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

+ **ARB.P. 704/2017**

VIJAY KAHOL

..... Petitioner

Through: Mr.Sachin Mittal, Adv.

versus

**AMRAPALI AADYA TRADING AND INVESTMENT PVT. LTD.
& ANR.**

..... Respondents

Through: Mr.Sanjay Bhatt & Mr.Sumit Nagpal,
Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **11.05.2018**

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen under the agreement executed between the parties titled 'Know Your Client' and transaction executed by the petitioner on basis thereof. The said agreement provides that the transactions are subject to rules, Bye-laws, regulations and circulars/notices issued there under by the respondent no. 2. Chapter XI of the Bye-laws of respondent no.2 provides for adjudication of the disputes through arbitration.

The disputes having arisen, the petitioner requested the respondent no. 2 to constitute an Arbitral Tribunal vide its letter dated 31.08.2017. The receipt of the same was acknowledged by the respondent no. 2 vide its letter dated 04.09.2017, however, vide its letter dated 24.10.2017 the respondent no. 2 informed the petitioner that on an investigation being conducted against respondent no.1, its financial assets have been frozen and respondent no.1 stands expelled from the exchange with effect from 11.10.2017. It was

stated that because of this reason, the Arbitrator cannot be appointed by respondent no. 2. The petitioner has filed the present petition claiming that merely because respondent no. 1 stands expelled from the exchange, respondent no. 2 cannot refuse to appoint an Arbitral Tribunal.

The counsel for the respondent no. 1 did not appear in the present proceedings in spite of notices being served and therefore, is proceeded *ex parte*.

Counsel for the respondent no. 2 submits that the assets of respondent no. 1 have been taken over by the Defaulter Committee in terms of the Bye-laws of respondent no. 2 and any claim that the petitioner may have, can be filed before the said Committee. He, however, fairly admits that there is no provision in the Bye-laws which states that an Arbitral Tribunal shall not be constituted in case a member is declared as a defaulter.

In my opinion, merely because the petitioner has an alternative remedy by filing the claim before the Defaulter Committee, it cannot be denied its rights to have the disputes adjudicated through arbitration.

In view of the above, respondent no. 2 is directed to appoint an Arbitral Tribunal in accordance of the Bye-laws of respondent no. 2 for adjudicating the disputes that have arisen between the petitioner and the respondent no.1.

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

NAVIN CHAWLA, J

MAY 11, 2018/rv