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

+ **ARB.P. 579/2024**

OMAXE LTD

..... Petitioner

Through: Mr. Karanjot Singh Mainee,
Advocate.

versus

NAZEER DELICACIES PVT. LTD.

..... Respondent

Through: Mr. Anshuman Sood, MR. Rajiv
Bajaj & Mr. Vidhur Marwah,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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06.05.2024

I.A. 10124/2024(exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

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1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties under a rent agreement dated 02.11.2018. The agreement contains an arbitration clause [Clause 18], which provides for resolution of disputes by arbitration of an arbitrator appointed by mutual consent or by the competent Court. It is expressly stated that the seat of arbitration shall be at New Delhi. Clause 18 is reproduced below:



“18. ARBITRATION

*Any dispute or difference arising between the parties, parties hereby agree that the same shall be resolved amicably at the first instance. Unresolved disputes, controversies, contests, disputes, if any shall be submitted to arbitration by sole arbitrator to be appointed by parties on mutual concurrence. In the event there is no concurrence, arbitrator to be appointed by the competent court. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act 1996 along with the Rules thereunder and any amendments thereto. The arbitration shall be conducted in English. The decision/ award of the arbitrator shall be final/ conclusive and binding on the Parties. **The seat of the arbitration shall be at New Delhi.**”*

[Emphasis supplied.]

2. Disputes having been arisen between the parties, the petitioner invoked arbitration by a legal notice dated 25.10.2023. The petitioner’s claims are in the region of ₹41 lakhs, principally for unpaid rent.

3. Mr. Anshuman Sood, learned counsel, appears on behalf of the respondent on advance notice. He does not dispute the existence of arbitration clause, but draws my attention to Clause 19 of the agreement, which contains a governing law clause in the following terms: -

“19. GOVERNING LAW

*This Agreement to Rent shall be construed, interpreted and applied in accordance with, and shall be governed by, the laws applicable in India. **The Courts at Greater Noida and High Court of Judicature at Allahabad alone shall have the exclusive jurisdiction to entertain any dispute or suit arising out of or in relation to this Agreement to Rent.**”*

[Emphasis supplied.]

4. Mr. Sood submits that, under Clause 19, exclusive jurisdiction has been vested in the courts in Greater Noida and the Allahabad High Court. On merits, he submits that the petitioner’s entitlement to rent during the period of COVID-19 lockdown is disputed in view of the *force majeure* Clause contained in Clauses 15.2 and 15.3 of the agreement. He also



submits that the petitioner has disconnected electricity in the premises since January 2024, making it impossible for the respondent's restaurant business to continue.

5. As far as question of jurisdiction is concerned, I am of the view that this Court has jurisdiction to entertain this petition in view of the express designation of New Delhi as the seat of arbitration. The Supreme Court in *Indus Mobile Distribution (P) Ltd. vs. Datawind Innovations (P) Ltd.*¹ held that “*the moment the seat is designated, it is akin to an exclusive jurisdiction clause*”. The judgment of the Supreme Court, in *BGS SGS Soma JV vs. NHPC Limited*² holds that an exclusive jurisdiction agreement is taken as the designation of the seat of arbitration in the absence of any contrary *indicia*. The express designation of a seat in Clause 18 provides ample evidence of the contrary intention of the parties in the present case.

6. The other submissions of Mr. Sood are on the merits of the disputes between the parties. They do not arise for consideration at the stage of Section 11 of the Act. At this stage, the Court is required only to enter into a *prima facie* determination with regard to existence of an arbitration clause that binds the parties. This aspect is undisputed in the fact of this case.

7. I am, therefore, of the view that the arbitrator is liable to be appointed. However, Mr. Sood suggests that an attempt may be made by the parties to settle their disputes in mediation. Mr. Karanjot Singh Mainee, learned counsel for the petitioner, is also agreeable to this course.

¹ (2017) 7 SCC 677, paragraph 19.

² (2020) 4 SCC 234.



8. The petition is therefore disposed of with the following directions:
- a. The disputes between the parties are referred to *Samadhan*, Delhi High Court Mediation and Conciliation Centre, Shershah Road, New Delhi-110503. The parties are directed to appear before the learned mediator on 15.05.2024.
 - b. In the event, the parties are unable to settle their disputes in mediation, the disputes will be referred to arbitration under the aegis of Delhi International Arbitration Centre, Shershah Road, New Delhi-110503 [“DIAC”]. DIAC is requested to nominate an arbitrator from its panel.
 - c. The learned arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.
 - d. The remuneration of the learned arbitrator will be governed by DIAC rules.
 - e. DIAC is requested to defer the reference until 31.07.2024 in order to enable the parties to arrive at a mutual settlement in mediation. If the parties joint request for further deferment, DIAC may defer the proceedings further. Conversely, if the mediation proceedings have been closed unsuccessfully, prior to 31.07.2024, either party may approach DIAC to enter into the reference forthwith.
9. The petition stands disposed of with these observations.

PRATEEK JALAN, J

MAY 6, 2024/‘pv’/