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

+ **ARB. A. (COMM.) 48/2022 & I.A. 12105/2022**

ASIAN HOTELS (NORTH) LTD

..... Appellant

Through: Ms. Aakanksha Kaul, Ms. Manya Chandok, Mr. Sidhant Kumar, Ms. Vidhi Udayshankar, Mr. Manek, Advocates (M:9899675905)

versus

SITAL DASS SONS & ANR.

..... Respondents

Through: Mr. P.K. Agrawal, Mr. Rishabh Tomar, Advocates (M:8285230770)

WITH

+ **ARB. A. (COMM.) 49/2022 & I.A. 12107/2022**

ASIAN HOTELS (NORTH) LTD

..... Appellant

Through: Ms. Aakanksha Kaul, Ms. Manya Chandok, Mr. Sidhant Kumar, Ms. Vidhi Udayshankar, Mr. Manek, Advocates

versus

ABHUSHAN & ANR.

..... Respondents

Through: Mr. P.K. Agrawal, Mr. Rishabh Tomar, Advocates

WITH

+ **ARB. A. (COMM.) 50/2022 & I.A. 12109/2022**

ASIAN HOTELS (NORTH) LTD

..... Appellant

Through: Ms. Aakanksha Kaul, Ms. Manya Chandok, Mr. Sidhant Kumar, Ms. Vidhi Udayshankar, Mr. Manek, Advocates

versus

JH JEWELLERS & ANR.

..... Respondents

Through: Mr. P.K. Agrawal, Mr. Rishabh Tomar, Advocates

AND

+ **ARB. A. (COMM.) 51/2022 & I.A. 12111/2022**

ASIAN HOTELS (NORTH) LTD

.....Appellant

Through: Ms. Aakanksha Kaul, Ms. Manya Chandok, Mr. Sidhant Kumar, Ms. Vidhi Udayshankar, Mr. Manek, Advocates

versus

SITAL DASS JEWELLERS & ANR.

..... Respondents

Through: Mr. P.K. Agrawal, Mr. Rishabh Tomar, Advocates

**CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA**

J U D G M E N T
22.12.2022

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MINI PUSHKARNA, J.

1. The present appeals have been filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (hereinafter called “the Act”) against the common order dated 23.04.2022 passed by the Arbitral Tribunal disposing of the applications filed under Section 17 of the Act on behalf of appellant and respondents respectively, seeking interim measures.

2. The disputes between the parties relate to the revocation of the licence agreement of the respondents by the appellant. The present appeals deal with different shops situated in the premises of the appellant’s hotel, details of which are given herein below:-

- (i) Arb. A (COMM) 48/2022- Shop No. L-79, Shopping arcade, Hotel Hyatt Regency, Bhikaji Cama Place, New Delhi
- (ii) Arb. A (COMM) 49/2022- Shop No. L-78, Shopping arcade, Hotel Hyatt Regency, Bhikaji Cama Place, New Delhi
- (iii) Arb. A (COMM) 50/2022- Shop No. L-73, Shopping arcade,

Hotel Hyatt Regency, Bhikaji Cama Place, New Delhi

(iv) Arb. A (COMM) 51/2022- Shop No. L-81, Shopping arcade,
Hotel Hyatt Regency, Bhikaji Cama Place, New Delhi

3. The appellant and respondents entered into unregistered licence agreements/Supplementary Agreements as follows:

(i) Arb. A (COMM) 48/2022- Unregistered Licence Agreement dated 01.09.1982 read with Supplementary Agreement dated 01.09.1982; Supplementary Agreement II dated 10.08.1984 and Amended Agreement dated 01.09.1983.

(ii) Arb. A (COMM) 49/2022- Unregistered Licence Agreement dated 18.02.1992 and Supplementary Agreement dated 18.02.1982.

(iii) Arb. A (COMM) 50/2022- Unregistered Licence Agreement dated 09.09.1992 and Supplementary Agreement dated 09.09.1992.

(iv) Arb. A (COMM) 51/2022- Unregistered Licence Agreement dated 01.09.1982 and Supplementary Agreements dated 01.09.1982 and 10.08.1984.

4. In terms of the aforesaid agreements, the use of the licensed premises were restricted only to the purposes authorised under the Licence Agreements i.e. for the purpose of carrying on the business of sale of jewellery, arts and handicrafts, in all the cases. Any change in the use of the licensed premises required the prior written permission of the appellant. Under the licence agreements, the respondents had no right to make any alterations or additions to the licensed premises. The respondents required the appellant's prior written permission and approval for the interior decoration of the licensed premises. The respondents further required prior approval of appellant for transfer of

any interest or right under the licence agreement.

5. The respondents in all the cases were granted the right to use the licensed premises for a term of 5 years, subject to renewal for further 5 year terms. The appellant retained the right to terminate the licence agreements in terms of Clauses 3(t) and 9 of the respective licence agreements. In return for use of the licensed premises, respondents paid monthly licence fee. Respondents were further required to pay security deposit towards proper maintenance of the premises. Any disputes arising between the parties in relation to the agreement were to be referred to arbitration in terms of Clause 11 of the licence agreements.

6. In Arb. A. (COMM) 48/2022, the licence agreement was last renewed upto 31.08.2017. In Arb. A (COMM) 49/2022, the licence agreement was last renewed upto 28.02.2017. In Arb. A (COMM) 50/2022, the licence agreement was last renewed upto 31.08.2017. In Arb. A (COMM) 51/2022, the licence agreement was last renewed upto 31.07.2020. Thus, revocation letters dated 29.05.2020 were issued by the appellant in all the four cases thereby revoking the licence agreements, for the reason that the shopping arcade in which the licensed premises were situated, was in urgent need for total repair, as the internal fittings and wiring of the arcade required replacement for their safe operation. In the revocation letters, respondents were provided a period of 30 days till 30.06.2020 to remove their goods and belongings from the licensed premises.

7. The respondents did not respond to the termination letters and instead instituted suits before this Court challenging the revocation of

the licence agreements. Thus, in the case of Arb. A (COMM) 48/2022, CS (COMM) No. 214/2020 was filed before this Court. In the case of Arb. A (COMM) 49/2022, CS (COMM) No. 237/2020 was filed before this Court. In the case of Arb. A (COMM) 50/2022, CS (COMM) No. 231/2020 was filed before this Court. In the case of Arb. A (COMM) 51/2022, CS (COMM) No. 191/2020 was filed before this Court.

8. During the pendency of the aforesaid suits, it was agreed that the appellant shall not demolish the licensed premises as an interim arrangement. It is the case of the appellant that from 30.06.2020 onwards, the appellant has continued to be in possession and control of the licensed premises.

9. CS (COMM) 214/2020 and CS (COMM) 191/2020 came to be dismissed vide order dated 21.07.2020 holding that the parties are required to avail the remedy of arbitration. Similarly, CS (COMM) 237/2020 and CS (COMM) 231/2020 came to be dismissed vide order dated 21.07.2020 passed by this Court.

10. The appellant as well as respondents challenged the decision of the learned Single Judge in RFA (OS) (COMM) 27/2020 & 29/2020 in Arb. A (COMM) 48/2022, RFA (OS) (COMM) 37/2020 & 38/2020 in Arb. A (COMM) 49/2022, RFA (OS) (COMM) 44/2020 & 51/2020 in Arb. A (COMM) 50/2022, RFA (OS) (COMM) 15/2020 & 20/2020 in Arb. A (COMM) 51/2022. Subsequently, respondents withdrew their respective suits with liberty to pursue proceedings under the Act, which was allowed by this Court vide order dated 16.03.2021.

11. Thereafter, respondents preferred applications under Section 9

of the Act being OMP (I) (COMM) No. 244/2021 and Section 11 of the Act being Arb. P. 667/2021, in the Arb. A (COMM) 48/2022; under Section 9 of the Act being OMP (I) (COMM) No. 245/2021 and Section 11 of the Act being Arb. P. 668/2021 in the Arb. A (COMM) 49/2022; under Section 9 of the Act being OMP (I) (COMM) No. 249/2021 and Section 11 of the Act being Arb. P. 665/2021, in the Arb. A (COMM) 50/2022; under Section 9 of the Act being OMP (I) (COMM) No. 248/2021 and Section 11 of the Act being Arb. P. 661/2021, in the Arb. A (COMM) 51/2022. The aforesaid applications under Section 9 as well as Section 11 of the Act were disposed of this Court vide order dated 06.08.2021, whereby this Court appointed Sh. R.L. Meena, former Secretary, Department of Law and Justice, as the sole arbitrator. It was held that the application of the respondents under Section 9 of the Act be read as application under Section 17 of the Act. In terms of this order, the interim arrangement between the parties, under which the appellant herein would take no action against the respondents, was to continue until the learned Arbitral Tribunal entered reference i.e. until 02.09.2021.

12. At this stage, it may be noted herein that the appellant took over possession of the shopping arcade pursuant to the revocation notices dated 29.05.2020. The respondents thereafter periodically wrote to the appellant for seeking access to the premises, which access was provided by the appellant to the respondents limited for the purposes of removal of their goods. One such letter dated 20.07.2021 sent by email on behalf of appellant to respondent in Arb. A (COMM) No. 48/2022 is reproduced as below:-

“Without Prejudice’

Dear Mr. Rakyan,

You may visit the Shop L79, as requested by you on 20.07.2021 at 11 :00am.

We may once again reiterate that your access to the Shop is limited for the purposes of removal of your goods only and subject to compliance with the requirements of SOP which have already been circulated to you vide letter of revocation of license dated 29.05.2020.

The entire matter, as you are aware, is subjudice in the Honourable High Court. In view of this while we deny your allegations made in your email we do not wish to comment any further on the same.

Regards

Dalip Singh Rawat”

13. Another similar letter dated 29.07.2021 by appellant herein granting access to respondents for removal of their goods in Arb. A (COMM) 49/2022 is reproduced as below:-

“Without Prejudice’

Dear Ms Jain,

Your staff may visit the Shop L78, as requested by you on 30.07.2021 & 31.07.2021 at 11 :00am.

We may once again reiterate that your access to the Shop is limited for the purposes of removal of your goods only and subject to compliance with the requirements of SOP which have already been circulated to you vide letter of revocation of license dated 29.05.2020.

Regards

Dalip Singh Rawat”

14. After reference of the cases to arbitration, the respondents pursued their respective applications under Section 17 of the Act seeking inter alia de-sealing of the licensed premises, with further prayer for restoration of the access to the respondents for the purpose of carrying on business during the pendency of the arbitral proceedings, and the maintenance of status quo by the appellant during such period.

15. Appellant also filed respective applications in all the cases under Section 17 of the Act seeking inter alia an injunction from the learned Arbitral Tribunal restraining the respondents herein from interfering with the peaceful possession and useful enjoyment of the licensed premises by the appellant during the pendency of the arbitral proceedings. It was further prayed by the appellant by way of Section 17 application that since premises required urgent repairs, irreparable harm would be caused to the appellant, if its applications were not allowed.

16. The learned Arbitral Tribunal disposed of all the applications under Section 17 of the Act filed on behalf of the appellant and the respondents by way of the common impugned order dated 23.04.2022. Thus, the present appeals under Section 37 of the Act have come to be filed before this Court.

17. On behalf of appellant, it has been contended that in adjudicating the applications under Section 17 of the Act, the learned Arbitral Tribunal has exercised its discretion in a manner which is perverse and contrary to law. It is submitted that the learned Arbitral Tribunal has failed to carry out the necessary exercise of considering

the prima facie rights of the parties prior to exercising its discretion under Section 17 of the Act. The appellant set out a strong prima facie case in its favour, which was ignored by the learned arbitrator.

18. It is contended that the learned Arbitral Tribunal failed to appreciate that throughout the subsistence of the agreements, the parties proceeded on the basis that the licence was revocable and that the renewal of the licence agreements were necessary in order for the respondents to continue to occupy the licensed premises. It is the case of the appellant that the respondents were occupying the licensed premises only as permissive licensees. The license agreements did not constitute agreement to sell. Thus, respondents were neither in part possession of the licensed premises, nor exercised any interest in the licensed premises, beyond those granted through the license agreements. The respondents failed to make out any prima facie case in their favour. Thus, the respondents could not in any manner disturb the appellant's possession. Further, the agreements being unregistered instruments, cannot be considered to be as instruments of transfer of a right or interest in the immovable property. Reliance is placed on behalf of appellant upon Section 107 of the Transfer of Property Act read with Sections 17 and 49 of the Registration Act, 1908 to contend that unregistered license agreements cannot confer any rights or interest as permanent lessee in the licensed premises to the respondents.

19. Ld. Counsel appearing for appellant has also argued strenuously that there is an urgent need to repair the licensed premises in the interest of safety and public health. The licensed premises are part of

an old construction of more than 40 years, which requires restoration.

20. On behalf of the appellant, affidavits dated 29.09.2022 have also been filed, wherein the appellant has given undertaking that in case liberty is granted to conduct the necessary repair and renovation, the appellant shall not create any third party rights or interests in respect of the premises. It is further undertaken that in case the respondents succeed in the arbitral proceedings, the premises will be restored to the current position. Similar affidavits have been filed by appellant in all the four appeals. For ready reference, affidavit filed on behalf of appellant in ARB. A (COMM) 48/2022 is reproduced as below:

“AFFIDAVIT ON BEHALF OF THE APPELLANT

I, Dalip Singh Rawat, S/o Mr. Jaman Singh Rawat, aged about 55 years, R/o 184D, Pocket J&K, Dilshad Garden, New Delhi-110095, solemnly affirm and declare as under:

- 1. That I am the authorized representative of the Appellant in the captioned matter, authorised by Board Resolution dated 12.11.2020 and as such I am competent to swear the present affidavit.*
- 2. That the present Affidavit is being filed pursuant to the directions of this Hon’ble Court during the hearing conducted on 26.09.2022.*
- 3. I state that in the event this Hon’ble Court sets*

aside or modifies the directions passed in the Impugned Order dated 23.04.2022 passed by the Ld. Arbitral Tribunal and grants liberty to the Appellant to conduct the necessary repair and renovation of the Shop L-79 at the Shopping Arcade, Hyatt Regency Hotel, Bhikaji Cama Place, New Delhi (the 'Premises') pending the outcome of the arbitral proceedings, the Appellant Company expressly undertakes that no further third party rights, interests or encumbrances will be created in respect of the Premises.

- 4. I further state that in the event the Respondents succeed in the arbitral proceedings, the Premises will be restored to the current position and handed over to the Respondents, subject to the outcome of the arbitral proceedings and in accordance with law.*
- 5. I state that the present Affidavit is bonafide and in the interest of justice.*

DEPONENT

VERIFICATION

I, the deponent above named do hereby verify on this the 29.09.2022 day of September, 2022 that the contents of this affidavit are true and correct to my

personal knowledge. No part of this affidavit is false and nothing material has been concealed therefrom.

DEPONENT

21. In support of its submissions, appellant has relied upon the following judgments:

- I. Braham Singh Vs. Sumitra & Ors., 2011 (125) DRJ 570
- II. Tilak Raj Bhagat Vs. Ranjit Kaur & Ors., 2012 Scc Online Del 1675
- III. Chandu Lal Vs. Municipal Corporation of Delhi, ILR (1978) I Delhi 292
- IV. Bharat Petroleum Corporation Vs. Delhi International Airport, 2013(135) DRJ 445
- V. Thomas Cook (India) Vs. Hotel Imperial 2006 (88) DRJ 545
- VI. Mumbai International Airport Vs. Golden Chariot Airport, (2010) 10 SCC 422
- VII. Gesture Hotels and Food Vs. The New Delhi Municipal Council, 2014 SCC OnLine Del 1577
- VIII. Saptagiri Restaurant Vs. Airport Authority of India, 2014 SCC OnLine Del 1906
- IX. Judgment by Hon'ble Supreme Court dated 23.09.2022 in Civil Appeal No. 6733/2022, Balram Singh Vs. Kelo Devi

22. Respondents on the other hand have vehemently opposed the present appeals. It is submitted that vide notice dated 29.05.2020, the appellant had revoked the license of the shops in question and had directed the respondents to remove their goods from the shops by

30.06.2020. The respondents immediately filed civil suits before this Court. In the said suits, the appellant had undertaken before the Single Judge of this Court that it would not take any action against the respondents herein pursuant to the notice of termination. The interim arrangement was confirmed/continued by the Division Bench. Further, this Court vide order dated 06.08.2021, while referring the disputes to arbitration had directed the appellant herein to not take any action against the respondents till the learned Arbitrator enters into reference.

23. It is submitted on behalf of the respondents that the learned Arbitrator while entering into reference vide order dated 19.09.2021 had directed the parties to maintain status quo till the next date of hearing. The said order of status quo was extended time and again, and ultimately after hearing the parties on the application of both the parties under Section 17 of the Act, learned Arbitrator was pleased to direct that till the conclusion of the arbitration proceedings, the parties shall maintain status quo. It was further directed that no coercive action shall be taken by the appellant against the respondents herein. Thus, it is contended that the status quo in respect of any action pursuant to the notice of termination is continuing from June 2020 itself. Therefore, appellant cannot have any grievance against the status quo order having been continued by the learned Arbitrator till the passing of the award.

24. It has been argued on behalf of the respondents that the appellant has filed the present appeals with malafide intent and ulterior motives. The appellant is harassing the respondents and

making every effort to oust the respondents and take physical possession of the premises in question, contrary to law and the agreement between the parties. It is contended that after issuing the revocation notice, appellant has put their locks on the doors leading to the shopping arcade, thus, preventing the access of the respondents. The shops in question, however, continued and are still continuing to be in possession of the respondents. The valuable goods of the respondents are stored in the said shops in question. The shops in question are under the lock and key of the respondents. The respondents, however, cannot access their shops as the appellants have locked the entry points to the shopping arcade.

25. It is further contended on behalf of the respondents that appellant cannot be allowed to disturb the status quo existing as on the date of filing of the civil suit before this Court or as on the date of passing the order of status quo by the Arbitral Tribunal. The allegation of the repairs is merely a ruse of taking over possession of the shops in question and the galleries/common areas of the shopping arcade. Thus, it is contended that the appellant cannot be permitted to take possession of any portion of the shopping arcade during pendency of the arbitration proceedings.

26. It is further stated on behalf of the respondents that they have no objection if the appellant carry out repairs for duration of time to be fixed by Arbitral Tribunal, under the supervision of the respondents. However upon completion of the repairs, the appellant be directed to restore status quo existing as on the date of the order of the Arbitral Tribunal, i.e., close the entry gates leading to the

shopping arcade as the same were at the time of passing of status quo order. Alternatively, the respondents be allowed to carry on their business from the shops in question after completion of repairs/renovation.

27. In support of their submissions, respondents have relied upon judgment in the case of ***World Window Infrastructure Pvt. Ltd. Vs. Central Warehousing Corporation, 2021 SCC OnLine Del 5099*** in order to contend that scope of interference in appeal against orders passed by arbitrators on applications under Section 17 of the Act, is limited.

28. I have heard Id. Counsels for the parties and have perused the record.

29. The facts as discussed in detail in the preceeding paragraphs point out to the fact that the disputes between the parties started when the appellant revoked the license of the respondents vide letter dated 29.05.2020, w.e.f. 01.06.2020. The respondents were granted time till 30.06.2020 to remove their belongings from the respective shops. The respondents and various other licensees operating shops in the appellant's hotel approached this Court by filing suits challenging the said revocation. The appellant objected to the maintainability of the suits in view of the arbitration clause contained in the agreements. Thus, Ld. Single Judge of this Court by judgment dated 21.07.2020 referred the parties to arbitration. Before the Single Judge of this Court, appellant undertook not to take any action against the respondents pursuant to the revocation notices.

30. The aforesaid judgment dated 21.07.2020 was challenged by all

the parties by filing Regular First Appeals. In the said appeals, vide order dated 29.07.2020, this Court directed that the interim arrangement whereby the appellant had undertaken not to take any action against the respondents pursuant to the revocation notices, would continue. Subsequently, the respondents withdrew their suits.

31. Thereafter, the respondents filed petitions under Section 9 and 11 of the Act. By order dated 06.08.2021, this Court appointed an arbitrator. In the said order, it was clearly recorded that the learned Senior Counsel appearing on behalf of appellant herein submitted that the interim arrangement shall continue till the arbitrator enters into reference. Further, all issues were left open for agitation by the parties and consideration by the learned Arbitrator.

32. Certain other licensees also filed similar petitions under Section 9 and 11 of the Act. Vide order dated 25.10.2021, this Court referred the disputes to the same arbitrator and directed that the petitions under Section 9 of the Act be treated as applications under Section 17 of the Act. This Court while referring to its earlier order dated 06.08.2021, passed similar order vide order dated 25.10.2021 thereby directing that pending decision of the learned arbitrator in the applications under Section 17 of the Act, the appellant herein would be restrained from taking any coercive action.

33. In view of the aforesaid discussion, it is clear that the learned Arbitrator had to consider the applications of the parties under Section 17 of the Act independently and not simply follow the pre-arbitral protection orders as passed by this court. Perusal of the orders passed by this Court makes it evident that the appellant had undertaken not to

take any further action against the respondents. However, further examination and adjudication of the reliefs sought under Section 17 of the Act were left to the learned arbitrator, consistent with the objective of the Act. It is pertinent to note here that when the pre-arbitral orders were passed by this Court, the licensees of the respondents had already stood revoked and possession taken back by the appellants. Thus, the plain intent of the orders passed by this Court was clearly to permit the learned Arbitrator to adjudicate the issues raised before him in the applications under Section 17 of the Act.

34. By the impugned order, the learned Arbitrator has on the one hand deemed it improper to stay the operation of the revocation notice dated 29.05.2020 during the arbitral proceedings, as it may defeat the very purpose and cause of arbitration between the parties. On the other hand, the learned Arbitrator has not permitted the appellants to carry out repairs and renovation. The fact remains that pursuant to issuance of revocation notice revoking the licence of the respondents, possession of the shopping arcade has been taken by the appellant by putting its locks on the entry gate of the shopping arcade.

35. The respondents in their reply to the present appeals have stated that they have no objection if the repairs are carried out by the appellant, if the status quo as existing as on the date of order dated 23.04.2022 passed by the Arbitral Tribunal is restored i.e. the gates leading to the shopping arcade may be closed. Alternatively, it has been stated on behalf of the respondents that they may be allowed to carry on their business from their shops after the repairs are carried out by the appellant. Similar stand has been taken by respondents in

all the four appeals. Para 5 of the reply on behalf of respondents in ARB.A.(COMM) 48/2022 is reproduced herein for ready reference:

“5. That the Respondents have no objection if the Appellant carried out repairs for the duration of time to be fixed by the Hon'ble Arbitral Tribunal under the supervision of the Respondents and on undertaking given by the Appellants that it will restore status quo existing as on the date of the order of the Hon'ble Arbitral Tribunal i.e. close the entry gates leading to the shopping arcade as the same were at the time of passing of the status quo order. Alternatively, the Appellants be allowed to carry on their business from the shops in question after all the repairs that are needed to be carried out in the shopping arcade, the Respondents would not have any objection for any such repairs/renovations.”

36. It is important to note here that the respondents have admitted that after the issuance of the revocation notice, the appellant has put lock on the main gate of the entry to the shopping arcade. It is also the case of the appellant herein that possession of the shopping arcade was taken over by the appellant 30 days after the revocation of licence. Thus, it is clear that the shops in question are lying closed since the year 2020. As emerges from the pleadings on record, the respondents have taken out their goods time and again from the respective shops by moving appropriate applications in this regard, though the premises of the shopping arcade remain under the lock and key of the appellant. Thus, the prayer of the respondents that they may be allowed to carry on the business after completion of renovation, is found to be unjustified.

37. The license agreements have come to an end by efflux of time.

The question whether the licence agreement could have been revoked or were wrongly revoked, is yet to be determined by the learned Arbitrator. The impugned order passed by the learned Arbitrator, whereby the learned Arbitrator had dismissed the application of the respondents under Section 17 of the Act, has not been challenged by the respondents. By way of the impugned order, the learned Arbitrator has held that it would be improper to stay the operation of the revocation/ termination notice issued by the appellant. Thus, since the respondents have chosen not to challenge the decision of the learned Arbitrator to not grant stay of the revocation/ termination notice of their licensees during the pendency of arbitration proceedings, the said finding in that regard has attained finality. Thus, the respondents, at this stage, cannot pray that they may be allowed to carry on their business if the appellant is allowed to carry out the necessary repairs/ renovation. Even otherwise, no such direction can be given by this Court permitting the respondents to resume their business from the premises in question, in the light of the license of the respondents having been revoked by the appellant.

38. This brings to the second aspect for consideration by this Court as to whether the appellant may be allowed to carry out the necessary repairs/ renovation.

39. The dispute between the parties is essentially regarding the nature of the license agreements between the parties. The respondents have sought to set up a case that the license agreements were infact agreements to sell where possession was delivered in part performance of the agreement. The alternative case set up by the

respondents is that the agreement was a lease agreement where the rights of the respondents were agreed to be created in the property. The respondents claim that the license could not have been revoked at will. While nature of the agreements and the rights of the respondents thereunder, can only be finally determined by the learned Arbitrator after the evidence has been led by both the parties, for the purposes of the present adjudication, it would be useful to refer to certain terms and conditions of the license agreements:

- (i) Clause 2 of the License Agreement clearly stipulated that it shall be operative for a period of five years. It was further stipulated that the respondents may, at their option, renew the license agreements for a period not exceeding five years at a time.
- (ii) Under Clause 3 (a) of the license agreements, the respondents were liable to pay a monthly license fees subject to increase in terms of Clause 8.
- (iii) Under Clause 3 (f), the respondents were not entitled to make any alterations or additions to their allotted space or even remove any of the appellant's fixtures or fittings.
- (iv) Similarly, Clauses 3 (g) and (l) inter alia restricted the right of the respondents to alter the original colour of the outside space or facade and to put displays and exhibits on the exterior of the designated space. The appellant also had a right to inter alia approve the interiors and layout for decor.
- (v) Under Clause 3 (h), the appellant could direct removal of goods being sold in the stipulated space. Under Clause 3 (t), the

respondents were obligated to sell goods at a price found to be reasonable by the appellant.

(vi) As per Clause 5, the respondents were required to pay a security deposit which was refundable on the expiry of the license.

(vii) While Clause 6 entitled the respondents to assign/transfer their rights, the same could only be done with the consent of the appellant.

(viii) Clause 10 of the license agreements provided that the appellant had right to terminate the license agreement with 30 days notice subject to the condition stated therein. Clause 3(u) provided that the respondents herein shall vacate the premises upon termination of the license agreements.

40. The license agreements between the parties were renewed in writing every five years. The said agreements were renewed upon request by the respondents themselves from time to time. The last renewal was executed between the parties on 12.07.2012 for shop No.L-78; on 01.09.2012 for Shop No. L-79; on 01.08.2015 for Shop No. L-81 and on 25.10.2012 for Shop No. L-73. Thus, the license agreements have lapsed by efflux of time in all the four cases on 28.02.2017, 31.08.2017, 31.07.2020 and 31.08.2017, respectively.

41. After the lapse of the license agreements by efflux of time, there is no valid license in favour of the respondents as on date. The possession of the premises of the shopping arcade is already with the appellant since the year 2020, when the appellant put their lock to the

entry gate of the shopping arcade. Learned counsel for the appellant has relied upon the Safety Audit Report, as per which the premises require urgent repair and renovation. The property in question forms part of a larger property owned by the appellant. It is the case of the appellant that it had submitted a plan to SDMC for modification and changes in the existing structure in and around the shopping arcade. The said plan has been approved by the SDMC, but the appellant is unable to carry out changes in view of the order passed by the learned Arbitral Tribunal.

42. At the stage of considering the case for grant of an interim relief, the Court has to see if a party has been able to establish the three essential elements of *prima facie* case, balance of convenience and irreparable harm and injury. In view of the aforesaid discussion, it is held that the appellant has been able to satisfy the aforesaid requirements of *prima facie* case and balance of convenience in its favour and a case of irreparable harm and injury to it, in case interim orders are not granted in its favour.

43. This Court is aware of the limited scope of interference in appeal against orders passed by Arbitrators on applications under Section 17 of the Act. However, in appropriate cases, Court can exercise its jurisdiction under Section 37 of the Act to protect the legitimate interest of the appellant, which includes modifying the order of the learned Arbitral Tribunal. It may be noted that jurisdiction of this Court under Section 37 of the Act is substantially different from the scope of jurisdiction under Section 34 of the Act, which does not include the authority to modify the award passed by the Arbitral

Tribunal. Thus, in the case of ***Edelweiss Asset Reconstruction Company Ltd. Vs. GTL Infrastructure Ltd. And Anr., 2020 SCC Online Del 2081***, a coordinate Bench of this Court held as follows:

“136. Once the legislature has consciously conferred appellate powers, to the High Court, against orders of Arbitral Tribunals, rendered under Section 17 of the 1996 Act, I see no reason, absent any statutory or precedential proscription to the contrary, for not allowing such appellate jurisdiction its full play and effect. No doubt, while exercising jurisdiction, even as an appellate court under Section 37, the High Court would be required to maintain the discipline of the 1996 Act, which requires minimal interference with the decision of the learned Arbitral Tribunal. Where, however, the directions contained in the impugned Order of the learned Arbitral Tribunal are found to be unsustainable on account of the prior rights of the appellant before this Court, to which the attention of the learned Arbitral Tribunal was never invited, interference, in order to protect the legitimate interests of the appellant, is justified. Once a case for interference is found to exist, the appellate jurisdiction of the Court, under Section 37 would, in my view, also extend to modifying the order of the learned Arbitral Tribunal, in view of the inalienable indicia of appellate jurisdiction, as identified and delineated in Tirupati Balaji Developers (P) Ltd., (2004) 5 SCC 1.”

44. Similarly, in the case of ***Augmont Gold Pvt. Ltd Vs. One 97 Communication Limited, 2021 SCC OnLine Del 4484***, while holding that Court has the authority to modify the decision of Arbitral Tribunal in an appeal under Section 37 of the Act, this Court held as follows:-

“74. In this context, it is necessary to differentiate between the scope and ambit - expressions which often exist cheek

by jowl - of Section 37 jurisdiction, vis-a-vis the reach and extent of such jurisdiction. The scope of jurisdiction - which embraces its governing considerations - is restricted, as already observed hereinabove. While remaining within those constraints, however, the Court, in its appellate avatar, can modify the award; something which is outside the reach of the Section 34 Court. Expressed otherwise, and more simply, having examined the award/order under challenge within the limited scope of Section 34 or 37, if the Court finds that the interests of justice could be met by modifying the decision of the Arbitral Tribunal, it can do so under Section 37, but it cannot do so, under Section 34. This, in my opinion, is one of the inevitable sequelae of the legislative dispensation in conferring, on Courts, appellate jurisdiction over orders passed under Section 17 by the Arbitral Tribunal, granting or refusing to grant interim protection.

Re. impugned direction to Augmont to pay, to One97, ₹ 2,61,22,319/- for transactions between 8th January and 21st February, 2019”

45. At this stage, it may also be useful to refer to the judgment of Hon’ble Supreme Court in the case of **James Joseph Vs. State of Kerala, 2010 SCC OnLine SC 956**, wherein Supreme Court has detailed the principles with reference to appeals, which includes the authority of an appellate Court to modify the decision of the lower forum. Thus, Supreme Court has held as follows:-

“19. We may therefore formulate the following principles with reference to appeals:

- (i) An appeal is a proceeding where an higher forum reconsiders the decision of a lower forum, on questions of fact and questions of law, with jurisdiction to confirm, reverse, modify the decision or remand the matter to the lower forum for fresh decision in terms of its directions.*
- (ii) The appellate jurisdiction can be limited or regulated*

by the legislature and its extent has to be decided with reference to the language employed by the statute conferring the appellate jurisdiction.

(iii) The width of jurisdiction or the limitations on jurisdiction with reference to an appeal, does not depend on whether the appeal is a first appeal or a second appeal, but depends upon the limitations, if any, placed by the statute conferring the right of appeal.

(iv) If the legislature's intention is to limit the jurisdiction in an appeal, it may indicate such limits in the provision providing for appeal. Alternatively, it may expressly or impliedly incorporate the provisions of Section 100 of the Code, into the provision for appeals.

(v) Generally statutory provisions for appeals against original orders or decrees (that is, first appeals) will not have any limitations and therefore rehearing on both law and fact is contemplated; and statutory provisions for appeals against appellate orders (that is, second appeals) will be restricted to questions of law. But such restriction is not on account of any legal principle that all second appeals should always be with reference to questions of law, but would depend upon the wording of the statute placing the restrictions upon the scope of second appeal.

(vi) Where the statute does not place any limitations or restrictions in regard to the scope and width of the appeal, it shall be construed that the appeal provides a right of rehearing on law as well as facts. If the legislature enacts a self-contained provision for second appeals, without any limitation upon the scope of the second appeal and excludes the possibility of reading the provision of Section 100 of the Code, into such provision, then, it will not be permissible to read the limitations of Section 100 of the Code into the special provision.”

46. Bearing the aforesaid principles in mind, this Court proceeds to deal with the issues raised in the present case.

47. It is pertinent to take note of the fact that appellant in the

present case has filed identical affidavits in all the cases thereby expressly undertaking that in the event liberty is granted to the appellant to carry out necessary repairs and renovation, it will not create any further third party rights, interests or encumbrances in respect of the premises. The appellant has further given an express undertaking that in the event the respondents succeed in the arbitral proceedings, premises will be restored to the current position and handed over to the respondents subject to outcome of the arbitral proceedings and in accordance with law. In view of the aforesaid undertaking, the interests of the respondents are protected and no irreparable loss shall be caused to the respondents if interim orders are passed in favour of the appellant. The learned Arbitrator has already refused to stay the operation of the notice revoking the license of the respondents and the shops in question are lying locked since the year 2020, under the lock and key of the appellant. Thus, respondents are neither running their businesses from the premises in question since the year 2020, nor have they pressed for such relief after the dismissal of their Section 17 application by the learned Arbitrator.

48. Taking into consideration the aforesaid facts and circumstances of the present case and detailed discussion, it is held that there is no legal impediment in granting permission to the appellant to carry out requisite repair and renovation in the premises in question as an interim relief. Such permission to the appellant would be in tandem with the objective of preservation of the property, subject matter of the dispute in arbitration.

49. Pleadings on record show that respondents have been removing

their goods from the respective shops time and again after filing appropriate applications in this regard. Thus, respondents are directed to remove their left over goods, if any, from the premises in question as and when intimation in this regard is given by the appellant to the respondents before commencement of the renovation/ repair work in the premises. As noted above, the interests of the respondents herein are protected in view of the categorical undertaking given by the appellant. No irreparable loss would be caused to the respondents herein, in the facts and circumstances of the present case, if interim relief to the aforesaid extent is granted in favour of the appellant.

50. It is clarified that this Court has not expressed any opinion on the merits of the case and the learned arbitrator is directed to decide the cases uninfluenced by any observation made in the present order.

51. The aforesaid appeals are disposed of in the aforesaid terms, along with all pending applications.

**(MINI PUSHKARNA)
JUDGE**

DECEMBER 22, 2022

C/PB/au