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

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Date of Decision: 07.11.2024+ **ARB.P. 1568/2024**

OYO WORKSPACES INDIA PRIVATE LIMITEDPetitioner
Through: Mr. D. Acharya, Mr. Samarth
Mehrotra, Mr. Sagar Pradhan, Advts.

versus

EDUUIS TECO SOLUTION PRIVATE LIMITEDRespondent
Through:

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL.)

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeking appointment of a Sole arbitrator for adjudicating the disputes between the parties.
2. Disputes between the parties have arisen under a Membership Agreement dated 20.09.2023 (hereinafter the '*Membership Agreement*') between the petitioner and the respondent, whereby the petitioner granted rights to the respondent to occupy 32 cabin seats at their co-working space namely, '*Innov8 CLC Tower*', addressed at *Plot 146, CLC Tower, Sector 44, Gurugram, Haryana -122003*, (hereinafter referred to as '*the property*').
3. The Respondent failed to make the payments in lieu of the monthly charges, as also the charges for using the amenities provided at the said property, and the monthly charges applicable for the unexpired lock-in period, amounting to a total sum of Rs. 15,87,078/-, along with the



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applicable TDS.

4. Disputes having arisen between the parties, the petitioner invoked the arbitration clause incorporated in the Membership Agreement vide Notice issued to the respondent on 04.07.2024. The relevant stipulation is as under:-

“27. Governing Law and Dispute Resolution: Governed by Indian law. Disputes shall be resolved by arbitration in accordance with the Arbitration and Conciliation Act 1996 at New Delhi only.”

5. The respondent is stated to have been served with the notice via email on unicorn.uis@gmail.com and info@eduuais.com. Notice was also sent to the respondent via speed post, however, the same returned unserved with the endorsed remarks *“Item Returned No such person in the address”*. In this regard, an affidavit of service has been filed by the petitioner on 28.10.2024 vide diary no. 4893919.

6. The scope of the present proceedings is confined to ascertaining whether there exists an arbitration agreement between the parties. In this regard, it has been held by the Supreme Court in ***In Re: Interplay between Arbitration Agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899***, Curative Petition (C) No. 44/2023 decided on 14.12.2023, as under :-

“208. The Statement of Objects and Reasons of the 2015 Amendment Act are as follows:

“(iii) an application for appointment of an arbitrator shall be disposed of by the High Court or Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of sixty days.

(iv) to provide that while considering any application for appointment of arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues.”

209. The above extract indicates that the Supreme Court or High Court



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at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings.”

7. Furthermore, in *SBI General Insurance Co. Ltd. v. Krish Spinning*, 2024 INSC 532, the Supreme Court has observed as under:

“113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in *In Re: Interplay* (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow:

“209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. [...]”

(Emphasis supplied)

114. In view of the observations made by this Court in *In Re: Interplay* (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement and nothing else. For this reason, we find it difficult to hold that the observations made in *Vidya Drolia* (supra) and adopted in *NTPC v. SPML* (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in *In*



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Re: Interplay (supra).

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123. The power available to the referral courts has to be construed in the light of the fact that no right to appeal is available against any order passed by the referral court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the arbitral tribunal at the nascent stage of Section 11, the referral courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if its Section 11 application is rejected.”

8. In the present case, from a bare perusal of Clause 27 of the Membership Agreement, as placed on record, it is *prima facie* discernible that a valid Arbitration Agreement exists between the parties.

9. In the circumstances, there is no impediment to appointing an independent Sole Arbitrator for adjudicating the disputes between the parties, as prayed for.

10. Accordingly, Mr. Narinder Pal Singh, Advocate (Mob. No.: +91 9311010090) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

11. The respondent shall be at liberty to raise preliminary objections regarding jurisdiction and/or arbitrability, if any, which shall be decided by the sole arbitrator, in accordance with law.

12. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties the requisite disclosure as required under Section 12 of the A&C Act.

13. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.



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14. It is clarified that this Court has not expressed any opinion on the merits of the respective contentions of the parties, or the merits of the matter.

15. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 7, 2024/TS