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

+ ARB.P. 479/2017
INDIACAN EDUCATION PVT. LTD. Petitioner
Through: Mr.Raveesh Thukral, Adv.

versus

CAFT ACADEMY Respondent
Through: Mr.Wills Mathews, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **18.05.2018**

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 "License and Service Agreement" dated 10.12.2011 executed between the parties. The said agreement contains an Arbitration Agreement in form of Clause 17.1 thereof, which is reproduced herein below:-

"17.1 All Claims, disputes, differences or disagreements of whatsoever nature arising out of, in connection with or in relation to this Agreement whether during its term or after expiry thereof or prior termination, shall be finally decided by arbitration to be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 in force as at the date of the invocation of the arbitration. Parties mutually agree to refer their disputes to arbitration of 3 (three) arbitrators, wherein, both the Parties shall appoint an arbitrator each and the two designated arbitrator shall mutually appoint a third arbitrator who shall be the presiding arbitrator. The decision and award shall be final and binding between the Parties."

Certain disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement by its notice dated 10.06.2016. Having received no response thereto, the present petition was filed by the petitioner.

The counsel for the respondent submits that the petitioner has not filed the original or the certified copy of the Agreement with the petition, however, on being asked, he does not deny that the document produced bears the signatures of the respondent. He further submits that though the Agreement states that the same was executed at New Delhi, the respondent had never travelled to New Delhi on the given date and therefore, the said recital is incorrect. In my opinion, this would have no effect on the question of the appointment of an Arbitrator as the respondent does not deny his signature on the said document, which contains the Arbitration Agreement between the parties.

The counsel for the respondent further submits that the claim raised by the petitioner would be barred by the Law of Limitation. To counter this, the petitioner has drawn my attention to an e-mail dated 25.06.2014, which the counsel submits has been received by the petitioner from the respondent. This is denied by the counsel for the respondent.

In my opinion, the above disputed question of fact, as to whether the e-mail is addressed by the respondent to the petitioner or not, can only be adjudicated by the Arbitrator upon receiving evidence from both the parties. This Court in exercise of its power under Section 11 of the Act cannot look into this controversy.

As the existence of the Arbitration Agreement and the invocation thereof, is not denied by the respondent, I appoint Ms.Mansi Bajaj, Advocate (R/o. A-13, Ground Floor, Jangpura Extn., New Delhi, Mobile:

98181000003) as an Arbitrator to adjudicate the disputes that have arisen between the parties. The Arbitrator shall give her disclosure statement under Section 12 of the Act before entering upon the reference. The Arbitrator shall be entitled to the fee as provided in the Fourth Schedule of the Act.

The counsel for the parties submit that before proceeding with the reference, they would first like to explore the possibility of an amicable settlement. The parties are therefore, referred to the Delhi High Court Mediation and Conciliation Centre where they shall appear on 25.05.2018 at 3:00 p.m. In case a settlement is arrived at between the parties, the Arbitrator so appointed shall not enter upon the reference or proceed with the same. However, if the settlement is not arrived at, the petitioner may request the Arbitrator to enter upon the reference and proceed with the proceedings. The mediation proceedings should culminate within a period of eight weeks from first sitting so as to avoid any further delay in the resolution of the disputes.

The petition is disposed of with the above directions and with no order as to cost.

NAVIN CHAWLA, J

MAY 18, 2018/rv