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

+ **ARB.P. 792/2017**

RAJESH JALE & ANR.

..... Petitioners

Through Mr. V. Govinda Ramanan and Mr.
Jayesh Kain, Advs.

versus

ENHANCE AESTHETIC & COSMETIC STUDIO PVT. LTD.

THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR, DR.

MANOJ KHANNA & ORS.

..... Respondents

Through Mr. Sumit Mehta, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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25.01.2019

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short '1996 Act').
2. Notice in this petition was issued on 11.12.2017.
3. The respondents entered appearance in the matter on 17.4.2018.
4. Since reply was not filed within the time allocated by the Court, costs in the sum of Rs.15,000/- were imposed on the respondents.
- 4.1 The respondents were directed to deposit the costs with the Delhi High Court Advocates Welfare Fund.
5. Mr. Mehta, who, appears for the respondents says that the costs have been deposited as directed by this Court.
6. As a matter of fact, in this regard, I had to pass an order on 24.9.2018 giving respondents five (5) days from that date to cure the infraction of the direction issued for depositing the costs.

7. The Registry will enquire as to whether or not the costs have been deposited by the respondents.
8. In case the costs have not been deposited, the matter will be placed for appropriate directions before this Court.
9. Insofar as this petition is concerned, learned counsel for the respondents says that while there is no dispute with regard to the existence of the arbitration agreement, the case set up by the petitioner on merits is not tenable.
10. Learned counsel for the respondents, *inter alia*, submits that the petitioner has not fulfilled the terms of the agreement dated 24.7.2015 obtaining between them which required the petitioners to ensure that there was a monthly revenue generation of at least Rs.12 lacs.
11. This apart, learned counsel for the respondents says that the petitioner has breached the exclusivity clause contained in the aforementioned agreement and has also claimed amounts for post-termination period.
12. Learned counsel says that, as a matter of fact, the petitioner has failed to disclose, to this Court, that the aforementioned agreement was terminated vide communication dated 4.7.2016.
13. To my mind, the objections raised by the respondents pertain to the merits of the dispute which appear to have arisen between them and the petitioners.
14. As indicated above, the respondents do not dispute the existence of the arbitration agreement which stands incorporated in clause 14 of the aforementioned agreement.
15. Faced with the situation, learned counsel for the respondents says that

he would have no difficulty in the Court appointing an independent Arbitrator, provided the respondents are given an opportunity to defend their case, on merits, before the Arbitral Tribunal.

16. Learned counsel for the petitioner submits likewise i.e. that the Court could appoint an independent Arbitrator in the matter leaving the Arbitral Tribunal to decide merits of the stand taken by the parties before it.

17. Accordingly, having regard to the aforesaid, the petition is disposed of with the following directions:

(i) Ms. Lalit Mohini Bhatt, advocate (Cell no:9910155008) is appointed as an Arbitrator in the matter.

(ii) The Arbitrator will be paid her fee as per the provisions of the Fourth Schedule appended to the 1996 Act.

(iii) The learned Arbitrator will give due opportunity to both the parties while adjudicating upon the disputes.

(iv) The learned Arbitrator prior to entering upon reference will file a declaration in terms of Section 12(5) and the attendant provisions of the 1996 Act.

RAJIV SHAKDHER, J

JANUARY 25, 2019
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