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

+ **ARB.P. 291/2024**

B A K S HOSPITALITY SERVICES PVT. LTD.Petitioner

Through: **Ms Shreya Bhardwaj and Mr Arnav Vats, Advs.**

versus

AVENTZ PRODUCTION AND EVENTZ AND ORS.

.....Respondents

Through: **Mr Vikram Singh Jakhar, Adv.
(through VC)**

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

29.07.2024

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1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties.

2. The facts of the case are that the petitioner and the respondents entered into an Artist Agreement dated 07.01.2023 for a concert to be held in Gautam Buddh Nagar. Clause 19 of the Agreement contained arbitration clause, which reads as under:

“19. THAT this Agreement for executing the Concert shall be subject to the laws in India, the parties agree to submit to this exclusive jurisdiction of the courts in DELHI alone by way of Arbitration in terms of Arbitration & Conciliation Act, 1996 (as amended) with seat at New Delhi.”



3. There were disputes between the parties and the petitioner invoked arbitration *vide* Legal Notice dated 16.08.2023 which was duly replied to by the respondents on 04.09.2023. Thereafter, the present petition has been filed.

4. Notice was issued and Mr Jakhar, learned counsel appears for the respondent.

5. Even though a copy of the reply is stated to have been filed, the same is not on record and hence a physical copy has been handed over to me in Court today. The same is taken on record.

6. Mr Jakhar, learned counsel for the respondent has primarily raised two objections. He states that firstly the Artist Agreement dated 07.01.2023 does not bear the signature of the respondents and is forged and fabricated.

7. The Artist Agreement containing the arbitration agreement filed on the Court's record shows the signature of the respondents. In addition, the execution of the said document has been admitted in the reply dated 04.09.2023 issued by the counsel for the respondents, on instructions of the respondents, wherein para 6 reads as under:

“6. That in accordance with the Artist Agreement dated 07.01.2023 made between my client and the opposition party, many mistakes were made by the opposition party and as per the settlement of money between the two, the same was not paid on time by the opposition party, due to which the program was cancelled. There were many difficulties in organizing the event and the biggest reason for the failure of the program later on was not paying the money on time.”

8. A perusal of the said para shows that the Artist Agreement dated



07.01.2023 has been admitted by the respondents. Therefore, the argument pertaining to the same being forged and not bearing the signature of the respondent cannot be accepted at this stage.

9. The second objection raised by Mr Jakhar, learned counsel for the respondents is that the petitioner is claiming about Rs. 28 lakhs whereas in the order passed by the learned Sessions Court at Gautam Buddh Nagar on 29.05.2023, a sum of Rs. 13 lakhs has duly been recorded to have been paid by the respondents to the petitioner.

10. To my mind, the Court at the stage of appointment of an Arbitrator is only to see that there is an arbitration clause between the parties. The Hon'ble Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754*** has reiterated the eye of the needle test and the relevant extract is quoted below:-

“90. In NTPC Ltd. v. SPML Infra Ltd. reported in (2023) 9 SCC 385, a two-Judge Bench of this Court was again faced with the issue of “accord and satisfaction” in the context of a Section 11 petition for appointment of arbitrator. Placing reliance on Vidya Drolia (supra), this Court gave the “Eye of the Needle” test to delineate the contours of the power of interference which the referral court may exercise under Section 11 of the Act, 1996. The first prong of the said test requires the court to examine the validity and existence of the arbitration agreement which includes an examination of the parties to the agreement and the privity of the applicant to the contract. The second prong of the test requires the court to, as a general rule, leave all questions of non-arbitrability to the arbitral tribunal and only as a demurrer



reject the claims which are ex-facie and manifestly non-arbitrable. However, it was clarified that the standard of the aforesaid scrutiny is only prima facie, that is, unlike the pre-2015 position, the scrutiny does not entail elaborate appreciation of evidence and conduct of mini trials by the referral courts.....”

11. Since, *prima facie*, there is an agreement dated 07.01.2023 between the parties, which bears the signature of the respondents and the same has duly been adverted to in the response dated 04.09.2023 by the respondent, at this stage I am satisfied that there is arbitration clause existing between the parties.

12. As regards the amounts already paid by the respondents and/or to be received by the petitioner, the same will be subject matter of the disputes which the learned Sole Arbitrator will decide.

13. Mr Jakhar, learned counsel for the respondents has drawn my attention to a Termination Agreement dated 25.03.2018 wherein the partnership between the respondent No.3 and respondent No.2 was terminated and respondent No.2 took over respondent No.1. He has also drawn my attention to the GST Registration – 06 form wherein it is only respondent No. 2 who is shown as partner of respondent No.1.

14. Ms Bhardwaj, learned counsel for the petitioner has no objection if respondent No.3 is deleted from the array of parties. Let it so be done.

15. For the said reasons, the petition is allowed. The dispute between petitioner and respondent Nos. 1 and 2 is referred to arbitration and the following directions are issued:-

i) Mr. Madan Lal Kalkal, Advocate (Mob. No.9868041507) is appointed as a Sole Arbitrator to adjudicate the disputes between



the parties.

- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- v) The parties shall approach the learned Arbitrator within two weeks from today.

JASMEET SINGH, J

JULY 29, 2024

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