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

+ **ARB.P. 951/2024**

FARHEEN SYEDDA AHMAD KHAN & ANR.Petitioners

Through: Mr. Abhijat, Mr. Shivek Trehan,
Mr. Ishaan Kumar & Mr. Harshuar
Dhan Gupta, Advocates.

versus

KAUSTUBH GOSWAMIRespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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16.08.2024

1. The petitioner has instituted this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], seeking appointment of an arbitrator to adjudicate disputes between the parties under a lease deed dated 02.04.2024 [“Lease Deed”].
2. The Lease Deed provides for lease of an immovable property [E-031, India Bulls, Engima, Sector 110, Gurugram, Haryana] by the petitioner to the respondent at a monthly rent of ₹70,000/-. It contains an arbitration clause [Clause 21] which provides for adjudication of disputes by a sole arbitrator. New Delhi has been designated as the seat and venue of arbitration and Courts in New Delhi have been vested with exclusive jurisdiction.
3. According to the petitioner, the respondent has failed to pay the monthly rent and remains in possession of the tenanted premises.



Disputes having thus arisen between the parties, the petitioner invoked arbitration by a legal notice dated 28.05.2024. The legal notice was sent to the respondent *inter alia* by email, WhatsApp and was also delivered by courier. According to the petitioner, the respondent replied to the WhatsApp message. The speed post delivery was returned unserved with a noting that the addressee was not at home, despite repeated attempts to deliver.

4. As the parties were unable to achieve consensus on appointment of an arbitrator, the petitioner has filed this petition under Section 11 of the Act.

5. Notice was issued on 08.07.2024. Learned counsel for the petitioner has filed an affidavit of service dated 13.08.2024. It is stated therein that the respondent was served by email on 20.07.2024 at the email address, “imkaustubhgoswami@gmail.com”. This email address is validated by a screenshot of the WhatsApp conversation on 12.05.2024, in which the petitioner asked the respondent for his email Id, and he responded with this very email Id. It has also been sent to the respondent by WhatsApp at the telephone nos. 9555555497 and 9711881236, upon which conversations have taken place between the parties. Additionally, *dasti* service have been effected at the tenanted property and received by Mr. Rakesh Kumar, father of the respondent. Despite service as above, the respondent has failed to appear.

6. At this stage, for the purposes of appointment of an arbitrator under Section 11 of the Act, the Court only has to satisfy itself *prima facie* with regard to the existence of the arbitration clause. The Lease Agreement *prima facie* contains such a clause and is signed by both the parties. The



respondent has also not appeared to controvert the above.

7. In these circumstances, the petition is allowed and the disputes are referred to arbitration under the aegis of Delhi International Arbitration and Conciliation, Delhi High Court, Shreshah Road, New Delhi [“DIAC”]. DIAC is requested to nominate an Arbitrator from its panel. The arbitration proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.

8. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

9. As the respondent has not entered appearance in these proceedings, it is made clear that the respondent is to be served afresh, in accordance with DIAC Rules, in the arbitration proceedings.

10. The petition stands disposed of in these terms.

PRATEEK JALAN, J

AUGUST 16, 2024

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