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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 578/2017

NEW SATLUJ SCHOOL

Through : Mr.Parveen Kumar Petitioner
Advocate. Aggawal,

versus

EDU SMART SERVICES PVT. LTD & ANR.

Through : None. Respondents

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **13.11.2017**

IA No. 10499/2017

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

ARB.P. 578/2017

This is a petition under Section 11 (5) and (6) of the Arbitration and Conciliation Act, 1996 (hereafter referred as the 'Act') for appointment of the arbitrator. Petitioner is a school run at Shakti Nagar, Barnala Road, Sirsa, District Sirsa in the State of Haryana and is engaged in providing quality education to students. The school has been running continuously for the last 25 years. On 19.04.2011 petitioner entered into a tri-partite agreement with the respondents whereunder the respondents had jointly undertaken to implement smart class program at the premises of petitioner. An additional agreement dated 31.03.2012 was also executed between the petitioner and the respondents whereunder the later extended the smart class

program in addition to the previous agreement dated 19.04.2011. The respondents had undertaken to provide hardware to the petitioner school by way of sale and to make available the repository of its digital contents as per the terms and conditions of the agreements. The petitioner had entered into the above agreement with intent to provide quality education to its students. As per the terms and conditions of the agreement, the respondents were under an obligation to provide hardware, server, equipments, networking and accessories by way of sale as per Annexure A-1 and were further responsible to install the same in the premises of the petitioner to meet out the requisite standard for the smart class program. The respondents had further undertaken many other obligations in the aforesaid agreements for which the petitioners were to pay certain sum of money in instalments as per the schedule attached to the agreement.

It is the case of the petitioner that the respondent failed to provide the services undertaken by them despite receipt of huge sums of money from the petitioner. The agreement was terminated by the petitioner vide legal notice dated 25.09.2013. Instead of replying to the aforesaid legal notice, the respondents sent counter legal notice dated 11.02.2014 stated to be demand notice under Section 21 of the Act, which was duly replied vide letter dated 07.03.2014. Thereafter, the petitioner filed the civil suit bearing No.CS/39/2015 in the Court of Civil Judge, Sirsa (Haryana) on 08.01.2015, seeking relief of declaration that agreement stood terminated since 25.09.2013 and that the same was not binding. The respondents moved an application under Section 8 of the Act in the said suit which was allowed on

16.04.2016. The Civil Revision No.6033/2016 was filed in High Court of Punjab & Haryana against order dated 16.04.2016 which was also dismissed vide order dated 16.09.2016.

Thereafter the petitioner received a letter dated 04.12.2015 proposing the appointment of Mr.Pankaj Kumar, Advocate as sole arbitrator, which was challenged by the petitioner. Hence, another letter dated 23.02.2017 was received from the respondents proposing to appoint Mr. J. N. Yadav (Retd. District Judge), as the sole arbitrator to adjudicate the disputes. Similarly, a letter dated 09.06.2017 was received from Mr.J.N.Yadav stating that he has been appointed as sole arbitrator. However, since his appointment was not acceptable to the petitioner as was against the arbitration clause it was objected to and hence this petition.

Indisputably, the arbitration agreement between the parties notes as under:-

“9.1 ARBITRATION

If any dispute or difference of any kind whatsoever arise between the parties in connection with or arising out of this Agreement or any part thereof such dispute or differences shall be referred to an acceptable sole Arbitrator under the provisions of the Arbitration and Conciliation Act, 1996, or any enactment or modification thereunder. The sole Arbitrator shall appointed by the Party-A. The venue for arbitration shall be at New Delhi and the language shall be English. The courts in New Delhi shall have jurisdiction to entertain all disputes between the parties.”

According to the learned counsel for the petitioner only an

arbitrator *acceptable* to both the parties needs to be appointed, but where there is dispute qua the nomination of the arbitrator, the matter may be decided by this Court.

The petition was served upon the respondents, but they did not appear.

The petitioner also refers to an order dated 24.07.2017 annexure P-14 at page No.68 wherein the petitioner challenged the appointment of Mr.J.N. Yadav, the sole arbitrator on the ground that he is not mutually acceptable and it was pointed out by the learned counsel for the respondent that he intend to file an application under Section 11 of the Act, which plea was allowed.

In the above circumstances and also since no one has appeared on behalf of the respondent despite due service to contest this petition; the petition is allowed and Shri B.S.Mathur (Retd ADJ) (Mobile No.9873724057) is hereby appointed as a sole arbitrator to adjudicate the dispute between the parties. The fee of the learned Arbitrator shall be in terms of the Delhi International Arbitration Centre Rules. Parties to appear before the learned arbitrator on 29.11.2017.

In above terms, the petition stands disposed of.

YOGESH KHANNA, J

NOVEMBER 13, 2017

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