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

+ **ARB.P. 656/2024**

M/S SALUD BEVERAGES PVT LTDPetitioner

Through: **Mr. Prashant Kumar & Mr.
Abhineet Arvind, Advocates.**

versus

INDOSPIRIT BEVERAGES PRIVATE LTDRespondent

Through: **Mr. Nikhil Goel, Senior Advocate
with Mr. Srijan Sinha, Mr.
Himanshu Chaubey, Mr. Siddharth
Garg, Mr. Gaurang Dubey & Ms.
Siddhi, Advocates.**

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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29.08.2024

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 resolve the disputes between the parties under Clause 15.4 of an agreement dated 27.10.2020, entitled “*Bottling Agreement*” [“the Bottling Agreement”].
2. I have heard Mr. Prashant Kumar, learned counsel for the petitioner, and Mr. Nikhil Goel, learned Senior Counsel for the respondent.
3. The Bottling Agreement contains a dispute resolution clause [Clause 15], which provides for resolution of disputes by a sole arbitrator.



New Delhi has been designated as the seat and venue of arbitration. The Courts in New Delhi have also been vested with exclusive jurisdiction under the Bottling Agreement.

4. Disputes having arisen between the parties, the petitioner sought to invoke arbitration by a legal notice dated 30.04.2024 [“the Notice”]. In its response dated 05.05.2024, addressed through counsel, the respondent contended that the Notice has been sent to circumvent proceedings initiated by the respondent under the Insolvency and Bankruptcy Code, 2016. While the claims of the petitioner were disputed on merits, and it was suggested that the parties were under the duty to discuss the claims mutually before invocation of arbitration, there was no dispute as to the existence of an arbitration clause in the Bottling Agreement.

5. Mr. Goel contends, in opposition to the petition, that the claims sought to be agitated in the Notice, included claims not just under the Bottling Agreement but also under three other agreements, which did not contain arbitration clauses, being a Distribution Agreement for Goa dated 10.11.2021, a Promoter Agreement for Karnataka dated 11.06.2021 [wrongly stated in the petition to be dated 11.06.2022] and an unwritten distribution agreement for Chandigarh region. He further submits that, in such circumstances, the claims are not liable to be referred to arbitration as the other agreements do not contain arbitration clauses at all and the Notice under Section 21 of the Act, therefore, is invalid. Mr. Goel relies upon the judgment of the Supreme Court in *BSNL v. Nortel Networks (India) (P) Ltd.*¹ and of this Court in *Alupro Building Systems Pvt. Ltd. v.*

¹ (2021) 5 SCC 738.



*Ozone Overseas Pvt. Ltd.*² in support of his contention.

6. Mr. Kumar, on the other hand, submits that the prayer in the petition is only for a reference with respect to disputes arising under the Bottling Agreement, which admittedly contains an arbitration clause. He argued that the submissions of Mr. Goel go to arbitrability of the disputes, which are not susceptible to consideration under Section 11 of the Act.

7. The scope of Court's jurisdiction under Section 11 of the Act has recently been explained by the Supreme Court in *SBI General Insurance Co. Ltd. v. Krish Spinning*³. The Court has considered the development of the law on this subject, including the earlier judgments in *National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd.*⁴, *Duro Felguera, S.A. v. Gangavaram Port Ltd.*⁵, *Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman*⁶, *Vidya Drolia v. Durga Trading Corpn.*⁷ and *NTPC Ltd. v. SPML Infra Ltd.*⁸. The Court has then examined the effect of the judgment of the Seven Judge Bench in *Interplay Between Arbitration Agreements under Arbitration & Conciliation Act, 1996 & Stamp Act, 1899, In re*⁹, and held that the scope of enquiry by the Court under Section 11 of the Act is limited to the question of existence of the arbitration clause, that too, on a *prima facie* basis, relating to formal validity alone. All questions of arbitrability, including questions of accord and satisfaction and limitation, upon which the earlier judgments of the

² 2017 SCC OnLine Del 7228.

³ 2024 SCC OnLine SC 1754.

⁴ (2009) 1 SCC 267.

⁵ (2017) 9 SCC 729

⁶ (2019) 8 SCC 714

⁷ (2021) 2 SCC 1

⁸ (2023) 9 SCC 385

⁹ (2024) 6 SCC 1.



Court had vested some limited jurisdiction in the referral court, have been held to be outside the purview of Section 11, as a consequence of the decision in *In Re: Interplay Between Arbitration Agreements (supra.)*.

8. The task of the referral court is thus extremely limited, which is to consider *prima facie* whether an arbitration agreement exists between the parties, and thereafter leave the matter to the arbitral tribunal for determination of all other issues, including of a conclusive determination on the question of the existence of the arbitration clause.

9. Viewed from this perspective, and in the light of Mr. Kumar's submission recorded above, and the prayer clause of the petition, I am of the view that the petition is liable to succeed. Mr. Goel's submission with regard to the scope of Section 21 notice does not commend to me in the facts and circumstances of this case. The Bottling Agreement is expressly referred to, and the arbitration clause contained therein is also cited in the Notice. Despite the fact that other claims have also been asserted, the proposal for appointment of an arbitrator is specifically for "*adjudication of disputes and differences between [parties] arising out of and concerning the aforesaid agreement*". The judgments in *BSNL (supra.)* and *Alupro Building Systems (supra.)*, have been cited to demonstrate the importance and purpose of Section 21 notice. While the proposition to that extent is undisputed, I am of the view that the Notice in the present case satisfies the requirements of the statute.

10. Needless to say, the conclusions recorded while disposing of petition under Section 11 of the Act are necessarily tentative, and it is open to the respondent to raise questions of maintainability of any claims asserted by the petitioner before the arbitral tribunal. It also bears notice



that, in the event patently non-arbitrable claims are sought to be raised in arbitration, the aggrieved party can always be compensated in costs. The rights and contentions in that regard are reserved.

11. For the aforesaid reasons, the petition is disposed of with the direction that the disputes between the parties under the Bottling Agreement dated 27.10.2020 will be adjudicated by arbitration of Hon'ble Ms. Justice Asha Menon, former Judge of this Court [Tel: 9910384664]. 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.

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

13. It is made clear that all rights and contentions of the parties are left open for adjudication by the learned Arbitrator.

14. The petition is disposed of in these terms

PRATEEK JALAN, J

AUGUST 29, 2024

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