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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 331/2020**

SMT. MANJU GUPTA & ORS..... Petitioners
Through: Mr. S.D. Singh, Mr. Kamla Prasad,
Mrs. Meenu Singh, Mr. Siddharth
Singh Advs. (M. 9958969007).

versus

SHRI VILAS GUPTA & ORS..... Respondents
Through: Mr. Ankit Singal & Mr. Samyak
Jain, Advs for R-4 – R-6 (M.
9899914370).

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AND

+ **ARB.P. 773/2022**

SMT MANJU GUPTA Petitioner
Through: Mr. S.D. Singh, Mr. Kamla Prasad,
Mrs. Meenu Singh, Mr. Siddharth
Singh Advs.

versus

SMT MEENU SINGHAL..... Respondent
Through: Mr. Shivam Goel, Ms. Ramya S
Goel, and Mr. Akash Katiyar, Advs
(M. 9871339314).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **05.02.2024**

1. This hearing has been done through hybrid mode.
2. The present two petitions are filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, '*the Act*'). The dispute in the said matters has arisen as per clause 3.15 of the Memorandum of Family Settlement (hereinafter, '*MFS*'). There are two issues, which are agitated in these two petitions i.e., -

(i) whether the petitions have to be treated as two petitions or one proceeding, for the purpose of arbitral proceedings; and

(ii) in respect of refund of the fee which has been paid to the Arbitrator previously appointed;

3. After hearing the matter on the last date, the Court had directed as under:-

“4. The Court notices that the Respondent Nos.1 to 3 are not represented. The Court would require a complete statement of the entire fee, which has been paid to the Arbitrator and pursuant to which order. Let a joint statement be filed by the parties in respect of the following aspects.

(i) Procedural Orders, directing the amount of fee to be deposited to the Arbitrator; and

(ii) the actual amount deposited by each of the parties.

4. The petitions were heard and vide judgment dated 22nd January, 2021, and on 6th March, 2023 the disputes were referred to a Id. Sole Arbitrator.

5. The Id. Arbitrator entered reference on 12th February, 2021 and on 19th February, 2021 the Id. Arbitrator directed the parties to deposit Rs.5,00,000/- each.

6. Thereafter, the Id. Sole Arbitrator has passed some procedural orders.

7. The Id. Arbitrator has also decided a Section 17 application under the Act on 15th March, 2021. Subsequently, further procedural orders have been passed on 19th April, 2021, 22nd June, 2021 and 20th August, 2021, 20th September, 2021, 25th October, 2021, 24th November, 2021 and 23rd December, 2021.

8. On 23rd December, 2021, the Id. Arbitrator also decided an application for impleadment.

9. Again, on 5th February, 2022, another procedural order was passed.

10. In the meantime, an appeal was filed for impleadment and arbitral proceedings remain stayed on 3rd March, 2022 till 24th July, 2023.

11. On 5th September, 2023, the Id. Arbitrator resigned. By the said date, the total amount which was deposited was Rs.14,50,000/-. Though, the directions were given for deposit of total of Rs.20,00,000/- by the Id. Arbitrator.

12. The resignation was sent by the Id. Arbitrator to the High Court of Delhi directly which led to the appointment of the new Arbitrator. The said Arbitrator entered reference vide order dated 13th September, 2023. The parties, at this stage, therefore seek refund of the fee paid to the Id. Arbitrator.

13. Ld. Counsel for the Petitioners and Respondents have made their respective submissions. The only relief they seek is for refund of some part of the fees paid to the Id. Arbitrator.

14. Ld. Counsel for the Petitioners submits that except two applications over the period of 12 months only some procedural orders have been passed. On behalf of the Respondents it is submitted that though Rs. 20 lakhs were directed, Rs. 14.5 lakhs has been deposited. One application under Section 16 of the Act and two applications for impleadment were heard and decided. The proceedings were at an initial stage, when the Id. Arbitrator has resigned. Both Counsels submit that since the parties have to now pay a new arbitrator and they are individual litigants, they have enormous hardship as a

substantial sum has been paid and fresh round of fees would have to be paid once again.

15. The Court has heard the parties. Issues concerning fees of Id. Arbitrators has been raised from time to time leading to the introduction of the Fourth Schedule of the Act. A perusal of the fourth schedule of the Arbitration Act shows that w.e.f. 2018, the fee that is payable to Arbitrator is as under:-

*[THE FOURTH SCHEDULE
[See section 11(14)]*

<i>Sum in dispute</i>	<i>Model fee</i>
<i>Up to Rs. 5,00,000</i>	<i>Rs. 45,000</i>
<i>Above Rs. 5,00,000 and up to Rs. 20,00,000</i>	<i>Rs. 45,000 plus 3.5 per cent. of the claim amount over and above Rs. 5,00,000</i>
<i>Above Rs. 20,00,000 and up to Rs. 1,00,00,000</i>	<i>Rs. 97,500 plus 3 per cent. of the claim amount over and above Rs. 20,00,000</i>
<i>Above Rs. 1,00,00,000 and up to Rs. 10,00,00,000</i>	<i>Rs. 3,37,500 plus 1 per cent. of the claim amount over and above Rs. 1,00,00,000</i>
<i>Above Rs. 10,00,00,000 and up to Rs. 20,00,00,000</i>	<i>Rs. 12,37,500 plus 0.75 per cent. of the claim amount over and above Rs. 1,00,00,000</i>
<i>Above Rs. 20,00,00,000</i>	<i>Rs. 19,87,500 plus 0.5 per cent. of the claim amount over and above Rs. 20,00,00,000 with a ceiling of Rs. 30,00,000</i>

Note: — In the event, the arbitral tribunal is a sole arbitrator, he shall be entitled to an additional amount of twenty-five per

cent. on the fee payable as per the table set out above.

16. Thus the maximum fees payable to an arbitrator is Rs. 30 lakhs. In the present case the quantification of the assets under the Family settlement has not been done. Thus, the Court is actually considering the highest fees payable under the Act as the standard to be adopted for the purposes of this order.

17. In addition, a reference is also made to the Rules of the Delhi International Arbitration Centre (DIAC) which prescribes the stages at which the amounts ought to be paid to the Id. Arbitrator as under:-

SCHEDULE F
Rule for Release of fee of Arbitrator
(Introduced vide minutes dated 26.10.2020)

Fees shall be disbursed stage-wise to the Arbitral Tribunal in the following manner:

<i>Sr. Nos.</i>	<i>Stage of the case</i>	<i>Fee payable</i>
<i>1</i>	<i>Upon Framing of issues or disposal of application under Section 16 or 17 of the Arbitration and Conciliation Act 1996, whichever is earlier</i>	<i>20% of the total fees</i>
<i>2</i>	<i>Upon completion of Claimant's Evidence (on merits of dispute).</i>	<i>20% of the total fees</i>
<i>3</i>	<i>Upon completion of Respondent's Evidence (on merits of the dispute).</i>	<i>20% of the total fees</i>
<i>4</i>	<i>After passing of the Award</i>	<i>40% of the total fees</i>

NOTE:

- 1) *The aforesaid fee schedule shall also apply to following cases:*
 - a) *Matters stayed or adjourned sine die or pending before the NCLT or like authorities.*
 - b) *Recusal by the Arbitrator(s).*
 - c) *Demise of the Arbitrator(s) (Fees will be paid to his/her legal heirs).*
 - d) *Proceedings terminated or withdrawn.*
 - e) *Termination of the mandate of the Arbitrator(s) by efflux of time as provided in the Act.*
- 2) *In case of occurrence of any of the events mentioned in point 1) prior to framing of issues, it shall be the discretion of the Chairperson of the Committee to determine the fees payable to the Arbitrator.*
- 3) *In cases decided on preliminary issue, it shall be the discretion of the Chairperson of the Committee to release such fees of the Arbitrator as may be deemed appropriate having regard to factors, which may include nature of the claim, number of hearings, etc.*
- 4) *If the application under Section 16 is allowed by the Arbitrator subsequent to framing of issues, then the Arbitrator shall be entitled to the fees as payable up to that stage.*
- 5) *It is clarified that each slab in the above table shall apply only upon conclusion of the relevant stage and in case a particular stage is not concluded, the previous slab shall apply.*
- 6) ***Termination of proceedings on settlement between the parties*** - *In case of settlement between the parties to a dispute, the Arbitral Tribunal shall be paid minimum of 1/3rd of the total fees if such settlement is arrived at before conclusion of the claimant's evidence. If the settlement is arrived at any subsequent stage, the fees of the Arbitral Tribunal shall be paid as per the above Schedule depending on the stage at which the settlement is arrived at*
- 7) *Notwithstanding this Schedule, it shall be the discretion of the Chairperson of the Committee to fix/revise the fees*

payable to the Arbitrator on case to case basis.

18. Though, strictly the present arbitration would not be covered by the DIAC Rules in terms of the reference which was made by the Court, Id. Counsel for the Petitioner submit that considering that only some procedural orders have been passed and three applications have been decided, a substantial sum has already been paid to the Id. Arbitrator. The reference order dated 22nd January, 2021 clearly records in paragraph 34 which reads as under:

34. The learned Arbitrator will be entitled to fees in accordance with the Fourth Schedule to the 1996 Act.

19. The total fees directed and paid by the parties is as under:

(i) <u>The deposits made by the claimants</u>	(i) on 22.03.2021 Rs. 1,00,000/- (ii) on 19.07.2021 Rs. 4,00,000/- (iii) on 24.12.2021 Rs. 2,50,000/-
Total amount deposited by the claimants	Rs. 7,50,000/-
(2) Deposits made by the respondents as per the information to the claimants	(i) on or before 15.03.2021 Rs. 2,50,000/- (ii) on 25.08.2021 Rs. 1,25,000/- (iii) on 22.09.2021 Rs. 1,00,000/- (iv) on 14.02.2022 Rs. 1,25,000/- (v) on 03.03.2022 Rs. 1,00,000/-
As per the information to the claimants total amount paid by the respondents	Rs.7,00,000/-
Total amount paid to the Learned Arbitrator by both the parties	Rs. 14,50,000/- (Rupees Fourteen Lakhs Fifty Thousand only)

20. The Court has perused the various orders passed by the Id. Arbitrator. Between the period January, 2021 till February, 2022, there have been a

total number of twelve hearings, out of which, three orders are substantive in nature. The issues were yet to be framed in the matter and the arbitral proceedings itself remained stayed for more than a year. At that stage, the Id. Arbitrator has resigned.

21. Considering this position and the amount of fee that has been paid, this Court is of the opinion that the amount that has been deposited is substantial. The parties are individual litigants and it is a suit for partition, basically seeking implementation of a memorandum of family settlement.

22. Under these circumstances, with the consent of the parties, the fee of the Id. Arbitrator is fixed at Rs.7,50,000/-. In addition, the Id. Arbitrator may charge a sum of Rs.1,00,000/- for administrative expenses and other expenses.

23. Thus, the remaining amount out of Rs.14,50,000/- is liable to be refunded to the parties. Accordingly, a sum of Rs.6,00,000/- be deposited with the worthy Registrar General within four weeks. The same would thereafter be released to both the parties i.e., Rs.3,00,000/- each to the Petitioners and Respondents.

24. Petitions are disposed of with all pending applications, if any. Copy of this order be communicated to the Id. Arbitrator by the Registry.

PRATHIBA M. SINGH, J.

FEBRUARY 05, 2024

mr/bh