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ADR S
ALTERNATIVE DISPUTE RESOLUTION SOCIETY

NATIONAL MEDIATION COMPETITION

27TH - 29TH MARCH, 2020



GENERAL INFORMATION

FINAL
SINGER INFRASTRUCTURE PVT. LTD. AND WINSOFT
TELECOMMUNICATIONS PVT. LTD.

Singer Infrastructure Pvt. Ltd. (SIPL) is in real estate business in India having its registered office at 13, Worli, Mumbai, Maharashtra. The company, through its wholly owned subsidiaries in various parts of the country, acts as an acquirer, buyer, developer, rehabilitator, redeveloper, seller, hirer, lease holder, manager, or otherwise deals in lands, dwelling houses, housing colonies, tenements, habitats, shops, offices, industrial estates, townships, settlements, hotels, holiday resorts, hostels, service apartments, club house, hospitals, health care centres, factories, warehouses, service centres, office premises, IT parks, lease of lands, flats and commercial establishments. Singer Consultants Pvt. Ltd. (SCPL) is the wholly owned subsidiary of SIPL and has its registered office at 34 New Complex, Hyderabad, Telangana. SCPL is the owner of Jubilee Plaza, 14 Old Road, Hyderabad, the property in question. It is one of SCPL's most expensive and exquisitely designed properties with five car parking slots. Jubilee Plaza has been encumbered by SCPL in favour of SIPL, which encumbrance is to be discharged through the rental income generated from Jubilee Plaza. SIPL aggressively advertised the Jubilee Plaza for rental purposes, complete with the term that SCPL would maintain the property, though it would be the tenant, of course, who would incur the maintenance charges.

WinSoft Telecommunications Pvt. Ltd. (WSTPL) is an IT company, having its registered office at 10, Golf Esplanade, Noida, Uttar Pradesh. WSTPL is on an expansion spree to set up offices in different parts of the country. In May 2018, Neena Elizabeth, the Managing Director of WSTPL came across the advertisement of SIPL for the letting out of Jubilee Plaza and was so

This problem is drafted by Dr. Aman Hingorani for the 1st National Mediation Competition, 2020 at Symbiosis Law School, Hyderabad. Names, characters, places, events, locales, and incidents are used in a fictitious manner and any resemblance to actual persons, living or dead, or actual events is purely coincidental. All rights concerning the problem shall rest solely with the drafter and the work shall not be reproduced or copied by any means, without the prior permission of the drafter.

impressed with the facilities offered by SIPL and SCPL that she decided to take the same on rent for office purposes of WSTPL in Hyderabad.

Neena Elizabeth, accompanied by her secretary, Sooraj Krishan, visited Jubilee Plaza on 10th June, 2018 where Sunny Singh, the manager of Jubilee Plaza, showed them the property. Neena Elizabeth found the property suitable for the office purposes of WSTPL. After a few rounds of negotiations, SCPL and WSTPL executed the lease deed on 25th June, 2018 with effect from 1st July, 2018 and duly registered the same.

The terms of the lease deed inter alia were that WSTPL would pay SCPL a monthly rental of INR 5 lakhs to be paid in advance by the 7th of every month for which the payment was due. The monthly rental for each of the five car parking slots was agreed to be INR 25,000/-. SCPL would raise the invoice for the maintenance charges by the 10th of every month, which was to be paid by WSTPL within a week. SIPL undertook that the property would be maintained by SCPL in the same habitable condition in which it was let out. The lease deed contained the standard clauses regarding payment of security deposit equivalent to three months rent which was liable to be forfeited in case of breach of contract, and a lock-in period of three years during which WSTPL could not terminate the lease. The lease could thereafter be terminated by either party by giving a three months notice in writing. The lease deed contained an arbitration clause to the effect that all differences and disputes arising under and in connection with the lease deed, including the validity, breach or termination thereof, shall be settled through arbitration by a sole arbitrator at Hyderabad in accordance with the Arbitration and Conciliation Act, 1996.

WSTPL shifted to Jubilee Plaza on 1st July, 2018. On 20th January, 2019, Varun Singer, the Managing Director of SIPL, went to the property for a courtesy visit on Neena Elizabeth. She seemed quite pleased with her new office which, according to her, helped the business of WSTPL grow so exponentially that soon there would be shortage of space. SCPL raised the maintenance invoices as provided by the lease deed which were always paid on time by WSTPL.

On 25th March, 2019, SCPL received a three months notice from WSTPL terminating the lease with effect from 30th June, 2019. The notice was copied to SIPL. WSTPL raised grievances regarding maintenance of the property and alleged breach of contract by SCPL. The notice stated that the central air conditioning of the premises was not working properly, which had to be then repaired by WSTPL at its cost. The notice stated that there was water logging in the common areas, and that SCPL was not sorting out the issue, even after repeated requests.

WSTPL stated in the notice that their clients frequently visit the office and such poor maintenance was creating embarrassment and was damaging its reputation. WSTPL called upon SCPL to adjust the rent for the months of April to June 2019 against the three months security amount.

On 1st April, 2019, SCPL replied to the notice denying the allegations, and claimed that the property had been maintained throughout. SCPL warned WSTPL that it was in breach of the terms of the lease deed, and that the three months security deposit stood forfeited. SCPL called upon WSTPL to pay rent for the unexpired period of the lock-in period, that is from April 2019 to June 2021 or face legal action. It was true that there was no provision for penalty or liquidated damages in the lease deed should WSTPL terminate the lease prior to the expiry of the lock-in period.

However, according to SCPL, there was no need for any such provision since should WSTPL terminate the lease prior to the expiry of the lock-in period, it would assume the rent for the unexpired lock-in period to be its debt, regardless of whether SCPL suffered any actual or real loss. The very purpose of a lock-in period was to ensure that the tenant stayed in the property during that period or made good all losses incurred by the landlord in case it wanted to vacate earlier. Otherwise, why have a lock-in period.

Meanwhile, WSTPL vacated Jubilee Plaza on 30th March, 2019, with Sooraj Krishan leaving the keys with the security guard of Jubilee Plaza employed by SCPL. At the time of leaving the premises, Sooraj Krishan happened to meet Sunny Singh, who derisively taunted him that he should tell his Madam, Neena Elizabeth, that she was not “Queen Elizabeth of England” and that she would be made to pay rent for the property up to June 2021. Upon learning this from Sooraj Krishan, Neena Elizabeth put out a tweet on 1 April 2019 that “Varun Singer and his group of companies are a bunch of thieves, who are only interested in extorting money for Jubilee Plaza, a third rate property”.

Varun Singer, SIPL and SCPL filed criminal complaint for defamation against Neena Elizabeth before the Magistrate at Hyderabad on 5th April, 2019. After recording pre-summoning evidence, the Magistrate has summoned Neena Elizabeth to stand trial where she has refuted the charge as “not guilty”.

Meanwhile, SIPL invoked the arbitration clause contained in the lease deed. The arbitrator entered into reference on 1st September, 2019. SIPL claimed that WSTPL had breached the terms of the lease deed resulting in forfeiture of the three months security deposit. SIPL, having security interest in Jubilee

Plaza and being materially affected by the premature termination of the lease deed, claimed the rent for the unexpired period of the lock-in period, that is from April 2019 to June 2021, along with interest @ 18 % p.a. on the basis that such amount was a debt.

WSTPL contested the claim before the arbitrator, firstly pointing out that SIPL was not party to the lease deed and as such could not invoke the arbitration clause. Further, the breach of contract was on part of SCPL, and hence there was no question of forfeiture of the security deposit or enforcing the lock in period. In any case, there was no provision of penalty or liquidated damages in the lease deed should WSTPL terminate the lease prior to the expiry of the lock-in period. SCPL had the vacant possession of Jubilee Plaza from 30th March, 2019, and there was no reason for it not to have let it out to another tenant so as to pre-empt or at least mitigate any actual loss.

At the request of the parties and without prejudice to the maintainability of the arbitration at the instance of SIPL, the arbitrator fixed 1st December, 2019 for the parties to jointly inspect the property. The parties did so. The property was lying vacant at that point of time. There was no water logging at the time of inspection, but then as WSTPL would contend, there is hardly any rain in the month of December in Hyderabad to cause water logging.

At the hearing before the arbitrator on 13th December, 2019, the parties expressed their willingness to explore the possibility of settlement through the process of mediation. Accordingly, the parties have been referred to mediation before a mediator jointly agreed upon by the parties.