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

+ **ARB.P. 742/2023 & I.A. 13635/2023**

INDORAMA INDIA PRIVATE LIMITED Petitioner

Through: Ms. Pooja Sharma, Mr.
Vishwanathan Iyer & Mr. Arman
Roop Sharma, Advocates.

versus

VIGNESHWARA TEXTILES Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

09.02.2024

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1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties under a Sales Contract dated 03.06.2022 [“the Sales Contract”]. The Sales Contract contemplated supply of material by the petitioner to the respondent, for which the petitioner claims that it has not received payment.

2. Notice was issued in this petition on 04.09.2023. The petitioner has filed an affidavit of service dated 11.10.2023, by which it is stated that the respondent was served by courier at the address mentioned in the memo of parties, and by email.

3. As the communications between the parties, placed on record, were through WhatsApp, by a further order dated 23.01.2024, the Court also directed learned counsel for the petitioner to serve the respondent by



WhatsApp. A second affidavit of service dated 24.01.2024 has been filed, affirmed by learned counsel for the petitioner, in which it is stated that service has been effected upon the respondent by WhatsApp also. Despite the aforesaid, the respondent has not entered appearance.

4. The case of the petitioner is that the respondent placed the purchase on the petitioner by a WhatsApp message on 03.06.2022. In response, the petitioner transmitted a *pro forma* invoice and the Sales Contract to the respondent, also by WhatsApp. The Sales Contract contains an arbitration clause (Clause 24) which provides for disputes to be adjudicated by arbitration in New Delhi.

5. The petitioner, by notice dated 22.12.2022, called upon the respondent to make payment of ₹5,60,523/-, being the balance amount due, alongwith interest. This communication did not elicit a response. Therefore, the petitioner, through counsel, addressed a legal notice dated 12.04.2023 invoking arbitration. The respondent has not replied to this notice either.

6. In these circumstances, the petitioner seeks appointment of an arbitrator by the Court.

7. It is clear from the order sheets that two issues were raised in the course of these proceedings – one relating to stamping of the agreement, and the second relating to whether the terms of the Sales Contract [which includes the arbitration clause] were agreed between the parties.

8. As far as the first issue is concerned, it is now settled by the seven Judge Bench of the Supreme Court in *In Re: Interplay Between the Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899* (Curative Petition (C) No. 44/2023 and



connected matters) that issues of stamping of agreements are not germane for consideration at the stage of Section 11 proceedings and are to be left open for adjudication by the learned arbitrator.

9. With regard to the second issue, pursuant to order dated 23.01.2024, the petitioner has filed an affidavit to demonstrate that the terms of the Sales Contract were agreed between the parties by an exchange of electronic communications. In this context, learned counsel for the petitioner has placed on record WhatsApp communications exchanged between the parties on 28.05.2022, pursuant to the purchase order sent by the respondent to the petitioner also. The documents placed on record *prima facie* show that in the same WhatsApp thread, the petitioner transmitted a four page Sales Contract to the respondent. It also *prima facie* appears from the image placed on record that this document is the same document which contains the arbitration clause, and has been placed on record at pages 35 to 38 of the present petition. Further, the screenshots show that the respondent has also sent messages thereafter on the same thread, although these were later deleted. There is also *prima facie* evidence on record to show that the message containing the Sales Contract, was delivered to the respondent by WhatsApp on 03.06.2022 at 05:43 PM and seen at the same time.

10. The judgment of the Supreme Court in *Vidya Drolia v. Durga Trading Corpn.*, [(2021) 2 SCC 1], makes it clear that at the stage of Section 11 proceedings, the Court is not called upon to return conclusive findings about the existence of an arbitration agreement, but only to satisfy itself *prima facie*. In my view, the documents available on record *prima facie* satisfy this level of scrutiny. In terms of Section 7(4)(b) of the



Act, although there is no document signed by the parties containing the arbitration clause, the exchange of electronic communications provides a record of the arbitration agreement. The respondent has also not appeared, despite service, to controvert the petitioner's contentions.

11. In these circumstances, the petition is allowed and the disputes between the parties are referred to arbitration under the aegis of Delhi International Arbitration Centre, Shershah Road, New Delhi-110503 ["DIAC"]. DIAC is requested to nominate an arbitrator from its panel. The arbitral proceedings will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act, prior to entering into the reference.

12. As the respondent has not entered appearance in these proceedings, it is made clear that the respondent is required to be served afresh in the arbitration proceedings, in accordance with DIAC Rules.

13. It is also clarified that this Court has only taken a *prima facie* view, and all rights and contentions of the respondent, including on the question of existence of the arbitration agreement, are left open for adjudication before the learned Arbitrator.

14. The petition, alongwith pending application, stands disposed of in these terms.

PRATEEK JALAN, J

FEBRUARY 9, 2024/'pv'/