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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION PETITION (L) NO.33587 OF 2026

Achieve Hospitality ... Petitioner

Vs.

Malad Gymkhana Limited ... Respondent

ATUL GANESH KULKARNI

Digitally signed by ATUL GANESH KULKARNI
Date: 2026.10.26 13:00:36 +0530

Ms. Ambrin Khan with Mr. Aditya Chopta, Mr. Amay Jain, Mr. Isiri Rajaneesh, VG Sreeram and Mr. Dhruvit Shah i/by Mohammad Abdi for the Petitioner.

Mr. Piyush Shah with Mr. Dishang Shah, Mr. Deep Madnani and Ms. Kinjal for the Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 23, 2026

PRONOUNCED ON : OCTOBER 26, 2026

JUDGMENT:

1. I have heard the arguments made by the learned Advocates appearing for both parties. The main question at this stage is whether the Respondent was entitled to terminate the Lease Deed in the manner in which it has done, when both parties had agreed upon the procedure to be followed for such termination. The other question is whether the Petitioner has shown sufficient grounds for temporary protection of its existing restaurant and bar business and the three additional premises referred to in Clause 17 of the

Lease Deed.

2. At the beginning, it is necessary to understand the nature of the agreement entered into between the parties. Under the Lease Deed dated 24 October 2024, the Petitioner is permitted to run a restaurant and bar in the name and style of "SOME PLACE NICE" in premises admeasuring about 2,500 square feet on the first floor of Malad Gymkhana House. Clause 2 provides that the agreement shall continue for nine years, from 22 October 2024 until 21 October 2033. The agreement provides for payment of monthly rent or royalty, security deposit and other obligations which both parties are required to perform.

3. The Respondent has argued that, in its real nature, the agreement is a business conducting agreement and not a lease which gives independent possession rights to the Petitioner. For this purpose, the Respondent has relied upon Clauses 27(c) and 54. These clauses state that the premises shall remain under the control and juridical possession of the Owners and that the Petitioner is allowed to use the premises for conducting its business. This argument cannot be ignored. Only because the document is called a Lease Deed, the Court cannot ignore what is written in it. At the same time, the Respondent cannot avoid the obligations accepted by it under the written document merely by describing the arrangement as a business conducting agreement. Whatever may be the exact nature of the rights created in respect of the existing premises, the Respondent is required to follow the conditions agreed between the parties for terminating the agreement.

4. The learned Advocate for the Petitioner has placed considerable reliance upon Clause 56 of the Lease Deed, which appears at page 88 of the Petition. The important part of this clause states that "cause" shall mean any continuing or repeated failure by the Lessee to perform its duties and responsibilities under the agreement. The clause states:

> "However, the Lessee shall be allowed a period of 60 days to rectify the issues as are pointed out by the Lessor in his notice."

5. Thus, the agreement provides the circumstances in which the Lessor may seek termination. It provides a period during which the Lessee must be allowed to correct the stated problems. This is an important condition agreed between the parties. They have agreed that the Lessee shall get sixty days to correct the breaches before termination is resorted to. The Court cannot reduce this period merely because the Lessor considers the alleged breach to be serious. At the same time, giving sixty days to correct a breach does not mean that the Lessee is free to violate the agreement. The purpose of this clause is that the alleged defaults must be pointed out to the Lessee and an opportunity must be given to correct them in the manner agreed between the parties.

6. It is necessary to see whether the Respondent pointed out the alleged breaches and whether the Petitioner was given the opportunity provided under Clause 56. The detailed reply dated 14 February 2026 refers to several alleged breaches. Paragraph 20 states that the delay in obtaining the Occupancy Certificate was caused because the Petitioner had asked for changes and

modifications in the approved plan. It refers to force majeure circumstances arising from rules, norms and procedures which were beyond the control of the Respondent. In paragraph 21, the Respondent has given a list of alleged breaches. These include alleged demolition of the existing store room and toilet blocks and construction of new ones without its consent, removal of internal walls, non-payment of non-member entry fees, failure to provide certain records, changes in the approved design, purchase of liquor allegedly beyond the permitted limit, putting up signage without necessary approval, failure to obtain approval for menu prices, holding functions similar to banquet functions, staff allegedly staying overnight and parking of more than two vehicles. The Respondent relies upon these allegations to say that the Petitioner has repeatedly committed serious breaches of the existing agreement.

7. It cannot be said that the Respondent made no attempt to point out the alleged defaults. Paragraph 21 contains specific allegations which the Petitioner could understand and answer. To this extent, the Respondent's argument has some substance. However, whether each alleged breach took place, whether it was against the Lease Deed and whether it was serious enough to justify termination are separate matters. These questions cannot be decided merely by reading the allegations made in an Advocate's notice as if they have been proved.

8. The Petitioner, by its reply dated 17 April 2026, denied the allegations made in paragraph 21 of the Respondent's reply. The Petitioner stated that the changes and construction work were

carried out with the knowledge or approval of the Respondent's representatives. It denied any deliberate failure to pay entry fees or any unauthorised use of the premises. The Petitioner disputed the allegations regarding liquor, signage, menu approvals, banquet functions and parking. In substance, the Petitioner stated that these allegations were not supported by proper material and had been made as a counterblast to its own complaints regarding non-performance of Clause 17. At this stage, the Court cannot treat the version of either party regarding these disputed events as proved. The allegations made by the Respondent cannot be ignored, but the answers given by the Petitioner will have to be considered by looking at the relevant documents and evidence. Merely because the Petitioner denies a breach, it cannot be said that no breach took place. In the same way, merely because the Respondent has listed certain allegations in its reply notice, it cannot be said that those allegations are true. The proper course is to examine whether the Respondent followed the agreed procedure for termination, without deciding the disputed facts which are to be considered in arbitration.

9. The more important difficulty for the Respondent arises from the last part of its reply dated 14 February 2026. Paragraph 59 of that reply calls upon the Petitioner to “cease and desist from committing breaches” and to correct the breaches mentioned in paragraph 21 within seven days from receipt of the notice. It states that if the Petitioner fails to comply, the Respondent would be required to terminate the existing agreement. Paragraph 60 again states that the Respondent would proceed to terminate the

agreement if the Petitioner failed to correct the stated breaches. The words in paragraph 59 are clear. The Petitioner was asked to correct the alleged breaches within seven days, whereas the agreement provides sixty days for this purpose. The two periods are different. The Respondent was required to follow the procedure which both parties had accepted. It could not reduce the agreed period on its own by mentioning a different period in its Advocate's reply. Therefore, the question is not only whether the Respondent pointed out the alleged breaches, but whether the Petitioner was given the opportunity to correct them in the manner required under the Lease Deed.

10. The learned Advocate for the Respondent submitted that the termination was not made immediately after seven days had expired. He pointed out that the termination notice was issued on 13 June 2026, which was more than sixty days after the reply dated 14 February 2026. According to him, the Petitioner had, in fact, received more than sixty days to correct the breaches and cannot now complain about the seven-day period mentioned in paragraph 59. This argument requires consideration. The fact that the Respondent did not issue the termination notice within seven days is relevant. The time which passed between the two notices is a circumstance which the Court must consider. However, the question is not only whether sixty days had passed according to the calendar. The Court must see what the Respondent told the Petitioner and whether its later action followed the protection given under Clause 56. The reply dated 14 February 2026 asked the Petitioner to correct the breaches within seven days and

threatened termination if the Petitioner failed to do so. It did not state that the Petitioner would be given sixty days to correct the issues.

11. The notice dated 13 June 2026 did not give the Petitioner another sixty-day opportunity to correct the alleged breaches. Instead, it claimed that the agreement stood terminated and required the Petitioner to remove within thirty days. Therefore, at this interim stage, merely because more than sixty days had passed after the earlier reply, the difficulty arising from the seven-day period mentioned in that reply and the termination claimed in the later notice does not disappear. The agreed procedure for correcting breaches has to be considered as a whole. The Respondent cannot rely upon the seven-day demand to say that the Petitioner failed to comply and, at the same time, treat the later termination as valid without showing that the protection provided under Clause 56 was followed.

12. I am unable to accept the Respondent's argument that, at this stage, the termination notice can be treated as having been issued in full compliance with Clause 56. The issue is not that the Respondent had no right to complain about the alleged breaches. The issue is that both parties had agreed upon the manner in which termination could take place. A contractual right to terminate must be exercised in the manner agreed between the parties. One party cannot rely upon the alleged breach of the other party while ignoring the procedure which governs its own right to terminate.

13. This is only a prima facie finding for deciding the present Petition. It does not mean that the allegations made in paragraph 21 of the reply dated 14 February 2026 are false. It does not mean that the Respondent has lost its rights in respect of any breach which may be proved. It only means that, on the material available, the termination notice dated 13 June 2026 cannot be treated as free from difficulty merely because the Respondent has made several allegations against the Petitioner.

14. The other important issue concerns Clause 17 of the Lease Deed. The Petitioner contends that the registered document creates a binding obligation upon the Respondent to construct a new restaurant and two banquet halls and to make these premises available exclusively to the Petitioner. For this purpose, the Petitioner relies upon the following words in Clause 17:

> "It is and irrevocably agreed between the First and Second party that the said New Restaurant and 2 Banquet Hall premises shall be offered solely to the Second Party and that the same cannot be offered to any third party for any reasons and on any terms whatsoever."

15. The clause records the broad commercial terms for the proposed premises. Clause 17(e) connects the future agreements with the existing agreement and provides nine months, with a one-month grace period, for making the premises available. It states that if the premises are not made available within that period, it shall be at the sole discretion of the Second Party to cancel or terminate the existing agreement as well as the arrangement for the future agreements. The clause provides for refund of security deposits and agreed liquidated damages of Rs.30,00,000 in the

circumstances mentioned therein. These terms are important. Clause 17 does not merely state that the parties may possibly do business together in future. It mentions the number and general nature of the proposed premises, their approximate area, the arrangement for giving them exclusively to the Petitioner, the time period and certain consequences if the premises are not made available. Therefore, Clause 17 will have to be considered by looking at all its terms and not only by referring to the fact that separate agreements were contemplated for the future.

16. The Respondent has disputed whether Clause 17 can be enforced. In paragraphs 8 to 19 of its reply dated 14 February 2026, the Respondent says that Clause 17 is separate from the agreement governing the existing restaurant and only records an intention to enter into future agreements. It points out that several matters, including menu, prices, licence fees, access, parking, amenities, working arrangements and other matters relating to running the business, were still required to be discussed and agreed. It contends that the proposed business was not fully established and that the necessary permissions and approvals for the new premises had not been obtained. On this basis, the Respondent argues that there was no complete agreement regarding the three additional premises and that the Petitioner did not acquire any enforceable right to demand their allotment. There is substance in the argument that the separate agreements mentioned in Clause 17 would be required to regulate the detailed working of the new restaurant and banquet halls. The document refers to those future agreements. Therefore, at this stage, it would

not be proper to hold that every detail of the future business arrangement had been settled. Nor would it be proper to hold that the Petitioner can immediately demand possession of all three premises without execution of the contemplated documents and compliance with the applicable requirements. However, that is not the end of the matter. The Respondent's argument does not deal with the clear words that the proposed premises “shall be offered solely to the Second Party” and “cannot be offered to any third party”. Clause 17(h) records that the terms were “agreed in principle between the Parties and being binding upon the parties”, while stating that they were to be included in individual agreements for the respective premises. These words have to be read together. The fact that detailed agreements were to be executed later does not make every obligation recorded in Clause 17 meaningless. The question whether the clause can be enforced will have to be decided after considering the agreement as a whole and the material placed before the Arbitral Tribunal.

17. At least for the purpose of temporary protection, Clause 17 raises a serious question as to whether the Respondent can use the premises reserved for the Petitioner for another commercial arrangement or give them to a third party while the contractual disputes remain unresolved. The Petitioner has shown a prima facie basis for claiming an exclusive arrangement. The Respondent's argument that some terms remained to be settled is a matter which the Arbitral Tribunal will have to consider. On the material available, this argument does not justify rejecting the Petitioner's request to preserve the disputed premises. The Court

must keep in mind the difference between protecting a contractual claim and directing specific performance of the agreement. The Petitioner has, among other things, asked that the Respondent should be prevented from creating third-party rights in the new restaurant and the two banquet halls. A temporary order preventing the creation of such rights would preserve the subject matter of the dispute. Such an order would not direct the Respondent to hand over the premises to the Petitioner. It would not decide whether every term of Clause 17 can be enforced. This limited protection would leave the main claims open for decision in arbitration.

18. The Respondent has stated, in paragraph 20 of its reply dated 14 February 2026, that the delay in obtaining the Occupancy Certificate occurred because the Petitioner had asked for changes and modifications in the approved plan and those changes were not approved. The Respondent has referred to force majeure circumstances arising from rules, norms and procedures which were beyond its control. The Petitioner denies that these allegations justify the Respondent's failure to perform its obligations. It has asked the Respondent to give details of the changes, the applications made to the authorities, the alleged rejection of the changes and the connection between those events and the delay in obtaining the Occupancy Certificate. At this stage, there is not enough material to hold that the entire delay was caused only by the Respondent. There is not enough material to hold that the Petitioner caused the delay by asking for changes in the plan. Both sides have made statements which are disputed by

the other side. The Respondent's explanation cannot be treated as proved only because it appears in the reply notice. Equally, the Petitioner's denial does not settle the issue in its favour. The relevant applications, approvals, communications with the authorities and other evidence will have to be examined during arbitration.

19. What is clear from the Lease Deed is that the parties had fixed a period for obtaining the Occupancy Certificate and making the three premises available. The Petitioner relies upon the expiry of that period to support its complaint. The Respondent relies upon the Petitioner's alleged conduct and circumstances beyond its control to explain the delay. Until these matters are examined, neither party should be allowed to take steps which may defeat the contractual rights claimed by the other party.

20. The termination notice dated 13 June 2026 requires consideration. In paragraph 2, the Respondent states that it has instructed its Advocates “to revoke, cancel and terminate” the Lease Deed because of the alleged breaches. Paragraph 6 again states that the Respondent is not willing to continue the agreement and that it “stands revoked, cancelled and terminated”. Paragraph 8 states that the Respondent would have the right to prevent and obstruct the Petitioner's restaurant and bar activities. Paragraph 9 reserves the Respondent's right to claim damages and seek forfeiture of the security deposit. Paragraph 10 calls upon the Petitioner to comply within thirty days, failing which the Respondent threatens to initiate appropriate civil or criminal proceedings. These statements show that the termination notice is

intended to have immediate effects upon the Petitioner's existing business. If the Respondent is allowed to act upon the notice and prevent the business from continuing, the Petitioner's operations may be interrupted before the contractual disputes are decided. The Petitioner states that it paid security deposits totalling Rs.30,00,000 and spent substantial amounts on renovation, interiors, equipment and setting up the restaurant. The Respondent disputes the amount and the legal basis of the Petitioner's claims for expenditure. However, its own reply states that it is willing to refund amounts received towards the proposed premises. The payment of these amounts and the nature of the Petitioner's entitlement will have to be decided on the evidence. For the present purpose, the material placed before the Court shows that there is a arrangement between the parties and that the Petitioner is running a restaurant business.

21. The Petitioner has asked for a direction to renovate or construct the rear fire exit and make it accessible. The papers refer to an email dated 28 January 2026 concerning construction of an underground water tank and breaking of the staircase. The Petitioner has relied upon photographs of the staircase and has stated that the present condition creates a risk to its staff, customers and other persons using the restaurant. This issue cannot be treated as an ordinary dispute about commercial terms. The safety of the persons using the premises is important. At the same time, the actual condition of the staircase, the construction work required and the proper manner of making the premises safe will have to be considered in accordance with the applicable

building and fire safety requirements.

22. In these circumstances, it would not be proper at this stage to hold that the Respondent deliberately created a dangerous condition. It would not be proper to insist upon a particular method of construction without considering the requirements of the competent authorities. However, the Respondent must ensure that construction work does not leave the restaurant and bar without a safe and lawful emergency exit. Necessary steps must be taken to make the rear fire exit accessible or to provide a safe and lawful alternative as required by the competent authority. This direction is necessary for protecting the persons using the premises and does not depend upon the final decision of the contractual dispute.

23. The next question is whether the Petitioner has fulfilled the requirements for temporary relief under Section 9 of the Arbitration and Conciliation Act, 1996. The Petitioner has shown a prima facie case regarding the procedure followed for termination under Clause 56 and the exclusive arrangement recorded in Clause 17. The balance of convenience supports maintaining the existing position for the time being. If the Respondent is allowed to obstruct the existing restaurant and bar business on the basis of a termination which is open to serious doubt, the Petitioner may suffer interruption of business, loss of customers and other commercial consequences before its claims are decided. If third-party rights are created in the new restaurant and the two banquet halls, the dispute concerning Clause 17 may become more difficult to resolve effectively. On the other hand, granting temporary

protection does not prevent the Respondent from defending in arbitration or placing its allegations of breach before the Tribunal. The Respondent's allegations regarding unauthorised alterations, non-payment of entry fees, signage, business practices and other matters remain open for consideration. The protection granted by this Court does not mean that the Petitioner is permitted to violate the Lease Deed or statutory requirements. The Petitioner must continue to perform its undisputed obligations, including payment of amounts which are due, and comply with the applicable safety and licensing requirements. The Respondent will remain free to seek appropriate relief from the Arbitral Tribunal in accordance with law.

24. I am of the view that the Petition deserves to be allowed in part. At this stage, it would not be proper to decide whether every term of Clause 17 is enforceable or to direct immediate handover of the new restaurant and the two banquet halls. These issues will have to be decided in arbitration. Equally, it would not be proper to permit the Respondent to obstruct the Petitioner's existing business or create third-party rights in the disputed premises while the contractual issues remain unresolved and the validity of the termination notice is open to serious doubt. The proper course is to preserve the existing business arrangement and the three additional premises until the Arbitral Tribunal considers the dispute, subject to the terms of the following order.

(a) Pending constitution of the Arbitral Tribunal and until the Tribunal considers and passes an appropriate order on interim protection, the Respondent shall not obstruct or

interfere with the Petitioner's existing restaurant and bar business under the name and style of “SOME PLACE NICE”, save in accordance with law and the terms of the Lease Deed;

(b) The operation and implementation of the termination notice dated 13 June 2026 shall remain stayed until the Arbitral Tribunal considers the question of interim protection, subject to orders passed by the Tribunal;

(c) Until the Arbitral Tribunal considers the dispute, the Respondent shall not create any third-party rights, lease, licence, allot, part with possession of, or enter into any fresh commercial arrangement concerning the new restaurant and the two banquet halls referred to in Clause 17 of the Lease Deed. This direction shall not be construed as a direction to hand over possession of those premises to the Petitioner or as a final finding that every term of the proposed future agreements is enforceable;

(d) The Respondent shall ensure that construction or other activities at the premises do not create an unsafe condition for persons using the existing restaurant and bar. The Respondent shall take necessary steps to ensure that the rear fire exit is accessible or that a safe and lawful alternative emergency exit is provided in accordance with the requirements of the competent authority;

(e) The Petitioner shall continue to comply with its undisputed payment obligations under the existing

agreement and shall comply with applicable statutory, licensing and fire safety requirements. All disputes regarding the alleged breaches set out in paragraph 21 of the Respondent's reply dated 14 February 2026, the delay in obtaining the Occupancy Certificate, the enforceability of Clause 17 and the parties' respective monetary claims are left open for determination in arbitration;

(f) The parties are at liberty to place their respective claims and applications for interim protection before the Arbitral Tribunal. The Tribunal shall consider those claims independently and in accordance with law;

25. The Petition is allowed in part in the above terms. No order as to costs at this stage.

(AMIT BORKAR, J.)