



2024:DHC:6916



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

+ **ARB.P. 997/2024**

AAKASH EDUCATIONAL SERVICES LIMITED ..Petitioner

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

versus

VIVEK SRIVASTAVARespondent

Through: Mr. Kumar Prashant and Mr.
Avnish Dave, Advs

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

% **06.09.2024**

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

2. The disputes arise in the context of an Employment Agreement between the petitioner and the respondent, the terms of which are contained in the Service Rules Manual of the respondent. Clause 42 of the Manual envisages resolution of disputes by arbitration, and reads thus:

“42. In case of any dispute or difference between you and the company regarding the interpretation of these terms & conditions, non-payment of any claim or any dispute arising out of or in pursuant to these terms & conditions, the same shall be referred to Sole Arbitrator who shall be appointed by Chairman of M/s. Aakash Educational Services Ltd. The proceedings shall be conducted at New Delhi under the provisions of Arbitration &

Signature Not Verified ¹ “the 1996 Act”, hereinafter

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Page 1 of 3

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2024:DHC:6916



Conciliation Act and the Courts at Delhi only shall have the jurisdiction over the matter and / or for enforcement as the case may be. If an Arbitrator to whom the matter is referred refuses to act or for any reason, does not enter the reference or after entering into the reference proceedings are abandoned or kept in abeyance or not proceeded with, it shall be lawful for the Chairman of M/s Aakash Educational Services Ltd. to appoint another person to act as Arbitrator in the manner aforesaid. Such person shall be entitled to proceed with reference from the stage at which was left by his predecessor, if both, the parties consent to this effect, failing which the Arbitrator will, be entitled to proceed denovo.”

3. As held in the line of decisions of the Supreme Court following *Bharat Broadband Network Ltd v United Telecoms Ltd*², *Perkins Eastman Architects DPC v HSCC (India) Ltd*³ and *Haryana Space Application Centre (HARSAC) v Pan India Consultants Pvt Ltd*⁴, unilateral appointment of an arbitrator by either one of the parties is impermissible. Accordingly, Clause 42 cannot be worked in the manner it is worded.

4. The petitioner, therefore, addressed a notice to the respondent under Section 21 of the 1996 Act on 27 March 2024 seeking resolution of disputes by arbitration. As there was no response from the respondent, the petitioner has approached this Court under Section 11(5) of the 1996 Act.

5. Though a reply has been filed by the respondent to this petition, the grounds taken in the reply pertain to the merits of the matter. Mr. Kumar Prashant, learned counsel for the respondent, while not objecting to the reference of the disputes to arbitration, prays that the

²(2019) 5 SCC 755

³(2020) 20 SCC 760

⁴(2021) 3 SCC 103



2024:DHC:6916



grounds urged in the reply may be available to be taken up before the learned arbitrator.

6. Accordingly, this dispute is referred to the Delhi International Arbitration Centre⁵ to appoint a suitable arbitrator to arbitrate on the disputes.

7. The arbitration shall take place under the aegis of the DIAC and would abide by its rules and regulations.

8. The arbitrator shall be entitled to charge fees as per the schedule of fees maintained by the DIAC.

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

10. This Court has not expressed any view on any contention between the parties. All contentions of fact and law shall be open for adjudication before the learned arbitrator.

11. The petition stands allowed in the aforesaid terms.

C. HARI SHANKAR, J.

SEPTEMBER 6, 2024yg

Click here to check corrigendum, if any