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

\+ ARB.P. 216/2024 and & I.A. No. 3825/2024

SAKET SHUKLA & ANR. .....Petitioners

Through: Ms. Bani Dikshit, Mr. Uddhav Khanna, Mr. Nipun Katyal and Mr. Dhruv and Mr. Kishan K., Advocates

versus

SANTANU ROY & ANR. .....Respondents

Through: Mr. Shubhayu Roy and Mr. Soumya Dutta, Advocates

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

O R D E R (ORAL)

% **21.08.2024**

1. This is a petition under Section 11(5) of the Arbitration and Conciliation Act, 1996[1] seeking reference of the dispute between the parties to arbitration.

2. The dispute arises in the context of an offer for investment for Bankruptcy Trackers contained in the communication dated 21 September 2018 from the respondents to the petitioners. There is no dispute about the fact that the petitioner and Respondent 1 and 2 are parties to the aforesaid offer for investment, as partners of the firm Devrath and Co.

3. The offer for investment envisages resolution of disputes

[1] "the 1996 Act" hereinafter

between the parties by arbitration, even while not providing for any pre-arbitral protocol. Clause 15 of the agreement which deals with the governing law and jurisdiction reads thus :

> "15. Governing Law and Jurisdiction : This offer will be governed by and construed in accordance with the law of India and the parties hereby agree to refer all disputes to arbitration in accordance with the Arbitration & Conciliation Act, 1996. The seat shall be Delhi."

4. Disputes between the parties having arisen, the petitioner addressed a notice to the respondent on 22 June 2023 under Section 21 of the 1996 Act, seeking reference of the disputes to arbitration. The parties having not been able to arrive at a consensus in that regard, the petitioner has moved this Court under Section 11(5) of the 1996 Act.

5. Learned counsel for the respondent has advanced an objection to the inclusion, in this petition, of Petitioner 2, as he submits that Petitioner 2 is not a signatory to the Offer for Investment dated 21 September 2018.

6. Ms. Bani Dikshit, learned counsel for the petitioner, however, justifies the inclusion of Petitioner 2 in these proceedings on the basis of Clause 6 of the said Offer for Investment, the relevant part of which reads thus :

> "6. Transaction : The Investor, the Owners and the Promoters will enter into a business combination whereby the Investor will make a debt investment of up to Rupees Forty Eight Lakh (Rs.48,00,000/-) to acquire Fifty Percentage (50%) interest of the Product from the Owners (the "Transaction Price"). The Investor may introduce additional investors (such as a banker or a lawyer) but such additional investor would be provided respective share in the Product basis the investments already made by the Investor and the

cumulative investment of the Investor and the additional investors shall not exceed Fifty Percentage (50%) of the Product. Any additional investor should be agreed in writing by all equity partners of Devrath & Co, provided that the Promoters and Owners agrees that a Phoenix Legal ("PL") co-founding partner, namely, Manjula Chawla, Sawant Singh and Abhishek Saxena, will be entitled to pro-rata participation rights along with the Investor without consent or approval of the Promoters. If any such PL co-founding partner invests any Instalment or part thereof, then such PL co-founding partner will also be treated in the same manner as the Investor and be entitled to all rights as applicable to the Investor on a mutatis mutandis basis."

7. Ms. Dikshit submits that Petitioner 2 has invested ₹ 12 lakhs in the aforesaid partnership firm on 28 September 2018 and is also therefore an additional investor within the meaning of Clause 6 of the Offer for Investment dated 21 September 2018.

8. The Supreme Court has in its recent decision in ***SBI General Insurance Co Ltd v. Krish Spinning***[2] held that a Court exercising jurisdiction under Section 11(6) of the 1996 Act is only required to examine whether there exists an arbitration agreement between the parties. Para 114 of the report specifically says that the *court is to see nothing else.* The only other aspect which the court has to bear in mind is whether the Section 11(6) petition has been filed within three years of the Section 21 notice initiating the arbitral proceedings.

9. In the present case, petition under Section 11(6) has been filed within three years of the Section 21 notice. Petitioner 1 and Respondent 1 and 2 are admittedly signatories to the Offer for Investment. In so far as Petitioner 2 is concerned, Ms. Dixit has

2 **2024 SCC OnLine SC 1754**

specifically pointed out that Petitioner 2 has also invested ₹ 12 Lakhs in the Respondent 2 Firm. That being so, in view of Clause 6 of the Offer for Investment dated 21 September 2018, a *prima facie* case for inclusion of Petitioner 2 in the arbitration proceedings is made out.

10. However, the Court clarifies that this view is only *prima facie*. It shall be open to the respondents to oppose or seek deletion of Petitioner 2 from the array of parties in the arbitration proceedings. Any such submission, if advanced, shall be considered and decided on merits by the learned Arbitrator.

11. Learned counsel for the respondents also sought to contend that Respondent 1 is facing insolvency proceedings before the appropriate Court in Alipore under the Provisional Insolvency Act. However, it appears that, till date, Respondent 1 has merely filed a petition before the said Court. No orders passed by the Court have been brought to my notice, nor have the respondents been able to produce any statutory or other embargo on the Court, proscribing it from exercising jurisdiction under Section 11(5) merely because an insolvency petition has been filed in another Court.

12. In that view of the matter, this Court appoints Mr. Pushkar Kumar Singh, Advocate (Mob: 9868349202) as the Arbitrator to arbitrate on the dispute between the parties.

13. The Arbitrator shall be entitled to charge fees as per the Fourth Schedule to the 1996 Act.

14. 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.

15. This Court has not expressed any view on any of the issues in controversy or the contentions raised by either side including the entitlement of Petitioner 2 to be a party in the arbitral proceedings. These are all aspects which are left open for decision by the learned Arbitral Tribunal.

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

C.HARI SHANKAR, J

AUGUST 21, 2024

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Click here to check corrigendum, if any