



2024:DHC:6340



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 329/2024, I.A. 5342/2024****SUMIT GARG**

.....Petitioner

Through: Mr. Rajat Joneja, Mr.
Manoranjan Sharma and Mr. Anmol Kumar,
Advs.

versus

DHIANU DAS

.....Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****JUDGMENT (ORAL)**

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20.08.2024**ARB.P. 329/2024**

1. This is a petition under Section 11(5) of the Arbitration and Conciliation Act, 1996¹ for reference of the disputes between the parties to arbitration.

2. The dispute arises in the context of a Share Transfer Agreement (STA) dated 17 May 2022, executed between the petitioner and the respondent, with M/s Luxury Ride India Pvt Ltd as a confirming party. The STA envisages resolution of the disputes by arbitration and the relevant clause in that regard reads thus:

“5. (iv) **Dispute Resolution:**

Any dispute arising out of or in connection with this



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Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in New Delhi in accordance with the Arbitration Rules of the Arbitration & Conciliation Act, 1996 ("Arbitration Rules") for the time being in force."

3. The disputes having arisen between the parties, and no pre-arbitral procedure having been envisaged by the STA, the petitioner addressed a notice to the respondent under Section 21 of the 1996 Act on 4 January 2024, seeking reference of the disputes between the parties to arbitration. The petitioner also suggested the name of a former Judge of this Court to act as an arbitrator.

4. The respondent, in its reply dated 1 February 2024, was not agreeable to arbitration being conducted by the arbitrator named in the Section 21 notice of the petitioner. The respondent, however, expressed its willingness to have the arbitrator appointed by this Court by moving the Court under Section 11 of the 1996 Act. It is in these circumstances that the petitioner has moved the present petition before this Court.

5. Despite issuance of notice as far back as in March 2024, no reply to this petition has been filed till date. Mr. Rajneesh Pratap, learned Counsel appears for the respondent today and submits that his client has briefed him only this morning. He seeks time to file reply.

6. The Supreme Court has emphasized the need to dispose of petitions under Section 11 of the 1996 Act, seeking appointment of an arbitrator, expeditiously. Moreover, with the recent decision of the



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Supreme Court in *SBI General Insurance Co Ltd v. Krish Spinning*² all that the Court is required to examine under Section 11(5) or 11(6) of the 1996 Act is whether there exists an arbitration agreement between the parties and whether the petition under Section 11(5) or 11(6) has been filed within three years of the Section 21 notice. Both these conditions stand satisfied in the present case.

7. The parties having not been able to arrive at a consensus regarding identity of the arbitrator to arbitrate on the disputes, this Court has to step in.

8. Accordingly, this Court appoints Mr. Avadh Bihari Kaushik, Advocate (Tel. 9811455431) as the arbitrator to arbitrate on the disputes between the parties.

9. The learned arbitrator would be entitled to charge fees in accordance with the Fourth Schedule to the 1996 Act.

10. 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.

11. The petition stands allowed in the aforesaid terms with no order as to costs.

12. All questions of fact and law shall remain open to be agitated in

² 2024 SCC OnLine SC 1754



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the arbitral proceedings.

I.A. 5342/2024

13. This application does not survive for consideration and is disposed of.

C.HARI SHANKAR, J

AUGUST 20, 2024

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Click here to check corrigendum, if any

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