

**Court No. - 46**

**Case :-** ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 110 of 2023

**Applicant :-** Dhk Eduserve Limited

**Opposite Party :-** Ganga Prasad Memorial Trust And Another

**Counsel for Applicant :-** Ashish Kumar Singh, Ajay Kumar Singh, Tejas Singh

**Hon'ble Ashwani Kumar Mishra, J.**

Notices were issued to the opposite parties on 28.7.2023. As per the office report the opposite parties have been served but neither any objection is filed on their behalf nor anyone has appeared on their behalf. In that view of the matter, this Court can proceed to take up the petition for hearing.

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator.

The petition is filed on the premise that there exists an arbitration clause in the agreement entered into between the parties, which has been invoked, yet an arbitrator has not been appointed so far with the consent of the parties.

Attention of the Court has been invited to Clause 68, as per which the dispute between the parties is required to be referred to arbitrator Sri Jeet Narain Singh, Advocate, Civil Court, Varanasi. Pursuant to dispute having arisen between the parties, a legal notice has been sent to opposite parties for appointment of arbitrator. The legal notice is responded by Sri Sunil Kumar Singh, Advocate, wherein the counsel representing the opposite parties has objected to reference of dispute to the named arbitrator Sri Jeet Narain Singh, Advocate, on the ground that he is the counsel for the applicant. It is further stated by the opposite parties that only the High Court while exercising power under Section 11(6) of the Arbitration and Conciliation Act, 1996 can appoint an arbitrator.

Despite service of notice none has appeared for the opposite parties. The assertions made in the affidavit filed in support of the petition under Section 11 of the Act of 1996 are taken to be correct relying upon the doctrine of non-traverse.

Since existence of arbitration clause in the binding agreement between the parties as well as accrual of dispute between them

is not disputed, as such this petition deserves to succeed and is allowed.

Accordingly, Mr. Justice Rajiv Lochan Mehrotra (Former Judge), R/o A-39, Agnipath Colony, T.B. Sapru Road, Allahabad, Mobile No.9415125760, is appointed as an Arbitrator to enter upon the reference and adjudicate the dispute in accordance with provisions of Arbitration and Conciliation Act, 1996, subject to his consent in terms of section 11(8) of the Arbitration and Conciliation Act.

The Arbitrator shall be entitled to fees, in accordance with the provisions of fourth schedule inserted by Act No.3 of 2016. The expenses shall be borne equally by the parties.

**Order Date :- 16.11.2023**

Anil