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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. (COMM) 326/2017 & I.A. Nos. 9899/2017 & 1020/2019

M/S. R. R.OVERSEAS & ANR. Petitioners

Through: Mr. Yogesh Chhabra, Adv
versus

M/S SHYAM LAL GOYAL TEXTILES PRIVATE
LTD

..... Respondent

Through: Mr. Ankit Jain with Mr. Kailash
Chand Goel, Advs

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **29.01.2019**

1. This is a petition which seeks to challenge the award dated 12.05.2017.
2. Arguments in the matter have been heard at length.
3. After hearing arguments, Mr. Ankit Jain, who, appears for the respondent concedes that there is a legal lacuna in the award and therefore, it may not hold up scrutiny in the present proceedings.
4. The legal lacuna, according to him, revolves around the aspect concerning existence of an Arbitration agreement. This submission is made in the context of the fact that the Arbitration Agreement is appended at the foot of the subject invoice which was drawn up in the name of the petitioner no. 1 i.e. M/S. R.R.OVERSEAS.
5. Learned counsel says that in view of the judgment of the Coordinate Bench of this Court dated 22.03.2018, passed in OMP (COMM) 374/2016, in the matter of *PRIKNIT RETAILS LTD. &*

ORS. Vs ANEJA AGENCIES, it may be difficult to sustain the argument that there was an Arbitration Agreement obtaining between the parties in terms of Section 7 of the 1996 Act.

6. Mr. Jain, however, says that since the respondent intends to file a suit, the time spent in prosecuting the arbitration action should be excluded for the suit action to be viable in law.

7. Mr. Yogesh Chhabra, who, appears for the petitioner, says that he has no difficulty, if the award is set aside. It is, however, the learned counsel's contention that if suit action is filed by respondent, it should be open to the petitioner to take recourse to all defences that may be available in law including with regard to limitation.

8. Having heard the learned counsel for the parties, the petition is allowed. The impugned award is set aside.

9. The respondent will, however, have liberty to take recourse to the suit action, *albeit*, in accordance with law.

10. The concerned Court will take into account that fact that the respondent took recourse to the arbitration action in the bonafide belief, though erroneous in law, that an Arbitration Agreement obtained between the contesting parties.

11. Needless to say, parties will be free to take recourse to all rights and contentions that may be available to them in law.

12. Consequently, pending applications will stand closed.

RAJIV SHAKDHER, J

JANUARY 29, 2019/c
O.M.P. (COMM) 326/2017

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