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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 216/2023

BHASWATI GHOSH AND ORS

..... Petitioners

Through: Ms. Kirti Mewar, Advocate.

versus

RAJ BAHADUR SINGH

..... Respondent

Through: Ms. Dharity Phookan and Ms.
Lanutula, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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11.01.2024

1. The petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”] for appointment of an arbitrator to adjudicate disputes between the parties under a partnership deed dated 04.05.2005. The parties to the partnership deed were the respondent and Shri Subhash Ghosh. Shri Subhash Ghosh passed away on 10.01.2022. Petitioner No.1 is his wife and petitioner Nos. 2 and 3 are his daughters. It is stated in the petition that they are his only legal heirs.

2. Learned counsel for the petitioner had filed additional documents *vide* diary No. 501869/2023. As the documents are not on record, a copy has been handed over in Court and is taken on record.

3. The partnership deed dated 04.05.2005, filed by the petitioner, *prima-facie*, bears the signatures of both parties and contains an arbitration clause (Clause 9), which provides for arbitration by a mutually

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appointed arbitrator.

4. Disputes arose between the parties, in respect of which the petitioners, through counsel, invoked arbitration by a communication dated 10.11.2022. The respondent replied by counsel's communication dated 25.11.2022, which has been placed on record by the respondent with his affidavit in reply. The respondent resisted the reference to arbitration on the ground that he had not signed the alleged deed of partnership dated 04.05.2005.

5. It appears from the record that the respondent had himself filed a suit before the District Court, Saket [CS (SCJ) No. 1085/2022], in which he also relied upon a partnership deed between himself and the late Shri Subhash Ghosh. The deed relied upon by the respondent, however, is a partnership deed dated 25.05.2005. It has been placed on record by the petitioner and also, *prima-facie*, bears the signatures of both parties, although the petitioners deny that any such partnership deed was executed.

6. Be that as it may, Ms. Kirti Mewar, learned counsel for the petitioners, points out that even in the partnership deed relied upon by the respondent, there is an arbitration clause (Clause 16), which provides for disputes with respect to any clause of the partnership deed, or working of the partnership, or for anything indicated thereof, to be resolved by arbitration.

7. During the course of hearing today, learned counsel for the parties have arrived at a consensus that the disputes between them may first be referred to mediation, and in the event mediation is unsuccessful, the disputes may be resolved by arbitration. The parties reserve their rights to



rely upon the respective partnership deeds asserted by them, and to leave it to the learned Arbitrator to adjudicate the question of which of the partnership deeds is binding upon them.

8. Having regard to the above consensus, the petition is disposed of with the following directions:

- a. The parties are referred to mediation under the aegis of Samadhan, Delhi High Court Mediation and Conciliation Centre, Shershah Road, New Delhi-110503. They will appear before the learned Mediator on 22.01.2024.
- b. In the event the mediation proceedings are unsuccessful, the disputes between the parties will be adjudicated by arbitration under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi [“DIAC”]. DIAC is requested to nominate an Arbitrator from its panel.
- c. The arbitration proceedings will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator.
- d. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.
- e. The parties will be at liberty to place their respective claims and counter-claims before the learned Arbitrator. As noted above, they each rely upon a different partnership deed, which is denied by the other. As both the documents, *prima-facie*, contain arbitration clauses, parties will make their submissions, and lead evidence before the learned Arbitrator, if necessary, as to which document binds them. The learned Arbitrator will thereafter adjudicate their claims and counter-claims, in accordance with law.



- f. In order to give the parties an opportunity to resolve their disputes by mediation, DIAC is requested to enter into the reference only after 01.04.2024. If the disputes have not been resolved, either party may approach the DIAC after the said date.
9. It is made clear that this Court has not adjudicated the rights and contentions of the parties on merits, which are reserved for adjudication by the learned Arbitrator.
10. The petition is disposed of with these directions.

PRATEEK JALAN, J

JANUARY 11, 2024
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