



2024:DHC:9599



\$~9

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision : 11.12.2024

+

ARB.P. 1227/2024

M/S SAMSUNG INDIA ELECTRONICS PRIVATE LIMITED

.....Petitioner

Through: Mr. Kapil Midha, Mr. Garv Singh,
Advs.

versus

JAISWAL TECHNO COMMERCIAL & ORS.

.....Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks appointment of a Sole Arbitrator for adjudication of the disputes between the parties under an 'Authorised Service Centre Agreement' dated 26.11.2021, and a 'Spare Parts Agreement' dated 26.11.2021 between the same parties.

2. Both the agreements contain an identical arbitration clause which reads as under:-

"Any and all disputes, controversies or claims between the Parties arising out of or in connection with this Agreement (including its existence, validity or termination and with respect to contractual or non-contractual obligations) shall be settled amicably within a period of forty five (45) business days after written notification from one Party to the other that a dispute or difference has arisen. In the event that amicable settlement is not reached within the said forty five (45) business days, the difference or disputes shall be finally resolved by Arbitration by a sole Arbitrator to be mutually appointed by Parties within thirty (30) days, failing which, to be referred to the Delhi International Arbitration Centre (DAC) or Indian



2024:DHC:9599



Council of Arbitration (ICA) or any such other institute/ organization, in that order, for such appointment. Arbitration shall be held at New Delhi, and conducted in the English language in accordance with the rules provided under Arbitration and Conciliation Act, 1996; provided, however, that each party may enforce its or its Affiliates' intellectual property rights in any court of competent jurisdiction including by way of an application for equitable relief. The arbitral award shall be final and binding on the Parties."

3. Notice in the present petition was issued on 09.08.2024. An affidavit of service dated 12.11.2024 came to be filed by the petitioner wherein it was averred that the respondents have been duly served through E-mail. It is further brought out that although an attempt to effect service through speed post and courier were made; however, the speed post was returned with the remarks "addressee left without instruction".
4. *Vide* order dated 19.11.2024, fresh notices were issued to the respondents. Learned counsel for the petitioner submits that requisite steps to serve the respondents once again were taken in terms of the said order and the respondents were duly served through e-mail and Whatsapp.
5. Despite the aforesaid, none appears for the respondents. It is pointed out by the learned counsel for the petitioner that the existence of the arbitration agreement is not in doubt since the respondent itself invoked the very same arbitration clause i.e. Clause 8 of the Authorised Service Centre Agreement and issued a notice invoking arbitration to the petitioner on 29.12.2023. However, the respondent did not follow it up by filing any petition under Section 11 of the A&C Act.
6. Learned counsel for the petitioner submits that the aforesaid agreements were terminated on 28.12.2023. However, disputes between the parties have arisen on account of the petitioner observing certain discrepancies which were highlighted during the audit process and which



2024:DHC:9599



have been set out in the petition as under:-

“4.7 That during the Audit, the Petitioner observed the following abnormalities on the part of the Respondent that had resulted in losses to the petitioner:-

- i. 41 instances where ASC changed QR Code (production Octa QR code or previous call new Octa QR Code) after approval of SAW by warranty team. This caused a loss of Rs. 12,15,187/- to the Petitioner.*
- ii. 1 case where QR Code error, production Octa cell ID was same at Octa Cell ID at the time of IQC. This shows QR Code error due to fault of ASC causing a loss of Rs. 22,230/- to the Petitioner.*
- iii. Found 17 manual fake invoices/ bills on computer records of the Respondent. 3 Invoices confirmed abnormal/ edited out of which 2 Invoices were used for replacement of product causing a loss of Rs. 30,289/- to the Petitioner.*
- iv. SAW (repeat repair) calls review observed. 10 abnormal calls of 20 sampled cells causing loss of Rs. 145,587/- to the Petitioner.”*

7. Pursuant thereto, a notice dated 28.09.2023 was issued to the respondent which was duly replied to by the respondent on 06.10.2023. A further communication dated 07.11.2023 was sent by the petitioner to the respondent. It was in the background of this correspondence that the respondent issued the aforesaid notice invoking arbitration dated 29.12.2023.

8. The petitioner itself also issued a notice invoking arbitration on 08.05.2024 to the respondent to which there was no response.

9. Since the existence of the arbitration agreement is evident from a perusal of the copy of the Authorised Service Centre Agreement dated 26.11.2021 and the Spare Parts Agreement dated 26.11.2021 as well as from the notice of invocation of arbitration dated 29.12.2023 sent by the respondent, there is no impediment to constituting an Arbitral Tribunal to adjudicate the disputes between the parties, and as contemplated in terms of the judgements of the Supreme Court in *In Re: Interplay between*



2024:DHC:9599



Arbitration Agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899, 2023 SCC OnLine SC 1666, and SBI General Insurance Co. Ltd. v. Krish Spinning 2024 SCC OnLine SC 1754.

10. In terms of the stipulation contained in the arbitration clause between the parties, the Sole Arbitrator is to be appointed mutually by the parties, failing which, the parties are required to be referred to “DIAC (Delhi International Arbitration Centre) or the Indian Council of Arbitration (ICA) or any such other institute/ organization” in that order, for such appointment.

11. Accordingly, the parties are referred to arbitration under the aegis of and as per the rules of the Delhi International Arbitration Centre (DIAC). Let the requisite appointment be made by the Delhi International Arbitration Centre (DIAC) in terms of its rules.

12. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosure as required under Section 12 of the A&C Act.

13. The respondent shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.

14. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

15. The petition is allowed in the above terms.

DECEMBER 11, 2024/uk

SACHIN DATTA, J