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

+ **ARB. P. 249/2020 & I.As. 5897-5898/2020**

MANISH CHIBBER

... Petitioner

Through: Mr. Praveen Kumar Jain, Mr.
Naveen Kumar Jain, Mr.
Ashish Gupta and Mr. Sajal
Manchanda, Advs.

versus

ANIL SHARMA & ANR.

... Respondents

Through: Mr. Baldev Raj and Ms. Shikha
Tyagi, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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07.08.2020

(Video-Conferencing)

1. By this petition, preferred under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the "1996 Act"), the petitioner prays that a sole arbitrator be appointed, to arbitrate on the disputes between the petitioner and the respondents.

2. In view of the nature of the said prayer, it is not necessary to advert, in detail, to the facts, and a brief elucidation would suffice.

3. On 1st April, 2016, a partnership deed was executed, between

the petitioner and the respondents, for providing tour and travel services under the name “Trips N Mice”. Apparently, the petitioner and the respondents were operating a single bank account, of the said entity. It is alleged that the respondents were also partners in another firm, in the name of their respective spouses, to which the respondents started diverting the business and clientele of “Trips N Mice”. It is also alleged that the respondents did not give the petitioner his share of the profits in “Trips N Mice”. Ultimately, on 27th May, 2018, the firm “Trips N Mice” was dissolved by mutual consent. Thereafter, certain legal notices were issued, by the respondents, to the petitioner, on 27th September, 2019 and 12th December, 2019, following which, *vide* legal notice dated 8th January, 2020, the respondents invoked Clause 22 of the aforesaid partnership deed dated 1st April, 2016, which constitutes the arbitration clause therein, and which reads thus :

“22. That the all dispute and questions in connection with the partnership or this deed arising between the partners or between anyone of then the legal representative of the other or between their respective legal representative whether during or after the partnership shall in the first instance be referred to the arbitration of one or more arbitrators appointed by common consent of all the partners and in case their failure, in accordance with the provisions of India Arbitration Act, 1940”.

4. Purportedly in exercise of the authority vested by the afore-extracted clause, the respondents suggested the name of one Mr. Ankit Batra, as the sole arbitrator to arbitrate on the disputes between the petitioner and the respondents, and sought the consent of the petitioner thereto. It is specifically averred, in the petition, that the petitioner never consented to the said appointment. Despite this, the respondents

proceeded to file a statement of claim before Mr. Ankit Batra, who assumed charge as sole arbitrator, on 5th June, 2020. The record reveals that Mr. Ankit Batra proceeded to conduct hearings on 7th March, 2020, 21st March, 2020, 4th April, 2020, 28th May, 2020, 6th June, 2020, 20th June, 2020, 27th June, 2020, 4th July, 2020 and 21st July, 2020. The petitioner, however, asserts that he never consented to the appointment of Mr. Ankit Batra and that, as he had not so consented, he sought adjournments. It is also alleged, in the petition, that Mr. Batra was a neighbour and a close friend of the respondents and that, therefore, the petitioner was not agreeable to his appointment as a sole arbitrator, to arbitrate on the disputes between the petitioner and the respondents.

5. Mr. Baldev Raj, learned Counsel appearing for the respondents strenuously opposes all the allegations, against his clients, as contained in the petition, and has filed a counter affidavit thereto, giving voice to the said objections. There can be no question of this Court entering into the merits of the claims of the parties, *inter se*, as they would have to be adjudicated upon, in arbitral proceedings.

6. Mr. Baldev Raj, however, also submits that the present petition is not maintainable, as the petitioner had consented to the appointment of Mr. Ankit Batra as arbitrator. In order to support the said submission, the respondents have placed, on record, the order sheets relating to the proceedings that took place before Mr. Ankit Batra.

7. Having perused the said order sheets, I find no vestige of any consent, by the petitioner, to the appointment of Mr. Ankit Batra as

arbitrator.

8. Admittedly, there is no written document, from the petitioner, suggesting his consent, to the appointment of Mr. Ankit Batra. However, Mr. Baldev Raj submits that the record of the proceedings before Mr. Batra, especially the record of the hearing conducted on 6th June, 2020, disclose such consent.

9. I have seen the record of proceedings, before Mr. Batra, and I am unable to agree with the submission of Mr. Baldev Raj. There was no appearance on behalf of petitioner, before Mr. Batra, on 7th March, 2020, 21st March, 2020, 4th April, 2020 and 28th May, 2020. On 6th June, 2020, no doubt, the petitioner was present before Mr. Batra, and the order passed on the said date merits reproduction, *in extenso*, thus:

“Before the Ld. Sole Arbitrator Mr. Ankit Batra Advocate, A-21 , Milap Nagar, Utam Nagar, New Dclhi-110059.

In the matter of Arbitration between:

Sh Anil Sharma,
S/o Sh Dev Raj Sharma,
R/o Plot No 51, Gali No.9,
Press Enclave, Part-III, Vikas Nagar, New Delhi-59

Sh Arun Kapoor,
S/o Sh I.D. Kapoor,
R/o Flat No.69, MIG DDA Flat,
Sector-14-B, Dwarka, Delhi-78.

...Claimant

Versus

Mr Manish Cilibber,
S/o Sh.Mehta R N Chibber,
R/o 61-B, Pocket - A, Vikas Puri Extnn.,
Vikas Puri, New Delhi-18.

Present: Counsel For Claimants.

Respondent in Person.

Dated: 06.06.2020 at 4.00 p.m.

ORDER

- Counsel for the claimant filed their petition via e-mail and supplied the same to opposite party as well. Respondent sought time to file reply.
- Time granted, on or before next date of hearing, respondent is directed to file its reply, via mail and also submitted hard copy of the same before undersigned. Further claimant also directed to file replication if any.
- Apart from their appearance and completion of pleadings, parties hereto asked for amicable settlement if any and in furtherance of the same parties are directed to appear in person with their counsels and bring a proposal if any.
- *Respondent accepted the consent today and admitted that earlier also he received all the letters and notice pertains to this Arbitration proceedings.*
- The fees of the Arbitration case is fixed at Rs.60,000.00 to be shared equally by both the parties.
- The parties are directed to deposit their share of Rs.30,000.00 each on or before the next date of hearing.
- Therefore, in view of above said situation let the matter be listed on 20.06.2020 at 4:00 p.m. at A-21, Milap Nagar, Uttam Nagar, New Delhi-110059. The parties are directed to remain present in person or through their counsels on the said date.
- NOTE: Parties and their counsels are directed to comply with instructions or COVID-19, declared by State Authorities while participate in proceedings and physical appearance. Parties can mail or whats app also if they wish to

avoid physical appearance. Pleadings should be in PDF format and self attested by the parties. (Whats App no: 9990786641 and Email Id: ankit.batra30@gmail.com)

Sd/-
Sole Arbitrator
(Ankit Batra)

Copy of this order is communicated to the parties/Counsel through E-mail.”

(Emphasis supplied)

10. Thereafter, the petitioner appeared before Mr. Ankit Batra on 20th June, 2020 and 4th July, 2020, and remained absent on the other dates of hearing.

11. The record of proceedings on 20th June, 2020 and 4th July, 2020 do not indicate any consent, as having been granted by the petitioner, to the appointment of Mr. Ankit Batra as sole arbitrator. Rather, the stand of the petitioner is that he deliberately sought adjournments on the said dates as he was not agreeable to the appointment of Mr. Ankit Batra, who was continuing with the proceeding, despite being *coram non judice*.

12. Mr. Baldev Raj, learned Counsel for the respondents places emphatic reliance on the sentence, italicized in the order as extracted hereinabove, in the record of the proceedings dated 6th June, 2020, as recorded by Mr. Ankit Batra. The said sentence merely states that the “respondent (i.e. the petitioner herein) *accepted the consent* today”. In my view, this recital, which is completely vague and largely unintelligible, can hardly suffice as consent, on the part of the petitioner, *to the appointment of Mr. Ankit Batra as sole arbitrator*.

All that is stated, is that the “respondent accepted the consent today”. As to what consent the respondent accepted, has been left delightfully – and, this Court is constrained to observe, perhaps deliberately – vague, and must remain anybody’s guess. The further acknowledgment, by the petitioner, i.e. the respondent in the said proceeding, that he had received the letters and notices pertaining to the arbitral proceedings, too, cannot constitute consent to the appointment of Mr. Ankit Batra as sole arbitrator.

13. Section 11(6) of the 1996 Act specifically states that, if a party fails to act as required by the procedure for appointment of arbitrator, as agreed upon between the parties, the appointment shall, in the case of domestic arbitration, be made by the High Court, on an application of the party, by this Court, where the arbitration is other than an international commercial arbitration. The procedure agreed upon, between the petitioner and the respondents, to appoint the arbitrator in the present case, is encapsulated in Clause 22 of the partnership deed dated 1st April, 2016, which already stands reproduced hereinabove. A reading thereof makes it clear that “appointment by *common consent of all partners*” is the *sine qua non*, for the appointment of the arbitrator to be valid. In the present case, there is nothing, whatsoever, to indicate that, prior to, or even at, the time of his appointment as sole arbitrator, and of his taking cognizance of the arbitral proceedings, there was any consent, by the petitioner to the appointment of Mr. Ankit Batra. Clearly, therefore, the appointment of Mr. Ankit Batra had not taken place in accordance with Clause 22 of the partnership deed, dated 1st April, 2016 *supra*. Section 11(6) of the 1996 Act, therefore, squarely applies, and the task of appointment

of the arbitrator, devolves on this Court, as there is no consensus, *ad idem*, regarding the arbitrator, who would arbitrate on the disputes between the parties.

14. In view thereof, Mr Abhaya Kumar Behera, Advocate (R/O 3830, Lal Kothi, 3rd floor, Pataudi House Road, Daryaganj, New Delhi-110002, Tel. No. 9810022498) is appointed to arbitrate on the disputes between the parties. The learned Sole Arbitrator shall be entitled to charge fees in accordance with the Fourth Schedule of the 1996 Act. The parties would get in touch with the learned Sole Arbitrator within 48 hours at the contact id/telephone no. aforesaid, in order to ascertain a date for submission of claim/counter claim and for commencement of the arbitral proceedings.

15. With the aforesaid directions, this petition is disposed of.

16. Mr. Praveen Kumar Jain submits that costs should be imposed in this matter on the respondents. I am not inclined to do so.

I.A. 5897/2020 and I.A. 5898/2020

1. In view of the disposal of Arb.P.249/2020, these applications also stand disposed of.

C. HARI SHANKAR, J.

AUGUST 07, 2020/kr