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

Date of Decision: 18th January, 2023

+ **W.P.(C) 4603/2022**

GTI INFOTEL PRIVATE LIMITED Petitioner

Through: Mr. Debasish Moitra, Advocate.

M:9810083029

versus

ML INFOMAP PRIVATE LIMITED

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner Company- GTI Infotel Private Limited in the present petition challenges the following:
 - (i) Order dated 15th May, 2017 directing the commencement of arbitration proceedings.
 - (ii) Arbitral Proceedings
 - (iii) Arbitral Award dated 2nd June, 2018.
3. The brief background of the present petition is that the Petitioner and the Respondent entered into a Memorandum of Understanding (MoU) titled as 'Bidder MoU' on 24th October, 2014 to bid for tenders floated by the Indian Oil Corporation Limited (IOCL). The said MoU is stated to be effective for a period of 6 years from the date of execution. The case of the Petitioner, is that there was no arbitration clause in the 'Bidder MoU'.
4. An application under Section 11 of the Arbitration and Conciliation

Act, 1996 (*hereinafter, 'the Act'*) was filed by the Respondent in which the following averment was made by the Respondent:

“19. The Arbitration Agreement between the parties was completed by way of the above said mails dated 07.03.2016, 09.03.2016 and 28.04.2016, by which the Respondent offered the Petitioner to settle all the disputes by way of an Arbitration and the Petitioner accepted the said offer of the Respondent. The parties therefore, mutually agreed to settle their disputes by way of an Arbitration.”

5. In the said arbitration petition being **ARB.P. 207/2017** titled '**ML Infomap Private Limited v. GTI Infotel Private Limited**' the following order dated 15th May, 2017 was passed by the Id. Single Judge.

“1. This petition is filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) seeking appointment of sole arbitrator to refer all the disputes and differences between the parties for adjudication.

2. It is the case of the petitioner that the respondent placed a purchase order on 24.03.2015 for Geo Database Creation for Route Mapping and Round Trip Road Distance Determination and verification in the State of Maharashtra and Goa. On 26.03.2015 an agreement took place between the parties. On 23.02.2016, the respondent is said to have terminated the agreement. The petitioner relies upon an e-mail dated 07.03.2016 received from the respondent whereby the respondent offered that the matter can be settled by mutual conciliation or arbitration. However as per the reply of the petitioner dated 09.03.2016, the petitioner agreed for arbitration as their last option. Reliance is also placed on a notice dated 06.09.2016 invoking the arbitration proceedings where certain names of arbitrators were also proposed. The respondent

replied to the notice stating that at this stage, they do not agree for appointment of a formal arbitrator to resolve the disputes.

3. The petitioner has filed an affidavit of service whereby the respondent are served. None has appeared for the respondent.

4. There exists an arbitration agreement between the parties as evidenced from the exchange of mail by the parties. Accordingly, the petition is allowed. The parties are referred to Delhi International Arbitration Centre. The said Centre may nominate an arbitrator from its panel to adjudicate the disputes between the parties. The arbitration shall be held under the aegis of the said Centre.

5. The petition stands disposed of.”

6. Mr. Debasish Moitra, Id. Counsel for the Petitioner submits that the entire basis of the invocation of the alleged arbitration agreement and the application under Section 11 of the Act was founded on fraudulent representations made by the Respondent, inasmuch as the letter of invocation categorically in effect admitted that there was no arbitration clause. But the arbitration agreement was derived on the basis of certain emails dated 7th March, 2016 and 28th April, 2016. He relies upon paragraph 22 of the arbitration notice, which read as under:

“22. Vide your emails dated 07.03.2016 and 28.04.2016, you, the Addressee had proposed and offered to resolve and adjudicate the disputes and differences between our Client and you, the Addressee through the process of arbitration, which is hereby accepted by our Client to be held at New Delhi.

23. In terms of the Arbitration and Conciliation Act, 1996, our Client calls upon you, the Addressee, to agree to the nomination of one of the following persons as the Learned Sole Arbitrator,

within 30 days of the receipt of this Notice in order to adjudicate disputes between the Parties:

(i) Hon'ble Mr. Justice S.K Mahajan (Retd.), Former Judge of Hon'ble High Court of Delhi, C-271, Defence Colony, New Delhi-110024.

(ii) Hon'ble Mr. Justice V.S Agarwal (Retd.), Former Judge of Hon'ble High Court of Delhi, C-52, Swami Nagar, New Delhi-110017.

(iii) Hon'ble Mr. Justice R.C. Chopra (Retd.), Former Judge of Hon'ble High court of Delhi, A-384, Defence Colony, New Delhi-110003.”

7. On the basis of above averment in the invocation notice and the application under Section 11 of the Act, it is submitted by the Id. Counsel for the Petitioner that since there was no arbitration clause at all, the arbitration proceedings could not have been initiated and even the award is *non est*.

8. Heard. It is not in dispute that the arbitral award has now been passed under the aegis of Delhi International Arbitration Centre (DIAC) on 2nd June, 2018. Thereafter, vide order dated 10th July, 2020, the Additional District Judge (Commercial Court -3), has also dismissed the challenge under Section 34 of the Act to the said award.

9. Mr. Moitra, Id. Counsel for the Petitioner submits that the order passed under Section 34 of the Act has been challenged in the appeal being ***FAO (Commercial) 7/2021*** titled '***GTI Infotel Private Limited v. ML Infomap Private Limited***' under Section 37 of the Act.

10. In the opinion of this Court, too much water has flown in this matter for this Court to entertain a writ petition in this manner to set aside the appointment of Arbitrator, the arbitration proceedings and the resulting arbitral award and in effect pass an order for revocation of the alleged

arbitration clause.

11. This Court cannot go into the question as to whether there existed an arbitration clause between the parties or not, especially when the Petitioner had adequate opportunity to raise these contentions both before the Id. Single Judge, who entertained the application under Section 11 of the Act and before the Id. Arbitrator, as also before the Court where petition under Section 34 of the Act was pending.

12. The submission of the Petitioner that the Respondents made fraudulent representations by creating an arbitration clause which did not exist ought to have been taken at the appropriate stage. Even now, if the said contention of the Petitioner is correct, the Petitioner can raise the same in appropriate proceedings and not in the writ petition before this Court under Article 226 or 227. It is the settled position in law that though a writ petition would be maintainable in respect of arbitral proceedings, it is to be only entertained under `exceptional circumstances`, as held in **CM(M) 1272/2019** titled '**Surender Kumar Singal v. Arun Kumar Balotia**'. The relevant portion of the order is extracted below:

24. A perusal of the above-mentioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Article 226/227 in challenges to orders by an arbitral tribunal including orders passed under Section 16 of the Act.

(i) An arbitral tribunal is a tribunal against which a petition under Article 226/227 would be maintainable;

(ii) The non-obstante clause in section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a Constitutional provision;

(iii) For interference under Article 226/227, there have to be `exceptional circumstances`;

(iv) Though interference is permissible, unless and

until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere;

(v) Interference is permissible only if the order is completely perverse i.e., that the perversity must stare in the face;

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process;

(vii) Excessive judicial interference in the arbitral process is not encouraged;

(viii) It is prudent not to exercise jurisdiction under Article 226/227;

(ix) The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown;

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided.

13. The present case does not qualify for entertaining of a writ petition. Moreover, the Petitioner does not dispute having had notice of the arbitral proceedings and the award. It has already availed of its remedies of challenge under Section 34 and an appeal under Section 37. Such parallel proceedings, that too in a writ petition are clearly not maintainable and would frustrate the very purpose of arbitral proceedings.

14. Accordingly, the writ petition is disposed of with the observation that if the Petitioner wishes to raise these contentions in appropriate proceedings, it is free to do so, in accordance with law. No further observations have been made by the Court on the merits of the issue raised. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

JANUARY 18, 2023/dk/am