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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO (COMM) 248/2023 CM APPL. 62504/2023

VELOCE LOGISTICS PVT. LTD.

..... Appellant

Through: Mr.Harshil Gupta, Mr.Chirag Jain,
Mr.Satish Kumar, Mr.B P Sharma,
Mr.Rohit Pal, Mr.Parth Mehra, and
Ms. Anshika, Advocates.

versus

SHANGHAI WINDOWS LOGISTIC CO. LTD.

..... Respondent

Through: Mr.Ajit Singh and Mr.Neeraj Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

10.04.2024

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1. The appellant has filed the present appeal impugning an order dated 04.10.2023 (hereafter *the impugned order*) passed by the learned Commercial Court in CS (COMM) No.437/2023 captioned *Shanghai Windows Logistics Co. Ltd v. Veloce Logistics Pvt Ltd*.

2. In terms of the impugned order, the learned Commercial Court had dismissed the application of the appellant under Section 8 of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) on the ground that same was not accompanied by the original arbitration agreement or a duly certified copy thereof.

3. The respondent had filed the aforementioned suit for recovery of USD 17009.24 equivalent to ₹14,01,901.56. For the purpose of the suit for recovery, the respondent had computed the INR equivalent of USD at the rate of ₹82.42 per USD. It is the respondent's case that it had provided



logistic services to the appellant company and the invoices raised aggregating USD17009.24 remained unpaid.

4. The appellant had filed the application under Section 8 of the A&C Act praying that the suit be rejected as an arbitration agreement existed between the parties.

5. The appellant had filed the photocopy of the Agency Agreement dated 10.05.2022, which includes an arbitration clause. The said clause reads as under:-

‘10. ARBITRATION

10.1 Any transaction falling under this agreement shall be subject to the existing laws, rules and regulations of governments, semi-governmental bodies and/or freight forwarding associations of the relevant countries of each party.

10.2 The parties hereto agree to amicably settle any disputes arising out of this agreement. Should this not be possible, disputes shall be arbitrated by and in accordance with the International Commercial Law and or according to the IATA organization rules for airfreight in CHINA and FIATA rules for sea freight shipments in CHINA.’

6. There appears to be no dispute that the parties are signatories to the Agency Agreement. According to the appellant, the original Agency Agreement is available with the respondent and a copy of the same was sent by the respondent to the appellant by an email. The appellant had also filed an application under Order 12 Rule 8 of the Code of Civil Procedure, 1908, for production of the said Agency Agreement. Notwithstanding the appellant’s case that it did not have the original Agency Agreement in its possession and have received only the scanned copy of the same on email, the learned Commercial Court rejected the said application on the ground that it was not non-compliant with Sub-section (2) of Section 8 of the A&C



Act.

7. We have serious reservations as to the aforesaid reasoning. However, a plain reading of the arbitration clause indicates that the arbitration is to be held in accordance with the IATA organization rules for airfreight in China and FIATA rules for sea freight shipments in China.

8. The arbitration, in terms of clause 10 of the Agency Agreement as set out above, is not to be held in India. In terms of Section 2(2) of the A&C Act, Part I of the A&C Act is applicable to arbitrations held in India. Section 8 of the A&C Act falls within Part I of the said Act, therefore, is inapplicable in respect of the arbitration proceedings as contemplated under clause 10 of the Agency Agreement. The application under Section 8 of the A&C Act is thus misconceived.

9. Whilst, we find ourselves unable to concur with the reasoning of the learned Commercial Court, no relief can be granted to the appellant. This is because the application under Section 8 of the A&C Act founded on the arbitration agreement as contained in the Agency Agreement, would not lie.

10. The appeal stands dismissed with the aforesaid observation. Pending application also stands disposed of.

11. We clarify that this order would not preclude the appellant from taking appropriate steps for pursuing the remedies under the A&C Act in accordance with law.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

APRIL 10, 2024/M