

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
[COMMERCIAL DIVISION]

COMMERCIAL ARBITRATION APPLICATION NO.314 OF 2019

Agricultural Discs Pvt. Ltd.

.. Applicant

Vs.

Sintex BAPL Ltd.

(Formerly known as Bright Autoplast Ltd.)

.. Respondent

Mr. Viral Vora for the Applicant.

Ms. Sayali Phansikar, i/by Mr. Abhishek Adke, for the Respondent.

CORAM : A. K. MENON, J.

DATE : 3RD JANUARY, 2022.

P.C. :

1. By this application, the applicant, a private limited company, seeks appointment of a Sole Arbitrator. The application, as filed, is based on a Memorandum of Understanding dated 2nd June 2011 and two Leave and License Agreements dated 28th May 2015 and 29th June 2015. The application is being opposed by the respondent inter alia on the ground that the subject matter of the proposed reference is not arbitrable since it involves a relationship between the licensor and licensee and hence would fall within the ambit of Rent Control legislation.

2. On behalf of the applicant, Mr. Vora has canvassed his case based on a Memorandum of Understanding dated 2nd June 2011 (**MOU**), which inter alia

records the applicant's obligations to build an infrastructure facility at Satpur, Nasik, Maharashtra and offer the entire constructed premises to the respondent on leave and license basis. The MOU sets out various obligations of the applicant. Vide clause 8, the respondent is required to enter into the Agreement of Lease for 99 months with a locking period of 66 months. Early termination is not permissible. The MOU also contemplates execution of a formal Lease Rental Agreement. Clause 21 of the MOU contains an arbitration agreement. It reads as follows :-

"21. All disputes and differences of any kind whatsoever, arising out of, or in connection with this MOU shall be referred to arbitration by both and the arbitration proceedings shall be held at Nasik as per the provisions of the Arbitration and Conciliation Act, 1996, or any statutory modifications or re-enactment thereof and of the rules made thereunder for the time being in force, shall apply to arbitration proceedings under this clause and the proceedings shall be in English."

3. The MOU thus sets out the basic intention between the parties, which has since translated into execution of two Leave and License Agreements. My attention has been invited by Mr. Vora to Leave and License Agreement dated 28th May 2015, annexed at Exhibit-B to the application. This is a registered leave and license agreement, making reference to the MOU of 2nd June, 2011 and under Article 2, the respondent-licensee is granted a license of demised

premises described therein on a term of five years. Article 3 provides for the license fees payable during the term and Article 4 provides for a security deposit, which I am told is still retained by the applicant.

4. The disputes between the parties have arisen upon the respondent vacating the premises, prematurely, before expiry of the lock-in period. This has given rise to claims and counter claims. The respondent has contended that certain permissions for sub-letting were to be obtained under Article 8, which have not been obtained. These disputes have led the applicant to approach this court. Mr. Vora has canvassed his case on the basis of the three arbitration agreements contained in clause 21 of the MOU and clauses 12.3 of both the Leave and License Agreements dated 28th May 2015 and 29th June 2015, respectively. While the arbitration agreements in clause 12.3 in the leave and license agreements are identical, the clause 21 of the MOU contains a different agreement. On perusal of these clauses, it is evident that clause 21 under the MOU contemplates disputes and differences arising under that MOU alone. Since the leave and license agreements contained their own independent arbitration agreements, the question that arises is whether the claim today is being made under the MOU or under the Leave and License Agreements.

5. In the course of hearing today, it has become clear that all obligations of the applicant under the MOU have been complied with since it is in pursuance of clause 8 that the two leave and license agreements have been

executed. Thus, prima facie, it appears that no claim survives under the MOU by itself since two separate leave and license agreements have been executed and those are in performance of the MOU. The dispute that has now arisen is on account of the respondent having failed to continue in occupation as licensee under Article 2 in each of these leave and license agreements. There was a lock-in period provided for and the respondent has vacated the premises prior to the expiry of the lock-in period and has declined to pay the license fees, as agreed upon. Thus, prima facie, it is evident that this is a dispute between the licensor and licensee and the objection raised by the respondent that the dispute is not arbitrable has merit. The respondent has, in no uncertain terms, contended that the dispute would have to be subject matter of the proceedings under the Rent Control legislation and that an Arbitrator appointed under the Arbitration and Conciliation Act, 1996 would not have jurisdiction to grant relief under the leave and license agreements. Mr. Vora has confirmed today, on instruction, that the claim that survives is only on account of non-compliance with the lock-in period and continued occupation under the first leave and license agreement.

6. The Supreme Court in *Booz Allen & Hamilton Inc. Vs. SBI Home Finance Ltd. and Ors.*¹ has considered arbitrability of disputes relating to tenancy. *N.N. Global Mercantile (P) Ltd. Vs. Indo Unique Flame Ltd.*² has also considered this aspect. In *Vidya Drolia and Ors. Vs. Durga Trading*

1 (2011) 5 SCC 532

2 (2021) 4 SCC 379

*Corporation*³, the court made a distinction between arbitrability of disputes only under the Transfer of Property Act and those which involve Rent Control legislation. The court observed that if the landlord-tenant disputes are governed only by the Transfer of Property Act, they were arbitrable as there was no occasion to consider Rent Control legislation. If the disputes between the landlord and tenant also involve the Rent Control legislation, then they would not be arbitrable. In the facts of the present case, it would appear that the disputes would have to be governed by Rent Control legislation as they are between licensor and licensee. The parties also appear to believe so. In that view of the matter, I am of the view that these are not arbitrable disputes.

7. In my view, therefore, the dispute falling under two leave and license agreements clearly not arbitrable and would be subject matter of the appropriate court or such other forum as the applicant may choose. I am of the view that the agreements contained in clauses 12.3 of both the leave and license agreements cannot come to the assistance of the applicant and no Arbitrator can be appointed. Mr. Vora has, during the course of submissions, submitted that an Arbitrator can still be appointed and the Arbitrator can decide this issue. That, in my view, is an unnecessary exercise given the clear terms of the leave and license agreements. In view thereof, this application cannot succeed and I pass the following order :-

- (i) Arbitration Application is disposed.
- (ii) No order as to costs.

3 (2017) 10 SCC 706

- (iii) All rights and contentions of the parties are left open, to be decided in appropriate proceedings that the applicant may choose to adopt.
- (iv) The observations made in this order shall not prejudice in any manner the contentions of either of the parties.

(A.K. MENON, J.)