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

Judgment Reserved On: 12.9.2018
Judgment Pronounced On: 28.11.2018

+ **O.M.P. (COMM) 38/2016**

MATRIX INFOSOFT PVT. LTD. Petitioner
Through: Mr. Pramod B. Agarwala with Mr.
Aayush Agarwala, Advs.
versus

PLANMAN TECNOLOGIES (INDIA) PVT. LTD..... Respondent
Through: Mr. Hem C. Vashisht with Mr. Rahul
Malik, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

1. This petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter referred to as "1996 Act") is directed against the award dated 8.10.2015.
2. Briefly, the challenge to the award arises in the background of the following facts:
3. The petitioner, who, is the owner of the premises described as: Plot Nos. A-4 and A-29, Sector – 9, Noida, admeasuring 1600 square meters, which includes a building constructed thereupon, admeasuring 38,000 sq.ft., (hereafter referred to as the "subject property") had entered into a Memorandum of Understanding dated 20.6.2007 (in short 'MOU') with the respondent.
- 3.1 As per the terms of the MOU, respondent was required to pay a sum of Rs.28 lakhs per month in respect of the subject property. Furthermore,

the respondent was also required to deposit a sum of Rs.1.40 Crores towards security. The tenure of the MOU was five (5) years with a leeway of extending it by another four (4) years. The MOU, however, provided for a lock-in period of sixty (60) months.

3.2 An important aspect of the MOU was that the burden of obtaining the Completion Certificate from the New Okhla Industrial Development Authority (in short the “Authority”) was placed on the petitioner. The petitioner was required to obtain the Completion Certificate and all attendant permissions on or before 15.7.2007; which was also the deadline by which the petitioner was required to hand over the subject property to the respondent.

3.3 A default clause was also provided in the MOU, which stipulated that in case the petitioner failed to discharge its obligations before the deadline, it would refund not only the initial consideration of Rs.28 lakhs (which was paid at the time of the execution of the MOU), but would also have to pay an equivalent sum by way of penalty.

4. Thus, two things, which were crucial in forging the MOU were: first, the petitioner’s obligation to hand over the building, complete in all respects along with the requisite permissions, such as Completion Certificate, by 15.7.2007; and second, the burden placed on the petitioner to execute a lease deed.

5. The record shows that the petitioner failed to meet the deadline, and accordingly, vide communication dated 13.8.2007 sought extension of time till 15.9.2007.

5.1 The respondent, based on the request made by the petitioner, extended the deadline till 15.9.2007. Evidently, the petitioner could not meet this

extended deadline as well and therefore, once again, wrote to the respondent on 15.9.2007 in that behalf. In this communication, the petitioner put forth two options before the respondent: first, that the MOU could be kept alive and the subject property could be handed over to the respondent by the petitioner as and when it obtained the Completion Certificate and all permissions as stipulated in Clause (7) (f) and (g) of the MOU. Second, that the MOU could be called off; in other words, terminated.

5.2 In order to show its *bona fide* with respect to the second option, the petitioner enclosed a cheque in the sum of Rs.28 lakhs in favour of the respondent. The purpose being that if the first option of keeping the MOU alive was not acceptable, the MOU could be brought to an end and the cheque could be encashed.

5.3 It appears, the respondent chose the first option given by the petitioner. This was conveyed by the respondent vide communication dated 17.9.2007 and accordingly, the cheque for Rs.28 lakhs was returned to the petitioner. However, in this communication the respondent emphasised that the petitioner would obtain all the necessary permissions at the earliest and not approach any other party for leasing out the subject property.

6. Since, the petitioner was not able to obtain necessary permissions which were necessary for closing the transaction, in particular, the Completion Certificate, the respondent vide an e-mail dated 30.10.2007, informed the petitioner that its management had taken decision not to continue with the MOU.

6.1 In addition thereto, the respondent sought refund of Rs.28 lakhs given to the petitioner at the time of execution for the MOU.

6.2 Pertinently, the respondent, at this stage, gave up its demand for being

paid the penalty amount and other damages incurred by it.

6.3 Evidently, the petitioner vide its e-mail dated 6.11.2007, informed the respondent that it was examining the contents of its e-mail dated 30.10.2007 and that it would send its response sooner than later.

7. On 23.11.2007, the petitioner informed the respondent that due to a change in the Government, it would not be in a position to obtain the Completion Certificate in quick time and that given the difficult circumstances in which it was placed, it should consider granting further time to obtain the Completion Certificate. The petitioner also made it a point to convey to the respondent that because of its earlier communication dated 17.9.2007, it was not looking for allotting the subject property to other prospective tenants.

7.1 It is important to note that e-mail dated 23.11.2007 was addressed by, one, Mr. Sushil Jain on behalf of the petitioner to Mr. Sudhir Gupta, employed with the respondent. The e-mail was sent at 2.52 p.m. and the petitioner obtained a revert to the same at 2.59 p.m. from Mr. Sudhir Gupta, carrying the following pithy message:

“Thanks for your mail. We are still with you.”

8. Apparently, on 11.12.2007, the petitioner informed the respondent that the Authority had taken a decision in its favour and as a result of a change in scenario, it had applied for a Completion Certificate, which would be made available to the respondent in the next ten (10) to fifteen (15) days. Via the very same communication, the petitioner also sought from the respondent its I.T. Project Report in order to enable it to obtain necessary permission from the Authority for leasing out the subject property.

9. It appears that, in and about 22.2.2008, the petitioner deposited a sum

of Rs.1,70,90,365/- as compounding fee to obtain the Completion Certificate.

9.1 This fact, according to the petitioner, was conveyed to the respondent on that very date.

9.2 The petitioner further claims that it received a Completion Certificate from the Authority on 26.2.2008. It is further averred that information with respect to the same was conveyed to the respondent on the very next date, that is, on 27.2.2008.

10. The petitioner, apparently, was pursuing the Authority to grant permission for leasing out the subject property. In this behalf, the petitioner avers that it wrote to the respondent on 3.3.2008 that it should provide information sought for, in its communication with it, to obtain the said permission from the Authority.

10.1 Evidently, the respondent via its Company Secretary, Ms. Preeti Khattar, supplied the information sought for via a return communication of even date, i.e., 3.3.2008.

10.2 It is the petitioner's stand that on 3.3.2008, it received a permission from the Authority to lease out the subject property. The permission, apparently, had a validity period of ten years.

10.3 According to the petitioner, this information was furnished to the respondent on 4.3.2008.

11. According to the respondent, vide e-mail dated 5.3.2008 it enquired from the petitioner as to whether it had obtained a No Objection Certificate (NOC) from the Pollution Board.

11.1 In response to query, the petitioner, seemingly, informed the respondent that as per the Uttar Pradesh Government I.T. Policy, no NOC

was required to be obtained.

11.2 Furthermore, the petitioner appears to have called upon the respondent to finalize the lease deed as it had discharged its obligations under the MOU.

11.3 The record shows that in the e-mail dated 7.3.2008, the petitioner appears to have noted that as per its telephonic conversation with Mr. Sudhir Gupta (a representative of the respondent), 10.3.2008 was fixed as the date for firming up the language of the lease deed.

12 The petitioner claims that thereafter, on 7.3.2008, for the first time, the respondent conveyed to petitioner that it wished to discontinue the deal for the reason that it had found an alternate premises. The respondent appears to have communicated that this step was taken as there was delay in closing the transaction in issue.

12.1 Accordingly, as noticed above, the respondent sought refund of a sum of Rs.28 lakhs given at the time of execution of the MOU.

13 Given this stand of the respondent, the petitioner requested that a meeting be convened to discuss the issue at hand. The respondent, however, vide communication dated 20.3.2008, after referring to the meetings that were held with the representative of the petitioner, conveyed that the issue was discussed with its Board of Directors, whereupon, a decision was taken to adhere to its earlier position, which was, that it did not wish to take the relationship any further.

14 This response propelled the petitioner to have notice dated 31.3.2008, served upon the respondent. Via this notice, the petitioner demanded under various heads, a sum of Rs.9,23,70,854/- from the respondent.

14.1 It appears that since the petitioner had brought an advocate in the fray,

the respondent decided to adopt the same approach. Accordingly, via its advocates, vide communication dated 26.4.2008, it responded to the petitioner's notice dated 31.3.2008. In this communication, it was conveyed, on behalf of the respondent, that its management had taken a decision not to continue with the MOU; something, which was conveyed to the petitioner via communication dated 31.10.2007 as well. Furthermore, the respondent's advocate adverted to two other aspects: firstly, the respondent was not in possession of the subject property, and secondly, the respondent disputed the fact that it had ever seen or received communications dated 11.12.2007, 30.1.2008, 22.2.2008, 27.2.2008, 3.3.2008, 4.3.2008 and 6.3.2008.

14.2 Not to be left behind, the petitioner issued a rejoinder dated 5.6.2008.

15 Since, the dispute had erupted between the parties, this Court, was approached by way of a petition under Section 11 of the 1996 Act, for appointment of an Arbitrator.

16 Consequent thereto, on 08.10.2015, the duly appointed Arbitrator rendered the impugned award.

17 It is in the background of the aforesaid broad facts and averments that arguments in the matter on behalf of petitioner were advanced by Mr. Pramod B. Agarwala, while those on behalf of the respondent were advanced by Mr. Hem C. Vashisht.

18 Mr. Agarwala's submissions can be, broadly, paraphrased as follows:

(i) Firstly, the finding returned by the learned Arbitral Tribunal that the termination of the MOU was valid was erroneous for the reason that the time was not of the essence when the parties had first executed the same. Furthermore, even if, it is assumed that it was of the essence to begin with, it ceased to be so, as was evident upon perusal of communications dated

15.9.2007 and 17.9.2007.

(i)(a) The communication dated 15.9.2007 gave two options to the respondent: firstly, to continue with the MOU and secondly, to bring the MOU to an end and to encash the cheque in the sum of Rs.28 lakhs, which represented the money that the respondent had paid at the time of the execution of the MOU. The respondent chose to continue with the MOU and thereby, agreed to the condition put forth by the petitioner, which is that, the possession of the subject property would be given by the petitioner as and when it received the relevant permissions. The petitioner, in lieu thereof, had agreed not to engage with other prospective tenants. The aforesaid circumstances, as also, the step taken by the respondent of returning the cheque in the sum of Rs.28 lakhs demonstrated that time was not of the essence of contract. In this behalf, reliance was placed on the judgment of the Supreme Court in *Hind Construction Contractors vs. State of Maharashtra*, (1979) 2 SCC 70 as well as *Associate Builders vs. Delhi Development Authority*, (2015) 3 SCC 49.

(ii) Secondly, though the respondent vide its communication dated 30.10.2007, had communicated its intention to terminate the MOU, its later communication dated 23.11.2007, conveyed to the petitioner that the respondent was desirous of continuing with the MOU. Based on this representation of the respondent, the petitioner continued with its efforts to obtain a Completion Certificate and necessary permissions for leasing out the subject property. In support of this contention, reliance was placed on the communications dated: 11.12.2007, 22.2.2008, 27.2.2008, 3.3.2008, 4.3.2008, 5.3.2008 and 6.3.2008.

(iii) Thirdly, the stand taken by the respondent that the petitioner's

communication dated 23.11.2007 was with a person who was not authorized to make a commitment on behalf of the respondent was not correct as was demonstrable from the testimony of, one, Mr. Naveen Chamoli, that is, the sole witness of the respondent. The argument advanced on behalf of the respondent that the communication, purportedly, had by the petitioner with the representative of the respondent could not be relied upon, as those communications were in fact exchanged with an unauthorized person – was a flawed submission, for the reason that though those persons were in the employment of the respondent, they were not produced for cross-examination by the respondent. In other words, the respondent had held back the best evidence warranting an adverse inference being drawn against the respondent by the Arbitral Tribunal.

(iv) Fourthly, the respondent erroneously relied upon the sole testimony of Mr. Naveen Chamoli (C.W. 1) in support of its case, who, admittedly had no personal knowledge of the subject transaction. The evidence was, therefore, wholly inadmissible on account of the same being in the nature of hearsay evidence. The Arbitral Tribunal had failed to notice this aspect of the matter as also the case law cited in support of this submission.

(v) Fifthly, the Arbitral Tribunal had failed to deal with the contentions raised by the petitioner. The award is, therefore, unreasoned and, hence, falls foul of Section 39 (3) of the 1996 Act. The Arbitral Tribunal had failed to adopt a judicial approach and thereby had committed a serious irregularity in dealing with substantial issues. The award deserved to be set aside for this reason alone. In this behalf, the provisions of Section 68 of the United Kingdom Arbitration Act were relied upon; in particular, emphasis was laid down on the fact that as per the United Kingdom Arbitration Act, an award

can be set aside on the ground of failure of the Arbitral Tribunal to deal with all issues put before it. This, according to the learned counsel, ought to be treated as a serious irregularity. The learned counsel urged the Court to adopt the same test and if found to be applicable in the facts of the instant case, to set aside the award on this singular ground.

19 In support of his contentions, Mr Agarwala placed reliance on the following judgments:

- (a) *Chander Kant and Co. vs. Delhi Development Authority*, (2009) 164 DLT 657; and
- (b) *Associate Builders vs. Delhi Development Authority*, (2015) 3 SCC 49.

20 As against this, Mr. Vashisht, on behalf of the respondent, largely relied upon the findings returned by the Arbitral Tribunal in support of its stand.

20.1 It was contended that the respondent never took possession of the subject property, since, neither the Completion Certificate nor the necessary approval was obtained from the Authority to lease out the subject property. The petitioner, on its own showing had applied for a Completion Certificate only on 11.12.2007, by which time, the respondent had terminated the MOU, that is, on 30.10.2007.

20.2 Attention of the Court, in this behalf, was drawn to the e-mail dated 11.12.2007, sent by the petitioner. The reliance placed by the petitioner on the e-mail dated 23.11.2007, issued on behalf of the respondent by, one, Mr. Sudhir Gupta, to demonstrate, that the respondent was desirous of keeping the MOU alive was misconceived, as Mr. Gupta, who had issued the said communication was neither directly nor indirectly concerned with the MOU,

nor was he a person, who, had been authorized by the respondent to deal with the petitioner.

20.3 It was further submitted that the respondent could not have taken possession of the subject property till a Completion Certificate had been obtained and all other requisite permissions had been taken for occupying the subject property. It was emphasised that the respondent, after 30.10.2007, had not entered into any communication with the petitioner. In order to demonstrate that this was so, reliance was placed on paragraph 10 of the reply to the counter claim filed by the petitioner.

20.4 Mr. Vashisht further contended that the MOU provided that correspondence exchanged between the parties could only be carried out through an authorized representative. Therefore, according to the learned counsel, reliance by the petitioner on correspondence carried out with an unauthorized representative of the respondent cannot be used by the petitioner to further its cause. The termination notice dated 30.10.2007 was never revoked by the respondent nor was there any request made in that behalf by the petitioner.

20.5 The argument advanced on behalf of the petitioner that the Arbitral Tribunal did not deal with the submissions advanced on behalf of the petitioner was misconceived, as the Arbitral Tribunal had dealt with all relevant submissions.

20.6 This Court while adjudicating upon a petition under Section 34 of the 1996 Act cannot exercise the powers of an appellate Court. In other words the Court would refrain from re-examining and reassessing the material, which was placed for consideration before the Arbitral Tribunal. The award passed was rooted in the material placed on record. The award, thus, needed

to be sustained, as the petitioner has failed to demonstrate that the view taken in the impugned award was not a plausible view. In support of its submission, learned counsel for the respondent relied upon the following judgments: *MCD vs. Jagan Nath Ashok Kumar & Anr.*, AIR 1987 SC 2316 and *Food Corporation of India vs. Joginderpal Mohinderpal & Anr.*, (1989) 2 SCC 347.

Reasons

21 I have heard the learned counsel for the parties and perused the record. What emerges therefrom and over which there is, largely, no dispute is as follows:

- (i) Firstly, the parties had entered into an MOU on 20.6.2007. At the time of entering into the MOU, the respondent paid a sum of Rs.28 lakhs to the petitioner.
- (ii) Secondly, as per the terms of the MOU, it was the petitioner's burden to obtain the Completion Certificate and all other permissions from the Authority on or before 15.7.2007 (See Clause 21(c) of the MOU).
- (iii) Thirdly, the subject property could not be occupied till such time the petitioner had obtained the Completion Certificate, the Occupation Certificate and the approval of the Authority for entering into a lease transaction.
- (iii) (a) Inferentially, the aforesaid also brings forth the circumstance that the subject building was incomplete and/or not fit for occupation at the time when the MOU was executed.
- (iv) Fourthly, the fact that the petitioner sought time is evident upon a perusal of the communication dated 13.8.2007 and 15.9.2007, addressed by the petitioner to the respondent.

(v) Fifthly, the respondent, in fact, based on an earlier communication dated letter 13.8.2007, extended the timeline till 15.09.2007 to enable the petitioner to discharge its obligations under the MOU. In fact, the respondent made it clear that if there was a default, the petitioner would be liable to pay a penalty in the sum of Rs.28 lakhs.

(v) (a) This communication, in fact, demonstrated that as between the parties, time was of the essence.

(vi) Sixthly, the petitioner, realizing that it was not in a position to discharge its obligations by 15.9.2007, on 15.9.2007, gave an option to the respondent to dissolve the MOU and receive back the sum of Rs.28 lakhs, which had been remitted to it at the time of execution of the MOU.

(vi) (a) The respondent on its part, chose to grant further leeway by writing to the petitioner that it would keep the MOU alive, provided it obtained the necessary permissions at the earliest. It is in this context that the respondent returned the cheque in the sum of Rs.28 lakhs.

(vii) Clearly, since the petitioner was not able to make any progress in the matter, despite nearly six(6) weeks having elapsed, on 30.10.2007, the respondent decided to terminate the MOU.

(viii) This decision was, accordingly, communicated to the petitioner and as a consequence, the respondent demanded the return of Rs.28 lakhs, which it had paid to the petitioner at the time of execution of the MOU.

22. To my mind, if the aforesaid facts and circumstances are taken into account that there is no doubt that time was of the essence when parties had entered into the MOU and it continued to remain so even thereafter, as the respondent persisted to demonstrate urgency in the matter by calling upon the petitioner to close the transaction as early as possible with the added

threat that if it failed to do so, it would be liable to pay a penalty in the sum of Rs.28 lakhs.

22.1 Therefore, the argument advanced by Mr. Agarwala, to the contrary, which is, that time was not of the essence is clearly untenable.

23. The alternate argument advanced by Mr. Agarwala, which is, that time ceased to be of essence, is an argument, which is based essentially on the contents of e-mail dated 23.11.2007 and the communication exchanged thereafter between the parties i.e. communication dated 11.12.2007, 22.2.2008, 26.2.2008, 27.2.2008, 3.3.2008, two letters of even date, i.e., 3.3.2008, 4.3.2008, 5.3.2008 and 6.3.2008.

23.1 Based on the aforesaid communications, it was sought to be argued on behalf of the petitioner that time ceased to be of essence. Interestingly, the stand of the respondent in respect of aforesaid communications is that these communications were addressed by the petitioner to persons who were not authorized to act on behalf of the respondent.

23.2 This argument, to my mind, needs to be tested. To test the argument, one would have to go back in time and look at the manner in which the parties engaged between themselves prior to 30.10.2007. In this behalf, one needs to look at the MOU, and the letter dated 15.9.2007, issued by the petitioner to the respondent.

23.3 Clauses (1) and (2) of the MOU read with Clause 21(d) would show that the correspondence between the parties could be exchanged only between authorized signatories. As per Clause (2) of the MOU, clearly, Mr. Naveen Chamoli was the authorized signatory of the respondent. Therefore, any communication of significance, which had an impact on the MOU ought to have been addressed by the petitioner to the respondent via Mr. Naveen

Chamoli.

23.4 The petitioner being cognizant of this fact, on 15.9.2007 addressed a letter to the respondent for extension of time via Mr. Naveen Chamoli. Likewise, the respondent's e-mail dated 30.10.2007, whereby, it conveyed its Management's decision to terminate the MOU was addressed to the petitioner's authorized representative, that is, one, Mr. Sushil Jain.

23.5 However, the correspondence exchanged between the parties after 30.10.2007, to which I have made a reference above, is addressed to Mr. Sudhir Gupta and not Mr. Naveen Chamoli, the designated authorized signatory of the respondent under the MOU. The MOU, admittedly, was executed by Mr. Naveen Chamoli on behalf of the respondent, and likewise, on behalf of the petitioner, by one, Mr. Sushil Jain.

23.6 It is because of this reason that on 30.10.2007, when, the respondent decided to convey its Management's decision to not pursue the MOU and seek refund of Rs.28 lakhs given to the petitioner by the respondent at the time of execution of MOU, the said communication was addressed by Mr. Naveen Chamoli on behalf of the respondent to Mr. Sushil Jain, who was as indicated above, the authorized signatory of the petitioner.

23.7 Therefore, the correspondence which, according to the petitioner, extended the time for discharge of its obligation as per the MOU ought to have been addressed to Mr. Naveen Chamoli and not Mr. Sudhir Gupta.

23.8 I must, at this stage, point out that, once, prior to 30.10.2007, the petitioner had, on 13.8.2007, written to the respondent, to extend the original deadline fixed to obtain the Completion Certificate by 14.8.2007, *albeit*, via Mr. Sudhir Gupta. Importantly, the request made, though not in line with terms of the MOU obtained ratification as it was responded to on behalf of

the respondent by its authorized signatory, that is, Mr. Naveen Chamoli. On 14.8.2007, Mr. Naveen Chamoli extended the deadline as requested by the petitioner till 15.9.2007. Pertinently, this communication was addressed by Mr. Naveen Chamoli on behalf of the respondent to Mr. Sushil Jain, who, as indicated above, was the authorized signatory of the petitioner.

23.9 Therefore, the argument that time ceased to be of the essence, in my view, is a submission, which is erroneous and hence was rightly rejected by the Arbitral Tribunal.

24. It is in this context that the Arbitral Tribunal, correctly, drew an inference that after the termination of the MOU on 30.10.2007, the petitioner's communication dated 23.11.2007 even though addressed to Mr. Naveen Chamoli, the authorized signatory of the respondent was within seven minutes, replied to by Mr. Sudhir Gupta via an email of even date, who had no authority to rescind the termination letter dated 30.10.2007.

25. The petitioner, it appears, somehow, through an unauthorized personnel, though employed with the respondent, kept the matter in play till such time it obtained the Completion Certificate and all necessary permissions to lease out the subject property. The ploy, it appears, did not work as on 20.3.2008, even Mr. Sudhir Gupta on behalf of the respondent reiterated the decision taken on 30.10.2007, which was to terminate the MOU.

26. Given these circumstances, I find no difficulty in accepting the findings returned by the Arbitral Tribunal that the petitioner was in breach of its obligation under the MOU, which led to its termination.

26.1 Therefore, the necessary consequences of the same would be, which is that the Arbitral Tribunal did, was to direct the petitioner to return the sum

of Rs.28 lakhs to the respondent alongwith interest. The Arbitral Tribunal proceeded to grant interest on the sum of Rs.28 lakhs at the rate of 12% from the date of filing of the statement of claim till the date of the award and thereafter, future interest at the rate of 18% per annum till the date of realization.

26.2 Since, there is no suffix following the rate of interest, it would be safe to assume that the interest awarded is a simple rate per annum, an aspect which emerges upon a bare perusal of the statement of claim as well.

26.3 Pertinently, no cavil has been raised in this behalf by counsel for either party.

27. The other submissions advanced on behalf of the petitioner by Mr. Agarwala, which is, that the Arbitral Tribunal failed to consider its counter claim and dismissed the same in limine, to my mind, are also unsustainable.

27.1 The counter claims lodged by the petitioner were predicated on the stand taken by the petitioner that time was not of the essence, in that the respondent by its conduct, which was reflected in the communication exchanged between the parties had conveyed to it that it would wait till such time, the petitioner was able to obtain the Completion Certificate and requisite permissions for leasing out the subject property.

27.2 However, as noticed above, since the Arbitral Tribunal had come to the conclusion that the time continued to be of the essence and that the petitioner was in the breach of the obligations as stipulated in the MOU, there was no reason for the Arbitral Tribunal to discuss in detail the counter claims lodged by the petitioner since it would have been an empty formality.

28. Therefore, the two judgments relied upon by the petitioner, before me, to my mind, in the facts obtaining in this case, would have no applicability.

While the proposition of law set forth in *Hind Construction* as well as in *Chander Kant* cannot be quibbled with, they would have no applicability to the facts and circumstances obtaining in the instant case.

29. Thus, for the foregoing reasons, I find no merit in the captioned petition. The petition is, accordingly, dismissed. Costs will follow the result.

RAJIV SHAKDHER, J

NOVERMBER 28, 2018/pmc

