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

+ **ARB.P. 1008/2023, I.A. 18935/2023**

VALVOLUME CUMMINS PVT LTD

..... Petitioner

Through: Mr. Rakesh Wadhwa, Mr. Akshay
Sharma, Advs.

versus

M/S D P MARKETING AND ANR

..... Respondents

Through: Mr. Milind Srivastava, Adv.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

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11.01.2024

1. By way of the present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act'), the petitioner seeks appointment of the Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes between the parties.
2. Learned counsel for the respondent submits that they have filed the reply. However, there is some delay and the same is lying under objection.
3. The delay is condoned.
4. Let the reply be brought on record.
5. Learned counsel for the petitioner submits that he has received the copy of the reply and submits that the only objection raised by the respondent is that the claim is barred by limitation.
6. Learned counsel for the respondent has also fairly submitted that the



objection raised by them is only qua the limitation.

7. Learned counsel for the petitioner submits that the parties had entered into a distribution agreement dated 04.04.2014. It is submitted that the said Agreement contains an arbitration clause (Clause 31), which provides that all disputes, with respect to the said agreement, shall be referred to arbitration as per provisions of the A&C Act, and further provides that the place of arbitration would be at New Delhi.
8. Disputes having arisen between the parties, the petitioner invoked arbitration vide legal notice dated 30.09.2022, to which no response has been received till date. The claim amount is stated to be around Rs.15,00,000/-.
9. Learned counsel appearing for the respondent, on instructions, submits that the answering respondent has no objection to the matter being referred to the Arbitral Tribunal comprising of a Sole Arbitrator.
10. The scope of jurisdiction of the court under section 11(6) of the Arbitration and Conciliation Act is very limited to examine whether an arbitration agreement exists between the parties. Reliance can be placed on ***M/S Duro Felguera, S.A. vs Gangavaram Port Limited*** (2017) 9 SCC 729 wherein the court inter-alia held as under:

“The scope of the power under Section 11 (6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. (supra) and Boghara Polyfab (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court’s intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11 (6A) ought to be respected.”



11. Considering that both the parties have consented to the reference to the arbitral tribunal, the present petition is disposed of with the following directions:
- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
 - ii) As agreed by both the counsels for the parties, Mr. Jahangir Ahmed, Advocate (Mobile No. 7503526501) is appointed as the sole arbitrator to adjudicate the disputes between the parties.
 - iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the A&C Act or as the parties may agree.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - vi) The parties shall approach the learned arbitrator within two weeks from today.
12. The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

JANUARY 11, 2024/AR