



**GOVT OF N.C.T OF DELHI v. YASIKAN ENTERPRISES PVT. LTD**  
**CASE NO.: [DEL] O.M.P. 639 of 2008**  
**[Decided on 16/10/2018]**

**HELD THAT:** Arbitration Agreement is with a Proprietorship concern “Yasikan Enterprise” and arbitration invoked by “Yasikan Enterprise Pvt Ltd” a company of the proprietor is not legal and tenable.

**BRIEF FACTS:**

1. The appellant called a tender for providing sanitation and scavenger services inside and outside the building including reception services from designated places for the Delhi Sachivalaya/Secretariat, I.P. Estate, New Delhi.
2. One M/s Yasikan Enterprises - a sole proprietary concern of Shri Jagdish Kumar submitted his offer and the work was awarded to him.
3. When dispute arose between the Parties, M/s. Yasikan Enterprises Pvt. Ltd the same was referred to a sole arbitrator and an award was passed against the appellant.
4. The appellant challenged the award mainly on the ground that the arbitration agreement was with the proprietor of Yasikan Enterprises and not with Yasikan Enterprises Pvt Ltd.
5. **DECISION:** Petition allowed.

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**6. REASON:**

- i) *The first submission of the Petitioner is that there was no arbitration clause with the company M/s Yasikan Enterprises Pvt. Ltd.*
- ii) *The contract was awarded to the firm M/s Yasikan Enterprises, which was a sole proprietary concern. Accordingly in the absence of an arbitration agreement, the arbitration proceedings are void ab initio and the award is liable to be set aside.*
- iii) *The Respondent, on this issue, submits that the reference having been made by the Lieutenant Governor on the request of M/s Yasikan Enterprises Pvt. Ltd., the same does not deserve to be set aside.*
- iv) *As per Section 7 of the Act, every arbitration agreement has to be in writing between the parties. It also has to be signed by the parties.*

**SECTION 7 OF ARBITRATION AND RECONCILIATION ACT, 1996**

*Arbitration agreement. —*

*(1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.*

*(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.*

*(3) An arbitration agreement shall be in writing.*

*(4) An arbitration agreement is in writing if it is contained in—*

*(a) a document signed by the parties;*

*(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or*

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*(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.*

*(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.*

- v) In the present case, there is no arbitration agreement signed between the Petitioner and M/s Yasikan Enterprises Pvt. Ltd. The company was not awarded the contract.*
- vi) The offer was submitted by M/s Yasikan Enterprises as a sole proprietary firm. It was signed by Mr. Jagdish Kumar as the sole proprietor.*
- vii) The company being a distinct legal entity from the sole proprietorship, the arbitration clause, does not apply devolve upon the company. Moreover, the arbitration clause is an independent clause which is not assignable.*
- viii) This is clear from a reading of Delhi Iron and Steel Company Limited v. U.P. Electricity Board & Another (2002) 61 DRJ 280.*

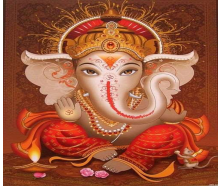
*“17. So far as the arbitration clause is concerned it was held that this contract is personal in its character and incapable of assignment on that ground. However it is a settled law that an arbitration clause does*

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*not take away the right of a party of a contract to assign it if it is otherwise assignable.*

*18. While distinguishing between two clauses of assignment the Supreme Court observed that a right of obligations under a contract cannot be assigned except with the consent of the promisee, and when such consent is given, it is really a novation resulting in substitution of liabilities. In other words, rights under a contract are assignable unless the contract is personal in its nature or the rights are incapable of assignment either under the law or under an agreement between the parties.*

*19. As observed above the petitioner had the liability to perform all contracts of Victor Cables and all benefits arising therefrom and liabilities thereunder in all or in any form. It does not mean that he had also the obligation to get the dispute settled by way of arbitration as agreed by Victor Cables. These are two different and distinguished liabilities. The former is assignable where the latter is not. Thus the undertaking by the petitioner that “all contracts of Victor Cables Corporation and all benefits arising therefrom and liabilities thereunder in all or in any form shall be of the petitioner” was in the form of discharging all the liabilities of the Victor Cables and there was nothing personal about such contracts whereas clause of arbitration was personal in its character and was even otherwise incapable of assignment.*

*20. In view of the foregoing reasons the unilateral reference of the alleged disputes to the respondent No.2 and unilateral appointment of*

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*respondent No.2 as arbitrator are hereby held illegal and inoperative and set aside.*

- 7. Petition is allowed.” Thus, the reference to arbitration was contrary to law.*
- 8. The award is liable to be set aside on this sole ground. However, this Court is also examining the matter on merits. After examining the merits the award was set aside on merits also.*

**CONCLUSION:** *The company being a distinct legal entity from the sole proprietorship, the arbitration clause, does not apply devolve upon the company. Moreover, the arbitration clause is an independent clause which is not assignable. This is clear from a reading of Delhi Iron and Steel Company Limited (Supra) given above.*

*“17. So far as the arbitration clause is concerned it was held that this contract is personal in its character and incapable of assignment on that ground. **However it is a settled law that an arbitration clause does not take away the right of a party of a contract to assign it if it is otherwise assignable.***

*18. While distinguishing between two clauses of assignment the Supreme Court observed that a right of obligations under a contract cannot be assigned except with the consent of the promisee, and when such consent is given, it is really a novation resulting in substitution of liabilities. **In other words, rights under a contract are assignable unless the contract is personal in its nature or the rights are incapable of assignment either under the law or under an agreement between the parties.***

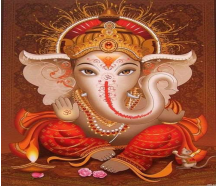
**Arbitration Clause is more of personal nature and independent clause , in absence of express consent of the promise, it cannot be assigned. And hence**

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**in above given case the arbitration clause invoked by Private Limited on behalf of proprietorship concern is invalid and not tenable.**

**DISCLAIMER:** the case law presented here is only for sharing information and knowledge with the readers. The views are personal ,shall not be taken as professional advice. In case of necessity do consult with professionals for more clarity and understanding on subject matter.

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