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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 30.05.2023
Judgment pronounced on: 03.07.2023

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+ ARB.P. 192/2023

VIPIN LUTHRA & ANR.

..... Petitioners

Through: Mr. Gautam Khazanchi, Adv.
alongwith Mr. Subham Jain,
Adv.

versus

DOIT SMART HOSPITALITY INDIA PVT LTD & ANR.

..... Respondents

Through: Mr. Vikram Sobti, Adv.
(through VC)

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

SACHIN DATTA, J.

1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (the "A&C Act") seeks constitution of the Arbitral Tribunal to adjudicate the dispute between the parties.
2. The disputes between the parties have arisen in the context of a Share Purchase Agreement ("SPA") dated 17.04.2018, entered into between the petitioners and the respondents. In terms of the said SPA, the petitioners, *inter alia*, agreed to sell/transfer their shareholding in respondent no.2 to respondent no.1 for certain consideration.



3. The respondents have placed on record the original duly stamped SPA.
4. The petitioners, *inter alia*, claim alleged failure on part of the respondents to pay “adjusted consideration” equivalent to potential tax refunds in terms of Clause 3.1 (b) read with Clause 5.1.3 and other clauses of the SPA, and also alleged outstanding loan amount of Rs. 44,00,000/- extended by petitioner no. 1 to respondent no.2. It is also averred that respondent no.1 being the purchaser was also obligated to facilitate the repayment of the entire loans standing in the accounts of respondent no.2.
5. The aforesaid Share Purchase Agreement dated 17.04.2018 contains an arbitration agreement in the following terms:

“12. Governing Law, Arbitration and Submission to Jurisdiction

12.1 Governing Law and Jurisdiction: This agreement and the documents to be entered into pursuant to it, save as expressly referred to therein, and any obligations arising out of or in connection with this Agreement and such documents (including non-contractual obligations) shall be governed by and construed in accordance with the laws of Republic of India. The Courts at Delhi shall have exclusive jurisdiction.

12.2 Dispute Resolution: If any dispute, difference, controversy or claim arises out of, in relation to or in connection with this Agreement (including but not limited to any question regarding its existence, validity, interpretation, breach or termination) (a “Dispute”), it shall be referred, upon written notice (a ‘Dispute Notice’) given by one Party to the other, to a final and binding arbitration.

12.3. Any Dispute which has not been satisfactorily resolved within thirty (30) days of the Dispute Notice being issued shall be referred to arbitration.

12.4 The arbitration shall be conducted by an arbitral tribunal consisting of three (3) arbitrators, with each disputing party appointing 1 (one) arbitrator and the 2 (two) arbitrators so appointed jointly appointing 1 (one) more arbitrator, who shall act as the third and presiding arbitrator.

12.5 The arbitration proceedings will be carried out in accordance with the Indian Arbitration and Conciliation Act, 1996 and the seat of arbitration



will be New Delhi, India. The arbitration proceedings will be conducted in the English language.

12.6. Each Party shall pay its own fees, disbursements and other charges, including legal fees, except as may be determined by the arbitral tribunal. The arbitral tribunal have the power to award interest on any sum awarded pursuant to the arbitration proceedings and such sum would carry interest, if awarded, until the actual payment of such amount.

12.7 Save as required by Law or regulation, no Party or person involved in any way in the creation, coordination or operation of the arbitration of any Dispute may disclose the existence, content or results of the Dispute or any arbitration conducted under this Agreement in relation to that Dispute to a third party."

6. The petitioners invoked the aforesaid arbitration agreement vide notice dated 01.11.2022, whereby the petitioners named its nominee arbitrator and called upon the respondents to name its nominee in terms of the aforesaid clause. Without prejudice to the same, the petitioners also sought waiver of the requirement of constitution of a three-member arbitral and requested the respondents to consider appointment of the arbitrator suggested by the petitioners as the Sole Arbitrator. No reply thereto is stated to have been sent by the respondents.

7. Learned counsel for the respondents whilst disputing the merits of the contentions of the petitioners does not dispute the existence of the arbitration agreement between the parties. Learned counsel strongly contends that the claim of the petitioners with respect to the alleged outstanding loan amount of Rs. 44,00,000/- is negated on a bare reading of the SPA, and being outside the scope thereof, and hence, non-arbitrable.

8. Since the existence of the arbitration agreement is not disputed, respective counsel for the parties are in agreement that a sole arbitrator be appointed to adjudicate the disputes between the parties subject to the



respondents' right to raise preliminary objections as regards jurisdiction/arbitrability/maintainability of claim(s) before the Arbitrator.

9. Accordingly, Ms. Preeti Goyal, Advocate (Mobile No.9821761687) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

10. The respondents shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability /maintainability of the claims which shall be decided by the arbitrator, in accordance with law, before adjudicating the claim(s) on merits. It is directed accordingly.

11. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.

12. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

13. Parties shall share the arbitrator's fee and arbitral costs, equally.

14. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

15. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.

16. The present petition stands disposed of in the above terms.

JULY 03, 2023/DK

SACHIN DATTA, J