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

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Date of decision: 15.12.2021

+ ARB.P. 969/2021

KAILASH NATH AND ASSOCIATES Petitioner

Through Mr.Sandeep Chandna, Adv.

versus

M/S. KARVY STOCK BROKING LTD. Respondent

Through None.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. The present petition has been filed under Sections 11 (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator to adjudicate the disputes with respondent.
2. As per the averments made by petitioner, respondent had taken the premises situated at Upper Ground Floor, Himalaya House, 23, Kasturba Gandhi Marg, New Delhi-110001 on rent and had entered into a lease deed with the owners of the abovesaid property on 12.07.2017. Thereafter separate Facilities Agreement was executed between petitioner and respondent on 21.08.2017 wherein respondent requested the petitioner to

install and run and maintain an air-conditioning system of 44.5 tonnes capacity, electrical fittings and fixtures, furniture and 85 KVA power back-up at its own cost and expenses in the abovesaid premises and in turn respondent shall pay service charges and GST as applicable to the petitioner. It was also agreed that in case of any delay on the part of respondent in making said monthly payment to the petitioner, respondent shall be liable to pay 1% interest per month to the petitioner. It was also mentioned that in terms of Clause 8 of the said agreement, it was to run concurrently with the Lease Deed dated 12.07.2017 and will automatically stand terminated on the expiry or earlier termination of the Lease Deed.

3. Learned counsel for the petitioner contended that as per the agreement, petitioner fulfilled all its contractual obligations, however, the respondents committed the breach of the terms of the agreement and since April 2020, no payment has been made by the respondent.

4. Consequently, Lease Deed dated 12.07.2017 was terminated by the Lessors of the premises and accordingly, Facilities Agreement also stood terminated in terms of Clause 8 of the Agreement with effect from the date, the said Lease Deed stood terminated.

5. Thereafter, on 11.12.2020 petitioner vide its letter informed the

respondent of the termination of the agreement and also called upon the respondent to pay the said arrears of service charges/GST with interest. However, respondent did not comply with the request.

6. Accordingly, petitioner invoked the arbitration agreement on 11.08.2021 and the parties had a meeting on the said date to discuss and agree on the name of the sole arbitrator to be appointed. At the said meeting, petitioner proposed two names for appointment of the arbitrator and authorized representatives for respondent sought three days time. Thereafter, respondent did not revert back, hence, the present petition has been filed today.

7. None has appeared on behalf of the respondent.

8. As per office report from Registry, service report qua notice to respondent through dasti, courier, speed post, email, fax and Whatsapp is awaited.

9. As per the office report from the Registry, notice sent to respondent through the ordinary post as email is served.

10. As per the affidavit of service filed by petitioner, service upon respondent has been affected through dasti and email as is evident from dasti notice and email which are annexed with the affidavit of service by learned

counsel for the petitioner. However, considering the aforesaid facts, it can be said that respondent is deemed to be served, but despite that, respondent has preferred not to appear before this Court. It seems that respondent has nothing to oppose in the present petition.

11. In view of the above, the present petition is allowed. Accordingly, **Mr. Sukhdev Singh, DHJS (Retd.) (Mobile: 9910384661)** is appointed sole Arbitrator in this petition to adjudicate the dispute between the parties.

12. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

13. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

14. The present petition stands disposed of.

15. A copy of this order be sent to the learned Arbitrator for information.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 15, 2021
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