

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.711 of 2022 (O&M)
Date of Decision: April 21, 2022

GEMS EDUCATION SOLUTIONS INDIA PVT. LTD.

..... Petitioner(s)

Versus

MEHAR SINGH AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Udit Garg, Advocate, for
Mr. Sumit Puri, Advocate
for the petitioner.

LISA GILL, J.

This petition has been filed by the petitioner challenging order dated 17.02.2022, passed by the learned Arbitrator wherein petitioner's application seeking opportunity to cross-examine claimant's witnesses and adduce additional evidence allegedly to bring clarity to the matter, has been dismissed.

Brief facts as detailed in the petition are that a registered lease deed dated 19.07.2016 was executed between the parties for a tenure of three years on monthly rental basis with it being extended for a fresh term of three years vide registered Lease Deed dated 4th March 2020 effective from 15th May, 2019 to 14th January, 2023 with a consideration of Rs.6,03,750/- as initial monthly rent. Petitioner invoked force majeure in the month of March 2020. Petitioner is stated to have terminated the lease on 27.08.2020 and offered to deliver possession of leased premises to the petitioner on 31.10.2020. Dispute arose between the parties with the claim of respondents

pertaining from 19.07.2016 to 04.03.2020. It is pleaded that keys of the demised premises were handed over on 31.10.2020 before Mr. B.L. Garg, alleged to be the earlier Sole Arbitrator between the parties. A claim is stated to have been then filed by the respondents before Mr. R.S. Baswana, Sole Arbitrator. There is a reference to an application under Section 17 of the Arbitration and Conciliation Act, 1996, wherein the petitioner was directed to furnish a tangible security/an irrevocable and unconditional bank guarantee equivalent to the claimed amount. Present impugned order was passed on 17.02.2022, aggrieved wherefrom this petition has been filed.

Learned counsel for the petitioner argued that the impugned order dated 17.02.2022 is in gross violation of principles of natural justice as the petitioner has arbitrarily been denied an opportunity to cross-examine the claimant's witnesses and that petitioner at no point of time ever agreed to waive its right to cross-examine the claimant's witnesses. It was contended that terms and conditions of the lease agreement by themselves are not sufficient to explain the factual matrix upon which rights of both the parties depend. It was argued that the learned Sole Arbitrator has not considered the material placed on record by the petitioner and has wrongly ignored the same causing grave prejudice to the petitioner. Reference was made by learned counsel for the petitioner to various e-mails etc. to submit that evidence regarding the same is necessary.

Learned counsel for the petitioner was heard at length and the file perused.

It is relevant to note that certain averments have been made in the revision petition regarding handing over of demised premises to the predecessor of the present arbitrator and thereafter there is mention of an

arbitration case being filed against the petitioner by the respondents before the Sole Arbitrator. It is mentioned in para XV of this petition that respondents filed an arbitration case against the petitioner before the sole Arbitrator with the place of arbitration being Gurugram. It is pertinent to note at this stage that the sole Arbitrator in this case was appointed by this High Court on 08.12.2020 in ARB No.195 of 2020 in the presence of learned counsel for the petitioner, a fact which has otherwise not been clearly stated in the revision petition. File of ARB-195-2020 was called for and perused. Admittedly, petitioner who was arrayed as respondent no.1 in the said petition was duly represented by counsel. Mr. B.L. Garg was the Arbitrator appointed unilaterally by the petitioner. Mr. Baswana, retired District and Sessions Judge was appointed as Arbitrator by this High Court in ARB-195-2020 as aforementioned. Proceedings were conducted by the learned Arbitrator thereafter.

Learned Arbitrator has specifically observed in impugned order dated 17.12.2021 that present petitioner's authorized representative Mr. Sachin Dingra on 23.12.2021 closed the evidence on its behalf after tendering his affidavit Ex. RW1/A and RW1/B while claimants (respondents in this petition) had already closed their evidence on 23.11.2021 and that all proceedings were conducted and concluded by the Arbitrator with the tacit consent of the parties and as per law after his appointment as Arbitrator vide order dated 08.12.2020.

Learned counsel for the petitioner is unable to deny that Mr. Sachin Dhingra is indeed the authorized representative of the petitioner. It is his affidavit, which has been filed in support of the present petition as well. Therefore, once having closed evidence on behalf of the respondent on

23.12.2021, learned counsel for the petitioner is unable to point out any case of exceptional rarity, which calls for intervention by this Court at this stage to stall arbitral proceedings. It has been held by the Hon'ble Supreme Court in *M/s. Deep Industries Ltd. Vs. Oil and Natural Gas Corporation Ltd. and another, 2020(15) SCC 706*, that interference by Courts is restricted to orders which are patently lacking in inherent jurisdiction. Present is clearly not such a case.

The Hon'ble Supreme Court in *Bhaven Construction through Authorised Signatory Premjibhai K. Shah Vs. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. and another, 2022(1) SCC 75*, held that Courts should interfere only in cases of exceptional rarity, wherein one party is either left remediless under the statute or a case of clear 'bad faith' is shown by one of the parties and that there should be no interjection of arbitral process in a routine manner.

Learned counsel for the petitioner has been unable to point out a case of exceptional rarity, which would persuade this Court to interfere and neither is the petitioner left remediless by passing of the impugned order.

Keeping in view the facts and circumstances of this case, I do not find any ground whatsoever for setting aside impugned order dated 17.02.2022. Needless to say parties are at liberty to raise all legally permissible pleas available to them before the learned Arbitrator/competent authority.

No other argument was addressed.

This revision petition is dismissed being devoid of any merit.

No separate order need be passed in pending applications, if any, which

stand disposed of accordingly.

(Lisa Gill)
Judge

21.04.2022
Sunil

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No