



\$~95

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

+ **ARB.P. 1341/2025**

M/S BASIX EDUCATION PVT. LTD

.....Petitioner

Through: Mr. Rahul Kumar and Mr. Mantosh
Kumar, Advocates.

versus

SHIVLAL BABANLAL GUPTA

.....Respondent

Through: Ms. Pooja Rai, Mr. Sunil Singh, Mr.
Somesh Kumar Vyas, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **26.09.2025**

I.A. 21278/2025

1. This application is filed by the Petitioner under Section 151 CPC seeking condonation of delay of 69 days in re-filing the petition.
2. Issue notice.
3. Ms. Pooja Rai, learned counsel accepts notice on behalf of the Respondent.
4. For the reasons stated in the application, the same is allowed. Delay of 69 days in re-filing the petition is condoned.
5. Application stands disposed of.

ARB.P. 1341/2025

6. This petition is filed under Section 11(6) of Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.



7. Issue notice.
8. Ms. Pooja Rai, learned counsel accepts notice on behalf of the Respondent.
9. Disputes between the parties emanate from a Memorandum of Understanding dated 28.04.2022 executed between the Petitioner and the Respondent, whereby Respondent was required to teach at Petitioner's Institute for a period of three years from 01.05.2022 to 31.04.2025, however, Respondent contravened Clause 12 and joined another Institute. Clause 19 of the MoU permitted either party to terminate the MoU by giving written notice of disassociation to the other party at least six months before commencement of a new academic session but contrary to this stipulation, Respondent left the services of the Petitioner before completing the session of 2024 and particularly, when he was in the midst of the admission process of fresh students for the 2025 Session.
10. It is averred that on 16.08.2024, Petitioner sent a notice to the Respondent to indemnify in terms of Clause 20 of the MoU, which provided that if the Respondent breached the MoU, then he would be liable to indemnify Rs. 1 crore or equivalent to one year gross remuneration received in the previous year, whichever was higher. There was, however, no response and Petitioner sent notice dated 03.12.2024 invoking arbitration and called upon the Respondent to agree to appointment of a Sole Arbitrator. Respondent declined to take recourse to arbitration by its message dated 12.12.2024.
11. Learned counsel appearing on behalf of the Respondent opposes the petition on the ground that Clause 26 in the MoU cannot be enforced by the Petitioner for appointment of the Arbitrator since it envisages appointment



of Sole Arbitrator by the Petitioner, which amounts to unilateral appointment and is in teeth of judgments of the Supreme Court in ***Perkins Eastman Architects DPC and Another v. HSCC (India) Limited***, (2020) 20 SCC 760; ***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Company***, (2025) 4 SCC 641 and ***Lombardi Engineering Limited. v. Uttarakhand Jal Vidyut Nigam Limited***, (2024) 4 SCC 341. The second objection is that Petitioner is not entitled to claim indemnification of Rs. 1 crore and no case entitling the Petitioner to claim the said amount is set out in the petition.

12. Having heard learned counsels for the parties, I find merit in the first objection of the Respondent that Clause 26 envisaging appointment of the Arbitrator by the Petitioner is hit by the judgments of the Supreme Court in ***Perkins (supra)***, ***CORE (supra)*** and ***Lombardi (supra)*** as this would amount to unilateral appointment. In fact, during the course of hearing, counsel for the Petitioner fairly concedes this position. As for the objection that Petitioner is not entitled to indemnification by the Respondent, this objection touches upon merits of the case and cannot be gone into at this stage in a petition under Section 11(6) of 1996 Act. In ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 SCC OnLine SC 1754, the Supreme Court has held that a referral Court under Section 11 of 1996 Act must confine its determination to the existence of an arbitration agreement between the parties and whether the petition itself is barred by limitation under Article 137 of the Limitation Act, 1963. It is for the Arbitrator to decide the merits of the claims raised by the Petitioner.

13. Accordingly, this petition is allowed, appointing Mr. Vaibhav Kalra, Advocate (Mobile No. 9650310194) as the Sole Arbitrator to adjudicate the



disputes between the parties. Arbitral proceedings shall be held under the aegis of Delhi International Arbitration Centre ('DIAC'). Fee of the Arbitrator shall be fixed as per fee schedule under DIAC (Administrative Cost & Arbitrators' Fees) Rules 2018.

14. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

15. It is made clear that this Court has not expressed any opinion on the merits of the case and on the second objection raised by the Respondent which will be a matter of adjudication on merits by the learned Arbitrator and all rights and contentions of the respective parties are left open.

16. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

SEPTEMBER 26, 2025/RW