

\$~S-5

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

Date of decision: 07th April, 2022

+ ARB.P. 1151/2021

JUKI INDIA PRIVATE LIMITED Petitioner

Through: Mr. Dhruv Wahi with Mr. Paras
Joshi, Advocates.

versus

M/S CAPITAL APPARELS TECHNOLOGY PRIVATE LIMITED

..... Respondent

Through: Mr. Navodaya Singh Rajpurohit,
Advocate.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

(Judgment released on 25.04.2022)

ANUP JAIRAM BHAMBHANI J. (ORAL)

By way of the present petition under section 11 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner Juki India Private Limited, seeks appointment of an arbitrator to adjudicate the disputes that are stated to have arisen with the respondent M/s Capital Apparels Technology Private Limited, from Distribution Agreement dated 01.07.2010 as renewed, extended and/or amended from time-to-time, the most recent renewal being by way of Distribution Agreement dated 01.01.2021 covering the period from 01.01.2021 to 31.12.2021. Mr. Dhruv Wahi, learned counsel for the

petitioner, has drawn attention to clause 10(e) of Distribution Agreement dated 01.07.2010 and to clause 13 of Distribution Agreement dated 01.01.2021, which contain the arbitration agreement between the parties.

2. Mr. Wahi, submits that no clause, covenant or provisions in the distribution agreements contains any reference to the place where the agreements were signed; nor does the opening part of the agreements recite to that effect. It is pointed-out that there is no clause in the agreement as regards 'territorial jurisdiction' of courts for purposes of disputes arising from them; and even the arbitration provisions embedded in the agreements do not specify any 'seat' or 'venue' or jurisdiction otherwise, for arbitration proceedings.
3. Mr. Wahi further submits that in admission of the dues owed by respondent to the petitioner, the parties signed a Memorandum of Understanding dated 31.12.2020 ('MoU'), whereby the parties agreed to settle all past dues; and the respondent undertook to pay to the petitioner the outstanding sum of about Rs. 4.53 crore, in terms of the commitments comprised in the MoU. It is submitted however, that the respondent has not honoured the terms agreed to in the MoU; and their *inter-se* disputes remain unresolved.
4. In this backdrop, the petitioner caused to be issued to the respondent demand notices dated 23.09.2020 and 07.08.2021; and subsequently also an invocation notice dated 27.09.2021, invoking the arbitral mechanism and calling upon the respondent to concur in the appointment of a sole arbitrator from amongst two former Hon'ble

Judges of this court whose names were proposed in the notice. *Vidé* reply dated 11.10.2021 (erroneously mentioned as 11.10.2017) received from the respondent, in essence and substance, the respondent has disputed the demands; has made a counter-claim; and has also declined to concur in the appointment of any of the proposed names as sole arbitrator.

5. Notice on this petition was issued on 30.11.2021, observing that the petitioner seeks reference of disputes only under distribution agreement dated 01.07.2010 (erroneously recorded as 01.07.2020); consequent whereupon the respondent has filed reply dated 18.01.2022, *inter-alia* disputing the territorial jurisdiction of this court to entertain the present petition. The respondent has also contended that the disputes sought to be raised do not fall within the purview of the arbitration clause and are therefore non-arbitrable. The respondent has further submitted that distribution agreement dated 01.07.2010 stands novated by subsequent agreements; and cannot therefore be relied-upon for the purpose of raising disputes or for seeking reference to arbitration. It has been further urged that the disputes between the parties stand resolved and settled under two separate MoUs dated 28.05.2018 and 31.12.2020, pointing-out that none of the MoUs contain any arbitration clause; and that therefore the petitioner cannot invoke the arbitral remedy any longer.
6. At this stage, it would be relevant to extract the arbitration clauses in distribution agreements dated 01.07.2010 and 01.01.2021:

<i>Agreement dtd 01.07.2010</i>	<i>Agreement dtd 01.01.2021</i>
<p>“10. Terms of Agreement ... e. <u>Arbitration</u> <i>Every dispute, difference, or question which may at any time arise between the parties hereto or touching or arising out of or in respect of this agreement (deed) or the subject matter thereof shall be referred to the arbitrator to be appointed by JIN and the decision of the arbitrator shall be final and binding on the parties.”</i></p>	<p>“13. <u>Arbitration</u> <i>Every dispute, difference, or question which may at any time arise between the parties hereto or touching or arising out of or in respect of this agreement (deed) or the subject matter thereof shall be referred to the arbitrator to be appointed by JIN and the decision of the arbitrator shall be final and binding on the parties.”</i></p>

7. In support of his contention, that absent any stipulation as to territorial jurisdiction in the distribution agreements, this court has territorial jurisdiction to entertain and decide the present petition, Mr. Wahi places reliance on the decision of this court in “*Aarka Sports Management Pvt. Ltd. vs. Kalsi Buildcon Pvt. Ltd*” reported as (2020) SCC OnLine Del 2077, in which decision, while summarizing the principles in that behalf, a Co-ordinate Bench of this court has held as under:

“Summary of Principles

“24. Section 20 (1) of the Arbitration and Conciliation Act empowers the parties to determine the seat of arbitration. The parties are at liberty to choose a neutral seat of arbitration where neither the cause of action arose nor the parties reside or work and Sections 16 to 20 of the Code of Civil Procedure would not be attracted.

“25. Once the seat is determined, the Court of that place shall have exclusive jurisdiction to deal with all matters relating to arbitration

agreement between the parties.

“26. If the parties have not determined the seat of arbitration, the seat of arbitration shall be determined by the Arbitral Tribunal under Section 20(2) of the Arbitration and Conciliation Act.

“27. If the parties have not agreed on the seat of the arbitration, the Court competent to entertain an application under Section 11 of the Arbitration and Conciliation Act would be the “Court” as defined in Section 2(1) (e) of the Act read with Sections 16 to 20 of the Code of Civil Procedure.”

(emphasis in original)

8. Mr. Wahi submits that since in the present case the distribution agreements are completely silent as to the ‘seat’ or ‘venue’ of arbitration and as to the ‘territorial jurisdiction’ of courts in relation to the arbitration agreement, the petitioner’s case would be covered by the principle summarised in para 27 as extracted above, namely, that the territorial jurisdiction would lie with a court as defined in section 2(1)(e) of the A&C Act, that is to say the ‘principal civil court of original jurisdiction’ which would be competent to decide the questions forming subject matter of the arbitration *if* the same had been subject matter of a civil suit.
9. Furthermore, attention is drawn to the provisions of section 20 of the Code of Civil Procedure 1908 (‘CPC’), to say that in the present case, since the registered office of the defendant is situate within the territorial jurisdiction of this court in Delhi; and that at least some of the invoices which are claimed to be due and payable by the respondent were raised at New Delhi, this court would be competent to entertain and decide the present petition. On this point, Mr. Wahi

draws attention to section 20(a) and (c) of the CPC which read as under :

“20. Other suits to be instituted where defendants reside or cause of action arises.—Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

** * * * **

(c) the cause of action, wholly or in part, arises.

** * * * **”

10. On the other hand, Mr. Navodaya Singh Rajpurohit, learned counsel for the respondent, has argued that for one, the arbitration clauses contained in the distribution agreements are completely silent as to ‘territorial jurisdiction’. Besides it is urged that since the disputes between the parties culminated in the signing of two MoUs, the distribution agreements are of no consequence now; and the petitioner’s claims can at best be said to arise from the MoUs, which do not contain any arbitration clause. Accordingly, it is argued that there is no subsisting arbitration agreement between the parties and the present petition deserves to be dismissed.
11. Upon a conspectus of the averments contained in the petition and in the reply; the documents placed on record, in particular distribution agreements dated 01.07.2010 and 01.01.2021, upon which reliance is placed; keeping in view the existence of the arbitration agreements contained in clauses 10(e) and 13 respectively of the said distribution agreements; as also the decision of the Co-ordinate Bench of this

court in *Aarka Sports Management* (supra) read with section 2(1)(i) of the A&C Act and section 20 of the CPC, this court is of the following opinion :

- i.* Since the respondent has its registered office in Delhi within the territorial jurisdiction of this court; and some of the amounts claimed by the petitioner are due against invoices that have *prima-facie* been raised in Delhi, this court has territorial jurisdiction to entertain and decide the present petition;
- ii.* Clause 10(e) of the parent distribution agreement dated 01.07.2010 and clause 13 of the latest distribution agreement dated 01.01.2021 clearly record that the parties have agreed to refer their *inter-se* disputes arising from the distribution agreements to arbitration by a sole arbitrator under the provisions of the A&C Act;
- iii.* A perusal of MoU dated 31.12.2020 also shows that certain monies were owed by the respondent to the petitioner against invoices raised, which monies are claimed to be due till date;
- iv.* Although it has been contended on behalf of the respondent that MoU dated 31.12.2020 does not contain an arbitration clause, and therefore, the disputes cannot be referred to arbitration, this court sees no merit in that contention, since MoU dated 31.12.2020 *is itself founded upon* the business transactions conducted by the parties *inter-alia* under distribution agreement dated 01.07.2010;

and the subject matter of the MoU is therefore itself part of a “ ... *dispute, difference, or question which may at any time arise between the parties hereto or touching or arising out of or in respect of this agreement (deed) or the subject matter thereof ...*” as contemplated in the arbitration agreement contained in the distribution agreements;

- v. This court is also satisfied that *prima-facie* none of the disputes that are sought to be raised appear to be non-arbitrable.
12. In view thereof, this court is to persuade to allow the present petition.
13. Accordingly, as requested jointly by the parties, the disputes between them are referred to arbitration under the aegis of the Delhi International Arbitration Centre (DIAC), New Delhi; for the arbitration to be conducted in accordance with the rules and regulations of the said institution, including arbitrator’s fee and arbitration costs as provided thereunder.
14. A copy of this order be sent to learned counsel for the parties.
15. A copy of this order be also sent to the Director, DIAC for information and compliance.
16. The petition is allowed in the above terms and disposed of accordingly.
17. Pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J

APRIL 7, 2022/ds