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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 311/2021**

MS PVR LIMITED Petitioner
Through **Mr. Abhishek Garg Adv.**

versus

MS TIRUPATI BUILDINGS
AND OFFICES PRIVATE LIMITED Respondent
Through **Mr. Vijay Kasana, Mr. Neeraj**
Yadav and Mr. Ketki Chayya Chaudhary,
Advs.

CORAM:

HON'BLE MR. JUSTICE C .HARI SHANKAR

ORDER (ORAL)

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16.09.2021
(Video-Conferencing)

1. No reply has been filed by the respondent to the present petition. Mr. Kasana, learned Counsel for the respondent, submits that his only objection, which is directed against the maintainability of the present petition, is that the petitioner has not complied with the pre-arbitration protocol provided in the agreement between the parties.

2. The arbitration clause between the parties, reads as under:

“7(z) Arbitration and Jurisdiction

Any dispute or difference arising between the Parties shall be resolved amicably at the first instance. Unresolved disputes, controversies, contests, disputes, if any, shall be submitted to

arbitration. The arbitration shall be conducted in accordance with the Provisions of the Arbitration and Conciliation Act 1996, along with the rules framed there under and any amendments thereto by a sole arbitrator appointed mutually by both the Parties. The arbitration shall be conducted in English. The decision/ award of the arbitrator shall be final/conclusive and binding on the Parties. The seat of arbitration shall be at New Delhi.”

3. There is no specific pre-arbitration protocol stipulated in the afore-extracted arbitration clause. All that it states, is that the disputes, which remained unresolved amicably between the parties would be submitted to arbitration. It is well settled that a clause such as this cannot inhibit proceedings.

4. It is on record that a cure notice was sent by the petitioner to the respondent on 17th September, 2020, followed by a termination notice dated 21st October, 2020 and a legal notice dated 26th November, 2020. None of these notices, admittedly, elicit any response from the respondent.

5. In these circumstances, I am of the opinion that no purpose whatsoever would be served in exploring the possibility of any amicable resolution at this stage. Needless to say, even after the appointment of the arbitrator, it would always be open to the parties to resolve the disputes amicably.

6. The objection of Mr. Kasana to the maintainability of the present petition is, therefore, rejected.

7. The substratum of the disputes stands set out in various sub paras of para 7B of the petition. Without burdening this order with the reproduction of the said paras, a reading thereof discloses, *prima facie*, the existence of an arbitrable dispute between the parties.

8. As the notices, from the petitioner to the respondent, have elicited no response, the task of appointment of the arbitrator is also on this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 (“1996 Act” in short).

9. The arbitration clause, I may note, fixes the seat of arbitration at New Delhi.

10. In the facts of the present case, the learned Counsel for both parties are agreeable to the disputes being referred to the Delhi International Arbitration Centre (DIAC), which would appoint a suitable arbitrator to arbitrate thereon.

11. The arbitration shall take place under the aegis of the DIAC and would abide by its rules and regulations.

12. The arbitrator would also be entitled to charge fees in accordance with the schedule of fees stipulated by the DIAC.

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

14. The petition stands disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

SEPTEMBER 16, 2021

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