

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.03.2018

+ **O.M.P. (COMM) 352/2017**

V4 INFRASTRUCTURE PRIVATE LTD

.....Petitioner

Versus

JINDAL BIOCHEM PRIVATE LTD

.... Respondent

AND

+ **O.M.P. (COMM) 353/2017**

V4 INFRASTRUCTURE PRIVATE LTD

.....Petitioner

Versus

JINDAL BIOCHEM PRIVATE LTD

.... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr S.K. Chaturvedi and Mr Amit Sood.

For the Respondent : Mr Vikas Kakkar and Mr Vaibhav Tiwari.
in OMP (COMM) 353/2017.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner (hereafter 'VIPL') has filed the present petitions under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') impugning an arbitral award dated 20.05.2017 (hereafter 'the impugned award') rendered by the Sole Arbitrator,

Justice M.L. Mehta, Retired (hereafter 'the Arbitral Tribunal'). The impugned award was rendered in the context of two Space Buyer Agreements, both dated 07.10.2009. In terms of one of the said agreement (hereafter 'the First Agreement'), VIPL agreed to sell three shops bearing Unit Nos. 1, 2 and 3 on the front side of the property constructed on Plot No. 228, Service Centre, Dwarka known as 'V-4 Metro Square' (hereafter 'the Property'). The covered area of the said three units measured 936.409 square feet, in aggregate. The second Space Buyer Agreement pertains to the sale of 1435.758 square feet of space on the second floor of the said commercial building (hereafter 'the Second Agreement').

2. The said two agreements were terminated by VIPL. In addition, VIPL also constructed a basement in the property in question, which according to the respondent (hereafter 'JBPL') was in breach of the said two agreements. The disputes between the parties in relation to the said agreements were referred to the arbitrator. By the impugned award, the Arbitrator has allowed the claims preferred by JBPL and has awarded an aggregate amount of ₹7.4 crores along with interest at the rate of 18% per annum. In addition, the Arbitral Tribunal has also awarded ₹10 lacs in favour of the respondent as cost for the litigation.

3. Briefly stated, the controversy between the parties arises in the following context:-

4. VIPL purchased the property bearing no. 228, Sector 9, Service Centre, Dwarka admeasuring 540 square meters in an auction

conducted by the Delhi Development Authority (DDA). At the material time, VIPL was in the nature of a joint venture between two groups, namely, Attar Singh Group and Jindal Group. Both the said groups had equal representation on the Board of Directors of VIPL. Certain disputes arose between the two groups and the Jindal Group exited from the control and management of VIPL. VIPL further claims that the two share purchase agreements dated 25.08.2009 and 30.08.2009 were entered into between its shareholders of VIPL belonging to the said groups. It is further claimed that the said share purchase agreements have attained finality. However, the controversy, if any, relating to the said share purchase agreements is not relevant for the purposes of the present proceedings.

5. VIPL and JBPL entered into two Space Buyer Agreements in relation to the Property. The First Agreement pertains to the sale of three shops bearing Unit Nos. 1, 2 and 3 on the front side of the ground floor aggregating 936.409 square feet of covered area, which was agreed to be sold to the JBPL at a consideration of ₹4.25 crores. In terms of the Second Agreement, VIPL agreed to sell 1435.758 square feet on the second floor of the Property at a consideration of ₹3.15 crores.

6. Admittedly, JBPL paid the entire consideration as agreed under the two Space Buyer Agreements. JBPL claimed that VIPL had initially handed over the possession of the built up space purchased in terms of the said two agreements but had forcibly re-possessioned the same by breaking open the locks. VIPL disputes the same and claims

that the Property was completed and an occupancy certificate was granted on 19.04.2010 but the physical possession of the Property was not handed over to JBPL as JBPL failed and neglected to pay the maintenance charges and to execute the agreement for maintenance of the Property (Maintenance Agreement). VIPL further claims that JBPL also failed to pay proportionate charges for installation of a lift.

7. VIPL terminated the two Space Buyer Agreements by letter dated 19.08.2011 on the alleged ground of failure on the part of JBPL to pay the proportionate charges for installation of the lift and to execute the Maintenance Agreement.

8. In the aforesaid context, the disputes between the parties were referred to arbitration. In the Statement of Claims filed before the Arbitral Tribunal, JBPL claimed for specific performance of the Space Buyer Agreements as well as damages for failure to handover possession of the Property along with interest. JBPL also sought rendition of accounts. In the alternative, JBPL claimed refund of the entire sale consideration paid for the Property (₹4.25 crores and ₹15 lacs pertaining to the ground floor and ₹3.15 crores alongwith ₹20 lacs paid towards the second floor) along with interest at the rate of 24% per annum.

9. In addition to the above, JBPL also claimed refund of certain amounts on account of difference in the area as stated in the Space Buyer Agreements and as agreed to be allotted by VIPL.

10. After considering the pleadings of the parties, the Arbitral Tribunal framed several issues. One of the principal issues was whether the notice dated 19.08.2011 issued by the VIPL for terminating the Space Buyer Agreements in question was legal and whether JBPL had failed to discharge any of its obligations under the said agreements. The Arbitral Tribunal considered the said issue and found that the JBPL had not committed any breach of the Space Buyer Agreements as alleged by VIPL in its termination notice dated 19.08.2011. Accordingly, the Arbitral Tribunal held the termination notice to be illegal.

11. The Arbitral Tribunal also concluded that JBPL had not only paid the entire consideration of ₹7.4 crores (₹3.15 crores for the second floor and ₹4.25 crores for the ground floor) but had also paid a sum of ₹35 lacs over and above the said consideration as proportionate charges for development of the external facade.

12. Insofar as the issue regarding the construction of basement is concerned, the Arbitral Tribunal found that the construction was not as per the sanctioned plan dated 12.03.2008. The said basement had been constructed after the building had been raised. The basement had been approved by the DDA in March/April 2010 subject to the payment of compounding charges. The Arbitral Tribunal found that notwithstanding that the construction of the basement was subsequently approved by the DDA, the same was in violation of Clauses (c) and (e) of the Space Buyer Agreements, wherein VIPL had represented that it had observed the terms and conditions of the

sanctioned plan and the construction was being done in accordance with the sanctioned plan.

13. In view of the above, the Arbitral Tribunal rendered an award for refund of the amount paid by JBPL being ₹7.40 crores plus ₹35 lacs along with interest at the rate of 18% per annum from the date of payment, till the date of actual realization.

Submission

14. Mr S.K. Chaturvedi, the learned counsel appearing for VIPL had assailed the impugned award on two fronts. First, he submitted that JBPL had sought the relief for specific performance of the Space Buyer Agreements and once the Arbitral Tribunal had found the termination of the Space Buyer Agreements to be illegal, it would necessarily follow that the JBPL's claim for specific performance ought to have been allowed. However, the Arbitral Tribunal had grossly erred in not considering the JBPL's claim for specific performance but has directed refund of the consideration paid by JBPL. Second, he submitted that the Arbitral Tribunal had also decided the issue relating to existence of an escrow account, which was not a subject matter of the agreements. He submitted that the impugned award was, thus, without jurisdiction.

15. Mr Chaturvedi, also made feeble attempt to argue that the termination of the Space Buyer Agreements by VIPL was legal and the conclusion of the Arbitral Tribunal was patently erroneous.

Reasons and Conclusion

16. The contention that the impugned award is patently illegal inasmuch as the Arbitral Tribunal has granted the alternate relief of return of consideration along with interest instead of directing specific performance of the agreements in question, is unsustainable. The learned counsel appearing for JBPL had also pointed out that JBPL did not press for the relief for specific performance and, thus, no issue was struck in this regard. The Arbitral Tribunal had also specifically noticed in the impugned award that the petitioner had not setup a case for specific performance. Thus, even though JBPL had in its statement of claims sought the relief for specific performance of the agreements. The said relief was not pressed and, therefore, the Arbitral Tribunal had struck no issue in this regard.

17. Further, it would be at the discretion of the Arbitral Tribunal whether to award specific performance of the agreements or to award damages in lieu thereof.

18. In view of the above, this Court finds no infirmity with the decision of the Arbitral Tribunal to award damages having found that the action of VIPL in terminating the agreements was illegal. This Court also finds no infirmity with the decision of the Arbitral Tribunal in awarding the refund of consideration paid by JBPL alongwith interest.

19. The contention that the impugned award is without jurisdiction as the agreements in question (Space Buyer Agreements) do not

mention any arrangement regarding an escrow account, is also unmerited.

20. The findings of the Arbitral Tribunal with regard to the escrow account and the settlement — although of not much relevance — were rendered in the context of the pleadings of the parties and the issues struck on that basis. It is also relevant to state that the relief granted by the Arbitral Tribunal is not based on any finding relating to the escrow account or the settlement arrived at between the two groups. Thus, this Court finds no ground to interfere with the impugned award.

21. The contention that the Arbitral Tribunal had erred in holding that the termination of the agreements was illegal is also unmerited. The Arbitral Tribunal had after appreciating the evidence concluded that there was no breach on the part of the JBPL as alleged by VIPL and, therefore, its action in terminating the agreements on the basis of such alleged breach was illegal.

22. The findings that JBPL had not breached any of its obligations under the agreements in question are the findings within the jurisdiction of the Arbitral Tribunal. Such findings are based on material placed on record and cannot by any stretch be stated to be patently illegal or perverse.

23. It is well settled that the scope of judicial review under Section 34 of the Act is limited and an Arbitral Award cannot be interfered with except on the grounds as set out under Section 34 of the Act. The

impugned award is neither opposed to public policy nor can be stated to be patently illegal.

24. In view of the above, the above petitions are dismissed as unmerited. The parties are left to bear their own costs.

MARCH 19, 2018
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VIBHU BAKHRU, J

