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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 10th August 2023*

42

+ O.M.P.(I) (COMM.) 117/2023

M/S INDORE MULTI FUNCTIONAL COMPLEX
PRIVATE LIMITED

..... Petitioner

Through: Dr. Sumant Bhardwaj,
Advocate.

versus

KOTAK MAHINDRA BANK LIMITED
AND ANR.

..... Respondents

Through: Mr. Anmol Mehta, Advocate
for R-1.

Mr. Nishit Kush, Ms. Mercy Hussain,
Mr. Siddharth Sikri and Ms. Kirti Singh,
Advocates for R-2.

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+ O.M.P.(I) (COMM.) 118/2023

JODHPUR MULTI FUNCTIONAL COMPLEX
PRIVATE LIMITED

..... Petitioner

Through: Dr. Sumant Bhardwaj,
Advocate.

versus

KOTAK MAHINDRA BANK LIMITED
AND ANR.

..... Respondents

Through: Mr. Nishit Kush, Ms. Mercy
Hussain, Mr. Siddharth Sikri and Ms. Kirti
Singh, Advocates for R-2.

44

+ O.M.P.(I) (COMM.) 121/2023

M/S MADURAI MULTI FUNCTIONAL COMPLEX
PRIVATE LIMITED

..... Petitioner

Through: Dr. Sumant Bhardwaj,
Advocate.



versus

KOTAK MAHINDRA BANK LIMITED
AND ANR.

..... Respondents

Through: Mr. Anmol Mehta, Advocate
for R-1.

Through: Mr. Nishit Kush, Ms. Mercy
Hussain, Mr. Siddharth Sikri and Ms. Kirti
Singh, Advocates for R-2.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

I.A. 7168/2023 (Exemption) in O.M.P.(I) (COMM.) 117/2023

I.A. 7169/2023 (Exemption) in O.M.P.(I) (COMM.) 118/2023

I.A. 7218/2023 (Exemption) in O.M.P.(I) (COMM.) 121/2023

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

**O.M.P.(I) (COMM.) 117/2023, O.M.P.(I) (COMM.) 118/2023 and
O.M.P.(I) (COMM.) 121/2023**

3. These petitions have been filed by the Petitioners under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act') seeking the following reliefs:-

"O.M.P.(I) (COMM.) 117/2023

a) Restrain Respondent No.1 from invoking or alternately direct withdrawal of invocation of bank guarantee dated 20.1.2023 issued by Respondent No. 2 for an amount of Rs.1,19,18,376/-; and

b) direct Respondent No.1 and 2 not to entertain and not to encash any invocation of the bank guarantee dated 29.12.2017 which was lastly renewed on 28.12.2022 for an amount of Rs.1,19,18,376/-; and

c) Restrain respondent no. 2 to withhold termination of the sub-lease agreement till disposal of the present petition; and

d) Restrain the respondents not to coerce the petitioner to enter the settlement without first getting registered the Sub-Lease Agreement dated 03.02.2016; and

Signature Not Verified

Signed By: KAMAL KUMAR

Signing Date: 14.08.2023
17:55:16

O.M.P.(I) (COMM.) 117/2023 & connected matters

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e) Direct the respondent No. 2 to honour all the Reliefs including covid relief and the waiver of the rent for 20 months given in writing to the petitioner; and damages amounting to Rs.3,30,47,835/-.

O.M.P.(I) (COMM.) 118/2023

- a) Restrain Respondent No.1 from invoking or alternately direct withdrawal of invocation of bank guarantee; and*
- b) direct Respondent No.1 and 2 not to entertain and not to encash any invocation of the bank guarantee dated 05.03.2020 which was lastly renewed on 27.02.2023 for an amount of Rs.1,00,00,000/-; and*
- c) Restrain respondent no. 2 to withhold termination of the sub-lease agreement till disposal of the present petition; and*
- d) Restrain the respondents not to coerce the petitioner to enter the settlement without first getting registered the Sub-Lease Agreement dated 26.10.2015; and*
- e) Direct the respondent No. 2 to honour all the Reliefs including covid relief and the waiver of the rent for 28 months given in writing to the petitioner; and damages amounting to Rs.2, 92,20,472/-.*

O.M.P.(I) (COMM.) 121/2023

- a) Restrain Respondent No.2 from invoking bank guarantee for an amount of Rs.1,58,70,000/-; and*
- b) direct Respondent No.1 and 2 not to entertain and not to encash any invocation of the bank guarantee dated 29.12.2017 which was lastly renewed on 28.12.2022 for an amount of Rs.1,58,70,000/-; and*
- c) Restrain respondent no. 2 to withhold termination of the sub-lease agreement till disposal of the present petition; and*
- d) Restrain the respondents not to coerce the petitioner to enter the settlement without first getting registered the Sub-Lease Agreement dated 03.02.2016; and*
- e) Direct the respondent No. 2 to honour all the Reliefs including covid relief and the waiver of the rent for 40 months given in writing to the petitioner; and damages amounting to Rs.3,29,56,600/- ”*

4. Disputes between the parties have arisen with respect to different Sub-Lease Agreements dated 03.02.2016, 26.10.2015 and 03.02.2016 respectively in the aforementioned petitions. Bank Guarantees were furnished by Respondent No.1 for and on behalf of the Petitioners in favour of Respondent No.2. Letter of Acceptance was issued, pursuant to which, these Sub-Lease Agreements were executed for the purpose of developing multi-functional complexes in various States.



5. Learned counsels appearing on behalf of the parties, on instructions, submit that in view of the arbitration clause in the Sub-Lease Agreements, parties are willing to be referred to arbitration and a sole Arbitrator be appointed by this Court in terms of clause 19 of the Sub-Lease Agreements.

6. I have heard the learned counsels for the parties. Admittedly, the dispute resolution mechanism incorporated in the Sub-Lease Agreements envisages adjudication of disputes by a sole Arbitrator. Clause 19 which is similar in all the three Sub-Lease Agreements is as follows :

“19. Dispute Resolution and Governing Law

All disputes, except matters provided for in the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the 'Act of 1971'), arising out of this Agreement shall be settled through Arbitration, in accordance with the Arbitration and Conciliation Act, 1996. Arbitration proceedings shall be conducted in English and the venue of arbitration shall be New Delhi. The tribunal shall consist of a sole arbitrator who shall be appointed as per the Rules of Indian Council of Arbitration which shall be binding on the Lessee and the Lessor. Any award made in any arbitration held pursuant to this Clause shall be final and binding on the parties.

Subject to above, the courts at New Delhi shall have exclusive jurisdiction over this Agreement.

This Agreement shall be governed by and construed in accordance with the laws of India.

This Clause shall survive the termination or expiry of the Agreement.

While any dispute under this Agreement is pending, including the commencement and pendency of any dispute referred to arbitration, the Sub-Lessee shall continue to perform all of its obligations under this Agreement without prejudice to the final determination of such dispute in accordance with the provisions of this Clause.”

7. With the consent of the parties, the following directions are issued :-

(a) Justice Mukta Gupta, Former Judge of Delhi High Court (Mob. No.9650788600) is appointed as a sole Arbitrator to



adjudicate upon the disputes between the parties pertaining to and in respect of the three Sub-Lease Agreements dated 03.02.2016, 26.10.2015 and 03.02.2016 respectively.

(b) Learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the 1996 Act, prior to entering upon reference;

(c) Fees of the learned Arbitrator shall be regulated as per the Fourth Schedule of the 1996 Act.

8. Since the Arbitral Tribunal has been constituted, it is open to the Petitioners to approach the learned Arbitrator for seeking any interim relief under Section 17 of the 1996 Act, if required.

9. It is made clear that this Court has not expressed any opinion on the merits of the case and it is open to the learned Arbitrator to decide the application as and when it is filed, in accordance with law and in the facts and circumstances of the case.

10. Since there is an urgency expressed by learned counsel for the Petitioners, the learned Arbitrator is requested to enter upon reference and fix the first date of hearing, as expeditiously as possible and as per mutual convenience of the learned Arbitrator and the parties.

11. Petitions stand disposed of with the aforesaid directions.

JYOTI SINGH, J

AUGUST 10, 2023/shivam