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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 08th January, 2018
Pronounced on: 18th January, 2018

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ARB.P. 684/2017

INDERJIT BADHWAR

..... Petitioner

Through : Mr.Jagdish Sagar, Advocate.

versus

M/S TARA PRESS & INDIA

RESEARCH PRESS

..... Respondent

Through : Mr.M.L.Mahajan, Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. The petitioner has filed this petition under Section 11 (5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the Act') for appointment of an arbitrator.
2. Undisputedly, the petitioner and respondent had entered into a publishing agreement dated 23.11.2001 whereby the petitioner assigned certain rights in respect of the literary work written by the petitioner. The copy of the publishing agreement is annexed with the petition and clause No.26 thereof notes as under:-

"26. In the case of any disputes or differences arising between the parties hereto relating to this Agreement or any matter arising therefrom or incidental thereto, the same shall be submitted to the

arbitration of a single arbitrator in accordance with the provisions of the Indian Penal Code or any statutory modification thereof for the time being in force.”

3. Though the learned counsel for the respondent argued a bare reading of the arbitration clause would reveal that it is not applicable to the disputes pertaining under the contract since clause 26 (supra) relate only to the disputes which fall under the Indian Penal Code, but I disagree with this contention of the respondent since the word ‘Indian Penal Code’ is nothing but a typographical mistake in drafting of the agreement wherein instead of the Arbitration and Conciliation Act, the word ‘Indian Penal Code’ is inscribed.

4. In *Visa International Limited vs. Continental Resources (USA) Limited* (2009) 2 SCC 55 the Apex Court held:-

“25. The submission is unsustainable for more than one reason. No party can be allowed to take advantage of inartistic drafting of arbitration clause in any agreement as long as clear intention of parties to go for arbitration in case of any future disputes is evident from the agreement and material on record including surrounding circumstances.”

5. The second objection raised by the respondent is qua the limitation stating *inter alia* that there is no arbitral dispute as the petitioner failed to invoke the arbitration clause since the year 2008 and has now issued the notice dated 12.03.2017 and hence the

claim is barred by limitation. I disagree since the dispute pertain to payment of the royalty which is a recurring cause of action every year and it cannot be said the petitioner is estopped to claim royalty after 2008. The royalty terms are given in the agreement dated 23.11.2001 as under:-

*“During the legal term of copyright the Publisher shall unless otherwise mutually agreed, pay to the author the following royalties:-
(a), (b), (c), & (d) xxx xxx”*

6. In his letter dated 12.05.2017, the petitioner has referred to various rights in the work and have raised various disputes including as noted in para No.5(vi) *“There has been no communication between you and my client since 2008. My client despaired of any response from you. However, recently, as my client apprehended that the Work may have gone out of print, he explored the factual position and has found that you continue to sell the English language version of the Work through various portals including Amazon, Flipkart, Alibris, Barnes & Noble, etc. yet even currently no annual accounts or royalty are being received from you.”*

7. Para No.7 of the above letter dated 12.5.2017 also notes:-

“7. Further, you have never complied with the conditions for exercise of the assignment made in your favour of the Other Subsidiary Rights referred to in paragraph 3 above, namely Anthology, Quotation, Serialisation,

Mechanical Reproduction, Book Club, Digest, Strip, Cartoon, and Picturisation. My client verily believes that you never exercised the said rights and that, consequently, the said rights reverted to my client. The same will be known only after complete disclosure by you, but in any case, without prejudice to the foregoing averment, it is further stated that you have never paid 30% royalties for the same, hence a dispute exists in regard to the same.”

8. From above the respondent cannot allege at this stage that there exist no arbitral dispute and hence, in the circumstances, I hereby appoint Ms.Bimla Makin, Additional District Judge (Retd.) (Mobile No.09910384624) as an arbitrator to adjudicate the disputes between the parties. The proceedings be conducted under the aegis of the Delhi International Arbitration Centre (DIAC) Rules and the fee shall be paid as per the Fee Schedule of DIAC. The necessary disclosure(s) be made by the learned arbitrator as per rules. The respondent may take objections qua limitation or otherwise, before the learned arbitrator.

9. The petition stands disposed of.

10. No order as to costs.

YOGESH KHANNA, J

JANUARY 18, 2018

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