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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 898/2023

M/S LEASE PLAN INDIA PRIVATE LIMITED Petitioner

Through: Mr. Akhilesh Pardhan, Advocate *via*
video-conferencing.

versus

M/S UMADUTT INDUSTRIES & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

16.01.2024

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By way of the present petition under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondents from Lease Agreement dated 03.01.2020 ('Agreement').

2. Notice on this petition was issued on 01.09.2023.
3. Mr. Akhilesh Pardhan, learned counsel for the petitioner submits that thereafter the petitioner took the requisite steps for effecting service upon the respondents; and, as evidenced by affidavit of service dated 08.12.2023, service has been duly effected on the respondents *via* speed-post (as evidenced by the tracking report appended as Annexure A-1 (Colly) to the affidavit) as also *via* e-mail and WhatsApp (as evidenced by the documents appended as Annexure A-2 and Annexure A-3 respectively to the affidavit).



4. The said documents, in particular, the tracking report in respect of the speed-post covers sent to the respondents show that notices were delivered to the addressees on 23.09.2023.
5. However, no one has appeared on behalf of the respondents on 04.10.2023 and 13.12.2023.
6. In view of the above, this court is satisfied that the respondents have been served in the matter but have chosen not to be represented.
7. Accordingly, the respondents are set *ex-parte*.
8. Though, *vide* order dated 04.10.2023, the petitioner was directed to place on record the original, duly-stamped Lease Agreement dated 03.01.2020, from which the disputes are stated to have arisen, Mr. Pardhan submits that the original of the duly stamped lease agreement was sought in order to address a possible defect in the stamping of the agreement. Counsel submits however that in view of the recent decision of the Supreme Court in ***In Re : Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899¹***, non-stamping or inadequate stamping is no longer an issue required to be determined by this court at the stage of appointing an Arbitrator.
9. Mr. Pardhan has drawn the attention of this court to Article 9.2(i) of the Agreement which comprises the arbitration agreement between the parties; and contemplates reference of disputes between them to arbitration by a Sole Arbitrator in accordance with the A&C Act; with the ‘place’ of arbitration being at Delhi.

¹ 2023 SCC OnLine SC 1666



10. For completeness, it may be recorded that a separate territorial jurisdiction provision is also contained in Article 9.2(ii) of the Agreement, which subjects the contract between the parties to the exclusive jurisdiction of the courts at New Delhi.
11. Though the arbitration agreement also contemplates that the sole arbitrator is to be appointed by M/s. Lease Plan India Private Limited (LPIN), that provision of the arbitration clause is, in any case, untenable in law in view of the decision of the Supreme Court in ***Perkins Eastman Architects DPC vs. HSCC (India) Ltd***².
12. As per the record, the petitioner had invoked arbitration *vide* Notice dated 20.02.2023; to which no reply was sent by the respondents.
13. In the above circumstances, learned counsel for the petitioner submits that this court may appoint a Sole Arbitrator; and then refer the matter for arbitration under the aegis of the Delhi International Arbitration Centre, New Delhi ('DIAC'), keeping all factual and legal contentions of the parties open.
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 20.02.2023, do not appear *ex-facie* to be non-arbitrable.

² (2020) 20 SCC 760



15. Accordingly, the present petition is allowed and Mr. Saurabh Dev Karan Singh, Advocate (Cellphone No.: +91 8527022200) 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.
16. The learned Sole Arbitrator would furnish 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 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.
18. 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.
19. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
20. A copy of this order be sent by e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.
21. The petition stands disposed-of in the above terms.
22. Pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 16, 2024/V.Rawat