



Arb.O.P (Com.Div.) No.82 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2024

CORAM

**THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY**

**Arb.O.P (Com.Div.) No.82 of 2024**

M/s.Samson Foundations  
Rep by its Partner  
Mr.Hamir Sampat  
Office at 191, Demellows Road,  
Opp Natraj Theatre, Choolai,  
Chennai-600 112.

... Petitioner

**Vs.**

Regus Grandeur Offices Private Limited  
Level 4, Dynasty Business Park,  
Andheri Kurla Road, Andheri East,  
Mumbai-400059.

...Respondent

Arbitration Original Petition filed under Sections 11 (5) and 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to resolve the disputes between the Petitioner and the Respondent in terms of the Lease Deed dated 31.08.2015.



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For Petitioner : Mr.P.Giridharan

For Respondent : Mr.Gaurav Chatterjee

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### **ORDER**

This petition has been filed to appoint a sole Arbitrator to resolve the disputes between the Petitioner and the Respondent in terms of the Lease Deed dated 31.08.2015.

2. The learned counsel for the petitioner would submit that the petitioner, the lessor, and the respondent, the lessee, had entered into a Lease Deed dated 31.08.2015 for a period of 10 years and 3 months. While so, on 14.10.2022, the Respondent had issued a notice through their counsel pointing out several defects in the leased out premises, to the Petitioner herein such as alleged water seepage that has allegedly occurred in cabin 815 of the leased out premises and sought for compensation of a sum of Rs.1,50,00,000/-, for which the Petitioner had issued a reply dated 22.10.2022, denying the said defect. Despite the same, the Respondent issued several notices, citing the very same unsubstantiated defects, to the



Petitioner and further sought to unilaterally terminate the Lease Deed, without giving 6 months notice, as per Clause 18.4 of the Lease Deed. The respondent had also failed to pay the monthly rent towards the leased out premises. Therefore, the Petitioner sent several communications to the Respondent calling upon the latter to clear the outstanding dues, despite which, the respondent had not made any payment to the petitioner. Hence, a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) was sent to the respondent on 12.05.2023 and the same was received by the respondent on 18.05.2023. However, since there was no response from the respondent, the Petitioner filed Arb.O.P.(Com.Div.)No.343 of 2023 for appointment of arbitrator. This Court, vide order dated 12.10.2023, based on the submission of the learned counsel for the respondent that since the lease agreement is unstamped, Clause 27 of the said agreement is not valid, and hence, in the light of the judgment of the Supreme Court in **N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd. and Ohters (2023) 7 SCC 1**, the said petition does not survive, and also observing that a curative petition has been moved before the Supreme Court seeking review of the decision in **N.N. Global,**



*supra*, dismissed the original petition for statistical purpose with liberty to the petitioner to file fresh application after review orders are passed in the aforesaid curative petition and this Court also made it clear that in case, the order of the Hon'ble Supreme Court is reversed, the petitioner is at liberty to approach this Court and in the alternative, the petitioner may pay the deficit stamp duty and file a fresh application. He further submitted that the Hon'ble Supreme Court vide Judgment dated 13.12.2023, reversed the Judgment in the case of ***N.N.Global Mercentile Private Limited Vs. Indo Unique Flame Limited and others [(2023) 7 SCC 1]***. The operative portion of the judgment reads as under:

*"41. There are also two aspects of the judgment in **Vidya Drolia** (supra) which need to be noticed. First, I agree to and accept the error made by me in the judgment which observes that Section 11(6A) of the Arbitration Act has ceased to be operative in view of the enforcement of Section 3 of the Arbitration and Conciliation (Amendment) Act, 2019. As rightly observed by Hon'ble Supreme Chief Justice, Section 3 of the Arbitration and Conciliation (Amendment) Act, 2019 which relates to the amendment to Section 11 has not been enforced. Secondly, as has been noted in the judgment of Hon'ble the Chief Justice and in **Career Insitute Educational Society v.Om Shree Thakurji Educational Society**, the issue before this Court in **Vidya Drolia**(supra) was not the validity of*



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*an unstamped or under-stamped arbitration agreement. No specific opinion was expressed on this question. The reference to the validity of an unstamped arbitration agreement, as mentioned in **Garware Wall Ropes Ltd. V.Coastal Marine Constructions & Engg. Ltd.** was only to serve the purpose of drawing a comparison between the 'existence' and the 'validity' of an arbitration agreement, and not a comment or opinion on the 'existence' of unstamped or under-stamped or under-stamped arbitration agreements.*

*42. For the reasons set out in detail by the Hon'ble the Chief Justice and recorded herein, I agree with the conclusions drawn, and referred to above, I also concur with the other findings and ratio in the judgment by Hon'ble the Chief Justice.*

Relying on the aforesaid Judgment, the learned counsel for the petitioner would urge this Court to allow the present petition.

3. The learned counsel for the petitioner would further submit that the present dispute is arising out of the Lease Deed dated 31.08.2015 and the same is arbitrable in terms of Clause 27 of the said agreement, which reads as follows:

**“27. GOVERNING LAWS AND DISPUTES  
RESOLUTION:**



27.1. This Lease Deed shall be governed by the Laws of the Republic of India.

27.2. In the event of any dispute or difference arising between the parties with regard to the performance of respective conditions and obligations under this Lease Deed or regarding interpretation of the terms of this Lease Deed, the same shall be resolved through mutual discussions. If no agreement arrived at within 30 days, then, the Parties agree to resolve the disputes through arbitration by appointing a sole arbitrator.

27.3. In the event the Parties fail to appoint an arbitrator mutually, then, any dispute or claim arising out of or relating to this Lease Deed, or any breach or alleged breach thereof, shall be finally settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any amendment or re-enactment thereof and the arbitration proceedings shall be held at Chennai. The proceeding of the arbitration shall be held in English language. The arbitration award shall be final and binding on the Parties. Each Party shall bear its own cost. The courts at Chennai shall have the exclusive jurisdiction in all matters arising out of the Lease Deed or under the Act.

27.4. Nothing contained in Clause 27 shall prevent the parties from approaching a court of competent jurisdiction to



obtain an interim injunctive relief, irrespective of whether the subject matter of dispute is under negotiation or pending arbitration."

By referring to the said clause, he would submit that the present dispute may be referred to Arbitration.

4. The Respondent filed a counter affidavit stating that once an application is closed, there cannot be continuity of the proceedings based upon the earlier notice dated 12.05.2023 and in the instant case, as the petition under the Arbitration & Conciliation Act, 1996, had been closed by this Court vide order dated 12.10.2023, the arbitration initiated and/or invoked by the petitioner, vide notice dated 12.05.2023 ought to be considered as closed by this Court and the remedy available to the Petitioner was either to opt for an Appeal against the said order or to initiate proceedings afresh i.e., issue a fresh notice as required under Section 21 of the Act.



5. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

6. In this context, it is useful to extract Section 21 of the Act as under:

***"21. Commencement of arbitral proceedings***

*Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."*

7. As per the above provision, the arbitral proceedings will commence on the date on which a request for the dispute to be referred to arbitration is received by the respondent.

8. In the case on hand, the present dispute arises out of the Lease Deed dated 31.08.2015 and the same is arbitrable in terms of Clause 27 of the said agreement and that apart, a notice under Section 21 of the Act was sent to the respondent on 12.05.2023 and the same was received by the respondent on 18.05.2023 and therefore, as per Section 21 of the Act, the arbitral proceedings had commenced on the date of notice sent by the Petitioner.



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9. Thereafter, the petitioner herein moved a petition for appointment of Arbitrator in Arb.O.P.(Com.Div.)No.343 of 2023 since the issue pertaining to the unstamped instruments was pending before the Hon'ble Supreme Court, this Court vide order dated 12.10.2023 dismissed the said petition with the following observations:

*“3. Considering the above, this Original Petition is dismissed for statistical purpose for the present with liberty to the petitioner to file a fresh application after review orders are passed in the curative petition. In case, the order of the Hon'ble Supreme Court in **N.N.Global Mercantile Private Limited Vs. Indo Unique Flame Limited and others** [(2023) 7 SCC 1] is reversed, the petitioner is at liberty to approach this Court. In the alternative, the petitioner may pay the deficit stamp duty and file a fresh application.”*

10. A perusal of the above order makes it clear that the petition was closed with liberty to the petitioner to re-open the said petition or to file a fresh petition for appointment of Arbitrator. Therefore, the question of once again sending a fresh notice for the commencement of arbitration proceeding would not arise. In any transaction, once the arbitration proceeding was commenced by virtue of due notice, under Section 21 of the Act, it cannot be



stopped for any reasons, so as to, once again issue a fresh notice for the commencement of arbitral proceedings. Therefore, this Court is of the view that there is no need to issue any fresh notice, once again, to file the present petition.

11. For the reasons stated above, this Court is of the considered view that the submission made by the learned counsel for the respondent has no merit and the same is incorrect.

12. In view of the above, this Court is inclined to appoint a sole Arbitrator.

13. Accordingly, this Court feels it appropriate to pass the following order:

i) The Hon'ble Mr. Justice ***K.Kalyana Sundaram, Former Judge, Madras High Court, Flat No.406, 5th South Cross Street, Kapaleaswarar Nagar, Neelankarai, Chennai, Mobile No:93810 11077***, is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the



parties

ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.

iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent and vice versa.

iv) Liberty is granted to both parties to raise the issue regarding the non-registration of the Lease Deed before the sole arbitrator.

14. With the above directions, this Arbitration Original Petition is allowed.

**06.06.2024**



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Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

arr/nsa

**Note:** Issue order copy on 20.06.2024



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**KRISHNAN RAMASAMY.J.,**  
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