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

+ ARB.P. 1328/2023

RAAMKAY CROP SCIENCE

SOLUTIONS PRIVATE LIMITED

..... Petitioner

Through: Mr. V. D'Costa, Ms. Astha Ojha &
Mr. Himanshu Sharma, Advocates.

versus

AKHILESH AGRAWAL

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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13.03.2024

1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitral tribunal to adjudicate disputes between the parties under an agreement dated 14.09.2021, entitled “Distributor Agreement” [“Agreement”].

2. The Agreement contains an arbitration clause [clause 27], which provides for resolution of disputes by arbitration. New Delhi has been designated as the seat of arbitration. The Agreement provides for nomination of an arbitrator by the petitioner. Disputes having arisen between the parties, the petitioner invoked arbitration by a notice dated 31.10.2023. The communication failed to elicit a response.

3. Although the arbitration clause provides for appointment of the arbitrator by the petitioner, Mr. V. D'Costa, learned counsel for the petitioner, submits that such unilateral appointment is impermissible, in



accordance with the prevailing jurisprudence. The petitioner therefore seeks appointment of an independent arbitrator by the Court.

4. Notice was issued in this petition on 15.12.2023. Pursuant to order dated 18.01.2024, the petitioner has filed an affidavit of service dated 06.03.2024, wherein learned counsel has affirmed that notice has been served upon the respondent by email on 06.02.2024 at two email addresses: *agrawalagency21@gmail.com* and *agrawalagroagency21@gmail.com*. The first email address is contained in the “Distribution Application Form” pursuant to which parties entered into the Agreement. However, that mail has bounced back. The second email address has been taken from another “Distributor Application Form”, in relation to a different transaction between the petitioner and the same respondent. A copy of the said document has been annexed as document No. 2 to an affidavit of the petitioner dated 24.01.2024. The address, phone number, photographs and signatures of the respondent’s proprietor, who has executed the Agreement in question, given in both the Distribution Application Forms are the same.

5. Alongwith the affidavit of service dated 06.03.2024, learned counsel for the petitioner has also attached a Speed Post tracking report, which shows that the Speed Post service to the respondent has been refused. Learned counsel has also served the respondent by WhatsApp, which appears to have been delivered.

6. In these circumstances, I am satisfied that service has been properly effected upon the respondent and further proceedings need not await the appearance of the respondent.

7. The petitioner has made out a *prima facie* case with regard to the



existence of the arbitration agreement and invocation thereof. The respondent has also not appeared to controvert these contentions, despite service. The consideration of the Court at the stage of Section 11 of the Act, is limited to *prima facie* satisfaction with regard to existence of the arbitration agreement. Further disputes, even with regard to the existence of the arbitration agreement, may be adjudicated by the learned Arbitrator.

8. In these circumstances, the petition is allowed and the disputes between the parties under the Agreement dated 14.09.2021 are referred to arbitration of Hon'ble Mr. Justice Vipin Sanghi, former Chief Justice, High Court of Uttarakhand [Tel: 9871300037]. The arbitration will be held under the aegis of Delhi International Arbitration Centre ["DIAC"] and will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.

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 is to be served afresh, in accordance with DIAC Rules, in the arbitration proceedings. Needless to say, all rights and contentions of the parties, including on maintainability of the claims and on merits, are left open for adjudication by the learned Arbitrator.

11. The petition stands disposed of in these terms.

PRATEEK JALAN, J

MARCH 13, 2024 'pv' /