



2024:DHC:6838



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ARB.P. 1067/2024
THRIVING FARM BUILDERS PVT LTD
AND ANRPetitioner

Through: Ms. Bani Brar, Adv.

versus

SUSHIL CHAUDHARY AND ANRRespondent
Through: Mr. Niyas Valiyathodi, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)
05.09.2024

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996¹, seeking reference of the disputes between the parties to arbitration.

2. The dispute arises in the context of a Share Purchase Agreement dated 1 October 2019² which envisages resolution of disputes by arbitration. Clause 17 of the SPA, which so provides, reads as follows:

“17. DISPUTE RESOLUTION & ARBITRATION

17.1 All disputes, differences and questions, directly or indirectly, arising at any time under or in connection with or in relation to this Agreement or the subject matter of this Agreement including without limitation, all disputes, differences, controversies and questions relating to the validity, interpretation, construction, performance and enforcement of this Agreement ("Dispute") shall be resolved by mutual consultation.

¹ “the 1996 Act”, hereinafter

² “the SPA”, hereinafter



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17.2 If the Parties are unable to resolve the Dispute by mutual consultation within 30 days, then the Parties shall be referred to and finally and conclusively settled by arbitration through a sole arbitrator as per rules framed under provisions of Indian Arbitration and Conciliation Act, 2013, as amended from time to time, and the rules of procedures prescribed for the conduct of the arbitration therein shall govern the arbitration proceedings. The place of arbitration shall be New Delhi. The arbitration shall be conducted in English language and the award of the arbitrators shall be final and binding on the parties. The losing party shall bear the cost of arbitration.”

3. Disputes between the parties having arisen, the petitioners after addressing an initial demand notice, invoked arbitration by means of notice dated 2 November 2023 issued under Section 21 of the 1996 Act. The respondents, in their reply, denied any liability to the petitioners and also refused the request of the petitioners to refer the disputes to arbitration.

4. In these circumstances, the petitioners have approached this Court by means of the present petition for reference of the disputes to arbitration.

5. I have heard Ms. Bani Brar, learned counsel for the petitioners and Mr. Niyas Valiyathodi, learned counsel for the respondents.

6. The respondents have filed a reply to this petition in which the existence of the arbitration agreement has been admitted.

7. Mr. Valiyathodi, however, opposes the petition on the ground that the petitioners have not complied with the pre-arbitration protocol envisaged in Clause 17.2 inasmuch as the petitioners have not



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exhausted the remedy of conciliation envisaged in the said clause.

8. Ms. Brar, learned counsel for the petitioners, points out that two attempts at mediation had failed, reference to which is contained in the orders passed in associated proceedings initiated by the petitioners against the respondents under Section 138 of the Negotiable Instruments Act. There were protracted attempts at settlement and the disputes were also referred to the Delhi High Court Mediation and Conciliation Centre. She has pointed out from the orders passed by the learned Metropolitan Magistrate as well as the Additional Sessions Judge on 5 September 2022, 18 November 2022 and 6 January 2023 that all attempts at mediation failed.

9. In that view of the matter, I am of the opinion that it cannot be said that the petitioners had failed to exhaust the pre-arbitration conciliation protocol before invoking arbitration. The contention of Mr. Valiyathodi to that effect is therefore rejected.

10. Mr. Valiyathodi thereafter submits that the dispute is not arbitrable as the petitioners have, before raising claims on the respondents, not complied with clause 2.4.3 of the SPA, which reads thus:

“2.4.3 First closing is subject to and conditional upon the following Conditions: The obtainment of the below approval in sub clause (a), delivery of the notifications in sub clause (b) and (c) and realization of the transaction indicated in sub clause (d) not later than 15/10/2019. The Parties are obliged to perform and comply with all respective obligations, procedures and covenants required to obtain the following approvals and to effectuate the transaction. The Parties shall collectively be responsible for preparation of the necessary documents and obtainment of the below approvals, giving the said intimation as well as the realization of the



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transaction.

- (a) Unconditional approval from Company regarding the transfer of the Shares as held by the Seller as per Annex B.
- (b) Notification to Company regarding the transfer of the "Shares" from the Sellers to Purchaser.
- (c) Delivery of the Share Certificate and share transfer deed duly executed by the Seller to the Purchaser.
- (d) Company to register the Share Transfer request

The Parties shall:

- (i) co-operate in good faith with each other for the purpose of enabling each to fulfill its obligations under this Agreement; and
- (ii) provide such information or assistance at the expense of the Party seeking information or assistance as that Party may reasonably require for that purpose.
- (iii) The seller shall not sell any shares except as per the terms of this Agreement.”

11. This is not an aspect which can be examined by the court under Section 11(6) of the 1996 Act, in view of the recent decision of the Supreme Court in *SBI General Insurance Co Ltd v. Krish Spinning*³ wherein it was held that a court exercising jurisdiction under Section 11(6) of the 1996 Act, is only required to examine whether there exists an arbitration agreement between the parties. Para 114 of the report specifically says that the *court is to see nothing else*. The only other aspect which the court has to bear in mind is whether the Section 11(6) petition has been filed within three years of the Section 21 notice initiating the arbitral proceedings.

³ 2024 SCC OnLine SC 1754



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12. Both these conditions stand satisfied in the present case.
13. Accordingly, as the parties have not been able to arrive at a consensus regarding arbitration, the court has necessarily to step it and refer the disputes to arbitration.
14. The principal amount of the dispute is stated to be in the region of ₹ 3.4 Crores.
15. Accordingly, the disputes stand referred to arbitration. This Court requests Mr. Lalit Satija, Advocate (Tel. 9810232590) to arbitrate on the disputes between the parties.
16. The learned arbitrator shall be entitled to charge fees in accordance with the Fourth schedule to the 1996 Act.
17. The learned arbitrator is also requested to file requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.
18. All questions of facts and law are left open to be agitated in the arbitral proceedings.
19. The petition stands allowed in the aforesaid terms.

C. HARI SHANKAR, J.

SEPTEMBER 5, 2024/yg

Click here to check corrigendum, if any