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

+ **OMP (T)(COMM) 40/2020, IA 7555/2020**

WEFREW EDUCATIONS PRIVATE LIMITED

..... Petitioner

Through: Mr. Ankur Mittal, Adv.

Versus

VIDYA MANDIR CLASSES LIMITED

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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07.09.2020

This matter is being heard through Video Conferencing.

OMP (T)(COMM) 40/2020

1. The present petition has been filed by the petitioner with the following prayers:-

"It is therefore most humbly prayed that this Hon'ble Court may be pleased to:-

(a) Terminate the unilateral appointment of Hon'ble Mr. Justice (retd.) S. J. Mukhopadhyay, Former Judge, Supreme Court of India, as the sole arbitrator, being je jure unable to function as an arbitrator;

b. Appoint a Sole Arbitrator in terms of Section 11(6) of the Arbitration and Conciliation Act, 1996;

c. Pass such further or other orders as it may deem fit and proper in the facts and circumstances of the case."

2. It is a conceded fact that disputes have arisen between the parties and the respondent herein had invoked the arbitration clause by issuing a notice dated May 08, 2020 wherein the respondent had suggested three names to the petitioner for giving its concurrence for appointing one person out of the three names, as an Arbitrator.

3. It appears that the petitioner had sent a reply to the notice dated May 08, 2020 of the respondent wherein the petitioner had suggested the names of an Hon'ble retired Judge of the Supreme Court of India and a the retired Judge of this Court one of whom, to be appointed as a sole Arbitrator. It appears that pursuant thereto, the respondent has, in response to the reply on behalf of the petitioner, has appointed a Hon'ble retired Judge of the Supreme Court of India, as a sole Arbitrator. It is seen that the learned sole Arbitrator has also issued a declaration / disclosure under Section 12 of the Sixth Schedule of the Arbitration & Conciliation Act, 1996 vide his letter dated July 26, 2020.

4. It is the submission of Mr. Ankur Mittal that the arbitration clause being Clause 17, which is reproduced as under, in view of the position of law of the Supreme Court read with provision of Section 12(5) read with Seventh Schedule of the Arbitration & Conciliation Act, 1996, the respondent could not have appointed the learned Arbitrator. According to him, the appointment is void *ab-initio*. In substance, it is his plea that the learned Arbitrator so appointed by the respondent cannot act as such. Clause 17 reads as under:

"17. DISPUTES AND ARBITRATION

In the event of any dispute or differences arising directly or indirectly out of this agreement, the parties undertake to use all reasonable endeavours to resolve such dispute amicably. If dispute and differences cannot be settled amicably than all disputes and differences arising between the parties hereto In connection with this agreement or the interpretation hereof or anything done or omitted to be done pursuant hereto or the performance or nonperformance of this agreement shall be referred to the arbitration of a single arbitrator to be appointed solely by mutual agreement of the Franchisor or Franchisee, however if both the parties are not able to come on an agreement w.r.t. arbitration than the arbitrator will be solely appointed the Franchisor and his/her award shall be final and binding on both the parties hereto. The arbitration shall be held at Delhi and the expenses of the arbitration shall be borne in such a manner as the arbitrator may determine: The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or such other law relating to arbitration as may be in force in India at the relevant time.”

5. Noting the submission made by Mr. Mittal and the fact that an Hon’ble retired Judge of the Supreme Court has been appointed by the respondent as a sole Arbitrator, this Court is of the view that in the facts of this case, the appointment should not be interfered with. The petition is dismissed.

6. At this stage, Mr. Mittal states that the last date for filing the statement of defence by the petitioner is 9th September, 2020. He states that the said time be extended by this Court.

7. Noting the fact that the petitioner was pursuing this petition, appropriate for the petitioner is to make a request to the learned Arbitrator, who may consider the said request favourably, so as to enable the petitioner herein file a statement of defence.

8. It is made clear that it shall be the discretion of the learned Arbitrator as to how much time be granted to the petitioner for filing its statement of defence.

IA 7555/2020

Dismissed as infructuous.

V. KAMESWAR RAO, J

SEPTEMBER 07, 2020/ak