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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 78/2018

ARUN KUMAR

..... Petitioner

Through: Ms.Barnali, Adv.

versus

FIITJEE LTD

..... Respondent

Through: Mr.Mukesh M.Goel, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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22.10.2018

IA 6937/2018

This is an application seeking extension of time for filing reply.

For the reasons stated in the application, the same is allowed and the reply is taken on record.

ARB.P. 78/2018

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the contract of employment of the petitioner by the respondent. The 'Service Rules for the employees of FIITJEE' contains an Arbitration Agreement between the parties in form of Clause 36(a) thereof, which is reproduced hereinbelow:

“36(a). All disputes and differences of any nature with regard to the FIITJEE service manual and the interpretation & adjudication of clauses and claims respectively shall be

referred to the Sole Arbitrator appointed by the Company i.e. FIITJEE Ltd. The arbitration proceedings shall be conducted in accordance with the provisions of the Arbitration & Conciliation Act, 1996 and statutory modification thereof & rules made thereunder. The award of arbitrator shall be final & binding on both the parties. The award of the arbitrator shall be final & binding on every matter arising hereunder. It is further agreed that in spite of the fact that the Sole Arbitrator may be known to any of the Directors or share holders and that he may have been dealing with the Company or had occasion to deal with any matter of this agreement shall not disqualify him. Even if the Arbitrator may have expressed opinion in similar matter earlier shall also not render him disqualified. The venue of the arbitration shall be Delhi/New Delhi only.”

2. Disputes having arisen between the parties regarding the dues of the petitioner, the petitioner invoked the Arbitration Agreement vide notice dated 26.06.2017. Having failed to receive any response, the present petition was filed by the petitioner on 05.01.2018.
3. The respondent in its reply, apart from making submissions on merits of the claim of the petitioner, has contended that the notice invoking arbitration had not been received by it. It is further contended that the petitioner had executed a confirmation letter dated 27.01.2017 in relation to the full and final settlement of all his dues and therefore, there is no arbitrable dispute between the parties.
4. The petitioner in response, while reiterating that it had duly sent notice invoking Arbitration at the correct address of the respondent, has also produced an application dated 27.08.2018 made by him to the postal department seeking the delivery report of the notice on the respondent. In response to the said request, the postal department, vide letter dated 13.09.2018, has stated that as per rules, the

preservation period of speed post articles is two months for online and six months for manual ones and therefore, the report of service cannot be made available at this stage.

5. As far as document dated 27.01.2017 is concerned, the petitioner in its rejoinder asserts that the same had been gotten executed by the respondent from the petitioner fraudulently.

6. I have considered the submissions made by the counsels for the parties. Though, it is correct that the petitioner has been unable to prove the due delivery of notice invoking arbitration on the respondent, the fact remains that the petitioner has filed on record the postal receipt of posting the same at the correct address of the respondent. Petitioner is handicapped from producing the proof of delivery of such notice on the respondent for reasons of rules of the postal department. Further, though this petition was filed on 05.01.2018 and the respondent had been duly served with the copy of the same and had even entered appearance through counsel as far back as 12.03.2018, the respondent has failed to appoint an Arbitrator in terms of the Arbitration Agreement.

7. In my view, the service of notice of the present petition itself should have acted as a notice invoking arbitration and the respondent having failed to appoint an Arbitrator, I see no impediment in appointing an Arbitrator in the present petition. The petitioner cannot be called upon to re-file the same petition once over again only in response to a technical defence.

8. As far as the claim of full and final settlement is concerned, the petitioner having asserted that the same was got signed fraudulently,

he would have to prove the said assertion before the Arbitrator by leading evidence in that regard. This Court while exercising its powers under Section 11 of the Act cannot venture into the scrutiny of such assertion.

9. In view of the above and with the consent of the parties, the parties are referred to the Delhi International Arbitration Centre (DIAC), where they shall appear on 2nd November, 2018 at 2.00 p.m.

10. The DIAC shall appoint a Sole Arbitrator for adjudicating the disputes between the parties. The arbitration proceedings and the fee shall be governed by the DIAC rules.

11. The petition is allowed in the above terms, with no order as to costs.

NAVIN CHAWLA, J

OCTOBER 22, 2018

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