ORDER OD – 17

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

AP/160/2025
G.E.T. PROPERTIES PRIVATE LIMITED
VS
UNION OF INDIA

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 4th December 2025.

<u>Appearance</u>:-

Mr. Sakya Sen, Senior Advocate
Mr. Tanmoy Sett, Advocate
Mr. Atish Ghosh, Advocate
Ms. Antara Dey, Advocate
... for the petitioner.

Mr. Uday Sankar Bhattacharya, Advocate
Mr. Tapan Bhanja, Advocate
...for the respondent.

<u>The Court</u>:-

1. This is an application for appointment of a learned arbitrator to adjudicate the disputes between the parties.

2. The respondent came in possession of the property on the basis of a lease agreement dated March 18, 2016. The said lease is deemed to have commenced from March 16, 2006 and continued till March 15, 2011 with an option to extend the period for a further term, as stated in clause 14 thereof. The fact is that the lease deed was executed in 2016 with effect from 2006. This clearly shows that the past possession of the respondent had been regularized and the lease was renewed by implication. However, the respondent did not take steps when the petitioner requested for execution of a lease deed, and also did not pay the incremental value of rent. Several communications continued between the parties.

3. It is an admitted position that the is rent still being paid at the rate contemplated under the lease agreement dated March 18, 2016, but the formal agreement has not been executed. I am of the, prima facie, view that, the terms and conditions of the said lease deed were acted upon and is continuously being acted upon even today. However, the petitioner is aggrieved because neither is the formal deed being executed nor is the rent being enhanced. The formal execution of the lease deed and registration thereof, are the requirements under the law. By a letter dated September 29, 2023, the Deputy Director [Admin.], DGGI, KZU, Kolkata informed the petitioner that, the office had processed the letter relating to the renewal of the lease agreement for the periods between March 16, 2011 to March 15,2026, March 16, 2016 to March 15, 2021 and March 16, 2021 to March 15, 2026. However, as the lessee was a Government organisation, some relevant documents were required for the purpose. As no steps were taken, the disputes between the parties over such issue, continued.

4. Mr. Bhattacharyya, learned advocate for the respondent submits that the lease expired in 2011 and notice invoking arbitration was issued after 14 years. The claim for enhanced rent i.e., differential value on and from 2011 is barred by limitation. He next submits that the arbitration clause ceased to exist and lost its force as soon as the lease came to an end. When the parent agreement was no longer in force, the

arbitration clause could not survive and, as such, the petitioner could not invoke arbitration. The petitioner must file a suit. The lessee has become a monthly tenant and, as such, the Transfer of Property Act will be applicable. He prays for rejection of this application. Reliance has been placed on the decision of ***Bharat Sanchar Nigam Limited And Another vs. Nortel Networks India Private Limited, reported in [2021] 5 SCC 738***, in support of the contention that the referral court must weed out time barred and non arbitrable claims. Relevant paragraph is quoted below :

> *"45. In a recent judgment delivered by a three-Judge Bench in Vidya Drolia v. Durga Trading Corpn., on the scope of power under Sections 8 and 11, it has been held that the Court must undertake a primary first review to week out "manifestly ex facie non-existent and invalid arbitration agreements, or non-arbitrable disputes". The prima facie review at the reference stage is to cut the deadwood, where dismissal is barefaced and pellucid, and when on the facts and law, the litigation must stop at the first stage. Only when the Court is certain that no valid arbitration agreement exists, or that the subject-matter is not arbitrable, that reference may be refused."*

5. Heard the parties. The averments in the affidavit-in-opposition filed by the Assistant Director, Directorate General of Goods and Services Tax [Intelligence], Kolkata Zonal Unit, discloses the stand of the respondents. The respondent stated that it was duty bound to obtain a fair rent certificate from the CPWD, before proceeding with the lease agreement. The CPWD shall issue the FRC, after the issuance of NAC by the Directorate of Estate Manager/Estate Manager's office. That, the respondent had never exhibited any disinclination to

execute and accede to the legitimate claim of the petitioner. Thus, the letter dated September 29, 2023 and the averments in the affidavit-in-opposition, clearly indicate that the respondent is inclined to execute the lease deed and continue to use the premises as a lessee thereof. Due to technical formalities, the lease deed could not be executed. This delay and inaction gave rise to further dispute. Moreover, the occupation by the respondent continues without any enhancement of rent, this is also a dispute. The dispute continues.

6. The averments in the affidavit-in-opposition are quoted below:

> *"Being an organization under the Government of India, the Respondent is mandated to comply for appointment of extant rules and regulations. The Respondent is duty-bound to obtain Fair Rent Certificate (FRC) from the CPWD before proceeding with the Lease Agreement. The CPWD, issues FRC subsequent to issuance of NAC by the Directorate of Estates / Estate Manager's office. The respondent at no point in time has exhibited any intent of not entertaining or not granting the legitimate claim of the Petitioner. The Respondent is mandated to follow the government rules and regulations, and executing entering into any fresh lease agreement or renewal, without the mandate of the Directorate of Estates / Estate Manager / CPWD, would apparently make the agreement 'nonest' and void. In order to execute the said three lease agreements, the Respondent is required to comply the mandate of obtaining Non-Availability Certificate (NAC) from the Directorate of Estates / Estate Manager office and the Fair Rent Certificate (FRC) from the CPWD. In this regard several communications have been made, and the offices of the said organization visited a number of times, for obtaining the said Certifications/clearances. The said Government departments are yet to issue the required certificates. Thus, the three Lease Agreements in question, could not be executed for want of NAC and FRC from the Directorate of Estates / Estate Manager and the CPWD covering the retrospective periods. I state that since the claim of the petitioner is barred by limitation thus, the respondent has rightly raised the point of limitation. I state that the respondent has acted in accordance with law and within the four corners of the statute."*

7. Even if some of the claims at the enhanced rate and/or part of the outstanding differential amounts are barred by limitation, the cause of action continues, as the lessee is using the premises after the expiry of the lease and paying rent at the earlier rate, fixed in the lease agreement. Secondly, with regard to the non-existence of the arbitration clause, the law has been well settled that, even after the parent agreement ceases to operate or the agreement is terminated, the arbitration agreement being a separate agreement, independent of the contract, continues. Under such circumstances, the contention of Mr. Bhattacharyya cannot be accepted.

8. In the decision of ***WEATHERFORD OIL TOOL MIDDLE EAST LIMITED vs BAKER HUGHES SINGAPORE PTE*** reported in ***(2022) 15 SCC 729,*** the Hon'ble Apex Court held as follows:-

> "**9.** The doctrine of separability and the doctrine of kompetenz-kompetenz encompassed in the arbitration jurisprudence, have been succinctly explained by a three-judge Bench of this Court in the recent case of ***N.N Global Mercantile Unique Pvt. Ltd. Vs. Indo. Unique Flame Ltd. and Others*** reported in ***(2021) 4 SCC 379***:
> "**4.** It is well settled in arbitration jurisprudence that an arbitration agreement is a distinct and separate agreement, which is independent from the substantive commercial contract in which it is embedded. This is based on the premise that when parties enter into a commercial contract containing an arbitration clause, they are entering into two separate agreements viz.: (i) the substantive contract which contains the rights and obligations of the parties arising from the commercial transaction; and (ii) the arbitration agreement which contains the binding obligation of the parties to resolve their disputes through the mode of arbitration.
> **4.1.** The autonomy of the arbitration agreement is based on the twin concepts of separability and kompetenz-kompetenz. The doctrines of separability and kompetenz-kompetenz though inter-related, are distinct, and play an important role in promoting the autonomy of the arbitral process.
> **4.2.** The doctrine of separability of the arbitration agreement connotes that the invalidity, ineffectiveness, or termination of

the substantive commercial contract, would not affect the validity of the arbitration agreement, except if the arbitration agreement itself is directly impeached on the ground that the arbitration agreement is void ab initio.

4.3. The doctrine of kompetenz-kompetenz implies that the Arbitral Tribunal has the competence to determine and rule on its own jurisdiction, including objections with respect to the existence, validity, and scope of the arbitration agreement, in the first instance, which is subject to judicial scrutiny by the courts at a later stage of the proceedings. Under the Arbitration Act, the challenge before the Court is maintainable only after the final award is passed as provided by sub-section (6) of Section 16. The stage at which the order of the tribunal regarding its jurisdiction is amenable to judicial review, varies from jurisdiction to jurisdiction. The doctrine of kompetenzkompetenz has evolved to minimise judicial intervention at the pre-reference stage, and reduce unmeritorious challenges raised on the issue of jurisdiction of the Arbitral Tribunal."

9. In ***SBI General Insurance Co. Ltd. vs. Krish Spinning, Civil*** decided in ***Appeal No. 7821 Of 2024 (Arising Out of SLP (C) No. 3792 Of 2024),*** it was held as follows :-

"**49.** The arbitration agreement, by virtue of the presumption of separability, survives the principal contract in which it was contained. Section 16(1) of the Act, 1996 which is based on Article 16 of the UNCITRAL Model Law on International Commercial Arbitration, 1985 (hereinafter, "Model Law") embodies the presumption of separability. There are two aspects to the doctrine of separability as contained in the Act, 1996: -

i. An arbitration clause forming part of a contract is treated as an agreement independent of the other terms of the contract.

ii. A decision by the arbitral tribunal declaring the contract as null and void does not, ipso facto, make the arbitration clause invalid.

50. The doctrine of separability was not part of the legislative scheme under the Arbitration Act, 1940. However, with the enactment of the Act, 1996, the doctrine was expressly incorporated. This Court in ***National Agricultural Coop. Marketing Federation India Ltd. v. Gains Trading Ltd. reported in (2007) 5 SCC 692***, while interpreting Section 16 of the Act, 1996, held that even if the underlying contract comes to an end, the arbitration agreement contained in such a contract survives for the purpose of resolution of disputes between the parties.

51. The fundamental premise governing the doctrine of separability is that the arbitration agreement is incorporated by the parties to a contract with the mutual intention to settle any disputes that may arise under or in respect of or with regard to the underlying substantive contract, and thus by its inherent nature is independent of the substantive contract."

10. In ***National Agricultural Coop. Marketing Federation India Ltd. vs. Gains Trading Ltd.,*** reported in ***(2007) 5 SCC 692***, the Apex Court held as follows :-

> "6. The Respondent contends that the contract was abrogated by mutual agreement; and when the contract came to an end, the arbitration agreement which forms part of the contract, also came to an end. Such a contention has never been accepted in law. An arbitration clause is a collateral term in the contract, which relates to resolution disputes, and not performance. Even if the performance of the contract comes to an end on account of repudiation, frustration or breach of contract, the arbitration agreement would survive for the purpose of resolution of disputes arising under or in connection with the contract. [Vide : Heymen vs. Darwins Ltd - 1942 (1) All ER 337, Union of India vs. Kishori Lal Gupta & Bros. - AIR 1959 SC 1362 AND The Naihati Jute Mills Ltd VS. Khyaliram Jagannath - AIR 1968 SC 522]. This position is now statutorily recognized. Sub-section (1) of section 16 of the Act makes it clear that while considering any objection with respect to the existence or validity of the arbitration agreement, an arbitration clause which forms part of the contract, has to be treated as an agreement independent of the other terms of the contract; and a decision that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause. The first contention is, therefore, liable to be rejected."

11. The Hon'ble Apex Court has also laid down that, the referral court can weed out manifestly ex facie time barred claims. In the case in hand, limitation is a mixed question of law and fact. Whether the right of the petitioner to make a claim for execution of the deed of lease accrues from the date of issuance of the letter mentioned hereinabove or accrues on expiry of the lease, is a mixed question of law and fact. The lessee is continuing in the property. Thus, whether the lease has to be renewed or a fresh lease should be executed from a later date, is also another issue which has to be decided in the arbitration. Whether part of the money claim would be barred and part would not, must also be decided by the arbitral Tribunal. Here, the claims cannot be treated as ex-

facie dead claims. Under such circumstances, the contention of Mr. Bhattacharyya cannot be accepted.

12. In the decision of ***SBI General Insurance Co. Ltd. vs. Krish Spinning*** reported in ***2024 SCC OnLine SC 1754***, the Hon'ble Supreme Court held as follows :-

> "*129. Insofar as the first issue is concerned, we are of the opinion that the observations made by us in Arif Azim (supra) do not require any clarification and should be construed as explained therein.*
> *130. On the second issue it was observed by us in paragraph 67 that the referral courts, while exercising their powers under Section 11 of the Act, 1996, are under a duty to "prima-facie examine and reject non-arbitrable or dead claims, so as to protect the other party from being drawn into a time-consuming and costly arbitration process."*
> *131. Our findings on both the aforesaid Issues have been summarized in paragraph 89 of the said decision thus:-*
> *"89. Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that while considering the issue of limitation in relation to petition under section 11(6) of the Act, 1996, the courts should satisfy themselves on two aspects by employing a two-pronged test – first, whether the petition under Section 11(6) of the Act, 1996 is barred by limitation; and secondly, whether the claims sought to be arbitrated are ex-facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of disputes to arbitration. The court may refuse to appoint an arbitral tribunal.*"

13. In the decision of ***Arif Azim Co. Ltd. v. Aptech Ltd.***, *reported in* **(2024) 5 SCC 313,** the Hon'ble Apex Court held as follows:-

> *"**92.** Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that while considering the issue of limitation in relation to a petition under Section 11(6) of the 1996 Act, the Courts should satisfy themselves on two aspects by employing a two-pronged test — first, whether the petition under Section 11(6) of the 1996 Act is barred by limitation; and secondly, whether the claims sought to be arbitrated are ex facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of disputes to arbitration, the Court may refuse to appoint an Arbitral Tribunal."*

14. The dispute resolution clause provides that disputes and differences out of the said agreement shall be referred to

arbitral Tribunal having a sole arbitrator. The request for reference to arbitration shall be made by the claimant and the claimant shall be entitled to nominate the sole arbitrator from the panel sent by the opposite party. The mechanism prescribed has failed. The petitioner invoked arbitration on August 5, 2025 through a learned advocate.

15. Under such circumstances, this application is disposed of by appointing Mr. Druva Ghosh, learned senior Advocate, Bar Library Club as the learned Arbitrator. This court has not gone into the allegations made by the parties. The parties are at liberty to raise all the points before the learned Arbitrator.

16. This order is passed subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

17. The learned Arbitrator shall fix his remuneration in terms of the Schedule of the Act.

18. AP/160/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

S. Kumar / pkd