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

Judgment pronounced on: 06.11.2023

+ **ARB.P. 646/2023**

EXTRAMARKS EDUCATION INDIA PVT. LTD. Petitioner

Through: Mr. Zeeshan Hashmi and Mr. Ankit Parashar, Advs.

Versus

ROYALE CONCORDE EDUCATIONAL TRUST & ORS.

..... Respondents

Through: Mr. Amith J. and Mr. Gurudatta Ankolekar, Advs. for R-1, 2, 3, 5 and 6.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the "A&C Act") seeks appointment of an independent sole arbitrator to adjudicate the disputes between the parties.
2. The petitioner is stated to be in the business of selling, implementing and installing hardware, software and multimedia system accessories for the purpose of setting up 'smart learn classes'. The respondent no.1 is a trust which owns/runs respondent nos. 4-7, which are stated to be educational institutions/schools located in Bengaluru, Karnataka. Respondent nos. 2 and 3 are stated to be the Chairman, Managing Trustee and Authorised Signatories of respondent no.1 trust.
3. The disputes between the parties have arisen in the context of seven agreements dated 24.10.2013, 01.07.2014, 15.05.2015, 03.06.2016,



03.06.2016, 08.06.2017 and 08.06.2017 (the “Agreements”) and two purchase orders dated 04.01.2018 and 10.09.2018 (the “POs”) executed between the parties for the installation and services of providing ‘smart learn classes’ at the premises of respondent nos. 4-7. It is submitted on behalf of the petitioner that despite there being a payment schedule contained in the Agreements and POs executed between the parties, the respondents did not adhere to the same and there are certain outstanding dues that are stated to be payable by the respondents to the petitioner.

4. Admittedly, the agreements dated 24.10.2013, 01.07.2014, 15.05.2015, 03.06.2016, 03.06.2016, 08.06.2017 and 08.06.2017 contain an arbitration clause.

5. It is submitted on behalf of the petitioner that the disputes in relation to the purchase orders dated 04.01.2018 and 10.09.2018 have also arisen in the framework of the aforesaid agreements and should be referred to Arbitration.

6. Disputes having arisen between the parties, the petitioner issued a notice invoking arbitration dated 16.07.2021, whereby the petitioner invoked arbitration in terms of the arbitration clauses contained in the agreement dated 24.10.2013 (between the petitioner and respondent no.4), agreement dated 01.07.2014 (between the petitioner and respondent no.4), agreement dated 15.05.2015 (between the petitioner and respondent no.5), agreement dated 03.06.2016 (between the petitioner and respondent no.4) , agreement dated 03.06.2016 (between the petitioner and respondent no.5), agreement dated 08.06.2017 (between the petitioner and respondent no.4) and agreement dated 08.06.2017 (between the petitioner and respondent no.7). In the said notice of invocation, the petitioner suggested a name of a person



who could be appointed as the sole arbitrator to adjudicate the disputes between the parties.

7. It is submitted on behalf of the petitioner that the respondents have not responded to the said notice invoking arbitration dated 16.07.2021 and consequently the petitioner has preferred the present petition seeking appointment of a sole arbitrator.

8. Learned counsel for the respondents does not dispute the existence of the arbitration agreement between the parties and submits that he does not have any objection if an independent sole Arbitrator is appointed by this court to adjudicate the dispute between the parties.

9. The existence of the arbitration clause in the agreements dated 24.10.2013, 01.07.2014, 15.05.2015, 03.06.2016, 03.06.2016, 08.06.2017 and 08.06.2017 is not in dispute.

10. Since the existence of the arbitration agreement in the agreements dated 24.10.2013, 01.07.2014, 15.05.2015, 03.06.2016, 03.06.2016, 08.06.2017 and 08.06.2017 is not in dispute, there is no impediment in appointing an independent sole Arbitrator as contemplated therein, to adjudicate the disputes between the parties thereto.

11. Accordingly, Ms. Justice (Retd.) Ms. Deepa Sharma, Former Judge Delhi High Court, (Mobile No.-9910384631) is appointed as the sole Arbitrator to adjudicate the disputes between the parties with respect the Agreements dated 24.10.2013, 01.07.2014, 15.05.2015, 03.06.2016, 03.06.2016, 08.06.2017 and 08.06.2017.

12. It is clarified that there shall be a separate reference qua each agreement, although the learned sole arbitrator shall be at liberty to have common hearing/s for the sake of convenience.



13. Whether or not the purchase orders dated 04.01.2018 and 10.09.2018 were issued in the framework of the aforesaid agreement/s and/or whether disputes thereunder fall within the scope of the aforesaid agreement/s is an aspect that can be urged before the learned sole arbitrator. The petitioner is granted liberty to raise appropriate pleas in this regard before the learned sole arbitrator, which shall be considered and adjudicated upon in accordance with law.

14. The respondents shall also be entitled to raise preliminary objections as regards arbitrability/maintainability before the learned arbitral tribunal, which shall also be duly considered and adjudicated upon by the learned arbitral tribunal in accordance with law.

15. The learned sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

16. The learned sole Arbitrator shall fix her fees in consultation with the parties.

17. Parties shall share the fee of the learned sole Arbitrator and arbitral costs, equally.

18. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned sole Arbitrator on their merits, in accordance with law.

19. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.

20. The present petition stands disposed of in the above terms.

NOVEMBER 06, 2023/dk

SACHIN DATTA, J