



2024:DHC:5568



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

+ **ARB.P. 22/2024**

GOYAL HOUSING DEVELOPRs LLPPetitioner

Through: Mr. Rohit Oberoi, Mr.
Paramjeet Bhati and Mr. Jharvi Vashisht,
Advs.

versus

K. L. RATHI STEELS LIMITEDRespondent

Through: Mr. Abhishek Garg, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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26.07.2024

ARB.P. 22/2024

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("the 1996 Act"), for reference of the disputes between the parties to arbitration.

2. The arbitration is sought to be initiated in terms of Clause 12.1 of the Memorandum of Understanding¹ dated 11 October 2021, executed between the parties.

3. Mr. Abhishek Garg, learned Counsel for the respondent does not dispute the fact of execution of the MoU and existence of an arbitration clause therein. His plea is that the MoU was executed by

¹ "MoU" hereinafter



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fraud.

4. The Supreme Court in *Vidya Drolia v. Durga Trading Corporation*² has held that allegations of fraud should ideally be taken up before the learned Arbitral Tribunal rather than being addressed by a Court exercising jurisdiction under Section 11(6) of the 1996 Act. This preposition has further been underscored by the recent decision of the Supreme Court in *SBI General Insurance Co Ltd v. Krish Spinning*³, which has advocated relegation of all issues, save and except the issue of whether an arbitral agreement between the parties does or does not exist, for decision by the Arbitral Tribunal.

5. Even allegations of accord and satisfaction, fraud, as well as frivolity and dishonestly in litigation, have been held by the Supreme Court to be arbitrable and, therefore, liable to be decided by the learned Arbitral Tribunal rather than by the Section 11(6) Court.

6. As there is no other objection to the present petition, this Court appoints Ms. Anupama Bansal, Adv. (Cell: 9868365437) as an arbitrator to arbitrate on the dispute between the parties. The arbitrator shall be entitled to fix his fees in consultation with learned Counsel for the parties. The arbitration shall take place in accordance with the provisions of the 1996 Act. The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

² 2020 SCC OnLine SC 1018

³ 2024 SCC OnLine SC 1754



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7. It is made clear that this Court expressed no opinion on the merits of the matter or on the preliminary objections which the respondent seeks to urge. All contentions that the respondent chooses to raise, including the contention of fraud in execution of the arbitration agreement, shall remain open to be urged before the arbitrator.

8. This petition stands disposed of in the aforesaid terms.

C.HARI SHANKAR, J

JULY 26, 2024

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Click here to check corrigendum, if any