



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF SEPTEMBER, 2022



BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

CMP NO. 461 OF 2022

BETWEEN:

CAMPUS STUDENTS COMMUNITIES PVT LTD
HAVING REGISTERED OFFICE AT
NO.33/5, FIRST AND SECOND FLOORS,
NATIONAL HIGH SCHOOL ROAD,
V.V. PURAM
BENGALURU 560004

REP BY ITS DIRECTOR
MR. SANJAY JALAN,
PH. 9945211014
EMAIL SANJAY@CAMPUSVILLE.IN

...PETITIONER

(BY SRI. ANUPAM AGARWAL.,ADVOCATE)

AND:

M/S BAGAMANE ENTERPRISES
A REGISTERED FIRM
PRESENTLY HAVING ITS OFFICE AT
NO.23/2, 7TH FLOOR, COFFEE DAY SQUARE,
VITTAL MALYA ROAD,
BENGALURU 560001

REP BY ITS PARTNER
SRI. NITIN BAGAMANE

...RESPONDENT

(BY SRI. A RAVISHANKAR.,ADVOCATE)

THIS CMP IS FILED UNDER SEC.11(6) OF THE ARBITRATION AND CONCILIATION ACT 1996, PRAYING TO EXERCISE THE POWER UNDER THE SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT, 1996 AND APPOINT AN ARBITRATOR AS PER THE AGREED TERMS OF THE LEASE DEED DATED 22/11/2016





EXECUTED BETWEEN THE PETITIONER AND RESPONDENTS AS DETAILED IN ANNEXURE NO.A TO ARBITRATE THE DISPUTE THAT HAVE ARISEN BETWEEN THE PETITIONER AND RESPONDENT And Etc.

THIS CMP COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs:

- a) *To exercise the power under the Section 11(6) of the Arbitration and Conciliation Act, 1996 and appoint an Arbitrator as per the agreed terms of the Lease Deed dated 22/11/2016 executed between the Petitioner and Respondents as detailed in Annexure No.A to arbitrate the dispute that have arisen between the Petitioner and Respondent.*
- b) *Cost of the Petition to the Petitioner.*
- c) *Grant any such other and further relief(s) to the petitioner as are just in the interest of justice and equity.*

2. The petitioner and respondent had entered into a lease deed on 22.11.2016. The same is governed by the arbitration clause in terms of Clause 28 which is extracted hereunder for easy reference:

28. ARBITRATION

28.1 The parties agree that in case of any dispute or difference arising out of this Lease Deed, the matter shall be referred to arbitration of an Arbitrator of the standing of not less than a retired High Court Judge. The Arbitration shall be as per the provisions of the



Arbitration and Conciliation Act, 1996, as may be amended from time to time. The decision of the Arbitration so the Arbitrator so appointed shali be binding upon the Lessor and the Lessee”.

3. There being certain disputes between the parties, the petitioner issued a dispute notice on 30.11.2021 and subsequently invoked arbitration clause vide notice dated 18.01.2022 and nominated its arbitrator. Said notice having been served, the respondent not having concurred, the petitioner is before this Court.
4. Sri.Anupama Agarwal, learned counsel for the petitioner submits that dispute between the parties is governed by an arbitration clause and the matter be referred to arbitration.
5. Per contra, Sri.A.Ravishankar, learned counsel for the respondent would submit that there will be no purpose which will be served by arbitration, inasmuch as the petitioner has not paid huge amounts of rentals about Rs.1,50,00,000/-. He submits that the arbitration proceedings are only an



hogwash to harass the respondent and even if a award is passed in favour of the petitioner, the petitioner would not be able to comply with the same.

6. In reply thereto Sri.Anupam Agarwal, learned counsel for the petitioner submits that the petitioner has invested more than Rs.Five crores on the property, as such, the petitioner has a serious interest and investment in the matter and the award which would be passed would be capable of being implemented.

7. Sri.A.Ravishankar, learned counsel for the respondent submits that he is unwilling to make payment of the cost of the arbitration and the matter could be referred to arbitration if the petitioner is willing to make payment of cost on behalf of respondent also.



8. Heard Sri.Anupam Agarwal.A.N, learned counsel for the petitioner and Sri.A.Ravishankar, learned counsel for the respondent.
9. The existence of the arbitration clause is not in dispute. There being unresolved disputes between the parties is also not in question. The only aspect is as regards cost of arbitration.
10. In terms of first proviso to Subsection (2) of Section 38 of the Arbitration and Conciliation Act, 1996 (for short 'A&C Act), if one of the party fails to pay his share of the deposit the other party may pay the same and the said payment shall be the cost of the proceedings which can be considered in terms of Section 31A of the A&C Act.
11. In the present case, the respondent not willing to make payment of the cost of the arbitration and the petitioner having come forward to make payment of



cost of arbitration, both on behalf of the petitioner and respondent, insofar as the claim of the petitioner is concerned, there being no counter claim proposed to be filed by the respondent, I pass the following:

ORDER

- i. The petition is allowed. Sri. Justice Ram Mohan Reddy, Former Judge of this Court is appointed as a sole arbitrator to arbitrate the dispute between the parties.
- ii. The arbitration to be carried out under the aegis of the Bangalore Arbitration Centre.
- iii. The petitioner is directed to make payment of cost of the arbitration cost on behalf of the petitioner and respondent to the arbitration centre.
- iv. In the event of any counter claim being raised by the respondent, then the respondent would be liable to make payment not only as regards the counter claim but also as regards his share which has been waived earlier.



- v. The cost which are paid by the petitioner shall form cost of the proceedings which is to be taken into consideration while orders under Section 31A of the A&C Act are being passed.
- vi. Registry is directed to forward a copy of this order to the Director, Bangalore Arbitration Centre.
- vii. All contentions are left open.
- viii. Registry is directed to return the original documents to the petitioner.

**Sd/-
JUDGE**

LN
List No.: 2 SI No.: 30