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

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DECIDED ON: 17.05.2017

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FAO (OS) (COMM) 91/2016

M/S MILESTONE GAMES PVT LTD

..... Appellant

Through: Mr. Parikshit Kumar, Advocate.

versus

ANIL KUMAR MEHTA (HUF) & ANR

..... Respondents

Through: Mr. Ekansh Bansal, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

S.RAVINDRA BHAT, J.(ORAL)

1. The appellant is aggrieved by an order of the learned Single Judge whereby its petition under Section 34 of the Arbitration and Conciliation Act, 1996 was rejected.

2. The relevant facts are that the appellant entered into lease arrangement on 15.03.2012 with the respondents (hereafter referred to as lessor/owner). In sum, the arrangement contemplated letting out of a property for three years at monthly rent of ₹2,62,960/-; the appellant has also paid ₹10,51,840/- (equivalent to four month's rent as interest free security deposit). The agreement contained an arbitration clause. The owners complained that the lessee paid only a month's rent, i.e., for May,

2012 and after which it ceased to fulfill its obligations. The lessors, therefore, proceeded to first issue notice and thereafter terminate the arrangement. The lessors resorted to the arbitration clause claiming possession as well as recovery of the amounts payable under the contract.

3. Before the Tribunal, the lessee's principal defences were (i) the owner had misrepresented with respect to the premises. In that, according to it, the footfalls of the mall were supposed to be more substantial. It was stated that 70% of the shops in the mall - according to the lessor - had been leased to major retail brands which would have ensured (according to the lessee's position a more substantial footfall to its premises). The lessee also relied upon a condition in the agreement which according to it enabled retention of the premises till such time the security deposit amounts were refunded. These defences as well as the counter claim made by the lessee were rejected by the Tribunal. According to the Tribunal, the arbitration proceedings were essentially by way of recovery of amounts which had been assured payment by the lessee in terms of the contract arrived at by the parties. The Tribunal considered all contentions and awarded recovery of ₹1,11,65,234/- which included the rentals payable after adjustment of security deposit, i.e., for the period till 30.09.2012 together with interest on the monthly rent and user charges due for the period October 2012 till September 2014. The Tribunal rejected the lessor's claim for a sum of ₹50,000/- per day after termination of the lease. The lessee claiming to be aggrieved sought recourse to Section 34 contending that the Award was in conflict with the public policy in India, as it was patently illegal. The learned Single Judge by the impugned order was of the opinion that facially the Award did not disclose any such error; the Single Judge relied upon

Associate Builders v. Delhi Development Authority (2015) 3 SCC 49 in rejecting the lessee's petition.

4. In the present appeal, the lessee urges more or less same contentions and urges that the interpretation by the Tribunal of clause 2 (d) of the lease agreement dated 15.03.2012 is contrary to law and is unreasonable as it was plainly intended to ensure the lessee's continuance in the premises till such time the security deposit was not refunded. It was also argued that the Bombay High Court by an order has directed the winding up of the lessee company and that in the circumstances, the Court should be cognizant of the legal position and not proceed to dispose of the appeal on its merits.

5. The narrow window provided to the Court to consider challenges to arbitral award under the Act is well defined. It is only in rare and exceptional cases that the Courts are satisfied that the given award discloses a patent illegality, an approach that is plainly inconsistent with the Indian law or facially discloses findings that are so unreasonable that no reasonable man would arrive at in such given circumstances, would the Court interfere with the arbitral award. The facts of the present case disclose that the controversy revolves around the interpretation of clause 2 (d). It is well established that the interpretation of contract is within the exclusive domain of the Arbitrator. The Court cannot *per se* guess such findings unless the three enumerated features exist. In the present case, the lessee's contentions were considered and the Tribunal rendered its findings at paragraph 57 of the Award as to why they were not acceptable. This Court in the circumstances is of the opinion that there is no reason to upset the findings. Such an approach is neither unreasonable nor patently erroneous according

to Indian law. Consequently, the Single Judge too did not fall into error in refusing to interfere with the Award under Section-34.

6. The appeal is, therefore, dismissed as unmerited.

**S. RAVINDRA BHAT
(JUDGE)**

**PRATHIBA M. SINGH
(JUDGE)**

MAY 17, 2017
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