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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment reserved on: 06.12.2023*

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*Judgement pronounced on: 20.12.2023*+ **ARB. P. 849/2023**

SWASHBUCKLER HOSPITALITY PVT. LTD. .... Petitioner

Through: Mr. Saurabh Gupta, Mr. Faisal Zafar,  
Advvs. (VC).

versus

AVDESH MITTAL &amp; ANR.

..... Respondents

Through: Mr. Arun Batta, Mr. Abdul Vahid,  
Advvs. for R-1.**CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J.**

1. The present petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking the appointment of a sole arbitrator to adjudicate the disputes *inter-se* having been arisen between the parties out of the Letter of Intent dated 23.12.2022.
2. A bare perusal of the material on record reflects that Respondent No.1 being the owner/ proprietor of the Property E-582, Greater Kailash-II, New Delhi, agreed to lease the same to the Petitioner, leading to the parties executing the Letter of Intent dated 23.12.2022. Respondent No.1 represented to the Petitioner that the property is free from encumbrances and thereafter, obtained Rs. 40,00,000/- from the Petitioner towards a



Non-Refundable Security Deposit. However, on 31.02.2023, the aforementioned property was sealed vide Court Order dated 12.10.2022 passed by the Ld. Chief Metropolitan Magistrate, Saket Court, Delhi and Order of the Presiding Officer, DRT-II, dated 28.10.2022.

3. Pursuant to the sealing of the premises, the Petitioner asked for the refund of the security deposit of Rs. 40,00,000/- given to Respondent No.1. However, Respondent No.1 refused to refund it. In response to this, the Petitioner invoked arbitration vide notice dated 23.05.2023 arising out of the arbitration clause contained in the Letter of Intent dated 23.12.2022 in clause 24 which reads as under:

*“LETTER OF INTENT  
Private & Confidential*

*THIS LETTER OF INTENT {the “LOI”} is an expression of interest between the Parties signing hereof for the proposed GUEST HOUSE at E582, Greater Kailash-II, New Delhi- 110048. The agreement shall be executed by the Parties within a time frame as mentioned herein. Until such time as the Lease Agreement is signed and executed, the terms and conditions set out in this LOI shall govern the relationship of the Parties hereto.*

1.	<i>First Party/Owner</i>	<i>Avdshesh Mittal</i>
2.	<i>Second Party</i>	<i>Swashbuckler Hospitality Private Limited (PAN No.AAYCS5783M)</i>
3.	<i>Building</i>	<i>Entire Building situated at E-582, Greater Kailash-II (“Demised Building”) excluding 110 sq ft approx an Ice Cream Parlour in the North West Corner of Ground Floor.</i>
4.	<i>Date of Signing of the Lease Agreement</i>	<i>The Parties shall execute the lease agreement It is agreed that the Lease Agreement will be executed on or</i>



		<p><i>before end of Feb 2023, failing which this LOI shall be deemed cancelled. Party shall be refunded within 7 days of such cancellation.</i></p> <p><i>It is further agreed that from the date of signing of this LOI, the Demised Building will be taken off the market and the First Party shall not offer/ negotiate/ enter any understanding, interest, agreement with any other person in respect hereto.</i></p>
5.	<i>Lease Term Duration</i>	<p><i>The total tenure of the lease would be for 9 (Nine) years,</i></p> <p><i>The First Party cannot terminate the Lease Agreements except in the following event:</i></p> <ul style="list-style-type: none"><li><i>a. if the rental payment are arrears in two consecutive months;</i></li><li><i>b. breach of any of the terms and conditions to be observed or performed by the Second Party.</i></li></ul> <p><i>On the occurrence of any of the above event the agreement stands terminated.</i></p>
6.	<i>Rent</i>	<p><i>a) Corresponding to the Rent Commencement Date, the lump 1<sup>st</sup> Feb 2023 ((subject work at site getting completed and all compliances getting fulfilled)- 31st January 2024 - INR 10,00,000 per month Plus Taxes, and</i></p> <p><i>b) From 1<sup>st</sup> Feb 2024 till 31s January 2026, the monthly rent of INR 12,00,000/- Plus Taxes</i></p> <p><i>c) From 1<sup>st</sup> Feb 2026 to 31<sup>st</sup> January 2029 the monthly rent of 13,80,000/-</i></p>



		<p><i>Plus Taxes</i></p> <p><i>d) From 1<sup>st</sup> Feb 2029 to 31<sup>st</sup> January 2032 the monthly rent of 15,87,000/- Plus Taxes will be paid to the Lessor.</i></p> <p><i>The Rent shall be subject to escalation @ 15% after every 3 (three) years on the last paid monthly rent.</i></p>
7.	<i>Rent Payment</i>	<i>The Rent will be paid by the Second party to the First Party; in advance every month. .</i>
8.	<i>Rent-Free/Fit-out Period</i>	<i>Jan 2023</i>
9.	<i>Date of handover of possession</i>	<i>On the date of signing and registration of the Lease Agreement.</i>
10.	<i>Lease Commencement Date</i>	<i>01/01/2023 to 31/01/2032</i>
11.	<i>Rent Commencement Date</i>	<i>The rent will start from the date of complete handover or 1st February 23 whichever is later.</i>
12.	<i>Usage</i>	<i>The Hotel Building would be used for operating a hotel /Guest house. The Second Party has the sole and exclusive right to run and operate the same.</i>
13.	<i>Licences &amp; Approval</i>	<i>The first party represents and ensures that the proposed building is approved for the usage of hotel/guest house.</i>
14.	<i>Facilities and Amenities</i>	<i>As per Annexure 1.</i>
15.	<i>Expenses</i>	<i>Not required.</i>
16.	<i>Revenues</i>	<i>All revenue generated from the day to day operation and management of the Proposed Hotel will be to account of the Second Party and the First Party will have no right or lien on the income/ revenue generated there from in any manner whatsoever.</i>



17.	<i>Interest Free Refundable Security Deposit</i>	<p><i>Equivalent to 6{six} month's Rent. It has been mutually agreed that the security deposit will be payable by the Second Party to the First Party as per the following schedule:</i></p> <p><i>i) Rs. 60,00,000/- equivalent to Six month's Rent of which Rs. 20,00,000/ has been paid at the time of signing of this LOI, and another Rs. 20,00,000/- by 31/12/2022 and balance Rs. 20,00,000/- at the time of taking of possession and registration of this agreement.</i></p> <p><i>The First Party shall refund the security deposit simultaneously with the taking over the possession of the Demised Building at the time of expiry/termination of the Lease Agreements. In case of any delay the same shall be refunded along-with interest at the rate of 25% per annum for the period of delay.</i></p>
18.	<i>Rooms &amp; Building</i>	<p><i>To be Completed before the possession and registration of the Lease Agreement.</i></p>
19.	<i>Maintenance</i>	<p><i>The Second Party and/or the Hotel Operator shall maintain the Hotel Building and all facilities/ amenities provided therein either on its own or through a maintenance agency appointed in respect thereto. The First Party shall not interfere in respect thereto in any manner whatsoever.</i></p>
20.	<i>Property/Municipal Taxes</i>	<p><i>Property and any other municipal taxes relating to the Property shall be borne and payable by the First Party during the entire term of the lease.</i></p>
21.	<i>GST</i>	<p><i>GST and all other taxes, if any, shall be</i></p>



		<i>borne and payable by the Second Party during the entire term of the Lease.</i>
22.	<i>Legal Fees and Stamp Duty Costs</i>	<i>Each party to bear its own legal costs. The stamp duty and registration charges or any other tax applicable and payable of the Lease Agreement shall be borne as follows by First Party 1% and by Second Party 2%..</i>
23.	<i>Assignment</i>	<i>Not Allowed.</i>
24.	<i>Governing Law and Arbitration</i>	<i>This LOI shall be governed by the laws of India. Any and all disputes and differences arising out of or in relation to this LOI between the Parties shall be first resolved by mutual amicable discussions. In case of failure to resolve such disputes amicably within a period of 30 (thirty) days from reference thereof, such dispute or difference shall be referred to arbitration of a sole arbitrator to be mutually appointed by the Parties, The arbitration proceedings shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any Statutory modification/ amendment thereof. The arbitration proceedings shall be conducted in the English language and the place of arbitration shall be New Delhi. The Arbitration award shall be final and binding on the Parties and the Parties agree to be bound thereby and to act accordingly and such award shall be enforceable before any court of competent jurisdiction. The Parties shall continue to perform such of their respective obligations that do not</i>



		<p><i>relate to the subject matter of the dispute, without prejudice to the final determination. This clause shall survive expiry or termination of this LOI.</i></p>
25.	<i>Notices</i>	<p><i>Unless otherwise stated, all notices, approvals, instructions and other communications for the purposes of this Agreement shall be given in writing and may be given by facsimile, by e-mail, by personal delivery or by sending the same by registered acknowledgement due or courier addressed to the Party concerned at the address stated herein below or any other address subsequently notified to the other Party. Such notice shall be deemed: to be delivered on receipt thereof.</i></p> <p><i>First Party:</i> <i>Mr. Avdhesh Mittal</i> <i>E-94, Greater Kailash I,</i> <i>New Delhi.</i> <i>E-mail Id;- cmd@aveenamilk.com</i> <i>Phone No; 9811297470</i></p> <p><i>Second Party:</i> <i>Swashbuckler Hospitality Private Limited</i> <i>Email Id;-</i> <i>Phone NO;- +91 – 9779952158</i></p> <p><i>T-40, Hauz Khas Village, New Delhi - 110016, through Gautam Munjal</i></p>
26.	<i>Entire Agreement</i>	<p><i>This LOI constitutes the entire agreement between the Parties with respect to the subject matter hereof</i></p>



		<p><i>and supersedes all prior communications, negotiations and representations, either oral or written, between the Parties, in relation hereto. It is expressly declared that no variation, amendment, modification or addition to this LOI shall be effective or binding on any Party unless set forth in writing and duly authorized by the Parties hereto.</i></p>
27.	Counterparts	<p><i>This LOI may be executed in one or more counterparts, each of which shall be deemed an original but all of which signed and taken together, shall constitute one document.</i></p>

#### ANNEXURE-I

*The Lessor undertakes and shall be responsible to the Lessee, in providing the following amenities in the Said Building/ Said Premises, which shall be accessible to the Lessee before the Commencement date;*

1. Lifts;
2. Electrical panel;
3. Generator;
4. Fire extinguishers;
5. Fire Hydrants;
6. Fire panels;
7. Smoke detectors;
8. Servo;
9. Waterproofing;
10. Plumbing;
11. Air Conditioners with Compressor Warranty of 10 years
12. Paintwork across the building from inside and outside
13. Facade.
14. 32 inch Smart LED TV's across all rooms
15. 8.5+ inch mattress of good quality across all rooms depending on twin, queen or king size
16. Intercom and EPBAX System as per Operator standards





17. All basic furniture & fittings as is placed on site
18. Fully functional washroom fittings with shower cubicles
19. All room, washroom, common passage doors in fully functional condition
20. Water storage capacity in synchrony with the 40 rooms capacity and fully functional kitchen,
21. Solar based water heating system and heat pump of good quality with capacity to fulfil 40 rooms and kitchen and cafe operations.
22. Door Lock systems with RFID Cards (maintenance of same on Operator)
23. Curtains,
24. Glasswork to be repaired and replaced as per requirement, frosting in rooms & common areas wherever required.
25. CCTV cameras.
26. Lights across all rooms, corridors, basement, rooftop and side courtyard as per required.
27. Mini Fridge in all rooms
28. Kitchen equipment in fully functional position.
29. New electrical points in charcoal grey colour (switches, points, plugs)
30. Electronic safe in all rooms
31. Hair Dryers in all rooms.

*The above terms and conditions of this LOI are accepted and agreed between the First Party and the Second Party and both the parties intend to enter into legally binding Lease Agreements, which will reflect inter alia the above terms and conditions.*

*IN WITNESS WHEREOF, the parties hereto have signed these present at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2022.*

*Thanking you,*

*Signed, sealed and Delivered  
For Avdesh Mittal*

*Signed, sealed and Delivered  
For Swashbuckler  
Hospitality Private Limited.*



*Through Authorized Signatory”*

4. Perusal of the record indicates that the parties were unable to agree on the appointment of a Sole Arbitrator within the period of 30 days as stipulated in the arbitration clause and hence, the present petition is filed.
5. The learned counsel on behalf of the petitioner submits that Respondent No.1 misrepresented the facts to the petitioner as, despite his assertions, it has come to light that Respondent no.1 is not the sole owner of the property and that Respondent no.1 also possessed the knowledge of the Court Order dated 12.10.2022 for sealing the property and of the restraint order by the DRT in breach of which they executed the Letter of Intent dated 23.12.2022 and procured the Non-refundable Security Deposit amounting to Rs. 40,00,000/- towards the same.
6. Learned counsel further submitted that Respondent No.1 did not respond to any form of communication and thus, the Petitioner was constrained to file the Police Complaint dated 29.03.2023. It is submitted that the Petitioner also served a Demand Notice dated 24.04.2023 demanding their deposit and other payments back along with interest. However, Respondent No.1 failed to reply to both; the notice and the Police Authority's notice to appear before it.
7. Petitioner served a notice under Section 21 of the Arbitration and Conciliation Act, 1996, dated 23.05.2023 upon the Respondents. The respondent did not respond to the same. Learned counsel for the Petitioner submits that the Petitioner has also filed a petition under Section 9 of of the Arbitration and Conciliation Act, 1996, to secure the



disputed amount wherein notice has been issued by the learned District Judge, Saket Courts, and is now listed on 28.07.2023. It is submitted that the disputed subject amount is approximately Rs. 50,00,000/-.

8. Learned counsel for the Respondent no.1 submitted that the facts alleged by the learned counsel for the petitioner are false. It is submitted that being the owner of the property bearing No. E-582, Greater Kailash-II, New Delhi-110048, respondent no.1 was approached by Respondent no.2 who is a consultant stating that one Mr. Gautam Munjal, being the Petitioner's director, wishes to take the property on rent on behalf of the Petitioner. Pursuant to this, Respondent no.1 arranged a meeting with Mr. Gautam Munjal sometime towards the end of October 2022 wherein it was communicated to Mr. Gautam Munjal that there was an ongoing dispute between the respondent and IIFL Home Fin. Ltd in respect of the Basement and Ground Floor of the Property and that the matter was also pending before the Hon'ble Debt Recovery Tribunal, Delhi and, the order dated 28.10.2022 passed by the Ld. Presiding Office, DRT -II was also shown to him. It is submitted that the Petitioner was duly informed of the pending litigation and also continued making alterations to the property after the notice of the court receiver was pasted on the Property on 02.01.2023 with full intention to continue with the deal. It is further submitted that suddenly, the Petitioner cancelled the deal in the second week of February 2023 after which the Respondent refused to refund the deposit as the Petitioner had caused substantial damage to the property and that upon being duly assessed, it is submitted that the repair work would cost the Respondent an amount of Rs. 52,80,000/-.



9. Learned counsel on behalf of the Respondent no. 1 further submits that the Letter of Intent is not a legally binding document and is merely a document which signifies the intent of the parties to enter into a Lease Agreement, which would be a definitive agreement, governing the terms and obligations amongst the parties. Reliance in this regard has been placed on the Apex Court's judgements in *Dresser Rand S.A. vs Bindal Argo Chern Ltd & Anr.* (2006) 1 SCC 751 as well as *Rajasthan Coop. Dairy Federation Ltd. vs Maha Laxmi Mingrate Marketing Service (P) Ltd.* (1996) 10 SCC 405. It is submitted that in fact in the Judgment of *Dresser Rand S.A (Supra)*, the Court *inter-alia* held that the Letter of Intent was not a binding Contract and that since, entering a lease requires further approvals; therefore, a Letter of Intent amounts to only an intention to enter into a contract which would take place after all the other formalities are completed. Thereby, the learned counsel for respondent no.1 submits that no arbitration proceedings can be initiated against the Respondent on the basis of a non-binding document being the the Letter of Intent. In addition, it is submitted that the Invocation notice dated 23.05.2023 was never received by the Respondent.
10. Moreover, the court's attention is brought to the contention that the Letter of Intent which contained the alleged Arbitration Clause, is an unstamped document, and as such, in terms of the decision of the Hon'ble Apex Court in *M/s. N.N. Global Mercantile Pvt. Ltd. vs M/s Indo Unique Flame Ltd and Ors* (Civil Appeal Nos 3802- 3803 of 2020), the same is unenforceable.
11. In the present case, the main challenge raised by the respondent is that in light of the fact that the Letter of Intent dated 23.12.2022 is a non-



binding document and is not stamped, the Arbitration Proceeding invoked vide notice dated 23.05.2023 cannot be initiated.

12. This court has also perused the Letter of Intent dated 23.12.2022 containing the arbitration clause in clause 24. It is evident that the Letter of Intent is unstamped.

13. Before the court proceeds to examine the merits of the contentions of both parties, it is appropriate to examine the scope of jurisdiction of this court while entertaining a petition under Section 11 of the Arbitration and Conciliation Act, 1996.

14. In *Duro Felguera, SA v. Gangavaram Port Ltd.* (2017) 9 SCC 729, it was inter alia held as under:

*"48. Section 11(6-A) added by the 2015 Amendment, reads as follows:*

*"11. (6-A) The Supreme Court or, as the case may be, the High Court, while considering any application under subsection (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any court, confine to the examination of the existence of an arbitration agreement."*

*From a reading of Section 11(6-A), the intention of the legislature is crystal clear i.e. the court should and need only look into one aspect the existence of an arbitration agreement. What are the factors for deciding as to whether there is an arbitration agreement is the next question. The resolution to that is simple-it needs to be seen if the agreement contains a clause which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement.*

*59. .... After the amendment, all that the courts need to see is whether an arbitration agreement exists- nothing more, nothing less. The legislative policy and purpose is essentially to minimise the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected."*



15. In *Emmar MGF Land Ltd. v. Aftab Singh* (2019) 12 SCC 751 it was clarified that the non-existence of an arbitration agreement is the only valid reason for a court's refusal to refer a matter to arbitration upon being invoked, it was *inter-alia* held as under:

*“52. [...] The words “notwithstanding any judgment, decree or order of the Supreme Court or any court” added by amendment in Section 8 were with intent to minimise the intervention of judicial authority in the context of arbitration agreement. As per the amended Section 8(1), the judicial authority has only to consider the question “whether the parties have a valid arbitration agreement?” The Court cannot refuse to refer the parties to arbitration “unless it finds that prima facie no valid arbitration agreement exists”. The amended provision, thus, limits the intervention by judicial authority to only one aspect i.e. refusal by judicial authority to refer is confined to only one aspect, when it finds that prima facie no valid arbitration agreement exists.”*

16. Similarly in *Vidya Drolia v Durga Trading Corporation: (2021) 2 SCC 1*, *Garware Wall Ropes Limited v. Coastal Marine Constructions and Engineering Limited: 2019) 9 SCC 209* and *Mayavati Trading Pvt. Ltd. v. Pradyat Deb Burman: (2019) 8 SCC 714* it was *inter-alia* held that the scope of exercising jurisdiction under Section 11 of the Arbitration and Conciliation Act, the court is limited to check the apparent ex-facie case of whether a valid arbitration agreement exists and not to go into the enquiry of whether the dispute is barred by limitation or is not arbitrable.

17. The Supreme Court in the judgement of *In re: Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899*, 2023 SCC OnLine SC 1666 held as under:



*“183. It is the arbitral tribunal and not the court which may test whether the requirements of a valid contract and a valid arbitration agreement are met. If the tribunal finds that these conditions are not met, it will decline to hear the dispute any further. If it finds that a valid arbitration agreement exists, it may assess whether the underlying agreement is a valid contract.*

*184. By enacting Section 16 of the Arbitration Act, Parliament has (in a manner of speaking) permitted an agreement to arbitrate to be preliminarily enforced even if it is only an agreement. After parties have been referred to arbitration under Section 8 of the Arbitration Act or after the appointment of arbitrators under Section 11 of the Arbitration Act the arbitral tribunal will have jurisdiction to determine all questions and issues in dispute between the parties.*

*208. The Statement of Objects and Reasons of the 2015 Amendment Act are as follows:*

*“(iii) an application for appointment of an arbitrator shall be disposed of by the High Court or Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of sixty days.*

*“(iv) to provide that while considering any application for appointment of arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues.”*

*209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated*



goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators...

213... Therefore, paragraphs 22 and 29 of **Garware Wall Ropes** (*supra*), which held that an arbitration agreement contained in an unstamped or insufficiently stamped contract would be non-existent in law, does not set forth the correct position of law.

...

217. An arbitration agreement or its certified copy is not rendered void or unenforceable because it is unstamped or insufficiently stamped. We accordingly clarify that the position of law laid down in **Jupudi Kesava Rao** (*supra*) and **Hariom Agrawal** (*supra*) cannot constrain a referral court at Section 11 stage (as well as Section 8 stage) from acting upon a certified copy of an arbitration agreement and referring the parties to arbitral tribunal.

218. The discussion in preceding segments indicates that the referral court at Section 11 stage should not examine or impound an unstamped or insufficiently stamped instrument, but rather leave it for the determination by the arbitral tribunal. When a party produces an arbitration agreement or its certified copy, the referral court only has to examine whether an arbitration agreement exists in terms of Section 7 of the Arbitration Act. The referral court under Section 11 is not required to examine whether a certified copy of the agreement/ instrument/ contract discloses the fact of payment of stamp duty on the original. Accordingly, we hold that the holding of this Court in **SMS Tea Estate** (*supra*), as reiterated in **N N Global 2** (*supra*), is no longer valid in law.”

18. Therefore, this court need only to take a prima facie check whether an arbitration agreement exists or not.

19. It is pertinent to mention that the Section 16(1) of the Arbitration and Conciliation Act, 1996, holds as under:

(1) *The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the*





*arbitration agreement, and for that purpose,—*

*(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and*

*(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.*

20. From a bare perusal of Section 16 (1) of the Arbitration and Conciliation Act, 1996, as provided above, the legislative intent is to enable the arbitration clause to be treated as a separate agreement independent from the rest of the agreement between the parties. This is keeping in view, that the intent behind enacting the Act itself is to allow for expeditious reference to arbitral tribunals to enable speedy resolution of disputes. Therefore, the contention that the Letter of Intent dated 23.12.2022 is a non-binding agreement holds no ground as the arbitration agreement at clause 24 is treated as an independent agreement.

21. In the circumstances, there is no force in the contention of the learned counsel for the respondent.

22. In view of the above, this Court considers it apposite to allow the present petition. Arbitration has duly been invoked and therefore Sh. B.B. Chaudhary, Former District & Sessions Judge is appointed as the sole Arbitrator to adjudicate the disputes between the parties with respect to the Agreements. The arbitration is to be conducted under the aegis of DIAC.

23. Both parties shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability before the learned arbitrator, which shall be decided by the learned arbitrator, in accordance with law.



24. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing the requisite disclosures as required under Section 12 of the Arbitration and Conciliation Act, 1996 to the parties.
25. The learned Sole Arbitrator shall be entitled to a fee in accordance with the Fourth Schedule to the Arbitration and Conciliation Act, 1996; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator
26. The Parties shall share the fee of the learned sole Arbitrator and arbitral costs, equally.
27. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned sole Arbitrator on their merits, in accordance with law.
28. Needless to say, nothing in this order shall be tantamount to an expression of this court on the merits of the case.
29. The present petition stands disposed of in the above terms.

**DINESH KUMAR SHARMA, J**

**DECEMBER 20, 2023**

rb/aj.