



2024:DHC:8419



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

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Date of Decision: 25.10.2024

+ **ARB.P. 1550/2024**

CLEAVE CONSULTING NETWORK PRIVATE LIMITED

.....Petitioner

Through: Mr. Prashant Choudhary, Mr. Gagan
Kumar Singhal and Mr. Divyanshu
Pandit, Advs.

versus

ROZANA SUPERMART

.....Respondent

Through: Mr. Nishant Prateek, Adv.

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. These disputes stem from a "lease deed" dated 01.06.2023 (hereinafter '*the Lease Deed*'). As per the Lease Deed the petitioner agreed to lease out 7300 sq. ft of commercial space at the basement of Plot No. 4, Sector-3, Vasundhra, Ghaziabad, Uttar Pradesh. (hereinafter '*Demised Premise*')

2. The arbitration clause in the Agreement between the parties is in the following terms: -

"18.1 Any and all claims, disputes, questions or controversies involving the Parties and arising out of or in connection with or relating to this Deed, or the execution, interpretation, validity, performance, breach or



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termination hereof, Including, without limitation, the provisions of this Article shall be resolved by arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996 and the rules made there under or 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 / Gurgaon. The arbitral award shall be final and binding on the Parties.”

3. Disputes between the parties arose due to the respondent's alleged failure to pay rent for the demised premise, along with utility and common area maintenance charges. Despite multiple reminders from the petitioner, the respondent did not fulfil these payment obligations.

4. Consequently, on 06.05.2024, the petitioner issued a legal notice terminating the lease agreement and demanded the recovery of possession, outstanding rent, damages, and mesne profits. The respondent, however, failed to acknowledge or respond to the termination notice.

5. Following this, the petitioner filed an application under Section 9 of the A&C Act in the Commercial Court at Saket, Delhi. The Court issued a notice to the respondent, but as no one appeared on behalf of the respondent, the Court proceeded to pass an order on 05.08.2024, restraining the respondent from creating any third-party interests in the demised premise.

The relevant portion of the said order is as under -

“Since there is an arbitration clause between the parties and vide order dated 07.06.2014, this court has passed an order directing the respondents not to create any third party interest in the suit property bearing No. Basement of Plot No.4, Sector-3, Vasundhra, Ghaziabad, UP-201102.

Ld. Counsel for petitioner has further filed written submissions by submitting that respondent has already handed over the keys of the suit property to the petitioner and accordingly, the possession of the property is with the petitioner.



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Nothing survives in the present petition. Hence, the same is consigned to record room after due compliance.”

6. Additionally, the petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, 1881.

7. Subsequently, on 15.06.2024, the petitioner issued a notice under Section 21 of the A&C Act, thereby invoking the arbitration clause in the agreement. However, the respondent failed to respond to the notice.

8. Therefore, the petitioner has approached this Court, through the present petition, seeking the appointment of a Sole Arbitrator to adjudicate the dispute.

9. Learned counsel for the respondent does not dispute existence of the arbitration agreement between the parties and has no objection if an independent Sole Arbitrator is appointed to adjudicate the disputes between the parties.

10. Since, the existence of arbitration clause is evident from a perusal of the lease deed, there is no impediment in appointing an independent Sole Arbitrator for adjudication of the disputes between the parties, as prayed for, as mandated in terms of the judgments of the Supreme Court in ***In Re: Interplay between Arbitration Agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*** in Curative Petition (C) No. 44/2023 decided on 14.12.2023, and ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 INSC 532***

11. Accordingly, Mr. Anish Chawla, Advocate (Mob.: +91 9953541910) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.



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12. Prior to adjudication of the dispute on merits, the learned Sole Arbitrator is requested to encourage the parties to arrive at a settlement through the mediation or any procedure as may be considered appropriate by the learned Sole Arbitrator, as contemplated under Section 30(1) of the A&C Act.

13. 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.

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

15. The parties shall share the arbitrator's fee and arbitral costs, equally.

16. 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.

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

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

SACHIN DATTA, J

OCTOBER 25, 2024/sv