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

% Date of Decision: 02.05.2024

+ ARB. P- 556/2023

MILLENNIUM EDUCATION MANAGEMENT PRIVATE LIMITED

..... Petitioner

Through: Mr. Dhruv Varma and Rohit
Khaturia, Advs.

versus

NARAYAN SEWA SAMITI

..... Respondent

Through: Mr. Krishnan Mishra, Mr. Param
Mishra and Ms. Prashansika Thakur,
Advs.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

I.A. 8899/2024 (Exemption)

1. This is an application seeking exemption from filing of the certified/legible copies, true typed/translated copies with proper margins of the annexures.
2. Considering the averments made in the application, the same is allowed.
3. Application stands disposed of.

I.A. No. 8897/2024 (Recall of order dated 12.09.2023)& I.A. No. 8898/2024 (condonation of delay in filing the I.A No. 8897/2024)

4. I.A.No.8897/2024 is an application filed on behalf of the respondent/applicant seeking recall of order/judgment dated 12.09.2023



passed by this Court in ARB. P. No. 556/2023.

5. *Vide* the said order/judgment dated 12.09.2023, this Court had appointed an independent arbitrator to adjudicate the disputes between the parties.

6. I.A. No.8898/2024 is an application filed on behalf of the respondent/applicant seeking condonation of delay in filing I.A No. 8897/2024.

7. It is noticed that the judgment/order of which the recall is sought was passed on 12.09.2023, whereas the instant application seeking recall of the said order/judgment is accompanied by an affidavit which is sworn only on 30.03.2024. As such there is a delay of more than 200 days in filing the I.A No. 8897/2024. The following averments have been made in I.A. No.8898/2024 in support of the prayer seeking condonation of delay:

“2. That the respondent/ applicant has filed an I.A. For recall of the order passed by this Hon'ble Court since the order has been passed without disclosing the correct facts which are borne out from the documents annexed by the petitioner as well as other facts which could not be brought to the notice of this Hon'ble Court.

3. That the application for recall has been filed with the delay of _____ days of delay which is neither deliberate nor intentional.

4. That in order to substantiate the fact that the delay is neither deliberate nor intentional it is submitted that the respondent applicant herein had engaged a counsel to represent them in the above mentioned Arbitration Petition however as is submitted in the recall application the counsel for the respondent/ applicant herein had neither informed the applicant herein nor did he present the true and correct facts as per the instructions provided by the applicants herein.

5. That it is further submitted that the respondent/ applicant came to know about the orders passed by this Hon'ble Court only when the notice of the arbitration proceeding was served upon the respondent/ applicant.



6. That thereafter the respondent/ applicant herein contacted the counsel engaged by them and inquired about the case, it is only then the respondent/ applicant came to know that the order dated 12.09.2023 has been passed by this Hon'ble Court appointing the arbitrator.

7. That the respondent/applicant thereafter sought legal advice from another counsel after which he was advised to file a recall application before this Hon'ble Court whereafter some time was consumed in getting all the documents related to the present case.

8. That thereafter the respondent/ applicant herein filed the recall application, it is pertinent to mention that since the respondent/ applicant organisation is based in Prayagraj (Allahabad) and therefore after the drafting of the recall application the same was supplied to the respondent/ applicant hence some time was consumed in it.

9. That in view of the facts and circumstances herein above it is most respectfully prayed that this Hon 'ble Court may graciously be pleased to allow the application and condone the delay in filing the recall application.”.

8. It is noticed that the averments made in the application are cryptic and bereft of necessary details. Assuming that the said order/judgment dated 12.09.2023 erroneously records any concession/submission made on behalf of the respondent, there is no explanation given in the application as to the delay in filing the application seeking recall of the order/judgment dated 12.09.2023.

9. It also transpires that the instant application [I.A. No. 8897/2024)] has been filed after the learned arbitrator appointed *vide* the aforesaid order/judgment dated 12.09.2023 has passed a detailed and elaborate order on an application under Section 17 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the A&C Act, 1996). Such conduct on the part of the applicant casts a serious doubt as to the bonafides of the present application/s.



10. In any event, in the absence of any explanation whatsoever as to the reasons for delay in filing the present application, the delay in filing the same is not liable to be condoned.

11. Even on merits, no ground has been made out for recall of the judgement/ order dated 12.9.2023. In I.A No. 8897/2024, it is averred as under:-

“4) That it is submitted at the very outset that in the order dated 12.09.2023 though the counsel on behalf of the applicant herein had appeared and has consented of existence of the agreement between the petitioner and respondent however such consent is totally beyond the instructions given to the learned Counsel appearing on behalf of the respondent/ applicant herein therefore the same shall not be read against the applicant herein.

5) That it is submitted that one of the basic grounds on which the respondent/ applicant prays for the recall of the order dated 12.09.2023 is that there is no privity of contract with the petitioner company having registered office at Section 125 Noida therefore in view of the fact that when there is not contract between the petitioner and respondent/applicant hence no question of settling the dispute through arbitration.”

12. It is noticed that the submission of the learned counsel for the respondent as recorded in the order/judgment dated 12.09.2023 to the effect that “the existence of the arbitration clause in the Collaboration Agreement is not disputed”, was also reiterated before the learned arbitrator at the time of adjudication of the application under Section 17 of the A&C Act, 1996. *Vide* order dated 25.09.2023 passed by the learned Arbitrator, it was recorded as under:-

“5. At the outset, both counsel agreed that the present arbitration can take place under the aegis of the Delhi International Arbitration (DIAC). The Sole Arbitrator stated that both counsel would be provided with details of the Coordinator DIAC, who will also be sent a copy of the present order and the Section 17 Application of the Claimant. It is hereby recorded by consent both parties have agreed to



abide by the Rules and Regulations of the DIAC, in the conduct of this arbitration.”

13. Further *vide* order dated 10.10.2023 in the application under Section 17 of the A&C Act, 1996 it was *inter alia* recorded as under:-

“6. The Tribunal finds that the Collaboration Agreement, and in particular Clause 11 thereof, is not disputed by the Respondent. Further it also does not dispute Clause 4.4 of the Collaboration Agreement which requires the respondent to provide the Claimant with the requisite details of its earnings including accounts and financial statements. Further, the Respondent appears to realize that it cannot continue to use the Trademark ‘Millennium World School’ any longer. Although it has volunteered to change the name by adding ‘Star’ to the above name, this is merely a ‘variant’ of the said name and therefore is still *prima facie* in violation of Clause 11 of the Collaboration Agreement. Consequently, the Tribunal is satisfied that the Claimant has made out a *prima facie* case for the grant of an interim injunction in respect of the Respondent’s continued use of the above name/trademark ‘Millennium World School’ or any of its variants, and that the Claimant would suffer irreparable damage if a temporary restraint order against the Respondent is not passed. The balance of convenience in passing such an interim order is also in favour of the Claimant.”

14. As such, both before this Court (at the time of passing of order/judgment dated 12.09.2023) as also before the learned arbitrator (at the time of consideration and disposal of the application under Section 17 of the A&C Act, 1996), the existence of the Collaboration Agreement and in particular Clause 19 thereof was not disputed by the respondent.

15. Further, the existence of Clause 19 of the Collaboration Agreement is not disputed even today during the course of hearing. The said clause reads as under:-

“19 ALTERNATIVE DISPUTE RESOLUTION

All disputes arising in connection with or arising out this Agreement will be referred to final and binding arbitration under the provisions of Arbitration and Conciliation Act, 1996. For this purpose, the



Parties hereby agree that MEM would be entitled to appoint a sole arbitrator for the settlement of the dispute. The place of arbitration shall be at New Delhi and the language shall be English. The arbitration award shall be final and binding upon the Parties.”

16. The Arbitral Tribunal was constituted in view of the aforesaid arbitration agreement entered into between the parties. The contention of the learned counsel for the applicant is that the Collaboration Agreement although duly executed and signed by the parties was to be followed up by another definitive agreement; and was not intended to give rise to mutual rights and obligation. This submission does not impinge on the existence/validity of the arbitration agreement on the basis of which the Arbitral Tribunal was constituted by this Court.

17. Whether or not the Collaboration Agreement gives rise to mutual rights and obligation is an aspect that touches upon the merits/interpretation of the said agreement, which is to be gone into by the duly constituted Arbitral Tribunal. The same cannot afford any justification for seeking recall of the judgment/order dated 12.09.2023.

18. Learned counsel for the applicant also relies upon Clause 4.1 of the Collaboration Agreement to contend that a definitive agreement is yet to be executed between the parties. According to the applicant, the payments set out in Clause 4.1 of the Collaboration Agreement were required to be made only “at the time of agreement”. The contention is that an agreement which creates mutual rights and obligation is yet to be executed. Again, this contention has no bearing on the validity or existence of the arbitration agreement between the parties. All pleas regarding the scope and import of the collaboration agreement are necessarily required to be gone into by a duly constituted arbitral tribunal.



19. In the circumstances, there is no justification whatsoever to seek recall of the judgment/order dated 12.09.2023. These applications are not only wholly devoid of merit, but also evidently lacking in bonafides.

20. Accordingly, this Court finds no merit in the instant applications and the same are accordingly dismissed with costs of Rs.50,000/- payable to the petitioner.

SACHIN DATTA, J

MAY 2, 2024/at