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

Judgment reserved on: 28.07.2025
Judgment delivered on: 20.08.2025

\+ FAO (COMM) 175/2024, CM APPL. 52685/2024 (Stay) & CM APPL. 44943/2025 (Delay of 113 days in filing the reply to appeal)

JITENDER PAL SINGH HUF .....Appellant

Through: Mr. Pawanjit Singh Bindra, Senior Advocate with Mr. Udit Gupta and Mr. T.S. Sawhney, Advocates.

versus

M/S OYO APARTMENTS INVESTMENTS (LLP) .....Respondent

Through: Mr. Ashish Mohan, Sr. Adv. along with Mr. Diptiman Acharya & Mr.Sagar Pradhan, Advs.

\+ FAO (COMM) 193/2024, CM APPL. 56310/2024 (Stay) & CM APPL. 44180/2025 (Delay of 113 days in filing the reply to the appeal)

JUVELLO HOMES PVT. LTD. .....Appellant

Through: Mr. Pawanjit Singh Bindra, Senior Advocate with Mr. Udit Gupta and Mr. T.S. Sawhney, Advocates.

versus

M/S OYO APARTMENTS INVESTMENT (LLP) ...Respondent

Through: Mr. Ashish Mohan, Sr. Adv. along with Mr. Diptiman Acharya & Mr.Sagar Pradhan, Advs.

\+ FAO (COMM) 194/2024, CM APPL. 56909/2024 (Stay) & CM APPL. 44940/2025 (Delay of 113 days in filing the reply to the appeal)

VIBRUS HOMES PVT. LTD. .....Appellant

Through: Mr. Pawanjit Singh Bindra, Senior Advocate with Mr. Udit Gupta and Mr. T.S. Sawhney, Advocates.

versus

M/S OYO APARTMENTS INVESTMENTS (LLP) ...Respondent

Through: Mr. Ashish Mohan, Sr. Adv. along with Mr. Diptiman Acharya & Mr.Sagar Pradhan, Advs.

\+ FAO (COMM) 199/2024, CM APPL. 57915/2024 (Stay) & CM APPL. 44945/2025 (Delay of 113 days in filing the reply to appeal)

RAUNAK INTERNATIONAL .....Appellant

Through: Mr. Pawanjit Singh Bindra, Senior Advocate with Mr. Udit Gupta and Mr. T.S. Sawhney, Advocates.

versus

M/S OYO APARTMENTS INVESTMENTS (LLP) .....Respondent

Through: Mr. Ashish Mohan, Sr Adv along with Mr. Diptiman Acharya & Mr.Sagar Pradhan, Advs.

\+ FAO (COMM) 203/2024, CM APPL. 59614/2024 (Stay) & CM APPL. 44944/2025 (Delay of 113 days in filing the reply to appeal)

CONVEST BUILDCON PVT. LTD .....Appellant

Through: Mr. Pawanjit Singh Bindra, Senior Advocate with Mr. Udit Gupta and Mr. T.S. Sawhney, Advocates.

versus

M/S OYO APARTMENTS INVESTMENTS(LLP) ...Respondent

Through: Mr. Ashish Mohan, Sr. Adv. along with Mr. Diptiman Acharya & Mr.Sagar Pradhan, Advs.

\+ FAO (COMM) 252/2024 & CM APPL. 8440/2025 (restoration of main case)

CONVEST OVERSEAS PVT. LTD. .....Appellant

Through: Mr. Pawanjit Singh Bindra, Senior Advocate with Mr. Udit Gupta and Mr. T.S. Sawhney, Advocates.

versus

M/S OYO APARTMENTS INVESTMENT (LLP) ....Respondent

Through: Mr. Ashish Mohan, Sr. Adv. along with Mr. Diptiman Acharya & Mr.Sagar Pradhan, Advs.

\+ FAO (COMM) 67/2025 & CM APPL. 13370/2025 (Interim relief)

JEET CORPORATION AND ANOTHER .....Appellants

Through: Mr. Pawanjit Singh Bindra, Senior Advocate with Mr. Udit Gupta and Mr. T.S. Sawhney, Advocates.

versus

M/S OYO APARTMENTS INVESTMENT (LLP) ...Respondent

Through: Mr. Ashish Mohan, Sr Adv along with Mr. Diptiman Acharya & Mr.Sagar Pradhan, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% JUDGEMENT

HARISH VAIDYANATHAN SHANKAR J.

1. These appeals under Section 37 of the **Arbitration and Conciliation Act, 1996**[1], have been filed against separate orders, all dated 07.06.2024, passed by the learned **District Judge (Commercial Court-10), Central, Tis Hazari Courts, Delhi**[2], in petitions filed by the appellants under Section 34 of the A&C Act, whereby the learned Judge dismissed the said petitions and consequently upheld the separate arbitral awards, all dated 25.01.2023, passed by the learned Arbitrator.

2. Before delving into the legal submissions, it is important to note certain excerpts from the Arbitral Award dated 25.01.2023, which set out the relevant and analogous background to the present appeals. The following paragraphs from the Arbitral Award, rendered in one of the connected matters [*FAO (COMM) 175/2024*], are particularly illustrative:-

> "**2.** The Claimant entered into a Management Services Agreement dated 22.7.2019 with the Respondent, in respect of a property owned by the Respondent in Malka Ganj, Delhi, whereunder the Claimant was to pay 70% of the revenue share to the Respondent for the first three months, followed by the same share of the revenue, with a minimum guarantee stipulated in the Agreement, in the remaining term of the Agreement. The net revenue was to be derived by excluding, from the payments collected from the occupants, the sale proceeds of the food and beverages sold at the property. The term of the Agreement was agreed at two years with a Lock-in-Period of 11 months. Some payments in terms of the said Agreement were made by the Claimant to the Respondent. The claimant made an Interest Free Refundable Security Deposit of Rs. 6,20,000/ (Six Lacs Twenty Thousand Only) with the respondent.

[1]A&C Act
[2]District Court

3. As many as seven identical Agreements were executed by the Claimant, with seven different entities. All the seven entities were represented by the same person as their Authorised Representative and by the same counsel. The properties subject matter of these seven Agreements were being managed by a common person, who appeared in the witness box as their Authorised Representative.

4. On 1.9.2022, it was agreed that for the purpose of recording the cross-examination of the witnesses, all the seven matters may be consolidated so that the cross-examination pertaining to all the seven cases was recorded in one case and read and considered for the purpose of all the seven cases. One witness namely Ms. Ankita Munjal was examined by the Claimant. A common Authorised Representative was examined on behalf of all the seven Respondents.

5. The Agreement between the parties is titled as "Management Services Agreement". The Claimant is described as the Service Provider / Party of the First Party, whereas the Respondent is described as the Owner/Party of the Second Part, in the Agreement. It is recorded in the preamble that "The Owner is desirous of engaging a Service Provider for providing the services in the premises on an exclusive basis and on the terms and conditions as more specifically agreed hereunder."

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7. Vide an email dated 28.11.2019, the Claimant asked the Respondent to provide the documents specified therein and informed that the said documents are mandatorily required to run its operations. It was also stated in the email that further payment to the Respondent would be put on hold till the said documents were provided. The documents so sought by the Claimant were not provided to it.

8. On 11 March, 2020, an advisory on Social Distancing Measures was issued by Government of India, Ministry of Health and Family Welfare, in the wake of breakout of the pandemic COVID-19. The case of the Claimant is that to address the situation created by the pandemic throughout countries, lockdowns were imposed and non-essential travel was curbed. As a result, bookings in the Hotels were cancelled and travel plans were shelved. The Claimant, vide its email dated March 30, 2020, referring to the situation created by the spread of COVID-19, sought to re-visit the Agreement it had executed with the Respondent and as an interim measure, proposed a revised revenue sharing model with effect from 12.3.2020. It was also stated in the said email that because of the situation created by the pandemic COVID-19, the Claimant was left with no option but to invoke Force Majeure and suspend payment of the monthly rent and/or any other amount payable to the Respondent under the Agreement. It was further stated that though the Claimant was well within its right to terminate the

Agreement, it was refraining from taking such a drastic step while reserving its right to do so should the circumstances continue to deteriorate. However, the Respondent did not respond to the proposed revenue sharing model.

9. Vide its notice dated 2.5.2020, purporting to be sent under Clause 10.3(a) of the Agreement, the Claimant, referring to its email dated 28.11.2019 requested the Respondent to provide all the necessary documents within 30 days of the notice and informed that not providing the said documents would vitiate the Agreement which shall stand terminated forthwith, if the documents were not provided within 30 days. It was also stated in the said notice that the Claimant had received complaints from the occupants informing that the Respondent was collecting the room tariff directly from them. The Respondent was called upon to render accounts of all such collections with effect from December, 2019. The Arbitration Clause contained in the Agreement was also invoked and an Arbitrator named in the Notice was proposed with a request to the Respondent to confirm his appointment as a Sole Arbitrator.

10. The Respondent sent a Reply through its Advocate on 27.2.2021 stating therein that all the necessary documents had already been provided to the Claimant, the subject premises was already in its possession and the business was going on smoothly. It was stated in para 6 of the Reply that "due to non-availability of inhouse stay supervisor from your Client's side, residents deposited fee to my Client's Warden whose salary was agreed to be borne by your Client." The Respondent suggested another Arbitrator to adjudicate the disputes between the parties.

11. Disputes having arisen between the Claimant and all those seven entities, the Hon'ble High Court of Delhi was pleased to appoint me as the Arbitrator to adjudicate all those disputes. The nature of the disputes between the parties is identical though the reliefs claimed by the parties are not common.

(***Emphasis supplied***)

3. In the present appeals, the Appellants have raised a limited and common issue, and with the consent of both parties, all appeals were heard together. For consistency and clarity, arguments and references during the hearing were made from the record of *FAO (COMM) 175/2024* only. Accordingly, this judgment shall also refer to the contents of *FAO (COMM) 175/2024*, and for ease of reference, the Appellants will

hereinafter collectively be referred to as "**Appellant(s)**" and the Respondent as "**OYO**".

4. The core submission advanced by the learned Senior Counsel for the Appellant, which was even duly recorded by this Court at the stage of issuing notice, is that the arbitral award dated 25.01.2023 suffers from patent perversity, as the learned Arbitrator failed to duly consider a critical aspect of the case. It is contended that the alleged breach attributed to the Appellant, *namely*, the failure to furnish ownership documents, stood impliedly waived or condoned on 30.03.2020, when OYO itself issued a communication inviting the Appellant to re-negotiate the financial terms under the **Management Services Agreement dated 20.08.2019**[3].

5. At this stage, it is apposite to set out the relevant background facts that form the basis of the present controversy, which are:

(a) On 20.08.2019, the Appellant and OYO entered into a Management Services Agreementfor the operation and management of a property located at various locations in Delhi, which were primarily intended to serve as accommodation facilities. Prior to this, a draft version of the agreement was exchanged between the parties on 22.07.2019. The arrangement under the said Agreement was structured on a revenue-sharing model, wherein OYO, acting as the service provider, was entitled to receive a Management Fee based on the net revenue generated from the said properties.

[3] Agreement

(b) On 28.11.2019, OYO, by way of a formal email, raised a specific request calling upon the Appellant to provide essential regulatory and legal documents. These included, *inter alia*, a No-Objection Certificate from the local Society or Resident Welfare Association as well as clearances from the local Police authorities. OYO explicitly stated in the said communication that the absence of these documents would amount to a material compliance lapse and further made it clear that all future payments would be put on hold until such documents were submitted by the Appellant.

(c) However, notwithstanding the aforesaid request, the Appellant did not provide the relevant documents, and by December 2019, the Appellant allegedly began collecting room charges directly from the residents of the subject premises, which constituted a clear violation of the terms of the said Agreement. This act of direct collection of revenue significantly undermined OYO's operational and financial visibility with respect to the said property. Consequently, OYO was unable to accurately monitor or track the revenue generated from the premises from that point onward.

(d) On 11.03.2020, the World Health Organization officially declared COVID-19 as a global pandemic. In response, the Government of India invoked the provisions of the Epidemic Diseases Act, 1897, on 12.03.2020 and implemented a series of nationwide lockdown measures, including severe restrictions on movement and

business operations. Domestic air travel was suspended starting from 25.03.2020. These unprecedented restrictions gravely impacted the hospitality and accommodation sectors across the country, including OYO's operations under the said Agreement.

(e) In light of the extraordinary and unforeseen circumstances arising from the COVID-19 pandemic, OYO, vide communication dated 30.03.2020, issued a *Force Majeure* Notice to the Appellant. In this notice, OYO stated that due to the closure of educational institutions and the mass departure of students, occupancy levels at the subject premises had drastically declined. Consequently, OYO proposed a revised revenue-sharing arrangement, reducing its share to 30% of the net revenue.

(f) Thereafter, on 02.05.2020, OYO issued a formal Notice to the Appellant under Clauses 10.3(a) and 11.2 of the Agreement. In this Notice, OYO referred to its earlier email dated 28.11.2019 and once again requested the Appellant to furnish all the required documents within a period of 30 days. It was categorically stated that failure to provide the said documents within the stipulated period would result in automatic termination of the Agreement. OYO also alleged that it had received several complaints from occupants stating that the Appellant had been collecting room tariffs directly from them. Accordingly, the Appellant was called upon to disclose and render accounts of all such collections made from the residents with effect from December 2019 onwards. In the same notice, for the purpose of resolving the issues regarding

the collection of rents, OYO also invoked the arbitration clause stipulated in the Agreement and proposed the name of an Arbitrator to be appointed as the Sole Arbitrator, seeking consent from the Appellant for the same.

(g) Despite the lapse of the stipulated time period, the Appellant took no steps to comply with the said notice.

(h) It is pertinent to note that even after termination, the Appellant remained silent for nearly nine months and responded only on 27.02.2021 through a Reply issued by its legal counsel. In this Reply, the Appellant contended that all necessary documents had already been provided to OYO, that the subject premises continued to remain in its possession, and that the business was running smoothly. In paragraph 6 of the said Reply, the Appellant also stated that due to the non-availability of an in-house stay supervisor from OYO's side, the residents were constrained to deposit the rent with the Appellant's warden, whose salary was, as per the agreement, to be borne by OYO. Thus, the Appellant admitted that the collections were indeed being made directly, to the Appellant, from the residents.

(i) Subsequently, upon an application made by OYO, this Court appointed an Arbitrator to adjudicate the disputes arising out of the Agreement.

(j) In the arbitration proceedings, OYO filed its Statement of Claim setting out its allegations and claims against the Appellant. In response, the Appellant filed its Statement of Defence.

Thereafter, OYO filed a Rejoinder. The Appellant also filed a Counter-Claim before the learned Arbitrator, seeking certain reliefs against OYO in addition to its defence.

(k) After considering the pleadings, evidence, and submissions made by both sides, the learned Arbitrator passed an Arbitral Award dated 25.01.2023. In the said Award, the learned Arbitrator dismissed the counter-claims raised by the Appellant and partially allowed certain claims made by OYO.

(l) Aggrieved by the said Arbitral Award dated 25.01.2023, the Appellant filed a Petition under Section 34 of the A&C Act before the learned District Judge.

(m) After due consideration of the pleadings, material on record and contentions of the parties, the learned District Judge, *vide* impugned Order dated 07.06.2024, dismissed the said Petition filed by the Appellant, thereby affirming the Arbitral Award. On the same line, in other cases also, the learned District Judge dismissed the Petitions.

(n) It is against these dismissals that the present set of appeals has been preferred by the Appellant(s) under Section 37 of the A&C Act.

ANALYSIS:

6. This Court has heard both parties at length and has undertaken a detailed consideration of the pleadings, Impugned Orders and Arbitral Awards.

7. At the outset, it is necessary to reiterate that this Court is fully conscious of the limited scope of appellate jurisdiction under Section 37 of the A&C Act. Judicial interference with arbitral awards is strictly circumscribed and may only be exercised on well-settled and narrow grounds. As observed by the Hon'ble Supreme Court in ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***[4], appellate courts must remain cautious not to sit as appellate forums over the reasoning or conclusions of the Arbitrator unless a finding is so perverse or unreasonable as to shock judicial conscience. The relevant paragraphs of the ***Punjab State Civil Supplies Corpn. Ltd****(supra)* that summarizes the laware as follows:

> "**11.** Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.
> **12.** It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.
> **13.** In paragraph 11 of *Bharat Coking Coal Ltd. v. L.K. Ahuja*, it has been observed as under:
>
> > "11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an

[4]2024 SCC OnLine SC 2632

> arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."

14. It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.

15. In *Dyna Technology Private Limited v. Crompton Greaves Limited*, the court observed as under:

> "24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.
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> 25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

16. It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.

17. In paragraph 14 of *MMTC Limited v. Vedanta Limited*, it has been held as under:

> "14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

18. Recently a three-Judge Bench in *Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking* referring to *MMTC Limited* (supra) held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the courts should not interfere with the arbitral award lightly in a casual and a cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle the courts to reverse the findings of the arbitral tribunal.

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CONCLUSION:

20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the

> appellate court.
> **21.** It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement."
>
> ***(emphasis supplied)***

8. The principal argument of the Appellant is that the Arbitral Award and Impugned Order are perverse, as the learned Arbitrator as well as the learned District Judge failed to appreciate that the alleged breach by the Appellant in not furnishing documents stood condoned by OYO*vide* its communication dated 30.03.2020.

9. This contention, however, fails at the very outset. It was never part ofthe Appellant's reply dated 27.02.2021 to OYO's legal notice dated 02.05.2020, nor was it raised before the learned Arbitrator, either in the Statement of Defence or in the Counter-Claim.

10. The argument that the communication dated 30.03.2020 amounted to condonation of any prior breach was made for the first time before the learned District Judge during proceedings under Section 34, and that too only in the course of oral arguments. Such a belated plea appears to be nothing more than an afterthought or improvisation by the arguing counsel. Up to that point, the Appellant's consistent stand had been either that no such documents were required under the Agreement or that all necessary documents had already been furnished during the course of the execution of the Agreement.

11. A perusal of the record reveals that the Appellant's submissions, before the learned Arbitrator, were entirely silent on any claim that OYO

had expressly or impliedly waived its earlier demand dated 28.11.2019 for documents. The relevant paragraphs pertaining to the contentions raised by the Appellant in its Statement of Defence would demonstrate the same and are as follows:

> "**18.** Para no. 18 of the Statement of Claim is categorically denied. It is submitted that the notice dated 30.03.2020 was premature as the clause 10.4 of the Agreement clearly states that "*if the premises are rendered unfit….., for a period exciding 3 months then this unfit Agreement may be terminated*……". It is pertinent to mention that the lockdown declared by the Central Government was w.e.f. 25th March, 2020 to 31st May, 2020 and thereafter the State Government continued the lockdown till June, 2020. After the said period the various lockdowns were lifted and things became normal. Therefore, it cannot be ascertained that the subject property was lying vacant. The notice dated 30.03.2020 seems to be vague and based presumption and assumptions. The remaining contents of the answering paragraph are matter of record.
>
> ****
>
> **27.** That para no.27 of the Statement of Claim is wrong and denied. As per clause 10.4 of the Management Services Agreement, if the premises rendered unfit, in whole or part or use and occupation or the access thereof is hindered by any event such as tempest, flood, earthquake or any irresistible force or act of God not occasioned by negligence on the part of the service provider or his servant and agents, for a period exceeding 3 months, then in such event, the service provider may terminate this agreement by giving to the owner a written notice of One month, whereas the claimant served the notice on 30.03.2020 and didn't adhered to the terms of agreement. It is pertinent to mention here that without waiting for period for 3 months, the claimant sent the notice within 7 days of imposing day of lockdown announced by central government."

12. The same omission is evident even in the Appellant's Counter-Claim filed before the learned Arbitrator, where the narrative remained consistent with the initial pleadings and did not introduce any assertion that the communication dated 30.03.2020 altered or affected OYO's prior position regarding the requirements of the documents.

13. The learned Arbitrator framed specific issues for determination and, after conducting a reasoned and detailed analysis, rendered findings on each; among the principal issues examined were whether the Appellant's failure to provide the statutory and regulatory documents requested by OYO in its email dated 28.11.2019 constituted a material breach, and whether the Appellant's act of directly collecting rent from the residents violated the terms of the Agreement. Both of which were answered against the Appellant and in favour of OYO.

14. While delivering the Arbitral Award, the learned Arbitrator concluded that the Appellant had violated Clauses 6.1(h), 6.2(b), and 6.2(j) of the Agreement, holding that the breaches were not confined to the failure to furnish documents but also extended to the unauthorized collection of rent, which significantly impaired OYO's contractual and operational entitlements, thereby justifying the termination of the Agreement under Clause 10.3. The relevant portion of the Arbitral Award is produced hereinbelow:

> "**ISSUES/POINTS NO. 1 & 2**
>
> **18.** The Claimant had two main grievances against the Respondent, the first grievance being that the Respondent, despite receiving the email dated 28.11.2019 from the Claimant, did not provide the documents specified therein, the second grievance being that the Respondent had collected room tariff directly from the residents, though it had no authority to collect the said tariff and such an act on the part of the Respondent amounted to a material breach of the terms of the Agreement. Clause 6.2 (b) mandated the Respondent to ensure availability and validity of the documents such as Sale Deed, Power of Attorney, electricity and water bills. The documents required by the Claimant, vide its email dated 28.11.2019 inter alja included the registered title deed in favour of the Owner, registered and irrevocable Power of Attorney for entering into Lease Deed on behalf of the Owner, if any and latest electricity bill and water bill in the name of the Owner. Other documents included the completion certificate,

occupancy certificate and police NOC for renting the premises to the Claimant for co-living purposes. The case of the Respondent is that the Claimant having made its due diligence before executing Agreement with the Respondent, and having satisfied itself in all respects, it was not entitled to seek the documents specified in the said email dated 28.11.2019. In view of the specific obligation agreed by the Respondent in Clause 6.2 (b) of the Agreement, it would be difficult to say that it was not contractually bound to provide the copy of the Sale Deed of the subject Property, the electricity and water bills and the Power of Attorney / authorization for executing the Agreement with the Claimant. Clause 6.2(b) does not contain an exhaustive list of the documents required to be kept available and valid by the respondent. The use of the word 'such as' in the said Clause indicates that there could be other documents related to the property which would be necessary for the purpose of permitting the Claimant to rent the property for co-living purposes. The occupancy certificate would be one such document since a building cannot be legally occupied without issuance of an occupancy certificate by the concerned Local Authority. It has come in para 4 of the legal notice dated 2 May, 2020 sent by the Claimant to the Respondent that the aforesaid documents were demanded by the Auditors of the Claimant during internal audit and known provisioning of the said documents amounted to material breach of the terms of the Agreement.Despite receiving the legal notice, the Respondent did not provide the documents demanded vide email dated 28.11.2019. It was also stated in the legal notice dated 2 May, 2020 that the Claimant as a policy did not provide services in the premises which do not fulfill the legal compliance and necessary requirements under the applicable laws. Vide para 7 of the legal notice, the Respondent was informed that in case the said documents were not provided within 30 days from the date of the notice, the Agreement shall stand terminated. Clause 10.3 of the Agreement entitled the Claimant to terminate the Agreement at any time including within the Lock-in-Period, in case there was a material breach of the said Agreement by the Respondent.

19. As regards the second grievance of the Claimant, though the submission of the Respondent during the course of argument was that no rent was collected by it from the occupants during the currency of the Agreement, the said submission is contrary to the pleadings and documents of the Respondent.

Para 6 of the legal notice dated 2.5.2020 reads as under:

> *"Our Clients have received complaints from the residents who are staying at the subject premises (residents) that you are collecting the room tariff directly from the residents. It is pertinent to mention that you have no authority to collect*

room tariff from the residents directly and such an act amounts to material breach of the terms of the Agreement. You are therefore also being called upon to render accounts of all the collections done directly by you from December, 2019 till date...."

Para 6 of the Reply sent by the Respondent through counsel on 27.2.2021 reads as under:

"... Due to non-availability of in-house stay Supervisor from your client's side, residents deposited fee to my clients warden whose salary was agreed to be borne by your client."

It would thus be seen that the collection of rent by the Respondent from the residents / occupants of the subject Property through the Supervisor appointed by it was admitted in the Reply sent to the legal notice of the Claimant. This was not the plea taken in the Reply that the Respondent was entitled to collect the room rent directly from the residents/occupants or that the said room rent was collected by the Respondent with the consent of the Claimant. This is also not the case of the respondent that though some rent was collected by it, the amount so collected was paid to the claimant.

20. In para 21 of the Statement of Claim, the Claimant has inter alia stated that *"The act of the Respondent in collecting the tariff/ charges/fee / rent directly from residents, which apart from being in direct breach of the Agreement had also compounded the viability of the arrangement."*

In para 21 of the Statement of Defence, the Respondent has inter alia stated that *"It is submitted that no official of the Claimant was present at the subject Property and, therefore, the residents paid the due amount to the employee/caretaker of the Respondent."*

In para 15 of the Statement of Defence, it is stated that *"Without any rhyme and reason, the Claimant had abandoned the premises and the Respondent was forced to look after/manage the day to day business."*

21. It is thus evident that collection of rent/tariff from the occupants residents of the subject Property has been admitted not only in reply to the legal notice but also in the Statement of Defence filed by the Respondent.

22. In its email dated 28.1.2020 sent to the Claimant, the Respondent inter alia stated that "*According to.. rent collected by the Owner is Rs. 2,92,809/-whereas actual amount collected by me is only Rs. 1,57,097*."

It was submitted by the learned counsel for the Respondent that the above referred extract of the email pertained to the amount which the Claimant had taken from the occupants as security deposit and which

the Respondent was compelled to adjust at the time the occupants left the accommodation. However, the said submission is contrary to the stand taken in the reply to the legal notice and the Statement of Defence filed by the Respondent. Therefore, the submission made by the learned counsel for the Respondent is nothing but an afterthought.

23. The case of the Claimant is that the Respondent had circulated a pamphlet amongst the occupants/residents of seven properties including the subject Property, asking them to deposit the rent directly in its bank account. The said pamphlet purports to request the residents to make rent payment only to the Owner and his Authorised Representatives whose names and mobile numbers were given in the pamphlet. The Bank name, IFS Code and beneficiary name as well as the account number were also given in the pamphlet, in case payment was sought to be made through bank transfer. It was suggested to CW-1, in her cross-examination, that the pamphlet had been issued only to the occupants of the property subject matter of the Agreement with JHPL. It would be pertinent to note here that the property subject matter of this Agreement was being managed by the same person who was managing the property subject matter of the Agreement with JHPL. This very person has appeared as a common witness in all the seven matters.

24. In the matter of JHPL, the Respondent in that matter has placed on record a bank statement issued by HDFC Bank in respect of the account maintained by it with the said Bank. The statement of account pertains to the period from 1.8.2019 to 31.7.2020. There are several credit entries in the said statement which show transfer of rent/tariff directly to the Account Holder. On 7.9.2019, there is a transfer of Rs. 16,000/- by one Rattan Kumar described as "Bipasha PG Fees". There is a credit entry on 6.9.2019 describing the transfer of Rs. 2,000/- as 'September rent'. There is a credit of Rs. 13,000/- on 29.8.2019 described as 'rent'. There is a credit entry of Rs. 9,000/- on 14.12.2019 described as 'Charu Mittal rent'. On 10.12.20219 there is a credit entry of Rs. 15,000/- described as 'Sankalp rent'. On 27.1.2020 there is a credit entry of Rs. 9,000/-described as 'Sudhanshu rent' and another entry of Rs. 4,500/- described as 'rent'. On 13.1.2020 there is a credit entry of Rs. 9000/- as 'rent'. On 11.1.2020 there is a credit entry of Rs. 16,000/- described as 'rent'.

It is evident from the admission contained in the reply to the legal notice as well as the Statement of Defence, that the Respondent had been collecting rent/tariff from the residents / occupants of the subject Property.

Though it was submitted by the learned counsel for the respondent that the aforesaid entries in the bank account of JHPL pertained to other properties or that portion of the property which was retained by the

respondent, the said submission is not backed either by the pleadings or by any documentary evidence and therefore cannot be accepted.

25. Clause 10.3 of the Agreement entitled the Respondent to terminate the Agreement even within Lock-in-Period in case the Claimant failed to pay the share of the Claimant for one month despite being in operation and the said breach on the part of the Claimant was not remedied within 30 days of Notification of the said breach to the Claimant. Therefore, even if the Claimant had failed to pay the share of the Respondent in the net revenue subject to the stipulated minimum guarantee to it, the Respondent could not have started collecting rent directly from the occupants/residents though it could have terminated the Agreement executed between the parties.

26. The next question which arises for consideration is as to whether the collection of rent/tariff by the Respondent directly from the occupants/residents amounts to a material breach of the terms of the Agreement or not. The Agreement between the parties was essentially a Revenue Sharing Agreement under which the net revenue collected by the Respondent by renting/licensing accommodations in the subject Property was to be shared between the Claimant and the Respondent. The Respondent was to receive 70% of the net revenue whereas the remaining 30% was to be retained by the Claimant. If 70% of the net revenue came to less than the amount of minimum Guarantee given by the Claimant to the Respondent and incorporated in Schedule I of the Agreement, the respondent was entitled to the said amount irrespective of the net revenue collected by the claimant. After a period specified in the Agreement, if 70% of the net revenue was higher than the amount of the minimum Guarantee, the Respondent was entitled to the said higher amount. Such an arrangement necessarily required collection of the rent solely and exclusively by the Claimant. If both the parties were to collect rent/tariff from the residents/occupants, it would not have been possible to determine the total rent collected from the occupants. The Agreement between the parties did not envisage collection of rent/tariff by both the parties. This is more than evident from the terms of the Agreement including Clause 2.3, which required the Respondent to execute an Irrevocable Power of Attorney in favour of the Claimant authorizing it to collect rent / licence fee from guests and take action in the event they did not pay the rent, Clause 6.2 (j) required the Respondent not to interfere in the day to day operations of the Claimant including with the occupation of any sub-licencee/sub-lessee except for partial inventory (the portion of the building which had not been given to the Claimant for management). In any case, the collection of rent/tariff solely by the Service Provider is inherent in such an Agreement. It is not possible for the Service Provider to determine the exact net revenue recovered from the

occupants/residents if rent/tariff is collected by the Owner as well as by the Service Provider. In such a situation, the amount payable to the Owner in terms of the Agreement cannot be correctly determined. In any case, the Agreement between the parties did not permit both the sides to recover the rent/tariff from the occupants/residents. It would be pertinent to note here that neither in reply to the legal notice nor in its Statement of Defence, the Respondent has claimed that under the terms of the Agreement, both the parties were entitled to collect rent from the occupants/residents of the subject Property.

27. Though the term 'material breach' has not been defined in the Agreement executed between the parties, it would be difficult to dispute that breach of a fundamental term of the Agreement would certainly constitute its material breach. The collection of rent/tariff by the Claimant alone, in my opinion was a fundamental term of an Agreement of this nature since the Agreement could not have been successfully implemented if the rent/tariff is collected by both the parties. As rightly contended by learned counsel for the Claimant, a breach which makes the commercial performance of an Agreement impossible and unviable would amount to a material breach. The whole concept of revenue sharing becomes meaningless, if the revenue is collected by both the parties.

28. The Agreement between the parties is based on and comprises reciprocal rights and obligations. The right of the respondent to receive the agreed share in the net revenue carried with it, an obligation not to interfere in the management of the subject property by the respondent, including inducting occupants/residents therein and recovering rent/tariff from them. If a party to the Agreement commits breach of one or more of its material terms and thereby deprives the other party of its rights under the said Agreement, the party in breach can not compel the other party to perform the obligations of that party under the said Agreement, Logically also, such an Agreement cannot be performed, if both the parties collect rent/tariff from the tenants/occupants. The share of the respondent cannot be quantified in money terms, without first ascertaining the total revenue generated from the property. If the rent from the occupants is collected not only by the claimant but also by the respondent, the claimant cannot be sure of the total revenue generated from the property, even if the respondent were to offer to disclose the total rent collected by it. In any case, here no such offer has been made by the respondent. The stand taken during the arguments was that no rent/tariff from the residents/occupants of the subject property was collected by the respondent. By collecting rent /tariff from the residents/occupants, the respondent forfeited its right to receive any share in the net revenue generated from the property, irrespective of the extent of such

collection. A party who himself is in breach of an Agreement can not compel the other party to perform his obligations, ignoring the breach committed by him. I therefore hold that the respondent is not entitled to the any share in the revenue collected by the Claimant.

29. As noted earlier, in terms of clause 6.2(b) of the Agreement, the respondent was required to keep available and valid, the documents relating to the property subject matter of the Agreement and the documents specifically mentioned therein cannot be said to be the only documents required to be kept available and valid by the respondent. The use of the words 'all the documents related to the property such as 'clearly indicates that all the documents which could be genuinely required by the claimant were required to be kept available and valid. Of course, the claimant could not have sought irrelevant documents from the respondent. But, it can be hardly disputed that the documents such as title deed, Sanctioned Building Plans and the Occupancy Certificate would be genuinely required by the person entrusted with the management of the property. This is more so, when the policy of the service provider is to manage only those properties which are legally compliant. The respondent did not offer the copies of even these core property documents to the claimant. The case of the claimant is that the documents were necessary for carrying out an audit of the subject property, which was also envisaged in the Agreement. By failing to provide these core property documents to the claimant committed breach of yet another material term of the Agreement, thereby giving a right to the claimant to terminate the Agreement.

30. It is contended by the learned counsel for the Respondent that the Agreement between the parties was a Lease Agreement and, therefore, the Claimant was bound to pay the share of the Respondent in the net revenue subject to the minimum guarantee agreed between the parties, as the lease money. I however, find myself unable to accept the contention. Though the words "lease" and "lessee" have been occasionally used in the Agreement as well as in the Statement of Claim, in pith and substance the Agreement between the parties is a management Service Agreement. As noted earlier, the Agreement is described as Management Service Agreement, the Claimant is described as Service Provider and the Respondent as Owner, in the preamble to the Agreement. It is also recorded that the Owner was desirous of engaging the Service Provider for providing the services on an exclusive basis. As per Clause 2.1 of the Agreement, the Respondent had appointed the Claimant for providing services in the premises on the terms and conditions contained therein and had undertaken to execute an Irrevocable Power of Attorney in its favour, authorizing it interalia to collect rent / licence fee from the guests. The

> most important feature of the Agreement is that as per Clause 2.4, the possession of the premises was to remain with the Owner. In a lease, the possession is transferred to the Lessee and does not remain with the Lessor. Therefore, it would not be correct to say that the Agreement between the parties was a Lease Agreement. In any case, it would be immaterial whether the Agreement between the parties was a Lease or a Management Agreement, the relevant fact being breach of the material terms of the said Agreement. I therefore hold that the respondent had committed breach of clause 6.1(h), 6.2(b) and (j) of the Agreement. The claimant therefore, was entitled to terminate the Agreement in terms of clause 10.3 thereof."

15. Significantly, from the above analyses by the learned Arbitrator, it is clear that the findings of breach are not predicated solely on the Appellant's failure to furnish documents, but also on the unauthorised rent collection, which was found to be a distinct and substantive violation. Therefore, even assuming, arguendo, that there was a subsequent waiver of the document requirement, which, as discussed later, is not borne out from the record, it would still not absolve the Appellant of the second and independent ground of breach.

16. It further appears from the Impugned Order of the learned District Judge that the Appellant, for the first time, sought to characterize the communication dated 30.03.2020 as amounting to condonation/waiver of the breach for non-compliance with the email dated 28.11.2019. The learned District Judge, however, after a thorough examination of the scope of review under Section 34 and the arbitral record, declined to interfere with the arbitral award.

17. A plain reading of the communication dated 30.03.2020 leaves no room for any inference, either express or implied, that OYO had waived or condoned the requirement of the documents. The tenor and content of

the email clearly shows that it was written in the context of the emerging COVID-19 crisis, and merely proposed a revision of the revenue-sharing arrangement due to the significant disruption in operations. There is no indication in the said communication that OYO had abandoned its earlier demands or that it was willing to forego the contractual compliance on essential legal and regulatory obligations. For the sake of absolute clarity, the entire communication dated 30.03.2020 is produced hereinbelow:

> "Dear Business Partner,
>
> At the outset, we would like to express our sincere gratitude for the faith that you have reposed in OYO Apartment Investments LLP ("OYO") by partnering with us. The overwhelming support you have provided to us as a valued asset partner in our goal of providing safe, affordable, secure and reliable quality living spaces to millions of our valued customers is appreciated wholeheartedly.
>
> As you are aware, the widespread and severity of the Novel Coronavirus (COVID-19) pandemic has exponentially increased in the last weeks, both in India and over hundred fifty countries around the world. On March 11, 2020, the World Health Organization declared that COVID-19 is a ""pandemic". To combat this pandemic, many governments around the world have declared lockdown in their respective countries until the virus is contained.
>
> In India, State Governments and Union Territories have invoked the provisions of the Epidemic Diseases Act, 1897 from March 12, 2020 as a measure to arrest growth in the number of cases of COVID-19. The State Governments have issued notifications declaring COVID-19 as an epidemic and ordered a complete lockdown of their respective states with severe restrictions on movement of the people, including sealing of borders. On March 11, 2020, the Ministry of Health and Family Welfare Has issued an advisory on Social Distancing Measures where they have advised everyone to avoid non-essential travel and use video conferencing facilities to avoid face to face meetings. Due to these situations, the Ministry of Railways cancelled all train services to help contain the spread of the pandemic. Domestic air travel too has been suspended w.e.f. March 25, 2020.
>
> On top of that, the Hon'ble Prime Minister Narendra Modi addressed the nation on March 19, 2020 advising the general public to stay indoors, followed by a "Janta Curfew on March 22, 2020 and given that the pandemic is spreading so fast and uncontrolled, on

March 24, 2020 he gave directions that the entire country will be on lockdown, with exception of certain essential services, starting March 25, 2020 12:00 AM until April 15, 2020.

Even globally, the hospitality and accommodation industry is facing one of the most challenging times in its history, as people across the globe are forced to change their normal routine way of work including but not limited to working from home, cancellation of any travel plans in deference to or in compliance with advisories or regulations from their respective governments against travelling, public gatherings, visiting workplaces, and similar activities. Ministry of Health and Family Welfare has issued a consolidated travel advisory for COVID-19 on March 11, 2020 putting the prohibition of travel from China, Italy, Iran and some countries of EU to India and an additional travel advisory on March 19, 2020 prohibiting scheduled international commercial passenger aircrafts to enter into India from March 22, 2020.

These and many such circulars and notifications issued by the Central and State Governments mandating, cancellations of travels, lockdowns, curfews etc. as a consequence of the COVID-19 pandemic are available on the website of several ministries of Government of India and as responsible citizen, we must abide by these and help contain this COVID-19 pandemic and save precious lives.

While we hope that circumstances will improve and force majeure situation would improve, given the experience in other jurisdictions as is available in the public domain, it is likely that the situation will continue for a little while longer.

In this backdrop, the biggest challenge that we are facing today is that as the companies and educational institutes are closed down, most of our residents have either left for their hometown or are in process of leaving On our part, we are taking every measure possible to ensure that the safety and security-of our residents remain our highest priority and that we should do everything possible to ensure their well-being as well as that of our employees and partners amidst the COVID-19 outbreak. To deal with this -COVID-19 situation at property level, we have taken several steps such as:

Governmental Guidelines: Actively monitoring the situation and following guidance from the Centers for Disease Control and Prevention (CDC), World Health Organization (WHO) and "local/national health officials and regularly updating our business partners with accurate information and advisories;

Enhanced Sanitization Initiatives: taking enhanced sanitization initiatives in all public areas of all the buildings, such as lobbies, elevators, door handles, bathrooms and advising our business partners to do the same;

Technological Support: Our technological solutions continue to deliver easy and hassle-free check-in, check out and online payment experience, ensuring minimum people-to-people contact;

Support through Customer Service: Our customer. residents and ground support teams are fully equipped and sensitized to effectively manage resident concerns and our 24x7 emergency response team is ready to help business partners and OYO teams to apply necessary safety protocols and report any incident or suspected case.

Provide support services to ensure we do our part to help the community and enable our asset partners to provide accommodation to the healthcare professionals, stranded persons whether they are from neighbourhood cities or foreign countries, people who need support for isolation or quarantine which initiatives are being explored in discussion with the Government and Hospital Authorities.

In light of this COVID-19 pandemic and various restrictions issued by the governmental authorities, the occupancy rate of your property has been significantly and adversely impacted and it is unlikely to improve in the next few months. At the time of entering into the agreement between (**Agreement**) between JP Singh ("**you**") and OYO ("**OYO**" or "**we**"), this global pandemic, the Government's response to it (which is rightly so in light of this serious pandemic situation where we have no control whatsoever) and the resulting decline in the revenue of the property simply wasn't and could not have been foreseen by either of us. The basic assumption under which the Agreement and particularly the Rent/Benchmark Revenue was agreed, amongst others, "was that the demand for bed occupancy would continue in the ordinary course of business subject to usual fluctuations that are typical in the hospitality, accommodation and/or co-living business. This abrupt, extra-ordinary and unprecedented drop in your property's revenue as a result of the COVID-19 pandemic can hardly be considered to be in the ordinary course of business. OYO's performance and obligation in relation to the Rent/Benchmark Revenue under the Agreement has become extremely onerous and commercially impracticable.

This letter provides notice of the occurrence of a 'Force Majeure event effective from March 12, 2020 on account of the outbreak of COVID-19 around which various State Governments invoked provisions of the Epidemic Diseases Act, 1897, being an extraordinary circumstance, which is beyond our control and which could not be avoided by any amount of foresight and care and its severe impact on our performance under the Agreement.

As you are aware, the COVID-19 pandemic and the consequent actions of both the Government and other Regulators/private

organizations has had an unforeseen and extremely adverse impact on the entire hospitality and accommodation industry which has, effectively, disrupted the entire industry. In these exceptional and trying circumstances, kindly note that it is impossible for OYO to discharge its obligations under the Agreement including, inter alia, the provisions of Rent/Benchmark Revenue. Given that the impact of this unforeseen situation is likely to be felt long after the withdrawal of the lockdown and COVID-19 pandemic, it appears that the very basis upon which the Agreement was entered into has been altered beyond anyone's imagination. Consequently, OYO will find it virtually impossible to continue to operate the Agreement from the point of view of the object and purpose in relation to which the Agreement was first executed. As such, OYO is left with no option but to invoke Force Majeure in as much as the pandemic and related consequences have adversely impacted the operation of the property and the business of the property and to put you to notice that it is constrained to exercise its rights thereunder to suspend payment of the monthly rent and/or any other amounts payable to you under the Agreement. Kindly note that while OYO is well within its rights to terminate the Agreement, in view of the above, we are currently refraining from taking such a drastic step while reserving our rights to do so should the circumstances continue to deteriorate or the adverse conditions, be prolonged.

Notwithstanding the above, in our endeavour to effectively provide facilities and benefits at the property, we will continue to incur expenses during the time when we are running the property in relation to the quality maintenance and upkeep, safety and security, renovations and manpower for managing the property to the extent feasible and without any obligation on our part. Further, during this period of lockdown, please note that the existing residents and/or the belongings of the residents who have left for their hometown before or at the start of the lockdown will continue to stay/remain at your property in accordance with the instructions from the Government authorities. We will endeavor to collect the rental payment from such residents in subject to the instructions from the Government authorities, if any.

Under the circumstances, please note that we deeply value our partnership and wish to continue it while also safeguarding our common financial interests from the property and in larger public and government interest. As mentioned above, since the entire hospitality and accommodation industry as well as the way people live appears to have been disrupted and its impact is likely to continue well after the lockdowns restrictions are withdrawn/modified, it may be in our mutual interest to revisit our Agreement to try and arrive at a more

rational and mutually, beneficial commercial arrangement that is more in tune with the present day reality and the likely future.

In this regard, and in the interim, we propose a revenue share model, effective March 12, 2020, whereby our commercial engagement, in supersession of the existing commercial terms, under the Agreement will be 30% (thirty percent) of the net revenue Le., the revenue on account of accommodation deducting therefrom levies/cess/duties whether imposed by local/state/central authorities (wherever applicable), sales and marketing costs, channel charges including but not limited to commissions, customer acquisition expenses etc. and subject to all applicable taxes both present and which may be levied in the future ("**Revenue Share**").

Also, note that, as our joint efforts for the community services, OYO might not be able to make payment of Revenue Share as per the above-mentioned terms in case part or in full in the event that property is being utilized for supporting essential services by or under the orders of Government/ Health care centres/authorities.

We would like to emphasize continuity of the business at the property shall be subject to business feasibility, safety and security of the residents, manpower peaceful surrounding environment and compliance of the property with various applicable laws and regulations and OYO may use discretion in the event of any change in the aforementioned situations (including but not limited to shutting down the property), which we shall endeavour to inform to you as soon as practicable.

Apart from, the day-to-day operations, to achieve higher standard of governance for our respective responsibilities, you are expected to and committed to observe compliance with various government policies and regulatory requirements applicable to the property (including in relation to all guidelines and directives issued by the government and administrative authorities in relation to COVID-19 pandemic) and we will make all commercially reasonable efforts that we perform our obligations in accordance with the Agreement signed between us read in conjunction with this communication.

Needless to mention, our priority continues to be the safety of our residents, manpower, partners and the communities in which we operate. We are regularly reviewing the position and shall communicate once the force majeure event/COVID-19 situation has ceased and when OYO will be able to resume performance of its currently affected obligations under the Agreement.

In any event, you can reach us through the same mail, if you should have any immediate questions.

We appreciate your understanding and we look forward to the continued success of our partnership.

Yours faithfully,
OYO"

18. As is manifest from a bare perusal of the contents of the aforementioned communication, no novation, as has been contended by the Appellant, has been sought of the entire Agreement. The communication, in recognition of the prevailing conditions, seeks to amend the working of the Agreement to a limited extent, i.e., in respect of the commercial engagement inter-se the parties, limited to the revenue share. A reading of the said communication also makes it evident that the rest of the terms as between the parties subsisted.

19. This is further corroborated by the subsequent legal notice dated 02.05.2020 issued by OYO, in which the requirement of the same documents was reiterated. In fact, the notice expressly warned that non-furnishing of the documents within 30 days would amount to a material breach of the terms of the Agreement. The notice also invoked the arbitration clause and proposed the name of a Sole Arbitrator. Thus, far from supporting the Appellant's case, this sequence of communications reinforces the view that OYO consistently insisted on documentary compliance and never intended to waive the same.

20. The notice dated 02.05.2020 did not constitute a blanket termination of the Agreement but clearly stated that termination would ensue only upon failure to supply the documents. The invocation of the arbitration clause in the same notice further clarifies that OYO treated the breach, the direct rent collection, as live and unresolved disputes,

warranting formal adjudication. The relevant extracts of the notice dated 02.05.2020 are produced hereinbelow:

> "**3.** Noteworthy to mention here that under the Agreement you have specifically represented that all the documents related to Subject Premises as required from regulatory & legal perspective are available and the validity of the same shall be maintained throughout the term of the Agreement.
> **4.** That despite repeated requests you have failed to provide necessary documents/permissions/approval with respect to Subject Premises which are essential for purposes of the Agreement. Even when such documents were demanded by the auditors during internal audit our client had requisitioned these relevant documents from you vide our client's email dated 28/11/2019, including but not limited to non-objection certificate ("NOC") from the Society/ Housing/Resident Welfare Association & Police NOC for renting the Subject Premises to OYO for the purposes defined under the Agreement. However, the aforesaid documents have not been provided to our client till date and thus, non-provisioning of the aforesaid documents amounts to material breach of the terms of Agreement.
> **5.** That vide this notice we once again request you to provide the all necessary documents as requested vide our client's email dated 28/11/2019 for the Subject Premises within 30 (thirty) days of the date of this notice. Kindly note that non-provisioning of aforesaid documents would vitiate the Agreement from the very inception and shall render the same void. Kindly note that our client, as a policy, do not provide services in the premises which do not fulfil the legal compliance and necessary requirements under the applicable laws.
>
> *****
>
> **7.** Also please note that in case the documents referred to in para 4 and 5 above are not provided within aforesaid stipulated period of 30 (thirty) days from the date of this notice, then the Agreement shall stand terminated forthwith.
>
> 8. That in the meanwhile the COVID19 pandemic hit across the globe which has been declared as pandemic. As you are aware, due to COVID19, companies and educational institutes are closed down and thus, most of our client's residents have either left for their hometown or are in process of leaving. In view of the same our client invoked the force majeure clause in the Agreement vide its communication dated 30/03/2020.
> 9. That dehors the right of our client to terminate the Agreement, and without prejudice to exercise of its right to terminate the Agreement, it

is abundantly clear from your aforesaid acts and events that you are not willing to comply with your obligations under the Agreement dated 22/07/2019. From the aforementioned facts and circumstances, it is crystal clear that a dispute has arisen between our client and you regarding the payment of sums of money in terms of the Agreement and viability of doing business from the Subject Premises in absence of the relevantdocuments/approvals/permission, if the same are not provided as the formed the vary basis of Agreement. Further, that aforesaid dispute being purely civil and commercial in nature, is mandatorily required to be resolved through the dispute resolution mechanism as agreed between you and our client in the Agreement by invoking arbitration in accordance with Clause 11.2. of the Agreement dated 22/07/2019. In this regard, Clause 11 of the terms and conditions of the Agreement is relevant, and the same is as under:

*****

9. In view of the aforementioned clause which lays down the agreed mechanism for resolution of disputes between the parties, our client hereby invokes arbitration. That further our client recommends the name of Mr. K. K. Nangia, Retired Registrar of the Delhi High Court as a Sole Arbitrator for adjudicating the disputes which have arisen between our client and you. You are hereby requested to confirm the appointment of Mr. K. K. Nangia as a Sole Arbitrator within a period of 30 (thirty) days from receipt of the present notice, failing which our client shall be constrained to initiate appropriate proceedings for constitution of the Arbitral Tribunal before the Hon'ble High Court of Delhi.

****

….."

(emphasis supplied)

21. In response, the Appellant never furnished the requested documents. Instead, it waited nearly ten months and replied only on 27.02.2021, contending vaguely that the documents had already been provided in July 2019. Even in this reply, the Appellant made no assertion that the communication dated 30.03.2020 operated as a waiver or condonation of the earlier breach. This argument was plainly an afterthought and an attempt to raise a new defence not pleaded before the learned Arbitral Tribunal.

22. The consistent position taken by OYO, from the 28.11.2019 request and culminating in the legal notice dated 02.05.2020, demonstrates an unambiguous assertion of its rights under the Agreement. The allegation that the communication dated 30.03.2020 altered this legal position is misconceived and finds no support either in language or conduct.

23. Accordingly, the submission that the said communication constituted a waiver or condonation of breach is legally unsustainable, factually incorrect, and liable to be rejected as a belated and manufactured defence raised for the first time before the learned District Judge.

***CONCLUSION*:**

24. As noted at the commencement of this judgment, the core contention advanced by the learned Senior Counsel for the Appellant formed the common thread across all the connected appeals. Having been found devoid of merit in *FAO (COMM) 175/2024*, this ground cannot sustain any of the appeals.

25. In view of the above discussion, no case is made out for interference with the Impugned Orders dated 07.06.2024 passed by the learned District Judge or with the Arbitral Awards dated 25.01.2023 passed by the learned Arbitrator. The findings recorded therein are neither perverse nor contrary to the settled legal position and therefore warrant affirmation; accordingly, all appeals are dismissed.

26. The present appeals and all pending applications, if any, are disposed of in the above terms.

27. No order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

AUGUST 20, 2025/sm