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

+ O.M.P. (COMM) 74/2021, I.A. 2882/2021

TAK DECOR PRIVATE LIMITEDPetitioner

Through: Mr. Gaurav Chauhan, Adv.

versus

CARDIO FITNESS INDIA PVT LTDRespondent

Through: Mr. Varun Kumar, Adv.

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+ O.M.P. (COMM) 111/2021

CARDIO FITNESS (INDIA) PVT. LTD.Petitioner

Through: Mr. Varun Kumar, Adv.

versus

TAK DECOR PVT. LTD.Respondent

Through: Mr. Gaurav Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

04.08.2025

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1. These are petitions filed under section 34 of Arbitration and Conciliation Act, 1996 seeking to challenge the Arbitral Award dated 24.10.2020, wherein the counter claims of M/s Tak Decor Pvt. Ltd. have been rejected and only one of the four claims of the M/s Cardio Fitness (India) Pvt. Ltd. has been allowed partially.

2. Learned counsels for both the parties jointly state that the learned Arbitrator has ignored material evidences and documents available on record



while passing the impugned Award.

3. Both the learned counsels have instructions to state that the Award may be set aside.

4. The Hon'ble Supreme Court in ***Mutha Construction v. Strategic Brand Solutions (I) Pvt. Ltd. in SLP (Civil) No. 1105/2022***, observed as under:-

“2. The dispute arose between the parties. Both the parties were in arbitration before the learned Sole Arbitrator, a retired Judge of the Bombay High Court. The learned Arbitrator passed an award dated 17.01.2018. Being aggrieved by the award, the petitioner preferred the Commercial Arbitration Petition No.511 of 2018 under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'). By Order dated 30.04.2019, the learned Single Judge by consent set aside the award and remanded the matter to the learned Sole Arbitrator to pass a fresh reasoned award. The petition under Section 34 of the Act therefore was disposed of accordingly.

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8. Therefore, once it is held that the order dated 30.04.2019 was a consent order and the parties agreed to set aside the award and remand the matter to the Sole Arbitrator for a fresh reasoned award, the decisions relied upon by the learned counsel on behalf of the petitioner referred to hereinabove shall not be applicable and/or be of any assistance to the petitioner. The principle of law laid down by this Court in the aforesaid decisions would be applicable where the Appellate Court decides the application under Section 34 of the Act on merits. It is to be noted that even in a case where the award is set aside under Section 34 of the Act on whatever the grounds which may be available under Section 34 of the Act, in that case the parties can still agree for the fresh arbitration may be by the same



arbitrator. In the present case both the parties agreed to set aside the award and to remit the matter to the learned Sole Arbitrator for fresh reasoned Award. Therefore, once the order was passed by the learned Single Judge on consent, thereafter it was not open for the petitioner to contend that the matter may not be and/or ought not to have been remanded to the same sole arbitrator.”

5. A perusal of the above paragraphs show that the Hon’ble Supreme Court was of the view that when both parties to the arbitration mutually consent to set aside the arbitral award such a course of action is legally permissible.

6. For the said reasons, the petitions are allowed and the Arbitral Award dated 24.10.2020 is hereby set aside.

7. At this juncture, both the parties further state that a Sole Arbitrator be appointed by this Court to adjudicate the disputes between the parties.

8. In this view of the matter, the petitions are allowed with the following directions:-

- i) Mr. Avinash K. Trivedi, Adv. (Mob. No. 9871441764) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the ‘DIAC’).
- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators’ Fees) Rules, 2018.
- iv) The learned Arbitrator is requested to furnish a declaration in



terms of Section 12 of the Act prior to entering into the reference.

- v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - vi) The parties shall approach the learned Arbitrator within two weeks from today.
9. The petitions are disposed of in the above terms.

JASMEET SINGH, J

AUGUST 4, 2025/DM