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

+ **ARB.P. 630/2016**

RAJEEV DHINGRA & ANR.

..... Petitioners

Through: Ms Manvi Gupta and Mr Rajat
Kumar, Advocates.

versus

MIND & SOUL FITNESS PRIVATE LIMITED Respondent

Through: Ms Amrit Kaur Oberoi with Mr Utsav
Jain, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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02.01.2017

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter the 'Act') , *inter alia*, praying that a Sole Arbitrator may be appointed in terms of Clause 13.2 of the Lease Deed for adjudication of the disputes between the parties.
2. The petitioner had entered into a Lease Deed dated 29.09.2014 for leasing out the premises consisting of the three floors measuring 2000 Sq.ft each - first, second and third floors - of the property bearing no.G-3, Pushkar Enclave, Paschim Vihar, New Delhi-110063.
3. The Lease Deed included an arbitration clause, which is set out below:-

“13.2 In case of any dispute arising between the Parties in respect of this Lease Deed the same shall be referred to an arbitrator to be appointed by both the Parties mutually and the arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 and shall be held in Delhi/New Delhi.”

4. It is the petitioner's case that it had not received rentals in terms of the said Lease Deed and further the terms of the said lease had been breached by the respondent.

5. In the circumstances, the petitioner sent a notice dated 14.05.2016 invoking the arbitration clause. However, the same was returned un-served. Thereafter, the petitioner sent an e-mail dated 19.05.2016. However, it did not receive any response thereto.

6. The learned counsel appearing for the respondent does not dispute the existence of the Lease Deed or the Arbitration Clause. She, however, states that the notice invoking the arbitration was not received as the premises on which it was addressed is under the control of one Mr Surinder Singh Arora and his son Mr Gaurav Arora. She further submits that this fact was also known to the petitioner.

7. The learned counsel has earnestly contended that the respondent had entered into an agreement with Mr Surinder Singh Arora in respect of the gymnasium that was being run at the said premises. She states that Mr Gaurav Arora who is the son of Mr Surinder Singh Arora was engaged as a caretaker of the gymnasium. He had subsequently ousted the respondent from the said premises, therefore, the respondent is no longer in possession of the premises in question. She further states that Mr Surinder Singh Arora had also filed a suit in this Court being CS No.2881/2015 (which has now been transferred to the District Courts) and had also obtained an interim order staying the dispossession of Mr Surinder Singh Arora from the said premises.

8. I have heard the learned counsel for the parties.

9. It appears that there are serious disputes between the respondent and Mr Surinder Singh Arora/Mr Gaurav Arora. However, the existence of the arbitration clause between the petitioner and the respondent is not disputed. The petitioner had sent a notice at the address as indicated in Clause 12.1 of the Lease Deed. It is also not disputed that the said address is the registered office of the respondent company. In the circumstances any objection that the arbitration clause had not been invoked by addressing the letter of invocation at the correct address is not sustainable.

10. Since the only question to be examined in the present case is regarding the existence of the arbitration clause - which is not disputed - it is necessary that an Arbitrator be appointed to adjudicate the disputes between the parties.

11. Accordingly, Justice M. L. Mehta (Retired) a former Judge of this Court is appointed as an Arbitrator to adjudicate the disputes between the parties. The Arbitrator shall fix the fees in consultation with the parties.

12. The present appointment is subject to the necessary disclosure being made under Section 12 of the Act and the Arbitrator not being ineligible under Section 12(5) of the Act.

13. The parties are at liberty to approach the Arbitrator for holding a preliminary hearing.

14. The petition is disposed of.

VIBHU BAKHRU, J

JANUARY 02, 2017/MK