IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 31, 2022

\+ ARB.P. 194/2022

M/S SEQUOIA FITNESS AND SPORTS TECHNOLOGY PVT. LTD. ..... Petitioner
Through: Mr. Himanshu Mahajan, Adv.

versus

GD GOENKA PVT. LTD. & ORS. ..... Respondent
Through: Mr. Advait Ghosh, Adv. for R-2 to R-4

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. At the outset, I may state, the learned counsel for the petitioner had on May 27, 2022, made a statement that he shall press this petition qua respondents 2 to 4 and not against respondent No.1. Hence, the present petition is being considered for appointment of sole Arbitrator qua respondents 2 to 4.

2. This is a petition filed under Section 11 (6) of the Arbitration & Conciliation Act, 1996 (for short, 'A&C Act, 1996') with the following prayers:

"Prayers:-

Therefore, based on the facts and the circumstances of the matter, it is most humbly and respectfully prayed that this Hon'ble Court may

graciously be pleased to:

1. Pass an order for appointing an independent and impartial Sole Arbitrator, to adjudicate upon the pending disputes between the Petitioner and the Respondent; and/or

2. Pass and order directing the Respondent No. 1 to compensate the Petitioner for costs of this litigation; and/or

3. Pass such further or other orders which this Hon'ble Court may deem fit in the light of the facts and circumstances of the case and in the interest of justice, equity, and good conscience."

3. In the present case Sequoia Fitness and Sports Technology Pvt. Ltd. (hereinafter referred to as 'Petitioner') is a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at 2216, D2 Vasant Kunj, New Delhi-110070 and principal office at 127, 1st Floor, Tower B3, SpazeITech Park, Sohna Road, Sector 49, Gurugram, Haryana-122018.

4. On the other hand, respondent No.1 / (GD Goenka Pvt. Ltd.) is running schools in the name and style of GD Goenka International School at Naukuchiatal. Distt., Nainital / (respondent No. 2) and GD Goenka International School, Kashipur / (respondent No. 3). It is submitted that respondent No.1 is a private limited company incorporated under the relevant provisions of the erstwhile Companies Act, 1956, having its registered office at N-85, Connaught Place, New Delhi-110001.

5. According to the facts of this case, the petitioner emailed the profile of the Company to the respondents for entering into a sports

training and coaching arrangement, called the '*Fitness 365'* (hereinafter referred to as 'Program') for the students studying in the schools being operated by the respondent No.1 on November 05, 2018. Thereafter, several rounds of meetings were held between the petitioner and the respondent No.4 for conducting the program offered by the petitioner in the schools operated by respondent Nos.2 and 3. That apart, an In-person meeting was also held on November 24, 2018 between the respondents and the petitioner, AT Templeton Head Office, Nainital.

6. It is the case of the petitioner that it shared the copy of the *proposal-cum-agreement* for conducting the Program during the meeting dated March 16, 2019. The proposal contained exhaustive terms & conditions including arbitration clause clearly stipulating, referring of the disputes arising out of the *proposal-cum-agreement* to the Arbitral Tribunal consisting of a sole arbitrator.

SUBMISSIONS ON BEHALF THE PETITIONER

7. Mr. Himanshu Mahajan, the learned counsel for the petitioner submitted, the respondents had orally accepted the proposal and the terms & conditions stipulated thereof. On verbal assurances given by the respondents, the petitioner had posted one coach on April 13, 2019, with respondent No.3, and thereafter three more coaches on April 14, 2019. Consequently, a set of three more coaches were also provided to respondent No.3 during the week starting from April 14, 2019, for conducting the sports training program as per the agreed *proposal-cum-agreement* .

8. He submitted that the petitioner also deployed three middle-

level staff members and one senior staff member for visiting and interacting with the respondent No.3 from time to time, to ensure the quality of delivery, to conduct surprise checks on the training delivery, and for planned review meetings with the respondents. He also submitted that the trainers, coaches, and the training program were conducted by the petitioner's training team / staff at the respondent's school. The respondents took regular attendance of such trainers and coaches (Training Team) on a daily basis. The attendance was regularly shared with the petitioner by the respondents, to update the progress of the training being conducted by the petitioner for the students of the respondents. Moreover, the trainers shared their resumes with the respondents. He further submitted that the petitioner has made alternative arrangements in the staff when the respondents expressed such desire.

9. He stated that, on May 01, 2019, the petitioner shared a letter dated April 29, 2019 with the principal of respondent No.3, informing the entire arrangement of the petitioner's staff for the full-year training program at respondent No.3's school. He also stated that the letter contained clear-cut responsibilities of the Training Team deployed with the respondent No.3 School and the duration of the training program.

10. He further stated that, upon non-receipt of acceptance on the *proposal-cum-agreement* by the respondent No.3 and respondent No.4 / (Akarsh Agarwal), the petitioner again shared the *proposal-cum-agreement* dated March 16, 2019, along with Sports & Fitness Equipment Master List with respondent No.3 and respondent No.4 for

acceptance through e-mail dated May 14, 2019. However, respondent No.3 and respondent No.4 neither gave any reply to that e-mail nor did they execute the *proposal-cum-agreement*.

11. On June 05, 2019, the petitioner shared the invoices dated June 03, 2019, amounting to ₹1,31,603.04/-, Invoice dated June 03, 2019, amounting to ₹3,24,500/- and Invoice dated June 03, 2019, amounting to ₹3,24,500/- vide email.

12. He stated that the contract between the petitioner and respondents was that of reciprocal obligations and the petitioner performed its part of the contract by deploying its staff for training the students of the respondents. However, the respondents failed to perform their part of the contract by not only failing to execute the contract but also by not making the payments against the invoices raised by the petitioner from time to time.

13. Furthermore, the learned counsel for the petitioner submitted that the petitioner gave several reminders for payment over email dated June 24, 2019, WhatsApp Messages dated June 25, 2019, and July 04, 2019 but the respondents kept on delaying the payment against the invoices raised by the petitioner on some pretext or the other.

14. He submitted that the petitioner vide WhatsApp Message dated July 15, 2019 reminded the respondents regarding the outstanding payments against the invoices. However, the respondents raised certain disputes regarding the conducts of the trainers and denied the payment against the invoices. He also submitted that the possible solution for the issue was also broached in the same conversation by the petitioner and gave the alternative to hold 15 days' worth of payment instead of

holding the entire amount; however, the respondents gave no heed to the request of the petitioner. The petitioner further sent documents for approval of records vide emails dated August 10, 2019, and August 13, 2019.

15. He stated that between September 16, 2019 and September 19, 2019, the respondents directed the trainers and coaches working with respondent Nos.2 and 3 to vacate the premises without any advance notice to the petitioner, terminated the contract with petitioner. That apart, the respondents ordered the employees of the petitioner with the threat of calling the police if the training team fails to leave the premises on the same day. In addition, a formal complaint vide email dated September 19, 2019, about the appalling behavior of respondents, was also made by coach Surya Vikram Singh Rathore to the Principals of respondent No.2 and respondent No.3.

16. He submitted that the petitioner in good faith tried to reason out with the respondents' the aspect of outstanding payments via WhatsApp and emails dated September 19, 2019, September 21, 2019, September 23, 2019, and October 14, 2019. Consequently, on October 29, 2019, the petitioner sent the consolidated invoice for the period starting from April 2019 to September 2019 amounting to ₹15,97,261/- vide Invoice dated October 20, 2019, through email to the respondents. Thereafter, on November 07, 2019, vide WhatsApp message reminder was given by the petitioner to the respondents for payment of invoices post the illegal and arbitrary termination of the agreement by the respondents, however, the reminders did not materialize in any way whatsoever.

17. Furthermore, he submitted that the petitioner tried to resolve the issue amicably, but bore no result. It sent a Legal Notice dated December 21, 2019, claiming the principal amount of ₹15,97,261/- for the services availed by the respondents from April 2019 to September 2019 along with training fee for remaining 30 months of the contract period with an interest @18% per annum on the claimed amounts. However, the respondents did not even reply to the legal notice.

18. He submitted that, on January 29, 2020, the petitioner expressed the intention of starting arbitration proceeding under the *proposal-cum-agreement* of the program named *"fitness 365"* via letter, inviting the appointment of Arbitrator for the dispute on January 29, 2020, and vide email dated January 31, 2020 but that too has been ignored by the respondents.

19. He stated that the conduct of the respondents would bring the present petition under the purview of Section 115 of the Indian Evidence Act, 1872.

20. He submitted that the cause of action for filing the present suit arose on January 29, 2020, when the respondent willfully ignored the invitation to appoint an Arbitrator in accordance with the Arbitration Clause contained in the *proposal-cum-agreement* dated March 16, 2019, which reads as under:

> *"**Arbitration***
> *In the event of any dispute or difference arising under this Agreement, the Parties shall meet to arrive at an amicable resolution thereof. In the event the that the Parties fail to arrive at an amicable resolution within 30 (thirty) days of the dispute having arisen, the matter shall be referred to arbitration by a single arbitrator appointed jointly by both*

> *First Party and the Second Party pursuant to the Arbitration and Conciliation Act, 1996. The arbitral proceedings shall be held in New Delhi. The Parties agree that the decision of the arbitrator shall be final. The arbitrator shall also be entitled to make a decision as to the damages, if any, payable pursuant to his decision, as also to the apportionment of the costs in connection with such arbitration."*

21. That apart, he submitted that the present suit is filed within the time limit of 3 years as per Article 137 of the Limitation Act, 1963 starting from January 29, 2020, i.e., the date of refusal to appoint Arbitrator.

22. He submitted that the instant petition has been valued to the tune of ₹42,48,495.86/- (approx.) along with interest and applicable taxes. Further, this Court has the territorial jurisdiction to entertain and try the present suit as the venue and seat of arbitration is in New Delhi as per the arbitration clause. Moreover, respondent No.1 is a company that carries on business at N-85, Connaught Place, New Delhi-110001, and as per Section 20 of the Code of Civil Procedure, 1908 this Court has the territorial jurisdiction.

23. He also stated that the subject matter of the present suit is a dispute arising out of a contract for the provision of services as a 'commercial dispute' in terms of Section 2(vi) of the Commercial Courts, Commercial Division, and Commercial Appellate Division of High Courts Act, 2015. Therefore, this Court has the requisite jurisdiction to entertain the present petition in terms of Section 6 of the Commercial Courts, Commercial Division, and Commercial Appellate Division of High Courts Act, 2015. Hence, the present petition.

24. In support of his submissions, the learned counsel for the

petitioner has relied upon the judgments in the following cases:-

Babaji Automotive v. Indian Oil Corporation*, *2005 SCC OnLine Cal 291, Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia Pvt. Ltd., (2015) 13 SCC 477, Bharat Petroleum Corporation Ltd. v. Great Eastern Shipping Co. Ltd., (2008) 1 SCC 503, Nimet Resources Inc. & Anr. v. Essar Steels Ltd., (2000) 7 SCC 497.

SUBMISSIONS OF RESPONDENT Nos. 2 TO 4:-

25. On the other hand, Mr. Advait Ghosh, counsel appearing for respondent Nos. 2 to 4 would submit that the present petition filed by the petitioner for appointment of an arbitrator is not maintainable as there is no agreement executed between the petitioner and the respondents, which includes referring the dispute between the parties to arbitration. He relied upon the averments made by the petitioner in the petition itself wherein, it is stated that the respondents have orally accepted the proposal containing the terms and conditions including arbitration clause, which averment, according to him is denied by the respondents. He stated no document has been placed by the petitioner which will show meeting of minds between the parties that they were at *ad idem* to the terms of agreement dated March 16, 2019, including the arbitration clause.

26. In support of his submission the learned counsel for the respondents have relied upon the judgments of the following cases:-

Virgoz Oils & Fats PTE Ltd. v. National Agricultural Co-operative Marketing Federation of India Ltd., Ex. P. 149/2015, M/s Padia Timber Company (P) Ltd. v. The Board of Trustees of

Vishakhapatnam Port Trust Through its Secretary, Civil Appeal No. 7469/2008, DLF Home Developers Ltd. v. Rajapura Homes Pvt. Ltd. & Anr., Arbitration Petition (Civil) No. 17/2020. He seeks the dismissal of the petition.

ANALYSIS

27. Having heard the learned counsel for the parties, the case of the petitioner primarily is, that it provided services to the respondents 2 to 4 of the sports training and coaching assignment called *"fitness 365"* meant for the students studying in both the schools. It is the case of the petitioner that several rounds of negotiation took place between the petitioner and the respondent Nos.2 to 4, for conducting the training / coaching assignment of the petitioner. Pursuant thereto, the petitioner had shared a copy of the *proposal-cum-agreement* of the *"fitness 365"* during the meeting on March 16, 2019, which according to the petitioner was orally accepted by the respondent Nos. 2 to 4. It was only on the verbal assurance of the said respondents, the petitioner deployed Training team/persons for training / coaching in the respondents' schools and for which the petitioner has raised invoices, which have not been paid.

28. The first issue need to be decided is whether the *proposal-cum-agreement* said to have been shared by the petitioner with the respondent Nos.2 to 4 would bind the petitioner and the respondents for referring the dispute with regard to non-payment of the invoices to an Arbitrator. The answer to the same has to be 'No' for more than one reason; firstly the said *proposal-cum-agreement* has not been signed / executed by the parties. It was only a copy of the *proposal-*

cum-agreement, which according to the petitioner was shared with respondent Nos. 2 to 4.

29. Mr. Ghosh, learned counsel for the respondent Nos. 2 to 4 has denied that the terms and conditions were accepted.

30. The counsel for the petitioner had relied upon the judgment in the case of ***Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia Pvt. Ltd., (2015) 13 SCC 477,*** to contend that the Arbitration & Conciliation Act, more specifically, Sections 7(4)(b) and 7(c), does not contemplate that a document, which has not been signed by the parties cannot be an arbitration agreement. According to him, Section 7(4)(b) provides that "*an arbitration agreement can be culled out from exchange of letters, telex, telegrams and other means of telecommunication which provide a record of the agreement"*. In other words, an arbitration agreement even though in writing need not be signed by the parties if the record of agreement is provided by exchange of letters, telex, telegrams or other means of telecommunication provided if it is *prima facie* shown that the parties are at *ad idem*.

31. I have seen the judgment so relied upon by the counsel for the petitioner in the above case; the facts are that the appellant therein was carrying on business in Mumbai inter alia of import and export of commodities and the respondent company having its office at Singapore. On August 20, 2008, the appellant through the broker B.B. Rubber Pvt. Ltd. confirmed the order of purchase of natural rubber. The respondent issued a sales contract at US $2880 per metric tonne, The said sales contract, signed by the representative of the respondent,

provided the governing terms as "Singapore Commodity Exchange". The name of the appellant was described as buyer, who issued Purchase Order. Vide the purchase order the appellant placed orders on the terms and conditions set out therein. The appellant thereafter requested to change the payment term in the said sales contract to be 10% advance and 90% by DP. This request for amendment was accepted by the respondent and accordingly it issued invoice for the 10% advance payment. It is the case of the respondent that later the invoice was split into two invoices of 100 MT each for which 10% of contract value was US $28,800 which accordingly shipped to *Nhava Sheva* and the original documents of shipments were couriered to the appellant's bank. The dispute arose between the parties in respect of this second sales contract.

32. The appellant contended that the Singapore Commodity Exchange or its committee did not have the jurisdiction. It was submitted that the jurisdiction shall be in Mumbai. The Arbitral Tribunal made award dated December 18, 2009 directing the appellant to pay to the respondent a sum of US $7,16,283 and also to bear expenses of the said arbitration amounting to SGD 20330. The Arbitral Tribunal, rejected the counterclaim made by the appellant and recorded a finding that Singapore Commodity Exchange has jurisdiction. The appellant did not challenge the award. It filed a suit against the respondent in the High Court *inter-alia* praying for damages.

33. During the pendency of the suit, the respondent filed an enforcement petition seeking execution of the award. The learned Single Judge upheld the award and held that the same is enforceable.

The High Court also directed the appellant to produce on oath, complete inventory of its assets and properties as prayed for in the execution petition. The plea before the Supreme Court was in the absence of valid arbitration agreement between the parties as contemplated under Section 7 of the Act; Singapore Commodity Exchange had no jurisdiction to appoint any arbitrator on behalf of the appellant or to proceed with the arbitration. In other words, proceedings before the Singapore Commodity Exchange were without jurisdiction and cannot bind the appellant. The plea on behalf of the appellant was that the sale contract issued by the respondent containing and referring the arbitration to Singapore Commodity Exchange was not signed and returned by the appellant. On the contrary, the purchase order sent by the respondent contains commercial terms and conditions including exclusive jurisdiction of the Bombay High Court. The said purchase order was accepted by the respondent and was concluded. It was further contended that the High Court failed to appreciate the case of appellant and grossly erred in holding that the appellant did not raise jurisdiction in the counter claim filed by it. On the other hand, it was contended by the respondent that sales contract is a concluded contract and the appellant acted on the sales contract and issued a supply order to the respondent. The appellant thereafter requested to change the terms of payment mentioned in the sales contract to be 10% advance by TT and 90% by DP. The Supreme Court has held that there cannot be any dispute with regard to settled position of law that agreement if not signed by the parties can be spelt out from correspondence exchanged between the parties. However, it is the duty of the Court to

construe correspondence with a view to arrive at the conclusion whether there was meeting of mind between the parties which could create a binding contract between them. For this purpose, it is necessary for the Court to find out from the correspondence as to whether the parties were *ad idem* to the terms of contract.

34. The Supreme Court in the said case was clearly of the view that the respondent issued a sales contract for supply of goods incorporating various terms including hundred per cent payment against letter of credit and also providing the governing terms as "Singapore Commodity Exchange". Though the appellant had issued purchase order on terms and conditions set out therein but the appellant requested the respondent to change the payment terms mentioned in the sales contract. Hence, the Court was of the view that it can safely be inferred that there had been a meeting of mind between the parties and they were *ad idem* to the terms of sales contract which contained the forum of dispute resolution at Singapore Commodity Exchange. It was under these circumstances, in paragraph 21 of the judgment in the case of ***Govind Rubber Ltd (Supra),*** the court has held as under:-

> *"21. From the documents available on record and also referred to in the impugned order, it is evident that at the request of the appellant, the invoice was split into two invoices and in the said letter of request reference was made to the sales contract. The respondent proceeded to supply the goods on the terms contained in the sales contract. The intention of the parties, as appearing from the correspondence, can safely be inferred that there had been a meeting of mind between the parties and they were ad idem to the terms of sales contract which contained the forum of dispute resolution at Singapore Commodity Exchange. Apart from that, after the dispute was*

> *referred to Singapore Commodity Exchange for arbitration, the appellant in response to the notice made a counterclaim before the Arbitral Tribunal contending that the appellant had incurred huge loss in view of the failure on the part of the respondent to supply the goods in time. By making a counterclaim, the appellant indeed submitted to the jurisdiction of the arbitrator."*
>
> (*Emphasis Supplied)*

The said judgment is clearly distinguishable on facts in as much as in the case in hand there is no communication produced by the respondent from which it can be inferred that the parties were at *ad idem* on the arbitration agreement.

35. In fact in the present case, all correspondence was one way from the petitioner's side. Even the whatsapp message on which reliance has been placed, was exclusively with regard to the fee payment and not on the arbitration agreement. Even the invoices raised by the petitioner, refers to an agreement dated April 01, 2019 and not March 16, 2019. That apart, the reference to the arbitration agreement was made for the first time with the invocation notice dated January 29, 2020. The invocation notice has not been replied to by the respondents. Hence, in the absence of any communication it is difficult to infer that the parties were at *ad idem* with regard to settlement of dispute, if any, through the process of an arbitration. Hence, this judgment will not help the case of the petitioner.

36. Insofar as the judgment in the case of ***Babaji Automotive v. Indian Oil Corporation***, ***2005 SCC OnLine Cal 291,*** as relied upon by the learned counsel for the petitioner is concerned, there the facts are that the petitioner Babaji Automotive is a sole proprietorship of Surujit

Saha who was appointed as a distributor of Servo Brand Lubricants of Indian Oil Corporation Limited. The parties entered into an agreement and in terms of which, the petitioner took delivery of such lubricants from the respondent. The petitioner used to take lubricants on credit facility. It is alleged that the lube distributorship agreement contained an arbitration clause requiring the parties to refer their disputes and differences to the sole arbitration of the Director (Marketing) of Indian Oil Corporation Limited, who may either himself act as the Arbitrator or nominate some other officer of the Indian Oil Corporation Limited to Act as the Arbitrator. Invoking the said arbitration clause, the said corporation referred the disputes and differences between the parties to the arbitration of the Director (Marketing) of the Indian Oil Corporation Limited. The said Director nominated Subrata Ghosh, a Deputy General Manager of the said Corporation, as the sole arbitrator. The petitioner appeared before the Arbitrator and filed an application under Section 16 of the Arbitration and Conciliation Act, 1996 challenging the jurisdiction of the Arbitrator on the ground that there is no valid arbitration agreement between the parties. The petitioner, therefore, requested the arbitrator to rule on his jurisdiction and to drop the arbitration proceeding.

37. The Arbitrator held that there is a valid arbitration agreement between the parties. The case on behalf of the petitioner before the High Court was that the document is not signed by both the parties and is only signed by the petitioner. Reliance was placed on sub-section (4) of Section 7 of the Arbitration and Conciliation Act, 1996.

38. The Court held that a valid arbitration agreement can be spelt

out from the conduct of the parties. The petitioner admittedly signed the lube distributorship agreement accepting all its terms and conditions. The petitioner in furtherance to the said agreement took delivery of lubricants from the said Corporation. When he has committed defaults, under clause 39 of the agreement, the disputes and differences between the parties have been referred to arbitration. The Court held it is not open to the petitioner, to deny the existence of a valid arbitration agreement.

39. In the present case, as stated above, none of the parties have signed the agreement referred to by the petitioner. None of the whatsapp messages or the invoices or communications referred to *proposal-cum-agreement* dated March 16, 2019; though in one of the whatsapp messages reference is made to the agreement but it is not clear whether the reference is to the *proposal-cum-agreement* on which reliance has been placed dated March 19, 2019. Expressly a reference to the agreement "*fitness 365*" *proposal-cum-agreement* is made in the letter dated January 29, 2020 (document 28) to which admittedly no response was sent by the respondent Nos.2 to 4.

40. In fact, in the notice dated December 21, 2019, no reference has been made to the *proposal-cum-agreement* dated March 16, 2019, as such the very existence of the agreement is doubtful. To draw an inference or for showing meeting of minds on the arbitration agreement, a mere exchange of communication shall not suffice. Facts which depict meeting of minds or the parties are at *ad idem* are relevant, which are missing in this case. Therefore, the judgment in the case of ***Babaji Automotive (Supra)*** has no applicability in the facts

of this case.

41. Similarly, the counsel for the petitioner has relied upon the judgment in the case of ***Bharat Petroleum Corporation Ltd. v. Great Eastern Shipping Co. Ltd., (2008) 1 SCC 503*** wherein, it is held that the agreement can be accepted in silence and/or conduct and the same can be inferred under certain circumstances when the offeree's silence, coupled with his conduct, takes the form of a positive act, may constitute an acceptance, is also not borne out from the facts of this case. In fact, the very reliance placed by the petitioner on this judgment would show that the petitioner accepted the fact that the respondent had remained silent on the *proposal-cum-agreement* dated March 16, 2019. No positive act of the respondent has been highlighted by the petitioner to show acceptance of the terms of the agreement. Hence, this judgment shall not help the case of the petitioner.

42. The last submission of the learned counsel for the petitioner is that the issue of existence of an arbitration agreement can be looked into by the learned Arbitrator in view of Section 16 of the Arbitration and Conciliation Act, 1996 and in support of this judgment he has relied upon the judgment in the case of ***Nimet Resources Inc. & Anr. v. Essar Steels Ltd., (2000) 7 SCC 497***.

43. I am not in agreement with the said submission of the counsel, in view of Section 11(6A) of the Arbitration and Conciliation Act, 1996, as interpreted by the Supreme Court in the case of ***Vidya Drolia v. Durga Trading Corpn,(2021) 2 SCC 1,*** wherein, the scope of Section 11 has been clearly delineated to mean the Court, while exercising power under Section 11, has to see the 'existence' of an

arbitration agreement between the parties. The court further examined the question of "existence" by stating that, a reasonable and just interpretation of existence requires understanding the context, purpose and relevant legal norms applicable for a binding and enforceable arbitration agreement. An agreement evidenced in writing has no meaning unless parties can be compelled to adhere and abide by the terms. A party cannot sue and claim rights based on an unenforceable document. Thus, there are good reasons to hold that an arbitration agreement exists only when it is valid and legal. "Existence" of an arbitration agreement means an arbitration agreement that meets and satisfies the statutory requirements of both the Arbitration Act and the Contract Act and when it is enforceable in law.

44. As I have held, there is no agreement between the parties, the present petition is not maintainable and the prayer made cannot be granted. The same is dismissed. No costs.

V. KAMESWAR RAO, J

OCTOBER 31, 2022*/aky/ds*