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

+ ARB.P. 651/2024

INTERNATIONAL SOCIETY FOR SMALL AND MEDIUM
ENTERPRISES (ISSME)

.....Petitioner

Through: Mr. Anil Kumar Sharma,
Advocate.

versus

RAMKALA SINGH AND ANR.

.....Respondents

Through: Mr. Sandeep Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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12.09.2024

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 Memorandum of Understanding dated 01.02.2019 [“MoU”].

2. The MoU contains an arbitration clause [clause 12] which provides for resolution of disputes by a sole arbitrator. The arbitration proceedings have to be held in New Delhi, and Courts in New Delhi have also been vested with exclusive jurisdiction over the agreement.

3. Disputes having arisen between the parties, the petitioner invoked arbitration by a legal notice dated 12.02.2024, to which no reply was received. It has therefore approached this Court under Section 11 of the Act.

4. Notice was issued on 09.07.2024, pursuant to which Mr. Sandeep Singh, learned counsel, appears on behalf of the respondents. The



respondents are also present in Court, in person.

5. At the stage of Section 11 of the Act, the Court is only required to examine *prima facie* the existence of the arbitration agreement, all disputes of maintainability, arbitrability and on merits being left to the jurisdiction of the arbitral tribunal. The Supreme Court in its recent judgments of *SBI General Insurance Co. Ltd. v. Krish Spinning* [2024 SCC OnLine SC 1754] and *Cox & Kings Ltd. v. SAP India Pvt. Ltd. & Anr.* [Arbitration Petition No. 38/2020 dated 09.09.2024] has made this position clear.

6. Mr. Singh does not dispute the existence of the agreement or the arbitration clause, but submits that the claims of the petitioner are disputed on merits, and that the respondents have in fact instituted proceedings under Section 138 of the Negotiable Instrument Act, 1881 in respect of dishonoured cheques issued by the petitioner in their favour. As these contentions go to the merits of the disputes, he reserves the respondents' contentions before the arbitral tribunal, and also their right to raise any such counter claims in the arbitral proceedings.

7. Having regard to the above, the disputes between the parties are referred to arbitration of Mr. Rahul Kripalani, Advocate [9953049776]. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 ["DIAC"], and will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator.

8. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

9. All rights and contentions, including rights to file counter claims



are left for adjudication before the arbitral tribunal.

PRATEEK JALAN, J

SEPTEMBER 12, 2024

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