

\$~9

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

+ **O.M.P. (COMM) 580/2016**

**DELHI STATE INDUSTRIAL AND INFRASTRUCTURE
DEVELOPMENT CORPORATION**

..... Petitioner

Through: Mr Abhimanyu Garg, Advocate

versus

**CAPITAL INFRASTRUCTURE AND PROJECTS
PVT. LTD.**

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

23.12.2016

%

VIBHU BAKHRU, J

IA No. 16075/2016

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

IA No. 16077/2016

3. For the reasons stated in the application, the delay of one day in filing is condoned.

4. The application is disposed of.

O.M.P. (COMM) 580/2016 & IA Nos. 16074/2016 & 16076/2016

5. Delhi State Industrial and Infrastructure Development Corporation (hereafter 'DSIIDC') has filed the present petition under Section 34 of the

Arbitration and Conciliation Act, 1996 (hereafter 'the Act') impugning an arbitral award dated 24.08.2016 (hereafter 'the impugned award') passed by the Sole Arbitrator. The disputes between the parties relate to interest on the refund of the amount paid by the respondent (hereafter 'CIPL') as consideration for acquiring a commercial plot at Bawana Industrial Complex.

6. In October 2006, DSIIDC had published advertisements in various newspapers proposing to auction commercial plots at Bawana. In terms of the said advertisement, auction of the commercial plots was held on 30.10.2006. The plots put up for auction included a plot for community centre which was described in the booklet furnished by DSIIDC as under:-

"This Community Centre is in front of Block No.7 of Workers Housing Complex having an area of 748.57 sq. meters and is located in front of 40 meter wide road. The land use of this community centre is Community Hall, Health Centre, Chemist and Retail Shopping, Local Level service activities."

7. CIPL successfully bid for the aforesaid plot and DSIIDC issued an allotment cum demand letter on 13.11.2006. Admittedly, CIPL failed to pay the amount within the prescribed time, however, it deposited the entire bid amount of ₹3,62,00,000/- along with interest of ₹1,72,602/- by 10.08.2007.

8. Subsequently, CIPL by a letter dated 20.06.2009 demanded that possession of the plot demarcated as community centre "*in front of 40 meter wide road*" be handed over to CIPL failing which the amount paid by CIPL be refunded.

9. DSIIDC refunded the amount of ₹3,62,00,000/- on 06.10.2009 and thereafter, on 25.08.2011, also refunded the interest charges of ₹1,72,602/- paid by CIPL.

10. The dispute between the parties essentially relates to CIPL's claim for interest on the sum of ₹3,62,00,000/- and ₹1,72,602/- from the date when such amounts were paid till the date when the same were refunded by DSIIDC. It was CIPL's case that it had sought clarification from DSIIDC with regard to the location of the plot in question and had been assured that the same was located in front of a 40 meter wide road. It is stated that subsequently CIPL sought information, *inter alia*, relating to the site plans and layout, under the Right to Information Act, 2005. DSIIDC responded to the same by a letter dated 05.06.2009 and provided the new site plan/layout plan which indicated the plot of the Community Centre as the location of a nursery school.

11. Thereafter, CIPL sought physical possession of the plot in question or refund of the amount paid by it. In addition to the aforesaid, CIPL also raised certain other disputes.

12. The Arbitrator considered the evidence led by the parties as well as the material on record and concluded that, even if there was some confusion in the description of the plot in the Auction Booklet, CIPL could not have invested a large sum of money without ascertaining the location of the plot in question. However, the Arbitrator also held that DSIIDC was in default. The Arbitrator also reasoned that the fact that DSIIDC had refunded the entire bid amount including the interest amount to CIPL indicated that there

was reason enough for DSIIDC to refund the said amount.

13. Further, the Arbitrator also held that DSIIDC had delayed handing over the possession of the plot and had not executed the lease deed even after further payment was received by DSIIDC.

14. In view of the aforesaid, the Arbitrator awarded interest in favour of CIPL. The operative part of the impugned award reads as under:-

"14. In net result the respondent shall be liable to pay interest on bid amount of Rs.3,62,00,000/- (Rupees three crore sixty two lakh only) from 10.08.2007 till the date of refund of the bid amount @9% per annum and on interest amount of Rs.1,72,602(Rupees one lakh seventy two thousand six hundred two only) from 10.08.2007 till the date of refund of the interest amount charged by the respondent on delayed payment of bid amount @ 9% per annum considering the prevailing bank interest rates. In the circumstances parties are left to bear their own costs."

15. The learned counsel appearing for DSIIDC submitted that the Arbitrator had grossly erred in awarding interest from the date when the amounts were paid by CIPL instead of from the date when the said amount was demanded by CIPL. He submitted that the Arbitrator had referred to the decision of the Calcutta High Court in **Nathuni Shaw v. Union of India and Anr.: 2008 (5) R.A.J. 158 (Cal)**, however, had failed to take note that in the said decision, the Court had awarded interest from the date when the claimant therein had demanded the refund of the amounts paid and not from the date on which the amount had been paid by the claimant.

16. I have heard the learned counsel for DSIIDC.

17. The limited controversy to be addressed is whether the award of interest from the date of deposit to the date of refund is perverse, patently illegal and is, consequently, opposed to the public policy of India.

18. At the outset, it is necessary to observe that the scope of interference in an arbitral award under Section 34 of the Act is limited. It is trite law that Court while considering the petition under Section 34 of the Act does not act as an Appellate Court and will not supplant its view over that of the Arbitrator. It is clear from the reading of the impugned award that the Arbitrator had found that (a) that the description of the plot in the Auction Booklet, wherein it was represented that the plot in question was located on 40 meter wide road, was erroneous; (b) that DSIIDC had delayed handing over possession of the plot in question for which CIPL was not responsible. The Arbitrator had also observed that DSIIDC had refunded the amount paid by CIPL and the same was not without reason.

19. It is in view of these findings that the Arbitrator had awarded interest at the rate of 9% per annum from the date when the amounts were paid till the date when the amounts (₹3,62,00,000/- and ₹1,72,602/-) were refunded.

20. This Court does not find the said conclusion to be either perverse or patently illegal. Clearly, DSIIDC had used the funds deposited by CIPL. DSIIDC had neither handed over possession of the plot in question nor executed the necessary lease deed within the time specified and in the given circumstances, refunded the amount paid by CIPL. This Court finds no infirmity with the impugned award directing payment of interest on the amounts deposited by CIPL. Clearly, DSIIDC would be liable to pay interest

for the period that it had used the funds of CIPL.

21. It is further necessary to state that even if the decision of the Arbitrator is accepted to be erroneous, the same would be an error within the jurisdiction of the Arbitrator. The same does not warrant any interference by this Court under Section 34 of the Act as the said view can by no stretch be stated to be perverse or patently illegal.

22. The petition is, accordingly, dismissed. All pending applications also stand disposed of.

DECEMBER 23, 2016
RK

VIBHU BAKHRU, J

