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

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Delivered on: 21st December, 2017

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O.M.P.(I) 19/2017

SUBODH VIR RAHEJA & ANR.

..... Petitioners

Through: Mr.Saurabh Seth and Ms.Sumeera
Seth, Advocates.

versus

BDCS MEDIA VISION PVT. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. The respondent is not present today. It has been served and an affidavit of service is filed by the petitioner herein stating the summons were sent at the registered office of the respondent Lift No. 7(G) Ashoka Estate, 24, Barakhamba Road, New Delhi 110001 as well as at the tenanted premises A 12, Sector 93 B, First Floor, Noida, Uttar Pradesh. On 16.12.2017 at the registered office. It is submitted the summons were served on the respondent by way of Registered AD Post and Speed Post. The copy of the tracking status showing '*Door locked-intimation served*'. In addition, the respondent also served through emails on its email id pratinidhi@pratinidhi.tv and hr@pratinidhi.tv. The email dated 14.12.2017 was sent to the respondent alongwith the copy of summons

and the petition. None has appeared on behalf of the respondent, hence I proceed to decide.

2. This petition is under Section 9 of the Arbitration and Conciliation Act 1996 seeking urgent interim relief. The facts of the case are as under:

a) On 01.05.2017 the petitioners and the respondent through Mr. Alok Kumar, who was duly authorized vide Board Resolution dated 25.04.2017 signed a Lease Agreement dated 01.05.2017 in respect of the leased Premises. The Lease Agreement contained detailed terms agreed between the parties and it was specifically agreed the lease would be for a period of 11 months starting from 01.05.2017 and ending on 31.03.2018. Thereafter notwithstanding the clear terms of the Lease Agreement and express covenants to pay the monthly rent and other charges, the respondent has defaulted in its obligations under the Lease Agreement. The company has not paid the monthly rental for the month of August 2017, September 2017 and October 2017 despite various demands from the petitioners and in addition other charges under the Lease Agreement have also not been paid.

b) In the month of August and September 2017 the petitioners have made various attempts to contact/meet Mr. Alok Kumar through phone 2017 and personal visits to the leased premises however it appears that Mr. Alok Kumar is evading such meetings. Thus became clear to the petitioners that neither the respondent nor Mr. Alok Kumar have any intention to pay the outstanding amounts to the petitioners. In fact, numerous SMS's have been exchanged

between the petitioner No. 1 and Mr. Alok Kumar demanding the outstanding payments. Mr. Alok Kumar assured the Petitioner No. 1 that all payments would be made or else the respondent would vacate the leased premises.

- c) Since the respondent was in clear breach of the terms of the Lease Agreement the petitioners on 25.09.2017 through their advocate, issued a termination notice dated 25.09.2017 terminating the Lease Agreement forthwith in terms of clause 6 of the Lease Agreement. The Respondent was accordingly called upon to hand over the vacant physical possession of the leased premises to the petitioners within 15 days of the termination notice.
- d) The Termination Notice was served on 26.09.2017 to the respondent by Regd. AD Post as well as by courier. The termination notice was also addressed at the Leased Premises i.e. A - 12, Sector 93 B, First Floor, NOIDA, Uttar Pradesh, which stands served on 26.09.2017 by courier. However the Regd. AD Post on the same address has been returned undelivered.
- e) On 10.10.2017 period of 15 days as stipulated in the termination notice expired. Hence this petition.

3. Thus it is submitted by the learned counsel for the petitioner that per lease deed dated 01.05.2017 the premises was let out at the rate of ₹55,000/- per month. The respondent has paid the monthly rental for two months and it is outstanding since 01.08.2017 and that the respondent vacated the premises in early November 2017 and hence three months

rent is required to be paid by the respondent herein which is admitted by the respondent per their SMS on 04.09.2017 at 4:42 PM to the petitioner as under:

“Not in a position to talk to u or commit u anything. Give me this week time. I’ll either vacate or clear all the outstanding.”

4. Since the respondent did not adhere to the promises made, so a notice dated 19.09.2017 was issued but the rental was not paid and rather the respondent left the premises.

5. In a query raised by this Court as to if under Section 9 of the Arbitration Act a tenant can be directed to pay the arrears/damages at the rates which it was last paid can be given or not, is answered by *M/s Value Source Mercantile Ltd. vs. M/s Span Mechnotronix Ltd.* FAO(OS) No.141/2014 decided on 28.05.2017 which read as under:

“15. Mention may however be made of the judgment of the Division Bench of this Court in Ratnagiri Gas and Power Pvt. Ltd. vs Joint Venture Of Whessoe Oil & Gas Ltd. 199 (2013) DLT 212 where in appeal, the directions given by the learned Single Judge in exercise of powers under Section 9 of the Arbitration Act for some payments, were set aside and while doing so it was inter alia observed that Order XXXIX Rule 10 specifically clothes the Court with the power to direct a litigant to deposit the amounts and no such power is conferred upon the Court under Section 9 of the Arbitration Act. Reference was also made to Section 19 of the Arbitration Act to hold that the provisions of the CPC are not applicable. The said observations however came to be made after the Court held that the direction

issued by the Single Judge for payment was not only beyond the ambit of the reliefs claimed in the petition under Section 9 but also beyond the disputes between the parties. Also, it was not noticed that Section 9 expressly provides that the Court while exercising power thereunder shall have the same power as it has in relation to any proceedings before it and which in our opinion as aforesaid would include the powers under Order XXXIX Rule 10 and under Order XV-A of the CPC. Moreover, Section 19, to which reference was made is with respect to the powers of the Arbitral Tribunal and not of the Court exercising jurisdiction under Section 9. We are therefore of the view that the said observations are obiter. We may also mention that SLP (Civil) No.5757/2013 preferred there against is pending consideration. In fact another Division Bench of this Court in Simplex Infrastructures Ltd. Vs. National Highways Authority of India 177 (2011) DLT 248, in exercise of powers under Section 9, passed an order directing payment of certain monies, the payment whereof was considered to be just and due.

16. We also find the Division Bench of the High Courts of Andhra Pradesh & Madras in SPA Agencies (India) Pvt. Ltd. Vs. Harish Rawtani MANU/AP/0460/2009 & Gammon India Ltd. Vs. IVRCL Infrastructures & Projects Ltd. MANU/TN/0518/2005 respectively and a learned Single Judge of the High Court of Bombay in Heritage Lifestyles & Developers Pvt. Ltd. Vs. Amarvilla Cooperative Housing Society Ltd. MANU/MH/0380/2011 to have taken the same view as we have taken.”

6. Thus in the circumstances the respondent is hereby directed to deposit an amount of ₹1,65,000/- in the Court within 30 days from today. Copy of this order be given Dasti to the learned counsel for the petitioner.

7. The petition stands disposed of.

YOGESH KHANNA, J

DECEMBER 21, 2017

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