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

+ RFA(COMM) 419/2024

M/S GUNSHIKHA MARKETING CO.Appellant

Through: Mr. Sumit Wadhva and Mr.
Bharat Bhushan, Advs.

versus

AWADHESH PRASADRespondent

Through: Mr. Ganesh C Pandey and Ms.
Kriti Sinha, Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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22.01.2026

1. Through the present Appeal, the Appellant [Plaintiff before the Commercial Court] assails the correctness of the Judgment and decree dated 05.07.2024 [hereinafter referred to as 'Impugned Judgment'] passed by the learned District Judge, Commercial Court-08, Central, Tis Hazari Courts, Delhi in CS (COMM.) No.264/2024 captioned ***M/s Gunshikha Marketing Co. v. Awadhesh Prasad.***

2. The Commercial Court has referred the parties to the Arbitrator after finding that there is an agreement containing an arbitration clause. The correctness of the Impugned Judgment is challenged by the Appellant on the ground that such objection was taken for the first time, much after the Respondent [Defendant before the Commercial Court] submitted the first written statement on the substance of the dispute.

3. Facts, in brief, are required to be noticed in order to comprehend the controversy involved in the present case.

4. The Appellant filed the suit on 16.02.2024 for recovery of



Rs.6,00,000/- along with interest @ 18% p.a. with applicable GST @ 12% on such interest.

5. Notice was issued in the suit and the Respondent entered appearance on 20.03.2024. The Respondent filed his written statement dated 05.04.2024 on 06.04.2024. At that stage, the Appellant filed an application for permission to amend the plaint, which was allowed on 20.04.2024.

6. Thereafter, the Respondent filed another written statement to the amended plaint on 27.04.2024.

7. It is an admitted position on the record that while filing written statement to the un-amended plaint, the Respondent did not object to the continuation of the suit on the ground that this matter is required to be adjudicated by the Arbitral Tribunal.

8. At this juncture, it is pertinent to refer to Section 8 of the Arbitration and Conciliation Act, 1996, which is reproduced hereinbelow:

“8. Power to refer parties to arbitration where there is an arbitration agreement.—1 [(1)A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.]

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or



its duly certified copy before that Court.]

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

9. It is evident that the Respondent filed his first written statement on the substance of the dispute on 06.04.2024, but did not choose to object to the maintainability of the suit on the ground that the parties are required to get their dispute resolved through arbitration. Hence, this Court is of the considered opinion that the Respondent has failed to avail the opportunity, which was available to him at the first instance.

10. Consequently, the present Appeal is allowed and the Impugned Judgment is set aside. The suit is restored to its original number. The parties, along with their respective counsel, are directed to appear before the Commercial Court on 05.02.2026 for proceeding with the suit.

11. The Appeal stands disposed of.

ANIL KSHETARPAL, J

AMIT MAHAJAN, J

JANUARY 22, 2026

s.godara/shah/ad