



2024:DHC:6235



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 564/2024**ADITYA BIRLA FINANCE LIMITED**Petitioner

Through: Mr. Arvind Nayar, Sr. Adv.
with Mr. Puneet Singh Bindra, Mr. Akashya
Joshi, Mr. Sachin Sharma, Mrs. Charu Modi
and Mr. Shubham Chandra, Advs.

versus

**B K PODDER PRINTING PVT LTD AND
ORS.**

.....Respondent

Through: Mr. Gautam Narayan and Mr.
Ashok Kumar Jain, Advs.

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

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16.08.2024

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act 1996 ("the 1996 Act"), seeking reference of the dispute between the parties to arbitration.

2. The petitioner purports to rely on Clause 32.17 of the two Facility Agreements dated 14 July 2021. Each Facility Agreement contains a clause envisaging resolution of dispute between the parties by arbitration. The relevant clauses may be reproduced thus:

"32.17 Arbitration:

All claims or disputes arising out of or in relation to this Agreement shall be settled by arbitration. The arbitration tribunal shall consist of a sole arbitrator to be appointed by Lender. All parties to this Agreement hereby expressly consent to Lender being

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the sole appointing authority. Any vacancy created in the arbitration tribunal, for any reason whatsoever, shall also be filled only by Lender acting as the sole appointing authority. The place of arbitration shall be Delhi. Parties agree that the courts in Delhi shall have the exclusive jurisdiction to exercise all powers under the Arbitration and Conciliation Act, 1996.

Notwithstanding anything contained hereinabove, in the event the legal status of the Facility Provider changes or in the event of the law being made or amended so as to bring the Facility Provider under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the "DRT Act"), to proceed to recover dues from the Borrower(s) under the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of the Facility Provider, cease to have any effect and if arbitration proceedings are commenced but no arbitral award is made, then at the option of the Facility Provider such proceedings shall stand terminated and the mandate of the arbitrator shall come to an end from the date of the making of the law or the date when amendment becomes effective or the date when the Facility Provider exercises the option of terminating the mandate of arbitrator, as the case may be. Provided that neither a change in the legal status of the Facility Provider nor a change in law as referred to in this sub paragraph above, will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of this Agreement."

3. Mr. Gautam Narayan, learned Counsel for the respondent, has emphatically opposed this petition. He submits that, in fact, the agreement on which reliance is placed by the petitioner, is a subsidiary agreement of a main Master Facility Agreement dated 8 September 2017, which contains an arbitration clause fixing the seat of arbitration at Mumbai, and also contains an exclusive jurisdiction clause on courts at Mumbai. He, therefore, submits that this Court would not have the territorial jurisdiction to entertain this petition, and that the petitioner would appropriately have to approach the High Court of Bombay.

4. Mr. Nayar, learned Senior Counsel for the petitioner refutes the

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submission of Mr. Gautam Narayan and *inter alia* places reliance on Clause 32.13 of the Facility Agreements.

5. The scope of examination by a court exercising jurisdiction under Section 11(6) of the 1996 Act has now been considerably circumscribed by the judgment of the Supreme Court in ***SBI General Insurance Co Ltd v. Krish Spinning¹***. Following the said decision, a Section 11(6) Court is only empowered to examine whether there exists an arbitration agreement between the parties. Para 114 of the report specifically says that the court is to examine *nothing else*. The only other aspect which the court has to bear in mind is whether the Section 11(6) petition has been filed within three years of the Section 21 notice initiating the arbitral proceedings.

6. In the present case, the notice by the petitioner to the respondent under Section 21 of the 1996 Act was issued on 25 October 2023.

7. As such, the present Section 11(6) petition is within time, reckoned from the date of the Section 21 notice.

8. Apropos the objection of Mr. Gautam Narayan, it cannot be denied that the two facility agreements dated 14 July 2021 under which the present dispute has been raised by the petitioner contain arbitration clauses which fix the place of arbitration as Delhi and confer exclusive jurisdiction on courts at Delhi to deal with arbitration.

¹ 2024 SCC OnLine SC 1754



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9. In that view of the matter, applying the law laid down in ***SBI General Insurance***, and as the parties have not been able to arrive at a consensus regarding arbitration, this Court cannot but exercise its jurisdiction under Section 11(6) of the 1996 Act.

10. At the same time, the Court hastens to observe that it is not expressing any opinion, even tangentially, on the arbitrability of the present dispute under the two facility agreements on which the petitioner places reliance. The arbitrability of the dispute, it is now well settled, is an aspect which has to be examined by the Arbitral Tribunal under Section 16(1) of the 1996 Act.

11. The contentions of Mr. Gautam Narayan have been noted, nonetheless, and it shall be open to the respondent to raise the said contentions before the learned Arbitral Tribunal which shall, then, proceed to take a view thereon after providing an opportunity to the petitioner and in accordance with law.

12. Accordingly, this Court appoints Mr. Asheesh Jain, Advocate (Mob: 9999822288) as the arbitrator to arbitrate on the dispute between the parties.

13. The arbitration shall take place under the aegis of the DIAC and shall abide by its rules and regulations.

14. The arbitrator shall be entitled to charge fees as per the schedule

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of fees maintained by the DIAC.

15. The learned Arbitrator is requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

16. All questions of fact and law including preliminary objections regarding arbitrability of the dispute are left open to be agitated before the learned Arbitral Tribunal.

17. Mr. Gautam Narayan also sought to submit that his client is bedridden and is also not in a position to travel to Delhi, and also sought permission to make a request to the learned Arbitrator, if possible, to conduct the hearing at a venue which is suitable to both parties.

18. Liberty stands reserved to the respondent to make such a request to the learned Arbitrator who, if and when such a request is made, would take a view thereon.

19. The petition stands disposed of in the aforesaid terms with no orders as to costs.

C.HARI SHANKAR, J

AUGUST 16, 2024

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Click here to check corrigendum, if any

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