

OCD-17

AP-COM/1083/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

VAMIKA ENTERTAINMENT PRIVATE LIMITED AND ANR
VS
DESAI COMMERCIAL LLP

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 20th January, 2025.

Appearance:

Mr. Sourojit Dasgupta, Adv.

Mr. Vikas Baidya, Adv.

Ms. Ranjana Seal, Adv.

. . .for the petitioner.

Mr. Altamash Alim, Adv.

Mr. Arun Tanti, Adv.

. . .for the respondent.

The Court: This is an application for appointment of a learned Arbitrator, filed by the company/petitioner No.1, through the petitioner No.2.

The joint petition under Order XXIII Rule 3 of the Code of Civil Procedure read with Section 30 of the Arbitration and Conciliation Act, 1996 filed before learned Arbitrator, has been filed before this Court, by the respondent.

It appears that Vamika Entertainment Private Limited (claimant) and Desai Commercial LLP (respondent) had requested the learned Arbitrator to pass an award on the terms of settlement referred to in the schedule appended to the said application. Accordingly, the learned Arbitrator passed an award on October 8, 2024 in terms of Clauses (a) to (d) of the settlement agreement as set out below:

- “a. The lease agreement dated 1st April 2024 executed between the parties, in respect to vacant space on the Ground Floor on the back side of the building named “Shree Hari” situated at Premises No.138 Rash Behari Avenue, Kolkata 700029, stood cancelled.
- b. A sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) deposited with the Respondent on account of Security Deposit as referred to in Lease Agreement dated 1st April 2024, shall be treated as full and final payment, on account of the principal dues of Rs.20,60,768/- (Rupees twenty Lakhs Sixty Thousand Seven Hundred And Sixty Eight Only) payable by the Claimant to the Respondent on account of lease rent and electricity charges.
- c. Claimant shall handover vacant and peaceful possession of the said vacant space on the Ground Floor on the back side of the building named “Shree Hari” situated at Premises No.138 Rash Behari Avenue, Kolkata-700029, to be Respondent within 12th October 2024
- d. Both claimant and/or respondent have no monetary or other claim or grievance of any nature whatsoever against each other.

In view of such settlement/compromise entered by and between the parties on terms as referred to in Schedule appended to the joint Compromise/settlement application which is also referred to in point (a) to (d) above, I pass the award in accordance to such terms of settlement and/or compromise entered by and between the parties.”

The claimant had (company/petitioner No.1) also undertaken before the learned Arbitrator in the meeting dated September 26, 2024, that the

company/petitioner No.1 would withdraw the proposal to appoint a learned Arbitrator in terms of the notice invoking Arbitration dated September 9, 2024. Copies of the joint compromise petition and the award is retained with the record.

Mr. Dasgupta, learned advocate for the petitioner submits that the joint compromise petition was perpetrated by fraud. Two other directors signed the same without the consent of the petitioner No.2. All the steps, including the passing of the award, took place behind the back of the petitioner no.2. The petitioner no.2 issued the notice invoking arbitration and the other directors could not unilaterally withdraw from giving effect to the same. Secondly, the petitioner no.2 was never consulted when the compromise petition was filed and the award was passed. Those two directors were hand in glove with the respondent and acted adverse to the interest of the company. The other two directors who ultimately represented the company before the learned Arbitrator, and under whose signature the compromise petition was filed, were not signatories to the agreement. The company was all along represented by the petitioner no. 2. Possession was handed over when the assets of the company were present inside the premises. Serious loss has been suffered by the Company.

Heard the learned advocates for the respective parties. The petitioner seeks appointment of an Arbitrator in terms of an arbitration Clause, on the basis of the notice invoking arbitration dated September 9, 2024. The minutes dated September 26, 2024 in the arbitration proceedings records that the parties had agreed not to proceed with the said notice. In any event, the award has been

passed in terms of the compromise petition. Thus, at this stage, the question of appointment of another Arbitrator, to arbitrate upon the disputes between the parties does not arise.

Learned Advocate for the respondent submits that the money payable by the company was adjusted against the security deposit and vacant possession of the property was handed over to the respondent.

The application, being AP-COM 1083 of 2024 is, accordingly, dismissed. The petitioner is always at liberty to take appropriate steps, that may be permitted under the law.

(SHAMPA SARKAR, J.)

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