

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21<sup>ST</sup> DAY OF NOVEMBER, 2025



PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C M JOSHI

COMMERCIAL APPEAL NO. 125 OF 2025

**BETWEEN:**

1. GODOLPHINE INDIA PRIVATE LIMITED  
FORMERLY KNOWN AS DARVESH  
INDUSTRIES INDIA PVT LTD,  
(REGISTERED UNDER COMPANIES ACT, 1956)  
HAVING ITS REGISTERED OFFICE AT:  
SUITE No.1011, 1<sup>ST</sup> FLOOR  
PRESTIGE DEJA VU TOWERS  
PROMENADE ROAD, FRAZER TOWN  
BENGALURU - 560 005.  
REP. BY ITS DIRECTOR  
MR. ABDUL RASHEED.

...APPELLANT

(BY SRI SHREYAS JAYASIMHA, ADVOCATE)

**AND:**

1. UM PROJECTS LLP  
A LIMITED LIABILITY PARTNERSHIP CONCERN  
REGISTERED IN ACCORDANCE WITH  
THE LIMITED LIABILITY  
PARTNERSHIP ACT, 2008  
HAVING ITS REGISTERED OFFICE AT  
No.39, UNITED MANSIONS  
1<sup>ST</sup> FLOOR, M.G. ROAD  
BENGALURU - 560 001  
REP. BY ITS DESIGNATED PARTNER  
MR. PS KIRAN KUMAR



2. HON'BLE ARBITRATOR  
ARBITRATION AND CONCILIATION CENTRE  
BENGALURU  
3<sup>RD</sup> FLOOR, EAST WING  
KHANIJA BHAVAN  
RACE COURSE ROAD  
BENGALURU - 560 001.

...RESPONDENTS

(SRI PRADEEP NAYAK, ADVOCATE FOR C/R-1)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 (1-A) OF THE COMMERCIAL COURTS ACT, 2015 PRAYING TO SET ASIDE THE IMPUGNED JUDGEMENT DATED 07.02.2025 IN COM.A.P. NO.155/2023, PASSED BY THE LXXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (COMMERCIAL COURT), BENGALURU (ANNEXURE-A) AND CONSEQUENTLY & ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE  
and  
HON'BLE MR. JUSTICE C M JOSHI

### **CAV JUDGMENT**

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

### **INTRODUCTION**

1. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration & Conciliation Act, 1996 [**A&C Act**], impugning the judgment dated 07.02.2025 [**impugned judgment**] passed by the learned Commercial Court in Com.A.P.No.155/2023

captioned "*Godolphine India Private Limited v. UM Projects LLP and another*". The appellant [hereafter also referred to as '**the lessee**'] had filed the said application under Section 34 of the A&C Act, seeking to set aside the arbitral award dated 09.10.2023 [**'impugned award'**] rendered by the Arbitral Tribunal comprising of a sole arbitrator [**'Arbitral Tribunal'**].

2. The impugned award was rendered in the context of disputes arising between the parties in connection with the lease of premises measuring 30,350 square feet, which is a part of the property bearing New Municipal No.39 [BBMP PID No.76-1-39] known as 'United Mansions' situated at Mahatma Gandhi Road, Bangalore, along with nine car parking spaces in the basement of the said building [**' the demised premises'**].

3. The demised premises was leased to the lessee by the respondent [hereafter also referred to as '**the lessor**'], in terms of a Lease Deed dated 10.06.2020 [**the Lease Deed**]. The lease was for a period of twenty-five years. However, the same was prematurely terminated by the lessor, on account of failure on the part of the lessee to pay of rent and Common Area Maintenance [**CAM**], for a period of three months.

4. The lessee disputed the termination of the lease and its liability to pay rent, alleging failure on the part of the lessor to maintain the demised premises and to carry on the necessary repairs. According to the lessee, the same was an obligation required to be discharged by the lessor. The lessee also claimed damages on account of the alleged breach of the Lease Deed on the part of the lessor.

5. The Arbitral Tribunal, *inter alia*, found that the lessor's termination of the Lease Deed was valid and in accordance with the terms of the Lease Deed. The Arbitral Tribunal also rejected the lessee's contention that the lessor had failed to maintain the leased premises. The lessee's claim for damages was accordingly, rejected. The Arbitral Tribunal awarded an amount of Rs.3,06,80,000/- in favour of the lessor on account of lease rent and the applicable GST. In addition, the Arbitral Tribunal held that the lessor would also be entitled to arrears of occupation charges and maintenance charges from the date on which the same became due. The Arbitral Tribunal also awarded interest at the rate of 18% per annum on the amount recoverable from the lessee. Additionally, the Arbitral Tribunal awarded costs towards legal and

miscellaneous expenses quantified at Rs.50,00,000/- and the Arbitrator's fee and expenses paid by the lessor.

6. Aggrieved by the impugned award, the lessee preferred an application under Section 34 of the A&C Act to set aside the impugned award, *inter alia* on the ground that it was vitiated by patent illegality. The learned Commercial Court did not accept the said contention and accordingly, dismissed the said application in terms of the impugned order. The principal question to be addressed is, whether the impugned award is liable to be set aside on the ground that it is vitiated by patent illegality.

### **PREFATORY FACTS**

7. The lessee is a Company incorporated under the provisions of the Companies Act, 1956 and its registered office is located in Ahmedabad, Gujarat. The lessee claims that it is primarily involved in the business of real estate including buying, selling, renting and operating self-owned or leased buildings and dwellings.

8. The lessor is a partnership firm registered under the provisions of the Limited Liability Partnership Act, 2008 and is the absolute owner of a commercial property known as 'United Mansions' which is located in Mahatma Gandhi Road, Bangalore.

9. As noted above, the parties had entered into a lease agreement [the Lease Deed], whereby the demised premises (measuring thirty thousand three hundred and fifty square feet of the super built-up area in the building known as 'United Mansions' along with nine car parking space in the basement) was leased to the lessee, for a term of twenty-five years with effect from 19.10.2019. The parties executed the Lease Deed on 10.06.2020.

10. In terms of the Lease Deed the lessee was also entitled to establish and operate commercial enterprise and carry on business activities, as well as sub-lease whole or part of the demised premises. The lessee agreed to pay a rent of Rs.20,00,000/- (Rupees Twenty Lakhs) per month along with applicable GST in advance by the tenth day of each calendar month. The Lease Deed provided for a rent free period of two months from 19.10.2019, during which the lessee was not obligated to pay any rent. Further, it was agreed that the lease rent would increase by 10% of the last rent paid every two years from the rent commencement date, which was agreed as 19.12.2019.

11. The demised premises was let out in "as is where is" condition, and the lessee acknowledged the same.

12. It was also agreed that the lessee shall pay CAM charges calculated at the rate of Rs.4/- per square feet on an area of 28,750 sq.ft. It was agreed that the said charges would be increased by 15% every three years on the last paid CAM charges.

13. The dispute arose between the parties after March 2021. The lessee did not pay the lease rents, *inter alia* claiming failure on the part of the lessor to maintain the demised premises. The lessee also alleged that it had suffered a loss of income, as various persons who were interested in occupying the premises had backed out on the ground that the demised premises was not properly maintained.

14. The lessor issued a legal notice dated 30.06.2021 demanding payment of rent and maintenance charges along with applicable interest. The lessee responded to the said notice, by letter dated 12.07.2021, alleging that the legal firm, that had issued the notice on behalf of the lessor, suffered from a conflict of interest, rendering the notice as *non est*. The lessee further denied the claims made in the said notice and further claimed an amount of Rs.13,67,44,319/- towards the alleged expenses incurred and losses suffered.

15. Thereafter, the lessor sent a notice dated 30.07.2021 [**the termination notice**] terminating the lease of the demised premises with effect from 30.10.2021 in terms of Clause 16.3(A) of the Lease deed. Additionally, the lessor denied the lessee's claim for alleged expenses and losses.

16. There is a controversy as to the said notice, as according to the lessee, the said notice was a termination notice, as the lessor had also invited the lessee to enter into negotiations for an amicable settlement. However, the Arbitral Tribunal did not accept the said contention.

17. The lessee responded to the notice dated 30.07.2021 by letter dated 10.08.2021, *inter alia* contesting the termination of the Lease Deed but accepted the invitation for negotiations. Thereafter, the parties held meetings for arriving at an amicable resolution of their disputes. However, the disputes remained unresolved.

18. On 18.10.2021, the lessee issued a notice invoking the arbitration agreement (Clause 25 of the Lease Deed). Thereafter, both the parties filed petitions under Section 9 of the A&C Act, seeking an interim relief. The lessee filed an application being

A.A.No.127/2021, *inter alia* seeking an interim order restraining the lessor from interfering with its peaceful possession of the demised premises. It is stated that in the said proceedings, the lessee filed a memo agreeing to deposit 40% of the rent amount for the period December 2021 to March 2022. The lessor filed an application being Com.A.A.No.247/2021 before the learned Commercial Court, *inter alia* praying that the lessee be directed to pay rent and maintenance charges along with applicable GST till the conclusion of the arbitral proceedings. The said application was partly allowed by an order dated 04.03.2022.

19. The lessee appealed the said decision under Section 37(1)(b) of the A&C Act being COMAP No.140/2022. However, the same was dismissed. Thereafter, the lessor filed a contempt petition being Civil Contempt Petition No.313/2022, alleging willful disobedience of the orders passed by the Commercial Court in COM.AA No.247/2021. The lessor also filed a petition for execution of the said order being Commercial Execution No.192/2022. In the said proceedings, the learned Commercial Court passed an interim order dated 22.04.2022, freezing the lessee's Bank Accounts. The lessee challenged the said order by filing a writ petition being W.P.No.10281/2022, which was dismissed by this Court on

01.07.2022. In the meanwhile, both the parties filed applications under Section 11 of the A&C Act before this Court, seeking appointment of an Arbitrator. This Court allowed the said applications being CMP No.567/2021 and CMP No.339/2022 by a common order dated 24.03.2022 and appointed a Sole Arbitrator, thus constituting the Arbitral Tribunal.

20. The lessee states that during the course of the arbitral proceedings, the parties entered into a joint memo dated 15.09.2022 for interim arrangement.

21. The arbitral proceedings culminated in the impugned award.

### **THE DISPUTE**

22. The lessee filed a statement of claim before the Arbitral Tribunal stating that the lessor was obliged to undertake all major structural repairs in terms of clause 14.5 of the Lease Deed. It stated that it had sent an email dated 25.03.2020 relating to the maintenance work, which were required to be executed by the lessor. However, the lessor had sent a belated response by an email dated 13.07.2020, denying the averments.

23. The lessee claimed that it had paid rents for the period from 14.02.2020 to 13.04.2021. However, thereafter, it stopped paying

rents and CAM charges as the lessor failed to maintain and upkeep the property in question. The lessee had claimed that the lessor had undertaken to finish the waterproofing, shutter repair, painting of the front structure, deep cleaning of common areas and acid wash after the tenant vacated the ground floor, first floor and the fourth floor of the demised premises. However, the lessor had failed to do so.

24. The lessee claims that it sent an email dated 29.09.2020 proposing that the rental amount be reduced due to the outbreak of COVID-19. And, the lessor had agreed to reduce monthly rental by 25%. The lessor thereafter sent an email on 14.12.2020 mentioning that the lessor was getting the waterproofing, paint work, lift area, gate, common area of the G + 1 and the 4<sup>th</sup> floor and the fixture done in the common areas, including the front fascia of the building. He had also mentioned that if the lessee wanted, he could get the work done and deduct the same from the rentals. The lessee also stated that it had started the painting work on inside of the floors (G + 1 and 4<sup>th</sup> floor) as it was handed over in an extremely bad shape.

25. The lessor responded by an email dated 15.12.2020 (Ex.P.5) unequivocally stating that it would not reimburse any of the interior

work done, which would include painting, alterations, flooring, tiles, electrical, grill work, shutter servicing cost. However, it had committed to do painting in the common areas used by all tenants. Further, it denied the liability to reimburse any expenses.

26. The lessee claimed that in view of the above, dispute had arisen between the parties and attempts were made for resolving the dispute amicably through re-negotiations with the involvement of counsel/advisors.

27. The lessee claims that during the course of negotiations, it had also approached its counsel Indus Law [hereafter, **IL**] to draft a proposal to be issued to the lessor. It claimed that during the course of exchange of emails between the lessee and IL, on 06.05.2021, the lessee sent an email stating the revenue that it would have earned if the lessor had maintained the shared property. The lessee also stated that after obtaining the necessary information from the lessee, IL drafted a proposal for restructuring of the registered Lease Deed.

28. It claimed that it sent the proposal to the lessor, but did not receive any response to the said proposal. Accordingly, it sent a reminder dated 25.06.2021, but did not receive any response.

29. The lessee stated that it received a notice dated 30.06.2021 [Ex.P.12] raising certain issues and breaches mentioned therein. The lessee immediately responded to the said notice through its advocates disputing the claims made in the said notice. The lessee further mentioned that IL, which had sent the notice on behalf of the lessor, had been engaged by the lessee earlier and thus the notice was *non est* on account of IL being conflicted.

30. It is the case of lessee that since the lessor had failed to execute the work for maintenance of the property — waterproofing, shutter repair, painting of the front structure, deep cleaning of the common areas and acid wash — it had lost the opportunity to sub-lease the premises to several tenants. It also alleged that the lessor being aware that the demised premises were being inspected by brokers and tenants had fixed notices on the scheduled property and failed to clear the garbage. It also enclosed communications received from Real Estate brokers and agents in support of its contention that there was no maintenance of the property in question.

31. The lessee claimed that its prospective tenant, required enhancement of power supply and accordingly, the lessee had

issued an email dated 12.04.2022 seeking certain documents for securing enhanced supply. However, the request was turned down.

32. On the aforesaid basis, the lessee sought the following reliefs:

- a) Direct the lessor to comply with the registered deed and to complete the pending maintenance works and upkeep the property in question;
- b) Damages amounting to Rs.17,31,42,064/- (Rupees Seventeen Crores Thirty One Lakhs Forty Two Thousand and Sixty Four Only) along with interest at the rate of 18% p.a., being the loss for not maintaining the property as promised at the time of executing of the Lease Deed;
- c) To award costs of litigation;
- d) Declare that the termination of the Lease Deed by the notice dated 30.07.2021 with effect from 30.10.2021 is illegal, null and void and not binding on the lessor;
- e) Declare that the lessee is not entitled to pay monthly rentals, maintenance charges and GST or any other amount payable under the Lease Deed from 19.04.2021 till conclusion of the arbitral proceedings or till the pending maintenance works are completed, whichever is earlier.

33. The lessor filed a statement of defence as well as counter claim.

34. The lessor referred to the terms of the lease deed and claimed that the commercial terms of the lease had been agreed

between the parties prior to execution of the Lease Deed. In terms of the agreement, the enjoyment, occupation and use of the demised premises was handed over to the lessee on 'as is where is' condition. It claimed that at the material time, one Navratan Antique Art [**Navratan**] was operating a showroom for old collectibles, antiques and art pieces, in a portion of the demised premises. The said entity was at the material time the lessor's tenant. The lessee expressed its intention to retain Navratan as its sub-lessee. Therefore, instead of evicting the said tenant and handing over vacant possession, the lessor had, at the lessee's request, terminated the lease with Navratan and returned the security deposit. The lessee had accepted the possession of the demised premises with Navratan as its sub-lessee.

35. The lessor claimed that it could not execute the formal Lease Deed on account of various lockdowns and the outbreak of novel corona virus. However, the Lease Deed was executed subsequently on 10.06.2020 setting out the commercial terms as agreed between the parties. Thus, the Lease Deed recorded that the term of the lease of the demised premises commenced from 19.10.2019.

36. The lessor claimed that Navratan had vacated the demised premises, but it caused damage to the exterior walls of the said premises. It claimed it was the lessee's responsibility for ensuring that Navratan had returned the premises in a proper condition, as it was sub-tenant of the lessee.

37. The lessor claimed that although the lessee had taken possession of the demise premises on 'as is where is' basis, it subsequently requested the lessor to undertake certain renovations. It claimed that the lessee informed its representatives of its intention to establish a restaurant on the ground floor and the first floor of the demise premises. It proposed to use the fourth floor as co-working space and the rest of the demised premises for its offices. The lessor claimed that although it had no obligation to carry out any renovation work, it carried out certain renovations in the interest of maintaining healthy business relationship with the lessee. However, the lessee did not establish a restaurant or any co-working facility. Subsequently, the lessee proposed to establish an upscale car showroom. However, it did not set up the same as well.

38. The lessor claimed that in the month of October, 2020, the lessee once again changed its intention. It has now expressed its

intention to sublease a portion of the demised premises to third parties. It requested the lessor to upgrade some of the specific elements on the front compound wall and the lessor carried out the refurbishment works in Feb - March, 2021.

39. The lessor claimed that at the request of the lessee, it also changed the compound wall and compound gate and upgraded the drainage line. It also undertook painting of the common areas.

40. The lessee also called upon the lessor to do interior renovations. However, the lessor declined to do so.

41. The lessor claimed that in the month of March, 2020, the lessee had unilaterally decided to remit discounted rent, while continuing to be in possession of the demised premises without any interruption. It claimed that the lessee had proposed modification of the terms of Lease Deed, however, the same was denied.

42. The lessor claimed that the lessee also requested for one time concession in respect of the rents due for the period from April, 2020 to March, 2021. Although the lessor was in no obligation to grant any discount, it agreed to the lessee's request and the rent for the months of April, 2020 and May, 2020 was

reduced by 45%. And the rent for the period June 2020 to March 2021 was reduced by 25%. However despite agreeing to the reduction in rent, the lessee failed to remit the rent and CAM.

43. The lessor claimed that it continued to follow up with the lessee for payment of rent, but the lessee had failed to pay the same. It claimed that during the course of pursuing the Lessee for payment of rent, certain WhatsApp messages were exchanged, which reflect that the lessee had admitted its delay in deposit of rent and CAM.

44. The lessor caused legal notice dated 30.06.2021 to be issued calling upon the lessee to remit the rent due since March, 2021 along with corresponding GST. Thereafter, the lessor issued a legal notice dated 30.07.2021. The lessee had responded to the said notice raising certain issues, but had not denied its liability of paying the rents and maintenance charges.

45. The lessor also raised the following counter claims:

Counter Claim No.1 - for claim to hand over vacant and peaceful possession of the demised premises;

Counter Claim No. 2 - For arrears of rent and maintenance charges along with GST for the period March 2021 to October 2021, quantified at Rs.1,93,41,675/-;

Counter Claim No.3 - Payment of arrears of occupation and maintenance charges for the period November, 2021 till the date of handing over of possession, quantified at Rs.2,41,13,300/- till July, 2022.

Counter Claim No.4 - Payment of one year's rent, quantified at Rs.2,60,00,000/- as the liquidated damages.

Counter Claim No.5 - Interest at the rate of 12% p.a. on the amounts as claimed.

Counter Claim No.6 - Compensation for renovation of the demised premises carried out at the behest of the lessee, quantified at Rs.19,13,623/-.

Counter Claim No. 7 - Loss suffered on account of unlawful possession and occupation of the demised premises, quantified at Rs.27,14,500/-.

Counter Claim No. 8 - Legal costs amounting to Rs.18,91,064/- incurred till the date of filing its statement of claims and further

amounts, including legal expenses incurred in proceedings against the lessee in the arbitration.

Counter Claim No. 9 - Costs of arbitration

**IMPUGNED AWARD**

46. On the basis of the pleadings, the Arbitral Tribunal framed the following issues:

"1. Whether the Claimant proves that the Respondent's termination of registered Lease Deed dated 10.06.2020 vide Notice of Termination dated 30.07.2021 is illegal and not binding on the Claimant?

2. Whether the Claimant proves that the Respondent has failed to maintain the Leased Premises thereby violating the terms of the registered Lease Deed dated 10.06.2022?

3. Whether the Claimant proves that it is entitled to withhold payment of rents, maintenance amounts, and corresponding GST, as required under the registered Lease Deed dated 10.06.2020 from 19.04.2021 until conclusion of the arbitration proceedings or till the pending maintenance works are attended to, whichever is earlier?

4. Whether the Claimant proves that it is entitled to receive a sum of Rs.17,31,42,064/- (Rupees Seventeen Crore Thirty One Lakh Forty Two Thousand and Sixty Four only) towards damages suffered?

5. Whether the Claimant proves that it is entitled to receive *pendente lite* and future damages towards loss of monthly revenue?

6. Whether the Respondent is entitled for eviction of the Claimant from the Leased Premises?

7. Whether the Respondent proves that it is entitled for payment of arrears towards rent/ occupation charges and maintenance amounts along with corresponding GST from March 2021 till possession is handed over by the claimant to the respondent?

8. Whether the Respondent proves that it is entitled to payment of Rs.2,60,00,000/- (Rupees Two Crore Sixty Lakhs only) towards one year's rent along with corresponding GST of Rs.46,80,000/- (Rupees Forty Six Lakh Eighty Thousand only) in terms of Clauses 16.3A and 4.6 of the registered Lease deed dated 10.06.2020?

9. Whether the Respondent proves that it is entitled to payment of damages for loss occasioned on account of the Claimant's continued possession and occupation of the Leased Premises?

10. Whether the Respondent proves that it is entitled to payment of Rs.19,13,623/- (Rupees Nineteen Lakh Thirteen Thousand Six Hundred Twenty Three only) as compensation towards expenses incurred by the Respondent at the behest of the Claimant?

11. Whether there should be any order for interest and if so, what is the rate of interest to be awarded, on which amount and for what period and from whom it is recoverable?

12. Whether there should be any order for costs and if so, what is the quantum of costs to be awarded and from whom it is recoverable?

13. To what reliefs and award the parties are entitled for?"

47. The lessee examined Sri. Talib Hassan Darvesh, Financial Advisor of the lessee and tendered his additional affidavit in examination-in-chief. The lessor examined Sri. P.S. Kiran Kumar as its witness. Both the witnesses produced documents and were also cross-examined. The Arbitral Tribunal delivered the impugned award on the basis of the pleadings, the material and the evidence led by the parties.

48. As noted above, it was the lessee's case that the lessor had failed to maintain the premises and, therefore, it was entitled to withhold lease rentals. Consequently, the termination of the lease on the ground that the lessee had failed to pay the lease rent, was not sustainable.

49. The Arbitral Tribunal found that the termination of the Lease Deed was in accordance with the terms as agreed. The Arbitral Tribunal found that the lessor had terminated the lease and also invited the lessee for discussion for settling all the disputes amicably in terms of the dispute resolution term. Thus, the lessee's contention that termination letter was merely an invitation for settlement of disputes and could not be construed as termination of the lease, was rejected. The Arbitral Tribunal noted that prior to

the Termination Letter dated 30.07.2021, the lessor had issued a notice calling upon the lessee to pay the lease rent.

50. The Arbitral Tribunal noted that the lessor's obligation for maintenance was limited to the aspects mentioned in Appendix 3 to the Lease Deed. Thus, the lessor could not be said to be in breach of the Lease Deed on account of any failure to carry out any other interior and exterior works. The Arbitral Tribunal observed the fact that the lessor had carried out certain other works which did not render the same as a part of its obligations under the Lease Deed.

51. The Arbitral Tribunal also found that the lessor had executed almost all works, except

(a) changing of the colour of grill;

(b) deep cleaning and

(c) painting of the first floor and floor of the courtyard structure.

52. In view of the aforesaid findings, the Arbitral Tribunal rejected the lessee's claim for damages. Additionally, the Arbitral Tribunal found that the lessee had also failed to establish that it had suffered the losses as claimed by it.

53. The Arbitral Tribunal also held that even if it is accepted that certain maintenance works like sweeping of the floors, clearing of

cob webs were pending, the same were only house keeping tasks and the same would not entitle the lessee to claim damages as claimed.

54. The Arbitral Tribunal also accepted the lessor's claim for liquidated damages for Rs.2,60,00,000/- towards one year's rent as stipulated in Clauses 16.3A and 4.6 of the Lease Deed.

55. The Arbitral Tribunal accepted the lessor's claim that it would be entitled to claim rent for the period prior to termination of the Lease Deed and occupation charges, that is till 30.10.2021 and occupation charges from 01.11.2021 till the date of handing over of possession.

56. The Arbitral Tribunal also accepted the lessor's claim for interest and has awarded the interest at the rate of 18% per annum on the amounts awarded. Additionally, the Arbitral Tribunal examined the invoices produced by various legal firms engaged by the lessor (aggregating to a sum of Rs.61,01,754/-) and taking the facts on account, quantified the costs at Rs.50 lakhs.

### **IMPUGNED ORDER**

57. The lessee's application under Section 34 of the A&C Act to set aside the impugned award was rejected in terms of the

impugned order. It was contended on behalf of the lessee before the Commercial Court that the Tribunal failed to refer to certain documents (correspondence between the parties) produced and thus, the impugned award was vitiated by patent illegality. It was also contended that the Arbitral Tribunal had not considered the lessee's contention that the Lease Deed contained reciprocal promises and, therefore, the lessee could not be faulted for withholding the rents on account of failure on the part of the lessor in performing its obligations.

58. The learned Commercial Court rejected the said contentions and found that the issues revolved around performance of the obligations of the Lease Deed and the Arbitral Tribunal had evaluated and considered the same. The learned Commercial Court also referred to various decisions delivered by the Supreme Court including the decisions in **Ssangyong Engineering and Construction Co. Ltd. v. NHAI: 2019 15 SCC 131**, **Dyna Technologies v. Crompton Greaves Ltd.: (2020) 1 SCALE 121**, **Associate Builders v. DDA: (2015) 3 SCC 49** and **NHAI v. M.Hakeem and Another: (2021) 9 SCC 1** and rejected the application with costs.

**REASONS AND DISCUSSIONS**

59. The learned counsel who appeared for the lessee (appellant) advanced contentions as were advanced before the learned Commercial Court. He contended that the impugned award was vitiated by patent illegality on the ground that the Arbitral Tribunal had not examined various documents relied on by the lessee. He submitted that the Arbitral Tribunal has not considered the communications exhibited as Ex.P27 and Ex.P28, as the same were not mentioned in the impugned award. He contended that the lessee had requested the lessor to accept the rent at the rate of Rs.10 lakh per month. But, there was no response from the lessor. He contended that the Arbitral Tribunal had ignored the correspondences (Ex.R16 and Ex.R17) with regard to the request for reduction of rentals.

60. It was also contended that the premises in question had been rendered unsafe and, therefore, until extensive structural repairs were carried out, the lessee could not be called upon to pay any rents.

61. He referred to the decision of the Delhi High Court in **Natwarlal Shamaldas & Co. v. Minerals & Metals Trading Corporation of India Ltd: MANU/DE/0572/2002** as well as the

decision of the Supreme Court in **Sikkim Subba Associates v. State of Sikkim: (2001) 5 SCC 629.**

62. The law regarding scope of interference in Arbitral Tribunal under the A&C Act is now well settled. There is no dispute that if an award is rendered based on no material or evidence and at all, the same would be liable to be set aside on the ground of patent illegality. In **Natwarlal Shamaldas** (*supra*), the Court had observed as under:

"... The sufficiency of the evidence and its appreciation is exclusively within the province of the Arbitrator. However, judicial review would be justified, and in fact imperative, where there is a total absence of evidence. If an Award is passed in respect of a claim for which no evidence is available, and which is hotly contested, that would place the Award in the category of being perverse. It would also amount to judicial misconduct if the Arbitrator nonetheless grants damages. The Court would, therefore, intervene and set aside the Award."

63. In **Sikkim Subba Associates** (*supra*), the Supreme Court referred to various earlier decisions and held that "the error apparent on the face of the award contemplated under Section 16(1)(c) and Section 30(c) of the Arbitration Act, 1940 was an error of law apparent on the face of an award and not an error of fact."

64. In the facts of that case, the Court found that the award was vitiated on account of several errors of law and the Arbitrator had acted arbitrarily and irrationally on a perverse understanding or misreading of the materials and had misdirected himself on vital issues before him. The Court observed that the award in the case disclosed non-application of mind to the actual, relevant and vital aspects and issues in the proper perspective.

65. We are unable to accept that the impugned award suffers from any of the flaws as had persuaded the Supreme Court to set aside the arbitral award in ***Sikkim Subba Associates*** (*supra*). A plain reading of the impugned award indicates that the Arbitral Tribunal had evaluated the material placed before it. The contention that it was necessary for the Arbitrator to refer to each and every document or correspondence that was placed by the parties, failing which the arbitral award would be vulnerable to challenge under Section 34 to the A&C Act, is without basis.

66. In terms of Sub-section (3) of Section 31 of the A&C Act, an arbitral award is required to state the reasons upon which it is based, unless the parties have agreed otherwise or that the award is passed on agreed terms under Section 30 of the Act. There is no cavil that the arbitral award is required to be informed by

reasons. However, the contention that it must necessarily refer to each document placed before the Arbitral Tribunal separately, is erroneous. Since the award is required to be informed by reasons, it is necessary for the Arbitral Tribunal to appreciate and evaluate the materials placed before it. The Arbitral Tribunal must address the disputes after considering the materials placed by the parties. However, it is not necessary that every correspondence or document be specifically referred in the arbitral award. Considering the contents and noting gravamen of documents placed would suffice.

67. In the present case, it is the lessee's contention that Exs.P27 and P28 had not been considered. Ex.P27 is a letter sent by the lessee in response to the Termination Notice dated 30.07.2021.

68. Ex.P27 is the lessee's response to the termination notice. A plain reading of Ex.P27 indicates that the lessee had denied the contents and the allegations made in the Termination Notice. The lessee's response essentially set out its allegation that the lessor had not performed its obligations of carrying out the maintenance work as required. However, it is material to note that the lessee had accepted that it had taken over possession of the demised premises on 'as is where is' condition. Since at the material time,

Navratan was occupying a part of the demised premises, the lessee accepted the said occupation and had entered into a separate agreement with Navratan as its sub-lessee.

69. A plain reading of the impugned award indicates that the Arbitral Tribunal had extensively dealt with the lessee's contention that the lessor had failed to perform its obligations to maintain the building in question. The Arbitral Tribunal had also noted the lessee's stand that it was not obliged to pay rent on account of failure on the part of the lessor to maintain the building in question. This is precisely, the lessee's contention in its reply to the Termination Notice.

70. Ex.P28 is a letter sent on 18.10.2021 by another law firm on behalf of the lessee, *inter alia*, referring to the letter dated 10.08.2021 (Ex.P27) and invoking the arbitration clause. A plain reading of the said letter also clearly indicates the lessee's stand as noted by the Arbitral Tribunal in the impugned award.

71. The first three issues struck by the Arbitral Tribunal were to the effect

(i) whether termination of the Lease Deed was valid;

(ii) whether the lessee had established that the lessor had failed to maintain the building in question; and

(iii) whether the lessee had established that it was entitled to withhold payment of rents and maintenance charges as required to be paid under the Lease Deed from 19.04.2021 until the conclusion of the arbitral proceedings.

72. The Arbitral Tribunal had examined the Lease Deed and had referred to clause 11.20 of the Lease Deed which reads as under:

"11.20 The Lessee, upon paying the rent and observing and performing the several covenants and conditions on the Lessee's part herein contained, the Lessee shall be entitled to peaceful possession and enjoyment of the entire Demised Premises and all easements, rights and advantages appurtenant thereto, including the common areas such as entrance, passageways, elevators, stairways, etc., during the period of this lease without interruption by the Lessor or any person/s claiming under or in trust for them."

73. In the present case, admittedly, the lessee had failed to pay the rent for the demised premises. The Arbitral Tribunal thus, reasoned that the lessee was not entitled to continue the possession of the demised premises. Article 16 of the Lease Deed contained covenants regarding termination of the lease. Clause 16.3A of the Lease Deed expressly entitled the lessor to terminate

the lease on failure on the part of the lessee to pay lease rent and CAM charges for any three consecutive months. The said clause is set out below:

**"16.3 Termination by the Lessor:**

A. The Lessor shall be entitled to terminate this Lease Deed by giving prior written notice to the Lessee of at least 3 (three) months ("**Lessor Notice Period**"), **only** in the following events: **(a)** failure on the part of the Lessee to pay the Lease Rent and CAM Charges, for any 3 (Three) consecutive months along with 12% delayed interest on Lease Rent **(b)** failure on the part of the Lessee to pay the increase in the Security Deposit within a period of 90 (ninety) days from the date of expiry of each 5 (five) year period (as provided in Clause 7 herein); and **(c)** any act or omissions by the Lessee resulting in any concerned government authority/ies issuing an order for closure of the entire Building affecting the occupancy of other tenants in the Building and only if the other tenants of the Lessor are required to stop and/ or there is interruption in the business operations of the other tenants in the Building during the Term of this Deed. In case, the Lessee does not make good the delayed rent or delayed deposit or rectify any breach or default within the said Lessor Notice Period, the lease will be deemed terminated and the Lessee shall be obliged to pay the Lease Rent of 1 (One) year, at the existing rate of Lease Rent (taking into account any escalation if the same occurs at any point during the said period of 1 (one) year).

The Lessor acknowledges, understands and agrees that the Lessor does not have the right to terminate this Lease Deed during the Lease Term *save and except* as envisaged in Clause 16.3 (A)."

74. Admittedly, the lessee had failed to pay the rent and CAM charges and the Arbitral Tribunal accepted that this would entitle the lessor to terminate the lease.

75. The Arbitral Tribunal also noted the obligation of the lessor to maintain the said premises, which according to the lessee had been breached.

76. Clause 12.1(A)(iii) of the Lease Deed which provides for payment of CAM charges and the lessor's obligation to maintain the building in question is set out below:

"The Common Area Maintenance (CAM) Charges shall be calculated at Rs. 4.00 (Rupees Four Only) per square feet per month and shall be payable on 28,750 Square Feet, for the areas to be leased on Ground, First and Fourth Floors, excluding the terrace area of 1,200 Square Feet and the open area of about 400 Square Feet on the northern side of the Ground Floor. The CAM Charges are being paid for the common area maintenance services ('Maintenance Services') as detailed in **Appendix 3** hereto. It is explicitly agreed by the Lessor that no CAM Charges is payable for the terrace area of 1,200 square feet and for the open area of about 400 square feet on the northern side of the Ground Floor. The CAM Charges shall be increased at the rate of 15% (fifteen percent) every three (3) years on the last paid CAM Charges."

77. As noted above, the maintenance charges which the lessor was required to affirm in Appendix 3 to the Lease Deed is reproduced below:

**"APPENDIX 3**

[Common area maintenance charges]

1. Building Security
2. Lift maintenance
3. Common water pump and tank maintenance
4. Common area electricity
5. Housekeeping of common areas"

78. The Arbitral Tribunal examined the material on record and found that the lessor had maintained the premises. It is also important to note that the Arbitral Tribunal found that even in terms of clause 25.4, the parties were obliged to continue to perform their respective obligations so long as the lessee continued to occupy the demised premises. However, the lessee had failed to pay the rents even after the commencement of the arbitral proceedings.

79. Additionally, the Arbitral Tribunal noted that the lessee had also demanded certain works to be conducted which were beyond the scope of the Lease Deed. However, the lessor had made it clear that it would not conduct any interior repairs. The lessor's

email dated 15.12.2020 (Ex.P5) was also confronted to PW1 and he had admitted the receipt of the same.

80. The lessor had also produced photographs to show that it had carried on several works, including all that it was not required to do so in terms of the Lease Deed.

81. A plain reading of the impugned award indicates that the Arbitral Tribunal had evaluated the materials placed by the parties in support of their rival contentions. Clearly, the findings of the Arbitral Tribunal to the effect that the lessor had performed its obligations, are findings on questions of fact, which are based on material placed on record. The same cannot be re-adjudicated in the proceedings under Section 34 of the A&C Act.

82. The conclusion that the lessee was not entitled to withhold rent as long as it continued in occupation of the demised premises, is a matter that falls squarely within the jurisdiction of the Arbitral Tribunal, and the said decision is final. The view expressed by the Arbitral Tribunal is based on evaluation of material as well as consideration of the agreement between the parties. We are unable to accept that the same suffers from any patent illegality.

83. The learned counsel appearing for the lessee had also contested the impugned award to the extent it related to awarding costs and interest. The Arbitral Tribunal had awarded costs quantified at Rs.50 lakhs. It is contended on behalf of the lessee that the same is without any basis. However, we find the said contention is also unmerited.

84. A plain reading of the arbitral award indicates that the lessor had placed material on record to establish that it had incurred legal costs for a total sum of Rs.61,01,754/-. The Arbitral Tribunal considered the same but had restricted the amount to Rs.50 lakhs. Paragraphs 118 and 119 of the impugned award clearly establish that the costs are awarded after evaluating the material produced.

The relevant extract of the impugned award is set out below:

"118. The respondent has, apart from defending itself in the various cases filed by the claimant herein before the different fora and filing many cases against the claimant for the enforcement of the rights conferred on it under Ex.P1, incurred sufficient legal and miscellaneous expenses. In paragraph 128 of written notes the respondent's counsel has mentioned that the legal firm engaged by the respondent has raised as many as 11 invoices on various dates commencing from 03.07.2021 upto 22.08.2023 for a total sum of Rs.61,01,754/-. Hence, this amount is sought to be recovered from the claimant. Apart from this, the respondent has furnished invoices raised by M/s. Keystone Partners to an extent of

Rs. 18,91,064/- towards professional charges which is paid to M/s. Keystone Partners.

119. Taking into consideration, the above facts and the various miscellaneous expenses incurred by the respondent, awarding a sum of Rs.50 lakhs (Rupees fifty lakhs) towards legal expenses and miscellaneous expenses to be recoverable by the respondent from the claimant would be reasonable and therefore the same is awarded. **Accordingly Issue No.12 is answered in the affirmative in part holding that the respondent is entitled to recover a sum of Rs.50 lakhs (Fifty lakhs) from the claimant towards Legal and Miscellaneous expenses. The respondent is entitled to recover amount paid towards Arbitrator's fee, administrative and Miscellaneous expenses paid to the Centre, as its share."**

85. We may also note that there is no cavil that the lessor had produced the invoices (11 in number) to establish the costs incurred, as noted by the Arbitral Tribunal. It is well settled that cost follows events. Since, the lessee had failed in its defence and claims, the Arbitral Tribunal's decision to award costs cannot be faulted. As noticed above, the quantification of the costs is less than the amount for which invoices were produced by the lessor. Thus, the award cannot be faulted on the ground of the measure of such costs as well.

86. The next question to be examined is the award of 18% interest per annum from the date on which the occupation charges, maintenance charges and GST became due, till realisation. The said interest has been awarded on the rent and occupation charges for the pre-reference period, *pendente lite* as well as post award.

87. The Arbitral Tribunal, noted that the parties had already agreed to the rate of interest for the period prior to passing of the impugned award. However, the Arbitral Tribunal considered it apposite to award interest at a higher rate of 18%. In terms of clause 4.7 of the Lease Deed, the parties had agreed that any delay in paying lease rent would attract interest at the rate of 12% per annum. Notwithstanding the same, the Arbitral Tribunal had awarded interest at the rate of 18% per annum from the date on which the amounts of lease rentals and CAM charges that were withheld became payable till the date of realisation. The Arbitral Tribunal had reasoned that if the premises had been handed over in time, the lessor would reap the benefits of higher rentals, which had been denied to the lessor.

88. The aforesaid reasoning runs contrary to the plain language of clause 4.7 of the Lease Deed. The parties had expressly agreed that delay in payment of lease rent after the due dates would attract

interest at the rate of 12% per annum until the outstanding lease rent is paid. Clause 4.7 of the Lease Deed is set out below:

"4.7 The Lessee agrees that any delay in payment of the Lease Rent after the due date will attract 12% (twelve percent) interest per annum from the date it is due to be paid to the Lessor, until the date the outstanding Lease Rent is paid."

89. Thus, insofar as the lease rents payable prior to the termination of the lease is concerned, the lessee cannot be called upon to pay interest at the rate exceeding the rate of interest agreed by the parties.

90. We may also note the lessor's claim for interest [counter claim No.5]. The relevant extract of the Statement of Defence and counter claims relating to the aforesaid counter claim is set out below:

"It is submitted that the Respondent was forced to bear losses as a result of the Claimant's failure to pay rents/occupation charges and maintenance amounts from March 2021. The Respondent is a Limited Liability Partnership constituted of 57 Designated Partners. Majority of the Respondent's Designated Partners as well as other partners are senior citizens who are wholly dependent on the rental income received by the Partnership. On account of the Claimant's delay in payment of rents/occupation charges and maintenance

amounts since March 2021, the Respondent is entitled to claim interest on such sums at simple interest rate of 12% per annum from the date on which these rents/occupation charges and maintenance amounts fell due until actual payment, in accordance with Clause 4.7 of the Lease Deed."

91. In view of the above, the impugned award insofar as it awards interest in excess of 12% per annum, is patently erroneous and cannot be sustained.

92. In view of the above, the impugned award to the extent that it includes award of interest in excess of the interest computed at the rate of 12% per annum in respect of the arrears of occupation charges, maintenance charges and the corresponding GST in terms of clause (i) (c) of the impugned award, is set aside.

93. We also note that there is an element of interest included in the award for liquidated damages and the delay in payment thereof [counter claim 4]. We clarify that since there is no agreement as to payment of the interest on the said amount, the Arbitral Tribunal's discretion to award interest on such delayed payment need not be interfered with.

94. The appeal is disposed of in the aforesaid terms.
95. The pending interlocutory applications also stand disposed of.

**Sd/-  
(VIBHU BAKHRU)  
CHIEF JUSTICE**

**Sd/-  
(C M JOSHI)  
JUDGE**

KS/AHB/SD