

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**TUESDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND TWENTY THREE**

**PRESENT
THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

ARBITRATION APPLICATION NO: 143 OF 2022

Between:

Smt. Palaparthi Sitamahalakshmi Rao, W/o.Late Shri P V Subba Rao, Aged
About 72 years Occ.Land Lord, Street No.1, Opp. NSR Residency, H.No.11-
6-282, Pochammabagh Colony, Road No 1, Saroor Nagar, Hyderabad
500035
...APPLICANT

AND

M/s Food Haven India Private Limited, A company incorporated under the
Provisions of the Companies Act, 1956, Having its Registered Office at Door
No.8-2-293/82/HH, Plot No.61, Villa No.1, MLA Colony, Road No.12, Banjara
Hills, Hyderabad -500 034, Represented by its Director Mohammed Abdul
Razzak, S/o Mohammed Abdul Rasool, Aged about 23 years, Occ.Director of
M/s Food Haven India Private Limited, R/o 20-5-258, Qazipura, Charminar,
Shah Ali Banda, Hyderabad.
...RESPONDENT

Arbitration Application Under Section 11 (5) of the Arbitration and
Conciliation Act, 1996 read with scheme for Appointment of Arbitrators, 1996 to
appoint a sole Arbitrator as envisaged under Section 11(5) of the Act for deciding
the disputes arising out of lease deed dt.19/09/2018 in the present matter in the
interest of justice .

Counsel for the Applicant : Ms. APURVA M. GOKHALE

Counsel for the Respondent: SRI A. GANESH RAJ

The Court made the following: ORDER

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

ARB. APPLN.No.143 of 2022.

ORDER:

Heard the Learned Counsel Ms. Apurva Gokhale for the Applicant and the Learned Counsel A. Ganesh Raj for the respondent.

2. This Arbitration Application is filed praying to appoint a Sole Arbitrator under Section 11(5) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole arbitrator for adjudicating upon the claim of the applicant of Rs.94,88,880/- against the respondent.

3. The case of the Applicant, in brief, is as follows:

- a) The Applicant is the Absolute owner and possessor of the schedule property and the respondent had approached the Applicant to operate the business of Food and Beverages (non-alcoholic beverages) and offered to take the 1st floor in the schedule property to run the restaurant i.e., "La Saani (Riwayat)", a unit of Bade Miyan Kababs
- b) The agreed amount for the lease was Rs. 3,45,000 (Rupees Three Lakhs Forty Five Thousand only) per month

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exclusive of GST and other taxes, which are to be paid by the respondent on a timely basis. Accordingly, the Applicant and the respondent entered into a Registered Deed of Lease for a period of 9 years from the date of lease commencement date, with lock-in-period of 3 years vide bearing document no. 6761 of 2018 on 19.09.2018 registered with the Joint Sub Registrar, Banjara Hills.

c) Respondent started running the business in the schedule property and for the initial period has been prompt with the payments and thereafter, while continuing to be in the possession of the schedule property, the respondent started defaulting the payment of monthly rents and other taxes, more particularly from April, 2020 thereby causing petitioner willful loss in particular an amount of Rs. 36,49,122 (Rupees Thirty Six Lakhs Forty Nine Thousand One Hundred and Twenty Two only).

d) After several discussions, the Applicant and the respondent have entered into an Addendum of Registered Lease Deed dated 31.01.2021 wherein the respondent has agreed to pay the monthly rental dues and maintenance from April 2020 to December 2020. It was further agreed by the

respondent that, in the case of further default, the respondent shall stop the business and vacate the schedule property.

e) Further, even in the case of termination of registered Lease Deed, the respondent shall pay the outstanding instalments in lumpsum before vacating from the schedule property and was further agreed, that in the case of respondent is not clearing the rental amount and rental dues, then the petitioner was permitted to charge interest on late payment.

f) Even after into a addendum agreement, the respondent started defaulting in the rent amount and in the rental dues forcing the Applicant to issue a email dated 31.07.2021 calling upon the respondents to pay the rental dues including the monthly rents and other charges to a due of Rs.79,65,700 (Rupees Seventy Nine Lakhs Sixty Five Thousand Seven Hundred only.)

g) The Application several occasions, had reminded the respondent that non-payment of monthly rents would make the respondent liable to be vacated from the premises and stop the business but the respondent has acted in complete



violation of terms of Registration Deed of Lease dated 19.09.2018 and Addendum dated 31.03.2021.

- h) Applicant has been running from pillar to post to get the rental dues cleared from the respondent but the respondent has been avoiding the payment to the petitioner and hence the petitioner was left with no choice but to issue the email dated 31.07.2021 calling the respondent to clear the outstanding amount of Rs.79,65,700 (Rupees Seventy Nine Lakhs Sixty Five Thousand Seven Hundred only.).
- i) Respondent informed the Applicant as a show good faith, respondent would try to regularize the payment of rental dues and to enter into a Modified Lease Deed dated 20.08.2021 but to surprise of the Applicant, the respondent had not regularized the payment but also had not signed the Modified Lease Deed dated 20.08.2021, which forced the Applicant to issue a email dated 24.08.2021 to the respondent.
- j) Having left with no other option, the Applicant invoked clause 24 (iv) of the Registered Deed of Lease dated 19.09.2018 giving 30 days notice to the respondent to terminate the Registered Deed of Lease and also the Lease

Addendum dated 31.03.2021 and the respondent was directed to pay the rental dues but also to vacate and deliver the peaceful possession of the schedule property to the Applicant.

k) The Applicant issued a notice dated 11.09.2021, calling upon the respondent to repay the outstanding rental due and other charges and vacate the schedule property, or else the Applicant would be constrained to take appropriate steps as per clause 32 of Registered Deed of Lease dated 19.09.2018. The respondent despite receiving the notice had abandoned the premises with all the items and handing over the possession to the Applicant, with no payment.

l) The Application on 04.01.2022 issued a legal notice on the respondent to pay the outstanding rent arrear amount and to take all the items of the respondent within a period of 7 (Seven) days or else, the petitioner would take appropriate remedy available under law. But the respondent had not taken any action on the said issues thereby making the Applicant to invoke the Arbitration Clause 32 of Registered Deed of Lease dated 19.09.2018.

m) Instead of making payments of the entire outstanding, the Applicant got issued a reply notice dated 25.04.2022 admitting to determine the lease deed dated 19.09.2018 and the Applicant thereafter got issued a rejoinder dated 29.04.2022 seeking the consent of the respondent to appoint a Sole Arbitrator to settle their issues. Hence, the present Arbitration Application.

4. The case of the respondent, in brief, is as follows:

- a) The business of the respondent which is food and beverages has been hit by Covid pandemic and was virtually closed down and till date has not improved. Meanwhile the applicant has thrown out all the belongings and kitchen items without informing respondent, in the cellar which had ultimately led to closure of Respondent's business.
- b) If only the applicant had not thrown out the respondent from the schedule premises, the respondent would have recovered and cleared the arrears of rent in a phased manner. In the 1st place, the breach has been committed by the applicant, by throwing out the respondent without respondent's knowledge and not allowing the respondent to do the business causing huge loss to the respondent and the

applicant is liable to compensate for the same. Hence, the Arbitration Application is liable to be dismissed.

PERUSED THE RECORD

DISCUSSION AND CONCLUSION

5. Clause 32 of the Registered Deed of Lease on 19.09.2018 entered into between both the parties, reads as under:

"32. DISPUTE RESOLUTION

i. In the event of any dispute, difference or claim between the Parties which cannot be amicably resolved, the Parties shall refer the same to a sole arbitrator to be mutually appointed by both the Parties in accordance with Arbitration and Conciliation Act, 1996. The venue of arbitration shall be at Hyderabad the arbitration shall be conducted in English Language. The costs of the arbitration proceedings shall be equally shared by both Parties.

ii. In the event of such arbitration, both parties shall continue to perform their respective obligations during the arbitration period.

iii. Subject to the above, the competent Courts at Hyderabad shall have jurisdiction to deal with any dispute, difference or claim between the Parties

under this Deed. Both Parties retain the right appeal the Arbitral Award and the Courts in Hyderabad shall have exclusive jurisdiction."

6. Admittedly as per Clause 32 of the Registered deed of lease dated 19.09.2018 (extracted above) any dispute between the parties has to be resolved by referring the dispute to sole arbitrator.

7. The question whether the respondent committed default in payment of rents and fell in arrears to a tune of Rs.94,88,880/- as pleaded by the applicant or it is the applicant who committed breach of the terms of the lease and forced the respondent to close his business, is a matter to be decided in the arbitral proceedings, anyhow, this Court opines that there is no tenable objection to appointment of sole arbitrator for settlement of dispute between the parties and the parties are bound by Clause 32 of the Registered Deed of Lease dated 19.09.2018 entered into between the applicant and the respondent herein.

8. Hence, Sri I.Ramesh (9000433755), Retired Principal District and Sessions Judge (Khammam) (E-

mail: inuganntiramesh.pdj@gmail.com) Flat No.802, My Home, Mangala, Block 1, Kondapur, Serlingampalli, Hyderabad – 500 084, is appointed as sole Arbitrator to adjudicate upon the dispute between the parties as per the provisions of the Arbitration and Conciliation Act, 1996 he is entitled to claim the fee as per Schedule IV of the Arbitration and Conciliation Act, 1996. The registry is directed to send the copy of the present order along with all the necessary papers to the Arbitrator within a period of two weeks from the date of receipt of the copy of the order. Both the parties are directed to appear before the sole Arbitrator on receipt of notices from him and are at liberty to file their claim statement and written statement respectively.

9. In view of the above discussion, the Arbitration Application is disposed off. No costs.

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Sd/- B.S.CHIRANJEEVI
JOINT REGISTRAR

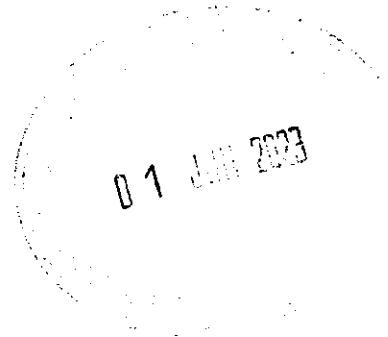

SECTION OFFICER

To

1. Sri I. Ramesh (9000433755), Retired Principal District and Sessions Judge (Khammam) , Flat No. 802, My Home, Mangala , Block-I, Kondapur, Serlingampalli, Hyderabad – 500 084. (by Special Messenger) (along with a copy of Affidavit and material papers filed with AA)
2. One CC to Ms. APURVA M. GOKHALE, Advocate [OPUC]
3. One CC to SRI. A GANESH RAJ, Advocate [OPUC]
4. Two CD Copies 

HIGH COURT

DATED:25/04/2023



ORDER

ARB.APPL.No.143 of 2022

DISPOSING OF THE
ARBITRATION APPLICATION

⑦ VW
1/6/23