IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
AC No. 12 of 2025

(ARJUN MANGHANI** Vs **SAPPHIRE FOODS INDIA PVT. LTD THROUGH ITS AUTHORIZED SIGNATORY MR. DEEPAK TALUJA AND OTHERS)

Shri Siddharth Singh, learned counsel for the applicant.

Shri Murtuza Bohra, learned counsel for respondent No.1.

Heard on : 13.11.2025

Pronounced on : 09.02.2026.

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The present application has been filed under Section 11 of the Arbitration and Conciliation Act, for appointment of sole arbitrator.

2. Short facts of the case are that the applicant is owner and title holder of the immovable property namely shop No.GF.1 situated on the ground floor of the premises commonly known as "The One" located at Plot No.5, RNT Marg, Indore M.P. The same was purchased by the applicant *vide* registered sale deed dated 29.03.2019.

2.1 The respondent No.1 is a Pvt. Ltd. Company, which is engaged in the business of quick service restaurants, food outlets for dining serving vegetarian and non-vegetarian food under the name and style of KFC. The leased premises i.e., the property referred herein above was offered by the applicant to the respondent No.1 pursuant to which agreement / lease deed dated 06.02.2020 was executed in which respondents No.2 and 3 were also parties as they are the owners of GF.2 and GF.3 in the same building complex. The duration of the lease was 20 years, commencing from the date of handover of the possession of the leased premises. The handover date was decided to be 20th January, 2020. The respondent no. 1 thus taken over possession of the leased premises and

commenced its activities as described above.

2.2 As there were some disputes between the parties, the applicant issued notice dated 30.07.2024 thereby terminating the lease with immediate effect and asking respondent No.1 to vacate the premises within a period of 15 days from the date of receipt of the notice. However, the respondent No.1 did not flinch. Rather a reply was sent to the fact that in view of the terms of lease agreement the termination notice is without any merits and a request was made for withdrawal of the same.

3. The applicant responded to the said reply by sending a notice invoking arbitration clause i.e. Clause No.26 of the lease agreement *vide* its notice dated 30.08.2024. Again the respondent by replying to the same on 12.09.2024 informed the applicant that notice should be withdrawn in view of the fact that abrupt closure of restaurant on 06.06.2024 triggered by the applicant caused significant operational disruption and financial losses to respondent and thus by reserving its right to claim compensation it was asked that notice invoking arbitration be withdrawn.

3.1 The applicant when faced with this situation sent notice dated 11.10.2024 thereby again invoking the arbitration clause and proposing appointment of sole arbitrator. The respondent again denied the same by repeating its earlier contentions. Ultimately the final notice was sent for invoking arbitration on 07.11.2024 and for demand of outstanding lease rent/dues a separate notice was sent on 07.01.2025. When the respondent did not consent for arbitration in terms of Clause 26 nor paid the dues, the present application for appointment of sole arbitrator has been filed.

3.2 Learned counsel for the applicant submits that in view of the above facts and Clause No.26 of the agreement there is a clear existence of dispute and

arbitration agreement. He further submits that in view of the reply given by the respondents there is no possibility of appointment of arbitrator by mutual consent, hence he prayed for appointment of arbitrator.

4. Opposing the prayer of the applicant, the respondent No.1 has filed its reply and stated that the property in question has been rented to the respondent No.1 by the applicant, non-applicant No.2 and non-applicant No.3 jointly by executing rent agreement (Annexure A/1) on 20.01.2020 for a period of 20 years on a rent of Rs.2,00,000/- per month. This rented property is situated within the limits of Indore Municipal Corporation since the rented property is a part of non-residential building and is let out to respondent No.1 within municipal limits of Indore Municipal Corporation therefore, the said tenancy between the applicant and respondent No.1 is governed by the provisions of the Madhya Pradesh Accommodation Control Act, 1963. The said rented property false within the definition of accommodation as provided in Section 2(a) of the Madhya Pradesh Accommodation Control Act, 1963. The aforesaid Act applies to Indore Municipal area as per Entry No.28 of Schedule I read with Section 1(3) of the said Act. As such, the eviction is restricted in terms of Section 12 of the said Act. The tenancy of the subject property is exclusively governed by the provisions of above said Act. As such, the present application for appointment of arbitrator is not tenable in view of the fact that the dispute is not arbitrable. Apart from this, it has also been submitted that in the present case respondents No.2 and 3 and applicant all three of them are joint landlords. However, the present application has been filed only by the applicant hence the dispute resolution clause cannot be invoked singularly by the applicant when the original agreement is executed between the above 3 persons and the respondent No.1. It has also been stated that the applicant

is paying regular rent and there is complete absence of any dispute between the parties. He also referred to the provisions of Section 28 of the Indian Contract Act and submits that the bar as contained in Clause 19.6 of the lease agreement has no consequences for the reason that agreement in restraint of a legal provision is void. Thus the statutory right of invoking protection under the provisions of the M.P. Accommodation Control Act, cannot be wished away by executing an agreement. In support of his submission he has placed reliance on the judgment of the Hon'ble Apex Court rendered in the case of ***Vidya Drolia V/s. Durga Tading, (2021) 2 SCC 1***, ***Booz Allen & Hamilton Inc. V/s. SBI Home Finance Ltd. & Ors., (2011) 5 SCC 532***, ***Suresh Shah V/s. Hipad Technology India Pvt. Ltd***, reported as ***(2021) 1 SCC 529***, ***Mojika Real Estate & Developer Pvt. Ltd V/s. Jaipur Builders LLP, (2023) 1 DNJ 56*** *and* ***Anthony V/s. K.C. Ittop & Sons & Ors,*** reported as ***2000 Supreme (SC) 1148.***

4.1 There is one more submission by the respondent that original agreement has not been produced and in absence of which present application is not maintainable for which he placed reliance on an order passed by this Court in A.C.No.83/2021.

5. In rejoinder submissions learned counsel for the applicant also placed reliance on the judgment of ***Vidya Drolia (Supra)*** and submitted that present is not a case of landlord and tenant. There was a lease agreement between the parties, which is governed by the provisions of Transfer of Property Act and it has already been held by the Hon'ble Apex Court in the case of ***Vidya Drolia (Supra)*** that in the matters governed by the Transfer of Property Act, arbitration is permissible. He further submits that there is no special forum provided for matters regarding tenancy. It is not a matter coming within the special category for which Rent Controlling Authority has been prescribed under the said Act. Any dispute in the

present matter would go to a regular Court hence there is no exclusion of arbitration due to any special enactment in the present case.

5.1 As regards the three persons he submits that was done for abundant caution. There are 3 persons having separate ownership of 3 portions at GF.1, GF.2 and GF.3. Present matter relates to GF.1 which is exclusively owned by the applicant hence there are no adverse consequences of the absence of respondents No.2 and 3 as applicants in the present matter. It has also been argued by the learned counsel for the applicant that if arbitration is declined then the applicant shall render remediless in view of the fact that in terms of Clause 19.6 of the lease agreement the proceedings under rent law are barred. As regards the absence of original copy of agreement he submits that this has already been pleaded in para 2 of the application. There were two original copies of the same which have been kept by respondent No.1 and respondent No.2 respectively. Hence they are in their possession.

6. Counsel for the respondent in response submits that question is not about special Courts but special legislation and in the present case undisputedly there is presence of special legislation in form of M.P. Accommodation Control Act hence the issue is not arbitrable. Hence for this reason the arbitration application deserves to be dismissed.

7. Heard the learned counsel for the parties and perused the case file.

8. The lease deed (Annexure A-1) provides for dispute resolution under Clause 26 in the following manner:-

> *"26.1. If any dispute, difference, claim or question shall arise between the parties as to the construction, meaning, validity or effect and enforceability of this lease deed or as to the rights and liabilities of the parties arising hereunder or as to any other matters or things or arising out of or in connection therewith, the same shall at the first instance be tried to be resolved amicably. if*

dispute cannot be resolved amicably, the same shall be referred to arbitration. The sole arbitrator shall be decided and appointed with the mutual consent of all the parties and such arbitration shall be conducted in accordance with the provision of the Arbitration & Conciliation Act, 1996 or any statutory modification or re-enactment for the time being in force.

26.2 The arbitration shall take place in Indore and shall be conducted in English. The arbitral award and decision by the arbitrator shall be in writing and shall be final and binding and shall be enforceable in any court of competent Jurisdiction."

9. Apart from clause 26, there is one more clause in the agreement which is relevant for the purposes of the present case, which is clause no. 19.6 which specifically bars proceedings under the rent laws. It is thus clear that the parties while executing the lease specifically agreed that any dispute would first be resolved through amicable settlement and failing which, through arbitration and not by resorting to the provisions of the rent laws.

10. A perusal of the lease deed would show that it was executed for a period of 20 years. The lease agreement contains various clauses dealing with different exigencies including Clause 4 which pertains to lease rent.

10.1 Clause 4 provides that the lease rent shall be the amount payable by the lessee to the lessor every month and shall be either the 'minimum monthly guarantee' or the 'revenue share', whichever is higher.

10.2 The minimum monthly guarantee is fixed at Rs.2,00,000/- which is required to be paid by the lessee to the lessor on or before 10th day of each English calendar month in advance.

10.3. Clause 4.2 provides for revenue sharing, which means aggregate percentage of the monthly total net sales generated at the leased premises which the lessee agreed to pay to the lessor every month in the manner specified under the said clause.

11. It is thus clear that the present is not a simple case of landlord-tenant. A

lease deed was executed between the parties for fixed tenure of 20 years and the consideration for the demised premises is stipulated as a minimum monthly guarantee or revenue share, which partakes a character beyond that of a regular / ordinary rent. Clause 4.1 and 4.2 clearly bear the character of profit sharing. There is a tinge of partnership in commercial activity. The respondent failed to honour these clauses of the lease agreement, as per the applicant, due to none payment of rent in accordance with the terms of the lease deed.

12. Resultant to failure in paying lease rent in terms of clause 4 of the agreement, the applicant issued notice on 30.07.2024 terminating the lease agreement with respondent No.1 in respect of Plot No.1. The said notice was replied to by respondent No.1 *vide* letter dated 09.08.2024, whereby it refused to vacate the premises. Consequently, notice invoking the arbitration clause was issued on 30.08.2024 proposing the name of a person for appointment as sole arbitrator to adjudicate the disputes. However, respondent No.1 refused to give consent.

13. It is thus clear that disputes have arisen between the parties as the applicant asserts that despite clear lease agreement, respondent No.1 has neither paid the lease rent in accordance with the terms of the lease deed nor vacated the premises even after termination of the lease in accordance with the agreement.

14. Clause 17.2 of the agreement provides that the lessor may terminate the lease only in the case of default in payment of lease rent for two consecutive months. The consequences of non-payment of lease rent are provided under Clause 17 of the agreement. Thus, the termination of the tenancy is governed by the terms of the agreement itself.

15. Now, as regards the question of maintainability of the present

application for appointment of arbitrator in view of the specific objections raised by respondent No.1, that as the dispute is regarding landlord and tenant the same is not arbitrable thus arbitration application is not maintainable. In view of the above analysis and consideration of clause 4 of the agreement this court is of the considered opinion that this issue cannot be decided without carrying out a deep and detailed inquiry into the terms of the contract. First, it has to be decided that what is the nature of the agreement and also the question that whether the lease will be governed under the provisions of the Transfer of Property Act or the M.P. Accommodation Control Act.

16. Learned counsel for respondent No.1 has placed reliance on the judgment of ***Suresh Shah (Supra)***. However, a close scrutiny of the said judgment would show that the Hon'ble Apex Court while considering the provisions of the Transfer of Property Act held that where lease is governed by the provisions of the Transfer of Property Act, arbitration would be permissible.

17. The Hon'ble Apex Court in Paras 15, 16 and 17 has held as under:-

> *"15. A perusal of the provisions indicate the manner in which the determination of lease would occur, which also includes determination by forfeiture due to the acts of the lessee/tenant in breaking the express condition agreed between the parties or provided in law. The breach and the consequent forfeiture could also be with respect to non-payment of rent. In such circumstance, where the lease is determined by forfeiture and the lessor sues to eject the lessee and, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, Section 114 of the TP Act provides that the Court instead of passing a decree for ejectment may pass an order relieving the lessee against the forfeiture due to which the lessee will be entitled to hold the property leased as if the forfeiture had not occurred. Under Section 114-A of the TP Act a condition for issue of notice prior to filing suit of ejectment is provided so as to enable the lessee to remedy the breach. No doubt the said provisions provide certain protection to the lessee/tenant before being ejected from the leased property. In our considered view, the same cannot be construed as a statutory protection nor as a hard and fast rule in all cases to waive the forfeiture. It is a provision enabling exercise of equitable jurisdiction in appropriate cases as a matter of discretion.*

16. This position has been adverted to by the Supreme Court in one of its earliest decisions in Namdeo Lokman Lodhi v. Narmadabai [Namdeo Lokman Lodhi v. Narmadabai, (1953) 1 SCC 343 : AIR 1953 SC 228] as under : (AIR p. 234, paras 30-31)

> *"30. The argument of Mr Daphtary that there was no real discretion in the court and relief could not be refused except in cases where third party interests intervene is completely negatived by the decision of the House of Lords in Hyman v. Rose [Hyman v. Rose, 1912 AC 623 (HL)].*
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> *31. With great respect we think that the observations cited above contain sound principle of law. We are, therefore, unable to accede to the contention of Mr Daphtary that though Section 114 of the Transfer of Property Act confers a discretion on the court, that discretion except in cases where third party interests intervene must always be exercised in favour of the tenant irrespective of the conduct of the tenant."*

17. Such equitable protection does not mean that the disputes relating to those aspects between the landlord and the tenant is not arbitrable and that only a court is empowered to waive the forfeiture or not in the circumstance stated in the provision. In our view, when the disputes arise between the landlord and tenant with regard to determination of lease under the TP Act, the landlord to secure possession of the leased property in a normal circumstance is required to institute a suit in the court which has jurisdiction. However, if the parties in the contract of lease or in such other manner have agreed upon the alternate mode of dispute resolution through arbitration the landlord would be entitled to invoke the arbitration clause and make a claim before the learned arbitrator. Even in such proceedings, if the circumstances as contained in Sections 114 and 114-A of the TP Act arise, it could be brought up before the learned arbitrator who would take note of the same and act in accordance with the law qua passing the award. In other words, if in the arbitration proceedings the landlord has sought for an award of ejectment on the ground that the lease has been forfeited since the tenant has failed to pay the rent and breached the express condition for payment of rent or such other breach and in such proceedings the tenant pays or tenders the rent to the lessor or remedies such other breach, it would be open for the arbitrator to take note of Sections 114 and 114-A of the TP Act and pass appropriate award in the nature as a court would have considered that aspect while exercising the discretion.

18. However, in Para 18 of the same judgment, the following was observed

by the Hon'ble Apex Court :

> *"18. On the other hand, the disputes arising under the Rent Acts will have to be looked at from a different viewpoint and therefore not arbitrable in those cases. This is for the reason that notwithstanding the terms and conditions entered into between the landlord and tenant to regulate the tenancy, if the eviction or tenancy is governed by a special statute, namely, the Rent Act the premises being amenable to the provisions of the Act would also provide statutory protection against eviction and the courts specified in the Act alone will be conferred jurisdiction to order eviction or to resolve such other disputes. In such proceedings under special statutes the issue to be considered by the jurisdictional court is not merely the terms and conditions entered into between the landlord and tenant but also other aspects such as the bona fide requirement, comparative hardship, etc. even if the case for eviction is made out. In such circumstance, the court having jurisdiction alone can advert into all these aspects as a statutory requirement and, therefore, such cases are not arbitrable. As indicated above, the same is not the position in matters relating to the lease/tenancy which are not governed under the special statutes but under the TP Act."*

19. Thus, in the present case, considering the language employed in the terms of the lease agreement, it is required to be decided whether the same is governed by the provisions of the Transfer of Property Act or the relationship between the parties is governed by the provisions of the M.P. Accommodation Control Act.

20. As regards the case of ***Booz Allen (Supra)***, the Hon'ble Apex Court held in Para 36, 38, 39 and 46 as under :-

> *"**36.** The well-recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.*
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> ***38.** Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes*

relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to subordinate rights in personam arising from rights in rem have always been considered to be arbitrable.

39. *The Act does not specifically exclude any category of disputes as being not arbitrable. Sections 34(2)(b) and 48(2) of the Act however make it clear that an arbitral award will be set aside if the court finds that "the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force.*

46. *An agreement to sell or an agreement to mortgage does not involve any transfer of right in rem but creates only a personal obligation. Therefore, if specific performance is sought either in regard to an agreement to sell or an agreement to mortgage, the claim for specific performance will be arbitrable. On the other hand, a mortgage is a transfer of a right in rem. A mortgage suit for sale of the mortgaged property is an action in rem, for enforcement of a right in rem. A suit on mortgage is not a mere suit for money. A suit for enforcement of a mortgage being the enforcement of a right in rem, will have to be decided by the courts of law and not by Arbitral Tribunals."*

21. Similarly, in the case of ***Vidya Drolia (Supra)***, the Hon'ble Apex Court while considering the issue relating to landlord-tenant, considered in Paras 79 and 80 as under :-

*"79. Landlord-tenant disputes governed by the Transfer of Property Act are arbitrable as they are not actions in rem but pertain to subordinate rights in personam that arise from rights in rem. Such actions normally [**Ed.** : Certainly in those cases where the dispute only affects the parties to the arbitration clause, third-party rights would not be affected, as in the facts of the present case. It is in such cases that "such actions under the TPA normally would not affect third-party rights or have erga omnes effect". However, one may consider cases for instance, where a sub-tenancy exists or where the head lessee has taken a mortgage on the lease, and the landlord invokes the arbitration clause against the head lessee seeking to terminate the head lease, can the sub-tenant or mortgagee of the head lessee seek to be impleaded in the arbitration proceedings? For termination of the head lease would also extinguish the rights of the sub-tenant and the mortgagee of the head lessee. The situations posited are relatively simple ones. Often there are numerous prior and subsequent transferees who might be affected by the result of a dispute between a landlord and tenant, or even between other transferees. In such complex situations involving prior and subsequent transfers, it would appear that the matter would be non-arbitrable as it would appear*

to satisfy the first two tests of non-arbitrability laid down herein—see Shortnotes B and C. In a case where the mortgagee is covered by the RDB Act and the Sarfaesi Act, it might be rendered non-arbitrable by virtue of the fourth test as well—see Shortnotes E and G.] would not affect third-party rights or have erga omnes effect or require centralised adjudication. An award passed deciding landlord-tenant disputes can be executed and enforced like a decree of the civil court. Landlord-tenant disputes do not relate to inalienable and sovereign functions of the State. The provisions of the Transfer of Property Act do not expressly or by necessary implication bar arbitration. The Transfer of Property Act, like all other Acts, has a public purpose, that is, to regulate landlord-tenant relationships and the arbitrator would be bound by the provisions, including provisions which enure and protect the tenants.

80. In view of the aforesaid, we overrule the ratio laid down in Himangni Enterprises [Himangni Enterprises v. Kamaljeet Singh Ahluwalia, (2017) 10 SCC 706 : (2018) 1 SCC (Civ) 82] and hold that landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration."

22. In view of the above, it is clear that not each and every dispute between two parties relating to leased premises can be said to be covered under the provisions of the special Act i.e. the M.P. Accommodation Control Act. In each case, the arbitrability of the issue has to be determined after elaborate examination of the relevant material including the agreement, which is not advisable in proceedings under Section 11 of the Act.

23. As observed above, the present case is not simple case of renting out suit premises, but involves an agreement between the parties termed as lease agreement, wherein the lease rent has been defined in Clause 4 as minimum monthly guarantee and revenue share, which has a tinge of profit sharing. Thus, the present case is not one where at the outset, it can be held that it is covered under the provisions of M.P. Accommodation Control Act. The nature of the

agreement is clearly commercial.

24. The Hon'ble Apex Court while considering the scope of inquiry in an application under section 11 of the Act of 1996 in the case of ***VGP Marine Kingdom (P) Ltd. v. Kay Ellen Arnold*, (2023) 1 SCC 597** has held in para 6, 8, 10 and 11 as under:

> *"**6.** The learned counsel appearing on behalf of the respondent relying upon the decisions of this Court in Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. [Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532 : (2011) 2 SCC (Civ) 781] , Chloro Controls (India) (P) Ltd. v. Severn Trent Water Purification Inc. [Chloro Controls (India) (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] and Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] and by supporting the impugned judgment and order [VGP Marine Kingdom (P) Ltd. v. Kay Ellen Arnold, 2021 SCC OnLine Mad 16528] passed by the High Court and even relying upon some of the observations made by this Court in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] has prayed to dismiss the present appeal.*
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> ***8.** Having heard the learned counsel appearing on behalf of the respective parties and considering the fact that share subscription and shareholders agreement dated 27-4-2016 entered into between the appellants and the respondent contains the arbitration clause in case of dispute between the parties arising out of the said agreement, we are of the opinion that the High Court ought to have allowed the application under Section 11(6) of the 1996 Act and ought to have left the issue on arbitrability of dispute between the parties to the arbitrator.*
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> ***10.** As observed hereinabove and from the impugned judgment and order [VGP Marine Kingdom (P) Ltd. v. Kay Ellen Arnold, 2021 SCC OnLine Mad 16528] passed by the High Court it appears that the High Court has refused to appoint an arbitrator, inter alia, on the ground that at the time when the application was filed there were already arbitral proceedings pending between the parties and the award was passed and also on the ground that the proceedings were pending before NCLT at the instance of the respondent on the allegation of mismanagement and oppression which was filed by the respondent as minority shareholder.*
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> ***11.** So far as the first ground is concerned, at the outset it is required to be noted that according to the appellant, the appellant was not a party to the said proceedings and the present share subscription and shareholders agreement dated 27-4-2016 is an independent agreement and it is the case on behalf of the respondent that all the three agreements are interlinked and therefore, in view of the above declared*

award with respect to the other two agreements the present application shall not be maintainable. As per the decision of this Court in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] unless on the face it is found that the dispute is not arbitrable and if it requires further/deeper consideration, the dispute with respect to the arbitrability should be left to the arbitrator. The decision of this Court in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] is a three-Judge Bench subsequent decision in which the entire law on the scope and ambit of the Court at the stage of application under Section 11(6) of the 1996 Act has been dealt with and considered by the Court."

25. Recently, the Hon'ble Supreme Court after considering all the earlier judgments on the point has passed an authoritative judgment on the issue of scope of examination in an application under section 11 of the Arbitration and Conciliation Act, 1996 in the case of ***Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd.*****, (2024) 4 SCC 341** and held in para 26 to 29 as under:

> ***"26.*** *Taking cognizance of the legislative change, this Court in Duro Felguera, S.A. v. Gangavaram Port Ltd. [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , noted that post 2015 Amendment, the jurisdiction of the Court under Section 11(6) of the 1996 Act is limited to examining whether an arbitration agreement exists between the parties — "nothing more, nothing less".*
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> ***27.*** *The entire case law on the subject was considered by a three-Judge Bench of this Court in Vidya Drolia v. Durga Trading Corpn. [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , and an overarching principle with respect to the pre-referral jurisdiction under Section 11(6) of the Act was laid down. The relevant portion of the judgment is as follows : (SCC pp. 120-21, paras 153-54)*
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> > *"153. Accordingly, we hold that the expression "existence of an arbitration agreement" in Section 11 of the Arbitration Act, would include aspect of validity of an arbitration agreement, albeit the Court at the referral stage would apply the prima facie test on the basis of principles set out in this judgment. In cases of debatable and disputable facts, and good reasonable arguable case, etc. the Court would force the parties to abide by the arbitration agreement as the Arbitral Tribunal has primary jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability.*
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> *154. Discussion under the heading "Who Decides Arbitrability?" can be crystallised as under:*

154.1. Ratio of the decision in Patel Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] on the scope of judicial review by the Court while deciding an application under Sections 8 or 11 of the Arbitration Act, post the amendments by Act 3 of 2016 (with retrospective effect from 23-10-2015) and even post the amendments vide Act 33 of 2019 (with effect from 9-8-2019), is no longer applicable.

154.2. Scope of judicial review and jurisdiction of the Court under Sections 8 and 11 of the Arbitration Act is identical but extremely limited and restricted.

154.3. The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. The court has been conferred power of "second look" on aspects of non-arbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34(2)(a) or sub-clause (i) of Section 34(2)(b) of the Arbitration Act.

154.4. Rarely as a demurrer the Court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably "non-arbitrable" and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the Court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism."

(emphasis supplied)

28. *The limited scope of judicial scrutiny at the pre-referral stage is navigated through the test of a prima facie review. This is explained as under : (Vidya Drolia case [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , SCC pp. 110-13, paras 133-34 & 138-40)*

"133. Prima facie case in the context of Section 8 is not to be confused with the merits of the case put up by the parties which has to be established before the Arbitral Tribunal. It is restricted to the

*subject-matter of the suit being prima facie arbitrable under a valid arbitration agreement. Prima facie case means that the assertions on these aspects are bona fide. When read with the principles of separation and competence-competence and Section 34 of the Arbitration Act, the referral court without getting bogged down would compel the parties to abide unless there are good and substantial reasons to the contrary. [The European Convention on International Commercial Arbitration appears to recognise the prima facie test in Article VI(3):"**VI. (3)** Where either party to an arbitration agreement has initiated arbitration proceedings before any resort is had to a court, courts of contracting States subsequently asked to deal with the same subject-matter between the same parties or with the question whether the arbitration agreement was non-existent or null and void or had lapsed, shall stay their ruling on the arbitrator's jurisdiction until the arbitral award is made, unless they have good and substantial reasons to the contrary."]*

134. Prima facie examination is not full review but a primary first review to weed out manifestly and ex facie non-existent and invalid arbitration agreements and non-arbitrable disputes. The prima facie review at the reference stage is to cut the deadwood and trim off the side branches in straightforward cases where dismissal is barefaced and pellucid and when on the facts and law the litigation must stop at the first stage. Only when the Court is certain that no valid arbitration agreement exists or the disputes/subject-matter are not arbitrable, the application under Section 8 would be rejected. At this stage, the Court should not get lost in thickets and decide debatable questions of facts. Referral proceedings are preliminary and summary and not a mini trial. …

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138. … On the other hand, issues relating to contract formation, existence, validity and non-arbitrability would be connected and intertwined with the issues underlying the merits of the respective disputes/claims. They would be factual and disputed and for the Arbitral Tribunal to decide.

139. We would not like to be too prescriptive, albeit observe that the Court may for legitimate reasons, to prevent wastage of public and private resources, can exercise judicial discretion to conduct an intense yet summary prima facie review while remaining conscious that it is to assist the arbitration procedure and not usurp jurisdiction of the Arbitral Tribunal. Undertaking a detailed full review or a long-drawn review at the referral stage would obstruct and cause delay undermining the integrity and efficacy of arbitration as a dispute resolution mechanism. Conversely, if the Court becomes too reluctant to intervene, it may undermine

effectiveness of both the arbitration and the Court. There are certain cases where the prima facie examination may require a deeper consideration. The court's challenge is to find the right amount of and the context when it would examine the prima facie case or exercise restraint. The legal order needs a right balance between avoiding arbitration obstructing tactics at referral stage and protecting parties from being forced to arbitrate when the matter is clearly non-arbitrable. [Ozlem Susler, "The English Approach to Competence-Competence" Pepperdine Dispute Resolution Law Journal, 2013, Vol. 13.]

140. Accordingly, when it appears that prima facie review would be inconclusive, or on consideration inadequate as it requires detailed examination, the matter should be left for final determination by the Arbitral Tribunal selected by the parties by consent. The underlying rationale being not to delay or defer and to discourage parties from using referral proceeding as a ruse to delay and obstruct. In such cases a full review by the Courts at this stage would encroach on the jurisdiction of the Arbitral Tribunal and violate the legislative scheme allocating jurisdiction between the Courts and the Arbitral Tribunal. Centralisation of litigation with the Arbitral Tribunal as the primary and first adjudicator is beneficent as it helps in quicker and efficient resolution of disputes."

29. *Following the general rule and the principle laid down in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] ,* ***this Court has consistently been holding that the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability****. In Pravin Electricals (P) Ltd. v. Galaxy Infra & Engg. (P) Ltd. [Pravin Electricals (P) Ltd. v. Galaxy Infra & Engg. (P) Ltd., (2021) 5 SCC 671 : (2021) 3 SCC (Civ) 307] , Sanjiv Prakash v. Seema Kukreja [Sanjiv Prakash v. Seema Kukreja, (2021) 9 SCC 732 : (2021) 4 SCC (Civ) 597] and Indian Oil Corpn. Ltd. v. NCC Ltd. [Indian Oil Corpn. Ltd. v. NCC Ltd., (2023) 2 SCC 539 : (2023) 1 SCC (Civ) 88] , the parties were referred to arbitration, as the prima facie review in each of these cases on the objection of non-arbitrability was found to be inconclusive. Following the exception to the general principle that the Court may not refer parties to arbitration when it is clear that the case is manifestly and ex facie non-arbitrable, in BSNL v. Nortel Networks (India) (P) Ltd. [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] , Secunderabad Cantonment Board v. B. Ramachandraiah & Sons [Secunderabad Cantonment Board v. B. Ramachandraiah & Sons, (2021) 5 SCC 705 : (2021) 3 SCC (Civ) 335] and B & T AG v. Union of India [B & T AG v. Union of India, (2024) 5 SCC 358 : 2023 SCC OnLine SC 657] , arbitration was refused as the claims of the parties were demonstrably time-barred."*

26. As already analysed herein above, agreement in the present case is not

such that it can be concluded on the face of it that it is a plain and simple agreement of landlord and tenant. As such in view of the law as laid down by the Hon'ble Apex Court in the above mentioned cases, it is better left for the arbitrable tribunal to decide the issue of arbitrability of the subject matter in the present case.

27. Apart from this, it has also to be kept in mind that there is an exclusion clause in terms of clause 19.6 of the agreement, which bars filing of suit under the rent laws. Thus there was always a possibility that in case the applicant would have filed a suit, the respondent no. 1 would have raised objections against its maintainability in view of the said bar because if both the clauses are read together (clause no. 19.6 and 26) than it would come to the fore that parties intended to submit themselves to arbitration at the exclusion of all other remedies.

28. In order to determine this, the entire dispute has to be appreciated after taking into consideration the material that may be placed on record by the contesting parties. This exercise can certainly be done by the arbitral Tribunal. Accordingly, in the peculiar facts of the present case, it is hereby held that the present application is maintainable. However, the arbitrability of the issue has to be determined by the arbitral Tribunal and the conclusions as drawn by this court are limited to the adjudication of this case and are only prima facie in nature.

29. As regards the objection that the original agreement has not been produced and in its absence the present application is not maintainable, for which learned counsel has placed reliance on an order passed by this Court in the case of ***Kabeer Reality Private Limited vs. Sapphire Foods India Private Limited*** in ***AC No.83/2021***. It would suffice to say that the facts of the said case were different. In the said case, the Court in para 3 held that arbitration could not be conducted on

the basis of unregistered and insufficiently stamped rent agreement. However, the Hon'ble Apex Court by its authoritative pronouncement in the case of ***In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Stamp Act, 1899,*** in ***(2024) 6 SCC 1*** has held that unregistered instrument can also be relied on for the purposes of arbitration agreement as the arbitration clause is severable. In the present case, the existence of the agreement has not been denied by respondent No.1. As such, on this objection, the Court is not inclined to reject the present application.

30. There is yet another objection raised by learned counsel for respondent No.1 in as much as the agreement was executed between three persons, whereas the present application has been filed by only one person i.e. the present applicant and is therefore not maintainable.

31. Learned counsel for the applicant, however, by referring to Annexure A-2 which is the sale deed of the Prakoshta submits that the dispute in the present case relates to Shop No.1 which falls within the exclusive ownership of the present applicant. This, however, is also an issue which is required to be decided by the arbitral Tribunal and at this stage, this Court is not inclined to examine the same.

32. In view of the above analysis, this Court is of the considered view that the present is a case where, in light of the dispute between the parties and the existence of arbitration clause, arbitrator deserves to be appointed by invoking the powers under Section 11 of the Arbitration and Conciliation Act, 1996.

33. It is further noted that the parties have failed to appoint arbitrator by mutual consent as per the agreed procedure.

34. Accordingly, the name of **Hon'ble Shri Justice A.M. Naik (Retd. Judge of M.P. High Court)** is proposed for appointment as the Arbitrator.

35. Let a declaration in terms of Section 11(8) read with Section 12(1) of the Arbitration & Conciliation Act, 1996 in the prescribed form as contained in sixth Schedule of the Act be obtained from the proposed Arbitrator by the Principal Registrar of this Court before the next date of hearing.

List the matter on **9th of March, 2026**.

(PAVAN KUMAR DWIVEDI)
JUDGE

SS / *Anushree*