

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION No.138 of 2016

ORDER

Dr.Raghavendra S. Prasad, Hyderabad, filed this application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), seeking appointment of a sole Arbitrator to adjudicate his claim for a sum of Rs.63,52,114/-, along with interest thereon, raised against Chalet Services Private Limited, Bangalore, the respondent herein.

Notice having been ordered upon the application, Sri M.Prahastha, learned counsel, entered appearance for the respondent company and filed a counter-affidavit.

The applicant states that he is the absolute owner and possessor of the stilt + 3 floored building in Plot No.854-L, Block II, new Survey No.120 (old Survey No.403/A) of Shaikpet Village and Survey No.102/1 of Hakimpet Village, forming part of the layout of Jubilee Hills Co-operative House Building Society Limited, Hyderabad. He entered into a Management Contract on 02.11.2012 with the respondent company for setting up corporate service apartments in the said building. Disputes having arisen between the parties, the applicant took recourse to Clause 14 of the Management Contract which provided for resolution of disputes, failing an amicable settlement, by arbitration and addressed legal notice dated 21.07.2016 to the respondent company, nominating an Arbitrator and calling upon the respondent company to give its concurrence to his appointment. Having received no response from the respondent company, the applicant invoked Section 11(6) of the Act of 1996.

In its counter-affidavit, the respondent company, while contesting the claim of the applicant on merits, stated that Clause 14 of the Management Contract dated 02.11.2012 only covered issues pertaining to

the management of the premises and therefore, the claim of the applicant in relation to interior works would not be covered thereby. According to the respondent company, there was a separate meeting held on 24.09.2014 between the applicant and another entity, by name, Chalet India, a partnership firm which was distinct from the respondent company. The minutes of the said meeting dated 24.09.2014 were considered as a Memorandum of Understanding (MoU) between the parties thereto and the respondent company pointed out that it was not one of them. It further pointed out that the MoU did not contain any arbitration clause and therefore, the applicant could not fall back upon the Management Contract dated 02.11.2012 to seek resolution of any dispute arising under the MoU. It is on this basis that the respondent company contended that the applicant's plea for arbitration was unfounded.

Though no reply was filed by the applicant rebutting the aforestated counter-affidavit averments, Sri Unnam Muralidhar Rao, learned counsel for the applicant, would contend that the material placed on record along with the application is sufficient to reject the stand taken by the respondent company. He would point out that correspondence between the applicant and the respondent company by e-mails clearly brought out that the dispute relating to interior works arose between them. On this basis, he would assert that the applicant was justified in seeking appointment of an Arbitrator in terms of Clause 14 of the Management Contract dated 02.11.2012.

At this stage, it would be apposite to refer to the said clause. It reads as under:

'14. DISPUTE RESOLUTION:

If any dispute or difference shall arise at any time between the parties here to for or in connection, inter alia, with the validity, termination or effects of this Agreement or any

terms or conditions or clause thereof, then the parties shall use their best endeavours to amicably settle the same. However if any dispute continues between the parties and the Parties fails to reach an amicable settlement within thirty (30) days from the date of a written notification addressed by either Party to this effect, such dispute shall be referred to arbitration of the sole arbitrator to be appointed by both the parties with mutual agreement. If the parties cannot reach consensus on the sole Arbitrator either of the party can approach the court of law and get the Arbitrator appointed for resolving the disputes. The Arbitration shall be governed by and conducted in accordance with the provisions of The Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be conducted in English and the Arbitration shall take place at Hyderabad. The arbitral award shall be final and binding upon both parties.'

It may be noted that the dispute resolution contemplated under the aforestated clause is not limited to a dispute or difference arising strictly under the agreement but also includes any dispute or difference arising 'in connection' with the validity, termination or effects of the said agreement. Therefore, any difference connected even remotely to the 'termination' or 'effects' of the Management Contract dated 02.11.2012 would be covered thereby. In the light of this widely worded resolution mechanism, it is clear that the dispute in relation to interior works within the building, indisputably connected with the Management Contract dated 02.11.2012, would be squarely covered by Clause 14 thereof.

In terms of Section 11(6A) of the Act of 1996, after its amendment with effect from 23.10.2015 under the Amendment Act No.3 of 2016, the Court dealing with an application under Section 11(6) of the Act of 1996 is required to only examine the existence of the arbitration agreement and no more. All other aspects would necessarily have to be left to the Arbitral Tribunal in terms of this amended provision.

As it is clear from the aforestated discussion that an arbitration agreement exists between the parties hereto and the said agreement is worded loosely enough to cover all disputes and differences arising in connection with the validity, termination or effects of the said agreement, the applicant is well justified in seeking appointment of an Arbitrator to resolve its claim against the respondent company.

The Arbitration Application is accordingly ordered appointing Sri Justice B.Seshasayana Reddy, Retired Judge, erstwhile High Court of Andhra Pradesh, residing at H.No.10-1-128/1/1, Rajasree Residency, Flat No.201, 2nd Floor, Paradise Hotel Lange, Masab Tank, Hyderabad-500028, as the sole Arbitrator for resolution of the claim for Rs.63,52,114/-, along with interest, raised by the applicant against the respondent company in accordance with the provisions and mandate of the Act of 1996. The learned Arbitrator shall be entitled to fees as per the rates specified in the Fourth Schedule to the Act of 1996, inserted by Act 3 of 2016 with effect from 23.10.2015, which shall be borne by both parties in equal measure. No order as to costs.

SANJAY KUMAR, J

13th MARCH, 2019

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