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IN THE HIGH COURT OF BOMBAY AT GOA

**APPLICATION FOR APPOINTMENT OF ARBITRATOR
NO. 8 OF 2022**

JOSE INACIO GUIDO DE
LOYOLA FURTADO REP. BY
POA JOSE LIGORIO QUERINO
GERALDO PARRAS AND ANR. ... APPLICANTS
VS
PRINCE DEVELOPERS THR. ITS
PARTNERS AND 3 ORS. ... RESPONDENTS

Mr. Bernard Fernandes, Advocate for the Applicants.
Mr. S. Korgaonkar, Advocate for Respondents.

CORAM: SANDEEP K. SHINDE, J.

DATED: 27 JULY 2022

P.C:

1. Heard Mr. B. Fernandes, learned Counsel for the applicants and Mr. S. Korgaonkar, learned Counsel for respondents.
2. This is an Application for appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (Act of 1996, for short).
3. That vide registered Lease Deed dated 20.1.2020, the applicants/ lessors, leased out the demised premises, to the respondents/lessees, for 14 years, upon certain terms and conditions. The respondents began to default on payment of rentals as stipulated in the Deed of Lease from the month of March 2020, onwards. Despite several reminders, the respondent no.1, failed to

settle the demand. Therefore, the applicants through their Advocate caused a notice dated 26.12.2020 to be issued, calling upon the respondents to arrange for payment of arrears of rents along with interest and GST refund, which amounted to Rs. 10,88,740/-.

4. Whereafter, the applicants and respondents mutually arrived at settlement which was recorded by the applicants in their letter dated 19.3.2021 and acknowledged by the respondent no.1.

5. Pursuant to the said settlement, the respondents paid to the applicants a sum of Rs.5,00,000/- on 22.3.2020 by cheque drawn on HDFC bank, but subsequently failed to effect payment of the amounts of Rs.5,00,000/- and 8,36,000/- on the scheduled dates. That being the reason, the applicants withdrew the concession in rentals in terms of the settlement arrived at and recorded in the letter dated 19.3.2021. Whereafter the applicants instructed their lawyer to send notice to the respondents and invoke clause no. 14(d) (i) and called upon the respondents to effect outstanding rental payments. Demand notice was not responded to, due to which the applicants terminated the lease through their Advocate notice dated 25.10.2021 and called upon the respondents to hand over vacant possession of the demised premises.

6. As the respondents failed to comply with the requisition of the notice dated 25.10.2021 and failed to handover the vacant possession of the demised premises, the applicants vide notice dated 4.3.2022 invoked clause no.15 of the Lease Deed and nominated Senior Advocate Mr. J. P. Mulgaonkar as the arbitrator and further called upon the respondents to concur upon the change.

7. Notice dated 4.3.2022 invoking the arbitration clause was not responded to by the respondents and therefore, the applicants have filed this application for appointment of arbitrator under section 11 of the Act of 1996.

8. So far as the jurisdiction of the Court under Section 11 of the Act of 1996 is concerned, in the case of **Duro Felguera SA vs. Gangavaram Port Ltd., (2017) 9 SCC 729**, the Apex Court has held that after the amendment, all that the Court needs to see is whether the arbitration agreement exists-nothing more, nothing less. Thus in context thereof, observed that legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the Arbitrator and this intention as incorporated in Section 11(6A), ought to be respected.

9. Therefore, while exercising jurisdiction under Section 11 of the Act of 1996, what is relevant is the existence of the arbitration of the Agreement and further, that the disputes arising from the Agreement, are amenable to arbitration.

10. In this case, all necessary elements to exercise the power under Section 11(6) of the Act, of 1996 are adequately satisfied. The application therefore deserves to be allowed.

11. Hence, the following order :

O R D E R

- (i) Mr. R. G. Ramani, Senior Advocate, of this Court, having his office at S-1, Satt Adhar Chambers, Pato, Panaji Goa, is appointed as sole Arbitrator to arbitrate the disputes/claim and counter claims, if any, which arise out of the registered lease deed dated 12.1.2020.
- (ii) The learned Arbitrator is requested to file his disclosure statement under Section 11(8), read with Section 12(1) of the Act of 1996, within three weeks, with the Registry of this Court and provide copies to the parties.
- (iii) Parties to appear before the sole Arbitrator on the date fixed by him at his earliest conveyance.
- (iv) The application is allowed and disposed of in the aforesaid terms.
- (v) It is clarified that this Court has not gone into the merits and demerits of the disputes between the parties and therefore, all contentions of the parties, on merits, are left open for decision of the Arbitrator in accordance with law and on its own merits.

SANDEEP K. SHINDE, J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK
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