



2024:DHC:6816



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

+ **ARB.P. 1012/2024**

CELSIUS HEALTHCARE PVT LTDPetitioner

Through: Ms. Kirti Mewar, Adv.

versus

**DEEPTI GAMBHIR PROPRIETOR OF
S P DISTRIBUTORS**

.....Respondent

Through: Mr. Rishab Raj Jain and Mr.
Sharique Hussain, Adv.

+ **ARB.P. 1015/2024**

CELSIUS HEALTHCARE PVT LTDPetitioner

Through: Ms. Kirti Mewar, Adv.

versus

S P ENTREPRENEUR AND ORS

.....Respondent

Through: Mr. Rishab Raj Jain and Mr.
Sharique Hussain, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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04.09.2024

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1. This is a petition filed under Sections 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996¹, for reference of the disputes between the parties to arbitration.

¹ "the 1996 Act", hereinafter



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2. The dispute arises in the context of an agreement dated 1 November 2020 executed between the petitioner and the respondent. Clause 19 of the agreement envisages resolution of disputes through arbitration and reads thus :

“19. DISPUTE RESOLUTION

In the event of any dispute arising between the Company and the Consignment Sales Agent out of or in relation to the present agreement including any question regarding its existence, validity or termination, may be resolved by mutual discussion at the corporate office of the Company, failing which shall be referred to and finally resolved by Arbitration exclusively at DELHI under the provisions of Arbitration & Conciliation Act, 1996. All disputes between the parties to be conducted by a sole arbitrator duly appointed by the Company which shall deem to be accepted by the Consignment Sales Agent, subject to the provisions of Arbitration & Conciliation Act, 1996. The seat, or legal place, of arbitration shall be exclusively at DELHI which shall be governed by laws prevalent in India. The decision of such arbitrator shall be final & binding upon the parties”

3. The petitioner issued a notice to the respondent under Section 21 of the 1996 Act on 6 January 2023 seeking reference of the disputes between the parties to arbitration. The respondent replied on 24 January 2023 denying the existence of any arbitral disputes and also refuted the request for reference of the disputes to arbitration.

4. As the parties have not been able to arrive at a consensus regarding arbitration, the present petition has been filed under Section 11(5) and Section 11(6) of the 1996 Act for reference of the disputes between the parties to arbitration.

5. Mr. Rishabh Raj Jain, learned counsel for the respondent,

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however, contested the matter. He submits that there is no arbitrable dispute in existence. The petitioner has not raised any claim against the respondent but has essentially disputed the legitimacy of the respondent's claim against the petitioner.

6. Ms. Kirti Mewar, learned counsel for the petitioner, refutes this contention and submits that the averments contained in the Section 21 notice issued by her client to the respondent clearly indicate the existence of disputes. She, moreover, submits that the notice also raised grievances against the respondent engaging third parties who are employing coercive measures against the petitioner.

7. Given the amplitude of the expression "dispute", it may not be possible for this Court to hold conclusively that there is no dispute between the parties, even if, there is no monetary claim raised by the petitioner against the respondent in the Section 21 notice.

8. Besides, after the judgment of the Supreme Court in ***SBI General Insurance Co Ltd v. Krish Spinning***², a Court exercising jurisdiction under Section 11(6) of the 1996 Act, is only required to examine whether there exists an arbitration agreement between the parties. Para 114 of the report specifically says that the *court is to see nothing else*. The only other aspect which the court has to bear in mind is whether the Section 11(6) petition has been filed within three years of the Section 21 notice initiating the arbitral proceedings.



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9. Both these conditions stand satisfied in the present case.
10. As such, as the parties have not been able to arrive at a consensus regarding arbitration, this Court has necessarily to step in.
11. Accordingly, this dispute is referred to arbitration under the aegis of the Delhi International Arbitration Centre³.
12. The arbitration shall take place under the aegis of the DIAC and would abide by its rules and regulations.
13. The learned arbitrator shall be entitled to charge fees as per schedule of fees maintained by the DIAC.
14. 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.
15. All questions of fact and law including existence of any dispute between the parties and the arbitrability of the disputes, if any, are left open to be adjudicated by the learned Arbitrator.

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16. The facts in this case are identical to Arb. P. 1012/2024. The arbitration clause in the agreement between the parties is also



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identical. The only difference between these two cases is the claims of the respondent against the petitioner which according to the petitioner are without substance.

17. Accordingly, this dispute is also referred to arbitration under the aegis of the DIAC. The DIAC is requested to appoint a common Arbitrator in both these petitions. The respondent is at liberty to raise counter claims before the learned Arbitrator in accordance with law.

18. The petitions stand disposed of, in the aforesaid terms.

C. HARI SHANKAR, J.

SEPTEMBER 4, 2024

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Click here to check corrigendum, if any

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