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

+ ARB.P. 315/2019

WALIANET

..... Petitioner

Through: Mr. Gaurav Vig, Adv.

versus

VIPSIE HOSPITALITY'S PVT LTD

..... Respondent

Through: Mr. M. Sufian Siddiqui and
Mr. Rakesh Bhugra, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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14.10.2019

1. This petition has been filed by the petitioner under Section 11 (6) of the Arbitration and Conciliation Act, 1996. The relevant clause related to the dispute resolution mechanism is clause 4.8 which reads as under:

“In the event of any differences or disputes arising between the First Party and the Second Party in respect of any matter connected with the interpretation of any of these terms and conditions which cannot be determined amicably, or settled through an Agreement between the Parties, the matter shall be referred to arbitration. Each party shall appoint one arbitrator and the appointed arbitrators shall appoint the Presiding arbitrator. The place of Arbitration shall be at Delhi and the Courts at Delhi shall have the exclusive jurisdiction to entertain the disputes.”

2. It is the submission of the learned counsel for the petitioner that the petitioner has invoked the arbitration clause in terms of the letter dated

February 13, 2019, to which a reply was sent by the respondent herein on March 10, 2019 challenging the arbitrability of the dispute by the arbitral tribunal.

3. On the other hand, learned counsel for the respondent would submit that no arbitration clause exists in the contract for the matter to be referred to the arbitration. In this regard, he has drawn my attention to clause 2.3 of the agreement at Pages 13 and 14, which is reproduced as under:

“In case the LESSEE does not pay the rent or any part thereof, as agreed hereinabove, for any 2 consecutive months, due to any reason whatsoever, the LESSOR shall serve a notice in writing of 7 days to the LESSEE for discharge of the due amounts. However, if the LESSEE still fails to discharge its liability on the expiry of the notice, the LESSOR at its discretion, may thereupon terminate this Lease Deed. In that case the LESSEE shall pay the due payments along with an interest @ 18% per annum from the date on which the rent becomes due under this Lease Deed till the time such amount is paid to the LESSOR and the LESSEE shall hand over the keys and vacant peaceful possession of the demised premises to the LESSOR on receiving the amount of security deposit after adjustment of arrears. The LESSOR without prejudice to the above shall always be entitled to initiate appropriate civil proceedings against the LESSEE for termination of the lease and for recovery of arrears of rent / damages / mense profits or any other outstanding dues entirely at the cost of the LESSEE, after adjustment of any due amount lying with the LESSOR.”

He has also drawn my attention to clause 4.8 to contend that from the conjoint reading of both the clauses, it is clear that if any dispute has arisen between the parties, same shall be resolved through the process of civil proceedings before the civil court. In other words, the arbitration is not the sole remedy as prescribed under the contract. The second submission of the

learned counsel for the respondent is that in view of the judgment of the Supreme Court in the case of *Himangni Enterprises v. Kamaljeet Singh Ahluwalia* (2017) 10 SCC 706, the issue relatable to lease / rent is not arbitrable. In this regard he has drawn my attention to Para 20 of the judgment.

4. Having heard the learned counsel for the parties, the first issue which arises for consideration is whether on a conjoint reading of clause 2.3 and clause 4.8 of the contract, it must be held that arbitration is not the sole remedy as agreed to between the parties in the contract. I am unable to agree with the said contention of the learned counsel for the respondent inasmuch as on a reading of both the clauses, it is clear if any dispute arises between the parties, the same has to be adjudicated through the process of arbitral proceedings by appointing one arbitrator each by the parties, who together shall appoint a presiding arbitrator. Learned counsel for the respondent lays stress on the fact that clause 4.8 also states that “*courts of Delhi shall have the exclusive jurisdiction to entertain the disputes*” to mean that the disputes between the parties shall have to be resolved through civil proceedings before the court and further the arbitration clause has to be read to mean only disputes which are connected with the interpretation of the terms and conditions which can only be referred to the arbitration.

5. In so far as the first limb of the submission of the learned counsel for the respondent is concerned, the words “*Courts of Delhi shall have the jurisdiction to entertain the disputes*” have to be read together with the earlier lines of the clause 4.8 inasmuch as “*each party shall appoint one arbitrator and the appointed arbitrators shall appoint the presiding arbitrator*” and “*place of arbitration shall be at Delhi*”. The words on

which reliance was placed by the learned counsel for the respondent, i.e., “*the Courts of Delhi shall have exclusive jurisdiction to entertain the disputes*” must be read to mean, if in the eventuality the parties intends to approach a court before or after the arbitral proceedings, then the same shall be the Courts of Delhi. Further, the plea that words “civil proceedings” should be read as Civil Court is not appealing. The arbitral proceedings are civil proceedings which are different from criminal proceedings. Further the Supreme Court in its latest opinion in the case of ***MTNL v. CANFINA Civil appeal Nos. 6202-6205 of 2019***, decided on August 8, 2019 held that the meaning of a contract must be gathered by adopting a common sense approach and must not be allowed to be thwarted by a pedantic and legalistic interpretation. A commercial document has to be interpreted in such a manner so as to give effect to the agreement, rather than to invalidate it. There is no dispute that arbitration agreement is a commercial document and must be interpreted so as to give effect to the intention of the parties. On a conjoint reading of clause 4.8 and clause 2.3 it is clear that the parties have agreed to resolve their dispute through the process of Arbitration.

6. Even the second submission of the learned counsel for the respondent that only dispute connected with the interpretation of the terms and conditions, which cannot be determined amicably or settled through agreement between the parties, shall be referred to the arbitration, is also meritless as the clause 4.8 does not distinguish between the disputes, which relates to the interpretation of the terms and conditions and the other which has arisen under the contract. The intent of the parties while signing the contract was to refer to the disputes arising between the parties through the process of arbitration.

7. In so far as the plea of the learned counsel for the respondent by relying upon the judgment of the Supreme Court in the case of ***Himangni Enterprises (supra)*** is concerned, I am unable to agree with the submission of the learned counsel for the respondent in view of the conclusion drawn by the Coordinate Bench of this court in the case of ***Rani Suri v. Swarantech Information Systems Pvt. Ltd. Arb. P. 430/2018 decided September 19, 2018*** wherein the Coordinate Bench in Paras 8 to 11 has held as under:

“8. I am unable to agree with the submission made by the counsel for the respondent. In the case of Himangni Enterprises(supra), the Supreme Court was dealing with the case where the lease deed containing the Arbitration Agreement executed between the parties had expired by the efflux of time and it was an admitted case of the parties that thereafter, no fresh Lease Deed was executed for extension of the time period. The tenant was therefore, occupying the property on a month to month basis without any written documents containing Arbitration Agreement. It was in those facts that the High Court had held that there was no Arbitration Agreement in existence between the parties therein and the said finding was affirmed by the Supreme Court. The Supreme Court in para 26 stated that only because the Delhi Rent Control Act is not applicable, it would not ipso facto mean that there is an Arbitration Agreement in existence or that the disputes have to be necessarily referred to arbitration. In the absence of an Arbitration Agreement, the parties cannot be referred to arbitration, this is all that the Supreme Court has held in the above judgment.

9. I may also note that the Supreme Court in Himangni Enterprises (supra) also relied upon the judgment of the Supreme Court in Natraj Studios(P) Ltd. vs. Navrang Studios & Anr. 1981 (1) SCC 523, which was a case where there was a statutory protection granted to the tenant under Section 28(1) of the Bombay Rent Act which vests exclusive jurisdiction in the Court of Small Causes to entertain and try

any suit or proceeding between the landlord and tenant relating to the recovery of rent or possession of any premises. It was in those facts that the Civil Suit filed by the landlord was held to be maintainable by the Court.

10. The Supreme Court further placed reliance on the earlier judgment of Supreme Court in Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd. & Ors. AIR 2011 SC 2507. I may only quote para 22 of the said judgment as under:

“22. Arbitral tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of arbitral tribunal is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the Legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by a public fora (courts and Tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes. The well recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which given rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi)eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection

against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.”

(emphasis supplied)

11. A reading of the above would clearly show that the Supreme Court had clarified that it is only in cases where eviction or tenancy matters are governed by special statutes and where the tenant enjoys statutory protection against eviction and only the specified Courts are conferred jurisdiction to grant eviction or decide the dispute, that the same cannot be referred to arbitration.”

8. That apart, I note that the Supreme Court in the case of ***Vidya Drolia and Ors. v. Durga Trading Corporation 2019 (2) ARBLR 121 (SC)*** while referring the issue as decided in ***Himangni (supra)*** to the Larger Bench had also considered the issue whether any exemption granted from the Rent Act would also mean that the matter has become non-arbitrable. The Supreme Court in ***Vidya Drolia and Ors. (supra)*** held that persons may be exempted from a Rent Act not merely for a certain period but also because the rent contained in the agreement between the landlord and tenant is above a certain amount. When the rent is fixed above the amount stated by a statute, in the normal course of human conduct, such rent can only be increased and not decreased so as to fall back within the provisions of the Rent Act. The Supreme Court held where an exemption is granted then also the matter becomes non-arbitrable, does not hold good.

9. In view of the aforesaid conclusion of the Supreme Court in ***Vidya Drolia and Ors. (supra)*** this court is of the view that the tenancy not being a statutory tenancy the parties herein are required to be relegated to the process of arbitration for settling their inter-se disputes.

10. The parties are accordingly referred to the Delhi International

Arbitration Centre who shall appoint a sole Arbitrator from its panel. The appointment of the arbitrator shall be regulated by the Rules of the Delhi International Arbitration Centre. The parties to appear before the Coordinator, Delhi International Arbitration Centre on October 21, 2019 for further proceedings.

A copy of this order be sent to the Coordinator, Delhi International Arbitration Centre.

The petition stands disposed of.

V. KAMESWAR RAO, J

OCTOBER 14, 2019/jg