

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.210

ARB-74-2018

Date of decision: 03.03.2020

M/s Garden Paradise (Wah Dilli)

....Applicant

versus

Haryana Urban Development Authority and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Sidhi Bansal, Advocate for
Mr. R. Kartikeya, Advocate
for the applicant.

Mr. Deepak Balyan, Advocate
for the respondents.

* * *

DEEPAK SIBAL, J. (Oral)

The present application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short – the Act) for appointment of an Arbitrator.

On 16.07.2008 the parties entered into an agreement as per which the applicant was granted a licence by the respondents to run a Restaurant in Sector-5, Panchkula. As per the terms agreed to between the parties disputes between them were to be settled through the mode of Arbitration.

Disputes having arisen between the parties with regard to non-payment of lease money by the applicant, the respondents sealed its premises against which the applicant took recourse to proceedings under the Haryana Urban Development Authority Act, 1977 which proceedings

culminated in the passing of order dated 29.09.2017 by this Court in CWP-21187-2017 – M/s Garden Paradise (Wah Dilli) Vs. State of Haryana and others, wherein the following directions were issued:-

- “i) The petitioners shall pay a sum of ₹ 70 lacs to the respondents and a further sum of ₹ 11 lacs as advance rent for three months for the use of the premises hereafter. The petitioners shall also furnish an unconditional guarantee of a nationalized bank in the sum of ₹ 50 lacs. The guarantee shall be valid initially for the period upto and including 31.03.2018.*
- ii) In the event of the petitioners making the aforesaid payments and furnishing the guarantee, the premises shall be de-sealed and the petitioners shall be entitled to use the same on the terms and conditions of the said order dated 12.07.2017.*
- iii) Upon the amounts being recomputed by the respondents after hearing the petitioners, the petitioners shall pay the same over to the respondents within four weeks of being intimated in writing, failing which the respondents shall be at liberty to invoke the guarantee. The invocation of the guarantee and the receipt of the amounts thereunder, however, shall be subject to the petitioners' right to challenge the same including by invoking the arbitration clause contained in the lease agreement. The petitioners shall appear before the officer concerned i.e. the Chief Controller (Finance), HUDA, Panchkula at 11.00 A.M. on 04.10.2017 and thereafter as directed by the officer.”*

The applicant did not deposit the above amounts nor furnished any Bank guarantee and therefore its premises continue to be sealed by the respondents. However, the Chief Controller (Finance), HUDA, Panchkula, before whom the parties had appeared passed an speaking order dated

13.03.2018 as per which the applicant was first required to make the

deposits and furnish Bank guarantee as per the afore-quoted directions of this Court.

In the meanwhile, since the claim made by the respondents was disputed by the applicant and the applicant had its own counter claims against the respondents, through notice dated 29.01.2018, the applicant required the respondents to refer the entire dispute to be settled through the mode of arbitration. When within 30 days of the receipt of such notice no Arbitrator was appointed by the respondents the present application was filed for the aforesaid relief.

After hearing learned counsel for the parties and in view of the right granted to the applicant by this Court in the afore-quoted order with regard to invoking of the arbitration clause in the event that the applicant laid a challenge to the claims made by the respondents, Justice Rameshwar Singh Malik, a former Judge of this Court, is appointed as the sole Arbitrator to adjudicate upon the disputes and differences between the parties. It is clarified that both parties would be at liberty to raise their claims/defences/counter claims that may be available to them in law before the Arbitrator. However, such appointment would be subject to the declaration to be made by Justice Rameshwar Singh Malik under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties.

The Arbitrator is requested to complete the proceedings within the time limit specified under Section 29A of the Act.

The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended or as may be mutually settled by the parties and the Arbitrator.

As per agreement expressed by learned counsel for the parties,
for the sake of the convenience of their respective clients, the venue of the
Arbitration shall be at Chandigarh.

A copy of the order be forwarded to Justice Rameshwar Singh
Malik (Retd.) at the given address:

H.No.280,
Advocates Society,
Sector-49 A,
Chandigarh
(Mob. No.78370-49206)

After seeking the convenience of the Arbitrator, the parties are
directed to appear before him on 23.03.2020 or on any other date suitable to
all concerned.

The matter is disposed of in the above terms.

March 03, 2020
Jyoti 1

(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No