

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.10436 OF 2017**

M/s. Indo Asiatic Engineers Pvt. Ltd. .... Appellant(s)

Versus

M/s. Ginni Global Ltd. .... Respondent(s)

**AND**

**CIVIL APPEAL NO.10437 OF 2017**

M/s. Premier Thermotech Pvt. Ltd. .... Appellant(s)

Versus

M/s. Ginni Global Ltd. .... Respondent(s)

**ORDER**

1. These appeals are directed against the common final order dated 04.02.2016 passed by the High Court of Delhi in Arbitration Petitions No.319/2015 and 320/2015, whereby the High Court has dismissed the petitions filed by the appellants herein under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to resolve the dispute between the parties.

2. Having heard the learned counsel for the parties, we have perused the material placed on record. At the outset, it is noticed that insofar as the issue

in Civil Appeal No.10436 of 2017 (arising out of Arbitration Petition No.319/2015), there is no dispute to the fact that the agreement/tender from which the dispute arises, contains an arbitration clause providing for resolution of dispute between the parties. However, the learned Single Judge who considered the matter has adverted to the rival contentions of the parties relating to the claim which was the subject matter of arbitration and adjudicated on merits.

3. In a matter where the claim is required to be decided based on the evidence to be placed by the parties, the learned Single Judge has merely taken note of the defence put forth by the respondent and accepting the same as correct, has rendered a finding with regard to the claim not being sustainable. Such a conclusion was not justified.

4. In any event, learned counsel for the parties are not averse to the appointment of an Arbitrator at this stage and to refer the dispute between the parties for adjudication.

5. Though, that being the position, as regard the issue arising in Civil Appeal No.10437/2017, the contention on behalf of the respondent is that the agreement in that case does not provide for resolution of disputes through arbitration which is however refuted by the other side. We refrain from adjudicating on the said contentions herein since we have already indicated in the companion appeal (Civil Appeal No. 10436/2017) that an Arbitrator is to be appointed. Further, it is noted that the High Court had disposed of the matters through a common order and the respondent is common to both the appeals though the appellants are different. On the aspect as to whether the dispute is arbitrable, is a matter on which a factual determination can be

made by the learned Arbitrator keeping in view the nature of the contract which is the subject matter of this appeal and the provisions therein, as also, as to whether the contracts involved are inter-related. Therefore, the said issue is left open to be determined by the learned Arbitrator.

6. In view of the above, we appoint Shri Ravi Kant Chadha, Senior Advocate (Mobile No. 9811024601) as an Arbitrator to resolve the disputes between the parties. The learned Arbitrator shall be entitled to fix his fee in terms of the Fourth Schedule to the Arbitration and Conciliation Act, 1996.

7. It is made clear that the learned Arbitrator shall not be bound by any observations contained in the impugned order dated 04.02.2016 and shall adjudicate the disputes on their own merits and in accordance with law. All the contentions of both the parties including the right to submit any counter claim by the respondent, are kept open.

8. The above appeals stand disposed of accordingly.

9. As a sequel to the above, pending application(s) stand disposed of.

.....CJI.  
(N.V. RAMANA)

.....J.  
(A.S.BOPANNA)

.....J.  
(HIMA KOHLI)

**New Delhi,  
March 10, 2022**

ITEM NO.102

COURT NO.1

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 10436/2017

M/S. INDO ASIATIC ENGINEERS PVT. LTD.

Appellant(s)

VERSUS

M/S. GINNI GLOBAL LTD.

Respondent(s)

WITH

C.A. No. 10437/2017 (XIV-A)

Date : 10-03-2022 These appeals were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE A.S. BOPANNA  
HON'BLE MS. JUSTICE HIMA KOHLI

For Appellant(s) Mr. Yoginder Handoo, AOR  
Mr. Ashwin Kataria, Adv.

For Respondent(s) Mr. S.S. Ray, Adv.  
Mr. Amod Dalela, Adv.  
Mr. Vaibhav Gulia, Adv.  
Ms. Rakhi Ray, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The appeals stand disposed of in terms of signed order.

Pending application(s), if any, shall stand disposed of.

(RAJNI MUKHI)  
COURT MASTER (SH)

(R.S. NARAYANAN)  
COURT MASTER (NSH)

(Signed order is placed on the file)