



2024:DHC:6643



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

+ **ARB.P. 1220/2023**

SH. RAJINDER KUMAR NARULAPetitioner

Through: Mr. Harry Chhibber, Advocate

versus

SH. PRINCE TANDONRespondent

Through: Mr. M.K. Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

28.08.2024

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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 a Partnership Deed dated 21 October 2019 executed between the parties. Clause 24 of the Partnership Deed envisages resolution of disputes by arbitration, and reads thus :

“That in case of any difference dispute litigation related to the business of the firm or any breach of the terms and conditions of this deed, the matter shall be referred to the sole arbitrator to be appointed by the both partners and the award of the arbitrator shall be binding on the partners.”

3. As disputes arose between the parties, the petitioner addressed a

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Page 1 of 4

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2024:DHC:6643



notice to the respondent under Section 21 of the 1996 Act on 10 January 2022 seeking reference of the disputes to arbitration. The notice also suggested the name of an arbitrator to arbitrate on the disputes. The respondent did not respond. The petitioner, therefore, referred the disputes to the arbitrator named in the Section 21 notice dated 10 January 2022. Before the said arbitrator, the respondent filed an application under Section 16 of the 1996 Act, questioning the jurisdiction of the arbitrator to proceed with the matter.

4. By order dated 25 May 2022, learned arbitrator rejected the Section 16 application but has recused from the proceedings in justice, equity and good conscience. In any event, the appointment of the Arbitrator was clearly in the teeth of the judgment of the Supreme Court in *Perkins Eastman Architects DPC v HSCC (India) Ltd*², *Bharat Broadband Network Ltd v United Telecoms Ltd*³ and *Haryana Space Application Centre (HARSAC) v Pan India Consultants Pvt Ltd*⁴ which hold that an arbitrator cannot be unilaterally appointed by one of the parties.

5. The petitioner has now, therefore, approached the Court under Section 11(6) of the 1996 Act for appointment of an arbitrator as the parties have not been able to arrive at a consensus in that regard.

6. Mr. M.K. Singh, learned counsel for the respondent, submits

¹ “the 1996 Act” hereinafter

² (2020) 20 SCC 760

³ (2019) 5 SCC 755

⁴ (2021) 3 SCC 103



2024:DHC:6643



that no dispute survives for arbitration. He also submits that the partnership deed itself is not capable of implementation as the pre-requisites for the deed to come into operation were not specified.

7. These aspects cannot be examined by a Court in a proceeding under Sections 11(5) or 11(6) of the 1996 Act, in view of the recent decision of the Supreme Court in ***SBI General Insurance Co Ltd v. Krish Spinning***⁵ wherein it was held that 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. Both these conditions stand satisfied in the present case.

8. Accordingly, as the parties have not been able to arrive at a consensus regarding arbitration, the Court has necessarily to step in and refer the disputes to arbitration.

9. Accordingly, the disputes stand referred to arbitration. This Court appoints Mr. Shailesh Tiwari, Advocate (Mob: 9313645659) as the arbitrator, to arbitrate on the disputes between the parties.

10. The learned arbitrator shall be entitled to charge fees as per the Fourth Schedule to the 1996 Act.



2024:DHC:6643



11. 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.

12. All questions of fact and law remain open to be urged before the learned Arbitrator. This Court has not expressed any view thereon.

13. The petition stands allowed in the aforesaid terms.

C. HARI SHANKAR, J.

AUGUST 28, 2024

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Click here to check corrigendum, if any