



2024:DHC:5909



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

+ **ARB.P. 728/2024**

AAKASH EDUCATIONAL SERVICES LTDPetitioner
Through: Ms. Manasi Chatpalliwar, Mr.
Pranav Proothi and Mr. Aditya Singh, Advs.

versus

PARVESH KUMAR DHIMANRespondent
Through: None

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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06.08.2024

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1. This is a petition under Section 11(5)/11(6) of the Arbitration and Conciliation Act, 1996¹ for reference of the disputes between the parties to arbitration.

2. The dispute arises in the context of the “Service Rules Manual for Faculty Members”² issued by the petitioner, whereunder the respondent was appointed as a faculty of the petitioner in the subject of Chemistry, and which may be said to constitute the contract between them. Clause 58 of the Service Manual envisages resolution of the disputes between the petitioner and the respondent, if any, by arbitration, and reads thus:

¹ “the 1996 Act” hereinafter

² “the Service Manual” hereinafter



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“58. In case of any dispute or difference between you and the company regarding payment or non payment of any claim(s), tenure of services, transfer of employees, termination of services, compensation and any other dispute arising out, or relating to the contract whether arising during the services or thereafter shall be referred to sole arbitrator appointed by the chairman of M/s. Aakash Educational Services Pvt" Ltd. This clause has been duly read by me and accepted without any objection or disapproval.

If the arbitrator to whom the matter is originally referred becomes de jure or de facto, unable to perform his duties or refused to act for any reason whatsoever the chairman AESPL as aforesaid at the time of such inability to act shall appoint any other person to act as an arbitrator in accordance with the term and conditions of the agreement. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor, if both the parties consent to this effect, failing which the Arbitrator will be entitled to proceed de novo. The cost of proceeding shall be decided by the arbitrator and it will binding on both the parties.

The proceedings shall be conducted at New Delhi subject to the provisions of Arbitration & Conciliation Act 1996 and the courts at Delhi only shall have the Jurisdiction over the matter.”

3. Though Clause 58 clause envisages unilateral appointment of an arbitrator by the petitioner, nonetheless, in view of Section 12(5)³ of the 1996 Act, read with a judgment of the Supreme Court in *Bharat Broadband Network Ltd v United Telecoms Ltd*⁴, *Perkins Eastman Architects DPC v. HSCC (India) Ltd*⁵ and *Haryana Space Application Centre v Pan India Consultants Pvt Ltd*⁶, a clause which entitles one of the parties to an agreement to unilaterally appoint an arbitrator is unenforceable in law.

³ (5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.

⁴ (2019) 5 SCC 755

⁵ (2020) 20 SCC 760

⁶ (2021) 3 SCC 103



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4. The dispute had arisen between the petitioner and the respondent, the petitioner addressed a notice to the respondent under Section 21 of the 1996 Act on 27 March 2024, seeking reference of disputes with the respondent to arbitration. The claim of the petitioner against the respondent stands quantified in the said notice as ₹ 69,33,321/-.

5. The respondent did not reply. The petitioner has, therefore, moved this Court under Section 11(5)/11(6) of the 1996 Act, seeking intervention of this Court to appoint an arbitrator.

6. The respondent stands served by speed post as well as by email and WhatsApp. The respondent has, however, not condescended to file any reply to the present petition or appear when the matter was called out.

7. In this view of the matter, I have heard Ms. Manasi Chatpalliwar, learned Counsel for the petitioner and perused the material on record.

8. The Supreme Court, in its recent decision in ***SBI General Insurance Co Ltd v Krish Spinning***⁷, has clearly held that the role of Section 11(6) Court is extremely limited. The Court can only examine whether an arbitration agreement exists between the parties and whether the Section 11(6) petition has been filed within three years of issuance of the Section 21 notice.

⁷ 2024 SCC OnLine SC 1754



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9. Both these issues, in the present case, have to be answered in the affirmative.

10. In view of the matter, the dispute is referred to the Delhi International Arbitration Centre (DIAC), which would appoint a suitable arbitrator to arbitrate on the disputes between the parties.

11. The arbitration would take place under the aegis of the DIAC and would abide by its rules and regulations. The learned arbitrator shall be entitled to fees as per schedule of fees maintained by the DIAC.

12. The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

13. This Court has not expressed any opinion on the merits of the disputes.

14. The petition stands allowed in the aforesaid terms, with no order as to costs.

C.HARI SHANKAR, J

AUGUST 6, 2024

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Click here to check corrigendum, if any