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ORDER SHEET
AP-COM/653/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

MOHINI AGRO PRIVATE LIMITED
VS
PRABHJIT SINGH JOSAN

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 10th February, 2025.

Appearance:
Mr. Pranit Bag, Adv.
Mr. Rahul Poddar, Adv.
Ms. Pooja Jewrajka, Adv.
Mr. Anousko Das, Adv.
...for the petitioner

Mr. Agniswar Bhuinya, Adv.
Mr. Aniruddha Singha Roy, Adv.
...for the respondent

The Court: This is an application for appointment of an Arbitrator on the strength of Clause XI of the agreement dated June 14, 2023 executed between the parties. The parties entered into an agreement for sale of a particular quality and quantity of potato seeds. The contention of the petitioner is that the respondent supplied sub-standard quality of potato seeds, which gave rise to a dispute. The respondent was asked to refund the money paid by petitioner. According to the petitioner, the total dues payable for violation of the terms and conditions of the agreement dated June 14, 2023 was Rs.1,57,32,339/- along

with interest at the rate of 24% per annum from the date of advance payment, upto the date of realization of the dues. The petitioner, accordingly, issued a demand notice, to which the respondent replied, inter alia, denying the petitioner's claim. The respondent on the other hand, had a claim of about more than Rs.40 lakhs with interest for the goods supplied. Thus, the fact that the parties are in dispute and both have monetary claims against each other, is available from the correspondence. When the dispute was not resolved, the petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 in February 19, 2024 and proposed the name of an Advocate having office at 7C Kiran Shankar Roy Road, Ground Floor, as the sole arbitrator.

Mr. Bag submits that the correspondence between the parties clearly indicate that there is a dispute. The dispute is alive and the respondent replied to the notice by making an alternative money claim. Mr. Bag further submits that the arbitration clause gave an option to the parties to either select Kolkata or Jalandhar as the mutually agreed seat or venue. Mr. Bag relied on the decision of the Delhi High Court in this regard in the matter of '**Vedanta Limited vs. Shreeji Shipping**' reported in **2024 SCC Online Delhi 4871**. In the said decision it was held that, when the parties had an option to decide on the seat and three places were mentioned, the party approaching the Court for reference to arbitration would have the liberty to approach any of the three places.

Mr. Agniswar Bhuinya, learned advocate for the respondent submits that, the agreement dated June 14, 2023 was a disputed document. Secondly, the petitioner did not have the right to choose the Calcutta High Court as the referral Court when the High Court of Punjab and Haryana High Court also had the

jurisdiction in view of the option left to the parties to select the seat or venue at either Kolkata or Jalandhar. Such seat was required to be mutually agreed upon between the parties. In the instant case, although the petitioner invoked the jurisdiction and named an Arbitrator having office at Kolkata, the petitioner did not specifically indicate that the arbitration would be held at Kolkata. Mr. Bhuinya further submits that the petitioner also failed to respond to the reply given by the respondent.

Heard learned advocates for the respective parties.

Admittedly, the parties had the option to select the seat as either Kolkata or Chandigarh. The petitioner issued the notice invoking arbitration by suggesting the name of a learned advocate having office at 7C, Kiran Shankar Roy Road, Ground Floor, Kolkata to be appointed as the sole arbitrator. The respondent did not respond to the notice. The respondent also did not suggest the name of any arbitrator at Jalandhar. Two places have been mentioned as the seat i.e. Kolkata and Jalandhar.

The relevant paragraphs of Vedanta (supra) are quoted below :-

...“17. In the present case, the arbitration clause clearly states that the seat of arbitration is Goa, Karnataka or Delhi. It merely gives a choice to the parties to invoke the jurisdiction of either of these courts. There is no ambiguity in the clause, as it intended for the parties to choose either of these jurisdictions to govern the arbitration proceedings invoked by the parties. The same is certain, or is capable of being made certain. Hence, I am of the view that arbitration clause is not hit by Section 29 of the ICA.

18. The fact that the seat of the arbitration has been contemplated as Delhi, Karnataka and Goa also vests jurisdiction with this Court to entertain and try the Section 11 petition in view of the judgment of the Hon'ble Supreme Court in Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678:

“19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.”

19. I am unable to agree with the contention of the learned senior counsel for the respondent that where three other ports are stated to be having the seat of arbitration, in that scenario, the provisions of Section 16 to 20 of CPC should be applied for determining which of the Courts has jurisdiction, as the law in this case is already settled by the above paragraphs of the judgment of the Hon'ble Supreme Court. In case the seat of arbitration is at three places, the parties are at liberty to approach any one of the said three places.”...

The facts of this case also indicate that execution of the agreement was at Kolkata and supply of the goods in terms of the said agreement was to be made in Kolkata. Thus, the petitioner has rightly approached this Court as referral court. With regard to the issues raised by Mr. Bhuinya as to the ambiguities in the agreement, the mode and manner in which the same was executed, the validity etc., this Court is of the view that these issues are arbitrable and can be raised before the learned Arbitrator. The arbitration clause is quoted below:-

“Any disputes and differences arising between the parties out of this agreement, shall be referred to Arbitration. For constitution of Arbitral Tribunal, a sole Arbitrator shall be appointed by the parties on mutual consent to adjudicate upon the disputes arising hereunder. The said Arbitration shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time. The seat and venue of the Arbitration shall be entire at Kolkata or Jalandhar as mutually agreed between the parties.”

An arbitration clause is a separate agreement, independent of the agreement dated 14th June 2023. Under such circumstances, the respondent will be at liberty to raise all disputes before the learned arbitrator. All those disputes shall be decided by the learned arbitrator. This Court has not entered into the merits of the issues involved.

Accordingly, this Court appoints Mr. Basanta Kumar Sen, Advocate [Mobile Nos.: 9836181529/9433054865], as the arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned arbitrator shall fix his own remuneration as per the Schedule of the Act.

The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)