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

+ ARB.P. 55/2024
PRAYAS FOUNDATION Petitioner

versus

M/S.INNOVATIVE FINANCIAL ADVISORS PVT.
LTD. Respondent

+ ARB.P. 56/2024
PRAYAS FOUNDATION Petitioner

versus

M/S. INNOVATIVE FINANCIAL ADVISORS
PVT. LTD. Respondent

+ ARB.P. 57/2024
PRAYAS FOUNDATION Petitioner

versus

M/S. INNOVATIVE FINANCIAL ADVISORS
PVT. LTD. Respondent

+ ARB.P. 58/2024
PRAYAS FOUNDATION Petitioner

versus

M/S. INNOVATIVE FINANCIAL ADVISORS
PVT. LTD. Respondent

Appearances:

Mr. Mahesh Prakash Shinde, Advocate for petitioner.

Mr. Tajinder Kaur, Advocate for respondent.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN



ORDER

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26.02.2024

I.A. 1060/2024 (condonation of delay in refiling) in ARB.P. 55/2024

I.A. 1062/2024 (condonation of delay in refiling) in ARB.P. 56/2024

I.A. 1064/2024 (condonation of delay in refiling) in ARB.P. 57/2024

I.A. 1066/2024 (condonation of delay in refiling) in ARB.P. 58/2024

For the reasons stated in the applications, they are allowed and delay in refiling the petitions is condoned.

The applications stand disposed of.

ARB.P. 55/2024, ARB.P. 56/2024, ARB.P. 57/2024 & ARB.P. 58/2024

1. By way of these four petitions under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner, a Non-Governmental Organisation, seeks appointment of an arbitrator to adjudicate disputes between the parties under four agreements, one dated 29.12.2021 and the other three dated 10.03.2022.
2. By way of the agreements, the respondent agreed to provide certain fund raising services to the petitioner on the terms and conditions stated therein. Each of the agreements contains an arbitration clause [Article 6.1] which provides for settlement of disputes by a sole arbitrator appointed by the Chief Executive Engineer [“CEO”] of the respondent. The place of the arbitration has been designated as New Delhi and exclusive jurisdiction has also been conferred upon the Courts in New Delhi in respect of all matters arising under the agreements.
3. Although the right to appoint the arbitrator has been vested in the CEO of the respondent, it is not disputed that such unilateral appointment is impermissible under the Act.



4. Disputes having arisen between the parties, the petitioner invoked the arbitration clauses in all the four agreements by a common invocation letter dated 15.07.2023 addressed by its counsel. Although the respondent has addressed some communications thereafter to the petitioner, they have been unable to achieve consensus as to the appointment of an arbitrator.

5. Notice was issued in these petitions on 16.01.2024 pursuant to which Ms. Tajinder Kaur, learned counsel, has entered appearance on behalf of the respondent. Ms. Kaur submits that the disputes may be referred to mediation as the respondent would like to make an effort to settle the disputes with the petitioner.

6. Mr. Mahesh Prakash Shinde, learned counsel for the petitioner, has no objection to a reference to mediation.

7. Having regard to these submissions and to the fact that the existence of the arbitration clause in the agreements between the parties is not otherwise disputed, I am of the view that the appropriate course is to refer the parties to mediation, while also appointing an arbitrator who may adjudicate the disputes in the event the mediation proceedings are unsuccessful.

8. The petitions are disposed of with the consent of learned counsel for the parties with the following directions:

A. The parties are referred to mediation under the aegis of Samadhan, Delhi High Court Mediation and Conciliation Centre, Shershah Road, New Delhi – 110503. The parties will appear before the learned Mediator on 04.03.2024.

B. In the event, the mediation proceedings are unsuccessful, the



disputes will be referred to arbitration under the aegis of Delhi International Arbitration Centre, Shershah Road, New Delhi – 110503 [“DIAC”]. The arbitration proceedings will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator. The disputes under each of the agreements will be treated as a separate arbitration proceeding for all purposes, but learned counsel for the parties request that DIAC may appoint a common arbitrator in all the four agreements.

C. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act, prior to entering upon the reference.

D. DIAC and the learned Arbitrator are requested to defer the reference to arbitration for a period of six weeks from today, to enable parties to make an attempt to resolve the disputes in mediation. In the event the parties require further time to settle their disputes in mediation, they may jointly approach DIAC for a further deferment. The learned Arbitrator will otherwise enter upon the reference after the expiry of six weeks at the request of either party.

E. All rights and contentions of the parties are left open for adjudication by the learned Arbitrator, if necessary.

9. The petitions stand disposed of with these directions.

PRATEEK JALAN, J

FEBRUARY 26, 2024

“Bhupi”/