



2024:DHC:5883



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1248/2023

M/S PAM COSMETICS AND GLASSES PVT.
LTD

.....Petitioners

Through: Ms. Meghna De and Ms. L.
Gangmei, Advs.

versus

VEIRA PERSONALCARE PVT LTD.Respondent

Through: Mr. Sudhir K. Saneja, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

06.08.2024

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

2. The dispute between the petitioner and the respondent arises in the context of a Confidentiality Agreement dated 25 October 2018, to which the petitioner and respondent are parties.

3. According to the petitioner, the respondent owes certain amounts to the petitioner under the said Confidentiality Agreement which remain unpaid.

4. Beyond this, this Court is not required to comment on the

Signature Not Verified¹ "the 1996 Act" hereinafter

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dispute, given the recent judgment of the Supreme Court in ***SBI General Insurance Co Ltd v. Krish Spinning***². The decision clearly holds that a court exercising jurisdiction under Section 11(6) of the 1996 Act has only essentially to satisfy itself regarding the existence of an arbitration agreement between the parties. The only other issue which a Section 11(6) Court can examine is whether the Section 11(6) petition has been filed within three years of the issuance of the Section 21 notice.

5. Though Mr. Saneja, learned Counsel for the respondent, seeks to contend that the claims are time barred, when reckoned *vis-à-vis* the date on which the cause of action arose, the decision in ***SBI General Insurance*** is categorical in holding that such a contention cannot be examined by a Court exercising jurisdiction Section 11(6). The only aspect of limitation which a Section 11(6) Court can examine, to reiterate, is whether a Section 11(6) petition has been filed within three years from the date of issuance of a Section 21 notice.

6. Before filing the present petition, the petitioner had initially instituted CS (Comm) 367/2020 (***Pam Cosmetics and Glasses Pvt Ltd. v. Veira Personal Care Pvt Ltd.***) against the respondent before the learned District Judge (Commercial Court-03), New Delhi³.

7. The respondent filed an application, in the said suit, under Section 8 of the 1996 Act, pointing out that an arbitration clause existed in the Confidentiality Agreement and that, therefore, the suit

² 2024 SCC OnLine SC 1754

³ “the Commercial Court”, hereinafter



2024:DHC:5883



was not maintainable.

8. By order dated 9 June 2022, the learned Commercial Court allowed the said application and relegated the parties to arbitration, extending, in the process, to the petitioner, the benefit of Section 14 of the Limitation Act, 1963.

9. Following the above order, the petitioner addressed notices to the respondent under Section 21 of the 1996 Act, seeking reference of the dispute to arbitration. Ms. Meghna De, learned Counsel for the petitioner, submits that two such notices were issued, the first on 9 November 2022 and the second on 10 January 2023, as the first notice had returned undelivered.

10. The respondent replied to the said notices, stating that the name of the company was no longer Veira Personal Care Pvt. Ltd. but had changed to Key Vests Technology Pvt. Ltd. Mr. Saneja, learned Counsel for the respondent submits that, as the notice dated 9 November 2022 was addressed to Veira Personal Care Pvt. Ltd. and not to Key Vests Technology Pvt. Ltd. the requirement of issuance of a Section 21 notice has not been satisfied.

11. The submission fails to impress

12. It is not as though the respondent had ceased to exist or amalgamated in any other company. There was a mere change of name of respondent company. Merely because the respondent's name had changed and the Section 21 notice had been addressed to the

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respondent under its earlier name Veira Personal Care Pvt. Ltd., it cannot be said that the petitioner was in default of compliance with Section 21 of the 1996 Act.

13. As there has been no consensus between the parties regarding reference of the dispute to arbitration, the Court has no option but to exercise its jurisdiction under Section 11 (6) of the 1996 Act.

14. Accordingly, the Court appoints Mr. Imran Khan, Advocate (Tel. 9811484275) as the arbitrator to arbitrate on the dispute between the parties.

15. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations.

16. The learned arbitrator would be entitled to fees as per the schedule of fees maintained by the DIAC.

17. The arbitrator is also requested to furnish the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

18. All questions of fact and law are left open to be decided in the arbitral proceedings.

19. This Court has not expressed any opinion on any aspect of the matter.

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20. The petition stands disposed of in the aforesaid terms.

C.HARI SHANKAR, J

AUGUST 6, 2024

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Click here to check corrigendum, if any

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