



2025:DHC:228-DB



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

Date of Decision: 16.01.2025

+ **FAO (COMM) 12/2025**

WTC NOIDA DEVELOPMENT COMPANY PVT. LTD.

.....Appellant

Through: **Mr. Shaunak Kashyap, Ms. Nistha Gupta & Ms. Gayatri Dahiya, Advs.**

versus

MS. ARTI KHATTAR & ORS.

.....Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J (ORAL)

CM APPL. 2672/2025—exp.

1. Allowed, subject to just exceptions.

FAO (COMM) 12/2025 & CM APPL. 2671/2025—Addl.doc.

2. This appeal has been filed by the appellant, challenging the Order dated 13.01.2025 passed by the learned District Judge (Commercial Court-6), South-East, Saket District Court, in OMP (I) (COMM.) No.2/2025, titled *WTC Noida Development Company Pvt. Ltd. vs. Ms. Arti Khattar & Anr.*, dismissing the petition filed by the appellant under Section 9 of the Arbitration and Conciliation Act, 1996, as being not maintainable, holding that the arbitration clause



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contained in the lease deed dated 01.11.2013 was no longer binding on the parties.

3. The learned counsel for the appellant submits that the appellant had taken on lease commercial space in Plaza M-6, Uppal Plaza, Jasola Commercial Complex, New Delhi, from the respondents *vide* a lease deed dated 01.11.2013. The said lease deed admittedly contained an arbitration agreement between the parties in the form of Clause 7 (e), thereof. The lease was initially for a period of three years. It was later extended for a period of further three years, until 31.10.2019. It was later extended on the same terms and conditions on 22.06.2020, and 01.04.2021. By a notice dated 05.12.2024, the respondent directed the appellant to vacate the leased premises, and thereafter, on 04.01.2025, directed the Maintenance Agency to disconnect the utilities at the premises. The Maintenance Agency, acceding to the direction, disconnected the electricity and water supply to the lease premises on 05.01.2025. Aggrieved of the same, the appellant filed the abovementioned petition under Section 9 of the Arbitration and Conciliation Act, 1996, *inter alia*, pleading as under:

“12. Despite the Petitioner's best efforts to maintain the commercial relationship shared with Respondents No. 1 & 2, an email dated 05.12.2024 was sent to the Petitioner demanding it to vacate the demised premises. After telephonic discussion to resolve the issues amicably and reaching an oral agreement on the same, the Petitioner addressed an email dated 26.12.2024 to Respondents No. 1 & 2, regarding the continuation of lease and transferring the lease agreement to an associated company vide simultaneous termination of existing lease



agreement with WTC Noida Development Company Private Limited and execution of fresh lease deed with Propbridge Services Private Limited. Accordingly, a proposal to adjust the amount of rent accruing till 31.12.2024 from the Security Deposit and terminate the Lease Deed at the end of December 2024. Furthermore, the petitioner requested Respondents No. 1 & 2 to execute a fresh lease deed in favour of 'Propbridge Services Private Limited' with effect from 01.01.2025. In response, Respondents No. 1 & 2 sought the details of the Security Deposit to facilitate the settlement of dues. Pursuant thereto, a draft cancellation deed had also been drawn up between the Parties, however, it is yet to be executed. A copy of the email dated 05.12.2024 sent to the Petitioner is annexed herewith and marked as DOCUMENT - 7.

13. In January 2025, soon after the intervening holiday period was over, the Parties resumed with the formalities for transferring of the Lease Deed. On 03.01.2025, the Parties were in the process of exchanging financials to facilitate the transfer. While this process was still underway, to the utter shock and surprise of the Petitioner, Respondent No. 2 sent an email dated 04.01.2025 to Respondent No. 3 (Maintenance Agency) directing it to disconnect the supply of essential utilities i.e., electricity and water for the demised premises. In response, Respondent No. 3 sent an email dated 05.01.2025 acceding to the aforesaid request of disconnecting supply of electricity and water for the demised premises. True copies of emails dated 04.01.2025 and 05.01.2025 are annexed herewith and marked as DOCUMENT - 8 (COLLY)."

4. The learned counsel for the appellant submits that the learned District Judge, at a preliminary stage of the petition and without even



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issuing notice of the same to the respondents, has dismissed the petition, holding that the arbitration agreement contained in the lease deed dated 01.11.2013, was no longer valid. He submits that the learned District Judge has misconstrued the pleadings especially paragraph 12 and 13 of the petition.

5. The learned counsel for the appellant further submits that the learned District Judge has placed reliance on the judgment of this Court in ***Mukesh Khurana vs. Rahul Chaudhary***, 2024 SCC OnLine Del 4686. He submits that the said Judgment has been stayed by the Supreme Court *vide* an Order dated 25.10.2024 passed in Special Leave Petition (Civil) 23980/2024.

6. We have considered the submissions made by the learned counsel for the appellant.

7. As the learned District Judge dismissed the petition filed by the appellant without even issuing notice of the same to the respondents, we do not deem it necessary to issue notice of this appeal to the respondents.

8. In ***Vidya Drolia v. Durga Trading Corpn.*** (2021) 2 SCC 1, the Supreme Court held that it is only rarely and as a demurrer that the court may interfere at the stage of Section 8 and/or Section 11 of the Arbitration and Conciliation Act when “*it is manifestly and ex facie certain that the arbitration is non-existent, invalid or the disputes are non-arbitrable*”.

9. In ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 SCC OnLine SC 1754, the Supreme Court held that “*whether there has been a discharge of contract or not is a mixed question of law and*



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fact, and if any dispute arises as to whether a contract has been discharged or not, such a dispute is arbitrable as per the mechanism prescribed in the underlying contract”. It was held that the arbitration agreement, by virtue of presumption of separability, survives the principal contract in which it was contained. The Arbitration Agreement forming part of a contract is treated as an agreement independent of other terms of the contract. The question whether the underlying agreement stands discharged, itself may be a dispute arising out of or in relation to or under the substantive contract, and would not be precluded from reference to arbitration.

10. In the present case, the learned District Judge had not even called upon a response from the respondents as to whether they admit to the existence of an arbitration agreement between the parties. It was not an objection of the respondents that the arbitration agreement was no longer in existence. It was, therefore, premature for the learned District Judge to have determined this issue ex-parte without even calling upon the respondent to give its stand on the same. The above-referred pleadings of the appellant, in our view, do not in any manner justify a finding that the arbitration agreement between the parties stood extinguished. The learned District Judge has, therefore, fallen in passing the Impugned Order and dismissing the petition filed by the appellant *in-limine*.

11. Accordingly, we set aside the Impugned Order and remand the matter back to the learned District Judge. The appellant shall appear before the learned District Judge on 21st January, 2025.



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12. We make it clear that we have not given any finding on the existence or non-existence of the arbitration agreement or on the arbitrability of the disputes raised by the appellant. These issues would have to be considered afresh by the learned District Judge after receiving a response from the respondent, while remaining influenced by any observation made in the Impugned Order dated 13.01.2025.

13. Order *dasti*.

**(NAVIN CHAWLA)
JUDGE**

**(SHALINDER KAUR)
JUDGE**

JANUARY 16, 2025/ab/sk/IK

Click here to check corrigendum, if any