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

Date of decision: 20.03.2024

+ ARB.P. 135/2023

M/S CREATIVE PROJECTS AND CONTRACTS

PVT. LTD

..... Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate, Mr. Anuroop Singhvi, Mr. Ankit Shah, Mr. Aditya Vijay, Mr. Tarun Arora, Mr. Sidhant Singh, Advocates.

versus

M/S SUNCITY PROJECTS PVT LTD

..... Respondent

Through: Ms. Malvika Trivedi, Sr Advocate with Mr. Himanshu Satija, Mr. Harsh Saxena, Mr. Shevaaz Khan, Ms. Sujal Gupta, Mr. Siddhant Tyagi, Mr. Shailendra Slaria, Advocates.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

20.03.2024

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1. This is a petition filed under section 11(6) of the Arbitration and Conciliation Act, 1996 (in short "1996 Act") seeking appointment of a Sole Arbitrator to adjudicate disputes between the parties.
2. The petitioner is a private limited company having its registered office at SB-154, 5th floor, Ganga Heights, Bapu Nagar, Tonk Road, Jaipur, Rajasthan. The petitioner is engaged in execution of Civil Engineering Projects with specialization in commercial, residential, industrial and institutional assets across India. The respondent is engaged in the activities of developing the land for residential and commercial



purposes.

3. The petitioner and respondent herein executed three work orders i.e. Work order No. 1 on 22nd October, 2014, Work Order No. 2 on 17th July, 2017 and Work Order No. 3 on 12th February, 2018. Admittedly, only Work Order No. 1 had an arbitration clause.
4. As there were disputes with regard to all the three work orders, the parties arrived at a Settlement Deed dated 10.12.2021 for settling the disputes under Work Order No. 1, 2 and 3. The relevant clauses of the Settlement Deed dated 10.12.2021 are clause 1, 7 and 8 which reads as under:

“1. That the First Party agree & confirm that the Work Order-1 and Work Order-2 have been executed by the Second Party and the accounts for that works have been settled by both the parties. As per settled accounts, a sum of Rs. 98,68,354 /-(Rupees Ninety Eight Lac Sixty Eight Thousand Three Hundred Fifty Four only) inclusive of all taxes is payable by the First Party to the Second Party, towards both the Work Orders, i.e. Work Order-1 and Work Order-2, in full & final settlement which the First Party has paid to the Second Party vide Cheque bearing No. 002110 dated 10.12.2021 drawn on ICICI Bank. Regarding Work Order-1, a sum of Rs. 75,00,000 /- (Rupees Seventy Five Lac only) is lying deposited with the First Party as retention money in terms of Work Order-1, which the First Party has paid to the Second Party vide Cheque bearing No. 002111 dated 10.12.2021 drawn on ICICI Bank. Likewise, a sum of Rs.1,16,01,887 /- (Rupees One Crore Sixteen Lac One Thousand Eight Hundred Eighty Seven



only) is lying deposited with the First Party as retention money in terms of Work Order-2, which the First Party has paid to the Second Party vide Cheque bearing No.002112 dated 10.01.2022 drawn on ICICI Bank. Accordingly, nothing is due and no dispute remains between the parties, whatsoever, relating to Work Order-1 and Work Order-2 relating to payment of dues including security deposits.

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7. That the dispute between the parties on account of Cement supplied by First Party to the Second Party and rates thereof, an amount Rs.11,00,000/- + GST came between the parties for negotiation. It is settled between the parties that amount Rs.8,25,000 /- + 18% GST thereof i.e. total amount Rs.9,73,500/- has been paid by the First Party to the Second Party vide Cheque bearing No. 002114 dated 10.12.2021 amounting to Rs.9,57,000/(Rupees Nine Lac Fifty slven Thousand only) drawn on ICICI Bank after deduction of TDS @ 2% and rest Rs.2,75,000/- + 18% GST thereof shall be borne by Second Party and settled their account accordingly.

8. That the dispute between the parties on account of TDS on WCT deducted by the First Party during the period from 01.04.2016 to 30.06.2017 amounting to Rs.69,65,556/- (Rupees Sixty Nine Lac Sixty Five Thousand Five Hundred Fifty Six only) also came between the parties for negotiation. Said amount is settled for Rs. 44,65,556/- (Rupees Forty Four Lac Sixty Five Thousand Five Hundred Fifty Six only) and it is part of the



amount of Rs. 98,68,354/- as mentioned in clause 1 above. If at any point of time, the Second Party gets benefit of the amount of TDS on WCT deducted by the First Party, the Second Party shall refund the same immediately to the First Party to the extent of Rs.44,65,556/- (Rupees Forty Four Lac Sixty Five Thousand Five Hundred Fifty Six only).”

5. Thereupon, the respondent filed a Civil Suit before the Special Commercial Court, Gurugram, seeking recovery of damages of Rs.7,06,89,430/- with consequential relief of injunction. Para No. 19(g) of the plaint reads as under:

“19(g). That there was/is a disputed amount of TDS on WCT for the period from 01.04.2016 to 30.06.2017 for Rs. 69,65,556/ (Rs. 62,25, 112/- for the FY 2016-17 and Rs. 7,40,444/- for the period from 01-04-2017 to 30-06-2017). However, in terms of clause no. 8 of the settlement deed, the said disputed amount was settled for Rs, 44,65,556/- and it was agreed that if at any point of time, the Defendant gets benefit of the said amount of TDS on WCT as deducted and deposited by the Plaintiff i.e. Rs. 69,65,556/-, the Defendant shall refund the same immediately to the Plaintiff.”

6. The petitioner sought dismissal of the civil suit by filing Order VII Rule 11 application which was dismissed by the Special Court, Gurugram. The said order was challenged before Punjab and Haryana High Court wherein the order dismissing the said application has been stayed.
7. It is stated by Mr. Sethi, learned senior counsel for the petitioner that



the as per the respondent's own averments in the suit, there are disputes with regard to the Work Order No. 1.

8. Learned senior counsel further urges that this court in Section 11 petition at the reference stage is only to see the existence of the arbitration clause and in case the reference Court is satisfied that there is an arbitration clause, the parties have to be refer to Arbitral Tribunal. Reliance is placed on ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re, 2023 SCC OnLine SC 1666*** and more particularly para 162 which reads as under:

“162. The legislature confined the scope of reference under Section 11(6A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In Duro Felguera (supra), this Court held that the referral courts only need to consider one aspect to determine the existence of an arbitration agreement whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity



of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by arbitral tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia (supra) in the context of Section 8 and Section 11 of the Arbitration Act.”

9. In addition, reliance is also placed on ***Meenakshi Solar Power (P) Ltd. v. Abhyudaya Green Economic Zones (P) Ltd., 2022 SCC OnLine SC 1616*** and more particularly para 17 which reads as under:

“17. Further, this Court observed that the court at the referral stage can interfere only when it is manifest that the claims are ex facie time barred and dead, or there is not subsisting dispute. In the context of issue of limitation period, it should be referred to the Arbitral Tribunal for decision on merits. Similar would be the position in case of disputed “no-claim certificate” or defence on the plea of novation and “accord and satisfaction.”

10. He further places reliance on ***Radnik Exports vs. Supertech Realtors Pvt. Ltd., 2023:DHC:3135*** and more particularly para 15 which reads as under.

“15. The Arbitration Agreement as contained in the Allotment Letter is not disputed. The only claim of the



respondent is that the same stood exhausted by a full and final settlement of the disputes in relation to the Allotment Letter. This is a disputed question of fact, which has to be left to be adjudicated by the learned Arbitrator.”

11. I have heard learned senior counsels for the parties.
12. In the present case, the disputes are with regard to work orders which were duly settled by arriving at the Settlement Deed dated 10.12.2021. The recitals reproduced above clearly shows that the full and final settlement was concluded with regard to Work Order No. 1 and Work Order No. 2. It is further recorded that nothing is due and no dispute remains between the parties whatsoever relating to Work Order No. 1 and Work Order No. 2.
13. According to me, there were no disputes pending with regard to Work Order No.1.
14. The disputes highlighted in para 19(g) of the plaint filed by the respondent before the Gurugram Court is predicated out of the settlement agreement and more particularly para 8 which talks about the TDS on WCT which was deducted by the respondent pertaining to Work Order No. 1. It is not that the disputes mandated in the Work Order No.1 were being re-agitated but only the disputes arising out of the settlement agreement concerning Work Order No.1 was raised before the Gurugram Court.
15. The judgment of ***NTPC Ltd. v. SPML Infra Ltd., (2023) 9 SCC 385***, is also relevant and more particularly paras 25 to 28 and para 46 reads as under:-

“25. The abovereferred precedents crystallise the position



of law that the pre-referral jurisdiction of the Courts under Section 11(6) of the Act is very narrow and inheres two inquiries. The primary inquiry is about the existence and the validity of an arbitration agreement, which also includes an inquiry as to the parties to the agreement and the applicant's privity to the said agreement. These are matters which require a thorough examination by the Referral Court. The secondary inquiry that may arise at the reference stage itself is with respect to the non-arbitrability of the dispute.

26. As a general rule and a principle, the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. As an exception to the rule, and rarely as a demurrer, the Referral Court may reject claims which are manifestly and ex facie non-arbitrable [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1, para 154.4 : (2021) 1 SCC (Civ) 549] . Explaining this position, flowing from the principles laid down in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , this Court in a subsequent decision in Nortel Networks [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] held [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738, para 45.1 : (2021) 3 SCC (Civ) 352] : (Nortel Networks case [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] , SCC p.



764, para 45)

“45. ... 45.1. ... While exercising jurisdiction under Section 11 as the judicial forum, the Court may exercise the prima facie test to screen and knockdown ex facie meritless, frivolous, and dishonest litigation. Limited jurisdiction of the Courts would ensure expeditious and efficient disposal at the referral stage. At the referral stage, the Court can interfere “only” when it is “manifest” that the claims are ex facie time-barred and dead, or there is no subsisting dispute.”

27. The standard of scrutiny to examine the non-arbitrability of a claim is only prima facie. Referral Courts must not undertake a full review of the contested facts; they must only be confined to a primary first review [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1, para 134 : (2021) 1 SCC (Civ) 549] and let facts speak for themselves. This also requires the Courts to examine whether the assertion on arbitrability is bona fide or not. [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] The prima facie scrutiny of the facts must lead to a clear conclusion that there is not even a vestige of doubt that the claim is non-arbitrable. [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738, para 47 : (2021) 3 SCC (Civ) 352] On the other hand, even if there is the slightest doubt, the rule is to refer the dispute to arbitration [Vidya Drolia v. Durga Trading



Corpn., (2021) 2 SCC 1, para 154.4 : (2021) 1 SCC (Civ) 549] .

28. The limited scrutiny, through the eye of the needle, is necessary and compelling. It is intertwined with the duty of the Referral Court to protect the parties from being forced to arbitrate when the matter is demonstrably non-arbitrable [Ibid.] . It has been termed as a legitimate interference by Courts to refuse reference in order to prevent wastage of public and private resources [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1, para 139 : (2021) 1 SCC (Civ) 549] . Further, as noted in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , if this duty within the limited compass is not exercised, and the Court becomes too reluctant to intervene, it may undermine the effectiveness of both, arbitration and the Court [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1, para 139 : (2021) 1 SCC (Civ) 549] . Therefore, this Court or a High Court, as the case may be, while exercising jurisdiction under Section 11(6) of the Act, is not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen arbitrator, as explained in DLF Home Developers Ltd. v. Rajapura Homes (P) Ltd. [DLF Home Developers Ltd. v. Rajapura Homes (P) Ltd., (2021) 16 SCC 743, paras 22, 26 : 2021 SCC OnLine SC 781, paras 18, 20]



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46. We will now examine whether the allegations of coercion and economic duress in the execution of the settlement agreement are bona fide or not. This inquiry has a direct bearing on the arbitrability of the dispute. It was during the subsistence of the writ petition and the High Court's interim order, when SPML had complete protection of the Court, that the parties entered into the settlement agreement. This agreement was comprehensive. It inter alia provided for: (i) the release of bank guarantees by NTPC, (ii) the withdrawal of SPML's writ petition, (iii) restraining NTPC from filing contempt proceedings against SPML for letting the bank guarantees expire, and finally, (iv) restraining SPML from initiating any proceedings under the subject contract, including arbitration. The settlement agreement also recorded that there were no subsisting issues pending between the parties.”

16. On perusal of the above judgment, it is evident that the referral court under section 11 is only required to see the existence of the arbitration clause and whether the disputes raised in the petition are arbitral or not.
17. Reliance placed on ***Radnik Exports (supra)*** is misconceived as the dispute was with regard to the allotment of flat. Further, the petitioner therein claimed compensation for delayed possession in terms of the Allotment Letter which was disputed by the respondent therein and hence the said judgment is distinguishable.



18. Reliance placed on the judgment of *Meenakshi Solar Power (P) Ltd (supra)* will not help the petitioner as the question before the Supreme Court was with regard to the novation of the Share Purchase Agreement which contain the arbitration agreement, that is not the case here. In the present case, the parties have settled their disputes and entered into a Settlement Deed dated 10.12.2021, further received payments pursuant to the settlement agreement. In fact, para 10 of the settlement agreements quotes that “with this settlement the e-mail dated 06.11.2021 sent by the Second Party (petitioner) to the First Party and the demand raised therein also stand withdrawn. Hence, I am of the view that there are no disputes pending between the parties under Work Order No.1 which can be referred to arbitration.
19. The petitioner claims that the petitioner was fraudulently induced while entering into the settlement agreement. The said plea is with regard to the settlement agreement and not with regard to the Work Order No. 1. In case the petitioner has any grievance with regard to the settlement agreement, the petitioner is at liberty to agitate all its claim in accordance with law.
20. It is clarified that the findings and observations made herein above are only for the purpose of deciding the present petition and will have no bearing on the other disputes between the parties in different forums.
21. In view of the above, the petition is dismissed.

JASMEET SINGH, J

MARCH 20, 2024/K

(Corrected and released on 05th April, 2024.)