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

% **Reserved on: 19th February, 2025.**
Pronounced on: 25th June, 2025

\+ CM(M) 2008/2024 & CM APPL. 12962/2024

DIN DAYAL AGRAWAL HUF .....Petitioner

Through: Ms. Manpreet Kaur and Ms. Jaya Goyal, Advocates.

versus

CAPRISO FINANCE LTD .....Respondent

Through: Mr. Gaurav Pachauri, Adv.

CORAM:-
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. This is a petition under Article 227 of the Constitution of India read with Section 151 Code of Civil Procedure, 1908 ["**CPC**"], seeking to set aside the order dated 19.01.2024 passed by the learned District Judge, Commercial Courts-01, Tis Hazari Courts in CS (Comm) No. 2242/2022, whereby the petitioner's application under Order VII Rule 11 CPC was dismissed and right to file the written statement was closed.

2. The petitioner availed a loan of Rs. 35,00,000/- from the respondent and entered into a Loan Agreement dated 18.03.2019, pledging 13,113 fully paid-up equity shares of M/s Trishul Dream Homes Ltd. Subsequently, the respondent filed a recovery suit bearing

CS (Comm) No. 2242/2022 on 22.09.2022 before the Commercial Court at Tis Hazari, without filing a valid board resolution against the petitioner herein, inasmuch as, the board resolution filed by the respondent-company is qua M/s Trishul Dream Homes Ltd. and not qua the petitioner. The application under Order VI Rule 17 CPC was allowed on 22.10.2022 and suit was treated as an ordinary suit upon the counsel's statement. The petitioner filed an application under Order VII Rule 11 CPC for rejection of plaint raising the objection that plaintiff failed to disclose that as per clause 10 of the Loan Agreement, if the dispute arises between the parties, the same shall be referred to the sole arbitrator and arbitrator shall be appointed jointly by both the parties and hence in view of the said clause, the Court was not having the jurisdiction to entertain the suit.

3. During pendency of the suit before the trial Court, respondent had realised that board resolution filed along with plaint was not valid as by way of said board resolution, Authorised Representative ["**AR**"]/Director, Mr. Pradeep Kumar Jain was authorised to take legal action against M/s Trishul Dream Homes Ltd. instead of the present petitioner, Mr. Din Dayal Agrawal-HUF. In view of the defect in authority letter of the AR, respondent filed an application seeking permission to place board resolution dated 27.09.2023, which ratified the board resolution dated 03.04.2020 in favour of Mr. Pradeep Kumar Jain, Director of the plaintiff-company.

4. The learned trial Court granted permission to the respondent to place the board resolution dated 27.09.2023 on record and dismissed

the petitioner's application under Order VII Rule 11 CPC by order dated 19.01.2024 and also closed the petitioner's right to file the written statement.

5. Learned counsel appearing for the petitioner has submitted that the impugned order dated 19.01.2024, passed by the learned District Judge suffers from serious legal infirmities. It has been submitted that suit bearing CS (Comm) No. 2242/2022 was filed without valid board resolution, authorising the alleged AR of the respondent-company to institute the proceedings against the petitioner. The board resolution filed subsequently is dated 27.09.2023, which is admittedly after the date of filing of suit i.e. 22.09.2022. Furthermore, it has been pointed out that initial board resolution placed on record pertains to M/s Trishul Dream Homes Ltd. and not to the petitioner-HUF, which is a separate legal entity. It has been submitted that this renders the board resolution unauthorised and order passed by the learned trial Court is without proper appreciation of facts and law.

6. It has been further submitted that clause 10 of the Loan Agreement dated 18.03.2019 clearly stipulates the mandatory dispute resolution clause, requiring the parties to first attempt resolution through discussion and negotiation, failing which the matter must be referred to arbitration. Learned counsel appearing for the petitioner has argued that no such attempt at negotiation was made by the respondent-company and the institution of civil suit was in clear contravention of agreed dispute resolution mechanism. Furthermore, the petitioner's *Karta*, Mr. Din Dayal Agrawal has been in judicial

custody since 18.11.2023 and the present proceedings are being pursued by his wife, who is managing the household and legal affairs under compelling circumstances. It has been submitted that order closing the right of the petitioner to file the written statement and dismissal of application under Order VII Rule 11 CPC has been passed in a mechanical manner.

7. Per contra, referring to Order XXIX CPC, it has been contended by the learned counsel appearing for the respondent that suits by or against the corporation may be signed or verified by the Signatory/Director or Principal Officer, capable of deposing to the facts. Reliance was placed on ***United Bank of India* v. *Naresh Kumar & Ors*** (1996) 6 SCC 660, ***Mahanagar Telephone Ltd.* v. *Suman Sharma*** RFA 277/2001 decided on 06.12.2010, and ***Palm View Investment Overview* v. *Ravi Arya*** 2023 BHC 3790, to argue that procedural defects such as a defective board resolution are not fatal and can be cured. It has been emphasized that the learned trial Court rightly exercised its discretion under Order VI Rule 14 CPC, in line with the provisions of CPC by permitting rectification of a curable technical defect such as lack of proper authorization, especially when no prejudice was caused to the petitioner. Moreover, the objection regarding the defective board resolution was not even raised in the petitioner's Order VII Rule 11 CPC application and was raised only during arguments, making it an afterthought and, therefore, liable to be disregarded.

8. Furthermore, it was submitted that the arbitration clause in question is not binding, as it merely indicates a possibility of arbitration subject to future agreement, rather than mandating arbitration. Reliance was placed on ***Jagdish Chandra vs. Ramesh Chandra*** (2007) 5 SCR, where the use of terms such as "may" or conditional phrases like "if the parties so determine" was held to lack the mandatory intent to arbitrate. Reference was also made to ***M/s Linde Heavy Truck Division Ltd. v. Container Corporation of India Ltd.,*** CS(OS) 23/2012 dated 16.10.2012, where the use of the word "may" be interpreted as optional and not binding. In the present case, the phrase "in furtherance" only refers to seat and language and not to mandatory arbitration. It was further pointed out that the petitioner, being a director of M/s Trishul Dream Homes Ltd. was authorized to act, and that a fresh Board Resolution dated 27.09.2023 was submitted to cure the defect. Learned counsel for the respondent submitted that the suit was properly instituted under Order XXIX CPC and the objection appears to be an afterthought following the dismissal of the application under order VII Rule 11 CPC.

9. The Court has considered the rival submissions made by the learned counsel for the parties. The Supreme Court in ***Booz Allen and Hamilton Inc. v. SBI Home Finance Limited and ors.*** 2011 5 SCC 532 held as under:-

> "*19. Where a suit is filed by one of the parties to an arbitration agreement against the other parties to the arbitration agreement, and if the defendants file an application under Section 8 stating*

that the parties should be referred to arbitration, the court (judicial authority) will have to decide:
(i) whether there is an arbitration agreement among the parties;
(it) whether all the parties to the suit are parties to the arbitration agreement;
(iii) whether the disputes which are the subject-matter of the suit fall within the scope of arbitration agreement;
(iv) whether the defendant had applied under Section 8 of the Act before submitting his first statement on the substance of the dispute; and
(v) whether the reliefs sought in the suit are those that can be adjudicated and granted in an arbitration."

10. Section 8 of the Arbitration and Conciliation Act, 1996 ["**the Act**"] mandates that a judicial authority must refer parties to arbitration if a valid arbitration agreement exists and an application is made before submitting the first statement on the substance of the dispute, accompanied by the original or certified copy of the agreement, even as arbitration proceedings may continue independently, which reads as under:-

*"**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.] [Substituted by Act No. 3 of 2016 dated 31.12.2015.]
(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.[Provided that where the original arbitration

agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.] [Inserted by Act No. 3 of 2016 dated 31.12.2015.]

(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."

11. In ***Rashtriya Ispat Nigam Ltd. and Anr.*** **vs.** ***Verma Transport Company*** 2006 7 SCC 275, the Supreme Court held that Section 8 of the Act confers power on the judicial authority. It must refer the dispute which is the subject matter of arbitration agreement if an action is pending before him, subject to fulfillment of the conditions precedent. The said power, however, shall be exercised if the party so applies not later than when submitting his first statement on the substance of the dispute.

12. Admittedly, in the present case, no application has been filed under Section 8 of the Act. Only application filed by the petitioner is under Order VII Rule 11 CPC, just highlighting the existence of arbitration clause in the Loan Agreement and stating that the plaint is liable to be rejected as it does not disclose any cause of action. The Court shall now proceed to consider the legal provision and legal position of Order VII Rule 11 CPC to find out if the suit discloses any

cause of action or is barred by any law. Order VII Rule 11 CPC reads as under:-

> "*Rejection of plaint.*
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> *The plaint shall be rejected in the following cases-*
> *(a) where it does not disclose a cause of action;*
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
> *(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
> *(d) where the suit appears from the statement in the plaint to be barred by any law:*
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> *Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature form correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."*

13. It is apparent from bare language of Order VII Rule 11 CPC that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not ratified within the time specified by the Court, barred by any law, fails to file required copies and the plaintiff fails to comply with the provisions of Order VII Rule 9 CPC, the Court has no other option except to reject the same. The power under Order VII Rule 11 CPC can be exercised at any stage of the suit.

14. Instead of filing the application under Section 8 of the Act, petitioner merely filed an application under Order VII Rule 11 CPC, just highlighting the existence of arbitration clause in the Loan Agreement. The application under Section 8 of the Act is an application that should be made in a proper manner and at a proper time. Application should be accompanied by original arbitration agreement or certified copy thereto under Section 8(2) of the Act. The application which was filed by the petitioner was not under Section 8 of the Act. It was only an application under Order VII Rule 11 CPC for rejection of plaint on the ground that arbitration clause bars the suit. An application under Order VII Rule 11 CPC cannot be considered as a composite application under Section 8 of the Act as well. Section 8 of the Act only empowers the Court to refer the parties to arbitration but does not give the Court an option to reject the plaint. As per Order VII Rule 11 CPC, the Court has the power to reject the plaint only if there is bar to the suit because of any law. Section 8 of the Act does not create any bar to the Civil Courts. It merely provides an alternative to the defendant against whom civil suit is initiated, to submit to the jurisdiction of the Civil Court or file an appropriate application under Section 8 of the Act for referring the parties to arbitration. The power conferred by Section 8 of the Act cannot be considered as a bar to the civil suit to entertain the application under Order VII Rule 11 CPC. Dealing with a somewhat similar situation, the High Court of Andhra Pradesh in the case of ***Chundru Visalakshi***

v. *Chunduru Rajendra Prasad*, 2022 SCC OnLine AP 888, held as under:-

> *"52. We find that in M. Shankara Reddy (supra), the Coordinate Bench of this Court held that Section 8 of the Act, 1996 cannot be considered as bar to the civil suit to entertain application under Order 7 Rule 11 CPC. On the other hand, in Syed Irfan Sulaiman (supra), a Coordinate Bench of this Court held that once the suit was barred in terms of Section 8 of the Act, 1996, Order 7 Rule 11(d) CPC applied. In M. Shankara Reddy (supra), there was no application under Section 8 of the Arbitration and Conciliation Act, 1996 and the only application was under Order 7 Rule 11 CPC, whereas in Syed Irfan Sulaiman (supra), besides an application under Order 7 Rule 11 CPC an application under Section 8 of the Act, 1996 was also filed. Considering the Hon'ble Apex Court judgment in Rashtriya Ispat Nigam Ltd. (supra) that power under Section 8 of the Arbitration and Conciliation Act shall be exercised if a party so applies, In Our view, the exercise of power under Section 8 of the Arbitration and Conciliation Act is dependent upon a party applying under Section 8 of the Act, 1996 to refer the parties to the arbitration.*
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> *53. In view of the aforesaid, we are of the considered view that;*
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> *i. If an application is filed under Section 8 of the Act, 1996, the Court on being satisfied with the pre-conditions shall refer the parties to the arbitration and shall reject the plaint under Order 7 Rule 11(d) CPC as barred by law; But,*
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> *ii. If no application is filed as per Section 8 of the Act, 1996, and there is no prayer to refer the parties to arbitration, the existence of the arbitration clause would not be a ground to reject the plaint under Order 7 Rule 11 CPC."*

15. Since in the present case, no application was filed by the petitioner under Section 8 of the Act and no prayer was made to refer the matter to the arbitration, mere existence of arbitration clause

would not constitute a ground to reject the plaint. Thus, Court below did not commit any illegality in not rejecting the plaint on the plea of the petitioner that there was an arbitration clause.

16. The Court shall now deal with the other contention of the petitioner, which revolves around absence of valid board resolution at the time filing of the suit. The board resolution dated 03.04.2020 which was filed with the plaint was with respect to M/s Trishul Dream Homes Ltd., which according to the petitioner was inadvertently mentioned in the board resolution out of confusion as Mr. Din Dayal Agrawal, who is *Karta* of the petitioner is also the director of M/s Trishul Dream Homes Ltd. In order to rectify the said defect, respondent placed on record fresh board resolution dated 27.09.2023, ratifying the board resolution dated 03.04.2020, passed in favour of Mr. Pradeep Kumar Jain, Director of respondent-company, authorising him to pursue legal action against the petitioner on behalf of respondent-company. On a reading of Order VI Rule 14 CPC along with Order XXIX Rule 1 CPC, it would appear that in the absence of any formal letter of authority or Power of Attorney being executed, the person referred to in Rule 1 of Order XXIX CPC, can by virtue of his office, which he holds, sign and verify the pleading on behalf of the company. In addition thereto and dehors Order XXIX Rule 1 CPC , as the company is a juristic entity, it can duly authorise any person to sign the plaint or written statement on its behalf and this would be required as a sufficient compliance with the provision of Order VI Rule 14 CPC. Even if there is no board resolution, where the pleadings

have been signed by one of its officers, corporation can ratify the said action by its officers in signing the pleadings.

17. The suit in the present case has been signed by the Director of the respondent-company, merely because of the irregularity of the board resolution, the substantive rights of the respondent-company will not have any adverse effect and such irregularity can be cured at any stage of the suit. The mistake in the board resolution filed with the plaint is only a procedural irregularity and, therefore, the same cannot be made a ground to reject the suit, more so when such defect is rectified by subsequent board resolution ratifying the act of filing of suit by the Director of the respondent-company. The respondent cannot be non-suited for a technical reason which does not go to the root of the matter. The Supreme Court in the case of ***United Bank of India* v. *Naresh Kumar and Ors.***, (supra) has clarified that a company can cure the defect of authorization by ratification at a later stage. The subsequent filing of the board resolution dated 27.09.2023 thus effectively cures any initial procedural irregularity, and the trial court rightly exercised its discretion in allowing the same.

18. Lastly, the Court will deal with the challenge to the order dated 19.01.2024, by which the right of the petitioner to file the written statement was closed. The case was initially filed as a commercial suit but later, the same was treated as an ordinary suit. In commercial suits governed by the Commercial Courts Act, 2015, the timeline for filing the written statement is mandatory and non-extendable beyond 120 days from the date of service of summons. In terms of Order VIII Rule

1 CPC, as amended by Section 16 of the Commercial Courts Act, 2015, the written statement must be filed within 30 days from the date of service of summons and the Court cannot allow filing beyond 120 days from the date of service of summons.

19. Since the present matter was being treated as an ordinary suit, un-amended Order VIII Rule 1 CPC would be applicable, wherein no consequence for not complying with shorter timeline of 90 days has been provided. In ***Kailash* vs *Nanhku & Ors.*** 2005 4 SCC 480, it has been held that 90 days period for ordinary suit is directory and not mandatory. That being so, the Court may permit delay in filing the written statement, if sufficient cause is shown.

20. Petitioner has not listed any cause, much less sufficient cause for not filing the written statement within the prescribed period, particularly when it did not invoke Section 8 of the Act. Pendency of the application for rejection under Order VII Rule 11 CPC cannot be made ruse for retrieving the lost opportunity to file the written statement. Once the period prescribed for filing the written statement lapses, even though the provision being directory, the defendant needs to furnish satisfactory explanation for granting him extension of time for filing of written statement, which in the present case, petitioner failed to do, so much so that he did not even file an application before the trial Court for condoning the delay in filing the written statement.

21. In view of above facts and circumstances, there is no manifest illegality or perversity in the impugned order dated 19.01.2024 passed by the learned trial Court.

22. Accordingly, the present petition along with pending application(s), if any, stand dismissed.

RAVINDER DUDEJA, J.

25th June, 2025
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