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

+ **ARB.P. 556/2020& I.A. 2491/2021**

ASHWANI KUMAR

..... Petitioner

Through: Mr. Sparsh Goyal & Mr.
Chander Prakash Sharma,
Advs.

versus

NAV BHARAT INTERNATIONAL LTD. Respondent

Through: Mr. Kuljeet Rawal & Mr.
Vikram Alung, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

O R D E R(ORAL)

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18.02.2021

I.A. 2491/2021(under Section 151 of CPC, 1908- for condonation of delay)

1. For the reasons stated in the application, the delay in filing reply is condoned.

2. The application stands allowed.

ARB.P. 556/2020

1. Reply to the petition has been filed by the respondent.

ARB.P. 556/2020

2. Learned counsel for the petitioner submits that he does not seek to file any rejoinder thereto.

3. This is a petition under Section 11(6) of the Arbitration & Conciliation Act, 1996, for appointment of an arbitrator to arbitrate on the disputes between the parties.

4. According to the recital of facts in the petition, the respondent was desirous of securing a loan from M/s Caparo Financial Solutions Limited (hereinafter referred to as “CFSL”) for which they availed the services of the petitioner as an intermediary, *vide* Memorandum of Understanding (MoU) executed on 23rd August, 2019.

5. Under this MoU, it is averred that the respondent was bound to pay, to the petitioner, amounts, in accordance with Clause b of the MoU, which reads thus;

“The Second party hereby agree to pay consultancy fee 1 % + GST of loan amount to first party for arranging their financial requirements by means of cheque/cash, necessary deduction like TOS shall be deducted as per prevailing laws. 0.5% of consultancy fee will be payable to the first party at the time of sanction of loan facility and 0.5% shall be paid by the second party to the first party at the time of disbursement of loan amount in the bank account of second party.”

6. It is further averred that CFSL agreed to advance a loan of ₹ 11 crores to the respondent, in connection with which a sanction letter dated 13th September, 2019, was executed, whereafter, allegedly for *mala fide* reasons, the respondent backed out of the transaction. The

case of the petitioner is that, despite this, the MoU bound the respondent to pay, to the petitioner, ₹ 11 lakhs, as the petitioner has performed its part of the contract.

7. The petition further recites that according to the petition, attempts at settling the dispute with the respondent proved futile, whereafter, on 18th August, 2020, the petitioner addressed a legal notice to the respondent, followed by a further notice invoking the clause, in the MoU providing for arbitration as the mode of resolution of disputes *vide* second notice dated 31st August, 2020. The arbitration Clause in the MoU reads thus:

“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 related to the subject shall be with the jurisdiction of Delhi court.”

8. As the respondent did not agree to resolution of the dispute by arbitration, the petitioner has invoked the jurisdiction of this court under Section 11 of the 1996 Act.

9. A reply has been filed, to the petition, in which there is no dispute regarding the existence of the arbitration agreement. The only ground, on which the reply seeks to contest the petition, is that the MoU was terminated on 1st November, 2019, before it was acted upon, no note was sanctioned to the respondent, either of ₹ 11 crores or of any other amount in September, 2019 and that, after termination of the MoU, the respondent independently negotiated with CFSL and obtained a loan.

ARB.P. 556/2020

10. These assertions, in my opinion, do not make out any case for refusing reference of the disputes raised by the petitioner to arbitration. They are clearly dispute issues of fact, which do not impinge on the jurisdiction of this court under Section 11(6) of the 1996 Act, especially in view of the law enunciated of the Supreme Court in several decisions, including *Vidya Drolia v. Durga Trading Corporation*¹.

11. As such, the prayer in the petition is allowed, the petitioner is permitted to raise this dispute before Mr. Setu Niket, Advocate (Mob. No. 91+ 9873109672), who is appointed by this court as the arbitrator to arbitrate thereon.

12. Needless to say, the respondent would also be at liberty to contest the claim of the petitioner and raise any counter claim if it so chooses.

13. The fees of the arbitrator would be fixed in accordance with the Fourth Schedule of the 1996 Act.

14. The parties may contact the learned arbitrator within 48 hours of receipt, from the Registry of this court, a copy of this order by e-mail.

15. The learned arbitrator would file requisite disclosure under Section 12(2) of the 1996 Act, within a week of entering on the

reference.

16. With the aforesaid observations, the petition stands disposed of.

C.HARI SHANKAR, J

FEBRUARY 18, 2021

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