

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Arbitration Case No. 149 of 2022

Date of decision: 17th March, 2023

Sanjivani Lifecare Medical Centre Pvt. Ltd.

Petitioner

Versus

Estate Officer-II, Haryana Sehri Vikas Pradhikaran, Gurugram

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Gagandeep Singh, Advocate for the petitioner.
Mr. Vinesh Dahiya, Advocate for the respondent.

AVNEESH JHINGAN, J (Oral):

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') for appointment of an arbitrator for adjudication of disputes between the parties.

The parties entered into a conveyance deed dated 9.1.2007. Clause 12 of the general terms and conditions provides for pre-arbitral settlement mechanism and for dispute resolution through arbitration.

The petitioner served notice under Section 21 of the Act on 11.1.2022. The needful having not been done, the present petition was filed.

Learned counsel for the respondent submits that the petitioner had played fraud with the respondent as it has further transferred the shares, hence the arbitrator should not be appointed.

The contention raised by learned counsel for the respondent lacks merit.

The Supreme Court in *Vidya Drolia and others v. Durga Trading Corporation, (2021) 2 SCC 1* over-ruled the decision in *N.*

Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72 and it was held that the allegations of fraud relating to civil dispute can be subject matter of arbitration, the exception being of a fraud which invalidates the arbitration clause. In the case in hand, the allegations in the FIR are of simple fraud and for issuing a cheque having knowledge that there were not sufficient funds in the account. No pleading or contention has been raised of a fraud vis-a-vis the lease deed or the arbitration clause.

Para No. 78 of ***Vidya Drolia's case (supra)*** is reproduced below:

“78. In view of the aforesaid discussions, we overrule the ratio in N. Radhakrishnan inter alia observing that the allegations of fraud can (sic cannot) be made a subject-matter of arbitration when they relate to a civil dispute. This is subject to the caveat that fraud, which would vitiate and invalidate the arbitration clause, is an aspect relating to non-arbitrability. We have also set aside the Full Bench decision of Delhi High Court in HDFC Bank Ltd. which holds that the disputes which are to be adjudicated by the DRT under the DRT Act are arbitrable. They are non-arbitrable.”

In ***M/s N. N. Global Mercantile Pvt. Ltd. v. M/s Indo Unique Flame Limited and others, (2021) 4 SCC 379***, the Supreme Court held that the allegations of fraud arising out of dispute inter-se the parties are arbitrable. Para No. 51 is reproduced below:

“51. In the present case, the allegations of fraud with respect to the invocation of the bank guarantee are arbitrable, since it arises out of disputes between the parties inter se, and is not in the realm of public law.”

The petition is disposed of by appointing Dr. Justice B. B. Parsoon, former Judge of this Court, as sole arbitrator subject to declaration to be made by him under Section 12 of the Act with regard to independence and impartiality to settle the dispute between the parties.

The arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended. The fee of the arbitrator will be equally borne by both the parties.

The arbitrator is requested to complete the proceedings as per time limit specified under Section 29A of the Act.

It is clarified that the reference shall be subject to the petitioner's complying with all the requirements of the agreement including the condition of pre-deposit.

Since the main case has been disposed of, pending applications, if any, stand disposed of.

Copy of the order be sent to the appointed arbitrator.

[AVNEESH JHINGAN]
JUDGE

17th March, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |