



2024:DHC:10041



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 23.12.2024

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ARB.P. 1354/2024

SACHIN GOEL & ANR.

.....Petitioners

Through: Mr. Ashutosh Gupta, Mr. Gaurav
Rana, Mr. Ajitesh Kumar, Advs.

versus

SHRI AMANJOT SINGH & ORS.

.....Respondents

Through: Mr. Mayank Bhargava, Mr. Aarushi
Singh, Mr. Ashutosh Kumar Tiwari,
Mr. Rajdeep Saraf, Ms. Riya Parihar,
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 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 "Share Purchase cum Settlement Agreement" dated 02.01.2024. It is alleged that the respondent has not complied with the terms of the agreement.
3. Disputes having arisen between the parties, a notice of invocation dated 10.06.2024 was sent by the petitioner to the respondent. The said notice *inter alia* records as under:-

"7. That as per the agreement you, the Noticee(s) were required to pay the 1st instalment of INR 46,00,000/- (Indian Rupees Forty Six Lakhs Only) on or before 30.04.2024. However, no amount has been paid by you the Noticee(s) to Our Client till date which made



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- you, the Noticee No. 1 & 2 liable for payment of interest & penalty in terms of Clause 3 of the agreement.
8. That Our Client(s) tried to contact you, the Noticee(s) for the pending payment of first installment of Rs. 46,00,000/- (Indian Rupees Forty Six Lakhs Only) and interest amount along with penalty amount, on several occasions through emails and calls but hit a wall as you, the Noticee, escaped from your liability by giving frivolous reasons, thereby leading to a breach of agreement by you, the Noticee(s).
 9. That due to your default in adhering to the Agreement, Our Client(s) had issued a "Notice of Dispute Cum Breach of Share Purchase Cum Settlement Agreement" dated 13.05.2024 to you the Noticee(s).
 10. That through the said notice dated 13.05.2024, you, the Noticee No.1 & 2 were requested to abide by the terms of the agreement within period of Ten (10) days from the receipt of the notice.
 11. However, to Our Client's dismay, you, the Noticee neither gave any response to the said notice of dispute dated 13.05.2024 nor adhered to the said notice & agreement between the parties. It is thus evident that disputes and differences have arisen between you, the Noticee(s) and Our Client(s) with respect to the Agreement. Concomitantly, in terms of Clause 13, the dispute is now to be resolved by Arbitration. The relevant clause has been quoted herein below for your easy reference:

"13.GOVERNING LAW JURISDICTION AND DISPUTE RESOLUTION

13.1 This agreement (and any non-contractual obligations arising out of it or in connection with it and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its formation) together with all rights and obligations of the Parties arising under this Agreement shall be governed by and construed in accordance with the laws of India.

13.2 Any controversy, conflict or dispute of any nature arising out of or relating to or in connection with the provisions of this Agreement between the Parties, or any of them, shall be settled exclusively and finally by arbitration, in accordance with the Arbitration and Conciliation Act, 1996. The place of arbitration shall be Delhi and the arbitration shall be conducted in the English language. The Arbitral Tribunal shall consist of sole arbitrator, to be appointed by the consent of both the parties and in case the parties are unable to appoint a sole Arbitrator, the parties may approach appropriate court of law for appointment of the Arbitrator. The Parties agree that the award of the arbitrators



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shall be final and binding upon the Parties.

13.3 Nothing contained hereinabove shall prejudice any Party's right to have recourse to any court having jurisdiction for the purpose of interim or interlocutory orders."

12. *That in terms of Clause 13 above, Our Client(s) hereby nominate Sh. V.K. Maheshwari, Ex. Principal Judge, Family Court, Mob: 9910384671, as the Sole Arbitrator in the said matter. We hereby request you to kindly confirm and acknowledge appointment of Sh. V.K. Maheshwari as the Sole Arbitrator within a period of 7 days of receipt of the present notice.*
13. *That the present notice is a notice U/s 21 of the Arbitration and Conciliation Act, 1996 i.e. notice invoking arbitration.*
14. *Kindly note that the foregoing is not intended nor shall it be construed as the complete recitation of facts and event concerning the aforementioned matter, nor shall it be construed as a waiver of any rights, remedies or claims, legal or equitable, that Our Client(s) may have.*
15. *A copy of this notice has been preserved in Our Office for record and future reference."*

4. The said notice was replied to by the respondent no. 1 and 2 wherein the said respondents strenuously refuted the contentions of the petitioner on the merits of the matter. However, no controversy was raised as regards the existence of an Arbitration Agreement between the parties.

5. During the course of hearing, learned counsel for respondent no. 3 and 4 raises a two-fold objection to the present petition. Firstly, it is submitted that the concerned directors of the respondent no. 3 and 4 who have signed the agreement on behalf of the said respondent were not duly authorized by way of a valid board resolution issued in this regard. Secondly, it is contended that the claims sought to be raised are pre-mature and/or in the nature of deadwood.

6. The aforesaid objections do not constitute any impediment to the constitution of an Arbitral Tribunal.

7. As regards, the first objection, it has been held in ***In Re: Interplay***



between Arbitration Agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899 2023 SCC OnLine SC 1666, that in these proceedings, this Court is only concerned with the formal existence of an arbitration agreement between the parties. The relevant extracts of the said judgment are as under:-

“G. The doctrine of competence-competence

...

*162. The legislature confined the scope of reference under Section 11(6A) to the examination of the existence of an arbitration agreement. The use of the term “examination” in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of “existence” of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In DuroFelguera (supra), this Court held that the referral courts only need to consider one aspect to determine the existence of an arbitration agreement - whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. **Therefore, the scope of examination under Section 11(6A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by arbitral tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia (supra) in the context of Section 8 and Section 11 of the Arbitration Act.***

163. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence competence, only prima facie proof of



the existence of an arbitration agreement must be adduced before the referral court. The referral court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the arbitral tribunal. This position of law can also be gauged from the plain language of the statute.”

8. In the present case, the fact that the agreement has been duly signed by the directors of the respondent no. 3 and 4 on behalf of the said respondent is not disputed. Whether or not that the said directors were duly authorized or not, and as to whether the agreement is enforceable or not, is an aspect that shall necessarily be gone into by duly constituted Arbitral Tribunal.

9. Even, as regards the second aspect viz. whether or not the claims are premature and/ or in the nature of deadwood, the same is an aspect that is to be decided by the Arbitral Tribunal in the light of observations of Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532. The relevant extracts of the said Judgement 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*, 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.”



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10. Accordingly, Ms. Prity Sharma, Advocate (Mobile No.: +91 9911028589) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
11. The respondents 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.
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 this stage, respective counsel for the parties jointly request that the arbitration shall take place under the aegis of and as per the rules of the Delhi International Arbitration Centre (DIAC). It is directed accordingly.
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 expression of opinion of this court on the merits of the case.
16. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 23, 2024/uk