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**(2006) 05 DEL CK 0052**

**In the Delhi High Court**

**Case No : Arbitration Petition No. 33 of 2006**

Shanti Kiran India Pvt. Ltd.

APPELLANT

Vs

Indraprashtha Sevakari Bank Ltd.

RESPONDENT

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**Date of Decision :** 24-05-2006

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 11, 11(6)

**Citation :** (2006) 05 DEL CK 0052

**Hon'ble Judges :** Sanjay Kishan Kaul, J

**Bench :** Single Bench

**Advocate :** Ashutosh Gupta, for the Appellant; Mahesh Katayen, for the Respondent

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## **Judgement**

Sanjay Kishan Kaul, J.—The petition has been filed u/s 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred to as,

"the said Act") seeking reference of the disputes to arbitration. The reply has been filed by the respondent. However, the reply refers to the

provisions of The Delhi Co- operative Societies Act, 1972 and the learned Counsel states that the same were inadvertently referred to and the

relevant enactment is The Delhi Co-operative Societies Act, 2003 (hereinafter to be referred to as, "the Co-operative Societies Act") in terms

whereof the power is vested with the Registrar, Co- operative Societies alone to appoint an arbitrator.

2. Chapter VIII of the Co-operative Societies Act deals with the settlement of disputes. Sections 70 and 71 of the Co-operative Societies Act

prescribe the mechanism for reference of disputes to arbitration and are as under:

70. Disputes which may be referred for arbitration.

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business

of a co-operative society other than a dispute regarding disciplinary action taken by the co-operative society or its committee against a paid

employee of the co-operative society arises -

(a) among members, past members or person claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the co-operative society, its

committee or any officer, agent or employee of the co-operative society or liquidator, past or present; or

(c) between the co-operative society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or

past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the co-operative

society; or

(d) between the co-operative society and any other co-operative society, between a co-operative society and liquidator of another co-operative

society or between the liquidator of one co-operative society and the liquidator of another co-operative society

such disputes shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect

of such disputes.

(2) If any question arises whether a dispute referred to the Registrar under this Section is or is not a dispute touching the constitution, management

or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

(3) The Registrar shall decide the aforesaid question within a period of ninety days and in case the aforesaid question, as enumerated under Sub-

section (2) is not decided within the stipulated period of ninety days, the dispute shall be deemed to have been admitted u/s 70 of this Act and the

same shall be referred for decision u/s 71.

...

(5) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all

arbitrations under this Act, as if proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.

71. Reference of disputes to arbitration.-

(1) The Registrar may, on receipt of the reference of dispute u/s 70 "-

(a) decide the dispute himself, or

(b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf, or (c) refer it for disposal to an arbitrator.

(2) The method, manner of selection, appointment of arbitrators, their qualifications, terms and conditions of appointment and fees payable to them shall be as prescribed under the rules.

(3) (a) For selecting persons for appointment as arbitrators, the Government shall constitute a selection committee which shall consist of the following, namely:

(i) Minister in charge of the Department of Co-operative Societies

- Chairman

(ii) One elected member of the Delhi Legislative Assembly

- Member

(iii) Secretary (Co-operative) to the Government

- Member (iv) Secretary (Law and Justice) to the Government

- Member

(v) Registrar, Co-operative Societies

- Member

(b) All decisions of the selection committee shall be taken by majority.

(4) The Registrar may withdraw any reference under Clause (b) of Sub-section (1) or referred under Clause (c) of Sub-section (1) and decide it himself or refer the same to another arbitrator for decision.

(5) The Registrar or any other arbitrator to whom a dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory orders as he may deem necessary in the interest of justice.

3. In respect of the aforesaid, learned Counsel for the petitioner points out that the petitioner had issued a notice dated 27.05.2005 to the

Registrar, Delhi Co-operative Societies seeking reference of disputes to arbitration. In terms of Sub-section (2) of Section 70 of the said Act, the

question whether a dispute is referable to arbitration has to be decided by the Registrar, whose decision is final. However under Sub-section (3) of

Section 70, the Registrar is required to decide such a question within a period of 90 days, failing which, the dispute is deemed to have been

admitted u/s 70 of the Co-operative Societies Act and would be liable for reference of decision u/s 71.

4. Section 71 prescribes that the dispute may be decided by the Registrar himself or may be transferred to any person invested with that power by

the Government or refer it for disposal to the Arbitrator. The most material provision is Sub-section (5) of Section 70 of the Co-operative

Societies Act, which has now been introduced in terms whereof the provisions of the said Act are to apply to all arbitration proceedings under the

Co-operative Societies Act. Section 11 of the said Act provides for the procedure for appointment of the Arbitrator and in terms of Sub-section

(4) thereof on the failure to appoint an Arbitrator, it is the Court which has to appoint the Arbitrator. There is no other mechanism provided under

the Co-operative Societies Act in the eventuality of the failure of the Registrar to either commence the proceedings himself or appoint the person to

hold the arbitration proceedings.

5. The legal position, which, thus, emerges is that the provisions of Sub-section (4) of Section 11 of the said Act shall come into force with the

result that this Court is vested with the power to appoint the Arbitrator on account of the failure of the Registrar to exercise his powers under

Sections 70 and 71 of the Co-operative Societies Act.

6. In view of the aforesaid, Mr. Amit Bansal, Advocate, N-8, Greater Kailash Part I, New Delhi - 110 048 (Mobile No. 98100-72413) is

appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties. The fee of the Arbitrator shall be Rs. 30,000/- apart from

out of pocket expenses to be borne equally by the petitioner and the respondent.

7. The petition stands disposed of.