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

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Date of Decision : 17.12.2024+ **ARB.P. 520/2024****RISHI RAJ KHATANA**

.....Petitioner

Through: Mr. Rishi Pal, Mr. Jatin Kumar, Ms.
Sakshi Rathi, Advs.

versus

MACKERAL OIL TOOLS PRIVATE LIMITED & ANR.

.....Respondents

Through: Mr. Shantanu Garg, Adv.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of a Share Transfer Agreement dated 25.07.2018 entered into between the petitioner and the respondent.
3. According to the petitioner, the disputes have arisen on account of non payment of an amount of Rs.40,00,000/- to the petitioner in terms of Clause-6 of the said Share Transfer Agreement dated 25.07.2018.
4. A legal notice/ invocation notice was sent by the petitioner on 25.01.2024, *inter alia*, stating as under:-

“5. That as per the said Share Transfer Agreement our client apart from the value of shares, was also entitled to consultancy fee of Rs. 40 Lakhs as per clause 6 of the Share Transfer Agreement which reads as under:-

a. 6“Consultancy fee to the seller: The Purchaser acknowledges



that since the inception of the company, the seller has contributed immensely to the company in form of initial investment, market knowhow, growth roadmap, tactical plans, strategy building and performance monitoring. In consideration of the same, the parties agree that the seller shall be entitled to receive Consultancy payment of Rs.40 Lakhs up. The Purchaser agreed to make the payment of Rs.Rs.40 lakhs upto 31 Dec2020. "

6.That our client had approached you the Noticee No.2 for the payment of the agreed amount on several occasions, however you the Noticee No.2 have evaded the same on one pretext or other without explaining your conduct in non-payment of the agreed amount to our client.

7. Thus, our client states that the disputes have arisen between our client and you the Noticee No.2 and further repeated attempts to recover the amount in non-payment of Consultancy fee. Therefore, bearing in mind the situation as set out herein above, Our client is left with no other alternative but to invoke arbitration in accordance with Clause 7 of the Share Transfer Agreement which reads as:-

a. 7"ARBITRATION: Any and all differences, disputes or questions arising out of or under or incidental to this agreement shall be resolved by recourses to arbitration to be conducted by a single Arbitrator CA Sanjeev Kumar and Arbitration proceedings shall be conducted in accordance with the prevailing Arbitration Act of India. The venue of the arbitration shall be New Delhi and the Arbitration Award shall be final and binding on the parties. "

8. That it would also be relevant to state here that, it is clearly you the Notice No. 2 who is in breach of the said Agreement and not our client. Accordingly, our client is compelled to invoke the Arbitration Clause as envisaged in Clause 7 of the said Agreement which is enumerated above.

9. That my client calls upon you to pay the amount of Rs. 40,00,000/-(Rupees Forty Lakhs) along with interest@ 18% upto the date of realization in view of agreement entered upon with you within 7 days of receiving this Notice.

10. That in the arbitration agreement it was agreed that Mr. Sanjeev Kumar Chartered Accountant would be the Arbitrator in case of dispute however, our client doubts the impartiality of the agreed arbitrator as Mr. Sanjeev Kumar being a CA has provided his services to you as well as our client and hence our client reserves his right to approach the appropriate forum for appointment of an independent arbitrator in case you fail to comply with the terms of the present Notice.

11. That through this Notice our client hereby calls upon you to immediately make



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the payment of Rs. 40 Lakhs alongwith 18% interest from the 31st December, 2020 till the date of realization within 7 days of receiving this Notice failing which my client shall initiate arbitration proceedings as per clause 7 of the Share Transfer Agreement dated 24th July, 2018.

12. That our client is in possession of the original Agreement containing the Arbitration Clause duly signed and agreed between you the Noticee No.1 through Noticee No.2 and our client.”

5. The Share Transfer Agreement contains an arbitration clause as under:-

“7. ARBITRATION: Any and all differences, disputes or questions arising out of or under or incidental to this agreement shall be resolved by recourse to arbitration to be conducted by a single arbitrator CA Sanjeev Kumar and Arbitration proceedings shall be conducted in accordance with the prevailing Arbitration Act of India. The venue of the arbitration shall be New Delhi and the Arbitration Award shall be final and binding on the parties.”

6. Learned counsel for the respondent does not dispute the existence of the arbitration agreement he, however, raises a two-fold objections to the maintainability of the present petition. Firstly, it is submitted that there are no subsisting live disputes between the parties which can be referred to arbitration. It is sought to be emphasised that no dispute has been raised by the petitioner prior to filing of the present petition.

7. Secondly, it is submitted that in the arbitration clause the parties have also agreed on an arbitrator and if at all, the matter is to be referred to arbitration, the named arbitrator be appointed as the sole arbitrator.

8. This Court is not inclined to accept the aforesaid submissions.

9. *Prima facie*, it is untenable to contend that there are no disputes between the parties or that the petitioner has omitted to notify the disputes sought to be raised by it to the respondent.

10. A perusal of the legal notice dated 25.01.2024 reveals that the disputes



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on account of non payment of consultancy fees of Rs. 40,00,000/- was categorically set out therein. The said notice also says that in the event of failure to pay the amount, the petitioner would claim the same along with interest and would also take recourse to arbitration proceedings.

11. As such, no merit is found in the first contention raised by learned counsel for the respondent.

12. As regards, the second contention, it is noticed that the petition contains a categorical averment that the named arbitrator has acted as the Chartered Accountant to both the petitioner and the respondents. As such, he is ineligible to act as the arbitrator. Learned counsel for the respondent is unable to controvert the same.

13. In the circumstances, this Court feels that it would be apposite to appoint an independent Sole Arbitrator to adjudicate the disputes between the parties.

14. Consequently, Mr. Abhishek Mahajan, Advocate (Mob. No.: +91 9810981062) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

15. The respondents shall be entitled to take appropriate objections as regards jurisdiction/arbitrability, if any, before the learned Sole Arbitrator, which shall be decided by the learned Sole Arbitrator on merits and in accordance with law.

16. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosure as required under Section 12 of the A&C Act.

17. At request of respective counsel, it is directed that the arbitration shall take place under the aegis of and as per the Rules of Delhi International



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Arbitration Centre (DIAC).

18. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

19. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the case. It is directed accordingly.

20. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 17, 2024/uk