2026:DHC:7608

$~J

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 13.08.2026
Judgment pronounced on: 07 .09.2026

\+ **ARB.P. 853/2025**

FLEMINGO (DFS) PRIVATE LIMITED ....Petitioner

Through: Mr. Achint Singh Gyani, Adv.

versus

AIRPORTS AUTHORITY OF INDIA ....Respondent

Through: Mr. Digvijay Rai, Standing Counsel, Mr. Archit Mishra, Mr. Sachin Yadav, DSM (law) AAI & Mr. Ravinder Sulkhian, A.M. (law) AAI, Ayush Annand, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. This is a petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 ***("1996 Act")*** seeking appointment of a Sole Arbitrator for adjudication of the disputes between the parties arising out of the Licence Agreement dated 30.09.2011.

FACTUAL BACKGROUND

2. The petitioner is a private limited company incorporated under the

Signed By:ANSH SRIVASTAVA
Signing Date:07.09.2026
18:23

Companies Act,1956 and engaged in the operation of duty-free shops at airports.

3. The respondent is a body corporate constituted by the Central Government under the Airports Authority of India Act, 1994. The respondent is engaged in the creation, upgradation, maintenance and management of civil aviation infrastructure in India.

4. The respondent, with the intention of maintaining amenities and facilities for the passengers, decided to open up duty-free shops at the Amritsar Airport ***("the Airport")***. Accordingly, the respondent issued a notice inviting tenders for the development and operation of duty-free shops at the Airport.

5. The petitioner, being desirous of operating the duty free shops at the Airport in the Customs Hold departure/transit and Arrival Areas, submitted a tender to the respondent, which was accepted by the respondent. Accordingly, the petitioner was awarded the licence to develop and operate duty free shops *vide* the Letter of Award dated 10.06.2009. Thereafter, the Licence Agreement dated 30.09.2011 was executed between the parties for a duration of 5 years commencing from 10.06.2009 to 09.06.2014. The petitioner was allotted the following spaces for establishment and operation of duty-free shops:

i. Space measuring 66.64 SQM in the Arrival area

ii. Space measuring 46.58 SQM in the Departure area

6. The Agreement contained an Arbitration Clause being clause No. 57 which reads as under:

> *"57. If any dispute, difference or question shall at any time hereinafter arise between the parties hereto or their*

> *respective representatives or assigns in respect of the construction of these presents or the Contract, or concerning anything contained or arising out of these presents or as to rights, liabilities or dues of the said parties there under, which cannot be mutually resolved by the parties, the same shall be referred to the sole arbitrator on agreed terms under the provisions of the Indian Arbitration and Conciliation Act, 1996. If the parties fail to agree for appointment of sole arbitrator within 30 days, the Arbitrator Tribunal can be constituted with the appointment of one Arbitrator by the Claimant and one by the Respondent and these two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding arbitrator. The venue of Arbitration shall be New Delhi, India or any other place in India as may be decided mutually. The award of the arbitrator or the arbitral tribunal shall be final and binding on the parties."*

7. Subsequently, the possession of the duty-free shops on the arrival side and the departure side of the new Airport terminal was handed over to the petitioner on 21.07.2009 and 26.10.2009 respectively.

8. Since disputes arose between the parties concerning excess rent and concession fee charged by the respondent, there were several correspondences sent by the petitioner raising the said disputes before the respondent and the same were summarily rejected by the respondent on 28.09.2021 and 11.10.2021. In the meanwhile, the term of the Licence Agreement expired, and the respondent floated a new Request for

Proposal for granting concession rights at the Airport. The bid of the petitioner for the same was accepted, and the Concession Agreement dated 18.04.2016 was entered into between the parties.

9. It is the case of the petitioner that since the petitioner's claims were summarily rejected by the respondent, the petitioner invoked Arbitration vide legal notice dated 14.03.2022. After several follow-ups, the respondent replied to the said notice on 06.02.2023, suggesting that the disputes between the parties may be referred to mediation in terms of the Airports Authority of India Mediation Policy, 2022 (***"AAI Mediation Policy, 2022"***). Upon failure to resolve the dispute amicably, the petitioner, *vide* email dated 22.02.2024, urged the respondent to appoint a Sole Arbitrator for adjudication of disputes. After several reminders from the petitioner, the respondent intimated the petitioner that the petitioner's request has been forwarded to the competent authority. In the meantime, since the petitioner was under the apprehension that the respondent might encash its bank guarantees, the petitioner filed a petition under Section 9 of the 1996 Act. The respondent thereafter provided the petitioner with a list of 65 empanelled Arbitrators from which the petitioner recommended a name. Since the respondent failed to take any further action regarding the appointment of the Arbitrator, the present petition has been filed.

10. It is the case of the respondent that the petitioner made several representations from 2017 to 2021, and even requested the respondent to appoint an Arbitrator. The respondent rejected the correspondence of the petitioner on 28.09.2021 and 11.10.2021. Therefore, the breaking point of the *lis* for the purpose of limitation would commence on the said dates. The petitioner has filed the present petition in the year 2025 and, therefore, is barred by limitation.

<u>SUBMISSIONS ON BEHALF OF THE PETITIONER</u>

11. Mr. Achint Singh Gyani, learned counsel for the petitioner, states that the existence of a valid arbitration agreement between the parties is not in dispute and prays for the appointment of an Arbitrator. He further states that the objections raised by the respondent are both factually as well as legally unsustainable.

12. He points out that the claims raised by the petitioner were rejected by the respondent on 28.09.2021 and the decision was formally communicated to the petitioner on 11.10.2021. The petitioner, being aggrieved by the said decision, issued a notice under Section 21 of the 1996 Act. Thereafter, the respondent arbitrarily raised the demand of Rs. 35,57,777/- through an invoice dated 03.08.2022. Thereafter, at the suggestion of the respondent, the parties entered into mediation. Mrs. Manisha Nanda, Retd. Addl. Chief Secretary, Government of HP was appointed as a Mediator for amicable resolution of the disputes. The parties were engaged in *bona fide* negotiations from 30.06.2023 to 23.11.2023, which failed, and the said decision was formally communicated to the petitioner in January, 2024. Thus, it is apparent that the present petition is well within the prescribed limitation.

13. Learned counsel states that the issue of whether the claims are barred by limitation or not strictly falls within the jurisdiction of the Arbitrator in accordance with the principle of Kompetenz-Kompetenz. The same cannot be adjudicated at the stage of Section 11 (6). He places reliance on ***Aslam Ismail Khan Deshmukh v. ASAP Fluids Private Limited and Another, (2025) 1 SCC 502*** and ***Bakhtawar Ahmad Rather v. Airport Authority of***

India, ARB.P. 596/2025.

14. With respect to the issue of whether the petition is barred by limitation, it is stated by the learned counsel for the petitioner that after the invocation of Notice of Arbitration, the parties were actively engaged in a *bona fide* mediation process at the request of the respondent, which was not successful. Thus, the period of negotiations should be excluded for computation of the period of limitation for Arbitration. He places reliance on ***Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd., (2020) 14 SCC 643; Shree Ram Mills Ltd. v. Utility Premises (P.) Ltd. (2007) 4 SCC 599*** and ***M/s Unisys Infosolutions Pvt. Ltd. v. Gurbani Media Pvt. Ltd, 2024 SCC OnLine Del 1280.***

SUBMISSIONS ON BEHALF OF THE RESPONDENT

15. Mr. Rai, learned counsel for the respondent, opposes the maintainability of the petition and prays that the petition shall be rejected at the outset. He challenges the present petition on four grounds:

a. The alleged disputes are *ex facie* barred by limitation.

b. The petitioner has repeatedly invoked arbitration and abandoned the process.

c. The claims sought to be referred to Arbitration in the present petition do not arise from the License Agreement and are therefore outside the scope of the arbitration clause.

16. He states that limitation under the 1996 Act begins to run when the claims of a party are denied. In the present case, the respondent rejected the claims of the petitioner as early as on 22.05.2014. Thereafter, the petitioner sent four legal notices dated 05.07.2017, 16.11.2017, 10.01.2018 and 09.04.2018 (2017-18) and followed it up with 17 reminders till 2020. Despite the same, the petitioner did not pursue the proceedings to appoint the Arbitrator.

17. He also states that a fresh notice invoking the arbitration was issued on 14.03.2022 and the petition was filed on 22.05.2025. Once the notice under Section 21 has been issued invoking arbitration, time begins to run, and a subsequent notice in 2022 cannot revive the limitation which has already come to an end in 2020.

18. He places reliance on ***Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd., (2025) 1 SCC 502***, to contend that, even within the limited enquiry permissible at the referral stage, the Court is required to examine whether the Section 11(6) petition itself has been filed within the prescribed period of three years.

19. He places reliance on ***Geo Miller Company Pvt Ltd. v. Chairman, Rajasthan Vidyut Utpadan Nigam Ltd. (2020) 14 SCC 643*** and ***M/s B and T AG v. Ministry of Defence, (2023) SCC OnLine SC 657*** and highlights the principle of breaking point for determining limitation in arbitration. He states that even if the intervening correspondences are taken into account, the same cannot extend the limitation period. Thus, the present petition under Section 11, having been instituted only in 2025, is therefore *ex facie* barred by limitation.

20. It is further stated that the petitioner has raised claims relating to concession of fee in terms of the Licence Agreement dated 30.09.2011, but what is of significance here is that the said agreement dated 30.09.2011 does not contain any concept of concession of fee. Therefore, the dispute concerning the same falls beyond the purview of Clause 57, being the Arbitration clause.

ANALYSIS AND FINDINGS

21. I have heard the learned counsel for the parties and perused the material on record.

22. Before delving into the facts of the present case, it is pertinent to highlight the scope of interference by a referral court while adjudicating petitions filed under Section 11 of the 1996 Act. The Hon'ble Supreme Court in ***Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1,*** categorically held that the scope of examination at the stage of appointment of an Arbitrator is limited to a *prima facie* assessment of the existence of a valid arbitration agreement:

> *"81. One of the main objectives of the Arbitration Act is to minimise the supervisory role of Courts in the arbitral process. Party autonomy and settlement of disputes by an Arbitral Tribunal are the hallmarks of arbitration law. Section 5 gives effect to the true intention of the parties to have their disputes resolved through arbitration in a quick, efficient and effective manner by minimising judicial interference in the arbitral proceedings. [Food Corpn. of India v. Indian Council of Arbitration, (2003) 6 SCC 564.] Parliament enacted Section 5 to minimise the supervisory role of Courts in the arbitral process to the bare minimum, and only to the extent "so provided" under the Part I of the Arbitration Act. In doing so, the legislature did not altogether exclude the role of Courts or judicial authorities in arbitral proceedings, but limited it to circumstances*

Signed By:ANSH SRIVASTAVA
Signing Date:07.09.2026 18:23

where the support of judicial authorities is required for the successful implementation and enforcement of the arbitral process. [Union of India v. Popular Construction Co., (2001) 8 SCC 470; P. Anand Gajapathi Raju v. P.V.G. Raju, (2000) 4 SCC 539] The Arbitration Act envisages the role of Courts to "support arbitration process" [Swiss Timing Ltd. v. Commonwealth Games 2010 Organising Committee, (2014) 6 SCC 677 : (2014) 3 SCC (Civ) 642] by providing necessary aid and assistance when required by law in certain situations."

23. Further, the judgment of the Hon'ble Supreme Court in ***SBI General Insurance Co Ltd. v. Krish Spinning 2024 SCC OnLine SC 1754*** had perused the dictum laid down in ***Vidya Drolia and Ors. v. Durga Trading Corporation, (2021) 2 SCC 1*** and ***NTPC Limited v. SPML Infra Limited, (2023) 9 SCC 385***, and clarified the law laid down in ***In Re, Interplay (Supra)***. Post ***Krish Spinning (Supra)***, the jurisdiction of the Section 11 court is circumscribed to examining the existence of an arbitration agreement between the parties, and whether the petition under Section 11(6) has been filed within three years of the Notice Invoking Arbitration under Section 21 of the 1996 Act and nothing more**.**

24. The Hon'ble Supreme Court in ***Aslam Ismail Khan Deshmukh (Supra),*** reiterated that the limited enquiry to be conducted by the Court while adjudicating the petition filed under Section 11 of the 1996 Act would only entail prima facie existence of the Arbitration Agreement and whether the petition under Section 11 was filed within the limitation period as prescribed under Article 137 of Limitation Act, 1963. It would be improper for a referral court to hold a detailed examination as to whether a claim is time barred. The same is the domain of the Arbitrator. Such an enquiry at the stage of Section 11 petition would not only be improper but also would amount to the referral court venturing outside its well defined domain. The relevant paragraphs read as under:

> *"43. Therefore, while determining the issue of limitation in the exercise of powers under Section 11(6) of the 1996 Act, the referral Court must only conduct a limited enquiry for the purpose of examining whether the Section 11(6) application has been filed within the limitation period of three years or not. At this stage, it would not be proper for the referral Court to indulge in an intricate evidentiary enquiry into the question of whether the claims raised by the petitioner are time-barred. Such a determination must be left to the decision of the arbitrator.*
>
> *44. After all, in a scenario where the referral Court is able to discern the frivolity in the litigation on the basis of bare minimum pleadings, it would be incorrect to assume or doubt that the Arbitral Tribunal would not be able to arrive at the same inference, especially when they are equipped with the power to undertake an extensive examination of the pleadings and evidence adduced before them."*

25. The limitation period for filing a petition under Section 11, which is prescribed under Article 137, starts ticking 30 days after the notice under Section 21 of the 1996 Act is sent by one party to the other.

26. With this background, I shall now deal with the facts of the case.

27. The objection raised by the respondent is that the first Notice invoking Arbitration was sent in 2017. Therefore, the limitation to file a Section 11 petition expired had already expired in 2020. Since the present petition is filed in 2025, the same is barred by limitation.

28. At first blush, the argument of the respondent seems to be attractive. However, I am unable to agree. The said argument of the respondent is predicated on the fact that the notices dated 05.07.2017, 16.11.2017, 10.01.2018 and 09.04.2018 are notices invoking arbitration. The said notices read as under:

> *"July 5, 2017*
>
> *The Chairman,*
> *Airports Authority of India,*
> *Rajiv Gandhi Bhawan,*
> *Safdarjung Airport,*
> *NEW DELHI*
>
> *Dear Sir,*
>
> *SUBJECT: Refund of excess License fees and wrongly annual escalation charged*
>
> *We are writing with reference to the captioned subject and our repeated reminders to Airports Authority of India seeking resolution of the pending issue with respect to our old Amritsar Concession.*
>
> *We humbly submit that in spite of repeated reminders and assurances of a response, the issue still remains unresolved since past many years. We would therefore like to request kind intervention of your good offices so that necessary instructions be issued to the concerned department to expedite our request and to our request and also provide us*

the refund of excess License Fee and incorrect annual escalation charged from us.

We would like to propose that if required and instructed by your good offices, we are ready and willing to sit across the table with the concerned official and can provide necessary information and documents in support of our contention for refund.

We sincerely hope and trust that with your kind intervention, we will be able to resolve this issue. Please note that since this issue has remained unresolved since past many years, should this issue remains unresolved any further, we would request your good offices to kindly refer this matter to a Sole Arbitrator in accordance with Clause 57 of the License Agreement dated 30.09.2011.

We look forward to hearing from you.

Thanking you,

Your sincerely,
FOR FLEMINGO (DFS) PVT LTD.

Ajay Thoria
AGM – Operation & Compliance."

"November 16, 2017

The Chairman,
Airports Authority of India,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
NEW DELHI

Dear Sir,

SUBJECT: Refund of excess License fees and wrongly annual escalation charged

Ref: Earlier email dated 05.07.2017

We are writing with reference to the captioned subject and our repeated reminder emails to Airports Authority of India seeking resolution of the pending issue with respect to our old Amritsar Concession.

We humbly submit that in spite of repeated reminders and assurances of a response, the issue still remains unresolved since past many years. We would therefore like to request kind intervention of your good offices so that necessary instructions be issued to the concerned department to expeditiously respond to our request and also provide us the refund of excess Licensee Fee and incorrect annual escalation charged from us.

We would like to propose that if required and instructed by your good offices, we are ready and willing to sit across the table with the concerned official and can provide necessary information and documents in support of our contention for refund.

We sincerely hope and trust that with your kind intervention, we will be able to resolve this issue. Please note that since this issue has remain unresolved since past many years, should this issue remains unresolved any further, we would request your good offices to kindly refer this matter to a Sole Arbitrator in accordance with Clause 57 of the License Agreement dated 30.09.2011.

We look forward to hearing from you.

Thanking you,
Your sincerely,
For FLEMINGO (DFS) PVT LTD.

Ajay Thoria
AGM – Operation & Compliance."

"January 10, 2018

The Chairman,
Airports Authority of India,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
NEW DELHI

Dear Sir,

SUBJECT: Refund of excess License fees and wrongly annual escalation charged

Ref: Earlier email dated 05.07.2017

We are writing with reference to the captioned subject and our repeated reminder emails to Airports Authority of India seeking resolution of the pending issue with respect to our old Amritsar Concession.

We humbly submit that in spite of repeated reminders and assurances of a response, the issue still remains unresolved since past many years. We would therefore like to request kind intervention of your good offices so that necessary instructions be issued to the concerned department to expeditiously respond to our request and also provide us the refund of excess Licensee Fee and incorrect annual escalation charged from us.

We would like to propose that if required and instructed by your good offices, we are ready and willing to sit across the table with the concerned official and can provide necessary information and documents in support of our contention for refund.

We sincerely hope and trust that with your kind intervention, we will be able to resolve this issue. Please note that since this issue has remain unresolved since past many years, should this issue remains unresolved any further, we would request your good offices to kindly refer this matter to a Sole Arbitrator in accordance with Clause 57 of the License Agreement dated 30.09.2011.

We look forward to hearing from you.

Thanking you,
Your sincerely,
For FLEMINGO (DFS) PVT LTD.

Ajay Thoria
AGM – Operation & Compliance."

"April 09, 2018

The Chairman,
Airports Authority of India,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
NEW DELHI

Dear Sir,

SUBJECT: Refund of excess License fees and wrongly annual escalation charged

Ref: Earlier email dated 05.07.2017, 16.11.2017 and 10.01.2018

We are writing with reference to the captioned subject and our repeated reminder emails to Airports Authority of India seeking resolution of the pending issue with respect to our old Amritsar Concession.

We humbly submit that in spite of repeated reminders and assurances of a response, the issue still remains unresolved since past many years. We would therefore like to request kind intervention of your good offices so that necessary *instructions be issued to the concerned department to expeditiously respond to our request and also provide us the refund of excess Licensee Fee and incorrect annual escalation charged from us.*

We would like to propose that if required and instructed by your good offices, we are ready and willing to sit across the table with the concerned official and can provide necessary information and documents in support of our contention for refund.

We sincerely hope and trust that with your kind intervention, we will be able to resolve this issue. Please note that since this issue has remain unresolved since past many years, should this issue remains unresolved any further, we would request your good offices to kindly refer this matter to a Sole Arbitrator in accordance with Clause 57 of the License Agreement dated 30.09.2011.

We look forward to hearing from you.

Thanking you,
Your sincerely,
For FLEMINGO (DFS) PVT LTD.

Ajay Thoria
AGM – Operation & Compliance."

29. In the ***Prasar Bharti v. Visual Technologies India Pvt. Ltd. ARB. P. 558/2023***, this Court laid down the essentials of a valid Section 21

Notice. The relevant paragraph read as under:

> *"9. There is no fixed format of notice invoking arbitration. The requirement in law is that the party invoking arbitration must highlight the disputes between the parties and make a request that in case the disputes are not resolved, arbitration proceedings shall be commenced. The intention to invoke the redressal of disputes through the arbitral process must clearly spelt out in the notice. Hence in my view, the notice under Section 21 of 1996 Act must clearly state as follows:-*
>
> *a. The dispute between the parties.*
>
> *b. The demand to resolve the disputes as per the envisaged arbitration clause.*
>
> *c. In case, the disputes are not resolved the intention to resort to the arbitral process.*
>
> *d. The notice must be sent to the respondent."*

30. In the present case, the notices, which are allegedly the notices invoking arbitration, when read in totality, show that the petitioner is seeking resolution of its grievances and specifically states that in the event the grievances of the petitioner remain unresolved, the petitioner will resort to arbitration and had not invoked Arbitration at that point. Thus, the said notices cannot be construed as notices invoking Arbitration and are merely a communication that enumerates the intention of the petitioner to amicably solve the dispute without resorting to the arbitral clause as envisaged in the Agreement. In case the same is not so done, the disputes would be referred to Arbitration. The notices clearly show that there was no quantification or demand by the petitioner or any rejection of claim by the respondent. Therefore, the argument of the respondent that the petitioner has repeatedly invoked and abandoned the process of Arbitration does not further its case.

31. It is an admitted fact that the petitioner sent various reminders to the respondent starting 2017, to resolve the disputes with respect to Minimum Annual Guarantee ***("MAG")*** charged by the respondent from 03.11.2015 to 31.03.2016 and excess of licence fee charged by the respondent. It was only on 28.09.2021 that it was discussed for the first time and on 11.10.2021 that, for the first time, the respondent responded to and rejected the claims of the petitioner. The letter dated 28.09.2021, wherein the disputes raised by the petitioner were discussed by the respondent, and the letter dated 11.10.2021, wherein the disputes raised by the petitioner were rejected by the respondent, also assume relevance and read as under:

भारतीय विमानपत्तन प्राधिकरण 127
AIRPORTS AUTHORITY OF INDIA

F. No. CL- CL-11019/19/2020-Commercial / 220

Date: 28.09.2021

To,
The Regional Executive Director,
Airports Authority of India,
Northern Region.
Operational Complex,
Rangpuri, Gurgaon Road,
New Delhi-110037

[Kind attention: Sh Vivek Raj, Jt. GM (Commercial)]

Sub: Issues related with old DFS contracts at Amritsar Airport – Reg.

Sir,

M/s Flemingo had earlier raised following two issues in respect of its old concession of Duty Free Shop at Amritsar Airport, which were also taken up by RHQ-NR/ Amritsar airport:

Issue No- (i): - Refund of excess MAG charged from 03.11.2015 to 31.03.2016

Issue No. (ii): Refund of Excess License Fees charged in respect of space measuring to

a. 66.64 sqm. in new Arrival Hall (w.e.f. 21.07.2009 to 08.12.2009) and,

b. 46.58 sqm. space in new Departure Hall (w.e.f. 26.10.2009 to 15.12.2009) and wrongly annual escalation charged from 10.06.2009 instead of 08.09.2009.

2. The subject matter was examined at Commercial Dte in consultation with Finance Dte and Law Dte.

3. In this regard, the following is conveyed: -

On Issue No- (i): - MAG of USD 15,67,000 to be applicable for the period from 03.11.2015 to 31.03.2016.

On Issue No. (ii): - The applicable space rent for the space allotted in new location is payable w.e.f date of handing over of sites. Further, the agency was operating under the terms of new contract since 10.06.2009 from the area allotted under the previous contract, hence the claims of the agency do not find merit.

4. This issues with the approval of ED (Commercial).

Yours faithfully,

28/09/21
(Deepak Kumar)
JGM (Commercial)

राजीव गांधी भवन
Rajiv Gandhi Bhawan

सफदरजंग हवाई अड्डा नई दिल्ली - 110003
Safdarjung Airport, New Delhi-110003

दूरभाष : 24632950
Phone: 24632950

ENCLOSURE C

भारतीय विमानपत्तन प्राधिकरण
Airports Authority of India

128

भाविप्रा/अमृतसर/वाणिज्य/फ्लेमिंगो/21-22 5839 दिनांक: 11.10.2021

मेसर्स फ्लेमिंगो ड्यूटी फ्री शॉप प्राइवेट लिमिटेड/ M/s FLEMINGO DUTY FREE SHOP PVT. LTD,
डी ,1/73 -टीटीसी इंडस्ट्रियल एरिया/ D - 73/1, TTC INDUSTRIAL AREA,
NAVI MUMBAI- 400705/ नवी मुंबई-400705.

विषय:-अमृतसर हवाई अड्डे पर पुराने डीएफएस अनुबंधों से संबंधित मुद्दे - के संदर्भ में।
Subject:- Issues related with old DFS contracts at Amritsar Airport -reg.
महोदय/Sir,

अमृतसर विमानपतन पर इयूटी फ्री शॉप की पुरानी रियायत के संबंध में आपके कार्यालय द्वारा उठाए गए निम्नलिखित दो मुद्दों के लिए संदर्भ आमंत्रित किया जाता है:
Reference is invited to the following two issues raised by your office in respect of old concession of Duty Free Shop at Amritsar Airport:

मुद्दा संख्या (i) :- 03.11.2015 से 31.03.2016 तक प्रभारित अतिरिक्त एमएजी की वापसी
Issue No. (i) :- Refund of Excess MAG charged from 03.11.2015 to 31.03.2016

मुद्दा संख्या (ii):- स्थान मापने के संबंध में लिए गए अतिरिक्त लाइसेंस शुल्क की वापसी
Issue No. (ii):- Refund of Excess License fees charged in respect of space measuring to

ए) 66.64 वर्गमीटर नए आगमन हॉल में (21.07.2009 से 08.12.2009 तक) और,
a) 66.64 Sqm. in new Arrival hall (w.e.f. 21.07.2009 to 08.12.2009) and,

बी) 46.58 वर्गमीटर, नए प्रस्थान हॉल में जगह (26.10.2009 से 15.12.2009 से प्रभावी) और गलत तरीके से वार्षिक वृद्धि 08.09.2009 के बजाय 10.06.2009 से चार्ज किया गया।
b) 46.58 Sqm, space in new Departure Hall (w.e.f. 26.10.2009 to 15.12.2009) and wrongly annual escalation charged from 10.06.2009 instead of 08.09.2009.

इस संबंध में सूचित किया जाता है कि निगमित मुख्यालय के वाणिज्य निदेशालय ने विषय मामलों की जांच वित्त निदेशालय एवं विधि निदेशालय के साथ परामर्श से की गई है।

कार्यालय: निदेशक विमानपत्तन, O/o : The Airport Director
श्री गुरु राम दास जी अन्तर्राष्ट्रीय हवाई अड्डा, अमृतसर- 143101
Sri Guru Ram Dass jee International Airport, Amritsar-143101
An ISO 9001 : 2008, 14001 : 2004, 18001 : 2007 Certified Airport
दूरभाष / PHONE: 0183-2214118, फैक्स/FAX: 0183-2214358
E-mail : apdasr@aai.aero / asr_comml@aai.aero
Visit us : www.aai.aero

129

भारतीय विमानपत्तन प्राधिकरण
Airports Authority of India

In this regard, it is to inform that the subject matters were examined at Commercial Dte in consultation with Finance Dte and Law Dte at CHQ.

अत: अधोहस्ताक्षरी को सक्षम प्राधिकारी के निम्नलिखित निर्णय का पार्टी को अवगत कराने का निर्देश दिया गया है:-

Therefore, the undersigned is hereby directed to convey the following decision of the Competent Authority:-

मुद्दा संख्या (i) पर - 15,67,000 अमरीकी डालर का एमएजी 03.11.2015 से 31.03.2016 की अवधि के लिए लागू होगा।

On issue No. (i) - MAG of USD 15,67,000 to be applicable for the period from 03.11.2015 to 31.03.2016.

मुद्दा संख्या (ii) पर - आवंटित स्थान के लिए लागू स्थान का किराया 01.04.2015 से देय है जो कि साइटों को सौंपने की तिथि से है। इसके अलावा, एजेंसी पिछले अनुबंध के तहत आवंटित क्षेत्र में 10.06.2009 से नए अनुबंध की शर्तों के तहत काम कर रही थी, इसलिए एजेंसी के दावों को नहीं माना जा सकता है।

On issue No.(ii) - The applicable space rent for the space allotted in view location is payable w.e.f. date of handing over of sites. Further, the agency was operating under the terms of new contract since 10.06.2009 from the area allotted under the previous contract, hence the claims of the agency do not find merit.

यह आपकी जानकारी और आवश्यक अविवादित देय राशियों के यथाशीघ्र भुगतान के लिए है।

This is for your kind information and payment of necessary undisputed dues at the earliest.

भवदीय

11/10/2021

(हरमनजोत कौर)
सहायक प्रबंधक (वाणिज्य)
कृते विमानपत्तन निदेशक, भा .प्रा.वि.
श्री गुरु राम दास जी अंतरराष्ट्रीय हवाई अड्डा, अमृतसर।

कार्यालय: निदेशक विमानपत्तन, O/o : The Airport Director
श्री गुरु राम दास जी अन्तर्राष्ट्रीय हवाई अड्डा, अमृतसर- 143101
Sri Guru Ram Dass jee International Airport, Amritsar-143101
An ISO 9001 : 2008, 14001 : 2004, 18001 :2007 Certified Airport
दूरभाष / PHONE: 0183-2214118, फैक्स/FAX: 0183-2214358
E-mail : apdasr@aai.aero / asr_comml@aai.aero
Visit us : www.aai.aero

32. In the light of the above, since the claims of the petitioner were rejected by the respondent for the first time on 11.10.2021, it can be concluded that the cause of action arose on 11.10.2021. Therefore, the breaking point in the present case is 11.10.2021, as per the dicta laid down in ***Arif Azim Co. Ltd. v. Aptech Ltd.***,[1] while considering ***Geo Miller Company Pvt Ltd (Supra)*** and ***M/s B and T AG (Supra),*** which held that the notice invoking Arbitration has to be sent within 3 years from the date of the cause of action. When the respondent specifically rejected the claims of the petitioner, it was then that the petitioner sent a legal notice dated 14.03.2022 invoking Arbitration. Hence, I am of the view that the notice invoking arbitration was sent within the period of limitation i.e. 3 years as prescribed by ***Arif Azim (Supra)*** from the breaking point, i.e. 11.10.2021.

33. The respondent has sought to rely on the judgment in ***Geo Miller Company Pvt Ltd (Supra)*** and ***M/s B and T AG (Supra).*** The same is distinguishable on facts. In both the above cases, the claims of the parties seeking to invoke the Arbitration were culminated and decided by the respondent. Either a bill was sent to the petitioner, or the claims of the petitioner were rejected by the respondent.

34. In the present case, the respondent sent a letter dated 18.10.2016 stating that the case of the petitioner is being considered by the respondent and the decision regarding the same would be conveyed to the petitioner as and when considered by the concerned authorities of the respondent. The same was not so done until 28.09.2021, when the respondent, for the first time, discussed the issues internally and formed an opinion to reject the

[1] (2024) 5 SCC 313. Refer Paragraph Nos. 91,92 and 94.

claims of the petitioner. Only thereafter the claims of the petitioner were rejected on 11.10.2021 summarily.

35. Further, in response to the said notice dated 14.03.2022, the respondent further sent an email dated 06.02.2023 wherein it was acknowledged that the notice dated 14.03.2022 was the reference to arbitration and further mediation in terms of AAI Mediation Policy, 2022 was suggested by the respondent, which was a statutory requirement. The said email reads as under:

From: Amritsar Commercial <asr_comml@AAI.AERO>
Sent: 06 February 2023 13:07
To: Sandesh Khandekar <skhandekar@flemingo-intl.com>; Ajay Thoria <ajayt@flemingo-intl.com>; Ricky Dilip Dogra <rdogra@flemingo-intl.com>
Cc: APD Amritsar <apdasr@AAI.AERO>; commercial NR <commnr@AAI.AERO>
Subject: Issues related with old DFS contracts at Amritsar Airport -Appointment of Sole Arbitrator-reg.

महोदया / महोदय,

Reference is invited to the appointment of Arbitrator for the following two issues raised by your company in respect of old concession of Duty Free Shops at Amritsar Airport:-

Issue No. (i) :- Refund of Excess MAG charged from 03.11.2015 to 31.03.2016

Issue No. (ii):- Refund of Excess License fees charged in respect of space measuring to

a) 66.64 Sqm. in new Arrival hall (w.e.f. 21.07.2009 to 08.12.2009) and,

b) 46.58 Sqm, space in new Departure Hall (w.e.f. 26.10.2009 to 15.12.2009) and wrongly annual escalation charged from 10.06.2009 instead of 08.09.2009.

In this regard, it is to inform that the above issues may be resolved through Mediation as per AAI Mediation policy.

भवदीय,
प्रभारी (वाणिज्य)
कृते विमानपत्तन निदेशक, भा.वि.प्रा.
श्री गुरु राम दास जी अंतरराष्ट्रीय हवाई अड्डा, अमृतसर।
दूरभाष : 0183-2204119 / 2204120

2026:DHC:7608

36. The mediation began on 30.06.2023, and the last date of mediation was 23.11.2023. Subsequently the mediation process failed. Hence, the failure report is dated beyond 23.11.2023. Since the parties did not agree to settle, the mediation process failed. The report of the mediator documenting the failure of meditation process reads as under:

170

FAILURE REPORT

Name of the Mediator	**Ms. Manisha Nanda, Addl. Chief Secretary, Govt of HP**
Name of the Applicant	**M/s Flemingo (DFS) Private Ltd. First Party**
Name of the Opposite Party	**Airports Authority of India Second Party**
Name of the Work	**Concession of Duty Free Shops at Amritsar**
Mediation Request Date	**30.06.2023**
Mediation Case No.	**01/Comml/2023**
Venue of Mediation	**AAI CHQ R.G. Bhavan, Safdarjung Airport, New Delhi – 110 003.**
Date(s) of Mediation	**23.8.2023, 5.9.2023, 6.10.2023, 17.10.2023 & 23.11.2023**
No. of Sittings and duration of sittings.	**05 (Five) / 11.30 am to 4.30 pm**
Reason of Failure	**Not settled**

A. BACKGROUND

M/s. Flemingo (DFS) Private Limited, First Party, was awarded License to operate the dutyfree shops at Amritsar Airport for a period of 5 yers w.e.f. 10.6.2009 to 9.6.2014. The contract was further extended upto 30.6.2016. An agreement in this regard was executed on 30.9.2011.

First Party applied for mediation under AAI Mediation Policy 2022. A copy of the said request with its enclosure is enclosed at **Annexure A.**

B. GIST OF DISPUTES

a) Refund of excess rent and royalty for the period 10.06.2009 to 08.12.2009 and for the period 10.06.2009 to 16.12.2009;

b) Incorrect levy of excess concession fee for the period 03.11.2015 to 31.03.2016 with interest thereon.

C. DETAILS OF MEDIATOR & ISSUE INVOLVED

Ms. Manisha Nanda, Retd. Addl. Chief Secretary, Govt of HP was appointed as Mediator vide letter dated 7.8.2023 (referred as Mediator). Thereafter five Mediation meetings were held on 23.8.2023, 5.9.2023, 6.10.2023, 17.10.2023 & 23.11.2023 during which both the parties submitted their presentations and documents as required.

D. TERMS OF REASONS FOR FAILURE

Both the parties were heard at length by the mediator on all mentioned dates.

The Ld. Mediator in the mediation meeting held on 23.11.2023 gave her proposal (**Annexure B**), the brief of which is as under:

"Background of Dispute 1: A. Refund of excess rent and royalty for the period 10.06.2009 to 08.12.2009 (arrival) and for the period 10.06.2009 to 16.12.2009(departure).

a) M/s. Flemingo (DFS) Pvt. Ltd. had entered into licence agreement with AAI on 30.09.2011 for operation of Duty Free Shops at Sri Guru Ram Das Jee International Airport, Amritsar. The Licence commencement date was 10.06.2009 and it was valid upto 09.06.2014 i.e. for 05 years. As per the agreement, M/s. Flemingo (DFS) Pvt. Ltd. was allotted a space for 113.22 sqm as per the agreed rent and royalty.

b) As per record, M/s. Flemingo (DFS) Pvt. Ltd. was handed over the premises at the arrival side on 21.07.2009 (66.64 sqm) and departure side 26.10.2009 (46.58 sqm). From 09.12.2009 and 16.12.2009, both the shops became operational. Space Licence Fee w.e.f. 10.06.2009 to 08.12.2009 on pro rata basis (45 USD per sqm per month) as the party was existing licensee operating from the area in the previous international arrival area (20.85 SQM) under previous license which was on extension and Similarly, Royalty w.e.f. 10.06.2009 to 08.12.2009 on pro rata basis (556.76 USD per sqm per month) was charged as the party was existing licensee operating for the instant area (20.85 SQM).

c) M/s Flemingo (DFS) Pvt. Ltd. has been contesting about the escalation charged by AAI Amritsar and the matter remained unresolved for almost 05 years and the agency claimed an amount of Rs.42,58,907/- (principal amount) and interest @ 18% amounting to Rs. 72,39,675/-(for the period 26.09.2012 to 14.03.2022) to be refunded to them by AAI.

d) It is apparent from the record that AAI Amritsar got Customs permission for the new extended terminal building on 09.12.2009 (arrival side) and 16.12.2009(departure side). It is quite clear that without the permission of customs, duty free shop cannot be operated and hence, the international passenger couldn't land and take advantage of duty free shop.

e) AAI has contended that credit has already been given in the form of additional gestation period and the agency has been waived all the bill amounts raised by AAI in respect of Royalty for that period. As they had given extension of gestation period from 08.09.2009 to 08.12.2009.

After detailed discussion, the Mediator has finally arrived at a decision that AAI should refund the amount claimed by the agency in respect of

Signed By:ANSH SRIVASTAVA
Signing Date:07.09.2026
18:23

172

Dispute no. 01 by reducing the interest from 18% to 9%, keeping in view the circumstances under which the area handing over and permission from customs was given.

4. Dispute No. 02: Incorrect Levy of Excess Concession Fees for the period 03.11.2015 to 31.03.2016 with interest thereon:

a) An RFP was floated in 2015 by AAI Amritsar and that time M/s Flemingo (DFS) Pvt. Ltd. requested AAI to grant temporary extension for the duty free shops. AAI accordingly extended the contracts on 03.11.2015. The extension letter was issued on 03.11.2015 and departure area was taken over by agency on 06.01.2016.

b) AAI Amritsar charged License fees and royalty for the space occupied by M/s Flemingo (DFS) Pvt. Ltd. as per the old concession agreement for Arrival side. However, for the departure side (repossessed), MAG was charged on pro rata basis as per new concession terms.

c) The agency's claim amount was Rs. 1,19,16,974/-whereas AAI billed amount along with interest (to be charged) till 30.06.2023 is Rs. 35,57,777/- (principal) and Rs.6,85,280/-(interest @ 18%) based on RFP floated in March 2015 which was not finalized.

After discussion with both the parties, it was proposed by Mediator that this amount of Rs. 35,57,777/- (principal) and Rs.6,85,280/-(interest) to be waived off by AAI."

Consequent to the proposal of the Mediator, the First Party vide its email dated 7.12.2023 has accepted the proposals of the learned Mediator subject to the condition that AAI should accept the same in its entirety and any deviation/modification or partial acceptance of the proposal of the learned Mediator by AAI would not be acceptable to them. Similarly, Second Party agreed to proposal No.2 of learned Mediator and has not agreed to proposal no.1. Thus, it has become a case of partial acceptance of the proposal by the Second Party and conditional acceptance of First Party, resulted in non-acceptance of the mediator proposal by the First Party in entirety. Hence, it has become a case of non-acceptance of Mediator's proposal.

NOW WHEREAS considering the above and the contentions put forth by both the parties and despite efforts of the Mediator, the parties failed to reach at consensus/arrive at settlement.

Date :

Signature of First Party **Signature of Second Party**

Manisha Narang

Signature of Mediator

Signed By:ANSH SRIVASTAVA
Signing Date:07.09.2026
18:23

37. The perusal of the mediation report shows that dispute No. 1 and dispute No. 2 were part of the mediation between the parties. The same forms the basis to *prima facie* conclude that the issues were very much alive between the parties. At not stage prior to 11.10.2021, the respondent had rejected /disallowed the issues raised by the petitioner.

38. At this juncture, it is relevant to discuss the dictum laid down in ***Arif Azim (Supra)*** the petition under Section 11 of the 1996 Act is to be filed within 3 years of valid invocation of arbitration.

39. The learned counsel for the respondent states that even if the notice of 14.03.2022 is considered as the first notice invoking arbitration even then the present petition filed on 28.05.2025 is beyond the period of three years and hence liable to be rejected.

40. It will be apposite to discuss the judgment of ***Unisys InfoSolutions Private Limited v. Gurbani Media Private Limited, 2024 SCC OnLine Del 1280,*** wherein this court has held that even though the notice to invoke arbitration has been issued on 11.06.2016, the period spent by the parties in bona fide attempts to amicably resolve the dispute was to be excluded for calculation of period of limitation. The relevant paragraphs read as under:

> *"46. It is the admitted position of the parties that thereafter they actively engaged in a settlement process through mails, meetings from 29-7-2016 to 25-4-2017. In these circumstances, the period taken in mutual discussions, has to be necessarily excluded.*

47. The Notice for invoking arbitration is dated 29-7-2016. Prima facie, while considering the period of limitation for the present petition under Section 11 of the Act, 1996 which was filed on 28-11-2019, on exclusion of the period from 29-7-2016 to 25-4-2017 taken in settlement negotiations, the present petition is well within the period of three years as provided under Article 137 of the Schedule to the Limitation Act, 1963.

48. The present application under Section 11 of the Act, 1996 is therefore, held to be filed within the period of limitation. In the light of the aforesaid discussions, it is held that the arbitration has been invoked validly in accordance with law."

41. The aforesaid dicta squarely apply in the present case. The date of invocation of arbitration as per the above set of facts was 14.03.2022. Thereafter, the parties remained engaged in mediation from 30.06.2023 to at least until 23.11.2023, panning a period of 147 days. The said mediation was undertaken in terms of the statutory procedure of the respondent being AAI Mediation Policy, 2022 at the instance of the respondent itself. It was the respondent who sought resolution of disputes through mediation. The petitioner agreed to the same and accordingly, participated in the proceedings. Hence, the said period of bonafide mediation has to be excluded while computing the period of limitation.

42. The period of limitation for filing a petition under Section 11 would commence upon the expiry of 30 days, i.e. 13.04.2022, after invocation of arbitration. The Arbitration was invoked on 14.03.2022. Thus, the period of 3 years of filing the Section 11 petition would expire on 12.04.2025. In view of the principles enunciated in ***Unisys InfoSolutions Private Limited (Supra)*** adding a period of 147 days, spent on mediation, would make the petition filed on 20.05.2025 very much within the limitation period.

43. The third objection raised by the respondent is that the petitioner's claim No. 2 pertaining to excess of MAG charges for a period of 03.11.2015 to 31.03.2016 never formed a part of the Licence Agreement dated 30.09.2011. The same does not help the case of the respondent.

44. A bare perusal of the entire correspondence detailed above shows that Concession/MAG was very much a part of the notice invoking arbitration, the response of the respondent and the mediation report. The mediation report nowhere states that the mediation qua the dispute No. 2 failed due to the same not forming the part of the Licence Agreement. Hence, whether MAG/ concession fee forms a part of the Licence Agreement would require a detailed analysis of the Agreement, conduct of parties and evidence, which will lie within the domain of Arbitrator.

45. In ***Krish Spinning (Supra)*** the Hon'ble Supreme Court held that the issue of arbitrability of claim is to be determined by the Arbitrator. The relevant paragraph read as under:

> ***"117.*** *In view of the observations made by this Court in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6*

SCC 1 : 2023 INSC 1066] , it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] and adopted in NTPC Ltd. v. SPML Infra Ltd. [NTPC Ltd. v. SPML Infra Ltd., (2023) 9 SCC 385 : (2023) 4 SCC (Civ) 342] that the jurisdiction of the Referral Court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] ."

46. Further, in ***Office for Alternative Architecture v. Ircon Infrastructure and Services Ltd., 2025 INSC 665*** the Hon'ble set aside the judgment of the High Court, which bifurcated the claims into arbitrable and non-arbitrable holding that the issue of arbitrability of disputes is to be left open to the Arbitrator. The relevant paragraphs read as under:

*"**12.** As the above decision has been rendered by a three-Judge bench of this Court after considering the seven-Judge bench decision of this Court in In Re: Interplay (supra), we*

are of the view that the respondent cannot profit from certain observations made by a two-Judge bench of this Court in Emaar (supra). In our view, therefore, the High Court fell in error in bisecting the claim of the appellant into two parts, one arbitrable and the other not arbitrable, when it found arbitration agreement to be there for settlement of disputes between the parties. The correct course for the High Court was to leave it open to the party to raise the issue of non-arbitrability of certain claims before the arbitral tribunal, which, if raised, could be considered and decided by it."

47. Thus, the issue of whether the MAG is part of the Licence Agreement dated 30.09.2011 is to be decided by the Arbitrator. This Court cannot decide the Arbitrability of disputes. If so done, the same would amount to venturing outside the domain prescribed for the referral Courts. The Arbitrator is equally competent, if not more, to rule whether a particular issue is Arbitrable or not in terms of the Arbitration Agreement.

48. Therefore, it would be apposite to conclude that as per the limited enquiry which is permissible at this stage, there exists a valid arbitration agreement between the parties and the petition has been filed well within the stipulated limitation period.

49. For the said reasons, and without commenting on the merits of the case, the petition is allowed, and the following directions are issued:-

i) Ms. Justice Shalinder Kaur, (Retd. Judge, Delhi High Court) (Mob. No. 8130666013 / 9650448075) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter referred to as the 'DIAC').

iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the 1996 Act prior to entering into the reference.

v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties are left open for adjudication by the Sole Arbitrator.

vi) The parties shall approach the Sole Arbitrator within two weeks from today.

50. The observations and findings of the court recorded above are only for the purpose of deciding the present petition and the learned Arbitrator is free to decide all the issues uninfluenced by any observations made hereinabove. The petition is disposed of in aforesaid terms.

JASMEET SINGH, J.

SEPTEMBER 07th , 2026/(MU)