

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WP(C).No. 29339 of 2015 (N)

PETITIONER(S):

**M/S APPLIED BUSINESS CONSULTING SERVICES (P) LTD.,
AN INCORPORATED COMPANY HAVING ITS REGISTERED
OFFICE AT LB-15B, ANSAL BHAVAN, KG MARG,
CONNAUGHT PLACE, NEW DELHI - 110 002,
REPRESENTED BY ITS AUTHORISED OFFICER
MR.MANJU M.ISMAIL.**

**BY ADVS.SRI.N.M.MADHU
SMT.C.S.RAJANI**

RESPONDENT(S):

**INFOPARKS KERALA,
HAVING ITS OFFICE AT 'ATHULYA' BUILDING,
INFOPARK KOCHI, PIN - 682 042,
REPRESENTED BY ITS CHIEF EXECUTIVE
OFFICER MR.HRISHIKESH NAIR.**

**BY ADVA. SRI.E.K.NANDAKUMAR (SR.)
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS
SMT.RASHMI. K.V., SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1: COPY OF THE RESOLUTION OF THE PETITIONER COMPANY AUTHORIZING ITS OFFICIAL TO FILE THE WRIT PETITION.
- EXT.P2: COPY OF THE AGREEMENT BETWEEN THE PETITIONER AND THE RESPONDENT.
- EXT.P3: COPY OF THE COMMUNICATION SENT BY THE MANAGING DIRECTOR OF SPERIDIAN TO THE RESPONDENT VIA E-MAIL ON 6.8.2015.
- EXT.P4: COPY OF THE REPLY TO EXT.P3 SEND BY THE RESPONDENT TO SPERIDIAN.
- EXT.P5: COPY OF THE LETTER FROM MR.ARUN RAJEEVAN, THE DEPUTY MANAGER, MARKETING OF INFORPARD TO SPERIDIAN DTD.17.8.2015.
- EXT.P6: COPY OF THE REPLY FROM SPERIDIAN TO RESPONDENT TO EXT.P5.
- EXT.P7: COPY OF THE FURTHER COMMUNICATION INFORMING THE SUFFICIENCY OF DOCUMENTS SUBMITTED FROM THE RESPONDENT TO THE PETITIONER.
- EXT.P8: COPY OF THE COMMUNICATION DTD.31.8.2015 FROM SPERIDIAN TO RESPONDENT.
- EXT.P9: COPY OF THE COMMUNICATION FROM THE RESPONDENT TO SPERIDIAN INFORMING PETITIONER HAS NO DUES TO THE RESPONDENT.
- EXT.P10: COPY OF THE LETTER DTD.9.9.2015 SENT BY THE PETITIONER VIA E-MAIL TO THE RESPONDENT SEEKING APPROVAL FOR CARRYING OUT CERTAIN WORKS IN THE PREMISES.
- EXT.P11: COPY OF TH EREPLY DTD.1.9.2015 TO EXT.P10 SENT BY THE RESPONDENT.
- EXT.P12: COPY OF THE NOTICE ISSUED BY THE RESPONDENT TO THE PETITIONER.
- EXT.P13: COPY OF THE LETTER DTD.21.9.2015 WITH MOU SENT BY THE PETITIONER TO THE RESPONDENT.
- EXT.P14: COPY OF THE LETTER SENT BY SPERIDIAN TO THE RESPONDENT REGARDING THE STOPPAGE WORK.
- EXT.P15: COPY OF THE REPLY TO EXT.P14 SENT BY THE SPERIDIAN RESPONDENT.
- EXT.P16: COPY OF THE REPLY ANSWERING THE QUERIES IN EXT.P15 SENT BY SPERIDIAN TO THE RESPONDENT.

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EXT.P17: COPY OF THE TERMINATION LETTER SENT BY THE RESPONDENT TO THE PETITIONER DTD.30.9.2015.

EXT.P18: COPY OF THE FORMAL TERMINATION LETTER ATTACHED WITH EXT.P17.

EXT.P19: COPY OF THE LETTER SENT BY THE RESPONDENT TO ITS OFFICIAL DIRECTING TO GIVE THE BANK A/C DETAILS.

EXT.P20: TRUE COPY OF THE BUSINESS ACQUISITION AGREEMENT DTD.1.9.2015.

RESPONDENT(S)' EXHIBITS:

EXT.R1(a): TRUE COPY OF THE EMAIL DTD.9.9.2015 SENT BY THE RESPONDENT TO THE PETITIONER.

EXT.R1(b): TRUE COPY OF THE EMAIL DTD.9.9.2015 FROM THE PETITIONER TO THE RESPONDENT.

EXT.R1(c): TRUE COPY OF THE EMAIL DTD.15.9.2015, FROM SPERIDIAN TO THE RESPONDENT.

//TRUE COPY//

P.S.TO JUDGE

Ms✓/

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.29339 of 2015

Dated this the 8th day of October, 2015

JUDGMENT

The petitioner approached this Court challenging termination of the lease. The petitioner and the Infopark entered into an agreement on 5.8.2014. The agreement is produced as Ext.P2. The petitioner also seeks a direction to allow takeover of the premises by Speridian, another entity.

2. The Speridian, in fact, intimated the Infopark, they proposed to acquire a Company in Infopark. Since, it being an acquisition, the Infopark expressed that they have no objection in acquiring a Company in Infopark. But, it apparently came out the deal has been struck between the Speridian and the petitioner to transfer of possession of the premises. Therefore, sensing that, it is a sub-lease in violation of Clause-12 of the lease agreement, the respondents refused to act upon the request of the Speridian to acquire the premises of the Infopark.

3. As borne out from Ext.P20 produced by the petitioner, it

would indicate that it is rather a physical transfer of the premises than acquisition of the Company by the Speridian. Therefore, this Court is of the view that respondents are rightly objected to the sub-lease. But, the fact remains that the petitioner continues to be in physical possession. Therefore, the question that would arise whether the respondents are entitled to invoke Clause-12 of the lease deed to terminate the lease. Clause-12 provides as follows:

“The Lessee shall not assign, transfer or under let the demised premises or any part thereof without the written consent of the Lessor and upon every such assignment, transfer or sub-lease of the premises hereby demised or any part thereof, with the written consent of the Lessor, the Lessee shall deliver a notice of such assignment, transfer of sub-lease to the Lessor within one calendar month thereof, setting forth the names and description of the parties thereto and the particulars and effect thereof.”

4. This Court is of the view that the sub lease being a transfer of interest (possession) in the premises, which has not come into effect so far, the respondents cannot act upon Clause-12 on a intended creation of the sub-lease. The respondents can act

based on Clause-12 only on actual transfer of premises or creation of sub-lease of the premises. Therefore, at this stage, this Court is of the view that any action based on Clause-12 is premature.

5. However, in the termination notice, the respondents have alleged that the petitioner has violated Clause-7 of the lease agreement. Clause 7 of the agreement reads as follows:

“The Lessee shall commence the operation not later than one month from the date of lease and ensure at least 60% occupancy within the first two months of operation. Failure to commence operations within the period aforementioned will be treated as a breach of covenant on the part of the lessee.”

6. It appears that the petitioner has not raised any objection on the reason for termination based on Clause-7 of the lease agreement. Certainly, it is in the domain of the respondents to take action if the petitioner has violated Clause-7 of the agreement.

7. This Court is of the view that the petitioner should be given an opportunity in this matter to show cause against the proposed action in terms of Clause-7 of the lease agreement. The

petitioner shall raise to the objection within two weeks from the date of receipt of a copy of this judgment. Thereafter, an appropriate decision shall be taken by the Infopark after hearing the petitioner in accordance with the lease agreement. Till a decision is taken in this matter, no action shall be taken against the petitioner.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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