COMAP No. 304 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

COMMERCIAL APPEAL NO.304 OF 2024

BETWEEN:

FASHNEAR TECHNOLOGIES PVT LTD
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE AT
3RD FLOOR, WING -E
HELIOS BUSINESS PARK
KADUBEESANAHALLI VILLAGE
VARTHUR HOBLI
OUTER RING ROAD, BENGALURU
KARNATAKA-560 103

(FORMERLY AT 06-105-B, 06-102
(138 WU), VAISHNAVI SIGNATURE
NO.78/9, OUTER RING RAOD
BELLANDUR, VARTHUR HOBLI
BENGALURU- 560 103)

Digitally signed by PAVITHRA B
Location: HIGH COURT OF KARNATAKA

REPRESENTED HEREIN BY ITS
AUTHORIZED REPRESENTATIVE
MS. LOPAMUDRA RAO

...APPELLANT

(BY SRI: DHYAN CHINNAPPA, SENIOR ADVOCATE FOR
SRI: NARENDRA H N AND
SRI: PARINA LALLA, ADVOCATES)

AND:

M/S. WORKSHAALA SPACES
HAVING ITS OFFICE AT
SHREE ARCADE, 2ND FLOOR
16TH MAIN, 4TH SECTOR, HSR LAYOUT
BANGALORE-560 103
REPRESENTED BY ITS CEO AND CO-FOUNDER
MR. MANOJ KHANDELWAL

…RESPONDENT

(BY SRI: ANIRUDH SURESH, AND
SRI: VARUN M C, ADVOCATES)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1) OF THE COMMERCIAL COURTS ACT, 2015 R/W SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT,1996 PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED JUNE 18, 2024 IN COMAP 151/2023 PASSED BY THE LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE (COMMERCIAL COURT NO.84) (ANNEXURE-A), THEREBY RESTORING THE ARBITRAL AWARD DATED AUGUST 11, 2023 PASSED IN A.C. NO.209/2022 AND ETC.

THIS COMMERCIAL APPEAL, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 07.09.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **T.P.VIVEKANANDA J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.P.VIVEKANANDA)

The appellant in this commercial appeal raises a challenge to the judgment passed by the Commercial Court in COM.AP.No.151/2023 dated 18.06.2024, whereby the Arbitral Award dated 11.08.2023 passed by the Sole Arbitrator in AC.No.209/2022 was set aside which resulted in permitting the respondent/claimant to initiate fresh arbitration in accordance with law.

2. The dispute between the appellant and the respondent, which led the initiation of arbitral proceedings culminating in the impugned judgment of the Commercial Court rose with the following facts and circumstances:

2.1. The respondent herein (M/s.Workshaala Spaces Private Limited represented by Mr. Manoj Khandelwal had entered into a contract of Lease with its owners Mr. Dinesh Kumar K., and Mr.Ritesh Kumar K., through registered lease deed dated 15.01.2019 in respect of premises known as Surya Building consisting of basement, ground and three upper floors bearing property No.20,

Intermediate Ring Road, Srinivagilu, Koramangala, Bangalore, for providing high quality workspaces on lease basis to the business entities.

2.2. The appellant herein which was in need of the office space had approached the respondent to occupy the aforesaid building on rental basis. Accordingly, the respondent had made necessary improvements and alterations, which were suitable to the specifications of the appellant-Company. The appellant and the respondent have entered into a sub-lease deed dated 16.01.2019. The lease was for a period of 10 years commencing from 06.05.2019. It was a condition in the lease deed that there was a lock-in period of 29 months from the date of commencement of the lease, namely, 06.05.2019 and 05.10.2021.

2.3. During the lock-in period, either the sub-lessor (Respondent) or sub-lessee (Appellant) were entitled to terminate the sub-lease except for the breaches specified in the sub-lease deed. The dispute arose between the appellant and the respondent as regards the default and

delay in making payment of the rents during the COVID outbreak in the year 2020. It is also on record that the sub-lessee/appellant herein had inducted the third party into the property in question. The non-payment of the rent and the breaches stated to have been committed by the appellant resulted in the respondent addressing the appellant pointing out the material breaches, failing which, the respondent would be having no other option to terminate the lease. There was certain letter correspondences and exchange of notices between the appellant and the respondent. Ultimately, the appellant had terminated the lease on 10.03.2021.

2.4. At that juncture, the respondent/claimant filed Com.AA.No.43/2021 invoking the provisions of Section 9 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as "the Act" for short) for securing the amount i.e., the arrears of rent. The said application was partly allowed by order dated 09.07.2021 directing the appellant herein to furnish the security and bank guarantee of a Nationalized Bank to the tune of Rs.5,35,06,194/- and the

said interim protection was directed to remain in force for a period of 90 days or commencement of arbitration proceedings. The said order was challenged by the appellant herein before this Court in COMAP.No.125/2021.

2.5. The very same order was challenged by the respondent contending that the interim measure should have been passed in respect of entire outstanding amount of Rs.9,71,65,724/-. Both the appeals were disposed of modifying the order of the Commercial Court directing to furnish the security in respect of Rs.5,35,06,194/-, which shall be valid till the claimant filing an application under Section 17 of the Act before the Arbitral Tribunal. The said judgment was challenged by the appellant herein before the Hon'ble Apex Court in SLP.No.20475-20476/2021. The SLP came to be disposed of directing the continuance of the interim measure till the application under Section 17 of the Act is taken up by the Arbitral Tribunal.

2.6. It is, thereafter, the respondent herein approached this Court invoking the provisions of Section 11(6) of the Act for appointment of sole Arbitrator to

arbitrate the dispute between the appellant and the respondent. This Court by order dated 29.03.2022 disposed of the said petition appointing the learned Arbitrator and constituting the Arbitral Tribunal. Pursuant to the constitution of the Arbitral Tribunal, the respondent had filed a statement of claim before the Arbitral Tribunal seeking for direction to the appellant to pay a sum of Rs.10,00,78,083/- along with interest of Rs.5,42,34,971/-, so also future interest at the rate of 18% p.a. The claim petition was presented by the claimant, which is described as follows:

> "M/s. WORKSHAALA SPACES,
> Shree Arcade, 2nd Floor,
> 16th Main, 4th Sector,
> HSR Layout, Bangalore-560 103,
> Represented by its CEO and Co-founder,
> Shri Manoj Khandewal."

2.7. It was supported by verifying affidavit filed by Mr.Manoj Khandelwal claiming to be the Chief Executive Officer of the claimant.

2.8. The claim petition was opposed by the appellant herein. Though, the contention was urged that the

claimant does not have locus standi to maintain the proceedings and the disputes raised are not arbitrable, however, there is no detailing as to under what circumstances the claimant had no locus standi to initiate the arbitral proceedings and whether the appellant disowns any relationship with the respondent and its representative. After having raised a contention regarding locus standi of the claimant, interestingly, the appellant had made a counter claim against the very same claimant.

2.9. After completion of the pleadings, the learned Arbitrator had framed issues on 18.11.2022, which are as follows:

> *1) Whether the Claimant proves its claims and entitlement of the amount shown in the statement of claims, if not, what sum and at what rate of interest?*
>
> *2) Whether the Respondent proves its claims and entitlement of the amount shown in the counter claim statement, if not, what sum and at what rate of interest?*
>
> *3) Whether the Respondent proves that the determination of tenancy by the Claimant is invalid and if so, what consequences should follow?*

4) What order and award?

2.10. After completion of recording of evidence, submission was made that the claimant has no locus standi to initiate the arbitration proceedings and the Arbitral Tribunal has no jurisdiction to adjudicate the claim of the claimant in the light of the provisions of Section 19(2)(a) of the Indian Partnership Act, 1932. After hearing the parties at the time of passing of the award, the learned Arbitral Tribunal has framed two preliminary issues for determination, which are as follows:

(i) Whether the claimant has the locus to maintain the claims against the respondent? and

(ii) Whether there exists an arbitration agreement?

2.11. While answering the aforesaid preliminary issues, the Arbitral Tribunal has held that there is no arbitration agreement between the claimant as shown in the cause title of the statement of claim and the appellant herein and therefore, the Arbitral Tribunal has no jurisdiction to adjudicate the dispute between the claimant

and the respondent. Sequentially, the claim of the claimant and the counter claim of the respondent have been rejected.

2.12. The award of the Arbitral Tribunal was challenged by the respondent before the Commercial Court in Com.AP.No.151/2023. The Commercial Court by its judgment dated 18.06.2024 allowed the petition filed under Section 34 of the Act and set aside the award of the Arbitral Tribunal leaving it open to either of the parties to initiate fresh arbitration, as and when any such fresh arbitration is initiated, the claimant to ensure that its representative in any such fresh arbitration proceedings is authorized by all the partners of the firm. The Commercial Court was of the firm opinion that the arbitral award suffers from patent illegality and erroneous on the face of the record particularly finding that the Arbitral Tribunal has ignored the principle of estoppel contained in Section 116 of the Indian Evidence Act in going into the question whether the sub-lessor under Ex.P.2 had obtained a valid

lease from the original owner under the lease deed at Ex.R.4.

2.13. The Commercial Court by referring to the admissions made by the appellant/respondent in its statement of objections to the claim petition has held that at more than one place there is categorical admission by the appellant/respondent with regard to the execution of sub-lease deed in favour of the appellant herein. The Commercial Court has also noticed that, the appellant, after having paid the rents during the subsistence of the sub-lease to the very same entity, which has filed the statement of claim, was debarred from contending that the very entity to which the rents were paid had no locus to initiate the arbitration proceedings. It is the said judgment of the Commercial Court is under challenge in the present commercial appeal.

3. Though, several grounds have been urged in the memorandum of appeal, however, the learned Senior counsel appearing for the appellant has submitted as follows:

3.1. The statement of claim was filed by M/s Workshaala Spaces represented by its CEO and Co-founder – Mr. Manoj Khandelwal. The Sub-lease deed dated 16.01.2019 was executed by M/s Workshaala Spaces **a firm** having its office at Shree Arcade, 2nd Floor, 16th Main, 4th Sector, HSR Layout, Bengaluru-560 103, represented by its CEO – Mr. Manoj Khandelwal. The evidence led on behalf of the claimant was through Mr. Ruhul Ahmed who is stated to be the authorized signatory of the claimant Company. The registration certificate under Udhyog Aadhaar reflects the name of the enterprises as M/s Workshaala Spaces situated at Shree Arcade, 2nd Floor, 16th Main, 4th Sector, HSR Layout, Bengaluru-560 103. The original lease deed with the landowner dated 15.01.2019 describes the lessee as follows:

> *"M/s Workshaala Spaces Pvt. Ltd., a Company incorporated under the Companies Act, 1956, having its registered office at No.26, Arpit Nagar, Gandhi Path, Vaishali Nagar, Jaipur-302021, represented by its authorized signatory Mr. Manoj Khandelwal, CEO, Workshaala Spaces."*

3.2. The learned Senior counsel has also referred to the memo dated 25.03.2023 filed on behalf of the claimant before the Arbitral Tribunal, which reads as follows:

> *"The undersigned Advocate for the Claimant submits that the Claimant i.e M/s Workshaala Spaces is a partnership firm duly registered under the Indian Partnership Act, 1932 and that as on date there is no entity by the name M/s Workshaala Spaces Pvt. Ltd. The reference to the Claimant as M/s Workshaala Spaces Pvt. Ltd. in the registered Lease Deed entered into between the Claimant and its landlord is a typographical error. It is hereby clarified any and all references to the Claimant as M/s Workshaala Spaces Pvt. Ltd. ought to be construed as a reference to the partnership firm M/s Workshaala Spaces."*

3.3. The learned Senior counsel further placed reliance on the reference to the memo dated 31.03.2023 in paragraph No.55 of the Arbitral Award and contended that the claimant has also claimed that it is a partnership firm registered under the Indian Partnership Act. By making reference to the aforesaid description of the legal status of the claimant, the learned Senior counsel contends that the initiation of the arbitral proceedings under the provisions of the Act by the claimant with the

following description i.e., M/s Workshaala Spaces, Shree Arcade, 2nd Floor, 16th Main, 4th Sector, HSR Layout, Bengaluru-560 103, represented by its CEO and Co-founder - Mr. Manoj Khandelwal was not maintainable and therefore, the Arbitral Tribunal lacks jurisdiction to adjudicate the claim of the claimant.

3.4. The legal status indicated in the sub-lease deed entered into on 16.01.2019 is M/s Workshaala Spaces **a firm** and the claimant in the claim petition submitted before the Arbitral Tribunal is not the firm. If the partnership firm were to file a claim petition, all the partners of the firm should have authorized one of the partners to institute the proceedings. Neither the deed of partnership was produced nor authorization of other partners to institute the proceedings was placed on record. Referring to the objections filed to the claim statement, the learned Senior counsel contends that a specific contention was urged in paragraph No.3 of the statement of objections to the claim petition that "the claimant does not have *locus standi* to maintain the captioned

proceedings and the disputes raised hereunder are not arbitrable". It is in the said circumstances, after completion of the proceedings before the Arbitral Tribunal, the Arbitral Tribunal has given a ruling on the jurisdiction as regards the existence or otherwise of the arbitration agreement between the parties and the *locus standi* of the claimant to maintain the claim and the counter claim of the respondent filed before the Arbitral Tribunal.

3.5. That the impugned judgment passed by the Commercial Court setting aside the Arbitral Award on the ground of patent illegality is erroneous, in as much as, there is no scope for interference of the Arbitral Award under Section 34 of the Act, since none of the grounds under Section 34(2)(a) of the Act exist for setting aside the Arbitral Award. It is his contention that the learned Judge of the Commercial Court has exceeded his jurisdiction traversing beyond the powers under Section 34 of the Act. The claimant has not established as to whether it is a Partnership Firm or a Company or a Proprietorship, the legal status of the claimant has been

shown differently in different documents. Ultimately, it was contended that if the claimant is a partnership firm, it was incumbent for the claimant to have produced the authorization of other partners of the firm for institution of the proceedings and the copy of the partnership deed was never produced in the course of the evidence, however, the same has been produced at the fag end of the proceedings.

3.6. The claimant has admitted in the memo filed on 31.03.2023 that the claimant is M/s Workshaala Spaces, which is a partnership firm duly registered under the Indian Partnership Act, 1932, and there is no entity by name M/s Workshaala Spaces Pvt. Ltd. If that is so, the sub-lease deed entered into with the appellant is not the claimant and therefore, the claimant was not entitled to invoke the arbitration clause contained in the sub-lease deed. It is his further submission that the lease deed entered into with the original landlord is by M/s Workshaala Spaces Pvt. Ltd., a Company incorporated under the Companies Act, 1956. Therefore, the sub-lessee

and the sub-lessor are different entities and the claimant herein is also different from the sub-lessee and sub-lessor and thus, the entire proceedings commencing from the stage of filing of claim statement is without authority of law and the claimant has no *locus standi* to initiate the arbitral proceedings. Therefore, the appeal requires to be allowed by setting aside the judgment of the District Court.

3.7. In the lease deed dated 15.01.2019 the lessee shown is M/s Workshaala Spaces Private Limited the Company incorporated under the Companies Act, 1956 and in the sub-lease deed dated 16.01.2019, the sub-lessee is shown as M/s Workshaala Spaces a firm. Therefore, the claimant, which is described as M/s Workshaala Spaces without indicating the legal status of it, could not have initiated the arbitral proceedings in as much as there is no contract between M/s Workshaala Spaces and the appellant. In addition, it is contended that, since the sub-lease deed on which the arbitral proceedings has been initiated, in which, the sub-lessor is shown as

M/s Workshaala Spaces a firm, there is no arbitrable dispute between the claimant and the respondent and thus, the learned Arbitrator has come to a definite conclusion that the Arbitral Tribunal has no jurisdiction to adjudicate the dispute between the claimant and the respondent. Such a finding could not have been disturbed by the Commercial Court in exercise of power under Section 34 of the Act.

3.8. In support of the aforesaid contentions, the learned Senior counsel has relied upon the findings recorded by the learned Arbitrator from paragraph No.53 onwards. The learned Senior counsel has pointed out that in view of Section 19 of the Indian Partnership Act, all the partners of the firm should have initiated the arbitral proceedings, if not, all the partners should have authorized one of the partner or the managing partner to initiate the arbitral proceedings. The authorization-Ex.P.15 authorizing Mr.Ruhul Ahmad to lead evidence in the arbitral proceedings is only signed by Mr.Manoj Khandelwal as CEO and Co-founder claiming that the

person has been authorized on behalf of the Company. If the claimant is a partnership firm as contended by the learned counsel for the claimant, the letter of authorization should have been signed by all the partners of the firm.

3.9. The learned Senior counsel has concluded his submission by submitting that the fresh arbitration proceedings will have to be initiated by a proper party with proper representation in accordance with law and the arbitral proceedings initiated by an incompetent person who had no *locus standi* to initiate the proceedings has been rightly concluded by the Arbitral Tribunal holding that the Arbitral Tribunal has no jurisdiction to adjudicate the dispute between the claimant and the respondent.

4. On the other hand, the learned counsel appearing for the respondent/claimant submitted that:

4.1. There has been no pleading in the objection to the claim statement regarding lack of jurisdiction of the Arbitral Tribunal to adjudicate the dispute. Only on the basis of a bare contention at paragraph No.3(a), the

Arbitral Tribunal could not have come to the conclusion that it has no jurisdiction to adjudicate the dispute. It is his submission that the appellant/respondent had not filed any application under Section 16 of the Act raising challenge to the jurisdiction of the Arbitral Tribunal to arbitrate the dispute. In the absence of an application having been filed under Section 16 of the Act, the award passed by the Arbitral Tribunal holding that it has no jurisdiction to adjudicate the dispute between the parties is only illegal, which was a patent illegality, therefore, the award has been rightly set aside by the Commercial Court.

4.2. The contention regarding lack of jurisdiction and *locus standi* are two different aspects. What has been raised in the objections to the claim statement was the issue of *locus standi* and not the issue relating to the lack of jurisdiction of the Arbitral Tribunal to adjudicate the dispute. The learned counsel has submitted that M/s Workshaala Spaces is a partnership firm represented by two partners i.e., Mr.Manoj Khandelwal and Mrs.Rasika Gupta. The head office of the firm is situated in Jaipur. For

the purpose of administrative convenience, the firm is having the office in Bangalore. The GST registration is also obtained in respect of the Bangalore address.

4.3. Referring to the memo dated 31.03.2023 filed before the Arbitral Tribunal, the learned counsel for the respondent/claimant submits that in the memo the claimant has clarified that M/s Workshaala Spaces is a partnership firm duly registered under the Indian Partnership Act and that there is no entity by name M/s Workshaala Spaces Private Limited.

4.4. Along with the memo, the claimant had produced the copy of the MSME registration certificate and the certificate of registration under the Indian Partnership Act, 1932. The non-production of the deed of partnership firm was a bonafide mistake and the indication in the claim statement, the name of the claimant as M/s Workshaala Spaces without showing the legal status is a bonafide mistake and only on the said ground, the claimant could not have been non-suited by the Arbitral Tribunal. It is his

further submission that due to a mistake of the counsel, the parties should not suffer.

4.5. At more than one place in the statement of objections filed to the claim petition, the appellant/respondent had admitted the transaction of lease with the claimant, which has been taken note of and considered by the Commercial Court while passing the impugned judgment. The learned counsel has invited our attention to the findings recorded by the Commercial Court from paragraph Nos.23 to 28 and submits that all the submissions now made on behalf of the appellant have already been considered by the Commercial Court and held that there is patent illegality in the arbitral award and set aside the same by the impugned judgment. The appellant has not made out any ground for interference with the findings of the Commercial Court holding that there is patent illegality in the award of the Arbitral Tribunal.

4.6. Reliance has been placed on the provisions of Section 19(1) of the Indian Partnership Act and contended

that since Mr.Manoj Khandelwal one of the partners of the firm was entitled to initiate the arbitral proceedings on behalf of the firm, only on the score that other partner has not signed the claim petition or the authorization given to the witness to appear and lead evidence on behalf of the appellant/claimant alone would not be a ground to hold that the arbitration proceedings was initiated by an incompetent person.

4.7. That the appellant/respondent has occupied the premises in question pursuant to the sub-lease deed executed by Mr.Manoj Khandelwal and his wife Mrs.Rasika Gupta and carried on the business for more than 1 ½ years and paid the rents under the very same sub-lease deed and thus, cannot contend that the person who has executed the sub-lease deed and the claimant before the Arbitral Tribunal are different entities. It is his further submission that because of non-payment of the rents by the appellant, the claimant could not pay the rentals to his lessor, which resulted in his lessor initiating proceedings

against the respondent and which is now pending before the Commercial Court.

4.8. Reliance has been placed on the judgment of the Hon'ble Apex Court in the case of ***Sharada Bai Vs. Navratan Vyas and Others***[1] in support of the contention that the plea regarding Arbitral Tribunal having no jurisdiction shall be raised not later than the submission of the Statement of defence in terms of Section 16 of the Act. In the present case, no such application has been made except contending in the statement of objection that the claimant has no locus standi to maintain the arbitral proceedings.

4.9. Learned counsel for the respondent has produced the copy of the partnership deed dated 15.03.2015 of M/s Workshaala Spaces and points out that Mr.Manoj Khandelwal and Mrs.Rasika Gupta are the partners of the firm. Mere non-production of the deed of partnership should not result in the claimant/respondent

[1] 2016 SCC ONLINE HYD 387

loosing huge arrears of rent to the tune of more than Rs.7 crore and thus, seeks for dismissal of the appeal.

5. On hearing the learned counsel for the appellant and the respondent and on perusal of the entire material on record, we find it appropriate to notice the pleadings of the parties before the Arbitral Tribunal. It is the claim of the claimant that it was a lessee of the property in question and the same has been sub-leased in favour of the appellant and the said sub-lease deed is dated 16.01.2019. The appellant was in occupation of the premises till 10.03.2021. There was a lock-in period between 06.5.2019 and 05.10.2021. During the said period, neither the sub-lessor nor the sub-lessee were entitle to terminate the lease. If there was any termination during the lock-in period, it results in payment of rent. The aforesaid clauses contained in the sub-lease deed and the averments made in that regard in the claim petition are not in dispute.

6. The objections raised by the appellant regarding the *locus standi* of the claimant to institute

arbitral proceedings is at paragraph No.3(a) of the statement of objections. On a reading of entire paragraph Nos.3(a) to (e), it does not suggest that the respondent has raised *locus standi* of the claimant to maintain the arbitral dispute not on the ground that the entity, which has filed the claim statement is not the entity with whom the respondent has entered into a lease deed. In paragraph No.3(b) of the statement of objections, it is contended by the appellant that the sub-lease deed based on which the claim is made is void ab-initio and the claims arising out of such sub-lease deed are not maintainable. In paragraph No.3(c) it is averred that the respondent was induced to execute the sub-lease deed and accept the terms there under based on certain misrepresentations made by the claimant and that the claim made is un-understandable and the claimant has approached the Tribunal with unclean hands. On a close reading of the aforesaid contentions, it would not suggest that the respondent has raised any plea regarding the lack of jurisdiction of the Arbitral Tribunal to adjudicate the dispute.

7. Now, it is relevant to notice other contentions contained in paragraph No.22 of the statement of objections, which was the strong basis for the appellant to non-suit the Respondent/Claimant and raise a challenge to the jurisdiction of the Tribunal, which reads as follows:

> *"22. The averments in paragraph Nos.3 to 5 are denied and the Claimant is put to strict proof of the same. As such, the Claimant has not made any averments as to the nature of its constitution or its locus standi and thus, the Claim Statement is filed without authority and is hence not maintainable. In fact, for the said reason, the very arbitration proceeding is not maintainable."*

8. One other important aspect, which requires to be noticed is that the appellant had made a counter claim against the Respondent/Claimant. The portion of the statement of objections, which contains the statement of counter claim is relevant for present consideration and it is extracted herein below:

> *"39. The averments and contentions stated hereinabove may be read as part and parcel of the instant Statement of Counter-Claim of the Respondent; and the same are incorporated herein by way of*

reference and not repeated for the sake of brevity.

40. As morefully explained hereinabove, the Claimant fraudulently and illegally induced the Respondent into executing the Sub-Lease Deed and agreeing to payment of higher rentals therein, on the basis of wholly false and misleading representations. Thus, the Sub-Lease Deed has been vitiated and rendered void by such fraudulent conduct of the Claimant, pursuant to which the Respondent has also terminated the same vide its notice dated March 10, 2021. Consequently, the Respondent is entitled to claim refund of all consideration paid to the Claimant pursuant to the Sub-Lease Deed.

41. The Respondent has paid the total sum of Rs.7,50,78,083/- (Rupees Seven Crores Fifty Thousand Seventy Eight Lakhs and Eighty Three) to the Claimant under the Sub-Lease Deed. That apart, the Claimant is also liable to refund the security deposit amount of Rs.2,50,00,000/- (Rupees Two Crores Fifty Lakhs) that has admittedly been paid to it by the Respondent. The said amount is also admittedly due to be repaid to the Respondent. Thus, the Respondent is now entitled to refund of the total sum of Rs.10,00,78,083/- (Rupees Ten Crores Seventy Eight Thousand and Eighty Three), being cumulative of the amounts received by the Claimant, including towards the security deposit.

42. Further, since the Claimant has wrongly and unlawfully enjoyed such payments from the Respondent under the commercial arrangement aforementioned, the Respondent is entitled to receive interest on the said amounts at the rate of 18% per annum, calculated from the date

> *that each of the said payments were made to the Claimant, until the date of repayment thereof. Detailed computation of the amounts payable by the Claimant to the Respondent are produced herewith."*

9. If according to the appellant/respondent, the claimant had no locus standi to initiate the arbitral proceedings and the claimant is not the entity with whom the respondent had entered into the transaction of sub-lease, it is un-understandable as to how the respondent could have raised a counter claim against the claimant. The fact that the respondent had made a counter claim against the claimant is an implied admission or acceptance of locus standi of the claimant to institute the arbitral proceedings. However, the entitlement of the claimant to recover the amount as claimed in the claim petition had to be decided by the Arbitral Tribunal. The objection raised by the appellant/respondent regarding the locus standi of the claimant to initiate arbitral proceedings is not only a technical objection and it is a hyper technical ground. We have noticed from Ex.P.15, which is the authorization authorizing Mr.Ruhul Ahmed to represent in the arbitration proceedings. Though, the said authorization refers to the

Company, however, the said authorization is signed by Mr.Manoj Khandelwal and his wife Mrs.Rasika Gupta. The said fact was not brought to the notice of the Arbitral Tribunal nor the Commercial Court.

10. One another aspect which requires our consideration is that the locus standi of the claimant and the lack of jurisdiction of the Arbitral Tribunal to arbitrate the dispute though urged with a feeble voice, however, the appellant/respondent did not insists the Arbitral Tribunal to consider the issue of jurisdiction as a preliminary issue prior to the parties moving towards placing their evidence in support of their claims. After conclusion of the proceedings and at the stage of final submission, the arguments were advanced with regard to the locus standi and the jurisdiction of the Arbitral Tribunal and it was then the Tribunal has framed two preliminary issues and held that the Arbitral Tribunal has no jurisdiction to arbitrate the dispute on the ground that the entity with whom the appellant/respondent had entered into the contract of sub-lease and the entity, which has

initiated the arbitral proceedings are not one and the same and the legal status which will enable the jurisdictional person to sue or be sued in the Arbitral Tribunal and maintain the claim. In the light of the said finding, the Tribunal has not considered and answered other issues.

11. It is necessary to notice that when the notice of arbitration was issued and when the CMP was filed before the High Court for appointment of Arbitrator, such an objection as regards the legal status of the claimant was not urged. The appellant/claimant based his contention on the observation made in the order passed by this Court while appointing the Arbitral Tribunal namely "that all contentions are kept open" and therefore, the Arbitral Tribunal can decide the question of jurisdiction to arbitrate or not. The observation as made above by this Court while directing constitution of Arbitral Tribunal cannot be stretched to the extent of raising objection with regard to the lack of jurisdiction of the Tribunal to arbitrate the dispute when the Tribunal was constituted at the instance of the very claimant.

12. One other aspect, which requires for our consideration is that before initiation of the arbitral proceedings, the claimant had approached the Commercial Court by filing application under Section 9 for interim measure. The said petition was also filed with the very same nomenclature and the representation of the claimant as could be seen from the cause title of the order passed in Com.AA.No.43/2021. In the course of adjudication of the said application for interim measure, no objection was raised as regards the legal status of the applicant in Com.AA.NO.43/2021.

13. After suffering an order at the hands of the Commercial Court, the appellant had filed Com.A.No.125/2021, in which, it had arrayed the very same claimant i.e. M/s Workshaala Spaces as party respondent. The Co-ordinate Bench of this Court had dismissed the said appeals, which resulted in the appellant approaching the Hon'ble Apex Court in SLP.Nos.20475-20476/2021. In all these proceedings, no contention was urged that the appellant had no relationship with M/s

Workshaala Spaces which had instituted the proceedings under Section 9 of the Act. When that being the position, the contentions raised in the course of the arbitral proceedings as regards the locus standi of the claimant to institute the arbitral proceedings and the lack of jurisdiction of the Arbitral Tribunal, is not a bonafide genuine defense. It is an attempt made by the respondent to scuttle the adjudication of the claim of the claimant.

14. It may not be out of context to observe here that if the parties have agreed for resolution of disputes by way of alternative dispute resolution mechanism, the claim, counter claim and defense shall be bonafide and resolution of dispute shall be speedy and efficacious. Parties shall not take usual defenses unlike in the civil disputes in the original suits, failing which, the very object of parties choosing the alternate dispute resolution mechanism would get frustrated. In the present case, though the cause of action rose in the year 2021, still the rights of the parties is not yet adjudicated on merits despite lapse of 5 years.

15. In the course of submission, the learned Senior counsel for the appellant has submitted that in the light of the fact that the learned Arbitrator has held that he has no jurisdiction to adjudicate the claim between the claimant and the respondent, the respondent is required to commence the arbitration proceedings afresh.

16. That is what has been done by the Commercial Court in the impugned judgment. For ready reference, that portion of the observation of the Commercial Court is extracted herein below:

> *"Since, the award is being set aside, it is now open to either of the parties, if so advised, to initiate fresh arbitration and as and when any such fresh arbitration is initiated, it is for the petitioner herein to ensure that its representative in any such fresh arbitration proceedings is authorized by all the partners of the firm."*

17. The submission of the learned Senior counsel appearing for the appellant and the observation made by the Commercial Court, which is extracted above are in the same line. If that be so, for what reason the instant appeal is filed is un-understandable in as much as while setting aside the Arbitral Award, the Commercial Court has not

passed orders on the merits of the claim and the Commercial Court has left the parties to initiate the fresh arbitration proceedings. In the light of the above, we are of the opinion that there is no necessity of consideration of arguments regarding Section 19 of the Partnership Act. It is for the respondent to take appropriate steps to cure the defect, if any, in the fresh arbitration proceedings, if so advised.

18. The judgment passed by the Commercial Court is not challenged by the respondent. Therefore, the remedy available to the respondent now is to initiate the arbitral proceedings afresh, in the light of the observation made by the Commercial Court, which is extracted herein above. Neither the Arbitral Tribunal nor the Commercial Court have considered the claim of the respondent and the counter claim of the appellant on merits. Even if the instant appeal is allowed, that would not stand in the way of the respondent initiating fresh arbitration proceedings in accordance with law. In that view of the matter, we are of the considered opinion that the entire approach of the

appellant is to delay the adjudication of the claim of the respondent on merits.

19. At the time of the hearing of the appeal, when queried, the learned Senior counsel appearing for the appellant was categorically in his submission that the rents for the duration in which the appellant was in occupation of the premises was paid to the respondent's account. The counter claim made by the appellant is also against the claimant. If that is the position, it does not lie in the mouth of the appellant to contend that the appellant is not the entity or person with whom the appellant has transacted and therefore, the appellant has no locus standi to institute the arbitral proceedings.

20. Though, the contention of the appellant that there was no requirement of filing an application under Section 16 of the Act challenging the jurisdiction of the Arbitrable Tribunal and the objections raised in the statement of defence is sufficient for the Tribunal to rule its jurisdiction is acceptable in the normal circumstances, however, in the present case as observed above the

contention in the statement of defense was regarding the locus standi of the respondent and not regarding jurisdiction of the Tribunal. Therefore, a separate application was required at the initial stage. In the present case, after completion of the pleadings, the Tribunal has framed issues and there was no issue regarding locus standi and jurisdiction of the Tribunal. The said issues were framed at the time of passing the award.

21. In the result, we find no merit in the contentions urged on behalf of the appellant and the appeal is devoid of merits and liable to be dismissed. Accordingly, the commercial appeal is ***dismissed***.

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(T.P.VIVEKANANDA)
JUDGE

PB