

IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. 266/2008

Date of Decision : 26.9.2008

SH SURYA KANT GUPTA AND ANOTHER ..... Petitioners  
Through Mr.D.K. Gupta, Advocate

versus

M/S RICHLOOK GARMENTS PVT LTD ..... Respondent  
Through Mr.S.K. Rungta, Advocate

**CORAM**

**HON'BLE MS.JUSTICE HIMA KOHLI**

1. Whether Reporters of Local papers may  
be allowed to see the Judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be  
reported in the Digest? No

**HIMA KOHLI, J. (ORAL)**

1. The present petition is filed by the petitioners praying inter alia for the appointment of an Arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (in short 'the Act'). The undisputed facts of the case are that M/s STC Developers Pvt. Ltd.

(hereinafter referred to as 'the Company'), acquired a plot at Central Business District near Karkardooma Court and developed a shopping mall known as Cross River Mall. In the aforesaid mall, the company let out a shop bearing no.8, located on the first floor, to the respondent, in terms of the lease deed dated 5.4.2006, executed between the respondent and the company. The lease deed contains an arbitration clause being clause no.19, whereunder the parties have agreed that their disputes and differences arising in connection with the lease deed shall be referred to the arbitration of three Arbitrators, one each to be appointed by the parties and third to be appointed by the two arbitrators. For ready reference, the relevant part of Clause No.19 is reproduced herein below:-

“ Clause XIX – Resolution of Disputes : –

- (a) Indian Laws shall govern the construction, validity and performance of this agreement and the Courts at Delhi shall have exclusive jurisdiction. If any dispute or difference, of any kind whatsoever, shall arise between the parties in connection with the interpretation of any of the provisions hereof and/or the performance of this agreement (and whether before or after the termination or breach of this agreement) the Lessor and the Lessee shall promptly and in good faith negotiate with a view to reach its amicable resolution and settlement. In case no amicable resolution or settlement is reached within a period of 30

days from the date of which the dispute or difference was referred for such settlement then such dispute and difference shall be referred to and settled by arbitration of Three (3) arbitrators, one each to be appointed by the parties here to and third arbitrator to be appointed by such (2) two arbitrators. All such proceedings shall be conducted at Delhi in accordance with and subject to the provisions of Arbitration and Conciliation Act, 1996 or any other statutory modification thereof or any other re-enactment for the time being in force. The arbitration proceedings shall be held in English and the Award shall be reasoned and given in writing.

(b) Xxxxxx"

2. Pursuant thereto, the shop was sold by the company to the petitioners herein and the respondent attorned to the petitioners by paying rent to them w.e.f. 18.10.2006 onwards in accordance with the terms and conditions of the lease deed. Subsequently, the respondent issued a legal notice dated 14.5.2008, to the petitioners expressing its intention to vacate the shop on 31.5.2008. The petitioners responded to the aforesaid notice through their counsel vide a reply dated 16.5.2008, whereunder various disputes were raised by the petitioners on account of alleged breach of the lease deed by the respondent, as enumerated in para 6 of the reply. The

petitioners also invoked the arbitration clause governing the parties and while suggesting the name of an Arbitrator, called upon the respondent to nominate an Arbitrator on its part, so as to refer the disputes for adjudication to the aforesaid forum. The aforesaid reply was rejoined to by the respondent vide letter dated 3.6.2008. In para 7 of the aforesaid rejoinder, the counsel for the respondent informed the petitioners that it had opted for "Court Jurisdiction" as per clause 19 of the lease deed and hence stated that there was no need for appointment of an Arbitrator. Aggrieved by the aforesaid response of the respondent, the petitioners have filed the present petition, praying inter alia for appointment of a sole Arbitrator in view of the fact that the respondent has failed to exercise its option within 30 days from the date of service of notice, for resolution of the disputes between the parties.

3. Counsel for the respondent submits that the arbitration clause contained in the lease deed and referred to by the petitioners does not vest exclusive jurisdiction on an Arbitral Tribunal to resolve the disputes between the parties and that the parties are entitled to approach the Civil Courts in Delhi which have been conferred jurisdiction by the parties in terms of Clause 19 of the lease deed. A

perusal of the arbitration clause, however, shows otherwise. Clause 19 of the lease deed is clear, unambiguous and unequivocal inasmuch as it is categorically stated therein that any dispute or difference whatsoever which may arise between the parties in connection with the interpretation of any of the provisions and/or performance agreement shall be sought to be resolved by amicable resolution and in case of no amicable resolution, the same shall be referred for settlement to an Arbitral Tribunal. The respondent cannot be permitted to read the first line of Clause 19 (a) out of context to state that his client had the option to opt for Civil Court jurisdiction, which it did. Instead, the entire clause has to be read to glean the intention of the parties, which on the face of it, indicates that the parties had agreed to submit themselves to the forum of arbitration. In view of the aforesaid, the stand taken by the respondent is rejected being misconceived and untenable. It is held that the parties are governed by the arbitration clause as contained in the lease deed dated 5.4.2006.

4. In the case of Datar Switchgears Ltd. Versus Tata Finance Ltd. & Anr., reported in **(2000) 8 SCC 151**, the Supreme Court has held that if the vacancy of an arbitrator is not filled till the party

approaches the Court and files a petition for appointment of an arbitrator by the designated authority of the Chief Justice of that Court under Section 11(6) of the Arbitration and Conciliation Act, the right to supply the vacancy by the opposite party stands extinguished. The ratio of the aforesaid case was approved by the Supreme Court in Punj Lloyed Ltd. Versus Petronet MHB Ltd., reported in **(2006) 2SCC 682** and it was again followed by a Division Bench of this Court in the case of Delkon (India) Pvt. Ltd. Versus G.M. Bharat Heavy Electricals Ltd., reported in **120 (2005) DLT 542 (DB)**.

5. In view of the aforesaid judgments, the respondent has lost its right to appoint an Arbitrator, it having failed to do so within 30 days from the date of receipt of the notice from the petitioners for appointment of an Arbitrator or even prior to the date of institution of the present petition. At this stage, counsels for the parties jointly state that although the arbitration clause mandates appointment of three Arbitrators, i.e., one Arbitrator by each side and an Umpire to be appointed by both the Arbitrators, it would be appropriate if a sole Arbitrator is appointed to adjudicate the disputes between the parties.

6. In these circumstances, the present petition is allowed. Mr.S.S.Bal (Retd. ADJ) is appointed as the sole Arbitrator to adjudicate upon all the disputes that have arisen between the parties. The parties shall share the fee of the Arbitrator equally, which shall be fixed by him.

7. The parties shall appear before the learned Arbitrator on 23.10.2008 at 4.00 P.M. The parties are at liberty to raise all their disputes before the Arbitrator. They shall be at liberty to file their claims and counter claims and also seek any interim order, if necessary, which may be passed by the learned Arbitrator in accordance with law, after taking into consideration, the facts and circumstances of the present case.

8. The Registry is directed to forward a copy of the order to the Arbitrator forthwith. The parties are also directed to intimate the Arbitrator about the order.

9. The petition is disposed of.

HIMA KOHLI,J

SEPTEMBER 26, 2008  
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