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

% ***Date of decision: 12.01.2022***

+ ARB.P. 1123/2021

BHASKAR INDUSTRIES PVT. LTD. & ANR. Petitioners

Through: Mr. Rajshekhar Rao, Senior Advocate
with Mr. Biju Mattam, Mr Sumit
Mamgain & Mr. Karthik, Advocates

Versus

NATIONAL TEXTILE CORPORATIO LD & ANR..... Respondents

Through: Mr. Sanjay Jain, ASG with
Mr. Sonal Singh, Mr. Sarfaraz
Ahmed, Mr. Anshuman Gupta,
Mr. Vignesh Raj, Ms. Aditi Mane &
Mr. Padmesh Mishra, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. The present petition has been filed by the petitioner under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator on behalf of respondent No.1 in terms of arbitration agreements.
 2. Petitioner No.1-Bhasker Industries Private Limited, petitioner No. 2- Decent Industries Private Limited are the companies incorporated under the provisions of Companies Act, 1956. Respondent No.1, National Textiles Corporation is a public sector enterprise under the Ministry of Textiles
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incorporated in the year 1968. Respondent No.2 is a Joint Venture Company duly incorporated under the laws of India, in which petitioners and respondent No.1 collectively hold 51% and 49% shares respectively.

3. During the course of hearing, Mr. Rajshekhar Rao, learned senior counsel appearing on behalf of petitioner has submitted that petitioner had entered into the following documents with respondent No.1:-

- (i) Memorandum of Understanding dated 0.6.11.2007
- (ii) Undertaking Transfer Agreement dated 15.11.2007
- (iii) Lease Deed dated 15.11.2007
- (iv) Share Subscription and Shareholders Agreement dated 20.11.2007

4. The parties had entered into the aforesaid documents to constitute a Joint Venture Company, i.e. respondent No.2, so that the Textile Mill/Undertaking namely India United Mills No. 1 along with its entire land admeasuring 21.25 acres consisting of the "Mill Land/1 and also the "Surplus Land" along with the building/structures thereof ("Lease Land") can be transferred to respondent No.2 on lease for a period of 33 years (renewable for two more term of 33 years each) to revive and operate the same by respondent No.2. However, according to petitioner, Respondent No. 1 till date, has miserably failed to comply the crucial terms of



transaction.

5. Learned senior counsel for petitioner submits that when all efforts of Petitioners for resolving the disputes/ differences with respondent No.1 failed, petitioner vide its notice dated 19.07.2021 to the respondent No.1 invoked arbitration in terms of Article 8.1, 8.2 and 9 of Memorandum of Understanding dated 06.11.2007; Article 13.1, 13.2, 13.13 of Share Subscription and Shareholders Agreement dated 20.11.2007; Article 13.1, 13.2, 13.3 and 13.4 of Lease Deed dated 15.11.2007 and Article 13.2, 13.3 and 13.4 of UTA Undertaking Transfer Agreement dated 15.11.2007. It is next submitted that till date, respondent has neither consented to the appointment of Sole Arbitrator nor appointed its nominee Arbitrator, hence, the present petition has been filed.

6. To the contrary, Mr. Sanjay Jain, learned ASG, appearing on behalf of respondent No.1 has disputed the claims raised in the present petition. However, he has agreed that the disputes are arbitrable. Existence of 'Dispute Resolution Clause' in the afore-noted documents executed between the parties is also not disputed. However, learned ASG has submitted that the plea of petitioner that respondent has failed to appoint its arbitrator deserves to be rejected, as respondent has been regularly communicating



with the petitioner vide communications dated 19.08.2021, 02.09.2021, 01.10.2021 and 01.11.2021 with the object to resolve the disputes.

7. During the course of hearing, learned senior counsel for the petitioner and learned ASG reached at a consensus that in terms of arbitration clause, the disputes have to be adjudicated by the arbitral tribunal comprising of three members, out of which one arbitrator each has to be proposed by both the sides and the two Arbitrators so appointed, shall appoint the Presiding Arbitrator.

8. Having reached this agreement, learned senior counsel for petitioner has once again proposed the name of Mr. Justice (Retd) Prakash Prabhakar Naolekar as nominee Arbitrator on behalf of petitioner. At this stage, Mr. Sanjay Jain, learned ASG has proposed the name of Ms. Justice (Retd.) Indu Malhotra as nominee Arbitrator on behalf of respondent.

9. Since both the sides have themselves proposed names of their nominee Arbitrators, which is acceptable to the other side, this Court hereby directs that the disputes, which are subject matter of this petition, shall be adjudicated by the Arbitral Tribunal comprising of Mr. Justice (Retd.) Prakash Prabhakar Naolekar and Ms. Justice (Retd.) Indu Malhotra, who shall mutually appoint the Presiding Arbitrator.



10. The learned Arbitrators shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

11. The present petition and pending application, if any, are accordingly disposed of.

12. A copy of this order be sent to the learned Arbitrators for information.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 12, 2022

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