



2024:DHC:5854



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 984/2024****YUVRAJ SINGH BUNDHEL & ANR.**Petitioners

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

versus

**M/S BRILLIANT ETOILE PRIVATE LIMITED
& ANR.**Respondents

Through: Mr. Neeraj Singh and Mr. Gulati,
Adv. for R1
Mr. Vijay Nair, Mr. Manoranjan Sharma and
Mr. Manmeet Singh Nagpal, Adv. for R2

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)
05.08.2024

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

2. The dispute arises in the context of an Agreement To Sell dated 5 February 2021 executed between the petitioners and the respondents.

3. Clause 38 of the agreement contains the dispute resolution clause and reads thus :

¹ "the 1996 Act" hereinafter



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“38. DISPUTE RESOLUTION:

38.1 All or any disputes arising out or touching upon or in relation to the terms and conditions of this Agreement, including the interpretation and validity of the terms thereof and the respective rights and obligations of the Parties, shall be settled amicably by mutual discussions, failing which the same shall be settled through the adjudicating officer appointed under the Act.

38.2 Notwithstanding anything mentioned in clause 38.1, the Parties may settle the dispute amicably by mutual discussion failing which the same may be settled through process of Arbitration. The arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996 and/or any statutory amendments/ modifications thereof for the time being in force. The arbitration proceedings shall be held at an appropriate location in Delhi/ New Delhi. Subject to Arbitration as referred above, the Courts at Delhi shall have jurisdiction in case of any dispute.

4. According to the petitioners, the respondents owed certain amounts, for which purpose, the petitioner addressed a notice dated 27 April 2024. After having waited for about a month, the petitioner followed up the said communication with notice dated 26 May 2024 invoking arbitration.

5. Mr. Rizwan, learned counsel for the petitioners, submits, on instructions, that his client is invoking arbitration in terms of letter dated 26 May 2024.

6. The parties having not been able to arrive at any consensus regarding arbitration, the petitioners have moved the present petition under Section 11(6) of the 1996 Act seeking reference of the disputes to arbitration.

7. According to the petitioners, the claims of the petitioners against the respondents are to the tune of ₹ 1.38 Crores.

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8. Mr. Nair, learned counsel for Respondent 2, submits that though his client is a party to the Agreement to Sell, the dispute is essentially between the petitioners and Respondent 1 and that Respondent 2 is, therefore, unnecessarily being dragged into the controversy.

9. The Supreme Court has in its recent decision in ***SBI General Insurance Co Ltd v. Krish Spinning***², circumscribed the exercise which a Section 11 (6) Court can legitimately undertake. The Section 11(6) Court is essentially to concern itself only with whether there exists an arbitration agreement between the parties and whether the Section 11(6) petition has been filed within three years of the Section 21 notice. If these two conditions stand satisfied, the decision in ***SBI General Insurance Co Ltd*** advocates relegation of all other issues in dispute to arbitration.

10. As there is an arbitration agreement in existence between the petitioners and Respondent 2, the I am unable to accept Mr. Nair's request that his client be excused from the arbitration proceedings at this stage. Nonetheless, it shall be open to Respondent 2 to seek deletion from the array of parties before the Arbitral Tribunal. Any such application, if made, would be considered on its own merits.

11. Learned counsel for Respondent 1 initially places reliance on Clause 38.1 of the agreement which, according to him, the petitioners

² 2024 SCC OnLine SC 1754



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have not exhausted.

12. The submission is without merit. Clause 38.2 starts with a *non obstante* clause, giving it overriding effect over clause 38.1. As such, it is open to a party to directly seek resolution of disputes under Clause 38.2 without proceeding under Clause 38.1. The clauses are available in the alternative.

13. The objection of Mr. Gulati on this score is therefore rejected.

14. No other submission has been advanced by Mr. Gulati to oppose the reference of the disputes to arbitration.

15. Mr. Gulati further pointed out that, after issuing the Section 21 notice, the petitioners wrote to the respondents seeking refund of certain amounts. Mr. Gulati's contention is that the request for refund effectively evinced the intention of the petitioners not to proceed with arbitration.

16. The contention cannot, *prima facie*, be accepted. The notice invoking arbitration does not stand effaced merely because the petitioners sought refund from the respondents. Nonetheless, as this is not an aspect which I am required to examine in exercise of my jurisdiction under Section 11(6) of the 1996 Act, no final opinion is being expressed on it. The issue shall remain open to be agitated in the arbitral proceedings.

17. The necessary ingredients of Section 11(6) clearly exist in the

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present case.

18. Accordingly, the disputes between the parties are referred to Mr. Mukesh Gupta (Tel. 8802169669), advocate and former Vice Chairman of the Central Administrative Tribunal, for arbitration.

19. 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.

20. 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.

21. 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.

22. The petition is disposed of in the aforesaid terms.

C.HARI SHANKAR, J

AUGUST 5, 2024/yg

Click here to check corrigendum, if any

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