



2024: DHC: 2124



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Decided on: 15th March, 2024***+ O.M.P. (COMM) 484/2018, I.A. 16303/2018, 17605/2018,
3347/2019 & 9513/2023MALT & LEAF HOSPITALITY PVT. LTD Petitioner
Through: Mr. Rakesh Kumar, Ms. Preeti
Kashyap and Mr. Varun Pandit,
Advocates.

versus

AGGARWAL HOTELS PVT. LTD Respondent
Through: Mr. N.P. Singh, Advocate.**CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)**

1. By way of this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner assails an Award dated 03.08.2018, by which an Arbitral Tribunal has adjudicated disputes between the parties under a registered Lease Deed dated 10.07.2015 ["Lease Deed"]. By the impugned Award, the Arbitral Tribunal has, by a majority of 2:1, granted possession of the demised premises to the respondent-lessor, alongwith arrears of rent, service tax, future occupation charges, electricity, maintenance and insurance charges, interest and costs. Counter claims filed by the petitioner herein have been rejected.

A. Facts

2. The Lease Deed relates to a premises at *Lado Sarai, behind Qutub Golf Course, New Delhi*. The petitioner was the lessee under the Lease

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Deed and the respondent was the lessor. The principal dispute between the parties relates to whether the Lease Deed was in respect of a built-up area of 1,000 sq. mts. [“built-up area”] alone, or also included an appurtenant green area of 4,600 sq. mts. [“green area”].

3. The respondent-lessor was, in turn, the lessee in respect of the built-up area of 1,000 sq. mts. in terms of a registered Lease Deed dated 01.01.2001, executed in its favour by Delhi Development Authority [“DDA”]. Additionally, DDA had executed a license agreement dated 01.01.2001 in favour of the respondent for an adjoining green area of 4,600 sq. mts.

4. The Lease Deed dated 10.07.2015, between the petitioner and the respondent, refers to the lease deed, as well as the license agreement, both dated 01.01.2001, executed by DDA in favour of the respondent. The Lease Deed was for a period of nine years, and the amount of rent was fixed at Rs.16 lakhs per month for the first year and Rs.17 lakhs per month for the second and third years¹. The Lease Deed also provided for an increase of 15% of the prevailing lease rent at the end of every three years.²

5. The disputes between the parties arose pursuant to a notice dated 29.03.2016 sent by DDA, to the effect that the green area was being misused for commercial purposes, contrary to the terms of the License Agreement dated 01.01.2001. Consequently, on 26.04.2016, it demolished a structure built on the green area. Admittedly, no part of the built-up area of 1,000 sq. mts. was demolished. The petitioner then

¹ Clause 2.1 of the Lease Deed dated 10.07.2015.

² Clause 2.3 of the Lease Deed dated 10.07.2015.



stopped paying lease rent, asserting that it was entitled to do so in view of DDA's actions, under clause 10.1.1 of the Agreement. The respondent disputed this. It referred to various clauses of the Lease Deed to contend that the demised premises were only the built-up area of 1,000 sq. mts., and the use of the green area for commercial purposes was expressly prohibited under clause 10.2.4 of the Lease Deed. The respondent terminated the lease deed by notice dated 07.09.2016.

6. These disputes were referred to arbitration, wherein the respondent raised claims for possession, arrears of rent, future charges for post-termination occupation, service tax, maintenance, electricity, insurance expenses and damages. It also sought *mesne* profits for the post termination period at twice the amount of lease rent fixed.

7. The petitioner filed a counter claim for a declaration that it was entitled to remain in possession for a monthly rent of Rs.1 per month, excess rent paid, refund of security deposit, damages etc.

8. By the impugned award, the Arbitral Tribunal has awarded the respondent's claims for possession of the property, arrears of rent of Rs. 1.68 crores, service tax, future rent, maintenance and occupation charges, but rejected the respondent's claim for *mesne* profits at twice the rate of the lease rent fixed. The petitioner's counter claims have also been rejected.

B. Submissions of learned counsel

9. It is clear from the submissions of learned counsel for the parties that the only question upon which the determination of this dispute rests, is whether the Lease Deed between the parties, in fact, pertains only to the built-up area of 1,000 sq. mts., or is also in respect of the green area



of 4,600 sq. mts.

10. According to Mr. Rakesh Kumar, learned counsel for the petitioner, the Arbitral Tribunal has missed the essential elements of the Lease Deed, which show that it covered both the aforesaid elements, and has, therefore, failed to grant to the petitioner the consequence of DDA's demolition of the structure in the green area, as provided in clause 10.1.1 of the Lease Deed itself. He also submitted that the respondent was estopped from contending that the green area plot was not part of the demised premises, as it knew all along that the said area was also being used as part of the petitioner's restaurant.

11. Mr. N.P. Singh, learned counsel for the respondent, on the other hand, submits that the Lease Deed very clearly provides that the built-up area alone was the demised premises. The green area had been licensed by DDA to the respondent only to be developed and maintained as a green area, and commercial exploitation thereof was not permitted. It is submitted that DDA's action was a consequence of the petitioner's misuse of the premises, and the Arbitral Tribunal has rightly come to the conclusion that the petitioner was in breach of the contractual provisions.

C. Analysis

12. Learned counsel for the parties have referred me to the following clauses of the Lease Deed:

"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 Outab 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 I(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

³ Reproduced as in the original.



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.⁴

13. In the impugned award, the Arbitral Tribunal has considered the pleadings filed by the parties and the documentary and oral evidence adduced before it. It has found that the terms of the Lease Deed and License Agreement dated 01.01.2001 between the respondent and DDA, were undisputed. Significantly, the License Agreement dated 01.01.2001 itself provided for the fact that the green area could not be used for commercial purposes, except for parking of 50 cars. The Arbitral Tribunal has also referred to applications filed by the petitioner for

⁴ Emphasis supplied.



registration of its establishment as an “*eating house*”. In these applications, the address of the establishment is mentioned as “*Ground Floor and First Floor, Qutub Golf Course, Lado Sarai Corner, Aurobindo Marg, New Delhi*”. The Arbitral Tribunal inferred that the petitioner itself represented that the restaurant was being run in the built-up area.

14. I do not find any basis in the Lease Deed to come to the conclusion that these findings of the Arbitral Tribunal are either contrary to the terms of the contract, or so irrational or perverse as to invite the interference of this Court under Section 34 of the Act. The Lease Deed refers both to the built-up area and the green area. However, Recital F and clause 1 of the Lease Deed make it clear that what was being leased by the respondent to the petitioner– the “demised premises” – was a part of the built-up area shown in Schedule-1 to the Lease Deed. Schedule-1 is referred to in Recital C, and is the plan of the building erected on the leasehold land. The “demised premises” was given to the petitioner, including the ground floor with open area appurtenant thereto, first floor and parts of two basements. The areas were to be used for the purposes permitted in law and the building regulations. Certain part of the built-up area was designated as a “common area” and part of the basements were retained in the possession of the respondent.

15. Mr. Kumar’s reliance upon various clauses of the Lease Deed, which refer to the “green area plot”, do not take the petitioner’s case much further. Clause 5.10 only records that inspection of the License Agreement for the green area was given to the petitioner. Clause 5.11 permits the petitioner to display its signage on the premises, but does not



refer specifically to the green area in any way. Clause 5.21 permits use of a delineated area for car parking without any charge. It does not suggest that the green area plot was part of the demised premises. Clause 6.2 does cast an obligation upon the petitioner to pay electricity and water bills for the demised premises and the green area plot. As noted above, the green area plot was licensed by DDA to the respondent, but was not to be used commercially. The lighting or other electricity expenses, in respect of the green area plot, have apparently been treated by the parties as incidental to the use of the demised premises and, therefore, obligation to pay the charges has been cast upon the petitioner, but that too does not establish any right to treat the green area plot as part of the demised premises. In fact, clause 6.2 obliges the petitioner to pay electricity charges even for the parts of the basement which were kept in the respondent's possession. It is clear therefrom that the parties did not restrict petitioner's obligations in this regard to the "demised premises" alone.

16. Clause 10.1.1 is the sheet anchor of the petitioner's case. According to the petitioner, the demolition of a structure in the green area by DDA on 26.04.2016 entitled it to continued use of the premises, upon a reduced rent of Rs.1 per month. I do not find force in this submission. If the "demised premises" itself can be held not to include the green area, the demolition of a structure on the green area would not trigger clause 10.1.1. Clause 10.2.4, which specifically prohibits commercial exploitation of the parking area or the adjoining green area, lends force to this conclusion.

17. In any event, the Court in exercise of Section 34 jurisdiction, is not called upon to re-interpret the contractual clauses or to re-appreciate the



evidence led before the Arbitral Tribunal. The tribunal is the ultimate arbiter of the agreement between the parties and the evidence led before it. The majority of the Arbitral Tribunal, in the present case, has not rendered a specific finding with regard to the issue argued before this Court, but its reasoning is discernible from the Award. The judgment of the Supreme Court in *Dyna Technologies (P) Ltd. vs. Crompton Greaves Ltd.*⁵ makes it clear that the Court is duty bound to uphold an Award if the rationale can be culled out from the Award by a process of reasoning. In view of the provisions of the Lease Deed discussed above, I do not find the conclusions of the Arbitral Tribunal to suffer from such defects of reasoning or conclusion, so as to call for interference within this limited jurisdiction.

18. Mr. Kumar drew my attention to various documents and evidence placed before the Arbitral Tribunal to suggest that the respondent was estopped from contending that the petitioner's use of the green area was contrary to the terms of the agreement between them. These documents were in the form of photographs of a party held by the wife of a director of the respondent in the green area itself, and an e-mail from a director of the respondent which referred to decorations in the green area. It is also contended that, in terms of the Lease Deed itself, the respondent was in possession of part of the basement and knew all along the use to which the petitioner was putting the property, including the green area. I do not find this contention to be merited, for the reason that none of these documents render the Arbitral Tribunal's view untenable. Even assuming

⁵ (2019) 20 SCC 1.



the respondent knew that the petitioner was using the property or the green area in a manner contrary to the Lease Deed, the petitioner could not have been absolved of its liability to pay lease rent by invoking clause 10.2.1. That drastic consequence – of reducing the lease rent from Rs.17 lakhs to Rs.1 per month – was limited to a situation where the “demised premises” itself was demolished. Having come to the conclusion that there is no infirmity in the award – which is based upon the understanding that the “demised premises” comprised only of the built-up area – clause 10.2.1, and the petitioner’s argument of estoppel, have no application in the facts of the case.

D. Conclusion

19. For the aforesaid reasons, I do not find any ground to interfere in the impugned Award under Section 34 of the Act. The petition is, therefore, dismissed, but with no orders to costs. All pending applications also stand disposed of.

20. By an order dated 30.11.2018, it was noted that possession of the subject property had been handed over to the respondent. The respondent was directed to secure the petitioner’s security deposit of Rs. 1 crore by a bank guarantee or fixed deposit in this Court. I am informed that a fixed deposit was placed in Court. As the petition has now been dismissed, the Registry is directed to release the fixed deposit submitted pursuant to the order dated 30.11.2018, alongwith interest accrued thereupon, to the respondent.

PRATEEK JALAN, J

MARCH 15, 2024
SS/Adhiraj/