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

+ **ARB.P. 15/2024**

**VIRIDIAN DEVELOPMENT MANAGERS
PRIVATE LIMITED & ANR.**

.....Petitioners

Through: Ms Nistha Gupta and Mr Anuj
Panwar, Advs.

versus

RPS INFRASTRUCTURE LIMITED

.....Respondent

Through: Ms Priya Kumar and Mr Shobhit
Shukla, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

30.07.2024

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1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 ("Act") seeking the appointment of a Sole Arbitrator for adjudication of disputes between the parties.
2. The brief facts are that the Respondent launched an IT project at land measuring 7.587 acres situated at Sector 27-C, Village Sarai Khwaja, Faridabad, and for that purpose, the respondent approached the petitioners for availing their services including branding services and services for making sales of the balance inventory.
3. The petitioner No. 1 and the Respondent entered into a Memorandum of Understanding ("MOU") dated 28.06.2021 for the said project.
4. Subsequently, on the same date the parties also entered into two Consultancy Agreements i.e. (i) Consultancy Agreement for brand and business development related services was signed between petitioner No. 2 and the respondent whereby it was agreed that fee for brand-related services



will be payable by respondent to petitioner No. 2; (ii) Consultancy Agreement for marketing, distribution, and sales Advisory services between petitioner No. 1 and the respondent whereby it was agreed that share in revenue will be payable by respondent to petitioner No. 1.

5. Pursuant to the three agreements being executed, the respondent started conducting booking/allotment of an area measuring 1,78,656 sq. ft between the period of 28.06.2021 to 09.05.2023.

6. The cause of action arose when the respondent defaulted in payments to be made to the petitioners in terms of the aforesaid Agreements dated 28.06.2021 and ignored the directions given by the petitioners to the respondent regarding the trademarks of the petitioner.

7. Thereafter, the petitioner issued a Legal Notice dated 12.05.2023 thereby terminating the MOU and the Consultancy Agreements and calling upon the respondent to make the due payments as well as refrain from using the trademarks belonging to the petitioners.

8. Since the disputes arose and the parties were unable to resolve the dispute amicably, the petitioners issued a Legal Notice dated 04.10.2023 for invoking arbitration. Hence, the present petition is filed.

9. The Arbitration clause is Clause 8.2 in the MOU dated 28.06.2021 which reads as under:

“8.2. All disputes between the parties hereto shall be resolved through arbitration, which shall be conducted by a Sole Arbitrator to be appointed mutually by the parties. The seat of Arbitrator and Venue of Proceedings shall be at New Delhi. The arbitration shall be held in English Language only.”

10. The Arbitration clauses being 8.2 and 7.2 in the Consultancy



Agreements dated 28.06.2021 are identical. For sake of perusal, Clause 8.2 reads as under:

“8.2 All disputes between the parties hereto shall be resolved through arbitration, which shall be conducted by a Sole Arbitrator to be appointed mutually by the parties. The seat of Arbitrator and Venue of Proceedings shall be at New Delhi. The arbitration shall be held in English Language Only.”

11. Ms Kumar, learned counsel for the respondent states that the respondent has been defrauded by the petitioners as the underline assumption in the MOU as well as the Consultancy Agreements was that the petitioners are the licensee of the trademark “WTC” and “World Trade Centre” and they have a license from World Trade Centre Association, New York (“WTCA”). After inquiry it has come to the knowledge of the respondent that the petitioners do not have the said license and the communications between the petitioners and the respondent clearly indicate that the respondent has repeatedly been asking for a copy of the license which has not been provided.

12. She further states that the said trademarks are properties of WTCA and for the adjudication of the disputes subsisting between the parties, the presence of WTCA may be required.

13. She also submits that the allegations against the petitioners are serious in nature and the investigation of fraud cannot be adjudicated by an Arbitrator in the Arbitration Proceedings but can only be adjudicated in a Civil Suit. Adjudication by the Arbitrator would decide rights *inter se* the parties which are in *rem* and not in *personam*. Further, with respect to the dispute between the parties, the interest of the buyers who have purchased



the commercial space in the project is also involved and therefore the only remedy is by filing a civil suit, reliance is placed on *A. Ayyasamy v. A. Paramasivam & Ors. (2016) 10 SCC 386*.

14. I have heard learned counsel for the parties.

15. As regards, the first objection taken by the respondent pertaining to the complete license Agreement for the said trademarks not being given to the respondent is concerned, I am of the view that the respondent should have raised this apprehension at the time of execution of the MOU and the Consultancy Agreements. In this regard, Clause 2 mentioned in the MOU dated 28.06.2021 reads as under:

“2. PROJECT BRANDING: -

2.1. The Project is presently named “RPS Infinia” and is registered with said name with Haryana Real Estate Regulatory Authority and the Developer has understood and agreed to rebrand the Project.

2.2. The Project and any adjacent expansion shall be branded as WTC Faridabad along with the concept name defined by the Developer in its entirety.

2.3. The Developer has clarified its desire for the high street retail concept to be promoted along with the concept name defined by the Developer (12th Avenue) equally in all branding relating to the Project.

2.4. Both parties have agreed that they will work mutually with a marketing agency towards a final branding nomenclature and hierarchy such that the views of both parties are achieved in the interests of the success of the Project (s)

2.5. Trademarks “WTC” and “World Trade Centre” are properties



*of the World Trade Centre Association, New York (“WTCA”).
Consultants (including its associate concerns) are licensees of
WTCA and the usage of trademarks and logos are governed by
WTCA directives.*

2. 6. Neither Developer, nor any plot/unit buyer in Project shall have any right or claim or interest in any brand/trademark associated with the Consultant in any way and upon termination/determination of this agreement have no right to use any brand/trade mark, identical or deceptively similar thereto, in relation to Project expansion or part thereof.”

16. In terms of the aforesaid clause, the respondent choose to sign the MOU as well as the Consultancy Agreements based on the representations made by the petitioners and did not raise any objection at the time of the execution of the MOU.

17. As of today, the respondent is not remediless and the issue of whether the petitioners are the licensee of trademark ‘WTC’ and ‘World Trade Centre’ is concerned, as and when raised will be decided by the learned Arbitrator.

18. Also, Ms. Gupta, learned counsel for the petitioners makes a statement that the petitioners are the licensee of the trademarks ‘WTC’ and ‘Word Trade Centre’ and the petitioners have a valid license from WTCA for using the said trademark ‘WTC’ and ‘World Trade Centre’.

19. Further, the allegation of fraud is also without merit. The mere fact that the respondent sought a copy of the License Agreement for the said trademarks and the same has not been supplied by the petitioners does not lead to a conclusion that the petitioners are not the licensee of the trademark



‘WTC’ and ‘World Trade Centre’. These allegations have been vehemently denied by the learned counsel for the petitioners and according to me at present, are just allegations without having been proved.

20. In my view, the allegations that have been made by the respondent are mere averments and do not constitute serious allegations of fraud.

21. At this juncture, if this Court under section 11 of Arbitration and Conciliation Act, 1996 delves into the merits of the disputes raised in the present matter, the same would be tantamount to a mode of avoiding the process of Arbitration. In this regard, the Hon’ble Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754*** has reiterated the ‘*Eye of the Needle*’ test, and the relevant extract is quoted below:-

“90. In NTPC Ltd. v. SPML Infra Ltd. reported in (2023) 9 SCC 385, a two-judge Bench of this Court was again faced with the issue of “accord and satisfaction” in the context of a Section 11 petition for appointment of arbitrator. Placing reliance on Vidya Drolia (supra), this Court gave the “Eye of the Needle” test to delineate the contours of the power of interference which the referral court may exercise under Section 11 of the Act, 1996. The first prong of the said test requires the court to examine the validity and existence of the arbitration agreement which includes an examination of the parties to the agreement and the privity of the applicant to the contract. The second prong of the test requires the court to, as a general rule, leave all questions of non-arbitrability to the arbitral tribunal and only as a demurrer reject the claims which are ex-facie and manifestly non-arbitrable. However, it was clarified that



the standard of the aforesaid scrutiny is only prima facie, that is, unlike the pre-2015 position, the scrutiny does not entail elaborate appreciation of evidence and conduct of mini trials by the referral courts. The relevant observations made therein are reproduced hereinbelow...”

22. In my view, this Court under section 11 of the Arbitration and Conciliation Act, 1996 is to only consider that whether there is a valid Arbitration Agreement and whether the disputes are barred by limitation or not. At the referral stage, the act of referring the disputes to Arbitration cannot be a judgment *in rem*.

23. For the said reasons, the present petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

vi) Mr. Najmi Waziri (Retd. Judge, Delhi High Court) (Mob. No. 9810097311) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

vii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the ‘DIAC’). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.

viii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

ix) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims



and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

x) The parties shall approach the learned Arbitrator within two weeks from today.

24. The petition is allowed and disposed of in the aforesaid terms.

25. It is clarified that the observations made above in the present petition are only for the purposes of adjudication of the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 and shall have no bearing on the Arbitration proceedings.

JULY 30, 2024/sr

JASMEET SINGH, J

Click here to check corrigendum, if any