



\$~37

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 24th December, 2025

Uploaded on: 26th December, 2025

+ **FAO (COMM) 362/2025, CM APPL. 82634/2025, CM APPL. 82635/2025 & CM APPL. 82636/2025**

M/S SHRI SAI NATH ENTERPRISES

.....Appellant

Through: Mr. Vinod Kumar Mantoo, Mr. Hem Kumar, Mr. Deepak Sharma, Ms. Niharika Mahto and Mr. Karan Arora, Advs.

versus

MUNICIPAL CORPORATION OF DELHI

.....Respondent

Through: Mr. Tushar Pannu, Ms. Rajbala, Ms. Shaomi Das and Mr. Abhinav Jha, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellant under Section 37 of the Arbitration and Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015, *inter alia*, assailing the order dated 3rd July, 2025 passed by the Id. District Judge (Commercial Court)-01, Saket Courts, South, New Delhi in **CS(COMM) No. 392/2021** titled '**Municipal Corporation of Delhi v. M/s Shri Sai Nath Enterprises**'.
3. The brief background of the present case is that an agreement dated 16th September, 2014 was entered into initially between the M/s Shri Sai Nath



Enterprises (hereinafter, 'Contractor') and the Delhi Development Authority (hereinafter, 'DDA') for running of a parking site. The said parking site is the subject matter for the dispute in this case.

4. Under the said license agreement dated 16th September, 2014, the Kabristan, Saket was to be operated as a parking site. The monthly license fees payable was a sum of Rs. 9,02,000/-. Certain disputes arose between the Contractor and DDA and the arbitration clause in the agreement, was invoked. The said clause reads as under:

*“24. That in case of any dispute arising between the licensor and the licensee in respect of interpretation or performance of any terms and conditions of this license, the same shall be referred to the sole arbitration of the choice of Vice-Chairman, DDA whose decision thereon shall be final and binding on both the parties. The licensee shall not object to the Vice Chairman of the Delhi Development Authority's action as sole arbitration on the ground that he had dealt with the case or has at some stage expressed opinion in any matter connecting herewith. **No arbitration should be allowed without depositing monthly license fee.**”*

5. It is clear from the above clause that no arbitration would be allowed without depositing the monthly license fee.

6. In the said arbitral proceedings which were invoked by the Contractor with the DDA, a Id. Sole Arbitrator i.e., Justice S. P. Garg (Retd.), awarded the following amounts in favour of DDA vide award dated 13th November, 2024:

*“1. The claims raised by the claimant in the claim petition/SOC are rejected.
2. The respondent/Counter-Claimant shall be entitled to arrears of monthly license fee@ Rs.9,02,000/- with*



applicable Service Tax for the period from 10.10.2014 till 30.04.2016. The respondent shall also be entitled to increase of 10% per year in terms of the agreement.

3. The earnest money deposited by the claimant for 3 months amounting to Rs. 27,06,000/- shall be adjusted out of the arrears payable by the claimant.

4. Rs.40/- lacs deposited by the claimant in terms of the orders of the Hon'ble High Court at the time of restraint against invocation of bank guarantee shall be adjusted.

5. The payments already made by the claimant, if any, towards licence fee shall also be adjusted.

6. The respondent shall also adjust the remission granted to the claimant for the period from 10.06.2015 to 09.09.2015 and 10.06.2016 to 09.09.2016@ 30% of the licence fee.

7. The respondent shall be entitled to costs of arbitration which area assessed to be Rs.4 lacs.

8. The respondent shall be entitled to interest@ 10% from the date of filing of the claim petition till the pronouncement of the Award.

9. The claimant shall pay the amount referred above within 30 days failing which it will entail interest @ 10% from the date of Award till its realization.”

7. As can be seen from the above award, the DDA was held entitled to the license fee with the increase of 10% and the earnest money was to be adjusted. The amount of Rs. 40,00,000/- which was deposited by the DDA at the time when the invocation of the bank guarantee was directed to be adjusted. Moreover, remission of license fee for the period 10th June, 2015 to 09th September, 2015 and 10th June, 2016 to 09th September, 2016 at 30% of the license fee was granted. Costs of arbitration as well as the interest were also awarded to DDA.

8. This award dated 13th November, 2024 has been challenged by the



contractor in **OMP(COMM) 133/2025** titled '**Shri Sai Nath Enterprises v. Delhi Development Authority & Anr.**' which is pending before the Id. Single Judge of this Court and the next date of hearing is 09th February, 2026.

9. In the meantime, the parking site had got vested with South Delhi Municipal Corporation (hereinafter, '**SDMC**') with effect from 01st May, 2016 and the Contractor stopped making the payment. When the SDMC demanded the said amounts, **W.P.(C) 10591/2016** titled '**Sai Nath Enterprises v. South Delhi Municipal Corporation & Anr.**' was filed by the Contractor wherein the following order dated 8th February, 2017 was passed by Id. Single Judge of this Court:

"Learned counsel for respondent No. 2 points out that it appears that due to inadvertence the Standing Counsel of the DDA has been arrayed as a party. It is the DDA who has to be arrayed as party. This connection is permitted to be made in the Court record. The Standing Counsel is deleted from the array of the parties. The DDA alone will be referred as respondent No. 2.

Learned counsel for respondent No. 1 points out that the arrears of license fee in terms of the last order have not been paid and as such the interim order granted in favour of the petitioner is liable to be set aside. This Court notes this submission. This Court also notes that a clear direction had been given to the petitioner to clear all license fee arrears. A period of two weeks is granted to the petitioner to clear all arrears in terms of the last direction. It is clarified that up to 01.05.2016, these arrears shall be paid to respondent No. 2 and thereafter the license fee shall be paid both past and current to respondent No. 1. If this payment is not made within the next two weeks, the interim order dated 09.11.2016 enuring in favour of the petitioner shall automatically be set aside. In the meanwhile, respondent No. 2 is directed to decide the dispute raised



by the petitioner for which an outer limit of six weeks has been granted on 09.11.2016. This Court has been informed that the DDA/respondent No. 2 has not yet decided this dispute. The same shall be answered by the DDA within two weeks. Counter affidavit be filed within four weeks with advance copy to the learned counsel for the petitioner who may file rejoinder before the next date.

List on 18.04.2017.

Order dasti under the signature of the Court Master.”

10. This order dated 8th February, 2017 was also challenged in an appeal being **LPA 133/2017** in which the sum of Rs. 40,00,000/- was directed to be paid and subject to which the 04th November, 2016 notice of the SDMC was stayed. The said order dated 22nd February, 2017 reads as under:

“ Heard the learned counsel for both the parties.

The petitioner in W.P.(C) No.10591/2016 is the appellant before us. The said petition which was filed impugning the order of the respondent No.1/SDMC cancelling the allotment of parking site on the ground that the petitioner failed to deposit the Monthly Licence Fees (MLF) since May, 2016 is still pending and stands posted to 18.04.2017 before the learned Single Judge.

By order dated 09.11.2016, the learned Single Judge granted two months time to the petitioner/appellant herein to clear the arrears of licence fees. There was also a direction to the respondent No.2/DDA to decide within six weeks the claim of the writ petitioner for remission of the Monthly Licence Fees on the ground that he was not given a hurdle free parking site.

By subsequent order dated 08.02.2017, which is under challenge in the present appeal, the petitioner/appellant herein was granted a further period of two weeks to clear all arrears in terms of the last direction.



It is vehemently contended by the learned counsel for the appellant that since DDA failed to decide the dispute raised by the appellant, in spite of the direction to decide the same within six weeks, the appellant should not have been compelled to clear the arrears. It is submitted that as the appellant is entitled for remission in the licence fees and that the same is yet to be decided by DDA, the learned Single Judge ought not to have directed to clear the arrears even before adjudication of the entitlement of appellant for remission.

The specific case of the respondents is that the appellant/writ petitioner has failed to pay the Monthly Licence Fees since May, 2016 and about Rs. 99 lakhs is due from him. As noticed above, the claim of the appellant/writ petitioner is only for remission in the licence fees but not for waiver of the entire fees. That being the case, we are of the view that the appellant is bound to pay at least the undisputed amount.

In the facts and circumstances of the case, without prejudice to the rights and contentions of the parties, we consider it appropriate to direct the appellant/petitioner to pay at least Rs.40 lakhs for the present, subject to which the interim stay may be continued. The learned counsel for the appellant agreed for the same.

We accordingly direct that the order dated 04.11.2016 of SDMC shall remain stayed subject to the condition that the appellant/writ petitioner pays Rs.40 lakhs to the respondent No.1/SDMC on or before 08.03.2017.

We make it clear that in case the appellant/writ petitioner fails to make the payment within the time fixed, the interim stay shall stand vacated without further reference to this Court. It is also made clear that the payment made by the appellant/writ petitioner in terms of this order shall be subject to further orders that may be passed by the learned Single Judge in W.P.(C) No.10591/2016.

The appeal is accordingly disposed of.



Copy of the order be given dasti under the signatures of the Court Master.”

11. Surprisingly, neither the contractor nor the DDA, got SDMC impleaded in the arbitral proceedings.

12. Since no payment was made by the Contractor, SDMC filed a suit bearing no. **CS (COMM) 392/2021** titled **‘South Delhi Municipal Corporation v. Shri Sai Nath Enterprises’** before the Commercial Court, South, Saket. In the said suit, two applications were filed by the Contractor. One application was filed under Section 8 of the Arbitration and Conciliation Act, 1996 and the second application was under Order VII Rule 11 of the Code of Civil Procedure, 1908.

13. Both these applications were dismissed *vide* order dated 03rd July, 2025, which is under challenge in the present petition and *vide* order dated 25th July, 2025. The order dated 03rd July, 2025 is under challenge in the present petition. The order dated 25th July, 2025, wherein the application under Order VII of Rule 11 of the Code of Civil Procedure, 1908 was dismissed is the subject matter of **CM(M) 1537/2025** titled **‘M/s Shri Sai Nath Enterprises & Ors. v. Municipal Corporation of Delhi & Anr.’** pending before Id. Single Judge of this Court. In **CM(M) 1537/2025** the following order has been passed on 18th August, 2025:

“2. During course of the pendency of the abovesaid suit, the defendant (petitioner herein) filed two different applications.

3. First application was filed under Section 8 of Arbitration and Conciliation Act, which has been dismissed by learned Trial Court on 03.07.2025.

4. The second application was filed under Order VII Rule, 11 CPC, which too, has been dismissed on



25.07.2025.

5. Both the abovesaid orders are under challenge in the present petition.

6. However, during course of the arguments, learned counsel for the petitioner submitted that he would restrict his present petition only to the order dated 25.07.2025 and with respect to order dated 03.07.2025, he reserves his right to file appropriate appeal.

7. Such statement is taken on record.

8. Learned counsel for respondent No.1/MCD and respondent No.2/DDA appears on advance notice.

9. Let them, without prejudice to their rights and contentions, file a short reply within four weeks from today.

10. List on 15.12.2025 for further consideration.

11. Learned Trial Court may proceed further with the matter, without insisting for payment of cost, but shall not finally dispose of the suit, till next date of hearing before this Court.”

14. The next date of hearing in **CM(M) 1537/2025** is 08th April, 2026.

15. In the opinion of this Court, the ground raised in the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 is the arbitral proceedings which had ensued between the contractor and DDA, which has been dismissed, for which **CM(M) 1537/2025** has already been filed by the Contractor.

16. In so far as the application under Section 8 of the Arbitration and Conciliation Act, 1996 is concerned, the same is completely untenable in as much as the arbitral proceedings were between the Contractor and DDA and not with the SDMC. Neither of them sought impleadment of SDMC in the arbitral proceedings. This proves that neither the Contractor nor the DDA was of the opinion that the arbitration clause was binding on the SDMC. In the



background facts which have been recorded above, even if the SDMC has stepped into the shoes of the DDA, the application under Section 8 of the Arbitration and Conciliation Act, 1996 would not be liable to be entertained as the award has already been passed and the remission etc., which was prayed for by the Contractor has already been dealt with by the Id. Sole Arbitrator in the award dated 13th November, 2024.

17. In the facts and circumstances of this case, this Court is of the opinion that the suit filed by SDMC ought to proceed for framing of issues and for trial. In addition, the SDMC is also permitted to intervene in the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 *i.e.*, ***OMP(COMM) 133/2025*** to apprise the Id. Single Judge of the pendency of the suit *i.e.*, ***CS (COMM) No. 392/2021***, and for securing its interest.

18. The present appeal is accordingly rejected. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

DECEMBER 24, 2025
dj/ck