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

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Date of Decision : 13.05.2026

+ **FAO (COMM) 242/2023 CM APPL. 61277/2023**

OYO HOTELS AND HOMES PVT. LTD.

.....Appellant

Through: Mr. Nikilesh Ramachandran, Mr. Sagar Kumar Pradhan, Mr. Diptiman Acharya, Mr. Samarth Mehrotra and Mr. Kartik Yadav, Advocates

versus

SHRI AMIT SAMANTA

.....Respondent

Through: Mr. Neil Wadia, Mr. Narayan Wadia, Ms. Jyoti Saini, Ms. Tanvi Munjal and Mr. Piyush Wadia, Advocates

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. (ORAL)

1. This appeal challenges the order dated 10.10.2023 by the learned District Judge (Commercial Court)-02, Dwarka Courts, New Delhi, whereby the application filed by the appellant herein under Section 8 of the Arbitration and Conciliation Act, 1996 ('Act of 1996') seeking reference of the dispute to arbitration was dismissed.

2. It is not in dispute that pursuant to the summons received by the appellant herein, the appellant had filed written statement to which,



replication was also filed by the respondent herein.

3. The learned District Judge noted that the appellant had in the written statement referred to the provisions of the agreement executed between the appellant and the respondent; but without stating the fact that the agreement contains an arbitration clause.

4. In the impugned order, the learned District Judge referring to the judgment of the Supreme Court in ***Sukanya Holdings Pvt. Ltd vs Jayesh H. Pandya & Anr. AIR 2003 SC 2252*** and also the judgment of this Court in the case of ***Mi2C Security Facilities Pvt Ltd vs North Delhi Municipal Corporation***, W.P.(C) 8197/2017, observed that if a party has filed its first statement without any intimation of the arbitration clause before the judicial authority then it would be presumed that the party has waived off its right to invoke the arbitration clause as per Section 8 of the Act of 1996. Relevant part of the order is reproduced as under:-

“3. Perusal of written statement reveals that the defendant had specifically mentioned that plaintiff and defendant had entered into an agreement dated 01.08.2017 and reference was also given to clauses of the said agreement in the written statement. There was no whisper in the entire written statement with regard to said agreement containing arbitration clause nor any such application separately had been moved. Despite the specific mention in the written statement with regard to agreement dated 1.8.2017, same was not even filed alongwith the written statement. Pleadings in the case had already been complete and matter was fixed for framing of issues when the instant application was moved. In these circumstances, since the defendant at the first instance had not invoked for reference of the matter to arbitration, defendant deemed to have waived off its right to invoke arbitration clause.

*4. Hon'ble Apex Court in ***Sukanya Holdings Pvt. Ltd vs Jayesh H.****



Pandya & Anr, observed that section 8 is essentially an acknowledgment of the fact that parties can waive an arbitration agreement. Conditions under section 8 are meant to provide for reading such waiver by conduct. When a suit is filed despite an arbitration agreement, it is an offer by one party to terminate this agreement. If the other party joins the suit by contesting it on substance, it accepts such offer and the arbitration agreement comes to an end. Section 8 provides that failure to invoke the arbitration agreement within reasonable time shall also be deemed to be an acceptance.

5. In *Mi2C Security Facilities Pvt Ltd vs North Delhi Municipal*, W.P.(C) 8197/2017 & CM. No. 33688/2017, it was observed by Hon'ble High Court of Delhi that if the party has filed its first statement without any intimation of the arbitration clause before the judicial authority, then it would be presumed that the party has waived off its right to invoke the arbitration clause as per section 8 of the Arbitration and Conciliation Act.

6. Application u/s 8 of Arbitration and Conciliation Act, in these circumstances, stands dismissed.

7. From the pleadings of parties, following issues are hereby framed:

- (1) Whether the plaintiff is entitled for recovery of the suit amount, as claimed? OPP
- (2) Whether the rights of plaintiff to receive the payments were contingent upon furnishing the requisite compliance documents by defendant? If so, its effect. OPD
- (3) Relief.

8. No other issue arises or is pressed for. Be put up the matter for PE on 1.11.2023 and for DE on 7.11.2023. On request, date for PE is changed to 10.11.2023 and for DE is changed to 20.11.2023.

9. Affidavits in evidence on behalf of witnesses from both sides be supplied in advance to opposite party."



5. The submission of Mr. Nikilesh Ramachandran, learned counsel for the appellant is primarily that the appellant could neither file the application under Section 8 of the Act of 1996 nor refer to the fact that the agreement contains an arbitration clause alongwith the written statement because the appellant was not in possession of the agreement. He states it is after retrieving the agreement that the application was filed and hence, delay, if any, shall have no effect on the merits of the plea of the appellant that the suit is not maintainable and as such the parties need to be referred to arbitration for resolution of their disputes.

6. He states that the obligation to file the agreement was on the respondent and not on the appellant herein.

7. We are not in agreement with the submissions made by Mr. Ramachandran. It was incumbent on the appellant to file the application under Section 8 of the Act of 1996 enclosing the agreement. Failing to do that, and having filed written statement on the substance of the dispute, it is presumed in law that appellant has waived its right to invoke the arbitration clause. The contention that the appellant was not in possession of the agreement at the time of filing the written statement is not appealing. Such a plea, in any way, does not absolve the appellant of the procedural requirements of Section 8 of the Act of 1996.

8. In fact, the respondent herein had also filed a replication to the written statement filed by the appellant. If that be so, the learned District Judge is right in relying upon the judgment in **Mi2C Security Facilities Pvt Ltd (supra)**, wherein this Court has stated as under:-



“8. There is no dispute that the respondent Corporation had initially filed a short affidavit followed by a reply to the additional affidavit filed by the petitioner. The short affidavit was on the merit of the controversy which falls for consideration in the writ petition. So, it follows the short affidavit to the writ petition and reply affidavit to the additional affidavit filed by the petitioner are the first statement on the dispute without resorting to the provisions of Section 8 of the Arbitration and Conciliation Act. If that be so, the respondent having submitted itself to the jurisdiction of this Court / waived its right to invoke Arbitration, cannot contend that the parties herein should be relegated to Arbitration in view of the existence of an Arbitration clause.

9. This proposition of law is well settled by the Supreme Court in the case of **Rashtriya Ispat Nigam Limited vs. M/S Verma Transport Company, (2006) 7 SCC 275** wherein it held that the expression “first statement on the substance of the dispute” contained in Section 8(i) of the Act is different from the expression “written statement”. It held, it employs submission of the party making the application under Section 8 of the Act, to the jurisdiction of the Judicial Authority. What should be decided by the Court is whether the party seeking reference to arbitration has waived its right to invoke Arbitration. The Supreme Court also held, that if an application is filed before actually filing the first statement on the substance of the dispute, then the party cannot be said to have waived its right or acquiesced itself to the jurisdiction of the Court. So, what is, therefore, material is as to whether the petitioner has filed its first statement on the substance of the dispute or not, if not its application under Section 8 of the 1996 Act may not be held wholly unmaintainable. In the case in hand, even though, the affidavit has been referred to as a short affidavit, the respondent has actually submitted the affidavit on the merit of the dispute. Having done that despite taking a plea with regard to arbitration clause, it must be construed that the same does indicate that the respondent Corporation has showed its intention to submit itself to the jurisdiction of the Court. This has also been held by the Supreme Court in the case of **Booz Allen & Hamilton Inc. v. SBI**



Home Finance Ltd., (2011) 5 SCC 532 wherein in para 25, it held not only filing of the written statement in a suit but filing of any statement, application, affidavit by a defendant prior to the filing of the written statement will be construed as submission of a statement on the substance of the dispute if by filing such statement / application / affidavit the defendant shows his intention to submit himself to the jurisdiction of the Court and waived his right to seek reference to Arbitration.

10. It may also be stated here, the short affidavit filed by the petitioner was surely not opposing an interim relief or any connected proceedings and but for the writ petition. Similarly, a Coordinate Bench of this Court in the case of ***M/S S.D.Buildwell Pvt.Ltd. vs. Rail Land Development Authority, 220 (2015) DLT 734***, has in para 52 has held as under:

“52. On the issue raised by the respondent that there was an Arbitration Clause, therefore, the petitioner should approach the Arbitration Tribunal. It is relevant to note that as per Section 8 of the Arbitration and Conciliation Act, 1966, an application should be filed before the party files its first statement on the substance of the dispute. However, the respondent had filed its counter-affidavit on 08.08.2012 whereas the application under Section 8 of the Act was filed on 07.09.2012. Therefore, since the respondent chose to file its application after filing of its first counter-affidavit, the said application is not maintainable.”

11. Even this Court in a recent pronouncement in the case of ***Vikram Sharma v. Union of India W.P.(C) 10588/2016 decided on January 29, 2018*** has by referring to the judgment of the Supreme Court in the case of ***Booz Allen & Hamilton Inc. (supra)*** and this Court in ***S.D.Buildwell Pvt.Ltd. (supra)*** rejected the plea taken by the respondent in that case on the maintainability of the writ petition in view of the existence of an arbitration clause by holding that the respondent having filed its statement on the dispute by way



of a counter affidavit to the writ petition is precluded from taking the plea that there exist an arbitration agreement. In view of the above, the plea of Ms. Biji Rajesh on the non-maintainability of the petition needs to be rejected. Suffice to state, the issue needs to be considered on merit and I accordingly proceed to examine the same.”

9. Keeping in view the facts which we have noted from the record, and the position of law, we are of the view that no fault can be found with the impugned order passed by the learned District Judge.

10. The appeal being without any merit is dismissed. The pending application has become infructuous and is dismissed.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

MAY 13, 2026/rhc