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

+ **ARB.P. 554/2020**

USHA WADHWA

..... Petitioner

Through: Mr. PK Agrawal, Ms. Tannya Sharma
& Ms. Deepti Gupta, Advs.

versus

PUSHPA SHARMA, SOLE PROPRIETOR, PET STORE

..... Respondent

Through: Mr. Saket Sikri, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G E M E N T (O R A L)

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14.01.2021

(Video-Conferencing)

1. This is a petition under section 11(6) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”), seeking reference of the dispute between the parties to arbitration.

2. The facts of the case, as set out in the petition, which disclose the existence of arbitrable dispute, may be enumerated thus:

(i) The petitioner owns the premises at E-8, East of Kailash New Delhi 110065. Lease, in respect thereof, was granted to the defendant, who is the sole proprietor of an establishment, named The Pet Store – with a registered lease deed dated 27th June, 2018.

(ii) The lease covered the basement and part of the ground floor of the aforesaid property (hereinafter referred to as “the property”). The respondent was required to pay rent @ ₹ 8,50,000/- plus GST per month which could be increased by 10% every three years. The tenancy was over a period of fifteen years with the initial seven years stipulated as a lock-in period.

(iii) Consequent to taking the aforesaid premises on lease, the petitioner states that she, and her husband Dr Manmohan Sharma, undertook large scale renovations of the property, so as to make it serviceable as a veterinary hospital. These renovations also covered part of the ground floor, the entire first floor and the entire second floor and the entire third floor of the property, which were taken on lease by another concern, stated to be of the respondent namely The Max Vets Hospitals Private Limited, *vide* lease deed dated 27th June, 2018.

(iv) Rent, for the month of June 2018, was waived by the petitioner. The respondent paid rent for the month of July 2018, from the personal account of the respondent and her husband, and for the months of August, September, October and November 2018 from the account of The Max Vets Hospitals Private Limited. From January 2019 onwards, rent was paid from the account of The Pet Store, However, it is alleged that no rent has been paid in December 2018.

(v) The petition further alleges that the respondent deducted, from the rent, for the period 20th July, 2018 to 20th July, 2019, ₹ 85,000/- per month towards TDS, but did not deposit the said amount, to the Income Tax authorities. Consequent to a demand by the petitioner, the

respondent paid ₹ 12,11,750/- by cheques, which was appropriated by the petitioner towards deduction of TDS and interest thereon.

(vi) The petition alleges that subsequent reconciliation of the accounts disclosed that the respondent had paid rent only for eight months, instead of nine months from July, 2018 to March, 2019, resulting in the respondent becoming liable to pay ₹ 9,18,000/- for the month of December 2018.

(vii) It is further alleged that, after March 2020, the respondent has defaulted, in the payment of rent. For the period April to August, 2020, it is alleged that the respondent has short paid rent to the tune of ₹ 30,14,050/-. A demand from the petitioner, to the respondent, to pay the unpaid rent, it is alleged, proved futile.

(viii) On 22nd August 2020, the petitioner addressed a notice to the respondent, calling on the respondent to pay ₹ 30,14,050/- within 15 days, failing which the tenancy would stand terminated with effect from 20th September, 2020. The respondent was also notified that, in the event of such termination, she would become liable to pay arrears of rent till September 2020 along with rent for 58 months of the lock-in period, which would total to ₹ 6,43,12,360/-.

(ix) The petitioners contention is that the tenancy stands terminated by operation of the relevant covenants of the lease deed and that, as a result, the aforesaid amounts have become payable by the respondent to the petitioner.

(x) The total claim of the petitioner against the respondent works out to ₹ 39,32,050/- as arrears till August 2020, ₹ 20,06,000/- as rent for the months of September and October 2020 and allegedly short paid rent of ₹ 18,05,400/- on 20th October, 2020 and 21st October, 2020, apart from the balance lock in period rent of ₹ 6,23,06,360/-, covering the period from November, 2020 to June, 2025.

3. Mr Saket Sikri, learned counsel for the respondent, does not contest the existence of an arbitrable dispute. However, he questions the correctness of the aforesaid claims of the petitioner. That, however, would be a matter for decision by the learned Arbitral Tribunal.

4. The parties have not been able to arrive at a consensus regarding the arbitrator to arbitrate on the aforesaid dispute.

3. The petitioner and the respondent have not been able to arrive at a consensus regarding the arbitrator to arbitrate on the dispute, necessitating intervention of this court in the matter. In view thereof, the court appoints Justice Brijesh Sethi (retired), who has recently retired as a learned Judge of this Court, as arbitrator to arbitrate on the disputes between the parties. The contact details of the learned arbitrator are as under:

AB-5 ,Purana Quila Road,

New Delhi

Mobile No- 9910384669

Email ID: justicebrijeshsethi@gmail.com

5. With consent, the arbitrator would arbitrate on the dispute under the aegis of the Delhi International Arbitration Centre (DIAC).

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6. The respondent shall also be at liberty to raise counter claims before the learned arbitrator, in accordance with law.
7. In view thereof, the arbitration would proceed in accordance with the protocol and the fees would also be determined by the DIAC in accordance with its schedule of fees.
8. The parties are directed to contact the concerned officer of the DIAC, as well as the learned sole arbitrator, within 48 hours of communication by them, of a copy of this order by e-mail by the registry.
9. The arbitrator would submit the requisite disclosure under section 12(2) of the 1996 act within a week of entering on the reference
10. With the aforesaid directions, this petition stands disposed of.

C.HARI SHANKAR, J

JANUARY 14, 2021/ss