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

% *Judgment reserved on: 2nd August, 2016*
Judgment pronounced on: 5th August, 2016

\+ **O.M.P. (COMM.) No.321/2016**

BLUE HORIZON IT SOLUTIONS PVT LTD & ORS ..... Petitioners
Through Mr.Raman Kapur, Sr. Adv. with Mr.Dhiraj Sachdeva and Mr.Aviral Tiwari, Advs.

versus

ANUJ BAIRATHI & ORS ..... Respondents
Through Ms.Maninder Acharya, Sr.Adv. with Ms.Zeba Khair, Adv. for R-1 & 2.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The abovementioned objection petition has been filed by the petitioners under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act") against the award dated 4th March, 2015.

2. Admitted facts of the case are that the respondent No.1 Mr.Anuj Bairathi intended to purchase a plot bearing No.5 measuring 5000 square meters situated in Sector-90, Noida, Uttar Pradesh (hereinafter referred to as the "said property") from the petitioner. The respondent No.2 is a Company of the respondent No.1 and respondent No.3 is the broker in the agreement entered into between the petitioner No.1 and respondent No.1.

3. An Agreement to Sell dated 9th March, 2013 was entered into between the petitioner No.1 and respondent No.1 for the sale of the said property for a total sale consideration of Rs.7,60,00,000/-. It was also stated in the agreement that the respondent No.1 can also take over the petitioner No.1-Company under the said agreement. A sum of Rs.1,10,00,000/- was paid as advance at the time of the execution of the agreement.

4. The balance consideration of Rs.6,50,00,000/- was to be paid by the respondent No.1 within 90 days of the execution of the Agreement.

5. Till 3rd June, 2013, respondent No.1 also made various payments to the petitioners. The details of the same would be discussed later on.

6. It was also mentioned in the agreement that the petitioner No.1 will obtain NOC/CIC in favour of the respondent No.1 from the concerned authorities within 30 days before the expiry of the agreement. The case of the petitioners is that the petitioners made all the efforts to complete the formalities mentioned in the agreement. They approached all the concerned departments for getting all the statutory permissions. They obtained the NOC from the account department of Noida Authority and on 11th July, 2013 CIC/CIS was also obtained from Noida Authority and thereafter, they duly informed the respondent No.1 that all the formalities have been completed and they are in a position to execute the transfer of documents in favour of respondent No.1, however, the respondent No.1 was never ready with the balance payment.

7. Disputes arose between the parties. On 24th April, 2014 the petitioners received a letter from the Arbitrator stating therein that the respondent No.3 had appointed him for adjudicating the disputes between the petitioners and the respondents under the Agreement to Sell dated 9th March, 2013.

8. The respondents No.1 and 2 filed statement of claim for the relief of specific performance of the Agreement to Sell dated 9th March, 2013 or in the alternative for refund of amount already paid along with interest. The petitioners filed their reply and pleaded that they were always ready and willing to perform their part however, it appears that the respondents were insisting for only refund of money.

Subsequently, the respondents filed an application for amendment of statement of claim and raised the pleas that an additional amount of Rs.1 crore was paid. Admittedly, the said amount was not mentioned in the original statement of claim since it was set off. The said application was allowed. No evidence was led by the parties after amendment.

9. On 4th March, 2015, the Arbitrator passed the award directing the petitioners to refund the amount along with interest @ 14.6% and future interest @ 18% and held that the petitioners are at fault and further held that the alleged amount of Rs.1 Crore in cash was paid to the petitioners.

10. The said award was challenged by the petitioners *inter alia*, mainly, on two grounds; firstly, the petitioner No.2 never received a sum of Rs.1 crore in cash allegedly paid by the respondent No.1 on 3rd June, 2013 as an additional amount and the Arbitral Tribunal

awarded the said amount without any valid reason and evidence, thus its findings are perversed and illogical. Secondly, the Arbitrator ought not have awarded the interest as the respondents themselves asked for the refund of amount. Even otherwise, the award of interest is on higher side.

11. When the present objection petition was listed before Court on 6th July, 2015, the following orders were passed:-

> "**Caveat Nos.647/2015, 648/2015, 649/2015, 653/2015, 655/2015 & 656/2015**
>
> Learned counsel appears for the caveators.
>
> Accordingly, caveats stand discharged.
>
> **I.A. No.13115/2015 (For condonation of delay in re-filing the petition)**
>
> For the reasons stated in the application, five days' delay in re-filing the petition is condoned.
>
> Application stands disposed of.
>
> **O.M.P. 361/2015**
>
> 1. Learned senior counsel for the petitioners argues that the Arbitrator has wrongly awarded the principal amount of Rs.3,86,33,175/- (Rupees Three crore eighty six lacs thirty three thousand one hundred seventy five only) whereas the principal amount should be Rs.1 Crore less. It is argued that the amount of Rs.1 Crore, said to have been paid in cash by the respondent No.1 to the petitioner No.1 is disputed by the petitioner, and the validity of which denial by the petitioner No.1 becomes clear from the fact that either in the original legal notice dated 17.02.2014 issued by the respondent No.1 or in the original statement of claim preferred by the respondent No.1 before the Arbitrator, there is no mention whatsoever of an amount of Rs.1 Crore of being paid in cash by the respondent No.1.
>
> 2. It is argued that a limited notice is prayed in this petition with respect to Rs.1 Crore and the high rate of interest awarded by the Arbitrator.

3. Learned Senior counsel also argues that liability will only be of the petitioner No.1, which is a company, and there can be no liability of the Directors of petitioner No.1 as they have not personally agreed to repay the amount and in this regard no such agreement has been shown by the respondent No.1.

4. In view of the above, the petitioner No.1 will pay the amount of Rs.2,86,33,175/- (Rupees Two crore eighty six lacs thirty three thousand one hundred seventy five only) along with simple interest @ 9% p.a. from 20.06.2013 till the date of payment and for which learned senior counsel for the petitioners prays for and is granted a period of eight weeks to make payment. In case payment is not made by the petitioner No.1 to the respondent No.1 of this amount within eight weeks, the rate of interest then payable by the petitioner No.1 to the respondent No.1 will be the same rate of interest as is granted by the Award.

5. Accordingly, limited notice is issued in this petition for the liability of Rs.1 Crore, as stated above, imposed upon the petitioners by the Award and also the rate of interest granted by the Award.

6. Learned counsel for the respondent accepts notice.

7. Reply be filed within a period of six weeks from today, rejoinder be filed within a period of four weeks thereafter.

8. Learned counsel for the parties states that the original record of Arbitrator need not be summoned inasmuch as the necessary pleadings and documents have already been filed before this Court or copies of the same will be filed before this Court before the stage of final arguments.

9. List before the Joint Registrar for completion of pleadings on 30.09.2015.

10. Respondent No.3 is deleted from the array of parties as there is no dispute with the said respondent No.3 of either of the parties."

12. The respondents' counsel has confirmed that in view of the order passed by this Court on 6th July, 2015, the respondents have

received the amount as per direction in the order and as far as the interest component is concerned, the said order was passed tentatively in nature. This issue was left open to be decided by the Court at the time of final hearing.

13. Relevant issues No.3 and 6 were framed before the Arbitrator which read as under:-

> "3. Whether the Respondent No.2 received a sum of Rs.1 Crore in cash from the Claimant No.1 and issued a receipt to that effect on 03.06.2013 vide Annexure C-6, at page 55?
>
> 6. Whether the Claimants are entitled to grant of interest, if any, on the amount retained by the Respondents?"

14. Both the parties have made their submissions only on the above said two issues. The issue No.3 is pertaining to the disputed amount of Rs.1 crore which is allegedly paid by the respondent No.1 to petitioner No.2 in cash and the receipt dated 3rd June, 2013 produced by the respondent No.1.

15. The findings on the issue No.3 are arrived at after the discussion in para 23 of the award. The same has been reproduced herein below:-

> 23. So far as the second and third issue are concerned, the same can be decided together. The payment of Rs.3,86,33,175/- by the Claimant No.1 and 2 to the Respondents is not in dispute. So, this Tribunal is left to decide as to whether the Claimant had paid Rs.1 Crore in cash to the Respondent No.2 on 03.06.2013. A perusal of the cash payment receipt filed as Annexure C-6, at page 55, reads as follows:

"I, Gurdip Singh S/o Late. S. Kuldip Singh, R/o 8 Tolstoy Marg, Cannaught Place, New Delhi - 110 001 (Seller) acting as director and share holder of Blue Horizon IT Solutions Pvt. Ltd. duly authorized by Company vide board resolution dated 08.03.2013 to receive the amount for sale of land have received Rs.1,00,00,000/- (Rupees One Crore Only) on 03.06.2013(Sdl- illegible-Initial of the Respondent No.2) at Delhi as advance in furtherance to amount already paid against the Agreement executed on 9th Day of March, 2013 from Anuj Bairathi S/o R.C. Bairathi R/o 606, Mahagun Morpheus, E-4, Sector-50, Noida (Buyer) for sale of land bearing Plot No.5, situated at Sector -90 in the revenue estate of Distt Gautam Budh Nagar,(Noida) U.P."

A perusal of the said cash payment receipt shows that the said payment was received only by the Respondent No.2 acting as Director of Respondent No.1 Company. Signatures of the Respondent No.2 are seen at three places, one in the middle of the receipt where date 03.06.2013 is mentioned, one on the revenue stamp and the third alongside the revenue stamp. The said signatures have not been denied. The argument of the Ld. Counsel for the Respondents that the said receipt was issued in lieu of the two RTGS transfers dated 03.06.2013, one in the account of Ms. Neerja Ghura, Respondent No.4 herein (Wife of Respondent No.2) and one in the account of Respondent No.2 himself, does not inspire confidence. Firstly the receipt is only from Respondent No.2 in his capacity as director and not from Respondent No.2 and 4 jointly. Secondly, the receipt does not mention receipt of two payments of Rs.50,00,000/- each in the account of Respondent No.2 and 4 respectively, but mentions only Rs.1 Crore and the heading of the said receipt shows that the sum of Rs.1 Crore was paid in cash. Ld. Counsel for the Respondents sought to argue that the expression "CASH PAYMENT RECEIPT" has been fraudulently inserted subsequently by the Claimants as the same did not exist in the original receipt. Ld. Counsel for the Respondents was asked to furnish a copy of the said receipt to show that the said expression does not exist in his copy but he failed to produce any such receipt. The Ld. Counsel for the Respondents also argued that there is no question of the Respondent No.1 Company receiving Rs.1 Crore in cash as the company does not and cannot deal in cash transactions and therefore, the case of the Claimants that Rs.1 Crore was paid in cash on 03.06.2013 is unbelievable. The said argument of the Ld. Counsel is being noted to be rejected as it is a matter of record that at the time of entering into the Agreement to sell on 09.03.2014, the Respondent No.1 Company had received a cash amount of Rs. 84,00,000/-. On the other hand, the Ld AR for the Claimants produced the original of the said receipt and the same was perused carefully by this Tribunal and no such fabrication could be made out. In this view of the matter, it can safely be concluded that apart from the admitted amount of Rs.3,86,33,175/-, the Claimant No.1 had also paid Rs.1 Crore in cash to the Respondent No.1 and the said Respondent No.2 had duly executed a receipt on behalf of Respondent No.1, thus, making the total payment to Rs.4,86,33,175/-. Out of this amount, a sum of Rs.1 Crore by way of two Demand Drafts of Rs.50,00,000/- each was returned by the Respondent No.2 and 4 respectively in the name of Claimant No.2. Thus, it is held that the Respondents No.1 to 5 received a total of Rs. 4,86,33,175/- from the Claimants and are retaining Rs. 3,86,33,175/- after 01.11.2013. Therefore, the second and third issues are decided accordingly."

16. In view of the said finding, it is now to be decided as to whether actually the petitioner No.2 did receive the said amount in cash from the respondent No.1 or not and under the scope of interference, whether this Court is now at this stage to reconsider the said issue which was decided by the Arbitrator in favour of respondent No.1 which came to the conclusion that the said amount was paid by the respondent No.1 to the petitioner No.2. The said main issue is now the heart and soul of the objections filed by the petitioners and rightly so, the notice was issued by the earlier Bench

in view of two versions of the parties, may be because of the reason that it was a cash transaction.

17. Both the parties have not denied the factual position that out of total agreed amount, i.e. Rs.7,60,00,000/- and an advance to the tune of Rs.1,10,00,000/- was paid by the respondent No.2 to the petitioner No.2 in the following manner:-

Date	Drawer	Mode	Amount	Details	In Favour of
21st Feb,2013	Cyber Futuristics India Private Limited	Cheque	10,00,000.00/-	Cheque No. 058864 drawn on ICICI Bank	Blue Horizon IT Solutions Private Limited
9th March, 2013	Anuj Bairathi	Cash	84,00,000.00/-	Cash	Cash
16th March, 2013	Cyber Futuristics India Private Limited	Cheque	16,00,000/-	Cheque No. 183939 drawn on HDFC Bank	Blue Horizon IT Solutions Private Limited

18. It is not denied by the petitioners that respondent No.1 has also made the further payment up to 3rd June, 2013 in the following manner:-

Date	Mode of Payment	Amount	Details
11.05.2013	RTGS – HDFCH13131131560	25,00,000/-	Transfer to Karur Vysya bank A/C No.410311511162 of Blue Horizon IT Solution Pvt. Ltd. i.e. Respondent No.1.
30.05.2013	DD No.346845	1,51,33,175/-	Transfer to Karur Vysya Bank A/C No.41031151116

			2 of Blue Horizon IT Solution Pvt. Ltd. i.e. Respondent No.1.
03.06.2013	RTGS No.HDFCH13154884473	50,00,000/-	Transfer to bank A/C of Mrs. Neerja Ghura (Respondent No.4).
03.06.2013	RTGS HDFCH13154884496	50,00,000/-	Transfer to Bank A/C of Mr. Gurdip Singh (Respondent No.2).

19. The case of the respondents is that in addition to the said amount of Rs.1 crore which was transferred by RTGS account, further Rs.1 crore was also given to the petitioner on 3rd June, 2013 in cash and against the same, the receipt was issued. It is admitted by the respondents that it is true that the factum of payment was not pleaded in the statement of claim but the receipt was attached.

20. On the other hand, the case of the petitioners is very simple and straight that upto the date of filing of the application for amendment, as per pleadings of the respondents, e-mail, draft agreement and legal notice exchanged between the parties, there was no reference at all about the alleged additional amount of cash payment of Rs.1 crore as alleged. Time and again the respondent No.1 has admitted and acknowledged the payment as mentioned by the petitioner in para 18 of my judgment. The said amount was only claimed by the respondents first time when the application for amendment was filed. The said alleged receipt referred by the respondents is pertaining to transfer of Rs.1 crore by way of RTGS i.e. Rs.50 lac in the account of Mrs.Neerja Ghura respondent No.4

and Rs.50 lac in the account of Mr.Gurdip Singh respondent No.2 as alleged by the petitioners who argued that the respondents are mischievously taking the advantage of situation as the said receipt was merely pertaining to the transfer of amount through RTGS. As the RTGS was shown on 3rd June, 2013 the respondent No.1 is trying to convert the same receipt with the cash payment in addition to payment which was transferred by RTGS.

21. Learned counsel for the respondents argued that while considering the objection under Section 34 of the Act, this Court has no jurisdiction to re-investigate into the merit of the case by giving different interpretation about the document once the Arbitral Tribunal has arrived at the conclusion that amount of Rs.1 crore was received by the petitioner No.2 who had also issued the receipt thereof. It is canvassed that the sole Arbitrator is the Judge of the quality of evidence and it is not proper to take up the same issue about the validity of the evidence which was accepted by the Arbitrator as this Court does not sit in appeal over the award. Counsel submits that in the present case, the Arbitrator has given reasons after examination of document. The plausible view was taken by the Arbitral Tribunal in the facts and circumstances of the matter thus, the Court cannot interfere with the conclusion of the Arbitrator or to re-assess the evidence in view thereof. Therefore, the objections are liable to be dismissed.

22. As far as the principles laid down in various judgments are concerned, the same cannot be disputed, however, once any matter falls within the preview of exception by a party in the objections within the parameter of law which mandates that if there is a patent illegality in the award when it was published without any logic of the

issue involved which goes to the root of the matter and the same is not of a trivial nature, under those circumstances, the Court cannot close its eyes only because of the perception that the Court does not sit in appeal over the award and evidence cannot be re-assessed. I am clear in my mind that if the Arbitrator does not give any reason by ignoring the issue and come to conclusion involved, which speaks otherwise on the face of the record and the findings are perverse, irrational and the reasons are illogical, then the award is to be treated in contravention of Section 31 (3) of the Act and liable to be set aside.

23. Before the Arbitral Tribunal, it was the case of the petitioners that the petitioners made all the efforts to complete the formalities mentioned in the agreement. The petitioners obtained the NOC from the accounts department of Noida Authority and on 11th July, 2013 CIC/CIS was also obtained from Noida Authority. They duly informed the respondent No.1 that all the formalities have been completed and they are in a position to execute the transfer documents in favour of the respondent No.1 but the respondent No.1 was never ready with the balance payment and that was the reason the respondent No.1 made various excuses to avoid his liability under the Agreement to make the balance payment and get the transfer documents in his favour. The respondent No.2 was not a party to the agreement, however, since the agreement was between the petitioner No.1 and respondent No.1, the said payment was duly returned on 1st November, 2013 via demand draft No.340336 of Rs.50 lacs by petitioner No.4 and by demand draft No.340335 of Rs.50 lacs by petitioner No.2 in favour of the respondent No.2. It was alleged by the petitioners that only a sum of Rs.2,86,33,175/-

was net paid under the Agreement dated 9th March, 2013. As the respondent No.1 was not coming forward to complete the transaction, the petitioners duly informed the respondents vide letter dated 11th October, 2013 that the Agreement dated 9th March, 2013 had been cancelled and earnest money of Rs.1,10,00,000/- stood forfeited and the respondent No.1 was at liberty to take the balance amount of Rs.1,76,33,175/- back from the petitioners.

24. The respondents No.1 and 2 filed statement of claim before the Tribunal. The petitioners duly filed their reply to the statement of claim whereby they denied the claims raised by the respondents. They also raised a plea that the respondents concealed the material fact from the Tribunal that a sum of Rs.1 crore was paid back to the respondent No.2 and the said amount was not shown by the respondents No.1 and 2 which was received through RTGS and only a sum of Rs.2,86,33,175/- was left with the petitioner No.1 under the Agreement to Sell dated 9th March, 2013.

25. By this time, there was no reference on behalf of the respondents that the additional payment of cash component of Rs.1 crore was also given on 3rd June, 2013 in addition to the payment made on the same day i.e. 3rd June, 2013 of Rs.1 crore by way of transfer (RTGS).

26. The respondent No.1 moved an application under Order VI Rule 17 CPC seeking amendment of para 6 of the claim petition to incorporate the details of alleged payment of Rs.1 crore made in cash to petitioner No.2 and also to incorporate the details of return of Rs.1 crore by the petitioners No.2 and 4 to respondent No.2. It was stated in the said application that this fact was not mentioned earlier as the amount of Rs.1 crore paid in cash to the petitioner

No.2 was subsequently returned by the petitioners No.2 and 4 and accordingly, the said cash amount was set off and therefore, it was not mentioned in the statement of claim. The petitioners duly filed their reply and disputed the said payment of Rs.1 crore in cash. The application of the respondents was allowed.

27. As mentioned earlier, the Arbitrator did not record the evidence and proceed with the matter by hearing the arguments. The Arbitrator passed the award on 4th March, 2015 directing the petitioners to refund an amount of Rs.3,86,33,175/- along with interest @ 14.6% from 26th June, 2013 to 4th March, 2015. The Arbitrator also awarded the interest on the additional amount of Rs.1 crore from 26th June, 2013 to 31st October, 2013. The Arbitrator also awarded costs as well as future interest @ 18% p.a. till the date of payment. No doubt, I agree with the submissions of the counsel for the respondents that if the Arbitrator after considering the vital documents and reading the evidence by going through the root of the matter had arrived to the conclusion that the petitioner No.2 had also received additional sum of Rs.1 crore in cash, the question of interference in the impugned award may not have arisen, however, the situation in the present case is entirely different.

28. In the present case, the Arbitrator after allowing the amendment did not record the evidence and straightaway put up the matter for final hearing. No doubt, the Arbitrator is a master of himself while dealing with the arbitration disputes and recording of evidence may be necessary but on crucial issue which would go to the root of the matter, he is supposed to be careful, particularly as per facts in particular matter. In the nature of present dispute where the main and only dispute left with the parties was as to

whether the respondent No.1 has paid Rs.1 crore to the petitioner where one party was alleging that the amount of Rs.1 crore was given in cash and the other party denies the same.

29. Admittedly, when the respondents No.1 & 2 filed their statement of claim, they never mentioned that any amount of Rs.1 crore in cash was paid by them to the petitioners. The respondents No.1 and 2 also mentioned about the receipt dated 3rd June, 2013 towards the alleged cash payment.

30. It was the case of the petitioners that the said receipt was issued pursuant to two payments of Rs.50 lacs each issued in favour of petitioners No.2 and 4 on 3rd June, 2013. The respondents No.1 and 2 intentionally manipulated the said receipt and put a heading of "Cash Payment Receipt" upon the said document.

31. The petitioners along with statement of claim filed an e-mail dated 21st June, 2013 sent by the respondent No.3 (Broker) to the respondent No.1 as well as petitioner No.2. Along with the said email, respondent No.3 annexed a format of addendum to the Agreement to Sell dated 9th March, 2013 for extending the time by 30 days for completing the transaction. In the said document also, it was clearly mentioned that only an amount of Rs.3,86,33,175/- was paid by the respondents No.1 and 2 to the petitioners under the Agreement to Sell dated 9th March, 2013.

32. The contents of the e-mail dated 21st June,2013 as well as the relevant para of the format of addendum of Agreement to Sell have been reproduced here as under:

<u>E-mail dated 21st June, 2013</u>

Dear Gurdeep Singh Ji,

As you are aware about day to day progress made against the sale of your plot No.5 Sector-90 Noida, our client Mr.Anuj Bairathi the buyer of your plot who has already made a major part of payment is all set to make the payment soon after the CIS is completed and duly verified by their legal team. You are requested to get CIS done as soon as possible along with proper documentation from your CA, in absence of which your payment is getting delayed and also the project of Mr. Anuj is unnecessarily getting prolonged.

Meanwhile we request 30 day extension agreement be signed as our current agreement would be expiring soon. We would arrange to send the copy of same to earliest for your kind review and acceptance.

Warm Regards,

Vipin Kumar/Sr. Business Dev. Executive
HSB Estate, B-3, B-5 & B11, Vishal Chambers, Sector-18, Noida -201301, India"

Addendum to the Agreement to Sell

"ON STAMP PAPER OR Rs. 300(e.g.100x3)
ADDENDUM TO EXISTING AGREEMENT TO SELL DATED 09.03.2013
BETWEEN
M/s. BLUE HORIZON IT SOLUTION PVT. LTD. AND ANUJ BAIRATHI

This Addendum is in reference to the Agreement entered on March 09, 2013, in Noida between the following parties.
M/S. BLUE HORIZON IT SOLUTION PVT. LTD. a company incorporated under the provisions of Companies Act, 1956 having its registered office at 8, TOLSTOY MARG, CONNAUGHT PLACE, NEW DELHI, 110001, Delhi, INDIA acting through its authorized Director Mr. GURDIP SINGH S/0 LATE SH. KULDEEP SINGH, R/0 8, TOLSTOY MARG CONNAUGHT PLACE, NEW Delhi,-110001 Delhi, INDIA hereinafter referred to as the "Seller" of the first part.

AND

<u>Mr. ANUJ BAIRATHI S/0 SH. R.C. BAIRATHI R/0 FLAT 606, MAHAGUN MORPHEUS, E-4, SECTOR-50, NOIDA - 201301</u> hereinafter referred to as the "Buyer" OF THE OTHER part.

The term "Parties" shall mean the Seller and the Buyer collectively and individual Seller and Buyer would be referred to as "Party".

The Buyer has entered into agreement with Seller on March 09, 2013 (Original Agreement) Pursuant to the covenants of the said Original Agreement, it was mandatory on part of Seller in obtain necessary permission/NOC/No dues Certificate account/No dues certificate water/clearances from all concerned department and authorities as may be required for the sale/transfer of the said property in favour of the Buyer or their nominee(s). However the Seller has not complied with the said stipulations till date. Vide this Addendum, the Seller hereby request Buyer for extension of time to fulfil its obligations under the original Agreement.

NOW, THEREFORE, upon Seller request and covenant, Buyer agrees to set forth herein, the receipt of which is hereby acknowledged and recorded, the Parties agree as follows:

1) Till date, the Buyer has made following payments (including further payment post execution of Original Agreement) as detailed hereunder and the revised list of payment is as follows:-

S.No.	Date	Mode of Payment	Amount (in Rs.)
1.	21-Feb-2013	Cheque No.058864, ICICI Bank	10,00,000/-
2.	09-Mar-2013	Cash	84,00,000/-
3.	16-Mar-2013	Cheque No.183939, HDFC Bank	16,00,000/-
4.	11-Mar-2013	RTGS – DR HDFCH13131131560 – BLUE HORIZON IT	25,00,000/-
5.	30-May-2013	Demand Draft No.346845	1,51,33,175/-

6.	03-Jun-2013	RTGS Dr. K.VBL0004103- Neerja Ghura – Jaipur – HDFCH13154884473	50,00,000/-
7.	03-Jun-2013	RTGS Dr. K.VBL0004103- Gurdip Singh – Jaipur – HDFCH13154884496	50,00,000/-
		Total	3,86,33,175/-

Seller acknowledges the receipt of above payment in consideration to the purposes of the Agreement to Sell.

2) That as per clause No.3, the Seller was under the obligation to procure at least 30 days before the expiry of the agreement the NOC and CIC in favour of the Buyer from the concerned, authorities and departments. It is to be recorded here that the Buyers have made of payment of Rs.2,76,33,175 after the initial payment of Rs.1,10,00,000 aggregating to total payment of Rs.3,86,33,175 and till date hereof the sellers have not been able to furnish the NOC/CIC in favour of the sellers from the NOIDA Authority with respect property owned by M/s. BLUE HORIZON IT SOLUTION PVT. LTD. Therefore, upon specific request by the Seller, the Parties agree to extend the period of the Original Agreement and payment timeline of the balance amount to the tune of Rs .... by 30 days from the expiry date of the Original Agreement i.e. ..... provided the Seller obtain the NOC and CIC from the concerned authorities and departments within such extended period. The Seller agrees that delay in obtaining these approvals is affecting the Buyer's interest and plans.

3) The Seller guarantee that

i) they have/will not withheld any information which is required for the original Agreement and this addendum by the Buyer and that information provided by them to the Buyer is complete, true and accurate.

ii) they shall Indemnify Buyer for any claim or loss arising out of their any act or omission under the Original Agreement and this Addendum. For avoidance of doubt, this Addendum, shall also be treated as "Indemnity Bond" for the purpose of original agreement and this Addendum.

The parties further agree that in case the Sellers fails to get the aforesaid NOC/CIC from the said Authority within the aforesaid period, the Agreement entered between the parties shall stand cancelled and the amount paid by the Buyer shall become payable immediately and shall be refunded to buyer together with interest at the rate of 2% per month from the date of expiry of the period of 30 days as mentioned above in this Addendum till the date of repayment and till such repayment. The buyer shall have lien on the IT property of the Original Agreement. No other terms of conditions of the agreement shall be negated or changed as a result of this here stated addendum.

IN WITNESS WHEREOF, this Addendum has been duly executed and delivered by the duly authorized officer of each party hereto, and shall be effective as of the date first above written.

The Seller The Buyer
For Blue Horizons Private Limited Anuj
Bairathi
Director

Witness Witness
1. ___________ 1. _________
2. ___________ 2. _________
To be notarized."

33. All the correspondences exchanged between the parties and other documents referred above, it is evident that it was never alleged that cash payment of Rs.1 crore was paid by the respondent No.1 to the petitioner No.2. Therefore, the Arbitrator completely

erred in holding that the respondents No.1 and 2 also paid an amount of Rs.1 crore cash to the petitioners under the agreement to sell dated 9th March, 2013. The said respondents have not denied the said documents i.e. e-mails, correspondences, notes and draft agreement sent by the respondents to the petitioners where the said amount of Rs.1 crore in cash was not mentioned. The Arbitrator appears to have deliberately avoided discussing the material evidence. All these admitted circumstances and documentary evidence have not been discussed in the award rather without any valid reason, the benefit was given to the respondents.

34. If any payment in cash was given by the respondent No.1 which would have been the case, respondents No.1 and 2 would have immediately pointed out and mentioned in the draft agreement and correspondence exchanged between the parties after 3rd June, 2013 despite of having many opportunities.

35. The e-mails dated 3rd June, 2013, 21st June, 2013 and 25th June, 2013 as well as the draft agreement are not denied by the respondents. The said documents are subsequent to the period of alleged payment of Rs.1 crore i.e. on 3rd June, 2013. The said documents are from the side of the respondents wherein there was no reference about the payment of Rs.1 crore which is paid additionally by way of RTGS entry.

36. Even on 14th June, 2014, the respondent No.1 had written a letter to the respondent No.2 Gurdip Singh depicting the details of payment made by the respondent No.1 wherein also there was no reference about the impugned payment of Rs.1 crore (cash component). Copy of the said letter was sent to the petitioners. Similar is the position of another letter dated 20th March, 2014.

37. It is also pertinent to mention that when the legal notice dated 17th February, 2014 was issued by the respondent No.1 to the petitioner No.1, only the payment admittedly received by the petitioners was mentioned. There is no reference about the alleged impugned payment. In case, the respondent No.1 had made the payment of cash component of Rs.1 crore on 3rd June, 2013, the respondent No.1 was bound to mention the same in further correspondence exchanged between the parties and other admitted documents.

38. Even, there is no iota of cogent evidence which would show that the payment has been made except the cash receipt dated 3rd June, 2013. It is not denied by the respondent No.1 that the payment of similar amount was made to the petitioners by way of transfer. The respondent No.1 has not even alleged or produced any document to show that on 3rd June, 2013, two sets of payments of Rs.1 crore was made to petitioner No.2 except the payment of Rs.1 crore which was transferred by RTGS. Even, the said fact is not proved from the record of the Income Tax Return which may disclose the entry of the payment to the petitioner No.2 made in cash, if any. It is obvious that the respondent No.1 has misused the receipt of Rs.1 crore which was issued towards the transfer of amount. In fact, it is the case of *res ipsa loquitur* where the things speak for themselves.

39. The contention of the respondents is also without any force that since it was a cash transaction, therefore, the said payment is not mentioned in the said documents and correspondences exchanged between the parties because of the reasons that as the respondent No.1 has from time to time prior to 3rd June, 2013 and

thereafter, in many documents, mentioned himself the details of cash payment made by him to petitioner No.2. Therefore, the award is liable to be set aside on issue No.3, as the same is wholly perverse and irrational as on the face of it, any reasonable person would have arrived at the said conclusion. The entire finding given by the Arbitrator in the award is without recording any evidence and without considering the solid evidence available on record. In fact, the Arbitrator has taken the view which is irrelevant and ignores the evidence which goes into the root of the issue. The relevant evidence has not been even discussed. The said issue is decided against the respondents who failed to discharge the burden thereof. The award on issue No.3 is set aside by allowing the objections of the petitioners.

40. As far as issue No.6 is concerned, I am not inclined to interfere with the finding of the Arbitrator as there are two different versions about the obligations of the parties. The petitioners are directed to pay the remaining amount, i.e. difference between the interest of 9% received by the respondent No.1 in view of the order dated 6th July, 2015 and as per the award, within four weeks from today. The award on issue No.6 is upheld. The objections on issue No.6 are dismissed.

41. The objections are accordingly disposed of. Parties to bear their own costs.

(MANMOHAN SINGH)
JUDGE

AUGUST 05, 2016