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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: November 03, 2023

\+ FAO (COMM) 164/2023 & CM APPL. 40580/2023

ANR INTERNATIONAL PRIVATE LIMITED

..... Appellant

Through: Mr. Samrat Nigam, Ms. Stuti Gupta and Mr. Sunil Manchanda, Advs.

versus

MAHAVIR SINGHAL & ORS.

..... Respondents

Through: Mr. Udit Maniktala, Mr. S. K. Maniktala, Mr. Mohit Sharma, Mr.Ayush Kumar and Mr. Abhishek Kedia, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. The present appeal has been filed challenging an order dated June 02, 2023 passed by the District Judge, Commercial Court-01, Shahdara, Karkardooma, Delhi, whereby an application under Section 8 of the Arbitration and Conciliation Act, 1996 ('Act of 1996', hereinafter) filed by the defendant No.1 in suit bearing CS(COMM.) No. 541/2022, has been dismissed.

2. The respondent No.1 ('respondent', hereinafter) in this appeal had filed the suit for recovery of a sum of ₹59,83,712/- along with

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pendente lite interest @ 18% per annum before the learned District Judge. The respondent served summons on the appellant on January 19, 2023. The appellant, before filing the Written Statement, filed an application under Section 8 of the Act of 1996 on April 28, 2023 i.e., within a period of 120 days, stating that the tax invoices filed and relied upon by the respondent in support of its suit contains an arbitration clause, and as such the suit is not maintainable and is liable to be dismissed. The learned District Judge dismissed the application under Section 8 of the Act of 1996 vide order dated June 02, 2023.

3. Mr. Samrat Nigam, learned counsel for the appellant would submit that the learned District Judge has taken a hyper technical view in deciding the application under Section 8 of the Act of 1996, and has failed to appreciate that (i) there is a valid arbitration agreement between the parties; (ii) action should be brought before a judicial authority and that action should be the subject matter of the arbitration (iii) either of the parties or any person related to the dispute can invoke the arbitration clause or agreement before the date of submitting their first statement on the substance of the dispute before the judicial authority (iv) the application of the party to refer the case to arbitration should be filed with the original arbitration agreement or its duly certified copy.

4. He stated that the respondent invoked the arbitration clause by issuing notice under Section 21 of the Act of 1996, which was initially denied by the appellant under wrong advice. He also stated that there is a valid arbitration clause in the tax invoices and the learned District Judge has not given any finding on the existence of an

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arbitration agreement. He also stated that the learned District Judge has failed to appreciate the conditions under Section 7(4) of the Act of 1996. Further, under Section 8, the party merely needs to insinuate the Court about the arbitration clause before the filing of the first statement.

5. Mr Nigam has stated that the arbitration clause contained in the tax invoice has been relied upon by both the parties; the relevant part whereof is reproduced as under:-

> *"Terms & Conditions:*
> *1. Cenvat Credit of 4% Additional Duty of Customs (SAD) is not Admissible on this Invoice.*
> *2. All the disputes will be referred to the Arbitration to be held at delhi by an Arbitrator appointed by the supplier to which the buyer shall have no objection & Decision of the Arbitrator shall be final & binding on the Parties & cost of such arbitration proceedings shall be borne by the Unsuccessful Party. Other conditions mention PTO."*

6. Under Section 8 of the Act of 1996, if all conditions are satisfied, then the judicial authority is obliged to refer the parties to arbitration. The Trial Court ought to have decided the debatable question of fact i.e., existence of a valid arbitration agreement. However no findings have been given by the learned District Judge on the issue.

7. He also stated that counsel for both the parties have relied upon the tax invoices containing arbitration clause, which ought to be treated as an arbitration agreement. In support of his submission, he has relied upon the order of the Trial Court dated May 20, 2023, which reads as under:-

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> *"The said Tax Invoices, as per the submissions of the Ld. Counsel for both the parties, contains the Arbitration Clause and may be treated as an Arbitration Agreement"*

8. He has stated that the learned District Judge failed to appreciate the ratio of the judgment in ***Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleum, (2003) 6 SCC 503*** relied upon by the appellant and mentioned in the application, wherein the Supreme Court has held as under:-

> *"This court in the case of P. Anand Gajapathi Raju v. P. V. G. Raju, has held that the language of Section 8 is preemptory in nature. Therefore, in cases where there is an Arbitration Clause in the Agreement, it is obligatory for the court to refer the parties to Arbitration in terms of their Arbitration Agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an Arbitrator. Therefore, it is clear that if, as contended by a party in an Agreement between the parties before the Civil Court, there is a clause for Arbitration, it is mandatory for the civil court to refer the dispute to an Arbitrator. In the instant case the existence of an Arbitral Clause in the Agreement which is duly accepted by both the parties as also by the courts below but the applicability thereof is disputed by the Respondent and the said dispute is accepted by the courts below. Be that as it may, at the cost if repetition, we may again state that the existence of the Arbitration Clause is admitted. If that be so, in view of the mandatory language of Section 8 of the Act, the courts below ought to have referred the dispute to Arbitration."*
>
> *(emphasis supplied)*

9. He submitted that the learned District Judge while passing the impugned order has observed that the appellant cannot be permitted to

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take inconsistent and contradictory stands, but has not observed that the respondent No.1/plaintiff has also concealed the fact that a legal notice was issued by him to the appellant invoking the arbitration clause and has later taken a contradictory stand by objecting to the application of the appellant under Section 8 of the Act of 1996. In support of his submission he has relied upon the judgment in ***Swadesh Kumar Agarwal v. Dinesh Kumar Agarwal***, ***Civil Appeal No. 2935-2938/2022***, wherein the Supreme Court while referring the matter to arbitration held that even without any written contract containing any arbitration agreement, the parties may themselves decide to refer the dispute to arbitration by mutual consent.

10. In support of his submissions, he has also relied upon the judgments in ***Magma Leasing and Finance Limited and Anr v. Potluri Madhavilata and Anr, (2009) 10 SCC 103***; and ***Hema Khattar v. Shiv Khera , (2017) 7 SCC 716;***

11. Mr Udit Maniktala, learned counsel appearing for the respondents, has conceded that the respondent No.1 had sent a notice invoking arbitration on January 02, 2021 stating that there exists an arbitration agreement between the parties and that any dispute arising from the invoice should be referred to arbitration. But the appellant/defendant No.1 denied the existence of any arbitration agreement between the parties vide reply letter dated January 09, 2021. He also stated that the appellant has approached the learned District Judge with the application under Section 8 of the Act of 1996 as a dilatory tactic.

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12. The appellant did not submit his first statement on the substance of dispute with regard to admissibility of the arbitration clause before the Shahdara District Legal Service Authority, despite appearing before it. As such, the appellant once again failed to point out the existence of the arbitration clause while exhausting the remedy of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

13. Thereafter, the appellant was served summons on January 19, 2023 and on the dates of hearing (January 23, 2023 and February 27, 2023), the counsel for the appellant had sought time to file Written Statement and had not raised the objection with regard to the existence of arbitration agreement.

14. According to him, under Section 8 (1) of the Act of 1996, the appellant ought to have shown the arbitration agreement before submitting his first statement on the substance of dispute, only then would a judicial authority refer the parties to arbitration. The appellant failed to demonstrate the admissibility of arbitration clause as he had not pointed out the existence of an arbitration agreement during his first statement on the substance of the dispute.

15. In support of his submission, he has relied upon the judgment of this Court in Raman ***Kwatra & Anr v. M/s. KEI Industries Limited, FAO (OS) COMM. 172/2022*** and of the Supreme Court in the case of ***Mumbai International Airport Pvt. Ltd v. M/s Golden Chariot Airport & Anr, Civil Appeal No. 8201/2010***.

16. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the learned District Judge

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was right in dismissing the application filed by the appellant under Section 8 of the Act of 1996. The conclusion drawn by the learned District Judge is the following:

> *"28. In the present case, it was initially the case of the plaintiff that there was an arbitration clause, as per the terms and conditions of the Excise Invoices, and accordingly a legal notice dated 02.01.2021 was served by the plaintiff on the defendant no. 4, in a similar dispute between the parties. But, the defendant no. 1 has denied the existence of the said Arbitration Clause, vide reply dated 09.01.2021.*
> *29. But now, after filing of the present suit, the defendant has taken a U-Turn and has again raised the objection that there exists an Arbitration Clause, as per the terms and conditions of the Excise Invoices, and therefore, the plaintiff should have resorted to Arbitration.*
> *30. In the considered opinion of this Court, the defendant cannot be permitted to approbate and reprobate on the same facts, at the same time, and cannot be permitted to take inconstant and contradictory stands.*
> *31. It has been held by the Hon'ble High Court of Delhi, in case titled as, "Sagar Ratna Restaurants Pvt. Ltd. v. D.S. Foods & Ors." passed in CM (M) 71/2021, decided on 22.04.2021 as under:*
>
> > *20. A bare perusal of the above sequence of events would show that the respondents have been taking inconsistent stands at different stages, as per their convenience. On the petitioner invoking the Arbitration Agreement, the respondents took a plea that the dispute raised is not arbitrable in nature. This submission found favour with the learned Appellate Court while dismissing the appeal of the petitioner filed under Section 37 of the Act. Faced with this situation, the petitioner instead of challenging the said order, accepted the*

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objection of the respondents and withdrew its claim before the learned Arbitrator to file the suit in question. The petitioner, therefore, not only suffered an order but also changed its position to its detriment based on the submission made by the respondents.

21. In Kiran Devi v. Bihar State Sunni Wakf Board & Ors., 2021 SCC OnLine SC 280, on inconsistent pleas being taken by a litigant, the Supreme Court has held as under:-

> *"13. We have heard learned counsel for the parties and find that it is not open to the appellant at this stage to CM(M) No.71/2021 Page 8 dispute the question that the suit filed before the learned Munsif could not have been transferred to the Wakf Tribunal. The plaintiff had invoked the jurisdiction of the Civil Court in the year 1996. It is the Wakf Board and the appellant who then filed an application for transfer of the suit to the Wakf Tribunal. Though, in terms of Ramesh Gobindram, the Wakf Tribunal could not grant declaration as claimed by the plaintiff, but such objection cannot be permitted to be raised either by the Wakf Board or by the appellant as the order was passed by the Civil Court at their instance and was also upheld by the High Court. Such order has thus attained finality inter-parties. The parties cannot be permitted to approbate and reprobate in the same breath. The order that the Wakf Tribunal has the jurisdiction cannot be permitted to be disputed as the parties had accepted the order of the civil court and went to trial before the Tribunal. It is not a situation where plaintiff has invoked the jurisdiction of the Wakf Tribunal.*

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22. In Suzuki Parasrampuria Suitings Pvt. Ltd. v. Official Liquidator of Mahendra Petrochemicals Ltd. (In Liquidation) & Ors., (2018) 10 SCC 707, the Supreme Court deprecated this practice of taking inconsistent pleas by a litigant to merely prolong the litigation, in the following words:

> *"12. A litigant can take different stands at different times but cannot take contradictory stands in the same case. A party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands. The untenability of an inconsistent stand in the same case was considered in Amar Singh vs. Union of India, (2011) 7 SCC 69, observing as follows:*
>
> *"50. This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions."*
>
> *13. A similar view was taken in Joint Action Committee of Air Line Pilots' Assn. of India vs. DG of Civil Aviation, (2011) 5 SCC 435, observing:*
>
> *"12. The doctrine of election is based on the rule of estoppel-- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity..... Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily."*

23. This Court in its judgment dated 27.05.2020 passed in CS(OS) 2454/2009 titled Parmod Kumar Jain & Anr. vs. Ram Kali Jain & Ors., has also held as under:-

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"29. The question which arises for consideration is, whether the Courts today can permit litigants coming before it to take a stand before the Court different from that they have been taking for long period of time before taxation and other authorities. In my view, the Courts, if permit the litigants to, for the purposes of litigation take a different stand from what they have been taking while complying with various laws, would be aiding and abetting such litigants to violate the laws, particularly fiscal laws and would be permitting the litigants to change their face from time to time to their advantage and to the detriment of public exchequer and the public at large. The same cannot be permitted. Reference in this regard can be made to Dr.Mukesh Sharma Vs. Dr. Maheshwar Nath Sharma 2017 SCC OnLine Del 7237, M/s New Era Impex (India) Pvt. Ltd. Vs. M/s Oriole Exports Pvt. Ltd. (2016) 234 DLT 615 and M/s CM(M) No.71/2021 Page 11 Moolchand Khairati Ram Trust Vs. Union of India 2016 SCC OnLine Del 2840."

24. *In Telefonaktiebolaget Lm Ericsson (Publ) vs. Intex Technologies (India) Ltd., 2015(62) PTC 90 (Del), this Court reiterated as under:-*

"144. It is equally well-settled that the party cannot be allowed to approbate or reprobate at the same time so as to take one position, when the matter is going to his advantage and another when it is operating to his detriment and more so, when there is a same matter either at the same level or at the appellate stage.

145. In the case of Dwijendra Narain Roy vs. Joges Chandra De, MANU/WB/0151/1923: AIR 1924 Cal 600, The Division Bench of the Calcutta High Court has succinctly held:

It is an elementary rule that a party litigant cannot be permitted to assume inconsistent

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positions in Court, to play fast and loose, to blow hot and cold, to approbate and reprobate to the detriment of his opponent. This wholesome doctrine, the learned Judge held, applies not only to successive stages of the same suit, but also to another suit than the one in which the position was taken up, provided the second suit grows out of the judgment in the first.

Applying the said principles of law to the present case, it is apparent that if the defendant is allowed to re-agitate, it would also lead to allowing the party to approbate and reprobate at the same time which is clearly impermissible. The plea is thus barred by way of principle of approbate or reprobate which is a facet of estoppels as the defendant had accepted the findings of the Division Bench and Single Judge. There are no subsequent events which have changed warranting re-adjudication of the matter."

25. It is also to be seen that arbitration is an Alternate Dispute Resolution mechanism which is resorted to by the parties with their consent. The parties have to be ad idem for the same. The respondents have, in the earlier instance, clearly envisaged an intent not to be bound by the Arbitration Agreement so far as the claim of the petitioner to the trademark is concerned. The petitioner has now accepted that opposition and has invoked the ordinary jurisdiction of a Civil Court seeking enforcement of its rights in the trademark. Where both the parties have become ad idem that the dispute raised by the petitioner is not arbitrable in nature, the parties could not have been referred to arbitration.

(emphasis supplied)

32. In view of the legal position, as discussed above and the material on record, I do not find any merit in the present application. It appears that the present application has been filed by the defendant no. 1 only

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with the malafide intention of delaying the present proceedings. Therefore, the same is hereby dismissed being devoid of any merits, subject to imposition of a cost of Rs.20,000/- on the applicant/defendant no. 1.
It is ordered accordingly.
Adjourned for payment of entire cost by the defendants and for filing the Written Statement and for further proceedings, on 06.06.2023."

17. The submission of Mr. Nigam is primarily that the provisions of Section 8 of the Act of 1996 are mandatory in nature and if all the conditions thereof are satisfied, the judicial authority is obliged to refer the parties to arbitration. Whereas the stand of Mr. Maniktala is that the appellant having denied the existence of an arbitration clause in reply to the legal notice issued by the respondent, cannot now contend otherwise and file an application under Section 8 seeking reference to arbitration.

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18. To answer this issue, it is necessary to reproduce Section 8 of the Act of 1996:

> *"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 so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.*
> *(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.*
> *(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."*

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19. Going by the above, we note that in the present case, an arbitration clause exists under the heading '*VAT Declaration*'. The respondent had sent a notice to the appellant invoking the arbitration clause as per the *Terms & Conditions* in the tax invoice. We reproduce the notice dated January 02, 2021 issued by the respondents invoking the arbitration clause in the invoice as under:-

> *"1. That my client is engaged in the business of marketing and sale of wide range of Polymers raw materials.*
>
> *2. That my client has sold/supplied to you Polymers raw materials vide various excise invoices and as per the books of accounts of my client as on 19.06.2027, a sum of Rs.14,04,860/- (Rupees Fourteen Lakhs Four Thousand Eight Hundred and Sixty only) is due and payable by you to my client.*
>
> *3. That despite having received the goods from my client in terms of the excise invoices relied upon you by my client and further having acknowledged/admitted your liability towards my client to pay to my client the outstanding amount, you have failed and neglected to make the payment of the outstanding amount to my client.*
>
> *4. That my client is your Creditor and you are indebted to my client for a sum of Rs.14,04,860/- along with interest @ 18% p.a. form the due date of payment till the date of actual payment.*
>
> *5. That despite repeated request made by my client, the outstand amount has not been paid by you to my client. It is clear that the outstanding amount has not been paid by you to my client due to some ulterior purpose which is legally untenable and unreasonable.*
>
> *6. That my client cannot wait for the recovery of the outstanding amount for an indefinite period and has thus instructed me to demand from you the entire outstand amount.*

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7. That I, on behalf of my client hereby call upon you to pay to my client, the entire outstanding amount of Rs.14,04,860/- along with interest @ 18% p.a. from the due date of payment till the date of actual payment and a sum of Rs.22000/- towards cost of this notice within 7 days from the receipt of this notice.

8. In case you fail to discharge your above mentioned liability, it would be presumed that you are not interest in making the legitimate payment of my client and in such a situation, it would be deemed that disputes have arisen between you and my client. As per the Terms and Conditions as contained in the Excise Invoice vide which goods have been supplied to you by my client, all the disputes will be referred to the Arbitration to be held at Delhi by an Arbitrator appointed by supplier to which the buyer shall have no objection & decision of the arbitrator shall be final and binding on the parties & cost of such arbitration proceedings shall be borne by the unsuccessful party.

9. In case you choose not to make payment, you may treat this notice as a notice invoking arbitration as per the Terms & Conditions as contained in the abovementioned Excise invoice, for reference of the dispute to the sole arbitrator of Sh. Rajesh Jindal (Advocate) H-4, 312, Vardhman North Ex Plaza, Near PP Jewellers Showroom, Netaji Subhash Place, Pitampura Delhi 110034, whose decision shall be final and binding on the parties.

10. Should you fail to comply with the notice, my client has given me unequivocal instructions to initiate legal proceedings against you including referring the matter to arbitration."

(emphasis supplied)

20. Though the plea of Mr. Maniktala looks appealing on a first blush, on a deeper consideration, we are of the view that merely because the appellant had denied the existence of the arbitration clause in its reply and also denied the claim on merit, it would not *per*

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se mean that the arbitration clause ceases to exist. It was required for the respondent / plaintiff to convince the Trial Court that no arbitration clause exists in the invoices and arbitration has been wrongly invoked for determining the *inter se* disputes between the parties.

21. Mr. Nigam is justified in relying upon the judgment in the case of ***Sundaram Finance Ltd. v. T. Thankam, (2015) 14 SCC 444***, wherein the Supreme Court has in paragraph 8 held as under:

> *"8. Once there is an agreement between the parties to refer the disputes or differences arising out of the agreement to arbitration, and in case either party, ignoring the terms of the agreement, approaches the civil court and the other party, in terms of the Section 8 of the Arbitration Act, moves the court for referring the parties to arbitration before the first statement on the substance of the dispute is filed, in view of the peremptory language of Section 8 of the Arbitration Act, it is obligatory for the court to refer the parties to arbitration in terms of the agreement, as held by this Court in P. Anand Gajapathi Raju and others v. P.V.G. Raju".*

22. Mr. Nigam is also justified in relying upon the judgment in the case of ***Magma Leasing and Finance Limited (supra),*** wherein the Supreme Court has in paragraph 18 held as under:

> *"18. Section 8 is in the form of legislative command to the court and once the pre-requisite conditions as aforestated are satisfied, the court must refer the parties to arbitration. As a matter of fact, on fulfillment of conditions of Section 8, no option is left to the court and the court has to refer the parties to arbitration. There is nothing on record that the pre-requisite conditions of Section 8 are not fully satisfied in the present case. The trial court, in the*

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circumstances, ought to have referred the parties to arbitration as per arbitration clause 22."

23. Insofar as the scope of Section 8 of the Act of 1996 is concerned, the Supreme Court has in ***Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1***, held as under:

"113. Prima facie case in the context of Section 8 is not to be confused with the merits of the case put up by the parties which has to be established before the Arbitral Tribunal. It is restricted to the subject-matter of the suit being prima facie arbitrable under a valid arbitration agreement. Prima facie case means that the assertions on these aspects are bona fide. When read with the principles of separation and competence-competence and Section 34 of the Arbitration Act, the referral court without getting bogged down would compel the parties to abide unless there are good and substantial reasons to the contrary.

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154.4. Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably "non-arbitrable" and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the

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jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism.

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207. Having observed the precedents holding the field in respect of Section 11, we now come to an analysis of Section 8. Section 8 of the Act applies, when a matter is brought by one of the parties before the court, and the other party brings to the notice of the court of existence of such arbitration agreement. Under these circumstances, the court is obligated to refer a matter to arbitration, on satisfaction that a valid arbitration agreement exists between the parties. The 2015 Amendment clarified that the test to be utilised by the court is on a prima facie basis."

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238. At the cost of repetition, we note that Section 8 of the Act mandates that a matter should not (sic) be referred to an arbitration by a court of law unless it finds that prima facie there is no valid arbitration agreement. The negative language used in the section is required to be taken into consideration, while analysing the section. The court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above. Therefore, the rule for the court is "when in doubt, do refer".

(emphasis supplied)

24. From the above judicial pronouncements, it is clear that Section 8 of the Act of 1996 has a mandatory effect and once the conditions prescribed therein are seen to have been fulfilled, it is incumbent upon the Court to allow the application filed by the appellant and refer the

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parties to arbitration. It is conceded by the learned counsel for the respondents that there is an arbitration clause governing the parties and disputes have arisen between the parties and that they have invoked the arbitration clause in the invoice vide notice dated January 02, 2021 issued under Section 21 of the Act of 1996. If that be so, then there was no option left to the learned District Judge but to refer the parties to arbitration.

25. Insofar as the judgment in the case of ***Mumbai International Airport Pvt. Ltd. (supra)*** relied upon by the learned counsel for the respondents for a similar proposition is concerned, the issue in the said case arose from the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The same is not applicable to the issue relating to Section 8 of the Act of 1996.

26. In view of the position of law which we have referred to above, it must be held here that though the doctrine of approbate-reprobate invoked by the learned counsel for the respondents is a facet of the law of estoppel, it is also a law well settled that there cannot be an estoppel against a law. The law with regard to Section 8 of the Act of 1996 mandates reference of the parties to arbitration with minimal judicial interference. Mr. Maniktala has also relied upon the judgment in the case of ***Raman Kwatra (supra)*** to contend that a person is not permitted to approbate and reprobate and if he does so, he is not entitled to any equitable relief. This judgment also has no applicability for the reasons already stated above.

27. The plea of approbate- reprobate on part of the appellant is no ground to decline reference of the parties to arbitration, moreover,

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when it is not the case of the respondents that the arbitration agreement has ceased to exist or has been novated.

28. The three-judge bench of the Supreme Court in ***Vidya Drolia (supra)*** being clear and also in terms of the judgments in ***Sundaram Finance Ltd***. ***(supra)*** and ***Magma Leasing and Finance Limited (supra),*** as relied upon by Mr. Nigam, we are of the view that the learned District Judge has erred in rejecting the application filed by the appellant under Section 8 of the Act of 1996, more so, when the learned District Judge accepts the existence of the arbitration clause in the invoice. Still, on the strength of the stand taken by the appellant in reply to the legal notice dated January 02, 2021 and by invoking the doctrine of approbate-reprobate, the learned District Judge has dismissed the same, which according to us, is clearly untenable.

29. In the conspectus of the foregoing discussion, the present appeal is required to be allowed. The order dated June 02, 2023 of the learned District Judge is set aside. We allow the application filed by the appellant under Section 8 of the Act of 1996 and appoint Justice R.K. Gauba, a former Judge of this Court as the Arbitrator, who shall adjudicate the disputes between the parties, through claims and counter-claims, if any. His fee shall be regulated by the Fourth Schedule of the Act of 1996. He shall give disclosure under Section 12 of the Act of 1996.

30. The suit bearing No. CS (COMM) 541/2022 is dismissed as not maintainable. No costs.

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31. Let a copy of this order be sent to Justice R.K. Gauba (Retd.) on his email justicegauba@gmail.com and through WhatsApp on his mobile number 9650411919.

CM APPL. 40580/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

NOVEMBMER 03, 2023/*jg/aky*

Signature Not Verified
Digitally Signed
By:ANIL KUMAR
Signing Date:03.11.2023
14:46:35