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

+ O.M.P.(I) (COMM.) 338/2024

SIGNIFY INNOVATIONS INDIA LIMITEDPetitioner

Through: Mr. Ashish Verma and Mr. Kartikey
Bhargava, Advs.

versus

M/S ACUSTOM APPARELS PVT LTD.Respondent

Through: Mr. Dinesh Mong, Adv.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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03.10.2024

1. The present petition under Section 9 of the Arbitration and Conciliation Act, 1996 has been filed by the petitioner seeking urgent interim relief/s in respect of a Lease Deed dated 14.05.2019, executed in respect of the premises bearing C-46, Sector-57, Noida. The Lease Deed was originally entered into between the petitioner and M/s. S.M. Associates.
2. Thereafter, an Attornment Agreement dated 12.09.2023 was executed whereby the respondent herein i.e. M/s. Acustom Apparel Pvt. Ltd. was recognized as the lessor of the property in place of the original lessor. A copy of the Lease Agreement and the Attornment Agreement has been placed on record. The initial Lease Agreement was executed for a period of three years w.e.f. 01.06.2018 to 31.05.2021, as mentioned in Clause 3.1 of the Lease Agreement dated 14.05.2019. By virtue of the addendum dated 17.06.2021, the tenure of the lease was extended w.e.f. 01.06.2021 till 31.05.2024.
3. It has been averred in the petition that the petitioner has paid lease



rentals in respect of the premises till 31.08.2023 to M/s SM Associates; a certificate of “no dues” was also provided by M/s SM Associates.

4. Subsequently, the petitioner and respondent agreed to extend the lease agreement for a second renewal term from 01.06.2024 to 31.05.2027 and for this purpose a second addendum dated 19.01.2024 was issued.

5. A separate lease deed was also executed on 19.01.2024 in respect of the third floor of the subject premises admeasuring 13,118 Sq. Ft.

6. It is averred that significant vibrations were observed on the third floor of the premises during routine work on 25.01.2024, leading the petitioner to immediately notify the respondent and raise concerns about the structural stability of the building outstanding on the property in question.

7. It is stated that the petitioner appointed an independent consultant to make a non-invasive structure assessment. It was found that the building was not safe for continued occupancy till remedial measures were taken *qua* the alleged structural defects.

8. It is submitted that on 29.03.2024 again, cracks on a sagging slab on the third floor of the subject premises in the incident report dated 29.03.2024 highlighted the compromised structural integrity of the building.

9. Thereafter the petitioner sought to terminate the lease deed. It is the petitioner’s case that the respondent has not been forthcoming in taking possession of the premises from the petitioner, despite the petitioner’s repeated requests in this regard.

10. Learned counsel for the respondent, who appears on advance notice, controverts the aforesaid submissions. He submits that there is no basis for terminating the lease deed. He further submits that the respondent has been ready and willing to take the possession of the premises in question,



however, it is the petitioner who has been remiss in this regard.

11. Admittedly, the Lease Agreement between the parties contains an Arbitration Clause as under:

“18. Dispute Resolution

If any dispute or difference relating to or arising under this Deed arises between the Lessor and the Lessee during the period of the Lease or upon the expiry of the said Lease, the parties shall try to negotiate the same and resolve within 30 days of such dispute. In case the matters remain unresolved, the matter shall be referred to arbitration after giving a notice of reference to the other Party the Arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 for the time being in force. A sole arbitrator shall be appointed on mutual consent of the Lessor and Lessee. The decision of the Arbitrator shall be final and binding. The arbitration shall be conducted in English language and venue shall be at New Delhi. The cost of the Arbitration shall be shared equally by both the Parties unless otherwise awarded by the Arbitrator.”

12. After some hearing, respective counsel for the parties have agreed upon the following upon receipt of instructions from their respective clients:

- (i) Possession of the premises in question shall be handed over by the petitioner to the respondent tomorrow, i.e. 04.10.2024 in the presence of a Court Commissioner to be appointed by this Court. The said Commissioner be also tasked with the exercise of inspecting the premises, taking note of the condition of the premises, and also duly identifying the alleged structural and other defects in the premises with regard to which claims/ counterclaims are sought to be raised. Structural alterations/repairs, if any, carried out by the petitioner, be also taken note of. Respective counsel jointly submit that this exercise is required to be conducted at the present stage since



structural changes may be made to the property after the possession is handed over to the respondent.

- (ii) Since admittedly, there is an arbitration clause in the lease deed, executed between the parties, it is jointly requested that a Sole Arbitrator be appointed in these proceedings itself to resolve the outstanding disputes between the parties, including as regards their respective monetary entitlement.

13. In view of the above joint request of respective counsel, Mr. Aryan Jain, Architect (CoA Registration No.CA/2018/97042), (Mob. No.:9899800759) is appointed as the Court Commissioner for the aforesaid purpose. Let the Court Commissioner visit the premises on 4.10.2024 at 5 pm for the purpose set out aforesaid. The Court commissioner will also be at liberty to visit the premises on any subsequent day/s to complete the inspection exercise, as per his convenience. The Court commissioner shall also take necessary photographs/ conduct videography during the inspection. Respective counsel for the parties undertake, on instructions, that the parties shall fully cooperate with, and participate in the inspection. The fees of the Court Commissioner shall be Rs.1.5 lakhs (in addition to expenses that may be incurred), to be shared by the parties. The report of the Court Commissioner shall be provided to the parties, and shall also be placed before the learned sole arbitrator.

14. Further, as jointly requested by the parties, Mr. Ganesh Khemka, Advocate (Mob. No.:9463441118) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

15. Since the refundable security deposit is to the tune of Rs.1,13,52,582, it is agreed that as an interim measure, a sum of Rs.65 Lakhs shall be



deposited by the respondent in the Registry of this Court. The same shall be in the form of an interest bearing FDR in the name of the respondent. The same shall be subject to further order/s that may be passed by the learned Sole Arbitrator.

16. The parties shall also be at liberty to move fresh application/s under Section 17 of the Arbitration and Conciliation Act, 1996, as may be warranted. The same shall be considered by the learned sole arbitrator on its own merit. The petitioner shall also be at liberty to seek direction regarding deposit/ payment of the entire/remaining security deposit amount; the learned Sole Arbitrator shall pass appropriate orders on any such prayer taking into account the submissions of both the parties.

17. At joint request of the parties, it is further directed that prior to adjudication of the dispute on merits, the learned Sole Arbitrator shall make an endeavour to encourage the parties to arrive at a settlement through the mediation or any procedure as may be considered appropriate, as contemplated under Section 30(1) of the A&C Act.

18. The learned Sole Arbitrator shall be entitled to fee in accordance with the Fourth Schedule of A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator. Parties shall share the arbitrator's fee and arbitral cost, equally.

19. 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 their merits, in accordance with law.

20. The learned Sole Arbitrator will decide the matter without in any manner being influenced by the directions contained in this order.

21. The learned Sole Arbitrator may proceed with the arbitration



proceedings subject to furnishing to the parties the requisite disclosures, as required under Section 12 of the A&C Act.

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

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

SACHIN DATTA, J

OCTOBER 3, 2024/cl