

\$~5 (2020)

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

Date of Decision: 2nd August, 2021

+ **O.M.P. (COMM) 478/2020**

PELICAN GRAND MOTELS PRIVATE LIMITED Petitioner

Through: Mr. Ramesh Kumar, Mr. Sam C Mathew and Mr. Abhishek Gusain, Advocates.

versus

PELICAN GRAND MOTELS Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral):

I.A. 8332/2020(under Section 34(3) of the Arbitration And Conciliation Act, 1996 for condonation of delay in filing the petition)

1. The impugned Arbitral Award is dated 31st October, 2019. The filing of the petition is delayed by 28 days beyond three months stipulated under Section 34 (3) of the Arbitration and Conciliation Act, 1996 [*hereinafter 'the Act'*]. Petitioner has filed an affidavit explaining the delay. For the grounds and reasons stated therein, the application is allowed; delay of 28 days is condoned.
2. Accordingly, the application stands disposed of.

O.M.P. (COMM) 478/2020 & I.A. 8333/2020 (for stay of impugned award)

3. The present petition under Section 34 of the Act has been filed by the Petitioner seeking setting aside of the impugned Arbitral Award dated 31st October, 2019 [*hereinafter*, '**Award**'] passed by the Sole Arbitrator wherein the Respondent (Claimant therein) was declared as the sole and absolute lease holder of the subject-property under the Lease Deed dated 7th July. The Petitioner (Respondent therein) was found to have no lease-hold right/ ownership over the subject-property.

THE PARTIES

4. The Petitioner- Pelican Grand Motels Private Limited, is a private limited company incorporated on 7th December, 2010 under the Companies Act, 1956 with the Registrar of Companies [*hereinafter*, '**PGMPL**'] and the Respondent- Pelican Grand Motels is a partnership firm registered on 29th April, 2008 with the Registrar of Firms, initially comprising of two partners, Sh. Yogesh Kumar Gupta and Smt. Vijay Laxmi, later, five more partners were inducted on 1st October, 2010 [*hereinafter*, '**PGM/ the Firm**'].

THE DISPUTE

5. In the arbitration, the dispute between the parties pertained to a parcel of land situated at Karnal, Haryana which was owned by Sh. Yogesh Kumar Gupta and Smt. Vijay Laxmi who were the original partners of PGM, in their individual capacity. They executed a Lease Deed dated 7th July, 2008 [w.e.f. 6th July, 2005] in favour of PGM for a period of 30 years. The Firm permitted PGMPL, to construct a hotel on the said land.

6. Subsequently, when PGM (Claimant therein) realized that the directors of PGMPL were misleading people with regard to the lease-hold rights of the property, they filed a civil suit for injunction and declaration against PGMPL¹. During the pendency of the suit, parties agreed to go for arbitration for adjudication of their disputes regarding the lease-hold rights relating to the afore-said property. In arbitration, the case of PGM (Claimant therein), *inter-alia*, was that the permission granted to PGMPL for construction of a hotel was subject to the condition that PGM alone shall continue to have the lease-hold rights over the land during the lease period, in terms of Lease Deed dated 7th July, 2008. Lease-hold rights of the property continue with PGM. The reliefs sought in the arbitration read as follows: -

“i. to pass an award declaring that the claimant partnership firm is lessee of the suit property as per lease deed, dated 07.07.2008 for a period of 30 years w.e.f. 06.07.2005; and

ii. to pass an award for permanent injunction restraining the respondent company, its directors, employees, agents, servants etc. from transferring possession or creating any third party rights/interests the property in question in respect of the leasehold rights in the property in question, and

iii. to pass an award declaring that third party right/interest, if any, created by the respondent company to prejudice and affect the leasehold rights of the claimant partnership firm in the property in question, be declared as null and void ab initio and does not affect the leasehold rights of the claimant partnership firm, in any manner, whatsoever; and

iv. to award cost of the litigation; and/ or

v. to pass any such other order(s) or direction(s) as deemed fit and proper in the facts and circumstances of the present case.”

¹C.S. No. 954/2019 before Sh. Pawan Kumar, Court of Civil Judge, Senior Division, Karnal.

7. PGMPL (Respondent therein) filed its 'Statement of Defence' and contested the claims, by *inter alia*, contending that permission for construction was given to PGMPL without any pre-condition. It was also contended that PGM initially comprised of two partners; subsequently, five more partners were added into the Firm with the sole purpose to convert the same into a Private Limited Company. Therefore, PGM has ceased to exist and the lease-hold rights have thus, been surrendered in favour of the PGMPL. Now, PGMPL is holding the lease-hold rights on the property and is, therefore, free to transfer possession thereof to any person or any other business entity. Besides, reliance was also placed on a unanimous Resolution dated 25th August, 2010 [which finds reference in the Memorandum and Articles of Association] passed by seven alleged partners of PGM (Claimant therein) whereby they allegedly transferred the lease-hold rights vested in PGM in favour of PGMPL and resolved to convert the Firm into a Private Limited Company.

8. The Arbitrator after considering the contentions of the parties, allowed the claims of PGM holding that the lease-hold rights were vesting in PGM, in terms of the Lease Deed 7th August, 2008. He has held that PGM neither transferred, nor intended to transfer the lease-hold rights to PGMPL. The relevant findings of the Arbitrator on this issue reads as under: -

"12. It is important to note that the Claimant Firm initially comprised of Sh.Yogesh Kumar Gupta and Smt.Vijay Laxmi, as partners. Thereafter, on 1.10.2010, 05 more partners were inducted and they included Smt.Sakshi Gupta, Sh.Jitendra Kumar Mittal, Sh.Pawan Kumar, Sh.Baljeet Singh and Sh.Surendra Mittal. Since on 25.08.2010, the Claimant Firm comprised of only 02 partners, no such Resolution could have been passed on

25.08.2010 and it is this Resolution that goes to the very root of the dispute between the parties.

13. The Respondent Company has claimed that the Claimant Partnership Firm had added 05 partners to it on 1.10.2010, with the sole purpose to convert the Claimant Firm into a Joint Stock Company. The 05 additional partners, however, joined the Claimant Firm only on 1.10.2010 and, therefore, they could not have passed any Resolution as partners of the Firm on 25.8.2010. It is, also, important to note that the Claimant Partnership Firm has its registered office at 15, Mall Road, Karnal, whereas the Respondent Company has its registered office at 117, Anand vihar, Pitampura, Delhi. It is, also, important to note that the alleged Resolution dt.25.8.2010 was passed at 117, Anand Vihar, Pitampura, Delhi, the registered office of the Respondent Company. The Company itself was incorporated, much later, i.e, on 7.12.2010. The Claimant Firm, therefore, could not have passed the Resolution dt.25.8.2010. Since the Claimant Firm had been leased-out the 'subject property' by Sh.Yogesh Kumar Gupta and Smt.Vijay Laxmi, in their individual capacity, though they were the. partners of the Claimant Firm at the time of execution of lease deed, but the said lease could not have been transferred to the Respondent Company vide any Resolution dt.25.8.2010, as on that date the Firm comprised of Sh.Yogesh Kumar Gupta ana Smt.Vijay Laxmi only.

14. The contention of the Id. Counsel for the Respondent that the Claimant Partnership Firm, had added 05 more partners only to convert the said Partnership Firm into Joint Stock Company is, also, contrary to record. The supplementary Partnership deed clearly mentions as under:

“-----and whereas the existing partners have agreed to admit the new partners as additional partners for the smooth and efficient running of the said Partnership business and the new partners have also given their acceptance to join the said Partnership business w.e.f 1.10.2010”.

Clause 01 of the supplementary Partnership-Deed states as under;

*That the Firm with the present
...---came into existence w.e.f.
1.10.2010 for doing the business of
tourist resort consisting of restaurant,
motels, amusement park under the name
and style of M/s. Pelican grand Motels.”*

"That the Partnership business will be

carried out in the same name and style as mentioned above and at the same place of business as at present."

15. *It is clear from the bare reading of the Supplementary-Deed that 05 additional partners were not inducted to convert the Partnership Firm into a Joint Stock Company. The contention the Ld. Counsel for the Respondent, thus, has no merit and hence rejected.*

16. *The Claimant Firm, holder of lease-hold rights in the said land, in terms of the lease-deed dt.7.8.2008, never intended to transfer the lease-hold rights to the Respondent Company. The Claimant Firm, is an altogether different entity from that of the Respondent Company. There is nothing to show that the Claimant Firm has been converted into the Respondent Joint Stock Company. The Respondent has itself admitted that Sh. Yogesh Kumar Gupta and Smt. Vijay Laxmi owned the subject land jointly in their individual capacity and they in that capacity never transferred the ownership right in its favour. There is, thus, nothing to show that the Claimant had ever transferred its rights in favour of the Respondent. The Claimant, therefore, remains the holder of lease hold rights in the subject property. The Claimant shall, also, be entitled to the cost of Arbitral proceeding.*

17. *The following Award is passed:-*

i) The Claimant is declared as the sole and absolute lease holder of the subject property under the lease-deed dt.7.7.2008 for a period of 30 years w.e.f. 6.7.2005. The Respondent has got no right, no ownership/ lease-hold right in the subject property and is restrained from transferring the possession of the subject property to any third party and from creating any third party interest in respect of the lease hold right in the property.

it) Any third party right/interest, if already created by the Respondent in the subject property, is null & void and cannot affect the lease hold rights of the Claimant Firm in any manner.

iii) The Claimant is awarded an amount of Rs.1,50,000/- towards the cost of the Arbitral Proceedings.

iv) The Claimant shall make good the deficiency in stamp paper, if any, within four weeks.

xx ... xx ... xx"

ANALYSIS

9. The sole ground of challenge urged by Mr. Ramesh Kumar, counsel

for the PGMPL is that in the 'Statement of Defence' filed in arbitration, there is an admission that PGM has permitted PGMPL to construct hotels on the property in question. On conversion of the Firm into PGMPL, the leasehold rights that vested in PGM stood transferred in favour of PGMPL. This is also evident from the Resolution dated 25th August, 2010 and Memorandum and Articles of Association of PGMPL, therefore, no separate Lease Deed was required to be executed in favour of PGMPL.

10. In the opinion of the Court, the aforesaid contention does not have any merit. The findings of the Arbitrator, as can be seen from the award, extracted above are based on consideration of the entire conspectus of the case. The Arbitrator has held that PGM is an altogether different entity, distinct from PGMPL. The Arbitrator holds that there is nothing on record to show that PGM has been converted into PGMPL. The ownership of the land is not in dispute and the same vests in favour of Sh. Yogesh Kumar Gupta and Smt. Vijay Laxmi and they never transferred their rights in favour of PGMPL. Significantly, the unanimous Resolution dated 25th August, 2010, on which PGMPL's case was founded, to contend that the partners of PGM had resolved to convert the Firm into a Private Limited Company, was never produced before the Arbitrator. There was merely a reference to the said Resolution in the Memorandum of Association of PGMPL. Nevertheless, the Arbitrator examined the merits of contention of PGMPL and held that reliance on the Resolution dated 25th April, 2010, on which its entire defence stands, could not have been passed by PGM on the said date. For coming to this conclusion, the Arbitrator found that as on the date of the alleged Resolution, the constitution of PGM was only of two partners. The five

additional partners were added to the firm on 1st October, 2010. PGMPL was incorporated much later i.e., on 7th December, 2010. Therefore, PGM which comprised of only two partners at that time, could not have passed the Resolution on 25th August, 2010, referred to as the unanimous Resolution of seven partners. These findings of fact, based on appreciation of evidence are reasonable and cannot be faulted.

11. In view of the foregoing, the Court does not find any merit in the present petition. Accordingly, the present petition along with all pending applications are disposed of.

AUGUST 2, 2021
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(Corrected and released on 1st September, 2021)

SANJEEV NARULA, J