

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

237

ARB No. 101 of 2018

Date of Decision: 29.09.2022

M/s Gurgaon Infospace Ltd. and anr

.....Petitioners

Vs

M/S The Food Planet throuth its partner

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.K.Kaushal, Advocate for
Mr.Arvind Chaudhary, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.(Oral)

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short “the Act”) for appointment of sole Arbitrator to resolve the dispute between the parties.

Registered lease deed was executed between the parties on 13.03.2012 at Gurugram. Clause Nos. 14.1 and 14.2 are the arbitration clauses of the registered lease deed, which read as under:-

“14.1- Notwithstanding anything contained in any other law for the time being in force, if any dispute, differences or disagreements arising out of, in connection with or in relation to this Agreement including its interpretation, performance or termination or of any civil nature arises among two or

more Units or between an Unit (herein the Lessee) and the Developer (herein the Lessor) in the Special Economic Zone (herein the Complex) and the court or the courts to try suits in respect of such dispute have not been designated under sub-section (1) of Section 23 of the SEZ Act, such dispute shall be referred to arbitration.

14.2- Provided that no dispute shall be referred to the arbitration on or after the date of the designation of the court or courts under sub-section (1) of Section 23 of the SEZ Act. Where a dispute has been referred to arbitration under Article 14.1, the same shall be settled or decided by the arbitrator to be appointed by the Central Government. The provisions of the Arbitration Act shall apply to all arbitration made under Article 14.1 as if the proceedings for arbitration were referred in settlement or decision under the provisions of the Arbitration Act.”

Petitioners are companies incorporated under Indian Companies Act, 1956. Present petition has been filed by the petitioners through their duly authorized signatories, namely, Sh.S.C.Jain and Sh.Sanjay Yadav, Head-Legal & Compliance respectively, who have been duly authorized by the petitioners vide their respective board resolutions dated 18.12.2019 and 09.11.2015 for signing and verifying the pleadings and also to engage their advocates. Petitioners-companies are developers and co-developers and being the landlords, rented out the premises/ unit No.7 measuring 1542 sq.ft. on the ground floor of

the Amenity Block at its IT/ITes SEZ at Infospace, Sector 21, Dundaheera, Gurugram for running a food outlet in the name and style of "Al-Kabab". Respondents had taken the aforesaid unit on lease for the period of five years by way of aforesaid lease deed dated 13.03.2012 commencing from 06.01.2012 at a monthly rent of Rs.1,38,780/-. The aforesaid rent was exclusive of the maintenance charges and service tax payable by the respondents in addition to the rent.

The dispute arose between the parties, for which the petitioners have already invoked the arbitration clause No.14 of the registered lease Agreement dated 13.03.2012. Seeing no response from the side of respondents, the petitioners, thereafter, filed the present petition on 06.04.2018 in this Court.

Notice of motion was issued on 20.04.2018. Thereafter, CM No.6014-CII of 2019 was filed under Order 5 Rule 20 read with Section 151 C.P.C. for substituted service of the respondent. None appeared on behalf of the applicant-petitioner on 15.03.2019 and the application was dismissed for want of prosecution. Main case was taken up on 29.03.2019 and the same was adjourned to 03.05.2019. Thereafter, CM No. 21456-CII of 2019 was filed by the applicant-petitioner for effecting substituted service of the respondent through publication and the same was allowed vide order dated 18.10.2019, which reads as under:-

“CM-21456-CII-2019

The application for substituted service of the respondent through publication is allowed for the reasons mentioned therein. Necessary steps for publication in ‘The Times of India’ and a newspaper having circulation in the National Capital Region (NCR) where the respondent is situated be taken up within four weeks and proof of the same be submitted before this Court.

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List on 31.01.2020.

(RAVI SHANKER JHA)
CHIEF JUSTICE

18.10.2019”

In compliance of the aforesaid order, publication has duly been effected by means of publication in two newspapers. Record of publication in the newspapers is on record. On 05.03.2020, the case was adjourned in order to peruse the ratio of **“Vidya Drolia & Ors. vs. Durga Trading Corporation”, 2019 (2) RCR (Civil) 542** in the context whether the same covers the dispute as regards the lease money by means of arbitration or not.

Learned counsel for the petitioner by referring to para Nos.3, 4, 5, 58, 66 and 67 of the **Vidya Drolia's case (supra)** submits that the issue as regards the dispute arising out of lease money is also covered by the ratio of **Vdya Drolia's case (supra)**. Learned counsel further submits that the value of the

claim is Rs.1,03,94,020/- and the petitioner has already invoked the arbitration clause and in such a situation sole arbitrator needs to be appointed for resolving the dispute.

Having gone through the material on record, I find that the dispute has to be resolved by way of appointment of an independent Arbitrator. Reference can be made to **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377**;, **(2 Bharat Broadband Network Limited vs. United Telecoms Limited 019) 5 SCC 755**; **Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760** and **Ellora Paper Mills Limited vs. State of Madhya Pradesh, (2022) 3 SCC 1**. Para No.54 of ***TRF Limited's*** case (supra) reads as under:-

“54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the

identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not *sustainable and we say so.*”

In my considered opinion, the plea of the respondents can very well be considered on merits by the Arbitrator in accordance with law. The authority of the official Arbitrator stands negated in view of ineligibility of such Arbitrator arising out of Section 12(5) of the Amended Act, 2015. Even Managing Director is statutorily ineligible to nominate any person as an Arbitrator in view of ratio of the afore cited case laws.

Keeping in view the facts and circumstances of the case, I hereby appoint Hon'ble Mr. Justice Surinder Gupta (Retd.), House No. 542, The Foothills Cooperative Residential Society (IAS/PCS Society), New Chandigarh, Mullanpur (Mobile: 9646356001 & 9417312323) as the sole Arbitrator, to resolve the dispute/difference between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle the dispute between the parties.

The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne by both the parties in equal proportion.

The seat of the Arbitrator is fixed at Gurugram. The venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

A copy of this order be dispatched to the Arbitrator at the following address:-

The Foothills Coperatie Residential Society
(IAS/PCS Society), New Chandigarh, Mullanpur
Petition stands disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

29.09.2022
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Whether speaking/ non speaking	yes/ No
Whether reportable/ non reportable	yes/ No
