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ORDER SHEET
AP-COM/687/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

CUSHMAN AND WAKEFIELD PROPERTY
MANAGEMENT SERVICES INDIA PRIVATE LIMITED
VS
IDEAL REAL ESTATE PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 2nd September, 2024.

Appearance:
Mr. Rohit Mukherji, Adv.
Mr. Pankaj Agarwal, Adv.
Ms. Muskan Agarwal, Adv.
...for the petitioner

The Court: The track report handed over by learned counsel today be kept on record. The same, in conjunction with the affidavit of service filed earlier, go on to show that a copy of the present application under Section 11 of the Arbitration and Conciliation Act, 1996 has been duly served on the respondent. However, none appears for the respondent at the time of call.

The matter arises from a dispute raised by the petitioner for alleged non-payment of the dues of the petitioner in terms of a Letter of Award (LoA) in the form of a renewal letter annexed at page 24 of the application.

The petitioner sought to invoke the arbitration clause contained therein by a communication dated November 7, 2023, to which allegedly there has been no response from the respondent. The said notice as well as the connected postal documents are also annexed to the present application.

The third last paragraph of the renewal letter dated June 14, 2021, which contains the purported arbitration clause, specifies that the agreement or LOA can be terminated by either party upon serving a notice period of 30 days and for the resolution of any dispute or arbitration Kolkata shall be the only area of jurisdiction.

It cannot be brushed aside that there may be some doubt as to whether the said clause expresses unequivocally the consensus between the parties to refer the matter to arbitration. However, there being no other clause to the contrary indicating that the parties do not choose arbitration as the preferred mode of dispute resolution and in view of the expression “arbitration” being mentioned in the said paragraph, a *prima facie* presumption can be drawn for the purpose of the present application under Section 11 of the 1996 Act that the parties had agreed to refer the dispute to arbitration.

Since the dispute is otherwise arbitrable in law, there cannot, thus, be any impediment in referring the matter to arbitration.

Accordingly, AP-COM/687/2024 is allowed, thereby appointing Mr. Utpal Bose, Senior Advocate, as the sole arbitrator to resolve the disputes between the parties, subject to a declaration under Section 12 of the Arbitration and Conciliation Act, 1996 Act being obtained from the said learned Arbitrator. It will be open to the learned Arbitrator to fix his own remuneration in consultation

with the parties and within the framework of the 1996 Act and the Fourth Schedule thereof.

It is made clear that all issues, including the question of jurisdiction of the learned Arbitrator, are kept open to be canvassed before and decided by the learned Arbitrator. The observations above do not touch the merits of the case and are merely tentative.

(SABYASACHI BHATTACHARYYA, J.)