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

% Date of decision: 06th August, 2024

+ **CONT.CAS(C) 1218/2024**

INDEX HOSPITALITY LIMITED

.....Petitioner

Through: Mr. Anil Kher, Sr. Advocate
with Ms. Chakshu Thakral,
Advocates.

versus

CONTITEL HOTELS AND RESORTS PVT LTD & ORS.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 44714/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CONT.CAS(C) 1218/2024

3. The petitioner company is seeking initiation of contempt proceedings against the respondents under Sections 11 and 12 of the Contempt of Courts Act, 1971 for wilful disobedience of the order dated 02.09.2023 passed in ARB.P. No. 7/2022.
4. None appeared on behalf the respondents, despite sending advance notice.
5. Briefly stated, the case of the petitioner is that being the owner of the property bearing Plot No. 281-282, Kirti Nagar, Jharsa Road,



Gurgaon, Haryana, he had leased the same to respondent No. 1 *vide* registered Lease Deed dated 01.06.2018, for a period of three years commencing from 01.06.2018, reserving monthly rent for different years at enhanced rates. It is his grievance that respondent No.1 was irregular in making payments of the lease rent and that the premises was not vacated by respondent No.1, despite the fact that the Lease Deed expired by efflux of time on 31.05.2021. In the said background, the arbitration clause was invoked and during the arbitration proceedings, the parties reached an amicable settlement and the MoU¹ arrived at between the parties was duly recorded by the learned Arbitrator *vide* order dated 02.09.2023.

6. Learned counsel for the petitioner has urged that pursuant to the undertaking given by the respondent No. 3 under the authority of respondent No. 2, it was undertaken that an *ad hoc* payment of Rs. 50 lacs shall be paid to the petitioner in the form of a Demand Draft on or before 25.09.2023. It is submitted that although vacant physical possession of the tenancy premises has been handed over to the petitioner, the respondents have deliberately avoided to pay Rs. 50,00,000/- to the petitioner. Therefore, alluding to the affidavit of respondent No.2/Mr. Ajay Dahiya dated 04.09.2023, it is urged that the respondents be proceeded against for non-compliance of their undertaking given by them before the learned Arbitral Tribunal.

7. In the opinion of this Court, although, the petitioner *prima-facie* has a plausible case, the appropriate remedy for the petitioner would be to seek enforcement of the award in terms of Section 31 of the

¹ Memorandum of Understanding



Arbitration and Conciliation Act, 1996, which provides as under:-

“31. Form and contents of arbitral award.—(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless-

- (a) the parties have agreed that no reasons are to be given, or
- (b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

[(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).]

[(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 31A.]”

8. The bottom line is that breach of each and every undertaking which is given before a Court or an Arbitral Tribunal cannot be agitated under the Contempt of Courts Act, especially in a case where an efficacious alternate remedy is available. Reference can be invited



to a decision in the case of **Rama Narang v. Ramesh Narang & Anr.**², wherein a consent decree had been passed between the parties in terms of Order XXIII Rule 3 CPC, in which matter, an undertaking was given by the judgment debtor to comply with certain directions, which were evidently flouted thereafter. The Supreme Court held that a violation of breach of undertaking becomes a part of the decree of the Court and certainly amounts to contempt of Court irrespective of the fact that it is open to the decree holder to execute the decree. However, it was also held that much would depend on the facts and circumstances of the case or the contextual background in which the Court may or may not decide to exercise contempt jurisdiction. It was reiterated that normally, the parties should resort for execution of decree or implementation of an order, which is the effective alternate remedy in law.

9. This Court may also invite reference to a decision in the case of **R.N.Dey & Ors. v. Bhagyabati Pramanik & Ors.**³, wherein a petition was filed under the Contempt of Courts Act, 1971 for non-payment of the amount awarded consequent to acquisition of land and it was held as under :

“7.....the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of Courts dignity and majesty of law. ...”

10. It was further held that:

² (2006) 11 SCC 114

³ (2000) 4 SCC 400



“8. ...the decree-holder, who does not take steps to execute the decree in accordance with the procedure prescribed by law, should not be encouraged to invoke contempt jurisdiction of the court for non-satisfaction of the money decree.”

11. Avoiding a long academic discussion, we may refer to another decision in **Soorajmull Nagarmull v. Brijesh Mehrotra & Ors.**⁴ wherein the proceedings arose out of the Land Acquisition Act, 1894 the Supreme Court observed that since the Land Acquisition Act, 1894 is a complete code in itself and lays down detailed procedure for acquisition of land, payment of compensation based on common law principles of justice, equity in good conscious, the parties should resort to seeking remedy under the same instead of enlarging the scope of the directions by brining contempt petitions.

12. Faced with the aforesaid situation, learned counsel for the petitioner has relied on the decision in **Alka Chandewar v. Shamshul Ishrar Khan**⁵ and has invited the attention of this Court to paragraph (09) of the judgment wherein it was observed as under:-

9. Pursuant to this 246th Report, sub-section (2) to Section 17 was added by the 2015 Amendment Act, so that the cumbersome procedure of an Arbitral Tribunal having to apply every time to the High Court for contempt of its orders would no longer b necessary. Such orders would now be deemed to be orders of the court for all purposes and would be enforced under the Civil Procedure Code, 1908 in the same manner as if they were orders of the court. Thus, we do not find Shri Rana Mukherjee’s submission to be of any substance in view of the fact that Section 17(2) was enacted for the purposes of provided a “complete solution” to the problem.’

13. I am afraid the submissions advanced by the learned counsel for

⁴ 2021 SCC Online SC 1252

⁵ (2017) 16 Supreme Court Cases 119



the petitioner cut no ice. In the opinion of this Court, Section 17 of the Arbitration and Conciliation Act, 1996 caters to enforcement of orders by way of approaching the Court under the Contempt of Courts Act in those situations where interim measures are ordered by the Arbitral Tribunal. Sub-Section (2) to Section 17 of the Arbitration and Conciliation Act, 1996 provides that subject to any final order passed under Section 37, any order issued by the learned Arbitral Tribunal shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908, in the same manner as if it were an order of the Court. It is apposite to note that Section 17 starts with the stipulation that at any time after passing of the arbitral award, but prior to its enforcement in accordance of Section 36, the party may apply to the arbitral tribunal for certain interim measures/directions.

14. The cited case of **Alka Chandewar** is distinguishable inasmuch as by virtue of Section 27(5) r/w Section 17, which caters to a situation where compliance is sought by the parties with regard to any interim measures or directions passed by the learned Tribunal. The offshoot of such proposition of law is that where the arbitral award attains finality, such an award becomes executable and enforceable. In that event, the beneficiary party can seek enforcement in terms of Section 36 of the Arbitration and Conciliation Act, 1996, which provides as under:-

“[36 Enforcement.—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a



decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]

[Provided further that where the Court is satisfied that a *prima facie* case is made to in sub-section (8) of section of the claim submitted to it:

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally claim and counter-claim.

Explanation.-For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective by the parties: of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016).]"

15. In view of the above, the present contempt petition is dismissed without prejudice. It is clarified that the petitioner shall be at liberty to initiate appropriate enforcement proceedings for execution of the arbitral award in accordance with the law.

DHARMESH SHARMA, J.

AUGUST 06, 2024

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