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

+ **ARB.P. 1414/2024**

REMSON PRIME TECHNOLOGIES PRIVATE LIMITED

.....Petitioner

Through: Ms. Sakshi Mehley, Ms. Harshita
Kumar and Mr. Sajal Manchanda,
Advocates.

versus

**KRC AND SONS (FORMERLY MS GAURI
COMMUNICATIONS)**Respondent

Through: Ms. Anshika Pandey, Mr. Vibhu
Anshuman and Mr. Shivam
Chaudhary, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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17.12.2024

1. The present Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes between the parties under a Consignment and Freight Agreement dated 28.08.2017. The Petitioner was a Consignment and Freight agent of the Respondent.

2. It is stated that though initially the Petitioner appointed an arbitrator unilaterally, however, the said appointment was challenged by the Respondent by filing ARB. No. 145 of 2019 (O&M) before the High Court of Punjab and Haryana. It is stated that during the pendency of the said Petition, a Memorandum of Understanding (MoU) dated 06.11.2020 was entered into between the parties. Relevant portions of the said MoU reads as under:

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“.....

A. Gauri and RPTPL entered into a C&F agreement dated ("Agreement"). 28/08/2017

B. Gaun had paid to RPTPL an amount of Rs 55,00,000/- in its position as a C&F Agent.

C. The Agreement has been terminated and the accounts have been reconciled.

D. Gauri has return to RPTPL, material worth Rs. 7,00,000/- ("Material") which has sold by RPTPL to Gauri

E. After return of the Material, RPTPL will clear in totality the outstanding amount.

F Gauri shall withdraw all all litigations including but not limited to criminal complaints under section 138 of the Negotiable Instruments Act and arbitration proceedings pending before the Courts and/or arbitral tribunal in accordance with this MOU.

2. The Parties hereby declare voluntarily that there is no claim for damages, loss, charges, expenses or whatsoever against each other and there shall be no claim in future whatsoever against each other arising or flowing out of the Agreement or exchange of other documents or communication, written or oral with respect to the appointment of Gauri as a C&F Agent after the receipt of the outstanding Amount in terms of this MOU.

3. That as on the Effective date the outstanding amount is Rs. 62,00,000/- inclusive of the value of the Material to be returned by Gauri to RPTPL



4. That Gauri has agreed that RPTPL will clear the Outstanding Amounton or before twentyfour months from the Effective Date.

5 That for every payment of Rs. 3,00,000/- through RTGS/NEFT, Gauri shall withdraw one criminal complaint under section 138 of the Negotiable Instruments Act, 1882 pending before the Court of Chief Judicial Magistrate, Agra. The list of cases pending before the Court of Chief Judicial Magistrate, Agra to be withdrawn by Gauri are annexed as Annexure "A" to this Agreement.

6. That Gauri shall withdraw the arbitration proceedings pending between the Parties as on Effective Date after the payment of the outstanding amount. In the meantime the Parties shall make an application before the Ld. Arbitrator to keep the arbitration proceedings pending. A copy of this Agreement shall be filed before the Ld. Arbitrator”

3. It is stated that subsequent disputes arose between the parties under the MoU. It is stated that a Sole Arbitrator was appointed by the Punjab and Haryana High Court. It is stated that the Petitioner herein filed an application under Section 16 of the Arbitration Act before the learned Sole Arbitrator stating that since the MoU has been entered into between the parties, no dispute survives between the parties and, therefore, the arbitral proceedings must be terminated. It is stated that the said application was rejected by the learned Sole Arbitrator *vide* Order dated 07.07.2024 by observing as under:

“An application under section 16 of the Arbitration and Conciliation Act,1996 filed by the Respondent on my email on 29.06.2024. Counsel for



the Claimant admits the receipt of copy of the same. Reply to this application be filed by the Claimant on 13-07-2024.

Vide order dated 29.06.2024 it was made clear to both the parties that both the parties shall pay the arbitrator fee before the date of hearing and accordingly the Claimant paid his part of fee whereas counsel for the Respondent submits that he has no instruction from the Respondent regarding payment of fee of the arbitrator. In these circumstances the Respondent is directed to deposit Rs.4(four) lakh towards advance for the costs of this arbitration in view of section 38 of The Arbitration and Conciliation Act, 1996.”

4. The said Order has not been challenged by the Petitioner. The Petitioner has now approached this Court by filing the present Petition under Section 11 of the Arbitration Act. It is stated that during the pendency of the present Petition, the learned Sole Arbitrator has passed the award dated 12.10.2024. The said award has also not been challenged by the Petitioner.

5. It is the contention of the learned Counsel for the Petitioner that the present Petition has been filed in terms of the Arbitration Clause in the MoU dated 06.11.2020 and not on the basis of the earlier arbitration clause as the earlier arbitration clause stood novated in the MoU dated 06.11.2020 and, therefore, the present Petition is maintainable.

6. *Per contra*, learned Counsel for the Respondent states that the issue as to whether the MoU dated 06.11.2020 resulted in termination of the earlier arbitration clause or not has already been adjudicated by the learned Sole Arbitrator. He states that the only course available to the Petitioner is to challenge the award dated 12.10.2024 by filing an appropriate



Petition.

7. Heard the Counsels for the parties and perused the material on record.
8. This Court is not able to accept the submission made by the learned Counsel for the Petitioner for the reason that appointing an arbitrator to adjudicate the disputes under the MoU dated 06.11.2020 which will have a direct bearing on the Award dated 12.10.2024 more so when the issue has been adjudicated by the Arbitrator in its Order dated 07.07.2024 and can result in conflicting orders. The correct course of action for the Petitioner is to challenge the award dated 12.10.2024 by stating that once the MoU has been entered into between the parties, nothing was left to be arbitrated upon and the arbitration proceedings could not have proceeded ahead. After challenging the award and in case the award is set aside, the Petitioner can come to this Court for appointment of an arbitrator.
9. In view of the above, this Court is not inclined to accept the contention of the learned Counsel for the Petitioner.
10. The Petition is dismissed along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

DECEMBER 17, 2024

Rahul