



2024:DHC:5382



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 77/2024****J.S. BUILDER**

.....Petitioner

Through: **Mr. Dhruv Gandhi and Mr.
Deepam Rangwani, Advs.**

versus

DR. GIRISH GUPTA

.....Respondent

Through: **Mr. Anuj Tyagi and Ms.
Akshita Agarwal, Advs.****CORAM:****HON'BLE MR. JUSTICE C.HARI SHANKAR****ORDER (O R A L)****19.07.2024**

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1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (1996 Act), for reference of the disputes between the parties to arbitration.

2. The dispute arises out of a work order dated 12 January 2021 placed on the petitioner by the respondent. The work order envisaged resolution of the disputes between the parties by arbitration. The arbitration clause reads as under:

“Arbitration:- In the event of a dispute between the parties arising out of condition or interpretation of this agreement, they shall immediately endeavour to reach an amicable solution but if they are unable to settle such dispute amicably then either of the parties shall at any time be entitled to refer such dispute for resolution by arbitrators subject to and in accordance with the rules of the arbitration law. The decision of the majority of the arbitrators shall be final and binding on the parties.”

3. Mr. Deepam, learned Counsel for the petitioner submits that the

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parties had explored the possibility of an amicable resolution but the attempts remained abortive.

4. In the circumstances, the petitioner addressed a notice under Section 21 of the 1996 Act on 25 July 2023. The claim amount is ₹ 32,80,631/-.

5. Mr. Tyagi, learned Counsel for respondent raises, as his only objection to this petition, the contention that the petitioner had in fact being over paid by an amount of ₹ 1,76,808/-. He also relies *inter alia* on a document dated 12 March 2022 whereunder the petitioner is stated to have admitted that no further financial liability of the respondent remains qua him. He also submits that the petitioner is vacillating, changing the claim amount time and again.

6. In view of the judgment of the Supreme Court in ***SBI General Insurance Company Ltd v. Krish Spinning¹***, this aspect cannot be fettered of referring the dispute to the arbitration. Para 135 of the said decision reads as thus:

“135. The existence of the arbitration agreement as contained in Clause 13 of the insurance policy is not disputed by the appellant. The dispute raised by the claimant being one of quantum and not of liability, prima facie, falls within the scope of the arbitration agreement. The dispute regarding "accord and satisfaction" as raised by the appellant does not pertain to the existence of the arbitration agreement, and can be adjudicated upon by the arbitral tribunal as a preliminary issue.”

7. The dispute is referred to the Delhi International Arbitration Centre (DIAC), who would appoint a suitable arbitrator to arbitrate on

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the disputes.

8. The arbitration shall take place in accordance with the rules and regulations of the DIAC. The Arbitrator would be entitled to fees as per the schedule of fees maintained by the DIAC. The Arbitrator shall also file the requisite disclosure under Section 12 of the 1996 Act within a week of entering the arbitration.

9. The right of the respondent to prefer counter claims, if any, stands reserved.

10. The petition stands disposed of in the aforesaid terms.

C.HARI SHANKAR, J

JULY 19, 2024

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Click here to check corrigendum, if any

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