



2026:DHC:7186-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 20.08.2026***# **CNR No. DLHC010388742026**+ **FAO(OS) (COMM) 223/2026, CM APPL. 56040/2026, CM APPL. 56041/2026 and CM APPL. 56042/2026****GETWELL HEALTHCARE PRIVATE LIMITED**

.....Appellant

Through: Mr. K.K. Rai, Sr. Adv. with Mr. Imtiyaz Hussain, Ms. Medha Tandon, Mr. Shubham Khare, Ms. Salma and Ms. Jayati Tandon, Advs.

versus

DR SANTOSH SAHI & ORS.

.....Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MS. JUSTICE SHAIL JAIN****J U D G M E N T (O R A L)****ANIL KSHETARPAL, J.:**

1. This is a tenant's Appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (the "Act") filed against the judgment dated 22.07.2026 passed in O.M.P. (COMM) 321/2026, captioned ***Getwell Healthcare Private Limited v. Dr Santosh Sahi & Ors.***¹. By the Impugned Judgment, the learned Single Judge dismissed the Appellant's petition under Section 34 of the Act challenging the Partial Award dated 20.06.2026.

¹ Impugned Judgment



2026:DHC:7186-DB



2. This Appeal raises a simple question. The Respondents, during course of the arbitral proceedings had invoked Section 17 of the Act read with Order XII Rule 6 CPC, but expressly sought a partial award directing delivery of possession. After the parties had led evidence and been heard, the Tribunal granted that relief while leaving the monetary claims and counterclaims open. The question is whether the determination takes its legal character from provision as cited in the application or from what the Tribunal actually decided. It is the latter. For the reasons that follow, the determination by the Tribunal constitutes an interim arbitral award within the meaning of Section 31(6) of the Act.

FACTUAL MATRIX

3. The dispute arises from a registered Lease Deed dated 17.12.2015. Under the said instrument, the Respondents leased to the Appellant premises comprising House Nos. 1 and 2, Jangpura-A, Mathura Road, New Delhi, admeasuring approximately 2,167 square yards. The initial term of the lease was nine years. The monthly rent for the first three years was fixed at ₹27,00,000/-, subject to an agreed escalation of 20 per cent after every three years.

4. The Lease Deed allocated responsibility for the works to be carried out at the premises. The Respondents were required to undertake what the parties described as the “Basic Work”, whereas the Appellant was to undertake the “Fit-Out Work”. The Lease Deed also provided for payment of a pre-rent fee and a security deposit.

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46AO(OS) (COMM) 223/2026

Page 2 of 17



2026:DHC:7186-DB



5. Of significance is Clause 10.4 of the Lease Deed, which records that the relationship between the parties was that of lessor and lessee and that nothing contained in the instrument would constitute a partnership, joint venture or joint undertaking.

6. The parties subsequently executed a Supplementary Lease Deed dated 20.12.2019. The said document was not registered. The Appellant relies upon it, together with the correspondence exchanged between the parties and the expenditure allegedly incurred upon the premises, to contend that the commercial arrangement went beyond an ordinary lease and was, in substance, a collaborative venture.

7. On 02.06.2022, the Respondents issued a notice terminating the tenancy. Arbitration followed. The Respondents sought, *inter alia*, possession of the premises, arrears and damages. The Appellant contested the claims and raised counterclaims exceeding ₹65 crore, principally on account of expenditure allegedly incurred upon the premises and breaches attributed to the Respondents.

8. During the arbitral proceedings, the Respondents filed an application under Section 17 of the Act read with Order XII Rule 6 CPC. Significantly, the application itself sought a “partial award” in respect of possession on the basis of admissions.

9. The Appellant filed a detailed reply contesting the application. On 18.12.2024, the Tribunal deferred consideration of the application



2026:DHC:7186-DB



until the stage of final hearing so as to enable the parties to complete their evidence. Evidence was thereafter led by both sides. The application was ultimately heard on 17.04.2026, whereafter the decision was reserved.

10. By the Partial Award dated 20.06.2026, the Tribunal directed the Appellant to remove its movable medical equipment, machines and furniture and hand over vacant and peaceful possession of the premises within thirty days. In the event of failure to do so, the Appellant was made liable to pay damages for use and occupation equivalent to the agreed monthly rent of ₹27,00,000/-. The Tribunal also recorded that the Partial Award could be executed in accordance with law.

11. The Tribunal held that the registered Lease Deed governed the jural relationship between the parties and that Clause 10.4 was inconsistent with the Appellant's plea of partnership or joint venture. In reaching its conclusion, the Tribunal considered the pleadings, answers to interrogatories, cross-examination, contractual documents and correspondence exchanged between the parties.

12. The Tribunal also considered the termination notice dated 02.06.2022 and returned an express finding that the termination was legal and valid under Section 106 of the Transfer of Property Act, 1882. The monetary claims and counterclaims were left open for subsequent adjudication.

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46 AO(OS) (COMM) 223/2026

Page 4 of 17



2026:DHC:7186-DB



13. The learned Single Judge noticed the objection that a final relief could not be granted while exercising power under Section 17 of the Act. The learned Single Judge nevertheless found no ground for interference under Section 34, principally on the basis that the Tribunal had considered the contractual documents, admissions and evidence placed before it and that the objections raised by the Appellant would require reappreciation of the material on record.

14. Heard Mr. K.K. Rai, learned Senior Counsel assisted by Ms. Medha Tandon, Mr. Imtiyaz Hussain and Ms. Salma appearing for the Appellant, at length and perused the relevant record placed with the Appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

15. Learned Senior Counsel appearing for the Appellant submits that Section 17 of the Act authorises only interim measures and cannot sustain a final direction for possession. According to him, an application preferred under Section 17 could not have been converted into a partial award under Section 31(6), particularly when issues had been framed concerning the nature of the relationship between the parties, validity of termination and breaches alleged against each other.

16. It is further submitted that there was no clear, unequivocal and unconditional admission which could justify an award on admissions.



2026:DHC:7186-DB



According to the Appellant, its possession formed part of a larger commercial arrangement and the registered Lease Deed could not be considered in isolation from the Supplementary Lease Deed, the expenditure allegedly incurred by the Appellant and its pending counterclaims.

17. Learned Senior Counsel also submits that separation of the possessory claim from the remaining disputes causes serious prejudice to the Appellant. It is stated that approximately ₹20 crore has been invested in the premises and that the Appellant has counterclaims exceeding ₹65 crore. In the alternative, learned Senior Counsel submits that the Appellant is willing to deliver possession if its monetary claims are secured by an appropriate bank guarantee.

ANALYSIS AND FINDINGS

18. At the outset, the limits of the present Appeal must be kept in view. An Appeal under Section 37 against an order refusing to set aside an arbitral award does not enlarge the grounds of interference available under Section 34 of the Act. The Appellate Court does not undertake an independent reassessment of the merits of the Award or substitute its own interpretation merely because another view may also be possible. The restraint contemplated under Sections 34 and 37 operates cumulatively.



2026:DHC:7186-DB



19. The principal submission of the Appellant requires a distinction to be drawn between an interim measure under Section 17 and an interim arbitral award under Section 31(6) of the Act.

20. Section 17 empowers an Arbitral Tribunal to grant interim measures during the arbitral proceedings. The jurisdiction is essentially protective or preservative and operates in aid of an effective arbitral process. What Section 17 does not permit is final adjudication of a substantive claim merely under the guise of granting interim protection.

21. Section 31(6) operates differently. It empowers an Arbitral Tribunal, “at any time during the arbitral proceedings”, to make an interim arbitral award “on any matter with respect to which it may make a final arbitral award”. Such an Award is interim because other disputes remain pending. In respect of the matter finally determined, however, it possesses the attributes of an arbitral award.

22. In ***Indian Farmers Fertilizer Cooperative Limited v. Bhadra Products***², the Supreme Court explained that the language of Section 31(6) is deliberately wide and extends to “any matter” with respect to which the Tribunal may make a final award. An interim award may thus conclusively determine one matter while leaving the remaining disputes for subsequent adjudication.

² (2018) 2 SCC 534.



2026:DHC:7186-DB



23. The legal character of a determination must, therefore, be gathered from its substance. Relevant considerations would include the relief actually sought before the Tribunal, whether the opposite party had notice of that relief and an effective opportunity to meet it, whether the matter formed part of the reference and was capable of final adjudication by the Tribunal, and whether the determination was intended to be conclusive upon that matter. The statutory provision mentioned in the application is relevant, but cannot by itself determine the character of the resulting adjudication.

24. The present case must be examined on that basis. Although the Respondents' application invoked Section 17 of the Act read with Order XII Rule 6 CPC, the relief expressly sought in the application was a partial award of possession. Thus, this is not a case where the Tribunal granted substantive relief which had neither been sought against the Appellant nor disclosed to it.

25. The Supreme Court in ***Pruthvirajsinh Nodhubha Jadeja v. Jayeshkumar Chhakaddas Shah***³ reiterated the settled principle that reference to an incorrect provision does not, by itself, defeat an application where the power to grant the relief otherwise exists. That principle cannot confer a jurisdiction which the adjudicating forum does not possess, nor can it cure absence of notice or procedural unfairness. It does, however, prevent form from prevailing over

³ (2019) 9 SCC 533.



2026:DHC:7186-DB



substance where the power exists and the relief sought is known to the opposite party.

26. The decision in ***Tata Advanced Systems Limited v. Telexcell Information Systems Limited***⁴, relied upon by the Appellant, illustrates the distinction. There, an interim award had been sought. The Tribunal declined that relief but nevertheless directed furnishing of a bank guarantee, thereby granting a measure in the nature of Section 17 without an application or pleadings seeking such relief. The affected party had consequently not been afforded an opportunity to meet the requirements for grant of such a measure. The defect was therefore substantive, and not merely one of nomenclature.

27. The present case is materially different. The Respondents expressly sought a partial award directing delivery of possession. The Appellant knew the precise substantive relief sought against it and filed a detailed reply opposing the same. The Tribunal did not decide the application summarily when it was filed. It deferred consideration until the parties had completed their evidence and thereafter heard both sides before finally determining the possessory claim. There was, therefore, no disconnect between the case which the Appellant was called upon to meet and the relief ultimately granted. The Appellant was neither taken by surprise nor deprived of an opportunity to place its case before the Tribunal.

⁴ 2020 SCC OnLine Del 1716



2026:DHC:7186-DB



28. The determination itself bears the attributes of an arbitral award. It is expressly titled “Partial Award”, it contains reasons, it finally directs delivery of possession, it prescribes the consequence of non-compliance and it declares itself executable. The Tribunal did not reserve the question of possessory entitlement for reconsideration at the stage of the final award. What remained pending were principally the monetary claims and counterclaims.

29. In substance and effect, therefore, the determination constitutes an interim arbitral award within the meaning of Section 31(6), notwithstanding the reference to Section 17 in the application which occasioned it.

30. The reliance upon *Khurana Educational Society (Regd.) v. Smt. Shashi Bala*⁵ and *Evergreen Land Mark Private Limited v. John Tinson and Company Private Limited*⁶ does not advance the Appellant’s case. Those decisions emphasise the limits of Section 17 where substantive liability remains seriously disputed and the direction granted is, in substance, only an interim measure. The present case concerns a determination made final on a separable claim and amenable to challenge as an arbitral award.

31. This brings the Court to the second limb of the Appellant’s challenge, namely, whether the Partial Award could have been

⁵ 2026:DHC:1727

⁶ (2022) 7 SCC 757



2026:DHC:7186-DB



founded upon principles analogous to Order XII Rule 6 CPC.

32. Section 19 of the Act provides that an Arbitral Tribunal is not bound by the CPC or the law of evidence. This does not prevent the Tribunal from drawing guidance from the principles underlying those enactments. In ***Srei Infrastructure Finance Limited v. Tuff Drilling (P) Limited***⁷, the Supreme Court explained that the words “shall not be bound” in Section 19 are words of amplitude and not of restriction.

33. More directly, in ***Aspire Investments Private Limited v. Nexgen Edusolutions Private Limited***⁸, this Court recognised that principles analogous to Order XII Rule 6 CPC are applicable in arbitral proceedings and may form the basis of an interim award concerning possession. An arbitral tribunal is therefore not compelled to postpone determination of a separable entitlement merely because other disputes remain pending. The requirement, however, remains that the admission relied upon must be sufficiently clear when the pleadings and material are read as a whole.

34. The Tribunal applied that principle to the material before it. It did not treat the mere title “Lease Deed” as conclusive. The Tribunal recorded, *inter alia*, that the Appellant had admitted execution of the registered Lease Deed, that its witness accepted that the Lease Deed contained the mutually agreed terms and conditions, that no other

⁷ (2018) 11 SCC 470

⁸ 2015:DHC:3967



2026:DHC:7186-DB



written terms governing the alleged collaborative arrangement existed, that the Appellant had paid the stipulated pre-rent fee and a security deposit equivalent to six months' rent, and that it had received possession of the premises under the contractual arrangement.

35. The Tribunal further relied upon the Appellant's answers to interrogatories and the cross-examination of its witness, including the admission regarding the stipulated monthly rent of ₹27,00,000/-. It also considered the correspondence exchanged in December 2020 concerning commencement of payment of rent.

36. The Appellant's defence was not that the registered Lease Deed had never been executed or that its terms were fabricated. Its case was that, notwithstanding the instrument and its express terms, the true commercial relationship was one of collaboration or joint venture. The Tribunal considered that defence and rejected it, particularly in view of Clause 10.4, which expressly provides that the relationship between the parties is that of lessor and lessee and excludes a partnership, joint venture or joint undertaking.

37. A party does not necessarily efface an otherwise clear admission of foundational facts merely by proposing a different legal characterisation of those facts. Whether such a defence is sufficient to displace the legal effect of the admitted contractual material is itself a matter which the Tribunal was entitled to determine.



2026:DHC:7186-DB



38. The learned Single Judge has recorded that the Appellant did not expressly challenge the validity of the termination, which may not be separately required to be challenged, however, the Appellant has failed to draw the attention of the Court towards any material flaw in the termination of its tenancy.

39. The fact that the Tribunal framed an issue concerning the validity of termination does not alter this position. It shows that the issue arose before the Tribunal and does not establish that the Tribunal's finding on that issue was challenged before the learned Single Judge under Section 34 of the Act.

40. In any event, the Tribunal returned a finding that the termination effected by notice dated 02.06.2022 was legal and valid under Section 106 of the Transfer of Property Act, 1882. In arriving at that conclusion, it considered the Lease Deed, the Appellant's possession, the correspondence concerning commencement and payment of rent, and the other material placed before it.

41. The Appellant now contends that rent had never validly commenced, that the Respondents had failed to perform their reciprocal obligations relating to the Basic Work, and that the termination consequently could not have been sustained. Examination of these contentions would require this Court to reassess the contractual documents, correspondence and evidence considered by the Tribunal.

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AO(OS) (COMM) 223/2026

Page 13 of 17



2026:DHC:7186-DB



42. Such reassessment is impermissible within the limited jurisdiction available under Sections 34 and 37 of the Act. The Tribunal adopted a possible view of the contractual and evidentiary material. No perversity or patent illegality has been demonstrated in that determination.

43. The objection founded upon the unregistered Supplementary Lease Deed also does not warrant interference. The Tribunal noticed that the said instrument was unregistered and observed that it could be looked into only for collateral purposes.

44. It is unnecessary, for deciding the present Appeal, to pronounce upon the precise extent to which individual stipulations contained in the Supplementary Lease Deed could permissibly be relied upon under Section 49 of the Registration Act, 1908.

45. Even assuming the Appellant's submission founded upon ***Paul Rubber Industries Private Limited v. Amit Chand Mitra***⁹ to be applicable, the possessory determination does not rest upon the Supplementary Lease Deed alone. The registered Lease Deed independently records the relationship of lessor and lessee and expressly excludes a joint venture. The Tribunal additionally relied upon the Appellant's admissions in the pleadings, interrogatories and evidence, the payments made under the lease arrangement, its possession of the premises and the correspondence concerning



2026:DHC:7186-DB



payment of monthly rent.

46. Nor does the pendency of the Appellant's counterclaims denude the Tribunal of its power under Section 31(6). In *Numero Uno International Limited v. Prasara Bharati*¹⁰, this Court held that the existence of a counterclaim does not, by itself, preclude an interim award upon an otherwise separable entitlement. The same principle was reiterated in *Nimbus Communications Limited v. Prasara Bharati*¹¹, where the counterclaim remained to be established while an admitted entitlement was separately determined.

47. The caution sounded in *Bhadra Products (supra)* against unnecessary fragmentation of arbitral proceedings must nevertheless be borne in mind. Piecemeal awards may result in additional delay and expense, and the Tribunal must consider whether a real advantage exists in separately determining a particular matter. That consideration pertains to sound arbitral case management and it does not impose an absolute prohibition upon the power conferred by Section 31(6).

48. In the present case, the Tribunal did not precipitately fragment the reference. It initially deferred the application, permitted the parties to complete their evidence and heard the application only thereafter. It determined the possessory claim while leaving the monetary claims and counterclaims open. No patent illegality arises merely because the

⁹ 2023 SCC OnLine SC 1216

¹⁰ 2008 SCC OnLine Del 175



2026:DHC:7186-DB



Tribunal adopted that course.

49. The alternative prayer that the Respondents be directed to furnish a bank guarantee securing the Appellant's monetary claims also cannot be accepted. The counterclaims remain contested and unadjudicated. They have neither been admitted by the Respondents nor allowed by the Tribunal.

50. Directing security for those claims as a condition for enforcement of an adjudicated possessory entitlement would confer substantive protection upon the Appellant in respect of claims whose existence and quantum remain to be determined. No contractual or statutory basis for such a direction has been demonstrated.

51. The distinction which governs this Appeal is ultimately a narrow one. An Arbitral Tribunal cannot finally determine a substantive claim merely under the guise of granting an interim measure under Section 17. It can, however, after notice and an effective opportunity of hearing, finally adjudicate a matter forming part of the reference by way of an interim award under Section 31(6). The legal character of the resulting adjudication depends upon its substance and effect and not merely upon the statutory provision mentioned in the application.

¹¹ 2016 SCC OnLine Del 6886



2026:DHC:7186-DB



CONCLUSION

52. The learned Single Judge was, therefore, justified in refusing to set aside the Partial Award. For the reasons recorded above, no ground for interference under Section 37(1)(c) of the Act is made out.

53. The present Appeal, along with the pending application for stay, is accordingly dismissed *in limine*.

54. It is clarified that nothing contained in this Judgment shall be construed as expressing any opinion on the merits of the monetary claims or counterclaims which remain pending before the Arbitral Tribunal. The same shall be adjudicated independently, in accordance with law, and uninfluenced by any observation contained herein which is not necessary for determination of the present Appeal.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

AUGUST 20, 2026

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