IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 113 OF 2024
ALONGWITH
COMM. ARBITRATION PETITION (L) NO. 21730 OF 2023

Paperbox Company of India ...Petitioner

Versus

Goldensource International Pvt. Ltd. ...Respondent

Mr. Rohan Cama *a/w Mr. Anish Karande i/b Ashish Amritlal Gatagat for the Petitioner.*

Mr. Anil D'souza *a/w Mr. Mark Dbritto and Mr. Ernest Tuscano for the Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

RESERVED ON : January 31, 2025

PRONOUNCED ON : August 5, 2025

JUDGEMENT :

Context and Factual Background:

1. These Petitions are filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("***the Act***") challenging two arbitral awards dated May 15, 2023 ("***Impugned Award***") by which the Petitioner, Paper Box Company

of India ("***Paperbox***") has been held liable to refund the security deposit and electricity deposit with interest at the rate of 10% from June 12, 2020 to the Respondent, GoldenSource International Pvt. Ltd. ("***GoldenSource***").

2. The two arbitration proceedings relate to interpreting provisions of two identical Leave and License Agreements dated April 30, 2019 (collectively, "***Agreement***") for the period from April 1, 2019 to March 31, 2020, for GoldenSource to use 10,262 square feet of super built-up area on the lower ground floor and 22,777 square feet of super built-up area on the first floor of the Paper Box House building, along with proportionate usage of identified common areas (***"Licensed Premises"***).

3. The parties also contracted an agreement for amenities in parallel for each floor and overall, the relationship between the parties is governed by four concurrent and contemporaneous Agreements. For all purposes of this Judgement, references are made to the proceedings and pleadings in Arbitration Petition No. 113 of 2024 (relating to the ground floor) since the determination of issues in that Petition would be dispositive of the issues involved in both proceedings.

4. The relationship between the parties first began in 2005 and license agreements were first executed on April 9, 2005. The agreements were kept renewed from time to time. These agreements entailed GoldenSource

providing a security deposit and a deposit for electricity connection. The relationship came to an end in 2020 on the scheduled expiry of the license period on March 31, 2020, bringing to an end a 15-year relationship. The parties did not have an amicable parting – they have been locked in a dispute about whether and when "*vacant* possession" was handed over by GoldenSource to Paperbox.

5. What the word "*vacate*" and all its derivatives mean, forms the core issue relevant for the dispute between the parties. Against GoldenSource *vacating* the Licensed Premises, the security deposit was to be refunded – Rs. ~1.51 crores for the first floor and Rs. ~68.24 lakhs for the ground floor. According to GoldenSource, vacant possession was handed over on June 12, 2020, while according to Paperbox, vacant possession can only be said to have been handed over on November 4, 2022.

6. A brief overview of the relevant facts would be necessary. As seen above, the Agreement was executed on April 30, 2019. On March 9, 2020, ahead of the expiry of the Agreement scheduled for March 31, 2020, GoldenSource wrote to Paperbox stating that it would hand over quiet, peaceful and vacant possession of the Licensed Premises by the date of expiry of the Agreement. The specific equipment that would be removed was listed (for example, diesel generator sets, air-conditioners, chairs, some woodwork,

gym equipment, fire extinguishers etc.) and it was stated that dismantling of the office and workstations would be decided mutually. Paperbox was requested to refund the security deposit at the earliest.

7. It would be necessary to allude to a development that took place during the 15-year relationship between the parties but before the execution of the final Agreement. The Municipal Corporation of Greater Mumbai ("***MCGM***") had objected to a full-size glass/wooden partitions on the first floor of the Licensed Premises and had directed that the same ought to be removed, failing which it would have to be demolished. A Notice dated April 23, 2018 was issued in proceedings initiated by the MCGM under Section 351 of the Mumbai Municipal Corporation Act, 1888, directing removal and demolition of the partitions. A reply to this Notice was rejected by the MCGM and by an Order dated June 15, 2018, removal and demolition of the partitions was ordered by the MCGM.

8. Extrude Design Pvt. Ltd., an architect firm was engaged to attempt regularisation. On July 10, 2018, the Chief Fire Officer granted a no-objection certificate for the regularisation of the partitions. Paperbox filed Writ Petition No. 2540 of 2018 in which this Court granted *ad interim* relief by an Order dated July 15, 2018 in the form of a stay on the MCGM carrying out the demolition. That relief continued at all times relevant to the dispute

between the parties. Paperbox would contend that the Writ Petition was filed by Paperbox as the owner with legal possession of the Licensed Premises, but it was all under the directions and oversight of GoldenSource, which was the entity that had erected the partitions.

9. The Agreement of April 30, 2019 had been signed after the aforesaid developments. Evidently, no special provision was made in the Agreement about consequences of the MCGM Notice, Order and the Writ Petition relating to the partitions. This is what led to one of the facets of the dispute between the parties – the linkage of the refund of security deposit to the allegedly unauthorised partitions being erected. That apart, GoldenSource's proposal to remove the partitions too came in for controversy when the Agreement came to an end.

10. On March 12, 2020, Paperbox replied to GoldenSource asserting that removal of the partitions would constitute contempt of court. Paperbox would contend that the security deposit would not be refunded until the culmination of the proceedings in Writ Petition 2540 of 2018 and ascertaining the costs. What is of utmost significance in this letter is that Paperbox used the word "vacant" and "vacate" as it then understood the term – that GoldenSource would be "***vacating the premises***" on March 31, 2020 (Paragraph 11) and that the continuance of the partitions would result in the

"***premises being vacant***" after March 31, 2020 with intending licensees being unwilling to take the Licensed Premises (Paragraph 12) due to the partitions. Even in relation to the refund of electricity deposit, Paperbox would write that after "***vacating the premises***" Paperbox would have to get the load capacity on the electricity meters reduced and that would involve further expenditure (Paragraph 18). That apart, the electricity bills would be received only in April and all these amounts and costs would need to be set off against the electricity deposit and only then would a refund be considered.

11. According to Paperbox, partitions could not be disturbed because removing them would constitute contempt of court in view of the protection granted by this Court in the Writ Petition. Indeed, GoldenSource politely refuted Paperbox's allusion to removal of partitions constituting contempt of court in a letter dated March 31, 2020, pointing out that the stay order was a restraint on MCGM taking action and not on the parties removing the partitions. Moreover, the partitions related only to the first floor premises and not the ground floor premises and therefore, it was contended that the security deposit for the ground floor had no relation with the partition issue that was being raked up. Since the lock-down owing to the Covid-19 Pandemic was underway, GoldenSource hoped Paperbox would cooperate with the process of handing over quiet and vacant possession of the Licensed Premises consistent with the letter and spirit of the Agreement. An email of

that date also indicated that all the equipment indicated for removal in the letter dated March 9, 2020 could not be removed and that it would be taken down as the lockdown conditions eased up.

12. Eventually, on June 11, 2020, GoldenSource wrote to Paperbox recording that it had moved out by March 15, 2020 and due to the lockdown imposed in the city, all the equipment as indicated earlier had not been removed by March 31, 2020, but on the easing of the lockdown, everything had been removed except for those that Paperbox had directed not to be removed. Such equipment and items were listed in an annexure to that letter. Paperbox was requested to nominate a representative to collect the keys and accept the hand over of possession. The letter of June 11, 2020 is countersigned as received by Paperbox on August 8, 2020, and there is a dispute about whether the letter was back-dated or the signature acknowledgement was post-dated, but that is not really material for how the dispute panned out eventually.

13. On November 9, 2020, Paperbox wrote a letter accusing GoldenSource as having abandoned the Licensed Premises and not having handed over *vacant* possession. In this letter, Paperbox claimed that it had made an error earlier about interpreting removal of partitions as constituting contempt. It was asserted that after August 2020, the partitions were agreed to be

removed but had not yet been removed. Adding up costs claimed towards litigation, the purported costs attributable to inability to get new licensees and the like, Paperbox demanded payment of Rs. ~5.49 crores from GoldenSource – a multiple of the security deposit and electricity deposit.

14. The disputes and differences eventually led to the Learned Arbitral Tribunal being constituted by a Learned Single Judge of this Court on November 23, 2021. After hearing the parties, examining the evidence, and taking a view of the matter, the Learned Arbitral Tribunal has passed the Impugned Award on May 15, 2023. The two awards in the two references provide for a refund of the security deposit and the electricity deposit, holding that the refund of the deposits had no connection to the interpretation of "vacant" possession as canvassed by Paperbox in the arbitral proceedings i.e. ripping out the Licensed Premises to a bare shell, by emptying it out of every single fixture.

Analysis and Findings:

15. I have heard Mr. Rohaan Cama, Learned Advocate on behalf of Paperbox and Mr. Anil D'Souza, Learned Advocate on behalf of GoldenSource at length. I have taken on record their respective Written Submissions and the List of Dates tendered by Mr. Cama. With their assistance, I have examined the record.

Jurisdictional Challenge – Section 16:

16. Before dealing with the Impugned Award, it is necessary to note that Paperbox has also impugned an Order dated February 8, 2022 ("***Section 16 Order***") by which the Learned Arbitral Tribunal rejected a jurisdictional challenge under Section 16 of the Act. The premise of the challenge was that the disputes and differences are amenable to the exclusive jurisdiction of the Small Causes Court under Section 41 of the Presidency Small Cause Courts Act, 1882 ("***Small Cause Courts Act***").

17. What is evident from the record is that the reference to arbitration is explicitly specific to the refund of security deposit. In fact, it was Paperbox' case before the Learned Arbitral Tribunal too that the arbitral proceedings were only about refund of security deposit and electricity deposit and interest thereon. However, Paperbox contended that GoldenSource had not yet handed over possession and had simply abandoned the Licensed Premises. Therefore, it was contended, that the claim for refund of security deposit was premature. It was stated that the Small Causes Court would determine the disputes about recovery of possession of the Licensed Premises in L.C. Suit No. 86 of 2021 which was still pending. It was only thereafter, that there could be any assessment of whether the security deposit was to be refunded.

18. As is conventional for such contention, reliance was placed on, among others, ***Mansukhlal***[1] and ***ING Vysya***[2] to contend that the phrase "relating to" must be widely construed and any dispute that relates to recovery of possession would have to go to the Small Causes Court alone. ***Sukanya Holdings***[3] was also relied upon to contend that there could not be a splitting of a cause of action for multiple forums to contend with different elements of the dispute.

19. The Learned Arbitral Tribunal has rightly noticed that there can be no quarrel with the proposition that the term "relating to recovery of possession" is wider than the term "for recovery of possession". However, on the face of the record it is apparent that the dispute is not remotely connected to recovery of possession. If anything, Paperbox had claimed that GoldenSource had abandoned possession. Therefore, there could not be an element of having to go to court to recover possession. The Statement of Claim filed by GoldenSource in the arbitration was for refund of security deposit and that alone.

20. The Learned Arbitral Tribunal is accurate in its finding that by no stretch of extrapolation could it be said that the subject matter of the arbitral proceedings (claim for refund of security deposit) was not arbitrable by

[1] *Mansukhlal Dhanraj Jain vs. Eknath Ogale* – *(1995) 2 SCC 665*
[2] *ING Vysya vs. Modern India* – *(2008) 2 Mh.L.J 653*
[3] *Sukanya Holdings vs. Jayesh Pandya* – *(2003) 5 SCC 531*

reason of jurisdiction being vested in the Small Causes Court. It must be mentioned that the 2015 Amendments to the Act were effected in order to overcome the ruling in ***Sukanya Holdings*** (which was essentially under Section 8 of the Act). The 2015 Amendments not only reduced the scope of review under Section 8(1) of the Act by mandating that the parties *shall* be referred to arbitration unless it is found *prima facie* that no arbitration agreement exists; but also made such provision applicable notwithstanding any judgement of the Supreme Court or any Court. The 246th Law Commission Report that led to the 2015 Amendments specifically indicated that the amendment to Section 8 of the Act was intended to depart from the declaration of the law in ***Sukanya Holdings***. Such an amendment gave new meaning and force to Section 8(3) of the Act which provides that the pendency of an application under Section 8(1) of the Act would not come in the way of the arbitral proceedings being commenced, continued and concluded with an arbitral award.

21. In these proceedings, Mr. Cama had fairly stated that he was not giving up on the challenge to Section 16 of the Act but would focus on the merits of the Impugned Award. In any case, at the stage of the Section 16 Order, the Learned Arbitral Tribunal could only look at the pleadings of the parties, and even if it took the pleadings of Paperbox into account, what was evident was

that there was not even a remote connection to recovery of possession. Therefore, no fault can be found with the Section 16 Order.

Impugned Award Impeccable:

22. The Learned Arbitral Tribunal has returned impeccably plausible findings. No case has been made out for interference with the Impugned Award. Even a bare reading of the provisions of the License Agreement would indicate that under Clause 5(a) of the Agreement, the parties had explicitly agreed to a refund of the security deposit after deducting any utility dues such as electricity, broadband and telephone use at the time of "vacating" the Licensed Premises "upon expiry" of the Agreement by efflux of time. The parties had even agreed on how to deal with unpaid invoices – they would adopt an average of the last four billing cycles of the utility bills and one and half times of the average amount would be withheld, and the rest of the security deposit would be refunded. Once the bills were received and paid, the accounts would be adjusted.

23. Under Clause 5(b) of the Agreement, GoldenSource was to remove itself, its officers and employees and *vacate* the Licensed Premises "giving charge" of the Licensed Premises to Paperbox for the refund of the security deposit under Clause 5(a). It is noteworthy that reasonable wear and tear and damage due to any force majeure event was acceptable. On Paperbox'

failure to refund the security deposit, interest was payable at 12% per annum under Clause 5(c) while under Clause 5(d), GoldenSource would have to bear interest at 1% per month for any overdue payment left pending.

24. Under Clause 11(a), "movable fixtures" were to be removed by GoldenSource "at the time of vacating" the Licensed Premises. Under Clause 11(f), GoldenSource is obliged not to remove wall, ceilings and floors and is required to keep all materials and *fixtures* in "good and tenantable condition".

25. It is evident from the aforesaid provisions of the contract between the parties that nowhere had the parties agreed to conflate the term "vacate" to ripping out the Licensed Premises to a bare shell. It is not even commercially commonsensical that the understanding between the parties was that "vacant" possession would mean stripping the Licensed Premises down and ripping out anything and everything fixed in the Licensed Premises as a pre-condition to refund of security deposit. If that were the requirement, evidently, the fixtures could not be left in good and tenantable condition as required in Clause 11(f) of the Agreement.

26. It is noteworthy that on March 9, 2020, GoldenSource indeed wrote to Paperbox that the parties would need to engage on what to do with the

permanent fixtures and clearly indicated the specific equipment that it intended to remove.

27. What is reasonably discernible from the record is that Paperbox has been unreasonable, obtuse and irrationally litigious in its approach to losing out on a 15-year stable source of revenue and was adopting interpretations that would delay and frustrate the refund of the security deposit. The Learned Arbitral Tribunal has rightly observed the three clear events – the letter of GoldenSource dated March 9, 2020; the reply dated March 12, 2020; and the eventual letter and email of March 31, 2020. These three events have been analysed and it has been rightly noted that it was only in October 2020 that a novel point was brought up on interpreting what "vacating" the Licensed Premises ought to mean.

28. By no stretch of imagination could any commercial entity, that was in the business of letting out its premises, have reasonably read the order of this Court in the Writ Petition as imposing a fetter on removal of the partitions. The Court had protected Paperbox (and GoldenSource) from demolition of the partitions by the BMC. Indeed, Mr. Cama would seek to explain this away as a *bona fide* mistake in interpretation, but it is evident that this was nothing but a hurdle thrown in GoldenSource's path to a smooth refund of the security deposit. Clause 5 of the Agreement is a self-contained code on how

the parties intended to deal with the security deposit. What deductions and withholdings could be made before the refund of deposit had also been contracted. Therefore, clearly the Learned Arbitral Tribunal was completely right in its decision that the refund of the security deposit was due in June 2020. No fault can be found with the Impugned Award in this regard.

29. The Learned Arbitral Tribunal has rightly noted that the keys and possession was handed over by GoldenSource to the security personnel in June 2020. There is nothing in the Agreement to indicate that vacating the Licensed Premises is synonymous with emptying out the Licensed Premises of everything fixed in it. As a matter of fact, the Agreement has provisions to the contrary. As seen above, the reference to fixtures being removed at the time of "vacating" the Licensed Premises in Clause 11(a) is a reference to "movable fixtures". This could never bring within its fold the false ceilings or walls decorations or other fixtures that were meant to be permanently fixed. That is also evident from Clause 11(f), which requires the fixtures in the Licensed Premises to be left in "good and tenantable" condition. Stripping down the Licensed Premises to a bare shell can never be regarded as being consistent with a "good and tenantable" condition. Indeed, the next potential licensee may accept the structure of the fixtures as they stood or desire to make further changes to it. This is why the parties have explicitly agreed in Clause 11(f) of the Agreement, that at the time of vacating, GoldenSource

would be expected to leave such fixtures that were not movable, in a good and tenantable condition.

30. Therefore, by no stretch could it be held that the Learned Arbitral Tribunal has exceeded the scope of the Agreement or that the Impugned Award has breached the very terms of the Agreement, of which the Learned Arbitral Tribunal is a creature.

31. The partitions are permanently fixed to the floor. They could well get regularised or removed, obviating the need to persist with the Writ Petition – Mr. Cama would submit that the Writ Petition was eventually withdrawn in 2023. Expenses relating to the partition would be a matter of settling accounts between the parties. However, by no stretch could this potential contingent claim be the basis to withhold the interest-free security deposit. The only withholding permissible was also specifically contracted – utility bill amounts with a one-and-half-times of the average of last four billing cycles being permitted to be withheld. Any other withholding would attract interest at 12% per annum. In fact, the Learned Arbitral Tribunal has reduced the interest rate to 10%, which has not been challenged by GoldenSource.

Meaning of Vacant Possession:

32. The semantic insistence on interpreting the word "vacant possession" and "vacating", to my mind, is brazenly disingenuous and also inflicts

violence to the terms of the Agreement. First, as the Learned Arbitral Tribunal has rightly noticed, it was an afterthought adopted in November 2020, when the "abandonment" theory was advisedly propounded by Paperbox. Even a plain reading of the term in the Agreement would show that the principle of interpretation to be adopted for this phrase is that the Agreement treated the word in the same manner as the words "quiet" and "peaceful". The plain English meaning[4] of the term "vacate" in relation to something is to leave that thing so that it is available for others to use. The phrase "vacant possession"[5] of a property means to have the people using the property move out to make it empty. It reflects the fact that no one is using the property in question so that others can use it.

33. The landmark case law on the subject is that of ***Topfell***[6] (*per. Templeman L.J.*), where it was held as follows:-

> ***The meaning of the words "vacant possession" can, I think, vary from context to context*** *but the background to this case is that, to all outward appearances, the house consisted of two separate occupations.* ***To all outward appearance, the ground floor was capable of being occupied by the owner or his tenants and licensees. When the contract boasted that vacant possession of the ground floor would be given, it was saying that the great advantage of this property is that you can occupy the ground floor****. In my judgement, when the vendors said they would give vacant possession in the context of these particulars in this contract and in the context of this property,*

[4] Cambridge Dictionary: https://dictionary.cambridge.org/dictionary/english/vacate; Oxford Dictionary: https://www.oxfordlearnersdictionaries.com/definition/english/vacate
[5] Cambridge Dictionary: https://dictionary.cambridge.org/dictionary/english/vacant-possession; Oxford Dictionary: https://www.oxfordlearnersdictionaries.com/definition/english/vacant-possession
[6] Topfell Ltd. Vs. Galley Properties Ltd. (Ch. D) – *(1979) 1 W.L.R. 446 @ 449*

> *the vendors cannot now say, "Oh, no; all we intended and all we contracted to give was the right to possession in the negative sense. There is no rubbish on the floor, no other tenants and nobody else was there. It was vacant."* *I have come to the conclusion that the vendors were contractually bound, on completion, to hand over the ground floor* ***in a condition which would allow the plaintiffs to occupy it****. It is quite plain that the at date of the contract and at the date fixed for completion, the vendors cannot do that because, by reason of the Housing Act direction, in fact, nobody can occupy the ground floor. The vendors cannot occupy it themselves, they cannot sell it to somebody who wishes to purchase it in order to go and live there himself and they cannot let it.*
>
> ***[Emphasis Supplied]***

34. As indicated in ***Topfell***, it is the context in which the term is used that should inform the meaning of the term "vacant possession". In ***Topfell***, the context was the auction of a property promising vacant possession, indicating that the person acquiring would be able to bring occupants into it to earn from it and enjoy the fruits of the acquisition. When it was found that only one family could legally reside in the property and a tenant was already occupying it, vacant possession as promised had not been given.

35. In the present case, in the context of the Agreement, the term "vacating" used in Clause 5(a) is linked to the timing of doing so – at the time of expiry or earlier termination of the tenure. Clause 9(h) of the Agreement provides for "vacant premises" being handed over in accordance with the other terms of the Agreement. Such other terms would necessarily include ensuring that the Licensed Premises are left in "good and tenantable"

condition. In Clause 9(j), the term used is "vacate with all of his belonging" which means the personnel must leave the place with the belongings – again this has to be harmoniously read with other provisions in the same Agreement and can never be regarded as stripping the Licensed Premises to a bare shell. Clause 9(m)(c) deals with earlier termination by Paperbox if GoldenSource were to be asked to leave upon a breach of the contract – that too requires GoldenSource to "vacate without any protest".

36. In the Agreement, there are at least 11 instances of usage of words derived from "vacant" and "vacate". This evidently not being a term of art, it is evident that what the parties understood it to mean is that the Licensed Premises ought to be capable of use by the next licensee, which is why the same contract provided for leaving the Licensed Premises in good and tenantable condition as required in Clause 11(f) of the Agreement. The usage of the term has to be harmoniously construed across the multiple provisions of the Agreement to give it commercial logic and common sense. For purposes of the Agreement, the expectation of handing over quiet and vacant possession to Paperbox can reasonably only mean leaving the Licensed Premises free of occupants and encumbrances such that Paperbox could put in others in the Licensed Premises, and also to ensure that only movable fixtures were removed and other fixtures were to be left in good and tenantable condition.

37. Paperbox itself understood the property as becoming vacant after GoldenSource would leave on March 31, 2020. This is seen from Paperbox's own letter dated March 12, 2025 which used the term "vacating" and "vacant" in the normal sense as articulated above, without inflicting the violence of the newfound interpretation adopted in November 2020. In fact, Paperbox had stated on March 12, 2020 that the Licensed Premises would remain "vacant" after March 31, 2020 with the partitions intact. This indicated that Paperbox understood what "vacant" would mean, or better still, what it would *not mean*. The theory of stripping it down of every fixture was not the intention of the parties when they agreed on handing over of vacant possession as a milestone for refund of the security deposit.

38. Therefore, the Learned Arbitral Tribunal has rightly been unimpressed by the argument that 32 trucks were involved to remove whatever was eventually stripped out and removed in October 2022. Even a plain reading of the two "Quantification Reports" of October 2022 pursuant to the joint agreement to strip down and remove fixtures in the course of proceedings in the Small Causes Court, along with photographs would show that the activity carried out in 2022 by the consent, was to strip the Licensed Premises down to bare shell. This is something the parties agreed to do in 2022, and cannot be extrapolated to be linked to the obligation under the Agreement, as a condition to refund the security deposit. Every firm fixture fastened to the

floor, table, partition, ceiling, ducting and the like being ripped out (as was done in October 2022) could never constitute leaving the Licensed Premises in a good and tenantable condition at the expiry of the Agreement on March 31, 2020.

Interim Order – only a Prima Facie View:

39. I have had to examine the Agreement in this degree of detail, only because of the core contention of Paperbox that the Impugned Award has gone out of the scope of the Agreement. Since the assault on the Impugned Award is that of perversity and of patent illegality for being in conflict with the very Agreement containing the arbitration clause, such analysis became necessary. This degree of review exercised by me, although capable of being regarded as intense, was necessary, even while taking care to ensure that the standard being applied is not of an appellate review but of a review that is deferential to the standards of Section 34 of the Act.

40. That apart, Mr. Cama (sincere to his role for his client) sought to emphatically rely upon the strong *prima facie* observations made by a predecessor Learned Single Judge in an order dated April 5, 2024 in these very proceedings. The Learned Single Judge had granted interlocutory relief in these proceedings by a stay on the effect, operation and execution of the Impugned Award, indeed subject to a full deposit of the awarded amount,

coupled with liberty to apply for withdrawal of the amount so deposited. While doing so, the Learned Single Judge made the following observations:-

> *18. In my* ***prima facie view****, in the present case* ***the learned Arbitrator has not arrived at either a possible or a plausible interpretation of the clauses / terms*** *of the Leave & License Agreement relating the Security Deposit* ***by interpreting Clause 5 of Leave & License Agreement relating to Security Deposit as being independent and absolute****. Further,* ***the interpretation placed upon the clauses by the learned Arbitrator to hold that the Claimant's obligation to remove furniture / fittings etc, are without any consequence and sequitur is neither a possible nor plausible interpretation****.*
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> *19. I* ***prima facie find that the learned Arbitrator has lost site*** [sic] ***of the relevant clauses which have been referred to above which concern the Licensee's Covenants and the Licensee's rights****. I am of the* ***prima facie view that there can be no manner of doubt that these clauses read with Clause 5 of the Leave & License Agreement provide for the Licensee / Respondent to vacate the Licensed Premises / subject premises by removing all articles in the subject premises and restoring the subject premises in its existing condition in which it was at the time of executing the first Leave & License Agreement for the subject premises****. Thus, the Security Deposit was to be refunded simultaneously upon the Licensee removing itself, its officers and employees as well as vacating the subject premises and giving charge thereof to the Licensor.*
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> ***[Emphasis Supplied]***

41. Needless to say, despite the strength of their expression, these were *prima facie* views. It is at the final hearing that the depth of the issues involved were to be analysed. I have reproduced these observations to indicate the need to have gone into the degree of detail in interpreting the provisions of the Agreement and the contemporaneous correspondence of March 12, 2020, where Paperbox's own understanding of the term "vacate" speaks eloquently to the contractual understanding between the parties.

42. The observation of the Learned Arbitral Tribunal is not at all that there is no *sequitur* to the non-removal of other belongings. Right from its letter dated March 9, 2020, GoldenSource has indicated the need to discuss and agree upon what to do with the equipment and fixtures other than what was proposed to be removed. The Learned Arbitral Tribunal's observation is that the refund of security deposit is not linked to the removal of fixtures – not that there is no obligation to remove any fixture, or that non-removal has no consequences whatsoever.

43. Paperbox attitude and approach in March 2020 to GoldenSource moving away from a 15-year old relationship is apparent. It was strategic – to keep GoldenSource at a standstill without removing the partitions and yet pay a penal charge of Rs. ~1.17 lakh per day for non-removal of the partitions. At the same time, Paperbox' own understanding of "vacating" in March 2020 was clearly not to strip down the place to a bare shell that would be incapable of being immediately tenantable and fit for occupation by anyone else.

44. That the Learned Arbitral Tribunal has considered this well becomes clear upon a careful examination of the Impugned Award and all the attendant material on record. The Learned Arbitral Tribunal has actually taken care to notice that the cost of the eventual removal and stripping down the place was quoted by Paperbox to be in region of Rs. 22 lakhs.

Consideration of this facet is left to the Small Causes Court, which is seized of the matter. The security deposit that has been withheld by Paperbox is in the order of Rs. ~2.19 crores when the costs incurred was a fraction of the value unlawfully retained by Paperbox despite securing possession and admittedly taking steps to show the Licensed Premises to other potential future licensees, who are said to have indicated that the partitions were the cause of their reluctance to use the Licensed Premises.

45. In fact, Mr. Cama's approach to making submissions in these proceedings has been entirely in the vein of making submissions in a full appellate jurisdiction. Mr. D'Souza rightly relied on ***Konkan Railway***[7] to repel such an approach – the following extracts are noteworthy:

> *15. Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction. It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal. In Dyna Technologies Private Limited v. Crompton Greaves Limited (2019) 20 SCC 1, this Court held:*
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> > *"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section*

[7] *Konkan Railway Corporation Ltd. Vs. Chenab Bridge Project Undertaking – (2023) 11 SCR 215*

34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

20. The principle of interpretation of contracts adopted by the Division Bench of the High Court that when two constructions are possible, then courts must prefer the one which gives effect and voice to all clauses, does not have absolute application. The said interpretation is subject to the jurisdiction which a court is called upon to exercise. While exercising jurisdiction under Section 37 of the Act, the Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the challenge to the Arbitral Award. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. Accordingly, the question of reinterpreting the contract on an alternative view does not arise. If this is the principle applicable to exercise of jurisdiction under Section 34 of the Act, a Division Bench exercising jurisdiction under Section 37 of the Act cannot reverse an Award, much less the decision of a Single Judge, on the ground that they have not given effect and voice to all clauses of the contract. This is where the Division Bench of the High Court committed an error, in re-interpreting a contractual clause while exercising jurisdiction under Section 37 of the Act. In any event, the decision in Radha Sundar Dutta (supra), relied on by the High Court was decided in 1959, and it pertains to proceedings arising under the Village Chaukidari Act, 1870 and Bengal Patni Taluks Regulation of 1819. Reliance on this judgment particularly for interfering with the concurrent interpretations of the contractual clause by the Arbitral Tribunal and Single Judge under Section 34 of the Act is not justified.

[Emphasis Supplied]

Summary of Conclusions:

46. Therefore, in my opinion, there is no case at all for interference with the Impugned Award. It is not only eminently plausible but seen from the prism of Section 34, it is just, fair and responsive to a reasonable and accurate interpretation of the Agreement. No case whatsoever is made out to interfere with the Impugned Award.

47. To summarise my conclusions:

a) The Agreement emphatically deals with refund of security deposit against handing over of quiet and vacant possession by GoldenSource to Paperbox with the only cause for any withholding being for payment of any outstanding utility bills;

b) Vacant possession does not mean emptying out the Licensed Premises of every fixture as was done subsequently in October 2022 – such emptying out requires stripping down the Licensed Premises to its bare shell. Such stripping of the Licensed Premises to a bare shell would militate against the obligation in the Agreement on GoldenSource to hand over the Licensed Premises removing only movable fixtures and leaving the remaining fixtures in a good and tenantable condition;

c) The photographs with the two Quantification Reports make it abundantly clear that Paperbox' rendition of the requirement of vacant possession would be in direct conflict with the state of the Licensed Premises being immediately tenantable on GoldenSource's exit;

d) Paperbox itself confirmed in writing that the Licensed Premises would remain "vacant" after March 31, 2020 because of the partitions subsisting, and in the same breath also stated that removing the partitions was prohibited and constituted contempt of court. GoldenSource politely pointed out that Paperbox was wrong and there was no prohibition on removal of the partitions and equally pointed out that it was vacating the Licensed Premises as planned but with some spill over beyond March 31, 2020 due to Covid-19 Pandemic lockdown restrictions;

e) On June 12, 2020, despite Paperbox's evasion of taking possession, GoldenSource *vacated* the Licensed Premises. Paperbox had no authority under the Agreement to withhold the security deposit after this point;

f) The Learned Arbitral Tribunal has interpreted the Agreement accurately and has delivered a fair, just and even-handed

outcome that cannot by any stretch be regarded as being in conflict with either the Agreement, or with the most basic notions of law and justice;

g) The Impugned Award is consistent with the Agreement and the interpretation of the provisions are impeccable and cannot be regarded as implausible or untenable as apprehended at the interim stage in these proceedings; and

h) The Learned Arbitral Tribunal, as the master of the evidence, has returned an eminently defensible and well-justified arbitral award. There is no scope at all to assail the Impugned Award under Section 34 of the Act.

48. The Petitions challenging the Impugned Awards are hereby ***dismissed*** as being devoid of merit. All that is stated in relation to the Impugned Award and analysis in Arbitration Petition No. 113 of 2024 is as relevant and applicable to dismissal of the other companion petition, Arbitration Petition (L) No. 21730 of 2023.

Costs and Release of Deposits:

49. Since costs must follow the event, taking into account the nature of the obstruction posed by Paperbox, it would be reasonable to impose costs in the sum of Rs. 2.5 lakh, which shall be payable by Paperbox to GoldenSource

within a period of four weeks from the upload of this judgement on this Court's website.

50. I have factored in the lower scale of involvement of resources at the Section 34 stage as opposed to the investment of time and resources at the arbitration in the first instance. The Impugned Award factored in costs of Rs. 7.25 lakh in each of the two proceedings, the scale of which was adopted by both sides (before it became clear who was going to be the judgement creditor). The cumulative costs awarded by me in both the proceedings put together is one-third of the amount of costs awarded in each of the proceedings by the Learned Arbitral Tribunal. This, in my opinion, is a reasonable estimate of costs considering that as proceedings go higher, the issues get more distilled and involve lesser investment of time and resources.

51. Deposits, if any, of the amount awarded made in the Registry of this Court shall, along with all accruals thereon, be released to GoldenSource forthwith after a period of four weeks from the upload of this judgement on this Court's website, and preferably within a week of being approached.

52. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN J.]

Aarti Palkar