

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 24th March, 2023**
+ ARB.P. 102/2023
NAVEEN BATHLA Petitioner

Through: Mr. Bhavya Sethi and Mr. Shiven
Khurana, Advocates

versus

M/S YOUTH DESTINATION & ANR. Respondents

Through: Mr. Rohit Puri, Advocate for R-1

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition has been filed on behalf of the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") seeking appointment of a Sole Arbitrator for redressal of disputes between the parties *qua* the Rent Deed dated 16th April, 2019.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is the rightful owner of the premises bearing no. 639, Ground Floor, Dr. Mukherjee Nagar, Delhi-110009 and the respondent No. 1 is a partnership firm and the respondent No. 2 is one of the partners in respondent No. 1 firm.

3. It is submitted on behalf of the petitioner that in order to operate an institute for imparting education, the parties executed a Rent Deed dated

16th April, 2019, for a period of 03 years commencing from 1st May, 2019 and expiring on 30th April, 2022.

4. It has been submitted on behalf of the petitioner that in accordance with Rent Deed, the rent of the property was fixed at Rs. 2,75,000/- per month for first year, Rs. 2,88,750/- per month for the second year and Rs. 3,03,190/- per month for the third year after the deduction of the TDS and exclusive of the payment of water bills, electric bills and GST.

5. It has been submitted that in light of the outbreak of the COVID-19 pandemic, the rent of the property, pursuant to mutual negotiations was reduced and the same subsequently did not increase after the pandemic was over, in accordance with the terms and conditions of the Rent Deed.

6. Learned counsel appearing on behalf of the petitioner submitted that the petitioner vide notice dated 9th June, 2021 intimated the respondents regarding the increment in rent and to clear the arrears of rent pending on the respondent herein towards the petitioner, failing which the petitioner would terminate the said agreement.

7. It has been submitted on behalf of the petitioner that there was no response to the said communication by the respondent. Therefore, the petitioner vide letter dated 14th July, 2021 terminated the Rent Deed and asked the respondent to vacate the above-mentioned property.

8. It has been submitted on behalf of the petitioner that a commercial suit was instituted on behalf of the petitioner bearing CS(COMM) No. 110/2022 before the Rohini Courts, North District, New Delhi which was

eventually withdrawn vide order dated 16th September, 2022 due to the presence of the arbitration clause, i.e., clause 12 in the said deed.

9. Learned counsel appearing on behalf of the petitioner submitted that in view of the existence of the arbitration clause, the petitioner in accordance with Section 21 of the Act, invoked clause 12 of the Rent Deed vide notice dated 3rd December, 2022. It is further submitted that the said notice was not replied by the respondent.

10. In view of the foregoing submissions, it has been prayed on behalf of the petitioner that an independent arbitrator may be appointed by this Court to adjudicate upon the dispute arising between the parties.

11. *Per contra*, learned counsel on behalf of respondent vehemently opposed the averments made in the instant petition and submitted that clause 12 of the Rent Deed dated 16th April, 2019 provides for panel of two arbitrators, which is in violation of Section 10 of the Act.

12. However, the learned counsel appearing on behalf of the respondent fairly conceded that the dispute between the parties is arbitral in nature and has no objection if this Court appoints an independent Sole Arbitrator for redressal of disputes between the parties.

13. Heard the learned counsel for the parties and perused the record.

14. This Court has taken into consideration the arguments advanced on behalf of the respondent and therefore finds it evident to peruse Section 10 of the Act, which reads as follows:

“10. Number of arbitrators.—(1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

(2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.”

15. It has been time and again settled by the Hon’ble Supreme Court and this Court in catena of judgments that an arbitration agreement containing an even number of arbitrators cannot be a basis for invalidating the agreement.

16. The Hon’ble Supreme Court in its judgment titled as ***Narayan Prasad Lohia v. Nikunj Kumar Lohia*** reported as **(2002) 3 SCC 572** held that sinec, the arbitration is a creation of the parties' agreement, it would be difficult to address all issues. As an illustration, Section 10 allows the parties to select the number of arbitrators, so long as it is not an even number. Section 11(2) allows parties to agree on a method for choosing arbitrator(s). Section 11 specifies how arbitrators are to be selected if the parties cannot agree on a procedure or if the agreed method fails. A reading of Section 11 of the Act reveals that it only allows for the appointment of arbitrators where there is only one or three arbitrators. By mutual agreement, parties may stipulate the appointment of five or seven arbitrators. If they do not specify a method for their appointment or if the agreed upon procedure fails, Section 11 makes no provision for such a circumstance. Certainly, the approach outlined in Section 11 will apply similarly to the selection of five, seven, or more arbitrators. Thus, even if the parties stipulate the appointment of just two arbitrators, this does not render the agreement unlawful. The two arbitrators must then designate a

third arbitrator to serve as the presiding arbitrator under Section 11(3). This appointment should ideally be made at the very outset. The Hon'ble Supreme Court found no reason, however, why the two arbitrators cannot select a third arbitrator at a later stage, if and when they disagree. This would ensure that arbitration processes are not derailed by a disagreement of opinion. But, if the two arbitrators reach an agreement and issue a unified award, the proceedings are not rendered futile. In such a scenario, their consensus would have triumphed even if the third arbitrator, assuming there was one, had reached a different conclusion. Hence, the Hon'ble Supreme Court was of view that the same would not be a waste of time, money and resources if a party agrees to two member arbitration and then participates in the proceedings. In contrast, it would be a waste of time, money, and effort, to allow such a party to resile if the award is not to its liking. Allowing such a party to recant would not advance any public goal and would be grossly unfair.

17. This Court, in view of the foregoing discussions and on the basis of consent of both the parties, finds it appropriate to refer all the disputes and disagreements arising between the parties with respect to the Rent Deed dated 16th April, 2019 to an independent Sole Arbitrator. Hence, the following order:

ORDER

- (i) Ms. Radhika Bishwajit Dubey, Advocate is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Rent Deed dated 16th April, 2019;

- (ii) The learned sole arbitrator, before entering the arbitration reference, shall ensure the compliance of Section 12(1) of the Arbitration and Conciliation Act, 1996;
- (iii) The learned sole arbitrator shall be paid fees as prescribed under the Delhi International Arbitration Centre (DIAC) (Administrative Cost and Arbitrators Fees) Rules, 2018 as amended vide notification dated 15th November, 2022;
- (iv) At the first instance, the parties shall appear before the learned sole arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator;
- (v) All contentions of the parties are expressly kept open.

18. A copy of the order be forwarded to the learned sole arbitrator on the following address:

Ms. Radhika Bishwajit Dubey, Advocate
F-18, 3rd floor, Geetanjali Enclave, New Delhi 110017
Ph. No.+91 98280-31813/63910-06169
E-mail ID - radhika.arora21@gmail.com

19. With the aforesaid observations, the present petition is accordingly disposed of.

20. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 24, 2023

Dy/ug

Click here to check corrigendum, if any