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

+ **ARB.P. 530/2023**

M/S G4S SECURE SOLUTIONS (INDIA) PVT. LTD.

..... Petitioner

Through: **Mr.Gulshan Chawla and Mr.Ankur Chauhan, advts.**

versus

MR. SUNIT GULATI PROPRIETOR M/S CHARLES AND CO.

..... Respondent

Through: **Ms.Geetika Kapoor, Adv.
(through VC)**

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

01.03.2024

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The present petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes *inter se* the parties. Learned counsel for the petitioner has stated that it had entered into an agreement with M/s Charles & Company for providing security service. The case of the petitioner is that though the M/s Charles & Company has availed the service but failed to make the payment which led to the dispute between the parties. Part 11 of the agreement contains the arbitration clause which provides for the appointment of an arbitrator with venue of the arbitration at New Delhi. The petition has been filed against Mr. Sunit Gulati, proprietor of M/s Charles & Company.



Ms.Geetika Kapoor, learned counsel appearing for the defendant has taken a preliminary objection that the petition is not maintainable at all. Learned counsel for the respondent that Mr.Sunit Gulati is not privy to the contract. Learned counsel has further submitted that M/s Charles & Company is not a proprietorship firm but it is a partnership firm which has two partners i.e. Mr.Sunit Gulati and Ms.Shweta Gulati. Learned counsel submits that in the absence of privity of contract between Mr.Sunit Gulati and the petitioner, the present petition is required to be rejected outrightly and the matter cannot be referred to arbitration. During the course of submissions, learned counsel for the respondent has also disputed the signing of the agreement. Learned counsel for the respondent firm has never authorised Mr.Neeraj to sign the agreement. The claim amount is stated to be Rs.7.82 lakhs.

Learned counsel for the respondent has relied upon ***Magic Eye Developers Private Limited Vs. Green Edge Infrastructure Private Limited and Others*** (2023) 8 SCC 50. Learned counsel submits that in this case it was held though the jurisdiction of the court at the time of referral is very limited but at this stage the court is required to examine the existence and validity of an arbitration agreement, which includes an inquiry as to the parties to the agreement and the applicant's privity to the said agreement. Learned counsel submits that in view of the categorical law laid down, the present petition is liable to be dismissed.

Per contra, learned counsel for the petitioner has invited the attention of the court to certain email communications between Mr.Sunit Gulati and the petitioner. In these emails, Mr.Sunit Gulati has requested for deployment of additional security guards. Learned counsel submits that



pursuant to this mail, the security audit was duly conducted. Learned counsel submits that now the plea has been taken only to wriggle out of the of the arbitration agreement. There is no doubt that at the stage of referral, the court has very limited jurisdiction. The court has to see whether there is an agreement between the parties, which contains the arbitration clause and there is an arbitrable dispute between the parties. It is correct that if the person against whom the petition has been filed has not signed an agreement, he cannot be forced into arbitration. But at the same time, the court has to see whether such plea is bonafide or mischievous. In the present case, it is not disputed that agreement was entered into with M/s Charles & Company. The agreement has been admittedly signed by Mr.Neeraj, who is an employee of M/s Charles & Company. During the course of submissions learned counsel for the respondent has stated at Bar that M/s Charles & Company is a partnership firm having two partners i.e. Mr.Sunit Gulati and Ms.Shweta Gulati.

The agreement on the record is apparently signed by the petitioner and M/s Charles & Company. Since it has been stated at bar that M/s Charles & Company is a partnership firm, it has to be represented through partners. In ***Buildmyinfra Private Limited vs. Gyan Prakash Mishra***, Arb.P.340/2022 (2022:DHC:2789), a petition under Section 11 of the Arbitration Act was filed wherein the respondent has taken plea that he had never signed the agreement and is therefore not bound by the arbitration clause contained therein. The coordinate bench of this court relying upon ***Vidya Drolia and Others. Durga Trading Corporation*** (2021) 2 SCC 1 and ***Bharat Sanchar Nigam Limited and Another vs. Nortel Networks India Private Limited*** (2021) 5 SCC 738 inter alia held that the courts enquiry



while considering the petition under Section 11 of the Act is generally limited to the existence of the arbitration agreement/clause except in certain extraordinary situations. It was further held that in cases where the arbitration agreement *prima facie* exists, the arbitrator ought to be appointed. It is also pertinent to mention here that it is not necessary for the written documents to be signed by all the parties so long as the existence of an arbitration agreement can be culled out from the exchange of letters, telex, telegrams or other means of communication which provide a record therefore. Reliance has been placed upon ***Govind Rubber Limited vs. Louis Dreyfus Commodities Asia Private Ltd.***

I consider that the arguments raised by the respondent cannot be sustained in the eyes of law. There is an agreement with M/s Charles & Company and it is not the case where Mr.Sunit Gulati has no connection with the M/s Charles & Company. He is admittedly one of the partners of the firm. Thus, the matter between the petitioner and M/s Charles & Company is referred to the arbitration. The issue as to who would represent M/s Charles & Company is left open to be decided by the learned arbitrator. The present petition is disposed of with the following directions:

- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
- ii) As agreed by both the counsels for the parties, DIAC shall nominate an Arbitrator to adjudicate the disputes between the parties.
- iii) 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 fee rules of the DIAC schedule or as the



parties may agree.

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 on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

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

DINESH KUMAR SHARMA, J

MARCH 1, 2024

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