

2022 LiveLaw (Del) 438

IN THE HIGH COURT OF DELHI AT NEW DELHI

SANJEEV SACHDEVA, J

ARB.P. 207/2022 and ARB.P. 327/2022; 11th May, 2022

EXTRAMARKS EDUCATION INDIA PRIVATE LIMITED *versus* MES CENTRAL SCHOOL

Arbitration and Conciliation Act, 1996 - A party cannot be deemed to have waived its right to invoke arbitration merely because it has filed a written statement in respect of disputes that are not covered under the agreement. A suit in respect of a dispute that is not governed by the arbitration agreement is not an impediment to the invocation of the arbitration.

For the Petitioner: Mr. Zeeshan Hashmi and Mr. Ankit Parashar, Advocates; For the Respondent: Mr. M.R. Shamshad, Mr. A.K. Suri, Mr. Arijit Sarkar and Ms. Nabeela Jamil, Advocates

J U D G M E N T

I.A. 6195/2022 (condonation of delay) in ARB.P. 207/2022

The Supreme Court by its orders 23.03.2020, 27.04.2021 and 10.01.2022 in Suo Moto Writ Petition (Civil) No.3 of 2020 had suspended the period of limitation in view of the ongoing pandemic. Accordingly, there is no delay in filing the petition. Delay in filing is condoned.

Application is disposed of.

ARB.P. 207/2022 & ARB.P. 327/2022

1. Petitioner in ARB.P. 207/2022 seeks reference of disputes to arbitration pursuant to agreement dated 03.05.2014. Petitioner in ARB.P. 327/2022 seeks reference of disputes to arbitration pursuant to agreement dated 25.03.2015. Both agreements are identical in nature and terms.
2. Under the said agreements, petitioner was, inter-alia, to provide education services besides sale of certain hardware which was specified in the said agreements.
3. The Agreements specifically provided the nature of services to be provided by the petitioner as also the hardware which was to be sold to the respondent for provision of the said services.
4. Subsequently a purchase order was placed on the petitioner on 25.02.2016 for provision of certain Chrome Books (Laptops).
5. Learned counsel appearing for the respondent submits that respondent has filed a civil suit for recovery of the payment made towards Chrome Books because the same were not per the specifications. He submits that in the said suit petitioner has filed a written statement without taking a plea of the disputes being covered by the arbitration agreements and has not sought reference of disputes to arbitration and as such petitioner is prohibited from invoking Section 11 of Arbitration & Conciliation Act, 1996 and is deemed to have waived his rights.

6. Learned counsel further submits that the last payment made to the petitioner was on 05.10.2016 and as such the claim is ex-facie barred by limitation.
7. This is disputed by the learned counsel for the petitioner who submits that the Suit was for an independent transaction i.e. supply of Chrome Books and was not emanating from the subject agreements or related thereto.
8. He further submits that the agreements have been sought to be terminated by letter dated 26.04.2019 and as such claim is still within limitation and arbitration has been invoked within time.
9. Perusal of the subject agreements shows that the agreements in Clause 4 provides for the sale of hardware that was to be sold by the petitioner to the respondent and is subject matter of the agreements. The hardware has been described in Annexure-2 to the said agreements and the Chrome Books are not part of the said list of hardware items to be supplied by the petitioner as part of the agreements.
10. Perusal of the plaint of the Suit filed by the respondent shows that there is no reference to the subject agreements or any connection between the supply of Chrome Books with the services as well as the hardware to be supplied by the petitioner under the subject agreements.
11. The only connection sought to be made in the plaint is that Chrome Books were to be used in the same class rooms. Besides that there is no connection to show that the Chrome Books that were supplied were a part of the said agreements so as to make the said claim part of the disputes between the parties that emanate from the agreements.
12. In view of the above, petitioner cannot be held to be deemed to have waived his right to invoke arbitration under the subject agreements by merely filing a written statement in the Suit which is not connected with the subject agreements and is in respect of disputes that do not arise from the subject agreements.
13. Furthermore, the objections of learned counsel for the respondent with regard to limitation, is not sustainable for the reasons that respondent has specifically issued a letter on 26.04.2017 alleging that the services rendered by the petitioner are not satisfactory and as such they have requested the petitioner to cancel the software agreements with effect from May, 2017 and close the contract.
14. Termination of the subjects agreement is sought to be done by the Respondent by letter dated 26.04.2017 with effect from May, 2017. Arbitration has been invoked by letter dated 07.12.2021. In view of the order of the Supreme Court in Court its own Motion Suo Moto Writ Petition (Civil) No.3 of 2020, the invocation is within the period of limitation.
15. Accordingly, the disputes are liable to be referred to arbitration.
16. Learned counsel for the parties, without prejudice pray that the disputes be referred to Delhi International Arbitration Centre for appointment of a common Sole Arbitrator for adjudication of the disputes.
17. In view of the above, the disputes are referred to the Delhi International Arbitration Centre (DIAC), which would appoint a common sole arbitrator to arbitrate the disputes

arising in both the petitions. The arbitration shall take place under the aegis of the DIAC in accordance with its rules and regulations.

18. The arbitrator would be entitled to charge fees in accordance with the schedule of fee stipulated by the DIAC.

19. The arbitrator shall furnish the requisite disclosure under section 12 of the Arbitration and Conciliation Act, 1996 within two weeks of entering reference.

20. The petitions are disposed of in the above terms.

21. Next date 02.08.2022 in ARB.P. 207 of 2022 is cancelled.

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