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

+ **ARB.P. 1350/2024**

M/S. A.R. PLASTICS

.....Petitioner

Through: Mr. Arpit Sharma, Adv.

versus

M/S. WASAN OVERSEAS PVT. LTD.

.....Respondent

Through: Mr. Vishwa Bhushan Arya, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

02.04.2025

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1. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. In the present case, the petitioner is a tenant and the respondent is a landlord and executed a Lease Deed dated 22.02.2021 for premises bearing No. 263, Sector-7, IMT Manesar, Gurugram, Haryana.
3. The initial lease was dated 10.09.2015 and thereafter a fresh lease deed was executed on 22.02.2021 for a period of 3+3 years i.e. six years.
4. The Lease Deed dated 22.02.2021 contains Arbitration Clause, being clause no.10, which reads as under:

*“10. **Arbitration Clause**: THAT in the event of any dispute or differences arising out of or relating to or with reference to or in connection to or in connection*



with this Lease Deed, including the termination of the Lease Deed, the same shall be referred to a sole Arbitrator to be nominated jointly by the Lessor and Lessee whose decision shall be final and binding on both the parties. The Arbitrator shall give a reasoned award. The venue of the Arbitration shall be at New Delhi and the arbitration proceedings shall be in accordance with the Indian Arbitration & Conciliation Act, 1906.”

5. Clause 11 deals with jurisdiction of this Court, which reads as under:

***“Jurisdiction of Courts etc:** THAT this Lease Deed and the rights and obligations of the parties under or arising out of this Lease Deed shall be construed and enforced in accordance with the laws of India. It is also agreed that the Courts at New Delhi will have the jurisdiction to decide any dispute in case the arbitration proceedings fail to decide any matter.”*

6. Since there were disputes between the parties, the respondent terminated the Lease Deed on 30.10.2023 and sought damages for unauthorised use and occupation. Additionally, the respondent filed a suit for eviction and damages at Gurgaon.

7. Subsequently, the petitioner invoked arbitration vide Legal Notice dated 14.03.2024 and thereafter, filed a suit for possession and damages before Gurgaon Court. The respondent filed Section 8 and subsequently withdrew the Section 8 application and filed an



application under Order 7 Rule 10 of CPC in view of the arbitration clause in the Lease Deed.

8. Mr. Arya, learned counsel for the respondent states that in the present case, arbitration will not lie as the lease is compulsorily registerable, and is unregistered and hence, cannot be read in evidence.

9. He relies on judgment “*SMS Tea Estates Private Limited vs. Chandmari Tea Company Private Limited* (2011) 14 SCC 66.”

10. I have heard the learned counsel for the parties.

11. The effective *paras* of the judgment of “*SMS Tea (supra)*” read as under:

“6. The respondent opposed the said application. The respondent contended that the unregistered lease deed dated 21-12-2006 for thirty years was invalid, unenforceable and not binding upon the parties, having regard to Section 107 of the Transfer of Property Act, 1882 (“the TP Act”, for short) and Section 17 and Section 49 of the Registration Act, 1908 (“the Registration Act”, for short); that the said lease deed was also not duly stamped and was therefore invalid, unenforceable and not binding, having regard to Section 35 of the Stamp Act, 1899; that Clause 35 providing for arbitration, being part of the said lease deed, was also invalid and unenforceable.

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12. When a contract contains an arbitration agreement, it is a collateral term relating to the



resolution of disputes, unrelated to the performance of the contract. It is as if two contracts—one in regard to the substantive terms of the main contract and the other relating to resolution of disputes—had been rolled into one, for purposes of convenience. An arbitration clause is therefore an agreement independent of the other terms of the contract or the instrument. Resultantly, even if the contract or its performance is terminated or 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.

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13. *Similarly, when an instrument or deed of transfer (or a document affecting immovable property) contains an arbitration agreement, it is a collateral term relating to resolution of disputes, unrelated to the transfer or transaction affecting the immovable property. It is as if two documents—one affecting the immovable property requiring registration and the other relating to resolution of disputes which is not compulsorily registerable—are rolled into a single instrument. Therefore, even if a deed of transfer of immovable property is challenged as not valid or enforceable, the arbitration agreement would remain*



unaffected for the purpose of resolution of disputes arising with reference to the deed of transfer.

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16. An arbitration agreement does not require registration under the Registration Act. Even if it is found as one of the clauses in a contract or instrument, it is an independent agreement to refer the disputes to arbitration, which is independent of the main contract or instrument. Therefore having regard to the proviso to Section 49 of the Registration Act read with Section 16(1)(a) of the Act, an arbitration agreement in an unregistered but compulsorily registerable document can be acted upon and enforced for the purpose of dispute resolution by arbitration.

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22.4. Once the document is found to be duly stamped, the court shall proceed to consider whether the document is compulsorily registerable. If the document is found to be not compulsorily registerable, the court can act upon the arbitration agreement, without any impediment.

22.5. If the document is not registered, but is compulsorily registerable, having regard to Section 16(1)(a) of the Act, the court can delink the arbitration agreement from the main document, as an agreement independent of the other terms of the document, even if



the document itself cannot in any way affect the property or cannot be received as evidence of any transaction affecting such property. The only exception is where the respondent in the application demonstrates that the arbitration agreement is also void and unenforceable, as pointed out in para 15 above. If the respondent raises any objection that the arbitration agreement was invalid, the court will consider the said objection before proceeding to appoint an arbitrator.

22.6. *Where the document is compulsorily registerable, but is not registered, but the arbitration agreement is valid and separable, what is required to be borne in mind is that the arbitrator appointed in such a matter cannot rely upon the unregistered instrument except for two purposes, that is (a) as evidence of contract in a claim for specific performance, and (b) as evidence of any collateral transaction which does not require registration.*

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29. *An arbitrator can no doubt be appointed in regard to any disputes relating to the lease deed. But as noticed above, as the lease deed was not registered, the arbitrator cannot rely upon the lease deed or any term thereof and the lease deed cannot affect the immovable property which is the subject-matter of the lease nor be*



received as evidence of any transaction affecting such property. Therefore, the arbitrator will not be able to entertain any claim for enforcement of the lease.

30. Lastly, we may consider the claim for recovery of the amounts allegedly spent towards the tea estates, as a consequence of the respondents not selling the estates or not permitting the appellant to enjoy the lease for 30 years. If this claim is treated as a claim for damages for breach in not granting the lease for 30 years then it would be for enforcement of the terms of the lease deed which is impermissible under Section 49 of the Registration Act. If it is treated as claim dehors the lease deed then the arbitrator may not have the jurisdiction to decide the dispute as the arbitration agreement (Clause 35) is available only to settle any dispute or difference arising between the parties in relation to or in any manner touching upon the lease deed and not in regard to disputes in general.

31. In paras 29 and 30 above, we have considered and stated the general legal position for guidance in arbitrations, even though the same does not directly arise for consideration within the limited scope of the proceedings under Section 11 of the Act.”

12.A perusal of the aforesaid paras clearly shows that the Arbitration Clause in an unregistered lease deed is a separate contract and the



same does not require registration. Though the Arbitration Clause is contained in an unregistered lease deed, it is a separate contract which does not require registration.

13. The observations of the Hon'ble Supreme Court of India further show that an Arbitration Agreement in an unregistered, but compulsorily registerable document can be acted upon and enforced for the purposes of dispute resolution by the Arbitrator. Additionally, the judgment of *SMS Tea Estates (supra)* has been set aside though on the issue of stamping in Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899 in **(2024) 6 SCC 1**.

14. Under the terms of the unregistered lease deed, in which clauses are to read and acted upon and which are unenforceable are disputes on the facts of the case which will be adjudicated by the Arbitrator.

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

- i. Mr. Justice Talwant Singh, (Retd.) (Mobile No. 9910384653) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii. The arbitration will be held under the aegis 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.
16. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

APRIL 2, 2025/pk