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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 25th May, 2022*+ **ARB.P. 504/2020**

STELLA INDUSSTRIES LTD Petitioner

Through: Mr. Amit Bhatia, Mr. Samyak
Jain & Mr. Manmay Saranagi,
Advocates.

versus

VERO MODA RETAILS PRIVATE LTD Respondent

Through: Mr. Anil Kumar Chandel &
Ms. Preeti Gupta, Advocates.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****NEENA BANSAL KRISHNA, J. (ORAL)**

1. A petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 has been filed on behalf of the petitioner for appointment of an arbitrator.
2. It is stated that the petitioner Company which is the absolute owner of the shop bearing No. GF 67 & 68, Ground Floor, MGF Metropolitan Mall, MG Road, Gurgaon, Haryana entered into a Lease Agreement dated 18th January, 2016 with the respondent. According to the terms of lease, the period of tenancy was six years three months four days w.e.f 1st April, 2016 with the initial rent being Rs.8,58,400/- per month plus service tax. In terms of the clause 3.2 of the Lease Agreement, the rent was escalated by 15% after every three years. The rate of rent last payable was



Rs.11,35,234/- per month plus tax as applicable. An interest free refundable security of Rs.51,50,400/- was given by the respondent at the time of entering into the lease Agreement. Since about March, 2020 after the imposition of lock down due to outbreak of COVID 19, the respondent stopped paying the rent, taxes and the maintenance charges. Even the electricity charges were not paid.

3. A Legal Notice dated 4th August, 2020 was served by the respondent refuting its liability with respect to payment of rent w.e.f 1st April, 2020 till 10th October, 2020 and also sought refund of the security amount along with interest @ 18% per annum. It also intended to surrender the possession of the tenanted shop to the petitioner. However, whenever the petitioner contacted for taking the possession, the respondent delayed it on one pretext or the other. Due to willful breach of terms and conditions of the lease deed and non-payment of rent and charges by the respondent, the petitioner was forced to invoke arbitration Clause 21.2 of the lease deed. The clause 21.1 and 21.2 of the lease deed are reproduced as under:

"21.1 If any dispute and/or difference arises between the parties hereto during the subsistence of this agreement or thereafter, in connection with the validity, interpretation, implementation or alleged material breach of any provision of this agreement or regarding any question, parties hereto shall endeavour to settle such dispute amicably through mutual negotiations.

21.2 In the event such dispute or difference is not resolved within 15 (fifteen) days of written notice of existence of such dispute, the same shall be finally settled by a sole arbitrator to be mutually appointed by the Parties. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996. (or any other act applicable at that point of time). In case parties fail to appoint a sole arbitrator, either Party may approach the Competent Court of jurisdiction at New Delhi for appointment of an arbitrator."

4. A Legal Notice dated 06th August, 2020 for invoking the arbitration



was served upon the respondent, who despite service neither responded nor took any steps for the appointment of arbitrator.

5. A reply dated 08th August, 2020 was sent by the petitioner to the notice of the respondent dated 04th August, 2020. It is claimed that dues of Rs.1,02,37,340/- collectively and applicable GST apart from maintenance, electricity and other charges are recoverable from the respondent. The petitioner has thus, filed the present petition for appointment of arbitrator.

6. The respondent in its reply has taken the preliminary objection that the respondent does not carry on the business within the territorial jurisdiction of this court. Its office is situated at Mumbai, as is indicated in the memo of parties. The Agreement containing the arbitration clause was also not executed within the territorial jurisdiction of this court. The Agreement containing the arbitration clause was executed at Gurugram, Haryana. No part of cause of action arose within the territorial jurisdiction of this court. Hence, the petition is not maintainable on the grounds of jurisdiction as has been explained by the Supreme Court in Indus Mobile Distribution Private Limited Versus Datawind Innovations Private Limited, wherein the concept of determination of "seat" has been introduced for determining the exclusive jurisdiction of the Court.

7. In the present case, the Agreement clearly contained the exclusive jurisdiction clause that no place other than Haryana can entertain, adjudicate and decide the present petition. Furthermore, the subject matter of the present dispute is not arbitrable as held by the Supreme Court in Himangi Enterprises Versus Kanwaljeet Singh Ahluwalia. Moreover, the petitioner has concealed material facts and has not disclosed that this petition has been filed as a counter blast to the suit already instituted by the respondent



wherein the petitioner has not filed his written statement till date. Moreover, there is a defect of stamping and the petition cannot be pursued till the defect is cured. On merits, all the contentions made were denied.

8. Learned counsel for the petitioner has submitted that the possession of the tenanted premises was handed over by the respondent on 18th February, 2021, but the arrears of rent and other charges are still due and payable. It has been explained that a sum of Rs.1,81,17,880/- is due and payable from which the security amount is liable to be adjusted.

9. It has been further contended that Clause 21.2 of the lease deed specifically provided that the courts at New Delhi shall have the exclusive jurisdiction for the appointment of the arbitrator. The objection in regard to territorial jurisdiction is, therefore, not maintainable. Reliance has been placed in the decision of this court in CARS24 Services Pvt. Ltd. VS Cyber Approach Workspace LLP bearing Arbitration Petition No. 328/2020 decided on 17th November, 2020 and Mankastu Impex Pvt. Ltd. (2015) 12 SCC 225. Moreover, the judgment of Himangi Enterprises (supra) has been overruled and the Hon'ble Supreme Court in Vidyo Drolia & Ors. Vs. Durga Trading Corporation (2021) 2 SCC 1 has held that the arbitration petition is maintainable in landlord-tenant disputes falling under Transfer of Property Act. In regard to defect in stamping of Arbitration Agreement, reliance has been placed on the decision of Hon'ble Supreme Court in N.N. Global Mercantile Pvt. Ltd. Vs Indo Unique Flame Ltd. 2021 SCC Online SC 13, wherein it was observed that the non-payment of stamp duty on a commercial contract would not invalidate the Arbitration Agreement. Reliance has also been placed on the decision of this Court in M/s IMZ Corporate P. Ltd. vs. MSD Telematics Pvt. Ltd. bearing Arbitration Petition



No. 204/2021 dated 04.06.2021.

10. During the course of the arguments, the learned counsel for the respondent had limited his objections only to the ground of lack of territorial jurisdiction of this court to appoint the Arbitrator.

11. Submissions heard.

12. It is not in dispute that the parties had entered into a Lease Deed dated 18th January, 2016 in which Clause 21.1 and 21.2 provided for resolution of the disputes through arbitration.

13. It is not denied that in Clause 21.2, it had been categorically observed that the courts at New Delhi would have jurisdiction to invoke the arbitration proceedings. The respondent stated that the rent was being paid to the petitioners at Delhi and the same was being encashed at Delhi. Part cause of action has arisen in Delhi. In view of Clause 21.2 the courts at New Delhi have the jurisdiction to entertain the present case.

14. Without prejudice, the parties shall be at liberty to raise the objection in regard to the jurisdiction before the learned Arbitrator.

15. Similar facts as in the present case came up for consideration in the case of Cars 24 Services Pvt. Ltd. (supra) wherein it was held that in view of the express Agreement, the court which has been specifically agreed to be the appointing court, would possess territorial jurisdiction to entertain the petition under Section 11 of the Arbitration & Conciliation Act. The party autonomy to decide the court for appointment of arbitrator was thus, upheld.

16. This judgment was followed by this court in Arjun Sethi Vs. All About Outdoor Pvt. Ltd. MANU/DE/3522/2021 and in Orix Leasing & Financial Services Vs. One97 Communications Limited & Ors. MANU/DE/3194/2021, wherein as well the arbitration clause provided the



venue of arbitration to be Gurugram but specifically conferred jurisdiction for arbitration for appointment of sole arbitrator to courts in Delhi. The Courts at Delhi were held to have jurisdiction for appointment of sole arbitrator.

17. There is a valid Arbitration Clause in the Lease Deed dated 18th January, 2016. Given the limited scope of examination under Section 11 of the Arbitration & Conciliation Act, 1996, this court considers it apposite to allow the present petition.

18. Accordingly, Mr. O.P. Saini, Learned District & Sessions Judge (Retired) (Mobile No.9717196857), is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

19. This is subject to the learned Arbitrator making the necessary disclosure as required under Section 12(1) of the Arbitration & Conciliation Act and not being ineligible under Section 12(5) of the Arbitration & Conciliation Act.

20. The parties are at liberty to approach the learned Arbitrator for further proceedings.

21. It is clarified that all rights and contentions of the parties are reserved.

22. The petition is disposed of in the aforesaid terms. All the pending applications, if any, also stands disposed of.

NEENA BANSAL KRISHNA, J

MAY 25, 2022

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