IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-CARB No. 17 of 2020 & C.M. No. 50-FCARB of 2020

Decided on 31st August, 2020

Cars24 Services Pvt. Ltd. Appellant

Versus

Landmark Infonet Pvt. Ltd. Respondent

CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN

Present: Mr. Amit Sibal, Senior Advocate, with Mr. Chandandeep Singh, Advocate for the Appellant.

Mr. Narender Hooda Senior Advocate, with Mr. Sajjan Singh, Advocate for the Respondent.

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Dr. S. Muralidhar, J.:

1. This appeal under Section 37 (1) (b) of the Arbitration and Conciliation Act, 1996 ('Act') is directed against a judgment dated 17th August, 2020 passed by the learned Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurugram (hereinafter 'trial Court'), in an application (Arbitration Case No. 53) under Section 9 of the Act, filed by the Respondent/Landmark Infonet Pvt. Ltd. against the present Appellant/Cars24 Services Pvt. Ltd., seeking attachment of the movable and immovable assets, if any, of the Appellant, as an interim measure for securing its rental dues until the conclusion of the arbitral proceedings.

2. Although the facts have been set out in sufficient detail in the impugned judgment of the trial Court, for the purposes of the present appeal, it is sufficient to notice that the Appellant to took on lease from the Respondent, the fourth, fifth and sixth floors

of a property at Gurugram, Haryana, belonging to the Respondent admeasuring 29,910 square feet (hereafter the 'leased premises'). The monthly rent for the leased premises inclusive of GST was Rs. 27,52,876/- and the monthly maintenance charge was Rs. 4,23,585. The total period of the lease was 9 years in the format of 3 +3+3 years and the initial period of three years was kept as the lock-in period commencing on 17th October, 2018 and ending on 17th October, 2021. In terms of Clause 21.2 of the lease deed, the Appellant could vacate the premises after giving a three-month notice upon expiry of the 33rd month.

3. For the purposes of present appeal, it is sufficient to notice Clause 4.1 of the lease deed dealing with the lock-in period. The said clause reads as under:

> "4.1 **Lock-in period**
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> The parties have agreed that the initial period of 33 months of the Lease Period from the rent commencement date shall be the Lock-In-Period for both the parties during which neither the Lessor nor the Lessee shall have the right to terminate this Deed. It is specifically agreed between the Parties that the LESSEE shall not be entitled to terminate this Lease before the expiry of lock-in-period. However the Lessee shall have the right to terminate this Deed with immediate effect during the lock in period in the event the Lessee is unable to use the Demised Premises for 30 consecutive days due force majeure or a change in law making the Demised Premises illegal to operate for commercial purposes or due to any of the representation and warranties given by the Lessor are found to be false or the Lessor fails to perform the same. The period for which the Lessee falls to enjoy/use the Demised Premises, the Lessee shall not be liable to pay the rent for the same. The Lessee can be terminated by the LESSEE any time after the expiry of the initial 33 (thirty-three) months from the Rent Commencement Date by serving advance written notice of 3 (three) Months. In case the Lessee terminates the Lease before the expiry of the lock-in-period in such a case, the LESSEE shall be liable to pay the Lease rent for the balance lock-in-period as well notice period of three English calendar months. The Lessor shall be entitled to terminate this lease only in case the LESSEE is in a financial default or in material breach as per the terms and conditions of this lease deed. It is abundantly clarified that The Lessor shall have no objections for the renewal of this lease as per the Terms and conditions of this lease deed."

4. It must be noticed at this stage that the Appellant describes itself as an Indian company, incorporated under Indian law, essentially engaged in the business of the

sale of used cars. The Appellant further claims that it has 145 retail showrooms all over the country, 3 of which are stated to be in Gurugram. During the course of submissions, Mr. Amit Sibal, learned Senior Counsel appearing for the Appellant drew the Court's attention to the figures of 'Revenues from Operation', as per the Appellant's audited accounts, which *inter alia* show the figure in 2018-2019 to be Rs. 1655 crores and the figure in 2019-2020 to be Rs. 2990 crores. The Appellant claims that its total asset size was Rs. 339 crores in 2018-219 and Rs. 753 crores in 2019-2020.

5. According to the Appellant, in view of the lockdown ordered in the entire country as a result of Covid-19, it was constrained to shut down the leased premises from 21st March, 2020 onwards. It claims to have tendered to the Respondent the entire rent for the month of March, 2020. According to the Appellant, although a subsequent notification of the Central Government dated 15th April, 2020 allowed the functioning of IT and IT related services, since the Appellant did not come within the ambit thereof, it could not resume its operations. The Appellant accordingly decided to terminate the lease deed by serving upon the Respondent a notice dated 8th July, 2020 invoking Clause 4.1 of the lease deed.

6. The Respondent then filed a petition under Section 9 of the Act before the trial Court at Gurugram. In the said petition, initially an *ex parte* order dated 20th July, 2020 was passed by the trial Court ordering the attachment of the Appellant's bank account to the extent of Rs. 4,45,29,216. The Appellant then filed FAO-CARB-15-2020 in this Court under Section 37 of the Act challenging the aforesaid order. The said appeal was disposed of by this Court by an order dated 27th July, 2020, directing the trial Court to afresh the application under Section 9 and decide the same, *inter alia* "taking into consideration the amount that may have to be considered in favour of Respondent-Landlord, if their claim is accepted in the said proceedings". It was also

directed that “while doing so, any amount, which is lying with the respondent-landlord before the District Judge, should also be taken into consideration” and “the balance amount that the respondent-landlord may be entitled to receive tentatively in the event of its success, shall be calculated”. This Court further directed that “thereafter, the District Judge may call upon the appellant-tenant to furnish suitable security”.

7. Pursuant to the above order dated 27th July, 2020 of this Court, the Section 9 application was heard afresh and the trial Court has by the impugned judgment tentatively assessed the Respondent’s claim at Rs. 5,72,95,600, which includes the amount of rent, maintenance, GST, as well as interest. The said amount has been arrived at after deducting the security deposit of Rs. 1,39,97,880 furnished by the Appellant to the Respondent. The operative portion of the impugned order reads as under:

> “Petition is consequently allowed in following terms:
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> (i) It is hereby ordered that the respondent-tenant shall furnish a suitable security in the shape of bank guarantee to the tune of Rs. 5,72,95,660/- (Five Crores Seventy Two Lakhs Ninety Five Thousands Six Hundred and Sixty Only). On furnishing of requisite security the accounts of the respondent shall be forthwith defreezed.
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> (ii) It is further ordered that in case requisite bank guarantee is not furnished in time, the accounts of the respondent shall remain attached to the extent of aforesaid amount of Rs. 5,72,95,660/- (Five Crores Seventy Two Lakhs Ninety Five Thousands Six Hundred and Sixty Only).
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> (iii) It is clarified that this order shall initially remain effective for a period of 90 days from the date of the order and within this time, the Petitioner shall invoke arbitration. The order shall remain operative till conclusion of arbitration. However, failure on the part of the petitioner to invoke arbitration within given time would not entitle him to seek further extension of this order.”

8. This Court has heard submissions of Mr. Amit Sibal, learned Senior Counsel for the Appellant and Mr. Narinder Hooda, learned Senior Counsel appearing for the Respondent on advance notice. With their consent the appeal is being finally disposed

of at this stage, since the point involved is limited to considering the extent to which the interest of the Respondent during the pendency of the arbitral proceedings should be secured.

9. Mr. Hooda informed the Court that in terms of the impugned judgment, the Respondent has in fact invoked the arbitration clause in the lease deed and has issued a notice to the Appellant proposing the appointment of a sole arbitrator. It is therefore plain that as of date the arbitral tribunal is not in place.

10. One of the central issues that would arise for determination in the arbitral proceedings is the interpretation of the Clause 4.1 of the lease deed and in particular the expressions 'force majeure' and 'change in law' occurring therein. The Appellant's case is that it was unable to use the leased premises during the Covid-19 lockdown in force in the entire country and was, therefore, justified in invoking Clause 4.1 to terminate the lease deed. On the other hand, the case of the Respondent is that the Appellant was not justified invoking Clause 4.1 and particularly the force majeure clause since it was using the leased premises for IT or IT enabled services which were permitted to recommence after 20th April 2020. This Court is of the view that since this issue would have to be examined by the arbitral tribunal on the basis of the materials placed before it and the evidence led by the parties, this Court should desist from making any observation at this stage on this aspect. It does appear, however, that for the purposes of the application under Section 9 of the Act, the finding of the trial Court in the impugned order that the Respondent had a *prima facie* case does not need to be interfered with to that extent.

11. In considering the further aspect viz., what should be the interim order to be passed to secure the claim of the Respondent on a balance of convenience and to what extent, a factor that appears to have weighed with the trial Court was the submission of the Respondent that the Appellant is a multi-national company having no tangible

assets and not making profits and, therefore, there was a possibility that it might abscond, rendering the enforcement of an Award in favour of the Respondent futile.

12. This Court finds that the Appellant did in fact file a reply to the Section 9 petition in the trial Court where *inter alia* the Appellant brought on record the figures from the audited accounts concerning its revenue from operations and assets from the year 2017-18 onwards. Mr. Amit Sibal, does not dispute the fact that, as a start-up venture, the Appellant has been incurring losses. However, he points to the fact that even during the lockdown period the Appellant has been paying salaries to its employees. He contends that its essential business is that the sale of used cars for which it operates as many as 145 retail showrooms all over the country, three of which are in Gurguram. He states that the value of moveable assets of the Appellant in the leased premises itself is around Rs. 3.62 crores but the same has not been permitted by the Respondent to be removed, although possession of the leased premises has been handed over to the Respondent. He maintains that the Appellant has more than sufficient means to meet the claim of the Respondent in the event of the latter succeeding in the arbitral proceedings and that there is no question of the Appellant absconding. He states that the Respondent has incorrectly characterised the Appellant as a multi-national company, when in fact it is not. He submits that the Respondent's claim is exaggerated and untenable.

13. This Court notes that the above submissions of the Appellant are consistent with its averments not only in its reply before the trial Court but also in the memorandum of the present appeal. There is nothing on record at this moment to indicate that the audited accounts of the Appellant, and the details regarding the scale and size of its operations in India are incorrect. This Court accordingly proceeds on that basis for the limited purposes of the present appeal. Further, Mr. Amit Sibal on instructions informs the Court that the Appellant is, without prejudice to its rights and contentions,

prepared to keep in a fixed deposit in the name of the Respondent a sum equivalent to the rent for the leased premises for the period between the termination of the lease deed i.e. 8th July 2020 and 31st July 2021 (minus the deposit already placed with the Respondent), in order to secure the Respondent's interests during the pendency of the arbitral proceedings. He urged that this Court should direct the Respondent to permit the Appellant to remove its moveable assets from the leased premises.

14. Having considered the above submissions, and that of Mr. Hooda in response thereto, this Court is of the view that the interests of the Respondent would stand sufficiently protected if, during the pendency of the arbitration proceedings, the Appellant is directed to keep in a fixed deposit in the name of the Respondent, with a nationalised bank, a sum of Rs. 3 crores which would be initially for a period of 1 year and which shall be kept renewed by the Appellant during the pendency of the arbitration proceedings with the original of the fixed deposit receipt (FDR) being retained by the Appellant and a copy thereof provided to the Respondent not later than 11th September, 2020. It is ordered accordingly. It is also directed that this would be subject to the further condition that neither the Appellant or the Respondent will encash or encumber the said fixed deposit in any manner, during the pendency of the arbitration proceedings. The above order and directions will continue till such time that the arbitral tribunal passes any order in an application under Section 17 of the Act that might be filed by either party for variation or modification of the present order.

15. Subject to the Appellant complying with the above directions, it is further directed that the Appellant shall be permitted to remove all its moveable assets in the leased premises on an mutually convenient time and date before 15th September 2020 in the presence of the representatives of both parties with an appropriate inventory and proceedings being drawn up and signed by both of them.

16. It is also made clear that this order which shall be in substitution of the directions in (i) and (ii) of the impugned order of the trial Court as set out in para 7 above, does not decide any of the contentions on merits raised by either party and it is open to them to raise all their respective contentions before the arbitral tribunal in accordance with law. The arbitral tribunal will adjudicate the dispute without being influenced by any of the observations or conclusions in either the impugned order of the trial Court or the present order of this Court.

17. The appeal and pending applications, if any, are disposed of in above terms.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

31st August, 2020
monika*

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No