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

% *Date of Decision : 20.07.2026*

\+ **FAO (COMM) 211/2023 & CM APPL. 54026/2023**

M/S INDOSPIRIT BARS PVT LTD .....Appellant
Through: Mr. Karan Gupta, Advocate.

versus

SMT PRABHA AGGARWAL .....Respondent
Through: Mr. SC Singhal and Mr. Saideep Kaushik, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. *(ORAL)*

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (the Act) has been filed by the appellant, challenging the judgment dated 28.07.2023 (impugned judgment) passed by the learned District Judge (Commercial)-02, Patiala House Courts, New Delhi in OMP (COMM) No.14/2023 titled *M/s. Indospirit Bars Pvt Ltd v. Smt. Prabha Aggarwal* whereby the learned District Judge has dismissed the petition filed by the appellant under Section 34 of the Act challenging the arbitral award dated 15.10.2022.

2. Some of the facts to be noted for the purpose of this appeal are that the appellant was tenant of one Shri Shambhu Prasad Kushwaha in terms of the Lease Deed dated 06.07.2016 in respect of the property No.109, 1st

Floor, CS/OCF No.7, Sector-24, Rohini, Delhi (subject premises). The subject premises was later purchased by Mrs. Prabha Aggarwal, respondent herein on 15.12.2018 and as such became entitled to receive rent of Rs.1,50,000/- per month with effect from 07.04.2018. In this regard, an undertaking / NOC dated 19.01.2019 was also issued by the erstwhile owner Shri Shambhu Prasad Kushwaha. As per the lease deed, the rent was to be enhanced at the rate of 15% after completion of three years of the tenancy. The landlord/ respondent was entitled to claim rentals of Rs.1,72,500/- per month with effect 01.10.2019, after the Tax Deducted at Source (TDS) at the rate of 10% of the rent, which comes to Rs.1,35,000/-.

3. The case of the respondent was that the appellant became irregular in payment of rent and legal notice dated 05.03.2020 was issued. The appellant instead of complying with the demand notice, issued the notice dated 04.03.2020 terminating the tenancy alleging that the subject premises did not have the facilities and requirements for running the business. The case of the respondent /claimant was that the termination notice was not sufficient enough to discharge the appellant from its obligation in as much as the appellant was liable to pay rent at the rate of Rs.1,72,500/- per month with effect from 01.10.2019, but was paying the rent at previous rate.

4. The claim of the respondent was for the difference in arrears of rent being Rs.3,32,100/-; the arrears of rent being Rs.24,42,600/-; interest on difference of rent and arrears of rent being Rs.4,98,988/-; litigation expenses being Rs.5,10,000/-; and the compensation for harassment being Rs.5,00,000/- totalling Rs.42,83,688/-.

5. The appellant has contested the claims of the respondent. In any case, the learned Arbitrator awarded a sum of Rs.18,18,750/- in favour of the respondent subject to payment of GST as applicable. The respondent was also granted *pendente lite* interest at the rate of 9% on the sum awarded and future interest at the rate of 6.5% with effect from the date of the award till the payment is made.

6. Being aggrieved, the appellant challenged the Award before the learned District Judge by urging in petition under Section 34 of the Act that the learned Arbitrator has erred in holding that the increase of 12% rent instead of 15% has not been acceded to by the respondent. No invoice with increased rent was ever raised by the respondent and therefore, the learned Arbitrator has erred in holding that the respondent is entitled to increased rental with effect from 01.10.2019. The learned Arbitrator while dealing with the issue of *force majeure* has only based the reasoning to the effect of *force majeure* as per the Transfer of the Property Act, 1882 (TP Act) without taking into consideration the *force majeure* clause specially agreed between the parties in the lease deed. The learned Arbitrator has wrongly considered the *force majeure* clause as mentioned in paragraph 7 of the lease deed and has awarded the rent in favour of the respondent due to the lock down period and the same is liable to be rejected.

7. Because the learned Arbitrator has erred while dealing with issue of *force majeure* to contend that he has wrongly held that the corona virus pandemic has not affected the subject premises but only affected the mind and body of the person. He simply failed to take into consideration the

impact of the restrictions imposed in view of the pandemic. Even otherwise, it is stated that the learned Arbitrator ought not to have been awarded the rent of Rs.22,68,750/- in favour of the respondent as escalated rent along with the GST in the absence of any GST invoice being raised by the respondent.

8. It may be stated here the learned District Judge in the impugned order has referred to the scope of the judicial review when a petition under Section 34 of the Act. On the issue of increase in rent, the learned District Judge has referred to Clause 2.3 of the lease deed to contend that the same empowers the lessor/respondent/claimant for increase in rent. On the issue of running the business from the subject premises, including the No Objection Certificate (NOC) from the Fire Department, the learned District Judge has referred to the fact that the learned counsel for the appellant during the cross examination of the claimant / respondent witness could not put any question as to what was deficiencies in the existing subject premises, which the claimant / lessor failed to carry out. Such a conclusion is finding of fact, which cannot be gone into in the proceedings under Section 34 of the Act. The learned District Judge finally *vide* the impugned order dismissed the challenge to the arbitral award.

9. Even before us, the learned counsel for the appellant has fervently argued that the learned District Judge has failed to appreciate that the enforcement of the terms of the contract had become impossible and thus, the appellant could not have been forced to continue with the lease and pay the rent for the said period. This according to the learned counsel for the

appellant is because the performance of the terms of the lease became impossible due to the notification of the Government and thus, the appellant could not carry on its business from the subject premises. In that sense, the notification issued by the Government caused the frustration of the contract. In other words, it is submitted that the learned District Judge has failed to appreciate that the *force majeure* clause in the contract, which entitled the appellant to terminate the contract. According to him, the learned Arbitrator has wrongly held that the corona virus pandemic has not affected the subject premises and only affected the mind and body of the person and simply failed to take into consideration the impact of the restrictions imposed in view of the pandemic as well as in view of the specific clause agreed to between the parties in respect of the *force majeure*.

10. We are not in agreement with this only submission made by the learned counsel for the appellant. There is no dispute that the respondent became the lessor/owner of the subject premises. The rent according to the respondent became as Rs.1,72,500/- per month; whereas the appellant was paying rent as per the old rate, hence the claim was made for difference in arrears of rent and the monthly rent. The lease deed was terminated on 04.03.2020. It was the case of the appellant that the lease has been terminated by the appellant in accordance with the terms of the lease deed. The justification given by the appellant is that the termination is because the Commissioner of Excise Department, had issued an order dated 14.06.2019 whereby NOC was made mandatory for all restaurants/ eating houses having more than 90 meters area, and the subject premises was not conducive for running a restaurant. It was the case of the appellant that despite several

requests to the respondent, no steps were taken by the respondent/lessor to obtain a NOC from the Fire Department. Hence, the appellant could not continue the business and as such terminated the lease deed. Reliance was placed by the appellant upon the clause 7 of the lease deed regarding the *force majeure* event. In other words, the appellant justified the termination and as such no case was made for paying the rent as demanded by the respondent.

11. The short question, which arose for consideration is whether there was any *force majeure* event, which can result in the termination of the lease deed by the appellant. There is no denial to the fact that the Commissioner of Excise Department had issued the order dated 14.06.2019 whereby NOC was made mandatory for running restaurants/eating houses having more than 90 meters area.

12. The finding of the learned Arbitrator on the issue No.1 – Whether the respondent lawfully terminated the lease agreement? – is as under:-

> *"Under the agreement both the parties have been given right to terminate the tenancy. Lessor has not been given right to terminate the tenancy any times during the entire period of Lease except that the Lessor may terminate the Lease in case of default in payment of monthly rent for the period of continuous two months. On the other hand, Lessee has been given sole right to terminate the lease after the expiry of lock in period. After the completion of more than three years, the Lessee terminated tenancy by way of notice Ex.CW-1/4 dated 04.03.2020. The service of notice was admitted by CW-1 Anand Singh in his cross examination, but deposed that subsequent to the notice premises was not handed over and possession was given as late as on*

16.03.2021. Another ground stated by the respondent for termination of tenancy is the issuance of an order by the Commissioner of Excise, Government of· Delhi by which the FIR NOC was made mandatory for all eating houses/ restaurants having an area of more than 90 meters. According to the contention of the respondent the existing structure/ building layout of the premises was not conducive for running of the restaurant and required modification to be complaint with the fire safety norms. It is also contended that despite several assurances of providing safety norms but the claimant did not carry out necessary structural changes. The in-action on the part of claimant, compelled the other to issue notice of termination of tenancy. However, whatsoever reason may be, issuance of notice after two years of occupation is sufficient to continue a regular termination of tenancy. The issue is decided in favour of the Lessee and against the Lessor."

13. From the finding above, it is noted that even if the lease deed was terminated on 04.03.2020, but the possession was handed over as late as 16.03.2021 and it is on this ground that the learned Arbitrator has awarded arrears of rent with effect from April 2020 till 16.03.2021 at the rate of Rs.1,72,500/- per month totalling to Rs.19,83,750/-(as detailed in paragraph no.5 above) along with GST as applicable.

14. Today before us, the learned counsel for the appellant has not contested the aforesaid finding of fact arrived at by the learned Arbitrator. His contention is primarily relatable to Clause 7 of the lease deed, which we reproduce as under:-

"7. Force majeure Clause
The Lessee shall not be responsible for any loss whatsoever cause to the demised premises, building or anyone else as a

> *result of any force majeure condition and or act of god or liable for not performing any of its performance is prevented, delayed or hindered by an act of god/force majeure condition. If a force majeure event like fire (not caused by the willful act or negligence of the parties) earthquake, flood, lighting, violence of any arm or mob or enemies of the country or by any other irresistible force so as to render the demised premises uninhabitable or renders the use of any part of such of such space difficult to use for a period in excess of 60 (sixty) days, the lessee shall have the right to (i) terminate the lease deed and forthwith and seek return of the Security Deposit and other relevant amounts like (advance Base Rent) by pay order, or (ii) seek pro-rate adjustment of Base Rent, Maintenance Charges and other amounts payable by the Lessee even during the lock In period. In case of Force majeure, the Lessee shall not be liable to pay the full rent for the lock in period.*

15. His submission as noted above is that, in terms of the Section 108(e) of TP Act, whereby the effect of *force majeure* conditions are explained. According to him, the said sub-clause lays down that *"if by fire, tempest or flood, or violence of any 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"*.

16. His submission is that post March 2020, the subject premises became non-compliant with the policy and as such, the appellant could not carry out the business and also due to complete lock down enforced due to covid, the appellant had rightly terminated the lease deed, is not appealing. In any case, what has been granted by the learned Arbitrator is that despite the notice of termination dated 04.03.2020, the appellant had handed over the

possession only on 16.03.2021. The learned Arbitrator has granted arrears of rent at the rate of Rs.1,72,500/-. There is no dispute to the fact that as per the lease deed, the respondent was entitled to increase in rent. If that being so, the claim of arrears of rent with effect from April 2020 to 16.03.2021 is justified and the balance of rent from 01.10.2019 to February 2020 at the rate of Rs.1,12,500/- and the monthly rent of March 2020 onwards at the rate of Rs.1,72,500/- in accordance with the provisions of the lease deed also cannot be contested by the appellant.

17. We note that the counter claim filed by the appellant for Rs.4,50,000/- which was for return of the security deposit was allowed in favour of the appellant. The learned Arbitrator has directed that this amount of Rs.4,50,000/- be adjusted against the amount granted in favour of the respondent.

18. In the facts of this case, we are of the view that the conclusions drawn by the learned Arbitrator and also the learned District Judge are justified. The impugned order passed by the learned District Judge does not require any interference and the appeal is liable to be dismissed. We order so.

19. Accordingly, the appeal and pending application are dismissed.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

JULY 20, 2026
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