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

+ ARB.P. 793/2017

THE ORBIS SCHOOL

..... Petitioner

Through : Mr.Zeyaul Haque, Adv.

versus

EDUCOMP SOLUTION LIMITED & ANR.

..... Respondents

Through : None

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **09.02.2018**

IA No.14673/2017

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

ARB.P. 793/2017

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996.

It is submitted by learned counsel for the petitioner that on 22.02.2010 a Tripartite Agreement was signed and executed between the parties, wherein the respondents No.1 & 2 were the parties which were responsible for providing infrastructure, sale of hardware and making available the repository of digital content for successful implementation of smart class program for a period of sixty months with the liberty to terminate it at the instance of the petitioner herein.

On 02.04.2013 the petitioner herein, dissatisfied with the services as promised and represented, addressed a letter to the respondent no.1 to discontinue the services and effectively terminated the agreement with effect from April 01, 2013. On 23.10.2013 an email is received from Educomp demanding the alleged outstanding as approx. Rs.3,33,625 Lacs.

It is further submitted on 12.04.2016 the respondent no.1 after a gap of three years addressed a letter to the petitioner demanding an outstanding amount of Rs.7,81,653.00.

Learned counsel for the petitioner submits on 17.04.2017 the respondent no.1 sent a legal notice to the petitioner demanding an enhanced outstanding amount of Rs.12,89,347.00 and purportedly terminating the contract which was already terminated by the Petitioner on April 02, 2013 in a failed bid to cover up its default and enhance the outstanding amount. On 11.05.2017 the respondent no.1 unilaterally appointed Ms.Rekha Gupta as the sole Arbitrator to arbitrate the dispute which purportedly has arisen, without seeking consent from the petitioner violating the Arbitration clause 9.1 in the agreement dated 22.02.2010. On 29.05.2017 the Ld. Arbitrator sent a Notice of Arbitration to the petitioner to attend the Arbitral Tribunal on July 25, 2017. On 13.07.2017 the Petitioner, responded to the Notice of Arbitration mentioning the constitution of Arbitral Tribunal is illegal and has no force of law as it is in violation of the Arbitration clause of the Agreement and therefore the petitioner is incapable to attend the Tribunal's proceeding. On 30.07.2017 the Arbitrator sent a letter purportedly with the Notice of intention to

proceed ex parte and directing the petitioner to attend the proceeding on September 04, 2017 and failure to attend would attract ex parte proceedings.

It is further submitted by learned counsel for the petitioner that on 22.08.2017 the Petitioner, responded to the Notice of intention to proceed ex parte in the Arbitration proceeding dated 04.09.17 mentioning that, the constitution of Arbitral Tribunal is illegal and failure to further proceed in the arbitration shall be challenged before this Court in appropriate proceedings. On 26.09.2017 the Arbitrator sent the intimation of ex parte proceedings dated September 4, 2017 and the next date of hearing was fixed on October 25, 2017 for ex parte evidence and no further information was received since then. Hence, on 04.12.2017 the petitioner filed the present petition.

The notice was issued to the respondent through speed post. The affidavit of service was also filed. On January, 2018 the learned counsel for the petitioner was directed to file the list of cases in which Ms.Rekha Gupta has been appointed as an arbitrator in more than two cases in violation of the Schedule V of the Arbitration and Conciliation Act 1996. The petitioner has filed the said list dated 19.1.2018 in which Ms.Rekha Gupta has been appointed as an arbitrator by Educomp in 10 such matters. Since the respondent has failed to appear and since Ms.Rekha Gupta has been appointed in more than 10 cases already, hence in the circumstances the petition is allowed. Mr.N.K.Goel, ADJ (Retd.) (Mobile No.9910384625) is appointed as the sole arbitrator. Arbitration proceedings shall be conducted under the aegis of DIAC. Fee shall be fixed as per DIAC

rules. Necessary declarations shall be made by the arbitrator.

In view of the above the petition stands disposed of.

YOGESH KHANNA, J

FEBRUARY 09, 2018

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