

OD - 13

AP/22/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

BALAJEE EDUCATION PRIVATE
LIMITED

-Versus-

RAGHWENDRA SWARUP

BEFORE :
THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
Date : 17th April, 2023

Appearance :
Mr. Aniruddha Mitra, Adv.
Ms. Arijita Ghosh, Adv.,
. . . for the petitioner.

Mr. Ayan Kumar Boral, Adv.
Mr. Soumyadeep Banerjee, Adv.
...for the respondent.

The Court : The arbitration clause in the agreement between the parties contained a rider that the Arbitrator is required to be appointed by the director of the petitioner company. However, learned counsel submits that since under the amended Arbitration and Conciliation Act, 1996 the director of the company would be ineligible either to appoint an Arbitrator or to act as an Arbitrator, an independent invocation was made by the petitioner. As the respondent did not respond to the same, the present application has been filed.

Learned counsel appearing for the respondent takes an objection as to maintainability in so far as the invocation

notice does not mention any particular person as the suggested Arbitrator, for the respondent to agree or disagree with such name. Hence, it is submitted that the present application is not preceded by a proper invocation in law under Section 21 of the 1996 Act and, as such, is not maintainable.

A perusal of the invocation notice in the present case indicates that no specific suggested Arbitrator was named therein. However, as per the language of Section 21 of the 1996 Act, a request is to be made for the dispute "to be referred to arbitration".

In the present case such a request was made by the petitioner to which the respondent did not respond. As such, it cannot be said that the Section 11 invocation is vitiated by non-compliance of Section 21 of the 1996 Act. In such view of the matter, AP 22 of 2023 is allowed, thereby appointing Ms. Deblina Lahiri (Mobile No.9831155553), an Advocate practising in this Court, as the Sole Arbitrator to resolve the disputes between the parties, subject to obtaining consent/declaration under Section 12 of the 1996 Act.

(SABYASACHI BHATTACHARYYA, J.)