

In the High Court of Punjab and Haryana, at Chandigarh

Arbitration Case No. 190 of 2020 (O&M)

Date of Decision: 28.06.2021

Creative Looms & Crafts Pvt. Ltd.

... Petitioner(s)

Versus

Cultfit Healthcare Pvt. Ltd.

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Munish Gupta, Advocate
for the petitioner.

Mr. Sachin Ohri, Advocate
for the respondent.

Anil Kshetarpal, J.

1. Through this application, filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”), the petitioner prays for the appointment of an Arbitrator.

2. It has been pleaded that the petitioner is owner of a part of the building- CLC Tower situated at plot No. 146, Sector 44, Gurugram, which was leased to the respondent vide registered lease deed dated 17.12.2019 for running a training centre for a period of nine years commencing from 17.12.2019 to 16.12.2028, with a lock in period of 24 months from the date of commencement of the lease. The initial lease amount was agreed at ₹7,96,450/- apart from the maintenance charges ₹ 1,76,076/-. The petitioner claims that there was a provision for 15% escalation on the last rent paid and maintenance charges after a period of every three years from the date of

the parties to the agreement had agreed to resolve their disputes and differences through an Arbitrator, which is extracted as under:

“28. DISPUTE RESOLUTION

28.1 In the event of any dispute, difference or claim between the parties which cannot be amicably resolved, the Parties shall refer the same to a sole arbitrator to be mutually appointed by both the Parties in accordance with Arbitration and Conciliation Act, 1996. The venue of arbitration shall be at Gurgaon and the arbitration shall be conducted in English language. The costs of the arbitration proceedings shall be equally shared by both Parties.

28.2 In the event of any such arbitration during the Lease period, both parties shall continue to perform their respective obligations during the arbitration period.

28.3 Subject to the above, the competent Courts at Gurgaon shall have jurisdiction to deal with any dispute, difference or claim between the Parties under their Deed”.

3. Now, the petitioner claims that the dispute has arisen and therefore, an Arbitrator should be nominated. It may be noted here that the existence of the lease agreement and clause containing agreement, to resolve the dispute through a sole Arbitrator is not in dispute.

4. It is also not in dispute that the respondent-tenant does not have protection of the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973. Thus, the parties are governed by the contract. No reply to the petition has been filed by the respondents.

5. Keeping in view the aforesaid facts, this Court is of the considered view that the matter can very well be decided by a retired District

petition is allowed. This Bench finds it appropriate to nominate Dr. Shiva Sharma, District & Sessions Judge (Retired), as an Arbitrator.

(a) Appointment of Arbitrator: Dr. Shiva Sharma, District and Sessions Judge (Retired), is hereby nominated to act as the Sole Arbitrator to decide the disputes and differences between the parties in both the petitions.

(b) Communication to Arbitrator of this order:

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the learned counsel for the petitioner within one week from the date of the order being uploaded.

(ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal address:

Arbitrator : Dr. Shiva Sharma, District and Sessions Judge (retired)

Address : #195, Opposite Devender Vihar, Sector 56, Gurgaon, Haryana.

Mobile No. : +9195605-20062 & 0124-4373297

(c) Disclosure: The learned Sole Arbitrator is requested to forward his statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act, 1996 to the Registrar General of this Court, referencing this arbitration petition, as soon as possible, and in any case, sufficiently in advance of his

entering upon the reference to his arbitration. That statement will be retained by the Registrar General on the file of this application. Copies will be given to both sides.

(d) Appearance before the Arbitrator: The parties will appear before the learned Sole Arbitrator physically or through video conferencing on such date and at such place as he nominates and will obtain appropriate directions in regard to fixing a schedule for completing the pleadings, etc.

(e) Contact/communication information of the parties: Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email address.

(f) Application under Section 16: Liberty to either side to file an application before the learned Sole Arbitrator under Section 16 in regard to any matter or claim and its arbitrability or with regard to the jurisdiction and competency of the arbitral tribunal.

(g) Interim Application(s):

(i) Liberty to both the parties to make an interim application or interim applications including (but not limited to) an interim application under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator.

(ii) Any such application will be decided in such

manner and within such time as the learned Sole Arbitrator deems fit.

(h) Fees: The fees of Arbitral Tribunal shall be governed by IVth Schedule of the Arbitration and Conciliation Act, 1996.

(i) Sharing of costs and fees: Parties agree that all arbitral costs and the fees of the arbitrator will be borne by both sides in equal shares at the first instance.

(j) Venue and seat of arbitration: The venue of arbitration shall be at such place or places as may be fixed by the Sole Arbitrator in his sole discretion.

(k) Contentions kept open. All contentions before the learned Sole Arbitrator are specifically kept open.

6. It is clarified that it is open to the respondents to file a counterclaim, if so advised, before the learned Sole Arbitrator, within such time and subject to such terms as the learned sole Arbitrator may direct.

7. Costs of the arbitration proceedings may be included by both the sides in their claims before the learned Sole Arbitrator.

8. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

June 28, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No