

\$~2

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

+ **ARB.P. 458/2018**

V.K SINGHAL

..... Petitioner

Through Mr. Rohit Goel and Mr. Gaurav
Singh, Advs. alongwith Mr. Rishi
Singhal, son of petitioner in person.

versus

MS. ALKA JAIN

..... Respondent

Through Mr. Arun Kumar, Power of Attorney.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

%

07.08.2018

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996.
2. The prayer made in the petition is that the Court may be pleased to appoint an Arbitrator to adjudicate upon the disputes between the parties.
3. Notice in this petition was issued on 10.7.2018.
4. While issuing notice, I had observed that the respondent had approached the Paper Merchants Association (Regd.) Delhi (in short 'Association') for triggering the arbitration mechanism.
5. It was further noted that the petitioner had, perhaps, filed a response to the notice issued dated 6.6.2018 issued by the Association.
6. Unfortunately, despite a direction, the petitioner has failed to place on record his response, purportedly, issued to the notice dated 6.6.2018, issued by the Association.
7. Be that as it may, the respondent is represented by her husband, i.e. Mr. Arun Kumar.

8. Mr. Arun Kumar has brought to Court, the original Genral Power of Attorney ('GPA'). The GPA appears to have been executed on 18.5.1987. The GPA, *inter alia*, gives Mr. Arun Kumar the power to represent the respondent in legal matters.

9. This apart, Mr. Arun Kumar has also placed on record his licence. The self attested photocopy of the same is also placed on record. The Registry is directed to scan and upload the GPA and the licence.

9.1 To be noted, the originals have been returned to Mr. Arun Kumar.

10. It is not disputed before, me even by the counsel for the petitioner or Mr. Arun Kumar that the suit filed by the respondent for recovery of dues was disposed of by the concerned court via an order dated 16.2.2018, referring the parties herein to arbitration.

10.1 The order passed in that behalf is appended as a document to the present petition.

10.2 The operative part of order dated 16.2.2018 reads as follows:

"14. In the present case, although no application under Section 8 of Act 26 of 1996 has been made by the defendant, but in the written statement a preliminary objection has been taken to the effect that in view of the arbitration clause the suit is barred by law.

15. In view of the law laid down by the Honb'le Delhi High Court in Sharad P. Jagtiani's case (supra) and in the light of the contents of the invoices filed on behalf of the plaintiff, which contain arbitration agreement and the preliminary objection taken in the written statement by the defendant, the issue is decided in favour of the defendant and against the plaintiff.

16. In view of my findings on the preliminary issue the parties are directed to avail of their remedy by way of the process of arbitration as agreed between them. The suit is disposed of accordingly. File be sent to records...”

11. Mr. Arun Kumar has also brought to Court, the Constitution and Regulations of the Association. Reference has been specifically made to Regulation 30. The relevant part of Regulation 30 is extracted hereafter:

“XXX. Rules for Arbitration Cases framed by the Executive Committee under Rule XVI (15) of the Constitution & Regulation.

1. In regard to the Aims and Objects of the Paper Merchants Association (Regd.) Delhi, Rule II sub-clause (13), the disputes including the disputes of non-payment between and amongst the members or member to an outsider shall be decided by Arbitrator/(s) appointed by the Association. The award given by the Arbitrator/(s) shall be binding on both the parties. The dispute including dispute of non payment between the members shall be filed in the Association.

In case of any dispute including dispute of non-payment of bill the same shall be referred to the “Paper Merchant Association (Regd.) Delhi” for sole Arbitration and the Judgement given by the Arbitrator/Arbitrators appointed by the Executive Committee shall be final and binding on both the parties.

2(a) The Association will have the authority to adjudicate between a member and non-member provided the said persons agree and give consent for the arbitration to be conducted by the Paper Merchants Association (Regd.)...”

12. A bare reading of the Regulation XXX, Clause 2(a) would show that the claim made by the member of the Association against a non-member regarding payment of dues can be referred to Arbitration by the Association

only with consent of the member and not the non-member.

12.1 Since, the petitioner is concerned about the manner in which arbitration is conducted by the Arbitrators as appointed by the Association, I have put to the counsel for the petitioner as to whether the petitioner would agree to the disputes being adjudicated upon by an Arbitrator appointed by this Court.

13. Counsel for the petitioner says, on instructions of Mr. Rishi Singhal, who is the son of the petitioner that he would have no difficulty in the Court appointing an Arbitrator in the matter.

13.1 Likewise, Mr. Arun Kumar says that he would have no objection if an Arbitrator is appointed by this Court.

13.2 The counsel for the petitioner and Mr. Arun Kumar agree that rules and the fee schedule prescribed by Delhi International Arbitration Centre ('DIAC') should govern the arbitration proceeding.

14. In these circumstances, the petition is disposed of with the following directions:

(i) Mr. Prem Kumar, Mobile no.9873176030, Former Additional District Judge, Delhi is appointed as an Arbitrator in this matter.

(ii) The rules and fee schedule prescribed by the Delhi International Arbitration Centre (DIAC) will be applicable to the proceedings.

15. The Registry will dispatch a copy of this order to the learned Arbitrator as well as to the DIAC.

16. *Dasti.*

RAJIV SHAKDHER, J

AUGUST 07, 2018/rb

ARB.P. 458/2018

Page 4 of 4