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

Decided on 22nd February, 2021

+ **O.M.P. (COMM) 71/2021**

M/S BLS SUMER JOINT VENTURE Petitioner
Through **Ms. Pratibha Upadhyay**
Dwivedi, Adv.

versus

M/S RANGOLI BUILDTECH PVT. LTD. Respondent
Through

CORAM:
HON'BLE MR. JUSTICE C .HARI SHANKAR

JUDGEMENT (ORAL)

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22.02.2021

1. This petition, under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "1996 Act"), is directed against an arbitral award dated 21st March, 2020.

2. The dispute emanated out of an Agreement to Sell, dated 20th June, 2019 whereunder the respondent agreed to sell 2500 sq. yds land to the petitioner for a consideration of ₹ 30 crores. On the same day, the petitioner paid ₹ 7,42,50,000/- as Earnest Money Deposit (EMD), for execution of the contract, and it was agreed between the parties that the remaining amount of ₹ 22.5 crores would be paid by the petitioner in three installments every two months i.e. within six months of execution of the Agreement, on or before 20th December,

2019. The Payment plan, as contemplated by the Agreement was thus:

S.No.	Date	Amount
1.	On or before 20.08.2019	₹7,50,00,000/-
2.	On or before 20.10.2019	₹7,50,00,000/-
3.	On or before 20.12.2019	₹7,50,00,000/-

3. It is undisputed that the petitioner submitted a cheque for ₹ 7,42,50,000/- to the respondent, towards EMD, but, immediately thereafter, wrote to the respondent on 21st June, 2019 requesting the respondent not to present the cheque. The respondent apparently did not present the cheque.

4. There appears to be continuous default on the part of the petitioner in making the payment in accordance with the aforesaid payment plan, resulting in demand letters having been addressed by the respondent to the petitioner on 1st August, 2019, 30st August, 2019, 31st October, 2019, and 8th December, 2019. This was followed by a Show Cause Notice dated 20th December, 2019, whereby the respondent required the petitioner to show cause the Agreement to Sell be not cancelled and the EMD of ₹ 7,42,50,000/-, furnished by the petitioner, be not forfeited.

5. There was no response from the petitioner. Consequently, on 31st December, 2019, the respondent terminated the Agreement to Sell and forfeited the earnest money deposit.

6. On 8th January, 2020, the petitioner invoked the provision for O.M.P. (COMM) 71/2021

arbitration, as contained in the Agreement to Sell, resulting in the appointment of an arbitrator to arbitrate on the disputes between the petitioner and the respondent.

7. The petitioner argued, before the learned arbitrator, that the respondent ought not to have forfeited the earnest money deposited by the petitioner, as the petitioner had repeatedly requested for extension of time to make payment in accordance with the payment plan contemplated in the Agreement to Sell. It was pleaded that the respondent actually intended to “usurp” the EMD provided by the petitioner.

8. The findings of the learned arbitrator are as under:

“19. I am not convinced with the contention of the Claimant that its right as a Purchaser remains active and alive for not complying with the terms of the Agreement. Accepting such an argument would mean that the Agreement is of no significance, it would be as if the Agreement was never entered into between the parties. Accepting such a contention, as correctly pointed out by the Learned Counsel for the Respondent in their oral arguments, would tantamount to deviating from the terms of the contract between the Parties which is not permissible in law. It is an admitted position of the Claimant that the Agreement was entered into and executed by it. The Claimant has failed to provide any documentary proof in support to convince the Arbitrator with regard to any wrongdoing on part of the Respondent.

20. It would be apposite to clarify here that even the contention of the Respondent that it was the Claimant which approached and showed interest purchasing a part of the Said Plots is also devoid of any merit as the Respondent has failed to produce any evidence in this regard. A perusal of the pleadings submitted by the parties show that both the parties are not challenging the validity of the Agreement but the

intent of entering into such agreement. The question of intention of the parties prior to execution of an Agreement, where the terms of the contract are categorical, is beyond the scope of adjudication of the Arbitrator and in my view such an exercise is not permissible under law. The fact that the parties admit to the execution of the Agreement and that neither of the parties challenge such execution is sufficient to uphold the validity of the Agreement.

21. The contention of the Ld. Counsel for the Claimant that it has been able to clearly point out the provision under the Agreement whereby the Claimant could make the delayed payment of instalments as agreed and undertaken therein. In fact, a perusal of the letter dated 15.10.2019 and 01.12.2019 further substantiates the fact that the Claimant has admitted its obligation to make payment of the instalments as per terms of the Agreement and that the Claimant had admitted its inability to make the necessary payments to the Respondent within the stipulated time and has only sought extension of time and undertook to pay the balance instalments till 31.01.2020.

22. I am further not impressed with the contention on behalf of the Claimant that the forfeiture of Rs. 7,42,50,000/- (Rupees Seven Crores Forty Two Lakhs Fifty Thousand Only) by the Respondent was not justifiable. Since no further amounts have been paid by the Claimant under the Agreement, I find that there is a clear breach on part of the Claimant of Clauses of the Agreement and the consequences for the said breach are unambiguously provided under Clause 10 of the Agreement i.e. the right of the Respondent to forfeit the entire amount of Rs.7,42,50,000/- (Rupees Seven Crores Forty Two Lakhs Fifty Thousand Only). The Ld. counsel for the Respondent is right in his contention that if the Claimant had paid the amounts due in instalments as per Schedule I of the Agreement there would have been no default and no breach can be attributed to the Claimant. Also the contention of the Ld. counsel for the Claimant that the instalment amounts as agreed under Schedule I to the Agreement were not paid due to financial constraints at its end unfortunately does not support the case of the Claimant to challenge the forfeiture done by the Respondent.

23. In light of the aforementioned observations with regard to the respective contentions raised by the Claimant and the Respondent, and the submissions made by the Counsels for the parties, it is held that the cancellation of the Agreement to Sell of the Claimant with regard to the Said Land by the Respondent is valid and in accordance with the provisions of the Agreement. Further, since the Claimant failed to make the payments as per the terms of the Agreement thus was in clear breach thereof, the Respondent in terms of the provisions of the Agreement has rightly forfeited the earnest money paid as advance by the Claimant. Thus, it is held that the forfeiture of the earnest money of Rs.7,42,50,000/- (Rupees Seven Crores Forty Two Lakhs Fifty Thousand Only) by the Respondent along with the amount of tax deducted at source, is valid and within its right and scope as provided under the Agreement.

24. In view of the aforesaid finding, there is no question of any refund of the aforesaid amount to the Claimant. The Claim of the Claimant is hence dismissed with the aforesaid observations and the parties are left to bear their own costs with regard to the present arbitration. One separate original set each of this Award shall be provided to both the parties for their record.”

9. The present petition assails the aforesaid award dated 21st March, 2020 of the learned arbitrator.

10. Ms. Pratibha Upadhyay Dwivedi, learned counsel for the petitioner, only advances one argument, which is that, given the fact that the petitioner was placed in dire financial circumstances, and had repeatedly asked for extension of time, the respondent ought not to have forfeited the EMD.

11. This is merely in the nature of a mercy plea. By no stretch of imagination can it constitute a justifiable basis to interfere with the

arbitral award, especially in view of the law, in that regard, enunciated by the Supreme Court in *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*¹. The findings of the arbitrator cannot be said to suffer from perversity or as contrary, in any manner, to the covenants of the Agreement to Sell. Nor can it be said to be violative of any law laid down by any judicial authority or otherwise contrary to public policy.

12. It is well settled that the scope of Section 34 of the 1996 Act is extremely limited and that Courts would not interfere with arbitral awards, even if findings in the arbitral awards may, to the perception of the Court, be erroneous.

13. In the present case, I find no reason to interfere with the impugned award of the arbitrator. The petitioner having been repeatedly in default of making payments in accordance with the Agreement to Sell, no fault can be found with the respondent in seeking to terminate the agreement or forfeit the EMD. The respondent could not be expected to wait *ad infinitum*, for the petitioner to make payments in accordance with the agreement.

14. No ground, meriting interference with the impugned award, can be said to exist.

15. Accordingly, the petition is dismissed *in limine* with no orders as to costs.

¹ (2019) 15 SCC 131

**I.A. 2659/2021 (Section 151 CPC for exemption), I.A. 2660/2021
Section 5) and I.A. 2661/2021 (Section 36 (2,3))**

In view of the order passed in the petition, these applications do not survive for consideration and stand disposed of.

C.HARI SHANKAR, J

FEBRUARY 22, 2021

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HIGH COURT OF DELHI



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