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

+ ARB.P. 810/2018

BIBA APPARELS PRIVATE LIMITED Petitioner
Through Mr.Rajat Singh andn Ms.Tara Narula,
Adv.

versus

RITU EXPORTS Respondent
Through Mr.Gulshan Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **25.01.2019**

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Agreement dated 16.02.2015 executed between the parties. The said Agreement contains an Arbitration Agreement in form of Clause 11 thereof which is reproduced hereinbelow:

"11. DISPUTE RESOLUTION AND ARBITRATION

In the event of any dispute arising between the parties hereto BIBA shall be obliged to first clear all undisputed outstanding dues payable to THE PROCESSOR and THE PROCESSOR shall be obliged to return all fabric/ material and other articles to BIBA before proceeding further with the dispute and the dispute shall thereafter be resolved through arbitration by referring such dispute of the sole arbitrator to be jointly appointed by both the parties. The arbitration shall be conducted as per the provisions of the Arbitration and

Conciliation Act, 1996 or any other statutory modification or enactment in force at the relevant time. The venue of arbitration shall be New Delhi. The award of the arbitrator shall be final and binding on the parties.”

2. The disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement by way of its notice dated 03.05.2018.
3. Though, counsel for the respondent submits that the said notice has not been received by the respondent, in my opinion, as the petition itself has been filed and has been replied to by the respondent, this technicality need not detain this Court any further.
4. Learned counsel for the respondent further submits that the Arbitration Agreement between the parties is a conditional Agreement inasmuch as it requires the petitioner to clear all undisputed outstanding dues and the respondent as the “Processor” has to return all fabric/material and other article to the petitioner. He submits that while the respondent has duly returned all the fabric/material and other article to the petitioner, the petitioner has not cleared the undisputed outstanding dues of the respondent.
5. On the other hand, learned counsel for the petitioner submits that the disputes between the parties have arisen on this very issue itself. According to the petitioner, the respondent has not returned the fabric/material and other article to the petitioner, while the petitioner has paid all undisputed outstanding dues to the respondent.
6. I have considered the submissions made by the learned counsels for the parties. In my view the very nature of the dispute between the parties, itself satisfies the so called pre-condition in Clause 11 of the Agreement. The said dispute has to be resolved through the process of arbitration and

cannot be considered by this Court while exercising its power under Section 11 of the Act.

7. I, therefore appoint **Mr.Davinder Singh**, Senior Advocate (Chamber No.176, Lawyers Chamber Block-II, Delhi High Court, New Delhi, Mob. No.9810039326) as Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Agreement.

8. The Arbitrator shall give a disclosure statement under Section 12 of the Act before proceeding with the reference.

9. The petition is allowed in the above terms, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

JANUARY 25, 2019/Arya