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

+ **ARB.P. 769/2024**

FUJIFILM INDIA PVT. LTD.Petitioner

Through: **Mr. Gulshan Chawla, Advocate.**

versus

**RAHUL LUMBA PROPRIETOR OF
M/S RAHUL ENTERPRISES**Respondent

Through: **Mr. Rishi Sood and Mr. Gurjot
Singh, Advocates.**

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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19.09.2024

I.A. /2024 (to be numbered) (vide Diary No. 3865127/2024)

This application has been filed by the respondent seeking condonation of delay in filing its reply.

For the reasons mentioned in the application, the application is allowed and the delay stands condoned. The reply is taken on record.

The application stands disposed of.

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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 Distributorship Agreement dated 11.12.2020 [“the Agreement”], by which the petitioner allegedly appointed the respondent as a distributor of

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its products. A copy of the Agreement has been placed on record as Document No.2. The said document contains an arbitration clause [Article 30], which provides for resolution of disputes by arbitration of a sole arbitrator appointed by the petitioner. The arbitration is to be conducted in New Delhi.

2. Disputes having arisen between the parties, the petitioner claims to have invoked arbitration by a legal notice dated 10.02.2024. In an undated reply, sent through counsel [Document No.7 of the petition], the respondent took the position that the agreement was never signed by the respondent and claims that the signature of the respondent is forged and fabricated. The respondent has, therefore, declined reference to arbitration.

3. In the reply filed by the respondent to this petition also, the principal ground taken is that the respondent was acting as a distributor of the petitioner even prior to December 2020, and that no written agreement, containing an arbitration clause, was ever entered into between the parties.

4. I have heard learned counsel for the parties.

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.

7. The petition is, therefore, allowed. The disputes between the parties are referred to arbitration of Hon’ble Ms. Justice Deepa Sharma, former Judge of this Court [Tel: 9910384631]. 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. It is made clear that all contentions of the parties, including with regard to the existence of the arbitration agreement, are left open for determination by the learned Arbitrator.

10. The petition stands disposed of in terms of the above.

PRATEEK JALAN, J

SEPTEMBER 19, 2024
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