

\$~3

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

%

Date of decision: 15.12.2021

+ ARB.P. 986/2021

MR SANDEEP KHANNA & ORS. Petitioners

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 Section 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 petitioners, they are the owners of the premises being an immoveable property, holding undivided share, admeasuring 5,980 sq. ft. situated at Upper Ground Floor, Himalaya House, 23, Kasturba Gandhi Marg, New Delhi-110001. Vide a registered Lease Deed dated 12.07.2017, petitioners had let out the premises to the respondent for a period of 9 years from 15.11.2016 which would expire on

14.11.2025. According to the said deed, respondent was to pay to the petitioners a lease rental of ₹130/- per sq. ft. per month for the premises in question in advance on or before the 10th day of English calendar month, subject to the deduction of income tax at source in proportion to the super built-up area owned by each of the petitioners. It was also agreed in the said lease deed that the rent was to be enhanced by 15 % on the expiry of every block of 3 years and in case of delay in payment of the monthly rent, 1% per month simple interest would carry over.

3. According to the petitioners, respondent was put in possession of the premises by the petitioners and has been carrying on business therefrom. Respondent did not pay the rent at the enhanced agreed rate for any period and even rent paid at lesser rate which also paid for only some period, was also delayed.

4. It is contended by the petitioners that as the respondent did not pay any rent for the period April, 2020 to November 2020 and rents had remained in arrears for more than 90 days on numerous occasions, thus, the respondent had committed serious breach of the terms and conditions of the lease deed.

5. Accordingly, petitioners were constrained to invoke clause 9.2.2 of

the said lease deed and serve the respondent with a notice dated 30.11.2020 and terminate the said Lease Deed dated 17.07.2017 and asking the respondent to vacate the premises within 30 days of the receipt of the said notice and remitting all the amounts due to the petitioners, however, respondent did not comply with the aforesaid notice.

6. Thereafter petitioners sent a legal notice to the respondent on 12.01.2021 calling upon to vacate the premises and handover its possession to the petitioners and make upto-date payment of arrears alongwith enhancement, penalty, rent, interest accrued and GST within a period of 30 days from the date of receipt of the notice, however, respondent again did not comply with the said legal notice.

7. Accordingly, petitioner invoked the arbitration agreement on 29.07.2021 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 sought three days time. Thereafter, respondent did not revert back, hence, the present petition has been filed.

8. None has appeared on behalf of the respondent.

9. As per office report from Registry, service report qua notice to

respondent through dasti, courier, speed post, email, fax and Whatsapp is awaited. As per the office report from the Registry, notice sent to respondent through the ordinary post and email is served.

10. According to affidavit of service filed by petitioner, service upon respondent has been effected through dasti, speed post and courier and email as is evident from dasti notice, track assignment slip 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

ab

