

# THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 29.07.2015

+ **FAO(OS) 406/2015**

**KAVITA AGARWAL**

... Appellant

versus

**AVNEET SONI**

... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr Sanjeev Mahajan

For the Respondent : Nemo

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**BADAR DURREZ AHMED, J (ORAL)**

**CM No. 13248/2015**

The exemption is allowed subject to all just exceptions.

**FAO(OS) 406/2015 and CM No. 13247/2015**

1. This appeal is directed against the order dated 27.04.2015 passed by a learned Single Judge of this court in OMP No. 273/2015. It was a petition filed by the appellant herein under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act') challenging the award dated 31.12.2014 passed by the sole Arbitrator in disputes between the parties.

2. The main ground urged before us as also urged before the learned Single Judge was that the arbitrator who passed the said award could not have been appointed as a sole Arbitrator without the consent of the appellant. According to the learned counsel for the appellant, the terms of the Memorandum of Understanding dated 15.05.2010 had indicated a named Arbitrator who alone could enter upon the reference. He further submitted that the subsequent agreement dated 26.10.2012 did not supersede clause 17 of the earlier agreement. He submitted that the second agreement only related to the additional amount of Rs 30 lakhs and had no connection with the earlier amount of Rs 4.5 crores under the earlier agreement. He also submitted that the fact that the second agreement had been entered into did not mean that the earlier agreement stood abandoned or superseded.

3. The learned Single Judge had examined this aspect of the matter and found that the parties agreed expressly to the appointment of an Arbitrator by the respondent in terms of the second agreement in the event any disputes arose between them. The challenge to the authority of the arbitrator had also been raised before the learned Arbitrator who had held against the appellant. The learned Single Judge observed that the view taken by the learned Arbitrator that clause 5 of the second agreement was by way of an amendment of clause 17 of the earlier MOU was a plausible view and could not be said to be perverse or irrational. It is in these circumstances that the learned Single Judge found no

cause to interfere with the impugned award on the ground that the Arbitrator had no authority to decide the disputes between the parties. The learned Single Judge also found that no prejudice had been caused to the appellant as an independent Arbitrator had been appointed, who also happened to be a former judge of this court and there was no allegation of bias or misconduct on the part of the Arbitrator.

4. We find that the earlier agreement contained the following arbitration clause:-

“Clause (17). In case of any dispute arising between the parties in respect of this agreement, the same shall be decided by a sole arbitrator Mr Gian Chand Gupta Resident of Ford Service Station, Rangpuri NH-8, Adj. to Shiv Murti, New Delhi. The venue of the arbitration shall be at Delhi.”

The subsequent agreement between the parties contained the following arbitration clause:-

“Clause (5). In case of any dispute arising between the parties in respect of this agreement, the same shall be decided by Arbitration by a sole arbitrator to be appointed by second party. The venue of the arbitration shall be at New Delhi.”

The learned counsel for the appellant submitted, by referring to clause (5), which has been extracted above, that the arbitration clause in the second agreement was

limited to the disputes which would arise between the parties in respect of the second agreement and did not extend to the disputes which would have arisen under the first agreement. We are unable to agree with this submission of the learned counsel for the appellant. First of all, we agree with the learned Single Judge that the Arbitrator had taken a plausible view and that no interference was called for on that ground. Secondly, clause (1) of the second agreement itself provides that all the other terms and conditions of the MOU dated 15.05.2010 “shall remain the same unless amended herein and shall form part and parcel of this agreement”. A fresh arbitration clause has been placed in the second agreement. Therefore, the interpretation that clause (5) of the second agreement superseded clause (17) of the earlier agreement cannot be said to be irrational or perverse. It is on these lines that the learned Arbitrator and the learned Single Judge have proceeded and we see no reason to take a contrary view.

The appeal is dismissed but with no order as to costs.

**BADAR DURREZ AHMED, J**

**SANJEEV SACHDEVA, J**

**JULY 29, 2015**

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