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Arb.O.P (Com.Div.) No. 55 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div.) No. 55 of 2022

Guess? India Private Limited
Represented by Ajay Kumar
Level 9, Office No.972
Spaze I-Tech Park, A1 Tower
Sector 49, Sohna Road
Gurugram – 122 018

... Petitioner

Vs.

Sugam Vanijya Holdings Private Limited
Plot No.11B, Sy.No.40/9
Devasandra Industrial Area, 2nd Stage
K.R.Puram Hobli
Bengaluru – 560 048

... Respondent

Arbitration Original Petition filed under Section 11(6)(A) of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate upon the differences and disputes between the Petitioner and Respondent hereto along with an order directing the Respondent to pay the costs of the present petition to the Petitioner.

For Petitioner : Mr.S.M.Vivekananda
& Ms.Vani Sharma

For Respondent : Mr.N.Surya Narayanan
for Mr.R.Parthasarathy

ORDER



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In the captioned Arb.OP, Ms.Vani Sharma, learned counsel for sole petitioner and Mr.N.Surya Narayanan, learned counsel representing the counsel on record for lone respondent are before this Court.

2. Read this in conjunction with and in continuation of earlier proceedings made in the previous listings, more particularly the proceedings made in the listings on 15.02.2022 and 01.03.2022, which read as follows:

'Proceedings dated 15.02.2022

Captioned 'arbitration original petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented in this Court on 03.01.2022 with a prayer for appointment of a sole arbitrator for adjudicating the differences and disputes that have arisen between the petitioner and respondent.

2. Captioned Arb OP says that it is under Section 11(6)(A) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity].

3. Mr.S.M.Vivekanandh, learned counsel for petitioner submits that there is a typographical error in the petition and requests this Court to read Section 11(6)(A) of A and C Act as Section 11(6)(a) of A and C Act. Request acceded to.

4. Learned counsel submits that the genesis of the dispute is a lease deed dated 14.12.2018 between petitioner and respondent.



To be noted, the respondent-Company is a lessor and petitioner is a lessee. The demised property is 'Shop No.G 27 A in the Ground Floor situate in a shopping mall known as 'VR-Chennai' in Koyembedu, Chennai' [hereinafter 'demised shop' for the sake of convenience and clarity]. Lease is for a period of nine years and learned counsel submits that the commencement date is 01.10.2018. This means that the lease would have subsisted till 30.09.2027.

5. However, the parties decided to exit from the lease and 'deed of surrender of lease dated 06.11.2020' [hereinafter 'surrender document' for the sake of convenience and clarity] came to be executed. The surrender document has an arbitration clause contained in it, that arbitration clause is Clause 6 and the same reads as follows:

'6. If any question of difference or claim or dispute shall arise between the parties in relation to this Surrender Deed or the construction thereof to rights, duties or obligations of the parties or as to any matter arising out of or connected with the subject matter, the same shall be referred to arbitration in accordance with the provisions of the (Indian) Arbitration and Conciliation Act, 1996. The seat of arbitration shall be Chennai. The arbitration shall be conducted by a sole arbitrator, to be mutually appointed by the parties. In case the parties are unable to agree upon an arbitrator,



within 30 (thirty) days of issue of notice by either party in relation to a dispute, any such appointment shall then be made in terms of the applicable provisions of the (Indian) Arbitration and Conciliation Act, 1996. The arbitrator shall render his/her award in English language and in writing. The parties agree that the decisions of the arbitrator shall be final and binding.'

6. Learned counsel submits that the above is the arbitration agreement between the parties being arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.

7. Learned counsel submits that the demised shop has since been surrendered and issue now largely turns inter alia on refund of security deposit.

8. Learned counsel submits that the procedure for appointment of arbitrator having been agreed, trigger notice dated 30.09.2021 was issued nominating an advocate as a sole arbitrator and calling upon the respondent to consent and the same has not evoked any response though the trigger notice has been duly served on the respondent on 04.10.2021. To be noted, as already alluded to supra as the trigger notice has not evoked any response or reply, captioned Arb OP has been presented in this Court on 03.01.2022.

9. To be noted, lease deed has been registered and in the light of narrative thus far prima facie case qua existence of arbitration agreement made out.



10. Issue notice to respondent returnable in a fortnight i.e., returnable by 01.03.2022. Private notice permitted. Notice through all available electronic modes of communications (subject of course to proof being demonstrated) also permitted.

11. List on 01.03.2022.'

Proceedings dated 01.03.2022

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 15.02.2022.

2. Mr.S.M.Vivekanandh, learned counsel for the sole petitioner is before this physical Court.

3. Mr.N.Surya Narayanan, learned counsel who has joined this virtual Court submits that Mr.R.Parthasarathy, learned counsel with address for service at No.8, 8th Street, Radhakrishnan Salai, Mylapore, Chennai 600 004 (Mobile No:72998 99436) has instructions to enter appearance on behalf of the lone respondent. Learned counsel submits that vakalatnama for the lone respondent will be filed within one week from today i.e., on or before 08.03.2022.

4. In the interregnum, learned counsel for petitioner to favour the aforementioned counsel with one set of papers.

Registry to list this matter on 10.03.2022.'

3. Regarding the respondent Company, learned counsel for



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respondent submits that there has been a change of name and a Certificate from the jurisdictional Registrar of Companies being Certificate dated 23.11.2021 has been placed before this Court. A scanned reproduction of the same is as follows:


GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
Office of the Registrar of Companies
E-Wing, 2nd Floor, Kendriya Sadana, Bangalore, Karnataka, India, 560034

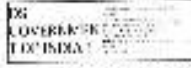
Certificate of Incorporation pursuant to change of name
(Pursuant to rule 29 of the Companies (Incorporation) Rules, 2014)

Corporate Identification Number (CIN): U74809KA1987PTC00519

reby certify that the name of the company has been changed from SUGAM VANIJYA HOLDINGS PRIVATE LIMITED to VR DAKSHIN PRIVATE LIMITED with effect from the date of this certificate and that the company is
ted by shares.

company was originally incorporated with the name Sugam Vanija Investments Private Limited.

an under my hand at Bangalore this Twenty third day of November two thousand twenty-one.


C V SAJEEVAN
Registrar of Companies
Bangalore

Online Address as per record available in Registrar of Companies office:
VR DAKSHIN PRIVATE LIMITED

8 BENGALURU, NO. 11B, 5TH FLOOR, DEVASANDRA INDUSTRIAL AREA, 2ND STAGE,
CHURAMHOBILI, BENGALURU, Bangalore, Karnataka, India, 560048

4. Be that as it may, both learned counsel submit that the



facts/trajectory as captured in the aforementioned two listings is in order.

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5. Suffice to say that there is no dispute or disagreement regarding the existence of arbitration agreement between the parties.

6. Therefore, captioned Arb.OP being a legal drill under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' which shall hereinafter be referred to as 'A and C Act' for the sake of brevity, considering the short perimeter within which this legal drill should perambulate, without embarking upon the procedural exercise of filing an amendment application, carrying out amendments and serving / filing amended copy of petition, this Court deems it appropriate to proceed with the appointment of sole Arbitrator holding that the Arbitration will now be between two juristic persons, namely Guess? India Private Limited, petitioner and VR Dakshin Private Limited formerly known as Sugam Vanijya Holdings Private Limited with address at VR Bengaluru, 11B, Sy.No.40/9, Devasandra Industrial Area, 2nd Stage, K.R.Puram Hobli, Bengaluru – 560 048, Karnataka. Mr.M.J.Jaseem Mohamed, a learned member of the Bar with address for service at New No.247, Old No.121, 1st Floor, Thambu Chetty Street, Parrys, Chennai – 600 001, Mob: 94980



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00528, 98400 29528, E-mail: jazzzeem@gmail.com is appointed as sole Arbitrator. Learned Arbitrator is requested to enter upon reference and adjudicate the arbitrable disputes that have arisen between the petitioner and respondent qua a contract styled 'Surrender Deed' dated 06.11.2020. Learned Arbitrator is requested to hold sittings in the 'Madras High Court Arbitration and Conciliation Centre under the aegis of this Court' (MHCAC) and conduct arbitration in accordance with the Madras High Court Arbitration Proceedings Rules 2017 and fee of the learned Arbitrator shall be governed by the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

7. Captioned Arb OP is disposed of in the aforesaid manner. There shall be no order as to costs.

17.03.2022

gpa

Note:

Registry is directed to communicate this order forthwith to

1. Mr.M.J.Jaseem Mohamed,
New No.247, Old No.121,
1st Floor, Thambu Chetty Street,
Parrys, Chennai – 600 001,
Mob: 94980 00528, 98400 29528, E-mail: jazzzeem@gmail.com
2. The Director
Tamil Nadu Mediation Conciliation Centre

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-cum- Ex-Officio Member
Madras High Court, Arbitration Centre
Chennai - 104.



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