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

\+ ARB.P. 1793/2024

MBOOK TECHNOLOGY PRIVATE LIMITED .....Petitioner

Through: Mr. Pallav Saxena, Mr. Neeraj Malik, Mr. Karan Chopra, Advs.

versus

M S SHIVAAY RECYCLING SOLUTIONS THROUGH ITS PARTNERS & ORS. .....Respondents

Through: Mr. Sourabh Leekha, Adv.

**CORAM:**
**HON’BLE MR. JUSTICE JASMEET SINGH**

**<u>O R D E R</u>**

% **30.04.2025**

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (“*the Act*”) seeking appointment of an arbitrator to adjudicate the disputes between the parties, arising out of the Agreement dated 30.09.2023.

2. The brief facts of the case as per the petitioner are that the parties entered into an agreement dated 30.09.2023 for the purpose of sale and purchase of scrap materials.

3. Respondent No. 1 is a partnership concern and respondent Nos. 2-5 are the partners of respondent No. 1.

4. Since there were disputes between the parties, the petitioner invoked arbitration against the respondents in terms of Clause 10 of the Agreement and *vide* legal notice dated 27.09.2024.

5. Clause 10 of the Agreement reads as under:

> “*10. APPLICABLE LAW & DISPUTE RESOLUTION*
>
> *This Agreement shall be governed by, and construed in*

*accordance with, the laws of India. Any dispute arising out of or in relation to this Agreement shall be subject to the exclusive jurisdiction of the courts of New Delhi, to which each of the Parties agrees to submit for these purposes.*

*Disputes arising out of or in connection with this Agreement shall be settled in the first instance amicably. In the event no amicable resolution or settlement is reached within a period of 3 0 (thirty) days from the date on which the above-mentioned dispute or difference arose, such dispute or difference shall be finally settled by arbitration.*

*Arbitration proceedings shall commence after a Party issues a written notice of arbitration to the other Party, stating their intention to refer the dispute for arbitration and providing details of the issues to be resolved. The arbitral proceedings shall be conducted by a sole arbitrator, mutually appointed by and agreed upon by both Parties. The appointment of the arbitrators shall be in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any subsequent enactment or amendment thereof The governing law of the arbitration shall be Indian Law and the seat and venue of such arbitration shall be Delhi*."

6. Mr. Saxena, learned counsel appearing on behalf of the petitioner, states that as a direct consequence to the vexatious and nefarious acts

of the respondents, apart from its claims for damages and interest, there is an outstanding principal amount of Rs.2,18,38,374.08/- which remains due and outstanding on the part of the respondents payable to the petitioner in terms of its ledger. In addition, since the petitioner is only seeking adjudication of its claims against the respondents, it has already filed no due certificate from the lenders.

7. Mr. Leekha, learned counsel appearing on behalf of the respondents has advanced twofold submissions, namely:

A. There are two tripartite agreements executed between the petitioner, the respondents and the lenders dated 30.09.2023 and 26.03.2024. Under the said tripartite agreements, the bills raised by the respondents towards the supply of scrap were to be discounted by the lender. It is stated that the bills have all been discounted and there are no amounts due and payable to the petitioner and hence, the lenders of the tripartite agreements are proper and necessary parties and a consolidated reference should be made to the arbitrator. Reliance is placed on ***P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. & Ors., (2012) 1 SCC 594,*** and more particularly para 19, which reads as under:

> *"19. If A had a claim against B and C, and there was an arbitration agreement between A and B but there was no arbitration agreement between A and C, it might not be possible to have a joint arbitration against B and C. A cannot make a claim against C in an arbitration against B, on the ground that the claim was being made jointly against B and C, as & was not a party to the arbitration agreement.*

*But if A had a claim against Band C and if A had an arbitration agreement with B and A also had a separate arbitration agreement with C, there is no reason why A cannot have a joint arbitration against B and C. Obviously, having an arbitration between A and B and another arbitration between A and C in regard to the same claim would lead to conflicting decisions. In such a case, to deny the benefit of a single arbitration against B and C on the ground that the arbitration agreements against B and C are different, would lead to multiplicity of proceedings, conflicting decisions and cause injustice. It would be proper and just to say that when A has a claim jointly against B and C, and when there are d provisions for arbitration in respect of both B and C, there can be a single arbitration*."

B. Additionally, it is stated that the Agreement dated 30.09.2023 executed between the petitioner and the respondents has been executed based on fraud and misrepresentation as it was never the intention of the parties to enter into the said agreement, however, the intention of the parties was to incorporate a joint venture on 50% sharing profit basis. He draws my attention to an e-mail dated 06.07.2023 sent by the petitioner to the respondents offering Joint Venture Business Module and an undated response, wherein the said offer of the petitioner was accepted by the respondents. Once the said offer and acceptance was concluded, there was no requirement of the respondents to be appointed as a supplier and to enter into the said Agreement, wherein the parties would get into a relationship of vendors/ vendee for the purpose of sale and purchase of the scrap materials. Reliance is placed on ***Bharat Rasiklal Ashra v. Gautam Rasiklal Ashra & Anr., (2012) 2 SCC 144***, and more particularly para 16, which reads as under:

> *"16. The learned counsel for the first respondent next submitted that if the Chief Justice or his designate is required to examine the allegations of fabrication and forgery made by a party in regard to the contract containing the arbitration agreement, before appointing an arbitrator under Section 11 of the Act, the proceedings under the said section will cease to be a summary proceedings, and become cumbersome and protracted, necessitating recording of evidence, thereby defeating the object of the Act. In our considered view this apprehension has no relevance or merit. Existence of a valid and enforceable arbitration agreement is a condition precedent before an arbitrator can be appointed under Section 11 of the Act. When serious allegations of fraud and fabrication are made, it is not possible for the court to proceed to appoint an arbitrator without deciding the said issue which relates to the very validity of the arbitration agreement. Therefore the fact that the allegations of fraud, forgery and fabrication are likely to involve recording of evidence or involve some delay in disposal, are not grounds for refusing to consider the existence of a valid arbitration agreement."*

8. I have heard learned counsel for the parties and perused the material

available on record.

9. The case of the petitioner is that it is seeking adjudication of its claims against the respondents only and there are no claims of the petitioner against the lenders and the petitioner has already filed no due certificate from the lenders.

10. However, it is the case of the respondents that for proper and effective adjudication and to come to the finding that there is no due payable from the respondents to the petitioner, the lenders are the proper and necessary party.

11. It is pertinent to note that the statement of account filed by the petitioner shows payments made by the lenders to the respondents, which is now being sought to be appropriated as payment made by the petitioner and sought to be claimed in the proposed arbitration.

12. The Coordinate Bench of this Court in ***Indraprastha Power Generation Co. Ltd. v. Hero Solar Energy Pvt. Ltd., 2024 SCC OnLine Del 6080***, has already differed from the view in ***Arupri Logistics Pvt. Ltd. v. Vilas Gupta, (2024) 308 DRT 327***, subsequent to the decision of ***Cox and Kings Ltd. v. SAP India Pvt. Ltd., 2023 SCC OnLine SC 1634 (Cox and Kings - II)***.

13. The operative portion of ***Indraprastha Power Generation Co. Ltd. (supra)*** reads as under:

> *"24. These passages indicate that the Section 11 Court should leave, to the Arbitral Tribunal, the decision as to whether a non-signatory to the arbitration agreement should be bound by it. The corollary would obviously be that if the Arbitral Tribunal were to find that a*

*nonsignatory is bound by arbitration agreement, it would necessarily have to include such non-signatory in the arbitration proceedings. Following Cox and Kings-II, therefore, it may be possible to argue that an Arbitral Tribunal does possess the jurisdiction to implead non-signatories who may be bound by the outcome of the arbitral proceedings."*

14. For the said reasons, the fact whether the lenders are a party to the arbitration proceedings and need to be impleaded or not, is left open to the appointed arbitrator to decide the same in accordance with law.

15. As regards the contention of fraud and misrepresentation, the signatures of the respondents appearing on the Agreement dated 30.09.2023 are not in dispute. I am of the view that whether the same was executed under fraud or misrepresentation are questions which will require detailed evidence and hence, a referral court is not required to go into the same.

16. The appointed arbitrator will be free to adjudicate the same as and when the parties lead their evidence in this regard.

17. For the said reasons, the petition is allowed with the following directions:

    i) Mr. Justice Satish Kumar Agnihotri (Retd.) (Mob. No. 9498095770) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

    ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the

'DIAC').

iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

vi) The parties shall approach the learned Arbitrator within two weeks from today.

18. The present petition is disposed of in the aforesaid terms.

**JASMEET SINGH, J**

**APRIL 30, 2025/DM**

*Click here to check corrigendum, if any*