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

+ **ARB.P. 1019/2024**

VALUE LINE INTERIORS PRIVATE LIMITEDPetitioner

**Through: Mr.Namit Suri, Ms.Purnima Singh and
Ms.Tanya Sharma, Advocates**

versus

M/S UNISON HOTELS PRIVATE LIMITEDRespondent

Through: Mr.Gaurav Bahl, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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28.01.2025

1. By way of present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act'), the petitioner seeks appointment of Arbitral Tribunal (hereafter, referred to as 'AT') comprising of a Sole Arbitrator, to adjudicate the disputes between the parties.

2. This is the second instance of the petitioner seeking to invoke arbitration. The petitioner was awarded various works orders dated 01.07.2008, 28.08.2008, 28.11.2008 and 28.12.2008 by the Respondent for redevelopment/development of the property known as Hotel "The Grand", Vasant Kunj, New Delhi. Certain disputes arose between the parties and the petitioner invoked arbitration for the first time vide notice under Section 21 of the A&C Act dated 30.06.2011. The petitioner had approached this Court under Section 11 of the Act, subsequent to which a Sole Arbitrator was appointed. In the said proceedings, the right of respondent to cross-examine



the witnesses of the petitioner was closed. The award was pronounced on 08.05.2015. The respondent's challenge under Section 34 of the A&C Act being O.M.P. (COMM) 97/2016 was dismissed vide judgement dated 01.03.2021. Aggrieved by the said dismissal, respondent preferred an appeal under Section 37(1)(c) of the A&C Act being FAO(OS) (COMM) 47/2021. The Division Bench of this Court allowed the appeal of the respondent and set aside the award vide judgement dated 30.10.2023. The SLP preferred by the petitioner against the Division Bench judgement came to be dismissed on 08.12.2023. Thereafter, the petitioner has invoked fresh arbitration vide notice dated 14.05.2024 issued under Section 21 of the A&C Act.

3. Learned counsel for the petitioner submits that there is a legal, binding and subsisting arbitration agreement entered into by the parties contained in clause 24 of the work orders. It is submitted that once the previous arbitral award was set aside, the dispute stood revived and there is no bar to the petitioner invoking arbitration again. Reliance is placed on the decision of the Full Bench of this Court in Steel Authority of India Limited v. Indian Council of Arbitration and Anr., reported as **2016 SCC OnLine Del 1921**.

It is further submitted that the award was not set aside on merits, but because it was deemed that the respondent herein was unable to present its case, and hence *Res judicata* would have no applicability. On the aspect of limitation, it is submitted that as per Section 43(4) of the A&C Act, the period between commencement of the Arbitration and the date of the order of the Court setting aside the Arbitral Award shall be excluded in computing the period of limitation. Moreover, it is contended that the question of limitation could be looked into by the AT.



4. Learned counsel for the respondent has opposed the present petition by contending that there is no arbitration clause between the parties. It is submitted that while setting aside the previous award, Court has granted no liberty to the petitioner to once again agitate the same issue. It is submitted that even the Supreme Court while dismissing the challenge of the petitioner did not grant it any liberty to reinvoke arbitration. It is next contended that though the Court could have exercised its powers under Section 34(4) of the A&C Act and remanded the matter back to the AT, it chose not to do so. Reliance is placed on the decision of Supreme Court in Kinnari Mullick and Anr. v. Ghanshyam Das Damani, reported as **(2018) 11 SCC 328**. Lastly, it is submitted that the claims are stale and barred by limitation.

5. In rejoinder, it is submitted that Section 34(4) of the A&C act would be inapplicable in the present case. Reliance is placed on SBI General Insurance Co. Ltd. v. Krish Spinning, reported as **2024 SCC OnLine SC 1754** to contend that scope of enquiry at the stage of section 11 of the act is limited to scrutiny of *prima facie* existence of the arbitration agreement and nothing else.

6. I have heard learned counsel for the parties and gone through the records.

7. In the previous round of the arbitral proceedings, the respondent had approached the Supreme Court after several unsuccessful attempts at challenging the decision of the AT closing its right to file the Statement of Defense. The Supreme Court vide order dated 27.04.2015 had directed that the respondent may approach the AT within 3 weeks for filing counter claim subject to payment of costs of Rs 50,000/- to the other side. Despite



intimation of this order, the AT, on non-appearance of respondent, closed its right to cross-examine the witnesses of the petitioner on 28.04.2015 and matter was fixed for arguments for the next day, i.e., 29.04.2015 and reserved for final pronouncement. In the meantime, the respondent had complied with the order of the Supreme Court within the stipulated time. The award was pronounced on 08.05.2015. The Division Bench of this Court set aside the award, holding that it was against the public policy because it was in defiance of the direction of the Supreme Court. The Division Bench held that the manner in which the tribunal immediately took up the matter and reserved it for orders before the time granted to respondent by Supreme Court expired rendered the respondent incapable to present its case and also made the order of the Supreme Court illusory.

8. Once the arbitral award is set aside, the parties are relegated to their original positions, and can once again invoke arbitration. Reference in this regard may be made to the decision of the Full Bench of this Court in Steel Authority of India Limited (Supra), wherein it was held that: -

17. The decisions of the Division Benches of this Court in National Highways Authority of India v. ITD Cementation India Ltd. 2008 (100) DRJ 431 (DB) and BSNL v. Canara Bank 169 (2010) DLT 253 (DB) holding that the power to remit disputes back to the Arbitral Tribunal is envisaged in Section 34 (4) of the Arbitration and Conciliation Act, 1996 cannot be understood to have laid down that in the absence of such remand by the Court, the parties are precluded from invoking the Arbitration clause for settlement of the same dispute. As already mentioned above, we are of the view that in the event of the Arbitral award being set aside by the Court under Section 34, the dispute between the parties stands revived and the same can be settled in terms of the Arbitration clause under the agreement.

9. It has been contended on behalf the respondent that there existed no arbitration clause between the parties. However, this claim falters in view of



the fact that one round of arbitration between the parties already stands concluded with respect to the same work orders without this objection being raised with any seriousness. Pertinently, in the first round, the respondent vide reply dated 29.07.2011 to the petitioner's notice under Section 21 of the Act, had objected to the lack of arbitration clause only with respect to the 1st work order dated 01.07.2008. However, the arbitration proceedings were initiated with respect to all four work orders. The respondent failed to raise any objection either at the stage of reference under Section 11, or at any time during the pendency of arbitration proceedings and is thus precluded from raising it now.

10. Respondent has contended that the re-invocation by the Petitioner is not pursuant to a remand ordered under Section 34 (4), which may have lent legitimacy to the re-invocation. The award was set aside in an appeal filed under Section 37 against the court's refusal to set aside the award under Section 34. According to this court, this issue is irrelevant since a remand under Section 34(4) would not have required a re-invocation of arbitration. So, the question for consideration is, whether upon the setting aside of the award, the cause to sue still survive in favour of the Petitioner, upon the setting aside of the award. Pertinently, the award was not set aside on the merits of the dispute, which would have otherwise given some right to the respondent to claim res judicata to oppose re agitation of the same claims.

11. It can't be further ignored that the award was set aside at the behest of the respondent who felt aggrieved by the alleged unfair denial of opportunity of hearing before the AT. Having convinced the court that it must be permitted to contest the claim, the respondent is estopped from contesting that the petitioner has no right to proceed *de novo* with the arbitration.



Respondent cannot be permitted to approbate and reprobate.

12. Be that as it may, it would be open to the respondent to raise the plea of the claims being barred by limitation before the Arbitral Tribunal which would be the appropriate forum for adjudicating the said issue.

13. *Per se*, there is no bar to re-invocation of the arbitral proceedings once an award is set aside, unless the petitioner's claims are hit by res judicata. This court does not believe-prima facie, though, that mere re-invocation is hit by res judicata. However, the issue will be best decided by the AT once the claims are filed and the respondent has the opportunity to file its defense. Respondent is at liberty to raise all disputes that it may be advised, challenging the maintainability of the claims on all grounds, including validity of re-invocation of arbitration.

14. Existence of arbitration agreement is not in dispute. No more inquiry is warranted at this stage in deciding if the re-invocation is legally valid. In view of the above, the present petition is disposed of with the following directions:

- i) The disputes between the parties under the said agreement are referred to the Arbitral Tribunal.
- ii) Mr Justice Vinod Goel, former Judge at High Court of Delhi (Mob. No. 9910384637) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
- iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018 or as the parties may agree.



- iv) The learned Arbitrator shall furnish a declaration in terms of Section 12 of the A&C Act prior to entering into the reference.
- v) It is made clear that all the rights and contentions of the parties, including on the existence and validity of the Arbitration agreement, arbitrability of any of the claim/counter claim, any other preliminary objection, need and legality of interim relief, as well as contentions on merits of the dispute by either of the parties, are left open for adjudication by the learned arbitrator.
- vi) The parties shall approach the learned Arbitrator within four weeks.

MANOJ KUMAR OHRI, J

JANUARY 28, 2025
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