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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 104/2024, CAV 46/2024, I.As. 2551/2024, 2552/2024
& 2553/2024**

BHL FOREX AND FINLEASE LIMITED Plaintiff
Through: Mr. Vipin Nandwani, Adv. (M.
9899299404)
versus

INDIAN ENERGY EXCHANGE LTD Defendant
Through: Mr. Bharat Chugh and Mr. Abhinav
Agrawal, Advocates (M:
8889299671).

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **02.02.2024**

1. This hearing has been done through hybrid mode.

CAV 46/2024

2. As the Defendant entered appearance. Caveat is discharged.

I.A. 2553/2024 (for exemption)

3. This is an application seeking exemption from filing original documents. This is an application seeking exemption from filing original documents. Original documents shall be produced/filed, if sought, strictly as per the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter, 'Commercial Courts Act') and DHC (Original Side) Rules, 2018.

4. Exemption is allowed, subject to all just exceptions.

5. Accordingly, the application is disposed of.



I.A. 2551/2024 (exemption from S12A of Commercial Courts Act)

6. This is an application filed by the Plaintiffs seeking exemption from instituting pre-litigation mediation under Section 12A of the Commercial Courts Act, 2015.

7. Considering the facts and circumstances of the case, the Court is satisfied that in terms of the judgment of the Hon'ble Supreme Court in ***Yamini Manohar v. T.K.D Keerthi, (2023 LiveLaw (SC) 906)***, the present suit contemplates urgent interim relief.

8. Accordingly, exemption is allowed and application is disposed of.

CS(COMM) 104/2024 and I.A. 2552/2024

9. The present suit arises out of lease deed dated 20th August, 2014 in respect of the suit property bearing Unit No. 3, 4, 5 and 6, having a super built up area of 14,987.73 sq. ft on the fourth floor of the commercial building named "TDI Centre" situated at Plot No. 7, Jasola District Centre, New Delhi- 110044, (*hereinafter called the suit property*). The term of the said lease for a period of nine years commencing with effect from 12th October, 2014 and which as per the lease agreement was to expire on 11th October, 2023.

10. The Plaintiff is the landlord and the lessor of the property in favour of the Defendant. The case of the Plaintiff is that the premises was given out on lease at a monthly lease rent of Rs.15,73,712/- and the same was to be enhanced after a period of three years. The total lease period was nine years and the lease agreement contemplated a lock in of three years.

11. It is averred in the plaint that at the time of entering into the said lease agreement, the Defendant had deposited with the Plaintiff, an interest free security deposit of Rs.1,57,37,120/- which was equivalent to ten months



initial rentals, and which was agreed to be enhanced after every 3 years by 15% i.e., in proportion with the enhancement of the rentals so as to ensure that the security deposit shall always be equal to 10 months lease rent during the entire term of lease. In view of the same an amount of Rs.23,60,570/- was further deposited by the Defendant on 30th August, 2018 with the Plaintiff as enhanced security deposit.

12. Further, vide the termination clause in the said agreement, it was agreed between the parties that in an event if the Defendant would intend to vacate the demised premises simultaneously on the expiry of the lock-in-period of initial 3 years, the Defendant was required to give 3 months advance notice prior to the expiry of the said lock-in-period i.e. 3 months before 11th October, 2017. The same would be permitted to be exercised by the Defendant only after providing/ sending an advance notice to the Plaintiff.

13. The Plaintiff's Counsel Mr. Nandwani submits that the lessee i.e. the Defendant only had an option of terminating the lease during the lock-in-period which they did not avail. The lessee then chose to terminate the lease on 11th September, 2020 and sought refund of the security deposit which was not agreed to by the Plaintiff in view of the interpretation of the termination Clause 12 of the lease agreement. The said clause of the lease agreement dated 20th August, 2014 is reproduced herein below:

“During the Lock in period of 3 years (36 months) the Lease Deed cannot be terminated by LESSEE subject to regular payment of monthly rent / maintenance charges by the LESSEE and compliance by both LESSOR and LESSEE with the terms and conditions incorporated in the Lease Deed.



That if the LESSEE intends to vacate the Demised Premises at the end of the above said lock-in-period of Three Years, the LESSEE shall give a notice Three months prior to the end of lock in period to the LESSOR.

In case the LESSEE fails to pay rent / maintenance charges for a continuous period of two month, during the lock in period or thereafter, the LESSOR shall issue notice of to 15 days to the LESSEE and in such event LESSOR shall have the right to re-enter the premises. However, this will not absolve the LESSEE of its liability to pay rent and other charges for the balance /unexpired lock in period.

In case either party comm its breach of any material terms of the Lease Deed other than payment of rent, in that event the other party shall serve a written notice to the Party in breach, specifying the nature of breach committed by the party in breach. The Party in breach shall be entitled to rectify / remedy the said breach within a span of 30 days from the date of receipt of the aforesaid notice, subject to Force Majeure condition . In case he party in breach fails to do so, in that event the other party shall be entitled to terminate / forfeit the lease even prior to expiry of lease period by serving 30 days notice. If the LESSEE is in breach , the LESSOR would have the right to re-enter the premises and the LESSOR shall return to the LESSEE interest free deposits as aforesaid simultaneously, after adjusting the dues and expenses, if any.”

14. On the other hand, Id. Counsel for the Defendant submits that after the lock-in period, lessee could terminate at any point. The Id. Counsel submits that the Defendant had issued the first notice on 11th September, 2020 calling upon the lessor to take the possession of the property and to return the ten months security deposit of approximately Rs.1.57 crore which the lessor refused to do so. Accordingly, the key has been retained by the Defendant in view of the Clause 3.5, 3.6 which clearly stipulates that the lessee shall retain the possession, if the security deposit is not returned. The



said clause also stipulates that even interest is payable on the said security deposit, in case it is not refunded. The said clauses 3.5 and 3.6 of the lease agreement dated 20th August, 2014 is reproduced hereinbelow:

“3.5. Provided always, in the event LESSOR defaults in refunding or repaying the unadjusted advance rent/ security deposit, if any, to the LESSEE simultaneously upon the handing over of the vacant and peaceful physical possession of the Leased Premises by the LESSEE to LESSOR, in accordance with the terms hereof, on the expiry of the term or earlier termination of this Lease Deed, then notwithstanding anything to the contrary contained herein, the LESSEE shall have a right to retain possession of the Leased Premises without payment of any rent or any other charges together with the right to recover the said amount of unadjusted advance rent along with interest @ 21 % per annum thereon from the date LESSOR was to refund such amount, in accordance with terms hereof, till the date of full and final payment.”

3.6. The LESSEE shall hold the possession of the Premises with right of gainful use of the same without any obligation to pay any rental and any other or further charges whatsoever till the date of payment or realization of the Security Deposit.”

15. The Court has considered the matter. The Defendant has already filed its suit seeking refund of the ten month security deposit which is pending before the Id. Addn. District Judge at the Commercial Court Saket being **325/2022** titled ***Indian Energy Exchange Limited v. BHL Forex and Finlease Limited***. The said suit is stated to be at the stage of Defendant's evidence.

16. The present suit has been filed at a later stage, after the Defendant had instituted its suit in 2022.



17. In the overall facts and circumstances of the case, the opinion of this Court is that since the lease period of nine years has itself come to an end, certain conditional orders can be passed such that the Plaintiff can be handed over the keys of the suit property so that the same can be put to use by the Plaintiff and it can derive rental income thereon.

18. Accordingly, let Senior competent officials, who are capable of taking decisions, on behalf of both the parties be present in Court on the next date of hearing.

19. The above order is without prejudice to the rights and contentions of both the parties on merits.

20. List on 28th February, 2024 on top of board.

PRATHIBA M. SINGH, J.

FEBRUARY 02, 2024

mr/bh