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

+ O.M.P. (T) (COMM.) 109/2017 & IA No.15500/2017

HITABHILASHI SARVHITKARI Petitioner

Through: Mr Chinmay Kumar with Mr
Rajneesh, Advocates.

versus

EDU SMART SERVICEES PVT LTD & ANR. Respondents
Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **15.03.2018**

1. None appears for the respondents despite service of notice.
2. This a petition filed by the petitioner under Section 14 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that the mandate of the Arbitrator, Ms Rekha Gupta be terminated and an Arbitrator be appointed in substitution of the said Arbitrator.
3. It is apparent from the above that certain disputes have arisen between the parties in relation to a Tripartite Agreement dated 01.03.2013 (hereafter 'the Agreement') entered into between the petitioner and the respondents for the purposes of implementation of Smart Class 3D Lab. The Agreement contains an arbitration clause, which is set out below:-

“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 of 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 the 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.”

4. It is the petitioner’s grievance that the respondents have appointed Ms Rekha Gupta, as an Arbitrator without seeking the petitioner’s concurrence. The petitioner further states that the said arbitrator is not “acceptable” to the petitioner. In the aforesaid context, the petitioner prays that the mandate of the arbitrator be terminated and an arbitrator be appointed in her place.

5. The learned counsel appearing for the petitioner has also drawn the attention of this Court to various orders passed by this Court (order dated 03.11.2015 passed in ARB.P.441/2015 and the order dated 03.08.2016 passed in OMP (T) (COMM.) 35/2016), whereby this Court had appointed an arbitrator in place of the arbitrator unilaterally appointed by the respondents. He submitted that the agreements entered into by the parties in those cases contained a clause, which is identical to the Arbitration clause in the Agreement.

6. It is seen that the orders referred to by the learned counsel for the petitioner were passed by this Court with the consent of the said parties.

7. It is clear from the plain language of the arbitration clause that although the arbitrator was to be appointed by the respondents, it was necessary that such arbitrator be acceptable to all the concerned parties. It is also clear from the clause that any proceedings undertaken by the arbitrator would be wholly without jurisdiction and her appointment as an arbitrator is

flawed.

8. In view of the above, the present petition is allowed to the extent that the mandate of the Arbitrator appointed by the respondents is terminated. The petition is disposed of by permitting the petitioner to file a separate application under Section 11 of the Act. The pending application also stands disposed of.

VIBHU BAKHRU, J

MARCH 15, 2018
MK