

ODC-13

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
[COMMERCIAL DIVISION]

AP/114/2023

M/S. AKVIK BARMECHA PROPERTIES LLP
VS
AIR PLAZA RETAIL HOLDINGS PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 9th April, 2024.

Appearance:
Mr. Rajarshi Dutta, Adv.
Mr. Sujit Banerjee, Adv.
Mr. Nilay Sengupta, Adv.
...for petitioner.

Mr. Amit Kr. Nag, Adv.
Mr. S. Dey, Adv.
Ms. Ranjabati Ray, Adv.
...for respondent.

The Court:- This is an application filed under section 11 of the Arbitration and Conciliation Act, 1996.

The disputes between the parties arise out of an agreement dated 21 May, 2018 entered into by and between the predecessor in interest of the petitioner and the respondent.

By and under the agreement, the entirety of the commercial space situated on the ground floor, 1st floor and the 2nd floor of premises no. 92F, B. T. Road, Kolkata- 700058 measuring approximately 25,000 sq. ft. alongwith 40 car parking spaces (the premises) was leased to the respondents. Thereafter, by a subsequent Memorandum of Understanding dated 29 September, 2019 a supplementary agreement was also entered into by and between the parties whereby the respondents released their right over the 2nd floor of the premises

and 15 car parking spaces and remained in possession of the remaining portion of the premises. Pursuant to the said agreement, security deposit was also paid by the respondents. Thereafter, the respondents continued to pay lease rentals at the original rate of Rs.6,60,000/-.

Subsequently, by a deed of conveyance dated 15th July, 2022, the entirety of the aforesaid area was purchased by the petitioner with all assets and liabilities. By a prior letter dated 30th May, 2022, the respondent, inter alia, agreed that all other terms and conditions of the agreement dated 21 May, 2015 shall continue to remain the same. Significantly, there is a serious allegation of non-payment of occupational charges.

It is submitted that despite commercially exploiting the entirety of the premises, the respondent has not made any payment in respect of occupational charges and there is a sum now in excess of approximately Rs.1.60 crores which has become due and payable on account of outstanding rental charges. There is a deposit of Rs.25 lakhs which has been made by the respondent pursuant to an order under Section 9 of the Arbitration and Conciliation Act, 1996 and due credit has been given by the petitioner in this regard.

Clause 17 of the lease deed dated 21st May, 2018, inter alia, provides as follows:-

“17. All disputes, and differences and questions of any nature which at any time arise between the Parties to this Deed or their respective representatives and assigns or any of them out of the construction of or concerning anything contained in or arising out of this Deed or as to the rights, duties or liabilities under it of the Parties to it respectively or their respective representatives shall be subject to the exclusive jurisdiction of the courts at Kolkata. The disputes shall be settled by the arbitrator to be appointed mutually in accordance with the Indian Arbitration Act 1996.

The venue of arbitration shall be at Kolkata and the arbitration proceedings shall be conducted in English language. The applicable law shall be Indian law.”

It is submitted on behalf of the respondent that there is no arbitration agreement by and between the petitioner and the respondent and there is no dispute referable to arbitration.

I find that there are live disputes pending between the parties which are covered by the arbitration clause. The defence of the respondent is *prima facie* dishonest. Being in possession and commercially exploiting a valuable space measuring 25,000 sq.ft. as a Mega Mart without making due payment on account of occupational charges, the respondent is only seeking to unnecessarily delay the proceedings.

In such view of the matter, AP/114/2023 is disposed of by appointing Hon'ble Ms. Justice Nadira Patherya, (Retd.), as Sole Arbitrator to adjudicate the disputes by and between the parties. The appointment is 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. The Advocate on Record of the petitioner shall communicate this order to the Learned Arbitrator forthwith and positively within 7 days from the date of passing of this order.

(RAVI KRISHAN KAPUR, J.)