



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

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Date of Decision: 22.11.2023

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O.M.P (COMM.) 328/2023 AND IAs. 15699-15700

IN THE MATTER OF:

**M/S. BERKELEY LIFESTYLE BRANDS
PRIVATE LIMITED AND ORS.**

..... Petitioners.

Through: Mr. Gaurav Gupta, Mr Nikhil Kohli,
Mr. Kushank Garg and Ms. Shrishti
Jeswani, Advocates.

versus

M/S. RAJ BUILDERS PRIVATE LIMITED

..... Respondent

Through: Mr. Rohin Dubey, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Section 34 of the Arbitration and Conciliation Act (hereafter, referred to as '*A&C Act*'), the petitioners seek setting aside of the Arbitral Award dated 27.03.2023 (hereafter, referred to as '*impugned award*') delivered by the Arbitral Tribunal comprising of a Sole Arbitrator (hereafter, referred to as '*AT*').

2. The impugned award has been rendered in the context of five different lease deeds, all dated 21.10.2019 with respect to five different floors in the same building at *Plot No.27, Community Centre, Basant Lok, Vasant Vihar, New Delhi-110057*. While the respondent was the lessor, the petitioners-companies were the lessees and represented by Shri Tript Singh, who was the shareholder and director in all the petitioners-companies.



Though Shri Tript Singh was impleaded as respondent No.1 in the arbitral proceedings, petitioners-companies have chosen not to implead him in the present proceedings.

3. All the lease deeds were executed for a period of five years beginning from 21.10.2019 till 20.10.2024. The initial two years were agreed to be the lock-in-period. While petitioner No.1 was the lessee with respect to basement, petitioner No.2 was the lessee with respect to first floor, petitioner No.3 was the lessee with respect to mezzanine floor, petitioner No.4 was the lessee with respect to second floor and petitioner No.5 was the lessee with respect to third floor.

4. Disputes arose between the parties on account of non-payment of lease rentals by the petitioners. Respondent invoked arbitration and filed its statement of claim wherein it claimed that around June, 2019 Shri Tript Singh approached the respondent thereby offering to take the entire subject property on lease for business purposes. During negotiations, Shri Tript Singh insisted that each of the floors be rented to different entities for taxation purposes. The entire building was agreed to be taken on rent of Rs.7 lacs per month with applicable taxes, to be increased by 5% each year. In this manner, five different lease deeds were executed with respect to each of the floor in the aforesaid manner. The possession of the building was handed over on 21.10.2019 to the petitioner companies. Respondent being the lessor, invoked arbitration and filed claims seeking recovery of lease rentals from February-March, 2020 to March, 2021 and damages towards lock-in period from April, 2021 to November, 2021.

5. In its statement of defence, petitioners claim that a force majeure event in terms of the lease deeds occurred in the form of COVID-19 for



which reason, they could not use the premises and thus, were not liable to pay any lease rentals.

6. AT after considering the stand of the parties disbelieved the petitioners' case and delivered the impugned award thereby holding the respondent entitled to rent for basement and second floor for the month from February, 2020 to March, 2021, and for the mezzanine, first and third floors from March, 2020 to March, 2021. In this regard, AT took note of the fact that while the petitioners had handed over the possession of the mezzanine, second and third floors on 05.03.2021; the possession of basement and first floor came to be handed over in Court on 31.03.2021 in proceedings initiated under Section 9 by the respondent. AT further awarded interest @ 18% on the aforesaid sums from the respective dates till the date of the award as well as damages to the tune of Rs.44,10,000/- as well as cost of the proceedings quantified to the tune of Rs.16,75,000/-.

7. In the present proceedings, learned counsel for the petitioners restricted his contention on the interpretation of clause 24 by the AT by terming it as 'arbitrary'. Learned counsel contended that DDMA¹ had issued notifications as per which the premises could not be used for any commercial purpose and as such the occurrence of force majeure event had rendered the premises unfit for any use. It was further contended that as the petitioners had offered the possession back to the respondent, they were not liable to pay any lease rent/damages to the respondent.

8. Learned counsel for the petitioners was asked to show as to whether any notification issued by DDMA was placed in the arbitral proceedings or

¹ Delhi Disaster Management Authority



any contention in this regard was raised before the learned Arbitrator. Learned counsel fairly conceded that no such submission was made before the AT or taken in the present petition.

9. Records reveal that respondent had terminated the lease vide notice dated 15.04.2020. On failure of the petitioners to handover the possession, initially a civil suit was filed however in view of the arbitration clause the same was withdrawn. The arbitration was invoked vide notice dated 18.01.2021 and a petition under Section 9 was also filed. In the said proceedings, the petitioners handed over possession with respect to mezzanine, second and third floor on 05.03.2021. The possession of basement and first floor was retained with the assurance to handover possession by 31.03.2021.

10. Before proceeding further, it is deemed apposite to take note of Clause 24 of the Lease and the same is extracted hereunder:

“24. The Lessor shall not liable or responsible for the destruction or damage to the Rented Premises or any part thereof by force majeure circumstances such as fire, earthquake, act of God or irresistible forces, civil disobedience, riots, terrorism or any other reason whatsoever beyond the reasonable control of the Lessor. In case the premises is destroyed or rendered unfit for any use due to the above reasons, the Lessee shall have the option to surrender the lease and handover the same to the Lessor. However, if the Lessee wishes to hold the lease, the Lessee shall have to pay the rent agreed hereinabove irrespective of it using or unable to use the Rented Premises.”

11. AT interpreted the Clause 24 by observing that the same did not entitle the petitioners to seek waiver of the rent as they failed to surrender the possession. As noted above, the petitioners failed to place any document



on record which would show that they could not use the premises. Had it been so, the petitioners would have surrendered the possession. On the contrary, they sought waiver of rent. Though in the statement of defence it was stated the possession was sought to be handed over, however Shri Tript Singh did not depose on the aforesaid line and rather failed to appear in the witness box.

12. Respondent's reliance on the decision in Onida Finance Ltd. v. Malini Khanna², is of no avail, the same being inapplicable to the facts of the case.

13. The scope of interference in Section 34 of the A&C is narrow and limited. Further, the solitary contention raised by the learned counsel for the petitioners that the interpretation of Clause 24 of the Agreement by the AT is erroneous, the same has no merit. The AT's interpretation of the clause is both plausible and possible.

14. Finding no merit in the contention, the petition alongwith pending applications is dismissed.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 22, 2023/rd

² 2002 (3) AD (Delhi) 231