



2024:DHC:5866-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision:-5th August, 2024.*+ **FAO(OS) (COMM) 108/2019, CM APPL. 23080/2019 & 39332/2019****DELHI TOURISM & TRANSPORTATION DEVELOPMENT CORPORATION LTD**
.....AppellantThrough: Ms. Shobhana Takiar, Advocate with
Mr. Kuljeet Singh, Advocate (M:
9810962950).

Versus

M/S GRAVISS CATERING PVT LTDRespondentThrough: Mr. Sanjeev Mahajan and Mr. Pranjal
Tandon, Advocate (M: 9811156437).**CORAM:**
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (*hereinafter*, 'Act, 1996') has been filed on behalf of the Appellant- Delhi Tourism & Transportation Development Corporation Ltd. (*hereinafter* 'DTTDC') challenging the impugned judgment dated 12th February, 2019 in *O.M.P. (Comm) No. 69/2019*. Vide the said judgment, the ld. Single Judge dismissed a petition under Section 34 of the Act, 1996 which

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sought to challenge the arbitral award dated 20th March, 2018.

3. A brief background of this litigation is that a license deed dated 6th December, 1988 (*hereinafter, 'license deed'*) was executed between the Appellant and the Respondent- M/s Graviss Catering Pvt. Ltd. (*earlier known as, 'Leman International Private Limited'*) *vide* which, an open space measuring 4395 sq.mtrs. in the complex Qutab Minar, Mehrauli, New Delhi (*hereinafter, 'licensed premises'*) was licensed to the Respondent. The said license deed was renewed on 12th April, 2001 for another period of ten years. As per the said license deed, the Respondent was permitted to carry out its business of running a fast food counter, restaurant-cum-bar and banqueting facilities at the licensed premises.

4. The Monitoring Committee appointed by the Hon'ble Supreme Court sealed the licensed premises on 31st January, 2007 on the ground that the lawn outside the restaurant was being used for marriages and other social functions and the same was alleged to be misuse as per the terms of the license deed. This issue went to the Hon'ble Supreme Court where both the Petitioner and the Respondent had filed their applications, seeking de-sealing but the licensed premises continued to remain sealed till 25th September, 2009. Sometime in 2009, the premises was de-sealed but the Respondent for various reasons was unable to commence use of the premises till the expiry of the licence in 2011.

5. The Respondent in the meantime also filed two writ petitions, being ***W.P.(C) 55/2011 and W.P.(C) 2083/2012***, seeking renewal of the license deed in its favour. The stand of the Respondent was that it had paid a sum of Rs.96,00,000/- for a period of ten years but could not utilise the premises for the entire period due to sealing of the premises. The writ petitions were



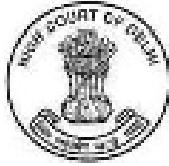
disposed of *vide* separate orders dated 14th February, 2012 and 13th April, 2012 respectively.

6. In the order dated 13th April, 2012 passed in ***W.P. (C) 2083/2012***, titled ***Leman International Ltd. v. UOI***, the Id. Single Judge directed that the Respondent could participate in public auction and no special status would be afforded to the Respondent. The operative portion of the said order reads:

8. Having heard learned senior counsel as well as perused the record, I find no merit in this petition. The petitioner had no vested right to seek renewal of the licence. The licence was granted for a period of 10 years which expired on 31.01.2011. The licence deed specifically provides that the licensor reserves the sole discretion whether, or not, to renew the licence. The contention that the petitioner was not in breach of any term of the licence agreement has not been agreed to even by the four member Committee, on whose minutes/recommendations the petitioner places such heavy reliance. The recommendations of the said four member Committee itself records:-

“.....The Committee further made it clear to Mr. Garg that the Corporation is not satisfied with the reply dated 03.04.2007 submitted by M/s. Leman International Pvt. Ltd in respect of Show Cause Notice issued by the Corporation on 26.03.2007 as the premises was inspected three times by different officers of the Corporation who found that the Fast Food Counter was not in operation. It was further informed by the Committee members that the Corporation was rather free to terminate the license in 2007 itself on findings and that the reply submitted by the licensee was not satisfactory.....”

9. These minutes have not been assailed by the petitioner. It is for this reason that the Committee



recommended issuance of a warning to the petitioner. The sealing of the premises may not have a correlation with the breach of the licence conditions. The sealing would take place on the finding of misuse of the premises vis-a-vis the bye laws. Even if the petitioner's plea were to be accepted that there was no breach of the building bye laws or other applicable laws, it does not follow that there was no breach of the licence conditions.

10. Merely because the Committee may have recommended the extension of the petitioner's licence does not create any right in the petitioner. This was an internal Committee of the respondent and its recommendations were meant only for the consideration of the Chairman. The thrust, even while recommending extension of the petitioner's licence, is on the aspect that the market rate of rent should be recovered. The Chief Manager (Legal) has opined, and rightly so, that open bidding process is the only mechanism to discover the market rent. Any other process will give an inconclusive estimate at best. Moreover respondent no.2 is dealing with a public asset, and every citizen has a right to seek an opportunity to exploit the same. The petitioner has no vested right, as aforesaid, to continue to use the said asset to the exclusion of others for all times to come.

11. I may also note that the Committee, despite finding that the petitioner had breached the licence conditions, recommends extension of the licence but does not record any reason for being so indulgent to the petitioner. When the recommendations of the committee are compared with the impugned order, one finds the impugned order to be more rational and appealing to common sense. It is a financial decision taken by the DTTDC, with which this Court is not inclined to interfere.

12. Obviously, the petitioner may be entitled to participate in an open bidding/auction process that the



DTTDC may undertake, and if the petitioner turns out to be a successful bidder, the petitioner may be granted a fresh licence. However, the petitioner has no right to seek to exclude others from consideration on the basis of the said recommendation of the Committee. I find no merit in this petition and, therefore, dismiss the same.

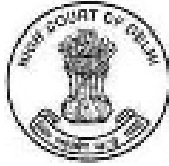
7. The Respondent, thereafter, invoked the arbitration clause in the license deed dated 12th April, 2011. The said clause is extracted hereinunder for ready reference: -

“17. This licence deed shall be governed by the Arbitration & Conciliation Act, 1996. All matters, questions, disputes or differences whatsoever arising between the parties under or relating to or arising out of this deed including its construction, meaning, operation or effect or out of or relating to the performance or breach thereof shall be referred to in writing by either or both the parties to the Managing Director of the licensor who shall at his/ her sole discretion, nominate a person to be the Sole Arbitrator. The decision of the Sole Arbitrator so appointed shall be final and binding on the parties. The Sole Arbitrator would give a reasoned award within 4 months of entering upon reference.”

8. Vide order dated 4th July, 2013 in **ARB. P. 332/2012** a ld. Sole Arbitrator was appointed under the aegis of DIAC. The said order is extracted hereinunder for a ready reference:-

This is an application moved under Section 11 of the Arbitration and Conciliation Act, 1996. The petitioner seeks appointment of an arbitrator in terms of clause 16 of the license deed dated 12.04.2011. The said clause reads as follows:-

The licence deed shall be governed by the Arbitration



and Conciliation Act, 1996. All matters, questions, disputes or differences whatsoever arising between the parties under or relating to or arising out of this deed including its construction, meaning, operation or effect or out of or relating to the performance or breach thereof shall be referred to in writing by either or both the parties to the Managing Director of the licensor who shall at his/her sole discretion, nominate a person to be the Sole Arbitrator. The decision of the Sole Arbitrator so appointed shall be final and binding on the parties. The Sole Arbitrator would give a reasoned award within 4 months of entering upon the reference. The petitioner had served a notice on the Chairman and Managing Director of the respondent on 13.09.2011 articulating therein various grievances and issues which had arisen qua the respondent. By virtue of this notice, the petitioner sought compensation to the tune of Rs. 14.95 crores under various heads set out in paragraph 18 of the said notice. In paragraph 20 of the very same notice, the petitioner alluded to the fact that in case the same amount was not paid within 15 days, its claims be referred to arbitration in terms of the aforementioned clause within a period of one month. The said notice was replied by the respondent vide a response dated 10.10.2011. By this response the request of the petitioner both for the amount of compensation demanded and the request for appointment of an arbitrator was rejected. There is no dispute that an arbitration agreement obtains between the parties. The arbitration clause contained in the licence deed required the Managing Director of the respondent to nominate a person as a sole arbitrator to decide all matters, questions, disputes and differences arising between the parties in relation to or arising out of or under the licence deed, which includes construction, meaning, operation or effect inter alia of any of the clauses of the licence deed. Ms Takiar submitted that the respondent had rejected



the petitioner's request for appointment of an arbitrator for the reason that the very dispute raised by the petitioner were subject matter of a writ petition being WP(C) 2083/2012; which was disposed of on 13.04.2012, and therefore, the matter had attained finality. According to her, this is the only ground on which the respondent was objecting to the appointment of an arbitrator.

In my view, this is a defence available to the respondent which could be examined by the arbitrator. This defence, broadly, pertains to the application of the principles analogous to res judicata. As expected, Mr Mahajan says that the writ proceedings do not determine the disputes, which have been raised now, by the petitioner.

Having regard to the above, this court is inclined to appoint an arbitrator in terms of clause 16 of the licence deed. Accordingly, Mr Justice R.C. Chopra (Retd.) is appointed as a sole arbitrator in the matter. The parties will be governed by the rules of the Delhi International Arbitration Centre (Arbitration Proceedings) Rules, 2012 as amended from time to time. The fee schedule which is prescribed by the said Arbitration Centre, for domestic arbitration will be applicable to the said proceedings. The parties and their counsel shall appear at the office of the Arbitration Centre on 12.07.2013 at 11.00 a.m.

The application is, accordingly, disposed of.

9. The said Id. Arbitrator rendered Award dated 20th March, 2018. The relevant portion of the said award is extracted hereinunder:

“38. In view of the foregoing the Claims raised by the Claimant and the Counter Claim made by the Respondent are disposed of as under:-

- (a) Claim No. 1 – A sum of Rs.22,40,000/- is awarded in favour of the Claimant*
- (b) Claim No.2 - Rejected*



(c) Claim No.3 -A sum of Rs.54 Lacs is awarded in favour of the Claimant

(d) Claim No.4 - A sum-of Rs.7.5 Lacs is awarded in favour of the Claimant

(e) Claim No.5 – Rejected

(f) Claim No.6 - On the amount awarded under Claim No. 1 the Claimant is granted interest at the rate of 12% per annum w.e.f 31.01.2007 till the realization of the amount. On the awarded amount under Claims Nos. 3 and

4 the Claimant is entitled to interest at the rate of 12% per annum from the date of the Award till realization.

(g) counterclaim – Rejected

39. In view of the foregoing, an Award in the sum of Rs.83,90,000/- is passed in favour of the Claimant and against the Respondent with interest as detailed above.”

10. In the said award, the Id. Arbitrator considered various claims of parties. The decision of the Id. Arbitrator on each of the claims are summarised below:-

Claim No. 1:- This was a claim for refund of the license fee for the period during which the premises remained sealed. The Id. Arbitrator considered the total license fee which had been paid and proportionately granted a refund of Rs.22,40,000/- to the Respondent.

Claim No. 2:- This claim was for refund of amounts spent on repair, maintenance, depreciation etc. This claim of Rs. 40,00,000/- was rejected by the Id. Arbitrator.

Claim No. 3:- This claim was for a sum of Rs. 54,00,000/- on account of loss of profits which the Respondent would have earned if the licensed premises would not have been sealed. On this claim, the Id. Arbitrator has taken a figure of Rs. 1,50,000/- per month and has



awarded a sum of Rs.54,00,000/- to the Respondent for the loss of profits of approximately 28 months from 31st January, 2007 to 25th May, 2009 during sealing of the licensed premises as also for the period the Respondent could not run its business till 31st January, 2011.

Claim No. 4:- This was a claim for Rs.27,00,000/- on account of amounts spent on salaries of employees, security engaged for taking care of premises etc. This claim, according to Id. Arbitrator, was on the higher side and after considering the average expenditure on security and staff during the sealed period, the Id. Arbitrator awarded a sum of Rs.7,50,000/-.

Claim No. 5:- This was a claim of Rs.14,00,000/- on expenses incurred for challenging the sealing orders and pursuing legal remedies. This claim has been rejected by the Id. Arbitrator.

Claim No. 6:- This was a claim for interest. The Id. Arbitrator has awarded 12% interest per annum only for Claim No. 1 w.e.f. 31st January, 2007 till realization of the amount. On the remaining amounts awarded under Claim Nos. 3 and 4, the Id. Arbitrator has awarded future interest @ 12% per annum till realization.

Counter Claim: Insofar as the counterclaim of the Corporation/Appellant for a sum of approximately Rs.3.87 crores was concerned, the same has been rejected by the Id. Arbitrator.

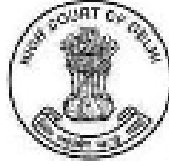
11. The award dated 20th March, 2018 was challenged before the Id. Single Judge in ***OMP (COMM) 69/2019***. *Vide* judgment dated 12th February, 2019, the Id. Single Judge, after considering the matter, has upheld the award and has held that the view of the Id. Arbitrator does not require any interference under Section 34 of Act, 1996.



12. Ms. Shobhana Takiar, Id. Counsel appearing for the Appellant/ Corporation has mainly raised two issues under Section 37 of the Act, 1996. Her first submission is that there was misuse of the licensed premises by the Respondent and organising marriage functions was not permissible under the license deed. She further submits that even though the Corporation was willing to permit the Respondent to take away its belongings or its moveable furniture etc., the Respondent, itself, wrote to the MCD stating that it had never sought permission for removal of its goods and moveables.

13. Ms. Shobhana Takiar, Id. Counsel's second submission is that in view of the order dated 13th April, 2012 passed in the *W.P.(C) 2083/2012*, waiver of license fee and other reliefs which were sought having been rejected, the same could not have been granted by the Id. Arbitrator. She also argues that interest is on the higher side, considering the fact that a substantial sum already lies deposited in this Court.

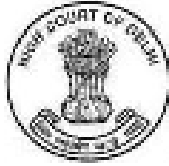
14. Mr. Mahajan, Id. Counsel appearing on behalf of the Respondent, on the other hand, submits that the license deed clearly recognised the fact that banqueting services could be provided by the Respondent. Insofar as the misuse issue is concerned, it is his case that DTTDC itself wrote to the Monitoring Committee and approached the Hon'ble Supreme Court by way of an application. In all its letters dated 23rd March, 2007, 8th May, 2007 and 17th May, 2007, it was the stand of the Corporation that there was no misuse of the licensed premises. In the application filed before the Hon'ble Supreme Court, the same stand was taken by the Corporation. Thus, the allegation that the Respondent was misusing the licensed premises is



completely not tenable.

15. Finally, it is submitted that the order dated 13th April, 2012 in the writ petition cannot operate as *res judicata*. Though the Respondent had sought waiver of the license fee, refund etc., the order in the writ petition does not decide the said issues of waiver. Considering that there was an arbitration clause, since there was no decision by the Writ Court, there cannot be any *res judicata* in this regard. On a query from the Court as to what is the nature of evidence which was led before the Id. Arbitrator in support of the Claim for loss of profits, Id. Counsel has taken the Court through the balance sheet of the Respondent for the year ending in March 2007 which would show a profit of more than Rs. 3 Crores. This document was before the Id. Arbitrator and in the relevant financial year, and it was urged that there was sufficient profits that the Respondent had made.

16. This Court has considered the submissions of the parties. In an appeal under Section 37 of the Act, 1996, challenging the dismissal of the petition under Section 34 of the Act, 1996, the scope of interference by this Court is extremely limited. The grounds set out in Section 34 of the Act, 1996 and the law on Section 34 of the Act, 1996 as laid down repeatedly by the Hon'ble Supreme Court is that awards are usually not to be interfered with unless the grounds are clearly made out. This position of law has been laid down in several judgements. In ***Reliance Infrastructure Ltd. v. State of Goa [(2024) 1 SCC 479]*** the Supreme Court while hearing appeals under Section 37 of the Act, 1996 analysed the scope of challenge to an arbitral award under Section 34 of the Act, 1996 and the scope of appeal under Section 37 of the Act, 1996. The Supreme Court observed that interference with an order made



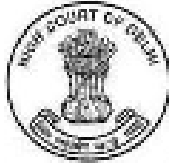
under Section 34 of the Act, 1996 per Section 37 of the Act, 1996 has limited scope. The Court while hearing an appeal in these circumstances, cannot travel beyond the restrictions laid down under Section 34 of the Act, 1996. The Supreme Court further enunciated that the Appellate Court must only ascertain whether the exercise of power by the Court under Section 34 of the Act, 1996 has exceeded the scope of the said provision and must not enter into the merits of the claim. However, this scope is all the more circumscribed in an appeal under Section 37 of the Act, 1996. The relevant portion of the said judgment is extracted below for a ready reference:

“The scope of challenge to an arbitral award under Section 34 and the scope of appeal under Section 37 of the Act

25. *Having regard to the contentions urged and the issues raised, it shall also be apposite to take note of the principles enunciated by this Court in some of the relevant decisions cited by the parties on the scope of challenge to an arbitral award under Section 34 and the scope of appeal under Section 37 of the Act of 1996.*

26. ***In MMTC Limited (supra), this Court took note of various decisions including that in the case of Associate Builders (supra) and expounded on the limited scope of interference under Section 34 and further narrower scope of appeal under Section 37 of the Act of 1996, particularly when dealing with the concurrent findings (of the Arbitrator and then of the Court). This Court, inter alia, held as under: -***

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015,



a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] ; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445] ; and McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC

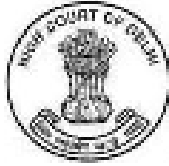


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13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

30. In Haryana Tourism [Haryana Tourism Ltd. v. Kandhari Beverages Ltd., (2022) 3 SCC 237 : (2022) 2 SCC (Civ) 87] , this Court yet again pointed



out the limited scope of interference under Sections 34 and 37 of the Act; and disapproved interference by the High Court under Section 37 of the Act while entering into merits of the claim in the following words : (SCC p. 240, paras 8-9)

“8. So far as the impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233] passed by the High Court quashing and setting aside the award and the order passed by the Additional District Judge under Section 34 of the Arbitration Act are concerned, it is required to be noted that in an appeal under Section 37 of the Arbitration Act, the High Court has entered into the merits of the claim, which is not permissible in exercise of powers under Section 37 of the Arbitration Act.

9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to : (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233] passed by the High Court is hence not sustainable.”

31. As regards the limited scope of interference under



Sections 34/37 of the Act, we may also usefully refer to the following observations of a three-Judge Bench of this Court in UHL Power Co. Ltd. v. State of H.P. [UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116 : (2022) 2 SCC (Civ) 401] : (SCC p. 124, paras 15-16)

“15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings under Section 34 of the Arbitration Act, by virtually acting as a court of appeal.

16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed.”

32. The learned Attorney General has referred to another three-Judge Bench decision of this Court in SAL Udyog [State of Chhattisgarh v. SAL Udyog (P) Ltd., (2022) 2 SCC 275 : (2022) 2 SCC (Civ) 776] , wherein this Court indeed interfered with the award in question when the same was found suffering from non-consideration of a relevant contractual clause. In the said decision too, the principles aforesaid in Delhi Airport Metro Express [Delhi Airport Metro Express (P) Ltd. v. DMRC, (2022) 1 SCC 131 : (2022) 1 SCC (Civ) 330] , Ssangyong Engg. [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] and other cases were referred to and thereafter, this Court applied the principles to the facts of that case. We shall refer to the said decision



later at an appropriate juncture.

33. Keeping in view the aforementioned principles enunciated by this Court with regard to the limited scope of interference in an arbitral award by a Court in the exercise of its jurisdiction under Section 34 of the Act, which is all the more circumscribed in an appeal under Section 37, we may examine the rival submissions of the parties in relation to the matters dealt with by the High Court.”

17. In the present case, both the Id. Arbitrator as also the Id. Single Judge have considered all the contentions of the Respondent and the stand of the Corporation.

18. A perusal of the license deed would show that banqueting services were clearly permitted. However, for whatever reason, the sealing of the licensed premises had occurred and thereafter, the premises was de-sealed. When the license deed itself permitted banqueting facilities, the Respondent could not be stated to be in violation of the license deed. The refund of the license fee was, therefore, completely justified.

19. Insofar as the claim for loss of profits is concerned the period when the premises could not be used is a substantial period. A perusal of the balance sheet of the Respondent which was placed on record clearly shows that the profit of the Respondent for the period pending 31st March, 2007 is to the tune of Rs.3,16,30,078/-.

20. On the basis of the figures in the balance sheet, the assessment of the Id. Arbitrator granting Rs. 1.5 lakhs to the Respondent for one month cannot be stated to be either exaggerated or lacking in evidence. Non-use of a premises, does naturally result in loss of profits. The grant of loss of profits by the Id. Arbitrator also therefore, cannot be faulted.



21. Insofar as the order in the writ petition is concerned, there was no decision either on plea of waiver or refund in the writ petition and, therefore, the same would not operate as *res judicata*. In fact, post the decision in the writ petition, the disputes have been referred to arbitration, in terms of the arbitration clause contained in the License Deed.

22. Finally, insofar as the award of interest is concerned, considering the fact that in the present appeal, initially, stay was granted on 2nd September, 2019 by directing deposit of 50% of the awarded amount along with up-to-date interest, further grant of interest @ 12% per annum is clearly on the higher side.

23. Accordingly, the total interest on the awarded amount is reduced to @ 6% per annum both on Claim No. 1, and also, Claims No. 3 and 4 i.e., on the loss of profits and the amount spent on the salary of the staff/employees and security.

24. The arbitral award dated 20th March, 2018 is modified in the above terms.

25. Vide order dated 2nd September, 2019 passed in this appeal, the Court had directed deposit of 50% of the awarded amount. Pursuant to the said order, the Petitioner Corporation had deposited a sum of Rs. 64, 63, 415/-. The same was lying in a fixed deposit in the account of the Registrar General. The said amount be now released to the Respondent after deduction of TDS on the interest component, as per applicable Rules, within two weeks. The remaining amount calculated, in terms of this judgement, be paid to the Respondent within three months.



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26. Petition is disposed of with all pending applications, if any.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

AUGUST 05, 2024
MR/RKS/NS

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