

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Arbitration Case No. 181 of 2015 (O&M)

Date of Decision: 18.03.2016

M/s Frontier Vehicles Pvt. Ltd.

..Petitioner

versus

M/s Mac Weaves Pvt. Ltd.

..Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.

Present : Mr. Siddharth Yadav, Advocate, for
Mr. R.K.Saini, Advocate, for the petitioner.

Mr. Manoj Bajaj, Advocate, for the respondent.

S.J.VAZIFDAR A.C.J. (Oral)

This is an application under Section 11(6) of the Arbitration & Conciliation Act, 1996 for appointment of an Arbitrator to adjudicate upon the disputes and differences between the parties.

2. The parties had entered into an agreement titled "Lease Deed" under which the respondents had agreed to grant a lease in favour of the petitioner for unrestricted and uninterrupted right to use the premises on payment of monthly lease rent of ₹ 7,50,000/- plus service tax with increases stipulated therein. The lease was initially for a period of five years renewable for another term of four years. The respondents have now refused to perform the contract. The petitioner seeks inter-alia to have the agreement specifically performed.

3. Clause-23 of the agreement to lease reads as under:-

"Arbitration & Jurisdiction: Any dispute or difference between the parties hereto relating to or arising out of this Agreement (including any dispute of differences as to the existence or validity hereof) shall be referred to a sole Arbitrator and the decision of the Arbitrator shall be final and binding on the parties. The arbitration shall be conducted in accordance with the Arbitration & Conciliation Act, 1996 and/or any

statutory modification or re-enactment thereof and the venue of arbitration proceedings shall be at Gurgaon. The expenses of the arbitration proceedings shall be borne by each party in equal proportion or as per the decision of the Arbitrator. The Courts at Gurgaon alone shall have jurisdiction in respect of all matters or disputes or differences arising hereunder or in connection with or in relation to this Lease Deed.”

4. Disputes and differences have arisen between the parties. The respondents contend that the agreement stands frustrated as the structure constructed by the respondents itself has been held to be violative of the zoning plan. This, however, is a contention on-merits. Whether the agreement can be performed or not and in the event of the respondent not being able to perform the agreement, whether the petitioner is entitled to damages for breach of contract or not are all the issues that the learned Arbitrator must decide. The disputes fell within the ambit of the arbitration clause.

5. In the circumstances, the petition is disposed of by appointing Justice Permod Kohli, former Chief Justice of the Sikkim High Court as the sole Arbitrator to adjudicate upon the disputes and differences between the parties.

The parties have, however, agreed not to approach the learned Arbitrator upto and including 30.04.2016. This is to enable the parties to explore the possibility of a settlement through mediation by the Delhi High Court Mediation Centre.

18.03.2016
'ravinder'

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE