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

+ ARB.P. 448/2017

JMD LTD.

..... Petitioner

Through: Mr. T.S. Thakraon, Advocate.
versus

CELEBRITY FITNESS INDIA PVT. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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10.01.2019

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short '1996 Act'). Notice in this petition was issued on 24.07.2017. Since service could not be effected via ordinary mode, liberty was given to the petitioner to serve the respondent through publication.

2. The Joint Registrar (Judicial) in the proceedings dated 26.11.2018 has recorded that the respondent has been served via publication.

3. There is no appearance on behalf of the respondent despite service. In these circumstances, this Court is left with no option but to proceed further in the matter.

4. It is the petitioner's case that it executed 9 lease deeds with the respondent. Out of the 9 lease deeds, 6 lease deeds are dated 28.09.2009, while the remaining 3 lease deeds are dated 07.10.2009. It is petitioner's case that via these lease deeds showrooms/ commercial space located on the 3rd floor of the commercial complex referred to as "JMD Regent Arcade", situate at village Sikanderpur-Ghoshi, Mehrauli Gurgaon Road, District

Gurgaon, were let out on monthly rent to the respondent.

5. According to the petitioner, the respondent was defaulting in making payment of lease rents *vis-a-vis* the aforementioned showrooms/ commercial spaces. It is stated that till March, 2017 the arrears towards lease rent had reached a figure of Rs.36,33,677/-.

5.1 It is in these circumstances that the petitioner served upon the respondent a notice dated 01.04.2017. By virtue of this said notice, the petitioner terminated all 9 lease deeds. The aforementioned notice was followed by yet another notice dated 08.05.2017, whereby, the petitioner triggered the arbitration agreement contained in the aforementioned lease deeds. The arbitration agreement is contained in Clause 20 of the aforementioned lease deeds. Clause 20 contained in the 9 lease deeds is identically worded.

6. It is in this backdrop that the petitioner has approached the Court via the instant petition. Since there is no rebuttal to the assertions made in the petition, one would have to accept the same as they are backed by an affidavit.

7. To be noted, the arbitration agreement, which, as indicated above, is contained in Clause 20 of the lease deed(s), is extracted hereafter: -

“20. ARBITRATION:

In case of any dispute arising or accruing in respect of this Deed or upon matters incidental, related or consequent hereto, the same shall be referred for Arbitration in consonance with the provisions of the Indian Arbitration and Conciliation Act, 1996. The place of arbitration shall be Delhi and the language of the arbitration shall be English. The Arbitrator for the purpose of present Deed shall be appointed as per the provisions of the Indian Arbitration and Conciliation Act, 1996.

The Lessor and the Lessee shall mutually appoint the Arbitrator for the purpose of present Deed. The Lessee and the Lessor agree that the said Arbitrator shall be bound to give reasons while passing the award. The Arbitrator shall also be entitled to award interest, damages and costs in terms of this Deed. The Arbitrator shall have the power to pass interim orders.”

8. Counsel for the petitioner, in the course of argument, has informed me that the respondent neither responded to the termination notice dated 01.04.2017 nor to the notice dated 08.05.2017 whereby the arbitration agreement was triggered.

8.1 It is, however, conceded by learned counsel for the petitioner that the arbitration agreement is neither registered nor stamped. To my mind, the absence of registration of the parent agreement which contains the arbitration clause would not come in the way of the petitioner approaching the Court for appointment of an Arbitrator. (See *SMS Tea Estates Private Limited vs. Chandmari Tea Company Private Limited*, (2011) 14 SCC 66). In so far as the stamp duty is concerned, the same is a matter which can be examined by the Arbitrator as well in terms of the provisions of Section 33 of the Indian Stamp Act, 1899 which gives the learned Arbitrator, amongst others, the power to collect evidence and, therefore, to impound the instrument chargeable to duty if found to be inadequately stamped. This approach is adopted in view of the insertion of sub-section (6A) in Section 11 of the 1996 Act. This Court need not detain itself qua this aspect of the matter once it comes to the conclusion that the arbitration agreement is in existence. (See *Sandeep Soni v Sanjay Roy & Ors*, Arb. P. 413/2018, dated 06.09.2018)

9. As indicated above, since the respondent has chosen not to enter appearance in the matter, this Court is left with no choice but to proceed

with the adjudication of the instant petition. Furthermore, counsel for the petitioner says that he has no difficulty in this Court appointing a neutral Arbitrator in the matter.

10. Accordingly, Mr. M.S. Sabharwal, (Contact No.9711119304), Former Additional District Judge, is appointed as Arbitrator. The Arbitrator will be paid his fee as per the Fourth Schedule appended to the 1996 Act. The learned Arbitrator, before proceeding further in the matter, will issue notice to the respondent. The respondent will have liberty to file its defence and also lodge a counter claim, if found necessary.

11. The petition is disposed of in the aforesaid terms.

12. Before entering upon reference, the learned Arbitrator will file a declaration as required under Section 12 and other attendant provisions of the 1996 Act.

13. The Registry will dispatch a copy of this order to the learned Arbitrator.

RAJIV SHAKDHER, J

JANUARY 10, 2019

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