

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA
ON THE 30th SEPTEMBER, 2022
ARBITRATION CASE No. 84 of 2021**

BETWEEN:-

**KOTAK MAHINDRA LIFE INSURANCE COMPANY
LTD. KOTAK TOWERS BUILDING NO. 21 7TH
FLOOR INFINITY PARK OFF WERSTERN EXPRESS
HIGHWAY GENERAL AK VAIDHYA MARG MALAD
(MAHARASHTRA)**

.....APPLICANT

***(BY SHRI NILESH AGRAWAL, LEARNED COUNSEL FOR THE
APPLICANT)***

AND

**PRAMOD KUMAR SETHI S/O SHRI DARSHAN LAL
SETHI 1 GULMOHAR COLONY EXTENTION
INDORE AND PR 3 GROPU LEVEL 4 MEGAPOLICE
579, M.G. ROAD INDORE (MADHYA PRADESH)**

(NONE FOR THE RESPONDENT DESPITE SERVICE)

.....RESPONDENTS

*This petition coming on for orders this day, the court passed the
following:*

ORDER

1. The applicant has approached this Court by way of this application filed under section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator in order to resolve the dispute with the respondents.

The facts of the case as stated by the applicant in this case are as under:-

2. The applicant is registered under section 3 of the Insurance Act, 1938 and also under the Companies Act, 1956 . That being an insurance company, it provides service related to insurance to customers all over the India. The applicant and the respondent entered in a lease deed dated 13.09.2012 for carrying of applicant's business of life insurance in the respondent's premises situated at 203, 2nd floor Mega Polis Square, Block 579 MG Road Indore for a period of 9 years. Under the said lease deed the applicant deposited an amount of Rs.26,32,000/- as an interest free refundable security deposit (The security deposit) with the respondent. Due to certain unavoidable circumstances, the applicant has terminated the lease deed vide letter dated 26.09.2019 by serving the 90 days advance notice in accordance with clause 5.1 of the lease deed dated 13.09.2012 and it was informed to the respondent that the applicant would be ready to hand over the peaceful possession of the premises and simultaneously requested to refund the security deposit.

3. That vide email dated 26.12.2019 and letter dated 20.01.2020 the applicant has communicated to the respondent that the said premises has been vacated. The applicant vide letter dated 20.01.2020 has invoked Article 25.1 wherein Mr.Sandeep Jain was appointed to resolve the disputes by means of friendly consultation. Respondent's office has acknowledged the friendly consultation proposal vide email dated 27.01.2020 and for the same 09-10th February was given. However, friendly consultation failed as the respondent did not show any interest in amicable settlement of dispute. In the above circumstances, the applicant invoked the Arbitration clause contained

in the clause 25.3 of the above mentioned lease deed, which read as follows:-

“All such disputed shall be referred to and finally resolved by arbitration by a sole arbitrator to be appointed jointly by the parties. In case the lesser and the lessee are not able to jointly appoint a sole arbitrator then the provisions of the Arbitration and Conciliation Act, 1996 relating to the appointment of the arbitrator will apply. The arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1966. The language of the arbitration shall be in English. The place of arbitration shall be Indore.”

4. Despite service of notice by way of process fee as well as by way of paper publication no one is appearing on behalf of the respondent. Hence proceeded ex-parte.

5. In view of the arbitration clause, and there is no opposition by the respondent hence the application is allowed. Shri H.Y Mehta, a practicing Advocate of this High Court is appointed as Arbitrator in the matter subject to the declarations being made under Section 12 of the 1996 Act (as amended) with respect to the independence and impartiality of the arbitrator, and the ability to devote sufficient time to complete the arbitration within the period specified by Section 29-A of the 1996 Act.

6. The arbitration agreement states that the venue of Arbitration shall be at Indore . The arbitrator is, at liberty to conduct the proceedings at a convenient venue as per the convenience of the arbitrator and the parties if so required. The arbitrator will be paid fees in accordance with the Fourth Schedule of the 1996 Act. Both parties will share the costs of the arbitration equally.

7. The Registry is directed to dispatch a copy of this order to
Mr.H.Y. Mehta, Advocate

Address : 403-404, D.M Tower, Near 56 Dukan, Janjirwala Square,
Race Course Road, Indore (MP) 452003

Mob. No. : 9826070863

The matter is disposed of accordingly.

(Vivek Rusia)
Judge

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Digitally signed by SOURABH
YADAV
Date: 2022.10.14 17:38:45 +05'30'