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

+ ARB.P. 2014/2025

M/S PERFECT EDUCARE

.....Petitioner

Through: Ms. Mansi Jain & Ms. Katyani
Malhotra, Advs.

versus

AAKASH EDUCATIONAL SERVICES LIMITEDRespondent

Through: Mr. Pranav Proothi, Ms. Mansi
Chatpalliwar & Mr. Aditya Singh,
Advs.

CORAM:

HON'BLE MR. JUSTICE AVNEESH JHINGAN

ORDER

20.04.2026

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1. The present petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for appointment of an arbitrator.
2. The brief facts are that the petitioner, a sole proprietorship firm, executed a Business Transfer Agreement (for short 'BTA') with the respondent on 27.04.2021 and the payment was to be made in three parts; rupees forty crores upfront on the completion date; rupees fifty crores after twelve months of completion and five crores after twenty four months of completion.
3. Clause 18.11 of the BTA provided for dispute resolution through arbitration which is reproduced below and the name of the arbitrator is as mentioned therein.

"18.11 Governing Law and Dispute Resolution



(a) The validity, construction and performance of this Agreement, and any action arising out of or relating to this Agreement, shall be governed by the Laws of India. Subject to the provisions of Clause 18.11(b) below, the courts of New Delhi, India shall have exclusive jurisdiction in respect of all matters relating to or arising out of this Agreement.

(b) Arbitration of Disputes

- (i) The Parties agree to negotiate in good faith to resolve any dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity, interpretation, breach or termination (a "**Dispute**").
- (ii) In the absence of any settlement of Disputes under Clause 18.11(b) (i) any and all Disputes arising out of or in connection with this Agreement or its performance shall be submitted to arbitration at the request of any of the Parties upon written notice to that effect to the other Parties, as the case may be, and such arbitration shall be conducted in accordance with the Indian Arbitration and Conciliation Act, 1996, as amended (the "**Arbitration Act**") by a sole arbitrator who shall be Mr. J.C. Chaudhry. If for any reason, Mr. J.C. Chaudhry is unable to act as the sole arbitrator, then the sole arbitrator shall be appointed by mutual consent of the Purchaser and the Seller.
- (iii) The venue and seat of arbitration shall be New Delhi, India, and any award shall be treated as an award made at the seat of arbitration. By agreeing to arbitration under the Arbitration Act in accordance with this Clause 18.11(b), the



Parties undertake to abide by and carry out the award promptly.

- (iv) The proceedings of arbitration shall be in the English language.
- (v) The arbitration award shall be substantiated in writing. The sole arbitrator shall also decide on the costs of the arbitration proceedings.
- (vi) The arbitration award shall be final and binding on the Parties subject to applicable Law in force and the award shall be enforceable in any court of competent jurisdiction in India.
- (vii) During the pendency of any arbitration proceedings, the Parties shall continue to perform such of their obligations that are not the subject matter of the Dispute under this Agreement.
- (vii) The Parties shall cooperate in good faith to expedite, to the maximum extent practicable, the conduct of any arbitral proceedings commenced pursuant to this Agreement.”

4. There was a dispute between the parties with regard to non-adherence to the schedule of payments and the petitioner is seeking interest on the delayed payment. A notice dated 13.09.2025 under Section 21 of the Act was served upon the respondent and thereafter the present petition was filed.

5. Learned counsel for the respondent contends that the entire payment has been made and there is no amount due. Consequently, there is no arbitral dispute surviving as on date. It is further submitted that there is no clause in the agreement regarding payment for delayed payment. The contention is that there is second addendum to the agreement and the petitioner shall not be entitled to any interest.



6. The law is well settled at the stage of Section 11 of the Act, this court has to prima facie satisfy existence of an arbitration clause and an arbitral dispute. The language of clause 18.11 is widely worded and covers the disputes arising out of or relating to the agreement. There is an existence of arbitration clause and the merits of the claims made are to be determined by the arbitrator in the proceedings. Prima facie, there is a dispute between the parties arising out of the non-adherence to the schedule of the payments. After the amendment of Section 12(5) of the Act, there cannot be unilateral appointment of the arbitrator by one of the parties and such a clause is severable as held by the decision of the Supreme Court in **Hindustan Construction Company Ltd. V. Bihar Rajya Pul Nirman Nigam Limited and Others** 2025 SCC OnLine SC 2578 the same is reproduced is below:-

“12.9. ...It is also a term of this contract that no person other than a person appointed by such Managing Director or administrative head of the Nigam as aforesaid should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitrator at all. ...”

“12.12. Accordingly, the portion of Clause 25 that vests exclusive appointment power in one party and forecloses arbitration in default of such appointment must be severed as void and unenforceable. However, the substantive agreement to arbitrate survives by virtue of the doctrine of severability.

12.14. The present contract, being a public-private contract, must withstand not only conventional contractual scrutiny but also constitutional scrutiny. As held in **CORE II**, arbitral appointments in public contracts must satisfy the requirements of fairness, equality, and non-arbitrariness under Article 14.



12.15. The sub-clause in Clause 25 which provides that “if for any reason the matter shall not be referred to arbitration” is vague, uncertain, and arbitrary. The expression “for any reason” confers an unguided and absolute veto, particularly objectionable in a public contract. Such a clause fails the test of manifest arbitrariness and violates Section 18 of the Act, which mandates equal treatment of parties.

12.16. In light of the above discussion, the following propositions emerge:

- (i) The parties' conduct clearly demonstrates their intention to arbitrate, satisfying the requirement of Section 7(4)(c);
- (ii) Clause 25, in its substantive form, constitutes a valid arbitration agreement;
- (iii) The unilateral and exclusionary appointment mechanism is void and severable; and
- (iv) This Court is empowered under Section 11(6) to cure the defect and appoint an independent arbitrator.

12.17. Accordingly, it is held that a valid and subsisting arbitration agreement exists between the parties. Clause 25, when read in its entirety and construed in accordance with the doctrine of severability, satisfies the statutory requirements of an arbitration clause under Section 7 of the Act. The contrary finding of the High Court is unsustainable in law and is liable to be set aside.”

7. Accordingly, the petition is allowed by appointing Ms. Varuna Bhandari Gugnani, Advocate (Mobile No.9810400605) as the sole arbitrator for adjudication of the disputes which have arisen between the parties.

8. The fees of the learned Arbitrator will be governed by Schedule IV of the Act. Before entering upon reference, the learned Arbitrator will comply with Section 12 of the Act.

9. It is made clear that since this Court has not expressed any opinion on



the merits of the rival claims of the parties, it will be open for the parties to file their respective claims/counter claims before the learned Arbitrator which will be considered in accordance with law.

10. A copy of this order be forwarded to the learned Arbitrator for information.

AVNEESH JHINGAN, J

APRIL 20, 2026
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