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

+ **ARB.P. 1962/2024**

SPRINGBOARD SOLUTIONS PRIVATE LIMITEDPetitioner

Through: Mr. Sagar Shivam Jaiswal, Advocate.

versus

RIGHT HEALTH PRODUCTS PRIVATE LIMITED

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **21.01.2025**

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the 1996 Act) by the petitioner seeking the appointment of an Arbitrator to adjudicate upon the disputes that have arisen between the parties as per the Membership Agreement dated 03.03.2023.
2. Heard learned counsel appearing on behalf of the petitioner.
3. Learned counsel for the petitioner contends that an affidavit of service has been placed on record which clearly states that the notice of this petition was served on the email address of the respondent i.e. yekulmurali@gmail.com which is reflected on the official portal of the Ministry of Corporate Affairs. He then contends that the notice sent to the aforesaid address clearly indicated that the matter would be taken up for consideration on 13.01.2025 and despite that, no one appeared on 13.01.2025 on behalf of the respondent and the hearing of the instant case



was deferred till today. Even today, no one appeared on behalf of the respondent.

4. At this juncture, reference can be drawn to the case of ***Lease Plan India (P) Ltd. v. Rudraksh Pharma Distributor (2024 SCC OnLine Del 2687)***, wherein, this Court permitted the service of the petition by email and WhatsApp. The Court held as follows:

“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.”

5. In view of the aforesaid and the affidavit of service filed on behalf of the petitioner, along with the steps taken to serve the notice *via* email and WhatsApp both, the Court is satisfied that the service has been duly completed.

6. The Membership Agreement dated 03.03.2023 was executed between the parties, whereby, certain services were availed by the respondent. The respondent stated to have defaulted in the payment of monthly membership fees etc. The petitioner, therefore, sent a notice for an alleged outstanding



amount of ₹2,78,138/-, however, there was no reply on behalf of the respondent to the said notice. Accordingly, the petitioner has invoked provisions under Section 11 of the 1996 Act while placing reliance on Clause 17(g) of the Membership Agreement dated 03.03.2023, which reads as under:-

“17. MISCELLANEOUS

.....

.....

g. Dispute Resolution: Any dispute arising out of or in connection with this Terms of Offer which is not resolved within 21 (Twenty-One) days after the service of a notice by a Party on the other, including any question regarding its existence, validity or termination shall be referred to any finally resolved through arbitration by a sole arbitrator nominated mutually by both parties under the Arbitration and Conciliation Act, 1996 and other applicable provisions thereof. In the event the parties are not able to mutually appoint one arbitrator within 5 days from the commencement of discussion to this effect, each party would appoint one arbitrator who will in –turn appoint a third arbitrator who would be the chairperson of the tribunal thus constituted. The arbitration proceedings shall be in the English language and shall be held in New Delhi. The arbitration award shall be final and binding on the Parties.”

7. In view of the aforesaid, the Court finds that the parties unequivocally agreed for ventilation of their grievance by way of Arbitration under Clause 17(g) of the Membership Agreement dated 03.03.2023. Since the existence of the arbitration clause is evident from a perusal of the Agreement, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties as prayed for, as mandated in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***,¹ ***TRF Limited v. Energo Engineering Projects Ltd.***,² ***Bharat Broadband Network Limited v. United Telecoms Limited.***,³ and

¹ (2020) 20 SCC 760

² (2017) 8 SCC 377

³ 2019 SCC OnLine SC 547



Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899⁴.

8. In view of aforesaid, the Court appoints Ms. Nidhi Dalal, Advocate (Mob No. +91 9999240395, Email: advnidhidlal@gmail.com) as the Sole Arbitrator to adjudicate the dispute between the parties.

9. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the 1996 Act.

10. The Sole Arbitrator shall be entitled to fee in accordance with the IV Schedule of the 1996 Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

11. The parties shall share the arbitrator's fee and arbitral cost, equally.

12. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the Sole Arbitrator on their merits, in accordance with law.

13. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy between the parties. All rights and contentions of the parties in this regard are reserved. Let the copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well.

14. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

JANUARY 21, 2025

Nc/@m

⁴ In re, 2023 SCC OnLine SC 1666.