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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 06.02.2023

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ARB.P. 1131/2022

JYOTSANA SINHA

..... Petitioner

Through: Mr.Tushar Swami, Mr.Jacob
Benny & Mr.Amit Kumar,
Advs.

versus

SNIGDHA PAPER AND PACKAGING LLP AND ORS.

..... Respondents

Through: Mr.Rudraksh Gupta,
Mr.Neeleshwar Pavani &
Mr.Sidharth Bhati, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the LLP Agreement dated 17.08.2017 executed between the parties.

2. The Arbitration Agreement between the parties is contained in Clause 52 thereof, which is reproduced hereinunder:-

"52. All disputes between the partners or between the Partner and the SNIGDHA PAPER & PACKAGING LLP arising out of the limited liability partnership agreement which cannot be resolved in terms of the agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996)."

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3. Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide notice dated 15.02.2022. In response, the respondent vide reply dated 08.03.2022, *inter alia*, refused the appointment of an Arbitrator. The petitioner has filed the present petition thereafter.
4. The learned counsel for the petitioner has also placed reliance on the order dated 18.01.2023 passed by the learned District Judge, Commercial Court-03, Shadhara District, Karkardooma Court in CS (Comm) 126/2022 titled ***M/s Snigdha Paper and Packaging LLP Through Its Partner v. Jyotsna Sinha***, whereby the learned District Judge has been pleased to allow the application filed by the petitioner under Section 8 of the Act, *inter alia*, observing as under:-

“Perusal of this said suit, shows that defendant herein has sued to the plaintiff No. 1 firm for recovery of Rs. 6,76,526/- with 18% interest. The said suit as evident from the plaint which is in Hindi, shows that defendant herein had sold two machines to the plaintiff No. 1 firm for Rs. 3,69,920/- and Rs. 3,16,606/- respectively. It is argued by Ld. Counsel for defendant that cause of action for filing the said suit at Gautam Budh Nagar is a stand alone and has nothing to do with the dispute raised by the plaintiffs in the case in hand.

On the contrary, it is argued by Ld. Counsel for plaintiff that LLP which was agreed between the three partners that plaintiff No. 2 and 3 and defendant No. 1 was for Rs. 25 lacs with 33.33% share each and the contribution of each partner was Rs. 8.33 lacs. It is argued that the Gautam Budh Nagar suit has direct bearing of this case cited, in so far as no initial contribution money was paid by the defendant and the said liability in the Gautam Budh Nagar suit was adjusted against Rs. 8.33 lacs contribution.

This plea is vehemently denied by Ld. Counsel for defendant / applicant and reference has made to Para-4 of the plaint

where plaintiffs have clearly stated that “That defendant Jyotsana Sinha was bound to pay Rs. 8,33,333/- towards her capital contribution with M/s Snigdha Paper & Packeging LLP but she could arrange only Rs. 6,50,000/- and balance amount of Rs. 1,83,333/- were paid by Mr. Shantanu Sinha. But she could not return this amount to Shri Shantanu Sinha, she requested plaintiff No. 1 to adjust this amount out of dues to M/s Nag Paper Tubes and reimburse to Sh. Shantanu Sinha.” There is also reference that when defendant could not pay back the said Rs. 1.83 lacs to Shantanu Sinha and she had made a request to plaintiffs to adjust this Rs. 1.83 lacs money from the dues which plaintiff agreed to defendant qua sale of two machines. This specific admission makes it clear that financial liability under which plaintiffs owes money to the defendant is a stand alone independent liability and has nothing to do with the dispute amongst the partners in the LLP in question.”

(Emphasis supplied)

5. On the other hand, the learned counsel for the respondent submits that the petitioner having filed an independent suit, cannot now invoke and rely upon the Arbitration Agreement. In support, he placed reliance on the order dated 15.07.2022 of the Supreme Court in SLP(C) No. 010722/ 2022 titled ***Tantia Construction Limited v. Union of India; Dolphin Drilling Ltd. v. Oil and Natural Gas Corporation Ltd.***, MANU/SC/0120/2010; and of this Court in ***Hero Wind Energy Private Ltd. v. Inox Renewable Limited and Ors.***, MANU/DE/1349/2020.

6. I have considered the objections of the respondent. The existence of the Arbitration Agreement in the LLP Agreement referred hereinabove is not denied by the respondent. The only defence raised by the respondent is based on the suit filed by the petitioner before the Commercial Court, Gautam Budh Nagar,

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contending that the petitioner is estopped from invoking and relying upon the said Arbitration Agreement.

7. The petitioner, on the other hand, contends that the said suit relates to an independent transaction of sale of machinery by the petitioner to the Partnership Firm. It is contended that the said transaction does not arise out of the LLP Agreement and, therefore, such dispute would not fall within the Arbitration Agreement between the parties.

8. In my opinion, the above plea can be considered only by the Court where the Suit filed by the petitioner is pending adjudication and/or the Arbitrator. As the existence of the Arbitration Agreement and due invocation thereof are not denied by the respondent, following the judgment of the Supreme Court in ***Vidya Drolia and Others v. Durga Trading Corporation***, (2021) 2 SCC 1, it is not for this Court to enter into the merits of the claims raised by the parties. It shall always be open to the respondent in such arbitration proceedings to contend that the transaction for which the suit has been filed by the petitioner is also related to or shall have an effect on the claim raised by the petitioner before the learned Sole Arbitrator.

9. The Supreme Court in ***Tantia Construction Ltd.*** (supra), is an order rejecting the Special Leave Petition by the Supreme Court wherein the High Court appears to have dismissed a petition under Section 11(6) of the Act on the ground that there was an earlier arbitration proceedings between the parties which had also resulted in an Arbitral Award. The same is not a situation in the present petition. The said order, therefore, cannot come to the aid of the respondent.

10. In *Dolphin Drilling Ltd.* (supra), the Supreme Court, and in *Hero Wind Energy Private Ltd.* (supra), this Court, held that arbitration need not be a one-time measure and it cannot be held that once the arbitration clause is invoked, the remedy of arbitration is no longer available in regard to other disputes that might arise in future. The said judgments, therefore, are inapplicable to the facts of the present case.

11. The learned counsels for the parties at this stage request that they be referred to the Delhi International Arbitration Centre (in short 'DIAC') for appointment of an Arbitrator. They further request that a Chartered Accountant be appointed as an Arbitrator as the dispute between them is in relation to accounts.

12. I find merit in both the submissions.

13. Accordingly, with the consent and on the request of the parties, the parties are referred to the DIAC, where they shall appear before the learned Coordinator on 21.02.2023 at 2:00 PM. The DIAC shall appoint a Chartered Accountant from its panel as a Sole Arbitrator. The fee and the procedure of arbitration shall be governed by the DIAC Rules.

14. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

FEBRUARY 6, 2023/rv