

Court No. - 46

Case :- ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 172 of 2022

Applicant :- M/S Lord Krishna Communication

Opposite Party :- Nagar Palika Parishad, Khoda, Makanpur
Through Its Executive Officer

Counsel for Applicant :- Sunil Kumar Misra, Ayush Mishra

Counsel for Opposite Party :- Sant Ram Sharma

Hon'ble Ashwani Kumar Mishra, J.

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

It is urged that inter-se between the parties an agreement has been executed on 18.5.2022, which contains clause 24, as per which any dispute between the parties is required to be referred to arbitrator. It is further submitted that subsequent in point of time a request has been made for reference of dispute to arbitrator but the opposite party has rejected such request and has also cancelled the contract itself. Submission is that essential conditions required for invoking jurisdiction of this Court under Section 11(6) clearly exists, and therefore the petition be allowed.

Sri S.F.A. Naqvi, learned Senior Counsel assisted by Ms. Fatma Anjum for the opposite party submits that the contract itself has not yet created a defined legal relationship between the parties, inasmuch as the notice issued on 22.9.2022 calling upon the applicant to explain as to why the contract be not cancelled has not been properly replied.

I have heard learned counsel for the parties and have perused the records.

So far as execution of agreement between the parties is concerned, there is no dispute on such count. Whether conditions of contract have been fulfilled by the applicant or whether the contract has been validly terminated are the issues that would require determination at the hands of the arbitrator concerned. Having entered into an arbitration agreement, the parties cannot resile from the existence of such agreement nor it can be said that a defined legal relationship had not come into existence.

So far as the issue on which differences have arisen between the parties is concerned, such aspect need not engage the attention of this Court, as those are arise for determination by the arbitrator.

In view of the above, this petition for appointment of Arbitrator succeeds and is allowed.

Accordingly, Mr. Justice Ajay Tyagi (Former Judge), R/o A-31, Sector 35, Noida UP-201307, Mobile No.8630652446, 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-A 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 :- 9.11.2023

Anil