



2024:DHC:5048



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

+ **ARB.P. 963/2024**

DALIP SINGH

.....Petitioner

Through: Mr. Shivesh Sehgal and Mr.
Sanjay Sehgal, Advocates

versus

JASWANT RAI GARG

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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08.07.2024

I.A. No.32574/2024 (Exemption)

1. Allowed subject to all just exceptions.
2. Application stands disposed of.

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

4. Mr. Sehgal, learned counsel for the petitioner, has drawn my

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¹ "the 1996 Act" hereinafter

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attention to Clause 22 of the Consultancy and Retainership Agreement dated 29 September 2020 executed between the parties which envisage resolution of disputes between them by arbitration. Clause 22 reads thus :

“22. If any dispute arises between the Parties during the pendency of this Agreement or thereafter, for any breach of any provision of this Agreement the Parties hereto shall attempt to settle such Dispute amicably. In case the parties are unable to settle the dispute amicably within 21 (twenty one) days or any extended period any party may serve a notice invoking this Clause and making a reference to a Sole Arbitrator to be appointed by the parties in mutual consultation with each other. The Arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 (as amended upto date). The costs and expenses of arbitration, including, the fees of the Sole Arbitrator, shall be borne equally by each Party to the dispute.”

5. Clause 22 envisages a specific pre-arbitration protocol. The parties are required to make an attempt to amicably resolve the dispute. It is only if the dispute cannot be resolved within 21 days or any extended period, that a Section 21 notice can be served invoking arbitration.

6. Mr. Sehgal has not been able to show me any document whereunder there was an attempt to amicably resolve the dispute in the terms envisaged by Clause 22. He referred me to notice dated 16 May 2024. This, however, is a formal legal notice making allegations against the respondent and does not contain even a vestige of an attempt to settle the matter amicably.

7. It is well settled that where the arbitration clause envisages a pre-arbitration protocol, the protocol has to be adhered to, before

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invoking arbitration, unless emergent circumstances can be shown which render adherence to the protocol counter-productive.

8. No such circumstances exist in the present case.

9. Accordingly, this petition is disposed of as premature, reserving liberty to the petitioner to proceed in accordance with the protocol envisaged by Clause 22 of the Consultancy and Retainership Agreement dated 29 September 2020.

10. The petition stands disposed of accordingly.

C.HARI SHANKAR, J

JULY 8, 2024

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Click here to check corrigendum, if any

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