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

% *Date of Decision: 5th September, 2023*

+ ARB.P. 603/2023

M/S G.D. GOENKA PVT. LTD. Petitioner
Through: Mr. Raghav Wadhwa, Advocate
versus

SHRI TIKAM CHAND EDUCATIONAL AND
CHARITABLE TRUST & ANR. Respondents
Through: Mr. Dhruv Chawla, Advocate

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This petition has been filed by the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act') for appointment of an independent sole Arbitrator to adjudicate the claims of the Petitioner.

2. A Memorandum of Understanding was executed between the parties on 16.05.2012 under which Petitioner was to provide education services and assistance to the Respondents for running a school situated at Village Ushayani, Firozabad, U.P. in return of quarterly payment as royalty. As per Clause 16 of the MoU, royalty calculated at 10% of the school's revenues for the first three years and at the rate of 12% of school's revenues after the first three years of operation were payable on quarterly basis to the Petitioner on or before the 10th of the first month of each quarter. According to the Petitioner, in addition to this, under Clause 9, Respondents were obliged to provide



all financial and other details about the day-to-day running of the school to calculate the royalty payable. Petitioner urges that Respondents failed in the performance of their obligations under the MoU and instead of paying the outstanding dues to the Petitioner illegally terminated the agreement dated 14.01.2022. Respondents have also failed to respond to the demand notice and the notice invoking arbitration. It is the case of the Petitioner that Petitioner has nominated an Advocate as an Arbitrator and requested the Respondents to agree to the nominated Arbitrator or nominate their own Arbitrator, however, even to this there has been no response. Each time Respondents have expressed their willingness to settle the matter but no concrete steps have been taken, compelling the Petitioner to approach this Court.

3. Mr. Dhruv Chawla, learned counsel enters appearance on behalf of the Respondents and, on instructions, submits that without admitting the contents of the petition on merits and disputing the allegations of breach of the terms of the agreement/MoU, Respondents have no objection to this Court appointing an independent Arbitrator in terms of Arbitration Clause 19 incorporated in the MoU dated 16.05.2012.

4. I have heard the learned counsels for the parties and perused the Arbitration Clause incorporated as Clause 19, which is extracted hereunder for ready reference:-

“19. ARBITRATION AND JURISDICTION

19.1 Except as otherwise specifically provided in this MOU, the following provisions apply if any dispute or difference arises between the parties arising out of or relating to this MOU (The 'Dispute'). A Dispute will be deemed to arise when one party serves on the other party a notice stating the nature of the Dispute (a 'Notice of Dispute'). The parties hereto agree that they will use all



reasonable efforts to resolve between themselves, any Disputes through negotiations. Any Disputes and differences whatsoever arising under or in connection with this MOU which could not be settled by parties through negotiations, after the period of 30 (Thirty) Business Days from the service of the Notice of Dispute, shall be finally settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996 and:

19.1.1 All proceedings shall be conducted in English and a daily transcript in English shall be prepared;

19.1.2 There shall be a Sole Arbitrator to be selected mutually by FRANCHISOR and the FRANCHISEE;

19.1.3 The venue of arbitration shall be in New Delhi, India.

19.1.4 Any decision or award resulting from arbitration shall be final and binding upon the Parties.

19.1.5 The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid by respective Parties subject to determination by the Arbitrator.

19.1.6 The Arbitrator may provide in the arbitral award for the reimbursement to the prevailing Party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by such Party.

19.1.7 Pending the submission of and/ or decision on a dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligations under this MOU without prejudice to a final adjustment in accordance with such award."

5. Counsels for the parties have jointly proposed the name of Mr. S.K. Tandon, Retd. Additional District and Sessions Judge (Mobile No. 9811719888) for appointment as a sole Arbitrator to adjudicate their *inter se* disputes.

6. Accordingly, Mr. S.K. Tandon, Retd. Additional District and Sessions Judge is appointed as the sole Arbitrator to adjudicate the disputes between the parties. The learned Arbitrator shall give a declaration under Section 12(1) of the 1996 Act before entering upon reference and the arbitration proceedings shall be conducted under the aegis of DIAC. Fees of the learned Arbitrator shall be regulated as per

the Fourth Schedule of the 1996 Act.



7. Needless to state that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the parties are left open to be decided by the learned Arbitrator, in accordance with law.

8. Petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

SEPTEMBER 05, 2023/kks