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

% ***Date of decision: 16.07.2021***

+ **ARB.P. 549/2021**

M/S JAYCEE HOUSING PVT. LTD. THROUGH ITS DIRECTOR

..... Petitioner

Through: **Mr. Pravir Kumar Jain with Mr. Arjav Jain, Advocates with Authorized Representatives of the Petitioner**

Versus

M/S CURE FOODS PRIVATE LIMITED, THROUGH ITS DIRECTOR

..... Respondent

Through: **Mr. Vibhor K. Aggarwal, Advocate**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

The hearing has been conducted through video conferencing.

1. The present petition has been filed by petitioner seeking appointment of a Sole Arbitrator under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996, in terms mentioned in lease deed dated 19.02.2019, executed between the parties.
2. The dispute *inter se* parties pertains to Building No. 10, Ground Floor, Local Shopping Centre, Madangir, Delhi – 110062, measuring 1974 sq. ft. super built up area and 1230 sq. ft. carpet area owned by the petitioner, which was leased out to respondent, who is engaged in the business of

fitness, health care, fitness sports training, café/food retailing, yoga and meditation centres, vide registered lease deed dated 19.02.2019, for a period of 09 years with effect from 01.02.2019. In terms of the aforesaid lease deed, neither petitioner/lessor nor respondent/lessee had a right to terminate the lease within locking period except on account of a force majeure event which was described in para 24 of the said lease.

3. The stand of petitioner is that the possession of the premises in question was handed over to the respondent on 31.01.2019 for a rent free fit out period of 60 days commencing from 01.02.2019 to 31.03.2019, during which respondent carried out massive repairs and renovations including structural changes in the premises in question to suit its requirement of running its business of manufacture and distribution of food.

4. Further, an addendum dated 01.04.2019 to lease deed dated 19.02.2019 is stated to have been entered between the parties wherein it was agreed that upon termination of the lease the respondent/lessee shall hand over the premises in question to the petitioner/lessor in the same condition as was taken in the time of possession. However, respondent sent a letter dated 18.08.2020, followed by an e-Mail dated 25.08.2020, to the petitioner claiming the same to be termination notice and further seeking to terminate the lease in respect of the premises in question with immediate effect seeking to invoke Clause 24 of the said registered lease deed dated 19.02.2019 on account of prevailing pandemic situation to be a force majeure event.

5. Petitioner, vide its reply dated 29.08.2020, referred to Clause 6 of the registered lease deed according to which lock in period agreed between the parties was 09 years, however, with an intention to resolve the dispute made

certain offers like payment of half rent etc., but since respondent did not respond, petitioner issued a Notice dated 28.09.2020 to respondent in terms of Clause 26 of the registered lease deed invoking Arbitration clause. Though parties are stated to have communicated with each other but since no resolution could be arrived, therefore, the present petition has been filed.

6. At the hearing, learned counsel for petitioner submits that petitioner has a claim of Rs.1,91,17,980/- towards rent; for restoration of building to its original position Rs.14,50,000/- as per the terms of addendum dated 01.04.2019 besides cost of additional power load and separate new water connection and cost towards flooring repair deducted from rent bills amounting to Rs.4,55,000/- against respondent and, therefore, a Sole Arbitrator be appointed for resolution of this dispute.

7. On the other hand learned counsel for respondent submits being the first date of appearance by respondent before this Court, time to file reply be given. However, he does not dispute the dispute between the parties and invocation of arbitration clause by the petitioner.

8. In view of the above, the present petition is allowed. Accordingly, **Justice Pratibha Rani (Retd) (Mobile: 9910384626)** is appointed as sole Arbitrator to adjudicate the dispute between the parties. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC).

9. The fee of the Arbitrator shall be in accordance with the schedule of fees prescribed under the Delhi International Arbitration Centre (DIAC) (Internal Management) Rules and Delhi International Arbitration Centre (Administrative Cost and Arbitrators' Fees) Rules, 2012.

10. With aforesaid directions, the present petition is accordingly disposed of.

11. A copy of this order be sent to the learned Arbitrator as well as Delhi International Arbitration Centre (DIAC) for information.

(SURESH KUMAR KAIT)
JUDGE

JULY 16, 2021

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