
(2013) 05 DEL CK 0451

In the Delhi High Court

Case No : Arbitration Petition No. 362 of 2011

SAP India Pvt. Ltd.

APPELLANT

Vs

M/s. Zenith Software Ltd.

RESPONDENT

Date of Decision : 15-05-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(6), 16, 8
Contempt of Courts Act, 1971 — Section 2
Copyright Act, 1957 — Section 51, 63A, 63B, 68
Penal Code, 1860 (IPC) — Section 420

Citation : (2013) 201 DLT 108

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Rahul Beruar and Mr. Subhash Bhutoria, for the Appellant; Anil Sapra Mr. Ajit Nair and Mr. P. Nagesh, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

J.R. Midha, J.—The petitioner is seeking appointment of an arbitrator u/s 11(6) of the Arbitration and Conciliation Act, 1996 for adjudication of disputes between the parties. The petitioner is in the business of developing software products. The petitioner has developed various softwares. The relevant software for the present case is named SAP R/3 in respect of which the petitioner has a copyright.

2. Vide End User Licence Agreement dated 26th December, 2006, the petitioner granted a licence to the respondent to use the said software for their internal business operations and permitted the respondent to provide the internal training to its employees for internal business operations. However, the Licence Agreement does not permit the respondent to provide training to third parties for commercial purposes. For providing training for commercial purposes to third parties, the petitioner had set up fifty-seven centres which were authorized to provide the training to the third parties for commercial purposes.

3. In October, 2008, the petitioner came to know that the respondent was

conducting unauthorized training programmes in batches of one hour each consisting of 15 to 20 students and was charging fees of Rs. 30,000 to Rs. 35,000/- per student per module whereas the fees for the authorized courses conducted by the petitioner at its fifty-seven centres across the country was Rs. 1,50,000/- per student.

4. On 18th October, 2008, the petitioner made a complaint to police at P.S. Koramangala, Bangalore whereupon the police conducted search at the respondent's premises and recovered ten hard discs loaded with pirated SAP R/3 software, six trainers' attendance register files, three registration forms, a SAP course content file and seventy certificates issued by the respondent for SAP modules, which were being used for providing training on SAP software. The police seized the above material and registered FIR No. 463/2008 dated 18th October, 2008 against the respondent under Sections 51, 63A, 63B and 68 of the Copyright Act, 1957 read with Section 420 IPC.

5. On 17th February, 2009, the petitioner instituted a suit bearing no. CS(OS) 340/2009 for permanent injunction against the respondent before this Court for restraining the infringement of copyright, damages, delivery up, rendition of accounts of profits etc. The suit was listed on 18th February, 2009 when this Court issued notice to the respondent for 4th May, 2009. Learned counsel for the respondent entered appearance on 4th May, 2009. On 9th April, 2009, the respondent filed an application being IA No. 5111/2009 u/s 8 of the Arbitration and Conciliation Act, 1996 seeking reference of disputes between the parties to arbitration in terms of Clause 11 of the End User Licence Agreement dated 26th December, 2006. In the said application, it was submitted by the respondent that the disputes between the parties were subject to arbitration agreement contained in Clause 11 of the End User Licence Agreement dated 26th December, 2006. The respondent filed the original End User Licence Agreement dated 26th December, 2006 as "Annexure A" to the application. Paras 5 to 7 and the prayer clause of IA 5111/2009 are relevant and reproduced here under:

5. That in term of Clause-11 of the said Agreement and Section 8 of the Arbitration and Conciliation Act, 1996 the aforesaid actions are subject to be referred to the "Arbitrator" by this Hon'ble Court. The applicant/defendant have yet to submit its first statement on the substance of aforesaid dispute.

6. That the applicant/defendant wishes to have the said disputes referred to "Arbitration".

7. That the original "End User License Agreement" (EULA), which contains the original arbitration agreement is filed along with the application as Annexure-A and is the original of the agreement referred and relied by the plaintiff before this "Hon'ble Court.

It is, therefore, most respectfully prayed that:

a) Order be passed to refer the parties to Arbitration in terms of Clause-11 of the

End-User License Agreement.

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(Emphasis Supplied)

6. Vide order dated 6th September, 2010, this Court allowed IA 5111/2009 filed by the respondent u/s 8 of the Arbitration and Conciliation Act and referred the matter to arbitration. Order dated 6th September, 2010 is reproduced hereunder:

IA 5111/2009 in CS(OS) 340/2009

1. This is an application u/s 8 of the Arbitration and Conciliation Act, 1996 filed by the defendant raising objection to the maintainability of the plaint on the ground that there is an arbitration clause between the parties.

2. The plaintiff has filed reply to the application.

3. The learned counsel for the plaintiff has contended that the software which was given to the defendant in respect of End User Licence Agreement entitles him to use the same for internal usage while as the defendant used the said software for external purposes and thus it was beyond the terms and conditions of the License agreement. It has been further stated that although there is no dispute about the Arbitration Clause contained in the License Agreement, but the question as to whether the dispute which arises between the parties falls within the domain of the License Agreement will have to be adjudicated.

4. On his attention being drawn to Section 16 of the Arbitration and Conciliation Act, wherein the Arbitral Tribunal itself has the jurisdiction to decide the question as to whether it has the jurisdiction to go ahead with the adjudication of the dispute or not is vested with the Tribunal itself. The learned counsel for the plaintiff agreed that the petition be treated as disposed of and the matter be referred to Arbitration.

5. In view of the statement made by the learned counsel for the plaintiff, the application is allowed with the observation that the plaintiff shall be free to take any objection with regard to the maintainability of the reference itself.

6. With these observations the petition stands disposed of.

(Emphasis Supplied)

7. Clause 11 of the End User Licence Agreement dated 26th December, 2006 contains the Arbitration Agreement between the parties which is reproduced hereunder:

11. ARBITRATION

Except for the right of either party to apply to a court of competent jurisdiction for an injunction or other equitable relief available under applicable law to preserve the status quo or prevent irreparable harm pending the selection and

confirmation of a panel of arbitrators, and for the right of SAP to bring suit on an open account for any payments due SAP hereunder, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in New Delhi, India, in accordance with the Rules of Conciliation and Arbitration of the ICC, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Arbitration shall be conducted in the English language by a panel of three (3) members, one member selected by SAP, one member selected by Licensee and the third member, who shall be chairman, selected by agreement between the other (2) members. The chairman shall be a solicitor, and the other arbitrators shall have a background or training in computer law, computer science, or marketing of computer industry products. The arbitrators shall have the authority to grant injunctive relief in a form substantially similar to that which would otherwise be granted by a court of law. The parties agree that the arbitration proceedings and the outcome shall be kept strictly confidential and that obligations under this Section 11 shall survive termination or expiration of this Agreement.

8. Vide notice dated 23rd February, 2011, the petitioner appointed Mr. Rodney D. Ryder, Advocate as the arbitrator in terms of Clause 11 of the End User Licence Agreement dated 26th December, 2006 and called upon the respondent to appoint the second arbitrator within 15 days.

9. Vide reply dated 8th March, 2011, the respondent raised frivolous objections to the petitioner's request for appointment of arbitrator. It is relevant to reproduce the said objections which are as under:

At the outset your notice under reply is objected for the following reasons:-

1. Because you have failed to mention the address of your Client, the alleged "Claimant" and hence deliberately suppressed the identity of the said client.
2. Because the referred License Agreement was executed between M/s. SAP India Systems, Applications and Products in Data Processing Private Limited with my client and not as alleged by you.
3. Because the order dated 06/09/10 passed by Hon''ble High Court of Delhi in C.S. (O.S.) No. 340/2009, titled SAP AP & Anr. Vs. Zenith Software Ltd. was not a consent order. Further the reference was kept open to Arbitration.
4. Because as per the clause 11 of the License Agreement the Arbitrators shall have a background or training in computer law, computer science or marketing of computer industry products. Unlike the referred respected Mr. Rodney D. Ryder who is an Advocate.
5. Because both the parties to the License Agreement were/are of Bangalore, Karnataka State, India and agreement was executed/stamped therein with nothing related thereto of Faridabad, Haryana State.

Hence you are requested to forthwith withdrew your notice under reply and therefore my client need not to intimate any further.

10. Vide letter dated 24th March, 2011, the petitioner replied to all the frivolous objections of the respondent. With respect to the respondent's objection to the qualification of Mr. Rodney D. Ryder, the petitioner clarified that Mr. Ryder is a qualified IT and computer law practitioner and well versed in computer science. With respect to the territorial jurisdiction, the petitioner clarified that the seat of arbitration proceedings under Clause 11 of the Agreement was New Delhi. The petitioner again requested the respondent to appoint the arbitrator within 15 days.

11. On 24th May, 2011, the petitioner again sent a reminder to the respondent to appoint the arbitrator within 15 days. The respondent did not care to reply to the petitioner's reminders dated 24th March, 2011 and 24th May, 2011.

12. On 8th November, 2011, the petitioner filed the present petition u/s 11(6) of the Arbitration and Conciliation Act for appointment of the arbitrator. The show cause notice was issued to the respondent returnable on 19th December, 2011. The respondent entered appearance through his counsel on 21st December, 2011 and filed the reply dated 9th April, 2012 in which he challenged the jurisdiction of this Court to appoint the arbitrator. The respondent also raised many other frivolous objections in the reply namely the petition was barred by limitation; the arbitrator appointed by the petitioner was not qualified; the petition has not been instituted by a duly authorized person; and the notice dated 23rd February, 2011 for appointment of the arbitrator does not mention the petitioner's address.

13. On 11th January, 2013, the counsel for the respondent sought time to file an undertaking on merits to put an end to the matter. This Court granted four weeks time in pursuance to which the affidavit dated 28th January, 2013 was filed which was not found proper by the Court. On 15th February, 2013, the counsel for the respondent sought further two weeks time to file a proper affidavit by way of undertaking in pursuance to which the respondent filed a second affidavit dated 26th February, 2013 which was also not found acceptable. Consequently, the case was fixed for hearing on 23rd April, 2013.

14. On 23rd April, 2013, the counsel for the respondent raised an objection to the territorial jurisdiction of this Court whereupon the Managing Director of the respondent company was directed to remain present in the Court on 1st May, 2013.

15. On 1st May, 2013, the learned senior counsel for the respondent raised a new plea that there was no arbitration agreement between the parties. This plea was not raised earlier at any point of time. In CS(OS) No. 340/2009, the respondent had filed IA No. 5111/2009 u/s 8 of the Arbitration and Conciliation Act, 1996 on the ground that there was a valid End User Licence Agreement dated 26th December, 2006 containing the arbitration clause and therefore, the disputes between the parties should be referred to arbitration. This Court

accepted the said plea and referred the disputes to arbitration. If there was no agreement between the parties, as stated on 1st May, 2013, the respondent is guilty of making a false statement on oath before this Court in CS(OS) No. 340/2009. Consequently, this Court appointed Mr. P. Nagesh, Advocate as Amicus Curiae to assist this Court as to the consequences of raising such a plea. At this stage, learned senior counsel for the respondent submitted that the respondent withdraws the objection to the territorial jurisdiction of this Court as well as all objections to the appointment of the arbitrator by this Court and tenders unconditional apology. The respondent was directed to file written apology and the case was fixed for consideration of the apology on 6th May, 2013.

16. The respondent has filed a written apology dated 1st May, 2013 for not appointing the arbitrator earlier and for contesting this petition challenging the appointment of the arbitrator. The apology of the respondent is reproduced hereunder:

AFFIDAVIT TENDERING APOLOGY BY RESPONDENT

AFFIDAVIT OF SHRI K. VENKATARACHALAM, S/O. LATE SHRI R. KANDASWAMY CHETTIAR, AGED 66 YEARS, DIRECTOR, ZENITH SOFTWARE LIMITED HAVING ITS REGISTERED OFFICE AT ZENITH HOUSE NO. 4, INDUSTRIAL LAYOUT, KORAMANGALA, BANGALURU-95

I, the deponent above named, do hereby solemnly affirm and state as follows:

1. That being the Director and authorized signatory of the Respondent Company, I am fully conversant with the facts of the case and competent to depose thereto.
2. That the deponent tenders unconditional apology to this Hon"ble Court for and on behalf of the Respondent Company in the above matter for not appointing the Arbitrator earlier and then contesting the aforementioned petition challenging the appointment of Arbitrator.
3. That the deponent also tenders apology for any of his action, conduct or statement made by him or on his behalf before this Hon"ble Court.

17. On 6th May, 2013, the learned Senior Counsel for the respondent submitted on instructions from Mr. K. Venkatarachalam, the Director of the respondent company present in Court that the respondent withdraws all objections including the objection of territorial jurisdiction to the appointment of arbitrator. Learned senior counsel further submitted that the respondent accepts the jurisdiction of this Court to entertain and try this petition. Learned senior counsel further submitted that this petition may be allowed and a sole arbitrator be appointed to adjudicate the disputes between the parties. This Court reserved the order on 6th May, 2013 and directed both the parties and the learned Amicus Curiae to submit the brief note of submissions. Both the parties and the learned Amicus Curiae have filed the submissions discussed hereunder.

18. SUBMISSIONS OF THE PETITIONER

The learned counsel for the petitioner submitted that the respondent has abused the process of law and has committed contempt of Court by interfering with the administration of justice. The petitioner referred to and relied on the following judgments:-

18.1 Rama Narang Vs. Ramesh Narang and Another,

22. ...In fact, the reason why a breach of clear undertaking given to the court amounts to contempt of court is that the contemner by making a false representation to the court obtains a benefit for himself and if he fails to honour the undertaking, he plays a serious fraud on the court itself and thereby obstructs the course of justice and brings into disrepute the judicial institution.

18.2 Rita Markandey Vs. Surjit Singh Arora,

12. ...However, in our considered view even in a case where no such undertaking is given, a party to a litigation may be held liable for such contempt if the court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the court ultimately finds that the party never intended to act on such representation or such representation was false.

18.3 Chandra Shashi Vs. Anil Kumar Verma,

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter other from indulging in similar acts, which shake the faith of people in the system of administration of justice.

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8. To enable the courts to ward off unjustified interference in their working those indulged in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in true sense and to the satisfaction of those who approach it in the hope that the truth would ultimately prevail....

19. SUBMISSIONS OF THE PETITIONER

19.1. The learned counsel for the respondent admitted that contesting the application u/s 11 and by raising several pleas which were not urged in Section 8 application, was not appropriate since the respondent had already submitted to the jurisdiction of this Hon"ble Court without any objection. The respondent further admitted that this conduct can as such be termed as frivolous and not bonafide but the same may not be strictly be construed as contempt of any order, direction, undertaking, etc. as stipulated u/s 2 of the Contempt of Courts Act. It was submitted that though the acts of the respondent may not fall under the definition of "contempt" under the Contempt of Courts Act, but the

respondent needs to be strictly warned for the manner in which he has used the process of the Court. The respondent having already submitted an unconditional apology on affidavit may be warned of strict consequences on account of his acts and conducts, if such acts are repeated in future.

20. SUBMISSIONS OF THE LEARNED AMICUS CURIAE

20.1. Mr. P. Nagesh, learned Amicus Curiae submitted that the order referring the parties to arbitration is akin to a consent order but cannot fall within the meaning of an undertaking to the Court. The Respondents ought to have complied with the order instead of prolonging the litigation. The conduct of the Respondent is definitely to stall the order referring the parties to arbitration and is an abuse of the process of the Court.

20.2. The Respondent be subjected to conditions like not making applications for extension of time before the Ld. Arbitrator, completing the process of arbitration within a time bound manner, asking the Respondent to pay costs and such directions which would enable the litigants to have faith in the Judiciary and the Alternative Dispute Resolution mechanism agreed to between the parties.

20.3. Learned Amicus Curie has referred to Delhi Development Authority Vs. Skipper Construction and Another, , in which the Supreme Court elucidated the concept of contempt of Court in the light of an interim order and held that even if the Respondent contends that his course of conduct is based on legal opinion, it still amounts to an intentional act and a willful disobedience of the Supreme Court order and amounts to civil contempt (para 60 & 66). In para 67, the Supreme Court held as under:-

....the contemnors have indulged in judicial adventurism by raiding one court or the other. Each of such raids is a clear abuse of the process of court calculated to obstruct the due course of the judicial proceedings and the administration of justice. Thus, we conclude that the contemnors are guilty of contempt of court. No doubt, the contemnors have tendered apology. This apology is coming for after sensing that the adventure has turned down to be misadventure, realizing that the contemnors have ended up in a cul-de-sac. An apology is not a weapon of defence forged to purge the guilt of the offences nor is it intended to operate as a panacea. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted and earnest desire to make such reparation as lies in the wrongdoers" power...

In para 71 of the judgment, the Supreme Court made the following parting remarks:

Judiciary is the bedrock and handmade of orderly life and civilized society. If the people lose faith in justice imparted by the highest court of the land, woe be to orderly life. The fragment of the civilized society would be broken up and crumbled down.

The Supreme Court deferred the sentence of imprisonment imposed on the

contemnors subject to the conditions stated in para 72 of the judgment.

20.4. The learned Amicus Curie also referred to Maruti Udyog Limited Vs. Mahinder C. Mehta and Others, , in which even though a consent order was passed by the Supreme Court upon an undertaking on affidavit given by the parties, the Supreme Court came heavily on the alleged contemnors and held that the contemnors not only prevaricated their stand at different stages in different proceedings, they intended to prolong the litigation one way or the other. The parties accepted that the disputes and differences pending between them should be referred to an arbitrator. The Petitioner agreed to refer the parties to arbitration on the representation made by the alleged contemnors that they would have furnished a bank guarantee. However, no bank guarantee was furnished and the Court held that the alleged contemnors have misled the Supreme Court and have committed gross contempt of the court.

20.5. The learned Amicus Curie submitted that the Supreme Court made similar observations in Bank of Baroda Vs. Sadruddin Hasan Daya and Another, (para 10 at page 368), where one of the parties to a consent order dragged the proceedings by filing several proceedings.

21. FALSE CLAIMS AND DEFENCES

21.1 In Maria Margarida Sequeria Fernandes and Others Vs. Erasmo Jack de Sequeria (Dead) through L. Rs., , the Supreme Court held that false claims and defences are serious problems with the litigation. The Supreme Court held as under:-

False claims and false defences

84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.

21.2 In Dalip Singh Vs. State of U.P. and Others, , the Supreme Court observed that a new creed of litigants have cropped up in the last 40 years who do not have any respect for truth and shamelessly resort to falsehood and unethical means for achieving their goals. The observations of the Supreme Court are as under:-

1. For many centuries, Indian society cherished two basic values of life i.e., "Satya" (truth) and "Ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence

period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

(Emphasis supplied)

21.3 In *Satyender Singh and Others (L.Rs. of Hari Singh) Vs. Gulab Singh and Others*, , the Division Bench of this Court following *Dalip Singh v. State of U.P.* (supra) observed that the Courts are flooded with litigation with false and incoherent pleas and tainted evidence led by the parties due to which the judicial system in the country is choked and such litigants are consuming Courts' time for a wrong cause. The observations of this Court are as under:-

2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court. Indeed, it is a nightmare faced by a Truer of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left.

(Emphasis supplied)

21.4 In *Sky Land International Pvt. Ltd. v. Kavita P. Lalwani*, (2012) 191 DLT 594, this Court held as under:-

26.20 Dishonest and unnecessary litigations are a huge strain on the judicial system. The Courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court.

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26.22 Unless the Courts ensure that wrongdoers are denied profit or undue

benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that the Courts' scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases. It becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation, ultimately they must suffer the costs. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that the dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.

22. FINDINGS

22.1. There is a valid arbitration agreement contained in Clause 11 of the End User Licence Agreement dated 26th December, 2006 between the parties which contains arbitration clause no. 11 reproduced in para 8 above.

22.2. Vide order dated 6th September, 2010 in CS(OS) No. 340/2009, this Court referred the parties to arbitration whereupon the petitioner invoked the arbitration vide notice dated 23rd February, 2011 in reply to which the respondent raised may frivolous objections including the objection to the territorial jurisdiction of this Court.

22.3 In IA No. 5111/2009 filed in CS(OS) No. 340/2009 u/s 8 of the Arbitration and Conciliation Act for reference of disputes by this Court to arbitration, the respondent had specifically accepted the jurisdiction of this Court. In para 5 of the application, the respondent stated that the "aforesaid actions are subject to be referred to the arbitrator by this Hon"ble Court". In that view of the matter, the respondent should have gracefully appointed the arbitrator upon the request having made by the petitioner on 23rd February, 2011. However, the respondent raised all possible frivolous pleas to the notice and compelled the petitioner to approach this Court for appointment of arbitrator u/s 11(6) of the Arbitration and Conciliation Act. In this petition also, the respondent raised all possible frivolous objections, including the objection to the territorial jurisdiction of this Court as a result of which the case is pending for more than one and a half years. As if this was not sufficient, on 1st May, 2013, the respondent raised a new plea that there was no agreement between the parties. Upon this Court taking a serious view of the matter, the respondent immediately withdrew all objections and consented to the appointment of the arbitrator. The respondent has now tendered a written apology for not appointing the arbitrator earlier and contesting the petition. However, the apology of the respondent does not appear to be sincere. The respondent has no respect for truth and has attempted to pollute the pure fountain of justice with tainted hands. The respondent has played tricks with this Court resulting in the appointment of the arbitrator being delayed by more than two years. This case warrants strict action to be taken. However, considering that

the Courts are overloaded with litigation, the action against the respondent is deferred and the respondent is let off for the time being with a warning that if the respondent behaves in this manner either during the arbitration proceedings or thereafter at any stage or attempts to delay the arbitration proceedings, the petitioner would be at liberty to approach this Court for appropriate action against the respondent.

CONCLUSION

23.1. In the facts and circumstances of this case, the petition is allowed and Mr. Nakul Dewan, Advocate (Mobile No. 9891325005) is appointed as sole arbitrator to adjudicate the disputes between the parties. The fees of the arbitrator shall be in terms of Delhi High Court Arbitration Centre (Administrative Costs and Arbitrator's Fee) Rules.

23.2. Copy of this order be given dasti to the learned counsel for the parties.

23.3 Copy of this order be sent to learned Arbitrator.