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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 07.07.2023***

+ ARB.P. 545/2023

SALIL KANT

..... Petitioner

Through: Mr.Shyam Sunder Gangwar, Adv.

Versus

MENETA AUTOMOTIVE COMPONENT PVT.LTD

..... Respondent

Through: Mr.Pradyuman Sewar, Adv.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****REKHA PALLI, J (ORAL)**

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the Act), seeks appointment of an Arbitrator for adjudication of the disputes which have arisen between the parties in relation to agreement dated 31.12.2013.
2. The petition is sought to be opposed by the respondent on two grounds. The first being that the legal notice dated 17.02.2023 issued cannot be treated as a valid notice in consonance with Section 21 of the Act. In support of his plea, learned counsel for the respondent has relied on the decision of a Coordinate Bench of this Court in *Alupro Building Systems Pvt. Ltd. vs. Ozone Overseas Pvt. Ltd.* 2017 SCC



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3. The second submission of the respondent is that the petitioner's claim is on the face of it grossly barred by limitation. Learned counsel for the respondent submits that the cause of action if any, in favour of the petitioner having arisen in the year 2013, his claim was liable to be rejected at this stage itself as no useful purpose would be served by referring the parties to arbitration. He therefore, prays that the petition being an abuse of the process of law be dismissed.
4. In response, learned counsel for the petitioner submits that the respondent was well aware that the petitioner was invoking arbitration in accordance with the liberty granted to him by the learned Additional District Judge on 30.08.2022 in ARBTN No. 244/2018. He submits that vide his notice dated 17.02.2023, the petitioner had unequivocally invoked arbitration and therefore the respondent's plea that there was non-compliance of Section 21 of the Act was wholly misconceived. He further submits that even the respondent's plea that the petitioner's claim was barred by limitation was equally misconceived. He submits that the respondent having failed to assail the order dated 30.08.2022 vide which the petitioner was granted liberty to invoke arbitration cannot now be permitted to urge that the petitioner's claim was barred by limitation.
5. He further submits that even otherwise, this aspect as to whether the petitioner's claim is barred by limitation can be determined only by the learned Arbitrator after considering the evidence to be led before him. He therefore prays that the petition be allowed and an Arbitrator be expeditiously appointed so that the petitioner can receive his dues



which have remained pending since 2013.

6. Having considered the submissions of the parties, I find that the primary submission of learned counsel for the respondent is that the notice dated 17.02.2023 could not be treated as a notice invoking arbitration as envisaged under Section 21 of the Act. It would therefore be apposite to first note the relevant extracts of para 7 and 8 of the notice whereby the petitioner claims to have invoked arbitration. The same read as under:

*“7. That my client started Arbitration proceedings against you as per the terms and conditions of the contract and wherein the Arbitrator passed the Arbitral Award against you on 17th July 2017 and wherein you also participated therein. After the Arbitral Award you challenge the same before the Hon’ble Court and” wherein the Hon’ble Court set aside the said Arbitral Award on the ground of not compliance of the Section 21 of Arbitration-C 85 Conciliation Act and not adhere to the Arbitration Clause of the Contract and wherein my client unilaterally appoint the sole ‘Arbitrator which is against the public policy, therefore, the said Arbitral Award dated 17th July 2017 was set by the Hon’ble Court vide order dated 30th August 2022 and therein the Hon’ble Court also granted the liberty to initiate Arbitration proceedings again as per law. **Therefore, the present notice is issued to you for initiating the Arbitration proceedings of dispute between you and my client.**(Emphasis supplied)*

8. XXX

NOW BY MEANS OF THIS NOTICE, I hereby call upon you to pay the entire outstanding amount of Rs. 12,38,512 / - (Rs. Twelve Lacs, Thirty-Eight Thousand and Five Hundred 85 Twelve only) plus interest on the said outstanding amount since 1st September 2013 till the



issuance of present notice / realization of the said amount, within a period of 15 days and/ or I shall proceed as per the Arbitration Clause of Agreement executed between you and my client, which was valid till 31st December 2013 from receipt of this notice failing which our client shall be constrained to take recourse to law of Arbitration so as to -recover the said amount. ”

7. From a bare perusal of the aforesaid extract of the legal notice, it is evident that the petitioner had categorically stated that the notice was being issued for initiating arbitration of the disputes between the parties. Even though the notice may not be very aptly worded, the fact remains that the petitioner had clearly expressed his intention of invoking arbitration. Once no particular format for issuance of such notice has been prescribed under the Act, it is the contents of the notice and not the form which would be relevant. As the receipt of this notice is admitted by the respondent, I am of the view that the respondent having not replied to this notice, cannot now be permitted to urge that the present petition is pre-mature.
8. I have also considered the decision in ***Alupro Building Systems Pvt. Ltd. (supra)*** relied upon by the petitioner, but find that the same does not deal with the questions raised in the present petition. The said decision reiterates the settled legal position that a petition under Section 11 of the Act would not be maintainable unless the claimant has served the respondent with a legal notice invoking arbitration. In the present case, I am of the considered opinion that vide his notice dated 17.02.2023 the petitioner had clearly invoked arbitration. It can therefore not be said that the respondent had not been served with a



notice in accordance with Section 21 of the Act. I therefore find no merit in the respondent's plea that the present petition is premature or is not maintainable for want of a valid notice.

9. Now coming to the respondent's other plea that the petitioner's claim being barred by limitation, the present petition deserves to be rejected. The petitioner while not denying that the cause of action in his favour had initially arisen in September, 2013 has urged that the present petition has been filed as per the liberty granted to him by the Court on 30.08.2022 wherein the learned Additional District Judge while setting aside the earlier award dated 17.07.2017, had granted him liberty to initiate arbitration proceedings again. In order to appreciate this plea, it would be necessary to refer to the relevant extract of the judgment dated 30.08.2023, which reads as under:

"32. As the very function of Arbitral proceedings is found to be untenable in law, the proceedings before the Arbitrator and the Award deserves to be set aside. Hence, no useful purpose would be served by dealing with the Award on merits when the entire foundation of which Arbitration proceedings had commenced have been shattered.

33. In view of the above, the appointment of Arbitrator is set aside. Arbitration "petition is accordingly allowed. The proceedings before the Arbitration and the impugned Award dated 17.07.2017 passed by the Ld. Sole Arbitrator is hereby set aside. .

34. Parties are left to bear their own cost. Parties are at liberty to initiate Arbitration Proceedings again as per law."

10. The respondent does not deny that this order granting liberty to the petitioner to again invoke arbitration proceedings has attained finality.



I am, therefore, of the view that once the petitioner was, as late as on 30.08.2022, granted liberty by the Court to initiate arbitration proceedings again, it would be unfair and unjust to reject his claim on the ground of limitation at this stage itself. I am inclined to agree with the learned counsel for the petitioner that this question as to whether despite the specific liberty granted to the petitioner his claim can still be said to be barred by limitation ought to be determined only by the Arbitrator after considering the evidence to be led by the parties.

11. For the aforesaid reasons, the petition is allowed by appointing Mr. R.S. Rathi, Advocate, Enrl. No. D-1018/92, Res.-cum Off.: C-33/233, Guru Nanakpura, Laxmi Nagar, Delhi-110092 [Mobile No.9810868733, 8800981054], as the sole Arbitrator for adjudication of disputes between the parties arising out of Agreement between the parties dated 31.12.2013. It is, however, made clear that merely because this Court is referring the dispute between the parties to arbitration, the same would not be construed as this Court having expressed any opinion regarding the maintainability of the petitioner's claim.

12. Before commencing arbitration proceedings, the learned Arbitrator will ensure compliance with Section 12 of the Act. The arbitration will be held under the aegis of the Delhi International Arbitration Centre and therefore, the fees of the learned Arbitrator will be determined as per the rules of the DIAC.

13. Needless to state, this Court has not expressed any opinion on the merits of the petitioner's claims and therefore, it will be open for the parties to file claims/counter claims and raise all pleas permissible in



law before the learned Arbitrator, which will then be decided in accordance with law.

14.A copy of this order be forwarded to the learned Arbitrator for information.

15.The petition is allowed in the aforesaid terms.

JULY 7, 2023
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REKHA PALLI, J

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