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

+ ARB.P. 42/2024, I.A. 752/2024 & I.A. 753/2024

VACMET INDIA LIMITED

..... Petitioner

Through: Mr. Adhish Sharma, Advocate.

versus

XS PRODUCTIONS INDIA PRIVATE LIMITED Respondent

Through: Mr. Rajiv Bakshi and Mr. Pranav,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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27.02.2024

1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner seeks appointment of an arbitrator to adjudicate the disputes between the parties under a Work Contract dated 22.03.2023.

2. The contract contains an arbitration clause [Clause 6(iii)], which provides for adjudication of disputes by a sole arbitrator. It is provided that the arbitration would take place in Delhi.

3. Disputes having arisen between the parties, the petitioner invoked the arbitration clause by a legal notice dated 26.09.2023. The respondent replied through counsel's communication dated 20.10.2023, in which the claims of the petitioner have been disputed on merits, and it has also been contended that the Work Contract was never signed by the petitioner.

4. Mr. Rajiv Bakshi, learned counsel for the respondent, has entered

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appearance pursuant to notice issued on 12.01.2024. He submits that the Work Contract does not bear the signatures of the parties and that it was never signed by the petitioner and returned to the respondent. However, he states that the stamp and signature of the respondent on the annexures to the Work Contract are not disputed.

5. The Work Contract [Document 1 annexed to the petition] was for construction of an exhibition booth by the respondent for the petitioner. The document was issued by the respondent to the petitioner and refers to the two annexures, Annexure-1 and 2, which detail the booth design and the scope of work respectively. The copy of the document placed before the Court shows that there are no signatures at the end of the document clauses, but both parties have stamped and signed the document at the end of Annexure-2. While it is the contention of Mr. Bakshi that the petitioner did not sign and return the document to the respondent at any stage, this is a matter which, in my view, is best left open for adjudication by the learned Arbitrator.

6. It is clear from the judgments of the Supreme Court in *Vidya Drolia vs. Durga Trading Corpn.* [(2021) 2 SCC 1], *NTPC Ltd. vs. SPML Infra Ltd.*, [(2023) 9 SCC 385] and a recent judgment of a seven Judge Bench of the Supreme Court dated 13.12.2023 in *In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899* [Curative Petition (C) No. 44/2023 and connected matters] that the questions of arbitrability of disputes, including as to existence of the arbitration agreement, can be examined at a *prima facie* stage, before the Section 11 Court, but once the existence of an arbitration agreement is *prima facie* made out, the



appropriate course is to refer the matter to arbitration, leaving it to parties to run their respective cases in this regard there. In the present case, the respondent is not denying its own signature below Annexure-2 to the Work Contract. The signature of the petitioner also *prima facie* appears on the document. In these circumstances, I am of the view that a reference to arbitration is merited.

7. Mr. Bakshi also submits that the parties may be referred to mediation to see if a mutual resolution of the disputes is possible. Mr. Adhish Sharma, learned counsel for the petitioner, has no objection to this suggestion.

8. Having regard to the aforesaid, the petition is disposed of with the following directions:

- a. The parties are referred to mediation under the aegis of Samadhan, Delhi High Court Mediation and Conciliation Centre, Shershah Road, New Delhi-110503.
- b. The parties will appear before the learned Mediator on 05.03.2024.
- c. In the event the mediation proceedings are unsuccessful, the disputes between the parties will be adjudicated by arbitration of Hon'ble Ms. Justice Mukta Gupta, former Judge of this Court [“Tel:96507-88600”] under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi [“DIAC”].
- d. The arbitration proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.
- e. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.



9. In order to enable the parties to settle their disputes in mediation, DIAC is requested not to enter into reference for a period of four weeks from today. If the parties require further time in mediation, they may jointly approach DIAC for further deferment. If the mediation proceedings are unsuccessful, either party may approach DIAC to enter into the reference after the expiry of four weeks.

10. The petition is disposed of with the aforesaid directions.

PRATEEK JALAN, J

FEBRUARY 27, 2024
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