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

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Date of Decision : 14.05.2024+ **FAO(OS) (COMM) 90/2024 & CM APPL. 27499/2024****M/S MALT AND LEAF HOSPITALITY PVT. LTD.**

..... Appellant
Through: Mr.Rakesh Kumar, Ms.Preeti
Kashyap, Mr.Varun Pandit and
Mr.Rishab Arora, Advocates.

versus

M/S AGGARWAL HOTELS PVT. LTD.

..... Respondent
Through: Mr.N.P.Singh and Mr.Vikalp Sharma,
Advocates.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J. (Oral)**

1. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning a judgment dated 15.03.2024 (hereafter *the impugned judgment*) passed by the learned Single Judge in OMP (COMM) No.484/2018 captioned *Malt & Leaf Hospitality Pvt. Ltd. v. Aggarwal Hotels Pvt. Limited.*

2. The said application was filed by the appellant under Section 34 of the



A&C Act impugning an Arbitral Award dated 03.08.2018 (hereafter *the impugned award*), which was rendered by an Arbitral Tribunal comprising of three members (hereafter the Arbitral Tribunal). The majority (two members) had delivered the impugned award and the third member had rendered a dissenting opinion.

3. The impugned award was rendered in the context of disputes that has arisen in connection with the Lease Deed dated 10.07.2015 entered into between the parties in respect of the premises situated at Lado Sarai, behind Qutub Golf Course, New Delhi (hereafter *the demised premises*).

4. The respondent was granted a lease in respect of 1000 square meters of land in terms of the Lease Deed dated 01.01.2001 executed by Delhi Development Authority (hereafter *the DDA*). In addition, the DDA had also licensed a green area of 4600 square meters adjoining the land of 1000 square meters in terms of the License Deed dated 01.01.2001 (hereafter *the License Deed*). The respondent had, in turn, let out a part of the aforesaid premises to the appellant in terms of the Lease Deed dated 10.07.2015 (hereafter *the Lease Agreement*).

5. The dispute between the parties relates to the lease rental payable by the appellant for the demised premises in terms of the Lease Agreement. The appellant had, in addition to part of the structure built up on the 1000 square meters (the demised premises), also utilized the adjoining green area for commercially exploiting the same. The appellant had constructed a structure on the said green area and also used the same for commercial purposes, which was not permissible in terms of the License Deed. In the



circumstances, the DDA had demolished the structure built up on the said adjoining land, which was required to be maintained as a green area and was not permitted to be used for commercial purposes.

6. The DDA also canceled the License Deed in respect of the said green area, which led to disputes between the parties. The appellant claimed that in view of the demolition action carried out by the DDA, it was now required to pay only ₹1 per month in terms of the Lease Agreement. This was disputed by the respondent. The respondent claimed that only a part of the built-up structure on the 1000 square meters of land was leased to the appellant for running a restaurant. Since no part of the said structure was demolished, the appellant was liable to pay the lease rent as payable in terms of the Lease Agreement.

7. The respondent also claimed that the appellant had misused the adjoining green area for commercial purposes, which was impermissible. In the aforesaid circumstances, the respondent had served a legal notice dated 13.08.2016 terminating the Lease Agreement and calling upon the appellant to handover the vacant and peaceful possession of the demised premises within a period of 15 days from the said date. In addition, the respondent also forfeited the security amount of ₹98,65,953/- alleging that the appellant had breached the terms of the Lease Agreement. The said notice was followed up by another notice dated 07.09.2016, whereby the respondent reiterated that the Lease Agreement was terminated and once again called upon the appellant to hand over the vacant and peaceful possession of the demised premises within a period of fifteen days.



8. In addition, the respondent claimed that the appellant was liable to pay rental at the rate of ₹34,00,000/- per month, as contemplated in the Lease Agreement, for illegally holding over the demised premises.

9. The learned Arbitral Tribunal considered the rival contentions and evidence led by the parties and rejected the appellant's contention that the green area was also a part of the demised premises leased to the appellant.

10. The relevant extract of the impugned award is set out below:-

“A perusal of the said admitted indenture of the Lease/ Sub lease dated 22.05.2015 signed by the Claimant and the present Respondent Ex.CW2/11 and the registered lease deed Ex.CW1/4, show that the contents of the same are identical.

Also RW 1 Sudhir Nagar during the course of his cross examination on 06.03.2018 admitted as correct that ‘the 5600 sq.metres of land comprises of 4600 sq. metres of Green Area and 1000 sq.metres built up restaurant area’. He also stated that there was parking at the entrance in the said 4,600 sq.metres. Even RW1 Sudhir Nagar, who is one of the Directors of the Respondent has admitted in his said cross examination recorded on 06.03.2018 that the said Registered Lease Deed Ex.CW1/4 was executed between the parties on 10.07.2015, was signed by him and Mr.AjayBindal, directors of the Respondent. Admittedly, the original thereof had been produced by the said witness during the Arbitral proceedings.

Therefore portion of the Respondent's defence in para 6(viii) on page 40, in para 5(ii) on page 6 and elsewhere taken in the Statement of Defence and the Counter Claim, to the effect that no title documents were shown during the course of. the discussion, is rendered false on the face of it. The aforesaid admissions of RW1 Mr.Sudhir Nagar in his cross examination detailed above and the documentary evidence Ex.CW1/2 to Ex.CW1/6, the Respondent cannot be heard to say that 5600 Sq.metres had been



let out to it. The said defence in the Statement of Defence and also put forth at some places by RW1, cannot be believed to be correct by any reasonable person. It is simply false and an afterthought and therefore needs to be rejected.”

11. The Arbitral Tribunal also rejected the contention that there was any misrepresentation on the part of the respondent. The Arbitral Tribunal found that the Lease Deed dated 01.01.2001 and the License Deed executed by the DDA were duly shown to the appellant at the time of entering into the Lease Agreement.

12. In view of the aforesaid conclusion, the appellant’s contention that he was liable to pay only ₹1 per month as lease rental till it continued to retain the demised premises, was rejected.

13. The appellant preferred an application under Section 34 of the A&C Act assailing the impugned award, which was considered by the learned Single Judge. The learned Single Judge examined the terms of the Lease Agreement and found that the conclusion of the Arbitral Tribunal could not be held to be contrary to the terms of the said agreement or considered to be irrational or perverse so as to warrant any interference of the Court under Section 34 of the A&C Act. The relevant extracts of the lease deed as highlighted by the learned Single Judge in the impugned order are set out below:-

“WHEREAS:

A) AHPL by virtue of a perpetual lease deed, duly stamped and registered at the Office of Sub-Registrar of Assurances at Vikas Sadan, New Delhi on the 1st day of January 2001 (Original Lease Deed) executed by the President Of India (“Owner / Lessor”)



demised, unto AHPL as the lessee therein, all that piece or parcel of land admeasuring 1000 square meters or thereabouts situated at Lado Sarai, Behind Qutab Golf Course, New Delhi, more particularly described hereinafter as ("Leasehold Land")

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E) Further, in addition to the Leasehold Land, the DDA has allotted on a license basis under a duly executed License Agreement dated January 1, 2001 to AHPL an adjoining area admeasuring 4600 square meters, for a period of 10 years (DDA License Agreement) on the conditions that the same will be developed and maintained as a "green area" and no commercial exploitation of the same shall be permitted (hereinafter referred to as the "Green Area Plot")

F) M&L is a company which is incorporated under Companies Act 2013, are engaged in the business of hospitality i.e Restaurant and Bar, entertainment business etc has approached and requested AHPL to grant/demise to it a lease/ sub lease of the Premises for the purpose of running a restaurant and bar ("Business") in accordance with the terms and conditions of the perpetual Lease Of the land AHPL has agreed to lease/Sub-lease of the portion shown/marked in red color in the schedule-1 supra comprising of entire ground floor with open area appurtenant thereto, entire first floor and part portion in both the basements at different levels i.e. level-I and II. The portions which are marked in Green in the Schedule-1 is given to M&L on lease for the purposes for which it is permitted under the Law and building regulation as amended up to date and the same has been referred to herein after as "The demised premises". The portion in the building which is marked and shown in yellow is the common area and the area shown in pink color in schedule-1 will be retained by the AHPL which shall be in exclusive possession of AHPL and AHPL will be free to utilize for the same as per it permitted use under the regulation.



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1. DEMISE/ SUB DEMISE:

In consideration of the Lease Rentals, covenants and other stipulations hereinafter contained, to be paid, observed and performed on the part of M&L, AHPL hereby lease/sub-demise the demised Premises with an exclusive right to use and occupy the same in accordance with the terms of Permitted Use and to have and to hold the same for the Terms unless otherwise terminated pursuant to clauses 10 to 13 and renewed pursuant to Clauses 3.2 of this Indenture.

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5. REPRESENTATIONS AND WARRANTIES OF AHPL:

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5.10 AHPL has given the inspection of all relevant documents with regard to the Original Lease Deed of the Leasehold Land, completion plan as submitted to DDA and the ownership of the Building, Original License agreement for green area, together with copies of the approvals/ licenses and current bills of electricity and DJB etc to M&L including but not limited to the Permitted Use of the Premises.

5.11 M&L shall be entitled to display its signage anywhere on the Premises with the requisite approvals from the competent authority as per the statutory norms without removing the name of the Complex, "Tavern On The Greens."

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5.21 M&L is permitted, to use the delineated area for car parking, without any charge, in the layout plan annexed to the Original Lease Deed inclusive of the Green Area Plot.

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6. M&L'S OBLIGATIONS AND COVENANTS:

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6.2 M&L shall pay the electricity and water bills inclusive of fixed charges, meter rent and taxes etc directly to the authorities as per the bills raised in accordance with the associated reading in respect of the Premises (including the excluded portion of the



basement occupied by AHPL) and the Green Area Plot as provided herein, from the date of the signing of the present indenture.

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10. BREACH AFFECTING THE PREMISES/ BUSINESS:

10.1 BREACH BY AHPL:

10.1.1 In case the Premises are sealed or demolished by the DDA or any appropriate authority on account of any breach by AHPL of the terms of the Original Lease Deed or any applicable law on or prior to the Effective D3

M&L may at the option continue with the occupation & use of the Premises in accordance with the terms hereof, save & except that the Lease Rentals payable to AHPL shall be reduced to Re.1 until such time as the Premises are re-opened of Business, a maximum up to 12 (twelve) months, thereafter lease agreement gets automatically terminated. M&L during the period of occupation of the above twelve months, would not be entitled to carry on business from the premises till the time sealing is lifted or demolition set right under orders from competent authority.

10.2. BREACH BY M&L:

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10.2.4 M&L shall not commercially exploit the parking area as well as adjoining green area which is allotted to AHPL on license basis & as per the terms of the license agreement, the parking area & the green area cannot be utilized for the commercial activity & M&L agrees to abide by the terms & conditions of the license agreement with respect to use & restriction in permission granted in parking & usage in the green area. In case M&L violates the terms of the license agreement and gets any notices from DDA or any appropriate authority, M&L would promptly get the First and/or the Second notices vacated and legally settle and, if required, pay up all the penalties and get these resolved to the satisfaction of DDA or any appropriate authority, and would communicate the same in writing to AHPL along with copies of all



correspondence. In case M&L does not reply/resolve/ get vacated or legally settle or pay up for any penalties or levies or fines to the satisfaction of DDA or any appropriate authority, it will be treated as non condonable breach and this indenture would be terminated forthwith without any notice and security deposit forfeited. In addition to the first and the second notices received and settled for, if a third notice is received from DDA or any appropriate authority on account of violations by M&L of the terms of the license agreement then it will be treated as non condonable breach and this indenture would be terminated forthwith without any notice and security deposit will also be forfeited.”

14. It is contended on behalf of the appellant that list of the inventories annexed with the Lease Agreement specifically mentions shifting of the hut. He submits that the hut was demolished by the DDA. He contends that inclusion of such item in the list of inventories annexed to the Lease Agreement also indicates that the lease of the demised premises includes the green area and the appellant was entitled to use the same for commercial purposes.

15. In addition, he submits that a part of the built-up structure was occupied by the respondent. Therefore, he was fully aware of the commercial use of the green area by the appellant at the material time. He also submits that some of the social parties held in the green area were also attended by the representatives of the respondent and therefore they are estopped from contending to the contrary.

16. It is apparent that the appellant invites this Court to re-adjudicate the disputes between the parties. The question whether the green area was let



out to the appellant on the same terms as the lease deed is a contentious one. The decision in respect of such an issue is premised on the terms of the Lease Agreement as well as other evidence led by the parties.

17. The Arbitral Tribunal did not accept that the appellant was permitted to use the green area for holding parties. The terms of the Lease Agreement expressly provided that the demised premises would be used only for the purposes as permissible. There is no ambiguity in the terms of the License Deed entered into by the DDA with the respondent. The commercial use of the green area was not permissible and the Arbitral Tribunal found that the appellant was aware of the terms of the said License Deed. The Arbitral Tribunal held that the appellant could not take the advantage of the action taken by the DDA. More importantly, the Arbitral Tribunal also concluded that the demised premises was only the built-up structure on 1000 square meters of land and no part of that structure was demolished.

18. In the aforesaid view, the appellant's contention that he was entitled to retain the possession of the demised premises for rental of ₹1 per month was rejected. The said contention was premised on the basis that part of the demised premises had been demolished, which the Arbitral Tribunal found was erroneous.

19. We concur with the decision of the learned Single Judge that the impugned award does not warrant any interference in the proceedings under Section 34 of the A&C Act.

20. The entire claim is centered around interpretation of the Lease



Agreement and whether the appellant had breached the same. The Arbitral Tribunal's conclusion is based on the evidence led by the parties and the interpretation of the Lease Agreement. It is well settled that the question as to the consideration of the contract falls within the jurisdiction of the Arbitral Tribunal¹.

21. Thus, unless this Court finds that the interpretation is not a plausible view and no reasonable person would accept the same, no interference would be warranted in the proceedings under Section 34 of the A&C Act.

22. In the present case, we find that the view of the Arbitral Tribunal is a plausible one if not the correct one.

23. The appeal is unmerited and is, accordingly, dismissed. Pending application also stands disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 14, 2024

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Click here to check corrigendum, if any

¹ MSK Projects India (JV) Limited v. State of Rajasthan and Anr.: (2011) 10 SCC 573