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

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Date of decision: 27.09.2017

+ O.M.P.(I) (COMM.) 373/2017

M/s DEVYANI INTERNATIONAL LTD. Petitioner
Through Mr.Rishi Kapoor and Mr.Raunak
Satpathy, Advs.

versus

SIDDHIVINAYAK BUILDERS AND
DEVELOPERS Respondents
Through Mr.Rajender Singhvi, Mr.Ashish
Verma and Mr.Farman Ali, Advs.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

IA No.10836/2017 (exemption)

Allowed subject to all just exceptions.

O.M.P.(I) (COMM.) 373/2017

1. The present petition is filed under section 9 of the Arbitration and Conciliation Act, 1996 seeking an interim order restraining the respondents from obstructing the petitioner in recovering its assets as per Annexure C of the Leave and License Agreement dated 20.10.2014 from the demised premises.
2. The case of the petitioner is that the petitioner entered into a Leave and License Agreement with the respondent on 20.10.2014 for opening its stores under the name and banner of Pizza Hut at Shop Nos.5 and 6, Plot

No.1, Sector-8, Airoli, Navi Mumbai. It is urged that on 14.7.2016 the petitioners were restrained to carrying on their operation as the premises were sealed by the officials of Navi Mumbai Municipal Corporation. On account of the said sealing of the premises Writ Petitions were filed in the Bombay High Court by both the parties. An order was passed on 14.10.2016 by the said court whereby a submission was recorded that the petitioners therein may be permitted to remove all the materials, machineries, fixtures and fittings lying in the subject premises to which the counsel for the corporation did not object. On this submission of counsel for the petitioner was directed to file an affidavit on record that it does not intend to run the business of restaurants. Subsequently, on an application being filed by the petitioner on 29.8.2017 the Bombay High Court allowed the application in terms of prayer clause (b). By prayer (b) the petitioner had sought directions to the respondent to desal the premises of the applicant/petitioner for a period of 10 days for the limited purpose of permitting the applicant to remove its machineries, fixtures, material and fittings.

3. Now, the present petition has been filed under section 9 of the Act stating that the respondents have denied to give entry to the petitioners and hence a direction may be passed to restrain the respondents from interfering in the petitioner removing its assets lying in the premises.

4. I have heard learned counsel for the parties. Learned counsel for the respondent has vehemently submitted as follows:-

(i) He submits that this court has no territorial jurisdiction to adjudicate the present petition under section 9 of the Act. He submits that the property in question is situated in Mumbai and in terms of section 16 of CPC the

appropriate courts in Mumbai will have the jurisdiction to adjudicate the present petition. He also relies upon clause 12 of the Agreement dated 20.10.2014 which states that in case of any disputes the courts in Mumbai shall have exclusive jurisdiction to entertain a case or suit arising out of this agreement.

(ii) He further submits that the petitioner has already approached Bombay High Court by way of a writ. He has hence chosen his jurisdiction and cannot now approach this Court.

(iii) He further submits that the petitioners are in arrears of rent of the property since June 2016. Further, he submits that no letter of termination has been issued by the petitioners terminating the agreement and hence there is no equity in favour of the petitioner.

5. As far as the issue of jurisdiction is concerned, reference may be had to the arbitration clause in the Agreement being Clause 11.1 which reads as follows:-

11. ARBITRATION

11.1 Any dispute or difference arising between the parties shall be resolved amicably at the first instance. Unresolved disputes, controversies, contests, disputes, if any shall be submitted to arbitration to a sole arbitrator. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act 1996 along with the Rules there under and any amendments thereto. The arbitration shall be conducted in English. The decision/award of the arbitrator shall be final/conclusive and binding on the Parties; The seat of the arbitration shall be at New Delhi.

6. Clause 12 of the Agreement reads as follows:

“12. GOVERNING LAW

12.1 This Agreement shall be construed, interpreted and applied in accordance with, and shall be governed by, the laws

applicable in India... The courts at Mumbai shall have the exclusive jurisdiction to entertain the dispute or suit arising out of or in relation to this Agreement.”

7. In view of the clause 11.1 above, it is obvious that the seat of arbitration is Delhi. In this context reference may be had to the judgment of the Supreme Court in *Indus Mobile Distribution Private Ltd. vs. Datawind Innovations Pvt. Ltd. & Ors.*, (2017) 7 SCC 678, the Supreme Court held as follows:

“19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction - that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the Code of Civil Procedure be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.”

8. In the light of the above legal position, it is manifest that the Agreement records that the seat of arbitration shall be Delhi. In view of the above legal position the courts at Delhi would have exclusive jurisdiction to adjudicate the dispute between the parties. The reliance of the learned counsel for the respondent on clause 12 of the agreement is misplaced due to the clear terminology used in clause 11.1 of the agreement, i.e. “seat of

arbitration shall be Delhi.”

9. Regarding the plea of the respondent about the petitioner having approached the Bombay High Court, a perusal of the record would show that the said Writ Petition was filed by the petitioner and the respondent. A perusal of the Writ record of the Bombay High Court would show that the relief sought pertained to quashing of report/notice dated 07.06.2016 and 13.7.2016 passed by the Commissioner, Navi Mumbai, Municipal Corporation. It was not a dispute raised by the petitioner against the respondent. On the contrary the petitioner had filed one writ petition which was seeking relief against the concerned Municipal Corporation being Writ Petition No.8422/2016 whereas respondent has filed another writ petition being 8638/2016. The two writ petitions have been heard together by the Bombay High Court. Filing of the Writ petition against the Municipal corporation pertain to an entirely different cause of action and does not in any manner bar the petitioner from filing the present petition under section 9 before this Court.

10. As far as the issue raised by the learned counsel for the respondent pertaining to arrears of rents is concerned, the same has been disputed by the petitioner. According to the petitioner it has paid rents till the date the premises in question were sealed by the concerned Municipal Corporation. He further submits that the facts of the case show that due to sealing of the premises, the petitioner could not use the premises. He further submits that the premises remain sealed. These are in any case issues which would have to be adjudicated upon by the concerned Arbitrator in the arbitration proceedings.

11. I may also note that in the course of arguments learned counsel for the

respondent has admitted that the goods in question belong to the petitioner and has not been able to show any rights that the respondent may have on these goods. The petitioner has made out a prima facie case. Balance of convenience is in favour of the petitioner. Hence, without prejudice to the rights and contentions of the respective parties, in my opinion, it is in the interest of justice that the petitioner be permitted to remove its fittings, fixtures and goods without any impediment being created by the respondent. The respondents are accordingly restrained from obstructing the petitioner from removing their fixtures, fittings and machinery which belong to the petitioner and which are lying in the premises. The articles will be taken out in the presence of a Notary Public who may prepare a list and file it before the arbitrator, when called upon.

12. Petition stands disposed of.

13. At this stage, learned counsel for the respondent submits that this order may be kept in abeyance for two weeks to enable the respondent to approach the higher court for appropriate relief against this order. The request is declined.

14. A copy of this order be given dasti under signatures of the court master.

JAYANT NATH, J

SEPTEMBER 27, 2017

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