



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 25th July, 2023

+

ARB.P. 1128/2022 & I.A. 15902/2022

PURE DIETS INDIA LIMITED

..... Petitioner

Through: Mr. Raghav Awasthi,
Mr. Mukesh Sharma and Mr. Kunal Tiwari,
Advocates.

versus

LOKMANGAL AGRO INDUSTRIES
LTD.

..... Respondent

Through: Mr. Shivlok Yashovardhan,
Mr. T.N. Durga Prasad and Mr. Prakash,
Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. Present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for appointment of a sole Arbitrator in respect of a Supply Agreement dated 18.08.2017.

2. The controversy in the present case pertains to construction of Clause 15.7 of the Agreement dated 18.08.2017 and while it is the contention of the Petitioner that Clause 15.7 is an arbitration clause providing for reference of the disputes between the parties to Arbitration, Respondent contends to the contrary. Before proceeding to examine this issue, it would be necessary to have a bird's eye view

of the facts obtaining between the parties.

Signature Not Verified

Signed By: KAMAL KUMAR ARB.P. 1128/2022

Signing Date: 29.07.2023
18:53:27



3. As per the Petitioner, a Supply Agreement was executed between the parties on 18.08.2017 for supply of products such as organic sugar, organic molasses, etc. customised for the Petitioner. The agreement *inter alia* contains a clause mandating exclusivity on the part of the Respondent for markets in U.S.A. and Europe where the Petitioner desired to acquire supply of these products. Subsequent thereto, parties entered into several other agreements for different quantities of the products, however, parties are *ad idem* that no other agreement contains any clause *akin* to Clause 15.7 in the Agreement dated 18.08.2017.

4. Petitioner asserts that it terminated the Agreement on 29.09.2019 on account of breach of the exclusivity clause by the Respondent. Notice dated 07.08.2022 was issued by the Petitioner, invoking Clause 15.7 of the Agreement dated 18.08.2017 seeking reference of the disputes to arbitration.

5. One of the many objections raised by the Respondent to the appointment of an Arbitrator is that the agreement between the parties does not contain an arbitration clause. Clause 15.7 relied upon by the Petitioner cannot be construed as an arbitration agreement as it does not indicate intention of the parties to resolve their disputes through the mechanism of arbitration. Clause 15.7 only provides that parties are at liberty to seek equitable/interim/provisional relief from a Court of competent jurisdiction including temporary or permanent injunction concerning a dispute, either prior to or during 'any arbitration' to protect their interests and preserve the *status quo* pending arbitration proceedings. There is nothing in the Clause which can be construed to mean and connote that parties envisaged appointment of an Arbitrator.



Additionally, Clause 15.2 which is an exclusive jurisdiction clause shows that parties intended that any dispute pertaining to the Agreement would be decided by a Civil Court at Delhi and both clauses 15.2 and 15.7 have to be read together and given a harmonious construction. Learned counsel for the Respondent placed reliance on the following judgments:

- (a). ***Nilesh C. Sanghani and Others v. Rakesh V. Zangda and Others, 2007 SCC OnLine Bom 530;***
- (b). ***Jagdish Chander v. Ramesh Chander and Others, (2007) 5 SCC 719;***
- (c). ***K. K. Modi v. K.N. Modi and Others, (1998) 3 SCC 573;***
- (d). ***Bharat Bhushan Bansal v. U.P. Small Industries Corporation Ltd., (1999) 2 SCC 166;***
- (e). ***Bihar State Mineral Development Corporation and Another v. Encon Builders (I) (P) Ltd., (2003) 7 SCC 418;***
- (f). ***State of Orissa and Another v. Damodar Das, (1996) 2 SCC 216; and***
- (g). ***Groupe Chimique Tunisien SA v. Southern Petrochemicals Industries Corpn. Ltd., (2006) 5 SCC 275.***

6. *Per contra*, learned counsel for the Petitioner strenuously and eloquently contended that Clause 15.7 of the Agreement dated 18.08.2017 is an arbitration agreement between the parties, which is reflected from the words ‘prior to or during any arbitration’. A holistic reading of Clause 15.7 shows that parties intended arbitration as a mechanism for adjudication of their disputes, however, for the purpose of seeking any equitable or interim relief/interim injunction, parties were free to approach a Court of competent jurisdiction. Counsel for the Petitioner sought to place reliance on the judgment of the Supreme

Court in ***Mahanadi Coalfields Ltd. and Another v. IVRCL AMR***



Joint Venture, 2022 SCC OnLine SC 960, where the Supreme Court observed that while there is no specific form of an Arbitration Agreement, the words used should disclose a determination and obligation to go to arbitration and not merely contemplate the possibility of going for arbitration *albeit* mere use of the word ‘Arbitration’ or ‘Arbitrator’ will not make it an Arbitration Agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. Seen in the light of the observations of the Supreme Court, Clause 15.7 constitutes a valid Arbitration Agreement and does not contemplate fresh consent by the parties. Although the Clause may not be happily worded, but parties have consciously used the word ‘arbitration’ and this is enough to construe the same as an arbitration agreement.

7. Learned counsel further emphasised that one of the principles of contract construction is that each and every word of the contract has to be given effect to and Clause 15.2 which is an exclusive jurisdiction clause cannot be interpreted in a manner that renders the word ‘Arbitration’ in Clause 15.7 redundant and *otiose*. In this context, reliance was placed on the judgment of the Bombay High Court in *Dr. Arun Subrao Prabhu v. Rizvi Builders, 2009 SCC OnLine Bom 1403*.

8. To examine and adjudicate the rival contentions of the parties, reference to the relevant provisions of the Act would be imperative. Section 2(b) of the Act defines “arbitration agreement” as an agreement referred to in Section 7. Section 7 defines arbitration agreement as follows:-

“7. Arbitration agreement. — (1) In this Part, “arbitration agreement” means an agreement by the parties to submit to



arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in —

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.”

9. In ***Wellington Associates Ltd. v. Kirit Mehta, (2000) 4 SCC 272***, the Supreme Court held that unless the document filed by the party in a petition under Section 11 of the Act is an arbitration agreement as defined in Section 7 requiring a reference in a mandatory sense, no reference can be made to the Arbitral Tribunal. Therefore, it is indeed implicit that if an objection is raised by the Respondent before the Court that the so-called arbitration clause is not an arbitration clause at all falling within Section 7, such a question will have to be decided in the proceedings under Section 11 and cannot be left to be decided only by the Arbitral Tribunal. The question was whether Clause 5 in the agreement could be construed as an arbitration clause as defined in Section 2(b) read with Section 7 of the 1996 Act, especially in light of Clause 4 therein. For ready reference, Clauses 4 and 5 are as follows:-

“4. It is hereby agreed that, if any dispute arises in connection with these presents, only courts in Bombay would have jurisdiction to try and determine the suit and the parties hereto submit themselves to the exclusive jurisdiction of the courts in Bombay.

5. It is also agreed by and between the parties that any dispute or differences arising in connection with these presents may be referred



to arbitration in pursuance of the Arbitration Act, 1940 by each party appointing one arbitrator and the arbitrators so appointed selecting an umpire. The venue of arbitration shall be at Bombay.”

10. After examining and interpreting the two Clauses, the Supreme Court came to a conclusion that Clause 5 was merely an enabling provision and did not evidence the intention of the parties that arbitration was the sole remedy for adjudication of their disputes. The Supreme Court held that parties had consciously and deliberately used the word ‘may’ instead of the word ‘shall’ while drafting the agreement, which could only be interpreted to mean and connote ‘also’.

11. From a reading of the aforesaid judgment, it is clear that the question as to whether a clause in the agreement is an arbitration clause falling within the scope of Section 7, may be decided in the proceedings under Section 11 of the Act as it touches upon the existence and validity of the Arbitration Clause and may not be left to be decided by the Arbitral Tribunal. The expression “existence” was subject matter of the decision of the Supreme Court in ***Vidya Drolia and Others v. Durga Trading Corporation, (2021) 2 SCC 1***, where the Supreme Court held that the expression “existence of an arbitration agreement” in Section 11 would include the aspect of validity of the agreement *albeit* the Court at the referral stage would only apply a *prima facie* test. In a recent judgment, a Co-ordinate Bench of this Court in ***Ashwani Kumar v. Scraft Products Pvt. Ltd. decided on 26.07.2021 in Arb. P. 488/2020***, has relied on the aforementioned judgments and held that it is no longer *res integra* that existence (which includes the validity and lawfulness) of the arbitration agreement can be examined by this Court and if the



arbitration agreement is absent, reference of disputes to an Arbitrator can be denied under Section 11.

12. From the conspectus of the aforesaid judgments and a conjoint reading of Section 2(b) and Section 7 of the Act, the conclusion that this Court can draw is that if a clause in an agreement purporting to be an arbitration clause does not fit in the statutory regime of Sections 2(b) and 7 and cannot be termed as an arbitration agreement, Court can at the threshold deny reference of disputes for adjudication through the arbitral mechanism.

13. The conundrum of determining the existence of an arbitration agreement in Court's quest to do so is best resolved by reading the clause since the language will be a pointer to the intention of the parties to choose arbitration as a Dispute Resolution Mechanism and then examining if the clause satisfies the parameters required. For this, I may first profitably refer to the judgment of the Supreme Court in **K.K. Modi (supra)**, where the Supreme Court had delineated the attributes of an arbitration agreement. Relevant paragraphs are as follows:-

“17. Among the attributes which must be present for an agreement to be considered as an arbitration agreement are:

- (1) The arbitration agreement must contemplate that the decision of the tribunal will be binding on the parties to the agreement,*
- (2) that the jurisdiction of the tribunal to decide the rights of parties must derive either from the consent of the parties or from an order of the court or from a statute, the terms of which make it clear that the process is to be an arbitration,*
- (3) the agreement must contemplate that substantive rights of parties will be determined by the agreed tribunal,*
- (4) that the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides,*



(5) that the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law and lastly,

(6) the agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal.

xxxx

xxxx

xxxx

xxxx

19. In *Russell on Arbitration*, 21st Edn., at p. 37, para 2-014, the question how to distinguish between an expert determination and arbitration, has been examined. It is stated,

“Many cases have been fought over whether a contract's chosen form of dispute resolution is expert determination or arbitration. This is a matter of construction of the contract, which involves an objective enquiry into the intentions of the parties. First, there are the express words of the disputes clause. If specific words such as ‘arbitrator’, ‘arbitral tribunal’, ‘arbitration’ or the formula ‘as an expert and not as an arbitrator’ are used to describe the manner in which the dispute resolver is to act, they are likely to be persuasive although not always conclusive.... Where there is no express wording, the court will refer to certain guidelines. Of these, the most important used to be, whether there was an ‘issue’ between the parties such as the value of an asset on which they had not taken defined positions, in which case the procedure was held to be expert determination; or a ‘formulated dispute’ between the parties where defined positions had been taken, in which case the procedure was held to be an arbitration. This imprecise concept is still being relied on. It is unsatisfactory because some parties to contract deliberately choose expert determination for dispute resolution. The next guideline is the judicial function of an arbitral tribunal as opposed to the expertise of the expert; An arbitral tribunal arrives at its decision on the evidence and submissions of the parties and must apply the law or if the parties agree, on other consideration; an expert, unless it is agreed otherwise, makes his own enquiries, applies his own expertise and decides on his own expert opinion....”

20. The authorities thus seem to agree that while there are no conclusive tests, by and large, one can follow a set of guidelines in deciding whether the agreement is to refer an issue to an expert or whether the parties have agreed to resolve disputes through arbitration.

21. Therefore our courts have laid emphasis on (1) existence of disputes as against intention to avoid future disputes; (2) the tribunal or forum so chosen is intended to act judicially after taking into account relevant evidence before it and the submissions made



by the parties before it; and (3) the decision is intended to bind the parties. Nomenclature used by the parties may not be conclusive. One must examine the true intent and purport of the agreement. There are, of course, the statutory requirements of a written agreement, existing or future disputes and an intention to refer them to arbitration. (Vide Section 2 Arbitration Act, 1940 and Section 7 Arbitration and Conciliation Act, 1996.)”

14. In ***Jagdish Chander (supra)***, the Supreme Court was examining an arbitration clause which read: “(16) *If during the continuance of the partnership or at any time afterwards any dispute touching the partnership arises between the partners, the same shall be mutually decided by the parties or shall be referred for arbitration if the parties so determine.*” Construing the clause, the Supreme Court observed that the Clause was not an arbitration agreement but a provision which enabled arbitration only if parties mutually decided after due consideration as to whether the disputes should be referred to arbitration or not. In effect, the clause required consent of the parties for reference of disputes to arbitration and the main attribute of an arbitration agreement, namely, *consensus ad idem* to refer the disputes to arbitration was missing. In the absence of an arbitration agreement, question of exercising power under Section 11 to appoint an Arbitrator did not arise. I may refer to a few passages hereunder from the judgment in ***Jagdish Chander (supra)***, which are as follows:-

“8. This Court had occasion to refer to the attributes or essential elements of an arbitration agreement in *K.K. Modi v. K.N. Modi* [(1998) 3 SCC 573], *Bharat Bhushan Bansal v. U.P. Small Industries Corpn. Ltd.* [(1999) 2 SCC 166] and *Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd.* [(2003) 7 SCC 418] In *State of Orissa v. Damodar Das* [(1996) 2 SCC 216] this Court held that a clause in a contract can be construed as an “arbitration agreement” only if an agreement to refer disputes or differences to arbitration is expressly or impliedly spelt out from the clause. We may at this juncture set out the well-settled principles in regard to what constitutes an arbitration agreement:



(i) *The intention of the parties to enter into an arbitration agreement shall have to be gathered from the terms of the agreement. If the terms of the agreement clearly indicate an intention on the part of the parties to the agreement to refer their disputes to a private tribunal for adjudication and a willingness to be bound by the decision of such tribunal on such disputes, it is arbitration agreement. While there is no specific form of an arbitration agreement, the words used should disclose a determination and obligation to go to arbitration and not merely contemplate the possibility of going for arbitration. Where there is merely a possibility of the parties agreeing to arbitration in future, as contrasted from an obligation to refer disputes to arbitration, there is no valid and binding arbitration agreement.*

(ii) *Even if the words “arbitration” and “Arbitral Tribunal (or arbitrator)” are not used with reference to the process of settlement or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause being an arbitration agreement if it has the attributes or elements of an arbitration agreement. They are: (a) The agreement should be in writing. (b) The parties should have agreed to refer any disputes (present or future) between them to the decision of a private tribunal. (c) The private tribunal should be empowered to adjudicate upon the disputes in an impartial manner, giving due opportunity to the parties to put forth their case before it. (d) The parties should have agreed that the decision of the private tribunal in respect of the disputes will be binding on them.*

(iii) *Where the clause provides that in the event of disputes arising between the parties, the disputes shall be referred to arbitration, it is an arbitration agreement. Where there is a specific and direct expression of intent to have the disputes settled by arbitration, it is not necessary to set out the attributes of an arbitration agreement to make it an arbitration agreement. But where the clause relating to settlement of disputes, contains words which specifically exclude any of the attributes of an arbitration agreement or contains anything that detracts from an arbitration agreement, it will not be an arbitration agreement. For example, where an agreement requires or permits an authority to decide a claim or dispute without hearing, or requires the authority to act in the interests of only one of the parties, or provides that the decision of the authority will not be final and binding on the parties, or that if either party is not satisfied with the decision of the authority, he may file a civil suit seeking relief, it cannot be termed as an arbitration agreement.*



(iv) But mere use of the word “arbitration” or “arbitrator” in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. For example, use of words such as “parties can, if they so desire, refer their disputes to arbitration” or “in the event of any dispute, the parties may also agree to refer the same to arbitration” or “if any disputes arise between the parties, they should consider settlement by arbitration” in a clause relating to settlement of disputes, indicate that the clause is not intended to be an arbitration agreement. Similarly, a clause which states that “if the parties so decide, the disputes shall be referred to arbitration” or “any disputes between parties, if they so agree, shall be referred to arbitration” is not an arbitration agreement. Such clauses merely indicate a desire or hope to have the disputes settled by arbitration, or a tentative arrangement to explore arbitration as a mode of settlement if and when a dispute arises. Such clauses require the parties to arrive at a further agreement to go to arbitration, as and when the disputes arise. Any agreement or clause in an agreement requiring or contemplating a further consent or consensus before a reference to arbitration, is not an arbitration agreement, but an agreement to enter into an arbitration agreement in future.”

15. It is thus palpably clear that the language of the purported arbitration clause must evidence an unambiguous, explicit and unequivocal intention to refer the disputes to arbitration, leaving no room for doubt that parties chose arbitration as their only mode of resolution of disputes. The main attribute of an arbitration agreement is thus *consensus ad idem* to refer the disputes to arbitration. An agreement to enter into an arbitration agreement cannot be an arbitration clause and therefore Courts have also held that mere use of the word ‘arbitration’ or ‘arbitrator’ is not enough to construe an agreement to be an arbitration agreement.

16. With this wealth of judicial precedents, I may now examine Clause 15.7, which is the bone of contention between the parties in the present case. Clauses 15.2 and 15.7 are extracted hereunder:-



“15.2 All disputes between the parties as to the validity, execution, performance, interpretation or termination of this Agreement will be submitted to the exclusive jurisdiction of the Courts of New Delhi.

xxxx

xxxx

xxxx

xxxx

15.7 Remedy for Breach of Exclusivity: Nothing in this clause 15.7 will preclude either Party from seeking equitable relief or interim or provisional relief from a court of competent jurisdiction, including a temporary restraining order, preliminary injunction or other interim equitable relief, concerning a dispute either prior to or during any arbitration if necessary to protect the interests of such Party or to preserve the status quo pending the arbitration proceeding. Specifically, the Parties agree that a material breach by either Party of its obligations in Clause 1 (Exclusivity Clause 1.1 – 1.3) of this Agreement may cause irreparable harm to the other Party, for which damages may not be an adequate remedy. Therefore, in addition to its rights and remedies otherwise available at law, including without limitation, the recovery of damages for breach of this Agreement, upon an adequate showing of material breach of such Section, and without further proof of irreparable harm other than this acknowledgement, such nonbreaching Party shall be entitled to seek (a) immediate equitable relief, specifically including, but not limited to, both interim and permanent restraining orders and injunctions, and (b) such other and further equitable relief as the court may deem proper under the circumstances. For the avoidance of doubt, nothing in this Clause shall otherwise limit a breaching Party’s opportunity to cure a material breach as permitted in accordance with Clause 10.”

17. Having perused Clause 15.7, this Court is of the view that it is difficult to hold that the parties intended to refer their disputes to arbitration and/or that the Clause can be construed to be an arbitration agreement. The Clause contains the expressions “any arbitration” and “arbitration proceeding” but does not meet the threshold of the attributes of an arbitration agreement as elucidated in ***K.K. Modi (supra)*** and the principles laid down in ***Jagdish Chander (supra)***. On an overall reading of Clause 15.7, it is a Clause which provides for remedies for breach of exclusivity which include seeking equitable and interim reliefs, claim for damages for breach of the agreement in the manner provided in the Clause. The emphasis is on interim reliefs



or preservation and *status quo* orders that can be sought by the parties to the agreement prior to or during the arbitration proceeding. The word “arbitration” is qualified by the word “any” and therefore it cannot be said that there was a clear intent of the parties to refer their disputes to arbitration. The words merely disclose a contemplation or a possibility of resorting to arbitration as different and opposed to an obligation to do so. In ***Bernhard Consultancy Private Limited v. Ind. Agro Synergy Limited, Nagpur, 2001 SCC OnLine AP 534***, the Court rejected the contention of the Petitioner that the clause in question was an arbitration agreement on account of use of the expression “if any”, despite the expression “arbitration” used in the heading of clause 14 and despite mentioning the venue of arbitration. Courts have time and again refused to accept clauses where the expressions “if any” or “may” have been used as arbitration clauses, holding that they do not indicate a definite intent of parties to arbitrate. Seen in this light and reading Clause 15.7 this Court is unable to discern any obligation or determination of the parties to refer their disputes to arbitration.

18. There is another important facet to this case, which is rightly pointed out by counsel for the Respondent. Clause 15.7 is preceded by Clause 15.2, which is an exclusive jurisdiction clause conferring the jurisdiction pertaining to all disputes between the parties as to validity, execution, performance, interpretation or termination on Courts at New Delhi. A similar issue arose before the Supreme Court in ***Wellington Associates Ltd. (supra)*** and on a conjoint reading of Clauses 4 and 5 therein, which have been extracted in the earlier part of this judgment, the Supreme Court held that if one looks at the fact that Clause 4 precedes Clause 5, one can see that under Clause 4,



parties desired that in case of disputes, the Civil Courts at Bombay are to be approached by way of a suit and therefore, it was not the intention of the parties that arbitration was the sole remedy. This Court in ***Avante Garde Clean Room & Engg Solutions Pvt. Ltd. v. Ind Swift Limited, 2014 SCC OnLine Del 3219***, construed an arbitration clause which read: “*Arbitration – Dispute if any arising out of this Agreement shall be subject to the exclusive jurisdiction of the courts in city of Delhi.*” and held that even though the heading of the clause used the expression “arbitration”, it would not militate against the substance of the clause which, in unequivocal terms, stated that the disputes arising under the agreement shall be subject to exclusive jurisdiction of the Courts and declined to refer the parties to arbitration. Court referred to and relied upon a somewhat similar clause that was subject matter of decision in the case of ***B. Gopal Das and Ors. v. Kota Straw Board (P) Ltd., Kota, decided on 21.10.1970 in Company Pet. No. 11 of 1967***, and read: “*That in case of any dispute arising between us, the matter may be referred to arbitrator mutually agreed upon and acceptable by you and us.*”

19. Coming now to a recent judgment of the Supreme Court in ***Mahanadi Coalfields Ltd. (supra)***, which is heavily relied on by the Petitioner. Having carefully gone through the judgement I am of the view that the observations of the Supreme Court inure to the advantage of the Respondent. The Supreme Court was examining Clause 15 of the Contract Agreement between the parties titled “*Settlement of Disputes/Arbitration*”. Clauses 15.1 and 15.2 read as follows:-



“15. Settlement of Disputes/Arbitration:

15.1 It is incumbent upon the contractor to avoid litigation and disputes during the course of execution. However, if such disputes take place between the contractor and the department, effort shall be made first to settle the disputes at the company level. The contractor should make request in writing to the Engineer-in-Charge for settlement of such disputes/claims within 30 (thirty) days of arising of the case of dispute/claim failing which no disputes/claims of the contractor shall be entertained by the company.

15.2 If differences still persist, the settlement of the dispute with Govt. Agencies shall be dealt with as per the Guidelines issued by the Ministry of Finance, Govt. of India in this regard. In case of parties other than Govt. Agencies, the redressal of the disputes may be sought in the Court of Law.”

20. The Supreme Court held that Clause 15 was a Dispute Resolution Mechanism at the company level rather than an arbitration agreement as it did not comport with the essential attributes of an arbitration agreement in terms of Section 7 of the 1996 Act and principles laid down in ***Jagdish Chander (supra)***. The Supreme Court further observed that plain reading of the above Clause left no doubt about its import. There was neither a written agreement to refer either the present or future disputes to arbitration nor did the substantive part of the Clause refer to arbitration as mode of settlement. In these circumstances, the Supreme Court concluded that invocation of jurisdiction of the High Court under Section 11(6) of the Act was not valid.

21. Having given my thoughtful consideration, I am unable to discern an unambiguous, certain or unequivocal intent of the parties from a reading of Clause 15.7 to resort to arbitration as mode of settlement of their disputes arising out of Agreement dated 18.08.2017. Clause 15.7 only provides that parties are at liberty to seek equitable/interim/provisional relief from a Court of competent



jurisdiction including temporary or permanent injunction concerning a dispute, either prior to or during ‘any arbitration’ to protect their interests and preserve the *status quo* pending arbitration proceedings. At the highest it can be construed as an agreement to enter into an arbitration agreement. In fact, the plea of the Petitioner is further negated by incorporation of Clause 15.2 in the Agreement which is an exclusive jurisdiction Clause providing for adjudication of disputes through Courts at Delhi.

22. For all the aforesaid reasons, this Court concludes that invocation of Section 11(6) of the Act by the Petitioner in view of Clause 15.7 of the Agreement dated 18.08.2017 is not correct and this petition cannot be entertained.

23. Petition is accordingly dismissed, however, granting liberty to the Petitioner to take recourse to other remedies available in law for redressal of its grievances, if any and if so advised.

24. Petition stands disposed of along with the pending application.

JYOTI SINGH, J

JULY 25, 2023/kks