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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 402/2024**
SHRI RAMESH CHANDRA AGARWALAppellant
Through: **Mr. Gaurav Kumar Singh,**
Advocate.
versus
SH RAJEEV KUMARRespondent
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

ORDER
09.04.2025

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CM APPL. 75883/2024

1. This is an application for condoning the delay of approximately 205 days in preferring the instant appeal.
2. For the reasons stated in the application, the delay is condoned.
3. The application is disposed of.

FAO 402/2024

4. This is an appeal under Section 104 read with Order XLIII of the Code of Civil Procedure, 1908 [**CPC**] against an order dated 15.03.2024 under Section 8 of the Arbitration and Conciliation Act, 1996 [**Arbitration Act**] allowing the application filed by the Respondent herein for referring the parties to arbitration in view of an MoU dated 23.12.2023.
5. The learned counsel for the Appellant has submitted that the said MoU dated 23.12.2023 had never been executed between the parties and the same is a forged and fabricated document filed by the Respondent. The learned counsel for the Appellant has further submitted that the issue with regard to the existence and validity of the MoU ought to have been decided by the learned District Court and the



order passed under Section 8 of the Arbitration Act requires to be set aside. The learned counsel for the Appellant has also relied upon the decision of *Magic Eye Developers Private Limited v. Green Edge Infrastructure Private Limited and Others* (2023) 8 Supreme Court Cases 50 in support of his submission.

6. It is trite law that Section 8 of the Arbitration Act casts an obligation on the court to refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists.

7. In the present case, the learned District Court has examined the aspect of existence and validity of the arbitration agreement and in view of the decisions of the Hon'ble Supreme Court of India on the issue of arbitrability of the dispute and with regard to the existence and validity of the arbitration agreement, has held that all questions relating to the arbitration clause including its existence and validity has to be decided by the arbitrator only.

8. Accordingly, the application under Section 8 of the Arbitration Act filed by the Respondent was allowed and the parties were referred to arbitration.

9. In view of the same, there is no infirmity with the order dated 15.03.2024 passed by the learned District Court by allowing the application under Section 8 of the Arbitration Act as the MoU dated 23.12.2023 has the following clause which shows that *prima facie* there exists an arbitration agreement:

“4. It has been argued by ld counsel for the defendant that an MOU dated 23.12.2023 had been executed between defendant and the plaintiff and it contained a clause being clause no.4 that;

“any dispute or differences arising out of this agreement between the parties, shall be settled by Arbitration under the Arbitration and



Conciliation Act 1996. The arbitration proceedings shall be conducted by Sole Arbitrator to be appointed by mutual consent of the Parties. Seat of Arbitration shall be at Delhi”.”

10. At this stage, the learned counsel for the Appellant submits that the Appellant is agreeable to refer the dispute to arbitration, to be administered by Delhi International Arbitration Centre [DIAC]. In view of the same, it is directed that the DIAC shall issue notice to the Respondent and subject to the Respondent agreeing, both the parties will jointly submit to the arbitration to be administered by DIAC.

11. A copy of this order shall be sent to the learned Co-ordinator DIAC for compliance.

12. The appeal is disposed of in the aforesaid terms.

TEJAS KARIA, J.

APRIL 09, 2025/sms