



2024:DHC:6644



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

+ **ARB.P. 114/2024 & I.A. 1936/2024**

R K ASSOCIATES AND HOTELIERS PVT LTD.....Petitioner
Through: Mr. Rajat Aneja, Mr. Utkarsh
Mishra and Mr. Aditya Sharma, Advocates

versus

BW BUSINESSWORLD MEDIA PVT LTDRespondent
Through: Mr. Saurajay Prakas Nanda,
Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)
29.08.2024

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1. This is a petition under Section 11(6) of the Arbitration and conciliation Act, 1996¹ for reference of the disputes between the parties to arbitration.

2. The petitioner and Respondent entered into a Memorandum of Understanding (“MoU”) dated 18 June 2018 for working on Railway Projects.

3. Clause 14 of the MoU envisages resolution of disputes by arbitration and reads thus:

“14. Applicable law and dispute resolution

(i) This Mou shall be governed and construed in accordance with the laws of India and the courts New Delhi

Signature Not Verified¹ “the 1996 Act” hereinafter

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shall have exclusive jurisdiction in connection with any dispute. Any claims, differences or disputes arising out of or in connection with this MOU or in connection with arrangements regarding the performance of this MOU shall be settled by an amicable effort on the part of the parties affected within one (1) month. An attempt to arrive at a settlement shall be deemed to have failed as soon as one Party so notifies the other Party in writing after one month.

(ii) In the event of failing to achieve an amicable solution, the dispute shall be finally resolved by arbitration under the Arbitration and Conciliation Act, 1996 ("Arbitration Act"). Each Party shall appoint one arbitrator within 15 (fifteen) days of notice for arbitration served by either party. The third presiding arbitrator shall be appointed by the two appointed arbitrators within a period of 15 (fifteen) days after their appointment. If for any reasons the arbitrators are not appointed then such arbitrator(s) shall be appointed in accordance with the Arbitration Act. The seat of arbitration shall be Delhi, India. The decision of the arbitrator shall be final and binding upon the parties.

4. As disputes had arisen among the parties, the petitioner by notice dated 16 October 2023 under section 21 of the 1996 Act, invoked arbitration and requested respondent to provide the name of a second arbitrator within a period of 15 days from date of receipt of the letter. Respondent *vide* notice dated 14 November 2023 refused to concede to such request.

5. The petitioner has accordingly moved this court under section 11(6) of the 1996 Act for reference of the disputes to arbitration.

6. The only submission that has been advanced by Mr. Nanda, learned Counsel for the respondent is that, as envisaged by Clauses 1(v) and 5 of the MoU, a Shareholders Agreement had been subsequently executed between the parties.

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7. That submission is of no relevance insofar as the present petition under Section 11(6) of the 1996 Act is concerned. It is for the claimant to take a decision on the contract, or agreement, on which the claimant seeks to predicate its claim.

8. In the present case, the claimant has predicated its claim on the MoU dated 18 June 2018. The MoU unquestionably has an arbitration clause providing seat of arbitration at Delhi.

9. The petitioner has also issued a Section 21 notice to the respondent and has approached this Court within three years thereof.

10. All requisite ingredients of Section 11(6) thereby stand satisfied as per the judgment of the Supreme Court in *SBI General Insurance Co Ltd v Krish Spinning*².

11. As the parties have not been able to arrive at a consensus regarding the arbitrator, it is necessary for this Court to step in.

12. Accordingly, the dispute stands referred to the Delhi International Arbitration Centre³ to appoint a suitable arbitrator to arbitrate on the dispute.

13. The arbitration shall take place under the aegis of the DIAC and would abide by its rules and regulations.

² 2024 SCC OnLine SC 1754

³ DIAC



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14. The learned arbitrator shall be entitled to fees as per the schedule of fees maintained by the DIAC.

15. The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

16. All questions of fact and law shall remain open to be urged before the learned arbitrator.

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

C. HARI SHANKAR, J.

AUGUST 29, 2024

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[Click here to check corrigendum, if any](#)

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