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

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Date of Decision: 11.10.2018

+ **ARB.P. 566/2017**

R K FILMS & MEDIA ACADEMY Petitioner
Through Mr. Sameer Bhatnagar, Adv.

versus

SHREE OMH CREATIONS(SOC) & ORS. Respondents
Through Mr. Rishi Manchanda and Mr. Arun
Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

I.A. 14106/2018

1. This is an application for condonation of delay in filing the rejoinder.
2. The period of delay is fifteen (15) days.
3. For the reasons given in the application, the delay is condoned.
4. The application is, accordingly, disposed of.

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5. The record shows that the parties have entered into a Memorandum of Understanding dated 3.6.2009 (MOU).
6. By virtue of this MOU, according to the petitioner, the respondents were obliged to produce a television serial to be aired on Doordarshan.
7. It is the case of the petitioner that the respondents failed to discharge their obligations which propelled the petitioner to seek refund of the amount handed over to the respondents for production of the television serial.

8. Evidently, on 5.1.2011, the respondents issued a cheque for a sum of Rs.2 lakh which was dishonoured on presentation.
9. Thereafter, the respondents refunded a sum of Rs.1 lakh to the petitioner.
10. I may only note that it is the respondents case that Rs.1 lakh was paid towards full and final settlement of all liabilities under the MOU.
11. In and about 10.6.2011, the petitioner filed a complaint in the concerned Court under Section 138 of the Negotiable Instruments Act, 1881, in respect of the cheque which was dishonoured.
 - 11.1 This complaint was, however, dismissed by the concerned Court.
12. Apart from the above, the petitioner also filed a Civil Suit for recovery in which, admittedly, the respondents filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (in short “1996 Act”).
 - 12.1 The suit was filed by the petitioner in and about 12.1.2012.
 - 12.2 The application filed by the respondents under Section 8 of the 1996 Act was allowed on 1.10.2012.
13. The learned Additional District Judge via the same order referred the matter for arbitration to, one, Mr. Biju Basumacary, Advocate.
14. The petitioner claims that the learned Arbitrator was informed about his appointment via communication dated 5.12.2012.
15. It is also the assertion of the petitioner that the learned Arbitrator convened hearings in the matter on 7.5.2013, 2.7.2013, 13.8.2013 and 20.10.2013.
16. Furthermore, the petitioner avers that the learned Arbitrator fixed his

fees in the matter at the hearing held on 13.8.2013.

17. According to the petitioner, the respondents failed to deposit their part of the fees which was fixed at Rs.10,000/- by the learned Arbitrator.

18. It appears that the respondents had challenged the jurisdiction of the learned Arbitrator by way of an application which was dismissed by the learned Arbitrator vide order dated 20.10.2013.

18.1 Via the same order, the respondents were given opportunity to file their defence to the statement of claim preferred by the petitioner.

19. It is the case of the petitioner that since then the learned Arbitrator has abandoned the proceedings.

19.1 The petitioner avers that after 20.10.2013 no proceedings have been held by the learned Arbitrator.

20. Given these circumstances, the petitioner, evidently, moved the Court of the ADJ at Tis Hazari under Section 14/15 of the 1996 Act for appointing a substitute Arbitrator.

21. This application, however, was dismissed by the learned ADJ vide order dated 30.8.2016.

22. Given this circumstance, on 12.11.2016, the petitioner wrote to the respondents to appoint an Arbitrator with mutual consent as per the terms of the MOU.

22.1 In response thereto, the respondents vide reply dated 2.12.2016 informed the petitioner that an Arbitrator need not be appointed as there was no dispute obtaining between the parties which required adjudication.

23. It is in this background that the petitioner has moved this Court.

24. Mr. Manchanda, who, appears for the respondents, in line with the stand taken by the respondents in their reply dated 2.12.2016, contends that

with the payment of Rs. 1 lakh to the petitioner, the disputes between the parties have been settled.

25. Mr. Manchanda also says that the claims made by the petitioner are time barred.

26. It is, however, not disputed by Mr. Manchanda that an Arbitration Agreement exists between the parties.

27. On the other hand, Mr. Bhatnagar, who, appears for the petitioner, says that the issues raised by Mr. Manchanda can be adjudicated upon by the learned Arbitrator, if so appointed by the Court.

28. Having heard the learned counsel for the parties and given the circumstances obtaining in the matter which have been adverted to hereinabove, I am inclined to agree with the petitioner insofar as the appointment of an Arbitrator is concerned.

29. This is especially so as there is no dispute with regard to the fact that there is an Arbitration Agreement in existence and that in the first instance, an Arbitrator was appointed on account of intercession of the respondents in the Civil Suit filed by the petitioner.

30. The fact that Mr. Manchanda does not dispute that the learned Arbitrator has not held any proceedings after 20.10.2013 only lends support to the submission advanced by the counsel for the petitioner that a substitute Arbitrator needs to be appointed in the matter.

31. Accordingly, as prayed, Mr. Arvind Nigam, Senior Advocate, (Cell no: 9313366345) is appointed as an Arbitrator in the matter.

32. He will be paid a lump sum fee of Rs.50,000/- which will be equally shared by the parties herein.

33. In addition thereto, incidental expenses will also be reimbursed to the

learned Arbitrator.

34. The parties and their counsel will appear before the learned Arbitrator on 13.11.2018 at 3:00 p.m.

35. The petition is disposed of in the aforesaid terms.

OCTOBER 11, 2018
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RAJIV SHAKDHER, J

