

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

The Hon'ble Justice Sabyasachi Bhattacharyya

A.P. NO. 152 of 2021

**Mala Roy & Others
-Vs-
M/s. Jai Balaji Industries Limited**

For the petitioners	:	Mr. Meghajit Mukerjee, Adv. Ms. Sonia Das, Adv.
For the respondent	:	Mr. Abhrajit Mitra, Sr. Adv. Mr. Sarvapriya Mukherjee, Adv. Mr. Uttam Sharma, Adv.
Hearing concluded on	:	25.06.2024
Judgment on	:	02.07.2024

Sabyasachi Bhattacharyya, J:-

1. The present application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as, "the 1996 Act") arises out of the disputes between the parties in connection with an Agreement for Settlement dated May 12, 2013. The petitioners/creditors, pursuant to purchase orders of iron-ore and fines placed by the respondent/debtor, had sold such materials to the respondent. Subsequently, an amount became due by way of sale price. The parties decided to resolve the issues by adjustment of the debts and agreed to a repayment schedule by the Agreement-in-question for realization of dues of the petitioner to the tune of Rs. 1,90,36,023/-.

2. Clause 9 of the Agreement contains the repayment schedule which has five (05) components.
3. In sub-clause (a), the debtor/respondent was to pay an amount of Rs. 25,00,000/- at the time of signing of the agreement.
4. In sub-clause (b), it was stipulated that post-dated account payee cheques of Rs. 20,00,000/- each would be handed over by the debtor to the creditor.
5. As per Clause (c), five separate purchase orders of one rake each of a particular size of iron-ore would be placed to the creditor/petitioner by the debtor/respondent.
6. In sub-clause (d), it was provided that the said five cheques would be presented to the Bank one by one by the creditor, each on the date of actual loading of each rake.
7. Sub-clause (e) mentions that a sum of Rs. 50,10,171/- payable by one M/s. Emars Mining and Construction Pvt. Ltd. to the respondent/debtor would be adjusted by the debtor against the dues payable to the creditor in terms of the agreement to be entered into between M/s. Emars Mining and Construction Pvt. Ltd. and the debtor/respondent.
8. The petitioners claim that due to closure of mining operations during the period between May 16, 2013 (soon after the agreement) and the later part of the year 2019, in view of the prevalent Government Orders and restrictions regarding direct purchase which were beyond the control of the petitioner, iron-ore could not be supplied by the petitioners in terms of the agreement.

9. On December 7, 2019, the petitioner requested the respondent to issue purchase orders as per the agreement and make payment of the balance amount by issuing post-dated cheques. The respondent refused to do so, thereby giving rise to the dispute between the parties.
10. On July 15, 2020, the petitioners communicated in writing to the respondent for a mutual discussion to resolve the disputes in terms of the agreement. The same having failed even after repeated correspondence, the petitioner invoked the Arbitration Clause in the Agreement *vide* a Notice under Section 21 of the 1996 Act dated May 12, 2013, naming an Arbitrator.
11. The respondent denied the allegations and disputed that any arbitrable dispute exists between the parties by replies dated September 8, 2020 and September 30, 2020, sent in response to the petitioners' letters dated July 15, 2020 and August 17, 2020 as well as September 9, 2020.
12. Learned counsel for the petitioners submits that in the agreement, in Clause 12, a *force majeure* provision was included, which, *inter alia*, stated that neither party would be liable for any breach of the agreement for reasons beyond the control and capacity of the creditor/petitioner if the production and/or despatch would have been sustained, delayed and/or not enforced in time due to the bar or rules or act of any regulatory bodies/Government Authorities, etc. The petitioner seeks to take advantage of the said clause and contend that

it was not possible for the petitioner to act on the agreement before December, 2019.

- 13.** It is next argued that although there might have been a minor error in the Arbitration Clause, that is, Clause 13 inasmuch as it referred to the validity of the agreement as the subject-matter of the probable dispute, the language of the same, if read comprehensively, indicates that any dispute or difference between the parties arising out of or in relation to the agreement would be the subject-matter of arbitration. As such, an Arbitrator ought to be appointed. In support of his contentions, learned counsel cites several judgments which will be considered at the appropriate time below.
- 14.** Learned senior counsel for the respondent/debtor argues that the subject-matter of the dispute relates to performance of the agreement and does not touch the validity of the same, such validity being undisputed. Hence, the dispute having not touched the validity, which furnishes the only scope of arbitration as per Clause 13 of the Agreement, the present application ought to be dismissed and the parties are required to resolve the disputes not by way of an arbitral proceeding but before a regular court of law/ forum.
- 15.** Learned senior counsel next argues that the subject-matter of the dispute is “dead wood”. It is argued that the dispute sought to be raised afresh by the petitioner has lost relevance long back and is palpably barred by limitation, since the agreement was entered into as long back as on May 12, 2013 and the first claim was made only in December, 2019.

16. Secondly, in view of the respondent having not placed any purchase order in terms of Clause 9(c) with the petitioner, no dispute has arisen at all within the contemplation of the agreement.
17. It is argued that the *force majeure* clause is not applicable in the present case at all. It is argued that the contention made at the bar cannot be a relevant consideration for reading the *force majeure* clause into the acts of the petitioner.
18. It is also contended that the Arbitration Clause in an agreement must be strictly construed and the presumption would be that the relief of the parties lies before a regular Civil Court and not before the Arbitral Tribunal. It is argued that presumption lies in favour of the civil court's jurisdiction and not the ouster of the same.
19. Learned senior counsel also cites several judgments which will also be considered at the relevant juncture while deciding the issues.
20. To adjudicate the matter, the following issues fall for consideration:-
 - (i) Whether the present dispute falls within the ambit of the Arbitration Clause;
 - (ii) Whether the claim is *ex facie* time-barred;
 - (iii) Whether the petitioner has any cause of action to refer to arbitration.
21. The above issues are decided as follows:

Issue:

- (i) ***Whether the present dispute falls within the ambit of the Arbitration Clause.***

- 22.** To decide this issue, the Arbitration Clause (Clause 13) and the Forum Selection Clause (Clause 14) in the Agreement itself are to be considered. The said Clauses are set out below:

“13. AND WHEREAS in case of any dispute or any different between the parties arising out of or in relation to the Agreement as to the validity of this Agreement the same shall be resolved by mutual discussion. If both the parties fail to do so then the matter shall be referred to the ‘Arbitration’ as per the “Arbitration and Conciliation Act, 1996”. The cost of ‘Arbitration’ shall be borne by both the parties equally and the place of ‘Arbitration’ will be in Kolkata.

14. AND WHEREAS in case of any dispute or any difference between the parties arising out of or in relation to the Agreement shall be subject to the exclusive jurisdiction of the Courts in Calcutta.”

- 23.** The scope of reference to arbitration as per Clause 13 is in respect of any dispute or difference between the parties “arising out of or in relation to the Agreement”. Immediately thereafter, the expression used is “as to the validity of this Agreement”. The respondent argues that the scope of reference is restricted to the validity of the agreement only and the previous words in the said Clause only qualify the same. On a plain reading of the Clause, undoubtedly, it is seen that the expression “arising out of or in relation to the Agreement” is suffixed by the term “as to the validity...”. However, on a closer scrutiny, it becomes obvious that in the event the intention of the parties was only to cover disputes relating to validity, the previous expression “arising out of or in relation to” would be completely superfluous, since, in such event, the expression “and whereas in case of any dispute or any

difference between the parties to the validity of this Agreement” would suffice. However, it is a cardinal rule of construction to avoid attributing redundancy to any of the expressions used in a document. Purposive interpretation is a recognized principle of construction where there is an iota of ambiguity. The courts, while construing a provision, are to endeavour to give effect to all the words used in the relevant clauses of the agreement if possible, unless such provisions are otherwise completely unworkable.

- 24.** Read in such context, the expressions “arising out of” and “in relation to” are considerably wide in amplitude, encompassing disputes not merely regarding interpretation of the different clauses of the Agreement and issues arising directly from the Agreement but also all issues arising incidentally, touching the Agreement. There may very well be disputes which, although not directly relatable to the Agreement, may arise out of it or in relation to it, covering necessary implications and effects of the clauses in the Agreement and the rights and liabilities of parties which can be reasonably deduced therefrom. Issues emanating incidentally from the Agreement are also covered by the said expressions. As such, the said phrases cannot be confined merely to the validity of the Agreement. Such a restriction would be a contradiction in terms, since validity of the agreement directly affects the Agreement and cannot extend to issues otherwise arising out of it or in relation to it, whether incidentally or whether relating to the effects which can be inferred from the clauses thereof.

- 25.** Thus, if the phrases “arising out of” and “in relation to” are read in conjunction with “as to the validity”, it would be an absurdity to confine the scope of reference merely to validity of the Agreement, which would have the necessary effect of entirely discarding the above two expressions which have been deliberately used by the parties in Clause 13.
- 26.** Seen from another perspective, Clause 14, which is the Forum Selection Clause, cannot be divorced from the Arbitration Clause so as to stand on an entirely independent footing. The selection of a forum cannot exist in thin air but is directly relatable to the dispute which is to be decided by such forum. Hence, an indication of the scope of disputes to be decided before the forum can also be derived from a Forum Selection Clause. Conspicuously, Clause 14, which confers exclusive jurisdiction on the courts in Calcutta, uses the expression “in case of any dispute or any difference between the parties arising out of or in relation to the agreement”, entirely omitting the term “validity”. The Forum Selection Clause has to be read along with the Arbitration Clause, since it does not supplant but supplements the Arbitration Clause and qualifies the same, providing merely the forum for redressal of the disputes which are indicated there. Hence, there must be an identity in the ambit of disputes covered by the arbitration clause and the forum selection clause. Otherwise, it would be absurd and unworkable if the forum selection clause covers wider disputes than the principal arbitration clause. Hence, Clauses 13 and 14 are to be read together to impart meaning to each other.

- 27.** Seen from such perspective, the obvious conclusion befitting a reasonable mind would be that the parties deliberately agreed to refer all disputes arising out of or in relation to the Agreement, including those regarding validity of the Agreement, to arbitration, which would be adjudicable by courts in Calcutta.
- 28.** The expression “courts” has been sought to be explained by the respondent to mean only regarding suits and not arbitration. However, in such event, Clauses 13 and 14 would be mutually exclusive, leading to the impossible conclusion that in the same breath, the parties choose to refer disputes to arbitration but at the same time provide for civil suits in the Forum Selection Clause. Notably, the expression “court” has also been defined in the Arbitration and Conciliation Act, 1996 and as such, may very well mean the adjudication by courts in Calcutta in respect of the matters referable in connection with the arbitral proceeding, where intervention of courts is permitted under the 1996 Act, such as Sections 9, 11, 34, 36 and 37 of the 1996 Act.
- 29.** The respondent has cited the decision of a learned Single Judge of the Madras High Court in the matter of *H.G. Oomar Sait and another Vs. O. Aslam Sait*, reported at 2001 SCC OnLine Mad 465, where the court quoted a judgment of 1993 where the Supreme Court observed that honest men dread arbitration more than they dread law suits. However, such premise itself has become obsolete upon the enactment of the 1996 Act, in consonance with the UNCITRAL Model Code. It has been consistently held in recent times that the endeavour of the

courts would be to interfere with an arbitral proceeding as little as possible and to relegate all disputes to arbitration if an intention is expressed by the parties to go for arbitration, which is a well recognized mode of ADR (Alternative Dispute Resolution).

30. Thus, the views of courts have undergone a sea-change over the years and the current endeavour of courts is to construe arbitration clauses in favour of reference to arbitration where the parties have mutually agreed to do so, rather than stultify such recourse by unnecessary court interference. Even otherwise, the said judgment is distinguishable on facts since there the parties had agreed to refer the matter to arbitration during subsistence of the partnership agreement but the court held that the same had been done only upon dissolution, thereby traversing beyond the arbitration clause itself.
31. The respondent also cites *Oriental Insurance Company Limited Vs. Narbheram Power and Steel Private Limited*, reported at (2018) 6 SCC 534. There, the court held that an arbitration clause is required to be strictly construed and any expression of the clause must unequivocally express the intent of arbitration. In the present case, the unequivocal intention to refer the dispute to arbitration is not in question but the issue is as to whether the subject-matter of dispute falls within the scope of the arbitration clause.
32. In the said case, it was held that if a clause stipulates that under certain circumstances there can be no arbitration and they are demonstrably clear, then the controversy pertaining to appointment of Arbitrator has to be put to rest. In the said case, as evidenced from

Paragraph 7 thereof, the arbitration clause had a clear negative provision that it is clearly agreed and understood that no difference or dispute shall be referable to arbitration as thereinbefore provided, if the company has disputed or not accepted liability under or in respect of the policy. The said circumstance cannot be equated with the present case, since there is no such negative clause in the arbitration clause herein.

- 33.** The respondent also cites *United India Insurance Company Limited and Another Vs. Hyundai Engineering and Construction Company Limited*, reported at (2018) 7 SCC 607, where there was also a similar clause restricting reference to arbitration if the company has disputed or not accepted liability under or in respect of the policy. In the said case, it was clearly agreed between the parties that the matter shall be referred to arbitration only if the quantum was disputed, thereby confining the reference in specific terms to disputes as to quantum alone. In such context, the strict construction of the clause was mandated by the Supreme Court. In the present case, however, there is no such negative clause specifically providing in negative terms that there would be no reference if the company has disputed or not accepted liability in respect of the policy.
- 34.** It is also required to be kept in mind that both the above judgments were rendered in the context of insurance contracts where the well-settled principle is that only disputes as to quantum are arbitrable. Moreover, the lop-sided and unequal bargaining powers of the insurer

and an ordinary insured is also an underlying consideration in such cases.

35. In *Vidya Drolia and Others Vs. Durga Trading Company*, reported at (2021) 2 SCC 1, the Supreme Court recognized the principle of *kompetenz-kompetenz*, which was left to the discretion of the court to decide. It was observed that validity of the agreement was a *sine qua non* and the court is to see whether the underlying contract contains an arbitration clause for disputes arising between the parties, for which it was necessary to enquire into the purpose of the arbitration clause. In Paragraph No. 150 of the said judgment, the strict principle rule of interpretation was reiterated, but in case of insurance contracts.
36. It is well-settled that in case of insurance contracts, almost in all cases, a dispute is arbitrable only if the quantum is refuted and not otherwise. No parallel can be drawn between the principles applicable to the present case and such proposition.
37. Again in *Life Insurance Corporation of India and Another Vs. Dharam Vir Chand*, reported at (1998) 7 SCC 348, the strict rule of interpretation in respect of an insurance contract was being considered by the Supreme Court. A mistake of drafting was under scrutiny there. In the present case, however, if we read the arbitration clause by adopting purposive interpretation, even without reading into it any mistake of drafting, all disputes or differences arising out of or in relation to the contract, including validity, is to be inferred as the subject-matter of arbitration.

- 38.** The respondent also cites *Indore Development Authority Vs. Shailendra (Dead) through legal representatives and Others*, reported at (2018) 3 SCC 412. The consideration therein was regarding two expressions used in two statutes which were being interpreted by the Supreme Court. The intendment of beneficial legislations and the effect thereof on interpretation of statutes were being considered. As such, the proposition laid down therein is completely irrelevant for the present purpose.
- 39.** On the other hand, the petitioner cites *Enercon (India) Limited and Others Vs. Enercon GMBH and another*, reported at (2014) 5 SCC 1 where, in Paragraph 88, it was observed that the courts have to adopt a pragmatic approach and not a pedantic or technical approach while interpreting or construing an arbitration agreement or arbitration clause. Therefore, when faced with a seemingly unworkable arbitration clause, it is the duty of the court to make the same workable within the permissible limits of the law, without stretching it beyond the boundaries of recognition. A common sense approach was preferred by the Supreme Court to give effect to the intention to the parties to arbitrate. The arbitration clause, it was held, cannot be construed with a purely legalistic mindset as if one is construing a provision in a statute. Quoting Lord Diplock, it was observed that if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense.

- 40.** It is to be kept in mind that the respondent was already a debtor to the petitioner at the juncture when the agreement-in-question was entered into between the parties. The agreement itself contemplates a settlement of the dues by incorporating modalities for discharge of the liability of the respondent to the petitioner, thus making it a purely commercial agreement. Hence, commercial prudence would only be subserved if effect is given to the intention of the parties to arbitrate, which is evident from the Clauses 13 and 14 of the agreement between the parties. The effort would be to facilitate resolution of the dispute by the alternative dispute redressal mode of arbitration rather than putting a spanner in the wheels of such resolution.
- 41.** Also, in *Visa International Ltd. Vs. Continental Resources (USA) Ltd.*, reported at (2009) 2 SCC 55, the Supreme Court observed that if there is a clear intention of parties to go for arbitration, the matter is to be referred to arbitration and that no party can be allowed to take advantage of “inartistic drafting” of arbitration clause as long as such clear intention of parties to go for arbitration in case of future disputes is evidenced from the agreement and materials on record including surrounding circumstances.
- 42.** Seen from such perspective, the inevitable conclusion is that Clauses 13 and 14, read in proper perspective, takes within their fold all disputes and differences between the parties arising out of or in relation to the agreement including the validity of the agreement. Hence, the first issue is decided in favour of the petitioners.

Issue:**(ii) Whether the claim is *ex facie* time-barred.**

- 43.** To consider the question of limitation, the case of the parties is to be considered. The petitioners' contention is that the agreement-in-question, which is an admitted document, was entered into on May 12, 2013. From May 16, 2013 onwards, the mines were closed, apparently due to coal auction Circulars and Government decisions prevailing at that juncture, which ultimately led to modalities being set out for e-auction in respect of coal. The embargo was lifted in or about the end of the year 2019. The petitioner, accordingly, requested purchase orders to be issued and balance cheques to be given by the respondent in terms of Clause 9 of the Agreement in a written communication dated December 7, 2019, on resumption of mining activities.
- 44.** In order to bolster its case, the petitioner has relied on Clause 12 of the Agreement which incorporates a *force majeure* provision. As per the said Clause, neither party shall be liable for any breach of the agreement caused by *force majeure* which is not in control and beyond the capacity of the creditor (the present petitioner) if the production and/or dispatch would have been sustained, denied and/or not enforced in time, *inter alia* due to the bar or rules or act of any regulatory bodies/Government Authorities, etc.
- 45.** The actual facts of the case are based precisely on the said provision, as according to the petitioner, the mining activities were stopped between May 16, 2013 and the later part of 2019, precluding the

petitioner from giving effect to supply of iron ore as per the terms of Clause 9 of the Agreement during the said period.

46. The veracity of such case is definitely required to be decided before the Arbitral Tribunal on merits when the claim is ultimately filed. However, the very arguability of the said issue justifies a reference to arbitration, since it is well-settled that while deciding an application under Section 11 of the 1996 Act, the court cannot enter into the merits of the case. Even if there is an iota of doubt on the issue of limitation, it cannot be said that the claim is *ex facie* barred by limitation. In the present case, the issue of limitation is very much arguable and requires evidence to be led and an adjudication on merits.
47. Moreover, since there was no time-line in the Agreement, time could not be said to be the essence of the contract, which could time-bar the claim of the petitioner. Rather, as per the petitioners' case, the cause of action froze by the operation of the *force majeure* clause till resumption of mining activity in 2019, immediately after which the dispute was raised and ultimately the matter was referred to arbitration by issuing a notice under Section 21 of the 1996 Act.
48. There is nothing on record to show that the respondent ever refused to perform its part of the Agreement. Sub-clauses (b) and (c) of Clause 9 of the Agreement cast a liability on the respondent as well, to hand over five post-dated account payee cheques to the petitioners and also to place five separate purchase orders of one rake each of the specified size of iron ores to the petitioners. Hence, the liability was on both

sides and in the absence of anything to show at this stage that the respondent completed its part of the Agreement or refused to comply with the Agreement, it cannot be said that the cause of action arose at any time before December, 2019.

- 49.** Hence, this Court does not find any *ex facie* bar of limitation apparent on the face of the materials before the court and, as such, even the issue of limitation is required to be decided on merits by the Arbitrator. Hence, this issue is also decided in favour of the petitioners and against the respondent.

Issue:

(ii) Whether the petitioner has any cause of action to refer to arbitration.

- 50.** The respondent raises a question as to the cause of action having not yet arisen at all in view of no purchase order being placed by the respondent. The respondent argues that as such, the question of the petitioner not being in a position to dispatch materials never arose.
- 51.** However, it was not an available option for the respondent not to place the purchase orders. If such an option was available in the facts of the case, it might still have been argued that the cause of action would arise in future and no claim arose for such future cause of action. However, the Agreement itself, as evidenced from the different clauses of the same, was the culmination of a previous debt of the respondent to the petitioners. The Agreement is also captioned as an “Agreement for Settlement” and clearly enumerates and admits the previous dues of the respondent/debtor to the petitioner/creditor,

which were sought to be settled between the parties at an agreed amount of Rs. 1,90,36,023/-. Thus, the Agreement itself arose from a previous liability of the respondent towards the petitioners by way of a modality being fixed for repayment of the debt. Clause 9 provides the different components of such repayment schedule. However, the sub-clauses of Clause 9 are not in chronological order, for one to happen in order for the next to arise. Those were rather overlapping in respect of time.

- 52.** Sub-clause (9), regarding payment of Rs. 25,00,000/- by the debtor to the creditor, was admittedly satisfied by such payment being made. Sub-clauses (b) and (c) cast liability on the respondent to issue five post-dated account payee cheques and place purchase orders for iron ore as specified therein. A reciprocal obligation of the petitioner was to supply such materials and to encash the cheques each on the dates of actual loading of the rakes. Although the petitioner could not perform its part by supplying such rakes of iron ore, at the same time, at this stage it cannot not be ascertained whether the respondent also complied with its part of the Agreement by issuing the cheques, placing the purchase orders as well as adjusting the amount of Rs. 50,10,171/- due to the respondent from one M/s Emars Mining and Construction Pvt. Ltd. with the dues payable to the petitioner/creditor.
- 53.** Thus, the cause of action for the present claim did not ripen, at least *prima facie*, before 2019. Hence, the mere non-placement of purchase orders by the respondent cannot entitle the respondent to take

advantage of its own wrong in non-compliance of its part of the Agreement. Since the Agreement itself was a continuation of the previous liability of the respondent to the petitioner, it cannot be said that the cause of action for the claim had not fructified as no purchase order was placed by the respondent. By doing so, the respondent cannot take advantage of its own wrong and negate the agreed mode of resolution of dispute, that is, arbitration, which was clearly intended between the parties.

54. The respondent cites the judgment of *Bengal Chamber of Commerce and Industry and Others Vs. State of West Bengal and Others*, reported at (2010) SCC OnLine Cal 2553, where it was held that there cannot be any deposition contrary to pleadings and that of *The Assam Company (India) Limited Vs. Numazar Dorab Mehta & Ors.*, reported at (2014) 2 CHN 200 also on the proposition that arguments from the Bar contrary to pleadings cannot be accepted.
55. Such propositions have apparently been cited to controvert the petitioners' plea that it was prevented by the *force majeure* clause from performing its part of the agreement and consequently, invoking the Arbitration Clause. However, at this stage, it would be premature to decide such issue conclusively. Moreover, it is not a mere submission from the Bar but a part of the pleadings of the petitioners in their application as well as affidavit-in-reply which bear testimony to the stand of the petitioners that the claim is not palpably barred by limitation. Thus, the aforesaid judgments cited by the respondent are entirely besides the point.

- 56.** The line of judgments cited by the respondent regarding a new case not being permitted to be made out in affidavit-in-reply have no direct bearing in the present context since the “case” of the petitioners has not yet been made out at all.
- 57.** In an application under Section 11 of the 1996 Act and/or the affidavits filed in connection therewith, the petitioner is not making its claim, but only *prima facie* seeks to satisfy the court that a dispute falling within the purview of the arbitration clause exists, that there is a valid arbitration clause and the dispute is otherwise arbitrable.
- 58.** It is beyond the competence of the court taking up an application under Section 11 to enter into the merits of the claims at all. The actual claim of the petitioners shall only be reflected in its statement of claims filed before the Arbitrator and as such, at this stage it cannot be said that the pleadings made in the affidavits of the parties can either be believed or disbelieved or even be treated to be comprehensive, comprising the entire case of the parties.
- 59.** Pleadings in a proceeding under Section 11 of the 1996 Act are intended only for the limited purpose of satisfying the court as to existence of its essential ingredients and are not meant to be the actual statements of claim or defence of the parties.
- 60.** Seen in such context, the petitioners have definitely made out a *prima facie* case sufficient for the purpose of Section 11 of the 1996 Act to convince the court that there is a live cause of action which cannot be labelled in any manner as “dead wood”. Thus, the present issue is

decided in favour of the petitioners and against the respondent as well.

61. In view of the above, all the objections taken to the application filed under Section 11 of the Arbitration and Conciliation Act, 1996 are turned down. The application is held to be very much maintainable. The agreement containing the arbitration clause is admittedly valid. An arbitration clause exists between the parties and the dispute raised by the petitioners is covered by the said clause as well as the forum selection clause. The dispute being otherwise arbitrable as well, the matter is required to be referred to arbitration.
62. Accordingly, A.P. No. 152 of 2021 is allowed on contest, thereby appointing **Sri Krishnaraj Thakker, Advocate (Mobile No. – 9830116355)** as the sole Arbitrator to resolve the disputes between the parties, subject to a declaration being obtained from him under Section 12 of the Arbitration and Conciliation Act, 1996.
63. The learned Arbitrator shall fix his remuneration in terms of the 1996 Act, read with its Schedules. It is made clear that all questions between the parties are left open to be urged before the learned Arbitrator.

(**Sabyasachi Bhattacharyya, J.)**