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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 22/2016

PICASSO DIGITAL MEDIA PVT.LTD.

..... Petitioner

Through: Mr. Gaurav Singh, Advocate.

versus

PICK-A-CENT CONSULATANCY SERVICE

PVT.LTD.

..... Respondent

Through: Mr. Chirag Jamwal, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

19.10.2016

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1. A Memorandum of Understanding ('MoU') dated 1st July, 2009 was entered into between the Petitioner and the Respondent at New Delhi in terms of which the Petitioner agreed to grant the Respondent a franchisee of 'Picasso Animation College' at Bangalore.
2. The fact that the above MoU was entered into is not denied by the Respondent. The fact that it contains clause 8 in terms of which it was agreed that any dispute and difference between them arising from the Agreement would be referred to a sole Arbitrator is also not denied.
3. However, the objection raised by learned counsel for the Respondent on the strength of the decision in *N. Radhakrishnan v. M/s. Maestro Engineers & Ors. (2009) (13) SCALE 403*, is that the Petitioner has played a fraud on the Respondent by making a misrepresentation and, therefore, it

is the Respondent which has to claim damages from the Petitioner as a result of such misrepresentation regarding the Petitioner being the sole and exclusive owner of the marks in question. It is submitted that where allegations of fraud are made by one party against the other, the appropriate forum is the Court and in the dispute should not be referred to arbitration.

4. In the first place, it requires to be noticed that the above decision was given at a time when the amendments to the Arbitration and Conciliation Act, 1996 with effect from 23rd October, 2015 had not been made. In terms of the amendments, sub-Section 6A in Section 11 of the Act reads as under:

“(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any court, confine to the examination of the existence of an arbitration agreement.”

5. The examination, therefore, by this Court as far as this petition is concerned has to be confined to the question whether there exists an arbitration agreement between the parties. The fact remains that the Respondent does not deny that it entered into the aforementioned MoU containing an arbitration clause. The Court, therefore, cannot at this stage examine whether the Respondent has a justified claim against the Petitioner as a result of the Respondent contending that the misrepresentation made by the Petitioner led to the execution of the Agreement. That obviously is a question that will be examined in the arbitration proceedings.

6. Therefore, without expressing any opinion on the contentions on merits of either party, the Court considers it appropriate to appoint Ms. Bimla Makin,

a former District & Sessions Judge, Delhi (Mob. No. 9910384624) as the sole Arbitrator to adjudicate the disputes between the parties including their claims and counter-claims. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DAC'). The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules.

7. The requirements of the Arbitration and Conciliation Act, 1996 as amended with effect from 23rd October, 2015 shall be complied with.

8. The petition is disposed of. A copy of this order be communicated to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

OCTOBER 19, 2016/dn

S. MURALIDHAR, J