(2022) 02 DEL CK 0080

In the Delhi High Court

Case No : Arbitration Appeal (COMM.) No. 9 Of 2022, Miscellaneous Application No. 2310 Of 2022

Evergreen Land Mark Pvt Ltd. APPELLANT

Vs

John Tinson And Co Pvt Ltd And Anr RESPONDENT

Date of Decision : 10-02-2022

Acts Referred:
Arbitration And Conciliation Act, 1996 — Section 17, 37(2)(b)
Code Of Civil Procedure, 1908 — Order 15A

Citation : (2022) 02 DEL CK 0080

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Ashutosh Dubey, Rinku Kumar Garg, Abhishek Chauhan, Harsh Nadda, Bharat Sharma, Jitendar Kumar

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

IA No.2309/2022 (for exemption)

1. Exemption is allowed, subject to all just exceptions.

2. The application is disposed of.

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3. The appellant has filed the present appeal under Section 37(2)(b) of the Arbitration & Conciliation Act, 1996 (hereafter the â??A&C Actâ??)

impugning the order dated 05.01.2022 (hereafter â??the impugned orderâ??) passed by the Arbitral Tribunal in an application filed by the respondents

under Section 17 of the A&C Act.

4. By the impugned order, the Arbitral Tribunal has directed the appellant to deposit the amount equivalent to the arrears of lease rentals in respect of

the premises leased to the appellant.

5. The appellant had taken the premises (Rear First Floor, 54, Janpath, New Delhi) on lease from respondent no.2 in terms of Lease Deed dated

22.09.2010 which was subsequently amended by agreements dated 30.11.2013 and 20.05.2014. Thereafter, the appellant took another premises on

lease (Rear Ground Floor, B.I. House, No.54, Janpath, New Delhi) from respondent no.1 and had executed a Lease Deed in respect of the same

which was duly registered.

6. It is not in dispute that the appellant has not paid the lease rentals in respect of the aforesaid premises to respondents no.1 and 2 for a certain

period. The respondents had issued a notice terminating the lease in respect of their respective premises and called upon the appellant to hand over

vacant possession of the same. In addition, the respondents also claim arrears of the lease amount due from the appellant. The said disputes have

been referred to arbitration.

7. The appellant states that it is running a restobar (restaurant and a bar) at the leased premises. Notwithstanding that the appellant is in possession of

the leased premises and is using the same for its business, it claims that it is not required to pay the lease rentals on account of force majeure

conditions that have resulted from the outbreak of Covid-19 and the directions issued under the Disaster Management Act, 2005 (Disaster

Management Act).

8. Mr. Dubey, learned counsel appearing for the appellant earnestly contended that the business of the appellant was adversely affected due to the

prevalent pandemic and the directions issued by the concerned Authorities under the Disaster Management Act in the wake of outbreak of the Covid-

19 pandemic. Admittedly, the appellant had failed to pay the lease rentals in terms of the lease agreements entered into with the respondents.

9. The respondents had filed an application, inter alia, praying that the appellant be directed to deposit the arrears of lease rentals to secure their

claims. The Arbitral Tribunal had considered the controversy and had also noted that the appellant was not inclined to surrender the leased premises

but is continuing to occupy the same for the purpose of its business. The Arbitral Tribunal had returned a prima facie finding that the financial terms of

the lease were not dependent on the revenue or profit sharing.

10. In view of the aforesaid, the Arbitral Tribunal had directed as under:

â??43. It is deemed proper to invoke the provisions of the above-quoted Order XV-A of CPC to put in position the requisite measures under Section

17 of the A&C Act in each of these cases, by directing as under:

(a) The Respondent shall compute the arrears towards rent separately in respect of each premises under lease at the agreed rate â?" Rs.10,35,000/-

per month (subject to applicable taxes) for the period from 01.05.2018 to 30.04.2021 and Rs.11,90,250/- from 01.05.2021 onwards in respect of leased

premises of JTCPL and Rs.2,39,390/- per month (inclusive of GST) in respect of leased premises of BIET â?" for the period of default and pendency

of the matter thus far, i.e. from March 2020 onwards for and up to December 2021, adjusting the amounts already paid (as per declarations made

before this tribunal), deducting the TDS as per law, and communicate the same to the respective Claimants within a week of this order.

(b) The amounts of money equivalent to the arrears computed as above shall be deposited by the Respondent in Fixed Deposit (FD) accounts â?

separately in relation to the respective Claimants â?" in a public sector Bank, initially for a period of six months with provision of auto-credit of Interest

and periodical auto-renewal within four weeks of this order.

(c) The value of the FDs, as taken out in terms of above directions, shall be liable to be released by the concerned bank to the appropriate party in

accordance with the final award that may be passed in these proceedings.

(d) Though the Respondent may take out the FDs in its own name, the encashment or withdrawal thereof shall be subject to final awards that may be

passed in due course in these proceedings. For clarity, it is added that there shall be a restraint against any withdrawal by the Respondent from the

said FDs till further orders.

(e) To ensure due compliance with the above directions, a copy of this Order shall be served by the Respondent on the concerned bank which shall be

obliged not to allow any encashment or withdrawal till further orders in these proceedings.

(f) Due compliance shall be confirmed by the Respondent n record of these proceedings, supported by copies of all relevant documents and affidavits,

and also shared with the respective Claimants, within five weeks of this order.

(g) The Respondent shall pay unto the respective Claimants the rent for the respective leased premises from January 2022 onwards, at the contracted

rate, without subjecting the same to any unilateral deduction (except as required towards statutory obligation like TDS), month by month, by due date

as per contractual clauses or past practice.

(h) The amounts representing the TDS withheld by the Respondent against arrears or monthly rent payable from January, 2022 onwards shall be duly

accounted for by deposit with the Income Tax Department within the period allowed by law and also certified promptly to the respective Claimants.

(i) Any default in strict compliance with the above directions may entails consequences envisaged in Order XV-A of CPC, referred to earlier.

(j) All compliances with the above directions by the Respondent shall be without prejudice to its contentions and be subject to final orders in each

case.â??

11. Mr. Dubey, learned counsel appearing for the appellant states that there is no finding that the appellant is attempting to alienate or dispose of its

assets to frustrate the award that may be ultimately rendered against the appellant. He also submits that the appellant had deposited certain amounts

as security deposits with the respondents and that may be adjusted from the amounts claimed by the respondents.

12. None of the aforesaid contentions are persuasive. The fact that it is not disputed that the appellant had taken on lease the premises from the

respondents and is continuing to occupy the same is sufficient ground for the Arbitral Tribunal to have directed the respondents to deposit the arrears

of rent payable in terms of the leases (which as stated earlier are not disputed). There is no denying the fact that the business of the appellant may

have been adversely impacted due to the outbreak of Covid-19, however, that may not absolve the appellant from its contractual obligations to pay the

lease rent. The respondents are not in the business of running a restaurant and therefore it is doubtful whether they can be mulcted with the risks

attendant to running that business. This Court concurs with the prima facie finding returned by the Arbitral Tribunal that the financial commitments of

appellant may not be dependent on the business operated by the appellant.

13. The security deposit furnished by the appellant to the respondents in terms of the lease agreements is required to be dealt with in terms of the

agreements. Thus the contention that the same may be adjusted from the arrears of rent cannot be accepted.

14. In view of the above, the present appeal is unmerited and is accordingly dismissed.

15. All pending application/s are also dismissed.

