2026:DHC:6735

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

Date of decision: 10th AUGUST, 2026

IN THE MATTER OF:

\# **CNR No. DLHC010151542021**

\+ ARB. A. (COMM.) 18/2021 & I.A. 5100/2021

ASIAN HOTELS (NORTH) LTD .....Petitioner

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Sidhant Kumar, Ms. Anushka Shah, Ms. Moomal Joshi, Mr. Joginder Singh, Mr. Rajeshwar Singh, Ms. Molly Agarwal and Mr. Pratyush Srivastava, Advocates.

versus

HARMAN SINGH BAWA .....Respondent

Through: Mr. Sandeep P. Agarwal, Senior Advocate with Mr. Rajesh Pathak, Mr. Siddhant Nath, Mr. Bhavishya Makhija, Mr. Amaan Khan, Mr Rajesh Pathak, and Ms. Tanya Chanda, Advocates.

\# **CNR No. DLHC010166312021**

\+ ARB. A. (COMM.) 20/2021 & I.A. 5807/2021

ASIAN HOTELS (NORTH) LTD .....Petitioner

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Sidhant Kumar, Ms. Anushka Shah, Ms. Moomal Joshi, Mr. Joginder Singh, Mr. Rajeshwar Singh, Ms. Molly Agarwal and Mr. Pratyush Srivastava, Advocates.

versus

GURSHARAN SINGH BAWA .....Respondent

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2026:DHC:6735

Through: Mr. Sandeep P. Agarwal, Senior Advocate with Mr. Rajesh Pathak, Mr. Siddhant Nath, Mr. Bhavishya Makhija, Mr. Amaan Khan, Mr Rajesh Pathak, and Ms. Tanya Chanda, Advocates.

\# **CNR No. DLHC010508022021**

\+ ARB. A. (COMM.) 22/2021 & I.A. 7950/2021, I.A. 2254/2022

ASIAN HOTELS (NORTH) LTD .....Petitioner

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Sidhant Kumar, Ms. Anushka Shah, Ms. Moomal Joshi, Mr. Joginder Singh, Mr. Rajeshwar Singh, Ms. Molly Agarwal and Mr. Pratyush Srivastava, Advocates.

versus

RAJWANT SINGH BAWA .....Respondent

Through: Mr. Sandeep P. Agarwal, Senior Advocate with Mr. Rajesh Pathak, Mr. Siddhant Nath, Mr. Bhavishya Makhija, Mr. Amaan Khan, Mr Rajesh Pathak, and Ms. Tanya Chanda, Advocates.

\# **CNR No. DLHC010314072022**

\+ O.M.P. (COMM) 344/2022 & CCP(O) 32/2024, I.A. 13212/2022, I.A. 42247/2024

ASIAN HOTELS (NORTH) LTD .....Petitioner

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Sidhant Kumar, Ms. Anushka Shah, Ms. Moomal Joshi, Mr. Joginder Singh, Mr. Rajeshwar

Singh, Ms. Molly Agarwal and Mr. Pratyush Srivastava, Advocates.

versus

GURSHARAN SINGH BAWA .....Respondent

Through: Mr. Sandeep P. Agarwal, Senior Advocate with Mr. Rajesh Pathak, Mr. Siddhant Nath, Mr. Bhavishya Makhija, Mr. Amaan Khan, Mr Rajesh Pathak, and Ms. Tanya Chanda, Advocates.

\# **CNR No. DLHC010314082022**

\+ O.M.P. (COMM) 345/2022 & CCP(O) 54/2024, I.A. 13216/2022

ASIAN HOTELS (NORTH) LTD .....Petitioner

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Sidhant Kumar, Ms. Anushka Shah, Ms. Moomal Joshi, Mr. Joginder Singh, Mr. Rajeshwar Singh, Ms. Molly Agarwal and Mr. Pratyush Srivastava, Advocates.

versus

HARMAN SINGH BAWA .....Respondent

Through: Mr. Sandeep P. Agarwal, Senior Advocate with Mr. Rajesh Pathak, Mr. Siddhant Nath, Mr. Bhavishya Makhija, Mr. Amaan Khan, Mr Rajesh Pathak, and Ms. Tanya Chanda, Advocates.

\# **CNR No. DLHC010314092022**

\+ O.M.P. (COMM) 346/2022 & CCP(O) 31/2024, I.A. 13220/2022

ASIAN HOTELS (NORTH) LTD .....Petitioner

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Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Sidhant Kumar, Ms. Anushka Shah, Ms. Moomal Joshi, Mr. Joginder Singh, Mr. Rajeshwar Singh, Ms. Molly Agarwal and Mr. Pratyush Srivastava, Advocates.

versus

RAJWANT SINGH BAWA .....Respondent

Through: Mr. Sandeep P. Agarwal, Senior Advocate with Mr. Rajesh Pathak, Mr. Siddhant Nath, Mr. Bhavishya Makhija, Mr. Amaan Khan, Mr Rajesh Pathak, and Ms. Tanya Chanda, Advocates.

\# **CNR No. DLHC010247132022**

\+ OMP (CONT.) 2/2022

ASIAN HOTELS (NORTH) LIMITED .....Decree Holder

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Sidhant Kumar, Ms. Anushka Shah, Ms. Moomal Joshi, Mr. Joginder Singh, Mr. Rajeshwar Singh, Ms. Molly Agarwal and Mr. Pratyush Srivastava, Advocates.

versus

HARMAN SINGH BAWA .....Judgement Debtor

Through: Mr. Sandeep P. Agarwal, Senior Advocate with Mr. Rajesh Pathak, Mr. Siddhant Nath, Mr. Bhavishya Makhija, Mr. Amaan Khan, Mr Rajesh Pathak, and Ms. Tanya Chanda, Advocates.

\# **CNR No. DLHC010363432022**

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2026:DHC:6735

\+ OMP (ENF.) (COMM.) 187/2022 & EX.APPL.(OS) 3495/2022, EX.APPL.(OS) 3774/2022, EX.APPL.(OS) 1558/2023, EX.APPL.(OS) 63/2025, EX.APPL.(OS) 600/2025

RAJWANT SINGH BAWA .....Decree Holder

Through: Mr. Sandeep P. Agarwal, Senior Advocate with Mr. Rajesh Pathak, Mr. Siddhant Nath and Ms. Tanya Chanda, Advocates.

versus

ASIAN HOTELS (NORTH) LTD .....Judgement Debtor

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Sidhant Kumar, Ms. Anushka Shah, Ms. Moomal Joshi, Mr. Joginder Singh, Mr. Rajeshwar Singh, Ms. Molly Agarwal and Mr. Pratyush Srivastava, Advocates.

\# **CNR No. DLHC010363442022**

\+ OMP (ENF.) (COMM.) 188/2022 & EX.APPL.(OS) 3497/2022, EX.APPL.(OS) 696/2023, EX.APPL.(OS) 1559/2023, EX.APPL.(OS) 1101/2024, EX.APPL.(OS) 64/2025, EX.APPL.(OS) 601/2025

GURSHARAN SINGH BAWA .....Decree Holder

Through: Mr. Sandeep P. Agarwal, Senior Advocate with Mr. Rajesh Pathak, Mr. Siddhant Nath and Ms. Tanya Chanda, Advocates.

versus

ASIAN HOTELS (NORTH) LTD .....Judgement Debtor

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Sidhant Kumar, Ms. Anushka Shah, Ms. Moomal Joshi, Mr. Joginder Singh, Mr. Rajeshwar Singh, Ms. Molly Agarwal and Mr. Pratyush Srivastava, Advocates.

\# **CNR No. DLHC010363892022**

\+ OMP (ENF.) (COMM.) 189/2022 & EX.APPL.(OS) 3499/2022, EX.APPL.(OS) 1563/2023, EX.APPL.(OS) 65/2025, EX.APPL.(OS) 609/2025

HARMAN SINGH BAWA .....Decree Holder

Through: Mr. Sandeep P. Agarwal, Senior Advocate with Mr. Rajesh Pathak, Mr. Siddhant Nath and Ms. Tanya Chanda, Advocates.

versus

ASIAN HOTELS (NORTH) LTD .....Judgement Debtor

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Sidhant Kumar, Ms. Anushka Shah, Ms. Moomal Joshi, Mr. Joginder Singh, Mr. Rajeshwar Singh, Ms. Molly Agarwal and Mr. Pratyush Srivastava, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. By way of the present Judgment, this Court shall dispose of the captioned Petitions under Section 34 as well as Appeals under Section 37 of the Arbitration and Conciliation, 1996 ["**Arbitration Act**"].

2. The party aggrieved by the various orders of the Arbitral Tribunal in all the captioned matters under Sections 34 and 37 of the Arbitration Act is Asian Hotels (North) Ltd. It is agreed that other than the fact that the

amounts and the apartment numbers involved in the contracts in question are different, the relevant clauses under which disputes have arisen as well as the orders passed by the Arbitral Tribunal are common and have the same effect. As such, with the consent of all the parties represented through their counsels, this Court shall examine the pleadings and documents as filed under the Petition being O.M.P. (COMM) 344 of 2022, which has been filed under Section 34 of the Arbitration Act against the Final Award dated 20.05.2022 passed by the Arbitral Tribunal in the proceedings titled '*M/s Gursharan Singh Bawa v. Asian Hotels (North) Limited*' ["**Impugned Award**"].

3. A brief factual background of the dispute between the parties herein, as well as the procedural history, which is borne out from the material on record, is stated as under:

(i) The Petitioner granted to the Respondent leasehold rights for a period of 99 years, with a provision of automatic renewal after 99 years, in relation to the Apartment No. 3001, 3rd Floor situated at Block A, New Tower, Hotel Hyatt Regency, Bhikaji Cama Place, New Delhi ["**the Premises**"], by way of a registered Lease Deed dt. 11.12.2018, which shall be referred to as the **1st Lease Deed**. The Hotel Hyatt Regency, Bhikaji Cama Place, New Delhi, shall be referred to as **the Hotel**.

(ii) In accordance with the terms of the 1st Lease Deed, the Respondent paid a one-time rent amounting to Rs. 6,09,94,000/-, along with a sum of Rs. 2,77,200/-, equivalent to 6 months interest-free maintenance charges to the Petitioner.

(iii) Shortly after the 1st Lease Deed was executed, the Respondent executed a registered Lease Deed dated 31.12.2018 in favour of the Petitioner, whereby the Premises was leased back to the Petitioner w.e.f. 01.01.2019, for an initial period of fifteen years in consideration of rent of Rs. 9,21,000/- per month with the stipulation for increase of rent @15% on the rent payable on expiry of each period of 36 months of the lease terms. This shall be referred to as the **2nd Lease Deed**. It is this 2nd Lease Deed which is the focal point of the dispute between the parties herein.

(iv) Under the 2nd Lease Deed, two lock-in periods were provided under Clause 12, one for the Respondent, extending to 15 years and the other for the Petitioner, extending to 84 months.

(v) In accordance with the terms of the 2nd Lease Deed, the Petitioner paid a sum of Rs. 55,26,000/- to the Respondent by way of an interest-free security deposit, equivalent to 6 months' rent.

(vi) Not long after the aforesaid Lease Deeds were executed between the parties, the COVID-19 pandemic struck the country, due to which a nationwide lockdown was imposed by the Government of India on 23.03.2020. However, shortly thereafter, *vide* a Notification dated 30.05.2020 published by the Ministry of Home Affairs, the Government of India permitted activities pertaining to hotels, restaurants and other hospitality activities to resume from 08.06.2020.

(vii) Despite of the Notification dated 30.05.2020 published by the Ministry of Home Affairs, the Petitioner, in the midst of the lock-in period, sent a Termination Notice dated 27.06.2020 to the

Respondent, thereby invoking Clause 15.2 of the 2nd Lease Deed and terminating the 2nd Lease Deed w.e.f. 25.03.2020 [“**Termination Notice**”].

(viii) As per the Petitioner, it was constrained to send the Termination Notice, as it was prevented from utilizing the Premises due to the restrictive governmental regulations suspending the operation of the Hotel, in light of the COVID-19 pandemic. For this reason, the Petitioner claimed that it was not responsible for any consequences and/or liabilities/obligations under the 2nd Lease Deed w.e.f. 25.03.2020. By way of this Termination Notice, the Petitioner also called upon the Respondent to take possession of the Premises and refund the security deposit.

(ix) The Respondent sent a Letter dated 14.07.2020, asking the Petitioner to recall its Termination Notice and continue payment of the agreed lease rent and applicable taxes to the Respondent under and as per the 2nd Lease Deed. It was the Respondent’s case that the Petitioner had no right to terminate the 2nd Lease Deed under Clause 15.2 in the duration of the lock-in period.

(x) The Petitioner responded to the Respondent’s Letter dated 14.07.2020, stating that due to the restrictive orders of the Government of India, it had become financially impossible for the Petitioner to comply with the terms of the 2nd Lease Deed. The Petitioner further stated that it had vacated the Premises and was not liable to pay the lease rental w.e.f. 26.03.2020 until the date of termination of the 2nd Lease Deed, due to the complete lockdown and stoppage of hotel operations brought on in light of the COVID-19 pandemic.

(xi) Aggrieved by the actions of the Petitioner, the Respondent invoked arbitration under and as per Clause 15.4 of the 2nd Lease Deed *vide* a Letter dated 23.07.2020.

(xii) Despite receipt of the Letter dated 23.07.2020, the Petitioner sent a Letter dated 12.08.2020 to the Respondent, enclosing the set of keys to the Premises and stating that the possession of the Premises have been fully handed over to the Respondent.

(xiii) Since no proper response was received by the Respondent regarding its invocation of arbitration, the Respondent approached this Court by way of Petitions under Section 9 as well as Section 11 of the Arbitration Act, seeking interim protection as well as appointment of an arbitrator to adjudicate upon the disputes between the parties. This Court, *vide* Order dated 23.11.2020, disposed of these Petitions under Section 9 and 11 of the Arbitration Act, by constituting the Arbitral Tribunal and directing the Arbitral Tribunal to treat the Respondent's Petition under Section 9 as one under Section 17 of the Arbitration Act.

(xiv) After the Respondent filed its Statement of Claims on 01.03.2021, the Arbitral Tribunal passed an Order dated 05.03.2021, disposing of the Application under Section 17 of the Arbitration Act, by observing that the Respondent had successfully made out a case under Section 17(1)(ii)(b) of the Arbitration Act, by establishing *inter alia* that the balance of convenience lay in favour of grant of interim protection to the amount fixed under Clause 12.2 of the 2nd

Lease Deed. The Arbitral Tribunal also observed that the Respondent successfully demonstrated the possibility of the Premises being unavailable at the culmination of the proceedings, in the event an award is passed in favour of the Petitioner. Having observed as such, the Arbitral Tribunal granted the following reliefs *vide* its Order dated 05.03.2021:

(a) The Petitioner must always maintain an amount of Rs. 9,22,13,989/- along with applicable taxes in its bank account till the disposal of the arbitration proceedings;

(b) The Respondent shall pay the maintenance charges for availing services from the Petitioner; and

(c) The Respondent shall maintain an amount of Rs. 58,67,271/- in its bank account till the disposal of the arbitration proceedings, towards the Security Deposit held by it.

(xv) The above Order dated 05.03.2021 passed by the Arbitral Tribunal was assailed by the Petitioner by way of an appeal filed before this Court under Section 37(2)(b) of the Arbitration Act, being ARB. A. (COMM.) No. 20 of 2021, which is one of the matters being disposed of by way of the instant Judgment. Other similar appeals against this Order dated 05.03.2021 have been filed *vide* ARB. A. (COMM.) 18 of 2021 and 22 of 2021.

(xvi) It is pertinent to note that the appeal bearing ARB. A. (COMM.) 22 of 2021 filed by the Petitioner in the dispute between the Petitioner and one Rajwant Singh Bawa, was disposed of by this Court *vide* an Order dated 19.05.2021, modifying the directions of the Arbitral Tribunal as contained in the Order dated 05.03.2021, to the following extent:

(a) The Petitioner shall deposit the up-to-date arrears of monthly rent and applicable tax, reckoned with effect from March, 2020, with the Registrar General of this Court by way of a demand draft covering the said amount, which shall be deposited in an interest bearing fixed deposit, to abide by further directions to be passed by the Arbitral Tribunal.

(b) The Petitioner shall also deposit, monthly, with the Registrar General of this Court, the amount of Rs. 10,28,000/- towards rent payable in respect of the Premises. This amount would also be deposited in an interest bearing fixed deposit and the Petitioner would continue to abide by the further directions to be passed by Arbitral Tribunal.

(xvii) The Petitioner thereafter filed its Statement of Defence before the learned Sole Arbitrator on 02.04.2021, while its Counter-Claims came to be filed on 12.06.2021.

(xviii) In the interregnum, the Respondent filed an application before the Arbitral Tribunal, alleging non-compliance of the Order dated 05.03.2021 on part of the Petitioner, and requesting initiation of contempt proceedings against the Petitioner. The Arbitral Tribunal, upon receipt of this application, observed that the Order dated 05.03.2021 was not being complied with by the Petitioner, which may have the effect of rendering the arbitration proceedings futile.

For this reason, the Arbitral Tribunal made a representation *vide* a Letter dated 02.07.2021 to this Court under Section 27(5) of the Arbitration Act, for taking appropriate action(s) against the Petitioner's default in complying with the Order dated 05.03.2021. This culminated into the petition being O.M.P. (CONT.) 2 of 2022, *vide* Order dated 31.05.2022 passed by this Court in the Appeals filed by the Petitioner under Section 37 of the Arbitration Act.

(xix) After the completion of pleadings and filing of the affidavits of admission/denial, the Arbitral Tribunal heard the final arguments advanced on behalf of the parties and reserved orders on 12.11.2021. Ultimately, the Impugned Final Award dated came to be passed by the Arbitral Tribunal on 20.05.2022.

4. A tabular summary of the findings of the Arbitral Tribunal in the Impugned Award on the claims and counter-claims is given below:

S.No.	Claims filed by the Respondent before the Arbitral Tribunal	Decision of the Arbitral Tribunal
1.	Restoration of the 2nd Lease Deed with all consequential benefits	Award in the sum of Rs. 8,50,62,276/- along with interest @7% p.a. w.e.f. 25.03.2020 until realisation in favor of the Respondent
2.	Damages towards mental tension, agony and harassment	Rejected for lack of evidence
3.	Litigation Expenses including costs on the present arbitration	Award in the sum of Rs. 5,00,000/- in favor of the Respondent
4.	*Pendente lite* and future interest	Included in the sum awarded under Claim No. 1

S.No.	Counter-Claims filed by the Petitioner before the Arbitral Tribunal	Decision of the Arbitral Tribunal
1.	Rs. 55,66,000/- towards Refund of Interest Free Security Deposit furnished by the Petitioner under the 2nd Lease Deed	Rejected
2.	Specific Performance Clause 6.6 of the 1st Lease Deed dated 11.12.2018 and execute the Maintenance Agreement qua the Premises	Held to be outside the purview for having been based on Clause 6 of the 1st Lease Deed – Rejected.
3.	Rs. 12,94,524 towards Deposit of Interest Free Maintenance Deposit with the Petitioner Claimant under the 1st Lease Deed dated 11.12.2018 read with Maintenance Agreement	Held to be outside the purview for having been based on Clause 6 of the 1st Lease Deed – Rejected.
4.	Rs. 72,41,904/- towards Arrears of maintenance charges from 01.04.2020 to 31.03.2022 under the 1st Lease Deed dated 11.12.2018 read with Maintenance Agreement	Held to be outside the purview for having been based on Clause 6 of the 1st Lease Deed – Rejected.
5.	Direction to the Respondent to continue paying Maintenance Charges under the 1st Lease Deed dated 11.12.2018 read with Maintenance Agreement	Held to be outside the purview for having been based on Clause 6 of the 1st Lease Deed – Rejected.
6.	Rs. 2,50,000/- towards Deposit of Interest Free Refundable Maintenance Security Deposit-For utility Charges with the Petitioner under the 1stLease Deed dated 11.12.2018 read with Maintenance Agreement	Held to be outside the purview for having been based on Clause 6 of the 1st Lease Deed – Rejected.
7.	Rs. 2,83,666/- towards Reimbursement	**Award in the sum of**

	of Property Tax for the period upto 2019-2020 paid by the Petitioner on behalf of Respondent under the 2nd Lease Deed dated 31.12.2018	**Rs. 2,83,666/- along with simple interest @7% p.a. w.e.f. 01.04.2019 till realization in favor of the Petitioner**
8.	Rs. 4,55,112/- towards Payment of Property Tax under the 1st Lease Deed dated 11.12.2018 for FY 2020-2021 and FY 2021-2022	**Award in the sum of Rs. 4,55,112/- in favor of the Petitioner**
9.	Rs. 1,04,672/- towards Payment of amount towards Sinking Funds under the First Lease Deed dated 11.12.2018	Held to be outside the purview for having been based on Clause 6 of the 1st Lease Deed – Rejected.
10.	Rs. 83,048/- towards Reimbursement of insurance premium charges towards the Insurance Policy Cover on pro rata basis under the 1st Lease Deed dated 11.12.2018	**Award in the sum of Rs. 83,048/- along with simple interest @7% p.a. w.e.f. 12.06.2021 till realization**
11.	Pre-arbitration, pendente lite and future interest as well as legal costs and expenses incurred by Petitioner in the preparation and conduct of these arbitration proceedings.	Rejected.

5. Before this Court, the Petitioner assails the Impugned Award to the extent that it allows the claims of the Respondent and rejected the counter-claims of the Petitioner.

6. Before delving into the rival contentions of the parties advanced before this Court, a reference to the relevant provisions under the Contract,

i.e., the 2nd Lease Deed, is pertinent to made. The same are being reproduced to read as under:

"***12. TERMINATION AND ITS CONSEQUENCES***

12.1 *The Lessor shall not have the rights to terminate this Deed during the initial term of the Deed i.e. for 15 (fifteen) years except in case of violation and breach of the terms of this Deed by the Lessee which has not been cured by the Lessee within a period of 30 days of receipt of notice from the Lessor in this regard. In case, the breach/ violation is not cured within such 30 days, the Lessor shall be entitled to terminate the lease by giving notice of 30 days in writing.*

12.2 The Lessee shall not have the rights to terminate this Deed during an initial 84 (Eighty Four) months ("Lock-in Period") of the Deed. However/ the Lessee can terminate this Deed by giving 6 (six) month advance notice of Termination of this Deed to Lessor any time after the expiry of 84 (Eighty Four) months of Lock-in Period. The termination prior to initial 84 months of this Deed can only be done by Lessee in case of violation and breach of the following critical terms of this Deed by the Lessor which has not been cured by the Lessor within a period of 30 days of receipt of notice from the Lessee in this regard. In case, the breach/violation is not cured within such 30 days, the Lessee shall be entitled to terminate the Lease by giving notice of 30 days in writing. The Lessee shall not be liable to pay any rent or any amount to the Lessor upon expiry of the 30 days' notice period and shall handover the Sad Property to the Lessor, .normal wear and tear excepted.

The said critical terms of the Deed are:

(a) Non-compliances, breach or non-performance of the terms and conditions, covenants and warranties as offered by the Lessor under this Deed, which are not rectified or made good by the Lessor within 30 days of written notice by the Lessee;

(b) Non-compliances, breach or non-performance of the terms and conditions, covenants and warranties as offered by the Lessor under this Deed of a nature due to which the Lessee is unable to have unhindered, uninterrupted, peaceful and vacant use, possession, enjoyment and the entitlement of the leasehold rights of the Demised Premises and if such defaults are not rectified or made good by the Lessor within 30 days of written notice by the Lessee;

Further if the Lessee terminates the Lease during the Lock-in Period due to any reason whatsoever other than due to the breach/violation of the critical terms mentioned above by the Lessor not cured within the notice period, the Lessee shall be fully liable to pay the Rent and applicable taxes thereon for the entire unexpired period of the Lock-in Period then remaining.

Further if the Lease gets terminated within the Lock-in Period by the Lessor due to violation/breach by the Lessee that is not cured by the Lessee within a period of 60 days of receipt of notice from the Lessor in this regard, then without prejudice the Lessor's rights to claim outstanding dues, claims, damages, interest if any, the Lessee shall also be liable to pay Rent for the entire unexpired period of the Lock-in Period then remaining.

***15.1 Conformity** - The Parties hereby confirms that they have carefully read the terms and conditions of Lease of the said Property as set forth in detail in this Deed and understood their respective obligations and liabilities set forth herein and the parties undertakes to abide by all the terms and conditions of the same. The Lessor further assures the Lessee that it has taken proper advice of competent legal counsel / advocates interpreting the provisions of the Deed before execution of the same.*

***15.2 Force Majeure** – In the event the Said Property or any part thereof is destroyed or damaged due to a Force*

Majeure event, not caused by any wilful act or negligence of the Lessee thereby rendering it impossible/unsafe/unfit/non-feasible to operate out of the Said Property then, the Lessee may, temporarily vacate the Said Property, as may be required to enable the Lessor to carry out repairs to restore the Said Property to as good condition as it was in on the Lease Commencement Date. In such an event, all payments specified under this Deed for this Said Property or portion thereof shall abate till the time the Said Property is repaired and restored to as good condition as it was in at the time of handover of the Said Property for interior fit-outs.

The Lessee shall not be held responsible for any consequences or liabilities under this Deed if it is prevented in performing its obligations under the terms of this Deed by reasons of any restrictive governmental laws or regulations, riots, insurrection, war terrorist action strike Public demonstrations rallies acts of God, etc."

(Emphasis Supplied)

7. Learned Senior Counsel appearing the Petitioner has advanced the following arguments while praying for the partial setting aside of the Impugned Award on the ground that it is perverse, based on 'no evidence', violates the fundamental policy of India, principles of natural justice and is contrary to the principles of natural justice:

(i) The Impugned Award is contrary to Sections 73 and 74 of the Indian Contract Act, 1872 ["**ICA**"], for the reasons that Clause 12.2 of the 2nd Lease Deed is not a genuine pre-estimate of damages. Accordingly, the reliance by the Arbitral Tribunal on the judgment of the Apex Court in Chunilal V. Mehta and Sons Ltd., vs. Century Spinning and Manufacturing Company Ltd., **(1962) Supp 3 SCR 549,** is erroneous, as unlike the said case, Clause

12.2 of the 2nd Lease Deed, does not contain words like "compensation" or "liquidated damages".

(ii) Without prejudice to the foregoing submission, it is further submitted that the Impugned Award violates Section 73 and 74 of the ICA, since the Respondent did not provided any pleading, proof or quantification of damages. Rather, at Paragraphs 28 and 29 of its Statement of Claims, the Respondent itself claimed that Sections 73 and 74 have no applicability to the present case.

(iii) The Impugned Award is contrary to the law laid down by the Apex Court in Kailash Nath Associates v. DDA, **(2015) 4 SCC 136**, which requires pleading and proof of damages, even where there is a genuine pre-estimation of damages in accordance with Section 73 of ICA.

(iv) It is submitted that contrary to the Respondent's case, it was very much possible to prove damages in the present case, since there was no restriction cast on the Respondent on the use of the Premises, barring that under Clause 6 of the 2nd Lease Deed, which specifies that the Respondent/Lessor shall not be entitled to use the club facility in the Hotel. Rather, Clause 9 of the 1st Lease Deed specifically empowers the Respondent to use the Premises for any purpose permitted by law.

(v) The Impugned Award results in an unjust enrichment of the Respondent, who has the benefit of possession of the Premises as well as rent from 26.03.2020 till 01.01.2026. This is contradictory to the judgments of the Apex Court in Maula Bux v. Union of India, **(1969) 2 SCC 554** and Fateh Chand v. Balkishan Dass, **AIR**

1963 SC 1405, which both dictate that a party cannot retain the benefit while also recovering full contractual sum, as if no benefit had reverted.

(vi) The Arbitral Tribunal overlooked Clause 9 of the 2nd Lease Deed, which obliges the parties thereto to comply with the terms of the 1st Lease Deed.

(vii) The Arbitral Tribunal did not consider that there was no subsisting obligation under Clause 10 of the 2nd Lease Deed, as the 2nd Lease Deed stood terminated by way of the Termination Letter, and the Respondent's plea for restoration was rejected by the Arbitral Tribunal.

(viii) In line with the Judgment of the Apex Court in <u>Renusagar Power Co. Ltd. v. General Electric Co</u>. **(1984) 4 SCC 679** and <u>Salter India (P) Ltd. v. Rakesh Nayyar,</u> **2009 SCC OnLine Del 3049**, Clause 15.4 of the 2nd Lease Deed, which is the arbitration clause, has to be considered in the widest amplitude and would therefore extend to all the counter-claims arising under the 1st Lease Deed as well.

8. *Per contra*, learned Counsel for the Respondent has opposed the instant Petitions *inter alia* on the following grounds:

(i) The objections raised by the Petitioner do not fall within the permissible scope of interference by a court under Section 34 of the Arbitration Act. Reliance is placed on the Judgments of the Apex Court in <u>MMTC Ltd. v. Vedanta Ltd.</u>, **(2019) 4 SCC 163** and <u>Delhi Airport Metro Express (P) Ltd. v. DMRC</u>, **(2022) 1 SCC 131**.

(ii) The Respondent was not required to prove any damage in the instant case, as the Petitioner, under and as per Clause 12.2 of the 2nd Lease Deed, had already agreed for payment of certain specified amount in case of termination of the lease during the lock-in period.

(iii) The award of amounts by the Arbitral Tribunal for the unexpired lock-in period is based on the settled principle that if the parties had already agreed for a particular sum as a consequence of the breach of a contract, there is no further need or legal requirement on part of the adversely affected party to prove any damages. In any event, the fact as to whether damages were proved or not, is not a valid ground for interference by this Court under Section 34 of the Arbitration Act.

(iv) The Arbitral Tribunal has specifically distinguished the Judgment of the Apex Court in Kailash Nath (Supra) from the facts of the present case, rendering a reasonable and plausible view. As such, the question as to whether or not the Arbitral Tribunal's interpretation of the said judgment is correct, cannot be delved upon by this Court at the stage of proceedings under Section 34 of the Arbitration Act.

(v) The Petitioner's argument that there was no restriction on usage of the Premises by the Respondent is unfounded, as the Premises forms an integral part of the Petitioner's Hotel and Respondent cannot use the same without the pleasure and permission of the Petitioner.

(vi) While the Arbitral Tribunal has harmoniously interpreted Clauses 15.2 and 12.2 of the 2nd Lease Deed, it is the Petitioner who has selectively interpreted Clause 15.2, while ignoring the effect of Clause 12.2 of the 2nd Lease Deed and unjustly taking refuge to the temporary government-imposed restrictions to terminate the lease deed during the COVID-19 pandemic.

(vii) Since it was the allegation of the Petitioner that the Respondent is not entitled to prove any damages, onus was on the Petitioner itself to prove this stance. Reliance, in this regard, is placed on the Judgment of the Apex Court in Construction and Design Services vs. Delhi Development Authority, **(2015) 14 SCC 263** and Oil and Natural Gas Corporation Ltd. vs. Saw Pipes Ltd., **(2003) 5 SCC 705**.

9. Heard the learned Counsels for the parties and perused the material on record.

10. Before delving into the merits of the case and the rival contentions of the parties, it is crucial for this Court to remind itself of the boundaries within which it can exercise the power under Section 34 of the Arbitration Act. In the present case, objection to the Impugned Award is that it is perverse, based on no-evidence and violates the fundamental policy of Indian laws. Reference is thus made to the Judgment of the Apex Court in OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., **(2025) 2 SCC 417**, which discusses the term 'in contravention with the fundamental policy of Indian law' as under:

> *"In contravention with the fundamental policy of Indian law*

51. As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] , in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:

(a) the fundamental policy of Indian law; and/or

(b) the interest of India; and/or

(c) justice or morality.

55. The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of Explanation 1. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

(a) violation of the principles of natural justice;

(b) disregarding orders of superior courts in India or the binding

effect of the judgment of a superior court; and

(c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii).”

11. Perversity as a ground challenge has also be discussed by the Apex Court in OPG Power Generation (Supra), as follows:

*“**Perversity as a ground of challenge***

***69.** Perversity as a ground for setting aside an arbitral award was recognised in Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] . Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.*

***70.** In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] certain tests were laid down to determine whether a decision of an Arbitral Tribunal could be considered perverse. In this context, it was observed that where:*

(i) a finding is based on no evidence; or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, a possible view by the *arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.*

71. *In Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , which dealt with the legal position post the 2015 Amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse [See Ssangyong Engg. case, (2019) 15 SCC 131, para 41 : (2020) 2 SCC (Civ) 213] .*

72. *The tests laid down in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] to determine perversity were followed in Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] and later approved by a three-Judge Bench of this Court in Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd. [Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd., (2020) 7 SCC 167 : (2020) 4 SCC (Civ) 149]*

> ***73.*** *In a recent three-Judge Bench decision of this Court in DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd. [DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd., (2024) 6 SCC 357 : (2024) 3 SCC (Civ) 112 : 2024 INSC 292] , the ground of patent illegality/perversity was delineated in the following terms : (SCC p. 376, para 39)*
>
> > *"39. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice."*

12. The fulcrum of controversy between the parties, as observed by the Arbitral Tribunal, was the Termination Notice sent by the Petitioner to the Respondent under Clause 15.2 of the 2nd Lease Deed, and whether the Petitioner was empowered to do so.

13. Perusal of the Impugned Award on the aforesaid question shows that the Arbitral Tribunal interpreted Clause 15.2 of 2nd Lease Deed in two parts – first, which applies to a *force majeure* event which destroys or damages the property and renders the lease impossible, unsafe, unfit, and non-feasible to operate out of the said property; and second, which deals with a situation created by restrictive governmental laws or regulations, riots, insurrection, war, terrorist action, strike, public demonstration, rallies, acts of God, etc.,

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that prevent the lessee from discharging its obligations cast on him under the terms of the lease deed. The Arbitral Tribunal deemed the first part as inapplicable, since it was neither the case of the Petitioner that there was a *force majeure* event leading to destruction of the Premises, nor that the Premises was damaged in any manner. As for the second part, the Arbitral Tribunal opined that though it relieved the Petitioner/lessee from the consequences arising from not being able to meet its obligations, it did not confer any right on the lessee to terminate the lease. Rather, the Arbitral Tribunal viewed the Petitioner's decision to terminate the 2nd Lease Deed as a deliberate act and not a passive submission to an event which prevented/precluded/hindered it from discharging its obligations.

14. The Arbitral Tribunal further took into account the fact that though a lockdown was imposed by the Government of India for a few months, restaurants and hospitality services were permitted to function, subject to adherence with the COVID-19 guidelines, from 08.06.2020 or so, which is much prior to the date on which the Petitioner sent the letter terminating the 2nd Lease Deed with a retrospective effect from 25.03.2020. Thus, while concluding that the Petitioner did not have a right to terminate the 2nd Lease Deed under Clause 15.2, the Arbitral Tribunal observed that the Petitioner was even less empowered to do so with a retrospective effect. The Arbitral Tribunal buttressed its interpretation of the second part of Clause 15.2 with the judgments of the Apex Court in Alopi Prashad vs. UOI, **(1960) 2 SCR 793** and Panna Lal vs. State of Rajasthan, **(1975) 2 SCC 633**, which hold that a contract is not frustrated merely because the circumstances in which the contract was made, are altered.

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15. Additionally, effect of the Petitioner's act of terminating the 2nd Lease Deed on ground of the same having become onerous, financially unviable or difficult to operate, was considered by the Arbitral Tribunal in light of Section 56 of the ICA, which is being extracted below for reference:

> *"**56. Agreement to do impossible act**.—An agreement to do an act impossible in itself is void.*
>
> ***Contract to do an act afterwards becoming impossible or unlawful**.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.*
>
> ***Compensation for loss through non-performance of act known to be impossible or unlawful**.—Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise."*

16. The Arbitral Tribunal applied Section 56 of the ICA after recalling some notable judgments of the Apex Court in Raja Dhruv Dev Chand vs. Raja Harmohinder Singh, **AIR 1968 SC 1024** and T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors,. **(2003) 5 SCC 150**, to eventually conclude that even when an executed contract becomes difficult and onerous to operate by a party to the contract, it cannot resile from it and cannot escape payment of rent or legal obligations and liabilities.

17. Lastly, the Arbitral Tribunal distinguished a Judgment passed by a Coordinate Bench of this Court in Ramanand v. Dr. Girish Soni, **2020 SCC**

OnLine Del 635, which was relied upon by the Petitioner to argue that the doctrine of frustration, which is encapsulated in Section 56 of the ICA, has no application in a case where there is a *force majeure* clause. The Arbitral Tribunal observed that it was the Petitioner who, in actuality, could not even avail the doctrine of *force majeure* which is incorporated under Section 108(B)(e) of the Transfer of Property Act, 1882 ["**TPA**"], which reads as under:

> "***108. Rights and liabilities of lessor and lessee.—***
> *xxx*
>
> *(B) Rights and Liabilities of the Lessee*
> *xxx*
>
> *(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:*"

18. The Arbitral Tribunal took note that this Court in <u>Ramanand</u> (Supra), held that there has to be complete destruction of property before recourse can be had to Section 108(B)(e) of the TPA. After the above in-depth discussion, the Arbitral Tribunal gave the following conclusions:

> "*61. **In the light of the above it is held as under:***
>
> *i. Respondent was not empowered to terminate the lease deed under clause 15.2 of the lease deed- 2. Therefore, termination of the lease deed under clause 15(2) was illegal;*
> *ii. The reason for termination on the alleged ground that the performance or operation of the lease deed had*

become impossible financially and practically suffers from vice of invalidity; and

iii. Even the termination of lease deed cannot be justified under section 56 of the Contract Act or section 108(B)(e) of the Transfer of Property Act."

19. In the opinion of this Court, the wordings of Clause 15.2 of the 2nd Lease Deed are clear as day to determine whether or not the Petitioner was entitled to terminate the 2nd Lease Deed or not. The simple answer, which aligns with the view taken by the Arbitral Tribunal, is no. Yet, this Court deems it fit to also refer to the wordings of the Notification dated 24.03.2020 bearing No. 40-3/2020-DM-I(A) released by the Ministry of Home Affairs imposing a nation-wide lockdown owing to the COVID-19 pandemic. Relevant portion of the said Notification reads as under:

"*Whereas in exercise of the powers under section 6(2)(i) of the Disaster Management Act. 2005, the National Disaster Management Authority (NOMA), has Issued an Order no. 1- 29/2020-PP (Pt.II) dated 24.03.2020 {Copy enclosed) directing the Ministries/ Departments of Government of India, State/Union Territory Governments and State/ Union Territory Authorities to take effective measures so as to prevent the spread of COVID-19 in the country; Whereas under directions of the aforesaid Order of NOMA, and in exercise of the powers, conferred under Section 10(2)(1) of the Disaster Management Act. The undersigned, in his capacity as Chairperson, National Executive Committee, hereby issues guidelines, as per the Annexure, to Ministries/ Departments of Government of India, State/Union Territory Governments and State/Union Territory Authorities with the directions for their strict implementation. This Order shall remain in force, in all parts of the country for a period of 21 days with effect from 25.03.2020.*

> *XXX*
>
> *7. Hospitality Services to remain suspended*
> *Exceptions:*
> *a. Hotels, homestays, lodges and motels, which are accommodating tourists and persons stranded due to lockdown, medical and emergency staff, air and sea crew.*
> *b. Establishments used/ earmarked for quarantine facilities."*

20. The lockdown was further extended till 31.05.2020, by way of another Notification released by the Ministry of Home Affairs, relevant parts whereof read as under:

> *"And whereas Delhi Disaster Management Authority (DDMA) has notified lockdown in Territory of NCT of Delhi w.e.f. 25th March, 2020 till midnight of 14th April, 2020 to curb the menace of COVID-19 vide order dated 25.03.2020 along with the guidelines;*
>
> *And whereas, Delhi Disaster Management Authority (DDMA) has issued various subsequent orders/Instructions to authorities concerned of NCT of Delhi to take all required measures to appropriately deal with the situation;*
>
> *And whereas, Govt. of India has extended the lockdown period all over India, Including the territory of NCT of Delhi, further w.e.f. dated 15.04.2020 to 3rd May, 2020 to curb the menace of COVID-19."*

21. Subsequently, the lockdown was relaxed *vide* a Notification dated 21.08.2020 bearing No. F.DDMA/COVID-19/2020/1/292, allowing the opening of hotels. Relevant extract of the said Notification reads as under:

> *"And whereas, in pursuance of Ministry of Home Affairs, Govt. of India Order as well as DO letter dated 29.07.2020,*

DDMA has issued Order No. 275 dated 31.07.2020 with regard to extension of lockdown in the containment zones and to maintain status quo (except removal of night curfew) in the territory of NCT of Delhi till the mid night of 31.08.2020;

And whereas, Ministry of Home Affairs, Govt. of India, vide Order No. 40- 3/2020-DM-l(A) dated 30.05.2020 annexed with guidelines for Phased Re-opening (Unlock 1) has already permitted to open Hotels & other hospitality services in the area outside the Containment Zones with the observation & compliance of Standard Operating Procedure (SOP) to be prescribed by the Ministry of Health & Family Welfare, Govt. of India. Ministry of Health & Family Welfare, Govt. of India vide OM dated 04.06.2020 has also issued SOP for Hotels & other hospitality services, which is enclosed herewith;

And whereas, the current situation of ongoing pandemic of COVID-19 in Delhi has been reviewed during the meeting of Delhi Disaster Management Authority held, through video conferencing, on August 19, 2020 under the Chairmanship of Hon'ble Lt. Governor, Delhi and it has been decided that the Hotels will be allowed to open in NCT of Delhi in all the areas outside the Containment Zones:

Now, therefore, in exercise of powers conferred under section 22 of the Disaster Management Act, 2005, the undersigned, In his capacity as Chairperson, State Executive Committee, DDMA, Govt. of NCT of Delhi, hereby, In partial modification of DDMA order dated 31.07.2020, directs all authorities concerned that Hotels shall be permitted to operate throughout the NCT of Delhi in all areas, except in containment zones, subject to the strict compliance of Standard Operating Procedure (SOP) issued in this regard by Ministry of Health & Family Welfare, Govt. of India dated 04.06.2020, annexed with this order as well as other directions / instructions / guidelines *issued by the Government of India and Government of NCT of Delhi from time to time."*

22. The above notifications released by the Ministry of Home Affairs fall within the ambit of 'restrictive governmental laws or regulations', which is envisioned in the second part of Clause 15.2 of the 2nd Lease Deed. However, what is pertinent in the above Notification dated 21.08.2020 is that *vide* an Order dated 30.05.2020, the Government of India had permitted the re-opening of hotels and other hospitality services, subject to their compliance with the Standard Operating Procedures. Therefore, while temporary restrictions were in place, they were certainly not in perpetuity.

23. A perusal of Clause 15.2 of the 2nd Lease Deed, more so, the second part thereof, as dissected by the Arbitral Tribunal, indicates that there is no mention of the parties' power to terminate the 2nd Lease Deed under Clause 15.2. The only respite that the Petitioner, as the lessee, may be entitled to is not being responsible for any consequences or not liabilities if it was prevented in performing its obligations under the terms of the 2nd Lease Deed by reasons of any restrictive governmental laws or regulations, etc. – nothing more, nothing less. Therefore, this Court has no hesitation in concurring with the view taken by the Arbitral Tribunal that termination of the 2nd Lease Deed under Clause 15.2 was illegal.

24. The next array of questions posed before the Arbitral Tribunal were regarding Clause 12 of the 2nd Lease Deed, to determine whether or not Clause 12 rendered the 2nd Lease Deed as determinable and as such, incapable of being specifically performed as per Section 14(1)(d) of the Specific Relief Act, 1963 ["**SRA**"] and further as to whether or not the 'penultimate sub-clause' dealing with the obligation of the Petitioner to pay

on termination survives and whether or not the Respondent was entitled to monetary relief.

25. Clause 12.1 of the 2nd Lease Deed provided that the lessor shall have no right to terminate the lease deed during the initial term of the deed, i.e., for 15 years. The Clause also provides an exception, in a situation where the lessee violates the terms of the 2nd Lease Deed and does not cure the breach within 30 days of the receipt of the notice given by the lessor in that regard, the lessor has the right to terminate the lease by giving further notice of 30 days in writing to the lessee. Further, Clause 12.2 fixes a mandatory lock-in period of 84 months, during which the lessee is injuncted from terminating the 2nd Lease Deed. But in case the lessor violates the critical terms of the 2nd Lease Deed which are specified in sub clauses (a) and (b) thereof, and it fails to cure the breach within a period of 30 days of the receipt of notice from the lessee in that regard, the lessee will not be liable to deposit any rent or any amount with the lessor during the notice period and on expiry of 30 days the lessee is entitled to hand over the apartment to the lessor. Now, the 'penultimate sub-clause' of Clause 12.2 of the 2nd Lease Deed provides that in case the lease is terminated by the lessee before the expiry of the lock-in period for any reason whatsoever, other than the reason of violation of the critical terms remaining uncured by the lessor, the lessee has been made fully liable to pay the lease rent along with applicable taxes thereon for the entire balance lock-in period.

26. The Arbitral Tribunal, after analysing the applicable case-laws in light of the wording of the 'penultimate sub-clause', held that the 2nd Lease Deed was determinable and consequently, incapable of being specifically performed in terms of Section 14(1)(d) of the SRA. There is no challenge to

this observation of the Arbitral Tribunal by either parties herein. Even this Court does not find any reason to interfere with the findings in the Impugned Award on this aspect. With that, the next related questions that remained to be answered were as to whether or not the 'penultimate sub-clause' dealing with the obligation of the Petitioner to pay on termination survives and whether or not the Respondent was entitled to monetary relief.

27. On the remaining two questions regarding monetary relief, the Arbitral Tribunal was of the opinion that the Petitioner cannot be allowed to approbate and reprobate at the same time, by stating that it had the right to terminate the 2nd Lease Deed as also the right to avoid the obligation to pay the stipulated amount after termination of the contract. The Arbitral Tribunal also considered the case, where if the Petitioner took resort to the 'penultimate sub-clause' under Clause 12.2 of the 2nd Lease Deed to terminate the contract, its obligation to pay would not perish at the same time. Having observed that, the Arbitral Tribunal held that the 'penultimate sub-clause' under Clause 12.2 of the 2nd Lease Deed survived the termination of the contract by way of the Termination Notice – which was done prior to the expiry of the lock-in period – and will continue to remain operative until the Petitioner discharges its liability to pay the agreed amount to the Respondent.

28. Having observed the aforesaid, the adjoining question remaining for consideration by the Arbitral Tribunal was as to whether or not the Respondent was entitled to monetary relief, for which it decided as to whether or not the Respondent was required to prove loss or damage Inarguably, observations of the Arbitral Tribunal in the Impugned Award on this question is the heart of the controversy before this Court.

29. The first remark of the Arbitral Tribunal on the above question was that in the present case, it was not possible to ascertain loss suffered by the Respondent on account of the premature termination of the 2nd Lease Deed by the Respondent and there existed no such standard in the contract. As such, the Arbitral Tribunal, while relying on the landmark decision of the Apex Court in Maula Bux (Supra), held that this was a case where since it was not possible to assess compensation for breach of contract, the sum specified by the parties in the 'penultimate sub-clause' under Clause 12.2 would be considered as a genuine pre-estimate of compensation. The Arbitral Tribunal turned its attention to the exchange of letters between the parties, starting from the Termination Notice. For the sake of convenience, firstly, the Termination Notice is being reproduced hereinbelow:

> *To,*
>
> *Mr. Gursharan Singh Bawa*
> *H. No. 21, Ground Floor,*
> *Road No. 78, West Punjabi Bagh*
> *New Delhi-110026*
>
> ***SUB: NOTICE FOR TERMINATION OF LEASE DEED DATED 31.12.2018 IN TERMS OF CLAUSE 15.2 OF THE DEED.***
>
> *Dear Sir,*
>
> *Vide the registered Lease Deed dated 31.12.2018, you had lease Service Apartment No. 3001, Third Floor, situated in New Tower in Hotel Hyatt Regency, Bhikaji Cama Place, New Delhi in favour of the undersigned on the basis of mutually agreed terms and conditions duly recorded in the said Lease Deed (hereinafter referred to as 'Lease Deed').*

We would like to draw your kind attention to Clause 15.2 of the Lease Deed. You are well aware that the undersigned has been prevented from utilising the leased premises due to the restrictive governmental regulations suspending the operations of hotels and is therefore not responsible for any of its consequences and or liabilities/obligations under the lease deed with effect from 25.03.2020.

The situation and restrictive orders due to which the undersigned has been unable to utilise the leased premises has already exceeded several months and consequent thereto, the Lease Deed stands terminated with immediate effect.

Pursuant to said termination, you are called upon to take possession of the premises. Simultaneously you are also requested to refund the entire security deposit for which you may please contact Sanjeev Malik in the Accounts Department at sanjeev.malik@ahlnorth.com

Regards,

For Asian Hotels (North) Ltd.

Authorised Signatory"

30. Next, the Letter dated 18.07.2020 sent by the Petitioner which clarifies its stand regarding termination of the 2nd Lease Deed, reads as under:

"ASIAN HOTELS (NORTH) LIMITED

By Speed Post/Email

Date: 18th July, 2020

Mr. Gursharan Singh Bawa (Lessor)

H.No. 21, Ground Floor,
Road No. 78
West Punjabi Bagh
New Delhi-110026

<u>Sub: Statement of Accounts of leased Service Apartment No. 3001 consequent to termination of Lease Deed.</u>

Dear Sir,

This is in reference to our communication dated 27.06.2020.

You are conscious and aware of the fact that due to unavoidable circumstances and the restrictive regulatory requirements we have been unable to operate the Hotel property for more than three months now. There is still grave uncertainty as to when the Government would permit the shutdown of the Hotels to be lifted. ***Under these compelling circumstances it had become impossible for us to financially and practically adhere to the terms of the Lease. Accordingly, the Lease had to be terminated with immediate effect.***

We would like to put on record that Asian Hotels (North) Ltd. has already vacated the premises. ***We would also like to record that the premises are deemed to be in your possession effective 27.06.2020 and we are not, consequent to the termination, liable to pay any lease rentals.***

We are not liable to pay and therefore have not paid lease rentals for the period 26.03.2020 till date of termination of the lease as aforesaid due to complete lockdown and stoppage of hotel operations. *The embargo on opening of Hotels in Delhi still continues.*

In terms of the Lease Deed we had paid a deposit of Rs. 55,26,000/- and as a consequence of the termination of the Lease we are entitled to the refund of the said deposit. It appears that certain payments are due to you as per statement enclosed. You may deduct the amounts due to you out of the security deposit and remit the balance amount of Rs. 59,87,924/- within a period of one week.

Failure on your part to do the needful as aforesaid would leave us with no other option except to initiate legal proceedings.

Your Faithfully,

Dalip Singh Rawat

For ASIAN HOTELS (NORTH) LTD.”

[Emphasis Supplied]

31. Upon reading of the above two letters, the Arbitral Tribunal formed an opinion that since the Petitioner never claimed that the amount fixed under the ‘penultimate sub-clause’ of Clause 12.2 is unreasonable or not a pre-estimation of loss suffered by the Respondent due to the premature termination of the 2nd Lease Deed, fixation of rent as a measure of loss to the Respondent in the event of a premature termination of the 2nd Lease Deed was a reasonable one.

32. The Impugned Award further depicts that the Arbitral Tribunal, while relying on the judgments of the Apex Court in ONGC vs. Saw Pipes Ltd. (Supra), and Construction and Design Services (Supra), cast the onus to show that no loss was suffered by the Respondent on account of the premature termination of the 2nd Lease Deed on the Petitioner, for the reason that the Respondent’s monetary claim was based on a pre-estimated amount

specified by the parties on the breach of Clause 12.2 of the 2nd Lease Deed. The Arbitral Tribunal observed that since the Petitioner violated Clause 12.2 of the 2nd Lease Deed, the onus was on it to show that the Respondent did not suffer any loss as a result of its breach and the amount stipulated was a penalty.

33. A further examination on the above aspect was undertaken by the Arbitral Tribunal by drawing similarities to the decision of the Apex Court in Chunilal V. Mehta (Supra) to the facts of the present case, while distinguishing the instant dispute with the factual matrix contained in the judgment of Kailash Nath (Supra). The similarities between the instant case and the features that emerge from the Chunilal V. Mehta (Supra) case, as jotted down by the Arbitral Tribunal are being extracted below:

> "*104. Features that emerge from Chunilal Mehta (Supra) and features of the subject case have striking similarities. These are juxtaposed as under:*

Sr. No.	*Chunilal Mehta Case*	*Instant Case*
I.	*In terms of the agreement firm Chunilal Mehta & Co. was appointed as managing agent of respondent company for a period of 21 years.*	*In terms of lease deed - 2 apartment was given on lease to respondent for a period of 15 years with a lock-in period of 84 months*
II.	*The Board of Directors of respondent company terminated the agency agreement before the expiry of 21 years.*	*Respondent terminated the lease agreement before the expiry of lock-in period of 84 months*
III.	*Clause 14 of the Agreement between the parties provides that in case respondent*	*Clause 12.2 of the lease deed provides that lessee shall not have*

	terminates agreement before the period of 21 years, the Managing Agency shall receive from respondent as compensation or liquidated damages for the loss of appointment a sum equal to the aggregate amount of the monthly ***salary*** *of not less than Rs. 6000 for and during the whole of the unexpired portion of the term of agency.*	*right to terminate the deed during initial 84 months of the deed and a sub-clause thereof provides that if the lessee during the lock-in period due to any reason whatsoever other than due to violation of critical terms, the lessee is fully liable to* ***pay the rent*** *for the entire unexpired lock-in period.*
IV.	*The managing agency agreement was terminated before the expiry of 21 years.*	*The lease deed was terminated before the expiry of lock in period of 84 months*
V.	*Clause 14 shows that the party have themselves provided for the specified amount of damages that would be payable by the company to the managing agent if the managing agency agreement was terminated before the expiry of 21 years.*	*Clause 12.2 read with its penultimate sub clause show that parties have themselves provided the amount payable by respondent to claimant in case the lease agreement is terminated before a period of 84 months. Respondent has admitted that the stipulation for payment of rent for the unexpired lock-in-period on pre-mature termination of lease is as a matter of law, a liquidated damages provision."*

34. What the Arbitral Tribunal especially took note of from the Chunilal V. Mehta (Supra) Judgment, was that the Apex Court did not consider the salary for the unexpired period of the terminated managing agency, akin to earnest money. Correspondingly, in the facts and circumstances of the instant case, it observed that unpaid rent for the unexpired lock-in period also cannot be treated as earnest money.

35. On the other hand, the Arbitral Tribunal distinguished the instant case from the features arising in Kailash Nath (Supra), firstly on the basis that in Kailash Nath (Supra), the Apex Court was dealing with a case wherein a party deposited a certain sum specifically as earnest money with the DDA, on the basis of a contractual stipulation, which also dictated that the said earnest money would be forfeited on the failure on part of the said party to despite the balance money. Secondly, it was noted that the Apex Court eventually held that neither was there any breach by the party that had deposited the earnest money, nor did the party having forfeited the earnest money, i.e., the DDA, suffered any loss. Most importantly, the Apex Court observed that insistence on a contractual stipulation, even when the forfeiting party did not suffer any loss, and allowing such a party to appropriate the monies, would be arbitrary.

36. To fully appreciate the above distinction drawn by the Arbitral Tribunal, this Court deems it fit to refer to the a few more important facts involved in the Kailash Nath (Supra) case before the Apex Court. The appeal arose out of a public auction conducted by the DDA, wherein the appellant made the highest bid. As per the following terms of the bid, the appellant deposited a particular sum as earnest money in favour of the DDA:

"2. xxx

(ii) The highest bidder shall, at the fall of the hammer, pay to the Delhi Development Authority through the officer conducting the auction, 25% of the bid amount as earnest money either in cash or by Bank Draft in favour of the Delhi Development Authority*, or Cheque guaranteed by a Scheduled Bank as "good for payment for three months" in favour of the Delhi Development Authority.* ***If the earnest money is not paid, the auction held in respect of that plot will be cancelled.***

(iii) The highest bid shall be subject to the acceptance of Vice-Chairman, DDA or such other officer(s) as may be authorized by him on his behalf. The highest bid may be rejected without assigning any reason.

(iv) In case of default, breach or non-compliance of any of the terms and conditions of the auction or misrepresentation by the bidder and/or intending purchaser, the earnest money shall be forfeited.

(v) The successful bidder shall submit a duly filled-in application in the form attached immediately after the close of the auction of plot in question.

(vi) When the bid is accepted by the DDA, the intending purchaser shall be informed of such acceptance in writing and the intending purchaser shall, within 3 months thereof, pay to the Delhi Development Authority, the balance 75% amount of the bid, in cash or by Bank Draft in favour of the Delhi Development Authority or by Cheque guaranteed by a Scheduled Bank as "good for payment for three months" in favour of the Delhi Development Authority. If the bid is not accepted, the earnest money will be refunded to the intending purchaser without any interest unless the earnest money is forfeited under para 2 (iv) above."

[Emphasis Supplied]

37. The deposit of earnest money by the appellant in Kailash Nath (Supra) was acknowledged by the DDA, however, the appellant thereafter sought some more time to deposit the remaining 75% amount, due to the economic recession affecting the country at the relevant time. Time for deposit came to be extended. However, later it transpired that due to certain developments, the DDA forfeited the earnest money deposited by the appellant and cancelled the bid/allotment in favour of the appellant. Moreover, later, the DDA sold the plot in question to a different bidder for a sum of Rs. 11.78 crores, which was more than the appellant's bid. Against this action, the appellant first filed a suit for specific performance, which came to be dismissed by a Coordinate Bench of this Court, *albeit* with a direction to the DDA to refund the earnest money to the appellant. This order was appealed against by the DDA before a Division Bench of this Court, who set aside the order passed by the Coordinate Bench to hold that the DDA's forfeiture was in order. Thereafter, the appellant approached the Apex Court.

38. One of the primary observations of the Apex Court in Kailash Nath (Supra) was that since there was no breach of contract on part of the appellant, which is a precondition as per clause (iv) of the terms of the bid, it was an arbitrary action on part of the DDA to forfeit the earnest money. The Apex Court also observed that since DDA did not suffer any loss, it would be arbitrary to allow it to appropriate the earnest money deposited by the appellant therein.

39. Now that the Court has recalled the facts involved in Kailash Nath (Supra), there is no hesitation in holding that the instant case involves vastly

different factual circumstances. First and foremost, the instant case is not related to earnest money. Secondly, it was never the case of the Petitioner that the Respondent violated the terms of the 2nd Lease Deed, so as to bring the termination thereof within the ambit of Clause 12.2. Rather, it was the Respondent's case that the Petitioner breached the 'lock-in period' provision encapsulated within Clause 12.2, and as such, breached the 2nd Lease Deed. Thirdly, the fact that the DDA sold the plot in question on a substantially higher bid than that of the appellant, was sufficient to conclude that no loss was suffered by the DDA. *Per contra*, in the present case, it has been established that the Respondent could not sub-lease the Premises to any other persons, since the Premises was a part of the Petitioner's Hotel.

40. From the above discussion, this Court has no hesitation in holding that the Arbitral Tribunal is correct in holding that the judgment of the Apex Court in Kailash Nath (Supra) is inapplicable to the facts of the present case. As such, reliance on the same by the learned Senior Counsel for the Petitioner is also erroneous. Consequently, this Court is of the view that the Arbitral Tribunal, after conducting an in-depth analysis into the facts of the present case, relevant contractual provisions, applicable legal provisions and case laws, has arrived at a plausible view to conclude that the Respondent was entitled to the amount designated by the parties themselves under Clause 12.2 of the 2nd Lease Deed, once a breach thereof occurs.

41. This Court recalls another landmark Judgment delivered by the Apex Court in Fateh Chand (Supra), observing as under:

> "***8****… The section is clearly an attempt to eliminate the somewhat elaborate refinements made under the English common law in distinguishing between stipulations providing for payment of liquidated damages and*

stipulations in the nature of penalty. Under the common law a genuine pre-estimate of damages by mutual agreement is regarded as a stipulation naming liquidated damages and binding between the parties : a stipulation in a contract in terrorem is a penalty and the Court refuses to enforce it, awarding to the aggrieved party only reasonable compensation. The Indian Legislature has sought to cut across the web of rules and presumptions under the English common law, by enacting a uniform principle applicable to all stipulations naming amounts to be paid in case of breach, and stipulations by way of penalty.

10. *Section 74 of the Contract Act deals with the measure of damages in two classes of cases (i) where the contract names a sum to be paid in case of breach and (ii) where the contract contains any other stipulation by way of penalty. We are in the present case not concerned to decide whether a covenant of forfeiture of deposit for due performance of a contract falls within the first class. The measure of damages in the case of breach of a stipulation by way of penalty is by Section 74 reasonable compensation not exceeding the penalty stipulated for. In assessing damages the Court has, subject to the limit of the penalty stipulated, jurisdiction to award such compensation as it deems reasonable having regard to all the circumstances of the case. Jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; but compensation has to be reasonable, and that imposes upon the Court duty to award compensation according to settled principles. The section undoubtedly says that the aggrieved party is entitled to receive compensation from the party who has broken the contract, whether or not actual damage or loss is proved to have been caused by the breach. Thereby it merely dispenses with proof of 'actual loss or damages'; it does not justify the award of compensation when in consequence of the breach no legal* *injury at all has resulted, because compensation for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from the breach.*

15. *Section 74 declares the law as to liability upon breach of contract where compensation is by agreement of the parties pre-determined, or where there is a stipulation by way of penalty. But the application of the enactment is not restricted to cases where the aggrieved party claims relief as a plaintiff. The section does not confer a special benefit upon any party; it merely declares the law that notwithstanding any term in the contract pre-determining damages or providing for forfeiture of any property by way of penalty, the court will award to the party aggrieved only reasonable compensation not exceeding the amount named or penalty stipulated. The jurisdiction of the court is not determined by the accidental circumstance of the party in default being a plaintiff or a defendant in a suit. Use of the expression 'to receive from the party who has broken the contract' does not predicate that the jurisdiction of the court to adjust amounts which have been paid by the party in default cannot be exercised in dealing with the claim of the party complaining of breach of contract. The court has to adjudge in every case reasonable compensation to which the plaintiff is entitled from the defendant on breach of the contract. Such compensation has to be ascertained having regard to the conditions existing on the date of the breach."*

42. Further, even though the Arbitral Tribunal has rightly distinguished the judgment from the facts of the present case, a reference is appropriate to the following principles laid down by the Apex Court in Kailash Nath (Supra):

*"**43.** On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:*

***43.1.** Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.*

***43.2.** Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.*

***43.3.** Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.*

***43.4.** The section applies whether a person is a plaintiff or a defendant in a suit.*

***43.5.** The sum spoken of may already be paid or be payable in future.*

***43.6.** The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.*

> ***43.7.*** *Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application."*

43. In view of the law laid down by the Apex Court in the foregoing case laws and upon perusal of the Impugned Award, what becomes the foundation of the Arbitral Tribunal's conclusion that the Respondent was not obligated to prove damages, was the fact that the Premises was a service apartment in the premises of the Petitioner's Hotel, wherein the services being provided were by the Petitioner's Hotel itself. As such, the Premises was a part of the Petitioner's Hotel. This, as rightly observed by the Arbitral Tribunal, would bring up a situation where it is unlikely for an individual to make bookings for the Premises without the facilities that go with it in the Petitioner's Hotel. In these circumstances, it was impossible for the Respondent to sub-lease the Premises to a third party for purpose of mitigation of losses. Therefore, the contention of the learned Senior Counsel for the Petitioner that since there was no effort to mitigate losses, it was upon the Respondent to plead and prove losses for claiming damages, cannot be accepted.

44. For the foregoing reasons, this Court has no hesitation in agreeing to the views of the Arbitral Tribunal, to the effect that the Respondent was entitled to unrealized rental amounts for the unexpired lock-in period, having occurred on account of the premature termination of the 2nd Lease Deed and as such, breach of Clause 12.2 by the Petitioner.

45. Thus, this Court is in agreement with the observations of the Arbitral Tribunal *qua* the Claims made before it by the Respondent.

46. The next challenge laid by the Petitioner to the Impugned Award is against the dismissal of its Counter-Claims no. 2, 3, 4, 5, 6 and 9. The Petitioner alleges that the 2nd Lease Deed subsumed within itself the 1st Lease Deed by virtue of Clause 9 of the 2nd Lease Deed and as such, the Arbitral Tribunal was wrong in concluding that the abovementioned claims were outside the ambit of the 2nd Lease Deed, having been based on Clause 6 of the 1st Lease Deed.

47. Clause 9.1 of the 2nd Lease Deed reads as under:

> *"9.1 Notwithstanding the terms of this deed, the parties shall ensure to comply with their respective obligations under the original deed to the extent it does not contradict this deed."*

48. Since the above clause mandates compliance of the clauses of the 1st Lease Deed only to the extent that they do not contradict those in the 2nd Lease Deed, the Arbitral Tribunal highlighted the entire role-reversal of the parties in the two contracts, i.e., in the 2nd Lease Deed, as per Clause 10.3, the Petitioner was liable to bear maintenance charges while as per Clause 6 of the 1st Lease Deed, the Respondent was liable to pay such charges to the Petitioner. Since this was the only contradictory factor, the Arbitral Tribunal dismissed the Counter-Claims based on Clause 6 of the 1st Lease, as being contradictory to and outside the scope of the 2nd Lease Deed.

49. The above view does not warrant any interference, having been based on the clear reading of the wordings of the contractual provisions, as also having arrived at after distinguishing the case laws relied upon by the Petitioner. It is clear that both the 1st and 2nd Lease Deeds operate in their independent atmosphere and existence of one does not affect the other.

Accordingly, the dismissal of the Counter-Claims no. 2, 3, 4, 5, 6 and 9 as having been based on Clause No. 6 of the 1st Lease Deed, also does not shock the conscience of this Court and deserves to be upheld.

50. A careful and comprehensive perusal of the Impugned Award demonstrates that the Arbitral Tribunal has examined the pleadings, documentary material, correspondence exchanged between the parties, and the evidence led in support of their respective claims and assertions. The Impugned Award reflects due consideration of the relevant facts and surrounding circumstances germane to the disputes.

51. The Impugned Award reflects a plausible and reasoned interpretation of the contract and an evaluation of evidence within the jurisdiction of the Arbitral Tribunal. It is well settled that a court exercising limited supervisory jurisdiction under Section 34 of the Arbitration Act cannot re-appreciate evidence or substitute its own interpretation of contractual clauses where the view taken by the Arbitral Tribunal is a possible and reasonable one.

52. Viewed in its entirety, the Impugned Award reflects a reasoned and structured adjudication of the disputes by the Arbitral Tribunal within the confines of the contractual terms agreed upon by the parties, the material placed on record, and the jurisdiction vested in the Arbitral Tribunal. The Impugned Award demonstrates due application of mind to the pleadings, evidence, and relevant contractual provisions.

53. In view of the foregoing discussion, this Court is of the considered opinion that the Petitioner has failed to establish any ground under Section 34(2) or Section 34(2A) of the Arbitration Act warranting interference with the Impugned Award.

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54. Accordingly, the Petitions being O.M.P. (COMM) 344/2022, O.M.P. (COMM) 345/2022 and O.M.P. (COMM) 346/2022 filed by the Petitioner, along with pending Application(s), if any, stand dismissed.

55. Since the Impugned Award, being the final award passed by the Arbitral Tribunal is upheld, the appeals being filed by the Petitioner being ARB. A. (COMM.) 18/2021, ARB. A. (COMM.) 20/2021 and ARB. A. (COMM.) 22/2021, filed by the Petitioner against the Interim Order dated 05.03.2021 passed by the Arbitral Tribunal, are disposed of as infructuous, along with pending Application(s), if any.

OMP (CONT.) 2/2022, OMP (ENF.) (COMM.) 187/2022, OMP (ENF.) (COMM.) 188/2022 & OMP (ENF.) (COMM.) 189/2022

56. List on 05.10.2026.

SUBRAMONIUM PRASAD, J

AUGUST 10, 2026
AP