



2024:DHC:10059



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision: 18.12.2024**+ **ARB.P. 1328/2024**

MANISH SAKHUJA

.....Petitioner

Through: Mr. Tarun Nanda, Mr. Rupesh Tagi,
Advs.

versus

SANJEEV SAKHUJA

.....Respondent

Through: Mr. Aditya Malhotra, Mr. Umang
Chopra, Mr. Prateek Gupta, Mr.
Karan Malhotra, Advs.**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 constitution of an Arbitral Tribunal to adjudicate the disputes between the parties.
2. The present petition has been filed in the context of a Partnership Deed dated 24.07.2020, under which, the petitioner and the respondent are partners.
3. Clause 18 of the partnership deed contains an arbitration clause as under:-

“(18) All disputes and differences whatsoever which shall arise between the partners or between the partners and the personal representatives of the deceased partner relating to any matter whatsoever touching the affairs of the partnership or the interpretation of this agreement and whether before or after the determination of the partnership shall be referred to a single arbitrator, if the parties agree upon one, otherwise to three arbitrators one to be appointed by each party to the difference in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment



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thereof for the time being in force.”

4. Disputes having arisen between the parties, a legal notice dated 25.08.2023 was sent by the petitioner to the respondent, however, the same was not replied to by the respondent. Thereafter, a notice of invocation dated 26.10.2023 was sent by the petitioner to the respondent. The same was not responded to.

5. Consequently, the present petition has been filed by the petitioner seeking constitution of an Arbitral Tribunal.

6. Learned counsel for the respondent does not dispute the existence of the Arbitration Agreement. He, however, points out that a complaint under Section 156(3) of the Code of Criminal Procedure, 1973 has been filed by the respondent against the petitioner before the CMM, Karkardooma Court. He contends that the same precludes recourse to arbitration.

7. This Court does not find any merits in the said contention of the respondent. In ***Swiss Timing Ltd v. Commonwealth games 2010 Organizing Committee***, (2014) 6 SCC 677, the Supreme Court has observed as under –

“28. To shut out arbitration at the initial stage would destroy the very purpose for which the parties had entered into arbitration. Furthermore, there is no inherent risk of prejudice to any of the parties in permitting arbitration to proceed simultaneously to the criminal proceedings. In an eventuality where ultimately an award is rendered by the Arbitral Tribunal, and the criminal proceedings result in conviction rendering the underlying contract void, necessary plea can be taken on the basis of the conviction to resist the execution/enforcement of the award. Conversely, if the matter is not referred to arbitration and the criminal proceedings result in an acquittal and thus leaving little or no ground for claiming that the underlying contract is void or voidable, it would have the wholly undesirable result of delaying the arbitration. Therefore, I am of the opinion that the Court ought to act with caution and circumspection whilst examining the plea that the main contract is void or voidable. The Court ought to decline reference to arbitration only where the Court can reach



the conclusion that the contract is void on a meaningful reading of the contract document itself without the requirement of any further proof.”

8. In the present proceedings, in terms of the judgement of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning*** 2024 INSC 532, this Court is only concerned with the issue as to whether there exists an arbitration agreement between the parties. It has been held therein 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, 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 and adopted in NTPC v. SPML Infra Ltd. 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.

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123. The power available to the referral courts has to be construed in the light of the fact that no right to appeal is available against any order passed by the referral court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the arbitral tribunal at the nascent stage of Section 11, the referral courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if its Section 11 application is rejected.”

(Emphasis supplied)

9. Since, the existence of the Arbitration Agreement is undisputed, there is no impediment to constituting an Arbitral Tribunal to adjudicate the disputes between the parties.

10. Accordingly, Mr. Nikhil Singhvi, Advocate (Mobile - +91 8826130600) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

11. The respondents shall be entitled to take appropriate objections as regards jurisdiction/arbitrability, if any, before the learned Sole Arbitrator, which shall be decided by the learned Sole Arbitrator on merits and in accordance with law.

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. At request of respective counsel, it is directed that the arbitration shall take place under the aegis of and as per the Rules of Delhi International Arbitration Centre (DIAC).

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. Needless to say, nothing in this order shall be construed as an



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expression of opinion of this Court on the merits of the case. It is directed accordingly.

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

SACHIN DATTA, J

DECEMBER 18, 2024/uk

Signature Not Verified

Digitally Signed By: ROHIT
KUMAR PATEL
Signing Date: 24.12.2024
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