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

+ **ARB.P. 56/2018**

**DENTAL AND MEDICAL EDUCATION
TRUST**

..... Petitioner

Through: Mr Mayank Wadhwa and Ms Kritika
Nagpal, Advocates.

versus

**NEEV ARCHITECTS URBAN DESIGNERS
ATELIER**

..... Respondent

Through: Mr Shiv Khorana, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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04.05.2018

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that a sole arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to an agreement dated 16.10.2015. The said agreement includes an Arbitration Clause, which is set out below:-

“14. ARBITRATION/ COURT OF LAW

All disputes or differences which may arise between the DMET and the NAUDA under this agreement with regard to the meaning or interpretation or matter or things done or to be done in pursuance hereof such disputes and differences can be referred for arbitration to the Council of Architecture or to the Court of Law as per jurisdiction specified below. The arbitrator shall be appointed by the President, Council of Architecture. The arbitration shall be conducted as per the provisions of the

Arbitration and Conciliation Act, 1996 and as per provisions of the Indian Penal Code and any modifications thereof. The decision and award of the arbitrator /Court shall be final and binding on the NAUDA and the DMET. The jurisdiction of Delhi/New Delhi will only be applicable.”

2. Admittedly, the parties had entered into the agreement dated 16.10.2015 in terms of which the petitioner had engaged the respondent for rendering services as “*an Architect and Campus Planner for Comprehensive Master Plan (CMP), Architectural and allied Engineering Services for the IDST Takshasila Medical College, Kadrabad, Modinagar, District Ghaziabad*”.
3. The petitioner claims that construction for which the respondent was engaged commenced sometime in February 2016. After the construction reached up to the first floor of the building, which was to be built up to the seven floor, it was found that building was not built according to the specifications and requirements of the Medical Council of India and, therefore, the building had to be broken down and the project had to be commenced from scratch. The petitioner claims that the construction was re-started in October 2016. It was again found that the same was not as per the norms, guidelines and requirements of the petitioner.
4. The petitioner claims that it terminated the service of the respondent in February 2017.
5. The petitioner received a legal notice, sent at the instance of the respondent on 07.06.2017, calling upon the petitioner to make the payments as indicated in the said notice failing which the respondent would be

requesting for the appointing authority to appoint the arbitrator as per the agreement.

6. The petitioner states that thereafter it issued a notice dated 03.10.2017 calling upon the respondent to pay a sum of ₹65,00,00,000/- (Rupees Sixty Five Crores) failing which the petitioner would initiate appropriate proceedings. It was also expressly stated that failure to comply with the said notice would mean that the arbitration clause would stand invoked.

7. Thereafter, the petitioner filed the present petition for appointment of an arbitrator. The present petition was filed on 27.12.2017 and after the defects were cured, was listed before the Court for the first time on 19.01.2018. On that date, this Court directed notice to be issued to the respondent. The petition was again listed on 08.03.2018 and on that date the respondent sought time to file a reply.

8. The respondent has filed its reply. The documents filed by the respondent along with its reply indicates that the respondent had issued a letter dated 18.09.2017 addressed to the President, Council of Architecture referring to the arbitration clause and requesting for adjudication of the disputes and difference that had arisen between the parties in connection with the Agreement dated 16.10.2016. A copy of the said letter was also marked to the petitioner. However, this fact has not been disclosed in the present petition.

9. Thereafter, the Council of Architecture sent a letter dated 30.10.2017 to the respondent requesting the respondent to send a sum of ₹32,000/- to cover the one time study and administrative charges as also sitting fee

towards first meeting. The letter also indicated that thereafter the parties would be required to remit ₹3500 each to the Council of Architecture before conduct of each meeting by the Arbitrator and the details regarding the sole arbitrator would be sent to the parties upon receipt of the fees. A copy of this letter was also sent to the petitioner but this letter also has not been disclosed in the petition.

10. The Council of Architecture sent another letter dated 28.12.2017 addressed to the petitioner informing the petitioner that the President, Council of Architecture would be appointing an arbitrator in terms of Clause 14 of the agreement dated 16.10.2015 entered into between the parties and requesting the petitioner to confirm its participation at the earliest.

11. None of the aforesaid letters sent by the Council of Architecture have been disclosed by the petitioner in its petition. On 02.02.2018, the Council of Architecture appointed Professor S.S. Ray, as the Sole Arbitrator, a copy of the appointment letter was also marked to both the parties. The present petition was listed on 08.03.2018, however, the petitioner did not inform this Court that the Council of Architecture had already appointed an arbitrator to adjudicate the disputes that have arisen between the parties.

12. The learned counsel for the petitioner earnestly contended that the present petition was maintainable as in terms of the arbitration clause, the disputes could be referred for arbitration to the Council of Architecture or to the Court of Law and, therefore, the petitioner was well within its right to file the present petition to seek appointment of an arbitrator by this Court.

13. The aforesaid contention is unmerited. The respondent had already

invoked the arbitration clause and had also requested the Council of Architecture for resolution of disputes by arbitration. Plainly, this was in accordance with the arbitration clause. It is also not disputed that the Council of Architecture has designated a person to act as a sole arbitrator to adjudicate the disputes between the parties. In the circumstances, the question of appointment of another arbitrator does not arise.

14. In view of the above, the petition is dismissed with costs quantified at ₹50,000/- as it is apparent that the petitioner has not approached this Court with clean hands. And, this Court has no doubt that the petitioner has wilfully suppressed the communications sent by the Council of Architecture.

15. The cost shall be paid to the Delhi High Court Legal Services Committee within a period of two weeks from today.

16. Needless to state that the petitioner is also be at liberty to make its counterclaims before the Arbitral Tribunal.

VIBHU BAKHRU, J

MAY 04, 2018
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