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

+ **ARB.P. 862/2023**

RAJ KUMARI TANEJAPetitioner

Through: Mr. Gurpreet Singh and Mr.
Dhruv Kumar, Advs.

versus

RAJINDER KUMAR & ANR.Respondents

Through: Ms. Sandhya Chawla and Mr.
Ashwani Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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21.08.2024

ARB.P. 862/2023

1. This is a petition under Section 11(5) of the Arbitration and Conciliation Act, 1996¹ for reference of the disputes between the parties to arbitration.

2. The dispute arises in the context of a Partnership Deed dated 25 February 2017, relating to Respondent 2 partnership firm, of which the petitioner and Respondent 1 are partners.

3. Partnership Deed envisaged resolution of disputes by arbitration, *vide* Clause 14 of the Partnership Deed, which reads thus:

“14. That in the case of dispute between the partners, the same

¹ “the 1996 Act” hereinafter



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shall be decided under the provision of Indian Arbitration Act then in force.”

4. As the disputes arose between the petitioner and the respondents and there is no pre-arbitral protocol envisaged in the afore-extracted arbitration clause, the petitioner, on 6 May 2023, addressed a legal notice to the respondents proposing reference of the disputes between them to arbitration.

5. The respondents replied by a communication dated 29 May 2023, disputing any liability towards the petitioner.

6. As the parties, therefore, have not been able to arrive at a consensus regarding arbitration, despite the existence of an arbitration clause in the Partnership Deed dated 25 February 2017, the petitioner has instituted the present petition under Section 11(5) of the 1996 Act for reference of the disputes to arbitration.

7. Notice, in this petition, was issued as far back as on 22 August 2023. There is, till date, no response to the petition from any of the respondents.

8. During pendency of these proceedings, IA 110/2024 was filed by one Vinay Kumar under Order XXXII Rules 3 and 15 of the Code of Civil Procedures, 1908 seeking to represent Respondent 1 as his next friend on the ground that Respondent 1, owing to prevailing psychological ailment, is unable to prosecute his interest. This application was opposed by the petitioner, whereupon this Court by



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order dated 14 May 2024 called for a report from the doctor at the Lady Hardinge Medical College, who was attending to Respondent 1, regarding the particulars of his ailment and whether he was physically and mentally in a position to enter appearance in Court. Mr. Vinay Kumar was also directed to place on record an affidavit stating that he had no conflict of interest or any adverse interest with the rights and interests *vis-à-vis* Respondent 1.

9. Four weeks were granted for submission of requisite report from the doctor and affidavit of Vinay Kumar.

10. Three months have passed since that date. Neither does the Court have on record any report from the doctor nor is there any affidavit from Vinay Kumar. The Court is not inclined to grant any further time in this regard, especially as the dispute in controversy is only with respect to reference of the disputes between the parties to arbitration and the scope of examination by a Section 11(5) and Section 11(6) Court in that regard is now circumscribed by a law enunciated by the Supreme Court in ***SBI General Insurance Co Ltd v. Krish Spinning***². According to the said decision, the Court exercising jurisdiction under Section 11(5) or Section 11(6) of the 1996 Act has only to satisfy itself that there exists an arbitration agreement between the parties and that the petition under Section 11(5)/Section 11(6) has been moved within three years of service of Section 21 notice. Both these conditions stand satisfy in the present case.

² 2024 SCC OnLine SC 1754



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11. Mr. Ashwani Kumar, learned Counsel for the respondents advances, as the only ground to oppose this petition, a contention that the disputes between the parties stand settled, as recorded by this Court in the order dated 9 May 2022 in Arb. P. 855/2019 and Arb. P. 856/2019. Mr. Gurpreet Singh, learned Counsel for the petitioner acknowledges that the said arbitration petitions had been filed by his client and that on 9 May 2022 they were dismissed as withdrawn. He, however, submits that this was because his client had been assured by the respondents that the disputes would be settled, but submits that no formal settlement agreement was ever drawn up, as the parties were not able to arrive at a negotiated settlement. Mr. Ashwani Kumar, learned Counsel for the respondents acknowledges that there is no written settlement, but submits that there was an oral settlement between the parties.

12. Nonetheless, I have considered the submissions advanced by learned Counsel for the parties, as it is the respondents' contention that no dispute survives. Mr. Gurpreet Singh submits that the petitioner had, in good faith withdrawn Arb. P. 855/2019 and Arb. P. 856/2019, as he had been promised by the respondents that they would settle the matter out of Court. However, as no such settlement took place, he had no option but to seek recourse of the disputes to arbitration.

13. If that is so, then the issue of whether the dispute stands settled becomes a disputed question of fact, which cannot be decided by the Court in Section 11(5)/Section 11(6) of the 1996 Act. The question is,



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therefore, left open to be decided by the arbitrator in the arbitral proceedings.

14. The parties have not been able to arrive at a consensus regarding the arbitration, the Court has to step in and appoint an arbitrator to arbitrate on the disputes.

15. The Court, accordingly, appoints Mr. Arvind Kumar Sharma, Sr. Advocate (Tel. 9810131448) as the arbitrator to arbitrate on the disputes between the parties.

16. The learned arbitrator shall be entitled to charge fees in accordance with Fourth Schedule to the 1996 Act.

17. The learned arbitrator is also directed to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

18. This Court has expressed no opinion on the merits of the disputes. The Court also reserves rights with the applicant Vinay Kumar to move the learned Arbitrator, in case if he so advised to represent Respondent 1. Any application is moved in that regard, would be considered by the arbitrator in accordance with law and to take a decision thereon.

19. The petition stands allowed to the aforesaid extent, with no order as to costs.



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I.A. 110/2024 (Order XXXII Rules 3 & 15 of the CPC)

20. This application does not survive for consideration and stands disposed of.

C.HARI SHANKAR, J

AUGUST 21, 2024/rb

[Click here to check corrigendum, if any](#)