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

+ **ARB.P. 796/2023**

**SHIVAM AGRIOILS PRIVATE LIMITED**

.....Petitioner

Through: Mr. Akash Vajpai, Adv.

versus

**SH. KRISHNA VANASPATI INDUSTRIES PRIVATE LIMITED**

.....Respondent

Through: Mr. Aadhar Nautiyal- Adv.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**ORDER**

**24.01.2025**

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1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed by the Petitioner for appointment of Arbitrator to adjudicate upon the disputes which have arisen between the parties under the two Memorandum of Understandings dated 25.11.2014 & 02.03.2016 and one Agreement to Sell dated 19.03.2016.

2. Shorn of unnecessary details, the facts leading to the petition are that the Respondent was the owner of property being Plot No.6A, Sector-1, Pant Nagar, Industrial Estate, Rudrapur, Udham Singh Nagar, Uttarakhand admeasuring 20357 sq. meters. It is stated that Respondent Company had taken a loan from the State Bank of India and the Respondent defaulted in payment of the loan and the same was taken over by SBI under SARFAESI Act. It is a claim of the Petitioner that they had repaid a part of the loan and got the property released from the SBI. It is stated that a Memorandum of



Understanding dated 25.11.2014 was entered into between the parties for the purpose of purchase of the property in question.

3. It is stated that since the Respondent did not perform his obligation as he did not get the requisite permission from the State Infrastructure and Industrial Development Corporation of Uttarakhand Limited (SIIDCUL) and SBI. A second Memorandum of Understanding dated 02.03.2016 was entered into between the parties. It is pertinent to mention that the first MOU dated 25.11.2024 contains an Arbitration Clause which is Clause 1.1.2. The said Arbitration Clause specifically stipulates that the seat of the Arbitration shall be at New Delhi. It is stated that in the second MOU dated 02.03.2016, also the parties had unambiguously in the Arbitration Clause contained therein decided that the seat of the Arbitration shall be at New Delhi.

4. Thereafter, an Agreement to Sell dated 19.03.2016 has been entered into between the parties for purchasing the same property in question. The said Agreement stipulates that disputes concerning this Agreement to Sell shall be settled in the jurisdiction of the Rudrapur Court only. There is also a Clause which states that the disputes should be resolved under the provisions of the Arbitration and Conciliation Act, 1996 and the disputes concerning the Agreement to Sell dated 19.03.2016 was to be settled in the jurisdiction of the Courts at Rudrapur.

5. All the three Agreements, the two Memorandum of Understandings and one Agreement to Sell deal only with purchase of the property being Plot No.6A, Sector-1, Pant Nagar, Industrial Estate, Rudrapur, Udham Singh Nagar, Uttarakhand admeasuring 20357 sq. meters. In last of the Agreement to Sell dated 19.03.2016, which actually amounts to novation the MoU in which the parties have unambiguously stated that the jurisdiction would be



the Courts at Rudrapur, Udham Singh Nagar, Uttarakhand.

6. Learned Counsel for the Petitioner contends that all the three documents have to be read together and it predominantly mentions was that the Courts at New Delhi have the jurisdiction to entertain the instant petition. This Court is not in a position to accept the arguments of the learned Counsel for the Petitioner.

7. All the Agreements have culminated into one Agreement to Sell determining the rights and liabilities of the parties, wherein the parties have agreed to submit themselves to the Court at Rudrapur.

8. Learned Counsel for the Respondent raises an objection stating that Petitioner has already approached the High Court of Uttarakhand at Nainital for appointment of an Arbitrator being ARB. P. No.31/2018 and the Petitioner withdrew the same on 04.12.2020 without taking liberty to file a fresh petition. He, therefore, states that the present petition is not maintainable in view of the judgment passed by the Apex Court in HPCL Bio-fuels Ltd. v. Shahaji Bhanudas Bhad, **2024 SCC OnLine SC 3190** which states that if petition under Section 11 of the Arbitration and Conciliation Act is withdrawn without taking a leave of the Court to file a fresh petition under Section 11 on the same cause of action, the second petition is not maintainable.

9. This Court is not going into the question as to whether there is a change of cause of action or not. However, in view of the fact that this petition is not maintainable in this Court on the ground of territorial jurisdiction, this Court is not inclined to entertain the instant petition.

10. At this stage, learned Counsel for the Petitioner seeks permission to withdraw the instant petition with liberty to avail remedies available in



accordance with law.

11. Leave and liberty, as prayed for, is granted.

12. This Court is not making any observation on the merits of the case and or on the fact as to whether there has been a change of cause of action permitting the Petitioner to approach the Courts at Nainital to file a fresh petition.

13. The instant Petition is disposed of along with pending applications, if any.

**SUBRAMONIUM PRASAD, J**

**JANUARY 24, 2025**

*RJ*