



2024:DHC:8820



\$~3

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

%

Date of Decision : 13.11.2024+ **ARB.P. 754/2024**

AAKASH EDUCATIONAL SERVICES LIMITEDPetitioner

Through: Ms. Manasi.C., Mr. Pranav Proothi,
Mr. Aditya Singh, Advs.

versus

RAVI KANT

.....Respondent

Through: None

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)****IA No.30397/2024 (Exemption)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

ARB.P. 754/2024

3. The present petition filed under section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'A&C Act') seeks appointment of a sole arbitrator to adjudicate the disputes between the parties.
4. The disputes between the parties have arisen in the context of a Service Rules Manual for the Employees as Faculty Members (*hereinafter referred as 'the Service Rules'*) dated 11.08.2013, in terms of which the respondent was appointed by the petitioner as a Senior Associate Professor Grade-I in Chemistry Department.
5. The arbitration clause in the Service Rules between the parties, is in



the following terms: -

“49. 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 Ltd.

If the arbitrator to whom the matter is originally referred becomes de jure or defacto, unable to perform his duties or refused to act for any reason whatsoever the chairman AESL 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 denovo

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.”

6. Dispute/s have arisen between the parties on account of resignation tendered by the respondent *via* email dated 10.11.2022. It is submitted by the petitioner that since resignation tendered by the respondent was without any prior intimation and in breach of the Service Rules, the resignation cannot be accepted. It is stated that *via* email dated 11.11.2022, the respondent communicated the aforesaid to the petitioner.

7. It is further submitted that since the respondent illegally and unlawfully retained the possession of a pen drive containing confidential data of the petitioner's institute, the petitioner was constrained to file a police complaint with S.H.O at the Police Station, Janakpuri, Delhi and a petition under Section 9 of the A&C Act for interim relief before the District Judge, Commercial Courts, Central District, Tis Hazari Courts, Delhi. In the aforesaid proceedings the Court *vide* order dated 11.08.2023 restrained the



respondent from using petitioner's confidential data and held as under:

“..... In facts the respondent is restrained from illegally misusing the study material, question papers, answer sets, home assignment sets, academic planner, lecture plan, test planner and test papers and data base of the petitioner. As far as the last prayer seeking restraining the respondent from illegally contacting and threatening the petitioner's students, their parents and petitioner's staff/ faculty is concerned, the same is declined as this court is not in a position to monitor the day to day violation of this prayer in case the same is violated. The above interim order shall continue till the petitioner appoints an arbitrator and the arbitrator enters upon the reference. The arbitrator shall be nominated at the earliest but not later than one month from the date of this order. Nothing said here in above shall tantamount to have any expression of the merits of the case. The petition stands disposed of.”

8. Disputes having arisen between the parties, a desertion cum demand notice dated 13.02.2023 was issued by the petitioner followed by a notice for invoking arbitration on 27.03.2024. However, the respondent *vide* letter dated 01.05.2024 sought withdrawal of the aforesaid notice. The parties have failed to mutually appoint a sole arbitrator to adjudicate the dispute/s that have arisen between them.

9. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute.

10. In the present proceedings, notice was issued by the Court on 27.05.2024. However, none appears for the respondent.

11. An affidavit of service dated 30.07.2024 has been filed on behalf of the petitioner wherein it has been brought out that the respondent has been served through speed post. It is also stated that the respondent has been duly served *via* e-mail at ravikantkarwal@gmail.com and *via* whatsapp at +919599433055. The relevant tracking reports have also been placed on record along with the affidavit of service.



12. In the circumstances, the present petition is taken up for hearing and disposal, despite no appearance on behalf of the respondent.

13. Since the existence of the arbitration clause is evident from a perusal of the Service Rules, there is no impediment in appointing an independent sole arbitrator for adjudicating the disputes between the parties as prayed for, as mandated in terms of the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 SCC 760, *TRF Limited v. Energo Engineering Projects Ltd.*, (2017) 8 SCC 377, *Bharat Broadband Network Limited v. United Telecoms Limited.*, 2019 SCC OnLine SC 547, *SBI General Insurance Co. Ltd. v. Krish Spinning*, 2024 INSC 532, and *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899*, In re, 2023 SCC OnLine SC 1666.

14. Accordingly, Ms. Sapna Chauhan, Advocate (Mob. No.: +91 9811264265) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

15. The respondent shall be at liberty to raise preliminary objection/s as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.

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

17. The learned Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

18. Parties shall share the arbitrator's fee and arbitral cost, equally. All



2024:DHC:8820



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 opinion of this court on the merits of the case.

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

SACHIN DATTA, J

NOVEMBER 13, 2024/sl