



2024:DHC:8981



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 20.11.2024

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ARB.P. 1241/2024

APOLLO SUPPLY CHAIN PVT. LTD

.....Petitioner

Through: Mr. Gurpratap Singh, Mr. Afesh
Kumar and Mr. Vinay Sehrawat,
Advs.

versus

M/S JALAN TRANSOLUTIONS (INDIA) LTDRespondent

Through: Mr. Pradeep Teotia and Mr. Jitender
Bakshi, Advs. (through v/c)

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

1. The present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeks constitution of an arbitral tribunal to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of a "Service Agreement for Freight under Management" dated 05.10.2018 entered into between the parties. The said agreement admittedly contains an arbitration clause as under:

"25. DISPUTE RESOLUTION, JURISDICTION & GOVERNING LAW

In case of any dispute or any difference between the Parties arising out of or in relation to this Agreement including dispute or difference in relation to interpretation or any of the provision of this Agreement, the Parties shall attempt to resolve the same through mutual discussions. However if the Parties fail to settle the dispute or difference amicably within a period of 15 (fifteen) days of the dispute, either Party may initiate arbitration under the



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provisions of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"). The arbitration will be conducted by a Sole Arbitrator appointed by AFIL in accordance with the provisions of the Arbitration Act. The arbitration proceedings shall be conducted in English and the venue of the arbitration shall be New Delhi. The decision of the arbitrator shall be final and binding on the Parties and may be entered and enforced in any court of competent jurisdiction by either Party. This Agreement shall be governed by the laws in India and subject to above foregoing courts in Delhi, India shall have exclusive jurisdiction over matters relating to or arising from this Agreement."

3. An arbitration invocation notice dated 04.04.2024 was sent by the petitioner to the respondent whereby the petitioner proposed the name of a person who can be appointed as a Sole Arbitrator to adjudicate the disputes between the parties. The same was replied to by the respondent, wherein it was sought to be emphasized that all disputes between the parties were duly settled and there was no arbitrable disputes which was required to be referred to arbitration.
4. In this regard, the reply filed on behalf of the respondent to the invocation notice elaborately sets out the sequence of events to demonstrate that full accord and satisfaction has been arrived at and there were no claims which were required to be adjudicated.
5. During the course of arguments, learned counsel for the respondent has once again strenuously emphasized that there is no surviving arbitrable disputes between the parties. He has sought to refer to the e-mail correspondence exchanged between the parties in terms of which outstanding disputes between the parties were duly resolved.
6. The legal position is well settled and as reiterated by Supreme Court recently in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 SCC OnLine SC 1754, that in these proceedings the scope of enquiry is confined



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to ascertaining whether there exists an arbitration agreement between the parties. The said judgment also clarifies that the issue as to whether there has been any accord and satisfaction is itself an aspect that is to be gone into by a duly constituted arbitral tribunal. The relevant observations in the said judgment are as under :-

“113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In Re : Interplay (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow:

“209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. [...]”

(Emphasis supplied)

114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re : Interplay (supra).”



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7. Considering the aforesaid, since the existence of the arbitration agreement is undisputed, there is no impediment to appointing a Sole Arbitrator to adjudicate the disputes between the parties.
8. Accordingly, Justice (Retd.) Jayant Nath, (Mob.: 8527959494) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
9. Respective counsel for the parties are in agreement that the learned Sole Arbitrator shall decide at the outset the objections raised on behalf of the respondent as regards jurisdiction/arbitrability of the claims sought to be raised. It is directed accordingly.
10. 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.
11. The learned Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
12. Parties shall share the arbitrator's fee and arbitral cost, equally.
13. 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.
14. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the case.
15. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 20, 2024/cl