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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 68/2023

GUERRILLA INFRA SOLUTIONS PVT. LTD. Petitioner

Through: Mr. Diptiman Acharyya, Advocate.

versus

NAVISHA SOFT SOLUTIONS PVT. LTD. Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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09.01.2024

1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996, ["the Act"] the petitioner seeks appointment of an arbitrator to adjudicate disputes which have arisen between the parties under an agreement dated 27.12.2020 entitled as "Membership Agreement" ["the Agreement"].

2. The Agreement is in respect of provision of co-working spaces by the petitioner to the respondent. It contains a "*Governing Law and Dispute Resolution*" clause which provides for resolution of disputes by arbitration. It is provided that the arbitration will be held at New Delhi only.

3. The case of the petitioner is that the respondent failed to make payment of its dues under the Agreement, as a result of which there are



outstanding dues of ₹3,43,727/- from the respondent to the petitioner.

4. The petitioner, through counsel, invoked the arbitration clause by a legal notice dated 26.09.2022. Mr. Diptiman Acharyya, learned counsel for the petitioner, states that the said notice failed to elicit a response.

5. In these circumstances, the petitioner has approached this Court for appointment of an arbitrator.

6. Notice was issued on 25.01.2023. It was recorded in the order dated 09.05.2023 that the respondent has been duly served. The respondent remains unrepresented today. Although, appearances on behalf of the respondent are recorded in the orders dated 31.08.2023, 04.09.2023 and 21.09.2023; no *vakalatnama* has been filed on behalf of the respondents. The appearances recorded on 31.08.2023 and 21.09.2023 also indicate that memo of appearance was given on behalf of the counsel for Municipal Corporation of Delhi and Delhi Development Authority, which do not have any role in the present matter and their appearances seem to be erroneously recorded. As the respondent has not appeared despite service, there is no impediment to proceed with adjudication of the petition.

7. In the *interregnum*, the petitioner was directed to place original documents on record. Mr. Acharyya states that these directions were passed in view of the fact that the Agreement was unstamped and that proceedings for stamping of the Agreement were required to be taken in terms of the decision of the Constitution Bench of the Supreme Court in *NN Global Mercantile v Indo Unique Flame* [(2023) 7 SCC 1], dated 25.04.2023, and the decision of this Court in *Splendor Landbase Ltd. vs. Aparna Ashram Society & Anr* dated 22.08.2023 in ARB.P. 366/2021. Since



then, a Seven Judge Bench of the Supreme Court [by judgment dated 13.12.2023 in Curative Petition (C) No. 44/2023 and connected matters (*In Re: Interplay Between the Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*) has overruled the judgment in *NN Global Mercantile (supra)* and held that objections with regard to the improper stamping of an agreement are outside the ambit of consideration at the stage of appointment of an arbitrator under Section 11 of the Act.

8. Having regard to the above position, it appears that existence of the Agreement and invocation of the arbitration clause are not disputed by the respondent. The respondent has not appeared to contest the relief sought.

9. The petition is, therefore, allowed and disputes between the parties are referred to arbitration under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi [“DIAC”]. DIAC is requested to nominate an arbitrator from its panel. The proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.

10. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

11. If the respondent has counter claims, those may also be placed before the learned arbitrator in accordance with law.

12. As the respondent has not entered appearance in these proceedings, notice of the arbitration proceedings will be served upon the respondent in accordance with the DIAC Rules. It is also made clear that this Court has not adjudicated the rights and contentions of the parties on merits,



which are reserved for adjudication by the learned Arbitrator.

13. The petition is disposed of with these directions.

PRATEEK JALAN, J

JANUARY 9, 2024

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