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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1221/2023

OYO WORKSPACES INDIA PVT. LTD.

..... Petitioner

Through: Mr. Sagar Kumar Pradhan, Mr.
Diptiman Acharyya, Ms. Shreya
Srivastava, Advocates.

versus

ONETRUEWEB SOFTWARE SOLUTIONS
PRIVATE LIMITED

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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26.02.2024

1. By way of the present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitrator to adjudicate the disputes between the parties.

2. Learned counsel for the petitioner submits that the parties had entered into a Membership Agreement dated 22.12.2022 [“the Agreement”]. It is submitted that the Agreement contains an arbitration clause [Clause 27], which provides that all disputes, with respect to the Agreement, shall be referred to arbitration as per provisions of the Act, and further provides that the place of arbitration would be at Delhi.

3. Disputes having arisen between the parties, the petitioner invoked arbitration *vide* legal notice dated 19.09.2023, which did not elicit a



response.

4. Pursuant to notice issued on 13.12.2023, the Office reports that service is still awaited. However, learned counsel for the petitioner has filed two affidavits of service. In the first affidavit dated 03.01.2024, learned counsel states that Speed Post delivery could not take place as the respondent's address was found locked. It is also stated that the respondent was also served by e-mail which has not bounced back. The address and e-mail address upon which service has been effected are the same details mentioned in the Master Data of the respondent - company as available on the website of Ministry of Corporate Affairs, Government of India, which has been placed on record alongwith the affidavit of service. Pursuant to order dated 10.01.2024, a second attempt at service was made, both by Speed Post and e-mail, which have yielded the same result.

5. As service has been attempted upon the respondent - company by Speed Post at its registered address, I am of the view that the notice must be taken to have been validly served in terms of Sections 12 and 20 of the Companies Act, 2013 and it is not necessary to await the appearance of the respondent any further.

6. The documents placed on record show *prima facie* existence of the arbitration clause in the Agreement. The Agreement is also signed on behalf of the respondent. The respondent has not appeared to controvert the existence of the arbitration agreement or the due invocation thereof.

7. At the stage of adjudication under Section 11 of the Act, it is not necessary for the Court to render a conclusive finding as to the existence of the agreement, but only to find *prima facie* that an agreement exists



and that the disputes are arbitrable.

8. In view of the above, the petition is allowed and the disputes between the parties are referred to arbitration under the aegis of Delhi International Arbitration Centre, Shershah Road, New Delhi-110503 [“DIAC”], and will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator. DIAC is requested to nominate an arbitrator from its panel.

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

10. As the respondent has not entered appearance in these proceedings, it is made clear that the respondent may be served in the arbitration proceedings in accordance with DIAC Rules and that all rights and contentions of the parties including maintainability of the claims are left open for adjudication before the learned Arbitrator.

11. The petition stands disposed of with these observations.

PRATEEK JALAN, J

FEBRUARY 26, 2024

“Bhupi”/