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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 424/2023

M/S LEASE PLAN INDIA PRIVATE LIMITED Petitioner

Through: Mr. Akhilesh Pradhan, Advocate.

Versus

M/S ANTFARM BUSINESS INCUBATOR
PRIVATE LIMITED & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

22.01.2024

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1. By way of the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitrator to adjudicate disputes under a Lease Agreement dated 02.12.2019 [“the Agreement”] between the petitioner and respondent No.

1 - company.

2. The Agreement contains an arbitration clause [Clause 9.2(i)], which contemplates arbitration by a sole arbitrator, to be appointed by the petitioner herein. Delhi has been designated as the place of arbitration. By virtue of Clause 9.2(ii), courts in New Delhi have been vested with exclusive jurisdiction in respect of the Agreement.

3. As the appointment of an arbitrator unilaterally by one of the parties to the agreement is not a valid appointment in accordance with the judgments of the Supreme Court, *inter alia* in *TRF Limited vs. Energo*



Engineering Projects Limited [(2017) 8 SCC 377] and Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited [(2020) 20 SCC 760], the petitioner has sought appointment of an arbitrator by this Court under Section 11 of the Act.

4. Notice was issued to respondent No. 1 on 19.04.2023. Time was also given for filing of a reply. Mr. Akhilesh Pradhan, learned counsel for the petitioner, does not press the petition as far as respondent Nos. 2 and 3 are concerned, as they were only directors of respondent No. 1 and were not parties to the Agreement in their individual capacity.

5. It appears from the affidavit of service dated 19.07.2023 filed by learned counsel for the petitioner that service has been effected upon the respondent by email *inter alia* at upen@antfarm.in, which is the email address of the respondent given in the Master Data of the respondent as provided on the website of Ministry of Corporate Affairs, Government of India [“MCA”] [page 26 of the petition]. It has also been served upon the respondent by speed post at the registered address in the memo of parties. The speed post tracking report shows that it has been delivered. Although an attempt was made to serve at the addresses mentioned in the Agreement, including the correspondence address disclosed in Clause 9.3 thereof, those attempts have been unsuccessful.

6. Despite service as aforesaid, the respondent has not entered appearance. In view of the fact that the respondent has been duly served at the registered office address, by email at the email address mentioned in the Master Data of respondent-company as available on the MCA website, and by WhatsApp, I am of the view that it is not necessary to await the appearance of the respondent.



7. It may be noted that by order dated 04.09.2023, the petitioner sought time to take steps to ensure that the Agreement is sufficiently stamped. However, Mr. Pradhan states that this issue may be left open for consideration of the learned arbitrator, in view of the fact that the Constitution Bench judgment dated 25.04.2023 of the Supreme Court in *N.N. Global Mercantile (P) Ltd. vs. Indo Unique Flame Ltd.*, (2023) 7 SCC 1, has been overruled by the 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). The contention of Mr. Pradhan is merited. The seven Judge Bench has held that issues with regard to non-stamping or insufficient stamping of documents are not germane to consideration of applications under Section 11 of the Act, and may be left open for adjudication by the learned arbitrator.

8. The petitioner has established *prima facie* the existence of an arbitration clause [Clause 9.2(i)] of the Agreement, as also the invocation by letter dated 13.04.2022 addressed to respondent No. 1 at the address mentioned in Clause 9.3 of the Agreement. The respondent has also not appeared to controvert these submissions.

9. In these circumstances, the petition succeeds and disputes between the parties are referred to arbitration under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 [“DIAC”]. DIAC is requested to appoint an arbitrator from its panel. The arbitral proceedings will be governed by Rules of DIAC, including as to the remuneration of the learned Arbitrator. The learned



Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering upon the reference.

10. In view of the fact that the respondent has not entered appearance in these proceedings, it is made clear that the respondent will be duly served in the arbitration proceedings in accordance with DIAC Rules.

11. The petition stands disposed of with these observations.

PRATEEK JALAN, J

JANUARY 22, 2024

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