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

+ ARB.P. 1144/2023, I.A. 21723/2023

AEROSOURCE INDIA PVT LTD. .... Petitioner

Through: Mr.Sukrit R.Kapoor and Mr.Aviral  
Tripathi, advts.

versus

GEETANJALI AVIATION PVT LTD. .... Respondent

Through: Mr.Jayashree Shukla Dasgupta, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

**ORDER**

**22.02.2024**

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1. The present petition has been filed under Section 11 (5) of the Arbitration and Conciliation Act, 1996 seeking the appointment of an Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes *inter se* the parties
2. The learned counsel for the petitioner submits that an agreement was entered into between the parties on 30.10.2020. The petitioner is a professional aviation consulting company experienced in the sale, and purchase of business aircraft/helicopters and handling all the processes involved in the induction of the same. The respondent had expressed its interest in acquiring one new/pre-owned midsize aircraft like Bombardier Challenger 650/605 or similar 'aircraft'. The respondent wished to hire the petitioner AIPL in the capacity of the consultant for managing/facilitating the entire aircraft induction project under the NSOP category.
3. Learned counsel submits that the petitioner company facilitated the

acquisition of *Bombardier Learjet 45XR aircraft* and the letter of intent was signed between the respondent company and the Luxembourg Air Ambulance **S.A.** Learned counsel submits that as per understanding between the parties as reflected from the WhatsApp chats filed on record, the petitioner raised an invoice bearing no. A1/VS/37/21-22, dated 22.02.2022 in the sum of Rs.48,67,500/- in the name of VSR Ventures Private Limited.

4. Learned counsel submits that in fact the respondent had given an assurance that the payment of the bill raised in the name of VSR Ventures Private Limited shall be made by the respondents. Learned counsel submits that though there is no formal order however WhatsApp chats have been placed to support the averment made in favour of the petitioner.
5. Learned counsel for the respondents has vehemently opposed the petition and submitted that as per the document filed on record, the agreement was between the petitioner and the respondents. Learned counsel submits that VSR Ventures Private Limited was nowhere in the agreement. Learned counsel further submits that the respondents cannot be saddled with the liability raised for the payment against invoice raised upon VSR Ventures Private Limited. Learned counsel submits that as far as the letter of intent is concerned, there is another letter of intent filed on record by the petitioner herein between VSR Ventures Private Limited and Luxemburg Air Ambulance SA regarding the same aircraft.
6. The scope of jurisdiction of the court under section 11(6) of the Arbitration and Conciliation Act, 1996 is very limited to examine

whether *prima facie* an arbitration agreement exists between the parties. Reliance can be placed on *M/S Duro Felguera, S.A. vs. Gangavaram Port Limited* (2017) 9 SCC 729 wherein the court inter-alia held as under:

*“The scope of the power under Section 11 (6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. (supra) and Boghara Polyfab (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court’s intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11 (6A) ought to be respected.”*

7. Therefore, before referring the matter to arbitration, this court is duty-bound to see whether there is an agreement between the parties and if there is an arbitrable dispute. As per sections 8 and 11 of the A&C Act, the court is required to only see whether *prima facie*, an agreement containing the arbitration clause exists between the parties or not. Section 8(1), which was replaced by the amendment of 2015, mandates a judicial authority to refer parties to arbitration unless there is a *prima facie* finding that no valid arbitration agreement exists. The language used in the provision is as follows:

*“8. Power to refer parties to arbitration where there is an arbitration agreement.— (1)A judicial authority, before*

*which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.”*

8. The Scheme of A&C Act, 1996 makes it clear that Sections 8 and 11 are similar in character, regarding reference to arbitration, and have the same reach and extent in terms of court intervention. If the party has *prima facie* proven the existence of an arbitration agreement, the Court is required by Sections 8 and 11 to send the issue to arbitration or appoint an arbitrator.
9. From the documents available on record, this court has *prima facie* found that no agreement exists between the petitioner and VSR Ventures Private Limited in whose name the invoice dated 22.02.2022 has been raised. Further, there is also no document to show that in any manner the respondent is connected with VSR Ventures Private Limited. Although the petitioner wants this court to rely upon the WhatsApp chats and ignore the agreement entered into between the parties. In the absence of any agreement containing the arbitration clause and the arbitrable dispute between the petitioner and the respondent, the matter cannot be referred to arbitration.

10. In view of the above, I consider that the present matter cannot be referred to arbitration as the petitioner has failed to prima facie show the existence of an agreement entered between the parties with respect to the invoice dated 22.02.2022.
11. Hence, the present petition along with the pending application is dismissed.

**DINESH KUMAR SHARMA, J**

**FEBRUARY 22, 2024/rb..**