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

Reserved on: 20th January, 2026
Pronounced on: 29th January, 2026

\+ ARB.P. 1678/2025

OMAXE NEW CHANDIGARH DEVELOPERS PRIVATE LIMITED .....Petitioner

Through: Mr. Karanjot Singh Mainee, Mr. Sahil Chopra, Ms. Manya Kaushik, Advocates (M:9717413994)

versus

ATHARVA HOTEL SUPERFLUITIES INDIA PVT. LTD. .....Respondent

Through: Mr. Vishal Bhatnagar and Mr. Veer Pratap Singh, Advocates (M:9313674756)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

1. The present petition has been filed on behalf of the petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") seeking appointment of a Sole Arbitrator in terms of the arbitration clause, i.e., Clause 15 (b) of the Lease Deed dated 15th November, 2022 ("**Lease Deed**"), which provides for adjudication of disputes between the parties by arbitration.

2. Facts of the case, as canvassed in the petition, are as follows:

2.1 The petitioner is a private limited company engaged in the business of real estate development, including, construction of integrated townships,

residential apartments, commercial spaces, hotels and related infrastructure across India.

2.2 The respondent is a private company engaged in the business of operating and managing hotels in association with third party brands in the hospital sector.

2.3 The petitioner is in the process of constructing and developing a commercial complex in the name and style of *'Beacon Street'*, on approximately seven acres of land situated at *Village Bharonjian, Tehsil-Kharar, S.A.S. Nagar, Mohali-160055, Punjab* ("**Project**"). For the purposes of the said Project, the respondent approached the petitioner, seeking lease of approximately, 1,75,000 sq. ft. of super area being *Unit no. S. Suite Floors Nos. 19th to 28th* of the Project ("**Demised Portion**"), to operate and manage the said area as a branded hotel.

2.4 In view of the above, the parties entered into a Lease Deed dated 15th November, 2022, by way of which, the Demised Portion was leased to the respondent, and the respondent was to enter into another agreement with a reputed hotel for operation of the same in the Demised Portion of the Project.

2.5 As per Clause 4.1 and Annexure-II of the Lease Deed, the respondent was to provide technical and pre-opening services, and towards the same, the petitioner had agreed to pay a onetime lump sum amount of Rs. 3,30,00,000/- to the respondent, towards applicable sign-up fees, including, brand association fees and for the technical and pre-opening services.

2.6 Consequently, as per Clause 8 (I)(a) of the Lease Deed, the petitioner paid to the respondent a sum of Rs. 1,65,00,000/- along with applicable

Goods and Service Tax ("**GST**") of Rs. 29,70,000/-, totalling to Rs. 1,94,70,000/-, as an advance payment.

2.7 Due to the non-performance of obligations by the respondent, the petitioner sought for refund of the advance amount, i.e., Rs. 1,94,70,000/-, paid to the respondent, towards which only Rs. 50,00,000/-, was refunded and an amount of Rs. 1,44,70,000/- remained to be refunded by the respondent.

2.8 Due to the continuous breach of the Lease Deed and on account of non-payment of pending advance amount, the petitioner issued a notice dated 22nd August, 2025 and sought for refund of the remaining advance amount along with damages. Since, the said amounts were not paid to the petitioner, the petitioner was constrained to invoke arbitration under Section 21 of the Arbitration Act.

2.9 The respondent has not replied to the notice dated 22nd August, 2025. Admittedly there exists a clear dispute between the parties, therefore, as per the valid arbitration clause, i.e., Clause 15 of the Lease Deed, and there being no alternative remedy, the petitioner has filed the present petition.

3. The present petition has been opposed by the respondent on the ground that the notice invoking arbitration and the present petition are premature, as the petitioner has not followed the procedure prescribed for appointment of an Arbitrator in consonance with Clause 15 of the Lease Deed, which requires the parties to attempt to first settle the disputes by way of negotiation and conciliation. Therefore, as per the respondent, the unilateral waiving of the dispute resolution mechanisms prior to arbitration is barred, as per the terms of the Lease Deed. The respondent has relied

upon the judgement dated 18th January, 2023, passed by this Court in ***ARB.P. 782/2022,*** titled as ***M/s Chabbras Associates Versus M/s HSCC India Limited & Anr.***, in support of their submissions.

4. Another objection raised by the respondent is that the agreement was not terminated in consonance with the terms of the Lease Deed, and there is no material breach of the agreement by the respondent which has been demonstrated by the petitioner. Further, as per the terms of the Lease Deed, the agreement has a lock-in period of 20 years, and only when a material breach is shown and a written notice or any communication through letter or mail is received from the petitioner, can the agreement be terminated, however, the said conditions are not satisfied.

5. As per the respondent, the present petition has been filed only as the respondent availed its statutory remedies under Section 9 of the Arbitration Act by filing a petition, i.e., *OMP (I)(COMM) 196/2025*, with respect to another project, i.e., *Omaxe, Hazratganj, Lucknow, 540-key Hotel Project*, wherein, the sister concern of the petitioner has committed material breaches.

6. The refund of Rs. 50,00,000/- paid to the petitioner by the respondent is portrayed in a false, misleading and *mala fide* manner by the petitioner. Further, as per the respondent, the present dispute is not arbitrable.

7. I have heard learned counsel for the parties and perused the record.

8. At the outset, this Court notes that the scope of Courts under Section 11(6) of the Arbitration Act has been well defined, and restricted to the purposes of reference of disputes to arbitration and an examination of the existence of an arbitration agreement. In this regard, the Supreme Court in

the case of ***Managing Director Bihar State Food and Civil Supply Corporation Ltd. and Another Versus Sanjay Kumar***, ***2025 SCC OnLine SC 1604***, held as follows:

> *"xxx xxx xxx*
>
> ***23.*** *Section 11 of the Act has perhaps been the only provision which would have been interpreted and re-interpreted by the Supreme Court for the longest time ever. After two decades of its interpretation commencing from 1996, Parliament intervened and supplied sub-section (6A) to Section 11 of the Act* ***as per which the consideration by a referral court shall be confine(d) to the examination of the existence of an arbitration agreement.***
>
> *xxx xxx xxx*
>
> ***27.*** *The curtains have fallen.* ***Courts exercising jurisdictions under Section 11(6) and Section 8 must follow the mandate of sub-section (6A), as interpreted and mandated by the decisions of this Court and their scrutiny must be "confine(d) to the examination of the existence of the arbitration agreement".***
>
> ***28.*** ***We have examined the matter in detail. There is an arbitration agreement. The matter must end here. While we agree with Mr. Ranjit Kumar submissions that his client has much to say, let all that be said before the arbitral tribunal. It is, as we have said elsewhere, just as necessary to follow a precedent as it is to make one.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

9. Further, it is settled law that the extent of inquiry under Section 11(6) of the Arbitration Act is limited, and the Courts cannot exceed its scope by undertaking a detailed examination of the factual matrix. Thus, the Supreme Court in the case of ***Goqii Technologies Private Limited Versus Sokrati Technologies Private Limited, (2025) 2 SCC 192***, held as follows:

> *"xxx xxx xxx*
>
> ***19.*** ***The scope of inquiry under Section 11 of the 1996 Act is limited to ascertaining the prima facie existence of an arbitration agreement. In the present case, the High Court exceeded this limited scope by undertaking a detailed examination of the factual matrix.***

> *The High Court erroneously proceeded to assess the auditor's report in detail and dismissed [Goqii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd., 2024 SCC OnLine Bom 3530] the arbitration application.* ***In our view, such an approach does not give effect to the legislative intent behind the 2015 Amendment to the 1996 Act which limited the judicial scrutiny at the stage of Section 11 solely to the prima facie determination of the existence of an arbitration agreement.***
>
> ***20.*** *As observed in Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1: 2024 SCC OnLine SC 1754: 2024 INSC 532],* ***frivolity in litigation too is an aspect which the referral court should not decide at the stage of Section 11 as the arbitrator is equally, if not more, competent to adjudicate the same.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

10. Thus, for the purposes of the present petition under Section 11(6) of the Arbitration Act, this Court is only required to form a *prima facie* view, as to existence of an arbitration clause/agreement between the parties. All disputes between the parties, including, any objections by the respondent, are to be adjudicated in the arbitral proceedings.

11. In the present case, the parties have entered into a Lease Deed dated 15th November, 2022, in which the parties sought to pursue the dispute resolution mechanism envisaged under Clause 15 of the said Lease Deed, which contains an Arbitration Clause, which is set out in the following manner:

> *"xxx xxx xxx*
>
> ***15. DISPUTE RESOLUTION***
>
> ***a. Amicable Resolution***
>
> ***Any and All disputes or differences arising out of or in connection with this Lease Deed or its performance, including its existence, validity, scope, meaning, construction, interpretation or application hereof, (a dispute) shall at the first instance, to the extent possible, be settled amicably by negotiation and discussion between the Parties, it being understood that the Parties may agree to appoint any representative(s) or Expert(s) they consider useful to settle the***

dispute.

b. Arbitration

i. ***Any dispute not amicably settled within thirty (30) days of the Dispute submitted by a party, or such a longer period as may be agreed by the Parties during the period of negotiation and conciliation, shall be referred to arbitration in accordance with the Arbitration and Conciliation Act, 1996 or any amendment or re-enactment thereof by either party***.

ii. *All proceedings of such arbitration shall be in the English language and the seat, place and venue of arbitration shall be New Delhi/Lucknow. The arbitration proceeding pursuant to this clause shall be strictly confidential.*

iii. *The arbitral panel shall consist of a sole arbitrator to be mutually appointed by the parties within 30 days from the date either party calling upon the other to appoint an arbitrator in terms of this agreement.*

iv. *In an event there is no concurrence, arbitrator to be appointed by the Competent Court. The Appointment of arbitrator and the arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 along with the Rules thereunder and any amendments thereto. The decision/award of the arbitrator shall be final/conclusive and binding on the parties.*

v. *The costs of the arbitration shall be borne by the Parties in such manner as the arbitrator shall direct in their arbitral award.*

vi. *When any dispute is under arbitration, except for the matters under dispute, the Parties shall continue to exercise their remaining respective rights and fulfil their remaining respective obligations under this Lease Deed.*

xxx xxx xxx"

(Emphasis Supplied)

12. Thus, the aforesaid clause envisages dispute resolution in the first instance through amicable settlement by way of negotiation and discussion between the parties. The Clause further envisages that in case the dispute is not amicably settled within 30 days, or such a longer period as may be agreed between the parties during the course of negotiation and conciliation, the same shall be referred to arbitration.

13. The respondent has raised an objection that the present petition is

premature, as the process of amicable resolution as per the terms of the Lease Deed has not been exhausted by the petitioner. However, the said contention is found to be totally untenable. It is to be noted that there were various correspondences between the parties over a period of time, from the date of the Lease Deed, wherein, the petitioner has flagged issues to the respondent with respect to the Project and its commencement thereof. Thus, it is apparent that the parties have attempted to resolve the issues in the present matter, and due to failure of the same, the Lease Deed has been terminated by way of the Notice dated 22nd August, 2025 sent by the petitioner to the respondent, wherein, the petitioner had listed all issues and correspondences between the parties.

14. Moreover, the parties admittedly have other pending disputes between them with regard to similar arrangement in another agreement between the respondent and sister concern of the petitioner for a project in Lucknow. *Vide* order dated 26th May, 2025 in *O.M.P.(I)(COMM.) 196/2025*, the respondent had categorically stated before the Court in the petition filed by the respondent itself, that they were ready and willing to have the disputes between the parties referred to arbitration. The said order recording the willingness of the respondent as petitioner in the said petition, for reference of similar disputes with sister concern of the petitioner herein to an Arbitrator, reads as under:

> *"1. Upon steps being taken by the Petitioner, issue notice to the Respondent through all modes. Reply be filed within two (2) weeks from receipt of notice.*
>
> *2.* ***Learned counsel for the Petitioner states that the Petitioner remains ready and willing to have the disputes referred to arbitration****.*
>
> *3. The Petitioner is directed to take instructions with respect to the*

appointment of the Arbitral Tribunal, before the next date of hearing.

4. List on 29.07.2025."

(Emphasis Supplied)

15. With regard to the aforesaid Lucknow Project with the sister concern of the petitioner, the sister concern of the petitioner had filed a petition for appointment of an Arbitrator, being *ARB.P.1340/2025*. The respondent herein, who was also a respondent in the said petition, indicated its no objection to appointment of an Arbitrator for adjudication of disputes between the parties. Accordingly, a Sole Arbitrator under Section 11(6) of the Arbitration Act was appointed by this Court *vide* order dated 03rd November, 2025 in *ARB.P.1340/2025*. Relevant portion of the said order recording the consent of the respondent herein for appointment of an Arbitrator with respect to disputes with the sister concern of the petitioner for a similar project, reads as under:

"xxx xxx xxx

7. ***Counsel appears on behalf of the respondent and submits that he has no objection if a Sole Arbitrator is appointed by this Court****.*

xxx xxx xxx"

(Emphasis Supplied)

16. Furthermore, this Court notes the submission made by learned counsel for the petitioner that if conciliation/settlement has to happen, it will have to be a comprehensive exercise, in relation to all the projects between the parties, including, the sister concern.

17. Therefore, in view of the facts and circumstances of the present case and the submissions made before this Court, and considering the fact that similar dispute with the sister concern of the petitioner is already pending adjudication before an Arbitrator, this Court finds no justification in

directing the parties to first undergo negotiation/conciliation proceedings, as the same would be a futile exercise.

18. In similar circumstances, considering the elaborate correspondence between the parties involved therein, the Supreme Court was of the view that any attempt to resolve the disputes at that stage between the parties by mutual discussions and Mediation would be an empty formality. Thus, overruling the objection with regard to appointment of an Arbitrator being premature, Supreme Court in the case of ***Demerara Distilleries Private Limited and Another Versus Demerara Distillers Limited, (2015) 13 SCC 610***, held as follows:

> *"xxx xxx xxx*
>
> ***5. Of the various contentions advanced by the respondent Company to resist the prayer for appointment of an arbitrator under Section 11(6) of the Act, the objections with regard the application being premature; the disputes not being arbitrable, and the proceedings pending before the Company Law Board, would not merit any serious consideration. The elaborate correspondence by and between the parties, as brought on record of the present proceeding, would indicate that any attempt, at this stage, to resolve the disputes by mutual discussions and mediation would be an empty formality****. The proceedings before the Company Law Board at the instance of the present respondent and the prayer of the petitioners therein for reference to arbitration cannot logically and reasonably be construed to be a bar to the entertainment of the present application. Admittedly, a dispute has occurred with regard to the commitments of the respondent Company as regards equity participation and dissemination of technology as visualised under the Agreement. It would, therefore, be difficult to hold that the same would not be arbitrable, if otherwise, the arbitration clause can be legitimately invoked. Therefore, it is the objection of the respondent Company that the present petition is not maintainable at the instance of the petitioners which alone would require an in-depth consideration.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

19. Likewise, in the case of ***Visa International Limited Versus Continental Resources (USA) Limited, (2009) 2 SCC 55***, Supreme Court

held as follows:

> *"xxx xxx xxx*
>
> ***Whether invocation of Article VI providing for arbitration is premature?***
>
> ***38. It was contended that the pre-condition for amicable settlement of the dispute between the parties has not been exhausted and therefore the application seeking appointment of arbitrator is premature. From the correspondence exchanged between the parties at pp. 54-77 of the paper book, it is clear that there was no scope for amicable settlement, for both the parties have taken rigid stand making allegations against each other. In this regard a reference may be made to the letter dated 15-9-2006 from the respondent herein in which it is inter alia stated "… since February 2005 after the execution of the agreements, various meetings/discussions have taken place between both the parties for furtherance of the objective and purpose with which the agreement and the MoU were signed between the parties. Several correspondences have been made by CRL to VISA to help and support its endeavour for achieving the goal for which the abovementioned agreements were executed". In the same letter it is alleged that in spite of repeated requests the petitioner has not provided any funding schedules for their portion of equity along with supporting documents to help in convincing OMC of financial capabilities of the parties and ultimately to obtain financial closure of the project. The exchange of letters between the parties undoubtedly discloses that attempts were made for an amicable settlement but without any result leaving no option but to invoke the arbitration clause.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

20. In this regard, reference is also made to the case of ***Jhajharia Nirman Ltd. Versus South Western Railways through Dy. Chief Engineer/IV Construction & Connected matter, 2024 SCC OnLine Del 7133***, wherein, it was held as follows:

> *"xxx xxx xxx*
>
> ***18. In numerous judicial precedents, this Court has taken the view that any pre-condition in an arbitration agreement obliging one of the contracting parties to either exhaust the pre-arbitral amicable resolution avenues or to take recourse to Conciliation are directory and not mandatory.***
>
> ***19.*** *In this regard, reference may be made to Oasis Projects*

Ltd. v. National Highway & Infrastructure Development Corporation Limited, (2023) 1 HCC (Del) 525, wherein the Court has observed as under:

> ***"12. <u>The primary issue to be decided in the present petition is, therefore, as to whether it was mandatory for the petitioner to resort to the conciliation process by the Committee before invoking arbitration. Though Article 26.2 clearly states that before resorting to arbitration, the parties agree to explore conciliation by the Committee, in my opinion, the same cannot be held to be mandatory in nature.</u>*** *It needs no emphasis that conciliation as a dispute resolution mechanism must be encouraged and should be one of the first endeavours of the parties when a dispute arises between them. However, having said that, conciliation expresses a broad notion of a voluntary process, controlled by the parties and conducted with the assistance of a neutral third person or persons. It can be terminated by the parties at any time as per their free will. Therefore, while interpreting Article 26.2, the basic concept of conciliation would have to be kept in mind."*
>
> *[Emphasis supplied]*

xxx xxx xxx

21. *This Court in Subhash Infraengineers (P) Ltd. v. NTPC Ltd., 2023 SCC OnLine Del 2177 has held as under:—*

> ***"21. <u>In this regard, it is relevant to note that in terms of Section 62(3) of the Act, it is open for a party to reject the invitation to conciliate. Further, in terms of Section 76 of the Act, the conciliation proceedings can be terminated by a written declaration of a party and there is no legal bar in this regard</u>****. In the present case, Clause 7.2.5 of the GCC expressly provides that "parties are free to terminate Conciliation proceedings at any stage as provided under the Arbitration and Conciliation Act, 1996."*
>
> ***
>
> ***28.*** *In the present case, the clause/pre arbitral mechanism contemplates mutual consultation followed by conciliation. As noticed in Abhi Engg. and Oasis Projects, conciliation is a voluntary process and once a party has opted out of conciliation, it cannot be said that the said party cannot take recourse to dispute resolution through arbitration."*

xxx xxx xxx"

(Emphasis Supplied)

21. Reference is also made to the case of ***Coach Com Through its Sole Proprietor Smt. Lalita Devi Sureka Versus DME, Northern Railway, 2025 SCC OnLine Del 8055***, wherein, the Court has held that exhaustion of pre-arbitral mechanisms, and its recourse is only directory and not mandatory in nature. Thus, it was held as follows:

> *"xxx xxx xxx*
>
> ***9.*** *In Jhajharia Nirman v. South Western Railways, 2024 SCC OnLine Del 7133, a Coordinate Bench of this Court, dealing with a similar arbitration clause in a Railway Contract,* ***has observed that any pre-condition in an arbitration agreement binding one of the contracting parties to either exhaust the pre-arbitral amicable resolution procedures or to take recourse to conciliation are directory, and not mandatory in nature.***
>
> ***10. In view of the facts noted above, in my view, the reference of the dispute between the parties to the conciliation and thereafter DAB would be an exercise of futility.***
>
> ***11. In the aforesaid facts and circumstances, this Court is of the view that the present petition is not premature and a Sole Arbitrator is required to be appointed to adjudicate the disputes between the parties.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

22. The judgment in the case of ***M/s Chabbras Associates Versus M/s HSCC India Limited (Supra),*** as relied upon by the respondent, is clearly distinguishable and not applicable to the facts and circumstances of the present case. The said case dealt with a specific procedure for reference of the disputes to specified authorities as per the contract in the said case. However, in the present case, the Clause pertaining to dispute resolution does not specify reference of disputes to any specified authorities, and only makes reference to amicable settlement by negotiation and discussion

between the parties, which aspect has already been dealt by this Court in the preceding paragraphs.

23. Significantly, the same Bench in a subsequent case titled as ***Oasis Projects Limited Versus Managing Director, National Highway and Infrastructure Development Corporation Limited, 2023 SCC OnLine Del 645***, has taken the view that conciliation proceedings are a voluntary process which are not mandatory in nature. Thus, it was held as follows:

> *"xxx xxx xxx*
>
> *12.* ***The primary issue to be decided in the present petition is, therefore, as to whether it was mandatory for the petitioner to resort to the conciliation process by the Committee before invoking arbitration. Though Article 26.2 clearly states that before resorting to arbitration, the parties agree to explore conciliation by the Committee, in my opinion, the same cannot be held to be mandatory in nature. It needs no emphasis that conciliation as a dispute resolution mechanism must be encouraged and should be one of the first endeavours of the parties when a dispute arises between them. However, having said that, conciliation expresses a broad notion of a voluntary process, controlled by the parties and conducted with the assistance of a neutral third person or persons. It can be terminated by the parties at any time as per their free will. Therefore, while interpreting Article 26.2, the basic concept of conciliation would have to be kept in mind.***
>
> *xxx xxx xxx*
>
> *15. In Ravindra Kumar Verma case [Ravindra Kumar Verma v. BPTP Ltd., 2014 SCC OnLine Del 6602],* ***this Court had stated that any doubt on the aspect of whether conciliation proceedings, as required by the arbitration clause, is directory or mandatory in nature, is removed when reference is placed on Section 77 of the Act****, which reads as under:*
>
> > *"77. Resort to arbitral or judicial proceedings*
> >
> > ***The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights****."*

(emphasis supplied)

> *16.* ***Section 77 of the Act as also Clause 16 of the OM state that where, in the opinion of a party, immediate initiation of the arbitral proceedings is necessary to preserve the rights of the said party, the said party may initiate arbitral or judicial proceedings even during the conciliation proceedings. Therefore, in case of urgency, arbitral proceedings can be initiated even when conciliation proceedings are pending. To determine whether there is such an urgency or it is necessary to immediately invoke arbitration, it is the opinion of the party concerned which is the relevant and the governing factor. This is so because conciliation, as noted hereinabove, is a voluntary process and by its very nature directory. It can be terminated at any point of time by any party.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

24. Reference in this regard is also made to the case of ***Hindustan Unilever Limited Versus Jagdish Kumar Sole Proprietor of Hari Ram Dharam Pal, 2024 SCC OnLine Del 7522***, wherein, the Court has reiterated that resolution of disputes through mediation, conciliation or similar mechanisms, is directory and not mandatory. Thus, it was held as follows:

> *"xxx xxx xxx*
>
> *7.* ***This Court in its catena of judgments has taken a view that any pre-arbitral mechanism making it obligatory to seek resolution of disputes through mediation or conciliation or the like, is directory and not mandatory.***
>
> *8. In the case of Oasis Projects Ltd. v. National Highway & Infrastructure Development Corporation Limited, (2023) 1 HCC (Del) 525, it was held as under:—*
>
> > *"12. The primary issue to be decided in the present petition is, therefore, as to whether it was mandatory for the petitioner to resort to the Conciliation process by the Committee before invoking arbitration.* ***Though Article 26.2 clearly states that before resorting to arbitration, the parties agree to explore Conciliation by the Committee, in my opinion, the same cannot be held to be mandatory in nature. It needs no emphasis that Conciliation as a Dispute Resolution Mechanism must be encouraged and should be***

one of the first endeavours of the parties when a dispute arises between them. However, having said that, Conciliation expresses a broad notion of a voluntary process, controlled by the parties and conducted with the assistance of a neutral third person or persons. It can be terminated by the parties at any time as per their free will. *Therefore, while interpreting Article 26.2, the basic concept of Conciliation would have to be kept in mind."*

(emphasis supplied)

9. In Kunwar Narayan v. Ozone Overseas Pvt. Ltd. 2021 : DHC : 496, it was held as under:—

"5. Ms. Pahwa, learned Counsel for the respondents submitted that her only objection, to the petition, was that the petitioner has not exhausted the avenue of amicable resolution, contemplated by Clause 12 of the Share Buyback Agreement. I am not inclined to agree with this submission. The recital of facts, as set out in the petition, indicate that efforts at trying to resolve the disputes, amicably were made, but did not succeed. ***Even otherwise, the Supreme Court in Demarara Distilleries Pvt. Ltd. v. Demerara Distilleries Ltd. and this Court, in its judgment in Ravindra Kumar Verma v. BPTP Ltd., opined that relegation of the parties to the avenue of amicable resolution, when the Court is moved under Section 11(6) of the 1996 Act, would be unjustified, where such relegation would merely be in the nature of an empty formality. The arbitration clause in the present case does not envisage any formal regimen or protocol for amicable resolution, such as issuance of a notice in that regard and completion of any stipulated time period thereafter, before which arbitral proceedings could be invoked. In the absence of any such stipulation, I am of the opinion, following the law laid down in Demarara Distilleries Pvt. Ltd. and Ravindra Kumar Verma v. BPTP Ltd. nothing worthwhile would be achieved, by relegating the parties to explore any avenue of amicable resolution. Besides, the appointment of an arbitrator by this Court would not act as an impediment in the parties resolving their disputes amicably, should it be possible at any point of time."***

xxx xxx xxx"

(Emphasis Supplied)

25. At this stage, it is noted that the petitioner has invoked the arbitration

clause, i.e., Clause 15 (b) of the Lease Deed by way of notice dated 22nd August, 2025 under Section 21 of the Arbitration Act, to which there has been no reply by the respondent.

26. In view of the above, this Court is satisfied that there exists a valid arbitration clause and there are disputes between the parties, which need to be adjudicated through arbitral mechanism.

27. It is to be noted that during the course of hearing, the respondent expressed that disputes in the present case be referred to another Arbitrator, other than the one already appointed in dispute related with the sister concern of the petitioner. Further, this Court notes that the arbitration proceedings between the respondent herein and the sister concern of the petitioner in a similar agreement, are being held under the aegis of the Delhi International Arbitration Centre ("**DIAC**").

28. Accordingly, the dispute between the parties arising out of the Lease Deed is referred to the Arbitral Tribunal, comprising of a Sole Arbitrator. The following directions are issued in this regard:

i. Justice (Retd.) Shalinder Kaur, former Judge, Delhi High Court, (Mobile No.: 9910384702) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii. The arbitration proceedings shall be held under the aegis and Rules of DIAC, Delhi High Court, Sher Shah Road, New Delhi.

iii. The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

iv. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Arbitration Act prior to entering into the reference.

In the event of any impediment to the Arbitrator's appointment on that Count, the parties are given liberty to file an appropriate application before this Court.

v. It shall be open to the respondent to raise counter-claims, if any, in arbitration proceedings.

vi. It is made clear that all the rights and contentions of the parties, including, as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned Arbitrator.

vii. The parties shall approach the learned Arbitrator within two (02) weeks from the date of appointment of the Arbitrator.

29. It is made clear that this Court has not expressed any opinion on the merits of the case.

30. Accordingly, the present petition is disposed of in the aforesaid terms.

31. The Registry is directed to send a copy of this order to the Secretary, DIAC for information and compliance.

MINI PUSHKARNA
(JUDGE)

JANUARY 29, 2026/KR