

Aakash Educational Services Limited vs Sarthak Dutta on 28 March, 2025

Author: Sachin Datta

Bench: Sachin Datta

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on:

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ARB.P. 755/2024

AAKASH EDUCATIONAL SERVICES LIMITED Petitioner

Through: Mr Pranav Proothi, Ms Manasi
Chatpalliwar and Mr Aditya Singh
Adv.

versus

SARTHAK DUTTA

Through:

Mr. Kumar Prashant, Ad
with Mr. Kartik Nigam,
and Mr. Sarthak Dutta,

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA
JUDGMENT

1. The present petition filed under section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'A&C Act') seeks appointment of a sole arbitrator to adjudicate the disputes between the parties.

2. The disputes between the parties have arisen in the context of an agreement titled 'Employment Terms and Conditions of Services (for Academic Employees)' (hereinafter referred as 'the ETC') executed between the parties for the appointment of the respondent as an Assistant Lecturer in Department of Zoology by the petitioner vide appointment letter dated 02.08.2022.

3. The arbitration clause in the ETC executed between the parties, is in the following terms: -

"10.2 GOVERNING LAW AND DISPUTE RESOLUTION 10.2.1 That the Parties agree that this ETC shall be construed in accordance with the laws in force in India and in the eventuality of any dispute or difference (including in the eventuality of violation of the Agreement by any party) should arise on any matter relating to or arising out of the present Agreement, the same shall be referred to the arbitration within 60 days of either party notifying the other party to the Agreement of such dispute, for adjudication under the provisions of Arbitration & Conciliation Act, 1996. Parties hereby mutually agree to appoint Mr. Arun Batta, Advocate, Chamber No. - 385, lawyer's Chamber, Block II, Delhi High Court, New Delhi- 110003, as sole arbitrator

for adjudication of disputes between the parties, whose. decision shall be final and binding upon the parties. The sole Arbitrator shall conduct the arbitration proceedings at Delhi.

10.2.2 It is also agreed between the parties that arbitration proceeding would be conducted in English only and in no other language. If such appointed Sole Arbitrator is unable to continue with such Arbitral proceedings for any reason whatsoever, a new Sole Arbitrator shall be appointed by mutual consent of the parties who shall continue with the Arbitral proceedings from the stage where the proceedings were left by his predecessor.

10.2.3 Parties mutually agree that the fee payable to the Arbitrator for adjudicating the dispute between the parties arising out of this Agreement shall be subject to a maximum limit of INR 50,000/- per case. Each party shall be liable to pay arbitration fees equally subject to a maximum limit of INR 25,000/- per case.

10.2.4 That the Courts at Delhi shall have exclusive jurisdiction (subject to the arbitration proceedings which are to be also conducted at Delhi) over any or all disputes arising out of this Agreement and the parties hereby submit themselves to the jurisdiction of such Courts and/or Tribunals."

4. Dispute/s have arisen between the parties on account of resignation tendered by the respondent via email dated 11.12.2022. It is submitted by the petitioner that since resignation tendered by the respondent was without any prior intimation and in breach of the ETC, such a resignation cannot be accepted. It is stated that via email dated 12.12.2022, the petitioner communicated the aforesaid to the respondent.

5. It is further submitted that since the respondent illegally and unlawfully retained the possession of a pen drive containing confidential data of the petitioner's institute, the petitioner was constrained to file a police complaint with S.H.O at the Police Station Jagat Puri, Delhi and a petition under Section 9 of the A&C Act for interim relief before the District Judge, Commercial Courts, Central District, Tis Hazari Courts, Delhi. In the aforesaid proceedings the Court vide order dated 10.10.2023 restrained the respondent from using petitioner's confidential data and held as under:

"Coming to the merits of the case, the petitioner apprehends that the respondent is likely to misuse the study material, academic planner and the data-base of the petitioner. The contention of the respondent that the allegations are vague is not correct. The petitioner has every right to protect its study material etc. The respondent is bound by the service agreement and the petitioner had made out a prima facie case for interim relief u/s 9 of the Act. In facts the respondent is restrained from illegally misusing the study material, question papers, answer sets, home assignment sets, academic planner, lecture plan, test planner and test papers and data base of the petitioner. As far as the last prayer seeking restraining the

respondent from illegally contacting and threatening the petitioner's students, their parents and petitioner's staff/ faculty is concerned, the same is declined as this court is not in a position to monitor the day-to-day violation of this prayer in case the same is violated. The above interim order shall continue till the petitioner appoints an arbitrator and the arbitrator enters upon the reference. The arbitrator shall be nominated at the earliest but not later than three months from the date of this order. Nothing said here in above shall tantamount to have any expression of the merits of the case. The petition stands disposed of."

6. Disputes having arisen between the parties, a desertion cum demand notice dated 11.02.2023 was issued by the petitioner followed by a notice for invoking arbitration on 08.03.2024. However, the respondent failed to respond to the aforesaid notice.

7. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute.

8. The learned counsel on behalf of the respondent in the counter affidavit avers that the agreement/contract executed between the parties, cannot be deemed valid on the premise that the petitioner exerted undue influence and compelled the respondent to sign the same.

9. The learned counsel on behalf of the respondent has placed reliance upon judgment rendered by the Supreme Court in *Vidiya Drolia vs Durga Trading Corporation*, (2021) 2 SCC 1 to contend that before referring a matter to arbitration, a court must carefully scrutinize whether a case is suitable for arbitration as it is essential to balance the need of arbitration with the need to protect the judicial process from being undermined by premature or inappropriate referral.

10. Furthermore, it is also submitted that a coordinate bench of this Court in *Vivek Rai vs Aakash Institute*, 2015:DHC:2095, has already opined that certain clauses stipulated in the agreement drafted by the petitioner are illegal and against public policy. Thus, referring the present dispute to arbitration by placing reliance on the clause under an agreement provided by petitioner will not only be futile but also prejudice the rights of respondent.

11. The learned counsel on behalf of the petitioner vehemently opposes the averments made by the respondent. It is submitted that the agreement was executed between the parties pursuant to the respondent duly agreeing upon (without any undue influence) to the terms and conditions stipulated therein. It is further stated that the respondent has neither challenged that authenticity or credibility of the signatures on the agreement, nor placed on record any proof that established that the signatures were obtained either through undue influence or that he was unaware of the binding nature of the said contract.

12. It is further submitted by the learned counsel on behalf of the petitioner that the reliance placed upon by the respondent on the judgment rendered by this Court in *Vivek Rai vs Aakash Institute* (supra) is misplaced and erroneous since it is a settled law that an arbitration agreement incorporated in the main agreement stands on an independent footing. Even if some clause/s of an

agreement are liable to be struck down, the arbitration agreement continues to survive. Therefore, it is stated that a validly executed arbitration agreement exists between the parties to the present dispute.

13. Having perused the arguments agitated by the parties, I find no merit in the contention raised on behalf of the respondent. It is well settled that an arbitration agreement incorporated in a contract stands on an independent footing, and is not impacted by invalidity (if at all) of the other terms of the contract between the parties. In this regard reference can be made to the judgment passed by the Supreme Court in *Enercon (India) Limited and Others vs Enercon GMBH and Anr.*, (2014) 5 SCC 1 wherein it is observed as under:

"83. The concept of separability of the arbitration clause/agreement from the underlying contract is a necessity to ensure that the intention of the parties to resolve the disputes by arbitration does not evaporate into thin air with every challenge to the legality, validity, finality or breach of the underlying contract. The Indian Arbitration Act, 1996, as noticed above, under Section 16 accepts the concept that the main contract and the arbitration agreement form two independent contracts. Commercial rights and obligations are contained in the underlying, substantive, or the main contract. It is followed by a second contract, which expresses the agreement and the intention of the parties to resolve the disputes relating to the underlying contract through arbitration. A remedy is elected by parties outside the normal civil court remedy. It is true that support of the national courts would be required to ensure the success of arbitration, but this would not detract from the legitimacy or independence of the collateral arbitration agreement, even if it is contained in a contract, which is claimed to be void or voidable or unconcluded by one of the parties.

84. The scope and ambit of the provision contained in Section 16 of the Indian Contract Act has been clearly explained in *Reva Electric Car [Reva Electric Car Co. (P) Ltd. v. Green Mobil]*, (2012) 2 SCC 93 :

(2012) 1 SCC (Civ) 541] , wherein it was inter alia observed as follows:

(SCC p. 107, para 54) "54. Under Section 16(1), the legislature makes it clear that while considering any objection with respect to the existence or validity of the arbitration agreement, the arbitration clause which formed part of the contract, has to be treated as an agreement independent of the other terms of the contract. To ensure that there is no misunderstanding, Section 16(1)(b) further provides that even if the Arbitral Tribunal concludes that the contract is null and void, it should not result, as a matter of law, in an automatic invalidation of the arbitration clause. Section 16(1)(a) presumes the existence of a valid arbitration clause and mandates the same to be treated as an agreement independent of the other terms of the contract. By virtue of Section 16(1)(b), it continues to be enforceable notwithstanding a declaration of the contract being null and void.

In view of the provisions contained in Section 16(1) of the Arbitration and Conciliation Act, 1996, it would not be possible to accept the submission of Ms Ahmadi that with the termination of the MoU on 31-12-2007, the arbitration clause would also cease to exist."

85. The aforesaid reasoning in Reva case [Reva Electric Car Co. (P) Ltd. v. Green Mobil, (2012) 2 SCC 93 : (2012) 1 SCC (Civ) 541] has also been approved by a two-Judge Bench of this Court in Today Homes and Infrastructure (P) Ltd. v. Ludhiana Improvement Trust [(2014) 5 SCC 68 : (2013) 7 Scale 327] wherein it was inter alia held as under: (SCC p. 73, para 14) "14. The same reasoning was adopted by a member of this Bench (S.S. Nijjar, J.), while deciding Reva Electric Car Co. (P) Ltd. v. Green Mobil [Reva Electric Car Co. (P) Ltd. v. Green Mobil, (2012) 2 SCC 93 : (2012) 1 SCC (Civ) 541] , wherein the provisions of Section 16(1) in the backdrop of the doctrine of kompetenz kompetenz were considered and it was inter alia held that under Section 16(1), the legislature makes it clear that while considering any objection with regard to the existence or validity of the arbitration agreement, the arbitration clause, which formed part of the contract, had to be treated as an agreement independent of the other terms of the contract. Reference was made in the said judgment to the provisions of Section 16(1)(b) of the 1996 Act, which provides that even if the Arbitral Tribunal concludes that the contract is null and void, it should not result, as a matter of law, in an automatic invalidation of the arbitration clause. It was also held that Section 16(1)(a) of the 1996 Act presumes the existence of a valid arbitration clause and mandates the same to be treated as an agreement independent of the other terms of the contract. By virtue of Section 16(1)(b) of the 1996 Act, the arbitration clause continues to be enforceable, notwithstanding a declaration that the contract was null and void."

86. In view of the aforesaid, we are not inclined to accept the submission of Mr Nariman that arbitration agreement will perish as the IPLA has not been finalised."

14. The aforesaid view has also been reiterated by the Supreme Court in SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 INSC 532. The same reads as under:-

"49. The arbitration agreement, by virtue of the presumption of separability, survives the principal contract in which it was contained. Section 16(1) of the Act, 1996 which is based on Article 16 of the UNCITRAL Model Law on International Commercial Arbitration, 1985 (hereinafter, "Model Law") embodies the presumption of separability. There are two aspects to the doctrine of separability as contained in the Act, 1996:--

i. An arbitration clause forming part of a contract is treated as an agreement independent of the other terms of the contract.

ii. A decision by the arbitral tribunal declaring the contract as null and void does not, ipso facto, make the arbitration clause invalid.

50. The doctrine of separability was not part of the legislative scheme under the Arbitration Act, 1940. However, with the enactment of the Act, 1996, the doctrine

was expressly incorporated. This Court in National Agricultural Coop. Marketing Federation India Ltd. v. Gains Trading Ltd. reported in (2007) 5 SCC 692, while interpreting Section 16 of the Act, 1996, held that even if the underlying contract comes to an end, the arbitration agreement contained in such a contract survives for the purpose of resolution of disputes between the parties.

51. The fundamental premise governing the doctrine of separability is that the arbitration agreement is incorporated by the parties to a contract with the mutual intention to settle any disputes that may arise under or in respect of or with regard to the underlying substantive contract, and thus by its inherent nature is independent of the substantive contract."

15. The existence of the arbitration agreement is evident from a perusal of the ETC. For the purpose of these proceedings, this Court has to determine, prima facie, the existence of the arbitration agreement. The same is evident from a perusal of Clause 10.2 of the agreement between the parties. In the circumstances, there is no impediment in appointing an independent sole arbitrator for adjudicating the disputes between the parties as prayed for and mandated in terms of the judgments of the Supreme Court in SBI General Insurance Co. Ltd. v. Krish Spinning (supra) and Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re, 2023 SCC OnLine SC 1666.

16. Further, in terms of judgment of the Supreme Court in Perkins Eastman Architects DPC v. HSCC (India) Ltd, (2020) 20 SCC 760, TRF Limited v. Energo Engineering Projects Ltd, (2017) 8 SCC 377, Bharat Broadband Network Limited v. United Telecoms Limited., 2019 SCC OnLine SC 547, it is incumbent on this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

17. Accordingly, Ms. Parul Tuli, Advocate (Mobile - +91 9810162324) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

18. The respondent shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.

19. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosure as required under Section 12 of the A&C Act.

20. The learned Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

21. Parties shall share the arbitrator's fee and arbitral cost, equally. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

22. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the case.

23. The present petition stands disposed of in the above terms.

SACHIN DATTA, J MARCH 28, 2025/sl