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

+ **ARB.P. 331/2022**

SHADOWFAX TECHNOLOGIES PRIVATE LIMITED

..... Petitioner

Through: Mr. Nrupal A. Dingankar and Mr.
Pushkara A. Bhonsle, Advocates.

versus

TELEVISION HOME SHOPPING NETWORK LIMITED

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

16.01.2024

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By way of the present petition filed under section 11 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of an Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondent from Service Agreement dated 06.06.2018 ('Agreement').

2. Notice on this petition was issued on 15.03.2022; whereafter the matter has been pending for a long time for effecting service upon the respondent company.
3. Since it transpired that the respondent company could not be served despite best efforts, *vide* order dated 20.03.2023, the court directed the petitioner to effect service upon the Directors of the company. That direction was repeated *vide* order dated 08.05.2023 since service



upon *all* the Directors had not been effected; and the petitioner was directed to file an affidavit of service in that regard.

4. In compliance thereof, the petitioner has filed affidavits of service dated 05.05.2023 and 20.07.2023, setting-out the details of the efforts made to serve the respondent and its Directors. Upon a perusal of affidavit dated 05.05.2023, it is seen that notice of the present petition was served upon Ms. Suchita Harenbhai Vaidya and Mr. Ripal Paragbhai Patel on 02.05.2023, who are stated to be the Directors of the respondent company. However, the affidavit further recites that the third Director of the company, Ms. Kalpana Barot, could not be served since the notice was returned with the remark “*addressee left without instructions*”.
5. In the above circumstances, *vide* order dated 21.07.2023, this court directed court notice be issued to the respondent, as also to its Directors, returnable for 15.09.2023.
6. Office report indicates that court notice could not be served upon the respondents *via* speed-post since the parties had left the address; and that the report for service through ordinary mode was awaited.
7. In view of the circumstances obtaining in the matter, *vide* order dated 08.05.2023, this court had also recorded that the matter would be taken-up for hearing on the next date, even if there was no appearance on behalf of the respondent.
8. In the context of effecting service upon a company, section 20 of the Companies Act, 2013 reads as follows :

20. Service of documents.—(1) A document may be served on a company or an officer thereof by sending it to the company or the



officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed:

Provided that where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

(2) Save as provided in this Act or the rules made thereunder for filing of documents with the Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed:

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Explanation.—For the purposes of this section, the term “courier” means a person or agency which delivers the document and provides proof of its delivery.

9. A perusal of the record shows that the requirements of section 20 of the Companies Act, 2013 have been duly fulfilled.
10. In view of the above, this court is satisfied that the respondent has been served in the matter but has chosen not to be represented.
11. Accordingly, the respondent is set *ex-parte*.
12. Though, *vide* orders dated 08.05.2023 and 15.09.2023, the petitioner was directed to place on record the original of the Service Agreement dated 06.06.2018, from which the disputes are stated to have arisen, learned counsel for the petitioner submits that despite best efforts, the petitioner has been unable to trace their copy of the Agreement, which is now available only with the respondent.



13. Be that as it may, the petitioner has placed on record a photocopy of the said Agreement, containing clause 9.1 which comprises the arbitration agreement between the parties; and contemplates reference of disputes between the parties to arbitration in accordance with the A&C Act. Clause 9.1 also stipulates that the venue of arbitration shall be at 'New Delhi'.
14. For completeness, it may be recorded that a separate territorial jurisdiction provision is also contained in clause 9.2 of the Agreement, which subjects the contract between the parties to the jurisdiction of courts at Delhi.
15. As per the record, the petitioner invoked arbitration *vide* Notice dated 26.10.2020; to which the respondents sent no reply.
16. In the above circumstances, learned counsel for the petitioner submits that this court may appoint a Sole Arbitrator, keeping all factual and legal contentions of the parties open.
17. Upon a conspectus of the averments contained in the petition and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 26.10.2020, do not appear *ex-facie* to be non-arbitrable.
18. Since the arbitration agreement is silent in this regard, the law requires that the disputes between the parties would be referred to adjudication by a Sole Arbitrator.



19. Considering that the record shows that the respondent is evading service, it is considered appropriate to send this matter to arbitration under the aegis of the Delhi International Arbitration Centre, New Delhi ('DIAC'), which institution may be better equipped to attempt service upon the respondent.
20. Accordingly, the present petition is allowed and Mr. Arkaneil Bhaumik, Advocate (Cellphone No.: +91 9874123633) is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis of the DIAC, in accordance with applicable rules.
21. The learned Sole Arbitrator would proceed with the arbitral proceedings subject to furnishing to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
22. The learned Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.
23. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on merits, in accordance with law.
24. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
25. A copy of this order be sent by e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.
26. The petition stands disposed-of in the above terms.



27. Pending applications, if any, also stand disposed of.

JANUARY 16, 2024/uj

ANUP JAIRAM BHAMBHANI, J