



2024:DHC:8380



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

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Date of Decision : 25.10.2024+ **ARB.P. 1251/2024****HINDUSTAN UNILEVER LIMITED**

.....Petitioner

Through: Mr. Prantar Basu Choudhary and Mr.
Ismaan Singh, Advocates.

versus

MR JAGDISH KUMAR SOLE**PROPRIETOR OF HARI RAM DHARAM PAL**

.....Respondent

Through: Mr. Sunny Vashisht, Mr. Vinay, Ms.
Prerna Sharma and Mr. Babru Bhan,
Advocates.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks constitution of an Arbitral Tribunal to adjudicate the disputes between the parties. The disputes between the parties have arisen in the context of an Agreement dated 05.01.2023 described as Redistribution Stockiest Agreement (hereinafter '*the Agreement*').

2. The said Agreement contains an arbitration clause/dispute resolution clause which reads as under:-

"21. GRIEVANCE REDRESSAL & DISPUTE RESOLUTION***21.1 The Parties hereto agree and undertake that any dispute or disagreement arising out of or in connection with or relating to this***



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Agreement including any question regarding its existence, validity or termination shall hereinafter be referred to as a “Dispute” and must be resolved pursuant to this Clause 21;

Provided that any dispute or disagreement arising out of or in connection with either Party’s exercise of its right of termination under Clause 19.1 shall be excluded from the applicability of this Clause.

Resolution Process:

21.2 Either Party is entitled to raise a Dispute by notifying the other in writing of the same along with all relevant details. The RS and the Company must attempt to resolve any Dispute mutually amongst themselves by personal discussion between the Parties and in any event through the mandatory procedure prescribed in this Clause 21.

21.3 In the event if the Dispute is not resolved as stated above, for a period of more than two months from the notice specified in Clause 21.1 above, the said Dispute, during the subsistence of this Agreement, shall be referred in writing to the RS Ombudsman, who shall be selected by the RS from a list of 3 (three) names provided by the Company to the RS. It is clarified that no former or present employee or agent or party with whom the Company has pecuniary relationship will be eligible to be appointed as Ombudsman.

21.4 Proceedings by the Ombudsman may be held physically or through videoconferencing or teleconferencing, as may be mutually agreed by the Parties hereto. Proceedings before the Ombudsman shall be strictly confidential. The rules governing the proceedings before the Ombudsman will be determined by the Ombudsman and the Ombudsman has the powers to rule on its own jurisdiction. Any settlement agreement signed between the Parties pursuant to proceedings before the Ombudsman shall be final and binding on the Parties.

21.5 In the event, the Ombudsman cannot resolve the Dispute within 2 (two) months from reference, such Dispute shall be referred to and finally resolved by arbitration in accordance with the (Indian) Arbitration and Conciliation Act, 1996 and all amendments or modifications thereto or re-enactments thereof. The Parties agree that the arbitral tribunal shall comprise of a sole arbitrator to be selected by the RS within 30 (thirty) days of a list of 3 (three) probable arbitrators being notified to the RS in writing by the Company. In the



event of the RS failing to appoint an arbitrator within 7 (seven) days of receiving the list of probable arbitrators, the arbitral tribunal will comprise of three arbitrators, of which 1 (one) shall be appointed by the Company and 1 (one) by the RS, and the 2 (two) arbitrators so appointed shall appoint the third and presiding arbitrator within 14 (fourteen) days of their appointment. In the event the Parties fail to constitute an arbitral tribunal or the two arbitrators so appointed fail to appoint the presiding arbitrator, the arbitral tribunal will be constituted by approaching the court of competent jurisdiction under section 11 of the (Indian) Arbitration and Conciliation Act, 1996. The seat of the arbitration shall be Delhi and the language of arbitration shall be English. The arbitral tribunal shall provide reasons for its award. The decision of the arbitrator shall be final and binding on the Parties.

21.6 The sole arbitrator/ arbitral tribunal will make best efforts to pass an award within 4 (four) months from the date of the commencement of the arbitration.”

3. The framework of the Agreement is that the respondent places purchase orders in electronic form through an online portal pursuant to which the petitioner is to deliver its product to the respondent and raise invoices upon the respondent. The dispute between the parties pertains to certain invoices which allegedly remain unpaid by the respondent. On the contrary, learned counsel for the respondent submits that the respondent is to recover certain amounts from the petitioner.
4. Disputes having arisen between the parties, an invocation notice dated 10.06.2023 was sent by the petitioner proposing appointment of a Sole Arbitrator with mutual consent. However, the parties could not mutually agree in this regard. Consequently, the present petition came to be filed.
5. Learned counsel for the respondent submits that a civil suit has also been filed by the respondent against the petitioner for rendition of accounts in which an application under Section 8 of the A&C Act has been filed by



the petitioner. Since the existence of the arbitration agreement is not disputed, filing of any suit by the respondent, would not prevent the petitioner from taking recourse to arbitration in terms of the agreement between the parties.

6. Learned counsel for the respondent objects to the present petition on the ground that in terms of the dispute resolution clause, it is incumbent on the petitioner to first take recourse to mutual discussion followed by a reference of the matter to an “ombudsman”. Only after exhausting these avenues, it is permissible to the petitioner to seek constitution of Arbitral Tribunal.

7. This Court in its catena of judgments has taken a view that any pre-arbitral mechanism making it obligatory to seek resolution of disputes through mediation or conciliation or the like, is directory and not mandatory.

8. In the case of ***Oasis Projects Ltd. v. National Highway & Infrastructure Development Corporation Limited*** 2023 SCC OnLine Del 645, it was held as under:-

“12. The primary issue to be decided in the present petition is, therefore, as to whether it was mandatory for the petitioner to resort to the Conciliation process by the Committee before invoking arbitration. Though Article 26.2 clearly states that before resorting to arbitration, the parties agree to explore Conciliation by the Committee, in my opinion, the same cannot be held to be mandatory in nature. It needs no emphasis that Conciliation as a Dispute Resolution Mechanism must be encouraged and should be one of the first endeavours of the parties when a dispute arises between them. However, having said that, Conciliation expresses a broad notion of a voluntary process, controlled by the parties and conducted with the assistance of a neutral third person or persons. It can be terminated by the parties at any time as per their free will. Therefore, while interpreting Article 26.2, the basic concept of Conciliation would have to be kept in mind.”

(emphasis supplied)



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9. In ***Kunwar Narayan v. Ozone Overseas Pvt. Ltd.*** 2021: DHC: 496, it was held as under:-

“5. Ms. Pahwa, learned Counsel for the respondents submitted that her only objection, to the petition, was that the petitioner has not exhausted the avenue of amicable resolution, contemplated by Clause 12 of the Share Buyback Agreement. I am not inclined to agree with this submission. The recital of facts, as set out in the petition, indicate that efforts at trying to resolve the disputes, amicably were made, but did not succeed. Even otherwise, the Supreme Court in Demarara Distilleries Pvt. Ltd. v. Demerara Distilleries Ltd. and this Court, in its judgment in Ravindra Kumar Verma v. BPTP Ltd., opined that relegation of the parties to the avenue of amicable resolution, when the Court is moved under Section 11(6) of the 1996 Act, would be unjustified, where such relegation would merely be in the nature of an empty formality. The arbitration clause in the present case does not envisage any formal regimen or protocol for amicable resolution, such as issuance of a notice in that regard and completion of any stipulated time period thereafter, before which arbitral proceedings could be invoked. In the absence of any such stipulation, I am of the opinion, following the law laid down in Demarara Distilleries Pvt. Ltd. and Ravindra Kumar Verma v. BPTP Ltd. nothing worthwhile would be achieved, by relegating the parties to explore any avenue of amicable resolution. Besides, the appointment of an arbitrator by this Court would not act as an impediment in the parties resolving their disputes amicably, should it be possible at any point of time.”

10. In light of the aforesaid, there is no impediment to this Court appointing an independent Sole Arbitrator to adjudicate the disputes between the parties.

11. Accordingly, Ms. Veronica Mohan, Advocate (Mob. No.: +91 9810005344) is appointed as Sole Arbitrator to adjudicate the disputes between the parties.

12. It is agreed by respective counsel that any preliminary/jurisdictional objection raised by the respondent including as to whether the claim sought to be raised by the petitioner are barred by limitation or otherwise, shall be



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considered and decided by the Arbitrator at the outset before adjudicating the disputes on merit. It is directed accordingly.

13. The respondent also seeks leave to raise its counterclaim before the learned Sole Arbitrator. Needless to say, the respondent would be at liberty to do so.

14. 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.

15. It is agreed between the parties that the arbitration shall take place under the aegis of and under the rules of Delhi International Arbitration Centre (DIAC). It is directed accordingly.

16. It is clarified that this Court has not expressed any opinion as regards merits of the respective contentions of the parties.

17. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

OCTOBER 25, 2024/at