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

+ ARB.P. 66/2018

ANUPAMA & ASSOCITES Petitioner
Through Mr.Mayank Kshirsagar, Adv.

versus

ARYABHATTA COLLEGE & ANR. Respondents
Through Mr.Umesh Sharma, Adv. for R-1 & 2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **02.05.2018**

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 a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the two Agreements dated 09.04.2009, executed between the petitioner and respondent no.2 Ram Lal Anand College, whereunder the petitioner was appointed as an Architect for construction of New Academic Block and Women's Hostel at Ram Lal Anand College.

The two agreements contain an identical Arbitration Agreement between the parties in the form of Clause 6, which is reproduced herein below:

"In case of dispute arising out of or in any way touching this agreement, the dispute will be referred to the sole arbitrator to be appointed by the Chairman, Governing Body, Ram Lal Anand College, New Delhi - 21, who may be functioning at the time of dispute or any other person

appointed by him. There will be no objection that the arbitrator so appointed is a Delhi University servant.”

It is an admitted case between the parties that Ram Lal Anand College was bifurcated and the work in question was transferred to respondent no.1 Aryabhatta College.

The respondent no.1 by its letter dated 20.06.2016 terminated the Agreements.

The petitioner vide its notice dated 06.10.2017 addressed separately to respondent no.1 and 2, invoked the Arbitration Agreement and called upon the Chairman, Governing Body of Ram Lal Anand College to appoint an Arbitrator for adjudicating the disputes.

The respondent no.1 by its letter dated 11.11.2017, while contending that there is no privity of contract between the petitioner and respondent no.1 as the Agreements dated 09.04.2009 had not been executed by the respondent no.1, appointed a Sole Arbitrator for adjudicating the disputes that have arisen between the parties.

There was no response received by the petitioner from the Chairman, Ram Lal Anand College to its request for appointing an Arbitrator.

The petitioner therefore filed the present petition.

The learned counsel for the respondent no.1 is not in a position to deny that the respondent no.1 availed the services of the petitioner under the Agreements dated 09.04.2009 and stepping into the shoes of respondent no.2 as far as the Agreements with the petitioner are concerned. In view of the above, it would be bound by the Arbitration Agreement contained in the two Agreements.

As far as the appointment of the Arbitrator by the Principal of respondent no.1 is concerned, it may only be noted that the Arbitration Agreement between the parties authorizes the Chairman of the Governing Body of respondent no.2 or “any other person appointed by him” to appoint a Sole Arbitrator.

Learned counsel for the respondent sought to rely upon the Minutes of the Joint Meetings dated 24.12.2014 and 02.02.2015 to contend that the Principal of respondent no.1 has been duly authorized by the Chairman of the respondent no.2 to appoint an Arbitrator in his place. I am unable to agree with the said submission. The Minutes of Meeting dated 24.12.2014 *inter-alia* records as under:

“xxxx The Committee instructed the Principal, Aryabhatta College [Formerly Ram Lal Anand College (Evening)] to comply with various provisions of government guidelines on construction and financial rules.”

In the Minute of Meeting held on 02.02.2015 it was resolved as under:

“Regarding the construction of the new academic block, the Principal, Aryabhatta College was authorised to take up the task and report to the Committee of any developments.”

The above two Minutes of Meetings cannot be held or construed as delegation of power to appoint an Arbitrator as well.

In view of the above, the Arbitrator appointed by the Principal of respondent no.2 would be *de-jure* and *de-facto* unable to perform such function as his appointment is *void ab-initio*.

Without prejudice to the rights and contentions of the respondents, learned counsel for the respondents is agreeable to the parties being referred to the Delhi International Arbitration Centre (DIAC) for appointing an Arbitrator and for conduct of the arbitration proceedings. I accordingly direct the parties to appear before the DIAC on 15th May, 2018 at 2.00 p.m. The DIAC shall appoint a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the above mentioned two Agreements. As there are two separate Agreements between the parties, there shall be two separate arbitration proceedings conducted, however by the same Arbitrator.

The arbitration and fee shall be governed by the DIAC rules.

The petition is allowed in the above terms, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

MAY 02, 2018/Arya