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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (COMM) 350/2017 & I.A. No.10706/2017
RAMESH CHANDRA MAHENDRA TRIPATHI &
ANRPetitioners
Through Mr.J.M.Sharma, Sr. Adv. with
Mr.Sanchit Garg, Adv.

versus

CAPRI GLOBAL CAPITAL LIMITED & ORS. Respondents
Through Mr.Prakash Gautam, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **10.10.2017**

This petition is filed under Section 34 of Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act'*) seeking to challenge the award dated 03.06 2017 passed by the learned Sole Arbitrator Mr.Gurcharan Singh Jugti.

Some of the relevant facts are that the petitioners entered into a facility agreement dated 13.09.2014 for availing a loan facility of Rs.2,36,00,000/-. There is a default in repayment of the loan and the respondent on 01.02.2016 recalled the loan amount. A notice invoking the arbitration clause was issued on 26.02.2016. The respondent appointed Mr.Gurcharan Singh Jugti as the Sole Arbitrator.

The arbitrator has now passed an award for a sum of Rs. 2,45,06,930.24/- plus costs.

A perusal of the award would show that the learned arbitrator has noted that notices were issued to the petitioners for appearance before the

learned arbitrator on 08.04.2016 by the registered post. From the tracking reports, it was clear that the petitioners were served but none appeared for the petitioners. In the interest of justice, it is stated that fresh notices were issued to the petitioners for 28.06.2016 by registered post. Again, none appeared on the next date i.e. 28.06.2016 despite service of notices. The petitioners were proceeded *ex-parte*.

The award notes that the petitioners have availed of the noted loan and created an equitable mortgage in favour of the respondent-company i.e. Flat No.-13, First floor, Rustomjee Adarsh Regency CMS, Adarsh Vihar Complex, Malad (W), Mumbai-400054 and Neelkanth, Flat No.-C/I, Ground Floor, Ever Shine Nagar, Ramchandra Lane Extension, Malad (W), Mumbai-400064 to secure the said loans decided the title deeds with the respondents.

Keeping in view the evidence placed on record and the evidence of PW-1, Shri Santosh Kumar Singh, the arbitrator has passed an award for Rs.2,45,06,930.24/- along with along with *pendent-lite* and future interest @ 14.50 % per annum from the date of reference of arbitration i.e 30.01.2016, till realisation of the amount.

The learned senior counsel for the petitioner, after some arguments, points out that the petitioners are ready and would without prejudice to their contentions like to settle the matter with the respondents. He further points out that the amount of interest is being awarded by the respondent is prohibitive and excessive. He also submits that liberty should be granted to the petitioners to try and sell one of the mortgaged flats to enable the petitioner to clear the dues of the respondents.

In my opinion, the learned arbitrator has awarded the excessive amount of interest. I reduce the amount of interest @ 9 per cent per annum from the date of reference namely, 30.01.2016 till realisation. As there is no other plea, the award is upheld, subject to the above modification.

Keeping in view the fact that the petitioner has already indicated a desire to settle the matter, liberty is granted to the petitioner to locate a buyer for one of the two mortgaged flats to enable the petitioner to clear the awarded amount. In the eventuality, the petitioner is able to locate a buyer within 8 weeks from today, the petitioner is at liberty to approach the respondent who may look at the proposal favourably and permit the sale if such a sale ensures receipt of the awarded amount by the petitioner on terms which secure the amount payable to the petitioner.

The petition stands disposed of.

A copy of this order be given dasti to counsel for the parties.

JAYANT NATH, J.

OCTOBER 10, 2017/rk