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

+ **ARB.P. 1218/2024**

HALWASIYA DEVELOPMENTS PVT LTDPetitioner

Through: **Mr. Gaurav Anand, Advocate**

versus

STERLING AGRO INDUSTRIES LIMITEDRespondent

Through: **Mr. Ravi Gupta, Sr Adv with Mr.
Rakesh Mukhija, Ms. Muskaan
Mehra, Advocates**

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

05.12.2024

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1. Petitioner has approached this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the Petitioners and the Respondent herein.

2. Shorn of unnecessary details, the facts necessary for adjudication of the present Petition, reveals that All India Sanskrit Sahitya Sammelan, Petitioner No.2 herein, acquired a perpetual lease qua Plot bearing No. A - 10, Qutub Institutional Area, Aruna Asaf Ali Marg, New Delhi, admeasuring 2420 sq. yds (*hereinafter referred to as 'the subject property'*). It is stated that the Petitioner No.1 and Petitioner No.2 entered into a Construction Agreement dated 12.11.1998 for carrying out construction and development in the said property as per which the Petitioner No.1 was allocated the entire basement, second floor, third floor and possession of the terrace above the third floor of the said property and was authorized by the

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Petitioner No.2 to grant lease of the abovementioned portions allocated to it and receive/realize the rent. It is stated that the Petitioner No.1 and the Petitioner No.2 entered into a registered sub-lease deed dated 01 .04.2023 with the Respondent herein in respect of the second floor of the property in question for a period of 9 years w.e.f. 01.03.2023 to 29.02.2032. It is stated that the Petitioner No.1 entered into an Infrastructure Agreement dated 11.03.2023 with the Respondent herein for enabling the Respondent to use, enjoy and get the benefits of the infrastructure, provided by the Petitioner No.1 at the Leased Premises, on payment of the infrastructure charges as mentioned in the agreement. It is stated that on 21.03.2024, the Respondent herein through its Director, Mr. Kuldeep Saluja along-with his 4-5 associates, in an extremely shocking, high-handed and in an outrageous manner, assaulted, intimidated, threatened and hurled abuses at an employee and also one Director of the Petitioner No.1 company at the Leased Premises. It is stated that since the Respondent had acted in utter disregard to the provisions of the Agreement(s) executed between the parties, the Petitioner No.1 issued a Notice of Termination dated 19.04.2024 to the Respondent. It is stated that the Petitioner issued a Notice dated 11.06.2024 under Section 21 of the Act invoking arbitration to adjudicate the disputes between the parties. It is stated that the Petitioner herein proposed the name of Hon'ble (Retd.) Justice Mr. M.L. Mehta to be appointed as the Arbitrator to adjudicate on the disputes between the parties. It is stated that the Respondent herein in its reply dated 03.07.2024 to the Notice under Section 21 of the Arbitration Act proposed the name of Hon'ble (Retd.) Justice Mr. Rajnish Bhatnagar to be appointed as the Arbitrator. Since the parties failed to mutually appoint a sole arbitrator, the Petitioner has approached this Court by filing the present Petition.



3. Clause 19 of the Registered Lease Deed contains the Arbitration Clause and the same reads as under:

“Any and all claims, dispute, questions or controversies involving the Parties and arising out of or in connection with or relating to this Sub-Lease Deed, or the execution, interpretation, validity, performance, breach or termination hereof including, without limitation, the provisions of this Article shall be resolved firstly by amicable discussions and failing to resolve the same amicably, secondly by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the rules made there under and any amendments made thereof. For the purpose of such arbitration, the dispute shall be referred to a sole arbitrator to be appointed mutually by the Parties. The arbitration proceedings shall be conducted in English language and shall be conducted at New Delhi. The arbitral award shall be final and binding on the Parties.”

4. It is pertinent to mention that the present Petition was initially filed by the Petitioner No.1 herein. Learned Counsel for the Respondent took an objection that since All India Sanskrit Sahitya Sammelan has not been impleaded in the array of parties, the present Petition cannot be entertained. It was stated by the learned Counsel for the Respondent that the Notice under Section 21 of the Arbitration Act does not specifically state that the invocation of arbitration was on the part of the Petitioner No.1. Confronted with this, an amended Memo of Parties has been filed impleading the All India Sanskrit Sahitya Sammelan as Petitioner No.2 in the array of parties. It is stated by the learned Counsel for the Petitioner No.2 that the Petitioner No.2 is being represented through Petitioner No.1, which is its constituted attorney. A copy of the General Power of Attorney has also been filed which is duly signed by the Petitioners No.1 & 2.



5. Learned Counsel for the Respondent has also drawn the attention of this Court to the construction Agreement to state that Petitioners No.1 & 2 together were referred to as the first Party and submitted that the notice invoking arbitration, which was issued only by the Petitioner No.1 herein, is not valid in law and, therefore, the present Petition is not maintainable. Learned Counsel for the Respondent also contends that in the absence of a notice by the Petitioner No.2 and even though the Petitioner No.2 has now been impleaded as a party to the present Petition, Petitioner No.2 cannot maintain the Petition under Section 11 of the Arbitration Act as it had not initiated any proceedings under the Arbitration Act. It is also contended that merely by filing an amended Memo of Parties, the defect in the notice under Section 21 of the Arbitration Act cannot be cured.

6. Heard the Counsels for the parties and perused the material on record.

7. A perusal of the Sub-lease Agreement, under which the disputes have arisen between the parties, describes Petitioners No.1 & 2 together as sub-lessors. The Sub-lease Agreement shows that Petitioner No.2 was being represented by Petitioner No.1 as its constituted attorney.

8. In view of the above, this Court is of the opinion that Petitioner No.2 has been added as a party to the present Petition by way of abundant caution so that all the parties to the Agreement are in the array of parties to the present proceedings. Notice under Section 21 of the Arbitration Act has been issued by Petitioner No.1 who is the constituted Attorney of Petitioner No.2. The fact that the Petitioner No.1 is the duly constituted Power of Attorney of Petitioner No.2 is not in dispute and, therefore, the notice under Section 21 of the Arbitration Act would automatically be deemed to be on behalf of Petitioner No.2 also.

9. In view of the above, the argument of the learned Counsel for the



Respondent that in the absence of a notice under Section 21 of the Arbitration Act on behalf of the Petitioner No.2 would invalidate the proceedings under Section 11 of the Arbitration Act, cannot be accepted.

10. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the Agreement, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

11. Accordingly, Mr. Shashank Garg, Senior Advocate, (Mob. No.9811526671) is appointed as an Arbitrator to adjudicate upon the disputes between the Parties.

12. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

13. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

14. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

15. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

16. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 05, 2024

Rahul

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