08-09-2023
Item no.1 CD
Subrata Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
(Commercial Division)

FMAT No.343 of 2023
Merlin Projects Limited
-vs-
Connaught Plaza Restaurants Pvt. Ltd.
with
CAN No.1 of 2023

Mr. Abhrajit Mitra, sr. adv.
Mr. Saptarshi Datta, adv.
Mr. Satadeep Bhattacharyya, adv.
Ms. Srinjita Ghosh, adv.
Mr. Rafat Reyar, adv.
Mr. Pourush Kanti Pal, adv. ...for the appellant

Mr. Pramit Kumar Ray, sr. adv.
Mr. Basabraj Chakraborty, adv.
Ms. Tirumala Chakraborty, adv.
Mr. Satyaki Chaudhuri, adv.
Mr. Shubham Banerjee, adv.
Ms. A. Bandyopadhyay, adv. ...for the respondent

This appeal together with the connected application was heard for several days, dispensing with all formalities.

The appellant is the owner of the subject premises. On 30th November 2012 the parties entered into an agreement. The most important terms and conditions of this agreement were: a fast food restaurant using the trademark “McDonald” would be run from there; the parties would run this business enterprise jointly; the appellant would be paid a percentage of the profit or a minimum guaranteed sum which was described as a revenue sharing arrangement; the respondent would be in possession of the subject premises.

The amity between the parties did not last long. It appears that the agreement was terminated by the appellant in 2017. Thereafter, this termination was waived. It was only to be followed by a second termination on 25th May 2019.

Finally, the parties ended their relationship by a termination notice issued by the appellant to the respondent on 1st October 2019.

It is undisputed that the occupation charges or minimum guarantee charges have been paid by the respondent till September 2019. There is some dispute whether it has been paid up to December 2019.

Both the parties accuse each other of breach of contract.

According to Mr Mitra, learned senior advocate appearing for the appellant, the relationship between the parties was that the respondent was a licensee of the appellant whereas, according to Mr Ray, learned senior advocate representing the respondent, the relationship between the parties was neither purely of lessor and lessee nor licensee or licensor, but arising out of a business arrangement by which possession of the said premises was delivered to the respondent for performance of the said agreement between the parties.

Mr Mitra contends that there has been gross default in payment of the monthly charges by the respondent for which his client was compelled to terminate the agreement.

According to Mr Ray, learned senior advocate for the respondent, the appellant was in breach of contract by instigating the Pollution Control Board by stating that their licence to the respondent had been terminated and that they had no right to carry on the business in the said premises. For this reason, amongst others, permission by the Pollution Control Board to the respondent to carry on the business at the said premises was denied.

Furthermore, for non-cooperation of the appellant, the electricity connection to the premises has also been disconnected, it was submitted.

The situation at the moment is that the respondent is in possession of the premises. The appellant says that they are in such possession without payment of revenue sharing charges and that they should pay the charges at the market rate from the time of last payment thereof. The respondent says that since the appellant is in breach of their obligations under the contract, they are disentitled to claim any amount by way of revenue sharing charges.

In our opinion, this dispute between the parties is very deep and serious and cannot even be prima facie resolved as things stand now.

While hearing was going on, we explored the possibility of an interim order by which the respondent would pay some occupation charges ad hoc without prejudice to the rights and contention of the parties pending arbitration. For the reasons advanced in their argument mentioned above, learned counsel for the respondent was unable to accede to this suggestion. We had also tried to explore whether the premises could be run for business purpose without prejudice to the rights and contentions of the parties under a Receiver or a Special Officer till the final award was made in the arbitral proceedings. The parties could not agree to any such arrangement.

In those circumstances, we have no alternative but to wait till the arbitral proceedings are concluded. We are told that a learned arbitrator has also been appointed and he has entered upon the reference.

We request the learned arbitrator to conclude the arbitral proceedings by March 2024, on making suitable peremptory directions for filing of pleadings, discovery and production of documents and so on.

Liberty to both the parties to file an application under section 17 of the Arbitration and Conciliation Act, 1996 which is to be entertained by the learned arbitrator in accordance with law. All our above observations are to be taken as prima facie or tentative. All points are kept open before the arbitral tribunal.

We are not interfering with the impugned judgement and order.

With the observations as above, the appeal and the connected application are disposed of.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]