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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 13.11.2024

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ARB.P. 992/2024

DELHIVERY LIMITED

.....Petitioner

Through: Mr. Naman Joshi and Mr. Guneet
Sidhu, Advocates.

versus

STERNE INDIA PRIVATE LIMITED

.....Respondent

Through: Mr. Sumit Roy and Mr. Siddharth
Mahajan, Advocates.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

1. The present petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeking appointment of a Sole Arbitrator. The disputes between the parties have arisen in context of a Delivery Services Agreement dated 23.11.2020 (hereinafter '*the agreement*').

2. Disputes between the parties have arisen on account of non-payment of the outstanding monetary entitlements of the petitioner under the said agreement. A notice invoking arbitration dated 10.04.2024 was sent by the petitioner wherein names of three persons were proposed, out of whom, any one could be appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

3. Despite further email correspondences being exchanged between the parties, an amicable resolution of the disputes could not be arrived at. As the parties also could not agree upon the appointment of a Sole Arbitrator, the present petition has been filed.



4. Clause 19 of the aforesaid agreement contains an arbitration clause as follows:-

“19. Governing Law and Dispute Resolution: This Agreement shall be governed by the laws of India, for the time being in force and the courts at New Delhi shall have exclusive jurisdiction to preside over matters arising hereunder. The Parties shall first endeavour to resolve their disputes amicably within fifteen (15) days from the date on which the dispute was first notified. In the event, the Parties fail to resolve the dispute amicably, the dispute shall be referred to arbitration. The Parties agree to mutually appoint a sole arbitrator. The venue/seat of Arbitration shall be Gurgaon and the language of arbitration shall be English. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect.”

5. It can be seen from the aforesaid clause that the choice of seat is not unequivocal and Gurgaon has been referred to as the venue/seat of arbitration. More importantly, however, the preceding part of the same clause specifically contemplates that Courts at New Delhi shall have exclusive jurisdiction to preside over “matters arising hereunder”. The succeeding part of the clause provides for the arbitration mechanism. It is thus evident, that the arbitration mechanism created under Clause 19 has been made, by the very same clause, to be subject to the exclusive jurisdiction of Courts in New Delhi.

6. Thus, the situation involved in the present case is akin to the situation in *Cars24 Services Pvt. Ltd. v. Cyber Approach Workspace LLP* AIR OnLine 2020 Del 1577 wherein the seat of arbitration was prescribed to be New Delhi and the same clause therein provided that “either party may approach a Court of competent jurisdiction at Haryana for appointment of the Sole Arbitrator”. In this context it was observed by this Court as under:-

“Where, therefore, the seat of arbitration is at place X, and exclusive jurisdiction over the subject matter of the suit is conferred on courts at place Y, a petition under Section 11 would unquestionably lie before the courts at place X. The



present case, however, is different, as the exclusive jurisdiction conferred by the arbitration agreement is not in respect of the subject matter of the suit but specifically for appointment of an arbitrator. It would be doing violence to the said clause, therefore, if this Court were to treat the exclusive jurisdiction clause as limited to the subject matter of the suit, and exercise Section 11 jurisdiction contrary to the mandate thereof.”

7. As noticed, in the present case also, although Clause 19 provides that the venue/seat of arbitration shall be Gurgaon, the very same clause makes the arbitration subject to the exclusive jurisdiction of Courts in Delhi. The exclusive jurisdiction clause, in the light of the peculiar language of the clause, is not in the nature of a generic stipulation; rather, it is referable to the conduct of arbitration proceedings.

8. In view of the aforesaid, judgments cited by learned counsel for the respondent are clearly distinguishable in the facts and circumstances of the present case and in the light of the peculiar language of the arbitration agreement herein.

9. It has also been rightly pointed out by the petitioner that in the context of an identical clause, this Court in ***Delhivery Ltd. v. Transkart Logistics Pvt. Ltd. & Anr.*** ARB.P. 167/2023 has exercised jurisdiction under Section 11 of the A&C Act.

10. In some other judicial pronouncements as well, this Court has taken the view that where exclusive jurisdiction has been conferred on a Court in respect of matters relating to arbitration, the same shall be construed to be a clear ‘contrary indicia’ and that the said court, upon which exclusive jurisdiction has been conferred, would be the juridical seat of arbitration.

11. In ***Hunch Circle Private Limited v. Futuretimes Technology India Pvt. Ltd.*** Arb. P. 1019/2021, this Court observed as under:-



“6. Clause 8.1 ordains that courts located at Gurgaon would have exclusive supervisory jurisdiction “especially for granting interim relief and enforcing arbitral awards”. Thus, Sections 9 and Section 34 jurisdiction have, per contract, been invested in courts at Gurgaon. That being so, Section 11 jurisdiction would necessarily lie with the High Court of Punjab and Haryana, which exercises jurisdiction over Gurgaon, and not with this Court, despite fixation of the seat or arbitration at Delhi. Else, a piquant situation would arise in which Section 11 jurisdiction would be exercised by this Court and Section 9 and Section 34 jurisdiction would be exercised by courts at Gurgaon.”

12. In ***Virgo Softech Ltd. v. National Institute of Electronics and Information Technology*** 2018 SCC OnLine Del 12722, the Court while considering a somewhat similar situation held as under:-

“5. Clause 8.2 of the GCC is quoted hereinbelow:

8.2 Arbitration

a) In the case of dispute arising upon or in relation to or in connection with the contract between the Purchaser and MSP-1, which has not been settled amicably, any party can refer the dispute for Arbitration under (Indian) Arbitration and Conciliation Act, 1996. Such disputes shall be referred to the sole arbitrator nominated by DIT.

b) Arbitration proceedings shall be held in New Delhi and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

The decision of the arbitrators shall be final and binding upon both parties. The expenses of the arbitrators as determined by the arbitrators shall be shared equally by the Purchaser and MSP-1. However, the expenses incurred by each party in connection with the preparation, presentation shall be borne by the party itself. All arbitration awards shall be in writing and shall state the reasons for the award. The courts in Chandigarh only shall have exclusive jurisdiction to try and entertain any dispute arising there from.

* * *

16. In view of the above, as Clause 8.2 (b) of the GCC confers exclusive jurisdiction in the Courts at Chandigarh in relation to the disputes arising out of the arbitration proceedings, this Court would not have the territorial jurisdiction to entertain the present petitions.”

13. Thus, this Court has jurisdiction to entertain the present petition. It



has been authoritatively held in *SBI General Insurance Co. Ltd. v. Krish Spinning* 2024 SCC OnLine 1754, that the scope of examination in proceedings under section 11 A&C Act is confined to ascertaining the 'existence' of the arbitration agreement. Since the existence of the arbitration agreement is admitted in the present case, there is no impediment for this Court to constitute an Arbitral Tribunal to adjudicate the disputes between the parties.

14. Accordingly, Justice (Retd.) Vinay Kumar Jain, (Mob.: 9650116555) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties under the aforesaid agreements.

15. Respondents shall be entitled to raise appropriate objections as regards jurisdiction/arbitrability, if any, before the learned sole arbitrator by filing an application under Section 16 of the A&C Act, 1996, which shall be duly considered by the learned sole arbitrator on merits.

16. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties, requisite disclosure as required under Section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.

17. The learned Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

18. 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.

19. Needless to say, nothing in this order shall be construed as an



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expression of this Court on the merits of the case.

20. The present petition stands disposed of.

NOVEMBER 13, 2024/uk,dn

SACHIN DATTA, J