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

+ **ARB.P. 422/2024**

MIGLANI MANAGEMENT SERVICES PRIVATE LIMITED

.....Petitioner

Through: Mr. Vikas Padora, Mr. Dipanshu
Chogh, Mr. Tushar Malik, Advs.

versus

K-NINE WRITING SYSTEMS PRIVATE LIMITED.....Respondent

Through: Ms. Rashi Bansal, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

04.10.2024

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1. This is a petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator arising out of business transactions between the parties.
2. The facts are that the parties entered into one Carrier and Forwarder Agreement ("C & F") in August, 2018 at Maharashtra, however certain disputes arose between the parties and another C & F agreement dated 18.09.2018 was entered between the parties at Delhi.
3. The arbitration clause is contained as clause 16 of the C & F Agreement dated 18.09.2018.
4. Both the parties had decided that a commission of Rs 45,000/- per month shall be paid by the respondent to the petitioner for acting as Carrier and Forwarder and an amount of Rs. 30,00,000/- shall be deposited by the petitioner with the respondent, however at the time of signing of C & F



Agreement dated 18.09.2018, it was mutually agreed between the parties that security amount shall be Rs. 25,00,000/- and the commission payable to petitioner shall be same as decided earlier i.e Rs. 45,000/-. Thereafter the petitioner deposited Rs 20,00,000/- as security amount with the respondent.

5. Subsequently, certain disputes arose between the parties, the C & F agreement dated 18.09.2018 was terminated on 14.10.2023. Hence, the petitioner invoked arbitration *vide* legal notice dated 23.11.2023.

6. Hence, the present petition has been filed.

7. Ms Bansal, learned counsel appears for the respondent and states that the C & F Agreement dated 18.09.2018 is not signed by the respondent.

8. She further states that the C & F Agreement signed by the respondent is the agreement executed in August 2018 and the same contemplates the jurisdiction of state of Maharashtra. The same is disputed by the counsel for the petitioner.

9. I have heard learned counsel for the parties.

10. Clause 16 of the C & F agreement executed in August, 2018 reads as under:

“16.ARBIRATION: Any dispute or difference arising out of the interpretation of this agreement or the business shall be subject to arbitration according to the provisions of the Arbitration and Conciliation Act. 1996 or such other law relating to arbitration prevailing at any material point of time. The arbitrator shall be appointed by party of the second part suggesting the name of the arbitrator, if accepted by the party of the first part, by way of sole arbitrator, in case of differences each party shall depute one arbitrator and such arbitrators appointed shall select presiding arbitrator necessarily a person from the legal fraternity having standing Civil practice not less than of 10 years at Bar at any



District place, High Court or Supreme Court as the case may be. This may include person who has effectively acted in the position of principle District Judge in the State of Maharashtra or High Court or Supreme Court Judge, as the case may be. Any dispute or differences between the parties arising out of or in connection with this agreement or its performance shall be subject to the Mumbai jurisdiction.”

11. Clause 16 of the C & F agreement dated 18.09.2018 reads as under:

“Arbitration: Any dispute or difference arising out of the interpretation of this agreement or the business shall be subject to arbitration according to the provisions of the Arbitration and Conciliation Act, 1996 or such other law relating to arbitration prevailing at any material point of time. The arbitrator shall be appointed by party of the second part suggesting the name of the arbitrator, if accepted by the party of the first part, by way of sole arbitrator, in case of differences each party shall depute one arbitrator and such arbitrators appointed shall select presiding arbitrator necessarily a person from the legal fraternity having standing Civil practice shall not less than of 10 years at Bar at any District place, High Court or Supreme Court as the case may be. This may include person 6 who has effectively acted in the position of principle District Judge in the State of Maharashtra or High Court or Supreme Court Judge, as the case may be.”

12. A perusal of Clause 16 of the Agreement dated 18.09.2018 shows that the last lines i.e. “any dispute or difference arising out of or in connection with this agreement or its performance shall be subject to the Mumbai jurisdiction” is missing.

13. The C & F agreement dated 18.09.2018 is shown to be signed and stamped by the respondent’s authorized signatory (which is disputed by the learned counsel for the respondent).



14. The fact of the matter remains that there is arbitration clause in both the agreements contemplating that the parties shall refer their dispute to arbitration.

15. Since there is an arbitration clause in both the agreements, the section 11 petition needs to be allowed. The agreement relied upon by the petitioner dated 18.09.2018 shows that it is duly signed and stamped by the respondent. Whether the same is an interpolation/forgery can only be decided by the Arbitrator once the parties have completed their pleadings and led evidence in this regard.

16. Ms Bansal, learned counsel for the respondent states that all the objections of the respondent in this regard may be left open.

17. In this view of the matter, the petition is allowed and the following directions are issued:-

- i) Mr. Jai Sahai Endlaw, Adv. (Mob. No. 9811122114) 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').
- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) 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. All the objections of the parties including the objection to the agreement dated 18.09.2018 being a forged and manipulated document shall also be adjudicated by the learned Arbitrator.

vi) The parties shall approach the learned Arbitrator within two weeks from today.

18. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

OCTOBER 4, 2024/NG