



2024:DHC:8633



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

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Date of Decision: 07.11.2024

+ **ARB.P. 1455/2024**

KANWAR SINGH YADAV

.....Petitioner

Through: Mr. Kaushal Kapoor, Adv.

versus

**DELHI TOURISM AND TRANSPORT DEVELOPMENT
CORPORATION LIMITED**

.....Respondent

Through: Mr. Vaibhav Kalra, Ms. Anisha
Upadhyay and Ms. Neha Bhatnagar,
Adv. and Mr. Ramniwas, AG
(Legal), DTTDC.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL.)

1. The present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of an agreement dated 25.01.2021 entered into between the respondent no.1 and 'M/s Kanwar Singh Yadav, Caterers, Canteen and Kiosk Contractor', through its proprietor/authorized signatory, Mr. Kanwar Singh Yadav.
3. The aforesaid agreement dated 25.01.2021 contains an arbitration clause which is in the following terms:

"18.3 ARBITRATION

18.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 18.2 shall be decided by reference to Arbitral Tribunal appointed in accordance with Clause 18.3.2. Arbitration shall



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be held in accordance with the provisions of Arbitration and Conciliation Act, 1996. The venue of arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

18.3.2 The Arbitral Tribunal shall consist of a panel of three arbitrators. Each Party shall appoint/nominate one arbitrator, and the third arbitrator shall be jointly appointed by the two arbitrators so appointed and in the event of disagreement between the two arbitrators or failure to nominate an Arbitrator by any party, the appointment shall be made in accordance with the Arbitration and Conciliation Act, 1996.

18.3.3 The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 18 shall be final and binding on the Parties as from the date it is made, and the Operator and DTTDC agree and undertake to carry out such Award without delay.

18.3.4 The Operator and DTTDC agree that an Award may be enforced against the Operator and/or DTTDC, as the case may be, and their respective assets wherever situated.

18.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder."

4. Disputes having arisen, an invocation notice dated 11.06.2024 was sent by the petitioner to the respondent. The said notice, apart from setting out the claims sought to be raised in arbitration proceedings *inter-alia* states as under:

"It is stated that Clause 18.3.2 provide for an Arbitral Panel of three Arbitrators to be appointed in the manner provided therein. However, we hereby suggest that, considering the claim, both the parties can mutually agree to appoint a Arbitral Tribunal having a sole Arbitrator.

In these circumstances, we hereby call upon you to do the following:

a) convey, in written, your acceptance to our suggestion to have Arbitral panel having a sole Arbitrator for adjudication of our claim, so that we can approach the Hon'ble High Court for appointment of the Arbitrator;



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b) in the alternative, suggest your nominee Arbitrator as per Clause 18.3.2 of the Agreement, so that, we may proceed to appoint our nominee Arbitrator for constitution of the Arbitral Tribunal;

within a period of 21 days of receipt of this notice, failing which we shall be constrained to approach the Hon'ble Court seeking appointment of an Arbitrator as per law.”

5. No response to the aforesaid notice was sent by the respondent. Hence, the present petition has come to be filed.

6. Learned counsel for the respondent raises an objection as to the maintainability of the present petition on the ground that the petitioner was not a party to the agreement between the parties. Instead, a sole proprietorship concern, namely “M/s Kanwar Singh Yadav”, was a party to the agreement whereas the present petition has been filed by a partnership firm. It is submitted that since the party which has invoked the arbitration is not a party to the original arbitration agreement, the present petition is not maintainable and is liable to be dismissed on this ground alone.

7. In response, learned counsel for the petitioner has contended that the petitioner is the successor in interest of the entity which entered into the agreement with the respondent. In this regard it has been averred in the petition as under:

*“1. The Petitioner M/s. Kanvvar Singh Yadav is currently a registered partnership having Mr. Sachin Yadav and Ms. Kaushlaya as its partners in the partnership firm. The Petitioner is also the successor in interest of Mr. Kanwar Singh Yadav, who was earlier the proprietor of the Petitioner and expired on April 09, 2024. This Petition is signed on behalf of the Petitioner by Mr. Sachin Yadav, who is a partner of the Petitioner. Copy of the registration details of the Petitioner along-with the partnership deed of the Petitioner is annexed hereto as **Document-I.**”*



8. The scope of the present proceedings is confined to ascertaining whether there exists an arbitration agreement between the parties.

9. As held in the decision of the Supreme Court in *In Re: Interplay between Arbitration Agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*, bearing the Curative Petition (C) No. 44/2023 decided on 14.12.2023, the scope of enquiry of the Court at the stage of appointing an arbitrator is restricted to only examining the existence of the agreement. The relevant portion of the decision is reproduced as under –

“208. The Statement of Objects and Reasons of the 2015 Amendment Act are as follows:

“(iii) an application for appointment of an arbitrator shall be disposed of by the High Court or Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of sixty days.

(iv) to provide that while considering any application for appointment of arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues.”

209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings.
.....”

10. In *SBI General Insurance Co. Ltd. v. Krish Spinning*, 2024 INSC 532, the Supreme Court has further clarified that at the stage of appointing an arbitrator, the Court’s role is limited to determining the prima facie



existence of an arbitration agreement, and “nothing else”. It was observed therein as follows:

“113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in *In Re: Interplay (supra)* that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow:

“209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. [...]”

(Emphasis supplied)

114. In view of the observations made by this Court in *In Re: Interplay (supra)*, it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement and nothing else. For this reason, we find it difficult to hold that the observations made in *Vidya Drolia (supra)* and adopted in *NTPC v. SPML (supra)* that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out *ex-facie* non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in *In Re: Interplay (supra)*.

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123. The power available to the referral courts has to be construed in the light of the fact that no right to appeal is available against any order



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passed by the referral court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the arbitral tribunal at the nascent stage of Section 11, the referral courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if its Section 11 application is rejected.”

11. Thus, the objections raised by the respondent as regards the capacity of the petitioner to initiate arbitration is an aspect which is necessarily required to be gone into the arbitration proceedings, however the same cannot preclude constitution of an Arbitral Tribunal.

12. Needless to say, it shall be open to the respondent to raise appropriate jurisdictional/preliminary objections before the Arbitral Tribunal as regards the maintainability of the arbitration and/or the arbitrability of the claim sought to be raised.

13. At this stage, respective counsel for the parties jointly submit that although the relevant clause in the agreement contemplates a three member tribunal, a Sole Arbitrator may be appointed by this Court to adjudicate the disputes between the parties.

14. Accordingly, Mr. Ashish Dixit, Advocate (Mob. No.: +91.9999900412) is appointed as the learned Sole Arbitrator to adjudicate the disputes between the parties.

15. As agreed by respective counsel, the learned Sole Arbitrator at the outset decide, the preliminary/jurisdictional objections raised by the respondent before proceeding to adjudicate on merits.

16. It is further agreed by the respective counsel for the parties that the arbitration shall take place under the aegis of and under the rules of Delhi International Arbitration Centre (DIAC). It is directed accordingly.

17. The learned Sole Arbitrator may proceed with the arbitration



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proceedings subject to furnishing to the parties requisite disclosure as required under Section 12 of the A&C Act.

18. The parties shall share the arbitrator's fee and arbitral costs, equally.

19. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

20. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the case.

21. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 7, 2024/cl