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

+ ARB.P. 659/2018

ANNAI SHRI SAROJA EDUCATIONAL TRUST` Petitioner

Through: Mr.A.Venayagam Balan and
Ms.V.Santhanalakshmi, Advs.

versus

SHEMFORD SCHOOLS PVT. LTD. Respondent

Through: Mr.Vishesh Issar and Ms.Pratiksha
Chaturvedi,Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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22.10.2018

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 Franchise Agreement dated 27.03.2010 executed between the parties. The said Franchise Agreement contains an Arbitration Agreement in form of Clause 11 thereof, which is reproduced hereinbelow:

"DISPUTE RESOLUTION

11.1 The parties agree that any dispute, differences and/or claims arising out of this Agreement or any breach thereof, including, without limitation, any claim that said Agreement, or any part thereof, is invalid, illegal or otherwise voidable or void, or the enforcement of any right or obligation which by its nature survives the expiration or termination hereof, shall be settled by Arbitration, in accordance with the provisions of The Arbitration &

Conciliation Act, 1996 and shall be referred to the sole arbitrator to be appointed by the FIRST Party in Delhi. All disputes are subject to Delhi jurisdiction.”

2. The disputes having arisen between the parties, the respondent appointed an Arbitrator for adjudicating such disputes. Counsel for the respondent submits that certain proceedings were also conducted by the Arbitrator so appointed.

3. The petitioner instead of participating in such proceedings before the Arbitrator, vide letter dated 26.07.2018 invoked the Arbitration Agreement afresh and proposed the name of an Arbitrator to be appointed. The respondent, in turn, vide letter dated 11.08.2018, after referring to the proceedings before the Arbitrator appointed by the respondent, refuted such Letter of Invocation. The letter seems to also suggest that the respondent challenged the very maintainability of the disputes raised by the petitioner.

4. Learned counsel for the petitioner submits that Clause 11 of the Agreement does not mention the authority who has to appoint an Arbitrator, the Clause merely mentions that it is the respondent who is to appoint the Arbitrator. Relying upon the judgment of the Supreme Court in ***Dharma Prathishthanam v. Madhok Construction (P) Ltd.***, (2005) 9 SCC 686, he submits that as there is no named Arbitrator and the authority who is to make such appointment is also not mentioned in the Arbitration Agreement, neither party can unilaterally appoint the Arbitrator. The Arbitrator having been appointed by the respondent unilaterally, cannot act as an Arbitrator in the eyes of law. Learned counsel for the petitioner submits that such unilateral appointment would be against the public policy of India.

5. I have considered the submission made by the counsel for the petitioner, however, I find no merit in the same. Clause 11 of the Franchise Agreement, as reproduced hereinabove, clearly stipulates that the appointing authority of the Arbitrator shall be the respondent. The respondent having appointed an Arbitrator in exercise of this power vested in it in terms of the Arbitration Agreement, the present petition would not be maintainable. The parties having themselves agreed on the procedure for appointment of an Arbitrator and such clauses having been found valid by the Courts in India, the question of Clause 11 being against the public policy of India cannot arise and is liable to be rejected. [(i) *Indian Drugs & Pharmaceuticals Ltd. v. Indo Swiss Synthetics Gem Manufacturing Ltd.*, (1996) 1 SCC 54; (ii) *Datar Switchgears Ltd. vs. Tata Finance Ltd. & Anr.* (2000) 8 SCC 151; (iii) *Yashwith Construction (P) Ltd. v. Simplex Concrete Piles India Ltd.* (2006) 6 SCC 204)].

6. As far as the plea of raising of its own disputes by the petitioner is concerned, learned counsel for the respondent submits that the reply dated 11.08.2018 is being misconstrued as the respondent was only challenging the re-invocation of the Arbitration Agreement by the petitioner. The respondent does not dispute the maintainability of a counter claim, if any, to be raised by the respondent before the Sole Arbitrator.

7. In view of the above, I find no merit in the present petition and the same is dismissed, with no order as to cost.

NAVIN CHAWLA, J

OCTOBER 22, 2018/Arya