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

% Judgment delivered on: 21st August, 2020

+ CM(M) 378/2020& CM APPL. 15145/2020

SCRAFT PRODUCTS PRIVATE LIMITED Petitioner

versus

ASHWANI KUMAR & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Ajay Kohli, Mr. S.S. Sobti, Ms. Priyanka Ghorawat, Mr. Raghav Marwaha, Advocates with Ms. Shivani Agarwal, AR of the petitioner company.

For the Respondents: Mr. Praveen Kumar Jain, Mr. Sanjay Agarwal, Ms. Sajal Manchanda and Mr. Lokendra Singh Chundawat, Advocates for Respondent No. 1.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. The hearing was conducted through video conferencing.
2. Petitioner seeks quashing of orders dated 30.08.2019, 19.06.2019 and 05.02.2020 and also the entire arbitral proceedings titled '*Ashwani Kumar Vs. Scraft Products Pvt. Ltd.*'.
3. It is contended by learned counsel for the petitioner that there is no arbitration agreement between the parties and even if assuming

there was an arbitration agreement, the appointment was without any recourse to Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Arbitration Act) and was unilaterally done by the respondent. He submits that the entire proceedings are a nullity and *void ab-initio*.

4. The alleged Arbitration agreement referred to by learned counsel for the respondent is contained in fee refund agreement dated 25.04.2018 which reads as under: -

“5. In case of any dispute in execution of the assignments as agreed above, the matter may be referred to an arbitrator in whom both have faith, or go with legal proceedings as per jurisdiction of Delhi Court.”

5. Learned counsel for the Respondents concedes that no application under Section 11 of the Arbitration Act was filed by the respondent before the High Court seeking appointment of an Arbitrator also that the reference was made unilaterally. He submits that he has no objection to the petition being allowed subject to reserving the right of the Respondent to approach the High Court for appointment of an Arbitrator in terms of Section 11 of the Arbitration Act.

6. In view of the above, orders dated 30.08.2019, 19.06.2019 and 05.02.2020 and the entire arbitral proceedings titled ‘*Ashwani Kumar Vs. Scraft Products Pvt. Ltd.*’ pending before Respondent No. 2 are quashed.

7. It is clarified that this order will not come in the way of the respondent approaching the High Court under Section 11 of the Arbitration Act for appointment of an Arbitrator. However, this would be without prejudice to the stand of the petitioner that the above referred arbitration clause does not amount to an arbitration agreement under the Arbitration Act and no reference to arbitration can be made.

8. The petition is accordingly allowed and disposed of in the above terms. All rights and contentions of the parties are reserved.

9. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email.

AUGUST 21, 2020
'rs'

SANJEEV SACHDEVA, J

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