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

Judgment reserved on: 10.01.2024

% ***Judgement pronounced on: 20.02.2024***

\+ ARB.P. 1114/2023

\+ ARB.P. 1138/2023

\+ ARB.P. 1139/2023

\+ ARB.P. 1142/2023

AAKASH EDUCATIONAL SERVICES LTD ..... Petitioner

Through: Mr. Anunaya Mehta and Mr. Vinayak Thakur, advts.

versus

M/S LOTUS EDUCATION & ORS. ..... Respondents

Through: Mr. Amit Kumar Maihan, Adv. (through VC)

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J.

1. The present petitions have been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (herein referred to as "*the A&C Act*") seeking the appointment of a Sole Arbitrator for adjudication of the disputes between the petitioner and respondents.
2. The disputes between the parties in **ARB. P. 1114/2023** have arisen out of the franchise agreement dated 02.09.2016 and franchise agreement dated 13.01.2017 entered into between the petitioner and

respondents, to set up "*coaching centres"* in the name of "*Aakash Institute / Aakash IIT JEE and "Aakash Foundations" for school students*".

3. The disputes between the parties in **ARB. P. 1138/2023** have arisen out of the two franchise agreements dated 18.03.2018 entered into between the petitioner and respondents, to set up "*coaching centres"* in the name of "*Aakash Institute / Aakash IIT JEE and "Aakash Foundations" for school students*".
4. The disputes between the parties in **ARB. P. 1139/2023** have arisen out of the two franchise agreements dated 30.06.2016 entered into between the petitioner and respondents, to set up "*coaching centres"* in the name of "*Aakash Institute / Aakash IIT JEE and "Aakash Foundations" for school students*".
5. The disputes between the parties in **ARB. P. 1142/2023** have arisen out of the two franchise agreements dated 01.02.2016 entered into between the petitioner and respondents, to set up "*coaching centres"* in the name of "*Aakash Institute / Aakash IIT JEE and "Aakash Foundations" for school students*".
6. Since the arbitration clauses in all franchise agreements are essentially the same, they are not reproduced herein for the sake of brevity. In any case the existence of agreement, arbitration clause and jurisdiction is not disputed.
7. Pursuant to the disputes between the parties, the Petitioner terminated the above-said franchise agreements executed between the Petitioner Company and the Respondents vide a common Termination Letter dated 26th April 2018.Thereafter, notices under

section 21 of the A&C Act were issued to the respondents and the petitioner nominated Sh. S.C. Rajan (Retd. Additional District & Session Judge) as the Sole Arbitrator. The case of the petitioner is that the said notices were duly received by the respondents.

8. In **ARB. P. 1114/2023**, the Ld. Sole Arbitrator decided the claims vide award dated 17.10.2019 and awarded Rs.35,90,694/- towards compensation of business, pecuniary, and losses to the Company. Further, the Ld. Arbitrator had also awarded interest @ 8% per annum on the outstanding amount. A sum of Rs. 35,000/- was further awarded in favour of the company as litigation expenses.

9. In **ARB. P. 1138/2023** the Ld. Sole Arbitrator decided the claims vide award dated 17.10.2019 and awarded Rs.10,31,671/- towards compensation of business, pecuniary, and losses to the Company. Further, the Ld. Arbitrator had also awarded interest @ 8% per annum on the outstanding amount. A sum of Rs.35,000/- was further awarded in favour of the company as litigation expenses.

10. In **ARB. P. 1139/2023** the Ld. Sole Arbitrator decided the claims filed by the petitioner Company vide award dated 17.10.2019 and awarded Rs.18,65,585/- towards compensation of business, pecuniary, and losses to the Company. Further, the Ld. Arbitrator had also awarded interest @ 8% per annum on the outstanding amount. A sum of Rs.35,000/- was further awarded in favour of the company as litigation expenses.

11. In **ARB. P. 1142/2023** the Ld. Sole Arbitrator decided the claims vide award dated 17.10.2019 and awarded Rs.37,74,236/- towards compensation of business, pecuniary, and losses to the Company.

Further, the Ld. Arbitrator had also awarded interest @ 8% per annum on the outstanding amount. A sum of Rs. 35,000/- was further awarded in favour of the company as litigation expenses.

12. The Respondents challenged the awards before the District Court vide OMP (Com.) No. 27/2020; OMP (Com.) No. 26/2020; OMP (Com.) No. 25/2020; OMP (Com.) No. 23/2020 and the Ld. District Court set aside all the awards, on the grounds that:

(i.) The petitioner company could not have entered into an arbitration clause that gives only one party the exclusive right to appoint an arbitrator. Therefore, the appointment of the Ld. Sole Arbitrator was unilateral and not in accordance with the law. The ld. District judge held as under:

> *"20. In view of the aforesaid facts and circumstances, the award is liable to be set aside as the appointment of arbitrator was unilateral and thus not as per the Indian law pronounce by the Hon'ble Supreme Courts and Hon'ble High Court in aforesaid cases and thus award is against public policy and is patently illegal."*

(ii.) The Ld. Sole arbitrator failed to comply with section 12(5) of the A&C Act which mandates the declaration to be given by the ld arbitrator in terms of the 7th schedule of the A&C Act. The Ld. District Judge held as under:

> *"21. ..... Ld. Arbitrator has though gave declaration u/s 12 (5) of Arbitration Act but he has not complied the provision of section 12 of Arbitration Act in letter and spirit as he has not declared in terms of seventh schedule. He has not declare how many matters he was earlier appointed Arbitrator by the respondent. If a person is repeatedly appoint as arbitrator by a party*

then that person definitely have financial interest and there is every apprehension that he will be biased towards the parties who repeatedly appoint him as Arbitrator and he will also have fear that he may not be appointed arbitrator in future by said party if he give award against said party. It is worthwhile to mentioned here that there are four matters pending before this Court related to same parties wherein Late Sh. S.C. Rajan has been appointed as Arbitrator but there is no mention in the declaration that he is appointed arbitrator in other cases by the respondent and further, petitioners have filed list of 7 other cases in which late Sh. S.C. Rajan was appointed as arbitrator. The respondent no. 1 has not controverted the said list, hence it is apparent that late Sh. S.C. Rajan was appointed as arbitrator by the petitioners repeatedly, thus, has developed material financial interest. Further declaration u/s 12(5) given by the Ld. Arbitrator is in ordersheetdt. 20.06.2018. As per ordersheet petitioner was not present at that time. There is no document on arbitration proceeding file that said declaration has been ever communicated to the petitioner by Ld. Arbitrator without communication of the same to petitioners, therefore no use of giving said declaration by ld. Arbitrator. Hence in my view declaration u/s 12 (5) made by Ld. Arbitrator is no declaration. Hence award is patently illegal on the ground of non-compliance of Section 12(5) by Ld. Arbitrator also."

13. Thereafter, the Petitioner again issued fresh notice(s) under S. 21 of the A&C Act. The said notice(s) were sent to the Respondents by Speed Post and duly delivered. The notice(s) were also sent by email to the Respondents to which the respondents replied vide email denying the claims/demand made by the Petitioner.

Submissions of the Parties

14. Learned counsel for the petitioner submitted that in reply to the notice under Section 21 of the A&C Act, the respondents admitted the existence of the Franchise agreements and further they admitted the existence of the arbitration clause between the parties. Further, it was submitted that the respondents allegedly raised only two objections to the above-said notice which are as under:

    i. The arbitration provision is exhausted if the Ld. Sole Arbitrator's decision is overturned, and the sole available option is to bring a civil lawsuit to resolve the disagreements; and

    ii. The Petition is barred by limitation.

15. Further, learned Counsel for the petitioner submitted that setting aside of the award passed in the first instance would not amount to exhaustion of the arbitration clause. Reliance is placed upon ***Steel Authority of India Limited v. Indian Council of Arbitration and Anr.*** [(2015) 225 DLT 348].

16. Learned counsel submitted that Arbitration is the chosen dispute-resolution mechanism, and therefore, the parties would be bound to refer disputes to arbitration as long as they remain unresolved. Learned counsel submitted that the similar view was taken by the Division Bench in ***Steel Authority of India Limited v. Indian Council of Arbitration and Anr.*** [2016 SCC Online 1921].

17. Learned counsel for the petitioner also submitted that clause containing alternative provided in Dispute Resolution clause only prescribes the seat of arbitration to clarify that disputes which require reference to a Court under the regime of the Arbitration and

Conciliation Act, would be referred to Courts in Delhi. Furthermore, it was submitted that the clause is not an alternative to the Arbitration clause itself and same is required to be interpreted in wholesome manner.

18. Furthermore, learned counsel for the petitioner submitted that the issue of Limitation is one which has to be considered by the Ld. Arbitrator. Ld. Counsel submitted that in view of the section 11 of the A&C Act and the amended provisions of Section 11, this Court is not required to delve into this aspect. Therefore, learned counsel submitted that this contention of the Respondent should be left open for adjudication by the Ld. Arbitrator.

19. Furthermore, learned counsel for the petitioner also submitted that the statute of limitations must be weighed against the provisions of Section 43(4) of the A&C Act. The section 43(4) eliminates the time frame from the start of arbitration procedures, until the award is set aside in accordance with S. 34 of the A&C Act. Further, it was submitted that Ld. ADJ while setting aside the award, has proceeded on a presumption that the notice under S. 21 was delivered on the Respondent and then held the unilateral appointment to be bad in the eyes of law. The Ld. ADJ has only referred to the submission of the Respondent that it claims to have not received the S. 21 notice and that the Ld. ADJ also did not find a document supporting delivery of the notice in the file.

20. Lastly, Learned Counsel for the petitioner submitted that Section 21 of the A&C Act only establishes a presumption that arbitration will begin upon service of notice. The arbitration will be deemed to have

started at least on 29.06.2018, when the Ld. Arbitrator entered upon the reference and served notice to the Respondent, even if the notice under S. 21 of the A&C Act is briefly disregarded. Therefore, the time frame starting on that day and ending on the date on which the Ld. ADJ allowed S. 34 (15.04.2023) would be omitted. The learned counsel submitted that the present petition is within limitations.

21. Learned counsel for the petitioner has placed reliance upon ***Steel Authority of India Limited v. Indian Council of Arbitration and Anr.*** **[**(2015) 225 DLT 348**];** ***Steel Authority of India Limited v. Indian Council of Arbitration and Anr.; Govind Singh v. M/s Satya Group Pvt. Ltd and Anr.***; ***SK Engineering and Construction Company India v. Bharat Heavy Electricals Ltd.***[Arb. P. No. 737/2023 decided on 01.12.2023]; ***G4S Secure Solutions India Pvt Ltd. v. Li consulting Private Limited*** [2021 SCC Online Del 4146].

22. *Per contra*, it was submitted by the learned counsel for the respondents that as per the Arbitration Clause in all the Franchise Agreements the power to appoint a sole arbitrator was retained by the Chairman of the Petitioner Company. No other provision or eventuality has been envisaged under such clause. Such kind of clause has been held to be not sustainable in light of the law laid down by the Supreme Court and followed by this Court in plethora of cases.

23. Furthermore, it was submitted that the agreement itself provides that all disputes are subject to the jurisdiction of Delhi Courts - separately, and thereby provides an alternative remedy to arbitration to contracting parties. Learned counsel submitted that it cannot be

assumed that parties had agreed for dispute resolution through Arbitration Only. It was also submitted that while contesting the petition under section 34 of the A&C Act, the Petitioner did not seek any liberty to refer the matter to arbitration again. Hence, the petitioner is not entitled to get the matter referred to Arbitration again at their will.

24. Learned counsel for the respondent further submitted that the findings of the Ld. Judge about notice of section 21 has attained finality in the absence of any challenge under section 37 of the A&C Act. Therefore, the first notice was served in the month of July 2023 of alleged demands pertaining to the year 2016-2017, therefore, the claims are hopelessly time barred.

25. Lastly, it was submitted that though the question of limitation can be decided by the ld. arbitrator, however when it appears on the face of it that the petition is time barred, the exercise under section 11 of the A&C Act would be futile.

26. Learned counsel for the respondent has placed reliance upon ***Newton Engineering and Chemicals v. Indian Oil Corporation Limited***, (2013) 4 SCC 44; ***Capacite Infra projects Limited Vs Ramprastha Promoters & Developers Ltd.*** 246 (2018) DELHI LAW TIMES 520; ***M/s Vindhya Vasini Construction Co. v. M/s Bharat Heavy Electricals Ltd.***, 2023: DHC:3338.

Analysis and Conclusion

27. The predominant objection raised by the respondent is thatin the event of an award having been set aside on the ground of unilateral

appointment and non-compliance of section 12 of the A&C Act, then the petitioner cannot file a fresh application under section 11 of the A&C Act for the appointment of an arbitrator. The respondents have also taken the issues of limitation and non-service of notice under section 21 of the A&C Act before initiating the first arbitration and the claims being time barred by limitation.

28. In ***M/s. Uttarakhand Purv Sainik Kalyan Nigam Limited Versus Northern Coal Field Limited***, (2020) 2 SCC 455, the apex court *inter-alia* held as under:

> *"9.11. In view of the provisions of Section 16, and the legislative policy to restrict judicial intervention at the pre-reference stage, the issue of limitation would require to be decided by the arbitrator. ……..*
> *9.12. In the present case, the issue of limitation was raised by the Respondent – Company to oppose the appointment of the arbitrator under Section 11 before the High Court.*
> *Limitation is a mixed question of fact and law. In ITW Signode India Ltd. v. Collector of Central Excise a three judge bench of this Court held that the question of limitation involves a question of jurisdiction. The findings on the issue of limitation would be a jurisdictional issue. Such a jurisdictional issue is to be determined having regard to the facts and the law.*
> *Reliance is also placed on the judgment of this Court in NTPC v. Siemens Atkein Gesell Schaft, wherein it was held that the arbitral tribunal would deal with limitation under Section 16 of the 1996 Act.If the tribunal finds that the claim is a dead one, orthat the claim was barred by limitation, the adjudication of these issues would be on the merits of the claim. Under sub-section (5) of Section 16, the tribunal has the obligation to decide the plea; and if itrejects the plea, the arbitral proceedings would continue, and the tribunal would make the award. Under sub-section (6) a party*

aggrieved by such anarbitral award may challenge the award under Section34.
In M/s. Indian Farmers Fertilizers Cooperative Ltd. v. Bhadra Products (2018) 2 SCC 534 this Court held that the issue of limitation being a jurisdictional issue, the same has to be decided by the tribunal under Section 16, which is based on Article 16 of the UNCITRAL Model Law which enshrines the Kompetenze principle."

29. In ***Bharat Sanchar Nigam Ltd. & Anr. v. M/S Nortel Networks India Pvt. Ltd.*** (2021) 2 SCR 644*inter-alia* held as under:

"30.Issue of Limitation
Limitation is normally a mixed question of fact and law, and would lie within the domain of the arbitral tribunal. There is, however, a distinction between jurisdictional and admissibility issues. An issue of 'jurisdiction' pertains to the power and authority of the arbitrators to hear and decide a case. Jurisdictional issues include objections to the competence of the arbitrator or tribunal to hear a dispute, such as lack of consent, or a dispute falling outside the scope of the arbitration agreement. Issues with respect to the existence, scope and validity of the arbitration agreement are invariably regarded as jurisdictional issues, since these issues pertain to the jurisdiction of the tribunal.
34. The judgment in Lesotho (supra) was followed by in BBA &Ors. v. BAZ & Anr., wherein the Court of Appeal held that statutory time bars go towards admissibility. The Court held that the "tribunal versus claim" test should be applied for purposes of distinguishing whether an issue goes towards jurisdiction or admissibility. The "tribunal versus claim" test asks whether the objection is targeted at the tribunal (in the sense that the claim should not be arbitrated due to a defect in or omission to consent to arbitration), or at the claim (in that the claim itself is defective and should not be raised at all).
Applying the "tribunal versus claim" test, a plea of statutory time bar goes towards admissibility as it attacks

> *the claim. It makes no difference whether the applicable statute of limitations is classified as substantive (extinguishing the claim) or procedural (barring the remedy) in the private international law sense.*
> *35. The issue of limitation which concerns the "admissibility" of the claim, must be decided by the arbitral tribunal either as a preliminary issue, or at the final stage after evidence is led by the parties."*

30. Thus the issue of limitation is to be adjudicated by the arbitrator is no more *res-integra*. The limitation being a mixed question of fact and law is to be decided by the tribunal except in the cases, where the claim is patently or ex-facie time-barred. The question of service of notice under section 21 of the A&C Act is also a connected issue which has to be determined by the learned arbitrator on the basis of material on record. The claims in the present case are not *ex-facie* or patently time-barred. Thus the issue of limitation is left open to be decided by the ld. Arbitrator.

31. The contention of the respondent that since the remedy available to the petitioner under the arbitration clause of the franchise agreements has already been exhausted by the petitioner, therefore, the petitioner cannot seek re-appointment of the arbitrator, is also not sustainable in law. This court under section 11 of the A&C Act has the power to re-appoint the arbitrator as once an award has been set aside, the parties would be free to begin the arbitration once again. The basic premise is that if there is an arbitration agreement between the parties, the dispute must be adjudicated by the agreed method of resolution of dispute.

32. A coordinate bench of this court in ***Steel Authority of India Limited v. Indian Council of Arbitration &Anr.;*** 2015 SCC OnLine Del 13394 inter-alia held as under:

> *"46. The petitioner's contention that since the disputes had been subject matter of an arbitration award, the arbitration agreement stood exhausted also cannot be accepted. An arbitration agreement merely provides for an alternative forum for resolution of disputes. Thus, all disputes that the parties agree to resolve by arbitration are to be resolved by arbitration. Thus, as long as the disputes that are covered under the arbitration agreement remain unresolved, the parties would be free to take recourse to arbitration for resolution of the said disputes and the other party would be contractually bound to submit the disputes to arbitration. Plainly, the claims made by GE Shipping arise under the Charter party and thus are covered under clause 57 of the Charter party, that is, the arbitration agreement."*

33. Further, a division bench of this court in ***Steel Authority of India Limited v. Indian Council of Arbitration & Anr.;*** 2016 SCC OnLine Del 1921 *inter-alia* held as under:

> *"15. We do not find any substance in the said contention. In the present case the award dated 7/10 May, 2010 was set aside by the Court on a petition filed under Section 34 of the Arbitration and Conciliation Act. Consequently, the dispute between the parties stood revived. Since Clause 57 of the Charter Party provides that "all disputes arising under the Charter Party" shall be settled by way of arbitration following the procedure specified therein, the parties are at liberty to invoke the arbitration clause for settlement of the dispute which stood revived. Such a course, according to us, does not amount to repeated/multiple arbitrations as sought to be contended by the learned Senior Counsel for the appellant.*

16. It may be true that in McDermott International Inc. v. Burn Standard Co. Ltd. (Supra), it was not expressly held that in the event of the Arbitral award being set aside by the Court under Section 34, the parties can again invoke Arbitration clause on the basis of the same cause of action. However, it was made clear that consequent to quashing of the award, the parties are free to bring the arbitration again.

17. The decisions of the Division Benches of this Court in National Highways Authority of India v. ITD Cementation India Ltd. 2008 (100) DRJ 431 (DB) and BSNL v. Canara Bank 169 (2010) DLT 253 (DB) holding that the power to remit disputes back to the Arbitral Tribunal is envisaged in Section 34 (4) of the Arbiration and Conciliation Act, 1996 cannot be understood to have laid down that in the absence of such remand by the Court, the parties are precluded from invoking the Arbitration clause for settlement of the same dispute. As already mentioned above, we are of the view that in the event of the Arbitral award being set aside by the Court under Section 34, the dispute between the parties stands revived and the same can be settled in terms of the Arbitration clause under the agreement."

34. In ***Govind Singh v. M/s Satya Group Pvt. Ltd and Anr.*** Neutral citation 2023/DHC/000081, wherein it was *inter-alia* held that:

> *"25. It is clarified that since the impugned award is being set aside on the ground that the learned Arbitrator was ineligible to act as an arbitrator, the parties are not precluded from re-agitating their claims/counter-claims afresh before another arbitral tribunal."*

35. Further, in ***SK Engineering and Construction Company India v. Bharat Heavy Electricals Ltd.***[Arb. P. No. 737/2023 decided on 01.12.2023] it was *inter-alia* held that:

> *"11. In the context of a similar arbitration clause, a Co-ordinate Bench of this Court in Ram Kripal Singh (supra),*

noted that the consistent view taken by at least three different Co-ordinate Benches of this Court, dealing with a similar arbitration clause, namely in T.K. Engineering (supra), ARSS Infrastructure (supra) and NIIT Technologies (supra), is that just because the procedure for appointment of an arbitrator has been rendered invalid or unenforceable by reason of the amendment to the A&C Act, by insertion of Section 12(5) and by the subsequent decisions of the Supreme Court in TRF Ltd.(supra) and Perkins Eastman (supra), would not imply that the entire arbitration clause is rendered invalid or void. It was held that the procedure for appointment of an arbitrator is clearly distinct and separable from the agreement to refer disputes to arbitration, even if these are contained in the same arbitration clause. The relevant extracts of the said decision are as under:

> *"17. Upon a conspectus of the averments contained in the petition and the reply, as also the submissions made by counsel, and on a reading of the judicial precedents cited, the following inferences arise:*
>
> *17.1. The respondent does not dispute the existence of the arbitration agreement between the parties, except to say, that since a certain procedure for appointment of an arbitrator was embedded in the arbitration clause, which procedure has now become illegal, invalid and unenforceable, the entire arbitration agreement perishes along therewith.*
>
> *The respondent's contention is that it was expressly agreed between the parties that if an arbitrator could not be appointed as per that agreed procedure, there would be no arbitration at all;*
>
> *17.2. Now, clauses that are same or similar to clause 56 of the GCCs, which contains the arbitration agreement in the present case, have been dealt with by at least three different Co-ordinate Benches of this court; and the consistent view taken is that just because the procedure for appointment of an arbitrator has been rendered invalid or unenforceable by reason of the amendment to*

the A&C Act, by insertion of section 12(5) and by the subsequent decisions of the Supreme Court in TRF Ltd. and Perkins Eastman (supra), that does not mean that the entire arbitration clause is rendered invalid or void. Such arbitration clauses have been held to be valid and enforceable. Reference in this regard may be made to TK Engineering(supra), ARSS Infrastructure(supra) as also to NIIT Technologies Ltd. v. Directorate General, Border Security Force;

17.3. Expatiating upon the aforesaid consistent view, in the opinion of this court, an „arbitration agreement" may narrate and include several other aspects relating to arbitration - such as the procedure for appointment of arbitrator(s); seat or venue of arbitration proceedings; the substantive and procedural law that would govern arbitral proceedings; specifics of disputes that are „excepted" from the purview of arbitration; liability of costs for arbitral proceedings and such-like other matters - so as to detail- out the arbitral mechanism and to make the arbitration agreement more comprehensive. Even if embedded in the self-same arbitration clause, these aspects relate to different strands of the agreed arbitral mechanism and are distinct and separable from the core arbitration agreement itself, viz. the primary consent of parties to refer their inter- se disputes arising from a given contract or transaction to arbitration;

17.4. The procedure for appointment of an arbitrator is clearly distinct and separable from the agreement to refer disputes to arbitration, even if these are contained in the same arbitration clause. If therefore, by reason of amendment, re-statement or reinterpretation of the law, as has happened in the present case by insertion of section 12(5) in the A&C Act and the verdicts of the Supreme Court in TRF Ltd. and Perkins Eastman (supra), the procedure for appointment of arbitrator at the hands of one of the parties becomes legally invalid, void and unenforceable, that does not mean that the core agreement between the parties to refer

their inter-se disputes to arbitration itself perishes. In the opinion of this court - this "my way or the highway" approach - is not tenable in law; and in such circumstances, that part of the arbitration agreement which has been rendered invalid, void and enforceable is to be severed or excised from the arbitration clause, while preserving the rest of the arbitration agreement;

17.5. Accordingly, this court is of the view, that there is a valid and subsisting arbitration agreement between the parties, though the procedure for appointment of the arbitrator at the hands of the CMD, NTPC is no longer valid, and must therefore be severed from the remaining arbitration clause;

17.6. The aforesaid view taken by this court is also in consonance with the extant legislative and judicial policy that arbitration agreements are not to be readily invalidated unless there is compelling basis to do so; and arbitration is to be encouraged as an alternative mode of disputes adjudication (cf. Chloro Controls India Pvt. Ltd. v. Severn Trent Purification Inc.)"

36. Thus in view of the settled legal position, it emerges that merely because one of the clause i.e., the procedure regarding the appointment of an arbitrator is held to be invalid by virtue of the law laid down, it will not quell the arbitration clause. Secondly, if there is an arbitration clause in the agreement entered into between the parties, and the award has been set aside for the reason of unilateral appointment, it will not exhaust the arbitration clause.

37. Further the primary intention behind amending Section 8 and Section 11 of the A&C Act is to reduce the extent of judicial power with the exception of situations in which there appears to be no legitimate arbitration agreement. Therefore, this court at this stage

cannot delve into the issue of limitation with respect to the present petition being time-barred and the same can be agitated before the arbitral tribunal.

38. Taking into consideration the discussions made hereinabove, it can be safely concluded that by merely rendering the arbitrator appointment process invalid or unenforceable, the arbitration clause as a whole does not become void. The fundamental understanding between the parties to submit their inter-party disputes to arbitration does not end when the process for selecting an arbitrator initiated by one of the parties becomes legally void, null, and unenforceable. It can be said that both parties acknowledge the existence of an arbitrable dispute. The earlier award was set aside due to the arbitrator's unilateral appointment, and non-compliance of section 12 of the A&C Act, leaving the parties' disagreements unresolved. As a result, the franchise agreements' parties would be free to exercise the arbitration clause once more and file a petition in accordance with section 11 of the A&C Act.

39. The present petitions are being disposed of with the following directions:

    i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.

    ii) Sh. L.K. Gaur, Former Ld. District Judge (Commercial Court) (Mob. No. 8800881765) is appointed as a sole Arbitrator to adjudicate the disputes between the parties in all the petitions

    iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah

Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of fee rules of the DIAC Schedule.

iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act before entering into the reference.

v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

vi) The parties shall approach the learned arbitrator within two weeks from today.

40. In view of the above, the present petition stands disposed of.

DINESH KUMAR SHARMA, J

FEBRUARY 20, 2024
Rb/ht