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HIGH COURT OF CHHATTISGARH, BILASPUR**ARBA No. 52 of 2017**

M/s. Mohan Clothing Company Private Limited, A company duly registered under the provisions of the Companies Act, 1956, Having its registered office at 2E/22, Jhandewalan Extension, Near Central Bank, New Delhi and corporate office at 76, Udyog Vihar, Phase-1, Gurgaon, Haryana, Through its authorized signatory Shri Abhishek Nikhil Punoria,

---- Applicant**Versus**

Raipur Treasure Island Private Limited, A company duly registered under the provisions of the Companies Act, 1956, Having its registered office at G-16, Ground Floor, R.R. Hosier Building, Shri Laxmi Woolen Mill Estate, Opp. Shakti Mills Compound, Off. Dr.E. Moses Road, Mahalaxmi, Mumbai-400011.

Also at

Raipur Treasure Island Private Limited, Corporate office at 6th Floor, Treasure Island, 11, Tokuganj, M.G. Road, Indore, Madhya Pradesh

---- Respondent

For Applicant: Mr. Ankit Singhal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board**08/12/2017**

(1) Invoking Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996'), the applicant herein has filed this application for appointment of arbitrator.

(2) Essential facts leading to filing of this application are as under:-

(2.1) The applicant had entered into leave and licence agreement on 3.2.2011 whereby Respondent – Company agreed to give the applicant

company four shops admeasuring approximately 2.172 sq. ft. of carpet area equivalent to 3,496 sq. ft. of chargeable area situated at the ground floor of Treasure Island Mall, Raipur for running their business of retail sale of apparels and accessories under their brand name Blackberrys for a period of 108 months at a monthly licence fee of Rs.2,62,269/-.

(2.2) Applicant Company, by its letter dated, 6.7.2015 terminated the leave and licence agreement and asked the Respondent- Company to refund the security deposit amount of Rs.7,86,807/- along with a sum of Rs. 29,68,033/- incurred by the applicant for the fit outs in the said shops along with interest at the rate of 18% per annum, but the Respondent-Company, even after receipt of the said notice, neither complied with nor replied to the said notice to the applicant.

(2.3) Being aggrieved by in-action on the part of the respondent – Company, the applicant made an application as per Clause 17 of the leave and licence agreement through notice dated 29.10.2015 and nominated sole arbitrator to enter into reference and adjudicate upon the dispute arose between the parties, but after receipt of notice no action has been taken and, therefore, this arbitration application has been filed for appointment of the arbitrator to resolve the dispute arose between the parties.

(2.4) Though notice was issued to the respondents through paper publication in the Times of India Mumbai Edition, but none appeared to prosecute the matter.

(3) Learned counsel for the applicant would submit that it is a fit case

where Arbitrator be appointed in exercise of power conferred under Section 11(6) of the Act of 1996.

(4) I have heard learned counsel appearing for the petitioner and also gone through the record with utmost circumspection.

(5) At this stage, it would be appropriate to notice Section 11(6A) of the Act of 1996 which has been incorporated in the Arbitration and Conciliation Act, 1996 by the Arbitration and Conciliation (Amendment) Act, 2015 with effect from 23-10-2015. Sub-section (6A) of Section 11 of the Act of 1996 reads as follows: -

“(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.”

(6) Amended sub-section (6A) of Section 11 of the Act of 1996 came up for consideration before the Supreme Court in **M/s. Duro Felguera, S.A Vs. M/s. Gangavaram Port Limited**¹ in which Kurian Joseph, J, while concurring with the conclusions recorded by R. Banumathi, J, formulated a question as to “what is the effect of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 with particular reference to Section 11(6) and the newly added Section 11(6A) of the Arbitration and Conciliation Act, 1996” and answered the question in paragraph 51 and finally answered in paragraphs 62 and 63 as under: -

“51. From a reading of [Section 11\(6A\)](#), the intention of the legislature is crystal clear i.e. the Court should and need only look into one aspect-the existence of

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an arbitration agreement. What are the factors for deciding as to whether there is an arbitration agreement is the next question. The resolution to that is simple – it needs to be seen if the agreement contains a clause which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement.

62. The scope of the power under [Section 11](#) (6) of the 1996 Act was considerably wide in view of the decisions in *SBP and Co.*, (2005) 8 SCC 618, and *Boghara Polyfab*, (2009) 1 SCC 267. This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in [Section 11](#) (6A) ought to be respected.

63. In the case at hand, there are six arbitrable agreements (five agreements for works and one Corporate Guarantee) and each agreement contains a provision for arbitration. Hence, there has to be an Arbitral Tribunal for the disputes pertaining to each agreement. While the arbitrators can be the same, there has to be six Tribunals - two for international commercial arbitration involving the Spanish Company-M/s Duro Felguera, S.A. and four for the domestic.”

(7) Following the principle of law laid down by Their Lordships of the Supreme Court in **M/s. Duro Felguera, S.A.** (supra), while considering the application for appointment of arbitrator by virtue of amended provision i.e. Section 11(6A) of the Act of 1996, only the existence of arbitration agreement has to be seen by this Court. In the present case

also, clause 17 of the Leave & Licence Agreement clearly provides for Arbitration under the provisions of Act of 1996, therefore, arbitral tribunal for resolving the dispute pertaining to the agreement has to be constituted by granting the present application.

(9) As a fallout and consequence of aforesaid discussion, in exercise of power under Section 11(6) of the Act of 1996, I hereby appoint Hon'ble Mr. Justice Dilip Raosaheb Deshmukh, former Judge of this High Court to arbitrate the dispute. Registry is directed to communicate this order to Hon'ble Mr. Justice Dilip Raosaheb Deshmukh who shall enter into reference after complying with the provisions contained in Section 12 (2) of the Act of 1996.

(10) The arbitration application is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

