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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 261/2018**

**DENTAL AND MEDICAL EDUCATIONAL
TRUST**

..... Petitioner

Through: Mr Mayank Wadhwa and Ms Kritika
Nagpal, Advocates.

versus

W.G. CONSTRUCTIONS

..... Respondent

Through: Mr Jasmeet Singh and Mr Aditya
Madaan, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **12.04.2018**

IA No. 4681/2018

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

“(a) Consolidate the disputes between the parties herein i.e. ‘W.G. Construction Vs. Dental and Medical Educational Trust’ and ‘Dental and Medical Educational Trust Vs. Neev Architects Urban Designers Atelier’ to be adjudicated by a 3 bench arbitration under the aegis of DAC;

(b) Stay the proceedings pending before the Ld. Sole Arbitrator Justice K.K. Lahoti (Retd.) between ‘W.G. Construction Vs. Dental and Medical Educational Trust’

till the adjudication of the present application;”

4. Mr Jasmeet Singh, learned counsel appearing for the respondent submits that the petitioner is guilty of suppressing of material facts. He has pointed out that the respondent had issued a legal notice dated 17.04.2017 invoking the arbitration clause as contained in the agreement dated 04.06.2016 entered into between the petitioner and the respondent. In terms of the said clause, the disputes between the parties were to be referred to a sole arbitrator. He submits that the petitioner had responded to the said notice. However, no objection was connected with the contract (agreement dated 16.10.2015) between the petitioner and M/s Neev Architects Urban Designers Atelier (hereafter ‘the Architect’). He states that, thereafter, the petitioner *suo moto* proceeded to appoint a sole arbitrator to adjudicate the disputes between the parties. Even at this stage, the petitioner did not take steps for referring the disputes between the petitioner and the Architect in the disputes that were referred to the arbitrator. The Architect was also not made the party to the said proceedings.

5. The respondent, of course, objected to the unilateral appointment of the arbitrator and filed a petition before this Court (Arb. P. 400/2017), which was allowed by an order dated 22.09.2017. He submits that in the aforesaid context, the present petition ought to be dismissed.

6. Mr Wadhwa, learned counsel appearing for the petitioner had countered the aforesaid submissions. In addition, he submits that the petitioner had appointed the Architect and in terms of the Agreement between the petitioner and the Architect, the Architect was to recommend a

construction company. The Architect had recommended the respondent for carrying out the construction. He states that the petitioner has suffered a huge loss on account of the respondent constructing buildings which were not in accordance with the contract and in collusion with the Architect. He further submits that the evidence to be led in the matter between the petitioner and the Architect would be also similar to the body of evidence that would be required to be led in the disputes between the petitioner and the respondent. He relied on the decision of the Supreme Court in the case of ***P.R. Shah, Shares and Stock Brokers Private Limited v. B.H.H. Securities Private Limited and Others: (2012) 1 SCC 594*** in support of his contention that there can be a single arbitration where claim is made against multiple parties. He also relied on the decision of the Supreme Court in ***Hema Khattar v. Shiv Khera: (2017) 7 SCC 716*** in support of his contention.

7. This Court is not persuaded to accept the contention advanced on behalf of the petitioner on several reasons. First of all, there are two separate agreements. One agreement is entered into between the petitioner and the respondent (agreement dated 04.06.2016), the scope of which is entirely different from the agreement entered into between the petitioner and the Architect (agreement dated 16.10.2015). There can be some contentious issues which may be common from the perspective of the petitioner. However, that does not warrant that the arbitral proceedings ought to be consolidated.

8. It is also seen that the arbitration agreement in both the contracts are entirely different. The procedure for appointment of the arbitrator is also different. In case of the petitioner and the Architect, the Arbitral Tribunal is

required to be referred to the Council of Architecture and the Arbitrator is to be appointed by the President, Council of Architecture.

9. There is no provision in either of the arbitration agreements for reference of the disputes to Arbitral Tribunal constituted by three members. It is also relevant to point out that the present petitioner has moved the present petition under Section 9 of the Act, which pertains to orders for interim measures of protection. The prayers made by the petitioner also do not fall within the scope of Section 9 of the Act.

10. There is also much merit in the respondent's contention that the petitioner's conduct in the past militates against the prayer made by the petitioner in this petition. It is also relevant to note that an arbitrator was appointed to adjudicate the disputes between the parties by an order passed by this Court on 22.09.2017. Even at that stage, there were no submissions advanced on behalf of the petitioner that the said arbitral proceedings ought to be clubbed with other disputes. The petitioner has now filed an application in the said proceedings, after a delay of over 158 days, seeking somewhat similar reliefs as sought by the petitioner. This Court is also of the view that the conduct of the petitioner is malicious.

11. Accordingly, the present petition is dismissed with cost quantified at ₹25,000/-. The cost shall be paid by the petitioner within a period of two weeks from today.

VIBHU BAKHRU, J

APRIL 12, 2018/RK