

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

% **Date of order : 12th April, 2023**

+ **ARB.P. 382/2023**

KKH FINVEST PRIVATE LIMITED & ANR. Petitioners

Through: Mr. Sandeep Sethi and Mr. Arvind Varma, Sr. Advocates with Ms. Ranjana Roy Gawai, Ms. Vasudha Sen, Ms. Niharika Behl and Mr. Vineet Wadhwa, Advocates

versus

SHARAD ARORA & ANR. Respondents

Through: Mr. Rajshekhar Rao, Sr. Advocate with Mr. Pranay Mohan Govil and Mr. Shivek Trehan, Advocates

+ **O.M.P.(I) (COMM.) 107/2023**

KKH FINVEST PRIVATE LIMITED & ANR. Petitioners

Through: Mr. Sandeep Sethi and Mr. Arvind Varma, Sr. Advocates with Ms. Ranjana Roy Gawai, Ms. Vasudha Sen, Ms. Niharika Behl and Mr. Vineet Wadhwa, Advocates

versus

SHARAD ARORA & ORS. Respondents

Through: Mr. Rajshekhar Rao, Sr. Advocate with Mr. Pranay Mohan Govil and Mr. Shivek Trehan, Advocates for R-1, 2 and 11
Mr. Tarang Gupta and Mr. Kartikeya Sharma, Advocates for

R-5 and 10

Ms. Rajeshwari H., Advocate for
R-8 and 9

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

ARB.P. 382/2023

1. The instant petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter "Arbitration Act") has been filed on behalf of petitioners seeking the following reliefs:-

" A. Pass an order to appoint a sole arbitrator to adjudicate all disputes between the Parties arising out of the Memorandum of Settlement dated 09.05.2022;

B. Pass such other and/or further orders as this Hon'ble Court may deem Fit and proper in the facts and circumstances of the case."

2. Mr. Sandeep Sethi and Mr. Arvind Varma, the learned senior counsels appearing on behalf of the petitioners submitted that the petitioner no. 1 is the strategic investor in the petitioner no. 2 Company, while the respondent no. 1 and 2 are the former promoters of the said Company.

3. It is submitted that a Share Subscription and Share Holders' Agreement was executed between the petitioner no. 1 and the respondent no. 1 and 2 on 27th May 2016. The respondents were responsible to supervise day-to-day affairs of the petitioner no. 2. During the period of

ARB.P. 382/2023 & O.M.P.(I) (COMM.) 107/2023

Page 2 of 8

the Agreement, several disputes arose between the parties, including breach of non-compete and non-solicitation obligations breach of audit rights, breach of confidentiality, breach of affirmative voting rights etc.

4. Subsequently, attempts were made by both the parties to settle the disputes and accordingly, a Memorandum of Settlement and Share Purchase Agreements was executed between the parties on 9th May 2022, which categorically enumerated respondents' obligations, to resolve the disputes between the parties. It is submitted that the respondent did not act in accordance with the Memorandum of Settlement and Share Purchase Agreements and hence, the petitioners issued Notices dated 22nd June 2022 and 8th August 2022 intimating the breaches to the respondents. It is submitted that the respondents, instead of curing the breaches, replied to the Notices without showing sufficient cause or cure for the said breaches.

5. It is submitted that, therefore, the petitioners sought invocation of arbitration proceedings and appointment of arbitrator by way of issuing the Notice dated 10th September 2022 in terms of Clause 79 of the Memorandum of Settlement, however, the parties could not agree upon an Arbitrator.

6. Therefore, the petitioners are before this Court seeking the appointment of an arbitrator for adjudication of disputes between the parties.

7. Mr. Rajshekhar Rao, the learned senior counsel for the respondents vehemently opposed the contentions raised in the instant petition, however, he has no objection if an arbitrator is appointed to adjudicate the disputes between the parties arising out of their contractual relations.

8. Heard the learned counsel for the parties and perused the record.
9. The parties before this Court entered into the Memorandum of Settlement and Share Purchase Agreements dated 9th May 2022, wherein a provision has been made for adjudication of any dispute amongst the parties by way of arbitration. The said provisions, i.e., under Clause 78 and 79, of the Memorandum are reproduced hereunder:-

“XX. DISPUTE RESOLUTION

78. All disputes or differences between parties in respect of or arising out of this Agreement including breach (“Disputes”), shall at the first instance be resolved through good faith negotiations between the Parties; which negotiations shall begin promptly after a Party has delivered to the other Party a written request for such consultation.

79. If the Parties are unable to resolve the Dispute in question within twenty one (21) Business Days of the commencement of negotiations in terms of Clause 78, the Dispute shall, unless the Parties otherwise agree in writing, be referred to arbitration in accordance with the Arbitration and Conciliation Act, 1996. The dispute shall be submitted for arbitration to a sole arbitrator to be jointly appointed by the Parties.”

10. The bare language of the Clauses shows that the parties were in consensus that they shall refer any dispute arising from the Memorandum to a Sole Arbitrator in accordance with the Arbitration Act. Therefore, it is evident that the Memorandum and Agreement between the parties makes provision for adjudication of disputes through arbitration.
11. The petition discloses that there are disputes between the parties that pertain to the refund of amount paid by the petitioners to the respondent, which the respondent admitted, in pursuance of the

Agreement executed by them. Therefore, the said claim, controversy, dispute admittedly stems from the Memorandum of Settlement and Share Purchase Agreements dated 9th May 2022.

12. The Arbitration Act and the provisions therein encourage that the parties to a dispute may be referred to arbitration where there exists an arbitration clause/agreement, the disputes between the parties are arbitral in nature and a prior notice is served upon the other party to the dispute by the party seeking resolution.

13. In the instant matter as well, there is an Arbitration Clause in existence, that is, Clause 79 of the Memorandum of Settlement, disputes have arisen between the parties which are arising from the said Memorandum of Settlement and are arbitrable in nature and the petitioners have also served a Notice under Section 21 of the Arbitration Act on 10th September 2022.

14. Therefore, considering the spirit of the Arbitration Act and the fulfilment of all necessary ingredients for appointment of an arbitrator under the Arbitration Act as well as the consensus between the parties for appointment of an Arbitrator, this Court is inclined to refer the parties to arbitration for resolution of their disputes.

15. Accordingly, keeping in view the above facts and circumstances, this Court finds it appropriate to refer the disputes between the parties to a Sole Arbitrator. Hence the following order:

ORDER

- (i) Justice T.S. Thakur, Former Chief Justice of India, is appointed as a sole arbitrator to adjudicate the disputes

between the parties which have arisen between the parties;

- (ii) The learned sole arbitrator, before entering the arbitration reference, shall ensure the compliance of Section 12(1) of the Arbitration and Conciliation Act, 1996;
- (iii) The learned sole arbitrator shall be paid fees as prescribed under the Delhi International Arbitration Centre (Administrative Cost and Arbitrators Fees) Rules, 2018 as amended vide notification dated 15th November, 2022;
- (iv) At the first instance, the parties shall appear before the learned sole arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator;
- (v) All contentions of the parties are expressly kept open.

16. A copy of the order be forwarded to the learned sole arbitrator on the following address:

Justice T. S. Thakur, Former Chief Justice of India

Address- A-160, New Friends Colony,
New Delhi – 110025

Contact No.- 8800309969, 26838718

17. Accordingly, the instant petition is disposed of alongwith pending applications, if any.

O.M.P.(I) (COMM.) 107/2023, I.A. 6587/2023 (Additional documents)
& I.A. 6586/2023 (Exemption)

1. The instant petition under Section 9 of the Arbitration Act has been

filed on behalf of petitioners seeking the following reliefs:-

“i. An injunction against the Respondents and their affiliates/agents/servants from carrying on the competing businesses enumerated in Schedule 6 of the MoS dated 09.05.2022 annexed herewith as Annexure 1 at page No. 102-218;

ii. An injunction against the Respondent No. 1 to 8 from representing the Petitioner No. 2 company in any manner including soliciting customers, clients, vendors, employees, consultants of Petitioner No.2 company;

iv. An order/direction to the Respondents to provide by way of affidavit disclosure of the business developed and intellectual property created during their engagement with Petitioner No. 2 Company.

v. Pass ex-parte ad-interim orders in terms of aforementioned prayers (i) to (iv);

vi. Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The learned senior counsels for the petitioners submitted that the instant petition has been filed since the respondents have disregarded the contractual obligations and have breached numerous terms and conditions of the Memorandum of Settlement and Share Purchase Agreements dated 9th May 2022.

3. After some length of arguments, the learned senior counsel appearing on behalf of the parties agreed that the dispute in question before this Court may be raised before and settled by the learned sole arbitrator appointed by this Court in ARB.P. 382/2023.

4. It is further submitted on behalf of the parties that since the disputes pertaining to the instant petition may be referred to the learned sole arbitrator, nothing remains for further adjudication in the instant petition.

5. Heard the learned counsel for the parties and perused the record.

6. In view of the above facts and circumstances as well as the consensus between the parties, this Court is also of the considered view that nothing survives for adjudication in the instant petition.

7. The learned counsel for the petitioner may raise all grounds invoked in the instant petition before the learned arbitrator by way of an application under Section 17 of the Arbitration Act.

8. It is also directed that the learned Arbitrator may adjudicate the said application under Section 17 of the Arbitration Act filed on behalf of the petitioner in accordance with law.

9. With the aforesaid directions, the instant petitions are disposed of, along with pending applications, if any.

10. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 12, 2023

dy/ms

Click here to check corrigendum, if any