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

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Date of Decision: 18th June, 2021

+ ARB.P. 202/2021

MONICA KHANNA & ORS. Petitioners
Through: Mr. Abhay Mahajan, Advocate

versus

MOHIT KHANNA & ANR. Respondents
Through: Mr. Amit Mishra, Advocate

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. The petitioner is seeking appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act.
2. The arbitration agreement between the parties is contained in clause XIII of the Memorandum of Family Arrangement-cum-Deed of Relinquishment dated 09th June, 2020 according to which the parties agreed for reference of disputes to the sole arbitrator, Mr. Sachin Dev Sharma, Chartered Accountant.
3. The arbitration agreement between the parties is not disputed. The respondents have no objection to the reference of disputes to the sole arbitrator named in the arbitration agreement.
4. Learned counsel for the petitioner submits that the sole arbitrator named in the arbitration agreement is not competent to act as an arbitrator in terms of Section 12(5) read with the Seventh

Schedule of the Arbitration and Conciliation Act as the named arbitrator is a consultant/advisor to the respondent; and is a director and shareholder in PEB Steel Lloyd (India) Ltd. Reference is made to para 9 of the petition which is reproduced hereunder:

“9. That the Petitioners have become aware that the proposed Arbitrator, named in the said Memorandum, is a Consultant/Advisor to the Respondents, in his capacity as a professional Chartered Accountant; is a Director and Shareholder in PEB Steel Lloyd (India) Ltd. an affiliate/subsidiary company of Lloyd Insulation India Limited (a family concern of Late Chander Prakash Khanna); has contacted Petitioners No. 1 and 2 indicating that they are not entitled to any amounts, other than release of the Fixed Deposits already standing in their names. All of the foregoing has rendered Mr.Sachin Dev Sharma ineligible to be appointed, and act, as an Arbitrator, in terms of Section 12(5) read with the Seventh Schedule of the Arbitration and Conciliation Act, 1996. Consequently, the Petitioners herein pray unto this Hon'ble Court to appoint an independent Arbitrator for adjudication of disputes/differences between the parties arising out of the said Memorandum.”

5. The respondents have filed the reply in which they have admitted that the named arbitrator is a consultant/advisor to the respondents in his capacity as a professional Chartered Accountant and is a director and shareholder of PEB Steel Lloyd (India) Ltd. Para 9 of the reply of the respondents is reproduced hereunder:

9. The contents of para 9 of the petition as stated are wrong and denied. It is denied that petitioners have become aware now that the proposed Arbitrator, named in the said Memorandum, is a consultant/Advisor to the Respondents in his capacity as a professional chartered Accountant is a Director and Shareholder in PEB Steel Lloyd (India) Ltd. an affiliate/subsidiary company of Lloyd Insulation (India) Ltd.

In this regard it is submitted that petitioners have themselves agreed to the name of Mr. S.D. Sharma as an Arbitrator, in case of any dispute/differences between the parties in the Memorandum, for the reason that he knew both Late Mr. Chander Prakash Khanna and Late Mrs. Nirmal Khanna and know all the family for last 40 years. Further it was at the insistence of the petitioners that name of Mr. S. D. Sharma was decided as Arbitrator in the said Memorandum. In fact on earlier occasion also in 2014 while the Late Mr. Chander Prakash Khanna and Late Mrs. Nirmal Khanna both were alive, at that time also the name of Mr. S.D. Sharma was agreed by all the family members, including Petitioners, to appoint him as a sole arbitrator to settle all the disputes with respect to various assets and properties owned by the family. However, the said proceeding did not initiate/proceeded further at that time.

Petitioners were well aware of the fact that Mr. S. D sharma, named Arbitrator in the said Memorandum, is an independent Director of the PEB Steel Lloyd (India) Ltd. since 24.9.2018, while signing the said Memorandum in June 2020. He is not the Director or Shareholder in PEB steel Lloyd (India) Ltd., as has been alleged. It is denied for want of knowledge that Arbitrator has contacted Petitioner No.1 & 2 indicating that they are not entitled to any amounts, other than release of the Fixed Deposits already standing in their names. It is submitted that Petitioners are falsely and frivolously raising these issues with regard to appointment of Arbitrator, while there is already a named arbitrator in the Memorandum, just to delay performing their obligation under the said Memorandum and harass the Respondents particularly when Respondents have honored their obligation.

It is denied that for the any reason much less as alleged has rendered Mr. Sachin Dev Sharma ineligible to be appointed and act as Arbitrator, in terms of Section 12(5) read with Seventh Schedule of the Arbitrator and Conciliation Act, 1996. It is, thus, prayed to this Hon'ble Court to not to appoint other Arbitrator for adjudication of dispute/differences between the parties particularly when there is no doubt on the

integrity and neutrality of the Mr. S. D.Sharma as an Arbitrator, who has been appointed with the consent and at the instance of Petitioners. Thus, Petitioner cannot now for false and frivolous reasons challenge him being appointed as Arbitrator.”

6. Vide order dated 26th March, 2021, this Court directed the named arbitrator, Mr. Sachin Dev Sharma, Chartered Accountant to file an affidavit with respect to his relationship between the parties in terms of the Seventh Schedule under Section 12(5) of the Arbitration and Conciliation Act.

7. The named arbitrator Mr. Sachin Dev Sharma, has filed the affidavit in which he has admitted that he is an independent director in PEB Steel Lloyd (India) Ltd. in which respondent No.1 is also a director. He has further admitted that he had acted as a mediator between the parties.

8. Learned counsel for the petitioner urged at the time of the hearing that the named arbitrator is not competent to act as an arbitrator under the Seventh Schedule read with Section 12 (5) of the Arbitration and Conciliation Act.

9. Learned counsel for the respondent urged at the time of the hearing that the named arbitrator be appointed as an arbitrator to adjudicate the disputes between the parties. It is further submitted that the named arbitrator is an independent arbitrator in PEB Steel Lloyd (India) Ltd. in which respondent No.1 is also a director. It is further submitted that the petitioner having agreed to the named arbitrator cannot wriggle out of the arbitration agreement.

10. On careful consideration of the rival contentions of the parties,

this Court has serious doubt to the independence of the named arbitrator and therefore, it would be appropriate and in the interest of justice to appoint an independent arbitrator to adjudicate the disputes between the parties.

11. Learned counsel for the petitioner submits that the petitioner has claims to the tune of over Rs.5 crore against the respondent.

12. The petition is allowed and Mr. Saurabh Kirpal, Senior Advocate, Mobile: 9811027511 is appointed as a sole arbitrator to adjudicate the disputes between the parties.

13. The learned arbitrator shall ensure the compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

14. The fees of the arbitrator shall be according to Fourth Schedule of the Arbitration and Conciliation Act, 1996.

15. Copy of this order be sent to the learned Arbitrator.

JUNE 18, 2021

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J.R. MIDHA, J.