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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 748/2024

SANASUNU HOSPITALITY PRIVATE LIMITED

.....Petitioner

Through: Mr. Karun Mehta, Mr. Yugam
Taneja, Advs.

versus

S A N GARMENT MANUFACTURING PRIVATE LIMITED

.....Respondent

Through: Mr. Navaniti Prasad Singh, Sr. Adv
with Mr. Abhishek Baid, Mr. Mohit Bajna, Mr.
Anup Jain, Mr. Utsarg Sinsinwal, Mr. Praneet Das,
Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

22.07.2024

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1. This is a petition filed under section 11 of the Arbitration and Conciliation Act, 1996 seeking the appointment of a sole Arbitrator for adjudication of disputes arising out of the Lease Cancellation Agreement dated 17.05.2019.
2. The brief facts are that the petitioner and the respondent entered into a Lease Agreement dated 22.03.2017 wherein the respondent agreed to lease a commercial space measuring 8718.32 sq. ft. (super area) in property No. CF-001, First Floor, Emaar Palm Spring Plaza, Sector-53, Gurgaon for 10 years.
3. The petitioner wanted to open a fine dining restaurant cum bar/pub microbrewery at the leased premises.



4. Somehow the project could not fructify and on 17.05.2019, the parties entered into a Lease Cancellation Agreement, wherein with respect to the CAM (Common Area Maintenance) dues, an amount of Rs. 45,23,068/- was withheld by the respondent out of the total security deposit of Rs 56,66,908/-.
5. The petitioner's case is that the respondent wrongly withheld that amount and the petitioner was coerced into accepting the retention of CAM dues.
6. Clause 10 of the Lease Cancellation Agreement contains the arbitration clause which reads as under:-

“10. Jurisdiction/Dispute:

Any dispute or differences arising out of the lease agreement or this agreement between the parties, shall be resolved mutually within a reasonable period and upon failure, the same shall be referred for settlement/adjudication to Arbitration by Sole Arbitrator duly appointed by mutual consent of both the parties under the Arbitration and Conciliation Act, 1996 and any amendments thereto. The seat and venue of Arbitration shall be at New Delhi. The Courts at Delhi shall have exclusive jurisdiction over the disputes.”

7. The petitioner invoked the arbitration clause *vide* Legal Notice dated 02.06.2023.
8. Mr. Singh, learned senior counsel for the respondent has opposed the petition on 2 grounds, that are, (a) there is no dispute between the parties and (b) the dispute, if any, is barred by limitation.
9. I have learned counsel for the parties.
10. As regards there being no dispute, the very fact that the petitioner has



stated that the amount of CAM dues has wrongly been withheld by the respondent and that he was coerced into agreeing to the said clause is a dispute in itself which is left open for the learned Arbitrator to decide. Whether the clause of retaining CAM dues was under coercion or was voluntary is an issue that will be framed and decided by the learned Arbitral Tribunal. The Hon'ble Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754*** has reiterated the eye of the needle test and the relevant extract is quoted below:-

“90. In NTPC Ltd. v. SPML Infra Ltd. reported in (2023) 9 SCC 385, a two-Judge Bench of this Court was again faced with the issue of “accord and satisfaction” in the context of a Section 11 petition for appointment of arbitrator. Placing reliance on Vidya Drolia (supra), this Court gave the “Eye of the Needle” test to delineate the contours of the power of interference which the referral court may exercise under Section 11 of the Act, 1996. The first prong of the said test requires the court to examine the validity and existence of the arbitration agreement which includes an examination of the parties to the agreement and the privity of the applicant to the contract. The second prong of the test requires the court to, as a general rule, leave all questions of non-arbitrability to the arbitral tribunal and only as a demurrer reject the claims which are ex-facie and manifestly non-arbitrable. However, it was clarified that the standard of the aforesaid scrutiny is only prima facie, that is, unlike the pre-2015 position, the scrutiny does not entail elaborate appreciation of



evidence and conduct of mini trials by the referral courts.....”

11. As regards to the claim of the petitioner being barred by limitation is concerned, the Lease Cancellation Agreement is dated 17.05.2019.
12. The Hon’ble Supreme Court ***In Re:Cognizance For Extension Of Limitation, 2022 (3) SCC 117*** has held as under:-

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.



IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

13. The aforesaid judgment was further clarified in ***M/S Arif Azim Co. Ltd vs M/S Aptech Ltd, (2024) 5 SCC 313*** wherein the Court held as under:

“Thus, in ordinary circumstances, the limitation period available to the petitioner for raising a claim would have come to an end after an expiry of three years, that is, on 27.03.2021. However, in March 2020, the entire world was taken under the grip of the deadly Covid-19 pandemic bringing everyday life and commercial activity to a complete halt across the globe. Taking cognisance of this unfortunate turn of events, this Court vide order dated 23.03.2020 passed in Suo Motu Civil Writ Petition No. 03/2020 directed the period commencing from 15.03.2020 to be excluded for the purposes of computation of limitation. The said extension of limitation was extended from time to time by this Court in view of the continuing pandemic. As a result, the period from 15.03.2020 to 28.02.2022 was finally determined to be excluded for the



computation of limitation. It was provided that the balance period of limitation as available on 15.03.2020 would become available from 01.03.2022.”

14. In the present petition, the cause of action arose on 17.05.2019 when the respondent wrongly withheld an amount of INR 45,23,068 out of the total security deposit of INR 56,66,908.
15. Thus in view of the aforesaid judgments laid down by the Hon'ble Supreme Court, the period from 15.03.2020 to 28.02.2022 is to be excluded while computing the period of limitation to entertain the present petition.
16. The notice invoking arbitration under section 10 of the Lease Cancellation Agreement was issued by the petitioner on 02.06.2023 and after excluding the period from 15.03.2020 to 28.02.2022, the notice is within the period of 3 years (as on 15.03.2020 only about 10 months had elapsed from 17.05.2019, adding the period of 2 years 2 months from 01.03.2022 makes the notice dated 02.06.2023 within limitation). Hence, neither the notice under Section 21 of the Arbitration and Conciliation Act, 1996 nor the petition falls beyond the time period of 3 years. The period of 3 years as per the limitation would only end in February, 2024.
17. Thus, I am of the view that the notice of invocation of arbitration is issued within time and the present petition is within limitation.
18. The respondent in its reply dated 06.06.2023, in paragraph 14, has even stated that the notice invoking arbitration is premature.
19. For the said reasons, I am of the view that the petition needs to be allowed and the following directions are to be issued:-



- i) Mr. Siddhant Nath (Adv.) (Mob. No. 9910870397) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- v) The parties shall approach the learned Arbitrator within two weeks from today.

20. The petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

JULY 22, 2024 / (MS)

Click here to check corrigendum, if any