2025:DHC:938

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

% Date of Decision: 31.01.2025.

\+ **ARB. A. (COMM.) 47/2023**

M/S SEGROW BIO TECHNICS INDIA PRIVATE LIMITED .....Petitioner

Through: Mr. Vaibhav Gaggar, Sr. Advocate with Mr. Turab Ali Kazmi, Mr. Utkarsh Singh, Ms. Hardika Kukreja, Mr. Tanay Dubey and Ms. Malavika Chandramouli, Advocates.

versus

M/S AFFORDABLE INFRASTRUCTURE AND HOUSING PROJECTS PRIVATE LIMITED .....Respondent

Through: Mr. Sameer Jain, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

I.A. 6700/2024 (delay)

1. By way of present application, the appellant/applicant seeks condonation of delay of 22 days in filing the appeal.

2. For the reasons stated in the application, the same is allowed and the delay of 22 days in filing the appeal is condoned.

3. In view of the above, the application stands disposed of.

I.A. 2516/2024 (delay)

1. By way of present application, the respondent/applicant seeks condonation of delay of 36 days in filing the reply.

2. For the reasons stated in the application, the same is allowed and the delay of 36 days in filing the reply is condoned. The reply is taken on record.

3. In view of the above, the application stands disposed of.

ARB. A. (COMM.) 47/2023

1. The present appeal has been filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (hereafter, *'A&C Act'*) thereby assailing the order dated 13.07.2023.

2. Vide the aforesaid order, the Arbitral Tribunal (hereafter, *'AT'*) rejected the application filed by the appellant under Section 17 of the A&C Act. The appellant is the claimant before the AT. The claim was filed with reference to the disputes that had arisen between the parties in the context of a registered Lease Deed dated 28.09.2017 read with an Addendum to the Lease Deed dated 07.12.2017, vide which the claimant, being the owner, had let out five floors (Ground, First, Second, Third and Fourth floors) (hereafter, '*lease premises'*) of the building situated at the *Industrial Plot No. 445, Phase-V, Udyog Vihar, Gurugram, Haryana-122016* alongwith proportionate parking and open space to the respondent for a period of twelve years. As per the terms of the Lease Deed, the lease premises were given on a monthly rent of Rs.36,91,500/- for the second three-year term w.e.f. 15.11.2017. In terms of Clause 8 thereof, the respondent is required to pay the rent by 15th day of each English calendar month. Disputes arose between the parties on account of delayed and partial payments of rent by the respondent, which led the appellant to terminate the Lease Deed vide notice dated 27.09.2022, whereafter the disputes were referred to the AT in

terms of Clause 22 of the Lease Deed.

3. During the pendency of the arbitral proceedings, the appellant preferred an application under Section 17 of the A&C Act thereby seeking directions to the respondent to immediately handover the possession of the lease premises as well as to make good the outstanding amount towards the monthly lease rentals, the shortfall in deposit of the Enhanced Security Deposit Amount alongwith interest up to 23.03.2023 and shortfall in deposit of TDS for the period from April, 2022 to March, 2023 alongwith other ancillary reliefs.

4. During the course of submissions, learned Senior Counsel for the appellant, on instructions, submits that the relief in the present case is confined to non-payment of the full amount of lease rentals from April, 2020 to March, 2021. He further submits that the respondent, vide its letter dated 16.04.2020, invoked the *force majeure* clause in the lease agreement to seek a waiver of monthly lease rentals, to which the appellant , vide its response dated 17.04.2020, expressed its inability to give a complete *carte blanche*, it rather reminded the respondent that having sub-let the lease premises, the respondent should pay at least proportionate sums and also asked for documentation and details of the arrangements the respondent had made with the sub-lessee to enable the appellant to take a decision on the respondent's said request. As the respondent did not share any details of the arrangements it had entered into with its sub-lessee, the appellant, vide letter dated 25.09.2020, demanded the release of full payments including arrears towards the lease rentals. The appellant contends that since the respondent failed to share the necessary details, the concession of payment of partial

lease rentals was withdrawn.

It is next contended that the AT erred in appreciating the import of the Supreme Court's decision in Evergreen Land Mark Pvt. Ltd. vs. John Tinson & Company Pvt, Ltd. & Anr. in **Civil Appeal No. 2783 of 2022,** wherein, in the case of lease rentals, the benefit of force majeure was granted only in case of complete closure due to lockdown. Further, reference is made to the decision dated 15.12.2022, passed by this Court in a petition preferred by the respondent under Section 9 of the A&C Act, whereby it sought injunction against the appellant for restraining the latter from acting upon the aforesaid termination notice or entering into any direct communication with its sub-lessees. The Division Bench, while referring the parties to the AT, noted that it was an admitted case of the parties that the respondent herein had sublet the lease premises. Learned Senior Counsel further contends that the appellant had entered into a separate lease with the respondent for the 5th floor of the said premises, for which separate arbitral proceedings were initiated and are pending. In the said arbitral proceedings, on a similar application filed by the appellant, the learned Arbitrator allowed the application and directed the respondent to make payment of lease rentals. The said order has not been challenged by the respondent and the lease rentals are being paid in terms of the order dated 30.05.2023 passed by the AT.

5. The present petition is resisted by the learned counsel for the respondent. While defending the impugned order, it is contended that partial payments of lease rentals from April, 2020 to March, 2021 were made in terms of the invoices raised by the appellant. It is further contended that the

nature of lease in the present case is entirely different from the lease entered into with respect to the 5th floor and as such, the appellant 's reliance on the order passed in a similar application for the 5th floor is misplaced.

6. In rejoinder, learned Senior Counsel for the appellant contends that the invoices were raised in terms of the respondent's request for payment of partial lease rentals and for the purpose of GST payment. The tax invoice cannot be read in isolation and must be interpreted in the light of the terms of the Lease Deed as well as the communication exchanged between the parties.

7. The short issue involved in the present case is whether the respondent is liable to pay full amount of lease rental for the period from April, 2020 to March, 2021. Respondent has invoked Clause 14 of the lease deed which is the *force majeure* clause vide letter dated 16.04.2020. The respondent has taken the defense that the parties had come to an understanding and accordingly, the respondent had paid proportionate rent for the period when *force majeure* continued. The issue of validity and duration of the applicability of the *force majeure* is a subject matter of adjudication which would require detailed appreciation of evidence. In fact, this issue forms the very substratum of the dispute which has been referred to arbitration. Deciding this issue in an application under Section 17 of the Act would amount to adjudicating the final dispute in an application for interim measures.

8. This Court while dealing with an appeal under Section 37(2) of the A&C Act, especially one arising from discretionary orders passed at an interlocutory stage, has to be circumspect in its approach, keeping in view

the principle of least intervention. The A&C Act is intended to provide an alternative avenue for dispute resolution and any interpretation of the act which tends to multiply disputes must be avoided. An appellate court while ordinarily not interfere with the discretion exercised by the AT at the first instance, unless the said discretion is proved to have been exercised arbitrarily, capriciously, perversely or ignoring settled principles of law regulating grant or refusal of interlocutory injunctions. It is also pertinent to note that Section 5 of the A&C Act crystallizes the legislative philosophy permeating throughout the Act, which is that there should be minimal judicial interference with arbitral proceedings. At this stage, it is deemed apposite to refer to a few decisions of Co-ordinate Benches of this Court dealing with the issue at hand.

9. In Bakshi Speedways v. Hindustan Petroleum Corpn., reported as **2009 SCC OnLine Del 2476**, this Court imported the principles governing appeals arising from interim injunctions given under Order 39 Rules 1 and 2 CPC to the appeals under Section 37(2)(b) A&C Act, holding that :-

> *"4. The principles applicable to an appeal under Section 37(2)(b) in my view ought to be the same as the principles in an appeal against an order under Order 39 Rules 1 and 2, CPC i.e., unless the discretion exercised by the Court against whose order the appeal is preferred is found to have been exercised perversely and contrary to law, the appellate Court ought not to interfere with the order merely because the appellate Court in the exercise of its discretion would have exercised so otherwise…"*

10. In Dinesh Gupta & Ors. v. Anand Gupta & Ors., reported as **2020 SCC OnLine Del 2099**, the approach of the Court while dealing with appeals arising of the A&C Act with respect to interlocutory orders was extensively discussed in the following manner:-

64. There can be no gainsaying the proposition, therefore, that, while exercising any kind of jurisdiction, over arbitral orders, or arbitral awards, whether interim or final, or with the arbitral process itself, the Court is required to maintain an extremely circumspect approach. It is always required to be borne, in mind, that arbitration is intended to be an avenue for "alternative dispute resolution", and not a means to multiply, or foster, further disputes. Where, therefore, the arbitrator resolves the dispute, that resolution is entitled to due respect and, save and except for the reasons explicitly set out in the body of the 1996 Act, is, ordinarily, immune from judicial interference.

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66. In my opinion, this principle has to guide, strongly, the approach of this Court, while dealing with a challenge such as the present, which is directed against an order which, at an interlocutory stage, merely directing furnishing of security, by one of the parties to the dispute. The power, of the learned Sole Arbitrator, to direct furnishing of security, is not under question; indeed, in view of sub-clause (b) of Section 17(1)(ii) of the 1996 Act, it cannot. The arbitrator is, under the said sub-clause, entirely within his jurisdiction in securing the amount in dispute in the arbitration. Whether, in exercising such jurisdiction, the arbitrator has acted in accordance with law, or not, can, of course, always be questioned. While examining such a challenge, however, the Court has to be mindful of its limitations, in interfering with the decision of the arbitrator, especially a decision taken at the discretionary level, and at an interlocutory stage.

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68. It is, no doubt, possible to argue that the intent, of Section 5, is to restrict judicial intervention, with arbitral proceedings, and orders passed therein, to the avenues for such interference, as provided by Part I of the 1996 Act, and not to restrict the scope of the Sections and the provisions contained in Part I. Perhaps. Section 5 remains, however, a clear pointer to the legislative intent, permeating the 1996 Act, that judicial interference, with arbitral proceedings, is to be kept at a minimum. Significantly, in Venture Global Engineering *v.* Satyam Computer Services Ltd., *(2008) 4 SCC 190, it was opined that the scheme of the 1996 Act was "such that the general provisions of Part I, including Section 5, will apply to all Chapters or Parts of the Act". In* State of Kerala *v.* Somdatt Builders Ltd., (2*012) 3 Arb LR 151 (Ker) (DB), a Division Bench of the Kerala High Court held that the jurisdiction of the Court, under Section 37 of the 1996 Act, was also required to be interpreted in the light of the legislative policy contained in Section 5. I*

entirely agree.

11. A Co-ordinate Bench of this Court in Handicraft & Handlooms Exports Co. of India v. SMC Comtrade Ltd., reported as **2023 SCC OnLine Del 3981**, highlighted the importance of the Court maintaining a circumspect approach while exercising power under Section 37(2)(b) of the Act, holding that:-

> *"30. From a reading of the observations of the Supreme Court, it is clear that an Appellate Court shall not interfere in exercise of discretion by the Court of first instance and substitute its views except where the discretion is exercised arbitrarily, capriciously or where the decision impugned is perverse and Court has ignored the settled principles of law governing grant or refusal of interim orders. It is not open to re-assess the material and if the view taken by the Court below is a reasonable or a plausible view and all relevant material has been considered, no interference is warranted solely on the ground that the Appellate Court may have taken a different view on the same set of facts and circumstances.*
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> *31. Reference may also be made in this regard to the judgment of a Co-ordinate Bench of this Court in Green Infra Wind Energy Limited v. Regen Powertech Private Limited, 2018 SCC OnLine Del 8273, relevant paras of which are as follows:*
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> > *"16. In my view, the Arbitral Tribunal has balanced the equity between the parties and has considered the submissions made by the parties before the Arbitral Tribunal. This Court in exercise of its power under Section 37 of the Act cannot interfere with the order passed by the Arbitral Tribunal under Section 17 of the Act unless the discretion exercised by the Tribunal is found to be perverse or contrary to law. As an Appellate Court, the interference is not warranted merely because the Appellate Court in exercise of its discretion would have exercised the same otherwise.*

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20. In view of the above, the Arbitral Tribunal having exercised its discretion and found a balance of equity between the parties, this Court in exercise of its power under Section 37(2)(b) of the Act would not interfere with the same unless it is shown that the discretion so exercised is perverse in any manner or contrary to the law. In the present case, no such exception has been made out by the appellant."

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35. From a conspectus of the aforesaid judgments, it is explicitly and luminously clear that while exercising power under Section 37(2)(b), the Court is required to maintain an extremely circumspect approach keeping in mind the object and purpose of the legislation and Section 5 of the 1996 Act which is a clear pointer to the legislative intent of keeping the Court's interference at the minimum."

12. In the present case, the AT has after hearing both sides and applying its mind, come to the decision that no ground is made out for grant of any interim relief. I have gone through the impugned order and the AT cannot be said to have exercised its discretion arbitrarily, capriciously, perversely or ignoring settled principles of law. In view of the facts and circumstances of the case and the catena of decisions discussed hereinabove, I find no ground to interfere with the impugned order.

13. In view of the above, the appeal stands dismissed.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 31, 2025
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