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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision:-23rd January, 2024.*+ **O.M.P.(T) 2/2023 & I.A. 1690/2024****FIITJEE LTD**

..... Petitioner

Through: Mr. Mukesh Goyal, Advocate.
versus**DEEPAK SOLANKI AND ANR**

..... Respondents

Through: Mr. Govind Rishi, Adv (M.
9818040003)**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition was initially filed by the Petitioner- FIITJEE Ltd. under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of a Sole Arbitrator. The petition was filed following an email from the then appointed Arbitrator dated 23rd February, 2023. In the said email, the Id. Arbitrator expressed his inability to continue overseeing the arbitration proceedings, citing health reasons as the cause.
3. None appears for the Respondent No. 2-Ms. Suruchi Arya.
4. The brief background is that the Respondent No. 1-Deepak Solanki joined the Petitioner company on 11th June, 2015 as a faculty. A Service Contract titled 'Service Rules for Employees and Code of Conduct' dated 6th April, 2015 (*hereinafter*, 'Service Rules') was also executed between the parties. As per the Service Rules, an arbitration clause was executed, which reads as under :-



*“36. (a) All disputes and differences of any nature with regard to the FIITJEE service manual and the interpretation & adjudication of clauses and claims respectively **shall be referred to the Sole Arbitrator appointed by the Company i.e. FIITJEE Ltd.** The employee hereby agrees to the appointment of the Sole Arbitrator by the company i.e. FIITJEE Ltd. whenever any dispute arises. The employee undertakes not to oppose the said appointment of the Sole Arbitrator. The arbitration proceedings shall be conducted in accordance with the provisions of the Arbitration & Conciliation Act, 1996 and statutory, modification thereof & rules made thereunder. The award of arbitrator shall be final binding on both the parties. The award of the arbitrator shall be final & binding on every matter arising hereunder. It is further agreed that in spite of the fact that the Sale Arbitrator may be known to any of the Directors or share holders or may have been appointed as an arbitrator earlier by the company shall not disqualify him. Even if the Arbitrator may have expressed opinion In similar matter earlier shall also not render him disqualified. The venue of the arbitration shall be Delhi/New Delhi only.”*

5. The Petitioner's case is that due to failure in performance of Respondent No. 1, disciplinary proceedings were initiated against the Respondent No.1 and he was also transferred to Bengaluru in 2015. Finally, a show cause notice was issued on 16th February, 2019 and a suspension cum show cause notice dated 19th February, 2019 was also issued. Thereafter, an Enquiry Committee was also constituted to consider the allegations made against the Respondent No. 1. Vide report dated 6th March, 2019, the Enquiry Committee recommended the removal of the Respondent No. 1. Pursuant to the report of Enquiry Committee, the Respondent No.1's



services were terminated on 7th March, 2019. The said termination notice is extracted below:

“Dear Mr. Deepak Solanki,

This is in reference to the above and thereafter submission of the enquiry report by the enquiry committee to the management. Enquiry Committee after going through the documents/communications and complaints found you guilty of not completing the allotted tasks/work, complaints from the students, skipping/absence from classes, not taking classes properly, spreading bad word of mouth, negativity and rumors about the company/FIITJEE, besides causing disturbance in smooth functioning of regular classes /batches, disobeying Instruction and directions, misbehavior and humiliating higher management, using abusive language and derogatory remarks, sending threatening, ill-mannered and humiliating mails to company officials/higher management. Despite giving enough opportunities you failed to Improve your conduct & attitude and performing your duties diligently, neglecting future and career of the students which amounts to gross negligence of duties and gross violation of the terms & conditions of the Service Rules Manual and Code of Conduct and cannot be condoned.

Therefore, In the light of the same, the Enquiry Committee is of the opinion that your services should be terminated with immediate effect.

In view of the opinion and recommendations of the Enquiry Committee, the Management has decided to terminate your services. Hence, your services are terminated with Immediate effect.

For FITJEE Limited

(Ashish Kr. Aggarwal)”



6. The Petitioner's case is that it invoked the arbitration clause on 11th June, 2019, leading to the nomination of Mr. S.P. Dubey as the Id. Sole Arbitrator in terms of the arbitration clause. The Id. Arbitrator had entered reference in August 2019. However, it appears that Respondent No. 1 filed an application under Section 12(3) of the Arbitration and Conciliation Act, 1996 (*hereinafter, '1996 Act'*), before the Id. Arbitrator, asserting that the proceedings ought not to continue by the Id. Sole Arbitrator due to various reasons.

7. While the said application was pending, the Id. Sole Arbitrator resigned due to health reasons, in terms of communication dated 23rd February, 2023 which reads as under:-

*"Dear Mr Goyal
Due to health issues I am unable to continue with
proceeding in the Arbitration matter. Please be
informed accordingly."*

8. In view thereof, the present petition came to be filed. Vide order dated 20th March, 2023, this Court observed that the present petition would be treated as one under Sections 14 and 15 of the 1996 Act, and not under Section 11 of the 1996 Act. Hence, the '**Arbitration Petition No. 311/2023**' has now been renumbered as '**OMP (T) 2/2023**'.

9. On the same date i.e. 20th March, 2023, notice was issued to the Respondents, after the amended petition was filed.

10. In the present petition, one of the objections raised by the Respondent No. 1 is that the notice under Section 21 of the 1996 Act which mandates invocation of the arbitration clause was not issued by the Petitioner. Consequently, vide order dated 12th September, 2023, the Court directed the



Petitioner to file an affidavit, explaining how the notice invoking arbitration notice under Section 21 of the 1996 Act was issued and served on the Respondent No.1. The Petitioner has submitted the said affidavit dated 11th January, 2024, accompanied with a letter dated 11th June 2019. In terms of the said affidavit, it is deposed that after receiving the termination letter dated 7th March, 2019, the Respondent No. 1 sent a notice dated 4th June, 2019 to the Petitioner as a counteraction. Thereafter, in accordance with clause 36(a) of the Service Rules, the Petitioner, being the appointing authority under Service Rules, appointed the Id. Sole Arbitrator vide letter dated 11th June, 2019. The said letter is attached with a DTDC courier receipt, which, however, lacks any delivery report.

11. Ld. Counsel for the Petitioner maintains that the present petition is for substitution of the Id. Sole Arbitrator. Thus, the invocation letter under Section 21 of the 1996 Act would not be relevant.

12. Ld. Counsel for the Respondent controverts this and submits that the letter filed along with the affidavit is fabricated, as there is no delivery report, and it is a pre-dated document. The same Id. Arbitrator had been also appointed by the Petitioner in other arbitrations. Thus, there is no invocation of the arbitration proceedings under Service Rules, in terms of Section 21 of the 1996 Act.

13. Heard. Vide order dated 20th March, 2023, the Court has already observed that the present petition is to be treated one under Section 14 and 15 of the 1996 Act. The Id. Sole Arbitrator, Mr. S.P. Dubey, who was appointed, resigned for whatever reasons. Under such circumstances, at this stage, this Court is not required to go into the question of fulfilment of



requirements of Section 21 of the 1996 Act, as at this stage, only the Arbitrator is to be substituted.

14. Unless the Respondent No. 1 provides irrefutable evidence to prove that the said letter attached with the affidavit is fabricated, the Court would rely on the letter dated 11th June, 2019, which has been placed on record. Furthermore, in paragraph 24 of the claim petition before the Id. Sole Arbitrator, the Petitioner pleaded as follows:

“That the claimant company has invoked the Arbitration Clause, as under Clause. 38 of the Service Manual. Thus, Respondent are liable and responsible to make the payment along with interest and also liable to cost of litigation. The Claimant has invoked the arbitration clause of the Service Manual, vide letter dated and appointed Sh. S. P. Dubey as the Sole Arbitrator to adjudicate the dispute and requested. him to enter into reference immediately.”

15. In response to paragraph 24 which pleaded about the invocation of the arbitration clause, the Respondent No. 1, merely, stated that paragraph 24 is a matter of record.

16. In view of the above stand in the claim petition, and in the reply dated 24th October, 2019 as also letter dated 11th June, 2019 having been perused, since the present petition is being treated as one under Section 14 and 15 of the 1996 Act, this Court is of the view that a Id. Sole Arbitrator deserves to be appointed.

17. Accordingly, Mr. Kunal Tandon, Advocate (9818442226) is appointed as the Id. Sole Arbitrator in the present matter. The proceedings shall be conducted under the aegis of the DIAC.



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18. If the Respondent No.1 so choses, he may raise the issue of non-invocation of Section 21 of the 1996 Act or the allegation that the letter dated 11th June, 2019 is fabricated before the Id. Sole Arbitrator, which shall be considered by the Id. Sole Arbitrator only in accordance with law.
19. All rights and contentions of the parties are left open.
20. List before the Id. Sole Arbitrator on 27th February, 2024.
21. The present petition is disposed of in the above terms. All pending applications are also disposed of.
22. Let a copy of the present order be emailed to Secretary, DIAC on email id- delhiarbitrationcentre@gmail.com.

PRATHIBA M. SINGH
JUDGE

JANUARY 23, 2024
Mr/dn