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

+ O.M.P. (T) (COMM.) 1/2024

VIVEK SAPRA

.....Petitioner

Through: Mr Dhruv Tamta and Mr Nishchay
Dutt, Advs.

versus

VIHAAN EXIMS COMPANY PVT LTD

.....Respondent

Through: Mr Anuj Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

08.08.2024

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1. This is a petition under Section 14(2) read with Section 15 of the Arbitration and Conciliation Act, 1996 seeking termination of the mandate of the learned Sole Arbitrator, Sh. Anmol Jain.
2. The brief facts are that there was dispute between the petitioner and the respondent pursuant to an MoU dated 16.02.2020 wherein the petitioner gave respondent 2000 grams of gold bullion (of 995 purity) for the purposes of redesigning ornaments and gave a sum of Rs. 3 lakhs by way of cheque.
3. Since the respondent failed to deliver the ornaments on time, the petitioner invoked arbitration on 24.02.2021.
4. The petitioner also moved an application for interim relief in terms of Section 9 of the Arbitration and Conciliation Act, 1996 before the Court of District Judge (Commercial Court), Rohini.
5. Since there was a named Arbitrator in the MoU at clause 9, the parties submitted to jurisdiction of Sh. Anmol Jain for adjudication of their disputes.



6. The Sole Arbitrator passed three preliminary orders and thereafter stopped proceedings. The last order passed by the Arbitrator was on 21.03.2021 and thereafter there have been no further orders.

7. There is an e-mail dated 01.07.2021 sent by the counsel for the respondent seeking fixing of hearing in the applications filed by the respondent for termination of mandate of the Arbitrator in the arbitral proceedings but there has been no response. Hence, the present petition has been filed.

8. My attention has been drawn to the judgment of the Hon'ble Supreme Court in ***Swadesh Kumar Agarwal v. Dinesh Kumar Agarwal & Ors.*** (2022) 10 SCC 235 and more particularly paras 21 and 22, which read as under:

“21. Therefore, on a conjoint reading of Sections 13, 14 and 15 of the Act, if the challenge to the arbitrator is made on any of the grounds mentioned in Section 12 of the Act, the party aggrieved has to submit an appropriate application before the Arbitral Tribunal itself. However, in case of any of the eventualities mentioned in Section 14(1)(a) of the 1996 Act and the mandate of the arbitrator is sought to be terminated on the ground that the sole arbitrator has become de jure and/or de facto unable to perform his functions or for other reasons fails to act without undue delay, the aggrieved party has to approach the “court” concerned as defined under Section 2(1)(e) of the 1996 Act. The court concerned has to adjudicate on whether, in fact, the sole arbitrator/arbitrators has/have become de jure and de facto unable to perform his/their functions or for other reasons he fails to act without undue delay. The reason why such a dispute is to be raised before the court is that eventualities mentioned in Section 14(1)(a) can be said to be a disqualification of the sole arbitrator and therefore, such a dispute/controversy will have to be adjudicated before the court concerned as provided under Section 14(2) of the 1996 Act.



22. *So far as the termination of the mandate of the arbitrator and/or termination of the proceedings mentioned in other provisions like in Section 15(1)(a) where he withdraws from office for any reason; or (b) by or pursuant to an agreement of the parties, the dispute need not be raised before the court concerned. For example, where the sole arbitrator himself withdraws from office for any reason or when both the parties agree to terminate the mandate of the arbitrator and for substitution of the arbitrator, thereafter, there is no further controversy as either the sole arbitrator himself has withdrawn from office and/or the parties themselves have agreed to terminate the mandate of the arbitrator and to substitute the arbitrator. Thus, there is no question of raising such a dispute before the court. Therefore, the legislation has deliberately provided that the dispute with respect to the termination of the mandate of the arbitrator under Section 14(1)(a) alone will have to be raised before the “court”. Hence, whenever there is a dispute and/or controversy that the mandate of the arbitrator is to be terminated on the grounds mentioned in Section 14(1)(a), such a controversy/dispute has to be raised before the “court” concerned only and after the decision by the “court” concerned as defined under Section 2(1)(e) of the 1996 Act and ultimately it is held that the mandate of the arbitrator is terminated, thereafter, the arbitrator is to be substituted accordingly, that too, according to the rules that were applicable to the initial appointment of the arbitrator. Therefore, normally and generally, the same procedure is required to be followed which was followed at the time of appointment of the sole arbitrator whose mandate is terminated and/or who is replaced.”*

9. As perusal of the said judgment clearly shows that for invoking the provisions of Section 14 of the Arbitration and Conciliation Act, 1996, the petitioner is required to approach the “Court” as defined under the Arbitration and Conciliation Act, 1996. The “Court” is defined in terms of Section 2(1)(e) of the Arbitration and Conciliation Act, 1996, which in view



of the pecuniary value of the disputes would be the Rohini District Court.

10. Since, *prima facie* the grounds raised by the petitioner would fall within the purview of Section 14 and there is no admission/letter written by the Arbitrator wherein he has withdrawn from office, the provisions of Section 15 may not be applicable to the facts of the present case.

11. For the said reasons, the petitioner is granted liberty to approach the Rohini District Court under Section 14 of the Arbitration and Conciliation Act, 1996 and as and when the same is filed, it shall be considered by the concerned Judge in accordance with law.

12. The period spent before the Delhi High Court in pursuing this petition shall be excluded for the purposes of limitation.

13. The petition is disposed of accordingly.

JASMEET SINGH, J

AUGUST 8, 2024

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