

Nexus Solutions vs Surya Maintenance Agency Pvt Ltd And ... on 20 March, 2023

Author: Navin Chawla

Bench: Navin Chawla

\$~2

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. 1145/2022

NEXUS SOLUTIONS

..... Petitioner

Through: Mr.Amit Jain, Adv.

versus

SURYA MAINTENANCE AGENCY PVT LTD AND

OTHERS

..... Respondents

Through: Mr.Angad Singh, Adv. for R-1

& R-2.

Mr.Neeraj Gupta & Mr.Rajat

Asija, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 20.03.2023

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Maintenance Agreement dated 07.05.2019. This Agreement has been executed by the petitioner and the respondent nos.1 and 2.

2. The Arbitration Agreement is contained in Article 20 of the Maintenance Agreement, which is reproduced hereinbelow:-

"ARTICLE 20 ARBITRATION 20.1 All disputes, difference, or disagreement arising out of, in connection with or in relation to this Agreement shall be mutually discussed and settled between the Parties.

20.2 All disputes, difference or disagreement arising out of, in connection with or in relation to this Agreement, which cannot be amicably settled, shall be finally decided by arbitration to be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996. Any arbitration pursuant hereunder shall be a domestic arbitration under the applicable law. 20.3 The venue of arbitration shall be Delhi and the language of the arbitration shall be Digitally Signed By:SUNIL 20.4 That all disputes differences between the 17:10:17 parties or in respect of any matter with regard to rights, dues and liabilities of any of the parties, shall be settled by reference

to Arbitration to a sole Arbitrator to be appointed by the Company as per provision of Arbitration and Conciliation Act 1996, together with any statutory proceeding shall be held and conducted at Delhi."

3. Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide notice dated 29.06.2022. Having received no response from the respondents, the present petition has been filed.

4. The learned counsel for the respondent no.3 submits that the respondent no.3 is not a party to the Maintenance Agreement and, therefore, cannot be referred to arbitration.

5. On the other hand, the learned counsel for the petitioner points out that the Maintenance Agreement in the recitals thereof records that the respondent no.1 has been engaged and appointed by the respondent no.3 to provide maintenance and security related services in the building in question. He submits that the respondent no.1 acts as an agent of the respondent no.3 and, therefore, respondent no.3 is also a party to the Arbitration Agreement.

6. Prima facie, I am in agreement with the submission of the learned counsel for the petitioner. The relevant recitals in the Maintenance Agreement is reproduced hereinbelow:-

"AND WHEREAS the Company was engaged by M/s V3S Infratech Ltd. (herein after referred to as the Promoter or Developer) to provide maintenance and security related services by itself or through some other maintenance agency in the said Building located at the said plot either through itself or by engaging some reputed agency."

7. The respondent no.1 is, therefore, acting at the behest of the respondent no.3 and at least, prima facie, the respondent no.3 would also be a party to the Arbitration Agreement. This issue may require a further detailed examination by the Arbitral Tribunal, which for the purposes of the present should not be undertaken in view of the judgment of the Supreme Court in Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1.

8. The learned counsel for the respondent no.1 submits that he is not ready with the arguments today.

9. I have perused the reply filed by the respondent no.1 and find that in the reply the only objection to the appointment of the Arbitrator is on the merits of the disputes raised by the petitioner. In any case, any objection on the jurisdiction of the Arbitrator can be raised by the respondent no.1 before the Arbitrator himself.

10. In view of the above, as the existence of the Arbitration Agreement and due invocation thereof is not denied by the respondent no. 1, and for respondent no. 3, I prima facie find the respondent no. 3 to be also bound by the Arbitration Agreement, I see no impediment in appointing a Sole Arbitrator.

11. I hereby appoint Mr.Rishi Manchanda, Advocate (Mobile:

9911681178) as a Sole Arbitrator.

12. The Arbitrator shall give a disclosure under Section 12 of the Act before entering upon the reference.

13. The fee of the Arbitrator shall be governed by Schedule IV of the Act.

14. It shall be open to the respondents to raise all pleas of lack of jurisdiction before the Arbitrator in accordance with law.

15. The petition is allowed in the above terms.

NAVIN CHAWLA, J MARCH 20, 2023/rv