

\$~10

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

+ ARB.P. 517/2024

PVR INOX LTD.....Petitioner
Through: Mr. Sumit Gehlot, Mr. T.S.
Thakran and Mr. Rukon Vadhera, Advs.

versus

SHEETAL ANSAL & ANR.....Respondents
Through: Mr. Anand Mishra, Mr. Sachin
Midha and Mr. Aditya Vikram Bajpai, Advs.
for Respondent 1

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT(ORAL)

%

30.07.2024

ARB.P. 517/2024

1. This petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (“the 1996 Act”) seeks reference of the disputes between the parties to arbitration.

2. Mr. Anand Mishra, learned Counsel for Respondent 1 does not oppose the prayer for referring the dispute to arbitration, but submits that Respondent 2 is not a party to the arbitration agreement and that, therefore, it may not be appropriate to refer the dispute *qua* Respondent 2 to arbitration.

3. Mr. Gehlot, learned Counsel for the petitioner is agreeable to this petition being disposed of by referring the disputes between the

petitioner and Respondent 1 to arbitration, leaving the question of whether to include or not to include Respondent 2 as a party being permitted to be urged in the arbitral proceedings.

4. The dispute arises in the context of a Sub-Sub-Lease Deed dated 7 June 2018, executed between the petitioner and Respondent 1, which contains the following clause envisaging resolution of disputes by arbitration:

“17. ARBITRATION:

a. In the event of any dispute, controversy or claim arising out of or in connection with this SSLD, including any questions regarding its existence, validity, construction and/or interpretation or termination (hereinafter referred to as the "**Dispute**") will be resolved through joint discussions between the concerned Parties. Any Dispute not resolved through joint discussions, within 30 days of its having arisen shall be referred to be resolved to a sole arbitrator appointed mutually in accordance with the Indian Arbitration and Conciliation Act 1996 including any amendment therein and the rules prescribed thereunder (the "**Act**"). This SSLD and the rights and obligations of the Parties hereunder shall retain in full force and effect pending the award in such arbitration proceedings, which award shall determine whether and when termination of this SSLD, if relevant, shall become effective. The award of the arbitrator shall be final and binding upon the Parties.

b. The seat of the arbitration shall be at New Delhi, India and the language of the arbitration shall be English.”

5. Disputes arose between the petitioner and Respondent 1 and on the disputes not being capable of an amicable resolution, the petitioner addressed a notice to the respondent on 21 February 2024, invoking the arbitration clause and seeking reference of the disputes to arbitration.

6. The petitioner claims, against Respondent 1 (i) refund of rent security deposited to ₹ 1,26,00,000/- with interest @ 18% per annum from 23 July 2022 till realization, (ii) ₹ 10 Lakhs as costs of fixed assets with interest @ 18% per annum from 23 July 2022 till realization, (iii) ₹ 2,06,65,166/- being the costs of movable assets and immovable assets installed in the respondents' premises with interest of 18% per annum from 23 July 2022 till realization and (iv) damages to the tune of ₹ 1 crore.

7. Mr. Anand Mishra, learned Counsel for Respondent 1 submits that Respondent 1 also has counter-claim against the petitioner which may be in the region of ₹ 4 to ₹ 5 crores, which may be permitted to be agitated in the arbitral proceedings.

8. *Prima facie*, an arbitrable dispute has arisen between the parties, which is amenable to arbitration in terms of the arbitration clause extracted hereinabove.

9. Accordingly, as the parties have not been able to come to a consensus regarding the arbitrator to arbitrate on the disputes, this Court has to intervene.

10. Accordingly, this Court appoints Mr. Sumeet Pushkarna, Advocate, (Tel: 9811042847) as the arbitrator to arbitrate on the disputes between the parties. The fees of the learned arbitrator would be fixed by the arbitrator in consultation with the parties. The learned arbitrator is requested to file the requisite disclosure under Section

12(2) of the 1996 Act within a week of entering on reference.

11. Respondent 1 shall also be entitled, in the arbitral proceedings, to take all legal objections, preliminary as well as on merits. Respondent 1 shall also be entitled to urge any counter-claim which she may choose to urge in the arbitral proceedings in accordance with law.

12. For the present, the arbitral proceedings shall be between the petitioner and Respondent 1. It shall be open to the petitioner to seek inclusion of Respondent 2 in the arbitral proceedings by moving an appropriate application before the learned arbitrator for that purpose. Any such application if moved, will be decided by the learned arbitrator on its own merits. This Court has not expressed any opinion on whether Respondent 2 should or should not be included in the arbitral proceedings.

13. It is also clarified that this Court has not expressed any opinion on the merits of the matter.

14. The petition stands disposed of in the aforesaid terms.

C.HARI SHANKAR, J

JULY 30, 2024

rb

[Click here to check corrigendum, if any](#)