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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 27th August, 2021

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O.M.P.(I) (COMM.) 294/2021 & I.A. 10860/2021

NARANGS INTERNATIONAL HOTELS PRIVATE LIMITED

..... Petitioner

Through: Mr. Kapil Sibal & Mr. Akhil Sibal,
Senior Advocates with Mr. Kshitiz
Garg, Mr. Anshum Jain, and Mr.
Rahul Kochal, Advocates.

versus

DELHI INTERNATIONAL AIRPORT LIMITED Respondent

Through: Dr. Abhishek Manu Singhvi, Senior
Advocate with Mr Anuj Berry, Mr.
Chaitanya Safaya, Mr. Amit Bhandari
and Ms. Perna Acharya, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral):

1. The present petition under Section 9 of the Arbitration and Conciliation Act, 1996 [*hereinafter referred to as ‘the Act’*] has been filed by the Lessee – Narangs International Hotels Pvt. Ltd. [*hereinafter referred to as “NIHPL”*], seeking urgent interim relief against the Lessor – Delhi International Airport Limited [*hereinafter referred to as ‘DIAL’*], being aggrieved by DIAL’s email dated 02nd July 2021 asking NIHPL to initiate steps for vacation of DIAL’s premises in view of the expiry of lease on 31st August 2021.

2. NIHPL seeks the following urgent reliefs:

“[A] Direct that pending the adjudication of the arbitration proceedings between the Parties status quo as on date be maintained by the Parties regarding the flight catering operations of the Petitioner;

[B] Restrain the Respondent from taking any coercive steps to impede the flight catering operations of the Petitioner, including discontinuing issuance of necessary permits/ passes to its personnel/vehicles for entry to the Airport premises, or taking any steps to oust it from the leased land;

[C] Pass ad-interim ex parte orders in terms of the above prayers.”

3. The facts leading to the filing of the present petition, as narrated therein, are briefly captured below:

3.1. International Airports Authority of India granted lease of airport land to NIHPL for the “*purpose of carrying on flight catering business at the Delhi Airport, Palam*” for a period of 30 years (ending on 31st August 2011), by way of a Lease Deed dated 20th August, 1982 [*hereinafter referred to as ‘Original Lease Deed’*]. Clause 19 of the General Conditions of Contract appended thereto contained an arbitration clause.

3.2. The Delhi Airport / Palam Airport was renamed in 1986 as the Indira Gandhi International Airport [*hereinafter referred to as ‘IGI Airport’* or the ‘**Airport**’]. The International Airports Authority of India was renamed in 1995 as Airports Authority of India [*hereinafter referred to as ‘AAI’*].

3.3. DIAL became AAI’s successor-in-interest for the Original Lease Deed by way of an Operations, Maintenance and Development

Agreement dated 04th April 2006, executed between AAI and DIAL, in respect of IGI Airport. [*hereinafter referred to as ‘OMDA’*]

- 3.4. The Original Lease Deed also provided “*an option of extension upto 10 years*” in its recital. Later, as recorded in the minutes of meeting dated 27th November 2009 held between NIHPL, DIAL and AAI, the lease was extended for a further period of 10 years (i.e. till 31st August 2021). A separate agreement was also entered into between NIHPL, DIAL and AAI regarding the same in 2009 [*hereinafter referred to as the ‘Agreement dated 2009’*]. Thus, NIHPL continues to operate at the IGI Airport on the same terms and conditions as contained in the Original Lease Deed, except for certain modifications as recorded in the minutes of meeting referred above.
- 3.5. NIHPL contends that shortly thereafter, DIAL started pressurizing it to enter into a license agreement instead of the lease, and threatened to disallow access of airport to NIHPL for providing in-flight catering services.
- 3.6. Faced with DIAL’s refusal to grant NIHPL’s personnel and vehicles access to the Airport, NIHPL was constrained in 2013 to file a petition under Section 9 of the Act for necessary reliefs, which included access to the Airport. During the course of the proceedings, NIHPL and DIAL executed a Supplementary Lease Agreement dated 17th May 2013 [*hereinafter referred to as ‘SLA’*], on the basis whereof, the Section 9 petition was withdrawn.¹ The said agreement also contained an arbitration clause.

¹ Order dated 20th May 2013 passed by a coordinate bench of this court in OMP No. 435/2013.

- 3.7. In 2016, once again, faced with DIAL's denial of access to the Airport, NIHPL approached this court by way of a writ petition, which was disposed of by recording statement of DIAL that the Original Lease Deed stands extended till August 2021 and that DIAL would extend the necessary permits and passes for access to the Airport premises.²
- 3.8. In terms of clause 2 of the SLA, the parties were to "*discuss and mutually finalize the mode, terms and conditions of the extension prior to the Term*" of the SLA, which is ending on 31st August 2021. Accordingly, from 2019 onwards, NIHPL addressed several letters inviting DIAL to discuss and finalize the extension, to which it received no response.
- 3.9. In 2021, yet another writ petition was filed by NIHPL in this Court, seeking directions to DIAL to negotiate and arrive at an extension of the Original Lease Deed. The Court, while adjourning the matter, observed that the parties were free to discuss the extension in the meanwhile.³
- 3.10. Thereafter, in a meeting of the parties dated 07th May 2021, DIAL offered to enter into a license agreement with NIHPL for one year beyond August 2021, at the same monetary terms as the lease, instead of proposing extension of the lease.
- 3.11. After various communications back and forth, during the pendency of the above-stated writ petition, DIAL asked NIHPL to vacate *vide* email dated 02nd July 2021.

² Order dated 28th August 2018 passed by a coordinate bench of this court W.P.(C.) 8768/2016.

³ Order dated 28.04.2021 passed by a coordinate bench of this Court in W.P.(C.) 3957/2021.

- 3.12. NIHPL invoked arbitration *vide* notice dated 06th July 2021 and in view thereof, withdrew the writ petition on 13th July 2021. However, despite lapse of 30 days from the date of notice, no response was received from DIAL.
- 3.13. Faced with the impending vacation of premises, which is just 4 days away from today, and aggrieved by DIAC's lack of proposal for extension of lease, for reasons elaborated in the contentions of the parties hereinafter, NIHPL has filed the present petition for interim relief pending the formation of the Arbitral Tribunal.

CONTENTIONS:

4. Mr. Kapil Sibal and Mr. Akhil Sibal, Senior Advocates, who appear for NIHPL make the following submissions:
- 4.1. DIAL has been constantly pressurizing NIHPL to enter into a License Agreement with it, notwithstanding the fact that DIAL and NIHPL are signatories to the minutes of meeting dated 27th November 2009, wherein, the parties agreed to extend the Original Lease Deed for a period of 10 years, and additionally, a further extension, post August 2021, was also contemplated.
- 4.2. Despite entering into the Agreement dated 2009 as well as the SLA dated 17th May 2013 with NIHPL, DIAL has been taking a dishonest stand that there is no valid lease, and hence, NIHPL must enter into a license with DIAL on terms divergent from the subsisting lease.
- 4.3. In 2016, NIHPL was compelled to approach this court for the second time [*in W.P.(C.) 8768/2016*] on account of DIAL's withholding of entry of NIHPL's personnel and vehicles at the Airport. In the court,

the AAI, as Respondent No. 2, took the stand that it need not sign the SLA due to the terms of OMDA whereunder all future arrangements shall be entered into between only NIHPL and DIAL. The relevant portions of the orders dated 28th September 2016 and 28th August 2018 in W.P.(C.) 8768/2016 read as under:

Order dated 28th September 2016:

“Learned counsel for the petitioner contends that the petitioner is a lessee under Lease Agreement dated 20.8.1982 which was a lease for a period of 30 years with the option to the petitioner to have the same extended for a period of further 10 years. It is contended that the said option was exercised and by the Minutes of meeting dated 27.11.2009, the petitioner as also the respondents agreed to the extension of the lease for a further period of 10 years w.e.f. August, 2011 to August 2021, on the same terms and conditions as also on the terms and conditions as modified therein. It is contended that subsequently a tripartite supplementary lease dated 17.05.2013 was prepared. However, the Airports Authority of India till date has not signed the same though the same has been signed by the petitioner as well as by respondent No.1.

Learned counsel for respondent No.2 prays for time to take instructions with regard to the signing of the said document.”

Order dated 28th August 2018:

“1. The petitioner has filed the present petition, inter alia, praying as under:-

“(i) issuance of appropriate writ, order or direction in the nature of mandamus or any other appropriate writ by directing the Respondents to issue to the Petitioner necessary vehicles permits, passes, ADP, NOC, permissions etc. for the access of personnel and vehicles at the IGI airport for providing in-flight catering services upto 31.03.2017 in accordance with Lease deed dated 20th August 1982 as extended on 27th November, 2009,

(ii) Issuance of appropriate writ, order or direction in the nature of mandamus or any other appropriate writ by

directing the Respondents not to withhold the entry of personnel or vehicles of the Petitioner at the IGI airport for providing in-flight catering services in terms of lease deed dated 20th August 1982 as extended on 27th November, 2009.”

2. *Mr Tripathi, learned Senior Counsel appearing for respondent no.1/DIAL concurs with the submission that the lease dated 20.08.1982 stands extended till August 2021 in terms of the Minutes of the Meeting dated 27.11.2009. He further states that in view of the above, the DIAL would extend the necessary vehicles permits and passes for granting access to the Airport premises.*

3. *The learned counsel appearing for the Airport Authority of India (AAI) also states that a decision has been taken that all arrangements ad agreements in future would be with the DIAL. Further, the AAI has no objection to the above.*

4. *In view of the above, the petitioner’s grievance stands addressed. No further orders are required to be passed in this petition.*

5. *The petition and the pending application are, accordingly, disposed of.”* (sic)

- 4.4. Thus, the parties agreed without prejudice to act in terms of the SLA. Clause 2 thereof stipulates that parties will discuss and mutually finalize the mode, terms and conditions of the extension prior to the Term, for the period post August 2021. The effect, scope and enforceability of this extension clause will be the subject matter of arbitration. For now, the court can take note of the plain-wording of the clause. It contemplates an extension of the existing lease. DIAL has not made any proposal for extension of lease, and rather, has proposed a license instead, which is contrary to the understanding between the parties.
- 4.5. NIHPL is one of the pioneers of the flight catering business along with Taj and Oberoi, carrying out its operations for the last 40 years,

employing thousands of personnel. In these circumstances, the subject matter of the arbitration should be preserved at this stage by restraining DIAL from taking any coercive steps to oust NIHPL, including denying requisite permissions to NIHPL's personnel and vehicles for access to the Airport.

- 4.6. The livelihood of 1500 employees along with their families will be at stake, if relief is not granted to NIHPL with immediate effect.
- 4.7. The balance of convenience lies in favour of NIHPL and irreparable loss and injury would be caused, in case an interim relief is not granted.
- 4.8. It is not the case of NIHPL that it is claiming a right of automatic extension of the lease. However, it is entitled to, in terms of Clause 2 of the SLA, to seek enforcement of its right to call upon DIAL to negotiate the mode, terms and conditions of an extension.
- 4.9. Reliance was also placed on the judgment of the Supreme Court in *Hardesh Ores (P.) Ltd. v. Hede & Co.*,⁴ to contend that extension is different from renewal. In the case of renewal, a new lease is required, while in the case of extension, the same lease continues in force for an additional period of time. The extension of lease also does not require any registered document to be executed.
- 4.10. Reliance was also placed on Section 14(3)(c)(ii) of Specific Relief Act, 1963 as it was the prior to the 2018 Amendment, to argue that the court can enforce specific performance in a case where the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money terms for non-

⁴ 2007 5 SCC 614, at para 29 and 30.

performance of the contract is not an adequate relief.⁵

5. Dr. Abhishek Manu Singhvi, Senior Counsel for DIAL, on the other hand, strongly contested the present petition by making following submissions:

- 5.1. There is unexplained delay and laches on the part of NIHPL in not approaching the court earlier. On this ground alone the petition deserves to be dismissed. NIHPL knew all along (and at least from 7th May 2021 and also from 2nd July 2021) that DIAL had an obligation to award a contract by way of tender in terms of Clause 8.5.7 of OMDA. Even then, instead of availing judicial remedies, it engaged in unnecessary correspondence, and has approached this Court at the very last moment. In fact, DIAL has not even received the purported notice of invocation dated 06th July 2021.
- 5.2. The SLA is void and invalid, and thus NIHPL has no right to seek extension of the lease. This position has been accepted by NIHPL, as evident from the order dated 28th August 2018 passed in W.P. (C) 8768/2016.
- 5.3. In terms of OMDA, DIAL can only award a sub-lease/license of the premises to a party selected through a tender process.
- 5.4. The Clause 2 of the SLA does not give any automatic right of extension in favour of NIHPL. It only obligates the parties to discuss and mutually finalize the mode, terms and conditions of the extension prior to the Term. Therefore, no mandatory injunction can be granted

⁵ This contention, made orally during the hearing, does not form part of the written submission filed by DIAL.

at the interim stage to extend a lease expiring on 31st August 2021. Reliance is placed upon *Indian Hotels Company Ltd. v. NDMC*.⁶

- 5.5. DIAL is the best judge of its business operations. It is for DIAL to choose the number of sub-contractors it should have at the IGI Airport.
- 5.6. DIAL, in good faith and without prejudice to its rights, made an ad-hoc offer for a license to NIHPL, which was expressly rejected. Multiple correspondences between the parties would show that NIHPL was unagreeable to enter into a fresh license for a period one year post the expiry of the present lease. The offer given by DIAL was expressly rejected by NIHPL, who sought “a fair and reasonable proposal for the extension of the lease.” NIHPL wanted only an offer that suited itself, which is against the basic tenets of mutual discussion, and thus, today, this offer cannot be foisted upon DIAL as it lapsed as far back as on 02nd July 2021.
- 5.7. In terms of Section 14(d) of the Specific Relief Act, 1963, a determinable contract cannot be specifically enforced, and therefore an interim injunction cannot be granted. Reliance is placed upon *Royal Orchid Associated Hotels Private Limited v. Kesho Lal Goyal*.⁷
- 5.8. There is a bar to arbitration under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Clause 19 of the General Conditions of Contract appended to the Original Lease Deed, specifically excludes disputes which fall within the purview of the

⁶ 2016 SCC OnLine Del 5733.

⁷ 2020 SCC OnLine Del 1708.

said Act. Therefore, the occupation of the subject premises by NIHPL, post 31st August 2021, can only be decided under the Public Premises Act, and hence the issues sought to be urged by NIHPL are not arbitrable. Relevant extract of Clause 19 of the General Conditions of Contract appended to the Original Lease Deed is extracted below:

“19. All disputes and differences arising out of or in any way touching or concerning this agreement (except those the decision whereof is otherwise hereinbefore expressly provided for or to which the Public Premises (Eviction of Unauthorised Occupants) Act and the rules framed thereunder which are now in force or which may hereafter come into force are applicable shall be referred to the sole arbitration (...)” (sic)

ANALYSIS & FINDINGS

6. The counsels for the parties have been heard at considerable length. Section 9 of the Act vests wide powers with the Court for granting interim orders, at all stages of an arbitration proceeding. However, for grant of relief of injunction, the court is guided by the principles applicable to Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908. In order to succeed, NIHPL has to meet the three-pronged tests of (i) *prima facie* case, (ii) balance of convenience and (iii) irreparable harm or injury. The Court must also be mindful that jurisdiction at the pre-arbitration stage is to be exercised only to ensure that an award passed by an Arbitrator should not be rendered infructuous. In other words, interim order should only be passed in aid of the imminent arbitration proceedings.

7. Although NIHPL is correct in saying that the scope, effect and enforceability of the extension clause will be the subject matter of arbitration, yet NIHPL has to certainly satisfy and establish a *prima facie*

case and manifest the necessary ingredients enumerated above, for grant of interim relief. To determine this, the court has to examine the contractual obligations flowing from the agreements in question.

8. Firstly, DAIL has contended that the SLA is not a valid document and thus DIAL is not governed by the terms stipulated thereunder. In the opinion of the Court, adjudication on this issue would require appreciation of evidence which, however, would only be feasible in arbitration. For now, taking a *prima facie* view, based on the stand taken by DIAL before a coordinate bench of this court in the order dated 28th August 2018 in W.P.(C.) 8768/2016 (which has been extracted earlier in para 4.3 of this judgment), the court finds the SLA to be subsisting and thus governing the relationship between the parties. It is also undisputed that the arrangement recorded thereunder grants NIHPL the right to occupy the premises at IGI Airport, till 31st August 2021.

9. That said, the next question that falls for consideration is the enforceability of NIHPL's right under the terms of the SLA. For that let's straightaway go to the SLA, relevant clauses whereof are extracted hereinbelow:

“ SUPPLEMENTARY LEASE DEED
(...)

WHEREAS:

2. As per the Original Lease Deed dated 20th August 1982 NIHPL had an option to renew the lease for a further period of 10 (ten) years from 31 August 2011 till 31st August 2021, and the same option has been exercised by NIHPL.

3. The Parties agreed and decided amongst other things in the Joint

Meeting held on 27 November 2009 at New Delhi to renew and extend the lease of the premises for a further period of 10 (ten) years effective from 31 August 2011 on the same terms and conditions as the Original Lease Deed save and except a Royalty (Levy) (as defined hereinafter) of 13% (thirteen) of the Gross Turnover. The MOU dated 27.11.2009 is annexed as Schedule-I.

6. *In view of the above, it has been agreed between the Parties to execute this Supplementary Lease Deed to the Original Lease Deed in writing thereby extending the terms of the original lease deed by another 10 (ten) years from 01 September 2011 to 31 August 2021 (both dates inclusive) on the same terms and conditions as contained in the Original Lease Deed, except as stated therein.*

NOW THEREFORE IN CONSIDERATION OF THE PROVISIONS AND MUTUAL COVENANTS CONTAINED HEREIN IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

2. EXTENSION

The parties hereby extend the term of the Original Lease Deed for the period of 10 (Ten) years from 01 September 2011 to 31 August 2021 (both days inclusive) ("Term").

For the period post 31 August 2021 the parties will discuss and mutually finalize the mode, terms and conditions of the extension prior to the Term or such extended period agreed to between DIAL and NIHPL.

14. *TERMINATION*

14. *This Deed shall expire automatically after the expiry of the Term unless terminated as provided in this Deed.*

The termination, consequences of expiry, termination and prior determination of the Term of this Deed shall be governed by the provision of the Original Lease Deed and this Deed.

Without prejudice to AAI and/or DIAL's right to repossess the Leased Premises along with any building and structures thereon, all other rights, remedies and legal action, if any on expiry, termination or sooner determination of the Lease, if NIHPL fails to hand over peaceful vacant possession of the Leased Premises then DIAL shall be entitled to not refund the Security Deposit till the Leased Premises is handed over to DIAL. DIAL shall charge the Rent along with simple interest at the rate of 18% per annum, thereon till such time NIHPL handovers to DIAL the Leased Premises." [emphasis supplied]

10. Great emphasis has been laid by Mr. Sibal on Clause 2 (Extension) to contend that DIAL is contractually bound to necessarily come forward to join NIHPL on the negotiating table. The court is, however, unable to read any such enforceable right in favour of NIHPL, in the manner of interpretation of clause 2 that is being urged by it. The aforementioned clause clearly defines the expiry of the term of the lease as 31st August 2021. It only envisages an option available to the parties to discuss the possibility of an extension, prior to the termination of the period of the lease. While it undoubtedly also provisions for an extension in the future, but that is with a caveat - in case the parties may so desire - upon mutual discussions. The court cannot read that as an absolute, automatic or vested right of extension being carved out in favour of NIHPL. In order to agree on an extension, the parties have to imperatively arrive at a consensus on mutually agreed terms - i.e., the parties have to be *ad idem*. Clause 2 cannot be interpreted to mean that NIHPL can compel DIAL to sit at the negotiating table, much less enter into a contract. Parties have an opportunity to extend the lease on mutually agreed terms, but DIAL's choice to not negotiate an extension is entirely its own business decision, and the court cannot compel it otherwise. A binding agreement can only come about if the earlier agreement is renewed on mutually agreed terms, in the absence whereof, the term of SLA is bound to terminate on the stipulated date.

11. In fact, Mr. Sibal has categorically stated that he is not claiming an automatic right of extension. He has painstakingly taken the court through the documents on record to demonstrate that the conduct of DIAL has been dishonest and that they have not come forward to negotiate the terms of

extension of the lease. He has relied upon the email dated 13th May 2021 to argue that DIAL has instead offered to allow NIHPL to continue in the premises, subject to the execution of a year-long license agreement. During the course of the arguments, a specific query was put to Dr. Singhvi, as to whether the offer made by DIAL in the aforementioned email was still open, i.e., whether DIAL was still desirous of entering into a fresh Licence Agreement with NIHPL. In response thereto, Dr. Singhvi took the Court through several correspondences between the parties, subsequent to the aforementioned communication, and stated that the offer stood lapsed as far back as 2nd July 2021, in terms of the conduct of and laches on part of NIHPL.

12. These communications, being an accurate account of the events that transpired, give us an insight into NIHPL's stand regarding DIAL's offer of entering into a fresh Licence Agreement. It would thus be apposite to refer to the email dated 14th May 2021, which is the first response of NIHPL to the offer noted above. The same is extracted herein below:

*"From: Ambassador's Sky Chef <dfk@ambassadorindia.com>
Sent: 14 May 2021 19:12
To: 'Sanjiv Edward' <Sanjiv.Edward@gmrgroup.in>
CC: 'Ashish Batra' <Ashish.Batra@gmrgroup.in>; 'Beena Patwal' <Beena.Patwal@gmrgroup.in>
Subject: RE: Your email dated 26.04.2021 regarding lease deed dated 20.08.1982 and MoU dated 27.11.2009 and order dated 28.08.2018 passed by the Hon'ble High Court*

*Dear Sanjeev,
Thank you for email dated 13th May 2021 along with the attached minutes of the discussions we had via Zoom last Friday.
At the outset I would like to bring to your notice that, during our discussions last Friday, I had clearly explained to you and your team, that our subsisting Lease Deed dated 17th May 2013 has a specific clause (Clause 2) for extension of the existing lease post 31st August 2021. The said clause provides for the Parties to discuss and mutually finalise the mode, terms and conditions of the extension of the lease. In view of this clause, I had*

explained that Ambassador Sky Chef stood on a entirely different footing as compared to the other flight catering units at Delhi, and any tender that you may come up with for appointment of new flight kitchen concessionaire would not be applicable to us. As such the only thing that remains is for us to discuss and mutually finalise fair and reasonable terms for the extension of our existing lease.

In addition please note that Clause 2 of the Lease Deed dated 17th May 2013 provides for an “extension” of the subsisting lease and hence there is no question of having it converted into a license. Thus DIAL is contractually obligated to extend the lease and not convert it into a License.

As stated during our meeting on 07th May 2021, and in my email dated 11th May 2021, in the present scenario even the most optimistic projections do not envisage a revival of domestic or international traffic of at least another 4-5 years. Given the losses we have suffered, and continue to suffer since the outbreak of the Corona virus pandemic, along with the difficulties faced in collecting our old outstanding dues, including the GST, Revenue Share paid to DIAL, TDS etc. all paid by us from our own pocket, a complete revival of the business is necessary which would require a considerable period of time. This will not be possible with a shorter term lease as on the one hand we have to invest substantial sums into the upgradation of the existing flight catering unit to prevent the spread of COVID as also ensure compliance with enhanced hygiene standards and on the other all airlines insist on a minimum 5 year residual land lease period before renewing or entering into fresh catering contracts.

In view of the above, and also considering the stiff competition that we will face from new airports opening in the vicinity, including the Jewar airport, your proposal for a one year extension is neither commercially feasible or nor financially viable and is contrary to the spirit of the long and cordial relationship that we enjoy.

We again request you to reconsider your proposal and let us have you offer for extension of the lease for a much longer period, and on far more favourable terms and conditions than the present terms, considering the financial crisis that our business is facing and is likely to continue to face in the near future.

*Best Regards,
Murali Krishnan”*

(sic)

13. The above email reveals that NIHPL has been looking for an offer that suits them, on their terms. Subsequent email communications also narrate the same story. The relevant part of a few of such communications are extracted herein below:

(i) Email dated 21st May 2021:

*"From: Ambassador's Sky Chef <dfk@ambassadorindia.com>
Sent: 21 May 2021 15:17
To: 'Sanjiv Edward' <Sanjiv.Edward@gmrgroup.in>
CC: 'Ashish Batra' <Ashish.Batra@gmrgroup.in>; 'Beena Patwal' <Beena.Patwal@gmrgroup.in>
Subject: RE: Your email dated 26.04.2021 regarding lease deed dated 20.08.1982 and MoU dated 27.11.2009 and order dated 28.08.2018 passed by the Hon'ble High Court*

Dear Sanjiv,

This is further to my trailing email dated 14th May 2021.

As explained in my email, clause 2 of the Supplementary Lease Deed dated 17th May 2013, requires us to discuss and mutually finalise the mode, terms and conditions of the extension of our subsisting lease for the period post 31st August 2021, prior to the expiry of the terms of the subsisting lease i.e. on 31st August 2021.

As you are aware we have been continuously requesting for a meeting to discuss and conclude the terms of the extension since last over 2.5 years.

In view of the prevailing circumstances, as explained in my various communications to you, including my email dated 14th May 2021, we await your fair and reasonable proposal for such extension.

Considering the paucity of time and the urgency of the matter, we again request you to kindly send us your revised proposal at the earliest so that the terms and conditions for the extension of the lease can be agreed and finalized sufficiently prior to the expiry of the existing lease on 31st August 2021.

Thanking you.

Best Regards,

Murali Krishnan"

(sic)

(ii) Email dated 28th May 2021:

*"To: 'Sanjiv Edward' <Sanjiv.Edward@gmrgroup.in>
Cc: 'Ashish Batra' <Ashish.Batra@gmrgroup.in>; 'Beena Patwal' <Beena.Patwal@gmrgroup.in>
Subject: RE: Your email dated 26.04.2021 regarding lease deed dated 20.08.1982 and MoU dated 27.11.2009 and order dated 28.08.2018 passed by the Hon'ble High Court*

Dear Sanjiv,

At the outset, we state that we have not made any insinuations which are contrary to the factual and legal position and deny all contentions and

allegations made by you which are contrary to or inconsistent with what has been stated by us in regard to the subject matter.

We reiterate that in terms of Clause 2 of the Supplementary Lease Deed dated 17th May 2013, we are entitled to an extension of our subsisting lease of the period post 31st August 2021, prior to the expiry of the term of the existing lease i.e., 31st August 2021.

The extension clause thus provides for extending the subsisting lease on fair and reasonable terms, and not conversion of the lease into a license.

We are not opposed to your issuing a competitive tender for appointing a new IFK concessionaire at the IGI Airport. However, the issuance of such tender and appointment of a new IFK concessionaire at the IGI Airport has no relation to or bearing on the extension of our subsisting lease.

In view of what is stated above, and in our earliest emails, we again request you to send us your fair and reasonable proposal for the extension of the subsisting lease post 31st August 2021.

Considering the paucity of time and urgency of the matter we request for your immediate action on the same.

Thanking you.

Best Regards,

Murali Krishnan

Vice President”

(sic)

(iii) Email dated 7th June 2021:

“From: Ambassador's Sky Chef [mailto:dfk@ambassadorindia.com]

Sent: Monday, June 7, 2021 5:03 PM

To: Sanjiv Edward

CC: Ashish Batra; Beena Patwal

Subject: RE: Your email dated 26.04.2021 regarding lease deed dated 20.08.1982 and MoU dated 27.11.2009 and order dated 28.08.2018 passed by the Hon'ble High Court

Dear Sanjiv,

Further to our trailing email dated 28th. May 2021, considering the urgency of the matter and the paucity of time available, we request you to kindly send your fair and reasonable proposal for extension of the subsisting Supplementary Lease Deed dated 17th. May 2013 for the period post 31st.August 2021 at your earliest.

Best Regards,

Murali Krishnan

Vice President”

(sic)

(iv) Email dated 15th June 2021:

*"From: Ambassador's Sky Chef <dfk@ambassadorindia.com>
Sent: 15 June 2021 16:00
To: 'Sanjiv.Edward@gmrgroup.in' <Sanjiv.Edward@gmrgroup.in>
CC: 'Ashish.Batra@gmrgroup.in' <Ashish.Batra@gmrgroup.in>;
'Beena.Patwal@gmrgroup.in' <Beena.Patwal@gmrgroup.in>
Subject: RE: Your email dated 26.04.2021 regarding lease deed dated 20.08.1982 and MoU dated 27.11.2009 and order dated 28.08.2018 passed by the Hon'ble High Court*

Dear Sanjiv,

Thank you for your email dated 10th June 2021.

We note with regret and disappointment your refusal to comply with your obligations under the Supplementary Lease Deed dated 17th May 2013, and particularly Clause 2 thereof.

We reiterate that the offer made by you, pursuant to the discussions held on 7th May 2021, is neither fair nor reasonable, and is not in compliance with your obligations under the Supplementary Lease Deed. As stated earlier, Clause 2 of the Supplementary Lease Deed specifically requires us to discuss and mutually finalise the mode, terms and conditions of the extension of our subsisting lease for the period post 31st August 2021, prior to the expiry of the subsisting lease on 31st August 2021. DIAL is therefore contractually obligated to extend the existing lease and not convert it into a license, as proposed by you.

As mentioned in our earlier emails it will take at least another 4 to 5 years for revival of domestic and international air passenger traffic, and consequently the flight catering business, which has suffered, and continues to suffer heavily on account of the outbreak and spread of the coronavirus pandemic. A short-term lease, or a one-year license as proposed by you, is not fair and reasonable, or commercially viable, in the present circumstances given the long time period that will be required to recoup the losses incurred over the last one and half years of the pandemic as well as the investments made to upgrade the hygiene and food safety standards of the flight catering unit to prevent the spread of Covid pandemic.

In addition, you are aware that all airline catering contracts are for a period 3-5 years and that they insist on a minimum five year residual land lease before renewing or entering into fresh catering contracts.

Although DIAL is a signatory to OMDA it has subsequently executed the Supplementary Lease Deed dated 14th May 2014 with Narangs International Pvt. Ltd. The said Supplementary Lease Deed contains an extension clause, i.e. Clause 2, as per which DIAL is obligated to extend the aforesaid Lease Deed by way of a fresh lease on fair and reasonable terms prior to 31st August 2021. To the best of our knowledge OMDA does not bar or prohibit DIAL from extending existing leases and ensuring the continued performance of its obligations.

We reiterate that the provisions of Clause 2 of the Supplementary Lease

Deed dated 17th May 2013, not only confers a right in our favour to seek an extension of the subsisting lease, but also casts an obligation on DIAL to extend the existing lease on fair and reasonable terms prior to 31st. August 2021.

We are unable to understand your statement in the last para of your aforesaid email “so that further action can be taken at the earliest for the continuity of services to the Airlines” and request you to clarify the same.

We once again request you to reconsider your earlier proposal and send us a fair and reasonable proposal for the extension of the lease to enable us to conclude the matter at the earliest prior to 31st. August 2021 as required under the terms of the Supplementary Lease Deed.

Thanking you,

Yours sincerely,

Best Regards,

Murali Krishnan

Vice President”

(sic)

14. The above-quoted mails establish that although NIHPL sought extension of the lease for a prolonged time, it was not agreeable to a license agreement. This stance of NIHPL is certainly against the tenets of mutual discussion. The terms offered by DIAL were not acceptable to it and were rejected on the basis of its commercial wisdom. It insisted on a lease agreement, which DIAL refused to countenance by citing restrictive provisions of the OMDA. DIAL’s stand has been explicit, yet NIHPL continued to flog the proverbial dead horse by engage back and forth with its correspondence. The mutual negotiation thus failed much earlier in time, yet NIHPL preened itself to be hopeful and did not relent. Now, when the realisation has dawned on it that the term of the lease is going to expire in 4 days, it has spurred into action at a much belated stage.

15. Mr. Sibal had argued that the terms of the proposed license agreement are not at variance with the lease, and thus the court may direct that the parties can, without prejudice to their rights and contentions, continue under

license, subject to final adjudication of the claim before the Arbitral Tribunal. This prayer appears to be appealing, but unfortunately, it is without any contractual foundation. The date of expiry of the agreement has been set. Adherence to contracted terms is the prime factor in any contractual relationship. DIAL cannot be compelled to enter into a contract, most certainly not by this court, while exercising jurisdiction under Section 9 of the Act. Even if that relief is left for adjudication in arbitration, in the absence of a *prima facie* right in favour of NIHPL, there is still no justification to be found to grant an interim relief of the nature as sought in the petition. The terms of the SLA have to spell out some enforceable right in favour of NIHPL and a corresponding obligation on DIAL, for NIHPL to be entitled to the relief of injunction. Just because disputes have arisen and that would require adjudication by the Arbitral Tribunal, does not necessarily invite an interim order.

16. The terms of the SLA do not create a vested right in favour of NIHPL. The terms of the SLA could only have been relied upon for initiating a negotiation. That cannot, however, mean that DIAL has to be compelled to choose its vendors. Negotiation, as noted above, has been in vain for the last two years, as it manifests from the correspondence placed on record. The court also finds merit in the contention of DIAL that it is the best judge of the business operations it seeks to conduct at the IGI Airport, and it is for DIAL to choose how many sub-contractors it should have at the Airport. Therefore, in the opinion of the Court, NIHPL has not made out any outline of a *prima facie* case, balance of convenience or irreparable loss, in its favour.

17. Section 14 of the Specific Relief Act, 1963, as substituted *vide* its 2018 Amendment, enumerates contracts which cannot be specifically enforced. One such category of contracts, given in Sub-section (d), is a contract which, by its very nature, is determinable. This court in its *prima facie* opinion finds the present lease, being of a specified term, to be determinable in nature. This is also evident from clause 5 of the Original Lease Deed, which reads as under:

“5. In the event of any default, failure, negligence or breach, in the opinion of the Authority, on the part of the Lessee in complying with all or any of the condition mutually agreed between the parties, the Authority shall be entitled and be at liberty to determine the lease forthwith and resume possession of the premises wherever provided without payment of any compensation or damages and also forfeit in full or in part the amount deposited by the Lessee for the due performance of the agreement.”
(sic) [emphasis supplied]

18. Further, as NIHPL has failed to establish a case for grant of interim relief, no need is felt to examine and determine the question of arbitrability of disputes in the context of bar under the Public Premises Act.

19. Even under the Specific Relief Act, 1963, the contentions of NIHPL are not merited. As the contract is determinable, it cannot be specifically enforced; thus, the nature of injunction sought by NIHPL for restraining its ouster from the premises cannot be granted under Section 41(e) of the Specific Relief Act, 1963. NIHPL cannot claim injunction in the nature of specific performance once the agreement has expired by efflux of time.

20. Before parting, the court must also record that NIHPL has been in

occupation of the premises for a long period of four decades. Its status under the Original Lease Deed as well as the SLA, acquired upon gaining entry to the premises, is, at the highest, that of a 'tenant'. Thus, there is no right in favour of NIHPL to occupy the premises or continue as a lessee in perpetuity. The right to seek extension has to be construed consistent to and in accordance with the covenants of the lease deed, which requires DIAL's consent. In this regard there is no ambiguity. DAIL's refusal to extend the lease/licence on the ground that it has an obligation to award contract by way of tender in terms of Clause 8.5.7 of OMDA cannot be called unfair or arbitrary, even if one applies that yardstick, which is although not strictly applicable in commercial matters. DIAL's insistence on adhering to the conditions of OMDA must also not be brushed aside lightly. Resorting to public auction is indeed universally recognized as the most apposite method that subserves public interest, promotes transparency, public participation, fair price, maximization of revenue, and promotes fair competition. Thus, on aspect as well, the Court does not find any right to have accrued in favour of NIHPL.

21. In view of the foregoing, the Court does not find any merit in the present petition and accordingly, the same is dismissed. The pending application also stands disposed of.

SANJEEV NARULA, J

AUGUST 27, 2021

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