

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

+ **FAO(OS) 307/2016 & CM 39210/2016**

+ **FAO(OS) 40/2017 & CMs 5569/2017, 5571/2017**

Reserved on: 22nd August, 2017
Date of decision : September 22, 2017

SUPERTRACK HOTELS PVT LTD Appellant
Through: Mr.A.K.Singla, Sr. Adv. with Mr.Shiv
Chopra, Mr.A.Khanna, Mr.Mayank
Mishra, Advs.

versus

FRIENDS MOTELS PVT LTD Respondent
Through: Mr.Sandeep Sethi, Sr. Adv. with
Mr.Manu Monga, Mr.S.K.Jha, Advs.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

1. The appellant has filed the above appeals, challenging the judgment and order dated 29.04.2016 passed by the Learned Single Judge of this Court in OMP(I) No. 643/2015 and the order dated 14.09.2016 passed by the Learned Single Judge in

I.A. No.5844/2016 in OMP (I) 643/2015 modifying the order dated 29.04.2016 with respect to the amount payable to the respondent as an interim measure. We reproduce herein the final direction of Learned Single Judge in the order dated 14.09.2016:

“The Learned counsel for the petitioner has provided the details of the amount due from the respondent. The same is mentioned as under:

- i. Net rental between 1st April, 2014 to 16th May, 2016 - Rs.4,73,81,220/-.*
- ii. Total payment by the respondent including the security deposit in the said period - Rs.3,43,09,760/-.*
- iii. Net rental due (i-ii) = Rs.1,30,71,460/-*

17. The respondent is granted liberty to pay the said amount in five equal monthly installments on 7th day of every calendar month, subject to furnishing of an undertaking that the respondent shall pay the amount every month positively and in case of any default, the entire balance amount shall be paid along with interest at the rate of 18% per annum. The first installment shall be paid on 7th October, 2016 and remaining on 7th of every succeeding month. He shall also give an undertaking to pay the actual electricity and water charges against the bill to the petitioner within one month from the date of payment of fifth installment. The petitioner would provide the copies of the bills to the respondent within two weeks from today. In failure to comply the above referred directions and in the absence of undertaking or in failure to pay first installment, the petitioner would

be entitled to recover the entire amount by way of filing of the execution petition.”

2. The dispute between the parties arose out of the Lease Deed dated 27.03.2014 executed between them. In terms of the Lease Deed (hereinafter referred as ‘Lease Deed’), the appellant had taken on lease basement, ground floor, first floor, second floor, third floor and four rooms in the annex block of Plot No.104, Babar Road, New Delhi-110001, admeasuring approximately 18000 sq. ft. (hereinafter referred to as the “Leased Premises”) from the respondent. Monthly rent agreed upon was Rs.18 lacs per month with a stipulation of 15% increment/escalation after every three years. The lease was for a period of 9 years commencing from 01.04.2014. Clause 20 of the Lease Deed provided for the dispute resolution mechanism through process of arbitration under the Arbitration and Conciliation Act, 1996 (Act, for short) by three arbitrators; one arbitrator each to be appointed by the parties and third to be appointed jointly by the two arbitrators. Clause 20 of the Lease Deed is reproduced herein under:

“DISPUTE Resolution:

- 20.1 *If any dispute, controversy or claim between the parties arises out of or in connection with this Lease Deed, including the breach, termination or invalidity thereof (“Dispute”), the parties shall Lease (sic.) all reasonable endeavors to negotiate with a view to resolving the Dispute amicably. The complaining party may serve a written notice of such dispute (“Dispute Notice”) to the other party and if the parties are unable to resolve the Dispute amicably within 30(thirty) days of service of the Dispute Notice, then the Dispute shall be settled by arbitration under the Indian Arbitration and Conciliation Act, 1996 by three arbitrators, with three arbitrators (sic.) with one arbitrator each being appointed by the Parties individually, and such two arbitrators jointly appointing the third arbitrator who shall chair the arbitration proceedings. The parties agree to a fast track arbitration which is to be disposed within 60 (sixty) days from the date of reference. The venue of arbitration shall be New Delhi and the proceedings shall be conducted in the English language. Each party shall bear its own cost of arbitration. The award of the arbitrators shall be substantiated in writing and shall be final and binding.*
- 20.2 *This Lease Deed shall be governed by Indian Law and all matters relating to this Lease Deed will be adjudged by the courts located within New Delhi.”*

3. The respondent filed a petition under Section 9 of the Act claiming therein that the appellant had failed to pay the

admitted rent with effect from 15.03.2015 forcing the respondent to terminate the lease through legal notice dated 16.09.2015. It was the case of the respondent that in terms of Clause 6 (e) of the Lease Deed, as the appellant had failed to hand over the vacant possession of the premises inspite of termination of the lease, the respondent was further entitled to claim a sum of Rs.2 lacs per day as liquidated damages. The respondent, therefore, claimed the following reliefs in the petition under Section 9 of the Act:

- “a) Direct to respondent to pay the outstanding rents of the amount of Rs. 2,30,44,960/- along with interest;*
- b) In alternative direct the respondents to secure the outstanding amount of Rs. 2,30,44,960/- along with interest by furnishing appropriate security;*
- c) To direct the respondent to vacate the premises forthwith;*
- d) To restrain respondent from alienating or creating any third party rights or interest in the premises leased to the respondent by the petitioner;*
- e) to pass direction for the attachment of respondent account no. 1220763000510 HDFC Bank, M-3, Outer Circle, Super Bazar, Connaught Place, New Delhi.*

f) pass any other or further order as deem fit and in the interest of justice.”

4. The appellant in its reply and even before us in these appeals, as far as the amount due from it under the Lease Deed is concerned, took the following defence:

(a) That in terms of Clause 4.1.a of the Lease Deed no rent was payable for the period 01.04.2014 to 31.12.2014;

(b) It had been agreed to reduce the monthly rent from Rs.18 lacs per month to Rs.14 lacs per month during season period from November till March and Rs.10 lacs per month during off-season from April till October every year.

(c) The appellant had paid an amount of Rs.39 lacs approximately to the electricity department on account of misuse charges, which is otherwise the liability of the respondent and a further sum of Rs.15 lacs on account of mixed land use charge, which again is the liability of the respondent.

5. Learned Single Judge vide order dated 29.04.2016 rejected the above defence of the appellant. As far as the claim of no rent being payable for the period of 01.04.2014 to 31.12.2014 is concerned, the Learned Single Judge held that the last line of Clause 4.1.b seemed to be a mathematical error as otherwise Clause 4.4 to 4.6 of the Lease Deed clearly and unambiguously states that rent for this period was payable @ Rs.18 lacs per month. Learned Single Judge also relied upon the Tripartite Agreement dated 18.06.2014 entered into between Bank of India, the Appellant and the respondent herein, whereby the Bank had agreed to disburse a loan of Rs.4 crores to the respondent on the undertaking of the appellant that monthly rent as payable under the Lease Deed, would be directly paid to the referred escrow account.
6. As far as the claim of reduction of rent is concerned, the Learned Single Judge relying upon Section 92 of the Evidence Act and the judgment of this Court in *M/s Kusum Enterprises and Ors. v. Vimal Kochhar and Anr.*, 207 (2014) DLT 172,

held that in case of a document in writing, plea of oral agreement raised by the appellant cannot be sustained.

7. However, in the final direction, the Learned Single Judge, due to a clear typographical mistake, had directed the appellant to pay a sum of only Rs.13,04,490/- as outstanding amount of the agreed rent as per Lease Deed from November 2015 till 30.04.2016. It is important to note here at this stage itself that the appellant in the appeal before us being FAO (OS) 307/2016 has also conceded that this was a clerical mistake and amount should have been Rs.1,30, 44,960/-. We quote paragraph 12 from the appeal FAO (OS) 307/2016, which reads:

“12. That in the said petition the Hon’ble Single Judge vide its Judgment dated 29/04/2016 was pleased to pass directions, directing the Appellant to pay a sum of Rs. 13,04,490/- (though the amount should have been Rs.1,30,44,960/-) towards rent as per lease deed from November, 2015 till 30th April, 2016 within two weeks of the said judgment alongwith an undertaking to be filed by way of affidavit within the same period of time that the Appellant would continue to pay the agreed rent regularly without any failure. It was further directed that in case of failure to comply the said direction, the Respondent (Appellant herein) shall handover the vacant possession of the leased premises to the

Petitioner (Respondent herein) after the expiry of two weeks.

8. Learned Single Judge had also directed the appellant to continue to pay the agreement rent regularly without any failure.
9. As for the claim of the respondent for damages @ Rs.2 lacs per day and also the claim of the appellant with regard to the amount spent by it, Learned Single Judge directed that the same would be raised before the Arbitral Tribunal.
10. As there was an admitted clerical mistake in the order dated 29.04.2016, the respondent filed an application under Section 151 of Code of Civil Procedure, 1908 (in short 'CPC') seeking modification/clarification of the said order being I.A. No.5844/2016. The Learned Single Judge by the second impugned order dated 14.09.2016 modified the order dated 29.04.2016 and has directed the appellant to pay a sum of Rs.1,30,71,460/- after taking into account the rent payable in terms of the Lease Deed for the period 01.04.2016 to 16.05.2016 and the total amount of rent already paid by the appellant, including the security deposit.

11. It is important to note here that the appellant had vacated the leased premises on 16.05.2016 and therefore the direction to pay rent, as agreed in the Lease Deed, was confined till the said date only.
12. The appellant has filed the above appeals challenging the above two orders i.e. 29.04.2016 and 14.09.2016 passed by the Learned Single Judge.
13. As far as the legal challenge is concerned, Learned Senior Counsel appearing for the appellant has contended that no such direction for payment of money could have been issued by the Learned Single Judge while exercising jurisdiction under Section 9 of the Act. In support of this contention, Learned Senior Counsel has drawn our reference to the judgment of the Supreme Court in ***Firm Ashok Traders and Anr v. Gurumukh Das Saluja and Ors.*** (2004) 3 SCC 155 and the judgment of the Division Bench of this Court in ***Ratnagiri Gas and Power Pvt. Ltd. v. Joint Venture of Whessoe Oil and Gas Ltd.***, 2013 (133) DRJ 482.

14. Learned Senior Counsel for the respondent on the other hand has referred to the judgment of Division Bench of this Court in ***Value Source Mercantile Ltd. v. Span Mechnotronix Ltd.***, (2014) 143 DRJ 505 and the judgment dated 03.07.2017 passed by Division Bench of this Court in FAO(OS)(COMM) 61/2016, titled as ***Ajay Singh v. Kal Airways Pvt. Ltd. & Ors.***
15. Section 9 of the Act empowers the Court to issue an interim measure of protection securing the amount in dispute in the arbitration as also such other interim measures of protection as may appear to the Court to be just and convenient. Section 9 specifically provides that “Court shall have the same power for making orders as it has for the purpose, and in relation to, any proceedings before it.” Thus, though it is correct that Arbitral Tribunal shall not be bound by the CPC i.e. Code of Civil Procedure, 1908, as held by the Supreme Court in ***Arvind Construction Company Pvt. Ltd. v. Kalinga Mining Corporation & Ors.***, 2007(6) SCC 798, general rules that govern and guide the Court while considering grant of an

interim injunction are attracted even while dealing with an application under Section 9 of the Act.

16. In *Ajay Singh (supra)* it has been held that Section 9 grants wide power to the Court in fashioning an appropriate interim order. Thus, it is correct that in exercise of such power, the Court should be guided by known principles, equally, the Court should not find itself unduly bound by the text of Section 9 of the Act rather it is to follow the underlying principles.
17. Order XV-A of CPC, applicable to Delhi, provides that in any suit of a owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and future mesne profit from him, the Court may direct the defendant to deposit such amount on account of arrears, upto date of the order and thereafter continue to deposit in each succeeding month the rent claimed in the suit. Similarly, Order XXXIX Rule 10 of CPC empowers the Court to order payment of money which the other party admits to be due. As stated, that though the said provisions have not been expressly mentioned in Section 9 of the Act, the principles thereof would certainly apply to such

proceedings. These provisions are in the nature of interim protection which can be passed by the Courts.

18. Supreme Court in the case of ***Pt. Rishikesh v. Salma Begum (Smt.)*** (1995) 4 SCC 718, while upholding the validity of the Order XV Rule 5 CPC as amended by UP Civil Laws (Reforms and Amendments), Act, 1976 observed that such provision is made to protect the landlord from hardship and to prevent unfair advantage of delaying the disposal of the suit by the tenant.
19. We are therefore of the opinion that while exercising the powers under Section 9 of the Act, the Court can certainly be guided by the principles of Order XV-A and Order XXXIX Rule 10 of CPC. The same view was expressed by another Division Bench of this Court in the case of ***Value Source Mercantile Ltd.*** (*supra*). The relevant portion of the said judgment reads:

“13. Section 9 of the Arbitration Act uses the expression “interim measure of protection” as distinct from the expression “temporary injunction” used in Order XXXIX Rules 1&2 of the CPC. Rather, “interim injunction” in Section 9 (ii) (d) is only one of the matters prescribed in Section 9 (ii) (a) to (e) qua which a party to an Arbitration Agreement is entitled to apply for “interim measure of protection”. Section 9(ii)(e) is a residuary power empowering the Court to issue /

direct other interim measures of protection as may appear to the Court to be just & convenient. Section 9 further clarifies that the Court, when its jurisdiction is invoked thereunder “shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it”.

14. The question which thus arises is that if the dispute as aforesaid had been brought before this Court by way of a suit, whether this Court could have, during the pendency of the suit, granted the relief as has been granted in the impugned order. Order XXXIX Rule 10 of the CPC empowers the Court to direct deposit / payment of admitted amounts. The appellant, as aforesaid does not controvert that it continued to be the tenant of office unit B-1 and had not terminated the tenancy with respect thereto. There is thus an admission by the appellant of the liability for rent at least of office unit B-1. The appellant, if had been a defendant in a suit, could have thus been directed by an interim order in the suit to make such payment to the respondent. Order XV-A added to the CPC as applicable to Delhi and which was added, as held by us in judgment dated 15th May, 2014 in FAO(OS)597/2013 titled Raghbir Rai Vs. Prem Lata, to empower the Court to direct payment during the pendency of the suit at a rate other than admitted rate also, empowers the Civil Court to direct payment which is apparently wrongfully disputed. The denial by the appellant of the entire rent as agreed, on the ground of having determined the tenancy of one of the two office units taken on rent, is clearly vexatious, as in law the appellant as a tenant could not determine tenancy of part of the premises taken on rent. It is not the case of the appellant that it was entitled to do so as part of terms of its tenancy. In that view of

the matter, the appellant could under Order XV-A of the CPC have been directed to pay the rent of the entire premises notwithstanding having given notice of termination of tenancy of part thereof. We are therefore satisfied that the impugned order satisfies the test of being in exercise of the same power for making orders as the Court has for the purpose of a Civil Suit and is thus within the ambit of Section 9 of the Arbitration Act.”

20. In the same judgment, the Division Bench also distinguished the judgment in ***Ratnagiri Gas and Power (supra)***, relied upon by Learned Senior Counsel for the respondent and we agree with the distinction drawn. The observation in the case of ***Ratnagiri Gas and Power (supra)*** were made while the court was dealing with a direction to deposit money, which was not even the subject matter of the application under Section 9 of the Act.
21. Reliance of the appellant on ***Firm Ashok Traders (supra)***, in our view, is totally ill-founded. In the said case Supreme Court held that the relief sought vide an application under Section 9 of the Act was neither in a suit nor a right arising from a contract. In fact, the Court held that Section 69 of the Partnership Act would have no bearing on the right of the party to file an application under Section 9 of the Act. This judgment was also

considered by this Court while passing the judgment in *Ajay*

Singh (supra) and we quote from the same:

24. *The first question which the court addresses is the one adverted to by the appellant, that principles underlying Order 38, Rule 5 CPC have to be kept in mind, while making an interim order, in a given case, directing security by one party. Indian Telephone Industries v Siemens Public Communication 2002 (5) SCC 510 is an authority of the Supreme Court, which tells the courts that though there is no textual basis in the Arbitration Act, linking it with provisions of the CPC, nevertheless, the principles underlying exercise of power by courts –in the CPC- are to be kept in mind, while making orders under Section 9. In Arvind Constructions v Kalinga Mining Corporation 2007 (6) SCC 798, the court held as follows:*

“The power under Section 9 is conferred on the District Court. No special procedure is prescribed by the Act in that behalf. It is also clarified that the Court entertaining an application under Section 9 of the Act shall have the same power for making orders as it has for the purpose and in relation to any proceedings before it. Prima facie, it appears that the general rules that governed the court while considering the grant of an interim injunction at the threshold are attracted even while dealing with an application under Section 9 of the Act. There is also the principle that when a power is conferred under a special statute and it is conferred on an ordinary court of the land, without laying down any special condition for exercise of that power, the general rules of procedure of that court would apply. The Act

does not prima facie purport to keep out the provisions of the Specific Relief Act from consideration. No doubt, a view that exercise of power under Section 9 of the Act is not controlled by the Specific Relief Act has been taken by the Madhya Pradesh High Court. The power under Section 9 of the Act is not controlled by Order XVIII Rule 5 of the Code of Civil Procedure is a view taken by the High Court of Bombay. But, how far these decisions are correct, requires to be considered in an appropriate case. Suffice it to say that on the basis of the submissions made in this case, we are not inclined to answer that question finally. But, we may indicate that we are prima facie inclined to the view that exercise of power under Section 9 of the Act must be based on well recognized principles governing the grant of interim injunctions and other orders of interim protection or the appointment of a receiver.”

25. Interestingly, in a previous decision, *Firm Ashok Traders & Anr v Gurumukh Das Saluja & Ors* (2004) SCC 155, the Supreme Court observed that:

“13. ..The Relief sought for in an application under Section 9 of the A&C Act is neither in a suit nor a right arising from a contract. The right arising from the partnership deed or conferred by the Partnership Act is being enforced in the Arbitral Tribunal; the court under Section 9 is only formulating interim measures so as to protect the right under adjudication before the Arbitral Tribunal from being frustrated.....”

26. Though apparently, there seem to be two divergent strands of thought, in judicial thinking, this court is of the opinion that the matter is one of the weight to be given to the materials on record, a

fact dependent exercise, rather than of principle. That Section 9 grants wide powers to the courts in fashioning an appropriate interim order, is apparent from its text. Nevertheless, what the authorities stress is that the exercise of such power should be principled, premised on some known guidelines - therefore, the analogy of Orders 38 and 39. Equally, the court should not find itself unduly bound by the text of those provisions rather it is to follow the underlying principles. In this regard, the observations of Lord Hoffman in Films Rover International Ltd. v. Cannon Film Sales Ltd.(1986) 3 All ER 772 are fitting:

“But I think it is important in this area to distinguish between fundamental principles and what are sometimes described as 'guidelines', i.e. useful generalisations about the way to deal with the normal run of cases falling within a particular category. The principal dilemma about the grant of interlocutory injunctions, whether prohibitory or mandatory, is that there is by definition a risk that the court may make the 'wrong' decision, in the sense of granting an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial. A fundamental principle is therefore that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been 'wrong' in the sense I have described. The guidelines for the grant of both kinds of interlocutory injunctions are derived from this principle.”

27. It was observed later, in the same judgment that:

“The question of substance is whether the granting of the injunction would carry that higher risk of injustice which is normally associated with the grant of a mandatory injunction. The second point is that in cases in which there can be no dispute about the use of the term 'mandatory' to describe the injunction, the same question of substance will determine whether the case is 'normal' and therefore within the guideline or 'exceptional' and therefore requiring special treatment. If it appears to the court that, exceptionally, the case is one in which withholding a mandatory interlocutory injunction would in fact carry a greater risk of injustice than granting it even though the court does not feel a 'high degree of assurance' about the plaintiff's chances of establishing his right, there cannot be any rational basis for withholding the injunction.”

22. In view of the above, we do not agree with the submission of Learned Senior Counsel for the appellant that under Section 9 of the Act, this Court is not empowered to order the payment of money, when justified as an interim measure of protection.
23. On the merits of the order, Learned Senior Counsel for the appellant placed reliance on Clause 4.1.b of the Lease Deed which reads as under:

“4.1.b. The LESSEE has paid an amount equivalent to three months advance Monthly Rent i.e. Rs. 54,00,000 (Rupees fifty four lacs only) vide

cheque no. 372413 dated 27.03.2014 drawn on State Bank of Mysore, New Delhi, (the “Advance Rent”). The Advance Rent shall be adjusted against the Monthly Rent to be paid over the first 9 (nine) Calendar Months of the Lease Period. In other words the LESSEE shall not pay any amount as monthly rent to the LESSOR for the period 1st April, 2014 to 31st December, 2014.”

He submits that in the said clause, it is clearly mentioned that lessee/appellant shall not pay any amount as monthly rent to the lessor/respondent for the period 01.04.2014 to 31.12.2014. He, therefore, submits that if no amount was payable during the said period, the appellant would have over paid the respondent and, therefore, no direction for payment should have been ordered by the Learned Single Judge.

24. We would not for several reasons at this stage agree with the submission of Learned Senior Counsel of the appellant. We first note some other clauses of the Lease Deed, which are reproduced herein under:

“3. Term:

The Lease shall be for an initial period of 9 (nine) years from 1st April, 2014 till 31st March, 2023 (the “Lease Period”). The LESSOR shall not be entitled to terminate this Lease Deed without cause (i.e. other than for Material Breach by the LESSEE) for the entirety of the Lease Period.

Notwithstanding what has been stated above, the LESSEE shall, in addition to termination for cause (i.e. in the event of Material Breach by the LESSOR or on the occurrence of a Force Majeure event, as the case may be), shall be entitled to terminate the Lease Deed upon 3 (three) months notice at any time after a period of 30 (thirty) months (“ Lock-in-Period”) from the date of the execution of this Lease Deed (“Get Out Rights”).

4. Consideration:

4.1 The LESSEE shall pay Monthly Rent less tax deductible at source (as applicable and subject to any accepted escalations) through cheques/pay orders/demand drafts in favour of Friends Motels Pvt. Ltd, against receipts issued by the LESSOR evidencing the payments as follows:

- a. Rent for Said Premises-INR 18,00,000/- (Rupees eighteen lacs only) per month payable on or before the 15th day of each Calendar month to the LESSOR in advance (“**Monthly Rent**”).*

*4.5 Except in case of termination of this Lease, monthly rent payable under this Lease Deed will be increased by 15% calculated on the last paid rent by the LESSEE for the previous month after every period of 3 (three) calendar years (“**Escalation**”). The provisions of escalation shall become effective from 1st April, 2017 and thereafter from 1st April, 2020 of the Lease period. Other than as provided in this Clause, there shall be no further escalation. For the removal of doubts, the rent payable will be as follows:*

<i>1st April, 2014 to 31st March, 2017</i>	<i>Rs.18,00,000</i>
<i>1st April, 2017 to 31st March, 2020</i>	<i>Rs.20,70,000</i>
<i>1st April, 2020 to 31st March 2023</i>	<i>Rs.23,80,500”</i>

25. A bare reading of the above clauses, in our prima facie opinion, would show that Rs.54 lacs was the advance monthly rent for three months and was to be adjusted over the period of next 9 months of the lease period. The lease was to commence from 01.04.2014. Clause 4.5 clearly states that rent payable from 01.04.2014 to 31.03.2017 is Rs.18 lacs per month. There was, therefore, no free period in the Lease Deed. The last sentence of clause 4.1.b i.e. *“in other words the lessee shall not pay any amount as monthly rent to the lessor for the period of 1st April, 2014 to 31st December, 2014”* is clearly ambiguous and has to be harmoniously read to give a meaning and not negate the first part of the same clause which reads *“the advance rent shall be adjusted against the monthly rent to be paid over the first 9 (nine) Calendar Month of the lease period”*. It is a settled principle of law that the Court, as part of the process of construction, has the power to correctly interpret the written expression, with reference to the intention of the parties. We, prima facie, feel that the latter part of clause 4.1.b is a case of bad drafting. The plea raised is an after thought, and not the

intent. The appellant had not understood the Clause in this manner. The appellant admits that during this period it has regularly paid the agreed rental of Rs.18 lacs per months minus Rs.6 lacs per month (i.e. Rs.54 lacs divided into 9 months) as provided in the first part of clause 4.1.b quoted by us above. This is how, the clause was interpreted by the appellant. Therefore, the appellant had also acted in accordance with the prima facie construction of the clause now being put by us.

26. As far as the plea of oral understanding of deduction in the monthly rent, the same cannot be accepted at this stage and would be a matter to be investigated and decided by the Arbitral Tribunal. The plea would not defer and prevent the Court from passing this order.
27. Similarly, regarding the plea of amount having been paid for misuse of electricity and/or for mixed land use, no evidence has been placed on record by the appellant in support of the said contention and therefore, at this stage, this cannot be taken into account while directing the admitted rent to be paid by the appellant to the respondent.

28. In view of our above discussion we find that the respondent has made out a strong prima facie case based on the admitted Lease Deed, which is a registered document. We further find that the balance of convenience is also in favour of the respondent and against the appellant. The respondent had taken a loan facility from Bank of India and a tripartite agreement had also been executed where under the appellant had undertaken to deposit the monthly rent in the designated escrow account. Therefore, the respondent shall suffer great irreparable injury in case the appellant is not directed to deposit the outstanding rent, till the date of its occupation of the Leased Premises, to the respondent.
29. The last plea raised by the appellant is that after obtaining interim direction by way of the impugned order(s), the respondent has not taken any steps to commence the arbitration proceedings. This has been vehemently opposed by Learned Senior Counsel for the respondent and we have been informed that steps have been taken invoking the arbitration clause. In any case, the respondent vide its notice dated 16.10.2015 invoked the arbitration clause and even nominated its arbitrator.

In terms of Section 21 of the Act, arbitration, therefore, commenced on the date the notice was received by appellant. It is thereafter the duty of both parties to ensure the speedy adjudication of their disputes through arbitration. The appellant cannot be heard to contend that such duty is cast only on the respondent, being the claimant. We, therefore, do not see any merit in the said submission of Learned Senior Counsel for the appellant.

30. In view of the above discussion, we find no merit in the appeals and same are dismissed. We, however, make it clear that the observations laid out by us above are a prima facie opinion and should not, in any manner, influence the final decision and award to be pronounced by the Arbitral Tribunal. There shall be no order as to costs.

NAVIN CHAWLA, J

SANJIV KHANNA, J

SEPTEMBER 22, 2017/vp