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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (T) (COMM.) 1/2018
SURYA NAGAR EDUCATIONAL SOCIETY Petitioner
Through: Mr.Rachit Batra, Mr.Sharad Aryan,
Advs.

versus

EDU SMART SERVICES PRIVATE LIMITED & ORS.
..... Respondents
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **07.02.2018**

In spite of notice, none appears for the respondents. The respondents are proceeded ex parte.

The parties have entered into an agreement for Summary Class Programme dated 1st February, 2012. The said agreement contains an arbitration agreement in form of Clause 9.1, which is reproduced hereinbelow:-

9.1 ARBITRATION:-

If any dispute or difference of any kind whatsoever arise between the parties in connection with or arising out of this agreement or any part thereof, such dispute or difference shall be referred to an acceptable sole Arbitrator under the provisions of the Indian Arbitration and Conciliation Act, 1996, or any enactment or modification there under. The sole Arbitrator shall be appointed by Party A. The venue for arbitration shall be at New Delhi and the language shall be English. The courts in New Delhi shall have jurisdiction to

entertain all disputes between the parties.”

The disputes having arisen between the parties, petitioner received a notice of arbitration dated 18th May, 2017 from the Arbitrator appointed solely by the respondents. The petitioner claims that prior to the appointment of the arbitrator, the respondents had not carried out any consultation or taken the concurrence of the petitioner.

The petitioner claims that in the notice of arbitration, the Arbitrator had stated that she is not aware of any circumstance nor has any interest that prevents her from being appointed as an Arbitrator to adjudicate the disputes that have arisen between the parties. However, the said declaration was false as the petitioner came to know that the arbitrator had been appointed as an Arbitrator by the respondents in various other matters as well. The petitioner, therefore, filed an application under Section 13 of the Act challenging the appointment of the arbitrator. In the reply filed by the respondents, they did not deny that the arbitrator had been appointed as an Arbitrator in various other matters between the respondent and the third parties. In spite of above, the Arbitrator vide order dated 25th October, 2017 rejected the application of the petitioner as having been filed beyond the period prescribed in Section 13 of the Act. It is submitted that as the petitioner was not aware of the circumstance that would make the arbitrator ineligible to continue with the arbitration proceedings, the application was filed immediately upon becoming aware of the same and was therefore, within the period of limitation, in any case, the appointment of the Arbitrator was not in accordance

with the terms of the agreement.

The learned counsel for the petitioner has brought to my notice orders passed by this Court in various other cases involving the respondents, where in similar circumstances, this Court has terminated the mandate of the Arbitrator(s) appointed by the respondents albeit with the consent of the respondents and appointed substitute Arbitrators.

I have considered the submissions made by the counsel for the petitioner. For the purposes of the present petition, I need not go into the issue whether the disclosure made by the Arbitrator was proper or not and whether her being appointed as the Arbitrator in other cases would amount to a disqualification making her ineligible for acting as an Arbitrator for the purposes of the present petition. For the present order, it is sufficient that the Arbitrator was not appointed in terms of the arbitration agreement between the parties. The arbitration agreement requires that 'an acceptable Sole Arbitrator' would be appointed by the respondents in case of any dispute having been arisen between the parties. As the contention of the petitioner that prior to the appointment of an Arbitrator, there was no consultation with the petitioner regarding the appointment, it cannot be said that the appointment was in terms of the agreement between the parties. The appointment not being in terms of the arbitration agreement is void and cannot be enforced. The Arbitrator appointed by the respondent, therefore, is *de jure* incapable of acting as an Arbitrator and her mandate is hereby terminated. (*Dharam Prathishthanam v. M/s Madhok Construction (P) Ltd.*, (2005) 9 SCC 686)

Parties would be at liberty to take steps for appointment of an Arbitrator in accordance with their agreement and the Act.

The petition is allowed in the above terms with no orders as to costs.

Dasti.

NAVIN CHAWLA, J

FEBRUARY 07, 2018
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