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

+ **ARB.P. 1171/2023**

M/S V-LIFE RETAIL PRIVATE LIMITED Petitioner

Through: Mr. Kushal Kumar, Mr. Additya
Kapoor, Mr. Akasdeep Gupta, Advs.

versus

SATISH KUMAR SINGH & ANR. Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

18.01.2024

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1. The present petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of Sole Arbitrator.
2. The parties have entered into two agreements. Initially, a profit sharing agreement entered into between the respondent No.1 and the petitioner on 12.09.2019. Vide this agreement, learned counsel submits that there is total investment of 8,00,00,000/-. Out of which, respondent No.1 invested Rs.25,00,000/- and as per clause-4 of the Profit Sharing Agreement, the respondent was entitled to one part of the sale profit on the 10th of every month. However, learned counsel submits that since inception, the respondent No.1 though started asking for more profit but on the other hand started creating hindrances in the conduct of the business.
3. Learned counsel submits that clause -18 of the profit sharing



agreement contains the arbitration clause with the venue at Delhi. Learned counsel submits that another Memorandum of Understanding dated 27.09.2019 entered into between the petitioner and the respondent No.2 regarding the lease of property i.e. Vasant Vihar, Hariwatika Chowk, Ward No.39, Bettiah, West Champaran, Bihar-845438. The demised premises consisted of three floors having 9000 sq ft. Area. However, learned counsel submits that respondent No.1 is the son of the respondent No.2.

4. Learned counsel further submits that the lease for the period of 9 years. However, it has been submitted that that possession was handed over and the petitioner put his stock in the mall in the premises. However, respondents started creating hindrances on account of which, the business could not be started. Learned counsel submits that the petitioner is complying with the agreement and has been paying the rent. It has been submitted that clause 15 of the MOU contains the arbitration clause. The MOU provides that the arbitration proceedings shall be held at Delhi/Bettiah, West Champaran by the Sole Arbitrator.
5. Learned counsel submits that since the disputes arose and there was an arbitration clause, a notice dated 19.09.2023 was sent to the respondent for invocation of the arbitration clause. Learned counsel submits that notice was duly served. However, respondent did not respond to it.
6. Pursuant to this, the petitioner filed the present petition under Section 11 (6) of the A&C Act for the composite reference in regard to both the agreements.



7. Learned counsel submits that since both the agreements are interconnected, it would be in interest of the justice if Sole Arbitrator is appointed for adjudication of wholesome disputes.
8. The notice of the present petition was issued vide order dated 06.11.2023. As per the office report, respondents No.1 and 2 refused to accept the speed post. The petitioner has filed an affidavit of service. In the affidavit of service it has been stated that though the respondents refused to receive, the speed post they have duly been served through e-mail and WhatsApp. It has been submitted that since the respondent has failed to appear, it seems that they are not interested in contesting the present petition. The claim amount is around Rs.2,71,71,139/-.
9. The scope of inquiry by the court under section 11(6) of the Arbitration and Conciliation Act is very limited to examine whether an arbitration agreement exists between the parties. Reliance can be placed on ***M/S Duro Felguera, S.A. vs Gangavaram Port Limited*** (2017) 9 SCC 729 wherein the court inter-alia held as under:

“The scope of the power under Section 11 (6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. (supra) and Boghara Polyfab (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court’s intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11 (6A) ought to be respected.”
10. Considering the fact that since the respondent has failed to appear despite being deemed served, the present petition is disposed of with



the following directions:

- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
 - ii) As agreed, Mr. Siddharth Sharma, Mobile No. (7400111111) is appointed as Sole Arbitrator to adjudicate the disputes between the parties.
 - iii) 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 Schedule IV of the A&C Act or as the parties may agree.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act before entering into the reference.
 - v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims, 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.
 - vi) The parties shall approach the learned arbitrator within two weeks from today.
11. The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

JANUARY 18, 2024

Pallavi