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

+ **ARB.P. 988/2024**

UNTHINKABLE SOLUTIONS LLP

.....Petitioner

Through: Mr. Prakhar Bhatnagar and Mr.
Divyansh Bothra, Advocates.

versus

EJOHRI JEWELS HUB PVT LTD

.....Respondent

Through: Mr. Vishisht Singh and Mr. Vijay
Chauhan, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

08.11.2024

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1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under the Master Services Agreement dated 19.08.2019 wherein the Petitioner undertook offsite work for the Respondent by deputing its employees who are software developers to work in the project of the Respondent. Clause 14 of the said Agreement contains an arbitration clause, which reads under:-

“14) ARBITRATION & JURISDICTION

In case any dispute or difference arises between the parties with regard to the terms and conditions of this agreement or relating to the interpretation thereof and which could not be solved with mutual understanding



within 30 days of the dispute being arisen, the same shall be referred to the sole arbitrator to be appointed mutually by the Parties hereto by giving other party written notice of the name of such arbitrator and seeking consent thereof and such arbitration shall be governed by the provisions of the Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment thereof, for the time being in force, which shall take place at New Delhi or Gurgaon and the language of the Arbitration Proceedings shall be English language. The Parties agree that the arbitration award shall be final and binding on the parties Further Irrespective of choice of law rules of private International law, this Agreement shall be governed exclusively by the laws of India and subject to the jurisdiction of courts either at New Delhi or Gurgaon.”

2. Notice was issued to the Respondent on 10.07.2024. Respondent has filed its reply.
3. In the reply, the Respondent has taken a contention that a Master Servant Agreement is unsigned and therefore, the Agreement is not legally binding on the parties. It is further stated that the Respondent/Company and the Petitioner has entered into Statement of Work dated 10.02.2020 which does not contain Arbitration Clause and the disputes have arisen under the said Agreement.
4. Learned Counsel appearing for the Petitioner draws attention of this Court to the signed Master Services Agreement dated 19.08.2019 which contains the signatures of both the parties. He also draws attention of this Court to an e-mail dated 11.09.2024 sent by the Petitioner to the Respondent stating that the Petitioner has gone through the exchange of emails of the ex-employees and found an email sent to the Respondent attaching the



Statement of Work and the Master Service Agreement.

5. Section 7(2) of the Arbitration and Conciliation Act reads under:-

“7. Arbitration agreement.—

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(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.”

6. Apart from the fact that along with the rejoinder, the copy of the signed Master Service Agreement has been filed in this Court. The exchange of letters also indicates that the parties had exchanged their record of the Agreements thereby indicating that an arbitration agreement has been entered into between the parties for deciding the disputes through arbitration.

7. Coming to the second objection raised by the Respondent, a perusal of the Statement of Work Agreement which shows that Agreement has been made in pursuant to the Master Service Agreement and which clearly states that the Statement of Work forms an integral part of the Master Service Agreement. Since the Statement of Work becomes an integral part of the Master Service Agreement, the Arbitration Clause contains that the Master Service Agreement will automatically become the part of the Statement of Work Agreement.

8. The Apex Court in M. R Engineers and Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 has held as under:-

“24. The scope and intent of Section 7(5) of the Act may therefore be summarised thus:



(i) An arbitration clause in another document, would get incorporated into a contract by reference, if the following conditions are fulfilled:

(1) the contract should contain a clear reference to the documents containing arbitration clause,

(2) the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the contract,

(3) the arbitration clause should be appropriate, that is capable of application in respect of disputes under the contract and should not be repugnant to any term of the contract.

(ii) When the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. The arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause.

(iii) Where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.

(iv) Where the contract provides that the standard form of terms and conditions of an independent trade or professional institution (as for example the standard terms and conditions of a trade association or architects association) will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. Sometimes the contract may



also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions.

(v) Where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract (as for example the general conditions of contract of the Government where the Government is a party), the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties.”

9. The said judgment has been quoted with approval in NBCC (India) Limited v. Zillion Infraprojects Private Limited, (2024) 7 SCC 174, wherein the Apex Court has held as under:-

“17. It could thus be seen that this Court has held that when the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. It has been held that the arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause. It has further been held that where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.



18. This Court further held that where the contract provides that the standard form of terms and conditions of an independent trade or professional institution will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. It has been held that sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions. It has also been held that where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract, the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties.

19. A perusal of sub-section (5) of Section 7 of the Arbitration Act itself would reveal that it provides for a conscious acceptance of the arbitration clause from another document, by the parties, as a part of their contract, before such arbitration clause could be read as a part of the contract between the parties.

20. It is thus clear that a reference to the document in the contract should be such that shows the intention to incorporate the arbitration clause contained in the document into the contract.”

10. While applying the law laid down by the Apex Court to the facts of the present case, this Court is of the opinion that the Statement of Work Agreement is a part of the Master Service Agreement which is clear from the recital which states as under:-

“And that this Statement of Work ("SOW") is made in pursuant ant to the terms of Master Service Agreement



dated 19th August 20 19 ("Master Service Agreement"). by and between the Parties hereto and that the Present SOW forms an integral part of the Master Service Agreement dated 19th August 2019."

11. The Arbitration Clause 14 contained in the Master Services Agreement dated 19.08.2019 becomes the part of the Statement of Work Agreement. Both the arguments raised by the Respondent are therefore untenable. Accordingly, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

12. Accordingly, Mr. Shashwat Bajpai, Adv. (Mob. No.9811208396) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.

13. The learned arbitrator shall be entitled to fees as per the Schedule of Fees mentioned under the A&C Act.

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

15. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

16. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

17. The present petition stands disposed of in the above terms.

SUBRAMONIUM PRASAD, J

NOVEMBER 8, 2024

RJ