

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

ARB-149-2020 (O&M)

Date of Decision: March 03, 2021

Affordable Infrastructure and Housing Project Pvt. Ltd.

.....Petitioner

Versus

AEC Digital Studios Pvt Ltd.

.... Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Sameer Jain, Advocate
for the petitioner.

Mr. Akhil Sachar, Advocate
for the respondent.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through
video-conferencing on account of outbreak of pandemic COVID-
19.

Premises by way of commercial building known as
“AIHP Horizon” is owned by one company Segrow Bio Technics

(India) Private Limited for the purposes of carrying out business relating to IT/ITES and (hereinafter to be called as **'the Principal Lessor'**) and who sub leased it to M/s Affordable Infrastructure and Housing Projects Pvt. Ltd. (hereinafter referred as **'the petitioner'**) and who further in terms of this lease let out the premises (comprising of 7045 square feet of premises on the 4th floor) to M/s AEC Digital Studio Pvt. Ltd (hereinafter to be referred as **'the respondent'**) on the basis of unregistered sub-lease dated 06th February 2018 wherein terms and conditions of this letting out was enumerated. It is worthwhile to mention here that for the maintenance and services, another agreement was executed by the present respondent with one M/s IFS (Innovative Facility Solutions Private Limited (hereinafter to be referred as **'the service provider'**) and the present petitioner for the upkeep of the premises. The sub-lease so executed had a mandatory lock-in initial period of three years commencing from 06.02.2018 till February 2021. By virtue of this sub-lease the said sub-lessee

respondent was under obligation to pay for this office space rent @ Rs. 71/- per square feet totalling to Rs.5,00,195/- per month plus all additional taxes so applicable besides payment of monthly maintenance charges in terms of the maintenance agreement so executed between the parties as detailed above.

During the course of sub-lease a dispute arose between the petitioner and the respondent and in consequence of this, the petitioner filed instant petition under Section 11(6) of the Arbitration and Conciliation Act 1996 (in short '**the Act**') for appointment of Arbitrator for the dispute resolution provided in the sub-lease in terms of clause 9 of the same. The primary grouse of the petitioner is that they had to incur great costs in making the premises suitable for the needs and desires of the respondent as office space so provided was tailor made from dedicated architects, interior designers, workmen and installation staff so as to promote the nature of its customer's business together with uninterrupted water, power supply and parking business facilities etc.

The petitioner claimed that the respondent has come under financial distress and operations have come to standstill and after March 2020 had failed to pay the dues. Thus, in the light of the same had prayed for appointment of an Arbitral Tribunal in terms of the conditions enshrined in sub-lease.

The respondent in its stand took the plea that the alleged sub-lease dated 06.02.2018 is an unregistered and insufficiently stamped sub-lease which cannot be considered as evidence and has termed the claim of the petitioner of the dues as whimsical and as such no reliance can be placed on such a document. The respondent has denied the claim of the petitioner of having spent huge amount on the modelling of the premises by him and has rather tried to duck the claim by setting up a plea of spread of Covid 19 Pandemic resulting in **'Force Majeure'** and closure of commercial establishments including that of the respondent and by virtue of which they were precluded from using the premises and, therefore, claimed that they were under no obligation to pay for the dues so

claimed. The respondent has specifically raised the plea that the petitioner has obstructed them from entering the premises of lease and removing the costly articles and equipment and sought dismissal of the petition.

Heard Mr. Sameer Jain, Advocate for the petitioner and Mr. Akhil Sachar, Advocate for the respondent and perused the records.

Counsel for the two sides have during the course of arguments laid scathing attack on the opposite side and common reliance has sought to be placed on the judgments **SMS Tea Estate Private Limited Vs. Chandmari Tea Company Private Limited, 2011(4)** Supreme Court Cases 66, **Garware Wall Ropes Limited Vs. Coastal Marine Constructions and Engineering Limited** (2019) 9 Supreme Court Cases 209, **Vidya Drolia and others Vs. Durga Trading Corporation** 2020 SCC Online SC 1018 and **M/s N.N. Global Mercantile PVT. LTD. Vs. M/s Indo Unique Flame Ltd. and others** Civil Appeal Nos. 3802-3803/2020.

Appreciating the submissions, invariable admission by the two sides brings about that an agreement by way of contract was brought about between the petitioner and the respondent, which is bereft of any coercion, force or mis-representation but at the same time, the very enforceability of this sub-lease between the petitioner and the respondent is the residue that trickles down from these submissions and is the sole rallying point which deserves to be adjudicated.

Section 17 of the Registration Act 1908 by way of sub Section 1(d) provides for that lessees of immovable property from year to year or for any term exceeding one year or receiving a yearly rent needs to be compulsorily registered. It could not be displaced by counsel for the petitioner that sub-lease falls within this ambit of Section 49 of the Registration Act which ensures that no document which requires to be registered by way of sub-Section 17 could be received as evidence of any transaction affecting such property and in the instant case sub-lease dated 06.02.2018 for having been

engulfed within that preview cannot escape from this rigour of statute. Rather is an offence enabling the registering officers to commence prosecution in terms of Section 83 of the Registration Act. Looking from another angle Chapter IV by way of Sections 33 and 35 of the Indian Stamp Act 1899 qualifies that such an unstamped and unregistered document is liable to be impounded. Further that where any instrument/document is chargeable with duty lacks on it would not be admitted in evidence for any purpose by any person having by law or consent of the party authority to receive evidence nor such evidence can be acted upon by any authority. Thus, the stand of the respondent shows that they do not in their stand by way of response placed on the records admitted this document though much reliance and vehemence has sought to be placed on **M/s. N.N. Global Mercantile Pvt. Ltd (supra)** whereby counsel has sought to impress upon the Court that the law laid down in **SMS Tea Estates Private Limited and Garware Wall Ropes Limited cases (supra)** were in conflict with each other over the

bar contained in Section 35 of the Indian Stamp Act 1899 and if it would render an instrument not registered and stamped as being non-existent unenforceable, or invalid and has thus referred the question before a Larger Bench. This Court with due reverence to the cited ratios is of the view that the Stamp Act legislated by repealing and re-enacting for the enabling of working of stamp law by way of physical instrument as income generation for the State and for purposes to ensure authenticity, veracity of documents of such nature which might lead to innocuous situation. Admittedly, as is clearly conceded by Mr. Sameer Jain, learned counsel for the petitioner that the sub-lease was got executed an an agreement at Gurugram and, therefore, keeping in view the economic worth of such a document and property detailed therein it appears to be a devise intended by the petitioner side for not getting the document registered purely for monetary gains and, therefore, after having appeared and contested in an earlier petition under Section 9 of the Arbitration Act and Conciliation Act 1996

bearing ARB No. 3100/2020 titled as **M/s AEC Digital Studio Private Limited (AEC) Vs. M/s Affordable Infrastructure and Housing Projects Private Limited and another** which was filed on 10.09.2020 had chosen to come up before this Court in the instant petition, which has come about on 16.09.2020 fully aware of this piecemeal invocation of the relief and jurisdiction of the Court after a dispute had cropped upon between the two sides are matters which needs to be read between the lines.

In the light of the foregoing discussion, this Court holds that since the sub-lease dated 06.02.2018 is not only unregistered but insufficiently stamped, therefore, cannot be relied upon for the purposes of adjudication of the present petition and ratio in Garware case *ibid* appears to be convincing. Neither there is any admission of the contents and document in question by the respondent ensures that Court is left with no other option but to hold that the petitioner cannot seek relief in question and, therefore, the parties cannot enforce this agreement or seek any relief thereon and the matter stands

disposed off in those terms.

Records so called be sent back.

March 03, 2021

amit rana

(FATEH DEEP SINGH)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No