



2024:DHC:6923-DB



\$~2

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of decision: 05.09.2024

+

EFA(COMM) 5/2024**MATSYA FINCAP PVT LTD**

.....Appellant

Through: Ms Shivani Garg, Advocate with Mr
Bhupendra Kr Gupta, AR.

versus

ABHISHEK GUPTA

.....Respondent

Through: Mr R.R. Jangu, Advocate with
respondent in person.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****AMIT BANSAL, J. (ORAL)**

1. This appeal is preferred against the impugned judgment and order dated 28th May, 2024 passed by the learned District Judge-Commercial Court-01 (Central), Tis Hazari, Delhi (hereinafter referred to as 'Execution Court').
2. *Via* the impugned judgment, the Execution Court has, in effect, refused to enforce the Award as it concluded that the Award was a "nullity". A perusal of the impugned order would show that the Execution Court has reached this conclusion as it accepted the submission advanced on behalf of the respondent that the appointment of the arbitrator was unilateral. Accordingly, the objections filed on behalf of the respondent were allowed and the execution petition was dismissed.
3. The appeal came up before this court on 18th July, 2024, when the

Signature Not Verified

Digitally Signed By: DINESH

KUMAR

Signing Date: 05.09.2024

18:13:17

EFA(COMM) 5/2024*Page 1 of 3*



appellant was directed to place on record the loan agreement between the parties which contained the arbitration clause. In the order passed by this Court on 29th August, 2024, it was noted that in terms of clause 4 of the Loan Agreement, the Sole Arbitrator had been appointed by the appellant-company.

4. Authorized Representative (hereinafter referred to as “AR”) for the appellant submits that in respect of the same debt, the appellant had received a cheque from the respondent, which was dishonored. Accordingly, the appellant has initiated proceedings under Section 138 of the Negotiation Instruments Act, 1881 against the respondent.

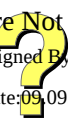
5. AR of the appellant further submits that without prejudice to the rights and contentions of the appellant, the appellant would be satisfied with initiation of *de novo* arbitration between the parties and a Sole Arbitrator being appointed by this court.

6. Counsel for the respondent submits that there was no arbitration agreement between the parties and the agreement placed on record by the appellant does not bear the signatures of the respondent. Therefore, the parties cannot be referred for arbitration.

7. AR of the appellant-company submits that in view of the aforesaid objection taken by the respondent, the appellant would have no reservation in initiating a suit action against the respondent, however, the respondent should not be permitted to take an objection in the said suit action with regard to existence of an arbitration agreement.

8. In view of the aforesaid submissions, the present appeal is disposed of in the following terms:

i. The appellant-company would at liberty to file a suit action against





2024:DHC:6923-DB



the respondent. The aforesaid suit action would be filed before the competent court in Delhi as the respondent resides in Delhi.

- ii. In the suit action, the respondent will not raise any objection with regard to maintainability of the suit on account of existence of an arbitration clause.
- iii. In the event, the appellant-company seeks exclusion of time in filing of the suit in terms of Section 14 of the Limitation Act, 1963 the same would be considered by the Civil Court in accordance with the law.

**AMIT BANSAL
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

SEPTEMBER 05, 2024

kd

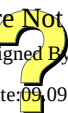
Signature Not Verified

Digitally Signed By: DINESH

KUMAR

Signing Date: 05.09.2024

18:13:17



EFA(COMM) 5/2024