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

Date of Decision: 05.08.2025

+ **ARB. A. (COMM.) 2/2024 & I.A. 1160/2024, I.A. 1161/2024,**
I.A. 1163/2024

ABL WORKSPACES PRIVATE LIMITEDPetitioner

Through: Mr. Vidur Mohan, Mr. Kaushal
Kumar Singh, Ms Prachi Batra, Advs.

versus

VINOD KUNDRA AND ORS.Respondents

Through: Mr. Rishi Manchanda and Mr.
Siddharth Mullick, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

I.A. 18068/2025

1. This is an application filed under section 151 of CPC seeking direction to the appellant to hand over the possession of the respective portions in the subject property, namely, the 4th Floor, Good Earth City Center, Sector 50, Malibu Towne, Gurgaon, to respondent Nos. 3, 4, 5, 7 and 10.

2. Mr. Mohan, learned counsel for the petitioner has no objection and hence the appellant shall hand over the possession of the respective portions of respondent Nos. 3, 4, 5, 7 and 10 in the subject property, on or before 08.08.2025, under prior intimation to the counsel for the respondents.

3. The same will be without prejudice to the rights and contentions of the parties in the Arbitration proceedings.

4. The application is disposed of.



ARB. A. (COMM.) 2/2024

5. This is an appeal filed under section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (***“the Act”***) seeking to challenge the impugned order dated 26.10.2023, passed by the learned Sole Arbitrator in arbitration proceedings, tiled ***“M/s Vinod Kundra & Ors. Versus M/s ABL Workspaces & Anr.”***, reference No. DIAC/5209/09-22.

6. The brief facts of the case are that the appellant was a tenant in the premises comprising units no. 402 to 412 on the 4th Floor, Good Earth City Centre, Sector 50, Malibu Towne, Gurugram (***“Leased Premises”***) owned by the respondents in terms of a registered lease deed dated 14.02.2020. The Leased Premise was leased on a profit-sharing model; as such, the appellant was to pay the respondents monthly profit share from its commercial activity apart from the monthly minimum guarantee/rent for using the Leased Premises. The lease deed had a lock-in period of 5 years and a minimum guarantee clause. However it was terminated by the appellant on 27.07.2021, which is disputed by the respondents.

7. Since, there were disputes between the parties, the respondents invoked arbitration and filed a statement of claim seeking an amount of Rs. 1,05,72,809/- due as the monthly minimum guarantee amount/rent plus ancillary charges towards the use and occupation of the Leased Property. Additionally, the respondents also claimed rendition of accounts for the entire lock-in period of 5 years.

8. During the arbitration proceedings, the respondents also filed an application under Section 17 of the Act, seeking direction against the appellant for depositing an amount of Rs. 4,13,60,640/- being the amount due and payable as per the respondents.



9. The learned Arbitrator in the said Section 17 application passed the impugned order dated 26.10.2023, wherein the appellants were directed to furnish an interest-bearing fixed deposit for a sum of Rs. 48,14,506/-.

10. Mr. Mohan, learned counsel for the appellant, states that the Arbitrator disregarded the absence of any averments under Order 38 Rule 5 CPC and passed an onerous direction requiring the Appellant to furnish an FDR, more severe than an attachment before judgment, without any material suggesting that the Respondents would be unable to reap the fruits of an eventual award.

11. Additionally, Mr. Mohan also states that the dispute between the parties is not a normal landlord-tenant dispute and further that the Arbitrator wrongly presumed admissions regarding access to the property and liability for Minimum Guarantee despite disputes, contradictions in the lease deed, and the invocation of force majeure due to Covid-19.

12. The same is opposed by Mr. Manchanda, learned counsel for the respondents.

13. I have heard learned counsel for the parties.

14. Under Section 37(2)(b) of the Act, the jurisdiction of an appellate court to interfere with an interim order passed by an arbitral tribunal under Section 17 of the Act is limited and well-settled. This restrained approach is rooted in the legislative policy of the Act, as reflected in Section 5 of the Act, which mandates minimal judicial intervention in arbitral proceedings.

15. This standard has been laid down and reiterated in multiple decisions of the Hon'ble Supreme Court. Recently, in ***National Highways Authority of India v. HK Toll Road Private Limited***, 2025 SCC OnLine Del 2376, I have already discussed at length the jurisdiction of this Court while



exercising powers under section 37(2)(b) of the Act. The relevant paragraphs of the said judgment are extracted below:-

“54. The Hon’ble Supreme Court and this Court in catena of judgments have held that the powers of Appellate Court while exercising jurisdiction under section 37(2)(b) of 1996 Act against orders passed by the Arbitral Tribunal is very restricted and narrow and the same should be exercised when the orders seems to be perverse, arbitrary and contrary to law. The judgment of Wander Ltd. v. Antox India (P) Ltd., 1990 Supp SCC 727 passed by the Hon’ble Supreme Court, followed by this Court, elaborate the ambit and scope of the appeals. Although the aforesaid judgment is not dealing with the arbitration proceedings but the same deals with the power of Appellate Court in Code of Civil Procedure, 1908 (“CPC”)....

56. A perusal of the aforesaid judgments show that the Appellate Court while exercising powers/jurisdiction under section 37 of 1996 Act and more particularly under section 37(2)(b) of 1996 Act has to keep in mind the limited scope of judicial interference as prescribed under section 5 of 1996 Act. Section 5 of 1996 Act clearly reflects the legislative intent to minimize judicial interference in the arbitration process. Unlike the appeals under other statutes, the appeals under 1996 Act against the orders passed by the Arbitral Tribunal are subject to strict and narrow grounds. The 1996 Act aims at minimal court involvement, thereby to uphold the autonomy and efficiency of the arbitration



process. [Reference: Paragraphs 64, 66, 68-70 of Dinesh Gupta (supra)]

57. The Appellate Court is not required to substitute its views with the view taken by the Arbitral Tribunal which is a reasonable or a plausible view except where the discretion is exercised arbitrarily or where the AT has ignored the settled principles of law. In fact, the whole purpose to bring the 1996 Act is to give supremacy to the discretion exercised by the AT. The Appellate Court is not required to interfere in the arbitral orders especially a decision taken is at an interlocutory stage. The Appellate Court is only required to see the whether the AT has adhered to the settled principles of law rather than re-assessing the merits of the AT's reasoning.

59. To sum up, it is clear that in view of the limited judicial interference, the Appellate Court has to exercise its power only if the arbitral order suffers from perversity, arbitrariness and a manifest illegality.

(Emphasis added)

16. With this background, I shall now proceed to deal with the submissions advanced by the learned counsels for both parties.

17. The learned Arbitrator in paragraphs 40 to 43 of the impugned order has duly considered the submissions made by Mr. Mohan, learned counsel for the appellant, and recorded as under:

“40. The Respondent No.1 has also contended that the Section 17 Application filed by the Claimants does not even contain the basic



averments that the Respondent No.1 is likely to frustrate any possible award that may be passed against it. He further submits that in the absence of such pleadings and proof, no orders regarding attachment before judgment can be passed against the Respondent No.1. The Respondent No.1 correctly contends that there are no averments in the application to justify an order of attachment before judgment against the Respondent No.1. However, the said requirements are to be considered where the order sought is in the nature of an attachment order under Order 38 Rule 5 of the CPC and may not strictly apply to a case where there is a landlord-tenant dispute, where the amounts of rent are already quantified in the Lease Deed itself.

41. This coupled with the fact that there is enough correspondence on record to show that the Claimant's were demanding monthly rents from the Respondent No. 1, and that the Respondent No. 1 was seeking further time to make such payments also fortifies the findings of the Tribunal that such amounts are prima facie payable by the Respondent No. 1.

42. In the considered opinion of the Tribunal the principle akin to Order 39 Rule 10 or under Order XVA of the CPC would be applicable to such a dispute, where the last paid rent or the rent payable by a tenant is already quantified. In the present case, Annexure "B" of the Lease Deed clearly quantifies the rent w.e.f. 14.06.2020 for the next 32 months and thereafter provides for a further escalation of 15%.

43. Since, the terms of the Lease Deed prima facie show that the



Respondent No.1 was in vacant physical possession of the Property, it would be highly unjust if the Respondent No. 1 is allowed to enjoy the possession of the Property rent free.”

18. The above findings clearly show that the learned Arbitrator categorically held that the respondents were demanding monthly rents from the appellant, and there is correspondence to show that the appellant was seeking time to make such payments. Additionally, the appellant did not make any payments whatsoever to the respondents, except for rent for one and a half months.

19. This Court is of the considered opinion that a situation where the appellant remains in possession of the respondents' property without making any payments either towards minimum monthly guarantee/rent or the profit share cannot be allowed. To permit such a continued occupation without corresponding consideration would be manifestly unjust to the respondents. This position assumes greater signification in light of precarious financial situation of the appellant which is fortified by the affidavit of assets of the appellant filed before this Court pursuant to the order dated 04.12.2024 which indicates the appellant's inability to meet its admitted financial commitments.

20. The assets and liabilities of the appellant as per the said affidavit read as under:

“1. That the Appellant is engaged in the business of managing and operating Co-working Spaces and currently has the following assets in its name:

a) Annual Revenue: Nil

b) Immovable Property: None



c) Rented Property: Nil

d) Bank Accounts: .

(i) Yes Bank bearing Acc No.: 005563300000137, Green Park, Delhi: Balance: 3,346.67

(ii) Yes Bank bearing Acc No.: 005561900005619, Green Park, Delhi: Balance: -843,705.71

(iii) Yes Bank bearing Acc No.: 005563400004200, Green Park, Delhi: Balance: 2.01

(iv) Yes Bank bearing Acc No.: 005563400002236, Green Park, Delhi: Balance: 46.34

(v) HDFC Bank bearing Acc No.: 50200033057907, Green Park Extension, Delhi: Balance: 0

(vi) HDFC Bank bearing Acc No.: 50200033763753, Green Park Extension, Delhi: Balance: 5,985.11

(vii) HDFC Bank bearing Acc No.: 50200048296256, Green Park Extension, Delhi: Balance: 0

e) Stocks and shares: Nil

f) Fixed Deposits: Rs.10,00,000/- with and overdraft of Rs.7,35,970.79/-

g) Other property: Nil

h) Other securities: NA

i) Movable Property such as Computer Hardware; Office Equipment; Furniture & Fixtures: Nil

2. The following debts are due on the Appellant Company:

a) Long term borrowings: Rs. 1,77,54,947.73/-

(i) Business Loans - Rs. 75,87,269.00/-



- (ii) Ankur Gupta (Loan) –Rs. 54,18,678.73/-
- (iii) Rishi Gupta (Loan) - Rs. 47,49,000.00/-
- b) Short term borrowings: Rs. 30,97,789.36/-
 - (i) ABL Capital Pvt. Ltd. - Rs. 30,97,789.36/-
- c) Trade Payables: Rs.18,000.72/-
 - (i) Mittal & Mittal Associates - Rs. 18,00,000/-
 - (ii) The Cloud Vantage – Rs. 0.72/-
- d) Other current Liabilities: Rs. 3,23,66,427.94/-
 - (i) Goldenglitz project private limited – 2,00,00,000.00/-
 - (ii) Vija Gupta (Loan) –Rs. 66,250.00/-
 - (iii) Deep Acoustics Private Limited Loan Ne - Rs.7,00,000/-
 - (iv) TDS - Rs.8,54,059.97/-
 - (v) Salary Payable – Rs. 2,00,000.00/-
 - (vi) Audit Fee Payable - Rs.2,61,030.00/-
 - (vii) ESN Finance & Capital Services - Rs. 1,40,000.00/-
 - (viii) Bank Overdraft – Rs. 7,35,970.79/-.
 - (ix) ABL Infotech Pvt Ltd - Rs. 94,08,867 /-

3. That the Appellant Company has closed all its co-working centres after the end of the financial year 2023 and the property owners have retained the furniture, fixture and other fixed assets developed in the property.”

21. A perusal of the said affidavit shows that the appellant has no assets and only liabilities, and the appellant has also stated that it has closed all co-working centres after the end of the financial year 2023.

22. In view of the above, I have no doubt that the observations of the



learned Arbitrator are based on the correct appreciation of both facts and law. The precarious financial situation of the appellant is clear, they have no funds and in case an Award is passed against it, the same maybe purely a paper Award.

23. For the said reasons, the appeal is dismissed.

JASMEET SINGH, J

AUGUST 5, 2025/DM
(Corrected and released on 12.08.2025)