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

***Pronounced on: 20.12.2023***

- + CS(COMM) 189/2020 and I.A. Nos. 638/2021  
ALOK KUMAR LODHA ..... Plaintiff  
versus  
ASIAN HOTELS (NORTH) LTD. .... Defendant
- + CS(COMM) 190/2020 and I.A. Nos. 1692/2021  
SWEETY SURI ..... Plaintiff  
versus  
ASIAN HOTELS (NORTH) LIMITED .... Defendant
- + CS(COMM) 192/2020 and I.A. Nos.630/2021  
CHARU LODHA ..... Plaintiff  
versus  
ASIAN HOTELS (NORTH) LTD. .... Defendant
- + CS(COMM) 200/2020 and I.A. Nos. 3339/2021  
H.S. NAG & ORS. .... Plaintiffs  
versus  
ASIAN HOTELS (NORTH) LIMITED .... Defendant
- + CS(COMM) 201/2020 and I.A. Nos. 1689/2021  
SYED MUJTABA SHAH ..... Plaintiff  
versus  
ASIAN HOTELS (NORTH) LIMITED .... Defendant
- + CS(COMM) 202/2020 and I.A. Nos.523/2021  
RAM KRISHAN ASSOCIATES PVT. LTD. .... Plaintiff  
versus  
ASIAN HOTELS (NORTH) LIMITED .... Defendant
- + CS(COMM) 203/2020 and I.A. Nos. 636/2021  
M/S JAIPUR JEWEL PALACE ..... Plaintiff  
versus  
ASIAN HOTELS (NORTH) LIMITED .... Defendant



- + CS(COMM) 206/2020 and I.A. Nos.527/2021, 601/2021  
REGENCY JEWELLERS ..... Plaintiff  
versus  
ASIAN HOTELS (NORTH) LIMITED ..... Defendant
- + CS(COMM) 208/2020 and I.A. Nos. 1686/2021  
M/S. SHANTI VIJAY JEWELS ..... Plaintiff  
versus  
ASIAN HOTELS (NORTH) LIMITED ..... Defendant
- + CS(COMM) 211/2020 and I.A. Nos. 3283/2021  
MEENA RASTOGI SINCE DECEASED THRU LR ..... Plaintiff  
versus  
ASIAN HOTELS (NORTH) LIMITED ..... Defendant
- + CS(COMM) 212/2020 and I.A. Nos.508/2021  
SHREE KHANNA GEMS ..... Plaintiff  
versus  
ASIAN HOTELS (NORTH) LIMITED ..... Defendant
- + CS(COMM) 213/2020 and I.A. Nos. 3282/2021  
AJAY KUMAR RASTOGI ..... Plaintiff  
versus  
ASIAN HOTELS (NORTH) LIMITED ..... Defendant
- + CS(COMM) 216/2020  
ARUN KUMAR JAIN ..... Plaintiff  
versus  
ASIAN HOTELS (NORTH) LIMITED ..... Defendant
- + CS(COMM) 229/2020 and I.A. Nos. 633/2021  
SHAW ART PALACE ..... Plaintiff  
versus  
ASIAN HOTELS (NORTH) LTD. .... Defendant
- + CS(COMM) 230/2020 and I.A. Nos. 3268/2021  
RAJESH JAIN ..... Plaintiff



Through:

- versus  
ASIAN HOTELS (NORTH) LTD. .... Defendant
- + CS(COMM) 232/2020 and I.A. Nos.507/2021  
SUGEET BALA AHUJA & ANR. .... Plaintiffs
- versus  
ASIAN HOTELS (NORTH) LTD. .... Defendant
- + CS(COMM) 233/2020 and I.A. Nos. 1691/2021  
BEENA JAIN .... Plaintiff
- versus  
ASIAN HOTELS (NORTH) LIMITED .... Defendant
- + CS(COMM) 234/2020 and I.A. Nos. 634/2021  
KASHMIR CARPET INDUSTRIES EMPORIUM .... Plaintiff
- versus  
ASIAN HOTELS (NORTH) LIMITED ..... Defendant
- + CS(COMM) 235/2020 and I.A. Nos. 635/2021  
KASHMIR CARPET PALACE .... Plaintiff
- Versus  
ASIAN HOTELS (NORTH) LIMITED .... Defendant
- + CS(COMM) 236/2020 and I.A. Nos. 1693/2021  
B.L. KAPOOR & ANR. .... Plaintiffs
- versus  
ASIAN HOTELS (NORTH) LIMITED .... Defendant
- + CS(COMM) 238/2020 and I.A. Nos. 631/2021  
MAHARANI OF INDIA .... Plaintiff
- versus  
ASIAN HOTELS (NORTH) LTD. .... Defendant
- + CS(COMM) 239/2020 and I.A. Nos. 526/2021  
TEHMINA SEN .... Plaintiff
- versus



- ASIAN HOTELS (NORTH) LIMITED ..... Defendant
- + CS(COMM) 240/2020 and I.A. Nos. 1687/2021  
V.P.SACHDEV ..... Plaintiff
- versus
- ASIAN HOTELS (NORTH) LIMITED ..... Defendant
- + CS(COMM) 241/2020 and I.A. Nos. 639/2021  
MR. FAROOQ AHMED & ANR. .... Plaintiffs
- versus
- ASIAN HOTELS (NORTH) LIMITED ..... Defendant
- + CS(COMM) 245/2020 and I.A. Nos. 637/2021  
CRAFTO ..... Plaintiff
- versus
- ASIAN HOTELS (NORTH) LTD. .... Defendant
- + CS(COMM) 246/2020 and I.A. Nos.524/2021, 1981/2022, 1982/2022  
SULTAN AHMED ..... Plaintiff
- versus
- ASIAN HOTELS (NORTH) LIMITED ..... Defendant
- + CS(COMM) 247/2020 and I.A. Nos. 1690/2021  
M/S NATIONAL COTTAGE EMPORIUM ..... Plaintiff
- versus
- ASIAN HOTELS (NORTH) LTD. .... Defendant

Through:

**Counsel for plaintiffs:**

Ms. Malvika Trivedi, Sr. Adv. along with Mr. Avishkar Singhvi, Mr. Nipun Katyal, Mr. Naved Ahmed, Mr. Shekhar Gupta, Ms. Mansha Gupta and Mr. Vivek Kumar, Advs.

**Counsel for defendants:**

Mr. Saurabh Kripal, Sr. Adv. along with Mr. Sidhant Kumar, Ms. Manyaa Chankok, Ms. Aakanksha Kaul, Ms. Vidhi Udayshankar, Dr. Joginder Singh, Ms. Muskaan Gopal, Mr. Gurpreet Singh Bagga, Mr. Shivankar Rao, Mr. Nikhil Arora and Ms. Shatakshi Singh, Advs.



**CORAM:**  
**HON'BLE MR. JUSTICE SACHIN DATTA**

**JUDGMENT**

IA. 626/2021 in CS(COMM) 189/2020  
IA.580/2021 in CS(COMM) 190/2020  
IA. 640/2021 in CS(COMM)192/2020  
IA. 628/2021 in CS(COMM) 200/2020  
IA. 556/2021 in CS(COMM) 201/2020  
IA. 572/2021 in CS(COMM) 202/2020  
IA. 558/2021 in CS(COMM) 203/2020  
IA. 600/2021 in CS(COMM) 206/2020  
IA. 517/2021 in CS(COMM) 208/2020  
IA. 622/2021 in CS(COMM) 211/2020  
IA. 554/2021 in CS(COMM) 212/2020  
IA. 604/2021 in CS(COMM) 213/2020  
IA. 616/2021 in CS(COMM) 216/2020  
IA. 612/2021 in CS(COMM) 229/2020  
IA. 608/2021 in CS(COMM) 230/2020  
IA. 576/2021 in CS(COMM) 232/2020  
IA. 533/2021 in CS(COMM) 233/2020  
IA. 578/2021 in CS(COMM) 234/2020  
IA. 552/2021 in CS(COMM) 235/2020  
IA. 574/2021 in CS(COMM) 236/2020  
IA. 519/2021 in CS (COMM)238/2020  
IA. 515/2021 in CS(COMM) 239/2020  
IA. 513/2021 in CS(COMM) 240/2020  
IA. 509/2021 in CS(COMM) 241/2020  
IA. 610/2021 in CS(COMM) 245/2020  
IA. 531/2021 in CS(COMM) 246/2020  
IA. 511/2021 in CS(COMM) 247/2020

1. The defendant has filed the present applications under Section 8 of the Arbitration and Conciliation Act, 1996 (the 'A&C Act'), seeking referral of the disputes, in the suits, to arbitration in terms of the arbitration agreement between the parties.



2. The facts involved in the present suits are similar; for sake of convenience, wherever necessary, facts as stated in CS (COMM) 189/2020 have been narrated hereunder.

3. Briefly stated, the factual background is that the plaintiff and the defendant have entered into an agreement dated 02.09.1991 whereby the defendant has granted the plaintiff a license in respect of a shop situated in the shopping arcade of Hotel Hyatt Regency Delhi. A supplementary agreement dated 02.09.1991 was also executed between the parties modifying/amending the agreement dated 02.09.1991. The said agreements are hereinafter collectively referred as “license agreement”. Under the said license agreement, the plaintiff has paid a refundable security deposit of Rs.8,47,000/- to the defendant. Similar license agreements have been executed with other licensees/plaintiffs. The said license agreement incorporates an arbitration agreement in following terms:-

*“12. That in case of any dispute, difference, between the Licensor and you, with regard to any matter including interpretation of this agreement and the clarification thereof, the same shall be referred to the joint arbitration of the Chairman of the Licensor or any person appointed by the Chairman and the arbitrator appointed by you, whose decision shall be final and binding between the parties and shall not be question in any court of law.”*

4. Other relevant stipulations in the agreement dated 02.09.1991 are as under: -

*“1. In consideration of the periodical payments hereinafter agreed to be paid by the Licencee and other Licencee’s undertakings hereafter set out, the Licensor hereby licences and authorises the Licence to enter upon and use the stipulated space for the purpose of carrying on Business or Trade of Jewellery & Handicrafts; Carpets & Boutiques etc\*. (hereinafter called ‘the authorised purpose’) on the days and during the hours to be determined by the Licensor from time to time. Any change in the authorised purpose shall be made only with the permission in writing of the Licensor.*



*\*except transport, travel agency, airlines, beauty parlour, bookshop, florist, cosmetics, medicines and any other trade which may be objectionable to the hotel industry.*

*2. The Licence under this agreement shall be operative for a period of 5 (five) years from the date the stipulated space is made available to the licensee (hereinafter referred to as 'commencement date') for carrying out the authorised purpose. At the option of the Licensee the licence under this Agreement shall be renewed for an additional period of not exceeding 5 (five) years at a time.*

*3. During the currency of this Licence, the Licensee hereby agrees with the Licensor and undertakes as follows :-*

*(a) To pay to the Licensor a sum of Rs. 5,066/- + taxes, if any (Rupees Five thousand sixty six only plus taxes, if any only) by 10<sup>th</sup> day of every month, the first of such payments to be made on commencement date; w.e.f. 2nd September, 91*

*(b) If the default is made in paying the said amount in time, interest @ 24% p.a. shall be chargeable from the due date(s) to the actual date of payment. Further, if the said default is continued for a period of three consecutive months the licensor shall have the right to terminate the licence ~~and the full amount of security deposits made under this licence deed with the licensor shall stand forfeited on such termination.~~*

*...*

*(v)*

*xxx*

*xxx*

*xxx*

*5 (a) As security for proper maintenance of the stipulated space and proper conduct and complete compliance of terms and conditions of the licence herein contained the licensee shall pay to the licensor an interest free security deposit of Rs. 8,47,000/- (Rupees Eight lakhs forty seven thousand only)*

*xxx*

*xxx*

*xxx*

*6. The licensee shall have the right to assign/transfer his/its right under this Licence with the written consent of the Licensor on such terms and conditions as the Licensor may notify from time to time in this behalf.*

*xxx*

*xxx*

*xxx*



10. That Licensor shall have the right to terminate the licence in case any of the terms of the Licence is contravened by the licensee by giving 30 (thirty) days notice in writing to the Licensee to remove the breaches or terms contravened, and on failure of the licensee to remove the said breaches with 30 (thirty) days', the licence will stand terminated. In case the Licensee the Licensee is interested in terminating the licence the Licensee may do so by giving 60 (sixty) date notice in writing to the Licensor and the Licence shall stand terminated on such expiry of the notice."

5. Stipulations in the supplementary agreement dated 02.09.1991 are as under:

1) In clause 2 add the following after the words 'at a time' :

*"On the same terms as this agreement including this clause for renewal. Option will be sufficiently exercised by delivery of notice sent by Registered A.D. post to the Licensor at least 30 days before the expiry of the term/renewed term".*

2) In clause 3 (v) add the following :

*"The Licensee will be free to take nut insurance in his own name or adjust the value depending upon the insurable interest".*

3) Clause 6 should be read as under :-

*"The Licensee shall have the right to assign/transfer its/their right under this Licence provided however that transfer charges calculated at the rate of 25% of the deposit money shall be payable by the licensee to the Licensor at the time of such assignment/transfer. However, in case of transfer of the constituent of Licensee and/or licensee's legal heirs, blood relatives, no transfer fee whatsoever shall be payable by the Licensee.*

4) In clause 10 add the following :

*"However, the right to terminate the licence will be exercised only case of a gross breach or engagement of the Licensee in unlawful activity or failure to pay the dues"*

6. The said license agreements have been renewed from time to time extending the operative period of license and increasing the license fee.



7. The defendant has sought to terminate/voke the said license agreement dated 02.09.1991 *vide* communication dated 29.05.2020 and has asked the plaintiff to remove all their goods/material/belongings from the shop within a period of one month. Similar termination/revocation notices have been sent to other licensees/plaintiffs. Aggrieved with the said notices, the present suits have come to be filed by the licensees/plaintiffs. The prayers in CS (COMM) 189/2020 are as under:

*“a) Pass a decree of declaration that the License in favour of Plaintiff in respect of the shop/premises No. L-83, Hotel Hyatt Regency Delhi, Bhikaji Cama Place, New Delhi is irrevocable and perpetual and the purported revocation of the License by the defendant is illegal, void and bad in the eyes of law;*

*b) Pass a decree of declaration declaring that the plaintiff has unfettered right to occupy and use the said premises/shop under the irrevocable license till the documents of transfer/conveyance are executed by the defendant;*

*c) In the alternative pass a decree of declaration declaring that plaintiff is the absolute owner of the said premises having already acquired the ownership rights in view of the consideration amount paid and documents executed between the parties;*

*d) pass a decree of permanent injunction in favour of the Plaintiffs and against the Defendant thereby restraining the defendant from interfering with ingress and egress of the plaintiff of the said premises and also interfering with its right to possess, occupy and carry on its business from the said premises;*

*e) pass a decree of permanent injunction restraining the defendant from damaging or demolishing the said premises and from selling, alienating, restructuring, parting with possession or creating any third-party rights with respect of portion of the property (subject shops) which is part of the Hyatt Hotel, New Delhi;*

*f) cost of the suit may be awarded in favour of the Plaintiffs;*

*g) may pass such order and further order as this Hon'ble Court may deem fit and proper in favour of the Plaintiffs as per the principles of Natural Justice.”*



## **SUBMISSIONS OF THE PARTIES**

8. Learned senior counsel for the plaintiffs has broadly raised two objections in opposing the present applications. *Firstly*, it is submitted that the subject matter of the suits, is per se non-arbitrable. It is submitted that the present suits seek a declaration in rem regarding the subject shops, which would involve determining the status or title of an individual with respect to the property, binding all third parties who currently have or may in the future have an interest in the premises. Such declarations can only be granted by courts, as they are binding on not only interested third parties who may have an interest in the same property but also on the general public. It is also submitted that all declaratory reliefs do not fall under Section 34 of Specific Relief Act, 1963. It is further submitted that the present suits involve determination of plaintiffs' rights as an owner or irrevocable licensee, which can only be in rem and therefore directly fall within the non-arbitrable categories of disputes as laid down in ***Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*<sup>1</sup>**, ***R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid*<sup>2</sup>**, ***Emaar MGF Land Ltd. v. Aftab Singh*<sup>3</sup>**, ***Sharad v. Hemant Kumar*<sup>4</sup>**, ***Fenner (India) Ltd. v. Brahmaputra Valley Fertilizer Corporation Ltd.*<sup>5</sup>** and ***Vidya Drolia v. Durga Trading Corpn*<sup>6</sup>**. It is further submitted that even though the judgment in ***Himangni Enterprises v.***

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<sup>1</sup> (2011) 5 SCC 532

<sup>2</sup> (1963) 3 SCR 22; 1962 SCC OnLine SC 112

<sup>3</sup> (2019) 12 SCC 751

<sup>4</sup> 2018 SCC Online Bom 11462

<sup>5</sup> 2016 SCC OnLine Del 110

<sup>6</sup> (2021) 2 SCC 1



***Kamaljeet Singh Ahluwalia***<sup>7</sup> has been overruled in ***Vidya Drolia*** (Supra), the Supreme Court did caution courts against referring inherently non-arbitrable disputes to arbitration.

9. *Secondly*, it is submitted that the subject matter of the suits is beyond/outside the scope of the arbitration agreement. It is submitted that the arbitration agreement is limited to disputes and differences between the defendant and licensees that arise from and pertain to the license agreement only. It is submitted that the arbitration agreement is intentionally restricted to bilateral disputes arising under the license agreement that do not involve title or interest in the property. It is submitted that the present suits are based on a number of other documents, actions, payment receipts, and conduct that fall well outside the narrow confines of the license agreement. It is submitted that the license agreement serves as one amongst several pieces of evidence that clearly establish that the shops in question were not actually transferred under the license agreement. Instead, the license agreement solely governed the terms of occupancy, given that the shops were situated within the hotel premises. It is asserted that even in the absence of the license agreement, the present suit would still be valid and legally sound. Furthermore, it is submitted that the license could not have been terminated by the defendant since the license was irrevocable as per Section 60 of the Easement Act, 1882; but even if one were to accept that the defendant's termination was justified, it would only result in the termination of the license agreement and would not affect any pre-existing property rights or interests that had already been conveyed, transferred, mortgaged, or created

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<sup>7</sup> (2017) 10 SCC 706



upon the grant of possession in exchange for the acceptance of sale consideration and/or extraordinary premium payments, which were significantly higher than the prevailing rates for the sale of neighbouring properties in the vicinity. It is emphasized that this constitutes the subject matter of the present suit and the same is not covered by the arbitration agreement.

10. *Per contra*, learned senior counsel for the defendant has submitted that since the plaintiffs have categorically admitted the existence of the arbitration agreement, a reference to arbitration under Section 8 of the A&C Act is mandatory. It is submitted that the defendant is only required to establish an arguable case in favour of arbitrability. Only where there is not a “vestige of doubt” will the court refuse to refer a matter to arbitration. In case of the slightest doubt, the court will rule in favour of arbitration. It is further submitted that the plaintiffs are seeking a declaration of title in the premises, which is a relief in personam as per Section 35 of the Specific Relief Act, 1963. A decree of this nature, if granted by the court, would only be binding on the parties to the present case and would not operate in rem. It is submitted that the Supreme Court in *Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties*<sup>8</sup>, has specifically upheld the authority of an arbitral tribunal to grant a declaration of title. Additionally, in *Razia Begum v. Sahebzadi Anwar Begum*<sup>9</sup>, the Supreme Court held that the use of the word “only” in Section 43 of the Specific Relief Act, 1877 (which is *pari materia* with Section 35 of the Specific Relief Act, 1963) was meant to emphasize that a declaration under the Specific Relief Act is not a judgment

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<sup>8</sup> (2021) 4 SCC 786

<sup>9</sup> 1959 SCR 1111



in rem. Further, in *Vidya Drolia v. Durga Trading Corpn.*, (supra) the Supreme Court held that only proceedings that result in a judgment having *erga omnes* effect (i.e., binding on parties who are not parties to the arbitration agreement) are in rem for the purpose of arbitrability. It is submitted that any judgment passed in the present suits allowing the claim of title would clearly result only in a judgment in personam in view of Section 35 of the Specific Relief Act, and thus clearly arbitrable. It is submitted that the Bombay High Court in identical circumstances allowed a petition under Section 11 of the A&C Act in *Prakash Cotton Mills v. Vinod Tejraj Gowani*<sup>10</sup>, holding that declaratory judgments are not in rem.

11. It is further submitted that, as per the allegations in the plaint, the sole basis of the plaintiff's claim lies in the terms of the license agreement. It is submitted that it is evident from Clause 1 of the license agreement that the plaintiff entered upon the premises solely in accordance with the license agreement itself. It is submitted that the arbitration agreement is broadly worded and explicitly encompasses all disputes pertaining to the interpretation of the License Agreement's terms. Furthermore, all reliefs sought in the plaint specifically seek a declaration of rights in terms of the License Agreement executed between the parties and concerns *inter se* rights between the parties with respect to the premises. It is thus submitted that the subject matter of the suits is within the scope of the arbitration agreement. It is submitted that a strong prima facie case exists in favour of referring the matter to arbitration.

### **ANALYSIS AND FINDINGS**

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<sup>10</sup>(2014) 6 AIR Bom R 1 : 2014 SCC OnLine Bom 1137



12. I have heard the parties and perused the record.

13. On the contentions raised, two issues arise for consideration (i) Whether the subject matter of the suit is capable of being adjudicated by an arbitral tribunal? and (ii) Whether the subject matter of the suit falls within the scope of the arbitration agreement contained in the license agreement executed between the parties?

14. At the outset, the scope and ambit of jurisdiction of this Court when an objection as to non-arbitrability is raised to an application under Section 8 of the A&C Act, may be seen. The Supreme Court in **Vidya Drolia v. Durga Trading Corpn.** (supra), has held as under:

*“133. Prima facie case in the context of Section 8 is not to be confused with the merits of the case put up by the parties which has to be established before the Arbitral Tribunal. It is restricted to the subject-matter of the suit being prima facie arbitrable under a valid arbitration agreement. Prima facie case means that the assertions on these aspects are bona fide. When read with the principles of separation and competence-competence and Section 34 of the Arbitration Act, the referral court without getting bogged down would compel the parties to abide unless there are good and substantial reasons to the contrary.*

*134. Prima facie examination is not full review but a primary first review to weed out manifestly and ex facie non-existent and invalid arbitration agreements and non-arbitrable disputes. The prima facie review at the reference stage is to cut the deadwood and trim off the side branches in straightforward cases where dismissal is barefaced and pellucid and when on the facts and law the litigation must stop at the first stage. Only when the court is certain that no valid arbitration agreement exists or the disputes/subject-matter are not arbitrable, the application under Section 8 would be rejected. At this stage, the court should not get lost in thickets and decide debatable questions of facts. Referral proceedings are preliminary and summary and not a mini trial. This necessarily reflects on the nature of the jurisdiction exercised by the court and in this context, the observations of B.N. Srikrishna, J. of “plainly arguable” case in Shin-Etsu Chemical Co. Ltd. are of importance and relevance. Similar views are expressed by this Court in Vimal Kishor Shah wherein the test applied at the pre-arbitration stage was whether there is a “good arguable case” for the existence of an arbitration agreement.*



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**154.2.** *Scope of judicial review and jurisdiction of the court under Sections 8 and 11 of the Arbitration Act is identical but extremely limited and restricted.*

**154.3.** *The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. The court has been conferred power of “second look” on aspects of non-arbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34(2)(a) or sub-clause (i) of Section 34(2)(b) of the Arbitration Act.*

**154.4.** *Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably “non-arbitrable” and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism.*

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**227.** *However, post the 2015 Amendment, the structure of the Act was changed to bring it in tune with the pro-arbitration approach. Under the amended provision, the court can only give prima facie opinion on the existence of a valid arbitration agreement. In line with the amended language and the statutory scheme, the examination of the subject-matter arbitrability may not be appropriate at the stage of reference under Section 8 of the Arbitration Act. It is more appropriate to be taken up by the court at the stage of enforcement under Section 34 of the Act. Having said so, in clear cases where the subject-matter arbitrability is clearly barred, the court can cut the deadwood to preserve the efficacy of the arbitral process.*

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**238.** *At the cost of repetition, we note that Section 8 of the Act mandates that a matter should not (sic) be referred to an arbitration by a court of law unless it finds that prima facie there is no valid arbitration agreement. The negative language used in the section is required to be taken into consideration, while analysing the section. The court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above. Therefore, the rule for the court is “when in doubt, do refer”.*

**239.** *Moreover, the amendment to Section 8 now rectifies the shortcomings pointed out in Chloro Controls case with respect to domestic arbitration. Jurisdictional issues concerning whether certain parties are bound by a particular arbitration, under group-company doctrine or good faith, etc., in a multi-party arbitration raises complicated factual questions, which are best left for the tribunal to handle. The amendment to Section 8 on this front also indicates the legislative intention to further reduce the judicial interference at the stage of reference.*

**240.** *Courts, while analysing a case under Section 8, may choose to identify the issues which require adjudication pertaining to the validity of the arbitration agreement. If the court cannot rule on the invalidity of the arbitration agreement on a prima facie basis, then the court should stop any further analysis and simply refer all the issues to arbitration to be settled.*

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**244.1.** *Sections 8 and 11 of the Act have the same ambit with respect to judicial interference.*

**244.2.** *Usually, subject-matter arbitrability cannot be decided at the stage of Section 8 or 11 of the Act, unless it is a clear case of deadwood.*

**244.3.** *The court, under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie (summary findings) case of non-existence of valid arbitration agreement, by summarily portraying a strong case that he is entitled to such a finding.*

**244.4.** *The court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above i.e. “when in doubt, do refer”.*

**244.5.** *The scope of the court to examine the prima facie validity of an arbitration agreement includes only:*

**244.5.1.** *Whether the arbitration agreement was in writing? or*

**244.5.2.** *Whether the arbitration agreement was contained in exchange of letters, telecommunication, etc.?*

**244.5.3.** *Whether the core contractual ingredients qua the arbitration*



agreement were fulfilled?

**244.5.4.** *On rare occasions, whether the subject-matter of dispute is arbitrable?”*

15. In *Gujarat Composite Ltd. v. A Infrastructure Ltd.*<sup>11</sup>, it has been held as under:

*“34. In Sukanya Holdings, while dealing with the question of applicability of Section 8 of the Act, as then existing, this Court underscored the requirements of correlation of subject-matter of the suit and subject-matter of the arbitration agreement and, inter alia, held as under : (SCC pp. 535-36, paras 12-17)*

*“12. For interpretation of Section 8, Section 5 would have no bearing because it only contemplates that in the matters governed by Part I of the Act, the judicial authority shall not intervene except where so provided in the Act. Except Section 8, there is no other provision in the Act that **in a pending suit, the dispute is required to be referred to the arbitrator**. Further, the matter is not required to be referred to the Arbitral Tribunal, if : (1) the parties to the arbitration agreement have not filed any such application for referring the dispute to the arbitrator; (2) in a pending suit, such application is not filed before submitting first statement on the substance of the dispute; or (3) such application is not accompanied by the original arbitration agreement or duly certified copy thereof. This would, therefore, mean that the Arbitration Act does not oust the jurisdiction of the civil court to decide the dispute in a case where parties to the arbitration agreement do not take appropriate steps as contemplated under sub-sections (1) and (2) of Section 8 of the Act.*

*13. Secondly, there is no provision in the Act that when the subject-matter of the suit includes subject-matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is also no provision for splitting the cause or parties and referring the subject-matter of the suit to the arbitrators.*

*14. Thirdly, there is no provision as to what is required to be done in a case where some parties to the suit are not parties to the arbitration agreement. As against this, under Section 24 of the Arbitration Act, 1940, some of the parties to a suit could apply that the matters in difference between them be referred to*

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<sup>11</sup> (2023) 7 SCC 193



arbitration and the court may refer the same to arbitration provided that the same can be separated from the rest of the subject-matter of the suit. The section also provided that the suit would continue so far as it related to parties who have not joined in such application.

15. The relevant language used in Section 8 is: “in a matter which is the subject of an arbitration agreement”. The court is required to refer the parties to arbitration. Therefore, the suit should be in respect of “a matter” which the parties have agreed to refer and which comes within the ambit of arbitration agreement. Where, however, a suit is commenced — “as to a matter” which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8. The words “a matter” indicate that the entire subject-matter of the suit should be subject to arbitration agreement.

16. The next question which requires consideration is — even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under Section 8 of the Act. In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action, that is to say, the subject-matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject-matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject-matter of an action brought before a judicial authority is not allowed.

17. Secondly, such bifurcation of suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the civil court would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums.”

35. As explained by this Court in Ameet Lalchand Shah, the amendment to Section 8 after the aforesaid decision in Sukanya Holdings could be seen in the background of the recommendations of 246th Law Commission



Report in which, inter alia, it was observed that as per the proposed amendment, judicial authority would not refer the parties to arbitration only if it finds that there does not exist an arbitration agreement or that it is null and void. If the judicial authority is of the opinion that prima facie the arbitration agreement exists, it would refer the dispute to arbitration and leave the existence of arbitration agreement to be finally determined by the Arbitral Tribunal.”

16. In the fact of **Gujarat Composite** (supra), the court did not find fault with the rejection of an application under Section 8 of the A&C, 1996, when “there being no doubt about non-existence of arbitration agreement in relation to the entire subject-matter of the suit.”

17. Therefore, an arbitral tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. Unless the dispute is manifestly and/or ex facie non-arbitrable, the rule is to refer the dispute to arbitration. At the referral stage, the court is primarily concerned about the existence of an arbitration agreement. If the court is of the opinion that *prima facie* the arbitration agreement exists, it would refer the dispute to arbitration and leave the existence of arbitration agreement to be finally determined by the arbitral tribunal.

***Re: (i) Whether the subject matter of the suit is capable of being adjudicated by an arbitral tribunal?***

18. The Supreme Court in **Booz Allen** (supra), has held as under:

*“36. The well-recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.*



*37. It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject-matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, a judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and a judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. (Vide Black's Law Dictionary.)*

*38. Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to subordinate rights in personam arising from rights in rem have always been considered to be arbitrable."*

19. Thus only when the subject matter of the dispute relates to actions in rem, that do not relate to subordinate rights in personam arising from rights in rem, the subject matter would be non-arbitrable.

20. In the present case, the plaintiff has filed the suit seeking a decree of declaration that the license in favour of the plaintiff in respect of shop/ premises is irrevocable and perpetual and the purported revocation of the license by the defendant is illegal, void and bad in the eyes of law. A decree is also sought for a declaration declaring that the plaintiff has unfettered right to occupy and use the said premises / shop under the irrevocable license till the documents of transfer / conveyance are executed by the defendant. In the alternative, a decree is also sought for a declaration declaring that plaintiff is the absolute owner of the said premises having



already acquired the ownership rights in view of the consideration amount paid and documents executed between the parties. Thus, declaration is sought on the basis of the license agreement executed between the plaintiff and the defendant.

21. There is no merit in the contention of learned counsel for the plaintiffs that the declaration regarding the shops would operate in rem and thus the subject matter of suit is *per se* non-arbitrable. In my view, such reliefs cannot be considered in rem. The substantive plea of the plaintiffs is that the right created in the shops/ premises in favour of the plaintiffs by the defendant is more than that of a license and that the plaintiffs are the owner or more than a lessee or at least holder of an irrevocable license, qua the shops. A declaration to that effect will operate only against the defendant and persons claiming through the defendant, and would thus operate in personam. In this regard, reference may be made to Sections 34 and 35 of the Specific Relief Act, as under:

***“34. Discretion of court as to declaration of status or right.***—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

*Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.*

*Explanation.*—A trustee of property is a “person interested to deny” a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

***35. Effect of declaration.***—A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.”



22. Section 35 of the Specific Relief Act makes it clear that any declaration of status or right in relation to any property granted under Section 34 would be binding “only” on the parties to the suit and persons claiming through them, respectively. In other words, the declaration granted would operate in personam and not in rem, and thus can be adjudicated in arbitration. In the present case, the declarations sought by the plaintiffs *prima facie* fall within the ambit of Section 34 of the Specific Relief Act. The Supreme Court in *Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties*, (2021) 4 SCC 786 has held as under:

*“29. When Sections 34 and 35 are seen, the position becomes even clearer. Unlike Section 31, under Section 34, any person entitled to any legal character may institute a suit for a declaration that he is so entitled. Considering that it is possible to argue on a reading of this provision that the legal character so declared may be against the entire world, Section 35 follows, making it clear that such declaration is binding only on the parties to the suit and persons claiming through them, respectively. This is for the reason that under Section 4 of the Specific Relief Act, specific relief is granted only for the purpose of enforcing individual civil rights. The principle contained in Section 4 permeates the entire Act, and it would be most incongruous to say that every other provision of the Specific Relief Act refers to in personam actions, Section 31 alone being out of step i.e. referring to in rem actions.*

*30. As a matter of fact, this Court in Razia Begum v. Sahebzadi Anwar Begum clarified that the predecessor to Section 35 of the 1963 Act, namely, Section 43 of the Specific Relief Act, 1877, made it clear that both Sections 42 and 43 of the Specific Relief Act, 1877 go together and refer only to an action that is in personam. This was felicitously stated by this Court as follows : (SCR p. 1131 : AIR pp. 894-95, para 12)*

*“12. ... Sections 42 and 43, as indicated above, go together, and are meant to be co-extensive in their operation. That being so, a declaratory judgment in respect of a disputed status, will be binding not only upon the parties actually before the court, but also upon persons claiming through them respectively. The use of the word “only” in Section 43, as rightly contended on behalf of the appellant, was meant to emphasise that a declaration in Chapter VI of the Specific Relief Act, is not a judgment in rem.*



*But even though such a declaration operates only in personam, the section proceeds further to provide that it binds not only the parties to the suit, but also persons claiming through them, respectively. The word “respectively” has been used with a view to showing that the parties arrayed on either side, are really claiming adversely to one another, so far as the declaration is concerned. This is another indication of the sound rule that the court, in a particular case where it has reasons to believe that there is no real conflict, may, in exercise of a judicial discretion, refuse to grant the declaration asked for oblique reasons.”.*

23. Further, in **Vidya Drolia** (supra), it has been held that landlord-tenant disputes, not governed by rent control legislations, are arbitrable. It was *inter-alia* held as under:

**“79. Landlord-tenant disputes governed by the Transfer of Property Act are arbitrable as they are not actions in rem but pertain to subordinate rights in personam that arise from rights in rem.** Such actions normally would not affect third-party rights or have erga omnes effect or require centralised adjudication. An award passed deciding landlord-tenant disputes can be executed and enforced like a decree of the civil court. Landlord-tenant disputes do not relate to inalienable and sovereign functions of the State. The provisions of the Transfer of Property Act do not expressly or by necessary implication bar arbitration. The Transfer of Property Act, like all other Acts, has a public purpose, that is, to regulate landlord-tenant relationships and the arbitrator would be bound by the provisions, including provisions which enure and protect the tenants.

**80.** In view of the aforesaid, we overrule the ratio laid down in *Himangni Enterprises* and hold that landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration.”

24. In **Booz Allen** (supra), it has been held that an agreement to sell does not involve any transfer of right *in rem* but creates only a personal obligation.



25. In *Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan*<sup>12</sup>, it has been held that issues relating to specific performance of contract relating to immovable property can be referred to arbitration.

26. The Bombay High Court in *Prakash Cotton Mills* (supra), has held as under:

*“52. Next submission of Mr D'vitre learned senior counsel is that the claim in respect of title in the immovable property cannot be referred to arbitration as the decision thereon would be decision in rem is concerned, in my view, a perusal of the notice invoking arbitration agreement and the averments made in the arbitration application No. 107/12 makes it clear that the applicants seek to claim a declaration that the applicant No. 1 and applicant No. 2 are sole and absolute owners of and in exclusive physical possession of the PCM and BBD property respectively. Such reliefs are sought to be claimed against the respondent Nos. 1 and 2. In my view such reliefs cannot be considered as relief in rem. If any declaration about title in respect of the immovable property sought against respondent Nos. 1 and 2 individually cannot be considered as a proceeding in rem.”*

*53. In so far as judgment of Supreme Court in case of Booz Allen and Hamilton Inc. (supra) relied upon by Mr D'vitre learned senior counsel is concerned, it is held by the Supreme Court that actions in personem referred to actions determining the rights and interest of the parties themselves in the subject matter of the case, whereas actions in rem referred to actions determining the title to property and the rights of the parties not merely amongst themselves but also against all persons at any time claiming an interest in that property. From the averments made in paragraphs 6.3 of the arbitration application it appears that the applicants seek to make various other claims also. In my view, the claims proposed to be made as indicated in the arbitration application are in personam and not in rem.”*

27. The plaintiffs contend that Section 34 of Specific Relief Act is not exhaustive of all declaratory reliefs<sup>13</sup> and where the intervention of the court is sought for the adjudication of a right or title to property, not merely as

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<sup>12</sup>(1999) 5 SCC 651

<sup>13</sup>See: *Ashok Kumar Srivastav v. National Insurance Co. Ltd.*, (1998) 4 SCC 361



between the parties but against all persons generally, the action is in rem.<sup>14</sup> However, in the present case the plaintiffs seek adjudication of their rights in the subject shops, in the light of the license agreements executed between the parties and other attendant circumstances. The said proceedings would result in a judgment binding on parties who are parties to the license agreements, and would thus operate in personam. In **Deccan Paper** (supra), while citing P. Ramanatha Aiyer's *Advanced Law Lexicon* which defines in rem proceedings, reference has been made to the observations of Chief Justice Marshall in **Mankin v. Chandle**<sup>15</sup>, which says that:

*"I have understood that where a process is to be served on the thing itself, and where the mere possession of the thing itself, by the service of a process and making proclamation, authorises the court to decide upon it without notice to any individual whatever, it is a proceeding in rem, to which all all the world are parties. The claimant if a party, whether he speaks or is silent, he asserts his claim or abandons it. But usage has distinguished as proceedings in rem a class of cases in which, while the seizure of the thing will be in aid of jurisdiction, yet it is essential that some form of notice be given to the particular person or persons. The proceedings thus assumes a phase of actions in personam, and a judgment will not be binding upon any one who was not before the court."*

28. It is also incorrect on the part of the plaintiffs to contend that equitable considerations are altogether precluded in arbitration. In this regard, reference may be made to **Suresh Shah v. Hipad Technology (India) Pvt. Ltd.**<sup>16</sup> where it has been held as under :-

*"17. Such equitable protection does not mean that the disputes relating to those aspects between the landlord and the tenant is not arbitrable and that only a court is empowered to waive the forfeiture or not in the circumstance stated in the provision. In our view, when the disputes arise between the landlord and tenant with regard to determination of lease under the TP Act, the landlord to*

<sup>14</sup>See: R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid, (1963) 3 SCR 22

<sup>15</sup> 16 F Cas 625 at P. 626 (CCDV 1823)

<sup>16</sup> (2021)1 SCC 529,



*secure possession of the leased property in a normal circumstance is required to institute a suit in the court which has jurisdiction. However, if the parties in the contract of lease or in such other manner have agreed upon the alternate mode of dispute resolution through arbitration the landlord would be entitled to invoke the arbitration clause and make a claim before the learned arbitrator. Even in such proceedings, if the circumstances as contained in Sections 114 and 114-A of the TP Act arise, it could be brought up before the learned arbitrator who would take note of the same and act in accordance with the law qua passing the award. In other words, if in the arbitration proceedings the landlord has sought for an award of ejection on the ground that the lease has been forfeited since the tenant has failed to pay the rent and breached the express condition for payment of rent or such other breach and in such proceedings the tenant pays or tenders the rent to the lessor or remedies such other breach, it would be open for the arbitrator to take note of Sections 114 and 114-A of the TP Act and pass appropriate award in the nature as a court would have considered that aspect while exercising the discretion."*

29. In view of the aforesaid, it cannot, at this stage, be said that the subject matter of the suits is manifestly and/or ex facie non-arbitrable.

***Re: (ii) Whether the subject matter of the suit falls outside the scope of the arbitration agreement contained in the license agreement executed between the parties?***

30. There is no merit in the contention of learned counsel for the plaintiffs that the subject matter of the suit falls outside the scope of the arbitration agreement.

31. An attempt of a party to circumvent an arbitration agreement cannot be countenanced; the court must have a meaningful - not formal - reading of the plaint. If the disputes fall within the scope of the arbitration agreement, regardless of the manner in which they are framed, the suit must be referred to arbitration. In ***Chloro Controls India Private Limited v. Sevrn Trent Water Purification Inc***<sup>17</sup>, it has been held as under:-

*"96. Examined from the point of view of the legislative object and the intent of the framers of the statute i.e. the necessity to encourage arbitration, the court is required to exercise its jurisdiction in a pending action, to hold the*

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<sup>17</sup>(2013) 1 SCC 641



parties to the arbitration clause and not to permit them to avoid their bargain of arbitration by bringing civil action involving multifarious causes of action, parties and prayers.”

32. In **A. Ayyasamy v. A. Paramasivam**<sup>18</sup>, it has been held as under:

*“45.2...The parties who enter into commercial dealings and agree to a resolution of disputes by an arbitral forum exercise an option and express a choice of a preferred mode for the resolution of their disputes. The parties in choosing arbitration place priority upon the speed, flexibility and expertise inherent in arbitral adjudication. Once parties have agreed to refer disputes to arbitration, the court must plainly discourage and discountenance litigative strategies designed to avoid recourse to arbitration. Any other approach would seriously place in uncertainty the institutional efficacy of arbitration. Such a consequence must be eschewed.*

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*53.The Arbitration and Conciliation Act, 1996, should in my view be interpreted so as to bring in line the principles underlying its interpretation in a manner that is consistent with prevailing approaches in the common law world. Jurisprudence in India must evolve towards strengthening the institutional efficacy of arbitration. Deference to a forum chosen by parties as a complete remedy for resolving all their claims is but part of that evolution. Minimising the intervention of courts is again a recognition of the same principle.”*

33. An examination of the entire plaint unequivocally brings out that the plaintiffs in their respective suits are only aggrieved with the revocation of their respective licenses. A perusal of the reliefs sought clearly indicates that the declaration is sought based on the license granted to the plaintiffs and the documents executed between the plaintiffs and the defendant. The only document executed between the plaintiff and the defendant (in CS(COMM) 189/2020) is the license agreement along with the renewal thereof. The situation is similar in the other suits. The license agreement admittedly contains an arbitration agreement between the parties to the suit.

34. In the plaint it has been *inter alia* averred as under:

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<sup>18</sup>(2016) 10 SCC 386



*“12. In view of the prohibition of transfer contained in the perpetual lease deed of the defendant, it was agreed that initially an irrevocable license would be created (borne out from terms of agreement) in favour of the plaintiff (and other shop allottees) in respect of respective shops in the shopping arcade and the documents of transfer and sale of the premises shall be executed subsequently once the property is converted into freehold. In other words, though the premises was always intended to be conveyed permanently to the plaintiff; at the first' instance an irrevocable license was created in its favour in respect of the shops/premises along with other proportionate rights in the said property, with the understanding/ agreement that the transfer documents shall be executed once the prohibition to transfer in law is cleared. This arrangement/agreement is clearly evident, inter-alia, from the perpetual right of renewal granted to the plaintiff under the above agreements with the element of permanency attached to it. Further, the increase in license fee, even in case of renewals, was related to the actual increase in the maintenance cost, which would clearly indicate that the entire cost/consideration for the space/shop had been understood to have been received by the defendant initially itself on the date of execution of agreements. It is further apparent from the fact that extraordinary premium was paid to the Defendant, a part of which was accepted as "security deposit" (a distinct component as informal payment) under the license agreement of Rs. 7,70,000/- for a small shop measuring 440.50 sq. ft. Thus, a substantial amount (including security deposit) was paid to the Defendant which was several multiples more than the ongoing market rates in the vicinity. Thereby, the defendant raised and received exponential premiums of money from the licensee Plaintiffs. This is as per prevalent practice at that time. The extraordinary premiums were astonishingly higher than prevalent market rate in the area at the relevant time. Thus, there is a clear underlying intention to transfer/convey a permanent interest in the said premises to the plaintiff and an irrevocable license was created, in the interregnum, till the property is converted into freehold. This mechanism, however, never affected the rights of the plaintiff to possess, occupy and carry his business from the said premises, initially on the basis of irrevocable license and finally as the absolute owner. Since, the defendant was a perpetual lease holder, at the time of entering into the agreements, the Defendant and the Plaintiff, at that time could not execute a formal registered sale deed to transfer or convey the subject premises that was leased by the government to the Defendant.”*

35. Thus, the license agreement is the only contractual document between the plaintiff and the defendant. Clause 1 of the license agreement makes it clear that the plaintiff entered upon the shop/ premises only in terms of the



license agreement. Clause 3 mentions the license fee payable to the defendant. Clause 5(a) mentions the consideration payable by the plaintiff to the defendant in the form of a refundable security deposit. Clause 10 (as amended) is the termination clause which has been invoked by the defendant and with which the plaintiff is aggrieved. Clause 12 is the arbitration agreement between the parties.

36. The other documents, such as agreement executed by the defendant for settlement with other similarly placed persons; license fee invoices raised by the defendant upon the plaintiff; lease deed between DDA and the defendant hotel; conversion of hotel from leasehold to freehold; permission to use the hotel as registered office with uninterrupted timing of use; prevailing property rates when deposits were accepted; prospectus advertising the shop in the year 1982 etc, on which much reliance has been placed by learned counsel for the plaintiffs, may aid as an evidentiary material in determining the true scope and nature of the license agreement executed between the parties, but the same does not detract from the fact that the contractual relationship between the parties emanates from the licence agreement.

37. In the present case, a dispute has arisen between the parties with regard to the nature of interest in the property/shop created under the license agreement. Adjudication of this dispute would involve an interpretation of the terms of the license agreement. For this purpose, an arbitral tribunal would not be precluded from taking into account the attendant circumstances surrounding the execution of the License Agreement, and other subsequent development/s. The arbitration agreement therein is broadly worded and includes “any dispute, difference, between the licensor



and licensee, with regard to any matter including interpretation of license agreement and the clarification thereof”. Thus, the substance of the dispute/s which is subject matter of the suit, falls within the purview of the arbitration agreement.

38. The contention of the plaintiffs, as referred to in para 35 of the plaint in CS(COMM)189/2020 that the arbitration agreement is invalid and unenforceable since it only provides for appointment of two arbitrators, is liable to be rejected in terms of judgement of the Supreme Court in *Narayan Prasad Lohia v. Nikunj Kumar Lohia*<sup>19</sup>.

### **Conclusion**

39. In view of the aforesaid, the present applications under Section 8 of the A&C Act, are allowed. The parties are at liberty to seek appointment of arbitrator/constitution of an arbitral tribunal in terms of as per the arbitration clause in the license agreement/s.

40. CS(COMM) 189/2020, CS(COMM) 190/2020, CS(COMM) 192/2020, CS(COMM) 200/2020, CS(COMM) 201/2020, CS(COMM) 202/2020, CS(COMM) 203/2020, CS(COMM) 206/2020, CS(COMM) 208/2020, CS(COMM) 211/2020, CS(COMM) 212/2020, CS(COMM) 213/2020, CS(COMM) 216/2020, CS(COMM) 229/2020, CS(COMM) 230/2020, CS(COMM) 232/2020, CS(COMM) 233/2020, CS(COMM) 234/2020, CS(COMM) 235/2020, CS(COMM) 236/2020, CS(COMM) 238/2020, CS(COMM) 239/2020, CS(COMM) 240/2020, CS(COMM) 241/2020, CS(COMM) 245/2020, CS(COMM) 246/2020, CS(COMM)

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<sup>19</sup> (2002) 3 SCC 572



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247/2020, along with all pending applications, accordingly stand disposed of.

41. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the disputes.

**SACHIN DATTA, J**

**DECEMBER 20, 2023/hg**