



2024:DHC:9278



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision : 29.11.2024**+ **ARB.P. 355/2024**

INDRAPRASTHA GAS LIMITED

.....Petitioner

Through: Mr. Abhishek Gupta and Mr. Udit K.
Thakur, Advocates.

versus

M/S CHINTAMANI FOOD AND SNACKS

.....Respondent

Through: Ms. Srishti Sharma and Mr. Adnan
Saifi, Advocates.**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. The disputes between the parties are stated to have arisen in the context of a Gas Supply Agreement dated 05.03.2018 (hereinafter '*the GSA*') entered into between the parties whereby the respondent agreed to purchase Piped Natural Gas (PNG) from the petitioner for its premises located at A-10 Jhilmil Industrial Area, Shahdara, New Delhi-110032.

2. It is averred in the petition that from the date of commissioning of PNG supply, i.e. from 25.08.2012 until October 2020, the respondent was using PNG on a post-paid basis and bills were being generated monthly based on PNG usage of the respondent; however, the respondent was



switched to a prepaid gas service plan from October 2020 which required the respondent to recharge its account in advance on the basis of the PNG consumption price as updated in the petitioner's system.

3. It is further averred in the petition that the PNG consumption price was revised multiple times during the period between July 2022 to December 2022, however, the same was not updated by AIUT Technologies LLP (the agency engaged by the petitioner) in the prepaid meter of the Respondent. Consequently, in the prepaid meter, lesser tariff rate was updated, instead of correct PNG price payable by the respondent.

4. The said discrepancy is stated to have been observed by the petitioner only in November, 2022 on account of which there are alleged outstanding arrears toward the gas consumption. The differential outstanding amount for the period 01.07.2022 to 09.12.2022, is stated to be to the tune of Rs. Rs.3,50,638.33/-. The petition itself acknowledges that the non-realisation of the appropriate amounts from the respondent was on account of the lapse on the part of the petitioner's agency viz. AIUT Technologies LLP, which omitted to update the PNG price.

5. The petitioner issued a legal notice dated 26.09.2023 seeking payment of the outstanding amount alongwith interest. The said liability was denied by the respondent and consequently, disputes arose between the parties. On 28.11.2023, the petitioner issued a notice of invocation of arbitration under Article 23(iii) of the GSA, and made a proposal for appointment of a sole arbitrator.

6. Article 23 of GSA is in the following terms:-

"Dispute Resolution

i) The SELLER and BUYER shall make every effort to resolve



amicably, by directed informal negotiations; any disagreements(s) or the dispute(s) arising between both the parties in relation to or in connection with the GSA whether directly or indirectly.

ii) If any dispute or difference of any kind whatsoever shall arise out of this GSA (and whether before or after) the termination or breach of this GSA parties hereto shall promptly and in good faith negotiate with a view to its amicable resolution and settlement.

iii) In the event, no amicable resolution or settlement is reached within a period of 30 days from the date on which dispute difference arose (in writing), such dispute or difference shall be settled by referring the same to Sole Arbitrator in accordance with the provisions of The Arbitration and Conciliation Act, 1996, or any other statutory modification/amendment thereof. Indraprastha Gas Limited will nominate three independent persons who can be the Sole Arbitrator and intimate the same to Vendor. The Vendor needs to choose one person from the said nominees as Sole Arbitrator. If Vendor fails to choose the arbitrator within thirty days from receipt of a nomination by Indraprastha Gas Limited, Indraprastha Gas Limited will have right to choose the Sole Arbitrator.

iv) The decision of the Arbitral Tribunal shall be final and binding on both the parties. The place of Arbitration shall be New Delhi and the language of the arbitration should be English.”

7. Learned counsel for the respondent seriously dispute the contentions made on behalf of the petitioner. She submits that there are no live and subsisting disputes between the parties, inasmuch as the respondent has been a prepaid customer since October 2020 and has availed the gas supply from the petitioner only after payment in advance as per the applicable rates.

8. It is submitted that no demand towards any alleged outstanding payment was raised by the respondent during the period when the gas was being supplied to the respondent and the same was only sought to be belatedly raised by the petitioner *vide* legal notice date 26.09.2023.

9. While not denying the existence of the arbitration agreement in the GSA dated 05.03.2018, she submits that since no disputes can be said to be



exist between the parties, the present petition be rejected. She further disputes the applicability of the arbitration agreement embodied in Article 23 of the GSA; it is contended that the same became inapplicable when the respondent was migrated to being a prepared customer.

10. For the purpose of these proceedings, I find no merit in the contentions raised on behalf of the respondent. As held in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532, and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re***, 2023 SCC OnLine SC 1666 that the scope of the present proceedings is confined to ascertain whether there exists an arbitration agreement between the parties.

11. In ***In re, Interplay*** (supra) the Supreme Court has held as under: -

“163. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the referral court. The referral court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the arbitral tribunal. This position of law can also be gauged from the plain language of the statute.

164. Section 11(6A) uses the expression “examination of the existence of an arbitration agreement.” The purport of using the word “examination” connotes that the legislature intends that the referral court has to inspect or scrutinize the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression “examination” does not connote or imply a laborious or contested inquiry. On the other hand, Section 16 provides that the arbitral tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the referral court is only required to examine the existence of arbitration agreements, whereas the arbitral tribunal ought to rule on its jurisdiction, including



the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.”

12. In ***SBI General Insurance Co. Ltd*** (supra) the Supreme Court has also held as under:-

“113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In Re: Interplay (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow:

“209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. [...]”

(Emphasis supplied)

114. In view of the observations made by this Court in In Re. Interplay, it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia and adopted in NTPC v. SPML Infra Ltd. that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re. Interplay.”

123. The power available to the referral courts has to be construed in the light of the fact that no right to appeal is available against any order



passed by the referral court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the arbitral tribunal at the nascent stage of Section 11, the referral courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if it Section 11 application is rejected.”

13. In the present case, the execution of the GSA is not denied by the respondent. The said agreement admittedly contains an arbitration clause which is reproduced hereinabove (Article 23). It is contemplated therein that the dispute between the parties shall be resolved by way of arbitration. The contention raised by the respondent as regards inapplicability thereof is inextricably connected to the version of the respondent as regards the merits of the controversy involved. It is the case of the petitioner that the terms of the GSA dated 05.03.2018 ceased to apply after October 2022. This is an aspect which requires interpretation of the terms of the contract and an adjudicatory exercise which is best left to be undertaken by a duly constituted Arbitral Tribunal.

14. Although the arbitration agreement between the parties contemplates that the appointment of the sole Arbitrator shall be made out of a panel of three persons chosen by the petitioner, it is conceded by the learned counsel for the petitioner that the said appointment procedure is no longer valid in view of the judgment of the Supreme Court in ***Central Organisation for Railway Electrification Vs. ECI SPIC SMO MCML (JV) A Joint Venture Company***, MANU/SC/1190/2024. It is acceded that it is incumbent on this Court to appoint an independent sole arbitrator.

15. Accordingly, Mr. Anant Vijay Palli, Senior Advocate (Mob. No.: +91 9810199102) is appointed as the Sole Arbitrator to adjudicate the disputes



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between the parties.

16. It is made clear that the respondent shall be entitled to raise appropriate objections as regards jurisdiction/arbitrability which will be duly decided by the learned sole arbitrator on merits. All rights and contentions of the respondent in this regard are expressly reserved.

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

18. At joint request, it is directed that the arbitration shall take place under the aegis of and as per the Rules of the Delhi International Arbitration Centre (DIAC).

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

20. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 29, 2024/at