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

Decided on 7th January, 2021

+ **ARB.P. 31/2021**

PARSVNATH ESTATE DEVELOPERS PVT LTD. Petitioner

Through: Mr. Vijay Nair, Mr.
Manoranjan Sharma, Mr. Varun Garg and
Mr. Rishu Kant Sharma, Advs.

versus

**FACEBOOK INDIA ONLINE
SERVICES PVT LTD**

..... Respondent

Through: Mr. Tejas Karia, Mr. Varun
Pathak, Mr. Gauhar Mirza, Ms. Nayantara
Narayan, Mr. Shyamal Anand and Mr.
Thejesh Rajendran, Advs.

AND

+ **OMP(I)(COMM) 2/2021**

**FACEBOOK INDIA ONLINE
SERVICES PVT LTD
THROUGH ITS AUTHORISED SIGNATORY
MS. SANJH PUROHIT**

..... Petitioner

Through: Mr. Tejas Karia, Mr. Varun
Pathak, Mr. Gauhar Mirza, Ms. Nayantara
Narayan, Mr. Shyamal Anand and Mr.
Thejesh Rajendran, Advs.

Versus

**PARSVNATH ESTATE DEVELOPERS PVT LTD.
THROUGH ITS AUTHORISED REPRESENTATIVE MR.
VIVEK GARF**

...Respondent

Through: Mr. Vijay Nair, Mr.
Manoranjan Sharma, Mr. Varun Garg and
Mr. Rishu Kant Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)
% **07.01.2021**
(Video-Conferencing)

C .HARI SHANKAR, J.

IA 193/2021 and 151/2021

1. Allowed, subject to all just exceptions.
2. The applications stand disposed of.

ARB.P. 31/2021 and OMP(I)(COMM) 2/2021

1. Arb. P. 31/2021 and OMP (I) (COMM) 2/2021 arise out of a Sub-License Agreement and a Maintenance Agreement, executed on 11th May, 2017 between Facebook India Online Services Pvt. Ltd. (hereinafter referred to as "Facebook") and Parsvnath Estate Developers Pvt. Ltd. (hereinafter referred to as "Parsvnath").

2. Under the said agreements, Parsvnath granted Facebook the license to use and occupy the office space, located at the 7th Floor, Commercial Complex, owned by Parsvnath and undertook to provide certain maintenance services and utilities. The terms of the agreements were to continue from 1st April, 2017 till 31st March, 2020.

3. Facebook claims to have deposited the security deposit of ₹ 4,58,39,904/-, under the aforesaid agreements.

4. That the agreements came to an end on 31st March, 2020, it appears, is not in dispute. The grievance of Facebook as ventilated in OMP (I) (COMM) 2/2021 appears to be that Parsvnath is not refunding the security deposit, deposited by Facebook, despite expiry of the aforesaid two agreements, and that certain amounts were deducted by Parsvnath from the said security in violation of Clause 4.3 of the Sub-License Agreement.

5. Facebook contends that though Clause 4.3 read with 13.6 of Sub License Agreement requires handing over peaceful and vacant possession of the premises by Facebook to Parsvnath on or before 31st March, 2020, it was unable to do so owing to intervention of the COVID-2019 pandemic and consequent lockdown imposed by the Government. Consequent to lifting of the lockdown, however, it is submitted that Facebook was ready and willing to handover the premises to Parsvnath since 3rd June, 2020 and Parsvnath is not taking possession thereof and is insisting on continued payment of rent by Facebook.

6. Facebook also takes exemption to the charging of maintenance fees, sub-license fees and car parking fees by Parsvnath, during the period from March to May, 2020, when the lockdown was in force, as well as charging of electricity charges for the month of April, 2020.

7. Parsvnath, on the other hand, contends in its petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter

referred to as “1996 Act”) (Arb. P. 31/2021) that Facebook has defaulted in granting peaceful and vacant possession of the premises to Parsvnath by 31st March, 2020 and has not tendered any satisfactory explanation for not paying sub-license fees to Parsvnath after March, 2020. It is also urged by Parsvnath that Facebook continues to remain in illegal possession of the premises of the Parsvnath till date, and that considerable amounts remain to be paid by Facebook to Parsvnath. Mr. Tejas Karia, learned counsel for the Facebook and Mr. Vijay Nair, learned counsel for the Parsvnath, submit that Facebook’s claims against Parsvnath are in the region of ₹4.5 crores, whereas Parsvnath’s claims against Facebook, after adjustment of security deposit, are in the region of ₹5.3 crores.

8. Clearly, there are arbitrable disputes between the parties.

9. In these circumstances, Facebook has moved OMP (I) (COMM) 2/2021 before this Court seeking certain pre arbitral interim reliefs.

10. Parsvnath has moved Arb. P. 31/2021, seeking appointment of an arbitrator to arbitrate on the aforesaid disputes under Section 11(6) of the 1996 Act.

11. Clause 17.10 of the Sub-License Agreement, dated 23rd August, 2017 provides for arbitration to resolve the dispute between Facebook and Parsvnath and reads thus:

“17.10 In the event of any and all disputes, controversies or differences which may arise between the Parties out of or in

relation to or in connection with this Agreement, the interpretation thereof, or its breach (collectively referred to as the "**Dispute**"), the authorized representatives of the Parties shall first attempt to resolve the Dispute by mutual discussions and agreement. If the Dispute is not resolved within 30 (*thirty*) days of the Parties attempting to resolve the same, the Dispute shall then be referred to a binding arbitration, with the procedural law of such arbitration governed by the Arbitration and Conciliation Act, 1996, as amended from time to time. The Parties shall mutually appoint a single arbitrator, who shall be a retired judge of the Supreme Court/High Court or an arbitrator from the panel of arbitrators appointed by the Supreme Court/High Court of Delhi, within a period of 15 (*fifteen*) days ("**Fifteen Day Period**") of a written notice by any Party ("**Dispute Notice**"). The venue of the arbitration shall be New Delhi, India. The fees of the arbitrator and expenses shall be borne by the Parties in equal percentages or as provided by the tribunal in the arbitration award. Each side will, in the event that no costs are awarded, bear their respective attorney's costs. The language of arbitration shall be English. The law governing the arbitration shall be Indian law. The award shall be binding on the Parties hereto. Judgment on the award shall be enforced by any court of competent jurisdiction.

Notwithstanding the aforesaid during the pendency of the arbitration proceedings the Parties shall be liable to perform all its obligations and comply with all its covenants specified in this Agreement except where such covenant is the subject matter of arbitration.”

12. Clause 14.1 of the Maintenance Agreement makes Clause 17.10 of the Sub-License Agreement applicable to the Maintenance Agreement. As such, both the agreements are governed by the same arbitration clause.

13. Learned counsel for the parties have not been able to arrive at a consensus regarding the name of the arbitrator to arbitrate on the dispute between them.

14. It is in these circumstances that Parsvnath has filed Arb. P. 31/2021 under Section 11(6) of the 1996 Act, seeking intervention of the Court for appointment of an appropriate arbitrator to arbitrate on the dispute between the parties.

15. Mr. Karia, learned counsel for Facebook, is agreeable to the appointment of the arbitrator by the Court, and to OMP (I) (COMM) 2/2021 being treated as an application under Section 17 of the 1996 Act, to be decided by the learned sole arbitrator. He, however, submits that he is seeking appointment of a receiver to take possession of the premises in his client's occupation and that, owing to his remaining continued in possession of the premises and Parsvnath allegedly, not taking possession thereof, the claim of Parsvnath against Facebook is increasing substantially, month by month.

16. Needless to say, Facebook denies the validity of the claim.

17. The above submission of Mr. Karia is noted. It shall remain open to Facebook to impress, on the learned sole arbitrator being appointed by the present order, the urgency of deciding the issue raised in OMP (I) (COMM) 2/2021, consequent to treating it as an application under Section 17 of the 1996 Act. This Court has no doubt that the learned sole arbitrator would deal with the matter with the urgency it deserves.

18. In view of the above, this Court appoints Hon'ble Mr Justice

K.S. Radhakrishnan, an eminent former Judge of the Supreme Court of India, as the sole arbitrator to arbitrate on the dispute between the parties. The contact details of the learned sole arbitrator are provided as under:

Hon'ble Mr. Justice K.S. Radhakrishnan
Former Judge, Supreme Court of India,
87, Anand Lok, 2nd Floor,
NEW DELHI – 110049

Phone No. 9560013636
Email ID : jusksr@gmail.com

19. OMP (I) (COMM) 2/2021 would be treated as an application under Section 17 of the 1996 Act, and decided by the learned arbitrator in accordance with law.

20. The parties may contact the learned sole arbitrator at the aforesaid contact details within 48 hours of receipt by email of the copy of the present order by the Registry of this Court. The Registry is directed to email a copy of this order to both parties as expeditiously as possible, as soon as it is available, so that the arbitral proceedings could take off immediately thereafter.

21. The learned arbitrator would file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

21. The fees of the learned arbitrator shall be determined by the

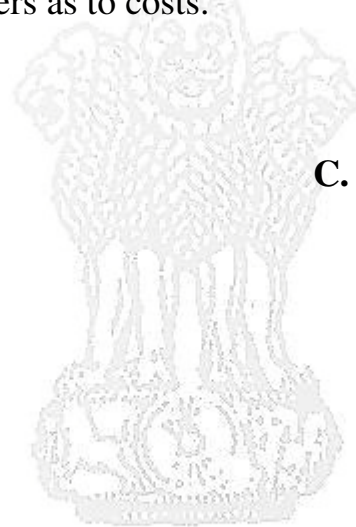
learned arbitrator in consultation with the parties.

22. In order to expedite the adjudication of the prayers contained in OMP (I) (COMM) 2/2021 by the learned arbitrator, Parsvnath is directed to file a response thereto, before the learned arbitrator, within a period of two weeks of the learned arbitrator entering on the reference.

23. With the aforesaid directions, both these petitions stand disposed of with no orders as to costs.

C. HARI SHANKAR, J.

JANUARY 7, 2021
Sr.bararia



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