



2024:DHC:9793



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

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Date of Decision: 17.12.2024+ **ARB.P. 1480/2024**

SH. MAHESH GUPTA & ANR.

.....Petitioners

Through: Mr. Rohit Kalra, Adv.

versus

M/S 4 DEVILS CAFE AND RESTAURANT & ORS.....Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the A&C Act') seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of a Lease Deed executed between the petitioners and the respondents on 03.11.2023. As per the lease deed third floor of the property located at 340/6, Friends Colony Industrial Area, Main GT Road, Shahdara, Delhi-110095 was let out to the respondents for a period of five years commencing from 01.11.2023 till 31.10.2028, on a monthly rent of ₹60,000/- excluding the GST, electricity, water and other miscellaneous charges.



2024:DHC:9793



3. On 04.11.2023, the parties entered into an additional agreement stipulating that the respondents would ₹60,000 per month for maintenance and supervisory services of the aforesaid leased out property.
4. Subsequently, on 06.11.2023, a rectification deed was executed to modify the Lease Deed, revising the annual rent escalation clause to 10% instead of the originally agreed 5%.
5. Disputes have arisen between the parties due to the respondents' failure to fulfill their payment obligations under the lease deed since February 2024. Despite repeated reminders and requests, the respondents have failed to clear the outstanding arrears.
6. The arbitration clause in the lease deed between the parties, is in the following terms: -

“29. That in the event of dispute arising between the parties regarding interpretation of the terms of this agreement the matter shall be referred to the sole arbitrator DECIDED BY LESSOR ONLY. The provisions of Arbitration & conciliation Act, 1996 shall govern the arbitration proceedings. In the event of failure/neglect/refusal on the part of the first party, the second party shall be free and entitled to get; this agreement specifically enforced by initiating proceedings, for specified performance of this Agreement. The award of the sole Arbitrator shall be final and binding on the parties. The seat of the Arbitrator shall be in Delhi and only the Delhi Courts shall have the jurisdiction.”

7. Disputes having arisen between the parties, on 22.05.2024, the Petitioners served a legal notice to the respondents, thereby terminating the lease deed and demanding payment of arrears, including rent and maintenance charges and directing them to vacate the premises. The notice also invoked penalty provisions under the lease deed, stipulating ₹5,000 per



2024:DHC:9793



day in case of failure to vacate the premises within 30 days from the date of receipt of notice.

8. The petitioners submit that after the service of the aforesaid Legal Notice, the respondents have made a payment of Rs. 60,000/- in lieu of arrears of rent to the petitioner No. 1, and a payment of Rs. 30,000/-, to the petitioner no.2, however, the request of the petitioners to vacate and handover the possession of the schedule property was not complied with, furthermore, no payment has been made by the respondents qua the maintenance/supervisory service charges, to the petitioners.

9. Consequently, the petitioners invoked arbitration through notice dated 15.07.2024. The Notice proposed a list of arbitrators and called upon the respondents to tender their consent for one of the nominated arbitrators.

10. Respondent no(s). 1, 3 and 4 did not reply to the notice. Respondent no.2, on the other hand, instead of consenting to one of the arbitrators nominated by the petitioners, proposed three alternative arbitrators. This response from the respondent no. 2 has led to a lack of consensus among the parties regarding the appointment of the arbitrator.

11. Notice in the present petition was issued on 24.09.2024.

12. An affidavit of service has been filed wherein it has been brought out that the respondents have been duly served by post and courier and also through WhatsApp and email. However, there is no appearance on behalf of the respondents.

13. In the circumstances, the present petition is taken up for hearing and disposal, despite no appearance on behalf of the respondents.

14. Since the existence of the arbitration clause is evident from a perusal of the lease deed, there is no impediment to constituting an arbitral tribunal



2024:DHC:9793



for adjudicating the disputes between the parties, as mandated in terms of the judgments of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532 and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899***, In re, 2023 SCC OnLine SC 1666.

15. Further, in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd*** (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Ltd***, (2017) 8 SCC 377 and ***Bharat Broadband Network Limited v. United Telecoms Limited***, 2019 SCC OnLine SC 547, it is incumbent on this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

16. Accordingly, Mr. Moksh Arora, Advocate (Mobile - +91 9999061836), is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

17. The respondents shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the learned arbitrator, in accordance with law.

18. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

19. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

20. 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.



2024:DHC:9793



21. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.

22. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 17, 2024/sv