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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ARB.P. 71/2024
LUCKY YARN TEX INDIA PVT. LTD. & ANR.Petitioners

versus

NIRWAANI GLOBAL THROUGH
KAMALJIT KAURRespondent

+ ARB.P. 72/2024
LUCKY YARN TEX INDIA PVT. LTD & ANR.Petitioners

versus

PROMOTIONAL CLUB THROUGH PARTNERSRespondent

Appearances:

Mr. Abhishek Malhotra, Ms. Srishti Gupta, Ms. Anukriti Trivedi,
Advocates for petitioners.
None for the respondents.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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29.07.2024

1. By way of these petitions under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioners seek appointment of an arbitrator for adjudication of disputes under several purchase orders between the parties.

2. The petitions have been taken up for hearing together because the petitioner asserts that they are also between related parties. The



respondent in ARB.P. 71/2024 is a sole proprietorship concern of one Ms. Kamaljit Kaur, and one of the partners of the respondent in ARB.P. 72/2024, includes the son of Ms. Kamaljit Kaur. It is alleged in the petitions that he was responsible for entering into the agreements in both cases.

3. Copies of various purchase orders issued by the respondents to the petitioners have been placed on record in both cases, which appear to be on identical terms. The terms and conditions stated in the purchase orders include a clause for the settlement of disputes by arbitration of an arbitrator appointed by the respondents.

4. The petitioners claim to have supplied goods in terms of the purchase orders and raised invoices. However, it is the petitioners' contention that the invoices were not paid in full, as a result of which it has certain claims against each of the respondents. The petitioners therefore invoked arbitration by letters dated 15.09.2023, addressed to each of the respondents. As the letters failed to elicit a response, the petitioners have approached this Court under Section 11 of the Act.

5. Notice was issued in these petitions on 18.01.2024. The affidavit of service shows that service by normal process and by e-mail were incomplete. By order dated 22.04.2024, therefore, the petitioners were permitted to serve the respondents by publication. Publication has been effected on 11.05.2024, as noted by the learned Joint Registrar *vide* order dated 21.05.2024. As the respondents did not appear despite service, the learned Joint Registrar has closed their rights to file replies by order dated 23.07.2024. In these circumstances, the petitions are taken up for hearing in the absence of the respondents.



6. In these petitions under Section 11 of the Act, the Court is required only to enter into a *prima facie* determination with regard to the existence of the arbitration clause, leaving all questions on merits and maintainability of the disputes to be decided by the arbitral tribunal. The petitioners have filed these petitions on the basis of arbitration clauses contained in the purchase orders issued by the respondents themselves. The said method of dispute resolution has been accepted by the petitioners. The petitioners also claim to have supplied goods and raised invoices in terms of the very same purchase orders. The goods and invoices were accepted by the respondents without demur.

7. In these circumstances, it appears *prima facie* that there exists an arbitration agreement between the parties by exchange of communications, which satisfies the requirements of Section 7 of the Act. The petitioners' letters invoking arbitration also went unrebutted.

8. For the aforesaid reasons, the petitions are allowed with the following directions:

- a. The disputes between the petitioners and the respondents under the purchase orders in question are referred to arbitration.
- b. The arbitration proceedings will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi ["DIAC"], and will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.
- c. DIAC is requested to nominate an arbitrator from its panel. The learned Arbitrator is requested to furnish a declaration



under Section 12 of the Act, prior to entering upon the reference.

- d. The arbitration proceedings are referred to a common arbitrator due to the commonality in the identity of the parties and the nature of transactions. However, they will be treated as independent arbitrations for all purposes and the parties will be entitled to raise independent claims and defences in each of the cases. The learned Arbitrator may decide whether to hold hearings jointly or separately at each stage, in consultation with the parties.
- e. As the respondents have not entered appearance in these proceedings, it is made clear that they must be served with notice in the arbitration proceedings, in accordance with the Rules of DIAC.

9. All rights and contentions of the parties, including on maintainability, arbitrability and merits, are left open for adjudication by the learned Arbitrator.

PRATEEK JALAN, J

JULY 29, 2024

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