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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 197/2024

SHRI SUJINDER SINGH MARWAH & ANR. Petitioners

Through: Mr. K.S. Rekhi, Mr. Jai Vardhan,
Mr. Parv Garg, Mr. Pawas
Kulshreshta, Advocates.

versus

OMAXE LIMITED

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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23.04.2024

1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioners seek appointment of an arbitrator to adjudicate disputes between the parties under an agreement dated 16.10.2019.

2. It is stated in the petition that the agreement contains an arbitration clause (Clause 62) which provides for resolution of disputes through arbitration to be held in Delhi/New Delhi.

3. By an order dated 09.04.2024, it was recorded as follows:

“1. Notice was issued in this petition on 13.02.2024. The petitioners were also permitted to serve the respondent through learned counsel who had appeared on its behalf in ARB.P. 595/2022.

2. ARB.P. 595/2022 was filed for appointment of an arbitrator to adjudicate disputes under the very same agreement. The respondent



was represented by Mr. Tarun Sharma, Ms. Kshiti Nim and Mr. Digamber Dutt Sharma, the authorised representative of the respondent.

3. In the order dated 01.09.2022 in ARB. P. 595/2022, a statement was recorded on behalf of the respondent that a sum of Rs.5,45,297/- would be paid to the petitioners by 10.10.2022. The respondent was also directed to continue to make monthly payments as required under the agreement. The petitioners therefore did not seek any further orders in the petition under Section 11 of the Arbitration and Conciliation Act, 1996, but were given the opportunity to revive the petition if the respondent did not meet its commitments.

4. Although the settled amount of Rs.5,45,297/- was paid to the petitioners, learned counsel for the petitioners states that the monthly payments required under the agreement have not been paid thereafter. The petitioner, therefore, invoked arbitration by a communication dated 31.10.2023, which did not elicit a response.

5. Learned counsel for the petitioners has filed an affidavit of service dated 05.04.2024. The affidavit records that learned counsel has served the respondent by e-mail at the e-mail address - care@omex.com (which is the e-mail address with which the parties have exchanged correspondence, as evidenced by the annexures at page 126 of the petition). It is stated by learned counsel for the petitioners that he also made an attempt to serve the respondent physically on 22.02.2024, but the respondent refused service. In accordance with the order of this Court, the petitioners have also served Mr. Tarun Sharma, learned counsel, by an e-mail dated 23.02.2024, and have annexed a reply received from Mr. Sharma's office seeking a complete copy of the paper book. Learned counsel for the petitioners has supplied a copy of the petition to Mr. Sharma on 05.04.2024.

6. The hearing was passed over today, with a request to learned counsel for the petitioners to contact Mr. Sharma and request him to appear. However, Mr. Sharma has not appeared.

7. In view of the fact that the petition was served upon the respondent and Mr. Sharma only on 05.04.2024, an adjournment is necessitated.

8. List on 23.04.2024.

9. Learned counsel for the petitioners is directed to serve a copy of this order upon the respondent, and upon Mr. Sharma, by e-mail by tomorrow, so that it can enter appearance on the next date of hearing. It is made clear that if the respondent does not appear on the next date of hearing, the petition may be taken up for hearing in its absence."



The respondent remains unrepresented despite this order.

4. It is stated by Mr. K.S. Rekhi, learned counsel for the petitioner, that the petitioner received a telephonic call from the representative of the respondent yesterday i.e. 22.04.2024, and the respondent has subsequently made payment of Rs.3,73,518/- which settles the petitioner's liability for monthly payments until March, 2024.

5. Mr. Rekhi states that the payment for April, 2024 has not yet been made and the petitioner also has a claim for interest. However, he does not press the present petition under Section 11 of the Act in view of the payment recorded above.

6. The petition is dismissed as not pressed with the above observations.

7. It is made clear that in the event of any further default by the respondent, the petitioner is at liberty to invoke the arbitration clause afresh and seek appointment of an arbitrator, including for the claims recorded above.

PRATEEK JALAN, J

APRIL 23, 2024

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