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

% ***Date of Decision: 28th March, 2025***

+ CM(M) 582/2025, CM APPL. 18394/2025 & CM APPL. 18395/2025
M/S JMC PROJECTS (INDIA) LTD.), (NOW KNOWN AS
KALPATARU PROJECTS INTERNATIONAL LTD.)Petitioner

Through: Mr. Vineet Hans, Mr. Amit Sagar, Mr.
Amit Kumar and Ms. Hmanshi
Sharma, Advocates

versus

SH. SUNIL KUMAR GUPTARespondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 18395/2025 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 582/2025 & CM APPL. 18394/2025

1. Petitioner is defending a suit which is commercial in nature and has taken exception to order dated 02.09.2024 whereby his application moved under Order VII Rule 11 r/w Section 151 CPC has been dismissed.
2. Rejection of the suit was sought on twin grounds.
3. Firstly, the Court in Delhi lacked jurisdiction and secondly, the dispute should have been referred to Arbitrator in terms of Section 8 of Arbitration & Conciliation Act, 1996 (*hereinafter referred to as 'said Act'*).
4. Fact remains that the learned counsel for petitioner/defendant has restricted the present petition, merely, with respect to the second aspect i.e.



reference of dispute under Section 8 of said Act.

5. Though, no separate application, as such, under Section 8 of said Act was moved before the learned Trial Court, a specific objection in this regard has been taken in written statement filed by the defendant.

6. To understand the aforesaid issue, it is appropriate to make reference to Clause 43 of the Work Order in question. It reads as under: -

“Resolution of Dispute:

Any dispute or difference arising out of this Work Order shall be first referred to the Project Manager/Site Incharge of the site. If no agreement is arrived at within 90 days then the same shall be referred to Business Unit Head (BU) mentioned in the Special Conditions for conciliation. BU head will conciliate the matter and given his decision within 60 days after he receives the notice from any of the parties. If any of the parties are not satisfied with the decision of BU head or failure of BU to give his decision within the said period of 60 days then the issue would be resolved mutually by both the parties with the intervention of any of the Director of Contactor and Sub-Contractor within 15 days or such other period as the respective Directors find time to meet for resolution of issue. The meeting shall take place as per their convenience or at the Contractor's office in Mumbai.”

7. Learned counsel for petitioner submits that aforesaid Clause is clearly indicative of the reference of any such dispute to Arbitrator and since with the mutual consent of the parties, the aforesaid mechanism was agreed upon and since present suit has been filed without resorting to aforesaid resolution mechanism, the Court should not have entertained the suit and, therefore, keeping in mind the specific provision of Section 8 of said Act, Court should have referred the dispute to an Arbitrator, as per the aforesaid mechanism.

8. Word “arbitration agreement” cannot be construed in such an elastic manner. Section 8 of said Act reads as under:-

“Section 8. Power to refer parties to arbitration where there is an arbitration agreement.— [(1)A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or



under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.]

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.]

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

9. If any such party wants to invoke its power under Section 8 of said Act, it has to be, categorically, shown that there is an *arbitration agreement* between the parties and only where the Court is satisfied that there exists such arbitration agreement, parties can be referred to the arbitration. *Sine qua non*, thus, would be *prima facie* opinion with respect to the fact that there is a valid arbitration agreement.

10. Aforesaid Clause, which merely, provides for initial resolution of disputes, cannot, by any stretch of imagination, be equated with an *arbitration agreement*. As per above mechanism, in case of any dispute, it can be first referred to the Project Manager/Site Incharge and if no agreement is arrived at, then it can further be escalated to Business Unit Head, who can conciliate in the matter. All important word “arbitration” is conspicuously missing from the aforesaid Clause and, therefore, the aforesaid resolution mechanism cannot be confused or equated with arbitration. It also cannot be inferred that



if such mechanism is not resorted to, the jurisdiction of Court would stand ousted automatically. Seeking rejection of suit or reference of dispute to Arbitrator does not seem warranted from any angle whatsoever.

11. In view of the above, this Court does not find any reason to interfere with the impugned order while invoking its supervisory power under Article 227 of the Constitution of India.

12. The present petition, along with pending applications, stands dismissed.

(MANOJ JAIN)
JUDGE

MARCH 28, 2025/dr/js