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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 503/2025**
M/S TIRUPATI BUILDINGS AND OFFICES PVT. LTD.

.....Petitioner

Through: Mr. Sandeep P. Agarwal, Sr. Adv.
with Mr. Mukul Chandra, Ms. Tanya
Chanda & Mr. Akshay Pratap Singh,
Advs.

versus

M/S COSMOS INFRA ENGINEERING (INDIA) PVT. LTD.

.....Respondent

Through: Mr. Vijay K. Singh & Mr. Himanshu
Dubey, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

28.03.2025

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1. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator for reference of disputes.
2. In the present case, the petitioner and the respondent entered into a registered lease deed dated 25.04.2019, wherein the petitioner took on lease the premises being commercial space on ground floor having carpet area of 2500 sq. ft. (super area 5000 sq. ft.) at Pinnacle Mall at Plot No.3, City Centre, Sector-10, Dwarka, New Delhi for a period of 12 years, on a monthly rent of Rs. 2,50,000/-.
3. In February 2020, there was renovation and upgradation of the Mall, which rendered the premises unusable.
4. Subsequently, there were disputes between the parties regarding the amount of rent due and payable. The respondent issued notice under Section 8 (1) of IBC and thereafter, filed an application under Section 9



of IBC, which is pending.

5. The petitioner, on the other hand, has sought reliance on an MoU in his defence.
6. The petitioner served notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 27.01.2025 and thereafter, filed the present petition.
7. The lease deed contains an Arbitration Clause, being clause no.6, which reads as under:

“6. That any dispute arising out this Lease Agreement shall be decided by way of Arbitration to be conducted by the Sole Arbitrator, who is to be appointed by the Hon'ble High Court of Delhi. The arbitration between the parties will be governed by the provision of Arbitration and Conciliation Act, 1996. The place and seat of arbitration will be New Delhi and the Courts of Delhi will alone have the jurisdiction over the subject matter.”

8. Mr. Singh, learned counsel for the respondent disputes the maintainability of the present petition on the ground that the alleged claim of the petitioner is arising from the MoU and not the lease deed and since the MoU does not contain an arbitration clause, the present petition needs to be rejected.
9. He relies on para 154.4 of *“Vidya Drolia v. Durga Trading Corpn.”* (2021) 2 SCC 1 to urge that claims are non-arbitral. The para reads as under:

“154.4. Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie



certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably “non-arbitrable” and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism.”

10. I have heard the learned counsel for the parties.
11. In the present case, the petitioner is only seeking adjudication of the disputes arising out of the lease deed dated 25.04.2019, which contains an arbitration clause.
12. If any disputes are raised by the petitioner which are outside the purview of the lease deed, the same will be adjudicated by the Arbitrator in accordance with the law.
13. Today, the facts before me are that the petitioners state that there are disputes arising out of lease deed, the lease deed has an arbitration clause



which is not denied by the respondent and hence, an arbitrator needs to be appointed.

14. The arguments of the respondent is in the nature of defence on merits which will be adjudicated by the Arbitrator.

15. For the said reasons, the petition is allowed and the following directions are issued:-

vii) Mr. Justice G.S. Sistani (Retired Judge Delhi High Court) (Mob. No. 9871300034) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

viii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

ix) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

x) 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.

xi) The parties shall approach the learned Arbitrator within two weeks from today.

16. All the contentions of the parties, including the fact that the claims are beyond the purview of the lease deed are left open for the Arbitrator to adjudicate in accordance with the law.



17. The observations made herein are only for the purpose of adjudicating the present petition and all other proceedings will be decided independently on their own facts.
18. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

MARCH 28, 2025/pk

Click here to check corrigendum, if any