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

Judgment pronounced on: 14.08.2023

+ **O.M.P. (COMM) 93/2021 & I.A. 3418/2021**

M/S MELLENIUM REALTECH PVT LTD Petitioner

Through: **Mr. Jugal Bagga and Mr. Sumit Kaushik, Advs.**

versus

M/S OPAQUE INFRASTRUCTURE PVT LTD Respondent

Through: **Mr. Harish Malhotra, Sr. Adv. with Mr. Rajender Agarwal and Mr. Anoop Kumar, Advs.**

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

SACHIN DATTA, J.

O.M.P. (COMM) 93/2021

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (the “A&C Act”) is directed against the award dated 20.11.2020 (the “impugned award”). The petitioner herein was the respondent in the arbitration proceedings whereas the respondent herein was the claimant.

FACTUAL BACKGROUND

2. The disputes between the parties arose in the context of a Collaboration Agreement dated 07.11.2011. The subject matter of the Collaboration Agreement was a land (plot) admeasuring 1148 Sq. Yards,



situated in Ishwar Nagar, Mathura Road, New Delhi.

3. Vide the said Collaboration Agreement/MoU (the “said agreement”), it was agreed that the respondent/claimant, in addition to bearing the cost of construction/development of the aforesaid plot, would pay a sum of Rs. 5.2 crores to the petitioner (the owner of the plot). A sum of Rs. 50 Lakhs was paid at the time of signing of the said agreement, followed by further payment/s, as noticed in the impugned award, as under:

“(a) A sum of Rs.1.50 Crore (Rupees One Crore Fifty Lakh) when the Owner gets the building plans sanctioned/approved from the concerned department and Owner was to execute registered Special Power of Attorney in favour of the Claimant (Builder) before the concerned authority and the Respondent (Owner) was to handover vacant physical possession of the property to the Builder for the purposes of constructing the building - Cl. 7 read with Cl.(V-c) and Cl.(V-e);

(b) Further sum of Rs.3.20 Crore (Rupees Three Crore Twenty Lakh) was to be paid by the Claimant (Builder) to the Respondent (Owner) in four equal installments within 120 days, from the date of intimation of approval/sanction of the building plans by the Respondent to the Claimant. The Agreement also provided that if the Claimant fails to pay the above amount to the Respondent within the said time of 120 days, the Claimant would get one month’s grace period, subject to penalty of Rs.25 lakh and thereafter, the Respondent was entitled to rescind the Agreement and the possession of the Property/Plot could be taken back by it. The Agreement also provides that after rescinding the Agreement, the Respondent shall return the total amount already paid by the Claimant (Builder) to the Respondent (Owner) Cl.-(V-d).”

4. It was the case of the respondent/claimant in arbitration that the petitioner/owner never sent any intimation about the approval/sanction of the building plans and was able to prolong the sanctioning of the plan on one pretext or the other. Ultimately, the respondent/claimant sent a registered letter to the petitioner/owner dated 07.03.2013 inquiring about the status of sanction of the building plans. Subsequently, in a communication dated



22.03.2014 sent on behalf of the petitioner/owner, it was contended that the respondent/claimant was to provide document/s to enable the petitioner to verify its credentials, financial status and their ability to execute the project. The said letter sought to terminate the agreement dated 07.11.2011 for non-supply of the said documents. It was contended by the respondent/claimant that alongwith the said letter, the petitioner/owner also sent a photocopy of a cheque of Rs. 50 Lakhs towards return of the amount received at the time of the signing of the said agreement. On the other hand, the petitioner/owner's case was that it had sent a cheque of Rs. 50 lakhs in favour of the respondent/claimant but it was deliberately not encashed.

5. Vide communication dated 02.07.2014, the respondent/claimant reiterated that it was always ready and willing to fulfil its obligations under the said Collaboration Agreement dated 07.11.2011. It was further stated as under :

“.....

Please note that we have been ready with the money at all times and we are still ready and willing to pay you the money in terms of the collaboration agreement provided you hand over the possession of the property and also the sanctioned plan of the said property. In view of this situation, you have no authority whatsoever to negotiate with any one regarding sale of the said property. In this regard, we met at least 7 or 8 times during the month of June, 2014 but all the times you have been avoiding and now you have come out with the clear intention that since the prices have increased therefore, you want to avoid enforcement of the said agreement which is not permissible in law.

In view of the said situation, we are left with no alternative than to call upon you by means of this notice to intimate us forthwith the status of the sanction of the plan for the purpose of construction of the said plot of land. In case you are unable to do the same, authorise us to get the needful done. Furthermore, we are willing to make payment of Rs. 1.5 crores immediately upon sanction of the plan and handing over of possession to us, as mentioned in the agreement and are also willing to make further payment, as provided in the said collaboration agreement. Please note that there exists a valid and subsisting collaboration agreement between you and us and therefore you have



no authority whatsoever to deal with any third person in regard to the said plot of land except with us in terms of the collaboration agreement and accordingly we request you to refrain yourself from dealing with the said property with anyone.

That since you have started raising disputes in regard to the fulfillment of your obligation under the said agreement therefore, in case you do not agree to the fulfillment or your obligation in terms of the collaboration agreement and still dispute your liability to fulfill the same then in that eventuality please intimate us names of three retired judges of Delhi High Court so that if possible to agree for a mutually appointed arbitrator in terms of the agreement and refer the disputes to such mutually appointed arbitrator for arbitration.

Accordingly we request you to treat this notice for invocation of the arbitration. In case you fail to forward names of three retired judges of Delhi High Court then we shall be constrained to file a petition under Section 11(6) of Arbitration and Conciliation Act, 1996 for appointment of an independent sole arbitrator from the court.

.....”

6. In response, the petitioner, *vide* communication dated 14.07.2014 sent on its behalf, stated that the return of the amount of Rs. 50 lakhs was pursuant to an agreement with one of the Directors of the respondent. It was further contended that in view thereof, there was no occasion to appoint any Arbitrator.
7. In the aforesaid backdrop, disputes having been arisen between the parties, a petition under Section 9 of the A&C Act was filed in this Court, wherein, certain interim orders were passed; thereafter a petition under Section 11(6) of the A&C Act came to be filed, whereby a Sole Arbitrator was appointed to adjudicate the disputes between the parties.
8. In the arbitration proceedings, the respondent/claimant sought specific performance of the aforesaid agreement dated 07.11.2011; alternatively the respondent/claimant sought monetary compensation towards the losses suffered by it. The basis for the monetary claim was the difference between



the value of the property at the time of entering of agreement *vis-à-vis* at the time of making of the award, alongwith refund of Rs. 50 lakhs (paid to the petitioner/owner) with interest. The petitioner/owner's case in the arbitration proceedings was that the specific performance, being a discretionary relief, could not be granted under Section 14(b) and (d) of the Specific Relief Act, 1963. Further, it was stated that the said agreement dated 07.11.2011 was terminated vide notice dated 22.03.2014 in view of the failure on the part of the respondent/claimant to supply documents showing its experience in the construction business and also its financial capability to execute such projects. It is emphasized that the petitioner/owner returned the amount of Rs. 50 lakhs paid by the respondent/claimant through cheque which was deliberately not encashed by the respondent/claimant. Thereafter, the said amount of Rs. 50 lakhs came to be deposited with the Registrar General of this Court pursuant to order passed by this Court, which amount was subsequently withdrawn by the respondent/claimant. It was also contended that the said agreement dated 07.11.2011, being an unregistered agreement, was not enforceable in law.

9. It was also contended that the said agreement was signed by the directors of the petitioner/owner, namely, Mr. Sanjeev Kumar Sharma and Mr. Vinod Kumar Sharma without holding any Board meeting and without any resolution of the company and that in view of the inter-se disputes between the shareholders/directors of the petitioner/owner, a petition also came to be filed subsequently before the Company Law Board under Section 357, 358, 401 and 403 of the Companies Act 1956, in which, a restraint order came to be passed against the said directors restraining them from creating any third party interest or enter into any Collaboration Agreement



without the consent of the other directors i.e. Mr. Deen Dayal Garg and Ms. Beena Mittal.

SETTLEMENT DURING THE COURSE OF ARBITRAL PROCEEDINGS

10. Significantly, during the course of the arbitral proceedings, on 18.09.2017, respective counsel for the parties who were appearing before the learned Sole Arbitrator, submitted that the matter had been fully and completely settled. This has been recorded in the impugned award. It has also been noticed therein that when the statement was made, Mr. Sanjay Kumar Mittal and Ms. Anjali Bhardwaj, directors of the petitioner/owner were also present and who also affirmed that the matter had been settled. The statements were also recorded to this effect, alongwith the statement of the learned counsel for the respondent/claimant. It has been specifically recorded in the award as under :-

“(iv) It appeared that the matter was fully and finally settled between the parties, on the terms and conditions recorded in the said proceedings which were duly supported by the statements of two directors of the Respondent company on oath, as noted above. The settlement appeared to have been lawfully arrived at and the same was accepted and the matter was adjourned to 26.09.2017 to enable the parties to file their respective Board Resolutions.”

11. The settlement having been arrived at, learned counsel for the petitioner/owner took some time to produce the Board resolution in support and reaffirmation thereof. Thereafter, instead of passing the requisite Board resolution, an application came to be filed by Mr. Vinod Kumar Sharma who claimed to be a director of the petitioner, wherein, it was stated that company has four directors namely Mr. Vinod Sharma, Ms. Anjali Bhardwaj, Mrs. Anshu Sharma and Mr. Sanjay Kumar Mittal “that calling



of the board meeting of their company was risky because of the attitude of Mr. Sanjay Kumar Mittal, one of their director”. It was further contended that formal board resolution was not necessary and that a consent award be passed.

12. In view of the inter-se disputes between the directors of the petitioner, the learned Arbitrator refrained from passing an award in the terms of settlement recorded in the proceedings dated 18.09.2017. However, it was eventually noted in the impugned award as under:-

“(x) In the facts and circumstances noted above, it was felt that it may not be appropriate to pass the consent Award on the terms of settlement recorded in the proceedings dated 18.9.2017 and the parties were required to lead evidence in support of their respective case. It may be mentioned here that after the Respondent’s failure to file the Board Resolution of its company in support of the settlement, Mr. S.K. Mittal, one of the directors of the Respondent, has been appearing through a different lawyer, but he did not challenge the settlement at all.”

13. Thus, none of the Directors of the Claimant sought to specifically challenge the settlement that was arrived at during the proceedings on 18.09.2017, even though the learned Arbitrator could not proceed to pass an award in terms of the settlement, for want of a valid Board resolution of the Claimant.

14. Consequently, the impugned award proceeds to adjudicate upon the claims sought to be raised on merits, after taking note of the aforesaid background and the pleadings/evidence on record.

THE AWARD

15. As regards, the issue as to whether specific performance could be granted of the said agreement dated 07.11.2011, the impugned award after taking note of Section 14(b) of the Specific Relief Act, came to the



conclusion that the specific performance could not be granted since the same would entail performance of a continuous duty which the Court/Arbitrator could not supervise. In reaching this conclusion, learned Arbitrator closely scrutinized the terms of the said agreement dated 07.11.2011 and the obligations imposed thereunder on the respective parties.

16. The Arbitrator also took note of the stand of the learned counsel appearing for the petitioner/owner in the arbitral proceedings stating that the petitioner/owner had no objection to granting specific performance. The impugned award notes the inter-se conflict between the directors of the petitioner and holds as under:-

“(v) In the above back ground, the argument of Mr. Bagga cannot be accepted, for more than one reason. Firstly, there is no such plea in the Statement of Defence and no oral evidence to this effect has been led. The argument being against the pleadings has to be rejected. Secondly, the Respondent during the proceedings, settled the matter and in terms of the settlement it agreed to pay a sum of Rs.1.65 crore to the Claimant towards full and final settlement of its claim as noted in the proceedings dated 18.09.2017. However, the consent Award could not be passed because of the Respondent’s inability to file the board resolution because of the inter se dispute amongst the directors of the Respondent. In view of the same, the parties were forced to go through the trial and the proceedings were delayed by further period of about three (03) years.

(vi) The plea now being put forth by the Respondent to grant specific performance of the contract to the Claimant is an afterthought and not bonafide. It is evident from the fact that the directors could not even arrive at consensus on passing a board resolution to be filed in these proceedings to enable settlement of the dispute with the Claimant. This was despite the fact that individually they had agreed on the terms of settlement, but collectively could not sit together to pass a board resolution, so as to bind the company. Hence, the concession now being offered is liable to be rejected.

(vii) Here under the Agreement/MoU completion period of construction was projected at 18 months but it may take much longer. The type of construction, quality of construction, material used, floors, frontage, wood work, steel work, plumbing and electrical work etc. which may vary in rates, would require continuous monitoring during



the execution of the project. The process of construction of a project of the given size is a long drawn process and the performance of which involves the performance of a continuous duty which the court cannot supervise. In view of the above, the specific performance of the Agreement/MoU dated 07.11.2011 cannot be specifically enforced and the same is rejected.

(viii) The alternative relief made by the Claimant for an award for damages for the losses suffered by them would be considered separately at the appropriate stage in the award."

17. Accordingly, the following conclusions were reached in the impugned award:-

"CONCLUSION (I):

For the foregoing reasons, on the facts at hand, it is held that the relief of Specific Performance of the Agreement/MoU dated 07.11.2011, by the Respondent cannot be awarded and same is rejected. However, whether the Claimant is entitled to recover damages from the Respondent for the losses suffered by it, would be considered separately at appropriate stage in the award."

18. As regards, the nature of the said agreement and as to whether the same was mandatorily required to be registered or not, it has been held in the impugned award as under :-

"(ii) The perusal of various clauses of the said Agreement/MoU dated 07.11.2011 clearly show that it does not create any interest of the Builder in the immovable property i.e. Plot in question which remains is the hands of the respondent. Even the caption of the Agreement is 'Collaboration Agreement/MoU', which shows that it was a Memorandum of Understanding between the parties and neither a sale nor transfer of property. Therefore, registration of the above said Agreement was not compulsory under section 17(2)(v) of the Registration Act, 1908. There is no merit in the Respondent's said plea and the same is rejected."

19. Accordingly, the impugned award concludes as under in this regard:-

"CONCLUSION (II):

For the foregoing, it is held that the registration of the Agreement/MoU dated 07.11.2011 between the parties, under section 17(2)(v) of the Registration Act, 1908 was not compulsory."



20. After closely scrutinizing the agreement dated 07.11.2011 in question, the impugned award further proceeds to hold as under :-

“CONCLUSION (III):

For the foregoing reasons, it is held that the Collaboration Agreement/MoU dated 07.11.2011 between the parties is a concluded Agreement and the respondent's contention to the contrary has no merit and the same is rejected.”

21. As regards the contentions of the petitioner/owner to the effect that the agreement dated 07.11.2011 could not fructify in view of the failure on the part of the respondent/claimant to supply requisite documents showing its financial credit worthiness, experience etc., and the contentions of the petitioner/owner as regards the circumstances in which the letter dated 22.03.2014 came to be issued by it, the impugned award, after closely scrutinising the relevant document/evidence on record, concludes as under:-

“CONCLUSION (IV):

For the foregoing reasons, it is held that the Respondent's defence as per its letter dated 22.03.2014 that (a) the Agreement/MoU dated 07.11.2011 was kept pending as the Claimant failed to supply the documents showing its financial credit worthiness and experience in the construction of similar projects, and as per its letter dated 14.07.2014 and (b) the matter was settled with Mr. Taskeen Hussain Siddique, Claimant's former director, who returned the original of the said Agreement/MoU to the Respondent and a cheque of Rs.50 Lakh was sent to the Claimant are not proved by any cogent evidence and the same are rejected.”

22. As regards the validity of the termination sought to be effectuated by the petitioner/owner vide communication dated 22.03.2014, it was held as under:-

“(i) It is evident from the above, that the Respondent after entering into the Agreement dated 07.11.2011 (Ex.PW-1/2) failed to perform its obligations in as much as, it did not apply and get the plans of the building sanctioned within the stipulated period of 60 days as per Clause-V(c) of the agreement or within a reasonable period thereafter. It is pertinent to mention here that SDMC vide letter



dated 24.01.2013, sanctioned the building plans on the Respondent's application dated 29.06.2012 (Ex.RW-1/7). Thus, it is absolutely clear that the Respondent failed to even apply for sanctioning of the building plans within 60 days as stipulated under the Contract between the parties. Even after the building plans were sanctioned by the SDMC vide letter dated 24.01.2013, the Respondent did not inform the Claimant despite specific request for the same vide Claimant's letter dated 07.03.2013 (CW-1/4).

(ii) The defence taken by the Respondent in its letter dated 14.07.2014 that the matter was settled with Mr. Siddique, director of the Claimant who returned the original agreement and a cheque of Rs.50 lakh was sent to the Claimant has already been rejected as an afterthought.

(iii) In view of the above, it is held that the termination of Agreement/MoU dated 07.11.2011 by the Respondent vide its letter dated 22.03.2014, is illegal, not sustainable in law and the Respondent is liable to suffer the consequences thereof."

23. Accordingly, it was concluded as under:-

"CONCLUSION (V):

For the foregoing reasons, it is held that the termination of Collaboration Agreement/MoU dated 07.11.2011 by the Respondent vide its letter dated 22.03.2014, is illegal, not sustainable in law and the Claimant is entitled to recover the damages from the Respondent for the losses suffered by it. The Claim No.3 is decided accordingly."

24. As regards the damages and interest to which the respondent/claimant was entitled, the Arbitrator took note of the statements made by the representatives of the parties during the proceedings held on 18.09.2017 which, according to the award, was the best available evidence. Importantly, for the purpose of working out the monetary entitlement of the respondent/claimant, it was noticed as under:-

"(vi) It may be recalled that the Consent Award on the terms and conditions, noted in the proceeding dated 18.09.2017 could not be passed, as the Respondent failed to produce the Board Resolution of its company approving the settlement despite repeated opportunities, because of the inter-se disputes amongst the directors of the Respondent company. In this background, the parties were required to lead evidence.



(vii) It is also important to mention here that even during the trial, both the parties did not dispute the damages which the Claimant agreed to recover from the Respondent towards the losses suffered by it, and also the payment of interest. In the facts and circumstances noted above, the Claimant is held entitled to recover Rs1.65 Crore (Rupees One Crore Sixty Five Lakh only) as damages from the Respondent on account of the illegal and unlawful termination of the Agreement/MoU dated 07.11.2011 by the Respondent.”

25. For the purpose of assessing the entitlement of the respondent/claimant to interest, it was noticed that in terms of the settlement arrived at during the course of proceedings on 18.09.2017, the entire payment in terms thereof, was to be made by the petitioner/owner to the respondent/claimant by 30.12.2017. Taking this into account, it was concluded as under:-

“CONCLUSION (VI):

For the foregoing reasons, Claimant is held entitled to recover Rs.1.65 Crore (Rupees One Crore Sixty Five Lakh only) from the Respondent towards the losses suffered by it along with interest @12% per annum from 30.12.2017, till the date of this Award. The Claimant is further held entitled to recover interest @ 12% per annum on the total sum found due and payable under this Award from the date of the Award till the date of its recovery. The Claims No. 1 & 4 are decided accordingly.”

26. In addition to the aforesaid, costs amounting to Rs. 22 lakhs was also awarded to the respondent/claimant. The award also directs that till the payment of the aforesaid amount, the order dated 18.11.2014 whereby the petitioner/owner was restrained from selling or parting with the possession of the plot in question, would continue to operate till the payment of the awarded amount to the respondent/claimant.

SUBMISSIONS OF THE PARTIES

27. In the above conspectus, learned counsel appearing on behalf of the petitioner submitted as under:-



- i. It is contended that the award applies different standards of interpretation/s and is internally inconsistent on that count;
- ii. It is contended that the award is contrary to the terms of the agreement between the parties inasmuch as it wrongly holds that the registration of the agreement was not compulsory under the Registration Act, 1908.
- iii. It is contended that the agreement does not contemplate payment of any penalty/damages by the petitioner/owner and for this purpose, reliance has sought to be placed on clause (v)(c) which, while imposing the obligation on the petitioner/owner to get approval of the sanction plan within 60 days, prescribes no penalty on account of any delay in this regard. On the contrary, clause (v)(d) contemplates penalty upon the respondent/builder in the event of delay in payment.
- iv. It is contended that the impugned award ignores a vital piece of evidence inasmuch as it does not specifically take note of the response given by Mr. Anil Yadav, Director of the respondent/builder during the course of examination, wherein, it has been stated by the said director as under: -

*“Q17. Can you as of today construct the building and comply with the terms of the agreement?
A Yes, subject to revision of all the prices which we had quoted.”*

- v. On the basis of the above, it is contended that there was absence of continuous readiness and willingness on the part of the respondent/claimant, which vitiated its entire claim. It is contended that the award passed in favour of the party who could not establish its continuous readiness and willingness to perform the contract and



accordingly, the award is contrary to the fundamental policy of the Indian Law.

- vi. Lastly, it is contended that the respondent/claimant failed to establish any actual damage or loss and therefore, damages could not be awarded to the respondent/claimant.

28. *Per contra*, Mr. Harish Malhotra, learned senior counsel for the respondent has relied upon the findings rendered in the arbitral award and has contended that there cannot be a factual reappraisal of the said findings in these proceedings under Section 34 of the A&C Act. He further contends that interpretation of the relevant provisions of the contract is the domain of the Arbitrator; moreover, the interpretation accorded by the Arbitrator to the relevant provisions of the agreement between the parties is completely justified and is the only plausible view to take in the matter.

29. As regards, the damages awarded to the respondent/claimant, he submits that the Arbitrator is the master of the quality and quantity of the evidence and hence, the conclusions arrived at by the Arbitrator cannot be interfered with.

ANALYSIS AND CONCLUSION

30. At the outset, it would be apposite to take note of the scope of the present proceedings under Section 34 of the A&C Act.

31. The limited scope of interference under Section 34 of the A&C Act, 1996 has been oft reiterated in a catena of judgements. In ***Ssangyong Engg. & Construction Co. Ltd. Vs. NHAI***, (2019) 15 SCC 131, the Supreme Court has held that contravention of any Statute not linked to public policy or public interest, cannot be said to be subsumed within the scope of “fundamental policy of Indian law” so as to warrant any interference with an



arbitral award. It was also clarified by the Supreme Court that patent illegality as referred to in Section 34(2A) of the A&C Act refers to such illegality as goes to the root of the matter but it does not amount to mere erroneous application of the law. It was reiterated that re-appreciation of evidence, which is what an appellate court is permitted to do, is impermissible under Section 34. Further, construction of the terms of the contract falls within the domain of the arbitrator, unless the contract is construed in a manner that no fair minded or reasonable person would, and the arbitrator's view is not even a possible view to take.

32. The same principles have been recently reiterated by the Supreme Court in *UHL Power Co. Ltd. v. State of H.P.*, (2022) 4 SCC 116, *Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum*, (2022) 4 SCC 463 and *Reliance Infrastructure Ltd. v. State of Goa*, 2023 SCC OnLine 604.

33. In the factual backdrop of the present case, it is evident that the contentions sought to be raised by the petitioner/owner, tantamount to seeking a factual reappraisal and a merit based review of the award which is clearly beyond the scope of Section 34.

34. The award gives cogent reasons in support of each of its conclusions. While reaching the conclusion that specific performance could not be granted, the learned arbitrator took into account (a) the pleadings of the parties; (b) the conduct of the parties, particularly the factum of the settlement arrived at during the proceedings on 18.09.2017; (c) the *inter-se* disputes between the Directors of the petitioner and (d) the nature of the agreement. Clearly, the view taken by the Arbitrator is a plausible view. Selective reliance sought to be placed on cross examination of the respondent/claimant's witness cannot dislodge the conclusions arrive at in



the award. Moreover, in any event, it is impermissible in these proceedings to embark upon re-appreciation of evidence in the manner suggested by the Petitioner.

35. Likewise, while reaching the conclusion that the agreement dated 07.11.2011 was not compulsorily registrable and was in the nature of a concluded contract, the learned Arbitrator has construed the said agreement, taking note of the various covenants therein, and has noted that it has been duly stamped, signed and executed. The award rightly holds that non-preparation of the detailed construction specifications would not undermine the validity or conclusive nature of the agreement. The conclusion/s of the Arbitrator, which is based on an appreciation of the relevant factual conspectus, the nature of the agreement, and interpretation of its terms, cannot be faulted. It is impermissible to substitute the views of the Arbitrator in these proceedings. It cannot be said that the view taken by the Arbitrator is not even a possible view to take.

36. Similarly, the conclusion arrived at in the impugned award with regard to the scope and import of the communications dated 22.03.2014 and 14.07.2014 addressed by the petitioner and the conclusion that the purported termination of the agreement by the petitioner was illegal, is predicated on a purely factual appreciation of the sequence of events. Any factual re-appreciation is beyond the scope of these proceedings.

37. The impugned award rightly takes note of the conduct of the petitioner/owner in purporting to arrive at a settlement with the respondent/claimant during the course of proceedings held on 18.09.2017 and the fact that a consent award could not be passed only for want of a board resolution on the part of the petitioner/owner. Importantly, it has been



specifically noticed in the award as under:-

“(vii) It is also important to mention here that even during the trial, both the parties did not dispute the damages which the Claimant agreed to recover from the Respondent towards the losses suffered by it, and also the payment of interest.”

38. The impugned award rightly finds the respondent/claimant eligible for monetary compensation, once breach on the part of the petitioner stood established. There is neither any legal or contractual bar in this regard. The contractual bar sought to be inferred by the petitioner is based on a convoluted reading of the agreement.

39. Importantly, while assessing the monetary compensation to which the respondent is entitled, the learned arbitrator takes note of the conduct of the parties, and in particular, the stand of the parties during the proceedings before the learned Arbitrator on 18.9.2017 when a purported settlement was arrived at. Contrary to what has been submitted by the petitioner in these proceedings, it would have been wholly unwarranted and unjust to disregard the same. Nothing amiss is found in the conclusions arrived at by the learned arbitrator nor is there any infirmity in the impugned award warranting interference under Section 34 of the A&C Act, 1996.

40. In the circumstances, no merit is found in the present petition and the same, alongwith pending applications, is accordingly dismissed.

AUG 14, 2023/rp

SACHIN DATTA, J