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

+ ARB.P. 743/2025

AMBIENCE COMMERCIAL DEVELOPERS PRIVATE
LIMITED

.....Petitioner

Through: Mr. Vanush Raajan and Ms. Riya
Mittal, Advocates.
versus

SMAAASH LEISURE LIMITED

.....Respondent

Through: None.

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+ ARB.P. 744/2025

AMBIENCE DEVELOPERS AND INFRASTRUCTURE PRIVATE
LIMITED

.....Petitioner

Through: Mr. Vanush Raajan and Ms. Riya
Mittal, Advocates.
versus

SMAAASH LEISURE LIMITED

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

19.08.2025

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1. These petitions are filed by the Petitioner under Section 11(6) of Arbitration and Conciliation Act, 1996 ('1996 Act') for appointment of the Sole Arbitrator to adjudicate the disputes between the parties.

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2. As per the case set out by the Petitioner, parties executed Lease Deed on 01.08.2017 for premises having super area ad measuring 48,006 sq. ft. at First Floor, Ambience Mall, Vasant Kunj. Physical possession of the



premises was delivered for operating and managing an entertainment centre. Parties executed an Addendum on 01.03.2018 in respect of Common Area Charges. Respondent started defaulting in payment of monthly rent and other charges from October, 2019 and issued Termination Letter on 20.02.2020 *albeit* admitting its liability to pay outstanding dues.

3. Petitioner avers that it allowed the Respondent on 13.03.2020 to remove all its goods and equipment from the leased premises with a condition that arrears of rent and other charges will be paid by post-dated cheques. On 25.09.2020, Petitioner invoked arbitration Clause 25 contained in the Lease Deed and proposed the name of a sole Arbitrator. Arbitration proceedings commenced and award was passed by the sole Arbitrator on 16.11.2021 which was challenged by the Respondent on the ground that the Arbitrator was unilaterally appointed. Challenge was accepted by this Court and vide judgment dated 18.12.2023, award was set aside. The judgment was challenged before the Division Bench in FAO(OS)(COMM) No. 34/2024 and since during the pendency of the appeal, the Supreme Court delivered the judgment in ***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Company, (2025) 4 SCC 641***, Petitioner withdrew the appeal on 22.11.2024 with liberty to proceed for appointment of Arbitrator, in accordance with law and thereafter issued invocation notice on 25.02.2025 proposing the name of the sole Arbitrator. There was, however, no response despite service of notice and on passage of 30 days from receipt of notice, Petitioner filed the present petition.

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4. As per the case set out by the Petitioner, parties executed a Lease Deed on 04.08.2017 for premises having super area ad measuring 42,500 sq.



ft. at Fourth Floor, Ambience Mall Complex, Ambience Island, Gurugram. Physical possession of the premises was delivered for operating and managing an entertainment centre. Parties executed an Addendum on 01.03.2018 in respect of Common Area Charges. Respondent started defaulting in payment of monthly charges and during the period from November, 2019 to January, 2021 paid *ad hoc* part payments while enjoying the possession of the premises. Respondent admitted its liability towards outstanding dues but issued Termination Letter to the Petitioner on 20.02.2020, terminating the Lease Deed with immediate effect, citing financial distress.

5. Petitioner avers that it allowed the Respondent on 13.03.2020 to remove all its goods and equipment from the leased premises with a condition that arrears of rent and other charges except late payment charges will be paid by post-dated cheques but payments were not made. On 25.09.2020, Petitioner invoked the arbitration Clause 25 contained in the Lease Deed and proposed the name of a sole Arbitrator. Arbitration proceedings commenced and award was passed on 16.11.2021. In the meantime, possession of the leased premises was delivered by the Respondent on 20.02.2021.

6. Petitioner further avers that Respondent challenged the award under Section 34 of the 1996 Act on the ground that the Arbitrator was unilaterally appointed. Challenge was accepted by this Court and the award was set aside vide judgment dated 18.12.2023. The judgment was challenged before the Division Bench in FAO(OS)(COMM) No. 35/2024 and since during the pendency of the appeal, the Supreme Court delivered the judgment in ***Central Organisation for Railway Electrification (supra)***, Petitioner



withdrew the appeal with liberty to proceed for appointment of the Arbitrator, in accordance with law. Fresh invocation notice was issued on 25.02.2025 and Petitioner proposed the name of sole Arbitrator. There was no response from the Respondent despite receipt of notice.

7. Notices were issued in the petitions *albeit* separately to the Respondent on 15.05.2025, returnable for today. Affidavits of service have been filed which are not on record. Copies of the affidavits are taken on record. It is stated that notices have been served on the Respondent along with complete copies of the petitions and documents through e-mail on e-mail IDs taken from the website of Ministry of Corporate Affairs ('MCA').

8. Matters have been called twice. None appeared for the Respondent on the first call and none appears on the second call. Respondent has been served through the electronic mode on e-mail ID taken from website of MCA. It is evident that Respondent is not interested in contesting the present petitions and is accordingly set *ex parte*.

9. Lease Deeds dated 01.08.2017 and 04.08.2017 contain arbitration clause 25, which are identical and read as follows:-

"The parties hereto have agreed to amicably settle and / or resolve all disputes and differences arising out of these presents or otherwise concerning the Lease / Occupation/ Use of the space amongst themselves; but in the event any dispute of whatsoever nature is incapable of being resolved amongst the parties hereto amicably then and in that event the parties have agreed to refer all disputes and differences including the construction scope or effect of any of the terms and conditions herein contained or otherwise concerning the Lease / Occupation / Use of the space and / or the determination of any right and / or any liability and / or in any way touching or concerning these presents or otherwise concerning the concerning the Lease / Occupation / Use of the space to the Sole Arbitrator of an independent arbitrator to be appointed by LESSOR. The Arbitrator shall not be less than the level of a Retd. High Court Judge. The



Lessor shall before appointing the Arbitrator, propose three names to the Lessee and the Lessee shall choose the sole arbitrator from the three names proposed.”

10. Since arbitration agreements exist in the Lease Deeds whereby parties agreed to adjudicate the disputes arising out of these Deeds through the mechanism of arbitration, there is no impediment in appointing an Arbitrator in light of the judgment of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754.***

11. Accordingly, Mr. Justice P.S. Teji, former Judge of this Court (Mobile No.9910384615) is appointed as a sole Arbitrator to adjudicate the disputes between the parties. Arbitral proceedings will be held under the aegis of Delhi International Arbitration Centre (‘DIAC’). Fee of the Arbitrator shall be fixed as per fee schedule under DIAC (Administrative Cost & Arbitrators’ Fees) Rules 2018. The reference will be treated as two separate references.

12. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

13. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open.

14. Petitions are disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 19, 2025
S.Sharma/Shivam