



2024:DHC:5858



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 983/2024****YUVRAJ SINGH BUNDHEL**

.....Petitioner

Through: Mr. Rizwan, Ms. Sachi Chopra,
Mr. Azadar Husain, Ms. Nistha Sinha, Mr.
Vitsal Anand and Ms. Yashi Bajpai, Advs.

versus

M/S BRILLIANT ETOILE PRIVATE LIMITED....Respondent

Through: Mr. Neeraj Singh, Adv.

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

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05.08.2024**ARB.P. 983/2024**

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("the 1996 Act"), arising out of a Memorandum of Understanding (MOU) dated 24 November 2020 executed between the respondent and the petitioner, whereby the petitioner was to endorse the project of the respondent.

2. The agreement contained the following clause, envisaging resolution of the disputes by arbitration:

"5.13. In case the Celebrity has any objection arising out of this MoU, the same needs to be presented before BEPL within 15 days from the date of such objection. Any claims, disputes and/or other matters in question between the Parties arising out of or relating to the MoU, which are not resolved as a result of non-



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binding mediation process, shall be decided by arbitration by a Sole Arbitrator, to be mutually decided by the Parties in accordance with the Indian Arbitration and Conciliation Act, 1996 or any modifications or re-enactments thereof. The arbitration shall be conducted at Delhi, which shall also be the seat of such arbitration proceedings, in English language in accordance with the rules of the Arbitration and Conciliation Act, 1996. If the Parties do not agree on the sole arbitrator within 15 days of one Party requesting the other Party, by a written notice to agree to the sole arbitrator, any of the Parties may approach the courts of relevant jurisdiction at New Delhi for the appointment of the sole arbitrator.”

3. Mr. Rizwan, learned Counsel for the petitioner submits that, prior to issuing a Section 21 notice to the respondent, the petitioner had addressed a legal notice dated 27 April 2024, setting out the disputes between the petitioner and the respondent and calling on the respondent to respond.

4. The respondent replied by a communication dated 2 May 2024 categorically denying the allegations of the petitioner and asserting that no claim was due to the petitioner from the respondent.

5. The petitioner, thereupon, issued a notice dated 26 May 2024 to the respondent invoking arbitration.

6. The respondent not having responded to the said notice, the petitioner has approached this Court under Section 11(6) of the 1996 Act, seeking intervention of this Court to appoint an arbitrator to arbitrate on the disputes between the parties.

7. Mr. Neeraj Singh, learned Counsel for the respondent, has



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advanced three submissions by way of opposition to this petition.

8. The first is that the petitioner has not exhausted the pre-arbitral protocol envisaged by Clause 5.13 of the agreement by exploring the possibility of the settlement through mediation. The second is no amount is due to the petitioner from the respondent on merits. The third is that the Section 21 notice stated to have been sent by the petitioner was not received by his client.

9. The judgment of the Supreme Court in *SBI General Insurance Co Ltd v. Krish Spinning*¹, rendered less than two weeks ago, has limited the scope of examination by a Court exercising jurisdiction under Section 11(6) of the 1996 Act only to the aspect of whether there exists an arbitration agreement between the parties. The only other issue which, according to that judgment, can be seen by Section 11(6) court is whether the petition under Section 11(6) has been filed within three years of the Section 21 notice. No other aspect of the matter is to be seen by Section 11(6) court, and all issues of fact and law are to be relegated to arbitration.

10. Insofar as objections raised by Mr. Neeraj Singh are concerned, the objection pertaining to the merits of the dispute is, therefore, obviously not open for examination by this Court under Section 11(6), in view of the law laid down in *SBI*.

11. Mr. Singh's contention that the petitioner has not exhausted the

¹ 2024 SCC OnLine SC 1754



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pre-arbitral protocol before approaching this Court also fails to impress, as the petitioner addressed a notice to the respondent on 27 April 2024, specifically setting out the dispute, and the respondent, in its reply, denied any liability to the petitioner. It would be futile and, to borrow a felicitous expression from *Demerara Distilleries (P) Ltd v. Demerara Distilleries Ltd*², an “empty formality”, therefore, for this Court to now relegate the parties to any exercise of pre-arbitral mediation.

12. The third submission of Mr. Singh is that the Section 21 notice was not received by the respondent. This submission is also not acceptable. The Section 21 notice was addressed at the same e-mail ID at which the earlier notice dated 27 April 2024 had been addressed, and to which the respondent had replied on 2 May 2024.

13. No other contention was advanced by Mr Singh.

14. There being an arbitration agreement in existence between the parties, and the parties having failed to arrive at any consensus regarding arbitration, the Court has necessarily to exercise jurisdiction under Section 11(6) of the 1996 Act.

15. Accordingly, this Court appoints Mr. Mukesh Gupta (Tel. 8802169669), Advocate and former Vice Chairman of the Central Administrative Tribunal, as the arbitrator to arbitrate on the disputes between the parties.

² (2015) 13 SCC 610



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16. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned arbitrator shall be entitled to fees as per the schedule of fees maintained by the DIAC.

17. The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

18. All questions of fact and law are left open to be adjudicated in the arbitral proceedings. This Court has not expressed any opinion on the issue in controversy either preliminary or on the merits of the matter.

19. The petition stands allowed to the aforesaid extent.

C.HARI SHANKAR, J

AUGUST 5, 2024

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Click here to check corrigendum, if any