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

+ ARB.P. 234/2022

INDIGRID TECHNOLOGY PVT. LTD Petitioner

Through: Mr. Uttam Datt, Ms. Sonakshi Singh,
Mr. Kumar Bhaskar and Mr. Aman
Sanjeev Sharma, Advs.

versus

GENESTORE INDIA PVT. LTD Respondent

Through: Mr. Aman Nandrajog, Ms. Shreya
Singh and Mr. Ujjawal Malhotra,
Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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06.02.2024

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (“Act 1996”) seeking appointment of an Arbitrator to adjudicate the disputes between the parties arising out of Binding Term Sheets dated 10.05.2021.

2. The binding term sheet is executed between the petitioner and one Mr. Manjiv Singh, acting as chairman of the respondent company. The term sheet pertains to supply of medical equipment and oxygen concentrators. This term sheet is stated to be the contract between the parties and contains the arbitration Clause which reads as under:-

“11 Dispute Resolution

11.1. Save and where otherwise provided herein, any dispute arising out of or in connection with this Agreement shall be settled amicably by the Parties hereto in good faith by whatever means such Parties deem appropriate)



11.2. If the Parties to such dispute cannot themselves resolve such dispute between or among them within thirty (30) days from the time the dispute arose, failing which the dispute may be submitted for final and conclusive resolution to be settled by arbitration in India under the auspices of the Indian Arbitration Act. The language of the arbitration shall be English.”

3. Mr. Nandrajog, learned counsel appearing for the respondent states that Mr. Manjiv Singh had no authority to enter into a binding term sheet *qua* the respondent company. The e-mails exchanged between the parties further show that supply has been made to another company i.e. M/s Deckmount Electronics Pvt. Ltd. and not to the respondent company.

4. He further states that since Mr. Manjiv Singh had played a fraud on the respondent company, a complaint was made against Mr. Manjiv Singh as well as the petitioner company and the order under Section 156(3) Cr.P.C. has been passed directing the registration of FIR against them. Hence, he states that as there are allegations of fraud which goes to the root of the matter and as there is no arbitration agreement between the petitioner and the respondent company, the proceeding cannot lie.

5. He further states that there are e-mails on record which show that the petitioner themselves wanted to treat the binding term sheet as null and void and enter into a fresh contract for which they had also exchanged drafts. He relies on the judgment “*A.Ayyasamy vs. A. Paramasivam and Others*” (2016) 10 SCC 386 and more particularly para 25 which reads as under:-

“25. In view of our aforesaid discussions, we are of the opinion that mere allegation of fraud simpliciter may not be a ground to nullify the effect of arbitration agreement between the parties. It



is only in those cases where the court, while dealing with Section 8 of the Act, finds that there are very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by the civil court on the appreciation of the voluminous evidence that needs to be produced, the court can sidetrack the agreement by dismissing the application under Section 8 and proceed with the suit on merits. It can be so done also in those cases where there are serious allegations of forgery/fabrication of documents in support of the plea of fraud or where fraud is alleged against the arbitration provision itself or is of such a nature that permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself of the entire contract which contains the arbitration clause or the validity of the arbitration clause itself. Reverse position thereof would be that where there are simple allegations of fraud touching upon the internal affairs of the party inter se and it has no implication in the public domain, the arbitration clause need not be avoided and the parties can be relegated to arbitration. While dealing with such an issue in an application under Section 8 of the Act, the focus of the court has to be on the question as to whether jurisdiction of the court has been ousted instead of focusing on the issue as to whether the court has jurisdiction or not. It has to be kept in mind that insofar as the statutory scheme of the Act is concerned, it does not specifically exclude any category of cases as non-arbitrable. Such categories of non-arbitrable subjects are carved out by the courts, keeping in mind the principle of common law that certain disputes which are of public nature, etc. are not capable of adjudication and settlement by arbitration and for resolution of such disputes, courts i.e. public fora, are better suited than a



private forum of arbitration. Therefore, the inquiry of the Court, while dealing with an application under Section 8 of the Act, should be on the aforesaid aspect viz. whether the nature of dispute is such that it cannot be referred to arbitration, even if there is an arbitration agreement between the parties. When the case of fraud is set up by one of the parties and on that basis that party wants to wriggle out of that arbitration agreement, a strict and meticulous inquiry into the allegations of fraud is needed and only when the Court is satisfied that the allegations are of serious and complicated nature that it would be more appropriate for the Court to deal with the subject-matter rather than relegating the parties to arbitration, then alone such an application under Section 8 should be rejected.”

6. Mr. Datt, learned counsel for the petitioner relies on Para 5 of the reply which reads as under:-

“5. The purported Term Sheet dated 10.05.2021 that the Petitioner is relying upon to show that an Arbitration Agreement/ Clause exists is ex-facie illegal and was never executed with the consent, or with any authority from the Respondent Company. Even according to the contentions made by the Petitioner itself, the Term Sheet was signed by the abovementioned Mr. Manjiv Singh, and the Respondent humbly submits that the said Mr. Manjiv merely had an honorary position at the Respondent Company and was never authorised to enter into any contract/ agreement on behalf of the Respondent Company, or to bind the Respondent Company under any legal obligations. The Petitioner has failed to show any evidence or proof to show that the said Mr. Manjiv had any authority to execute the Term Sheet dated 10.05.2021.”

7. He also relies upon the order and proforma invoice raised by the respondent company for supply of the medical equipment.



8. I have heard learned counsel for the parties.
9. The term sheet is not executed on the letter head of the company or the stamp. In para h of the reply, the respondent has stated as under:-

“h. When Mr. Manjiv finally exited the SpiceJet Group in the month of May 2021, he once again approached Mr. Anubhav seeking an appointment in the Respondent Company, on the ground that he would be better placed to assist in the growth of the Respondent Company's business. Mr. Manjiv was therefore given an honorary appointment as a show of good faith and on account of the Mentorship role that Mr. Manjiv had taken on in the life of Mr. Anubhav. It is reiterated that the position was entirely Honorary and gave Mr. Manjiv no right to take action on behalf of the Respondent Company.”

10. Therefore, it is admitted by the respondent that Mr. Manjiv Singh had an honorary appointment with the respondent company. The question with respect to the role of Mr. Manjiv Singh and whether Mr. Manjiv Singh had any authority to bind the respondent company is an internal issue which will be decided by the arbitrator after recording of evidence.

11. It is admitted that the signature of Mr. Manjiv Singh on the binding term sheets does not deny the fact that he had an honorary appointment with the respondent-company.

12. For the said reasons, the reliance on *A. Ayyasamy (supra)* will not help the respondent as in the present case, the fraud as alleged by the respondent is regarding its internal management and does not go to the root of the contract. This Court while deciding a petition under Section 11 is only required to see the existence of an Arbitration Clause. In *Re, 2023 SCC OnLine SC 1666*, the Hon'ble Supreme Court has held:



“89. One of the main objectives behind the enactment of the Arbitration Act was to minimize the supervisory role of courts in the arbitral process by confining it only to the circumstances stipulate by the legislature. For instance, Section 16 of the Arbitration Act provides that the arbitral tribunal may rule on its own jurisdiction “including ruling on any objection with respect to the existence or validity of the arbitration agreement.” The effect of Section 16, bearing in view the principle of minimum judicial interference, is that judicial authorities cannot intervene in matters dealing with the jurisdiction of the arbitral tribunal. Although Sections 8 and 11 allow courts to refer parties to arbitration or appoint arbitrators, Section 5 limits the courts from dealing with substantive objections pertaining to the existence and validity of arbitration agreements at the referral or appointment stage. A referral court at Section 8 or Section 11 stage can only enter into a prima facie determination. The legislative mandate of prima facie determination ensures that the referral courts do not trammel the arbitral tribunal’s authority to rule on its own jurisdiction.”

13. Hence, the petition needs to be allowed.

14. The observations made herein above are only for the purposes of deciding this petition and will have no bearing on the merits of the matter including Section 16 of the Act 1996 application if and when filed by the respondent.

15. For the said reasons, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

- i) Mr. Anant Palli, Sr. Adv. (Mob. No. 9810199102) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of the Delhi



International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.

iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

v) The parties shall approach the learned Arbitrator within two weeks from today.

16. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

FEBRUARY 6, 2024/NG