



2024:DHC:9899



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

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Date of Decision : 20.12.2024+ **ARB.P. 1513/2024**

RADICO KHAITAN LIMITED

.....Petitioner

Through: Mr. Kamal Garg, Advocate.

versus

SUMIT CHAUHAN

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition has been filed under section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as '*the A&C Act*') seeking appointment of a sole arbitrator to adjudicate the disputes between the parties.

2. The disputes between the parties have arisen in the context of business transactions between the petitioner, the respondent and father of the respondent, in terms of which the petitioner supplied alcoholic beverages i.e., Indian made Foreign Liquor (IMFL), Wine, Spirit, Whisky, Rum and other liquor products to the respondent and his father either itself or through its associated or subsidiary or sister concerns/units.

3. It is averred in the petition that although respondent and his father had separate business, the respondent assured and committed to also discharge the liability arising out of the purchase of goods/liquor by his father from the petitioner.



4. Therefore, it is stated that upon purchase of the goods/liquor by the respondent and his father, the petitioner either itself or through its subsidiary or associated or sister concerns/units issued tax invoices in the name of the respondent.

5. It is submitted that the business transactions between the parties were agreed to be governed by an arbitration clause contained in the tax invoices issued to the respondent by the petitioner. The tax invoices contain an arbitration clause as under:

“5. Any dispute (whether contractual or otherwise) arising out of this transaction between the parties or arising out of or relating to or in connection with this invoice shall be referred for arbitration in terms of Arbitration and Conciliation Act, 1996 or any amendment thereof. The arbitration shall be conducted by a sole arbitrator to be appointed by Radico Khaitan Limited in its sole discretion. The seat of Arbitration shall be Delhi. This invoice shall be governed the laws of India and Court of Delhi shall have exclusive jurisdiction over matters arising from this transaction/invoice. The Buyer shall be deemed to have accepted all terms and conditions contained in the invoice including the arbitration agreement by accepting the goods delivered under this invoice”

6. Dispute/s have arisen between the parties on account of alleged failure of the respondent towards collective and complete discharge of outstanding liability existing in the books of account of the petitioner against the respondent and his father for purchase of the goods/liquor supplied by the petitioner.

7. It is submitted that that a cheque of Rs. 18,16,155/- was issued by the respondent for the complete and collective discharge of outstanding liability of the respondent and his father. However, it is stated that upon presentation, the cheque was dishonoured due to insufficient funds. Pursuant to which, despite repeated reminders and requests, the respondent failed to pay the requisite outstanding amount.



8. Consequently, the petitioner issued a legal notice dated 18.06.2022 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred as “the NI Act”) to the respondent followed by a complaint under Section 138 of the NI Act before the Patiala House Court, New Delhi, Delhi.

9. Since the disputes between the parties persisted, the petitioner issued a demand notice cum Invocation of Arbitration on 05.02.2024 to the respondent. However, the respondent failed to respond.

10. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute.

11. In the present proceedings, notice was issued by the Court on 27.09.2024. However, since none appeared on behalf of the respondent, *vide* order dated 14.11.2024, a fresh notice was issued by the Court with a liberty to the respondent to file a reply, if any, before the next date of hearing. An affidavit of service dated 19.12.2024, filed on behalf of the petitioner states the communication/s sent to the last known address/es *via* speed post were returned with the notation, “*Item Returned Addressee left without instructions, “item returned unclaimed” and “item returned, no such person in the address”*”.

12. Further, as per the records, it is brought out that the communication/s served through *dasti* by ordinary/physical mode and registered speed post were returned with notations “*unserved-given addresses/premises found locked*” whereas notice sent by the registry of this Court *via* whatsapp at +91-9811082604 was duly served.

13. Section 3 of the A&C Act contemplates that a written communication is deemed to have been received if it is sent to the addressee’s last known



place of business or mailing address by any means which provides a record of the attempt to deliver it. In the present case, the petitioner has made numerous attempts to effect service on the respondent and has thereby discharged its onus to effect service on the respondent.

14. In the circumstances, the present petition is taken up for hearing and disposal, despite no appearance on behalf of the respondent.

15. Since the existence of the arbitration clause is evident from a perusal of the contract, there is no impediment to constituting an arbitral tribunal for adjudicating the disputes between the parties, as mandated in terms of the judgments of the Supreme Court in *SBI General Insurance Co. Ltd. v. Krish Spinning*, 2024 INSC 532 and *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666.

16. Further, in terms of the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd* (2020) 20 SCC 760, *TRF Limited v. Energo Engineering Projects Ltd*, (2017) 8 SCC 377 and *Bharat Broadband Network Limited v. United Telecoms Limited*, 2019 SCC OnLine SC 547, it is incumbent on this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

17. Accordingly, Ms. Amrita Sarkar, Advocate (Mobile - +91 7045438897) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

18. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

19. The learned Sole Arbitrator shall be entitled to fee in accordance with



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IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

20. The parties shall share the arbitrator's fee and arbitral costs, equally.

21. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

22. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the case.

23. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 20, 2024/sl