

HIGH COURT OF DELHI

Bench: REKHA PALLI, J

Date of decision: 04.12.2023

ARB.P. 1269/2023

I.A. 24006/2023

DEVENDER KUMAR KASHYAP

..... Petitioner

Versus

CHANDER MUNI

..... Respondent

Legislation and Rules:

Arbitration and Conciliation Act

Section 11, 21, 12 of the Arbitration and Conciliation Act

Schedule IV of the Arbitration and Conciliation Act

Subject: Petition for the appointment of a sole arbitrator to adjudicate disputes arising from a Partnership Deed dated 11.04.2016.

Headnotes:

Condonation of Delay in Re-filing Petition – Application seeking condonation of 93 days' delay in re-filing the petition allowed – Delay in re-filing stands condoned. [Para 3-5]

Appointment of Arbitrator – Petition under Section 11 of the Arbitration and Conciliation Act for appointing a sole arbitrator to resolve disputes related to Partnership Deed dated 11.04.2016 – Notice issued and respondent does not deny the existence of disputes or the need for arbitration. [Para 6-7]

Validity of Invocation Notice – Respondent opposes the petition by questioning the validity of the invocation notice due to incorrect address – Court finds no merit in this objection as the respondent himself provided the same address in a different case and was aware of the petitioner's intent to invoke arbitration. [Para 7-10]

Appointment of Mr. Pranav Proothi as Arbitrator – With the consent of parties, Mr. Pranav Proothi appointed as Arbitrator – Direction for compliance with Section 12 of the Act and fee governance under Schedule IV of the Act. [Para 11-12]

No Opinion on Merits of Claims – Court clarifies no opinion expressed on the merits of the rival claims – Parties can file their respective claims/counterclaims before the Arbitrator for decision in accordance with law. [Para 13-14]

Referred Cases:

Active Media vs. Divisional Commercial Manager, Northern Railway (ARB.P 694/2019)

Representing Advocates:

Petitioner: Mr. L.K. Singh, Mr. J.K. Jaiswal, Ms. Saira Praveen
Respondent: Mr. Puneet Ahuja

REKHA PALLI, J (ORAL)

I.A. 24006/2023

1. Exemption allowed subject to all just exceptions.
2. The application stands disposed of.

I.A. 24007/2023

3. This is an application filed by the petitioner seeking condonation of 93 days' delay in re-filing the petition.
4. The application is, for the reasons stated therein, allowed and the delay of 93 days' in re-filing the petition stands condoned.
5. The application stands disposed of.

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6. The present petition under Section 11 of the Arbitration and Conciliation Act (hereinafter referred to as "the Act") seeks appointment of a sole arbitrator for adjudication of disputes which have arisen between the parties in relation to Partnership Deed dated 11.04.2016.

7. Issue notice. Learned counsel for the respondent accepts notice and does not deny that there are existing disputes between the parties. He also does not deny that these disputes are required to be adjudicated as per the arbitration clause contained in the Partnership Deed dated 11.04.2016. He, however, opposes the petition as being premature by contending that the petitioner had failed to serve a valid notice in terms of Section 21 of the Act, which is a precondition for invoking arbitration under section 11 of the Act. By drawing my attention to the invocation notice dated 25.04.2018 and the Order dated 18.08.202 passed by the learned District Judge, Commercial Courts, North District, Rohini Courts, Delhi in OMP (COMM) 34/2021, vide which the exparte award dated 10.09.2020 passed by the learned Arbitrator unilaterally appointed by the petitioner, was set aside, he submits that the aforesaid notice was wrongly addressed at respondent's earlier address, i.e

Village Bharola, New Subzi Mandi, Azadpur, Delhi-110033. He submits that despite the petitioner being well aware that the respondent had already shifted to Shalimar Bagh, Delhi before the issuance of the aforesaid invocation notice had addressed the invocation notice to his earlier address. He, therefore, contends that an invocation notice, which was not sent to his correct address, would not be a valid notice in terms of section 21 of the Act. In support of his plea, he also relies on a decision of a Co-ordinate Bench in ARB.P 694/2019, titled **Active Media vs. Divisional Commercial Manager, Northern Railway**. He, therefore, prays that the petition be dismissed as being premature.

8. In response, learned counsel for the petitioner submits that while filing the aforesaid petition under section 34 of the Act, for setting aside of the earlier ex parte arbitral award, the respondent had himself provided the same address of Village Bharola, New Subzi Mandi, Azadpur, Delhi110033. He, therefore, cannot be permitted to now urge that the invocation notice was not served at the correct address. He, further, submits that, in any event, the purpose of an invocation notice is to inform the opposite party regarding the intent of the claimant to invoke arbitration, which fact is well known to the respondent. He, therefore, prays that an arbitrator be appointed by this Court for adjudication of the petitioner's claims, which has been pending since September 2018.

9. Having considered the submissions of learned counsel for the parties and perused the record, I find absolutely no merit in the objection raised by the respondent. I am inclined to agree with the petitioner that once the respondent himself provided his address at Village Bharola, New Subzi Mandi, Azadpur, Delhi-110033 in OMP (COMM) 34/2021, filed in December 2021, he cannot be permitted to urge that the invocation notice was not served at the correct address. I am also inclined to agree with the petitioner that the purpose of the invocation notice is to inform the opposite side, in advance, about the dispute being raised by the claimant as also grant an opportunity to the opposite side to concur in the appointment of an arbitrator. In the present case, once it is found that the respondent was well aware about the petitioner's prayer for adjudication of disputes through arbitration, I fail to appreciate as to how the petition can be said to be premature at this stage.

10. I have also considered the decision in **Active Media (Supra)**, in which the Court found that the respondent was never made aware of the invocation notice which had been issued at its incorrect address, as opposed to the present case where the respondent, at least since 2021 when he filed OMP

(COMM) 34/2021, has been aware about the invocation notice. I am, therefore, of the view that the decision in **Active Media (Supra)** is not applicable to the facts of the present case.

11. In the light of the aforesaid when the existence of disputes between the parties and the fact that these disputes are required to be adjudicated through arbitration are admitted, I find no reason to not accept the petitioner's prayer for appointment of an arbitrator. Accordingly, Mr. Pranav Proothi, Advocate (Mobile No.9560205151), is, with the consent of the parties, appointed as the Arbitrator for adjudication of disputes which have arisen between the parties in relation to Partnership Deed dated 11.04.2016. 12. Before entering upon reference the arbitrator shall comply with section 12 of the Act. The fees of the learned Arbitrator will be governed by Schedule IV of the Act.

13. Needless to state, this Court has not expressed any opinion on the merits of the rival claims of the parties and therefore it will be open for them to file their respective claims/counter claims before the learned Arbitrator which will be decided in accordance with law.

14. A Copy of the order be forwarded to the learned arbitrator for information.

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