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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 79/2017

PUDAMI EDUCATIONAL SOCIETY

..... Petitioner

Through: Ms. Sandhya Kohli, Advocate.

versus

NIIT LIMITED & ANR.

..... Respondents

CORAM: JUSTICE S. MURALIDHAR

ORDER

23.01.2017

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1. The grievance of the Petitioner is that contrary to Clause 13(a) of the arbitration agreement dated 24th June, 2010 entered into between the parties, the Respondent has unilaterally nominated a former District Judge as a sole Arbitrator.

2. Clause 13 (a) of the agreement reads as under:

“13 (a). That all disputes, differences or disagreement arising out of, or in connection with or in relation to this agreement shall be finally decided by the sole arbitrator nominated by CEO of NIIT . The Arbitration is to be held in accordance with the Arbitration and Conciliation Act, 1996 in force as on date of the invocation of the Arbitration. The Arbitration shall take place before a single Arbitrator to be appointed by mutual Consent of the Parties hereto.”

3. There are two mutually contradictory sentences in the above clause. The first sentence states that the disputes and differences between the parties

arising out of the agreement “shall be finally decided by the sole Arbitrator nominated by CEO of NIIT.” The penultimate sentence reads that “the arbitration shall take place before a sole Arbitrator to be appointed by the mutual consent of the parties.” It is not possible to reconcile the above two sentences. It is, therefore, not possible to agree at this stage that the parties intended only to act upon the later sentence and not the earlier one in the above clause.

4. It is then submitted that the conduct of the learned Arbitrator thus far leaves much to be desired. As far as this submission is concerned, the Court would not like to comment on it in this petition particularly since Section 11 does not vest in the Court a power to remove an Arbitrator who has been appointed. Section 12 read with Section 13 of the Arbitration and Conciliation Act, 1996 sets out the procedure to challenge an Arbitrator. The Petitioner has to adopt that remedy in accordance with law.

5. The petition is dismissed.

S. MURALIDHAR, J

JANUARY 23, 2017
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