

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/515/2023
REPROSCAN TECH PARK LLP
Versus
M/S. CAVINKARE PVT. LTD.

AND

AP/517/2023
M/S. REPROSCAN INDIA PVT. LTD. AND ANR.
Versus
M/S. CAVINKARE PVT. LTD.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 7th December, 2023.

Appearance:

Mr. Swatarup Banerjee, Adv.

Mr. Rahul Karmakar, Adv.

Mr. Shariful Haque, Adv.

Mr. Syamantak Banerjee, Adv.

The Court: The dispute in these two Arbitration Petitions arises out of a lease and a fit-out Agreements, both of which were executed on 24th December, 2018. By the first, the petitioner as the lessee inducted the respondent as the sub-lessee and was due to get lease rentals from the respondent. The second agreement, namely, fit-out agreement, involved the petitioner furnishing and completing the lease space in question and the respondent making payment of the agreed amounts to the petitioner.

A preliminary point raised on behalf of the respondent to resist the Section 11 applications was that there is no agreement of 15th December, 2018. On perusal of the documents, it appears that there is indeed no agreement of 15th December, 2018 but that this date has been mentioned in several places. The Court concludes, aided by the submission made on behalf of the petitioner, that there may be a typographical mistake in many of the places in the two agreements.

The documents also show that the parties commenced initial negotiations on 15th July, 2021 in terms of the two agreements which includes a mail of 4th May, 2021 from the respondent stating that the respondent will vacate the leased out premises and fulfil its contractual obligations in terms of payment. The respondent, however, failed to do so and the petitioner was hence constrained to invoke the arbitration clause in the sub-lease agreement on 3rd April, 2023. The petitioner's claim as of 15th July, 2021 was a consolidated amount of Rs.38 lakhs.

The other point taken on behalf of the respondent is that the second fit-out agreement does not contain an arbitration clause. Clause 9 of the said agreement however makes it clear that the fit-out agreement was to be co-extensive and co-terminus with the deed of sub-lease. The petitioner intends to use this clause to show that the arbitration clause in the sub-lease agreement would be transported to the fit-out agreement and bind the parties therein.

Learned counsel appearing for the petitioner reinforces his argument on this point with a judgment of the Gujarat High Court in *Instakart Services*

Private Limited Vs. Megastone Logiparks Private Limited. The judgment was delivered on 13th October, 2023. The Chief Justice of that High Court considered the relevant decisions to conclude that an arbitration clause may be transported and held to be a part of the second agreement where the second agreement is co-extensive and co-terminus with the first agreement.

In any event, the issues raised by learned counsel appearing for the parties for certain points to a dispute. The dispute relates to unpaid lease rentals and fit-out charges which were due from the respondent to the petitioner. These disputes are covered by the arbitration clause in the sub-lease agreement and deem to be part of the fit-out agreement. The Arbitrator, who is to be appointed, will certainly have the jurisdiction to decide all the points which the respondent has taken before this Court in order to stall the arbitration.

AP/515/2023 and AP/517/2023 are allowed and disposed of by appointing Ms. Ujjaini Chatterjee, counsel to act as the learned Arbitrator in both the matters, subject to the learned Arbitrator communicating her consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

Counsel for the parties agree that instead of three Arbitrators as provided for in the arbitration agreement, the parties would be better served by one Arbitrator.

The above statement should be qualified to the extent of the respondent being precluded from raising any contentions with regard to payment of stamp

duty. Clause 26 of the sub-lease agreement provides that stamp duty and registration charges in respect of the agreement shall be paid by the sub-lessee, namely, the respondent.

The petitioner's compliance report with regard to assessment and subsequent payment of the stamp duty is taken on record.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 9th December, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)