

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2018

CORAM:

THE HON'BLE MS.JUSTICE INDIRA BANERJEE, CHIEF JUSTICE
and
THE HON'BLE MS.JUSTICE P.T.ASHA

O.S.A.Nos.199 and 116 of 2018
and C.M.P.Nos.10029, 7208 and 8277 of 2018

1.Chillara Kalyan
2.Kamal Singh
3.Arjun Singh
4.Soni Bai
5.Choti Bai

...Appellants in
both appeals

Vs.

M/s.Berggruen Estate Projects Private Limited,
having their office at Span Centre,
6th Floor, South Avenue, Santa Cruz West,
Mumbai-400 054, India
and also at
Notan, 6th Floor, 898, Turner Road,
Bandra West, Mumbai-400 050.

...Respondent in both
appeals

Original Side Appeals filed under Order XXXVI Rule 9 of
Original Side Rules read with Clause 15 of Letters Patent
against the Common order dated 29.01.2018 passed by the
learned Single Judge in O.P.Nos.473 and 434 of 2016.

Prayer in O.P. No.473 of 2016 : Petition filed under
Section 34 of the Arbitration and Conciliation Act, 1996

(i) to quash and set aside the Impugned Award dated
November 9, 2015, passed by the Hon'ble Tribunal so far it
holds / directs that, "(vii) That the Claimant shall return
to Respondent No.1 - Agreement for sale-cum General Power
of Attorney dated 14-08-2006 executed by Respondents No.2
to 5 in favour of respondent No.1 The Respondent No.1 is
also held entitled to receive back from the Claimant -
Agreement for sale-cum General Power of Attorney dated 23-
01-2008....." and also the consequential portions of the
Impugned Award so far as it holds / directs that the title

documents were handed over by respondent No.1 to the petitioner;

(ii) To appropriately modify the Impugned Award dated November 9, 2015, passed by the Hon'ble Tribunal and pass appropriate orders / directions permitting petitioner to provide to Respondent No. 1 copies of said Agreements viz; Agreement for sale-cum General Power of Attorney dated 14-08-2006 and Agreement for sale-cum General Power of Attorney dated 23-01-2008 as provided by Respondent No.1 simultaneously while receiving the refund of interest free security deposit of Rs.7,00,00,000/- (Rupees Seven Crores) with interest from Respondent No.1 as mentioned in paragraph (i) of Impugned Award.

(iii) To direct the Respondent No.1, at petitioner's cost, to apply to the Registrar for duplicate copies of the Agreement for sale-cum General Power of Attorney dated 23-01-2008 and to issue appropriate public notices in this regard and upon receipt of duplicate copies of aforesaid agreements by Respondent No.1, consequently Respondent No.1 be directed to simultaneously refund to the Petitioner refund of interest free security deposit of Rs.7,00,00,000/- (Rupees Seven Crores) with interest from Respondent No.1 as mentioned in paragraph (i) of Impugned Award;

(iv) for the costs of the petition be provided for Prayer in O.P. No.434 of 2016 : Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 09.11.2015 passed by the Hon'ble Arbitral Tribunal by setting aside awarding for payment of interest by the petitioners @ 9% per annum on the security deposit amount of Rs.7,00,00,000/- w.e.f. 02.06.2010 till the payment is made to the claimant and further Award reasonable compensation to the petitioners.

For Appellants : Mr.ATM.Rangaramanujam
Senior Counsel
for Mr.R.Sagadevan

For Respondent : Mr.Satish Parasaran,
Senior Counsel
for Mr.M.Sricharan Rengarajan
for Caveator

COMMON JUDGMENT

Both these appeals under Section 37 of the Arbitration and Conciliation Act, 1996, hereinafter referred to as "the 1996 Act", are against a common judgment and order dated 29.1.2018 passed by the learned Single Bench, disposing of two

applications under Section 34 of the 1996 Act, one filed by the appellants being O.P.No.434 of 2016 and the other filed by the respondent being O.P.No.473 of 2016, for setting aside an arbitral award made and published on 9.11.2015 by an Arbitral Tribunal comprising a Retired Chief Justice of India and two retired Judges of the Supreme Court, namely, Justice Dr.A.S.Anand (Retd.), Mr.Justice B.P.Jeevan Reddy (Retd.) and Mr.Justice Doraiswamy Raju (Retd.). The appeals were, therefore, heard together and are now being disposed of by this common judgment and order.

2. The respondent was the claimant before the Arbitral Tribunal and the appellants were the respondents. The respondent claimant and the appellants had entered into a Joint Development Agreement, hereinafter referred to as "JDA", dated 24.01.2008, whereby the respondent claimant had undertaken to develop a commercial complex with agreed amenities and facilities on the land owned by the appellants herein.

3. Some of the conditions of the JDA are as follows:

"4) SECURITY DEPOSIT:

The DEVELOPER has today deposited with the OWNERS a sum of Rs.7,00,00,000/- (Rupees Seven Crores only) vide, Pay Order No.259999, dated 23.01.2008, drawn on HSBC Bank, Chennai Office favouring Sri C.Kalyan i.e, the representative of Owners 1 to 4 and Owner No.5 in the manner set out in Annexure 5 as interest free refundable security deposit ("Security Deposit") which shall be paid on the compliance of the Conditions Precedent as set out in Clause 6(a) to the satisfaction of the DEVELOPER. The OWNERS shall be liable to refund the interest free Security Deposit to the DEVELOPER on the completion of the Project. The DEVELOPER shall have a lien on the Schedule Property till the Security Deposit is refunded / adjusted by the OWNERS.

...

6.OBLIGATIONS OF THE OWNERS:

a)The OWNERS shall at their cost and expenses perform the following obligations:

(i)To satisfy all the conditions precedent as listed herein below within 60 (sixty) days of this Agreement ("Conditions Precedent").

1.The Landowner shall furnish all documents as may be required by the Developer and/or by the legal counsel of the Developer as may be required by them to fully satisfy and assure the Developer and the legal counsel of the Developer that the Landowner is the absolute owner of the property

with uninhibited / unrestricted rights of alienation over the same and the legal counsel of the Developer issues a title report ("Report") to the satisfaction of the Developer. Such compliance is including but not limited to obtaining the Orders, passed by the concerned Tahsildar, permitting Ayesha Begum to alienate of the property in favour of Madari Singh.

...

It being agreed between the Parties that the obligations of the DEVELOPER under this Agreement would commence only upon satisfaction of all the conditions Precedent save as except any condition waived by the DEVELOPER. It is also agreed that the DEVELOPER would be entitled to terminate this Agreement in the event the Conditions Precedent are not satisfied within 60 (sixty) days hereof. Upon termination of this Agreement, the OWNER shall refund the entire Security Deposit paid to them till the date of termination.

...

(xiv) Simultaneous with the execution of this agreement, the OWNERS shall deposit all the title documents relating to the Project in original with the DEVELOPER and such original documents shall be kept in the custody of the Developer and shall not be parted with by the Developer and no encumbrance or charge or mortgage shall be created by deposit of such title deeds and such documents will be in the custody of the developer only for the purpose of enabling the Bankers to verify the said documents for advancing loan facility to the prospective purchasers of the constructed areas in the Complex.

13.COMPLETION:

The DEVELOPER shall complete the construction of OWNERS share of built up area within 24 months from the date of plan sanction. The DEVELOPER shall however be entitled to a grace period of 6 months to complete the construction and deliver the OWNERS share of constructed area to the OWNERS, ready and fit for occupation.

14.DELAY:

a) In any event of any delay on the part of the DEVELOPER in handing over the OWNERS share of the agreed saleable built up area as stated above for reasons other than what is mentioned in Clause 13, the DEVELOPER shall be entitled to 6 months grace

period to complete the construction of the OWNERS share of the saleable built up area and obtain the occupancy certificate from the concerned statutory authorities, and deliver the OWNERS share of the saleable built up area to the OWNERS.

b) In the event the DEVELOPER is unable to hand over the OWNERS share of the saleable built up area even after the grace period of 6 months, the DEVELOPER shall pay a penalty equivalent to 50% of the rental value in respect of the unfinished portion of the project, for each month of delay for the undelivered OWNERS share of saleable built up area for the period of delay up to 1 year. In the event of delay persisting even after 1 year, the DEVELOPER shall then pay a penalty equivalent to 100% of the rental value in respect of the unfinished portion of the project. Such penalty would be arrived based on the average prevalent rental values of similar constructions within a radius of 1 (one) kilometre from the Schedule Property.

c) The DEVELOPER shall pay the aforesaid sums to the OWNERS as and by way of damages, which sum, the parties agree, is just and reasonable compensation for the loss suffered by the OWNERS on account of such delay, if any. Notwithstanding anything specified in this Agreement, as long as the DEVELOPER pays the OWNERS the monies in accordance with Clause 14(b), the DEVELOPERS shall not be liable to pay any further sums of money to the OWNERS as compensation or damages for delay in development of the Project on the Schedule Property."

The entire area of dispute revolves around the aforesaid clauses.

4. It is the case of the appellants that the respondent claimant did not carry out the work of development as per agreement. By a letter dated 18.02.2010, the appellants alleged that the respondent claimant had committed breaches of the terms of the JDA and sought to forfeit the security deposit of Rs.7 crores kept by the respondent claimant with the appellants. In addition to forfeiting the security deposit as aforesaid, the appellants also made a claim of a sum of Rs.86.45 crores towards loss and damages, after adjusting the security deposit amount of Rs.7 crores. Thereafter, there was exchange of correspondence between the parties with allegations and counter allegations against each other. Ultimately, the respondent claimant invoked

the arbitration clause in the JDA.

5. The respondent claimant claimed the following reliefs before the Arbitral Tribunal:

(a) order and decree against the respondents for a sum of Rs.4,00,00,000/- (Rupees four crores only) to the Claimant as more particularly mentioned in the particulars of claim at Exhibit "S" along with interest at the rate of 18% per annum from the date of the filing of the present proceedings till payment and /or realization of the same on account of the development and initial business expenses incurred by the claimant under the JDA.

(b) order and decree against the respondents for a sum of Rs.96,00,00,000/- (Rupees ninety six crores only) to the claimant as more particularly mentioned in the particulars of the claim at Exhibit "T" along with interest at the rate of 18% per annum from the date of the filing of the present proceedings till payment and /or realization of the same as compensation for the losses and damages suffered by it due to non - construction on the said property.

(c) order and decree against the respondents for a sum of Rs.7,00,00,000/- (Rupees seven crores only) along with interest at the rate of 18% per annum from February 24, 2010 till payment and /or realization of the same as per the particulars of claims which is annexed and marked as Exhibit "U" on account of return/refund of security deposit amount under the JDA.

(d) order and declaration that the claimant has a lien/charge for a sum of Rs.7,00,00,000/- (Rupees seven crores only) along with interest at the rate of 18% per annum from February 24, 2010 till payment and /or realization of the same as per the particulars of claims which is annexed and marked as Exhibit "U" till the respondent makes payment of the entire amount as claimed in Exhibit "U";

(e) award costs of this Arbitration to the claimant; and

(f) such other and further reliefs to the claimant as may be deemed to be just, fair and equitable in the facts and circumstances of the present claim."

6. In a nutshell, the contentions raised by the respondent

claimant before the Arbitral Tribunal were as follows:

- (a) The appellants, who had agreed to furnish all the documents of title had failed to do so, as a result of which, the respondent claimant was unable to inter alia carry out the title verification of the properties. This requirement was one of the conditions precedent under the JDA for the respondent claimant to start the development project.
- (b) The original title deeds were not deposited with the claimant respondent in total violation of Clause 6(a)(xiv), which once again amounted to a breach of the terms of the JDA.
- (c) The respondent claimant had incurred expenditure of over Rs.4 crores towards the initial project expenses.
- (d) The respondent claimant was unable to proceed further with the JDA and therefore, suffered substantial loss and damages. The respondent claimant was, thus, entitled to be compensated. Moreover since the JDA did not grant any right to the appellants to forfeit the security deposit, the forfeiture by the appellants was per se illegal.

7. The appellants filed a counter statement along with counter claim seeking the following reliefs:

- (a) Declaration that the Joint Development Agreement dated 24.01.2008 bearing registered document No.2561 of 2008 entered into between the claimant and the respondents is terminated, cancelled and rescinded on account of breaches committed by the claimant of the terms and conditions of the JDA and further direction on the claimant to execute and register the Deed of Cancellation of JDA;
- (b) Declaration that the security deposit of Rs.7,00,00,000/- paid by the claimant to the respondent No.1 at the time of Joint Development Agreement dated 24.01.2008 was forfeited on account of various breaches committed by the claimant of the terms and conditions of the JDA;
- (c) An award or order or decree directing the claimant for payment of a sum of

Rs.123,75,00,000/- (Rupees one hundred twenty three crores and seventy five lakhs only) to the respondents along with interest @18% per annum from the date of filing this counter claims till the date of realization of the same as compensation for the losses and damages suffered by them due to the breaches/non compliance of terms and conditions on its part committed by the claimant.

(d) An award or order or decree directing the claimant to get the registered Facilitation Agreements both dated 24.01.2008 executed by the claimant in favour of (1)Sagi Durga Prasada Raju and (2)A.Venkata Ramana Reddy terminated, cancelled and rescinded in view of the Cancellation of main Joint Development Agreement dated 24.01.2008 itself.

(e) An award or order or decree directing the claimant to deliver to the respondent No.1 the Original Agreement of Sale-cum-GPA dated 14.08.2006 bearing document No.16629 of 2006, which was executed by the respondent Nos.2 to 5 in favour of the respondent No.1.

(f) An award or order or decree directing the claimant to deliver to the respondent No.1 the Original Agreement of Sale-cum-GPA dated 23.01.2008 bearing Document No.439 of 2008, which was executed by the respondent Nos.2 & 3 in favour of the respondent No.1."

8. In a nutshell, in their counter statement, the appellants contended that notwithstanding several requests, the claimant had not come forward to perform its obligation as per the terms of Clause 13 of the JDA, to develop the commercial complex within a period of 24 months from the plan sanction. The security deposit was refundable only upon the successful completion of the project by the claimant. All the documents as required under the JDA had been provided and the claimant had entered into a JDA only after verifying and fully satisfying themselves with the documents, title, possession, ownership in respect of the property, as also the authority of the executants of the JDA to deal with the property. The respondent claimant has not returned the original title deeds to the appellants. By misplacing original documents, the claimant has rendered unsaleable properties worth several crores. In view of the breaches committed by the respondent claimant and in consonance

with the terms of JDA, the respondent was entitled to damages.

9. The Arbitral Tribunal, after considering the oral and documentary evidence on either side, came to the following conclusions:

- (a) the 1st respondent had handed over the title documents to the claimant and simultaneously, the claimant had paid the interest free security deposit of Rs.7 crores.
- (b) the claimant had not produced any evidence whatsoever in support of its claim of expenditure of Rs.4 crores.
- (c) the claimant had defaulted in carrying out its obligations under the MOU and JDA, by not completing the project within the stipulated time.
- (d) the respondents (the appellants herein) had not proved that they had suffered any legal injury on account of non completion of the project.
- (e) considering the fact that the value of the property had appreciated, the respondents (appellants herein) could not be allowed to contend that they had suffered any loss or damage entailing them to forfeit the security deposit of Rs.7 crores.

10. The Arbitral Tribunal passed the following Award:

- (a) The claimant shall receive from respondent No.1, the refund of the interest free security deposit amounting to Rs.7,00,00,000/- (Rupees Seven crores only) with interest at the rate of 9% per annum w.e.f. 2nd June, 2010, till the payment is made to the claimant.
- (b) The claim of the claimant for payment of Rs.96 crores towards damages/compensation by the respondent No.1 is dismissed.
- (c) The claim of the claimant for payment of Rs.4 crores towards expenses said to have been incurred by the respondent No.1 is dismissed.
- (d) So far as the counter claim is concerned, the Joint Development Agreement dated 24.01.2008 shall stand terminated and cancelled and the claimant shall execute the necessary deed of cancellation of the JDA simultaneously with and as a condition for the refund of the interest free security deposit by the respondent No.1.
- (e) The claim of the respondent No.1 for adjustment of interest free security deposit towards part liquidation of loss said to have been incurred by them shall stand dismissed.
- (f) The claim of the Respondent No.1 for an award

for a sum of Rs.1,23,75,00,000/- after deducting the seven crores lying with the respondent by way of interest free security deposit with the interest from the date of counter claim at 18% per annum shall stand dismissed.

- (g) The claimant is directed to cancel and terminate the registered facilitation agreements both dated 24.01.2008 as a consequence of cancellation of JDA executed by the claimant in favour of a) Sagi Durga Prasada Raju and b) A. Venkata Ramana Reddy simultaneously with the cancellation of the JDA dated 24.01.2008.
- (h) That the claimant shall return to Respondent No.1 - Agreement for Sale-cum-General Power of Attorney dated 14.08.2006 executed by respondents No.2 to 5 in favour of Respondent No.1. The Respondent No.1 is also held entitled to receive back from the claimant - Agreement for Sale -cum- General Power of Attorney dated 23.01.2008, simultaneously with receiving the refund of interest free security deposit of Rs.7,00,00,000/- (Rupees seven crores) with interest from Respondent No.1, as mentioned in Paragraph (i).
- (i) having regard to the facts and circumstances of the case we are of the view that the interest of justice would be better served by directing both parties to bear their respective costs of this Arbitration proceedings".

11. Both the appellants as well as the respondent claimant filed applications under Section 34 of the 1996 Act in this Court for setting aside the aforesaid award, the application of the respondent claimant being O.P.No.473 of 2016 and the application of the appellants being O.P.No.434 of 2016. While the respondent claimant challenged the award insofar as its claim for damages had been declined, the appellants challenged the award insofar as the appellants have been directed to refund the security deposit of Rs.7 crores with interest at the rate of 9% per annum with effect from 2.6.2010. Both the applications have been disposed of by the common judgment and order under appeal.

12. The respondent claimant also filed the following three interlocutory applications in O.P.No.473 of 2016 filed by the respondent claimant under Section 34 of the 1996 Act:

(a) A.No.4522 of 2016, seeking a direction to the 1st respondent to furnish security to the extent of Rs.7 crores with interest @9%, failing which, to pass an order of attachment of the immovable properties of the respondent described in the schedule to the Judge's summons.

(b) A.No.4523 of 2016, seeking a direction to the 1st respondent to disclose his movable and immovable properties.

(c) O.A.No.782 of 2016 for interim injunction, restraining the 1st respondent, his men, agent, etc, from dealing with the properties by way of sale, lease, mortgage, or otherwise alienating or encumbering or parting with the possession.

13. It appears that by an order dated 8.9.2016, the learned Single Judge was pleased to grant an interim order of injunction as prayed for in O.A.No.782 of 2016. By a common order dated 19.9.2016 the learned Single Judge vacated the aforesaid interim order, subject to the condition that the first appellant would furnish security by way of a bank guarantee of Rs.7 crores along with interest as directed by the Arbitral Tribunal with the Registrar General of this Court.

14. The aforesaid order records that the learned Senior Counsel appearing on behalf of the appellants, being the respondents before the learned Single Judge, had given an undertaking to furnish bank guarantee for the entire sum of Rs.7 crores along with interest awarded by the learned Arbitral Tribunal.

15. On the contention that learned Senior Counsel who had appeared on behalf of the appellants had not been authorized to give any undertaking to furnish bank guarantee, the appellants took out an application, being A.No.6105 of 2016, seeking modification of the order dated 19.9.2016, which has been rejected by an order dated 28.11.2016. An appeal, being O.S.A.No.23 of 2017, filed by the appellants against the aforesaid order dated 28.11.2016 has been disposed of by an order dated 27.2.2017 of Mr.Huluvadi G.Ramesh, Acting Chief Justice (as His Lordship then was) and Justice R.Mahadevan.

16. It appears that after the order dated 28.11.2016, the appellants had deposited Rs.7 crores by way of security. However, after the disposal of the appeal, by order the dated 27.2.2017, referred to above, the appellants withdrew the entire security deposit, although there was no such order of the Division Bench permitting withdrawal of the security deposit. The Division Bench had only directed the Single Bench to hear the parties as to whether the senior counsel appearing on behalf

of the appellants had been authorized to give an undertaking to furnish security deposit, along with interest.

17. By a judgment and order dated 29.1.2018, learned Single Bench of this Court disposed of both the applications filed by the appellants and the respondent claimant under Section 34 of the 1996 Act, being O.P.No.434 of 2016 and O.P.No.473 of 2016 respectively, by confirming the impugned award. The operative part of the said judgment and order dated 29.1.2018 is set out herein below for convenience:

"16. Accordingly, the award passed by the Tribunal stands confirmed subject to the modification, which are as under:

(1) instead of returning the original documents, the petitioner shall issue paper publications indicating the loss of documents.

(2) the petitioner shall indemnify the respondent accordingly. The petitioner shall also give police complaint on the missing documents.

(3) the petitioner shall not deal with the documents or the properties being the subject matter of the Joint Development Agreement on 24.01.2008.

17. The petitioner shall execute the cancellation of the Facilitation Agreements, either unilaterally or adding the parties mentioned therein."

18. Being purportedly aggrieved by the said common order dated 29.1.2018, the appellants have filed these two appeals, O.S.A.No.199 of 2018 is against the common order insofar as it relates to O.P.No.473 of 2016 and O.S.A.No.116 of 2018 is against the common order insofar as it relates to O.P.No.434 of 2016.

19. The thrust of the challenge to the order under appeal is directed against confirmation of the award insofar as the same directs refund of security deposit of Rs.7 crores with interest.

20. In the grounds of appeal, it is contended that the learned Judge failed to appreciate that the appellants were agreeable to refund the security deposit of Rs.7 crores subject to return of registered cancellation deeds pertaining to two Facilitation Agreements dated 24.1.2008 executed by the respondent in favour of third parties. However, learned Senior Counsel appearing on behalf of the appellants, Mr.Rangaramanujam, argued that under Clause 4 of the JDA the respondent was required to make interest free refundable security deposit. The JDA did not contemplate payment of interest on security deposit. The learned Arbitral Tribunal fell in error in awarding interest on the security deposit

ignoring the JDA. In support of his submissions, Mr.Rangaramanujam cited:

- (i)Chittaranjan Maity v. Union of India, reported in 2017 (6) Arb.LR 41 (SC) : (2017) 9 SCC 611;
- (ii) Maharashtra State Electricity Distribution Company Ltd., v. M/s.Datar Switchgear Limited and others, reported in AIR 2018 SUPREME COURT 529 : (2018) 3 SCC 133;
- (iii)Abba Gani and Co v. Trustees of the Port of Bombay, reported in AIR 1952 BOMBAY 310;
- (iv) Managing Director, M/s.Hindustan Shipyard Private Limited, Visakhapatnam v.Attili Appalaswami, reported in AIR 1963 ANDHRA PRADESH 71 (V 50 C 29); and
- (v) Union of India v. Bright Power Projects (India) Private Limited, reported in (2015) 9 Supreme Court Cases 695.

21. On the other hand, Mr.Satish Parasaran, learned Senior Counsel appearing on behalf of the respondent argued that the learned Arbitral Tribunal had awarded interest only from 2.6.2010, being the date on which the respondent claimant sought refund of the interest free security deposit and not from the date of deposit thereof.

22. In the light of the arguments advanced by the respective parties, the only question which falls for consideration in these appeals is whether the judgment under appeal is liable to be set aside to the extent the award of interest on security deposit has been confirmed.

23. As observed by the Supreme Court in Associate Builders v. Delhi Development Authority, reported in (2015) 3 SCC 49, the 1996 Act was enacted to provide for an arbitral procedure, which is fair, efficient and capable of meeting the needs of arbitration, to provide that the Arbitral Tribunal gives reasons for an arbitral award, to ensure that the arbitral tribunal remains within the limits of its jurisdiction and to minimize the supervisory role of Courts.

24. Section 34 of 1996 Act provides:

"34. Application for setting aside arbitral award.

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and subsection (3).

(2) An arbitral award may be set aside by the Court only if-

(a) the party making the application furnishes proof that-

- i. a party was under some incapacity, or
- ii. the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
- iii. the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- iv. the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:
Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
- v. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

- i. the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
- ii. the arbitral award is in conflict with the public policy of India.

Explanation.-Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

3. An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

4. On receipt of an application under sub-section (1), the Court may, where it is 16 appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award."

25. Arbitrators are Judges appointed by the parties and, therefore, an award passed by an Arbitrator/Arbitral Tribunal is not to be interfered with lightly. It is well-settled that in proceedings under Section 34 of the 1996 Act, the Court does not sit in appeal over the award.

26. In *P.R Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H Securities (P) Ltd.*, reported in (2012) 1 SCC 594, the Supreme Court held:-

"21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction

in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."

27. In *McDermott International Inc. v. Burn Standard Co. Ltd.*, reported in (2006) 11 SCC 181, the Supreme Court held:-

"112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. [See *Pure Helium India (P) Ltd. v. ONGC and D.D Sharma v. Union of India*]."

28. In *MSK Projects (I) (JV) Ltd. v. State of Rajasthan*, reported in (2011) 10 SCC 573, the Supreme Court held that if the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error. Extrinsic evidence is admissible in such cases because the dispute is not something which arises under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is that the nature of the dispute is something which has to be determined outside and independent of what appears in the award. Such a jurisdictional error needs to be proved by evidence extrinsic to the award. Reference may in this context, also be made to the judgment of the Supreme Court in *Gobardhan Das v. Lachhmi Ram*, reported in AIR 1954 SC 689, *Thawardas Pherumal v. Union of India*, reported in AIR 1955 SC 468, *Union of India v. Kishorilal Gupta & Bros.*, reported in AIR 1959 SC 1362, *Alopi Parshad & Sons Ltd. v. Union of India*, reported in

AIR 1960 SC 588, Jivarajbhai Ujamshi Sheth v. Chintamanrao Balaji, reported in AIR 1965 SC 214 and Renusagar Power Co. Ltd. v. General Electric Co., reported in (1984) 4 SCC 679: AIR 1985 SC 1156.

29. In Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, reported in (2012) 5 SCC 306, the Supreme Court held:

"43. In any case, assuming that Clause 9.3 was capable of two interpretations, the view taken by the arbitrator was clearly a possible if not a plausible one. It is not possible to say that the arbitrator had travelled outside his jurisdiction, or that the view taken by him was against the terms of contract. That being the position, the High Court had no reason to interfere with the award and substitute its view in place of the interpretation accepted by the arbitrator.

44. The legal position in this behalf has been summarised in para 18 of the judgment of this Court in SAIL v. Gupta Brother Steel Tubes Ltd. and which has been referred to above. Similar view has been taken later in Sumitomo Heavy Industries Ltd. v. ONGC Ltd. to which one of us (Gokhale, J.) was a party. The observations in para 43 thereof are instructive in this behalf.

45. This para 43 reads as follows: (Sumitomo case, SCC p. 313)

"43. ... The umpire has considered the fact situation and placed a construction on the clauses of the agreement which according to him was the correct one. One may at the highest say that one would have preferred another construction of Clause 17.3 but that cannot make the award in any way perverse. Nor can one substitute one's own view in such a situation, in place of the one taken by the umpire, which would amount to sitting in appeal. As held by this Court in Kwaliti Mfg. Corpn. v. Central Warehousing Corpn. the Court while considering challenge to arbitral award does not sit in appeal over the findings and decision of the arbitrator, which is what the High Court has practically done in this matter. The umpire is legitimately entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the

agreement. If he does so, the decision of the umpire has to be accepted as final and binding."

30. In *Indu Engineering & Textiles Ltd. v. Delhi Development Authority*, reported in (2001) 5 SCC 691, the Supreme Court held that the Arbitrator being a Judge appointed by the parties, the award passed by him is not to be interfered with lightly. When the view taken by the arbitrator was a possible or a plausible one on his analysis of evidence and interpretation of contractual and/or statutory provisions and did not suffer from any manifest error, it was not open to the Court to interfere with the award.

31. The learned Arbitral Tribunal has on its interpretation of the terms and conditions of the JDA and on consideration of the facts and circumstances of the case, based on the materials before the Arbitral Tribunal arrived at the finding that the respondent claimant had committed breaches of agreement. The respondent claimant had also not been able to substantiate its claim of having incurred expenditure of Rs.4 crores pursuant to the agreement. However, the appellants had also not suffered any loss or damages on account of breaches as aforesaid on the part of the respondent claimant and there was no provision in the JDA for forfeiture of the security deposit. While the claims of the respective parties against each other for damages was declined, there was an award in favour of the respondent claimant for refund of the security deposit of Rs.7 crores with interest at the rate of 9% per annum from 2.6.2010, as stated above.

32. The award rejecting the claims of the respective parties to damages and the award for refund of security deposit of Rs.7 crores, being based on the interpretation of the learned Arbitral Tribunal of the terms and conditions of the JDA as also analysis of the pleadings and evidence on record, the same are not liable to be interfered with in proceedings under Section 34 of the 1996 Act. The question is whether the award of interest is liable to be set aside.

33. An arbitral award can only be set aside by making an application under Section 34(1) of the 1996 Act, on any of the grounds enumerated in Section 34(2) (a) or (b) of the 1996 Act.

34. An arbitral award may be set aside by Court under Section 34(2) (a) only if it is established that the applicant was under some incapacity or if the arbitration agreement was not valid in law or the applicant was not given notice of

appointment of the arbitral tribunal or of the arbitral proceedings, or was otherwise unable to present his case, or if the arbitral award dealt with disputes not contemplated by or falling within the terms of the submission to arbitration or beyond the scope of the submission to arbitration, or the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties. None of the aforesaid grounds have been urged on behalf of the appellants.

35. An award may also be set aside on grounds contained in Section 34(2)(b) of the 1996 Act, that is, when the Court finds that the subject matter of the dispute is not capable of settlement by arbitration or the arbitral award is in conflict with the public policy of India.

36. It is nobody's case that the dispute between the appellants and the respondent cannot be settled by arbitration. The question is whether the arbitral award can be said to be in conflict with the public policy of India. In other words, the question before this Court is, what exactly does the phrase public policy of India mean?

37. In *ONGC Limited v. Saw Pipes Limited*, reported in (2003) 5 SCC 705, the Supreme Court held:

"16. The phrase "public policy of India" is not defined under the Act. Hence, the said term is required to be given meaning in context and also considering the purpose of the section and scheme of the Act. It has been repeatedly stated by various authorities that the expression "public policy" does not admit of precise definition and may vary from generation to generation and from time to time. Hence, the concept "public policy" is considered to be vague, susceptible to narrow or wider meaning depending upon the context in which it is used. Lacking precedent, the court has to give its meaning in the light and principles underlying the Arbitration Act, Contract Act and constitutional provisions.

....

31. Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has

varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public policy" in *Renusagar Power Co. Ltd. v. General Electric Co.*, [1994 Supp (1) SCC 644] it is required to be held that the award could be set aside if it is patently illegal. The result would be – award could be set aside if it is contrary to:

- (a) fundamental policy of Indian law; or
- (b) the interest of India; or
- (c) justice or morality, or
- (d) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.

38. In *Delhi Development Authority v. U.S Sharma & Co.*, New Delhi, reported in (2008) 13 SCC 80, the Supreme Court held that an award which was contrary to substantive provisions of law or the provisions of the 1996 Act or against the terms of the respective contracts or patently illegal or prejudicial to the rights of the parties was open to interference by Court under section 34(2) of the 1996 Act.

39. An award could be set aside if it was contrary to the fundamental policy of law or the interest of India or justice or morality. An award could also be set aside if it were so unfair or unreasonable that it shocked the conscience of the Court. In *Polymat India P. Ltd. v. National Insurance Co. Ltd.*, reported in (2005) 9 SCC 174: AIR 2005 SC 286, the Supreme Court held that the terms of the contract have to be construed without altering the nature of the contract.

40. In *Oil & Natural Gas Corporation Ltd. v. Western Geco International Ltd.*, reported in (2014) 9 SCC 263 : AIR 2015 SC 363, the Supreme Court reiterated that the phrase 'Public Policy' used in Section 34 was required to be given a wider meaning. It could be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what

would be injurious or harmful to public good or public interest has varied from time to time. However, the award which was, on its face, patently in violation of statutory provisions, could not be said to be in public interest. Such an award was likely to adversely affect the administration of justice. The award could thus be set aside, if it was patently illegal.

41. In *Associate Builders v. Delhi Development Authority*, reported in (2015) 3 SCC 49, the Supreme Court held:

"33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts."

42. The proposition which emerges from *Associate Builders*, supra, is that an arbitral award can be said to be against the public policy of India if it is against (i) the interest of India, which is obviously the interest of India in relation to other countries; (ii) if it is against justice or morality; (iii) if it is patently illegal; (iv) if it is induced by fraud or corruption.

43. It is nobody's case that the impugned award is against the interest of India or against morality or is induced by fraud or corruption. The question is whether the impugned award is patently illegal and, therefore, against justice, for anything that is patently illegal is necessarily against justice.

44. In other words, did the Arbitral Tribunal commit patent illegality by awarding interest, when the security deposit was interest free, and that too without assigning reasons for awarding interest.

45. In *Associate Builders*, supra, the Supreme Court held:

"42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality – for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.

42.3. (c) Equally, the third subhead of patent illegality is really a contravention of Section 28 (3) of the Arbitration Act, which reads as under:

"28. Rules applicable to substance of dispute.-(1)-(2)***

(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."

This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do."

46. If an Arbitral Tribunal publishes a reasoned award but omits to give reason for some components of the award which are severable, those components which are severable are to be set aside. If, however, the award is composite and the unreasoned component unseverable from the rest of the award, the entire award would have to be set aside.

47. Learned counsel appearing on behalf of the appellants submitted that the appellants had rightly forfeited the security deposit. In support of his argument, learned counsel cited Abba Gani and Co., supra, where a Division Bench of M.C.Chagla, CJ and Tendolkar, J. held that "a party repudiating a contract or putting an end to the contract would not claim a refund of the deposit which he had made for the due performance of the contract. In equity, he would be a wrongdoer and equity would not permit a wrongdoer to benefit on his own wrong".

48. Counsel also cited Managing Director, M/s.Hindustan Shipyard Private Limited, Visakhapatnam, supra, where a Single Bench of the High Court of Andhra Pradesh held:

"9. The-learned Judges (Chagla C. J. and Tendolkar J.) ruled that Section 74 of the Indian Contract Act was inapplicable to deposits made for the due performance of a contract, that it was not necessary in a contract to have an express provision with regard to forfeiture of a

deposit and that if the deposit was for the due performance of the contract and if the contract was repudiated by a party the other party became entitled to forfeit the deposit. Chagla C, J. who spoke for the Court observed as follows:

"It is a guarantee for the performance of the contract, and it supplied a motive to the parties to fulfil their obligations under the contract. It acts 'in terrorem' and by reason of the fear that the deposit might be forfeited if the contract is not performed, the parties are induced to carry out their obligations under the contract".

This decision makes it plain that even if there is no clause in the contract as to forfeiture of the deposit, if the party commits default in the performance of the contract he cannot have the money back if the money paid was as security for the due fulfilment of the obligations under the contract. It follows that the view of the District Munsif that because here was no express agreement providing for forfeiture of the deposit in the event of default being committed by the plaintiff the defendant was not entitled to retain the money, cannot be sustained and his decision has to be reversed"

49. Learned counsel appearing for the appellants also cited M/s.Datar Switchgear Limited and others, supra, where the Supreme Court held that breaches of contract give rise to right to terminate and/or repudiate the contract. Once it is established that the party was justified in terminating the contract on account of fundamental breach thereof, then the innocent party is entitled to claim damages for the entire contract.

50. It is axiomatic that wrongful repudiation and/or termination and/or breaches of contract give rise to claim for damages. However, the Court does not sit in appeal over an award. It is for the Arbitral Tribunal to interpret the contract and if the interpretation of the Arbitral Tribunal is not absurd or capricious or unreasonable or perverse, the Court does not interfere with the same. In this case, the learned Arbitral Tribunal found on facts, having regard to the evidence before it, that the appellants had not suffered any loss or damages and were hence not entitled to claim damages. On consideration of the contract, the learned Tribunal arrived at the finding, in effect, that the appellants had no right to forfeiture of the security deposit under the terms of the contract, more so as they had not suffered damages. The

impugned award directing refund of security deposit is not liable to interference. The judgment in M/s.Datar Switchgear Limited, supra, is clearly distinguishable on facts.

51. Mr.Rangaramanujam emphatically argued that, in any case, the learned Arbitral Tribunal committed patent illegality in awarding interest when the JDA specifically provided for interest free security deposit. In support of his argument, he cited Bright Power Projects (India) (P) Limited, supra, where the Supreme Court held:

"8. On the aforesaid contentions, this Court has to decide whether the contract between the parties contained an express bar regarding award of interest and if so, whether the Arbitral Tribunal was justified in awarding interest for the period commencing from the date of reference till the date of the award.

9. Clause 13 (3) of the contract entered into between the parties reads as under:

'13(3). No interest will be payable upon the earnest money and the security deposit or amounts payable to the contractor under the contract, but Government Securities deposited in terms of sub-clause(1) of this clause will be repayable with interest accrued thereon.'

10. Thus, it had been specifically understood between the parties that no interest was to be paid on the earnest money, security deposit and the amount payable to the contractor under the contract. So far as payment of interest on government securities, which had been deposited by the respondent contractor with the appellant is concerned, it was specifically stated that the said amount was to be returned to the contractor along with interest accrued thereon, but so far as payment of interest on the amount payable to the contractor under the contract was concerned, there was a specific term that no interest was to be paid thereon.

11. When parties to the contract had agreed to the fact that interest would not be awarded on the amount payable to the contractor under the contract, in our opinion, they were bound by their understanding. Having once agreed that the contractor would not claim any interest on the

amount to be paid under the contract, he could not have claimed interest either before a civil court or before an Arbitral Tribunal.

12. Section 31(7) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") is clear to the effect that unless otherwise agreed by the parties, the Arbitral Tribunal can award interest at reasonable rate for a period commencing from that date when the cause of action arises till the date of the award. Section 31(7) of the Act, reads as under:

'31. (7) (a) Unless otherwise agreed by the parties, where and insofar as an arbitral award is for the payment of money, the Arbitral Tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.'

13. Section 31(7) of the Act, by using the words "unless otherwise agreed by the parties", categorically specifies that the arbitrator is bound by the terms of the contract so far as award of interest from the date of cause of action to date of the award is concerned. Therefore, where the parties had agreed that no interest shall be payable, the Arbitral Tribunal cannot award interest.

14. We may also refer to the decision of this Court in Union of India v. Saraswat Trading Agency [(2009) 16 SCC 504 : (2011) 3 SCC (Civ) 499] . This Court has observed in the said case that if there is a bar against payment of interest in the contract, the arbitrator cannot award any interest for such period. In view of the specific bar under Clause 13(3) of the contract entered into between the parties, we are of the view that the Arbitral Tribunal was not justified in awarding interest from the date of entering upon the reference to the Arbitral Tribunal till the date of the award.

15. The Arbitral Tribunal had mainly relied upon the judgment delivered by this Court in G.C. Roy case [(1992) 1 SCC 508] . In the said case, the

situation was different. The contract between the parties did not contain any condition that interest would not be paid."

52. In *Centrotrade Minerals and Metal Inc. v. Hindustan Copper Limited*, reported in (2017) 2 SCC 228, the Supreme Court reiterated that an award could be set aside if it was, *inter alia*, patently illegal.

53. In *Sri Chittaranjan Maity v. Union of India*, reported in (2017) 9 SCC 611, the Supreme Court referred to its earlier judgments in *Ambica Construction v. Union of India*, reported in (2017) 14 SCC 323; *State of Orissa v G.C.Roy*, reported in (1992) 1 SCC 508; *Sayed Ahmed and Co. v. State of U.P.*, reported in (2009) 12 SCC 26; *Sree Kamatchi Amman Constructions v. Railways*, reported in (2010) 8 SCC 767; *Union of India v. Bright Power Projects (India) (P) Limited*, reported in (2015) 9 SCC 695 and held that "where the parties had agreed that the interest shall not be payable, the Arbitral Tribunal cannot award interest between the date on which the cause of action arose to the date of the award."

54. Learned counsel appearing for the respondent claimant submitted that the Arbitral Tribunal had awarded interest from 02.6.2010, being the date on which the respondent claimant had sought refund of the interest free security deposit. The respondent claimant having deliberately withheld the security deposit was liable to pay interest.

55. In support of the submission that the learned Arbitral Tribunal had the power to grant *pendente lite* interest, counsel appearing on behalf of the respondent claimant cited the judgments of the Supreme Court in *Ambica Construction v. Union of India*, reported in (2017) 14 SCC 323 and *Secretary, Irrigation Department, Government of Orissa and others v. G.C.Roy*, reported in (1992) 1 SCC 508. Both the aforesaid judgments were rendered in the context of the Arbitration Act, 1940 and not the 1996 Act and were duly considered and distinguished in the later judgment of the Supreme Court in *Chittaranjan Maity*, *supra*. The relevant passage is extracted herein below for convenience:

"16. Relying on a decision of this Court in *Ambica Construction v. Union of India*, (2017) 14 SCC 323, the learned Senior Counsel for the appellant submits that mere bar to award interest on the amounts payable under the contract would not be sufficient to deny payment on *pendente lite* interest. Therefore, the arbitrator was justified in awarding the *pendente lite* interest. However, it is not clear from *Ambica Construction* as to whether

it was decided under the Arbitration Act, 1940 (for short "the 1940 Act") or under the 1996 Act. It has relied on a judgment of Constitution Bench in State of Orissa v. G.C. Roy, (1992) 1 SCC 508 . This judgment was with reference to the 1940 Act. In the 1940 Act, there was no provision which prohibited the arbitrator from awarding interest for the pre-reference, pendente lite or post-award period, whereas the 1996 Act contains a specific provision which says that if the agreement prohibits award of interest for the pre-award period, the arbitrator cannot award interest for the said period. Therefore, the decision in Ambica Construction cannot be made applicable to the instant case."

56. However, the proposition of law which emerges from Sri Chittaranjan Maity v. Union of India, supra, is that when the contract specifically provides that a deposit would be interest free, interest on such deposit cannot be awarded for the pre-reference period. In Bright Power Projects (India) (P) Limited, supra, the Supreme Court, as observed above, held that where the parties had agreed that interest would not be payable, the Arbitral Tribunal could not even award pendente lite interest till the date of the award.

57. In view of the judgments of the Supreme Court, referred to above, we are constrained to hold that the award of interest on security deposit for the pre-reference period or even the period from the date of reference till the date of award is patently illegal and, hence, liable to be set aside. The award of interest on security deposit being non speaking it is not open to this Court to speculate the process of reasoning which led to the making of the award, or to substitute a non speaking award with its own reasons.

58. The learned counsel for the respondent claimant also advanced the argument that the clandestine manner in which the appellants withdrew the amount deposited towards security deposit after the order dated 27.2.2017 of the Division Bench justifies the award of interest. However, in adjudicating the legality or validity of an award in an application under Section 34(2) of the 1996 Act, the Court cannot take notice of any post award events. An award has to be adjudged on the basis of the materials that were placed before the Arbitral Tribunal at the time of making of the award.

59. The learned Arbitral Tribunal has on consideration of the materials before it, as also its interpretation of the terms and conditions of the JDA, rejected the counter claim of appellants. This Court does not find any patent illegality in the award insofar as the claim to damages has been rejected.

The learned Arbitral Tribunal has also on its interpretation of JDA held that the security deposit was liable to be returned.

60. Since, as observed above, this Court deciding an application under Section 34 of the 1996 Act does not sit in appeal over an award, the award except to the extent of interest on security deposit is not liable to be interfered with by this Court. However, the award of interest on security deposit is liable to be set aside. The respondent claimant shall, however, be entitled to post award interest at the rate of 9% per annum.

For the reasons discussed above, the appeals are allowed in part. The learned Single Bench having erred in affirming the award of interest on security deposit, the judgment and order of the learned Single Judge is set aside only to the extent it affirms the award of interest. The impugned award is also set aside to the extent of award of interest on the security deposit of Rs.7 crores. Except to the extent of award of interest, the ***order of the learned single Judge in O.P.Nos.473 & 434 of 2016 dated 29/01/2018** is confirmed. The miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

dt.1.8.2018

***Corrected as per order of this Court
dated 08/10/18 and made in
CMP.No.16294 & 16295/18
dt.24.10.2018**

//True Copy//

Sub Assistant Registrar

mps/bbr/sasi

To

1. The Sub Assistant Registrar, already despatched on 2/08/18
Original Side,
High Court, Madras.

/To be substituted the order

+4cc to Mr.R.Sagadevan, Advocate in sr.no.51719

+1cc to Mr.M.Sricharan Rengarajan, Advocate in sr.no.52328

O.S.A.Nos.199 and 116 of 2018

C.M.P.Nos.10029, 7208

and 8277 of 2018

GJ(CO)

CS/02/08/18

sm:25.10.2018