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

+ ARB.P. 167/2024

VERSATILE COMMOTRADE PVT LTD Petitioner

Through: Mr. Nikhilesh Krishnan & Mr.
Abhishek Bhushan, Advocates.
[M:-7337603842]

versus

SATBIR SINGH Respondent

Through: Mr. Tanmay Mehta, Mr. Sourabh
Gupta, Ms. Ananya Gupta & Mr.
Ujjwal Choudhary, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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15.02.2024

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 disputes between the parties under an agreement to sell dated 17.04.2013 [“Agreement”]. The Agreement contains an arbitration clause [Clause 12(iii)]. The Agreement also provides for exclusive jurisdiction of the courts in New Delhi. Disputes having arisen between the parties, the petitioner invoked arbitration by a notice dated 10.10.2023.

2. On the first date of hearing, a preliminary objection was taken by Mr. Tanmay Mehta, learned counsel for the respondent, that claims of the petitioner are *ex-facie* barred by limitation. However, Mr. Nikhilesh Krishnan, learned counsel for the petitioner, relying upon the judgment of the Madras High Court in *K. Shanmugam & Another vs. C. Samiappan & Others*, (2013) 7 Mad LJ 670, submitted that the period of limitation for



refund of payment made under an agreement to sell, is twelve years under Article 62 of the Limitation Act, 1963.

3. Mr. Mehta took time to examine the issue and submits today that an arbitrator may be appointed, leaving the question of limitation and all other questions on maintainability and merits of the petitioner's claim, open for adjudication by the arbitral tribunal.

4. Having regard to the fact that the existence of the arbitration agreement is undisputed, this position appears to me to be appropriate.

5. The petition is therefore disposed of with the consent of learned counsel for the parties, by referring the disputes between the parties under the Agreement dated 17.04.2013 to arbitration of Hon'ble Mr. Justice Vinod Goel, former Judge of this Court [Tel:- 9910384637].

6. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 ["DIAC"], and will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator.

7. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

8. It is made clear that all rights and contentions of the parties, including on limitation and maintainability of claims, are left open for adjudication by the learned Arbitrator. This Court has not examined the case on merits, and the averments in the petition are also not to be taken as admitted by the respondent.

PRATEEK JALAN, J

FEBRUARY 15, 2024/'pv'/