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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 12.11.2025

Judgment pronounced on: 02.12.2025

Judgment uploaded on: As per digital signature~

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FAO (COMM)155/2024 & CM APPL. 51616/2024

WOODLAND (AERO CLUB) PVT. LTD.

..... Appellant

Versus

M/S. AMBIENCE COMMERCIAL DEVELOPERS PVT. LTD.

..... Respondent

Advocates who appeared in this case

For the Appellant : Mr. Abhijit Mittal, Mr. Anukalp Jain and
Ms. Shaivya Singh, Advocates

For the Respondent : Mr. P.K. Agrawal, Mr. Akshay Chitkara, Ms. Sanjoli
Gupta and Mr. Darpan Jain, Advocates

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE VINOD KUMAR****JUDGMENT****VINOD KUMAR, J.**

1. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereinafter '*the Act*')



impugning a judgment dated 31.05.2024 (hereinafter '*the impugned judgment*') passed by learned District Judge (Commercial)-03, South, Saket Courts, New Delhi (hereinafter '*learned District Judge*') in the matter titled "*Aero Club Vs. M/s. Ambience Commercial Developers Pvt. Ltd. OMP (Comm) No. 32 of 2019*". The said petition was filed by the appellant under Section 34 of the Act challenging an Arbitral Award dated 30.8.2019 (hereinafter '*the impugned award*'). Learned District Judge Commercial Court upheld the impugned award passed by the Sole Arbitrator.

DISPUTE

2. Briefly stated the facts are that the appellant entered into a lease agreement on 17.03.2011 with Ambience Development & Infrastructure Pvt. Ltd. (hereinafter '*ADIPL*') for Retail Space No. F-106, First Floor, Ambience Mall, Gurgaon, measuring 290.13 sq.mtr. The tenure of the lease was nine years, with a lock-in period of two years, as per the Agreement between the parties.

3. As per clause 11 of the Lease Agreement, the appellant deposited a sum of Rs.22,84,922/- with ADIPL towards security for maintenance, electricity, water and other charges.

4. Subsequently, the appellant issued a Termination Letter dated 06.11.2015 proposing to vacate the premises with effect from 28.02.2016 and requested reconciliation of accounts from ADIPL. On 24.02.2016, the appellant informed ADIPL that an amount of Rs.18,73,812/- and Rs.5,62,144/- was recoverable by it after deducting Rs.1,51,034/-



towards late payment charges. On 05.03.2016 the appellant handed over the possession of the leased premises to ADIPL. The handover was duly acknowledged and the “store-takeover form” issued by ADIPL confirmed that the premises were surrendered.

5. The appellant claimed that ADIPL did not refund the security amount and as such legal notice was issued by the appellant on 17.08.2016 and was served upon the ADIPL. Vide reply dated 06.09.2016 ADIPL declined the demand alleging that the premises had suffered damage and that amount was liable to be adjusted towards restoration.

INVOCATION OF ARBITRATION

6. Through a letter dated 15.09.2016, the appellant invoked the arbitration under clause 28 of the agreement, which is reproduced as under:

“28. Any dispute or difference between the parties hereto concerning the construction, interpretation or application arising out of this Agreement shall be referred to the sole arbitrator' to be appointed by Ambience. Any decision of the arbitrator shall be final and binding on the parties.”

In this letter the petitioner requested the ADIPL to appoint any retired District Judge or Senior Advocate of Delhi as arbitrator. The letter is reproduced as under:

“To,
Ambience Developers & Infrastructure Pvt Ltd,
L-4, Green Park Ext.,
New Delhi -110016

DATED: 15.09.2018



Sub: Notice on behalf of the undersigned Mr. P.K. Sharma Authorised representative on behalf of M/s Aero Club seeking appointment of an arbitrator as per the arbitration clause in the agreement dated "17-3-2011 for adjudicating the dispute qua Security deposit amount of Rs 22,84,922/- along with interest@ 12 % P.A recoverable from you.

Sir,

1) I may refer to the agreement dated 17-3-2011, after execution of which the premises bearing no. F-106 on 1st floor and measuring 290.13 sq. mtr (3123.02 sq. ft) of super area in the Ambience Mall, Ambience Island, ND-8, Gurgaon, was taken on lease/ licence on the well set out terms and conditions.

2) Over the, years we had felt the brunt of unviable business and on account of the constricting financial situation, and therefore it was decided to put an end to the ongoing lease/ licence, at tandem with the agreed terms and conditions and Eventually the agreement was terminated on 6-11-2015 and an advance notice of 3 months was duly served on you. The termination of the lease/ licence was accordingly predisposed to expire on 29-2-2016. We prior to its expiry on 29th Feb 2016 had again called upon your good self for reconciliation of the entire account so that a recoverable figure could be arrived. at. I had even specified the total amount which was recoverable from you after the deduction of the late payment charges as conveyed and demanded by you.

3) On 5-3-2016 the vacated premises was handed over to your good self in good condition and the takeover and keys were received by your representative one Mr. Joseph. Thereafter on 5-3-2016 a store take over format was prepared at your quarter, wherein a dean and valid clearance was given to us along with the acknowledgment of the total payment due towards us.

4) After passing of more than 2 yrs the admitted payment of Rs 22,84,922/- as security deposit remains unrecoverable from you, despite rhetoric assurances from your side. The subsisting dispute does not find any resolution from your side, so the undersigned invokes the arbitration clause of the agreement dated 17.03.2011 which provide for appointment of Arbitrator. However you are called upon to appoint any retired District Judge or Senior Advocate of Delhi.



This is an imperative requirement on your part to ensure that an independent Person, having no vested interest in your company directly or indirectly, is deputed as an Arbitrator so that the rule of law can be enforced. This is an obligation on you as mandated by the Amendment in 2015 in the provisions of the Arbitration and conciliation Act 1996.

We wait for your response within 15 days, failing which the undersigned would take recourse under section 11 of The Arbitration and conciliation Act, 1996.

*For Aero Club
Sh P.K. Sharma
Sr. General Manager”*

7. ADIPL appointed Shri Brajesh Kumar (Retd. Additional District Judge) as the sole Arbitrator. On 15.10.2018, learned Arbitrator entered reference and directed parties to file their respective pleadings. Pursuant thereto, the appellant filed its Statement of Claim on 14.11.2018. As per the case of appellant, owing to a typographical error, the claimant i.e. the appellant mentioned the name “*M/s Ambience Commercial Developers Pvt. Ltd.*” (in short ‘*ACDPL*’) as respondent instead of ADIPL, although all pleadings, documents and reliefs pertained exclusively to ADIPL. After completion of pleading, following issues were framed:

(i)Whether the claimant is registered partnership firm, if so, whether its senior General Manager is empowered to sign and verify the pleadings on behalf of the firm?

(ii) Whether the claimant is entitled to recover security deposit of Rs.22,84,922/- alongwith 15 % interest as alleged?

(iii) Whether in terms of the defense which has been raised by the respondent in its defense statement, the contention of set off adequately resist the claim of the claimant?

(iv) Relief.



8. Parties led their respective evidence and the sole arbitrator also heard the arguments. After the final arguments, pending the pronouncement of the award, the appellant moved an application under Order VI Rule 17 Code of Civil Procedure, 1908 (hereinafter ‘CPC’) seeking amendment of memo of parties. The appellant submitted that the proceedings were not instituted against the necessary and proper party and that the Agreement dated 17.03.2011 had been executed with ADIPL and not with ACDPL. The learned Arbitrator dismissed the said application and the amendments sought by the appellant were not allowed.

IMPUGNED AWARD

9. The sole arbitrator decided the first issue holding that even if the partnership was not registered, the bar under Section 69 of the Partnership Act, 1932 is not applicable to the arbitration proceedings. While observing that the bar under Section 69 applies only to proceedings before a “court” and is inapplicable to arbitral proceedings or applications under Sections 9 and 11 of the Arbitration and Conciliation Act, the Arbitrator nevertheless held that the claimant had failed to prove a valid authorization in favour of Senior Manager to sign and verify pleadings on behalf of claimant. Consequently, the issue no.1 was decided against the claimant.

10. On the second issue, it was held that the case was filed against the wrong party and therefore the case itself was without jurisdiction and accordingly claimant was held not entitled to recover aforesaid amount



from respondent. On the third issue, Ld. Arbitrator found that since possession was surrendered only on 05.03.2016 and rent under Clause 3 was payable on a monthly basis, the respondent was entitled to rent for the entire month of March 2016. However, the claims for repair charges and loss of rent for April and May 2016 were rejected noting that no documentary evidence had been produced to substantiate the alleged damage or loss and that no such liability arose under the terms of the Agreement.

11. Vide impugned judgment, the arbitral award was passed by the learned Sole Arbitrator dismissing the claims raised by the appellant. Aggrieved, appellant preferred petition under Section 34 of the Act before learned District Judge.

IMPUGNED JUDGMENT

12. Disposing of petition under Section 34 of the Act, learned District Judge held that the appellant had impleaded a wrong party i.e. ACPDL before the sole Arbitrator despite the Agreement having been executed with ADIPL. The court's findings included the fact that the respondent had pointed out in para 4 of Statement of Defence that petitioner had entered into an agreement with ADIPL, yet the appellant took no steps to cure the defect until after arguments were concluded. The Court held that no relief could be granted against an improperly impleaded party and that rejection of the appellant's claim by the Arbitrator was justified. Allegations of misconduct and objections based on Section 34(2)(b)(ii) were rejected. The



Court held that the award was not perverse and it does not suffer from any patent illegality and is not in violation of morality or justice. Accordingly, the Section 34 petition was dismissed.

CONTENTIONS OF APPELLANT

13. The appellant challenged the aforesaid award and judgment before this court under Section 37 of the Act. Learned counsel appearing for the appellant contended that learned Sole Arbitrator erred in holding that the claim was filed against an improper party. It was submitted by him that the Agreement dated 17.03.2011 was executed with ADIPL, the termination and arbitration notices were addressed to ADIPL and the Arbitrator was also appointed by ADIPL. Hence, the impleadment of ACDPL, which is a sister company of ADIPL, was only a typographical error. He stated the respondent participated throughout as ADIPL. The appellant alleged that rejection of the claim on jurisdictional grounds by the arbitrator after reserving the matter for award as well as dismissal of the application under Order VI Rule 17 CPC were erroneous and violative of natural justice. It was further urged that having held the proceedings to be without jurisdiction, the Arbitrator could not have awarded rent charges etc. to the respondent.

CONTENTION OF RESPONDENT

14. The respondent submitted that the agreement containing arbitration clause was executed between the appellant and ADIPL and not with the respondent herein i.e. ACDPL. It is asserted that learned Sole Arbitrator



rightly disallowed the appellant's claim as the proceedings had been instituted against a wrong party and therefore learned District Judge correctly dismissed the Section 34 petition on this ground. The respondent argued that the appellant cannot now seek to implead ADIPL at the appellate stage, as ADIPL was neither a party before the Sole Arbitrator nor before the District Judge. It was submitted that the respondent and ADIPL are distinct legal entities with separate juristic personalities and the Sole Arbitrator lacked jurisdiction to adjudicate any dispute between the appellant and the respondent. The respondent further submitted that the appellant's plea of typographical error in impleading the wrong party is misconceived. Attention was drawn to specific averments in the Statement of Defence and in the witness affidavit wherein it was categorically stated that the Agreement was with ADIPL. Despite this, the appellant continued proceedings against an entity with whom it had no arbitration agreement. It was lastly contended that no valid ground under Section 34 of the Act had been disclosed and that the impugned judgment dated 31.05.2024 suffers from no infirmity.

ANALYSIS

15. From the perusal of the arbitral record, following facts emerge:

- (1) Clause 11 of the lease agreement records that parties to the lease agreement are Woodland (Aero Club) Pvt. Ltd. i.e. the appellant and AIDPL.



- (2) The appellant, instead of raising the dispute with AIDPL, filed the claim petition against the respondent i.e. ACDPL. Therefore, the Arbitrator wrongly acquired jurisdiction to proceed with arbitration proceedings and to pass an award dismissing the claim of the appellant. In fact, he was not eligible to proceed with the arbitration as ACDPL (i.e. the respondent herein) was not the party to the arbitration agreement.
- (3) It is necessary to mention here that when ACDPL filed a statement of defence before the Arbitrator, it specifically mentioned that the correct party is AIDPL. Still the Arbitrator did not take note of it.
- (4) Another fact, which is noticed by us, is that in the present case AIDPL appointed the Arbitrator unilaterally in terms of Clause 28 of the lease agreement.
- (5) Such appointment of Arbitrator is not valid in terms of Section 12 (5) read with the Seventh Schedule of the Act, scope of which has been expanded by various judgments of the Supreme Court in ***TRF Limited v. Energo Engineering Projects Limited***, (2017) 8 SCC 377; ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***, 2019 SCC OnLine SC 1517; ***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Co.***, 2024 SCC OnLine SC 3219 (in short '**CORE**'), even to the Arbitrators who have been appointed unilaterally by one party. Relying upon the said judgments, the Division Bench of this High



Court in *M/s. Mahavir Prasad Gupta and Sons v. Govt. of NCT of Delhi*, 2025 SCC OnLine Del 4241 held as under:

84. In view of the above discussion, the legal position on the unilateral appointment of the Sole and Presiding Arbitrator is summarized as under:

a) **Mandatory Requirement:** Any arbitration agreement providing unilateral appointment of the sole or presiding arbitrator is invalid. A unilateral appointment by any party in the arbitrations seated in India is strictly prohibited and considered as null and void since its very inception. Resultantly, any proceedings conducted before such unilaterally appointed Arbitral Tribunal are also nullity and cannot result into an enforceable award being against Public Policy of India and can be set aside under Section 34 of the Act and/or refused to be enforced under Section 36 of the Act.

b) **Deemed Waiver:** The proviso to Section 12(5) of the Act requires an express agreement in writing. The conduct of the parties, no matter how acquiescent or conducive, is inconsequential and cannot constitute a valid waiver under the proviso to Section 12(5) of the Act. The ineligibility of a unilaterally appointed arbitrator can be waived only by an express agreement in writing between the parties after the dispute has arisen between them. Section 12(5) of the Act is an exception to Section 4 of the Act as there is no deemed waiver under Section 4 of the Act for unilateral appointment by conduct of participation in the proceedings. The proviso to Section 12(5) of the Act requires an 'express agreement in writing' and deemed waiver under Section 4 of the Act will not be applicable to the proviso to Section 12(5) of the Act.

c) **Award by an Ineligible Arbitrator is a Nullity:** An award passed by a unilaterally appointed arbitrator is a nullity as the ineligibility goes to the root of the jurisdiction. Hence, the award can be set aside under Section 34(2)(b) of the Act by the Court on its own if it 'finds that' an award is passed by unilaterally appointed arbitrator without even raising such objection by either party.

d) **Stage of Challenge:** An objection to the lack of inherent jurisdiction of an arbitrator can be taken at any stage during or after the arbitration proceedings including by a party who has appointed the sole or presiding arbitrator unilaterally as the act of appointment is



not an express waiver of the ineligibility under proviso to Section 12(5) of the Act. Such objection can be taken even at stage of challenge to the award under Section 34 of the Act or during the enforcement proceedings under Section 36 of the Act.

16. Same principles were applied by the Division Bench of this court in ***Central Warehousing Corporation vs. M/s. Deen Dayal, FAO (COMM) 107/2024*** decided on 12.11.2025 to hold that an arbitrator is ineligible *de jure* on account of his unilateral appointment. In ***M/s. Mahavir Prasad Gupta*** (Supra), the Division Bench has held that the *de jure* ineligibility of an Arbitrator goes to the root of the arbitration agreement and therefore, even if any party does not raise this objection, the court **on its own** can set aside the award holding such arbitrator to be ineligible. In ***Central Warehousing Corporation*** (Supra), the Division Bench of this High Court has also taken the same view. In the present case also the award of arbitrator is invalid because of *de jure* ineligibility of the arbitrator as he was unilaterally appointed by ADIPL.

17. In view of above discussion, the Arbitrator suffered from two ineligibilities. First, he could not have proceeded with the arbitral proceedings as one of the parties was not signatory to the arbitration agreement. Second, he was appointed unilaterally by ADIPL.

18. Therefore, learned District Judge has erred in upholding the award. Consequently, the impugned judgment dated 31.05.2024 of learned District Judge and impugned award dated 30.08.2019 are held invalid because of the reason the Arbitrator was *de jure* ineligible to proceed with the arbitral proceedings. Accordingly, the impugned arbitral award, entire arbitral



proceedings as well as impugned judgment of learned District Judge are hereby set aside. Appeal is allowed.

19. Pending application stands disposed of.

VINOD KUMAR, J

V. KAMESWAR RAO, J

December 02, 2025

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