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

+ O.M.P. (T) (COMM.) 35/2022, I.A. 7524/2024

EXTRAMARKS EDUCATION INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr. Zeeshan Hasmi, Mr. Ankit
Parashar, Advs.

versus

KONCEPT PUBLIC SCHOOL

..... Respondent

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kr.
Saxena, Mr. Mukesh Kr. Tiwari, Mr.
Vardhaman Kaushik, Ms. Poonam
Shukla, Ms. Reba Jena Mishra, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

21.05.2024

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1. The present petition has been filed under Section 14 & 15 of the Arbitration and Conciliation Act, 1996, seeking termination of the mandate of the Arbitral Tribunal and appointment of a substitute Arbitrator.
2. The facts in brief stated by the petitioner are that the disputes between the petitioner and the respondent has arisen out of an agreement which contains the arbitration clause with the jurisdiction at New Delhi. The parties have entered into an agreement dated 07.06.2013 for the sale, implementation, installation of the Hardware, software and multimedia system accessories for the purpose of setting up of 12 smart learn classes at the premises of the respondent. The petitioner performed all its obligations including the timely clearance of pending



dues. However, the respondent failed to make the payment and there was an outstanding payment of Rs.11,32,600/-. The demand notice dated 12.12.2016 was sent to the respondent. The agreement was terminated vide notice dated 05.01.2017. Thereafter, again the legal demand notice dated 14.03.2017 followed by reminder dated 31.05.2017 was sent. However, the respondent failed to make the payment. Thereafter, the arbitration was invoked vide notice dated 09.08.2018.

3. In pursuance of clause 13.1 of the agreement dated 07.06.2013, the petitioner unilaterally appointed a sole arbitrator and the proceedings before the arbitrator commenced. However, at the initial stage, the parties entered settlement talks which could not succeed. In the meanwhile, the mandate of the arbitration expired on 09.08.2018.
4. The petitioner has submitted that even otherwise as per the judgment of Supreme Court in '*Perkins Eastman Architects DPC & Anr v. HSCC (India) Ltd. {Arbitration Application No. 32 of 2019}*' unilateral appointment of an arbitrator is not permissible in the eyes of law.
5. The respondent in its reply has taken a preliminary objection that the present petition has wrongly been filed under the Section 14 and 15 of the Act and that the petition under Section 11 of the Act has not been filed. Therefore, the present petition is liable to be rejected. Learned counsel further submits that the arbitration has also not been duly invoked.
6. In the rejoinder, the petitioner has denied all the averments made by the respondent.



7. It is pertinent to mention here that the respondent in its reply to the present petition has not disputed the unilateral appointment of Mr. Niteesh Kumar Upadhyay as a sole arbitrator. The respondent has taken a plea that the arbitration proceedings were proceeded in its absence. However, the settlement talks between the parties have not been disputed. The learned counsel has submitted that since the petition is not filed under Section 11 of the Act and that the arbitration has not duly been invoked, hence, the present petition is liable to be dismissed.
8. Per contra, learned counsel for the petitioner has submitted that the sole arbitrator was duly appointed by the petitioner unilaterally. However, since the mandate expired, therefore the present petition has been filed under Section 14 (1)(a) of the Act. Learned counsel submits that in order to obviate over the technical flaws, the application has also been filed for amendment to make this petition under Section 11 of the Act.
9. The facts as on the record do remain that there is no dispute that there is an agreement, arbitration clause and arbitrable disputes between the parties. The respondents have not disputed the factum of appointment of unilateral sole arbitrator. Now, the plea taken by the respondent that notice has not invoked properly or the petition should have been filed under Section 11 of the Act merits rejection.
10. The purpose of the act is expeditious and effective settlement of disputes through the agreed mode of settlement i.e. the arbitration. The technical glitch should not come into the way of the effectuating the real intent of the legislation. The petitioner had unilaterally



appointed the sole arbitrator which have become *nonest* and bad in the law in view of the judgment of the Supreme Court in '*Perkins Eastman Architects DPC & Anr v. HSCC (India) Ltd. {Arbitration Application No. 32 of 2019}*'. The claim amount is stated to be Rs.11,32,600/-.

11. Considering that there exists an arbitration agreement, arbitration clause and arbitrable disputes between the parties with territorial jurisdiction at this court, the present petition is disposed of with the following directions:

- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal. (change accordingly)
- ii) Mr. Lalit Luthra, Advocate, Mobile No. 9910645959 is appointed as an Arbitrator to adjudicate the disputes between the parties.
- iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of fee rules of the DIAC Schedule or as the parties may agree.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.



vi)The parties shall approach the learned arbitrator within two weeks from today.

12.The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

MAY 21, 2024/Pallavi