



2024:DHC:9997



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

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Date of Decision: 23.12.2024

+ **ARB.P. 1198/2024, I.A. 49614/2024** (for condonation of delay)

IN2IT TECHNOLOGIES PRIVATE LIMITEDPetitioner

Through: Mr. Prashanto Chadra Sen (Sr. Adv)
along with Ms. Madhup Singhal,
Mr. Tanmay Yadav, Mr. Raghav
Garg, Mr. Sumeet Singh, Mr. Suraj
Vishwakarma, Advs.

versus

PIESTING SERVICES PRIVATE LIMITED & ORS.....Respondents

Through: Mr. Shri Venkatesh, Mr. Suhael
Butran, Mr. Nikunj Bhatnagar, Advs.
for R1 to R3.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the A&C Act') seeks constitution of an Arbitral Tribunal to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of a Share Purchase Agreement dated 20.04.2020. The said Share Purchase Agreement contains an Arbitration clause as under:-

"12.1 In the event of any dispute, controversy, claim or conflict between the Parties arising out of or relating to this Agreement (including issues relating to the performance or non-performance of the obligations set out herein or the breach, termination or invalidity thereof) (a "Dispute'1), such Dispute shall be referred to a sole arbitrator, who shall be nominated with the mutual consent of the Parties. The arbitration proceedings shall be convened under the provisions of the Arbitration and Conciliation Act, 1996 and the award so granted by the sole



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arbitrator shall be final and binding on the Parties. The seat of the arbitration shall be New Delhi and the language of the arbitration shall be English.”

3. Disputes having arisen between the parties, a notice of invocation dated 14.02.2024 was sent by the petitioner in which it was *inter alia* stated as under:-

“16. *Our Client suggests the name of **Hon’ble Justice Indu Malhotra (Retd.)**, Former Judge of the Supreme Court for being nominated as the Sole Arbitrator to adjudicate the dispute that have arisen between you and Our Client.”*

4. In the reply to the said invocation notice, the existence of the arbitration was not disputed, however, the respondent strenuously refuted the merits of the claims sought to be raised by the petitioner, *inter-alia*, in view of certain proceedings pending in the NCLT. However, no specific objection was taken by the respondent as regards the name proposed by the petitioner for appointment as a Sole Arbitrator.

5. Consequently, since the parties were unable to constitute an Arbitral Tribunal with mutual consent, the present petition came to be filed.

6. Since there is no controversy as regards existence of an arbitration agreement between the parties, it is incumbent on this Court to constitute an arbitral tribunal as mandated in terms of the judgements of the Supreme Court in *In Re: Interplay between Arbitration Agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899 In re*, 2023 SCC OnLine SC 1666, and *SBI General Insurance Co. Ltd. v. Krish Spinning*, 2024 SCC OnLine SC 1754. Necessarily, any objection/s on behalf of the Respondents as regards maintainability/arbitrability of the claims sought be raised by the Petitioners are also required to be considered



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by a duly constituted Arbitral Tribunal.

7. During the course of hearing, it transpires that in the context of connected transactions between the same parties, this Court has appointed Hon'ble Justice Indu Malhotra (Retd.), Former Judge of the Supreme Court as the Sole Arbitrator. This Court considers it apposite to appoint the same Arbitrator to adjudicate the present disputes between the parties.

8. Accordingly, Ms. Justice (Retd.) Indu Malhotra, Former Judge, Supreme Court of India (Mob No. +91 9810026757) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

9. The respondent shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the learned arbitrator, in accordance with law.

10. Learned counsel for the respondent requests that the fee charged by the learned Sole Arbitrator should be as per the IVth Schedule of the A&C Act. The said request shall be duly considered by the learned Sole Arbitrator.

11. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

12. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

13. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the case.

14. The present petition stands disposed of in the above terms. Pending application also stands disposed of.

DECEMBER 23, 2024/uk

SACHIN DATTA, J