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

+ ARB.P. 653/2024

M/S ODWEN TECHNOLOGIES PVT LIMITEDPetitioner

Through: Mr Rahul Jajoo, Adv.

versus

M/S AKSHAR SCHOOL SOLUTIONS PVT LTD AND ORS.

.....Respondents

Through: Mr Akshaya Agarwal, Mr Neeraj K
Gupta and Mr Ranjeet Singh, Advs.
(through VC)

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

12.07.2024

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1. This is a petition filed under Section 11(6) of Arbitration and Conciliation Act, 1996 seeking appointment of the Sole Arbitrator to adjudicate the disputes between the parties arising out of the Warehouse Agreement dated 28.04.2023.

2. The petitioner and respondents entered into said agreement wherein the respondents agreed to take warehouse fulfilment services for a period of 66 months. The respondents had assured minimum packets for every year to be supplied to the petitioner.

3. Since there was a failure by the respondents to provide minimum packets for the month of May/June, 2023, the petitioner invoked arbitration clause being Clause 12 vide Legal Notice dated 05.04.2024 which reads as under:-

“12. DISPUTE RESOLUTION

That it is agreed by and between the Parties that any dispute regarding this Agreement or any claim made by one against the



other will be referred to arbitration of 1 (one) arbitrator appointed by the mutual agreement of the parties, or where the parties fail to agree on an arbitrator within twenty (20) days, then either party may approach a competent court for appointment of the arbitrator. This Agreement shall be governed and construed in accordance with Indian laws. The seat and place of arbitration shall be New Delhi. The courts at New Delhi shall have exclusive jurisdiction in respect of all matter arising out of this Agreement.

If any of the provisions of this Agreement are found to be unenforceable, the Agreement's unaffected provisions will remain in effect and the Parties will negotiate a mutually acceptable replacement provision consistent with the original intent of both the Parties.”

4. Mr Agarwal, learned counsel for the respondents has filed a reply where the primary objection is that the petition itself is pre-mature. He states that there is a lock-in period of 30 months which expires in the year 2026 and as of today, there is no cause of action in favour of the petitioner and the petitioner can sue for damages once the lock-in period is over.

5. In the present case, the dispute is for the year Financial Year 2024-2025 for which the respondent did not provide the minimum guaranteed packets as agreed under the agreement.

6. For the said reasons, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

xi) Ms. Shilpa Ohri, Advocate (Mob. No.9871900539) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.



- xii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- xiii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- xiv) 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.
- xv) The parties shall approach the learned Arbitrator within two weeks from today.
- xvi) The objections of the respondent that the petitioner should have quantified his damages only after the lock-in period is left open for the learned Sole Arbitrator to adjudicate.
- xvii) The learned Arbitrator shall enter reference only after four weeks from today in case the matter is not settled.
7. It is stated by learned counsel for the petitioner that in case the respondent has some meaningful offer, the same will be considered by the petitioner.
8. The petition is allowed and disposed of in the aforesaid terms.

JULY 12, 2024/sr

JASMEET SINGH, J

[Click here to check corrigendum, if any](#)