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

% **Date of Order : 13th February, 2023**

\+ ARB.P. 160/2023

PREPLADDER PRIVATE LIMITED ..... Petitioner
Through: Ms.Vidushi Jain and Mr.Vishv Vardhan, Advocates

versus

DR GOBIND RAI GARG ..... Respondent
Through: Mr.Neil Hidreth, Mr.Rahul Jain and Mr.Kshitiz Arya, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

I.A. No. 2708/2023 (for Exemption)

Exemption allowed, subject to just exceptions.

The application is disposed of.

ARB.P. 160/2023

1. The present petition has been filed by the petitioner under section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act, 1996") seeking redressal of disputes arising between the parties with respect to the License Agreement dated 3rd August, 2020.

2. It has been submitted on behalf of the petitioner that the petitioner is a corporation that offers a web-based service platform that enables information providers to generate and distribute content in multiple forms and make it accessible to learners. It is further submitted that the respondent

is a medical professional/content provider who was hired by the petitioner to develop and record instructional video lectures on the topic 'Pharmacology', which would be posted and disseminated on the petitioner's platform.

3. It is submitted on behalf of the petitioner that the petitioner and the respondent entered into a License Agreement on 3rd August, 2020, whereby the respondent's educational video lectures were to be uploaded and distributed on the platform of the petitioner, and in exchange, the petitioner agreed to pay the respondent a certain sum of money i.e. the License Fee, subject to the terms of the License Agreement.

4. It is submitted on behalf of the petitioner that during the License Period, the License Agreement stipulates that the respondent shall not enter into any arrangement with a third party in relation to the content or any part thereof, and shall not use, licence, sub-license, modify, amend, or reproduce the content on any other internet-based online platform (mobile, applications or otherwise) or on public domain through any online media, or by way of an arrangement with any third party.

5. It is submitted on behalf of the petitioner that the License Agreement also stipulates that the respondent shall not directly or indirectly make or cause to be made any disparaging, denigrating, derogatory, or other negative, misleading, or false statement orally or in writing to any person, platform, or medium about the petitioner and its affiliates, their respective members, officers, or employees, or business strategy or plans, policies, practises, or operations of the petitioner or its affiliates. The respondent acknowledged and agreed that any written or oral contacts/other correspondence with students, other consultants or service providers or advisors of the petitioner shall be made in good faith in accordance with the

terms of this clause and in the best interests of the petitioner and its affiliates.

6. It is submitted on behalf of the petitioner that respondent has been in continuous violation of the License Agreement since August 2022, engaging in defamation and disparagement of the petitioner, tortious interference with the petitioner's economic benefit, and unfair business practises, among others. The petitioner repeatedly urged the respondent to promptly halt and rectify its tortious actions before the petitioner suffered more injury.

7. It is submitted on behalf of the petitioner that the respondent has failed to produce the material within the specified timeframe in accordance with the Statement of Work (SOW). On various occasions, the respondent has ignored the petitioner's pleas, on other instances the requests have been denied for unjustifiable grounds. It is further submitted that the petitioner has repeatedly asked the respondent to comply with its duties of delivering information that fulfils the SOW and the agreement's quality and timeliness criteria.

8. It is submitted on behalf of the petitioner that in addition, by associating with the financial news portal “Money control”, where the article headlined *"Why educators on a warpath with Unacademy-owned PrepLadder"* was published on 17th November, 2022, the respondent has violated a number of conditions of the License Agreement. The breach is not only on account of the respondent’s requirement regarding restrictions on interaction with the media, but also on account of the License Agreement's and the respondent's engagement with the petitioner's private and sensitive information disclosure restrictions. In actuality, the respondent has been regularly dealing with the media without the petitioner's

agreement, as well as spreading false and malicious allegations about the petitioner. The publishing of this piece, like numerous of the respondent's previous activities, has resulted into a dramatic decline in number of new subscriptions for the petitioner and consequently, a severe financial loss.

9. Moreover, the abovementioned item has irreparably damaged the petitioner's reputation. This further bolsters the respondent's fraudulent effort to generate traction for its own endeavour, i.e., "Cerebellum Academy". The respondent's behaviour is both tortious and clearly suggestive of a fraudulent plan aimed to artificially depress the petitioner's market share and cause harm to the petitioner and its company.

10. It is submitted on behalf of the petitioner that the petitioner has exhausted all avenues to resolve the disagreements peacefully, including sending a Conciliation notice on 8th November, 2022 according to Section 62 of the Act, 1996. However, the respondent, adopting a careless approach, issued an email to the petitioner on 10th November, 2022 denying any reference of an external conciliator for the resolution of the dispute in the License Agreement. However, on 16th November, 2022, the petitioner responded to the respondent's email by providing the names of two independent and impartial conciliators from which the respondent may pick. However, the petitioner has not yet received a response from the respondent in this regard. Even when the respondent was invited to engage in the mediation process, he did not change his behaviour and continued to disparage the petition. Therefore, the petitioner was compelled to send notice to the respondent on 26th November, 2022, instructing the respondent to immediately cease and rectify its unlawful activities.

11. It is submitted on behalf of the petitioner that since the efforts of the petitioner to settle the disputes amicably, have failed. Consequently, being aggrieved by the unlawful conduct of the respondent, the petitioner was constrained to invoke the arbitration clause i.e. Clause 13.2 of the said License Agreement. The arbitration clause as mentioned in the said agreement is reproduced hereunder:

> *"13.2 That all disputes, differences, claims and questions, whatsoever, which shall arise either during the subsistence of this Agreement or afterwards between the parties and/or their respective representatives touching these presents or any clause herein, contained or otherwise in any way relating to or arising from these presents shall be referred to arbitration by a single Arbitrator, who shall be appointed mutually by both the parties and such arbitration shall be in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made thereunder, for the time being in force. The Arbitration proceedings shall be held at Delhi and the Courts at Delhi alone shall have the exclusive jurisdiction to entertain any matter arising out of or touching upon the matters relating to the arbitration proceedings between the parties to the present Agreement. "*

12. It is submitted on behalf of the petitioner that the petitioner in accordance with the provision of the Act, 1996 issued a notice dated 28th November, 2022 nominating/ proposing name of a sole arbitrator for redressal of disputes. However, the respondent has failed to respond to the said notice.

13. Learned counsel for the respondent appearing on advance notice has vehemently opposed the averments made in the present petition. However, has fairly conceded that the dispute arising between the parties is arbitral in nature and has no objection if an independent sole arbitrator is appointed by this Court for adjudication of disputes.

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

15. As agreed on behalf of the parties, it is evident that the parties intend the Court to refer the disputes to arbitration, by appointing a sole arbitrator. In view of the request made by the parties, to resolve the dispute arising under the License Agreement, the said disputes and differences arising between the parties are referred to arbitration, by appointing an arbitral tribunal. Hence, the following Order:

ORDER

(i) Mr. Apoorv Kurup, Advocate is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the License Agreement dated 3rd August, 2020;

(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;

(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.

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

Mr. Apoorv Kurup, Advocate
A-2/141, Lower Ground Floor,
Safdarjung Enclave, New Delhi – 110029
Moblie No. - +91–8800332253
E-mail Id : office@akurup.com

17. The petition is disposed of in the aforesaid terms along with pending applications, if any.

18. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 13, 2023
SV/UG

Click here to check corrigendum, if any