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

+ **ARB.P. 52/2025**

MS ELAN FASHION

.....Petitioner

Through: Mr. Milind Garg, Advocate

versus

MS N AND S EXPORTS

.....Respondent

Through: Mr. Ashish Dass and Ms. Komal Nanda, Advs. Along with Komal, wife of proprietor

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

02.04.2025

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1. This is a petition filed under Section 11(6) (a) & (c) of the Arbitration and Conciliation Act, 1996 ('Act of 1996'), seeking appointment of an Arbitral Tribunal comprising of a Sole Arbitrator, to adjudicate the disputes between the parties as per arbitration agreement contained in the Tax Invoices dated 12.10.2022 and 11.05.2022 issued by Petitioner to Respondent.

2. Learned counsel for the Respondent states that while Respondent does not dispute the existence of arbitration agreement and remains ready and willing for appointment of an Arbitrator; however, the Respondent contends that the Petitioner herein was appointed to carry out job work/embroidery work on semi-finished goods at the direction of the ultimate purchaser M/s Continuum Buying Agency.

2.1 He states that M/s Continuum Buying Agency also ought to be a party



to this arbitration however, he fairly states that there is no document placed on record evidencing any written instructions from the M/s Continuum Buying Agency to the Respondent for engaging the Petitioner as a sub-contractor for embroidery.

2.2 He however, states that in the Respondent's email dated 30.12.2022 addressed to M/s Continuum Buying Agency the Respondent has written that Petitioner herein is a nominated person of the M/s Continuum Buying Agency.

2.3 He also admits that there is no document on record evidencing existence of an arbitration clause with M/s Continuum Buying Agency.

2.4 He states that he has e-filed his reply. A copy of the reply has been handed across the bar.

3. In reply, learned counsel for the Petitioner states that none of the emails relied upon by the Respondent are addressed to the Petitioner; and Petitioner does not admit to the contents of the said email.

4. This Court has heard the learned counsels for the parties and perused the record.

5. The claim amount is stated to be Rs. 2,47,456/- approximately. The Respondent's proprietor Ms. Komal Chauhan is present in Court. The suggestion made to parties for considering mediation has been rejected by Respondent.

6. It is a trite law as settled by the Supreme Court in the Judgement of **Vidya Drolia v. Durga Trading Corpn**¹ that at the stage of proceedings under Section 11 of the Act of 1996, this Court is required only to form a prima facie view as to the existence of the arbitration agreement and all



other considerations are to be left to the Arbitral Tribunal. In the facts of the present case where there is a valid arbitration agreement contained in the Tax Invoices dated 12.10.2022 and 11.05.2022 issued by Petitioner to Respondent, which has been considered to be a valid arbitration agreement by the Judgement of coordinate bench of this Court in **Dhawan Box Sheet Containers (P) Ltd. v. SEL Manufacturing Co. Ltd.**². Moreover, the arbitration clause has not been disputed by the Respondent therefore, keeping in mind the limited jurisdiction of the Court at the pre-reference stage, this Court is of the considered opinion petitioner has made out a case for reference to arbitration, leaving all questions open for adjudication by the learned Arbitrator.

7. Since there is no controversy as to the existence of the arbitration agreement and this Court is satisfied that Petitioner has validly invoked arbitration agreement as per section 21 of the Act of 1996. Therefore, considering the quantum of claim amount this court deems it fit to appoint an Advocate as a sole arbitrator to adjudicate the dispute between the parties.

8. Accordingly, the present petition is allowed and **Mr. Sumehar Bajaj, Advocate** (M. No. 9811156505) (email: sumehar@gmail.com) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties. The fee of the learned Arbitrator shall be as per Schedule IV of the A&C Act.

9. The learned Arbitrator is directed to furnish a declaration in terms of Section 12 of the A&C Act before entering into the reference.

10. It is made clear that all the rights and contentions of the parties,

¹ (2021) 2 SCC 1.

² 2024 SCC OnLine Del 4779



including as to the arbitrability of any of the claims, joinder of parties, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

11. The statement of claim will be filed within two (2) weeks.

12. List for first hearing on **30.04.2025** at **04:30 PM** in the office of Sole Arbitrator.

13. With the aforesaid direction, the petition stands disposed of.

14. The Respondent is directed to have its reply brought on record.

15. Copy of the order be sent to the Sole Arbitrator.

16. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

APRIL 2, 2025/hp/AKT

Click here to check corrigendum, if any