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

\+ O.M.P. (COMM) 321/2019

SONI DAVE & ANR. ..... Petitioners

Through: Mr. Saurabh Prakash, Mr. Parth Kaushik and Mr. Utsav Jain, Advocates.

versus

GODREJ BOYCE MFG PVT LTD ..... Respondent

Through: Ms. Surekha Raman, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 14.08.2019

I.A. 11109/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.

O.M.P. (COMM) 321/2019, I.As. 11108/2019 & 11110/2019

2. The present petition under Section 34 of the Arbitration and Conciliation Act (hereinafter referred to as the 'Act') assails the award dated 1st May 2019 passed by the Sole Arbitrator.

Brief Facts

3. The disputes between the parties revolve around interpretation of a document titled as 'Letter of Intent (LoI)' dated 7th August 2017. The Petitioners [Ms. Soni Dave and M/s G.S. Berar and Company] are the registered owners of property bearing No. M-1, Hauz Khas, New Delhi.

The Parties were in discussions for leasing out the aforesaid premises. Consequent thereto, a LoI dated 7th August 2017 was executed whereby it was proposed that the aforesaid property would be leased out to the Respondent. The LoI sets out broad terms and conditions for letting out the premises on lease basis. In terms of Clause 17 of the LoI, a sum of Rs. 5 lacs was deposited by the Respondent with the Petitioners as a token amount that was agreed to be adjusted against security deposit in the event lease was signed and to be refunded in case the lease deed was not executed.

4. Subsequent to the execution of the LoI, various meetings and discussions ensued between the parties, however they were unable to mutually agree on terms/wordings of certain clauses of the proposed lease deed. Resultantly, Respondent vide letter dated 30th October 2017 cancelled and terminated the LoI and requested for refund of token amount deposited with the Petitioners in terms of Clause 17 of the LoI. Petitioners refused the request and raised several allegations through their counsel, vide notice dated 3rd November 2017 and inter alia claimed that token amount stood forfeited. In response to the aforesaid letter, Respondent through their counsel, controverted the allegations and requested Petitioners to withdraw the said letter and refund the amount of Rs. 5 lacs. This was not agreed to by the Petitioners. Disputes arose between the parties and they mutually agreed to resolve the same by way of Arbitration and appointed a Sole Arbitrator by mutual consent in terms of Clause 12 of the LoI.

5. Before the Arbitrator, Respondent raised a claim for refund of the token amount of Rs. 5 lacs, interest thereon, and for cost of litigation. Petitioners

on other hand contested the claims and raised counter claims to the following effect:

> "(a) a sum of Rs.1,56,58,875=00 for the period starting November 2017 (or starting 8th September 2017) till end of July 2018 (or till 7th July 2018) as per **Annexure A**;
> (b) a sum of Rs.16,58,750=00 per month for the period August 2018 onwards and until July 2019 (or for the period 8th July 2018 onwards and until 7th June 2019);
> (c) interest pendent lite @12% per annum;
> (d) costs of this petition;
> (e) pass such other order as this Hon'ble Tribunal may deem fit in the matter."

6. The parties led evidence and examined their respective witnesses. After completion of trial and on consideration of contentions of the parties, the learned Arbitrator passed the impugned Award and allowed claim of the Respondent and rejected all counter claims of the Petitioners. The operative portion of the Award reads as under:

> "a. Directing the respondents jointly and severally to pay the claimant the sum of Rs. 5 lakhs with interest at the rate of 12 % p.a. from 12.05.2018 i.e. the, date of filing SoC till the date of realization.
> b. Directing the respondents to pay the claimant the sum of Rs. 39,867/- towards the interest at the rate of 15 % p.a. on the said sum of Rs. 5 lakhs from 30.10.2017 to 11.05.2018.
> c. Directing the respondents to pay claimant Rs. 1,93,235/- towards costs with interest at the rate of 12 % p.a. from the date of the Award till payment.
> d. Rejecting the counter claims of the respondents.
> e. Directing the respondents to bear their costs."

Submissions of the parties

7. Court has heard learned counsels for the parties at length. Mr. Saurabh

Prakash learned counsel for Petitioners impugns the Award primarily on three grounds. Firstly, he submits that learned Arbitrator has not examined Petitioners' contention that the words in Clause 17 to the effect "*In case parties do not sign a agreement for any reason whatsoever, the above mentioned amount will be refunded to the Lessee forthwith*" have been inserted unilaterally and clandestinely. He submits that the aforesaid insertion/clause was never agreed to between the parties and could not be relied upon by the Respondent. He submits that the draft of proposed LoI forwarded to the Respondent, on or about 18th July 2017, did not contain the aforesaid clause. Even in subsequent exchange of correspondence, the said clause was not suggested by either party and the last draft of LoI exchanged also did not contain the said Clause. Thus, Petitioners had presumed that apart from agreed changes, the document remained the same as before. The aforementioned changes in LoI were not pointed out by the Respondent's Officer at the time of signing the same. The same was signed in good faith and execution does not amount to agreeing to clauses that have been introduced surreptitiously. Elaborating this contention, Mr. Saurabh Prakash also refers to the cross examination of Mr. Atul Natu who inter alia, deposed as under:

> "Q17 Can you show me any communication whereby either party had suggested this clause?
>
> A The para "we are forwarding this letter ..... for our records" is there in page No. 50 (RW1/3) and 58-59 (RW1/4) of Part-A Vol.II of the Respondent's documents. Rest of the paras were verbally understood.
>
> Q18 What do you mean by saying that the remaining paras were verbally understood?

> A These were discussed during calls with the Respondent.
>
> Q19 I put it to you that the calls with the Respondent were with Mr. Rajat Mathur and not with you and therefore, whatever you are saying is not to your personal knowledge. What do you say?
>
> A The calls with the Respondent were with Mr. Rajat Mathur. and the interactions were then discussed internally."

8. Mr. Saurabh Prakash contends that learned Arbitrator has neither considered nor decided the disputes between the parties pertaining to terms that were not agreed to be incorporated in the lease deed. He submits that in the entire Arbitral Award, there is no discussion regarding the said terms. The Respondent was insisting on clauses that were not only unreasonable, but also contrary to market practice relating to commercial leases. Respondent could not have insisted on such clauses and parties should have proceeded to execute final lease document in accordance with terms of the LoI. In case certain terms were essential as sought to be contended by the Respondent, it should have, at the first instance incorporated the same in the LoI. Lastly, Mr. Saurabh Prakash submits that learned Arbitrator has wrongly concluded that the LoI is not binding. The terms and conditions of the LoI ought to have been read holistically to arrive at a conclusion about the nature of the document. A document would be binding irrespective of its nomenclature if it contains all the relevant conditions that are necessary for a validly executed contract. Ms. Surekha Raman learned counsel for the Respondent controverts the submissions of the Petitioners' counsel and argues that the terms and conditions of the LoI are explicit and there cannot be any doubt upon a plain reading of the terms contained in the document that it was executed for limited purpose of setting out broad terms and

conditions of the proposed lease. It was to be followed by a formal binding document i.e. a lease deed. The terms and conditions provide for refund of the token amount in the event, for any reason whatsoever, parties do not sign the final agreement. The LoI does not contain any condition for forfeiture of the token amount and therefore the learned Arbitrator has rightly rejected all contentions of the Petitioners. The plea raised by the Petitioners that the clause was interpolated and introduced without the consent of Petitioners is completely misleading, frivolous and untenable. When the Respondent insisted upon the refund of the token amount, the Petitioners did not raise such a plea and only contended that the clause cannot be invoked by the Respondent. Later, when the Respondent filed a claim before the Arbitrator, the Petitioner improvised his stand and raised this plea which is completely meritless.

Analysis and Findings

9. The Court has given due consideration to contentions of the parties. A plain reading of the document dated 7th August 2017 leaves no room for any doubt regarding the nature and character of the said document. The document was intended to be of a non-binding nature. The LoI clearly specifies this as under:

> *"This Letter of Intent ("LOI") outlines the broad terms and conditions of a proposed letting of said premises on Lease basis and based on which the subsequent definitive legal documentation is to be entered into. This LOI is being executed for the purpose of setting out the broad terms and conditions agreed between the parties on which the Leased Premises (as defined herein after) shall he given by the Lessor to the Lessee. The present LOI is an expression of interest only and is binding*

on both the parties only upon the execution of definitive transaction documents."

10. Clause No. 4 of the LoI provides that parties shall execute a lease deed in accordance with the principle terms and conditions set out in the LoI and also on such other terms and conditions as may be mutually agreeable and acceptable to both parties. The language used in the said clause clearly evokes the non-binding nature of the document and also gives room to the parties to negotiate on the final terms and conditions. This necessarily means that the final document would contain such clauses which are mutually agreeable and acceptable to both parties. Clause No. 13 also sheds light on this aspect. This clause also clearly indicates that the parties intended to enter into a formal legally binding lease agreement and treated the LoI only as an expression of intention to do so. This also becomes crystal clear from the following terms and conditions which read as under:

"7.**Term**

a) Term of the agreement will be for a period of 9 years from the date of execution of the agreement and handover of the possession of the premises (Whichever is later). Out of this period a period of 18 months shall be a lock-in period during which it shall not be permissible the Lessor to terminate the lease.

b) The Lessee shall be liable to make payment towards consumption of water and electricity charges from the elate of physical occupation of the premises on actual consumption basis. Separate meters for the premises to be provided for water and power by the Lessor.

10. **Possession of the Leased Premises**

The possession of the Leased Premises shall be handed over by the Lessor to the Lessee on execution and registration of the Lease agreement between the parties. If required for making measurements and inspection or any other review, before the handover of the premises Lessor shall provide access to the premises to Lessees representatives.

17 **Token Amount**

A token amount of Rs. Five Lakhs is being paid alongwith the signing of this LoI.

Details of the payment-

1- In favour of –Ms. Soni Dave

   Amount – Two Lakhs and Fifty Thousand Only

   DD no- 880628

   Date- 4/08/2017

   Drawn on bank – Citibank

2- In favour of – G.S Berar & Co. Pvt. Ltd

   Amount – Two Lakhs and Fifty Thousand Only

   DD no- 880629

   Date- 4/08/2017

   Drawn on bank – Citibank

The letter of intent attains validity only with the presence of signatures of both parties and payment of the abovementioned token amount.

The above mentioned amounts will be considered as part of the security deposit and adjusted against the security deposit to be paid to the Lessor.

In case the parties do not sign a agreement for any reason whatsoever, the abovementioned amount will be refunded to the Lessee forthwith.

We are forwarding this letter (in duplicate) duly signed at our end and shall request you to sign both the copies in confirmation of the acceptance by you of its contents. You may retain one copy of the letter for your record and return the other copy to us for our records."

11. The principles governing the construction of a contract are well established. The Courts have repeatedly held that a document has to be given

meaning which is evident by a plain reading. In this regard, reference can be made to the judgment of the Supreme Court in ***Novartis Vaccines and Diagnostics Inc. vs. Aventis Pharma Limited*** [2010 (2) BomCR 317] citing the Supreme Court in ***M.O.H. Uduman and Ors. v. M.O.H. Aslum*** (AIR 1991 SC 1020), relating to the construction of the Commercial Contracts wherein it has been held as under:

> "It is settled canon of construction that a contract of partnership must be read as a whole and the intention of the parties must be gathered from the language used in the contract by adopting harmonious construction of all the clauses contained therein. The cardinal principle is to ascertain the intention of the parties to the contract through the words they have used, which are key to open the mind of the makers. It is seldom that any technical or pedantic rule of construction can be brought to bear on their construction. The guiding rule really is to ascertain the natural and ordinary sensible meaning to the language through which the parties have expressed themselves, unless the meaning leads to absurdity."

In the present case, on reading the clauses of the LoI, there can be no doubt that the parties never intended the same to be binding. It only sets out broad terms and conditions which were subject to further negotiations and accordingly the view taken by the learned Arbitrator cannot be faulted with. The grounds of challenge certainly do not come within the purview of amended Section 34 of the Arbitration and Conciliation Act. The other contention raised by Mr. Prakash that the terms and conditions were incorporated clandestinely is *ex facie* misconceived. Section 91 of the Evidence Act deals with the exclusion of oral evidence by documentary evidence. It provides that when the terms of contract have been reduced in the form of a document, no evidence shall be given in proof of the terms of the contract except the document itself. There are certain exclusions provided under Section 92 regarding the evidence of oral agreement. However in the present case, the evidence which has been brought on record, does not in any way suggest that there was any understanding between the parties that is contrary to the intention expressed in the LoI. Therefore, this contention of the Petitioners is also rejected. I find no reason to interfere with the findings of the Arbitrator on the ground that he has not examined the disputes pertaining to clauses that Respondent was seeking to introduce in the lease deed. The Arbitrator could not have decided such disputes. After the execution of the LoI, if the parties engaged in correspondence and suggested certain terms which were never finally agreed to or reduced in writing, the same would certainly not form part of arbitral disputes. There was no occasion for the Arbitrator to go into this aspect, being beyond the terms of the Arbitration agreement. The counter claims raised by the Petitioners were in the nature of loss of rent for the alleged lock-in period provided in the LoI. The contention that in case the lease deed had been executed as agreed in the LoI, Petitioners would have earned rental income is frivolous. The counter claims as noted in paragraph 5 above are bifurcated into two claims, one being the loss of rental income for the period ending July 2018 (the date of filing of the counter claim) and the remaining amount is for the unexpired period of lock-in period. The claims are untenable as there is no lock-in period envisaged in the LoI. The LoI only contains a stipulation that in case the party were to execute a lease deed, the same would have a lock-in clause. Since the lease deed was never executed, the proposed clause in the LoI cannot be read as a lock-in clause. The contention is frivolous, misconceived and legally untenable.

12. For the aforesaid reasons, I do not find any merit in the present petition. Accordingly the same is dismissed with a cost of Rs. 30,000/- to be paid to the Respondent within a period of four weeks from today. Pending applications, if any, are disposed of.

SANJEEV NARULA, J

AUGUST 14, 2019
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