

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO-CARB No.1 of 2021 (O & M)

Date of Decision: *February 17, 2021*

YKM Holdings Private Limited

..... PETITIONER(S)

VERSUS

QNS Facility Management Private Limited

..... RESPONDENT(S)

...

CORAM: **HON'BLE MR. JUSTICE JASWANT SINGH**
 HON'BLE MR. JUSTICE SANT PARKASH

...

PRESENT: - Mr. Vipul Joshi, Advocate, for the petitioner.

Mr. Sidharth Batra, Advocate, for the respondent.

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Sant Parkash, J

The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.

The appellant has filed the present appeal against order dated 22.01.2021 passed by the Additional District Judge, Gurugram in a petition filed by the appellant under Section 9 of the Arbitration & Conciliation Act, 1996 (for short, 'Act') in CIS Arb. No.24/2021 titled 'YKM Holdings Private Limited vs. QNS Facility'.

Learned counsel for the appellant has contended that respondent – company is a joint venture company promoted by Unitech Limited and Aditya Properties Private Limited. Unitech Limited and

appellant entered into an agreement dated 23.12.2000 (Annexure A/1), whereby Unitech Limited (Developer) who is owner of Signature Towers, South City, Gurugram, Haryana, allotted Unit Nos.1401, 1402, 1403 and 1408-A on the 14th floor in favour of the appellant. As per Clause 11 of agreement dated 23.12.2000, Unitech Limited undertook maintenance of premises either by itself or with the help of a maintenance agency. Accordingly, Developers entrusted the respondent with the management, operation and maintenance of various services and facilities/equipments installed at Signature Towers vide Maintenance and Services Agreement (for short, 'M&S Agreement') dated 30.04.2001 (Annexure A/2). Subsequently, the appellant was granted the absolute ownership and possession of the aforesaid premises vide Conveyance Deed dated 25.01.2008 (Annexure A/3).

Learned counsel has contended that the respondent was obligated to provide maintenance services at the premises, however, it failed to provide satisfactory services since many years. The appellant expressed its grievances and concerns regarding unsatisfactory services but inspite of rectification/redressal of same, respondent sought payment.

The appellant also approached the District Consumer Disputes Redressal Forum at Gurugram under Section 35 of the Consumer Protection Act on the ground of 'deficiency of service' on 14.10.2020 (Annexure A/25), and as a counter blast of this, respondent started issuing intimidating emails to the appellant for payment of monthly dues. Learned counsel has submitted that respondent has claimed that it has to recover ₹ 20 lac, for which purpose, the matter is pending before the Consumer Forum and yet to be adjudicated.

Learned counsel further submits that aggrieved by the conduct of the respondent, appellant filed a petition under Section 9 of the Act. When the matter was listed on 22.01.2021, respondent moved an application for dismissal of petition and alleged that appellant has wrongly with-held its dues. The lower court instead of adjudicating the matter, declined to grant any relief to the appellant vide impugned order, observing that appellant is not paying the maintenance charges to the respondent and that an amount of ₹ 19,07,976.84/- is remaining unpaid towards the appellant.

Learned counsel for the respondent has contended that the impugned order has been passed by the lower court after taking into account all the relevant facts and the same is absolutely in consonance with the law. Rather, the appellant was required to take recourse to the Arbitration contained in M&S Agreement.

We have heard learned counsel for the parties and gone through the record but do not find any substantial force in the submissions of learned counsel for the appellant.

Section 9 of the Act entitles a party to, before or during arbitral proceedings or at any time after the making of arbitral award, apply to the Court for interim measures and empowers the Court to grant interim measures as specified therein, in exercise of powers for making orders as the Court has for the purpose of, and in relation to any proceedings before it. In the case in hand, appellant filed a petition before the District Judge, Gurugram, under Section 9 of the Act seeking relief as interim measure but the same was dismissed vide the impugned order.

Moreover, as per the M&S Agreement dated 30.04.2001, the appellant was duty bound to pay maintenance charges, which he failed and accordingly violated the mandated clauses 4.6 and 5 of the Agreement which specify that in case of non payment of maintenance charges, the appellant will lose its rights to use the services.

Further, there was an Arbitration Clause in the M&S Agreement which reads as under:-

“ARBITRATION

Excepting the cases of theft/pilferage of electrical energy or on interference in matter etc., (which are prima facie offences) and only after the bill amount payable are paid by the Second Party to the First Party in the event of any difference or dispute arising between the Parties in respect of any matter connected with the accuracy of bills, supply of services or interpretation of any of the terms & conditions which cannot be settled amicably between the Parties hereto, the same shall be referred to arbitration of an Arbitrator to be appointed mutually by the parties to this Agreement. Reference to and pendency of Arbitration shall be without prejudice to the right of the First Party/Maintenance Agency to effect recovery of its dues under this Agreement. The decision of the Arbitrator shall be final and binding on the parties. The Arbitration proceedings shall be held at Gurgaon/New Delhi in accordance with the Arbitration & Conciliation Act, 1996 as amended from time to time.”

In view of the aforesaid clause, the appellant is obligated to approach the arbitrator and to get his grievances redressed.

With regard to the filing of petition before the Consumer Forum claiming compensation for deficiency in service on the part of the respondent, it would be suffice to say that it is yet to be adjudicated as to whether there was any deficiency in service and to what extent the appellant is entitled for the compensation on that count. Merely by filing the complaint/petition before the Consumer Forum, it can not be inferred that there was deficiency in service as claimed by the appellant and the quantum of compensation is yet to be assessed and adjudicated. Even if it is assumed for the sake of the argument that the amount claimed before the Consumer Forum on account of deficiency of service is awarded in favour of the appellant that can be a matter subject to adjustment for the future maintenance charges.

Lastly, the appellant is lacking balance of convenience. On the one hand, appellant wanted services of respondent for rectifying deficiencies in its premises including repairing air-conditions, lifts but on the other hand, it is not paying maintenance charges to the respondent which is a maintenance service providing agency. The appellant can not be allowed to blow hot and cold in the same breath. Thus, we are of the considered view that the lower court has rightly declined to grant interim relief to the petitioner and we do not find any error or legal fault with the impugned order.

In view of the above discussion, we do not find any merit in the instant appeal and same is hereby dismissed.

Since the main appeal itself has been dismissed, the miscellaneous applications stand disposed of having been rendered infructuous.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

February 17, 2021
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No