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

+ **FAO (COMM) 125/2021**

RITESH PURI

.....Appellant

Through: Mr. Sanjive Rohatgi and Ms.
Bhavna Arora, Advs.

versus

**AAKASH EDUCATIONAL SERVICES
PVT. LTD.**

.....Respondent

Through: Ms. Sandhya Chawla, Adv.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

ORDER

09.04.2025

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1. The present appeal, under Section 37 of the Arbitration and Conciliation Act, 1996 [“**Act**”], impugns the judgment and order dated 05.01.2021 in OMP (COMM) No. 13/2019, wherein the Id. Single Judge has set aside an arbitral award dated 12.05.2016.
2. Shorn of unnecessary details, the facts leading to the present appeal reveals that the disputes have arisen between the parties under an employment agreement.
3. The Appellant joined the services of the Respondent in the year 2012 and resigned on 19.02.2015. Since disputes had arisen between the parties, an Arbitrator was appointed by the Respondent and the award dated 12.05.2016 was passed against the Appellant herein. The award was the subject matter of challenge in the petition under Section 34 of the Act filed by the Appellant.
4. The short contention raised by the learned counsel appearing for the Appellant is that *sans* a notice under Section 21 of the Act,



arbitration proceedings could not have commenced at all.

5. When this issue arose for consideration, this Court on 25.02.2025 passed the following order:

"Presently, and on going through the additional documents which have been placed on our record, we find that the respondent has clearly failed to place any material which may even prima facie indicate compliance with Section 21 of the Arbitration and Conciliation Act, 1996.

In order to consider the matter further, let the appeal be called again on 21.03.2025."

6. Pursuant to the said order, some additional documents have been filed by the Respondent.

7. Learned counsel appearing for the Respondent places emphasis on a communication dated 04.09.2015 addressed to the Arbitrator. The learned counsel appearing for the respondent emphasizes that the said letter addressed to the Arbitrator would amount to a notice under Section 21 of the Act. This argument does not find favour with this Court.

8. A notice under Section 21 of the Act postulates a notice addressed to the Appellant by the Respondent, seeking initiation of arbitral proceeding, in respect to a dispute that has arisen between the parties.

9. The Apex Court in the judgment of **Bharat Sanchar Nigam Ltd. and Anr. v. Nortel Networks India Pvt. Ltd.** (2021) 5 SCC 738 has observed as under:

"15. It is now fairly well-settled that the limitation for filing an application under Section 11 would arise upon the failure to make the appointment of the arbitrator within a period of 30 days from issuance of the notice invoking arbitration. In other words, an application under Section 11 can be filed only after a notice of arbitration in respect of the particular claim(s)/dispute(s) to be referred to arbitration [as contemplated by Section 21 of the Act]



is made, and there is failure to make the appointment.”

10. This Court in **Alupro Building Systems Pvt. Ltd vs. Ozone Overseas Pvt. Ltd.**, 2017 SCC OnLine Del 7228 has held that an initiation of arbitration without a notice under Section 21 of the Act would not amount to a valid initiation of arbitrators at all. The relevant Paragraphs of the judgment has been reproduced hereinbelow:

“Is the notice under Section 21 mandatory?”

23. While the above ground is by itself sufficient to invalidate the impugned Award, the Court proposes to also examine the next ground whether the Respondent could have, without invoking the arbitration clause and issuing a notice to the Petitioner under Section 21 of the Act filed claims directly before an Arbitrator appointed unilaterally by it?

24. Section 21 of the Act reads as under:

“21. Commencement of arbitral proceedings.—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

25. A plain reading of the above provision indicates that except where the parties have agreed to the contrary, the date of commencement of arbitration proceedings would be the date on which the recipient of the notice (the Petitioner herein) receives from the claimant a request for referring the dispute to arbitration. The object behind the provision is not difficult to discern. The party to the arbitration agreement against whom a claim is made, should know what the claims are. It is possible that in response to the notice, the recipient of the notice may accept some of the claims either wholly or in part, and the disputes between the parties may thus get narrowed down. That is one aspect of the matter. The other is that such a notice provides an opportunity to the recipient of the notice to point out if some of the claims are time barred, or barred by any law or untenable in fact and/or that there are counter-claims and so on.

26. Thirdly, and importantly, where the parties have agreed on a procedure for the appointment of an arbitrator, unless there is such a notice invoking the arbitration clause, it will not be possible to know whether the procedure as envisaged in the arbitration



clause has been followed. Invariably, arbitration clauses do not contemplate the unilateral appointment of an arbitrator by one of the parties. There has to be a consensus. The notice under Section 21 serves an important purpose of facilitating a consensus on the appointment of an arbitrator.

27. Fourthly, even assuming that the clause permits one of the parties to choose the arbitrator, even then it is necessary for the party making such appointment to let the other party know in advance the name of the person it proposes to appoint. It is quite possible that such person may be 'disqualified' to act an arbitrator for various reasons. On receiving such notice, the recipient of the notice may be able to point out this defect and the claimant may be persuaded to appoint a qualified person. This will avoid needless wastage of time in arbitration proceedings being conducted by a person not qualified to do so. The second, third and fourth reasons outlined above are consistent with the requirements of natural justice which, in any event, govern arbitral proceedings.

28. Lastly, for the purposes of Section 11(6) of the Act, without the notice under Section 21 of the Act, a party seeking reference of disputes to arbitration will be unable to demonstrate that there was a failure by one party to adhere to the procedure and accede to the request for the appointment of an arbitrator. The trigger for the Court's jurisdiction under Section 11 of the Act is such failure by one party to respond.

29. of course, as noticed earlier, parties may agree to waive the requirement of such notice under Section 21. However, in the absence of such express waiver, the provision must be given full effect to. The legislature should not be presumed to have inserted a provision that serves a limited purpose of only determining, for the purposes of limitation, when arbitration proceedings commenced. For a moment, even assuming that the provision serves only that purpose viz. fixing the date of commencement of arbitration proceedings for the purpose of Section 43(1) of the Act, how is such date of commencement to be fixed if the notice under Section 21 is not issued? The provision talks of the 'Respondent' receiving a notice containing a request for the dispute "to be referred to arbitration". Those words have been carefully chosen. They indicate an event that is yet to happen viz. the reference of the disputes to arbitration. By overlooking this important step, and straightaway filing claims before an arbitrator appointed by it, a party would be violating the requirement of Section 21, thus frustrating an important element of the parties consenting to the appointment of an arbitrator.

30. Considering that the running theme of the Act is the consent or agreement between the parties at every stage, Section 21 performs



an important function of forging such consensus on several aspects viz. the scope of the disputes, the determination of which disputes remain unresolved; of which disputes are time-barred; of identification of the claims and counter-claims and most importantly, on the choice of arbitrator. Thus, the inescapable conclusion on a proper interpretation of Section 21 of the Act is that in the absence of an agreement to the contrary, the notice under Section 21 of the Act by the claimant invoking the arbitration clause, preceding the reference of disputes to arbitration, is mandatory. In other words, without such notice, the arbitration proceedings that are commenced would be unsustainable in law.”

11. The said judgment has been endorsed by a Co-ordinate Bench of this Court in **Shriram Transport Finance Co. Ltd. v. Narender Singh**, 2022 SCC OnLine Del 3412, wherein the Court has accepted that the initiation of Arbitral Proceedings without a valid Notice under Section 21 of the Act is permissible.

12. Resultantly, the arbitral award dated 12.05.2016, and the impugned judgment dated 05.01.2021 are set aside.

13. The parties are left to take remedies in accordance with law.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 09, 2025/v