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

+ **ARB.P. 1273/2023**

M/S LEASE PLAN INDIA PRIVATE LIMITED Petitioner
Through: **Mr. Akhilesh Pradhan, Advocate.**

versus

M/S RUDRAKSH PHARMA
DISTRIBUTOR & ORS. Respondents
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
10.04.2024

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1. The petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], for appointment of an arbitrator to adjudicate disputes between the parties under an agreement dated 21.03.2018 entitled “Lease Agreement” [“the Agreement”]. The parties to the Agreement were the petitioner and respondent No. 1, a partnership firm represented by respondent No. 2. Respondent No. 3 is stated to be the other partner of respondent no. 1. Maruti Suzuki India Ltd. was also party to the Agreement, but Mr. Akhilesh Pradhan, learned counsel for the petitioner, states that no claim is sought to be agitated against it.

2. The Agreement was for lease of vehicles by respondent No. 1 from the petitioner. It contains an arbitration clause [Clause 10.2] which provides for adjudication of disputes by reference to arbitration to be



conducted at New Delhi in accordance with the Rules of Delhi International Arbitration Centre. Under the same clause, Courts in New Delhi have also been vested with exclusive jurisdiction under the Agreement.

3. Disputes having been arisen between the parties, the petitioner claims to have invoked arbitration by a legal notice dated 31.12.2022 addressed to respondent Nos. 1 and 2. The petitioner proposed names of three persons for consideration of the respondent, to be appointed as the arbitrator, but the communication did not elicit a response.

4. Notice was issued in the present petition on 04.12.2023 and directions have been given from time to time with regard to completion of service.

5. By order dated 12.01.2024, learned counsel for the petitioner was directed to serve the respondents by email and WhatsApp at the addresses and phone numbers mentioned in the Agreement. Learned counsel for the petitioner has filed an affidavit of service dated 22.02.2024 which demonstrates that email and WhatsApp service was effected on 20.02.2024.

6. By order dated 06.03.2024, Mr. Pradhan was also permitted to serve the respondents through registered post and Speed Post at the address mentioned in the memo of parties. The learned Joint Registrar has recorded in the order dated 04.04.2024 that valid service has not been effected by these means in view of the Speed Post tracking report.

7. It is nonetheless clear that the respondents have been duly served by email and WhatsApp. It may be noted that the email address and the mobile number of the respondents is mentioned in the Agreement itself



[at page Nos. 35, 37, 40 and 43 of the petition]. The affidavit of service dated 28.03.2024, affirmed by the authorised representative/legal counsel of the petitioner – company, demonstrates service by both these modes.

8. Although service by email and WhatsApp is sufficient, it may also be noted that in the Agreement itself, the address of the respondent for the purposes of correspondence, provided in Clause 10.3, is the address at which service has been attempted. The notice invoking arbitration sent to the same address was reported to have been delivered, but in the Speed Post report, by which the petition was sent to the address, it is stated that no such person is available at the address.

9. In view of the fact that service upon the respondents has been duly effected by email and WhatsApp on 20.02.2024, I do not consider it necessary to await the appearance of the respondents any further.

10. I am *prima facie* satisfied that there exists an arbitration agreement between the parties and that the arbitration proceedings have been duly invoked against respondent Nos. 1 and 2. Mr. Pradhan does not seek any reference to arbitration against respondent No. 3 in her personal capacity.

11. In view of the aforesaid, 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”]. DIAC is requested to nominate an arbitrator from its panel. The arbitration proceedings will be governed by the Rules of DIAC, including as to the remuneration of the learned arbitrator.

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

13. As the respondents have not entered appearance in these



proceedings, it is clarified that they will be duly served in accordance with the DIAC Rules, in the arbitration proceedings also.

14. It is made clear that all rights and contentions of the parties on maintainability of the claims and on merits, are left open for adjudication by the learned arbitrator.

15. The petition is disposed of in the aforesaid terms.

PRATEEK JALAN, J

APRIL 10, 2024

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