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

+ ARB.P. 1282/2023 & I.A. 24231/2023, 24232/2023

AAKASH EDUCATIONAL SERVICES LTD. Petitioner

Through: Mr. Pranav Proothi, Ms Manasi
Chatpalliwar, Ms. Unnati Sadh and
Mr. Aditya Singh, Advocates.

versus

MRS. K. MOHINI

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

25.04.2024

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1. By way of the present petition filed under Section of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act'), the petitioner seeks the appointment of an Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes between the parties in terms of Clause 47 (Arbitration Clause) of the Service Rules Manual executed between the petitioner through its authorised representative and respondent.
2. The case of the petitioner is that the respondent was appointed as Senior Associate Professor Grade-I in the Chemistry department on 24.03.2012 and was given exposure to subject expertise, management techniques, systems and procedures of Aakash Educational Services Ltd. The respondent was also handed over study material prepared by the expert faculties, other vital information and records.



3. It is further stated that the respondent's service was governed by the terms and conditions contained in the "Service Rules Manual for the Employees", which were duly accepted by the respondent. The respondent also stated to have signed the undertaking/receiving on 17.09.2019 wherein the respondent confirmed and acknowledged that in order to discharge his official duties/obligations/functions he had received a pen drive from the petitioner company containing the academic planner, lecture plan, test planner and designed test papers. The respondent was also provided with confidential information in the form of names and contact details of students and their parents.
4. Learned counsel for the petitioner submits that in a similar matter, the Coordinate Bench of this Court had appointed an arbitrator in ARB P. 1288/2023 titled "*Aakash Educational Services Ltd. v. Mr. TPK Reddy*".
5. The petitioner states that the respondent suddenly sent a resignation through email on 06.06.2022 in violation of the terms of the Service Rules Manual. The petitioner sent a reply on the same day. However, the respondent failed to comply with this and thereafter a notice under Section 21 of the Arbitration and Conciliation Act dated 11.08.2022 was issued. The Conciliation before the Delhi Dispute Resolution Society also failed.
6. Perusal of the record reveals that the notice was sent through speed post for service at the address given in the petition; however the same was received back having duly endorsed by the Superintendent Central Nazart Principal District Court, Vishakhapatnam. The process server made a report that on the given address one Shri Someswara



Rao met and told that the respondent let out this house to him and has gone to Bangalore.

7. Learned counsel for the petitioner submits that this is the last known address of the respondent. Learned counsel submits that the respondent has also duly been served through email. An affidavit of service has also been filed.
8. Learned counsel submits that an advance notice was sent to the same email which was not bounced. Since the respondent has failed to appear, the matter is taken up on merit.
9. The jurisdiction of conducting an enquiry at the time of making reference is very well settled in ***DLF Home Developers Ltd. v. Rajapura Homes (P) Ltd.***, (2021) 16 SCC 743 wherein it was *inter alia* held as under:

“19. To say it differently, this Court or a High Court, as the case may be, are not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen Arbitrator. On the contrary, the Court(s) are obliged to apply their mind to the core preliminary issues, albeit, within the framework of Section 11(6-A) of the Act. Such a review, as already clarified by this Court, is not intended to usurp the jurisdiction of the Arbitral Tribunal but is aimed at streamlining the process of arbitration. Therefore, even when an arbitration agreement exists, it would not prevent the Court to decline a prayer for reference if the dispute in question does not correlate to the said agreement.”

10. It is no longer *res integra* that if there is doubt whether the matter should be referred to arbitration or not, the matter should be referred



to arbitration as it is an agreed mode of resolution of disputes. It is also separate execution that the agreement containing an arbitration clause is severable from the other clauses of the agreement. The agreement contained an arbitration clause is an independent agreement between the parties. Therefore, this has to be left to the arbitrator for arbitration.

11. The claim amount is around Rs. 8 lacs.

12. In the circumstances, the matter be referred to the arbitral tribunal with the following directions:

- a) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
- b) Mr. V. K. Maheshwari, Former DHJS (Mobile no.9910384671) is appointed as an Arbitrator to adjudicate the disputes between the parties.
- c) 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 Schedule IV of the A&C Act or as parties may agree.
- d) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- e) 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.

f) The petitioner shall approach the learned arbitrator within two weeks from today.

7. The petition is disposed of in the above terms

DINESH KUMAR SHARMA, J

APRIL 25, 2024/ssc