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

+ **ARB.P. 858/2024**

KOTAK MAHINDRA PRIME LTDPetitioner
Through: **Mr. S.K. Sen, Advocate.**

versus

SUNIL AGARWALRespondent
Through: **Respondent in Person.**

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
% **28.08.2024**

1. The petitioner has approached this Court under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"], for appointment of an arbitrator to adjudicate disputes under an agreement dated 22.04.2023 ["the Agreement"].
2. The Agreement contains an arbitration clause [Clause 26], which provides for adjudication of disputes by a sole arbitrator. Schedule I to the agreement provides that the arbitration proceedings will be held in Delhi.
3. Disputes having arisen between the parties, the petitioner invoked arbitration by a communication dated 15.05.2024, to which there was no response. It has therefore filed this petition under Section 11 of the Act.
4. Mr. Sunil Agarwal, the respondent, has entered appearance in person, pursuant to notice issued on 01.07.2024. Mr. Agarwal disputes



his signature on the Agreement.

5. At the stage of adjudication of a petition under Section 11 of the Act, the Court is only required to examine *prima facie* as to whether an arbitration agreement exists between the parties. 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 the exercise of jurisdiction at the pre-referral stage, is limited to this aspect, and that too only on a *prima facie* consideration. If the Court is *prima facie* satisfied in this regard, the conclusive determination, even on the question of the existence of an arbitration agreement, is to be left to the arbitral tribunal, consistent with the principle of *kompetenz kompetenz*.

6. I am satisfied on the basis of documents placed on record that the agreement contains an arbitration clause. Therefore, the question of arbitrability of the disputes is best left open to the arbitral tribunal.

7. Mr. Agarwal submits that he has made an attempt to settle the disputes with the petitioner, but the attempt has been unsuccessful. He seeks another opportunity to approach the petitioner to settle the disputes.

8. In view of the aforesaid submissions, The petition is allowed and disputes are referred to Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 [“DIAC”]. DIAC is requested to nominate an arbitrator from its panel. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

9. The arbitration proceedings will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator.

10. DIAC is requested to defer the reference for a period of six weeks



from today to enable the parties to settle their disputes. In the event either party approaches DIAC after a period of six weeks, DIAC will enter into reference upon a request of the parties.

11. It is made clear that all rights and contentions of the parties, including question of arbitrability are left open for adjudication by the learned Arbitrator.

12. The petition is disposed of in these terms.

PRATEEK JALAN, J

AUGUST 28, 2024

“Bhupi”/