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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision : 16.12.2024+ ARB.P. 765/2024

M/S FUJIFILM INDIA PVT. LTD.

.....Petitioner

Through: Mr. Gulshan Chawla, Mr. Shaswat
Jena Adv.

versus

AARTI LUMBA PROPRIETOR OF AARTI TRADING COMPANY

.....Respondent

Through: Mr. Rishi Sood, Mr. Tushar, Advs.

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

1. The present petition has been filed under section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the A&C Act') seeking 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 Distributorship Agreement dated 18.06.2018, in terms of which the petitioner granted the respondents right to sell, market and distribute the products of the petitioner.
3. The arbitration clause in the said agreement is in the following terms:

*"Article 30. Arbitration**Any and all disputes, controversies and differences arising between the parties hereto out of or in relation to this Agreement or any breach thereof shall be finally settled by arbitration to be conducted in New Delhi, in English language in accordance with the Indian Arbitration and Conciliation Act, 1996. The Sole Arbitrator shall be appointed by FFIN. Each party hereto shall, upon execution of this Agreement, provide the*



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other party with any and all documentation necessary for this arbitration clause to be valid under the law of the jurisdiction of its incorporation and (with respect to the Distributor) also under the law of the Territory, if there is any requirement in addition to the foregoing provision, and agrees further that it will do so if any such requirement is subsequently imposed or is found to apply. The award rendered in such arbitration shall be final and binding upon the parties.”

4. Dispute/s have arisen between the parties on account of alleged failure of the respondents to pay outstanding amount due against the material supplied by the petitioner to the respondents.
5. The petitioner issued a legal notice dated 14.01.2022 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred as “the NI Act”) to the respondents followed by a complaint under Section 138 of the NI Act. The same is pending adjudication.
6. Since the disputes between the parties persisted, the petitioner issued a notice dated 10.02.2024 for invocation of arbitration. *Vide* communication dated 23.03.2024, the respondents contested/ refuted the contents/ allegations contained therein.
7. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute.
8. It is the case of the petitioner that the respondents issued a Cheque bearing no.000051 dated 20.12.2021 for an amount of Rs.40,00,000/- in favour of the petitioner. However, upon presentation the cheque was dishonoured. It is submitted that issuance of the aforesaid cheque constitutes admission and acknowledgement by the respondents of the outstanding/pending payment due to the petitioner.
9. The learned counsel on behalf of the respondents seeks to refute the



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existence of the arbitration clause in the distributorship agreement on the premise that the respondents have not executed/signed the aforesaid agreement and the signatures contained in the said agreement are forged.

10. Further, the learned Counsel of the respondents also denies issuance of the dishonoured cheque by the respondents and has stated that as a pre-condition to the agreement, only a blank cheque was issued to the petitioner by the respondents as security. It is alleged that not only is the signature on the dishonoured cheque forged and fabricated but also presented without any intimation or knowledge of the respondents.

11. Having heard respective counsel for the parties at length, this Court is of the opinion that, *prima facie*, the copy of the distributorship agreement placed on record by the petitioner contains an arbitration clause and also bears the stamp and signature of the respondents on each page. The question as to whether or not the stamp and signatures are fabricated and forged would require appreciation of the factual conspectus and leading of evidence by the parties. A coordinate bench of this Court in ***Fujifilm India Pvt. Ltd. vs Rahul Lumba Proprieter of M/S Rahul Enterprises***, ARB. P 769/2024 has dealt with a similar situation and has observed as under:-

“5. The scope of adjudication under Section 11 of the Act is very limited. As far as the existence of an arbitration agreement is concerned, the recent judgment of the Supreme Court in SBI General Insurance Co. Ltd. v. Krish Spinning [2024 SCC OnLine SC 1754], makes it clear that a prima facie determination is to be made by the referral Court, leaving a final adjudication, even on this question, to the arbitral tribunal. The relevant observations of the Court are as follows:

“110. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.



111. The use of the term ‘examination’ under Section 11(6-A) as distinguished from the use of the term ‘rule’ under Section 16 implies that the scope of enquiry under section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the arbitral tribunal to ‘rule’ under Section 16. The prima facie view on existence of the arbitration agreement taken by the referral court does not bind either the arbitral tribunal or the court enforcing the arbitral award.

112. The aforesaid approach serves a two-fold purpose - firstly, it allows the referral court to weed out non-existent arbitration agreements, and secondly, it protects the jurisdictional competence of the arbitral tribunal to rule on the issue of existence of the arbitration agreement in depth.”

[Emphasis supplied.]

6. In the present case, Document No.2 annexed to the petition is stated to be a copy of the Distributorship Agreement. It purportedly bears the stamp and signature of the respondent on each page, as also at the end of the Agreement. The disputes raised by the respondent, as to the veracity of the document, would require evidence to be led and a factual determination to be returned. This task must be left to the arbitrator as, prima facie, there appears to be an agreement between the parties providing for resolution of disputes by arbitration.”

12. In the circumstances, on a *prima facie* conspectus, this Court finds no impediment to the constitution of an arbitral tribunal.

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

14. The respondents shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction which shall be decided by the arbitrator, in accordance with law.

15. 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.



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16. It is directed that the arbitration shall take place under the aegis of and as per the rules of the Delhi International Arbitration Centre (DIAC).

17. 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.

18. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the case.

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

SACHIN DATTA, J

DECEMBER 16, 2024/sl