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

\+ ARB. A. (COMM.) 39/2024& I.A. 32902/2024

KAMAL KHURANA .....Petitioner

Through: Mr. Rajesh Gupta and Mr. Harpreet Singh, Advs.

versus

GTG WORKPLACES LLP .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% **11.07.2024**

I.A. 32901/2024-EX.

1. Exemption is granted subject to all just exceptions.

2. The petitioner shall file legible and clearer copies of exempted documents, compliant with practice rules before the next date of hearing.

3. The application is disposed of.

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4. This is a petition filed under section 37 (2)(b) of the Arbitration and Conciliation Act, 1996 (*"1996 Act"*) seeking to challenge the order dated 30.03.2024 passed by the learned Sole Arbitrator under section 17 of 1996 Act in the case titled as *"Kamal Khurana vs. GTG Workplacse LLP"*.

5. Mr. Gupta, learned counsel for the petitioner states that the conclusion arrived by the learned Sole Arbitrator in paragraphs 35 - 37 of the impugned order are contrary to the finding recorded in paragraph 26 wherein the learned Sole Arbitrator has given a finding that there is a possibility that the claimant (petitioner herein) despite having a monetary award in his favor may not be able to recover the money from the respondent.

6. Paragraph 26 of the Order dated 30.03.2024 reads as under:-

> *"26. In the present case, undoubtedly, the respondent being a LLP, liability of partners whereof is limited to their share in the partnership and from the factum of the respondent having no assets, the possibility of the claimant, even if having a monitory award in its favour being not able to recover the monies thereunder from the respondent cannot be ruled out. The claimant thus, out of the 3 ingredients above for grant of interim measures, can be said to satisfy the ingredient of irreparable loss and injury. Having said that, one cannot be at the same time be unmindful of the fact that the claimant chose to do business with the respondent, a LLP, and is deemed to have known of the limits of the liability of the respondent and its partners. I have wondered whether the claimant can now be permitted to cry hoarse, of disadvantage or prejudice caused to it for the reason of the respondent being a LLP. The claimant, at the time of entering into the agreement with the limited liability partnership firm, did not opt to make the partners thereof personally liable for obligations under the contract and even now has not made out a case for piercing of the veil of LLP, as in the case of companies. However, even if the claimant were to be said to satisfy the ingredient of irreparable loss and injury, that alone does not entitle the claimant to the interim measures, which the counsel for the claimant also agreed, are in the nature of*

attachment before judgment."

7. However, in my view, the learned Sole Arbitrator in paragraphs 35-37 has dealt with the said issue. The findings recorded in paragraphs 35-37 reads as under:-

> *"**35.** Though the documents produced by the claimant indeed show involvement of the claimant but at this stage, therefrom I am unable to even prima-facie believe or hold the claimant to be entitled to share of 25%/40% in net profits of the business centre/co-working space being run and operated therefrom. It still remains to be established that the claimant brought together the owner of the immovable properties and the respondent as prospective lessee thereof and/or the respondent and the occupants of the business centre/co-working space being operated from such immovable property, only when it can be said that the claimant, in lieu of brokerage, became entitled to a share in profits. The MOU also does not provide for the claimant to become entitled to a share in profits merely by arranging for immovable properties on lease. Had the agreement between the parties been so, nothing prevented the parties from writing so. On the contrary, as per the MOU, a share in net profits was agreed to be paid by the respondent to the claimant for the expertise, time and effort of the claimant in providing services relating to such business centres/co-working spaces. In fact, there was no business centre also at the time when the claimant brokered the lease of the premises in favour of the respondent.*
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> ***36.** I am also intrigued that if the business centres/co-working*

spaces were being jointly set up/established, why the lease thereof was not taken in the joint names of the claimant and the respondent and why the agreements with occupants of the said business centres/co-working spaces were not executed jointly by the claimant and the respondent. Even if it were to be believed, as was indicated during the arguments, that the brand of the respondent was intended to be used, the parties in the MOU could have provided so. There is nothing of the kind in the MOU.

***37.** It is also not understandable that if some of the said business centres/co-working spaces were jointly established after the incorporation of the company agreed in the MOU to be jointly incorporated, why the same were not established in the name of the said company i.e. Synq Workspaces Pvt. Ltd. which had already been incorporated by then and why the lease thereof was taken in the name of the respondent and the agreements with occupants thereof entered into with the respondent instead of with the said company. At this stage, the same can lead only to the inference that the same were businesses of the respondent and not joint businesses of the claimant and the respondent. Again, it is not as if at any point of time the net profits whereof were shared by the respondent with the claimant."*

8. On perusal, the learned Sole Arbitrator has observed that the documents shows involvement of the petitioner but prima facie it cannot be ruled out that the petitioner will be entitled to share of 25%/40% in net profits of the business centre/co-working space. Further, the MOU dated 31.01.2022 does not provide the petitioner to become entitled to a share in profits merely by arranging for immovable properties on lease.

9. At this stage, Mr. Gupta, learned counsel for the petitioner restricts his prayer only on two aspects as under:-

a) The observations made in the impugned order were only for the purpose of deciding section 17 application of the petitioner and will have no bearing on the final Award.

b) He may be permitted to file a fresh section 17 application as regard to the direction to the respondent not to withdraw 25% of the gross revenue.

10. I am of the view that the prayers made above by the learned counsel for the petitioner seem to be reasonable.

11. It is therefore directed that the observations made in the impugned Order dated 31.03.2024 were only for the purpose of deciding section 17 application and the said observations will not have any bearing on the final adjudication.

12. Further, the petitioner is at liberty to file an application under section 17 of 1996 Act seeking direction to the respondent not to withdraw 25% of the gross revenue. As and when the said application is filed, the Sole Arbitrator shall adjudicate the same in accordance with law.

13. With these observations, the petition is disposed of.

JASMEET SINGH, J

JULY 11, 2024/NG