

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE DAY OF 28TH JULY, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 140 OF 2024

BETWEEN:

1. M/S. ARIA BREW AND DINE PRIVATE LIMITED
A REGISTERED COMPANY HAVING ITS OFFICE AT
NO.40/1, 3RD FLOOR
CENTURY CORBEL COMMERCIAL
SAHAKAR NAGAR MAIN ROAD
(60 FT ROAD), BENGALURU - 560 092
REPRESENTED BY ITS
MANAGING DIRECTOR
AND AUTHORIZED SIGNATORY
MR K.R. RAVISHANKAR

...APPELLANT

(BY SRI DHANANJAY V. JOSHI, SENIOR ADVOCATE A/W
SRI VACHAN H.U., ADVOCATE &
MS. KAVITHA DAMODARAN, ADVOCATE)

AND:

1. M/S. CENTURY CORBEL
A PARTNERSHIP FIRM
REPRESENTED BY ITS PARTNERS
MR. P ASHWIN PAI AND
MR. MAHESH PRABHU
2. MR P. ASHWIN PAI
AGED ABOUT 44 YEARS
S/O MR. SATISH P. PAI


YASHAVANT NARAYANKAR
Date: 2026.07.29
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3. MR MAHESH PRABHU
AGED ABOUT 47 YEARS
FATHER'S NAME NOT KNOWN
TO THE APPELLANT

RESPONDENT NOS. 1 TO 3 AT
NO.10/1, LAKSHMINARAYANA COMPLEX
GROUND FLOOR, PALACE ROAD
BENGALURU - 560 052

...RESPONDENTS

(BY SRI CHANDAN K., ADVOCATE FOR R-1 TO 3)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1)(A) OF COMMERCIAL COURTS ACT 2015, READ WITH ORDER 41 RULE 1 OF CPC PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 19.03.2024 ONE PASSED BY THE LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE, AT BENGALURU (CCH-86) (COMMERCIAL COURT) IN COM. O.S.NO.1789/2022 AND PASS AN APPROPRIATE ORDER TO DISMISS THE COUNTER CLAIM FILED BY THE RESPONDENTS HEREIN BEFORE THE TRIAL & COURT & ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 24.04.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE C.M. POONACHA)

1. The present appeal is filed by the plaintiff - M/s. Aria Brew and Dine Private Limited [**Aria**] under Section 13(1)(a) of the Commercial Courts Act, 2015 [**CC Act**] read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 [**CPC**] impugning the judgment and decree dated 19.03.2024 passed in Com.O.S.No. 1789 of 2022 [**impugned judgment**] by the Court of the LXXXV Additional City Civil and Sessions Judge at Bengaluru [**Commercial Court**].

2. The suit (Com.O.S.No.1789/2022) was filed by Aria - a company registered under the Companies Act, 2013 seeking for recovery of a sum of ₹6,75,38,342/- together with interest at 12% per annum as also costs. The respondents are the defendants in the suit. The 1st respondent - M/s. Century Corbel [**Century**] - a registered partnership firm - with the respondent Nos.2 and 3/defendant Nos.2 and 3 its partners, contested the suit and also made a counterclaim of a total sum of ₹30,28,24,219/- together with interest at 2% p.m. as also to direct Aria to vacate and hand over vacant possession of the suit property.

3. Aria was a tenant under Century from the year 2015. The suit claim amount as well as the counterclaim are arising out of the premises taken on lease by Aria from Century.

BRIEF FACTS:

4. Century is stated to be the absolute owner of a commercial building measuring 38,800 square feet formed out of site No. 1 to 5 and 14 to 15 and survey Nos.40/1, 40/2 and 42/2 of Byataranayapura Village, Yelahanka Hobli, Bengaluru North Taluk (presently situated at Sahakar Nagar Main Road, Bengaluru) [**suit property**]. It is a case of Aria that it has taken on lease a portion of the third floor of the suit property in July 2015. That it had carried out modification and furnishing works to the said lease property in view of the assurance by Century that they would execute the lease deed. That Century had permitted Aria to carry on business even without execution of a lease deed. That Aria had completed the entire modification and furnishing works by spending huge amounts of money without a lease deed having been executed. That on one pretext or the other, Century kept postponing the execution of the lease deed.

4.1. It is the further case of Aria that since it had spent huge amounts of money towards furnishing and modification works, Century was in a position to dominate the will of Aria and that Aria was coerced and induced into entering into the lease deed. That Century used its position to obtain an unfair advantage over Aria.

4.2. A registered lease deed dated 31.10.2018 was executed whereunder Aria took on lease 29,692 square feet of super built-up area on the third floor as well as 7,711 square feet of covered area in the terrace, in all measuring 37,403 square feet [**Suit A property/Leased Property**]. Under the said lease, the plaintiff paid a sum of ₹77,15,925/- as interest-free refundable security deposit, which was to be returned when Aria delivers vacant possession of the leased property to Century. It is a further case of Aria that it had issued several post-dated cheques to Century. That due to the undue influence exercised by Century, Aria was forced to enter into a registered Supplementary Agreement dated 02.11.2018 as well as a registered Modified Deed dated 30.12.2019. That although in the Supplementary Agreement and the Modified Deed, it was stated that Aria was required to pay Century a sum of ₹11,25,00,000/-, Century had not invested any money for modifications or furnishing. The Supplementary Agreement was

executed two days after the Lease Deed and there was no reason for the terms of the Supplementary Agreement not to be mentioned in the Lease Deed. That Aria had paid a sum of ₹5 crore to Century under the Modification Deed dated 30.12.2019, which was returnable by Century together with interest. Accordingly, Aria filed a suit seeking for recovery of the said sum of ₹5 crore paid under the Supplementary Agreement and the Modification Deed together with interest at 12% per annum on ₹5 crore from 12.12.2019 till 05.12.2022, that is for 2 years 11 months and 23 days which was quantified at ₹1,75,38,342/-. Accordingly, the suit was filed for recovery of a total sum of ₹6,75,38,342/-.

5. Century filed a written statement denying the case of Aria as well as making a counterclaim. It is a case of Century that an Agreement to Lease dated 09.06.2015 was entered into between the parties whereunder, Aria took on lease an extent of 28,995 square feet on the third floor of the suit property as well as 29 designated car parking slots in the suit property. That under the terms of the said lease, Aria had agreed to pay a sum of ₹11,59,800/- towards monthly rent and a sum of ₹2,000/- per car parking per month. That Aria was irregular in the payment of rent and had defaulted in the same.

5.1. That subsequently the parties entered into a registered Lease Deed dated 31.10.2018, whereunder, Aria took on lease the suit schedule "A" property. That the son of the director of Aria was a good friend of the 3rd defendant. A request was made on behalf of Aria to Century to allow modifications to be made in the leased premises. It was stated on behalf of Aria that they would make use of the rents payable by Aria to Century for carrying out modifications in the leased property and the said amount would be paid in terms of the Supplementary Agreement dated 02.11.2018. Hence, Century permitted Aria to carry out modification works out of the arrears of rent payable, which was a sum of ₹11,25,00,000/- and agreed to receive the same in a deferred manner in terms of the Supplementary Agreement.

5.2. That although in the plaint it was averred that Aria had given two cheques for ₹5 crore and ₹6.25 crore, the said cheques were not encashed. Hence, the Modified Deed was entered into whereunder in lieu of cheques of ₹5 crore given under the Supplementary Agreement, Aria gave a Banker's Cheque of ₹5 crore and that for payment of the sum of ₹6.25 crore, a post-dated cheque was given.

5.3. Century denied the assertion of Aria that there was any undue influence exercised while executing the Lease Deed, Supplementary Agreement as well as the Modification Deed. It is the case of Century that under the registered Lease Deed dated 31.10.2018, Aria took on lease the suit schedule 'A' property on a monthly rent of ₹15,43,185/- with an escalation of 15% every 3 years. That rent was to be paid on or before the 20th of every month. That in the event there was any delay in the payment of rent, the same would be paid together with compoundable interest at 2% per month. Aria was required to pay the electricity charges as per the meter reading and a sum of ₹10,000/- per month towards capital cost of providing DG set. Aria also agreed to pay a sum of ₹25,000 per month towards CAM charges.

5.4. That having regard to the request made by the son of the Director of Aria, Century agreed to permit Aria to utilise the arrears of rent payable under the Agreement of Lease dated 09.06.2015 to carry out modification works which was a sum of ₹11,25,00,000/- which was agreed to be paid by Aria to Century in terms of the registered Supplementary Agreement dated 02.11.2018. Towards payment of the said amount, Aria had given two postdated cheques of ₹5 crore and ₹6.25 crore to Century. However, since the cheque

issued towards payment of ₹5 crore was returned unpaid, the registered Modification Deed dated 30.12.2019 was entered into whereunder, Aria made payment of ₹5 crore (in lieu of the cheque which had returned unpaid) by way of banker's cheque and a fresh postdated cheque for ₹6.25 Crores was paid. That Aria had not paid rentals from 01.01.2019 and hence, it was liable to pay the same together with interest at 2% per month.

5.5. Accordingly, Century filed a counterclaim seeking for vacant possession of the suit property as well as a sum of ₹6,49,46,822/- towards arrears of rent from 01.01.2019 together with interest at 2% per month quantified at ₹4,08,20,554/- which was a cumulative sum of ₹10,57,67,376/-. Century also claimed a sum of ₹8,27,50,000/- towards the amount due and payable under the Supplementary Agreement along with interest at 2% per month which is quantified at ₹11,43,06,843/- thereby claiming a cumulative sum of ₹19,70,56,843/-. Hence, the counterclaim made by Century towards arrears of rent is a sum of ₹10,57,67,376/- as well as amounts payable under the Supplementary Agreement in a total sum of ₹19,70,56,843/-. Hence, the counterclaim was made for a total sum of ₹30,28,24,219/-.

6. Consequent to the pleadings of the parties, the Commercial Court framed the following issues and additional issues:

ISSUES

“1) Whether the plaintiff proves that he is entitled to recover an amount of Rs.6,75,38,348/- in pursuance of supplementary agreement dated 02.11.2018 from defendants along with interest @ 12% per annum from the date of execution of supplementary agreement?

2) Whether the defendants prove that the suit filed by the plaintiff is barred by law of limitation and thereby liable to be dismissed?

3) Whether defendants further prove that plaintiff is liable to pay a sum of Rs.6,49,46,822/- towards arrears of rent and interest on the said arrears of rent due thereon amounts to Rs.4,08,20,554/- totally Rs.10,57,67,376/- with future rent from 01.02.2023 and 2% monthly compounded interest thereon till plaintiff hand overs schedule C property to the defendants?

4) Whether defendants further prove that plaintiff liable to pay a sum of Rs.8,27,50,000/- towards outstanding amount is due of as per supplementary agreement dated 02.11.2018 along with 2% monthly compoundable interest totally amounting to Rs.19,70,56,843/- with future interest?

- 5) Whether counter claim of defendants is barred by law of limitation?
- 6) Whether plaintiff proves that the counter claim of defendants is not at all maintainable?
- 7) What order or decree?

ADDITIONAL ISSUES

- 1) Whether 1st defendant proves that he is entitled for ejectment of plaintiff from suit schedule "A" property as claimed?"

7. The Director of the appellant was examined as PW1 and Exs.P.1 to 50 were marked in evidence. The defendant No.2 was examined as DW1 and Exs.D1 to 5 were marked in evidence. Exs.D.6 to 8 were marked during the cross-examination of PW1. Vide the impugned judgment, the Commercial Court dismissed the suit and decreed the counter-claim as noticed below.

IMPUGNED JUDGMENT:

8. The Commercial Court while considering the Issue No.1 as to whether the Aria proved that it is entitled to recover a sum of ₹6,75,38,348/- together with interest @ 12% per annum pursuant to the Supplementary Agreement dated 02.11.2018 from Century held that Aria did not prove the contention regarding undue

influence, coercion, distress etc., having regard to the admitted position that the Lease Deed (Ex.P1), the Supplementary Agreement (Ex.P2), and the Modification Deed (Ex.P3) were registered documents. It was also noticed that the contentions regarding undue influence were taken almost 5 years after execution of the registered agreements. It was noticed that the Director of Aria was educated and capable of communicating in English.

9. It was also noticed by the Commercial Court that Aria never disclosed regarding the Agreement to lease dated 09.06.2015 (Ex.D4). Further, although Aria had occupied the premises during the year 2015, the contention that it was liable to pay rent from the date of the Lease Deed dated 31.10.2018 (Ex.P1) was untenable. That Aria did not establish the payment of rents and the bank statements were not produced. That only a statement certified by the Chartered Accountant was produced vide Ex.P49. Hence, the Commercial Court held that Aria did not demonstrate that Century was required to refund a sum of ₹5,00,00,000/- paid under the Supplementary Agreement and Modification Deed (Ex.P2 and Ex.P3, respectively).

10. While considering Issue No.3 as to whether Aria was liable to pay arrears of rent, as sought for in the counterclaim, it was noticed that the statement showing the arrears of rent and other dues (Ex.D5) disclosed that Aria was due in a sum of ₹8,27,50,000/- after deducting a sum of ₹5 crore paid by Aria to Century. It was further noticed that a sum of ₹5 crore paid by Aria was by virtue of the Supplementary Agreement (Ex.P2) and not the arrears of rent in terms of the Lease Deed (Ex.P1). The Commercial Court further noticed that the certificate issued by the Chartered Accountant (Ex.P49) had not been proved by examining the Chartered Accountant. It was noticed that Aria had not paid rent during the duration of the COVID-19 pandemic and held that it was liable to pay rent for the said period as well. Hence, in terms of the rent stipulated under the Lease Deed (Ex.P1), the Commercial Court has answered Issue No.3 in the affirmative and held that Aria is liable to pay the said amounts together with interest @ 2% per month.

11. While considering Issue No.4 with regard to the claim made by Century for payment of the sum of ₹8,27,50,000/- along with 2% monthly compoundable interest in terms of the Supplementary Agreement dated 02.11.2018, the said amount having been

claimed in terms of Ex.P2 and Ex.P3, it was held that the plaintiff was to pay the said amount to Century.

12. The Commercial Court has also directed Aria to quit, vacate and hand over vacant possession of the suit property forthwith to Century.

13. Accordingly the Commercial Court dismissed the suit and decreed the counterclaim. The operative portion of the judgment of the Commercial Court is as under:

“ORDER

The suit filed by the plaintiff against defendants jointly and severally for recovery of a sum of Rs.6,75,38,342/- along with current interest at the rate of 12% p.a from the date of suit till realization of the amount is dismissed with cost.

Further counter claim of defendants for ejection of the plaintiff from plaint "A" schedule property and recovery of arrears of rent of Rs.6,49,46,822/- due from 01.01.2019 along with interest on the said arrears of amount which is a sum of Rs.4,08,20,554/- totally Rs.10,57,67,376/- with future rent from 01.02.2023 and 2% monthly compounded interest thereon till realization of the arrears of rent and further outstanding amount due and payable by plaintiff to the defendants under supplementary agreement along with 2% monthly compoundable interest in total a sum of Rs.19,70,56,843/- with future monthly compound interest at 2% p.m. on total due amount from

01.02.2023 till realization of the amount is decreed with costs.

Further plaintiff is directed to quit, vacate and handover the possession of schedule "A" property to the defendants forthwith."

14. Being aggrieved, Aria has filed the present appeal assailing the decreeing of the counterclaim. It is pertinent to note here that Aria had also filed an appeal being aggrieved with the dismissal of the suit (COMAP 130/2024), which has been dismissed as withdrawn by the order dated 25.02.2026.

15. Along with the above appeal, Aria has filed I.A.No.1/2024 under Order XLI Rule 27 of the Code of Civil Procedure, 1908 **[CPC]** seeking leave to produce the following documents:

- i. Extract of the bank statement of Aria held at Karnataka Bank for the period 24.03.2016 to 03.01.2020
- ii. Extract of the bank statement of Aria held at Karnataka Bank for the period 14.10.2016 to 28.03.2024.
- iii. Extract of the bank statement of Aria held at Axis Bank for the period 03.07.2017 to 15.07.2019.

- iv. Extract of the bank statement of the Director of Aria held at Axis Bank for the period 21.04.2023 to 19.05.2023.
- v. The bank account statement of the Director of Aria held at HDFC Bank for the period 15.07.2023 to 18.03.2024.
- vi. Extract of the bank statement of Aria held at HDFC Bank for the period 18.07.2019 to 12.07.2021.

16. Century has filed I.A.No.3/2024 under Section 151 of CPC to directing Aria to pay the sum of ₹1,19,25,727/- towards rent, maintenance, electricity charges and capital cost of DG set in terms of the Lease Deed dated 31.10.2018, which are due from February, 2023 till the date of the application.

17. The respective parties have filed objections to the aforementioned applications.

CONTENTIONS:

18. The learned Senior Counsel appearing on behalf of Aria, placing reliance on the bank account statements produced along with I.A.No.1/2024 contends that Aria has paid a total sum of

₹9,43,10,231/- to Century (from 24.03.2016 to 28.03.2024) and hence the decreeing of the counterclaim is erroneous. It is further contended that although the statement of the Chartered Accountant (Ex.P49) had been produced by Aria before the Commercial Court, the same has been disbelieved since the bank account statements were not produced. Hence, Aria has filed I.A.No.1/2024 producing the bank account extracts, which are in support of the payments as already reflected in Ex.P.49. That the documents produced along with I.A.No.1/2024 are not new documents in view of the fact that the payments mentioned in the said statement of account have already been set out in Ex.P.49. That since Ex.P.49 has not been accepted by the Commercial Court, I.A.No.1/2024 has been filed together with the bank account extracts.

18.1 With regard to I.A.No.3/2024 filed by Century, it is submitted that Century having only made a claim of arrears of rent in the counterclaim made before the Commercial Court, it is not entitled to seek for recovery of the amount towards maintenance, electricity charges and capital cost of DG set as is sought to be done vide I.A.No.3/2024. Hence, learned Senior counsel seeks for allowing of I.A.No.1/2024 as well as the appeal, and dismissal of I.A.No.3/2024.

19. Per contra, learned counsel for Century, justifying the counterclaim made before the Commercial Court, contends that having regard to the fact that under the terms of the Lease Deed dated 31.10.2018, since Aria is liable to pay rent, maintenance, electricity charges and capital costs of DG, Century is entitled to seek for recovery of the amounts after deducting the amounts paid by Aria. Hence, learned counsel seeks for dismissal of the above appeal.

20. Both the learned counsels have filed various memos of calculation placing on record their respective claims.

DISCUSSION AND REASONING:

21. Under the terms of the Lease Deed – Ex.P1, Aria had agreed to pay Century the following amounts every month:

- a. ₹15,43,185/- (towards rent), (₹13,65,832/- with respect to 29,692 sq.ft. on the third floor, and ₹1,77,353/- for 7,711 sq.ft. on the terrace);
- b. The rent and other charges were payable on or before the 20th of every month. In the event of delay, interest was to be paid at 2%, compounded every month;

- c. The said monthly rent was subject to 15% escalation every three years;
- d. ₹10,000/- per month towards Capital Cost of the D.G. set;
- e. ₹25,000/- per month towards maintenance;
- f. The charges towards electricity were to be paid as per consumption;
- g. The lease was for a period of 09 years commencing from 01.01.2019 with an option to the parties to renew the same for a further period of six years on mutually agreeable terms;
- h. Security deposit amount of ₹77,15,925/- was paid which was required to be refunded by Century when vacant possession of the lease premises was handed over by Aria.

22. Under the terms of Supplementary Agreement dated 02.11.2018 (Ex.P2), it was agreed between the parties that Aria having requested for modifications and furnishings to suit its requirements along with an extended rent free period, had undertaken to reimburse Century by way of additional non-refundable deposit. That the rent free period was extended from 01.09.2018 to 31.12.2018 and the additional non-refundable deposit agreed to be paid by Aria to Century was ₹11,25,00,000/-.

The said amount was paid by two cheques: a) Cheque dated 30.06.2019 for ₹5 crore; b) Cheque dated 30.09.2019 for ₹6,25,00,000/-. It was agreed between the parties that penal interest payable would be 2% per month on a monthly compounded basis, if there was a dishonour in payment of the amounts under the said cheques.

23. Under the terms of the Modification Deed dated 30.12.2019 (Ex.P3), in lieu of Aria having defaulted in payment of the amounts, in terms of the Supplementary Agreement - Ex.P2, Aria agreed to pay the sum of ₹5 crore vide banker's cheque dated 12.12.2019 (which was in lieu of the cheque dated 30.06.2019 for ₹5 crore under the terms of the Supplementary Agreement). It was also agreed between the parties that in lieu of the cheque for ₹6.25 crores dated 30.09.2019 (handed over under the terms of the Supplementary Agreement), Aria handed over another Cheque dated 30.06.2020 for the said amount of ₹6.25 crore.

24. It is clear from the averments made in the plaint that, Aria seeks for refund of the sum of ₹5 crores paid under the Supplementary Agreement- Ex. P2. In other words, it seeks to resile from the terms of the Supplementary Agreement - Ex.P2 and

the Modification Deed Ex.P3. It is the contention of Aria that, Century had exercised undue influence while entering into the said agreement.

25. However, as noticed by the Commercial Court, the said Lease Deed (Ex.P1), Supplementary Agreement (Ex.P2) and Modification Deed (Ex.P3) are registered documents. In this context, it is pertinent to note that the Supreme Court in the case of ***Prem Singh and Others vs. Birbal and Others***¹, considering a presumption of valid execution of a registered document held as under:

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, *prima facie* would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

26. Further, apart from the testimony of PW1 who was a Director of Aria, no other evidence of any other witness has been adduced by Aria before the Commercial Court. No other contemporaneous documents have been produced to demonstrate that Century exercised undue influence over Aria at the time of execution of the Supplementary Agreement and the Modification Deed. The

¹ (2006) 5 SCC 353

Commercial Court, noticing that the documents in question were registered documents and the representative of Aria being educated held that Aria failed to prove Issue No.1 and demonstrate that the documents in question were vitiated by fraud and/or coercion. Hence, no grounds are made out to interfere the findings of the Commercial Court with regard to the execution of the Supplementary Agreement and the Modification Deed.

27. The Commercial Court, vide the impugned judgement, directed Aria to forthwith quit, vacate and hand over vacant possession of the Schedule 'A' property. The said finding of the Commercial Court has not been seriously impugned by Aria in the course of submissions made in the present appeal.

28. In any event, the Lease Deed (Ex.P1) was for a period of 9 years, commencing from 01.01.2019. Clause 8.1 of the Lease Deed entitles Century to terminate the lease if Aria defaults in payment of rent for a continuous period of two months. The said clause 8.1 reads as under:

"8.1 In the event Lessee defaults in payment of Rent or any other charges continuously for 2 months, then the Lessor shall issue a notice in writing to the Lessee seeking payments immediately from the date of receipt of such notice. Upon the Lessee not making payment aforesaid, the

Lessor at its discretion shall be entitled to either deduct the amount payable by the Lessee to the Lessor from the Security Deposit and terminate the lease of the Schedule 'B' Premises and take over the physical possession of Schedule 'B' Premises terminating the lease deed OR charge interest on the Rent due at the rate of 2% per month on monthly compoundable basis till the date of payment."

29. Legal notice dated 19.06.2020 (Ex.P4), was issued on behalf of Aria to Century, *inter alia*, calling upon Century to return ₹5 crore collected under the Supplementary Agreement as also the post-dated cheque dated 30.06.2020 for ₹6.25 crore given under the Modification Deed. The reply dated 06.08.2020 (Ex.P5), was issued on behalf of Century in reply to the legal notice - Ex.P4. Vide the said reply, at Para 2(f), Century had specifically contended that Aria had defaulted in the payment of rents. Further, at Para 2(g) of the said reply, Century had specifically invoked Clause 8.1 of the Lease Deed and called upon Aria to vacate and hand over vacant possession of the lease premises. The relevant portions of the said reply notice dated 06.08.2020 are as under:

"f. Further my client submits that, apart from payment of rents your client is also liable to pay, GST, maintenance charges, electricity charges and other outgoings, as agreed. As per clause 8.1 of the lease deed, my client is entitled to terminate the lease deed in the event your client defaults in payment of rent for a continuous period of two [2] months. In the present case, your client has not paid rents regularly from the date of leasing the premises

and whenever paid, has paid only some portion of the rent and not in full. xxxxxxxx”

“g. In the present case, as explained above, your client has failed to pay rents for a very long time as per clause 8.1 my client has ample right to terminate the lease forthwith and takeover possession of the leased premises, without any notice. Further as per clause 5 of the supplementary agreement dated 02.11.2018, non-payment dues as per the said supplementary agreement would also entitle my client to terminate the lease deed dated 31.10.2018. Hence my client is exercising the said right under this reply notice and requests your client to handover vacant possession of the leased premises, forthwith upon receipt of this reply notice. xxxxxxxx”

“In the above-mentioned circumstances, I on behalf of my client hereby call upon your client to comply with the following:

1. Pay a sum of. Rs. 17,46,86,972/- (Rupees Seventeen Crores Forty Six Lakhs Eighty Six Thousand Nine Hundred and Seventy Two Only) along with interest at the rate of 24% per annum from 01.07.2020 till the date of payment within 15 days from the date of receipt of this notice.

2. To quite, vacate and handover the vacant possession leased premises with all its furniture's and fixtures intact, immediately upon receipt of this reply notice as the tenancy existed between your client and my client under Lease Deed dated 31.10.2018 is hereby determined/terminated with immediate effect as per the terms of clause 8.1 for non-payment of rents from January 2019 and for breach of the terms of the said Lease Deed, non-compliance of Supplementary Agreement dated 02.11.2018, which agreement is in continuation with the above lease deed.

3. To continue to pay rents towards damages till the date of delivering vacant possession as demanded above.

4. To not dismantle, remove, alter or create any kind of encumbrance or charge over the fixtures and furniture's available in the premises.

In the event your client fails to comply with the above, my client shall be constrained to initiate appropriate legal action for recovery of dues and also vacant possession of the leased premises at the cost and risk of your client.”

(emphasis supplied)

30. Vide its response dated 19.08.2020 (Ex.P-6) issued consequent to the reply - Ex.P-5, Aria called upon Century to amicably resolve the matters between the parties.

31. In the counterclaim, Century had specifically called upon Aria to quit, vacate and hand over vacant possession of the lease premises. The Commercial Court had decreed the counterclaim and ordered Aria to vacate and hand over vacant possession of the lease premises.

32. It is clear and forthcoming from the material on record that Aria has been irregular in the matter of payment of rents. Having regard to Clause 8.1 of the Lease Deed, the finding of the

Commercial Court directing Aria to vacate the lease premises cannot be faulted.

33. Hence, it is to be adjudicated with regard to the arrears of rent payable by Aria from 01.01.2019 up to the date of filing of the counterclaim.

REG CLAIM MADE FOR ARREARS OF RENT:

34. Under the terms of the Lease Deed (Ex.P1), Aria was liable to pay monthly rent of ₹15,43,185/- apart from other charges. The claim of Century for arrears of rent is from 01.01.2019. Hence, Aria ought to have produced material on record to demonstrate that it had paid the rent and other charges in terms of the Lease Deed (Ex.P1) from 01.01.2019.

35. In the counterclaim, Century had made two claims namely, the first one towards arrears of rent from 01.01.2019 to the date of counterclaim together with interest at 2% compounded on a monthly basis the second claim was towards the amounts due and payable arising out of the registered Supplementary Agreement (Ex.P2) and the Modification Deed (Ex.P3).

36. With regard to the claim made towards arrears of rent from 01.01.2019, it is a contention of Century that the rent for the entire period from 01.01.2019 till the date of counterclaim, i.e., 06.02.2023, was payable and the same was claimed in a sum of ₹6,49,46,822/-. Interest on the arrears of rent was claimed at 2% per month and the same was quantified as ₹4,08,20,554/- up to 31.12.2022. Future interest was claimed from 01.01.2023 at 2% compounded monthly.

37. Aria claimed to have made payment in terms of the Chartered Accountant Certificate (Ex.P49). The details of the amount as enumerated in Ex.P49 are as under:

“Statement of Total Amounts Paid by M/s. Aria Brew & Dine Private Limited, to M/s. Century Corbel from 24.03.2016 to Till Date from Various Bank Accounts

Sl.No.	Nature of Payments/Paid Towards/From Bank A/cs.	Amount
I)	Advances	
1	Karnataka Bank - OD A/c No.: 0627000600108210	₹1,51,87,505
2	Axis Bank A/c No.: 915020031207817	₹1,13,26,500
3	Karnataka Bank Current A/c No.: 0622000100306301	₹ 24,00,000
	Total Advances Paid to Century Corbel	₹2,89,14,005
II)	Rent	
1	Karnataka Bank - OD A/c No.: 0627000600108210	₹3,62,09,800
2	Karnataka Bank Current A/c No.: 0622000100306301	₹21,42,459
3	HDFC-Bank A/C No.: 50200033580682	₹21,42,459

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4	Axis Bank A/c No.: 915020031207817	₹1,06,06,332
5	Axis Bank Ravishankar Personal A/c No.: 052010100581462	₹35,99,326
6	HDFC-Bank Ravishankar Personal A/c No. : 99999741545718	₹ 1,58,98,285
	Total Rent Paid to Century Corbel	₹7,37,22,450
III)	DG Charges	
1	Karnataka Bank OD A/c No.: 0627000600108210	₹1,53,400
2	Karnataka Bank - Curent A/c No.: 0622000100306301	₹11,800
3	HDFC-Bank A/C No.: 50200033580682	₹59,000
4	Axis Bank A/C No.: 915020031207817	₹11,800
5	HDFC-Bank Ravishankar Personal A/c No.: 99999741545718	₹94,100
	Total DG Charge Paid to Century Corbel	₹3,30,100
IV)	Electricity Charges	
1	HDFC Bank A/c No.: 50200033580682	₹10,20,808
2	HDFC-Bank Ravishankar Personal A/c No.: 99999741545718	₹12,45,033
	Total Electricity Charge Paid to Century Corbel	₹22,65,841
V)	CAM Charges	
1	HDFC Bank Ravishankar KR Personal A/c. No.: 99999741545718	₹2,32,000
	Total CAM Charges Paid to Century Corbel	₹2,32,000
VI)	Additional Amount Paid	
1	Banker Cheque No. 3830 Dated 12.12.2019	₹5,00,00,000
	Total Additional Amount Paid to Century Corbel	₹5,00,00,000
	Total Amounts Paid	₹15,54,64,396
(Rupees Fifteen Crore Fifty-Four Lakhs Sixty-Four Thousand Three Hundred Ninety-Six Only)		

38. It is forthcoming that, as per Ex.P49, a sum of Rs.2,89,14,005/- is shown as having paid towards advances; a sum of ₹7,37,22,450/- was claimed as having been paid towards rent; ₹3,30,100/- towards D.G. charges; ₹2,32,000/- towards maintenance charges; ₹22,65,841/- towards electricity charges. In addition, the amount paid in terms of the Supplementary Agreement (Ex.P2) that is a sum of ₹5 crore was also stated in Ex.P49, as also a sum of ₹2,89,14,005/- towards advances.

39. It is pertinent to note that along with Ex.P49, Aria has also furnished the details of payment which has been paid under the various heads in terms of Ex.P49 as an Annexure to the said Ex.P-49, whereunder, the details/particulars of the payments that have been made from various Bank accounts have been set out.

40. With regard to advances, it is forthcoming that the three payments that have been made towards advances, being a cumulative sum of ₹ 2,89,14,005/- have been made between the period 24.03.2016 and 29.09.2018, which is prior to the lease dated 31.10.2018-Ex.P1. Hence, the said payments are to be construed as being with regard to the prior agreement of lease dated 09.06.2015. Accordingly, the said amount is not taken into

consideration while adjudicating upon the arrears payable in terms of the lease deed dated 31.10.2018-Ex.P1.

41. In this context, as already noticed above, vide the earlier Agreement to Lease dated 09.06.2015, Aria had taken on lease an extent of 28,995 Sq. ft. in the third floor of the suit property as well as 29 designated car parking slots on a monthly sum of ₹11,59,800/- towards rent and ₹2000/- per car parking slot per month. However, in the subsequent Lease Deed dated 31.10.2018-Ex.P1, Aria has taken a total extent of 29,692 Sq. ft. in the third floor and 7,711 Sq. ft. on the terrace-Suit 'A' (Schedule 'B' property as per the Lease Deed) property on lease on a monthly rent of ₹15,43,185/- apart from other charges. The leased premise in the suit are in terms of the Lease Deed- Ex.P1. Hence, the question of adjudicating the arrears payable with respect to the earlier Agreement to Lease dated 09.06.2015 does not arise.

42. It is also pertinent to note that it is the case of the parties that when they entered into the subsequent Lease Deed (Ex.P1), a fresh area that was taken on lease Suit 'A' property/Leased Property has been let out and the rent free period was agreed up to 31.12.2018. It is under the said circumstances that rent is being

claimed by Century from 01.01.2019. Further, it is the case of Century that the arrears of rent payable at the time of entering into the Lease Deed (Ex.P1) in terms of the earlier Agreement to Lease -Ex.D4 was utilised by Aria for renovation of the Suit 'A' property, which was in a total sum of ₹11,25,00,000/-, which had been agreed to be paid by Aria to Century in terms of the Supplementary Agreement (Ex.P2) and Modification Deed (Ex.P3). Under the said circumstances, the question of considering any payments made prior to 31.10.2018 towards arrears of rent or other charges payable pursuant to the Lease Deed-Ex.P1 does not arise.

43. The total rent paid in terms of Ex.P49, is a cumulative sum of Rs.7,37,22,450/-. All the said amounts have been paid subsequent to 01.01.2019 and the last payment of rent in terms of the Annexure to Ex.P49 is on 28.12.2023.

44. It is also pertinent to note that in the counterclaim made by Century, only arrears of rent have been claimed and Century has not made a claim for payment of other charges (Electricity, Maintenance charges, D.G. set etc) in terms of the Lease Deed-Ex.P1. It is further pertinent to note that whilst Century has claimed a sum of Rs.6,49,46,822/- towards arrears of rent from 01.01.2019

together with interest at 2% per month on the said amount, which interest has been quantified at Rs.4,08,20,554/- as on date of counterclaim (Counterclaim was filed on 06.02.2023), in the said counterclaim, Century has not furnished details/particular as to the basis of the said claim. However, Century has produced a statement-Ex.D5 in justification of the amounts claimed by it. The summary of rental dues in terms of Ex.D-5 are as under:

“Summary of Rental dues of ARIA Brew & Dine Pvt Ltd

Sl. No.	Particulars	Amount in Rs. Jan 19,2023		
		Dues from Jan 01,2019 to Jan 31,2023		
		Amount Due	Taxes	Total Dues
1.	Rent Receivable	7,68,50,616	1,38,33,159	9,06,83,775
2.	Car Park charges receivable	-	-	-
3.	Common Area Maintenance Charges	12,00,000	2,16,000	14,16,000
4.	Bescom and DG Charges (incl electricity Charges)	2,62,64,397	88,200	2,63,52,597
5	Water charges upto Dec 2012	-	-	-
6	Security Deposit	7,57,125	-	7,57,125
	Total Receivable - A	10,50,72,138	1,41,37,359	11,92,09,497
1	Less: Amount received (Including Security Deposit) - B	5,42,62,675	-	5,42,62,675
	Balance receivable - C (A-B)	5,08,09,464	1,41,37,359	6,49,46,822
	Interest due on outstanding amount (i)	4,08,20,554	-	4,08,20,554
	Interest due on delay in paying Security Deposit (II)	-	-	-

	Interest due on outstanding amount - D (I+II)	4,08,20,554	-	4,08,20,554
	Total Amount due (C+D)	9,16,30,017	1,41,37,359	10,57,67,876

45. It is the contention of Aria that there are many errors in Ex.D5 and the same does not take into account all the payments made by Aria. It is sought to be pointed out that although in terms of the Lease Deed-Ex.P1, the security deposit amount is ₹77,15,925/- , in Ex.D5 the security deposit amount is mentioned as ₹7,57,125/-. It was also contended that the amounts mentioned in Ex.D5 are in excess of the amounts sought for in the counterclaim, inasmuch as, while in the counterclaim, only arrears of rent are sought, Ex.D5 also includes amounts towards common area maintenance as well as electricity charges. On the other hand, it is the contention of Century that Aria has failed to prove the payment of rent and other charges in terms of the Lease Deed-Ex.P1. It is contended that PW.1 in the cross-examination has stated that he is not aware of the accounts, and when questions with regard to the claims of Aria were put to PW.1, he did not specifically reply to the same and merely stated that he had to check with the accounts department.

46. Another aspect that is required to be looked into is the period for which the arrears of rent could be claimed. In this context, it is

noticed that in the counterclaim, arrears of rent was claimed from 01.01.2019. The counterclaim was filed on 06.02.2023. It is forthcoming from Ex- D5, that amounts have been claimed upto 31.01.2023 i.e., upto the date of filing of the counter claim. Hence, the arrears of rent is to be calculated from 01.01.2019 upto 31.01.2023, which is a period of 49 months.

47. It is also pertinent to note that vide the said counterclaim, Century also sought for a direction to vacate and hand over possession of the suit property, which has been granted by the Commercial Court vide the impugned judgment. As noticed above, vide the reply notice dated 06.08.2020 (Ex.P5) Century had specifically stated that it is exercising its right of termination of the lease under Clause 8.1 of the Lease Deed.

48. Hence the tenancy of Aria has been terminated from the date of receipt of Ex.P5. The monthly amounts payable have been claimed in the counterclaim up to the date of filing of the counterclaim. To claim the subsequent amount, it is open to Century to initiate such other proceedings as permissible under law.

49. It is also pertinent to note here that Century has filed I.A.No. 3 of 2024 to direct the Aria to pay Century a sum of ₹ 1,19,25,727/-. The said amount is claimed towards “rent, lumpsum amount from maintenance, electricity charges and capital cost of D.G for the suit schedule ‘B’ property as per the Lease Deed dated 31.10.2018, which is due from February-2023, till date.” The said application was filed on 02.07.2024. It is clear from a plain reading of the said application that Century is seeking to claim amounts from the date of the counter claim, till the date of filing of the application. Having regard to the fact that the amounts claimed under the applications are subsequent to the filing of the counter claim, as already noticed above, it is open for Century to initiate such other proceedings as permissible under law to claim the said amount. This is also due to the fact that the tenancy of Aria has been terminated upon the date of receipt of Ex.P5. Accordingly the relief sought for in the said application cannot be granted.

50. As already noticed above, that in justification for the amounts claimed by it as well as in response to the claims made by Century in the counterclaim, Aria has only produced the Chartered Accountant Certificate-Ex.P49, which also contains an annexure furnishing details of payments as noted in Ex.P49 Further, apart

from the statement of account produced at Ex.D5, Century has not produced any other document in justification of its claim.

51. I.A.No.1/2024 is filed by Aria under Order XLI Rule 27 of the Code of Civil Procedure **[CPC]** to furnish the Bank statements to corroborate the payments in Ex.P49. In the annexure produced along with Ex.P49, the details/particulars of the payments, which have been mentioned in the Chartered Accountant Certificate Ex.P49 have been furnished. Hence, for the purpose of consideration of the payments made by Aria, the annexure filed along with Ex.P49 has been considered. Under the circumstances, the question of consideration of the documents filed along with I.A.No.1/2024 does not arise.

52. I.A.No.1/2026 is filed by Century under Order XLI Rule 27 read with Section 151 of the CPC, to produce various documents as enumerated in the said application. It is forthcoming from a perusal of the documents produced along with the said application that they are invoices raised by Century on Aria towards energy consumption charges. Amounts towards electricity consumption charges have not been claimed in the counter claim. In view of the same, the question of permitting Century to produce the documents

as sought for in I.A.No.1/2026 does not arise. Accordingly, the said application is to be dismissed.

53. At this juncture, it is also pertinent to notice that in the present appeal, I.A.No.2/2024 was filed seeking for stay of the impugned judgment. This Court vide order dated 20.06.2024 while disposing of I.A.No.2/2024, *inter alia* ordered that Aria has to continue to pay the monthly rent in terms of the Lease Deed dated 31.10.2018 till further orders.

54. The claim for arrears for rent is from 01.01.2019. The counterclaim was filed on 06.02.2023. Hence, the rent claimed in the counterclaim is for a total period of 49 months (period calculated upto 31.01.2023).

55. Aria has sought to contend that the rent during the onset of the period of the COVID-19 pandemic is required to be excluded. However, it is pertinent to note that Clause 10 of the Lease Deed (Ex.P1) contains a Force Majeure clause, which requires a party to give a notice within seven days of the occurrence of the Force Majeure. Admittedly, in the present case, no such notice has been given by Aria. The said contention was also considered by the Commercial Court, which also noticed the fact that no notice has

been issued seeking exemption of rent during the period of COVID-19 pandemic. Hence, the finding of the Commercial Court, refusing to waive rent during the said period cannot be faulted and the contention of Aria in that regard is to be rejected.

56. The rent payable was ₹15,43,185/- per month for the first three years i.e., upto 31.10.2021 (36 months from 01.11.2018, since the date of the lease is 31.10.2018). Aria is also liable to pay Goods and Service Tax [**GST**] of 18% on the monthly rent. Accordingly the monthly rent payable from 01.01.2019 upto 31.10.2021 was (₹15,43,185/- + 18% GST) ₹18,20,958/-. For the period commencing from 01.11.2021 up to 31.01.2023 i.e., for a period of 15 months, the monthly rent payable inclusive of GST is (₹17,74,662/- + 18% GST) ₹20,94,101/-. Accordingly, the total rent payable for the first 36 months (inclusive of GST) is (₹18,20,958/- x 36) ₹6,55,54,488/-; and the rent payable for the subsequent period of 15 months (inclusive of GST) is (₹20,94,101/- x 15) ₹3,14,11,515/-. Hence, the cumulative arrears of the rent from 01.01.2019 upto the filing of counterclaim is (₹6,55,54,488/- + ₹3,14,11,515/-) ₹9,69,66,003/-.

57. Aria has claimed to have paid (as per Ex P49) a total sum of ₹ 7,37,22,450/- towards arrears of rent. However, in Ex.P49 the various amounts have been mentioned subsequent to filing of the counterclaim i.e., after 06.02.2023. The amounts mentioned in Ex.P49 subsequent to 06.02.2023 are of a total sum of ₹2,21,32,653/-. The said amount is required to be deducted from the total sum of ₹7,37,22,450/-. Hence, the arrears of rent paid by Aria from 01.01.2019 upto the date of filing of the counterclaim i.e., 06.02.2023 is a sum of (₹7,37,22,450/- less ₹2,21,32,653/-) ₹5,15,89,797/-.

58. Accordingly, the arrears of rent together with GST upto the date of counterclaim is a sum of ₹9,69,66,003/-. A sum of ₹5,15,89,797/- having been paid by Aria upto the date of counterclaim is required to be deducted. Accordingly, the balance arrears of rent due and payable from 01.01.2019 upto the date of counterclaim is (₹9,69,66,003/- less ₹5,15,89,797/-) = ₹4,53,76,206/-.

59. The amount paid by Aria after the date of counterclaim i.e., after 06.02.2023 is a sum of ₹2,21,32,653/-. It is open for Aria to claim deduction of the said amount when Century seeks to recover

the monthly charges for use and occupation of the leased premises after the date of the counterclaim upto the date of handing over vacant possession of the leased premises.

60. The Commercial Court, vide the impugned judgment, ordered that Aria is liable to pay Century a sum of ₹6,75,38,342/-. In view of the aforesaid discussion, the said amount is to be modified as ₹4,53,76,206/-, which shall be the arrears of rent from 01.01.2019 upto the date of counterclaim i.e., 06.02.2023. It shall be open to Century to institute appropriate proceedings to claim the arrears of rent from 01.02.2023 upto the date of handing over the vacant possession of the leased premises in accordance with law.

61. The security deposit paid by Aria under the Lease Deed (Ex.P1) i.e., the sum of ₹77,15,925/- has not been taken into consideration, as the same is required to be refunded by Century to Aria only at the time of Aria handing over vacant possession of the leased premises to Century.

62. With regard to the interest, it is specifically agreed between the parties in the Lease Deed (Ex.P1) that in the event of delay of payment of rent or other charges, interest at 2% compounded every month is payable. In view of the same, Aria is liable to pay

Century the aforementioned sum of ₹4,53,76,206/- together with interest at 2% compounded every month.

63. With regard to the period for which the said interest is to be computed, it is pertinent to note that the interest is payable from the date of the respective default in the payment of rent or part thereof. In the facts of the present case, Aria has paid the arrears of rent in installments/parts. Although, Century is entitled to claim interest at the agreed rate with respect to portions of the amount that had fallen due, there is no material placed on record by Century, giving the details/particulars of part payments and the interest claimed on the corresponding amounts that fell due from time to time. In the absence of the same, interest on the arrears of rent is payable from the date of counter claim i.e., from 01.02.2023 upto the date of payment.

64. The impugned judgment of the Commercial Court with regard to arrears of rent is required to be modified to the said extent.

THE CLAIM TOWARDS BALANCE AMOUNT DUE UNDER THE
SUPPLEMENTARY AGREEMENT:

65. With regard to the amounts claimed under the Supplementary Agreement and the Modification Deed, it is the contention of Aria that it has spent all the amounts towards carrying out the modification works and no amounts have been spent by Century for the said works; and hence, the amounts as enumerated in the Supplementary Agreement and the Modification Deed are not payable to Century. On the other hand, it is the contention of Century that the amounts which are the subject matter of the Supplementary Agreement and the Modification Deed are the arrears of rent payable in terms of the Agreement to Lease dated 09.06.2015 and upon a request made on behalf of Aria that the said amounts will be used for carrying out modification works of the leased premises and the said amounts will be paid subsequently, the parties have entered into the said Supplementary Agreement and the Modification Deed. As already noticed above, Aria attempted to resile from the obligations arising out of the Supplementary Agreement and Modification Deed. The Commercial Court as well as this Court (as noticed at paragraph No.24) already having concluded that Aria is bound by the terms

and conditions of the Supplementary Agreement and Modification Deed, the amounts mentioned therein are to be construed as the amounts payable by Aria to Century.

66. In the counterclaim, Century had also claimed a sum of ₹8,27,50,000/- as outstanding amount payable as per the Supplementary Agreement. Interest on the said amount at 2% compounded monthly from the date of the said agreement till the date of the counterclaim (that is 06.02.2023) was claimed in a sum of ₹11,43,06,843/-. Hence, a total claim of (₹8,27,50,000/- + ₹11,43,06,843) ₹19,70,56,843/- was claimed.

67. A perusal of the registered Supplementary Agreement (Ex.P2) indicates that the parties had agreed that Aria would pay Century a sum of ₹11,25,00,000/-. The said amount was paid in the following manner:

Sl.No.	Cheque Date	Cheque No.	Bank	Amount (Rs).
1.	30-06-2019	327809	Karnataka Bank Ltd, Minerva Circle Branch	5,00,00,000/-
2.	30-09-2019	327812	Karnataka Bank Ltd, Minerva Circle Branch	6,25,00,000/-
	TOTAL			11,25,00,000/-

68. It is pertinent to state here that since the cheque dated 30.06.2019 for ₹5 crore had returned unpaid when presented for encashment by Century, the parties subsequently entered into the Modification/Amendment Deed (Ex.P3), whereunder in lieu of the said sum of ₹5 crore payable by Aria under the Supplementary Agreement, Aria paid the said sum of Rs.5 crore vide Banker's Cheque dated 12.12.2019. Further, in lieu of the payment of ₹6.25 crore, which was to be paid vide cheque dated 30.09.2019, Aria paid the said amount vide Cheque No.327815 dated 30.06.2020.

69. It is clear from the aforementioned that of the amounts payable under the Supplementary Agreement and the Modification Deed, Aria had paid only a sum of ₹5 crore and the balance sum of ₹6.25 crores was to be paid.

70. While it is the admitted position that ₹5 crores has been paid in terms of the Modification Deed and the balance ₹6.25 crore was to be paid, however, in the counterclaim, Century has claimed a sum of ₹8,27,50,000/- together with interest calculated at 2% per month, which has been quantified at ₹11,43,06,843/-. Hence, a total sum of ₹19,70,56,843/- was claimed towards amounts

payable under the Supplementary Agreement and Modification Deed.

71. In justification of the amounts claimed consequent to the Supplementary Agreement, the relevant portion of Ex.D-5 is as under:

B. Statement of account settlement for Aria Brew - Supplementary Lease deed

Sl. No.	Particulars	Amount (In Rs.)	Sub Total
1	Amount receivable as per Agreement (excluding taxes) due on June 30, 19	5,00,00,000	
	GST on the above amount	90,00,000	
	Total Amount due	5,90,00,000	5,90,00,000
2	Amount due as on Sept 30, 2019	6,25,00,000	
	Add: GST on the above	1,12,50,000	
	Additional amount due - Mar 31, 2019	7,37,50,000	7,37,50,000
3	Total Amount due		13,27,50,000
	Total Amount received on Dec 31, 2019		5,00,00,000
	Balance due from Area Brew.		8,27,50,000
	Interest @2% per month from Nov 15, 2018		11,43,06,843
	Total Due on account of supplementary lease deed		19,70,56,843

72. It is forthcoming from the extract of Ex.D5, as noticed above, that Century has claimed a sum of ₹90,00,000/- as GST on the said sum of ₹5 Crore that has been paid.

73. With regard to the further sum of ₹6.25 Crore payable under the Supplementary Agreement and Modification Deed, Aria is also liable to pay GST in a sum of ₹1,12,50,000/-. Accordingly, the balance amount that is payable by Aria to Century in terms of the Supplementary Agreement and Modification Deed is a sum of ₹8,27,50,000/- which has been claimed by Century in the counterclaim.

74. In the Supplementary Agreement, it is specifically stipulated that Aria agrees to pay Century penal interest at 2% per month on monthly compounded basis, if it defaults in honouring the cheques mentioned in the said agreement. In the Modification Deed, there is no mention of any specific rate of interest, in the event of any default. However, Clause - 4 of the Modification Deed specifically stipulates that “all other terms and conditions of the principal agreement shall stand unaltered and binding.” Hence, any amounts that Aria defaults in payment of either under the Supplementary Agreement- Ex.P2 or the Modification Deed- Ex.P3 are to be paid along with the interest at 2% per month on monthly compounded basis.

75. With regard to the period from which the said interest is payable, it is to be noted that the amounts mentioned in the said Supplementary Agreement were to be paid as on date of the cheques i.e., on 30.06.2019 and 30.09.2019 with respect to the cheques for ₹ 5 crore and ₹ 6.2 crore respectively. In the Modification Deed, it is been agreed that the time period has been extended till 30.06.2020. Hence, Aria is liable to pay interest from 01.07.2020 upto the date of payment with regard to amounts due under the Supplementary Agreement and the Modification Deed.

76. In view of the aforementioned discussion, the following:

ORDER

- (i) The above appeal is partly allowed with costs;
- (ii) The Interim Applications stand disposed of;
- (iii) The impugned judgment of the Commercial Court is modified as under:
 - (a) The impugned judgment insofar as it directs appellant-plaintiff to quit, vacate and hand over the suit schedule 'A' property to the respondents-defendants forthwith, is affirmed.

- (b) The appellant-plaintiff shall pay the respondents/ defendants arrears of rent in a sum of ₹4,53,76,206/-, together with interest at 2% compounded per month from 01.02.2023 up to the date of payment.
- (c) The appellant-plaintiff shall pay the respondents- defendants a further sum of ₹8,27,50,000/- together with interest at 2% compounded every month from 01.07.2020 up to the date of payment.
- (d) Modified decree to be drawn accordingly.

**SD/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**SD/-
(C.M. POONACHA)
JUDGE**

BS/YAN/PMP/RKM