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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision : 25.10.2024**+ **ARB. A. (COMM.) 44/2022, I.A. 11144/2022, I.A. 11145/2022**

M/S CENTURY 21 MALLS PVT LTD.

.....Petitioner

Through: Mr. Vijay Assudani, Mr. Akash Deep  
Gupta and Mr. Siddharth, Advocates.

versus

BEYOND MALLS LLP

.....Respondent

Through: Mr. Ashwin Rastogi, Advocate.

**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)****I.A. 11143/2022 (Exemption)**

Allowed, subject to all just exceptions.

The application is disposed of.

**ARB. A. (COMM.) 44/2022**

1. The present appeal is directed against the orders dated 07.03.2021 and 21.11.2021 passed by the learned Sole Arbitrator on application/s filed by the appellant/claimant under Section 17 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*').

2. The disputes between the parties are in the context of a registered lease deed between the appellant and the respondent whereby the appellant agreed to lease out 2,63,693 Sq. ft of widths premises (being a building on which a shopping mall has been constructed) to the respondent. It is the case of the appellant that the lease rental being realised by from the various



shops/ outlets in the mall, prior to entering into the agreement with the respondent, was to the tune of Rs. 1.1 crore per year.

3. It is stated that the agreement with the respondent was entered into, in the expectation of realising a much higher amount of lease rental.

4. Disputes between the parties arose on account of multiple issues concerning the aforesaid agreement. It is the case of the appellant/claimant that the respondent, since inception, did not comply with the terms and conditions of the agreement and has not even deposited the full security deposit; even the lease rentals have not been paid since October, 2018. On the other hand, the respondent alleges breach of the agreement on the part of the appellant.

5. An application dated 26.12.2020 was filed by the appellant under Section 17 of the A&C Act before the learned Sole Arbitrator seeking the following reliefs:

*a. Restrain the Respondent from executing any sub-lease/Letter of Intent or any other document as regards any shop/anchor store of Capital Mall situated at Misrod, Hoshangabad Road, Bhopal;*

*b. Restrain Respondent from parting away the possession of any shop/ anchor store in shopping mall popularly known as Capital Mall situated at Misrod, Hoshangabad Road, Bhopal.*

*c. Direct Respondents to deposit the entire lease rent received, from all occupants of the Capital Mall in a separate bank account to be maintained by Respondent under supervision of this Tribunal.*

*d. Direct Respondent to provide a bank guarantee to the tune of Rs. 28 crores to meet out the claim of Claimant Company if ultimately an award in favour of Claimant Company is passed.*

6. Another application dated 11.02.2021 was filed by the respondent under Section 17 of the A&C Act seeking the following prayers:-



i. That the Claimant be directed to issue NOCs for enabling the leasing of Infinity retail & for the new food court which is been on hold because of the default of the Claimant along with the further leasing of the mall premises with retailers who have agreed to lease out portions of the mall, along with the requisite NOC from the banking and financial institutions including MPFC;

ii. That, the Claimant be further directed to cooperate and enable the execution of the tripartite agreement with Infinity retail and also provide assistance and cooperation in enabling future leases.

iii. The Claimant be restrained from making any communication with the retails/ occupants seeking payment of lease rentals or any charges towards services like HVAC, CAM, electricity, DG etc.

iv. The Claimant be directed to issue communications to all existing retails/occupants to continue to make requisite payment to the Respondent as per the right to collect lease rent and all other utilities charges, like CAM, HVAC, Electricity, etc., assigned to the Respondent in the lease deed;

v. The Claimant be directed to resolve the pending matters with the MPFC and Axis Bank, obtain a certificate from them for the said premises.

vi. The Claimant be directed to not to involve any interfere with the day to day operations of the mall and create insecurity feeling in the minds of employees of management team on uncertainty of their jobs and the retailers of the mall.

vii. That Claimant provide all the support in submitting request, letters, etc., as per the lease deed to sort the issues with the service provides of electricity & Solar.

viii. The Respondent have submitted their claim of Rs. 192,26,18,394/- ( Rupees One Hundred Ninety Two Crore Twenty Six Lakhs Eighteen Thousand Three Hundred and Ninety Four only). That the Hon'ble Tribunal direct the Claimant to deposit appropriate amount as deems fit to the Tribunal as security for ensuring that the Claimant is able to comply with the order this Hon'ble Tribunal as regards the counter claim referred by the Respondents.

7. The said applications under Section 17 of the A&C Act, were disposed of by the learned Sole Arbitrator vide a common impugned order



dated 07.03.2021 holding that no case was made out for grant of any orders by way of interim measures under Section 17 of the A&C Act, and that the nature of the allegations required that the main claims/ counterclaims be disposed of at the earliest.

8. Subsequently, by way of an interim award dated 10.06.2021 it was held as under: -

*55. For the aforesaid reasons I am of the considered view that the compliance with all the terms of the lease deed as provided under Clause 8.2.1 cannot be taken as a condition precedent for payment of rents by the Respondent for the use and maintenance of the Shopping Mall. The rent commencement date for all the purposes shall be 01.10.2017 only that the Respondent's obligation to pay rent would commence after 12 months from the said date as depicted in Annexure-C. The proviso to clause 8.2.1 undoubtedly is superfluous and beyond the object and purpose of the lease deed. It must therefore yield to clause 8.1.1 which expressly provided for payment of rent for use and maintenance of the Shopping Mall without any rider Preliminary Issue No. 1 is decided accordingly.*

*56. In the light of the reasons stated above, I hold on Preliminary Issue No. 2 that the rents under the lease deed dated 27.09.2017 have accrued from the 13<sup>th</sup> month from 01.10.2017 as claimed by the Claimant. The Respondent's contention that no rent has accrued till date in view of clause 8.2.1 is hereby rejected.*

9. Thus, the interim award affirmed the entitlement of the petitioner to lease rentals w.e.f. 01.10.2017.

10. Subsequently, another application under Section 17 of the A&C Act, came to be filed by the appellant seeking as under:-

- i. Direct respondent to deposit the monthly lease rental as defined in Annexure C with the claimant by or before 5<sup>th</sup> day of every month.*
- ii. Direct respondent to maintain the mall as per best industries standards and furnish the proof maintaining the mall every month to this Hon'ble tribunal.*

11. The said application was disposed of vide order dated 21.11.2021



holding as under:-

8. *I am also of the view that the Claimant failed to make out compelling circumstances for grant of such mandatory direction even before deciding the Claim and Counter Claim of the parties. It is also relevant to note that the pleadings are complete and the main proceedings are at the stage of hearing. No case is made out to grant at this stage a mandatory direction for payment of monthly rentals.*

9. *Regarding the direction to the Respondent to maintain the Mall as per best industries standards, I found that there is no plea at all in the application as to the alleged failure of the Respondent to maintain the Mall. In the absence of such pleading, leaving alone evidence to establish these alleged non-maintenance of the Mall, I do not find any justifiable reason to exercise the jurisdiction conferred under Section 17 of the Arbitration and Conciliation Act, 1996.*

12. An appeal came to be filed by the petitioner under Section 37 of the A&C Act against the order dated 07.03.2021 which came to be disposed of by this Court *vide* order dated 09.05.2022. The said order reads as under :-

*“1. The appellant has filed the present appeal against a common order dated 07.03.2021 passed by the Arbitral Tribunal disposing of the applications preferred by the parties under Section 17 of the Arbitration and Conciliation Act, 1996 (hereafter ‘the A&C Act’).*

*2. A plain reading of the said order indicates that the Arbitral Tribunal had declined to entertain the appellant’s application under Section 17 of the A&C Act for interim measures of protection, inter alia, for the reason that the Arbitral Tribunal was of the view that the main claims and the counter claims will be disposed of at the earliest. The Arbitral Tribunal held that at that stage, it would not be apposite for the Arbitral Tribunal to record a finding on the larger issues, which were pending consideration as the same would amount to finally concluding the rights and obligations of the parties in connection with the Lease Deed dated 27.09.2017.*

*3. It is stated that thereafter, the Arbitral Tribunal had passed an interim award deciding the preliminary questions. In terms of the interim award dated 10.06.2021, the Arbitral Tribunal has held that the lease rentals shall commence from 01.10.2017 as claimed by the petitioner.*



4. In view of the final determination of the said issue, the appellant had also filed another application under Section 17 of the A&C Act, once again, praying that the respondent be directed to deposit monthly lease rentals before the 5<sup>th</sup> day of every month. The said application was dismissed inter alia, on the ground that an application under Section 17 of the A&C Act would not be maintainable for enforcement of the interim award. The Arbitral Tribunal also held that it had only decided the preliminary issues while the main claims and counter claims were yet to be adjudicated.

5. The respondent preferred an application under Section 34 of the A&C Act for setting aside the said interim award, however, the respondent's application was rejected. The respondent has appealed against the order rejecting its application under Section 34 of the A&C Act. The said appeal is pending before the High Court of Madhya Pradesh.

6. The appellant is also aggrieved by the order dated 21.11.2021 passed by the Arbitral Tribunal.

7. After some arguments, the learned counsel appearing for the petitioner seeks to withdraw this appeal with liberty to file a comprehensive appeal in respect of the order dated 21.11.2021.

8. The petition is dismissed as withdrawn with the aforesaid liberty. All rights and contentions of the parties are reserved.

9. The appellant would also be at liberty to seek condonation of delay in the given circumstances.

13. Consequently, the present appeal has been filed by the appellant challenging both the orders dated 07.03.2021 and 21.11.2021.

14. The learned counsel for the appellant submits that the appellant/claimant has not been paid with any lease rentals after handing over the mall to the respondent. It is further submitted that there has been a huge shortcoming on the part of the respondent in maintaining the mall.

15. It is submitted that in these circumstances, when the respondent is not able to pay any lease rental to the appellant, nor able to maintain the Mall, it is imperative that the respondent be restrained from entering into any further



sub-leases with any third parties or in any manner otherwise creating any third-party rights till the final award is issued by the learned Sole Arbitrator, who is seized of the matter.

16. The learned counsel for the respondent submits that far from realising any lease rentals, the respondent has been incurring a loss ever since it has taken over the premises from the appellant. Learned counsel for the respondent also questions the maintainability of the present petition in as much as the appellant had earlier filed a petition under Section 9 of the A&C Act before the ADJ (Bhopal). The said application was disposed of *vide* order dated 22.12.2020. The said order noted that the arbitral proceedings between the parties are to take place in New Delhi, and considering that an arbitral tribunal was already in place, the application was disposed of, with the observation that it was open for the appellant to prefer an application under Section 17 of the A&C Act before the Arbitral Tribunal.

17. It is also noticed that the interim award dated 10.06.2021, that came to be passed by the Arbitral Tribunal was challenged by the respondent before the learned Commercial Court, Bhopal. The said challenge came to be dismissed by the said Court holding that the said Court had no jurisdiction, since the seat of Arbitration was New Delhi. In that order the Court also rejected the plea of the respondent that filing of the earlier application under Section 9 of the A&C Act in Bhopal would mandate that the petitions under Section 34 of the A&C Act be also filed in Bhopal.

18. In reaching the aforesaid conclusion, the learned Commercial Judge relied upon the judgment of the Supreme Court **BGS SGS, SOMA, JV vs. NHPC**, (2020) 4 SCC 234 and **Hindustan Construction Co. Ltd vs. NHPC**, (2020) 4 SCC 310.



19. This Court does not find any merit in the submission of the respondent as regards alleged lack of territorial jurisdiction of this Court.

The reasons are as under: -

- i. Filing of an application under Section 9 of the A&C Act in the Bhopal Court, which was not even entertained and was disposed of with liberty to file an application before the Arbitral Tribunal, would not denude the jurisdiction of the Courts at the seat of arbitration to exercise jurisdiction. Moreover, while disposing of the application under Section 9 of the A&C Act, it was noticed by the Court that arbitral proceedings are stated to take place in Delhi.
- ii. The respondent's own petition under Section 34 of the A&C Act challenging the interim order dated 10.06.2021 passed by the learned Sole Arbitrator was dismissed by the learned Commercial Judge, Bhopal on the basis that Delhi was the seat of arbitration and, therefore, the Courts in Delhi would have jurisdiction for the purpose of dealing with a petition under Section 34 of the A&C Act.
- iii. This Court on an earlier occasion entertained an appeal filed by the appellant under Section 37 of the A&C Act against the order dated 07.03.2021 (ARB. P. 21/2021) passed by the learned Sole Arbitrator. This Court, while disposing of the said appeal, granted liberty to appellant to file a comprehensive appeal taking into account the subsequent order dated 21.11.2021 passed by the learned Arbitrator.

20. On merits, the appellant has sought to make out a case for injuncting



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the respondent from creating any further sub-lease/creating any third party rights in respect of the premises in question. It is submitted that there is no cogent justification for the respondent to hold on to the premises and creating further sub-lease/s, when it is not in a position to pay the requisite lease rental. This aspect merits serious consideration. However, since the arbitral proceedings are stated to be at an advanced stage, this Court finds it apposite to request the learned Sole Arbitrator to consider this aspect of the matter and pass appropriate orders. For this purpose, the appellant is granted liberty to move a fresh application under Section 17 of the A&C Act which may be dealt with by the learned Sole Arbitrator in accordance with law. Respective counsel for the parties undertake that they will fully cooperate with the learned Sole Arbitrator for the purpose of expeditious disposal of the said application, and also for completing the arbitral proceedings as expeditiously as possible.

21. The present appeal is disposed of in the above terms.

**SACHIN DATTA, J**

**OCTOBER 25, 2024 /uk**