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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1316/2024

**PACIFICA (INDIA) PROJECTS
PRIVATE LIMITED**

.....Petitioner

Through: Mr. Sudhir Nandrajog and Mr.
Manish Vashisth, Sr. Advocates
with Mr. Anirudh Sharma, Mr.
Sanjeev Kumar Sharma, Mr. Rajiv
Dalal, Mr. Vikas Bhardwaj, Mr.
Ajay, Mr. Ritvik Bhanot and Ms.
Jagruti Dekavadiya, Advocates.

versus

CNA EXPORTS PRIVATE LIMITED AND ANR.....Respondents

Through: Mr. Abhinav Sharma and MS.
Avsi Malik, Advocates for R-1 and
2.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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19.09.2024

1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitral tribunal to adjudicate disputes between the parties under three agreements – being a Joint Development Agreement dated 23.10.2007 [“JDA”] read with a Security Agreement dated 06.02.2012 [“Security Agreement”] and Share Pledge Agreement dated 22.03.2012 [“SPA”].
2. A preliminary objection is taken by Mr. Abhinav Sharma, learned counsel for the respondents, that there has been no invocation under Section 21 of the Act, in respect of arbitration proceedings under the JDA and the SPA. He submits that the notice invoking arbitration dated



15.03.2024, refers only to the Security Agreement.

3. Mr. Sudhir Nandrajog, learned Senior Counsel for the petitioner, states upon instructions that, at this stage, he seeks a reference to arbitration only with respect to the disputes under the Security Agreement, and reserves the rights of the petitioner to invoke arbitration afresh in respect of the other two agreements.

4. As far as the Security Agreement is concerned, Mr. Sharma submits that the agreement was never acted upon, and there is no arbitrable dispute arising thereunder.

5. This, in my view, is not a ground that can be considered at the referral stage. The judgment of the Supreme Court in *SBI General Insurance Co. Ltd. v. Krish Spinning* [2024 SCC OnLine SC 1754], has made it amply clear that the Court's jurisdiction at the Section 11 stage is only to determine *prima facie* existence of the arbitration agreement between the parties, and all other contentions and grounds are to be left to the decision of the arbitral tribunal. It has been held that the limited jurisdiction to decline reference in cases which are *ex-facie* non-arbitrable, does not survive the judgment of the seven Judge Bench in *Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In Re* [(2024) 6 SCC 1].

6. The relevant extracts of *SBI General Insurance (supra.)* are reproduced below:

“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)*.

[Emphasis supplied.]

7. The arbitration clause under the Security Agreement reads as follows:

“8. Any and all disputes, differences, controversy or claims arising out of or in relation to, this agreement, which cannot be satisfactorily resolved by mutual negotiation within 30 days of issue of a notice by a party, shall be finally settled by arbitration under the Arbitration and Conciliation Act, 1996 including any statutory modifications, amendments, re-enactments thereof from time to time. Either Party may refer the dispute for resolution to sole arbitrator appointed by mutual consent of CNA and Mr. Anand on the one hand and Pacifica on the other. In case of disagreement regarding the appointment of the arbitrator, the dispute will be referred to three arbitrators. Of which CNA and Mr. Anand will collectively nominate one arbitrator. Pacifica will nominate one arbitrator and the third arbitrator shall be



appointed by the said two arbitrators.”

8. In view of the above contractual provisions, I am *prima facie* satisfied that the parties entered into an agreement for reference of disputes under the Security Agreement, to arbitration. All grounds, including a final determination as to the existence of the arbitration clause, arbitrability of disputes and merits, are left open for adjudication by the arbitral tribunal.

9. The petitioner has already nominated its nominee arbitrator - Hon’ble Mr. Justice T.S. Thakur, former Chief Justice of India.

10. Mr. Sharma states that respondents do not wish to nominate an arbitrator as they dispute the existence of the arbitrable disputes. As the respondent does not wish to nominate an arbitrator, Hon’ble Ms. Justice Indu Malhotra, former Judge, Supreme Court of India [Tel: 9810026757] is nominated as the Arbitrator in lieu of the respondent’s nominee. Both the learned Arbitrators are requested to nominate a presiding arbitrator within thirty days, in accordance with law.

11. The learned Arbitrators are requested to furnish declarations under Section 12 of the Act, prior to entering upon the reference.

12. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 [“DIAC”], and will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrators.

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

PRATEEK JALAN, J

SEPTEMBER 19, 2024//SS/pv