

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Order delivered on: 9th February, 2016*

+ **ARB. A. (COMM.) No.6/2016**

INDEPENDENT POWER PRODUCERS ASSOCIATION OF INDIA

..... Appellant

Through Mr.Aman Lekhi, Sr. Adv. with
Mr.Matrugupta Mishra &
Mr.Tanmay Mehta, Advs.

versus

SHARAM SADHNA DELHI TRUST

..... Respondent

Through Mr.Amit Singh Chadha, Sr. Adv.
with Ms.Sangeeta Bharti,
Mr.Luv Kumar Singh, Mr.Krishanu
Adhikary & Mr.Dilpreet, Advs.

CORAM:

HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

**Arb. A. (COMM.) No.6/2016, I.A. No.1693/2016 (for stay) and
I.A. No.1695/2016 (for condonation of delay of 48 days in re-
filing the appeal)**

1. The appellant has filed the present appeal under Section 37(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') for setting aside the orders dated 16th October, 2015 and 22nd July, 2015 passed by the Arbitral Tribunal in arbitration proceedings in the captioned matter.

2. The said order dated 22nd July, 2015 was passed by the Arbitral Tribunal on application under Section 17 of the Act filed on behalf of the respondent whereby the Tribunal on 22nd July, 2015 had directed the appellant to furnish a Bank Guarantee for a sum of Rs.

3,87,90,802/- as rent dues from October, 2013 to August, 2015 within six weeks and also to deposit an amount of Rs. 17,48,500/- being the monthly running rent with effect from September, 2015.

3. The application for modification of order dated 22nd July, 2015 was dismissed by order dated 16th October, 2015. It is stated in the appeal that while passing the interim order dated 22nd July, 2015, the Arbitral Tribunal had failed to consider, *inter-alia* that the interim reliefs sought by the respondent before the Tribunal were, in effect, the final reliefs and therefore, the same could not have been granted as an interim measure. The Tribunal had ignored the fact that the counter claim filed by the appellant, which is also pending adjudication before the Tribunal, is itself to the tune of Rs. 6,89,81,857/- along with interest at 18% per annum and therefore, in view of the pendency of appellant's counter claim for an amount of Rs. 6,89,81,857/- along with interest, the claim of the respondent for an amount of Rs. 3,87,90,802/- could not have been granted.

4. Learned Senior counsel for the appellant submits that it was duly informed to the Tribunal by the appellant in its application seeking modification of the order dated 22nd July, 2015, that even assuming the case of the respondent to be true, the appellant, in its individual capacity could not have been made liable to pay more than 5% of the total amount claimed by the Respondent. Even the order dated 16th October, 2015 passed by the Tribunal dismissing the application of the appellant seeking modification of the order dated 22nd July, 2015 is bad in law as the Tribunal did not consider the aspects brought in by way of the said application on behalf of the appellant. By the said application, the appellant had brought out, *inter alia*, that its individual liability towards the respondent, if at all, could not be more than 5%

but the Tribunal was of the view that the said aspects had not been brought before it while passing the interim order dated 22nd July, 2015 and on such pretext the Tribunal proceeded to dismiss the application seeking modification of the order dated 22nd July, 2015 without considering the said application on its merits.

5. In support of his submission, learned Senior counsel has referred to Sections 105 and 108(e)(f) and (g) of the Transfer of Property Act, 1882 as well as Sections 51 and 52 of the Indian Contract Act, 1872 and submits that the tenanted premises has not been fully enjoyed by the appellant as the respondent has failed to fulfil its promises to keep the tenanted premises in proper condition.

6. Mr. Amit Chadha, learned Senior counsel appearing on behalf of the respondent has informed the Court that in the application for modification of the order, the false statement is made, as the lease deed itself would show that the appellant is the tenant of the suit property. Admittedly, he had been paying the entire rent to the respondent. The question of his individual capacity at 5% does not arise. The said point was raised only in the application of modification of the order. He denied the argument addressed by the learned counsel for the appellant in toto. Mr. Chadha argued that the appeal filed by the appellant is totally misconceived. The same has been filed in order to avoid depositing the rent of the premises which the appellant is enjoying.

7. Mr. Chadha also submits that all the three requirements are fulfilled i.e. firstly, the relation between the landlord and tenant as per lease document and the appellant is the tenant as per written document; secondly, the rent is admitted between the parties; and thirdly, when

the fire took place, the appellant was in possession of the tenanted premises. The relationship between them was never denied by the appellant as he had been paying the rent as per lease deed.

8. The order dated 22nd July, 2015 reads as under:

"Counsel for the Claimant presses the application under section 17 of the Arbitration & Conciliation Act for directions to the respondent to furnish a bank guarantee to secure the outstanding amount of rent and to pay monthly rent of Rs 17,48,500/- by way of demand draft to the claimant.

The claimant contends that it is the owner in possession of the demised premises a portion of property admeasuring 7140 sq.ft comprising of ground floor and first floor. Registered lease deed was executed between the parties on 13.9.2010 for a period of 9 years. The lease was determined and the respondent was asked to deliver vacant possession / clear arrears of rent. The respondent is currently in unauthorized possession of the demised premises since 31.8.2014. The respondent stopped paying the monthly rent w.e.f from October 2013. Rent is payable as under:

From October 2013 to 30.8.2014	Rs 1,78,08,802/-
Sept 2014 to April 2015	Rs.1,39,88,000/-
May 2015 to July 2015	Rs. 52,45,000/-

The application is opposed. The respondent concedes that rent has not been paid and they are in possession of the premises. However no amount is payable to the claimant as the respondent is entitled to an amount of Rs. 6,89,81,857/-towards loss and damages due to fire breakout on account of negligence of the claimant.

Heard. There is no merit in the submission of the respondent. The respondent continues to be in possession of the demised premises. The counter claim has yet to be adjudicated upon.

It is contended that there was novation of the lease agreement and this fact was not considered by this Tribunal. Moreover subsequent events were also not considered. Besides there are counter claims of the respondent for which adjudication has yet to take place. Therefore, the order passed on 22nd July, 2015 may be kept in abeyance pending decision on the application for amendment. Even otherwise in light of the novation of agreement, contesting Respondent is liable to pay only 5% of the rent.

This application was contested by the claimant. Oral submissions were made. It was contended that the Tribunal cannot review its own order. Moreover, there was no novation of the lease agreement, which fact was categorically conveyed to the Respondent vide letter dated 29th April, 2013 wherein it was stated that the entities which the Respondent wanted to associate to share the burden of lease rent, would not claim any right of tenancy in the said premises and would carry its administrative function and under no circumstances any manufacturing activity or any activity which create a nuisance would be permitted. It was also conveyed that the Claimant would only deal for all purpose with the registered lessee i.e. IPPA and primarily IPPA would be liable for payment of the lease rent. Therefore, there is no novation of the lease agreement.

Be that as it may, when the Tribunal passed the order, the Respondent/Applicant did not contend that there was a novation of agreement nor was any reliance placed on any documents.

We consider all aspects particularly the fact that the Respondent is in occupation of the premises since October 2013 and has not paid the rent. Rent is admitted, execution of the lease agreement is admitted and under these circumstances the impugned order was passed and we see no reason to vary or review the same. The applicant/respondent if so advice can take recourse in accordance with law. The applications is dismissed.

(Justice(Retd)Usha Mehra)
Arbitrator

(Justice(Retd)C.K.Mahajan)
Presiding Arbitrator

(Mr.Rana Sudarshan Biswas)
Arbitrator"

10. Having gone through both the orders referred above, there is no infirmity in the said orders. I am of the view that the impugned order dated 22nd July, 2015 passed by the Tribunal is reasonable and it has been passed in order to strike balance at this stage. In the said order, merely the admitted rent has been secured which is not being paid to the respondent. The same is being released. The Court at this stage has to examine the conduct of the parties prior to the dispute. The relation between the parties cannot be disputed. The agreed rent was being paid by the appellant. The only ground in the reply to the application under Section 17 of the Act was taken that the counter-claim has been filed by which the appellant is entitled to recover the amount towards loss and damages due to the fire breakout on account of negligence of the respondent. The appellant has not denied the fact that at that time, he was in possession of the tenanted premises.

11. The counter-claim hence filed by the appellant is yet to be considered by the Arbitral Tribunal who would decide as to whether there is any merit or not. The same is to be determined on merit. A mere filing of counter-claim would not mean that any tenant would not pay the due rent to the landlord. Thus, none of the pleas raised by the appellant are sustainable. The provisions of two Acts referred by the learned Senior counsel for the appellant are not attracted in the facts of the present case and do not help the case of the appellant.

12. This Court in the case of ***The Chamber of Colours and Chemicals (P.) Ltd. Delhi v. Trilok Chand Jain***, reported in

(9)1973 DLT 510, wherein similar issue was involved, held that “....*In the case of tenancy premises being wholly destroyed or rendered substantially and permanently unfit by fire etc. for the purposes for which it was let, the only right given to the lessee by section 108(e) of the Transfer of Property Act is to exercise the option of treating the lease to be void. In such a case the lessee cannot continue to hold on to the premises or say that the lease continues but he will not pay the rent. If the lessee does not exercise the option to treat the lease to be void, he will remain liable to pay the rent.There cannot be any unilateral suspension of rent. The tenant continues to be liable for the whole of the rent until he obtains an order from the Court or agreement from the landlord for reduction of the proportionate part of the rent.*”

13. The abovementioned case referred by the learned Senior counsel appearing on behalf of respondent is squarely applicable to the facts of the present case.

14. The appeal filed by the appellant is without any merit. The same is accordingly dismissed.

15. No costs.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 09, 2016