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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 319/2024

**CUSHMAN AND WAKEFIELD PROPERTY MANAGEMENT
SERVICES INDIA PRIVATE LIMITED** Petitioner

Through: Mr. Vivek Malik, Adv. (VC).

versus

**VICTORY VALLEY CONDOMINIUM OWNERS WELFARE
ASSOCIATION** Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

25.04.2024

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1. By way of present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the '*A&C Act*'), the petitioner seeks appointment of Arbitral Tribunal comprising of a sole arbitrator, to adjudicate the disputes between the parties.
2. Learned counsel for the petitioner submits that the parties had entered into an Integrated Asset & Facility Management Services Agreement dated 16.12.2020 wherein it was agreed that petitioner shall provide Facility Management Service to the residents of the respondent society. The respondent in consideration to the service provided by the petitioner was required to pay a management fee to the petitioner. The duration of the agreement was for two years to be read from 21.07.2020.
3. The petitioner states that though the Facility Management Service was provided. However, respondent failed to pay a sum of Rs. 1,95,31,407.59/-. The respondent vide notice dated notice dated 16.07.2022 terminated the service with effect from 20.07.2022. The



same was duly responded to by the petitioner vide reply dated 30.08.2022.

4. The petitioner also served notice dated 13.12.2022 for amicable resolution of the dispute in view of clause-14 (Dispute Resolution) of the agreement dated 16.12.2022.
5. The petitioner invoked the arbitration vide notice dated 07.12.2023. The notice was replied to by the respondent vide communication dated 01.01.2024. In the reply the averments made in the notice were denied and it was also stated that the engagement of the petitioner was made in the year 2020 by the previous governing body. However on 06.10.2021 the District Registrar, Firms and Societies, Gurugram, passed an order directing the appointment of an Administrator to manage the day-to-day affairs of the association and conduct fresh elections.
6. It has been stated that no claim was made before the erstwhile governing body.
7. Clause-14 of the agreement contains the arbitration clause which provides that disputes with respect to the agreement shall be resolved through arbitration as per provisions of A&C Act. It further provides that place of arbitration would be at National Capital Region of Delhi.
8. The perusal of the record indicates that the respondent have duly been served, however, they have not responded. Clause-14 of the agreement provided that the Sole Arbitrator is to be appointed by the Respondent. However, such unilateral appointment is bad in law in view of the judgment of the Supreme Court in ***Perkins Eastman Architects DPC & Anr. v. HSCC (India) Limited*** 2019 SCC OnLine SC 1517.
9. Various communications between the parties indicates that the



execution of the agreement is not disputed, the arbitration clause has also not been disputed.

10. Considering that there is an agreement which contains the arbitration clause and exchange of the notices indicates that there is an arbitrable dispute, the present petition is disposed of with the following directions:

- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
- ii) Mr. Siddharth Sharma, Advocate (Mobile No. 7400111111) is appointed as an Arbitrator to adjudicate the disputes between the parties.
- iii) The remuneration of the learned Arbitrator shall be in terms of Fourth Schedule or as the parties may agree.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- vi) The parties shall approach the learned arbitrator within two weeks from today.

11. The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

APRIL 25, 2024/AR..