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

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Date of decision: 30.01.2020

+ ARB.P. 648/2019

SHRI RAM PISTONS & RINGS LTD. Petitioner

Through: Mr. Abhishek Bhardwaj & Mr.
Ansh Arora, Advocates

versus

M/S. KAUSHIK FABRICATORS & ANOTHER Respondent

Through: Mr. Sunil K. Kalra, Advocate

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. This is a petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 ('Act').

2. Learned counsel for the respondent has taken preliminary objections to the maintainability of the petition. The first objection is about the territorial jurisdiction of this Court. It is submitted that parties reside and work for gain at Ghaziabad and therefore, this Court has no territorial jurisdiction.

3. I have perused the Arbitration Clause which is extracted hereinunder:

“ARBITRATION:

All disputes or differences or claims arising out of or in relation to this contract including the construction, validity, performance or breach thereof, shall be settled and decided by arbitration in accordance with the 'The Arbitration & Conciliation Act, 1996' and the parties do hereby agree to refer and refer the same to the sole arbitration of Shri Jenis Francis, P-4-A, 1st Floor, Jangpura Extn., New Delhi -110014 whose award shall be binding on the parties.

No further consent for reference shall be required and the arbitration proceedings shall be held at Delhi."

4. The Arbitration Clause clearly provides that the arbitration proceedings will be held at Delhi. Supreme Court in a recent judgment in the case of **BGS SGS Soma JV vs. NHPC Ltd. 2019 SCC OnLine SC 1585** has clearly held that where the Arbitration Clause provides for a venue or a place, in the absence of any *contra indicia*, the venue or the place will be treated as ‘a juridical seat’. Therefore, this Court has territorial jurisdiction to entertain the present petition as the parties agreed to conduct the arbitration proceedings at Delhi.

5. The second objection of the learned counsel for the respondent is that there is no valid existing Arbitration Agreement between the parties.

6. Learned counsel for the petitioner has drawn the attention of this Court to several documents placed on record which include challans as well as statement of accounts indicating debits in favour of the petitioner.

From these documents, it is evident that there were business transactions between the parties. Petitioner has rightly pointed out that in the first arbitration proceedings, respondent had clearly admitted that he has been working with the petitioner for the last 35 years. In fact, a counter claim of Rs. 40 Lacs along with interest was also filed before the Arbitrator. Once the Arbitrator expressed his inability to conduct the proceedings, the petitioner again invoked the Arbitration Clause on 04.10.2018. It is thus rightly contended that the respondent at no stage disputed the existence and validity of the arbitration agreement.

7. This objection of learned counsel for the respondent also thus has no merit.

8. Lastly, the learned counsel submitted that the present petition cannot be entertained for the reason that it is barred by limitation under Article 137 of the Limitation Act. Article 137 lays the limitation period of 3 years from the cause of action to file the present petition. Perusal of the list of dates filed by the petitioner, which is not disputed by the respondent indicates that even as late as in 2016, there were correspondences exchanged between the parties with regard to certain debit notes and shortages in the material.

9. Since the respondents had failed to pay the balance outstanding amount allegedly due to the petitioner, the petitioner had sent a notice dated 04.10.2018 invoking the Arbitration Clause and proposing to appoint Mr. Aquib Ali as Sole Arbitrator. The notice came back with the endorsement that the addressee had refused to accept the same. The

petitioner thereafter vide letter dated 24.6.2019 appointed Mr. Ali as the Sole Arbitrator and filed his Statement of Claim on 28.06.2019. Thereafter, the Arbitrator issued notice to both parties to appear on 13.7.2019. On the said date, the respondents along with their counsel appeared before the Arbitrator and took objection that they had not received copy of the Statement of Claim. The copy was supplied to the respondents. Respondents thereafter sought adjournment on the ground of exploring the possibility of amicable settlement. On 31.07.2019, respondents informed the Arbitrator that there was no possibility of a settlement and sought time to file their Statement of Defence. On 09.08.2019 respondents filed their Statement of Defence as well as counter-claims and an application seeking dismissal of claim on the ground that they had not consented to the appointment of Mr. Ali. On 23.08.2019, the petitioner filed its reply to the said application and on 28.08.2019, the Arbitrator allowed the application of the respondents with liberty to the petitioner to approach a proper Forum seeking appointment of the Arbitrator. The chronology as narrated herein clearly shows that the petitioner had taken timely action for appointment of the Arbitrator, but on account of the application filed by the respondents the Arbitrator had recused, granting liberty to the petitioner to seek appropriate remedy in law. The objection of the respondents that the petition is barred by limitation under Article 137 of the Limitation Act has no merit and is rejected. Relevant portion of the order of the Arbitrator is extracted hereinunder:

“17. This Tribunal is of the view that the appropriate remedy for the claimant is to approach proper forum seeking appointment of arbitrator under section 11 of the Arbitration and Conciliation Act, 1996. It is therefore, the application of the Respondent qua the jurisdiction of this Tribunal is allowed with a liberty to the claimant to approach the Hon'ble Court under Section 11 of the Arbitration and Conciliation Act seeking appointment of arbitrator. The application is accordingly disposed off. It is made clear that this Tribunal has not made any observation I finding on any other issue in any manner whatsoever.”

10. In my view, therefore, even this contention of the respondent only merits rejection.

11. This petition thus deserves to be allowed.

12. Mr. Brijesh Sharma, Advocate is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

13. The address and mobile number of the learned Arbitrator is as under:

Mr. Brijesh Sharma, Advocate
I-45, Jangpura Extension,
New Delhi-110014
Mobile: 9810115969

14. The learned Arbitrator shall give disclosure under Section 12 of the Act before entering upon reference.

15. Fee of the Arbitrator shall be fixed as per Fourth Schedule of the Act.
16. The petition is disposed of in the aforesaid terms.

JANUARY 30, 2020
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JYOTI SINGH, J

