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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 62/2024

M/S CESTOS DEVELOPERS PVT LTD

..... Petitioner

Through: Mr. Nishant Das, Ms. Sanyya, Mr.
Atul Kumar and Mr. Aatrayi Das,
Advocates.

versus

M/S ARTEFACT PROJECTS LTD

..... Respondent

Through: Mr. Sameer Abhyankar and Mr.
Rahul Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

01.03.2024

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By way of the present petition filed under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator in relation to disputes between the parties that are stated to have arisen from Lease Agreement dated 27.08.2018 ('Lease Agreement') in respect of property bearing House No. C-3/3 First Floor, Vasant Vihar, New Delhi ('subject premises'). The lease was for a period of 36 months and expired by efflux of time on 05.08.2021. Thereafter, the respondent has admittedly continued to remain in possession of the subject premises; and the petitioner has accepted rent for the period even after the date of expiration of the lease.

2. Notice on this petition was issued on 16.01.2024. Reply dated 28.02.2024 has been filed on behalf of the respondent. Mr. Nishant Das, learned counsel appearing for the petitioner submits, that no rejoinder is required to be filed in the matter.



3. Mr. Das, learned counsel for the petitioner has drawn attention to clause 8 of the Lease Agreement which contemplates reference of disputes between the parties to arbitration under the A&C Act with the 'venue' of arbitration being at New Delhi. The Lease Agreement also contains a general jurisdiction provision comprised in clause 9, which vests jurisdiction in courts of law at Delhi in relation to disputes arising in connection with the lease deed.
4. The record shows that the petitioner had invoked arbitration *vide* notice dated 06.11.2023; but no response thereto was sent on behalf of the respondent.
5. The court has heard Mr. Das, learned counsel for the petitioner and Mr. Sameer Abhyankar, learned counsel appearing for the respondent at some length.
6. The essence of the objection raised by Mr. Abhyankar on behalf of the respondent, is that once the term of the Lease Agreement ended by efflux of time on 05.08.2021 but the respondent continued to remain in use and occupation of the subject premises, the tenancy stood converted into an oral lease from month-to-month, against which the petitioner accepted rent from the respondent. Counsel accordingly argues, that the present disputes, where the petitioner alleges non-payment of rent, and claims *mesne profits*/damages for unauthorized use and occupation of the subject premises, arise from the oral tenancy agreement *which does not contain an arbitration clause*. It is argued that such disputes are therefore not amenable to arbitration.
7. On the other hand, Mr. Das contends on behalf of the petitioner, that upon expiration of the term of the Lease Agreement, the respondent



continued in use and occupation of the subject premises as a tenant holding-over and was liable to pay rent from month-to-month. He argues that the disputes even in relation to the period *after* the lease expired, during which the respondent continued as a tenant holding-over, are disputes that have arisen from the Lease Agreement and are therefore amenable to arbitration in view of the arbitration clause comprised in the Lease Agreement.

8. After considering the submissions made at the Bar, as well as the contents of the petition and the reply, this court notices the following:

8.1. It is settled law that an arbitration clause is a separate contract, which is severable from any agreement in which it is embedded. The arbitration clause does not necessarily perish or expire alongwith the expiration of the terms of an agreement in which it is embedded. In the present case therefore, merely because Lease Agreement dated 27.08.2018 ran-out by efflux of time on 05.08.2021 does not mean that the arbitration clause comprised in clause 8 thereof also perished with the expiration of the term of the lease.

8.2. Furthermore, a perusal of section 116 of the Transfer of Property Act, 1882 shows that where a party remains in possession of a property after the determination, or in this case the expiration, of the lease granted to it; and the lessor accepts rent from the lessee or otherwise assents to the lessee continuing in possession, in the absence of any agreement to the contrary, the lease is “ *renewed from year to year, or from month to month* ” depending on the purpose for which



the property is leased. In the present case, a plain application of section 116 of the Transfer of Property Act would show that though that the tenure of the lease contemplated in the Lease Agreement expired on 05.08.2021, the fact that the respondent continued in possession of the subject premises thereafter and the petitioner accepted rent, amounted to statutory continuation of the lease on a month-to-month basis, since the subject premises is a residential property.

- 8.3. Other things apart, there is no cavil that the respondent came into possession, use and occupation of the subject premises under Lease Agreement dated 27.08.2018 and has continued to remain so ever-since. It is not disputed that no subsequent document of lease was ever signed between the parties. Only certain communications have been exchanged between them, which discuss the execution of fresh lease deed, which however has not happened till date.
- 8.4. As a sequitur to the above, this court is of the opinion that the dispute as to payment of the lease rent for the period during which the respondent continued in possession of the subject premises as a tenant holding-over, is anchored in Lease Agreement dated 27.08.2018, which document contains an arbitration agreement in clause 8.
9. Accordingly, the court is not persuaded to accept the respondent's contention.
10. Furthermore, upon a conspectus of the averments contained in the petition and the submissions made, this court is satisfied that there is a



valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 06.11.2023, do not appear *ex-facie* to be non-arbitrable.

11. Accordingly, the present petition is allowed and **Mr. Yugansh Mittal, Advocate (Cellphone No.: +91 9911256665)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis of the Delhi International Arbitration Centre, New Delhi ('DIAC'), in accordance with applicable rules.
12. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
13. The learned Sole Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.
14. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on merits, in accordance with law.
15. However, at this stage, learned counsel appearing for the parties jointly submit that they wish to explore the possibility of a mediated settlement.
16. In view of the request made by the parties, and to afford to them an opportunity for a negotiated settlement, the order appointing the



arbitrator shall be held in abeyance for a period of 04 weeks from the date of the first mediation session, during which time the parties are at liberty to attempt a negotiated settlement of their disputes; failing which, the order of appointment shall take effect.

17. Accordingly, the parties are referred to mediation under the aegis of the Delhi High Court Mediation & Conciliation Centre, with a request to the learned Organizing Secretary to appoint an appropriate Mediator in the matter.
18. Let the parties approach the Mediation Centre on Monday *i.e.* 11th February 2024 at 02:30 p.m. for the above purpose.
19. A copy of this order be sent to the learned Organizing Secretary of the Mediation Centre and to the Co-ordinator, DIAC, for information and compliance.
20. Parties are directed to sincerely attempt to settle their *inter-se* disputes through mediation within 04 weeks; and in the event settlement does not fructify within the said period, to approach the learned Arbitrator hereby appointed, within 10 days after the aforesaid 04 week period.
21. A copy of this order be sent by e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.
22. The petition stands disposed-of in the above terms.
23. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MARCH 1, 2024/ak