

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**ARBITRATION PETITION NO.1259 OF 2016
WITH
NOTICE OF MOTION NO.2909 OF 2016**

Chawla Interbild Construction Co. Pvt. Ltd. ... Petitioner

Versus

Soham Real Estate Developers

Co. Pvt. Ltd.

... Respondent

.....

Mr. Jeetendra Ranawat I/b Waquar Ahmed for the Petitioner.

Mr. Tushar Bhavsar a/w Ms. Shridevi Kotkar I/b Mr. Manoj Bhatt for the Respondent.

.....

CORAM : S.C.GUPTE, J.

DATE : 15 & 17 OCTOBER 2018

P.C. :

. The present petition challenges an award of a money claim. The disputes between the parties arise out of a written contract contained in a letter of intent followed by a Memorandum of Understanding between the parties ('MoU'). The contract was for the work of construction of "Ocean Park" and "Fairy Tale", two projects which never took off. Under the MoU, the Respondent agreed to pay a sum of Rs.30 lakhs to the Petitioner as compensation for loss in overheads suffered by the former due to non-start of the main project of "Ocean Park" and no further work for the "Fairy Tale" project. The Petitioner herein filed a claim for damages against the Respondent under several heads of claim. Such damages were claimed towards restraint on the Petitioner from removing materials as also

retention money, loss of profit, etc. The Respondent filed its counter-claim praying for return of its advance after adjusting a sum of Rs.30 lakhs payable by the Respondent to the Petitioner as compensation for loss of overheads under the MoU. It is not in dispute that a sum of Rs.90 lakhs was paid by the Respondent to the Petitioner towards mobilization costs of the projects. The arbitrator, by his impugned award, rejected the Petitioner's claim and awarded the Respondent's counter-claim. This award has been challenged by the Petitioner in the present petition.

2 Learned Counsel for the Petitioner submits that the arbitration agreement is invalid and accordingly, the impugned award ought to be set aside under sub-section (2)(a)(ii) of Section 34 of the Arbitration and Conciliation Act, 1996. The submission is on the ground that the MoU, which contains the arbitration agreement, has not been duly stamped; the learned Arbitrator ought to have impounded the document in the premises and not acted on it. Insufficiency of stamp makes the document inadmissible in evidence; it does not render it invalid in accordance with law. The objection, thus, has no substance.

3 The other grounds of challenge indicated in the petition are in the nature of grounds of appeal from a money decree. The arbitrator, whilst awarding the counter-claim, has construed the contract, including the MoU executed by the parties. The award indicates a possible view on construction of the contract and liability of the Petitioner arising thereunder. The award does not indicate any breach of public policy or patent illegality on its face within the meaning of Sub-Section 2(b)(ii) and (2A), respectively, of Section 34 of the Arbitration and Conciliation Act,

1996. There is, accordingly, no merit in the petition. The petition is dismissed. In view of the dismissal of the petition, the notice of motion does not survive and the same is also disposed of.

(S.C. GUPTE, J.)