



2024: DHC: 1369



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

Decided on: 19.02.2024

+ **ARB. A. (COMM.) 13/2024 & I.A. 3815-3818/2024**

M/S LA LAGOS SANTE HOSPITALITY PVT LTD..... Appellant

Through: Mr. Anil K. Airi, Sr. Advocate
with Mr. Anubhav Singh, Mr.
Mudit and Mr. Nitin Kumar,
Advocates.

versus

M/S SURIDHI COMMERCIAL INFRA PRIVATE LIMITED &
ORS. Respondents

Through: Mr. Gaurav Mitra, Mr. Ishan Roy
Chowdhury and Ms. Harshita
Gulati, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J. (ORAL)

1. The present appeal, under Section 37 of the Arbitration and Conciliation Act, 1996 [“the Act”], is directed against an order dated 23.01.2024 passed by a Sole Arbitrator in respect of disputes between the parties under a Lease Deed dated 06.02.2020, between the appellant and respondent No.1, and a Maintenance and Services Agreement dated 05.10.2019 between the appellant and respondent No.2.

A. Background

2. The Lease Deed is in respect of space owned by respondent No.1 in a commercial complex/shopping mall. The appellant has established a restaurant under the name “Cafe After Hours” in the leased premises.

Signature Not Verified

Digitally Signed
By: SHITU NAGPAL
Signing Date: 22.02.2024
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Respondent No.2 is a maintenance agency responsible for maintenance and services in the common areas of the mall. Prior to entering into the lease deed between the appellant and respondent No.1, the parties had entered into a leave and licence agreement, and maintenance services had commenced under the Maintenance and Services Agreement dated 05.10.2019.

3. Disputes having arisen between the parties, the learned Arbitrator was appointed by an order of the Court dated 28.08.2023 in ARB.P.880/2023. The order specifically records that the learned Arbitrator would adjudicate the disputes between the parties in respect of both, the Lease Deed and the Maintenance and Services Agreement.

4. Although the statement of claims has not been placed on record, Mr. Anil K. Airi, learned Senior Counsel for the appellant, states that appellant-claimant has challenged the termination of the Lease Deed, dated 08.07.2023, and claimed damages. The respondents have defended the claims and also sought various counter-claims.

5. The impugned order has been passed on an application under Section 17 of the Act filed by the respondents. By virtue of the said order, the learned Arbitrator has directed the appellant to remove two signages placed on the mall – one on the terrace and the second on the front elevation of the mall – to facilitate its renovation. The second direction of the learned Arbitrator is that the appellant must pay maintenance charges at the rate of Rs.3,08,000/- as required by a Settlement Agreement-cum-Amendment dated 13.08.2020.

6. I have heard Mr. Airi and Mr. Gaurav Mitra, learned counsel for the respondents.



B. Re: Removal of two signages

7. In the Maintenance and Services Agreement, learned counsel submit that the provision with regard to signages is provided in Clause 9.22, which reads as follows:

“9.22 Display of signages and boards:

The Occupant/Tenant shall put up any name/sign board, neon-light & publicity/advertisement material etc. only at the specified areas. In other words it shall not put up any name/sign board, neon-light & publicity/advertisement material etc. anywhere else inside or outside the premises. Any tax imposed by competent authorities in this regard shall be borne by the Occupant/Tenant. For any additional signage requirement over and above the designated place, the Occupant/Tenant/Tenant has to obtain permission in writing from the Management Agency on terms and conditions specifically decided by the Latter.”¹

8. The leased premises are defined in the Recitals to the Lease Deed as follows:

“a) The Lessor is the Sole, absolute, exclusive, and rightful owner of the entire built up property/ units bearing No. FF-01, FF-02, FF-02A, SF-01, SF-01B and SF-01C (Front Side Sky Bridge on Second Floor) in the building known as Gourmet Hub, Plot No. 1, BG-1 & BG-2, Paschim Puri, New Delhi - 110063, covered area admeasuring 6715.50 sq. ft., 13431.00 sq. ft of chargeable area ("the Leased Premises").”²

9. Learned counsel for the parties draw my attention to the following clauses of the Lease Deed with respect to signages:

“9.2 The Lessor has already provided the following infrastructure, facilities and utilities to the Lessee, and simultaneously holding necessary Permits under Applicable Law throughout the Term:

xxxx

xxxx

xxxx

xxxx

(b) The Lessor has already provided (i) space for fresh Air Handling Units (AHUs) on the terrace of the LSC, along with the route of exhaust and fresh air ducts, compressors, and other relevant

¹ Emphasis supplied.

² Emphasis supplied.



equipment (ii) space for exhaust unit for kitchen at no additional cost. Elevation of the duct, etc., will be done by the Lessee at its own cost to keep the aesthetic look of the LSC. Design in this respect will be provided to the Lessee by the Developer/Lessor.

XXXX

XXXX

XXXX

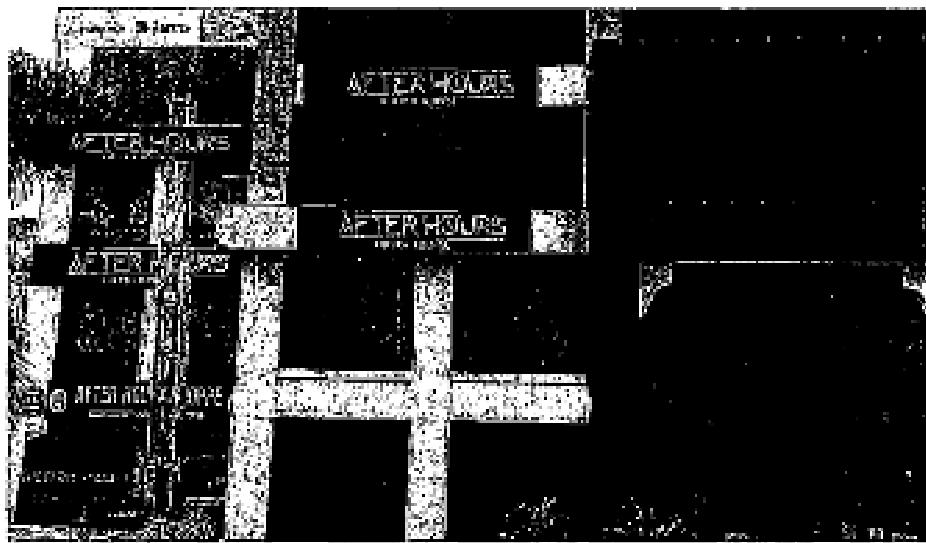
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9.3 Signage: The Lessor shall provide at no additional cost to Lessee space for signage as per the design control guidelines specified by the Lessor/Developer/Maintenance Agency from time to time.

The Lessor shall not place any item / hoarding that may impair visibility of the Restaurant in any manner. The detailed Signage Plan is enclosed and marked as per Annexure-B. The Lessee shall comply with Applicable Law and obtain necessary Permit(s) concerning the use of signage. The Lessee shall, at its own cost and expenses, maintain the validity of such Permit(s) throughout the Lease Period.”³

10. It is undisputed that Annexure B, entitled “Signage Plan”, as contained in the Lease Deed is in the following form:

SIGNAGE PLAN



For and on behalf of the Lessor
Signature of the Lessor

LA LAGOS SANTE HOSPITALITY PRIVATE LTD.
Signature of the Director
DIRECTOR

³ Emphasis supplied.



11. In the application filed by the respondents under Section 17 of the Act, the respondents pleaded that they were in the process of undertaking renovation of the premises and that the appellant had installed signages that deviate from the approved and sanctioned signage plan.

12. In the impugned order, the learned Arbitrator has incorporated two photographs, showing signages installed by the appellant on the terrace of the mall and on the front elevation. He has also incorporated the permitted signages and the location of the allegedly impermissible signages, superimposed on Annexure B, in the following image:



13. Having regard to the signages permitted under the agreements, the learned Arbitrator has held as follows:

“15. As per Signage Plan (Annexure B) on record display of signages is permitted at six places only. There is no dispute with the settled position of law as highlighted in decisions cited by the claimant’s counsel but reliance placed upon these decisions by the claimant’s counsel is of no avail as respondents have clearly made out a prima



*facie case to injunct the claimant from displaying the signages on the terrace and front elevation of the mall in question. **In the instant case, the balance of convenience is also in favor of the respondents as renovation of the mall in question cannot be halted as display of signages on the terrace and front elevation of the mall in question does not appear to be permitted in the face of Clause 9.22 of Maintenance and Services Agreement of 05.10.2019 and Clause 9.3 of the Lease Deed of 06.02.2020 in question** as the claimant is expressly prohibited from deviating from the approved Signage Plan outlined in Annexure B of the main Lease Deed of 06.02.2020. Question of Respondents not attracting potential tenants upon renovation of the mall in question is irrelevant and inconsequential in the facts of the instant case.*

*16. That in light of the above narration, since respondents have made out a prima facie case and so **purely as an interim measure**, claimant is directed to forthwith remove its signages on the terrace and front elevation of the mall in question **to facilitate the renovation of the mall in question.**”⁴*

14. The contention of Mr. Airi is that the aforesaid direction is, both legally and factually, incorrect. He submits that, even according to the respondents, the aforesaid signages on the terrace and on the front elevation have been in place since December 2019. He contends that the learned Arbitrator has alluded to photographs and images, which were not part of the Section 17 application filed by the respondents. He submits that the respondents have not even filed a counter-claim for removal of the signages but, by virtue of the impugned order, have been granted an interlocutory order of a mandatory nature.

15. Before dealing with these contentions, it may be noted that the scope of interference with a Section 17 order, in exercise of jurisdiction under Section 37, has been held by this Court to be fairly narrow. In some judgments⁵, this Court has even equated it to the nature of jurisdiction

⁴ Emphasis supplied.

⁵ Dinesh Gupta and Ors. vs. Anand Gupta and Ors, 2020 SCC OnLine Del 2099; Augmont Gold Pvt. Ltd. vs. One97 Communication Ltd., 2021 SCC OnLine Del 4484; and Sanjay Arora & Anr. vs. Rajan



exercised under Section 34 of the Act. In any event, the principles of restricted interference with interlocutory orders, laid down by the Supreme Court, *inter-alia*, in *Wander Ltd. and Anr. vs. Antox India (P) Ltd.*⁶, have consistently been held to be applicable while exercising Section 37 jurisdiction as well⁷. The following extract from this Court's recent decision in *Tahal Consulting Engineers India (P) Ltd. vs. Promax Power Ltd.*⁸ summarises the legal position thus:

“38. It would thus appear to be well settled that the powers under Section 37(2)(b) is to be exercised and wielded with due circumspection and restraint. An appellate court would clearly be transgressing its jurisdiction if it were to interfere with a discretionary order made by the Arbitral Tribunal merely on the ground of another possible view being tenable or upon a wholesome review of the facts the appellate court substituting its own independent opinion in place of the one expressed by the Arbitral Tribunal. The order of the Arbitral Tribunal would thus be liable to be tested on the limited grounds of perversity, arbitrariness and a manifest illegality only.”

16. Analysing the facts of the present case on the anvil of these tests, I do not find any reason to interfere with the interim order of the learned Arbitrator, for the following reasons:

- a. Clause 9.3 of the Lease Deed, read with Annexure B, clearly designated the spaces on the facade of the mall upon which the appellant was entitled to place its signages. The appellant does not factually dispute that the signages, which it has been directed to

Chadha & Ors., 2021 SCC OnLine Del 4619.

⁶ 1990 Supp SCC 727.

⁷ Green Infra Wind Energy Ltd. vs. Regen Powertech Pvt. Ltd, 2018 SCC OnLine Del 8273, Sona Corporation India Pvt. Ltd. vs. Ingram Micro India Pvt. Ltd. & Anr, 2020 SCC OnLine Del 300, Supreme Panvel Indapur Tollways (P) Ltd. vs. National Highways Authority of India, 2022 SCC OnLine Del 4491, Medipol Pharamceutical India (P) Ltd. vs. Union of India, 2023 SCC OnLine Del 2419, Handicraft & Handlooms Exports Co. of India v. SMC Comtrade Ltd., 2023 SCC OnLine Del 3981 and Tahal Consulting Engineers India (P) Ltd. v. Promax Power Ltd., 2023 SCC OnLine Del 2069.

⁸ *Ibid.*



remove, have been placed on the terrace of the mall and on the front elevation, which do not fall within the spaces designated in Annexure B. Such a position is admitted by the appellant and does not require consideration of the photographs included in the impugned order which, according to Mr. Airi, were not a part of the pleadings, but part of the written submissions filed by the respondents after the hearing.

- b. Clause 9.22 of the Maintenance and Services Agreement goes even further, stating expressly that the appellant was not entitled to display any signage “*anywhere else inside or outside the premises*”, and that it would be required to obtain permission in writing from the management agency for any additional signage requirement. No such permission was sought or obtained in writing. Mr. Airi’s justification is that the appellant has been permitted to display the signages at the concerned locations since the year 2019. Mr. Mitra, however, submits that during the COVID-19 period, the respondents did not consider it necessary to agitate this issue, and the requirement for removal of the signages has been necessitated by reason of the ongoing renovation of the mall.
- c. Although no specific locations were mentioned in the application under Section 17, there was a clear averment that signages had been placed at locations other than those permitted under the agreement, which has not been factually disputed. Similarly, in the counter claims, filed by the respondents, they have specifically pleaded that signages have been placed at unauthorised locations. The absence of a separate counter-claim for removal of the



signages is, therefore, not in my view conclusive. Mr. Mitra states that an application for amendment of the reliefs claimed in the counter-claim, to incorporate a relief of removal, has also been since filed before the learned Arbitrator. The legal position is that Section 17 relief can, in appropriate circumstances, be granted even prior to the filing of a claim or a counter-claim. In such circumstances, Mr. Airi's contention with regard to the width of the counter-claim is insufficient to displace the impugned order.

- d. Mr. Airi's final factual submission was that the impugned signages are in fact on portions of the mall demised to the appellant. As far as the signage on the terrace is concerned, he referred me to Clause 9.2(b) of the Lease Deed. However, this clause only refers to allocation of space on the terrace for the purposes of installing Air Handling Units, and does not appear to permit the installation of signages. As far as the signage on the front facade is concerned, Mr. Airi submits that this signage is on the "sky bridge", which is part of the leased premises, reflected in Recital (a), set out in paragraph 8 hereinabove. Even accepting that the "sky bridge" is part of the demised premises, I am unable to accept this submission, as I do not find any support in the Lease Deed for the suggestion that this would entitle the appellant to place an additional signage on the facade of the mall. The permitted signages have been clearly depicted in Annexure B and admittedly do not include the signage in question.
- e. The powers of an arbitrator under Section 17 are wide, and the order of the learned Arbitrator, in effect, requires adherence to



express and undisputed contractual terms. In the context of powers of the Court to grant interim measures under Section 9 of the Act, a Division Bench of this Court has explained that the Court is required to enter into a fact-based determination as to whether the risk of granting an injunction, ultimately found unjustified, would be higher than that of refusing a justified interim order⁹. The Supreme Court dismissed a Special Leave Petition against the said judgment¹⁰ and it has, in fact, been cited with approval in *Sepco*

⁹ Ajay Singh vs. Kal Airways Private Limited, 2017 SCC OnLine Del 8934. In paragraphs 27 and 28, it was held as follows:

“27. Though apparently, there seem to be two divergent strands of thought, in judicial thinking, this court is of the opinion that **the matter is one of the weight to be given to the materials on record, a fact dependent exercise, rather than of principle. That Section 9 grants wide powers to the courts in fashioning an appropriate interim order, is apparent from its text.** Nevertheless, what the authorities stress is that the exercise of such power should be principled, premised on some known guidelines - therefore, the analogy of Orders 38 and 39. **Equally, the court should not find itself unduly bound by the text of those provisions rather it is to follow the underlying principles.** In this regard, the observations of Lord Hoffman in *Films Rover International Ltd. v. Cannon Film Sales Ltd.* (1986) 3 All ER 772 are fitting:

“But I think it is important in this area to distinguish between fundamental principles and what are sometimes described as ‘guidelines’, i.e. useful generalisations about the way to deal with the normal run of cases falling within a particular category. The principal dilemma about the grant of interlocutory injunctions, whether prohibitory or mandatory, is that there is by definition a risk that the court may make the ‘wrong’ decision, in the sense of granting an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial. A fundamental principle is therefore that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been ‘wrong’ in the sense I have described. The guidelines for the grant of both kinds of interlocutory injunctions are derived from this principle.”

28. It was observed later, in the same judgment that:

“The question of substance is whether the granting of the injunction would carry that higher risk of injustice which is normally associated with the grant of a mandatory injunction. The second point is that in cases in which there can be no dispute about the use of the term ‘mandatory’ to describe the injunction, the same question of substance will determine whether the case is ‘normal’ and therefore within the guideline or ‘exceptional’ and therefore requiring special treatment. If it appears to the court that, exceptionally, the case is one in which withholding a mandatory interlocutory injunction would in fact carry a greater risk of injustice than granting it even though the court does not feel a ‘high degree of assurance’ about the plaintiff’s chances of establishing his right, there cannot be any rational basis for withholding the injunction.”

[Emphasis Supplied]

¹⁰ SLP(C) 18558/2017 dismissed on 28.07.2017.



*Electric Power Construction Corporation vs. Power Mech Projects Ltd.*¹¹. Applying this line of reasoning to the present case, the order of the learned arbitrator considers the strong *prima facie* case, shown by the respondents (based upon express contractual terms) and the risk in stalling the renovation project of the respondents. Merely because the signages had been up since 2019, I do not find this reasoning to be capricious, arbitrary or perverse, so as to require interference under Section 37 of the Act.

17. In these circumstances, I do not find any reason to interfere with the *prima facie* view taken by the learned Arbitrator. I note that the relief granted by the learned Arbitrator is in the following terms:

“16. That in light of the above narration, since respondents have made out a *prima facie* case and so **purely as an interim measure**, claimant is directed to forthwith remove its signages on the terrace and front elevation of the mall in question **to facilitate the renovation of the mall in question.**”¹²

Mr. Mitra contends that, even after the renovation, these signages cannot be replaced. That is a matter left open for adjudication by the learned Arbitrator, as the impugned order does not go so far as to suggest that relief has been granted for the period after renovation.

18. Needless to state, the learned Arbitrator will take a final decision at the appropriate stage, uninfluenced by the observations in the impugned order or in the present judgment.

19. The appeal on this ground is, therefore, rejected, with the aforementioned observations.

¹¹ 2022 SCC OnLine SC 1243.

¹² Emphasis supplied.



C. Re: Maintenance charges

20. As far as the maintenance charges are concerned, there is a dispute as to the quantum of monthly maintenance charges due to be paid by the appellant. According to the respondents, it is Rs.3,08,000/- per month, and according to the appellant, it is Rs.1,90,000/- per month under a Settlement Agreement.

21. Learned counsel for the parties agree that the impugned order may be modified, as far as this aspect is concerned, as follows:

- a. Rs.1,90,000/- will be paid by the appellant to respondent No.2 per month by way of maintenance charges, subject to invoices raised by respondent No.2 in this regard.
- b. The balance amount of Rs.1,18,000/- per month will be placed by the appellant in a fixed deposit on a quarterly basis and the fixed deposit receipts will be deposited with the learned Arbitrator. The first deposit for the quarter of January to March, 2024 will be made by 30.03.2024, and subsequent deposits will be made by the end of each subsequent quarter.

D. Conclusion

22. The appeal, alongwith the pending applications, is disposed of with the directions contained in paragraphs 17 to 19 and 21 hereinabove. There will be no order as to costs.

PRATEEK JALAN, J

FEBRUARY 19, 2024
'SS/udit'