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

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Decided on: 5th June, 2015

+ **FAO(OS) 306/2015**

M/S UNIQUE INFOWAYS PVT LTD

..... Appellant

Through

Mr. S.S. Mishra with Mr. Mukesh
Kumar and Mr. Dhananjay, Advs.

Versus

SAPPHIRE PROJECTS PVT LTD & ANR

..... Respondent

Through

Mr. Sandeep Sethi, Sr. Adv. with Mr.
Rajesh Yadav and Mr. Neeraj Yadav,
Advs.

+ **FAO(OS) 307/2015**

M/S UNIQUE INFOWAYS PVT LTD

..... Appellant

Through

Mr. S.S. Mishra with Mr. Mukesh
Kumar and Mr. Dhananjay, Advs.

Versus

V CUBED PVT LTD & ANR

..... Respondent

Through

Mr. Sandeep Sethi, Sr. Adv. with Mr.
Rajesh Yadav and Mr. Neeraj Yadav,
Advs.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE V.P.VAISH

MUKTA GUPTA, J (ORAL)

CMs. 10968-10969/2015 in FAO(OS) 306/2015

CM 10971/2015 in FAO(OS) 307/2015

Exemption allowed, subject to all just exceptions.

Caveat No. 603/2015 in FAO(OS) No.306/2015
Caveat No.604/2015 in FAO(OS) No. 307/2015

Learned counsel for the caveators enters appearance.

Caveats are discharged.

FAO(OS) No. 306/2015
FAO(OS) 307/2015 & CM 10970/2015

1. The petitioner M/s Unique Infoways Pvt. Ltd. (in short 'Unique Infoways') entered into sub-sub license agreement with Sapphire Projects Pvt. Ltd. (in short 'Sapphire Projects') and M/s V Cubed Pvt. Ltd. (in short 'V Cubed') by taking the entire upper ground floor of Nehru Place Metro Station for a period of 12 years given to M/s TDI Infrastructure Pvt. Ltd. on a license for a period of 30 years by Delhi Metro Rail Corporation (in short 'DMRC'). According to Unique Infoways the sub-sub lincense agreement dated 10th July, 2012 was entered for a period of 12 years with no right of termination in favour of the sub-sub licensor and right of termination only vested with Unique Infoways. Unique Infoways agreed for a monthly license fee/rent of Rs.1 crore including CAM charges and service tax and a refundable security of Rs.4.75 crores was deposited with Sapphire Projects and V Cubed. It is the case of Unique Infoways that after an initial fit-out period of 3 months the respondents failed to provide basic structure, requirements and contractual obligations till June, 2013 and thus Unique Infoways could start their operation only thereafter. Unique Infoways restructured and reorganized the work in phased manner and tried to renovate one wing for new venture which they wanted to start. It is stated by Unique Infoways that respondents adopted illegal business practices by

delaying the working of Unique Infoways by impressing and insisting upon it to incorporate a few brands of their liking and choice. Unique Infoways vide its letter dated 22nd March, 2015 asked the respondents to refrain from obstructing and interfering in renovation work, however respondents replied that they never agreed for the business of restaurants in the area whereas Unique Infoways was free to enjoy the licensed area as it wished. In view of the disputes between the parties and hindrance in the unobstructed business activities of Unique Infoways, it filed a petition under Section 9 of the Arbitration and Conciliation Act, which was registered as OMP(I) 143/2015.

2. In OMP(I) 143/2015 vide order dated 17th April, 2015 counsel for Sapphire Projects and V Cubed pointed out non-payment of arrears of sub-sub license fee since January, 2015 and thus vide order dated 25th May, 2015, the learned Single Judge held that no case was made out for grant of interim relief in favour of Unique Infoways. The application seeking recall of order dated 25th May, 2015 was dismissed vide the impugned order dated 29th May, 2015.

3. Another OMP being OMP(I) No.154/2015 was filed by V Cubed and Sapphire Projects alleging that the mall has been conceptualized, created and designed in such a manner that it has shopping centre on the upper ground floor and food courts on the lower ground floor which agreement was also for the purpose of avoiding conflict of business interest by running the food courts/restaurants from both upper and lower ground floors. Unique Infoways in breach of its obligations under the agreement wants to start food courts and restaurants on the upper ground floor and in view thereof V Cubed and Sapphire Projects sent a letter dated 22nd March, 2015. It was

also stated that Unique Infoways defaulted in payment of sub-sub license fee for the period January to March, 2015 and the cheques issued in lieu thereof were dishonoured. In the two OMP(I)s the following orders were passed on 29th May, 2015:-

OMP(I) 143/2015

“IA No. 12018 of 2015 (exemption)

1. Allowed subject to all just exceptions.

2. The application is disposed of.

IA No. 12017 of 2015

3. The submissions of Mr. Randhir Jain, learned counsel for the Petitioner/Applicant have been heard at length.

4. The order dated 25th May 2015 noted that the Petitioner has not paid the licence fee of the premises in question since January 2015.

5. Mr. Jain submitted out that the Petitioner has deposited with the Respondent over Rs.4.5 crores as security money which can easily be adjusted against the outstanding amount. On the other hand, it is pointed out by Mr. Rajesh Yadav, learned counsel for the Respondent, that the outstanding amount as of date is Rs.5,24,03,956.10, and therefore the Petitioner still owes the Respondent a substantial sum of money even if the security amount is adjusted. He informs that the cheques issued by the Petitioner have been dishonoured on presentation and the licence has been terminated with effect from 7th April 2015.

6. No grounds have been made out for recall of the order dated 25th May 2015. The application is dismissed.”

OMP(I) 154/2015

“1. Mr. Vipul Jain, Director of the Respondent is present in person along with his counsel Mr. Randhir Jain. Mr. Vipul Jain has also been heard by this Court.

2. With the sub-sub licence agreement having been terminated on 7th April 2015 and with the outstanding issues between the parties unable to be resolved, it is agreed that all the contentions of the parties would be left to be urged in the arbitration or other proceedings in accordance with law.

3. Mr. Vipul Jain undertakes to the Court that without fail by 11 am on 8th June 2015 he will hand back the premises in question to the Respondent. If Mr. Vipul Jain requires to remove any material which he has placed in the premises, he will be permitted to do so, without causing any damage to the property. An inventory will be prepared of the goods and materials etc. so removed. All the contentions of the parties are left to be urged in the arbitral proceedings. It will be open to the parties to seek interim reliefs in the arbitral proceedings. If there is any non-compliance of the above order, it will be open to the Petitioner to seek appropriate remedy in accordance with law.

4. The petition is disposed of.

5. A copy of this order be given dasti under the signature of Court Master.”

4. In FAO(OS) 306/2015 the order dated 29th May, 2015 passed in OMP(I) 143/2015 is challenged whereas in FAO(OS) 307/2015 the order dated 29th May, 2015 in OMP(I) 154/2015 is challenged.

5. The grievance of the Unique Infoways to the order dated 29th May, 2015 in OMP(I) 143/2015 is that though there were arrears of license fee since January, 2015 but in view of the security amount lying, the same could be adjusted and an interim relief was required to be granted to Unique Infoways otherwise it will suffer a huge loss and nothing will be left for

adjudication before the learned Arbitrator. As noted above, admittedly “sub-sub license fee” since January, 2015 has not been paid which was to be paid in advance. As per Article 4.3 of the agreement between the parties, in case of breach of any condition or restriction contained in the Sub Sub License agreement, the sub-licensee shall by way of written notice intimate the sub-sub licensee of the same who shall within one week of receiving of the intimation rectify/remove the default. In case the sub-sub licensee fails to rectify the default within 30 days of receiving the written notice from the sub-licensee then the sub-licensee may terminate the agreement forthwith and deny the sub-sub licensee access to the sub-sub license area.

6. Thus, the contention of Unique Infoways that sub-sub license was for a period of 12 years with a lock-in-period of 3 years and was terminable only at the instance of Unique Infoways is misconceived. Admittedly there has been breach in payment of sub-sub license fee and cheques paid in lieu thereof have been dishonoured. No interim relief restraining Sapphire Projects and V Cubed from seeking eviction of the Unique Infoways could be passed by the learned Single Judge and thus there is no infirmity in the impugned order dated 29th May, 2015 passed in OMP(I) 143/2015.

7. FAO(OS) 306/2015 is dismissed accordingly.

8. In OMP 154/2015 on 29th May, 2015 Mr. Vipul Jain, Director of Unique Infoways undertook before the learned Single Judge that without fail by 11.00 AM on 8th June, 2015 he would hand back the premises in question to Sapphire Projects and V Cubed and would remove the material which he has placed on the premises without causing any damage to the property. Since the said order has been passed on the undertaking of the appellant, no

appeal therefrom would lie and thus FAO(OS) 307/2015 is also dismissed accordingly.

(MUKTA GUPTA)
VACATION JUDGE

(V.P. VAISH)
VACATION JUDGE

JUNE 05, 2015
V Mittal