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

+ ARB.P. 1361/2022

PRINCE CHADHA

..... Petitioner

Through: Mr. Anil Sharma, Ms. Kalpana A.,
Mr. Arpit Sharma & Mr. Anuj
Sehgal, Advocates.

versus

AMARDEEP SINGH

..... Respondent

Through: Mr. Abhinash Barik, Mr. K.R.
Satapathy & Mr. Merusagar
Samantray, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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02.04.2024

1. The petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], seeking appointment of an arbitrator to adjudicate disputes between the parties under an Agreement to Sell dated 02.01.2008 [“Agreement”].

2. According to the petitioner, the respondent agreed to sell an immovable property to the petitioner. The petitioner has filed a copy of the Agreement, which contains a provision for resolution of disputes by arbitration [Clause 7]. The petitioner claims to have invoked arbitration by a letter dated 15.09.2022 addressed to the respondent. In the said communication, the petitioner proposed the name of a sole arbitrator and sought the respondent’s concurrence. As the communication did not elicit a response, the petitioner has filed this petition under Section 11 of the Act.



3. Notice was issue on 30.11.2022, pursuant to which it is recorded in the order dated 28.03.2023 that counsel had appeared on behalf respondent and was granted time to file a reply, although the appearance of the said counsel was not given. The respondent remained unrepresented on several dates thereafter. Finally, he was represented by counsel on 01.03.2024. The name of the learned counsel is not recorded in the order sheet, but Mr. K.R. Satapathy, learned counsel, states that he appeared on behalf of the respondent on 01.03.2024. Mr. Satapathy was granted further time to file a reply. No reply has been filed despite the time granted.

4. Mr. Abhinash Barik and Mr. Satapathy, appearing on behalf of the respondent, submit that the documents relied upon by the petitioner, including the Agreement, are disputed documents and that there, in fact, exists no arbitration agreement between the parties. Mr. Barik submits that the respondent has not signed the Agreement or the confirmation letter dated 02.11.2015 relied upon by the petitioner [Document-9 of the petitioner's list of documents].

5. I am of the view that these contentions need not detain us at the stage of adjudication of a petition under Section 11 of the Act. A plethora of judgments of the Supreme Court, including *Vidya Drolia v. Durga Trading Corpn.* [(2021) 2 SCC 1], *BSNL vs. Nortel Networks (India) (P) Ltd.* [(2021) 5 SCC 738], *NTPC vs. SPML Infra Limited* [(2023) 9 SCC 385] and a recent judgment of a seven Judge Bench dated 13.12.2023 in *In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899* [Curative Petition (C) No. 44/2023 and connected matters], make it clear that the



court's jurisdiction at the pre-reference stage is only to determine the *prime facie* existence of an arbitration agreement and the final adjudication, even on the question of arbitrability, is to be left to the arbitral tribunal being the parties chosen forum. The Court is to decline appointment of an arbitrator only when a claim is *ex-facie* non-arbitrable, and in cases of doubt, the default position is to refer the matter to the arbitral tribunal for final adjudication of the matter.

6. In the present case, the Agreement containing the arbitration clause *prima facie* bears the signatures of both the parties and of two witnesses, and it is also attested by a Notary Public. The matter is therefore one which does not fall within the limited class of cases in which reference can be declined at this stage.

7. For the aforesaid reasons, the present petition is allowed. The disputes under the Agreement to Sell dated 02.01.2008 are referred to arbitration of Mr. Vinay K. Gupta, former Principal District & Sessions Judge [Tel: 9910384701]. With the consent of learned counsel for the parties, it is directed that the arbitration shall be conducted under the aegis of Delhi International Arbitration Centre, Shershah Road, New Delhi-110503 ["DIAC"] and will be governed by the rules of DIAC, including as to the remuneration of the learned Arbitrator.

8. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act, prior to entering upon the reference.

9. It is made clear that the respondent's contentions on the existence of the arbitration agreement and on maintainability of the claims, have not been finally adjudicated by this Court and are left open for adjudication by the learned Arbitrator.



10. The petition stands disposed of.

APRIL 2, 2024
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PRATEEK JALAN, J