



2024:DHC:7368



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 939/2023****M/S K. S. K. IMPEX PRIVATE LIMITED**Petitioner

Through: Mr. Yogesh Jagia, Mr. Sandeep Thukral, Mr. Chandan Datta, Mr. Sunil Katariya and Ms. Sana Thukral, Advocates

versus

MR. PANKAJ PAHWAL & ANR.Respondents

Through: Mr. Rajesh Kumar and Mr. Aakash Kumar, Advocates for R1
Mr. Girdhar Govind Mr. Noor Alam, Adv. for R2

CORAM:**HON'BLE MR. JUSTICE C.HARI SHANKAR****JUDGMENT (ORAL)**

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19.09.2024

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996¹ for reference of the disputes between the parties to arbitration.

2. Mr. Jagia, learned counsel for the petitioner, submits that the petitioner's claim is restricted to the Collaboration Agreement dated 27 August 2007 and the petitioner is invoking the arbitration clause contained in the said agreement. Clause 15 of the Collaboration Agreement and its sub-Clauses 15.1 to 15.3 envisage resolution of the disputes by arbitration and read thus:

Signature Not Verified¹ "the 1996 Act", hereinafter

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“15. **Arbitration**

15.1 All disputes and differences that may arise between the parties hereto in regard to or touching these presents, the carrying out of the terms and conditions hereunder and / or the interpretation thereof in any way whatsoever or as to the construction meaning, validity or effects of this Agreement or any clause, matter or thing herein contained or the rights and liabilities of the parties hereunder shall be referred to the Arbitration. The sole arbitrator shall be appointed by both the parties with mutual consent. If there is no agreement between the Parties within a period of 30 days on the name of sole arbitrator, then either Party may approach the Court of Law for appointment of a sole arbitrator.

15.2 The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory modification or reenactment in force for the time being such arbitration shall be conducted at New Delhi.

15.3 The Courts in New Delhi shall have exclusive jurisdiction in respect of all disputes that are arising under this Agreement.”

3. Disputes having arisen between the parties, the petitioner addressed a notice dated 10 May 2023 to the respondents under Section 21 of the 1996 Act, seeking reference of the disputes to arbitration.

4. The petitioner submits that the claim of the petitioner is in the region of approximately ₹ 7 crores. Learned counsel for the respondents disputes the petitioner's claim.

5. Respondent 1 in its reply dated 20 July 2023 denied the petitioner's claim and stated that no disputes existed, referable to arbitration.

6. As the parties have been unable to arrive at a consensus regarding arbitration, the petitioner has approached this Court under

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Section 11(6) of the 1996 Act.

7. The Supreme Court, in its recent decision in ***SBI General Insurance Co Ltd v. Krish Spinning***², has clarified that a Court exercising jurisdiction under Section 11(5) or 11(6) of the 1996 Act is only required to examine whether there exists an arbitration agreement between the parties. Para 114 of the report specifically says that the *court is to see nothing else*. The only other aspect which the court has to bear in mind is whether the Section 11(6) petition has been filed within three years of the Section 21 notice initiating the arbitral proceedings.

8. Both these conditions stand satisfied in the present case.

9. As the parties have not been able to arrive at a consensus regarding arbitration, this Court has necessarily to step in.

10. Accordingly, this court appoints Mr. Ravi Kant Jain, Advocate, (Tel: 9910021485) as the arbitrator to arbitrate on the disputes between the parties.

11. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre³ and would abide by its rules and regulations.

12. The learned arbitrator shall be entitled to charge fees as per

² 2024 SCC OnLine SC 1754

³ "the DIAC", hereinafter



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schedule of fees maintained by the DIAC.

13. The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act, prior to entering on reference.

14. All questions of fact and law as well as on merits shall remain open to be agitated in the arbitral proceedings.

15. The petition stands disposed of in the aforesaid terms.

C.HARI SHANKAR, J

SEPTEMBER 19, 2024/yg

Click here to check corrigendum, if any

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