



\$~2

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

ARB.P. 72/2023

GUERRILLA INFRA SOLUTIONS PVT. LTD. Petitioner

Through: Mr. D. Acharyya, Advocate.

versus

VIEROOTS WELLNESS SOLUTIONS PVT.

LTD..

..... Respondent

Through: Mr. Manoj V. George, Mr. KM
Vignesh Ram, Ms. Chaahat
Khanna, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

%

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 17.09.2019 [executed on 27.09.2019] 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 Rs.14,49,000/- from the respondent to the petitioner.

4. The petitioner, through counsel, invoked the arbitration clause by legal notice dated 28.10.2022. 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 in the petition on 25.01.2023 pursuant to which the respondent has entered appearance through learned counsel and also filed a reply.

7. During the course of hearing, Mr. KM Vignesh Ram, learned counsel for the respondent, submits that the principal ground upon which the appointment of an arbitrator was resisted by the respondent was that the Agreement is unstamped. In the reply also, the respondent has *inter alia* drawn reference to the Constitution Bench decision of the Supreme Court dated 25.04.2023 in *N.N. Global Mercantile (P) Ltd. vs. Indo Unique Flame Ltd.*, (2023) 7 SCC 1. The Court had also given directions on 21.09.2023 for production of the original agreement in view of this legal position. However, a Seven Judge Bench of the Supreme Court by a judgment dated 13.12.2023, *In Re: Interplay Between the Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899* (Curative Petition (C) No. 44/2023 and connected matters) has overruled the judgment in *N.N. Global* (Supra) and held that objections as to proper stamping of the agreement are not within the scope of consideration at the stage of Section 11 of the Act and ought instead to be left to the learned Arbitral Tribunal for adjudication.

8. Mr. Ram further states that the Agreement is invalid as it is not



signed by both parties. However, significantly, it is the petitioner's signature that is apparently missing, and not the respondent's. The signature of the respondent's representative is undisputed, and the petitioner is itself relying upon the arbitration clause. In these circumstances, I am of the view that this objection on the part of the respondent is unsustainable.

9. Having regard to the above, the disputes between the parties under the Agreement are referred to arbitration of a sole arbitrator 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. It is made clear that all rights and contentions of the parties are left open for adjudication by the learned Arbitrator.

12. The petition stands disposed of with the aforesaid directions.

PRATEEK JALAN, J

JANUARY 9, 2024

"Bhupi"/