



\$~5

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

+ **ARB.P. 1435/2024**

EXTRAMARKS EDUCATION INDIA PVT LTDPetitioner

Through: **Mr. Ankit Parashar, Adv.**

versus

DELHI PUBLIC SCHOOL & ORS.Respondents

Through: **Mr. Bhaskar, Advocate**

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

04.11.2024

%

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the Parties under the Agreement dated 28.10.2015 entered into between the Parties by which the Petitioner was appointed as a service provider for providing services enumerated under the Agreement. Clause 12 of the said Agreement, which is an arbitration clause, reads as under:

“12. 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 dispute 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”



2. In view of the judgment of the Apex Court in Perkins Eastman Architects DPC v. HSCC (India) Limited, **2019 (9) SCC OnLine SC 1517**, the Petitioner cannot unilaterally appoint an Arbitrator and, therefore, the Petitioner has approached this Court by filing the present petition for appointment of an Arbitrator.

3. The aforesaid Arbitration Clause also provides that the Agreement shall be governed by the laws of India and Courts situated in Delhi alone shall have the exclusive jurisdiction to appoint an Arbitrator.

4. In view of the fact that the parties to the Agreement have agreed that for the purpose of arbitration, Courts situated in Delhi only will have the jurisdiction, the seat of the arbitration would be in Delhi, in accordance with the Judgment passed by the Apex Court in BGS SGS SOMA JV v. NHPC, **(2020) 4 SCC 234**.

5. The Petitioner has also impleaded Respondents No.2 and 3 but Respondents No.2 and 3 are not the parties to the Agreement dated 28.10.2015. This Court is, therefore, inclined to appoint an Arbitrator for adjudication of disputes between the Petitioner and Respondent No.1 who are signatories to the Agreement. However, it is always open to the Petitioner to move an application for impleading Respondents No.2 and 3 before the Arbitrator and it is for the Arbitrator to take a decision as to whether Respondents No.2 and 3 would be necessary parties to the dispute that has arisen between the Petitioner and Respondent No.1 or not. This Court has not made any observations on this aspect.

6. Accordingly, Ms. Charu Aneja, (Adv.) (Mob. No.9717976711) is appointed as an Arbitrator to adjudicate upon the disputes between the Parties.



7. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

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

9. 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.

10. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

11. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 4, 2024

RJ