

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
(Commercial Division)
ORIGINAL SIDE

AP-COM/259/2024
[Old case no. AP/198/2022]

FUNTAIL ENTERPRISE
VS
SHAZE LUXURY RETAIL PVT LTD.

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 24th April, 2024.

Appearance:

Mr. Jishnu Chowdhury, Adv.

Mr. Soumabho Ghose, Adv.

Mr. S. K. Singhi, Adv.

Ms. Riti Basu, Adv.

Mr. Sayan Banerjee, Adv.

Mr. V. V. V. Sastry, Adv.

The Court: This is an application under Section 11 of the Arbitration and Conciliation Act, 1996. The disputes by and between the parties arise out of a licence agreement dated 18th December, 2019 pertaining to a shop in a shopping mall i.e. "Forum Shopping Mall". It is submitted on behalf of the parties that pursuant to such agreement, disputes and differences have arisen *inter-alia* relating to license fee.

Clause 29 of the agreement, provides as follows:

"29. Conciliation and Arbitration

Any difference or dispute arising between the Parties arising out of or in relation to this Agreement to License and its Schedule, Annexures thereto or the Maintenance Agreement or any other congruent Agreement, shall be referred to the Sole Arbitrator appointed by the Licensor. The licensee hereby confirms that is shall have no objection to such appointment even if the person so appointed, as the Arbitrator, is an employee, attorney/advocate, consultant of the Licensor or is connected to the Licensor. The Licensee further confirms that it shall not suspect the impartiality or fairness of the Arbitrator due to such association of the Arbitrator with the Licensor Reference to arbitration shall be without prejudice to the rights of Licensor to take any action against or recover any dues from the Licensee. The arbitration shall be conducted under the Arbitration & conciliation Act, 1996 or its statutory modifications

amendments or re-enactment thereof. The award of the Arbitrator shall be final and binding upon the Parties. the venue of the arbitration shall be Kolkata. The language of the arbitration shall be in English. The governing law shall be Indian Law. The Arbitration Proceedings and all other matters connected to arbitration shall be subject to the exclusive jurisdiction of Courts at Kolkata. The Parties will be entitled to both interim relief and award including but not limited to injunction, permanent and mandatory and temporary as well as final. The Parties will be entitled to interim relief at any stage i.e. before, during or after arbitration as the case may be. The Sole Arbitrator shall have the power to proceed summarily. The sole Arbitrator shall decide the procedure to be adopted for the Arbitration proceeding. It will not be mandatory for the arbitrator to follow the Civil Procedure Code.”

There are live arbitral disputes by and between the parties in relation to the aforesaid arbitration clause arising out of the agreement dated 18 December, 2019.

In such circumstances, The Hon’ble Former Chief Justice Mr. Girish Chandra Gupta of the Calcutta High Court is appointed as a Sole Arbitrator subject to the Learned Arbitrator communicating his 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 10 days from the date of passing of this order.

With the aforesaid directions, AP-COM/259/2024 [Old case no. 198/2022] stands disposed of.

It is made clear that all questions on the merits of the disputes are left open to be decided by the Learned Arbitrator.

(RAVI KRISHAN KAPUR, J.)