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

+ **ARB.P. 416/2023**

M/S FORTUNE TALKIES PVT LTD

..... Petitioner

Through: Mr. Rishi Bhardwaj and Mr.
Ahiesumat Gupta, Advocates.

versus

NASEEM AHMED

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

24.01.2024

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By way of the present petition under section 11(6) and 8(b) of the Arbitration & Conciliation Act 1996 ('A&C Act' for short), the petitioner seeks appointment of an arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondent from Agreement dated 18.10.2019 ('Agreement').

2. Mr. Rishi Bhardwaj, learned counsel for the petitioner has drawn the attention of this court to Article 8 of the Agreement which comprises the arbitration agreement between the parties; and contemplates reference of disputes between them to arbitration in accordance with the A&C Act; with the place of arbitration being at Noida or New Delhi.
3. For completeness, it may be recorded that a separate territorial jurisdiction provision is also contained in Article 9, which also



subjects the contract between the parties to the jurisdiction of courts of law at Noida or New Delhi.

4. As per the record, the petitioner invoked arbitration *vide* notice dated 01.03.2023; to which the respondent has not sent a reply.
5. Notice on this petition was issued on 17.04.2023.
6. Learned counsel appearing for the petitioner has drawn attention to the affidavit of proof of service dated 20.09.2023 filed in compliance of the order dated 21.07.2023, to show that service upon the respondent has been effected by affixation of notice on the office address of the respondent in Gomti Nagar, Lucknow, Uttar Pradesh through the concerned officer of the District Judge, Lucknow, as is evidenced by the documents appended as Document No. 2 (Colly) to the affidavit of service.
7. It is further pointed-out, that as stated in affidavit of proof of service dated 09.06.2023 filed earlier in the matter, the respondent also stood served through courier and e-mail.
8. However, no one is present on behalf of the respondent when the matter is called-out. No reply has been filed either.
9. In the circumstances, this court is satisfied that having been duly served in the matter, the respondent has chosen not to be represented.
10. The respondent is accordingly set *ex-parte*.
11. As regards the issue of the territorial jurisdiction of this court to entertain and decide the present petition, Articles 8 of the Agreement which comprises the arbitration provision says that “... .. *the place of arbitration shall be Noida or New Delhi*”. Furthermore, Article 9 recites that “... .. *the jurisdictional courts located in Noida or New*



Delhi, India shall, subject to Article 9 above, alone have the jurisdiction in any matters arising in terms of this Agreement.” Most importantly, counsel points-out, that embedded in the agreement was a clause titled “AMENDMENT & ADDENDUMS” which comprises the amendments agreed-to between the parties, the relevant part whereof reads as follows :

“... .. Regardless of the place of signing of this agreement, The CLIENT agrees that for the purposes of the venue, this contract was entered into in Delhi, and any dispute will be litigated or arbitrated in Delhi.”

12. In the circumstances, it is submitted that though Articles 8 and 9 gave to the parties the choice of agreeing upon the place of arbitration and the jurisdictional courts to be either at Noida or New Delhi, by way of the amendment, the parties have chosen Delhi as the place of arbitration and as the jurisdictional court. Furthermore, it is argued that as per settled law, where an arbitration agreement is silent as to the ‘seat’ but mentions a ‘place’ of arbitration, such place is also taken to be the seat of arbitration.
13. In view of the above, this court is satisfied that the parties have agreed to the seat of arbitration being at Delhi, and also that the jurisdictional court for purposes of the transaction would be the Delhi courts.
14. 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 01.03.2023 do not appear *ex-facie* to be non-arbitrable.

15. Accordingly, the present petition is allowed and **Mr. Tariq Anwar, Advocate (Cellphone No.: +919999663628)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties.
16. The learned Arbitrator may 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.
17. The learned Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Arbitrator.
18. Parties shall share the arbitrator's fee and arbitral costs, equally.
19. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on merits, in accordance with law.
20. The petitioner is directed to approach the learned Arbitrator appointed within 10 days of release of this order.
21. A copy of this order be communicated by the Registry to the learned Sole Arbitrator.
22. Learned counsel for the petitioner requests that the original Agreement dated 18.10.2019, which was filed in this court in compliance of order dated 22.09.2023, in the context of stamping issue that had then arisen, be released to the petitioner. The Registry



is accordingly directed to return to the petitioner the original Agreement dated 18.10.2019 within 02 weeks; subject to verifying the credentials of the person who receives the original document.

23. The petition stands disposed-of in the above terms.
24. Other pending applications, if any, also stand disposed-of.
25. Let a copy of this order be sent by the Registry to the address and on the e-mail ID of the respondent as appearing on the record.

ANUP JAIRAM BHAMBHANI, J

JANUARY 24, 2024

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(Released on 07th February 2024)