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

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Date of Decision : 04.04.2024+ **FAO (COMM) 33/2024****M/S PAISALO DIGITAL LIMITED**

..... Appellant

Through: Mr.Alratim Animesh Thakur,
Mr.Lakshya Sachdeva and Mr.Varun
Singh, Advocates.

versus

M/S SUN CORP AND ORS

..... Respondents

Through: Ms.Nidhi Mohan Parashar and
Ms.Niharika Singh, Advocates.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J. (Oral)**

1. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning a judgment dated 08.01.2024 (hereafter *the impugned judgment*) passed by the learned Commercial Court in OMP (COMM) No.124/2019 captioned *M/s Sun Corp. & Ors v. M/s Paisalo Digital*. The said application was filed by the respondents under Section 34 of the A&C Act impugning an Arbitral Award dated 10.07.2019 (hereafter *the impugned award*).

2. The learned Commercial Court had set aside the impugned award on the ground that the learned Sole Arbitrator was appointed by the appellant unilaterally without the concurrence of the respondents. This objection was



also raised by the respondents before the learned Sole Arbitrator, but it was rejected.

3. In addition, the appellant also assails the impugned judgment on the ground that the learned Commercial Court did not have the pecuniary jurisdiction to entertain the aforesaid petition. The said challenge is founded on the basis that the respondents had raised a Counterclaim of ₹2.00 Crores and the same was required to be added to the value of the Claim for the determination of the value of the dispute and the pecuniary jurisdiction.

4. In so far as the conclusion of the learned Commercial Court that the Arbitral Tribunal had no jurisdiction to proceed as the Sole Arbitrator was unilaterally appointed by the appellant is concerned, the same cannot be faulted. This Court had considered the said question on 15.02.2024 and had held that the facts obtaining in the present case clearly establish that the learned Arbitral Tribunal had no jurisdiction to act as such. The appellant's contention that since the respondents had raised a Counterclaim, the same ought to be considered as an express agreement in writing, as contemplated under Section 12(5) of the A&C Act, was rejected as unmerited.

5. The only question that remained to be answered is whether the learned Commercial Court had the pecuniary jurisdiction to entertain the application under Section 34 of the A&C Act [being OMP (COMM) No.124/2019].

6. The learned counsel for the appellant has drawn the attention of this Court to the Statement of Claim filed by the appellant, which indicates that it had raised a claim of ₹79,83,997/-. This, according to the appellant, was



the amount due as on 09.09.2017 towards the overdue installments, late fee and cheque bouncing charges. Accordingly, it was prayed that an award be entered for the aforesaid amount along with interest.

7. The respondents had countered the claims made by the appellant and had filed their Statement of Defence. The respondents had seriously contested the jurisdiction of the learned Sole Arbitrator to act as an Arbitral Tribunal and had specifically asserted that they had not concurred to his appointment as the Sole Arbitrator. And, his appointment was in violation of the provisions of the A&C Act. Additionally, the respondents had also claimed that they had suffered a loss of ₹2.00 Crores and therefore, were liable to be compensated to the said extent.

8. The learned counsel for the appellant has specifically drawn the attention of the Court to paragraph nos.23 & 27 of the Statement of Defence. The same are set out below:-

“23. No cash collateral security as per Sanction letter:- The Sanction letter doesn't to whisper anything regarding cash security. Till the claimant forced the respondent to provide cash collateral of Rs. 50 lakhs to the claimant which literally blocked the working capital of the Respondent and caused huge loss running into more than 2 crores. Therefore, the claimant is liable to give compensation to the tune of Rs. 2 Crore to the Respondent.

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27. Therefore it is humbly prayed that the above claim may be rejected with heavy cost and allow the counter claim of the Respondent-firm in the interest of justice.” [emphasis added]

9. The learned Arbitral Tribunal had considered the Counterclaim and



had rejected the same. The reasons for rejecting the Counterclaim as set out in the impugned award are reproduced below:-

“Further, the Respondents have raised Counter Claims for a sum of Rs.2.00 Crores. There is nothing in the pleadings or in the evidence to reveal as to how and on what basis the Claims have been quantified by the Respondents. Merely raising of the Claims without justifying the basis of calculations in respect thereof is of no help. In view of the foregoing, I am of the considered view that the Counter Claims as raised by the Respondents cannot be allowed and the same therefore stand rejected.”

10. The learned counsel for the respondents submits that in fact no Counterclaim was raised and it was only a passing reference that was made in the Statement of Defence. Thus, the value of the dispute is to be ascertained only on the basis of value of the claim.

11. We find no merit in the aforesaid submission. The Statement of Defence filed by the appellant clearly indicates that a Counterclaim was raised. Further, the impugned award also shows that it was considered and rejected.

12. In view of the above, there is merit in the appellant’s contention that the specified value of the subject matter of the commercial dispute is the aggregate value of the claim and counterclaim as expressly provided in Sub-section (2) of Section 12 of the Commercial Courts Act, 2015.

13. In the aforesaid view, there is merit in the appellant’s contention that the learned Commercial Court did not have the jurisdiction to entertain the application under Section 34 of the A&C Act.



14. At this stage, the learned counsel for appellant submits that since the impugned award has also been set aside on the ground that the learned Sole Arbitrator was unilaterally appointed, the restoration of the respondent's petition would be a useless formality. He states that the appellant would take steps for appointment of the Arbitral Tribunal in accordance with law.

15. It is also relevant to note that during the course of the arguments, the learned counsel for the appellant made a suggestion that a sole arbitrator be appointed by the consent of both the parties. However, the learned counsel for the respondents states, on instructions, that the respondents are not agreeable to do so in these proceedings and the appellant may file an appropriate application under Section 11 of the A&C Act. She also states that in the meanwhile, the respondents would attempt to resolve the disputes with the appellant, amicably.

16. In view of the above, we dispose of the present appeal by leaving it open for the appellant to take appropriate steps for appointment of an arbitrator in accordance with law.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

APRIL 04, 2024

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Click here to check corrigendum, if any