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

% *Date of Decision: 13.07.2023*

+ **FAO (COMM) 143/2023 & CM APPL. 35185/2023 & CM APPL. 35186/2023**

DEVENDER KUMAR KASHYAP Appellant
Through: Mr. L. K. Singh, Adv.

versus

CHANDER MUNI & ANR Respondents
Through: Mr. Puneet Ahuja, Adv. for R1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitral and Conciliation Act, 1996 (hereafter '**the A&C Act**') impugning a judgment dated 18.08.2022 (hereafter '**the impugned judgment**') passed by the learned Commercial Court in **OMP(COMM.) 34/2021** captioned **Sh. Chander Muni v. Sh. Devender Kumar Kashyap & Ors.** In terms of the impugned judgment, the learned Commercial Court has allowed the respondent's application under Section 34 of the A&C Act against an Arbitral Award dated 10.09.2020 (hereafter '**impugned award**') delivered by an Arbitral Tribunal comprising of a Sole Arbitrator.



2. The respondent had assailed the impugned award before the learned Commercial Court, essentially, on two grounds. First, that the Arbitration Agreement entailed constitution of an Arbitral Tribunal comprising of more than one arbitrator; however, the Arbitral Award was rendered by a Sole Arbitrator. Second, that the appointment of the Arbitrator was flawed and the respondent had not concurred on any such appointment.

3. The arbitration clause, contained in the partnership deed – which was subject matter of the disputes – reads as under:-

“Any dispute or difference which may arise between the partners or their legal representatives with regards to construction, meaning, or effect of this deed or any part thereof, or in respect to the accounts, profits and losses of the business or the rights and liabilities of the partnership under deed of dissolution or winding up is to be referred for adjudication to arbitrators and provisions of Arbitration Act, 1940 shall apply.”

4. Although the arbitration clause referred to adjudication by ‘arbitrators’, the learned Commercial Court has construed the said clause to mean that the reference was required to be made to a Sole Arbitrator. The Court held that the letter ‘s’ indicating plurality of arbitrators, was surplus. Neither the appellant nor the respondent have challenged the said finding and therefore the same is binding on the parties.

5. Insofar as the second ground is concerned, the learned Commercial Court had found in favour of the respondent and held that the Sole Arbitrator was unilaterally appointed without the concurrence



of the respondent and such unilateral appointment was impermissible.

6. We find no infirmity with the said view.

7. At this stage, the learned counsel appearing for the appellant states that it be permitted to file a petition for appointment of an Arbitrator under Section 11 of the A&C Act. It is conceded by the learned counsel for the parties that the Arbitration Agreement exists between the parties and covers the disputes arising in connection with the partnership deed in question. Thus, there is no impediment for the appellant to prefer an appropriate application under Section 11 of the A&C Act for appointment of the Arbitrator.

8. We dismiss the present appeal with the aforesaid observations



VIBHU BAKHRU, J



AMIT MAHAJAN, J

JULY 13, 2023

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