



\$~1

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

+ ARB.P. 420/2023

DEEPAK MAURYA Petitioner

Through: Mr. Pranav Sarthi, Advocate.

versus

SARASWATHI SUPARI PROCESSING UNIT & ORS.

..... Respondents

Through: Mr. Vaibhav Sabharwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

24.04.2024

%

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act (*hereinafter referred to as 'the A&C Act'*) by the petitioner for the appointment of an arbitrator for adjudication of disputes between the parties.

2. The facts in brief, as stated by the petitioner, are that the petitioner entered into a Tripartite Agreement dated 03.10.2020 amongst M/s Ramesh Chandra Deepak Kumar (petitioner/Buyer) and Saraswathi Supari Processing Unit (Seller) and Nangia World Class Hospitality Private Limited (Commission Agent) for sell, purchase, and delivery of 1500 metric tonne of customisable goods i.e. Areca Nut (HSN Code-0802) at the location of the petitioner. The petitioner submits that in terms of the Tripartite



Agreement dated 03.10.2020, the respondents were required to safely and timely deliver 1500 metric tonnes of good quality Areca Nut at the desired location of the petitioner within a period of 4 months from the date of the Tripartite Agreement dated 03.10.2020. The petitioner was required to pay 25% towards advance payment and the balance 75% payment was required to be paid on delivery of goods at the desired location of the petitioner.

3. Learned counsel for the petitioner submits that the respondents delivered the first batch of 150 metric tonnes of customisable goods (Areca Nut HSN Code-0820). However, the quality of goods delivered was extremely poor and defective. The petitioner requested the respondent to immediately replace the sub-standard goods.

4. Learned counsel for the petitioner submits that thereafter the parties entered into a settlement agreement to settle inter se dispute arisen between them. Pursuant thereto, the petitioner furnished post-dated cheques to settle the disputes, however, the respondent without replacing the goods and with oblique motive filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner in Bangalore. The petitioner therefore in terms of the Arbitration Clause in the Tripartite Agreement dated 03.10.2020 invoked the arbitration.

5. By their notice dated 08.02.2023, the petitioner nominated three arbitrators, however, the respondent did not respond to the same. Respondent no.1 filed a reply raising preliminary objections that the petition is not maintainable. It has been submitted that there is no arbitration agreement between the petitioner and respondent No. 1.

6. The respondent has submitted that even the clause of the Arbitration in Tripartite Agreement dated 03.10.2020 does not satisfy the term



“arbitration agreement” as provided under Section 7 of the A&C Act. It has further been submitted that the mere use of the word “Arbitration clause” will not make an arbitration agreement. It has also been submitted that the alleged arbitration clause is non-invocable. It is further submitted that the Tripartite Agreement dated 03.10.2020 does not bear the signature of respondent no.1. It has been submitted that even in the petition it has simply been stated that there are certain claims against the respondent without reference to any particular claim. It has further been submitted that even disputes have not been detailed.

7. The petitioner has filed a rejoinder to the reply denying all the averments and has submitted that there was a Tripartite Agreement and in pursuance to that the petitioner has annexed E-way bills and Tax invoices issued by respondent no.1 for delivery of the product. Along with rejoinder, the petitioner has filed E-way bills dated 03.10.2020, 06.10.2020, 22.10.2020 and 30.10.2020. Along with the rejoinder, an affidavit of Mr. Clarence Coutinho has also been filed to substantiate the execution of the Tripartite Agreement.

8. Learned counsel for the petitioner submits that the arbitration clause in the Tripartite Agreement is duly invoked. It has been submitted that there is no specific form of an arbitration agreement and the intention of the parties ought to be gathered from the words used in an agreement. It has been further submitted that the disputes have not even been denied.

9. Learned counsel for the petitioner submits that the jurisdiction of the Court at the stage of making reference is very limited. The Court has only to see whether there is an agreement between the parties which contains a valid arbitration clause and whether there is an arbitrable dispute. He further



submits that there is an agreement and arbitrable disputes between the parties. Learned counsel submits that the objections taken by the respondent are baseless.

10. Per Contra, learned counsel for respondent no.1 submits that the present petition is entitled to be dismissed as firstly there is no signature of respondent no.1 on the alleged Tripartite Agreement, and secondly in the absence of an Arbitration disputes, matter cannot be referred to arbitration. It is pertinent to note that respondents nos. 2, 3, and 4 were duly served as per the office report dated 17.05.2023, however, they have chosen not to appear.

11. The jurisdiction of this Court at the stage of reference is very limited. In ***DLF Home Developers Limited v. Rajapura Homes Private Limited & Anr*** AIRONLINE 2021 SC 75, the apex hold inter-alia held as under:

“19. To say it differently, this Court or a High Court, as the case may be, are not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen Arbitrator. On the contrary, the Court(s) are obliged to apply their mind to the core preliminary issues, albeit, within the framework of Section 11(6-A) of the Act. Such a review, as already clarified by this Court, is not intended to usurp the jurisdiction of the Arbitral Tribunal but is aimed at streamlining the process of arbitration. Therefore, even when an arbitration agreement exists, it would not prevent the Court to decline a prayer for reference if the dispute in question does not correlate to the said agreement.”

12. Therefore it can be concluded from above that this Court is not required to behave in a mechanical manner in order to send an applicant's dispute to the arbitral tribunal and must consider the fundamental issues, within the parameters set forth in Section 11(6-A) of the A&C Act. It is interesting to note that in the petition under Section 11(6), the petitioner has



not detailed any dispute except in para 7.3 where it has been stated that the quality of the goods was extremely poor and defective. Paragraph 7.4 speaks about some settlement agreement to settle the disputes inter se between the parties. It has further been submitted in para 7.4 that the petitioner has certain claims against the respondent for which the petitioner has invoked the arbitration clause in terms of the Tripartite Agreement dated 03.10.2020. However, the petition is totally silent about such “certain claims”. In the notice dated 08.02.2023 also the petitioner merely stated in para 4 that there are certain claims against the respondent for which the arbitration has been invoked.

13. Since it is a well-settled law that the jurisdiction of this Court at the stage for making reference is very limited and the referral court cannot enter into the roving enquiry. However, at the same time court is not expected to act in a mechanical fashion and refer the disputes at the mere request. The matter can only be referred if the petitioner has shown existence of some arriable dispute between two parties. The purpose of notice under Section 21 is also to apprise the other party about the disputes between the parties. Strangely, the petitioner neither in the petition nor in the notice has enumerated such disputes. Besides this, the perusal of the Tripartite Agreement also reveals that it is an illegible copy and the signature of respondent no.1 is not at all legible.

14. In light of the above discussion, I consider that there is no substance in the present petition hence, the present petition is dismissed.

DINESH KUMAR SHARMA, J

APRIL 24, 2024/ssc