



2024:DHC:7876



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 07.10.2024

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ARB.P. 1053/2024

EXTRAMARKS EDUCATION INDIA PVT LTD.Petitioner

Through: Mr. Ankit Parashar, Advocate.

versus

G D GOENKA PUBLIC SCHOOL & ANR.Respondents

Through: Advocate (appearance not given).

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J.(Oral)**

1. The present petition has been filed by the petitioner seeking appointment of a Sole Arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondents. These disputes stem from the Agreement dated 12.02.2015 and extension Agreements dated 31.03.2015, 08.03.2016, 19.07.2017 and 19.04.2018 (hereinafter referred to as *Agreements*). These Agreements were executed between the parties for the sale, implementation and installation of the Hardware, multimedia system accessories and software for setting up 31 Smart Learn Classes at the premises of respondent no.1.

2. The arbitration clause between the parties is contained in the said Agreement dated 12.02.2015, which is in the following terms: -

“11. Governing Law, Jurisdiction and Dispute Resolution***This Agreement shall be governed by the laws of India and courts situated at Delhi alone shall exercise exclusive***



jurisdiction. Any disputes arising out of this Agreement shall be referred to a sole arbitrator to be appointed by EM. The School agrees that the fact that the sole arbitrator shall be appointed by EM shall not be used by the School to raise pleas of bias or prejudice against the sole arbitrator.”

3. Disputes having arisen between the parties, the petitioner issued a Demand Letter dated 25.08.2020 to the Respondents for payment of the outstanding amount due under the Agreements.

4. Having received no response from the respondents, the petitioner subsequently sent a series of further communications to the respondents, including a Legal Notice dated 01.12.2021, a Reminder Notice dated 06.05.2022, and an Intimation Notice dated 28.07.2022, all of which were directed towards securing the payment of the outstanding amount. However, the respondents did not reply to these notices/letters.

5. The petitioner, referring to the respondent's failure to make the requisite payment in terms of the Agreements, sent the notice dated 27.12.2023 under section 21 of the Arbitration and Conciliation Act, 1996, for invoking the arbitration clause of the said agreement.

6. *Vide para 8 of the notice dated 27.12.2023, it was stated as under -*

“Accordingly, an Arbitration Tribunal should be appointed to adjudicate upon the dispute. Our Client seeks to appoint an arbitrator mutually. Therefore, Our Client invokes the arbitration clause and proposes the name of Advocate Sanjeev Baliyan, Mobile No. 9818340105, as the sole arbitrator and further requests you to approve the appointment of the above as the sole Arbitrator to adjudicate the present dispute as per the provisions of the Arbitration and Conciliation Act, 1996. Kindly confirm the appointment of the sole arbitrator within 10 (ten) days after the receipt of this notice. Upon failure to respond to the present notice or to confirm the aforesaid recommendation. Our Client will proceed as per Section 11 of the Arbitration and Conciliation Act, 1996.”

7. The petitioner submits that, in light of the Supreme Court's judgment



in *Perkins Eastman Architects DPC v. HSCC (INDIA) Limited*, (2020) 20 SCC 760, the petitioner cannot unilaterally appoint an arbitrator. Therefore, the petitioner has approached this Hon'ble Court, through the present petition, seeking the appointment of a Sole arbitrator to adjudicate the dispute.

8. The existence of the arbitration agreement between the parties is evident from the Agreement dated 12.02.2015. In the circumstances, there is no impediment to appointing an independent Sole arbitrator to adjudicate the disputes between the parties as mandated in terms of the judgements of the Supreme Court in *Perkins Eastman Architects DPC* (Supra), *TRF Limited v. Energo Engineering Projects Limited*, (2017) 8 SCC 377, and *Bharat Broadband Network Limited v. United Telecoms Limited*, (2019) 5 SCC 755.

9. Accordingly, Mr. Ojusya Joshi, Advocate (Mob. No.:9582434100) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

10. It is made clear that there shall be independent reference in each of the Allotment Letters, although the Arbitrator shall be at liberty to conduct common proceedings for convenience.

11. The respondent shall be entitled to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.

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

13. The learned Sole Arbitrator shall be entitled to fee in accordance with



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fourth schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

14. Parties shall share the arbitrator's fee and arbitral costs, equally.

15. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

16. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.

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

SACHIN DATTA, J

OCTOBER 7, 2024/at