



2024:DHC:7426



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

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**RESERVED ON –10.07.2024.
PRONOUNCED ON – 18.09.2024**+ O.M.P.(COMM) 519/2023, I.A. 25480/2023, I.A. 25481/2023, I.A.
25482/2023, I.A. 25483/2023**RAIL LAND DEVELOPMENT AUTHORITYPetitioner**Through: Mr. Vijay Hansaria, Sr. Adv. With
Mr. Shaurya Sahay, Mr. Aditya
Kumar, Ms. Kavya Jhawar, Adv.

versus

PARSVNATH DEVELOPERS LIMITED & ANR.RespondentsThrough: Mr. Rajiv Nayyar, Mr. Ciccu
Mukhopadhyay, Sr. Adv. With Mr.
Vijay Nair, Mr. Saurav Aggarwal,
Ms. Sakshi Kapoor, Mr. Anmol
Kumar, Mr. Kapil Rastogi, Adv.**CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

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J U D G M E N T

DINESH KUMAR SHARMA,J :

(A) BRIEF FACTS

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the arbitral award dated 21.04.2023 as modified vide award dated 15.09.2023.
2. The learned Arbitral Tribunal vide arbitral award dated 21.04.2023 allowed the refund of Rs. 132.12 Crores alleged to have been wrongfully retained by the petitioner. learned Arbitral Tribunal also allowed the reimbursement of expenses amounting to Rs. 8,84,40,925/- (Rupees Eight Crores Eighty-Four Lakhs Forty Thousand Nine Hundred and Twenty-Five) occurred by the claimant on the project. The cost of arbitration in a sum of Rs. 5,22,61,722/- (Five Crores Twenty-Two Lakhs Sixty-One Thousand Seven Hundred and Twenty-Two) was also awarded by the learned Arbitral Tribunal. Besides this the claimants were also held eligible for interest on the refund of Rs. 132.12 Crores as postulated in Section 31(7)(a) and Section 31(7)(b) of the Arbitration and Conciliation Act at the prevailing bank rate 6.50% percent interest per annum payable from 15.03.2017. Claim No. 4 and 5 were rejected by the learned Arbitral Tribunal. The award was modified vide order dated 15.09.2023 to the extent that the interest was awarded at 8.50% percent interest per annum instead of 6.50% percent interest per annum. Para 176 of the award was also corrected to the



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extent that the petitioner was directed to pay the claimant Rs. 1,47,46,70,059/- along with interest at the prevailing bank rate 6.50% interest per annum plus 2% per annum in terms of claim No.2 payable from 15.03.2017.

3. The petitioner i.e., RLDA (Rail Land Development Authority) was notified on 31.10.2006 and was brought into existence on 01.11.2006 to undertake the development of vacant land of Railways for commercial use on behalf of the parent Ministry to generate revenue through non-tariff measures and optimize the utilization of public property. Pursuant to this the petitioner floated the Request for Qualification (RFQ) document on 02.02.2010 for grant of Lease for development of land including redevelopment of existing Railway Colony at Sarai Rohilla - Kishanganj, Delhi. The bidders including the respondent joined the pre-bid meeting. The bid of the respondent for Rs. 1651,51,00,000/- (Rupees One Thousand Six Hundred Fifty-One Crore and Fifty-One Lakh only) was accepted being the highest bid and Letter of Acceptance dated 26.11.2010 was issued. The petitioner gave conditional approval to PPDPL (Parsvnath Promoters and Developers Private Limited) as SPV on 07.02.2011 for the subject project. The respondent paid the part payment amounting to Rs. 282,77,18,000/- (Rupees Two Hundred Eighty-Two Crore Seventy-Seven Lakh Eighteen Thousand) to the petitioner towards 1st installment of the Lease Premium on 29.03.2011 and remaining amount towards 1st installment was paid by the respondent on 31.03.2011. The penal interest towards delayed payment of the 1st installment was paid on



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11.06.2011 and the first installment was finally received by the petitioner on 19.12.2012.

4. Subsequently, the respondent furnished a performance bank guarantee ('PBG') for Rs. 82,57,55,000/- (Rupees Eighty-Two Crore Fifty-Seven Lakh Fifty-Five Thousand only) on 30.05.2013 and thereupon the DA (Development Agreement) for the project was executed between the parties on 31.05.2013. The DA was executed with claimant No. 1 (Respondent No.1) in the capacity of 'Selected Bidder' and claimant No.2 (Respondent No.2) in the capacity of 'Developer'. The respondents deposited Rs. 1166,65,85,913/- towards first installment, second installment and third installment by 22.08.2013. However, in the meanwhile disputes surfaced between the parties which resulted in the initiation of two arbitration proceedings. The first Arbitration was invoked by notice dated 19.11.2013, while the second Arbitration was invoked by notice dated 02.11.2015 during the pendency of the first arbitration. The brief detail of the first and second arbitration are as under:

Arbitration No.1

Date of Invocation 19.11.2013.

Date of constitution of the tribunal 04.01.2014.

Relief sought in Statement of Claim

- 1) *Hold that the Respondent was estopped from issuing the letter dated 13.07.2011 or withdrawing the approval of PPDPL as the SPV granted vide letter dated 07.02.2011 and that the letter dated 13.07.2011 was issued by the respondent without any basis whatsoever;*



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- 2) *Hold that the delay of 18 months, between 07.02.2011 and 03.08.2012, i.e., between the approval of PPDPL as the SPV and later PRLPPL as the SPV, is solely attributable to the respondent;*
- 3) *Hold that the delay of approximately 10 months from 03.08.2012 to 31.05.2013 in signing the DA after approval of the SPV was also attributable to the Respondent as the Claimant could not have signed the DA without the respondent acknowledging that the disputes raised by the claimant shall be considered by the respondent and it was only on 03.04.2013 that the aforementioned assurance was provided by the Respondent and prior to the aforementioned dated, the respondent had flatly refused to even consider the request of the claimants.*
- 4) *Consequently, hold that the aforesaid period of 28 months, between 07.02.2011 and 31.05.2012 ought to have been considered as ZERO PERIOD, for the purposes of the time-lines for payment of installments of Lease Premium and the due dates of payments of each of the installments of Lease Premium were liable to be postponed by 28 months;*
- 5) *Consequently, hold that the payments received by the Respondent both towards installments of Lease Premium as well as interest claimed thereon as detailed in Annexure C-89 above have been received by the Respondent much prior to and much in excess of the entitlement of the respondent.*
- 6) *Direct the Respondent to pay to the claimants an amount of Rs.134,10,08,192/- (Rupees One Hundred Thirty Four Crores, Ten Lakhs Eighty Two Thousand One Hundred Ninety Two only) towards interest on the amount received by the Respondent towards the 1st installment of Lease Premium prior to the entitlement of the Respondent.*
- 7) *Direct the Respondent to pay to the Claimants an amount of Rs. 5,19,87,505/- (Rupees Five Crores Nineteen Lakhs Eighty Seven Thousand Five Hundred and Five Only) towards refund of the amount received by the respondent towards*



“purported” delay in payment of the 1st installment along with interest thereon @ 18% per annum, amounting to Rs. 3,75,31,723/- (Rupees Three Crores Seventy Five Lakhs Thirty One Thousand Seven Hundred Twenty Three Only).

- 8) *Direct the Respondent to pay to the Claimants an amount of Rs. 118,09,42,767/- (Rupees One Hundred Eighteen Crores, Nine Lakhs Forty Two Thousand Seven Hundred Sixty Seven only) towards interest on the amount received by the Respondent towards the 2nd installment of Lease Premium prior to the entitlement of the Respondent.*
- 9) *Direct the Respondent to pay to the Claimants an amount of Rs. 21,91,79,408 (Rupees /- Twenty One Crores Ninety One Lakhs Seventy Nine Thousand Four Hundred Eight only) towards refund of the amount received by the Respondent towards “purported” delay in payment of the 2nd installment along with interest thereon @ 18 % per annum, quantified from 22.08.2013 to 15.06.2015, amounting to Rs. 7,15,54,571/- (Rupees Seven Crores Fifteen Four Thousand Lakhs Fifty Five Hundred Seventy One only).*
- 10) *Direct the Respondent to pay to the Claimants an amount of Rs. 156,35,68,224/- (Rupees One Hundred Fifty Six Crores Thirty Five Lakhs Sixty Eight Thousand Two Hundred Twenty Four Only) towards interest on the amount received by the Respondent towards the 3rd installment of lease premium prior to the entitlement of the Respondent calculated from 22.08.2013 till 15.06.2015.*
- 11) *Award the costs of the arbitration proceedings to the Claimant.*
- 12) *Pass any such other orders as this Hon'ble Tribunal may deem fit in the interests of justice, equity and good conscious and in the facts and circumstances of the present case.*
- 13) *The Claimant withdrew relief 4, 5, 7, 9 and 10 during the proceedings on the submission that the same are subject matter of the IInd Arbitration proceedings.*



Award:

Pronounced on 01.06.2018.

Finding of the Tribunal:

96.4 Thus the execution of the DA in a way drops curtain over all the disputes or differences which may have been there by expressly stipulating that both the parties having rightly fulfilled all their obligations, the DA was being entered into. The Claimants cannot claim that any dispute pre-execution of the DA would continue to survive post the DA. The Claimants would be deemed to have clearly given up any claim or claims against the Respondent pre the execution of the DA, if there were any. All the rights and obligations with effect from the date of the DA can be worked out only by reference to the terms and conditions of the DA and not away from it.

97. Thus on the amount of installments for the period on which the Respondent has retained the amount of installments having received it prematurely as the Claimants have alleged, the question of award of interest does not arise in as much as we have held the installments were bound to be paid on the due dates as agreed and that the Claimant No. 1 had no case to support its plea for postponing the date due for payment of installments,

98. For all the forgoing reasons we are of the opinion that the Claimants are not entitled to any relief. The claims are held liable to be dismissed and are dismissed accordingly.

Challenge:

Claimant has filed a Petition under Section 34 of the A&C Act, 196 challenging the Award dated 01.06.2018 bearing O.M.P. (COMM.) 395/2018 titled 'Parsvanath Developers Limited &Anr. V. Rail Land Development Authority', which is currently pending.

Arbitration No.II

Date of Invocation 02.11.2015.

Date of constitution of the tribunal 02.02.2016.

Relief sought in Statement of Claim



- 1) *Pass an award declaring that the Agreement stood terminated under Article 7.2.1 thereof as on the end of the day on 15.06.2015 on account of non-achievement of Financial Close;*
- 2) *Pass an award declaring that the Respondent's purported termination of the Agreement with effect from 23.02.2015 as communicated by letter dated 06.08.2015 was invalid and of no effect and, if deemed necessary to, quash the said letter;*
- 3) *Pass an award restraining the Respondent from encashing the Performance Bank Guarantee;*
- 4) *Pass an award against the Respondent and in favour of the Claimant No.2 in the sum of Rs. 1034,53,77,913/- (Rupees One Thousand Thirty Four Crores Fifty Three Lakhs Seventy Seven Thousand Nine Hundred & Thirteen Only) with interest @ 18% per annum from 16.06.2015 until payment.*
- 5) *Award the cost of the arbitration in favour of Claimants.*
- 6) *Pass any other of further order(s) or direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

Award:

Pronounced on 25.11.2017.

Finding of the Tribunal:

22. We do not find merit in the said argument raised by the Respondent as the extensions of time for achieving Financial Close were granted by the Respondent in terms of and subject to Article 7.1.1. The Development Agreement provides for extensions of period of Financial Close' to the Claimant, though at the 'sole discretion' of the Respondent. Thus, the extensions were in terms of the Development Agreement, not over and above it. The question of waiver could only be of any significance had the Development Agreement provided for a strict regime for achieving Financial Close. The said deduction finds further strength from Article 7.2.1 of the Development Agreement which clearly



provides for deemed termination in case the Financial Close was not achieved within the period 'set forth in Article 7.1.1'. It is reiterated that Article 7.1.1 provides for extension of time though subject to terms.

23. Further the Respondent argued that the Claimant had not executed the Substitution Agreement and the Escrow Agreement' in terms of Article 4.1.2(b) of the Development Agreement therefore, it cannot be allowed to 'pick and choose' its defaults to its own advantage and to terminate the Development Agreement. This argument cannot come to the advantage of the Respondent in the face of the proven fact that the execution of the Substitution Agreement and Escrow Agreement were part and parcel of the Financial Close.

24. Thus, in view of the foregoing analysis, this Tribunal is of the view that the Development Agreement stood terminated with effect from 15.06.2015 due to non-achievement of the Financial Close by the Claimant. It will be noteworthy to add that there was no Agreement subsisting after 15.06.2015.

25. Though the heart of the controversy has been settled herein above, we think it necessary to highlight the consequences of the termination of the Development Agreement due to 'Payment Default' under Article 29.3.2 as opposed to the 'Deemed Termination' of the Development Agreement under Article 4.2 and 7.2.1. This becomes significant in view of the admitted position that the Respondent had received almost 60 percent of the Lease Premium whilst still retaining the possession of the Project Land. It is also clear that the building/layout plans for the Project have still not been cleared by the concerned authorities, which has not been disputed by the Respondent, resulting in a deadlock. The termination of the Development Agreement under Article 29.3.2 allows the Respondent to forfeit the entire amounts paid to the Respondent by the Claimants till date i.e. Rs. 1166,65,85,913/- (Rupees One Thousand One Hundred Sixty-Six Crore Sixty Five Lakh Eighty Five Thousand Nine Hundred Thirteen only) as 'genuine pre-estimated loss and loss likely to be suffered' by the Respondent. Whereas the 'deemed termination' under Article 4.2



and 7.2.2 entitled Respondent to invoke the PBG as well as forfeit an amount of equivalent to 15 percent of the First Installment of the Lease Premium which comes out to be Rs. 132,12,08,000/- (Rupees One Hundred Thirty Two Crore Twelve Lakh Eight Thousand only).

27. The Respondent's insistence on the forfeiture off the entire amounts remains severely and critically unsubstantiated in the present case. We have no hesitation in holding that the Respondent can under no circumstances be allowed to forfeit the entire amount of Rs. 1166,65,85,913/- (Rupees One Thousand One Hundred Sixty-Six Crore Sixty Five Lakh Eighty Five Thousand Nine Hundred Thirteen only) as liquidated damages in absence of any validation through evidence produced by the Respondent.

28. We must at once point out that after due consideration of the pleadings, the evidence available on the record and the arguments advanced in the matter, we see no overlapping of claims raised before this Tribunal with the claims raised in the First Arbitration. The claims raised in the First Arbitration are limited to alleged delays caused in the execution of the Development Agreement and the consequent damages caused to the Parties. The scope of this arbitration is admittedly limited to the termination of the Development Agreement that its inception.

29. Thus, the Claimant is granted the relief of Declaration to the effect that the Development Agreement dated 31.05.2013 stood terminated under Article 7.2.1 thereof on 15.06.2015 on account of non-achievement of Financial Close. The Claimant is also granted Declaration to the effect that the Respondent's purported termination of the Agreement with effect from 23.02.2015 as communicated by letter dated 06.08.2015 is invalid and of no effect.

30. The Claimants have made a total payment of Rs. 1166,65,85,913/- (Rupees One Thousand One Hundred Sixty-Six Crore Sixty Five Lakh Eighty Five Thousand Nine Hundred Thirteen only) till date. As per Article 7.2.2, after deduction of the amount equivalent to the PBG of Rs. 82,57,55,000/- (Rupees



Eighty Two Crore Fifty Seven Lakh Fifty Five Thousand only) and 15 percent of the first Installment of the Lease Premium which is Rs. 49,54,53,000/-, the Claimants are entitled for reimbursement of Rs. 1034,53,77,913/- from the Respondent. As the amount fell due on 15.07.2015 (i.e. 30 days of the date of deemed termination on 15.06.2015), the Claimants are eligible for interest on the said amount. The Respondent's reliance on Article 29.8.5 is faulty as admittedly a Lease Deed has not been executed in the present case. Thus, in accordance with the Bank rates prevalent at the relevant time, the Claimants are awarded Rs. 1034,53,77,913/- along with four (4) percent interest per annum payable with effect from the 15.07.2015 till the date of recovery, as opposed to 18 percent interest prayed for.

31. It is only logical that the PBG dated 30.05.2013 of Rs. 82,57,55,000/- (Rupees Eighty Two Crore Fifty Seven Lakh Fifty Five Thousand only) is declared non est, even though the Claimants had sought only to restrain the Respondent from its encashment.

Challenge:

The Award dated 25.11.2017 was challenged by the Respondent under Section 34 of the A&C Act, 1996 bearing O.M.P. (COMM.) 72/2018 titled 'Rail Land Development Authority v. Parsvanath Developers Limited &Anr. Vide order dated 03.04.2018 the High Court dismissed the Petition with costs quantified at Rs. 50,000/- The Respondent thereafter preferred a Special Leave Petition before the Hon'ble Supreme Court of India bearing S.L.P (C) No. 13017/2019 titled 'Rail Land Development Authority v. Parsvanath Developers Limited &Anr.' Which also stood dismissed vide Order dated 08.07.2019.

Arbitration- III

Date of Invocation: 30.05.2018

Relief was sought in Statement of Claim on 26.02.2019



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On 26 February 2019, the Claimants filed a statement of claim seeking relief for the following:

- 1) Pass an award for a sum of INR 132.12 Crores that was to be retained by RLDA as part of Arbitration II award;*
- 2) Pass an award directing payment of interest @ 18% per annum on the sum of INR 132.12 Crores from 15 July 2015 to date of payment towards Claim 2;*
- 3) Pass an award for a sum of INR 80.06 Crores or such other amounts as may be assessed along with interest @ 18% per annum from the date of expenditure till date of reimbursement/payments by the Respondent towards Claim 3;*
- 4) Pass an award for a sum of INR 3,247. 27 Crores as on 15 February 2019 or such other amounts as may be assessed towards Claim 4; Pass an award directing payment of Pendente Lite and Future Interest @ 21.2% per annum compounded annually on Claim 4;*
- 5) An award of costs of the present arbitration proceedings to the Claimants, such amounts to include all fees and expenses paid to the Tribunal, all legal fees and expenses incurred from the stage of invocation of arbitration, proceedings under Section 11 of the Arbitration and Conciliation Act, 1996 and till the Award and costs of witnesses/experts and time spent by the personnel of the Claimants; and,*
- 6) Pass any such orders as the Tribunal may deem fit in the interest of justice, equity and good conscience and in the facts and circumstances of the present case.*

Award was pronounced on 21.04.2023.

X. RELIEF

The Tribunal granted the following reliefs to the Parties:



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<i>Claims</i>	<i>Awarded</i>
<i>Claim No. 1/Relief No. 1: Refund of the Amount of INR 132.12 Crores wrongfully retained by the Respondent</i>	<i>Refund of Rs. 132,12,08,000/-</i>
<i>Claim No. 2/ Relief No.2: Interest @ 18% p.a. on the wrongfully retained Amount of INR 132.12 Crores one month from the date of termination of DA i.e. 15th July 2015 till the date of payment</i>	<i>The Claimants are eligible for interest on the said amount as postulated in Section 31(7) and 31(7)(b) A&C Act. Accordingly, the Claimant is awarded interest at the prevailing bank rate six point five zero (6.50) percent interest per annum payable from 15th March 2017, being the date of conclusion of the cross-examination of the Respondent's Witness, till date of recovery, as opposed to eighteen (18) percent interest prayed for.</i>
<i>Claim No.3/ Relief No.3: Reimbursement of expenses amounting to Rs. 80,06,92,944/- (with interest @ 18% p.a.) incurred by the Claimants in the Project, which investment would not have been made had the Claimants not entered into DA.</i>	<i>Reimbursement of expenses amounting to Rs. 8,84,40,925/- incurred by the Claimant on the Project.</i>
<i>Claim No.4/ Relief No.4: Damages/ compensation arising from Respondent's fraud or misrepresentation or breach of Representations and warranties</i>	<i>Rejected</i>
<i>Relief No.5:</i>	<i>Rejected</i>



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<i>Pass an Award directing payment of Pendente Lite and Future Interest @ 21.2% per annum compounded annually on Claim 4.</i>	
<i>Relief No.6: Cost of Arbitration</i>	<i>Rs. 5,22,61,722/-</i>
	<i>Rs. 1,46,19,10,647/-</i>

5. The Respondent is stated to have invoked Arbitration IIIrd while the matter rested thus during the cross-examination of the petitioner's witness in the first arbitration in or around July 2016 onwards which concluded in March 2017, i.e; after the invocation of Arbitration IInd, the respondents became aware of various facts which were concealed by the petitioner. Such facts revealed that respondent had "*committed a fraud on the Claimants or alternatively had misrepresented facts to the Claimants or alternatively deliberately breached the representation and warranty obligations under the DA*".
6. During the arbitral proceedings an application under Section 16 of the Arbitration and Conciliation Act was filed seeking rejection of the claim on the ground of (a) Res-Judicata; (b) Estoppel, Waiver, Acquiescence; (c) Order II Rule 2; and (d) Non-referral of disputes to Conciliation. However, the application under Section 16 of the Arbitration and Conciliation Act was dismissed on 13.08.2020. The tribunal after recording the evidence of the parties and hearing the submissions returned detailed finding on the 12 issues framed by it vide order dated 20.10.2019.



7. The petitioner has challenged the said award in the present petition. It is pertinent to mention here that the petitioner has taken as many as 80 objections and has challenged the arbitration on 80 grounds which are contained in paragraph 17 of the petition under Section 34 of the Arbitration and Conciliation Act which runs from Para 17.1 to 17.80. The petitioner has challenged the impugned award predominantly on the ground that impugned award suffers from patent illegality in as much as the tribunal has recorded the finding that the Development agreement dated 31.05.2013 is vitiated by fraud and misrepresentation whereas the respondents have made claims under the terms of the said agreement in Arbitration I and II. It has been submitted that the challenge to the award in Arbitration-I is still pending consideration before this court in O.M.P. (COMM.) 395/2018. It is pertinent to mention here that all the three arbitrations were initiated by the respondents.
8. The petitioners have alleged that the Arbitral Tribunal has erroneously held that the agreement is vitiated by fraud and on misrepresentation on the ground that the project land was not demarcated in the revenue record, and this was the primary reason for the respondent's non-achievement to get approval of the layout from the Municipal Corporation. The petitioner submits that this finding is ex-facie contrary to the record. It has been submitted that the respondents invoked the Deemed Termination clause vide notice dated 22.05.2015 by which date there was no rejection of the layout plan by the Municipal Corporation or even thereafter.



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9. The petitioners have stated that the Municipal Corporation in the letter dated 28.07.2015 addressed to the respondents noted the observations of its law officer that there is no discrepancy in the land and the file was only closed on 01.06.2020 regarding approval of layout plan after the Corporation was informed that the Development Agreement has already been terminated.
10. The petitioner has alleged that the finding of the Arbitral Tribunal is based on non-existing facts. It has been submitted that the entire finding is based on the finding that the respondents came to know of the alleged fraud by the petitioner between July to March 2017 during the cross-examination of Mr. Jitender Kumar (RW-1) during Arbitration-I whereas the respondents/claimants neither in the pleading nor in the evidence stated as to what new facts came to their knowledge which can be constituted as fraud. It has been submitted that on the date of deemed termination by the respondent they had full knowledge of all the relevant facts which have now been branded as fraud /misrepresentation /breach of representation.
11. The petitioner submitted that the finding of the Arbitral Tribunal in this regard is entirely perverse and patently illegal as nothing new was deposed by RW-1 and the witness was confronted only with the existing documents. It has further been submitted that the finding of the Arbitral Tribunal regarding fraud and misrepresentation are also contrary to Section 17 and 19 of the Contract Act as in the statement of claim no material particulars of fraud, as required under section 17 of the Contract Act was pleaded. It has further been stated that no plea of reasonable diligence was pleaded or proved by the claimant as required



under section 19 of the Contract Act. It has also been submitted that the claimants had pleaded alternative pleas of fraud/misrepresentation / lack of representation and breach of contract which were self-destructive. It has also been submitted that *mens-rea* with material particulars of person and time was not pleaded.

12. The petitioner has further submitted that the claimant has clubbed fraud/misrepresentation and multiple breach of representation and warranties which itself is vague and evasive and self contradictory. It has been submitted that these are distinct legal principles and cannot be used interchangeably.
13. The petitioner submitted that the tribunal could only have arrived at a finding that the land was not capable of development only after the claimants have proved that there is a requirement of sub-division of land in revenue records as per applicable laws, or there is a requirement of sub-division of land with the municipal authority or DDA, or the petitioner knew of this requirement in law and made false representation to claimant. The petitioner submitted that none of these requirements were met by the respondent. The petitioner submitted that there was no concealment or withholding of information from the claimant and the material facts were disclosed in the tender documents. The petitioner has submitted that all the material facts were duly communicated while inviting bids and the claimant did not prove that any representation in the tender documents was incorrect.
14. The petitioner submitted that the finding of the tribunal that the petitioner withheld the title record is perverse and patently erroneous. It has further been submitted that the reference to the file noting of the



petitioner are misconceived. The Petitioner stated that in the first arbitration the identical claim of damages on identical grounds were raised by the claimant and even the petitioners were awarded a cost of Rs. 97 lakhs. Similarly, in the Arbitration-II the issue of termination of agreement and post-termination entitlements of parties have already been adjudicated and therefore there was no issue left to be determined in the facts of the case as the final entitlement of the parties under the Development Agreement (“DA”) has already been decided.

15. The petitioner stated that since the award in Arbitration-II has attained finality therefore all the questions regarding entitlements of the parties have subsumed in the same. The petitioner submitted that the claims made in the present arbitration should have been agitated in the previous arbitration. It has been submitted that even as per the case of the respondent the alleged fraud was discovered between 2016 to 2017 i.e., much prior to passing of the awards in the previous two arbitrations between the same parties and therefore the claims were also barred by the principle of constructive *res-judicata*.
16. It has further been submitted that even the award in Arbitration-I was passed on 01.06.2018 and award in Arbitration-II was passed on 25.11.2017 and therefore the said award should have been challenged on the ground of fraud as the claimant/respondent has allegedly discovered the purported fraud during the period July 2016 to March 2017. The petitioner has submitted that even there was no averment regarding fraud in the notice under Section 21 of the Arbitration and Conciliation Act served for initiation of the present arbitration. It has been submitted that such allegations were made for the first time in the



statement of claim filed on 26.02.2019 and between July 2016 to February 2019 there was not even a whisper from the side of the respondents.

17. The petitioner has further submitted that the claim is ex-facie barred by limitation. It has been submitted that the cause of action if any arose between 25.11.2010 to 28.08.2013 when the payment of installments was made. It has been submitted that no averment has been made for seeking exception as provided under the Limitation Act. It has also been submitted that there is no averment that the fraud could not have been discovered with reasonable diligence. Learned counsel submits that therefore the award should have been rejected on the ground of the limitation.
18. The petitioner submits that the learned Arbitral Tribunal has not given finding regarding the limitation. The petitioner further submits that all the land records Aks Shajra, Jamabandi, and Nakal Khatauni are public records under Rule 27 of the Delhi Land Revenue Rules, 1962 and accessible to the general public. The respondent was obliged to exercise the reasonable diligence. It has further been submitted that the right of the petitioner to forfeit Rs. 132.12 Crores has been admitted by the respondent in communication dated 02.11.2015.
19. It has been submitted that the claims raised by the respondent were barred by waiver and estoppels. The petitioner has submitted that the sum and substance of the case of the claimant is that the project land was not sub-divided/demarcated in the revenue records, which was reason for refusal of sanction of layout plans by municipal authorities. Alternatively, claimants have settled a case of misrepresentation/



multiple breach of representations and warranties however, the ingredients of fraud under Section 17 of the Contract Act have neither been pleaded nor proved nor is there any allegation of mala-fide intention or *mens-rea*.

20. It has been submitted that there is no pleading as to the specific representation which has been broken in any manner by the petitioner. The petitioner submits that in Arbitration-I the land issues have duly been considered and adjudicated and therefore, the present claim should have been rejected on the principal of constructive *res-judicata*. The petitioner submitted that in Arbitration-I the precise case of the claimant was non-demarcation and non-division of land. However, this was adjudicated by the arbitral tribunal inter alia holding all the issues pertaining to land are not delays or defaults cast by the petitioner and the claimant were not entitled to any lease or site parcel until the timely payment of lease premiums and signing of the DA after fulfilling the pre-requisites.
21. The petitioner has further submitted that claim 1 and 2 in arbitration-II were also 'directly and substantially' the same as has been raised in the present arbitration. It has been submitted that in arbitration-II the petitioner were held entitled to forfeit Rs. 132.12 Crores as damages for breach of obligation by claimant to attain financial clause along with 15% of the first installment of PBG under Article 7.2.2 of the DA.
22. The petitioner has submitted that the claim awarded to the claimant are barred by the principles of Order 2 Rule 2 r/w Order 23 Rule 1 CPC as the Claimant was bound in law to raise all claims in relation to the issue of termination and post termination entitlements in Arbitration-II.



It has further been submitted that no 'leave' has been obtained by the claimants in terms of Order 2 Rule 3 CPC and, therefore, there was no right to bring a claim on the basis of the so-called reservation. The petitioner submitted that even assuming there was no "actual knowledge" of alleged fraud, the claimant could have discovered the fraud with reasonable diligence well before the critical dates. Therefore, the question is not whether the Claimant had actual knowledge of the fraud sooner than June 2016 - March 2017; but whether they could with reasonable diligence have discovered the fraud and the burden of proof for this was on the claimant.

23. The petitioner has submitted that the case of the claimants is that they received some documents by way of RTI inquiry in July 2016 and the examination of these facts led to 'discovery of fraud' in March 2017. However, no such document has been placed on the record. The petitioner has stated that the claim of fraud is fictitious, bogus and clearly a case of afterthought. The claimants had voluntarily given their consent on true and correct representation and nothing was concealed from them.
24. The petitioner has also submitted that the claimants themselves were at fault in placing incomplete/inadequate documents for sanction plans before the municipal corporation. The petitioner has stated that even assuming without admitting even in the case of fraud the only option is to 'Void' the contract (Section 19 of the Contract Act). However, claimant did not exercise the option to void as per Section 66 of the Contract Act despite knowledge of land issues.



25. The petitioner stated that the claimants have not voided the contract by unilateral or by conduct at any point of time. The petitioner stated that it is settled law that if the fraud is discoverable by ordinary diligence, then it is not voidable. The petitioner states that the Claimant could have ascertained the status of land by basic due diligence. The petitioner stated that even otherwise, assuming without admitting that the contentions of the claimants are true in respect of concealment of 'inherent defects' with land, the claimant opted to affirm the agreement at various occasions and relinquished its right to elect out of an allegedly voidable agreement. It has been submitted that the claimant on the same set of facts in Arbitration I sought remedies under the DA i.e. compensation of delay and extensions of timelines for payment of lease premiums, thereby affirming the contract.
26. The petitioner further stated that the claimant is not entitled to any sum towards reimbursement of expenses allegedly incurred by the claimants in respect of the project. The claim for refund of these amounts is expressly barred by the provisions of the contract documents including the RFQ, Pre-bid meeting, RFP and the DA ('Contractual bar'). The petitioner has also submitted that the grant of cost of arbitration is patently illegal as the said amount represents litigation and arbitration expenses of Arbitration-I and II and not of present arbitration proceedings. The petitioner has also stated that the Tribunal vide order dated 15.09.2023 purportedly under section 33 of the Arbitration Act 1996 is ex facie beyond jurisdiction being passed beyond the period of limitation under section 33(3) of the Act.



(B) SUBMISSION ON BEHALF OF PETITIONER

27. Sh. Vijay Hansaria, learned senior counsel for the petitioner submitted that Letter of Acceptance (LOA) was issued by the petitioner in favor of the Respondent No. 1 granting lease for development of 10.9 hectares and redevelopment of 4.37 hectares for Rs. 1651.51 crores. Respondents paid a sum of Rs. 1166.65 crores to the petitioner towards the 1st, 2nd and 3rd installment including interest for the late payment during the period 25.11.2010 to 22.08.2013. The Development Agreement was executed between the parties containing detailed terms and conditions of the grant of Development Right on 31.05.2013. The Layout Plan was submitted the MCD on 05.03.2014 for approval after getting all title documents. Learned senior counsel submitted that Respondents submitted ownership related documents to the MCD on 30.06.2014 which included Aks Shijra, Khasra Khatauni and Jamabandi. Learned senior counsel submitted that on 11.11.2014 Respondents wrote to MCD giving the break-up of the total Railway land measuring 17.973 hectares and project land 15.27 Hectares on 11.11.2024. Learned senior counsel submitted that on 22.05.2015 Respondents issued a letter invoking deemed termination under Clause 7.2.2 seeking extension of one year for payment of remaining installments; and alternatively, refund after deduction of Rs.132 crores.
28. Learned senior counsel submitted that on 28.07.2015 MCD in its communication mentioned the opinion of the Chief Law Officer that “the proposal is not for the entire land of railway, but a portion of land given for development, so there is no discrepancy.” Learned senior counsel submitted that Petitioner terminated the Development



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Agreement under clause 29.8.2(b) and forfeited the entire amount of Rs. 1166 crores on 06.08.2015.

29. Learned senior counsel submitted that the Respondent filed a Statement of Claim in Arbitration II seeking an award for Rs. 1034.53 crores on 02.02.2016 and pleaded that the respondents are entitled to a refund of Rs. 132 crores and sought leave under Order II Rule 2 CPC to raise the said claim in separate arbitration proceedings. Learned senior counsel submitted that the Arbitral Tribunal passed an award in Arbitration-II on 25.11.2017 granting Rs. 1034.53 crores (Rs. 1166.65 crores - 132.12 crores) to the respondent. Admittedly, the award has attained finality up to Supreme Court.
30. Learned senior counsel submitted that the Respondent issued notice under section 21 of the Arbitration and Conciliation Act on 30.05.2018 invoking the present arbitration proceedings claiming Rs. 132 crores. In the agreement there was no allegation of fraud. Learned senior counsel further submitted that award in Arbitration-I was passed on 01.06.2018 wherein the claim was rejected by majority. The Respondent's application under Section 34 (OMP No. 395/2018) is pending consideration before this Court. Learned senior counsel submitted that in the present arbitration proceedings Respondent filed Statement of Claim on 26.02.2019 claiming Rs. 132 crores, Rs. 80 crores towards reimbursement of expenses and Rs. 3247 crores towards damages along with interest. Learned senior counsel submitted that Respondent only produced Sanjeev Jain as CW1 who made a general statement of fraud or alternatively misrepresentation or alternatively breach of representation.



31. Learned senior counsel submitted that the impugned award dated 21.04.2023 is liable to be set aside on the grounds mentioned herein above. Learned senior counsel submitted that the allegedly the respondent came to know about the fraud between July 2016 to March 2017. Even thereafter the Respondents continued their claims in Arbitration I and II under the terms of contract treating the same to be valid. Learned senior counsel submitted that in Arbitration II, a sum of Rs. 1034 crores have been awarded under clause 7.2.2 of the contract on 25.11.2017 which has attained finality up to the Supreme Court. Learned senior counsel submitted that it is settled proposition that a contract cannot be valid for certain claims and is void for other claims.
32. Learned senior counsel further submitted that the pleading of fraud in the SOC was vague and general in nature. It has been submitted that “*Mens rea*” is an essential ingredient of fraud under section 17 of the Contract Act and in the absence of specific pleading with precision, finding of fraud could not have been arrived at. Learned senior counsel submitted that it is a settled proposition that pre-requisite for application of Section 17 of the Contract Act is that the fraud must be pleaded with specificity, particularity and precision. Reliance has been placed upon *Bishnudeo Narain v. Seogeni Rai*, (1951) SCC 447, *Afsar Sheik v. Soleman Bibi*, (1976) 2 SCC 142, *Ranganayakamma v. K.S. Prakash*, (2008) 15 SCC 673, *Shanti Budhiya Vesta Patel v. Nirmala Jayprakash Tiwari*, (2010) 5 SCC 104.
33. Learned senior counsel further submitted that the fraud must be proved like any other criminal charge beyond any reasonable doubt. Hence, it has been submitted that except bald averment in para 7.30 and 9.8 of



SOC and an omnibus statement of CW1 in para 114, there is no material to record finding of fraud. Learned senior counsel submitted that the respondent was aware that the project land is a part of the larger railway land from the very beginning, or at least on the date of the submission of municipal plan on 05.03.2014; and in any event on 30.06.2014 when the ownership documents were submitted to MCD. Reliance has been placed upon *UOI v. Chaturbha M. Patel*, (1976) 1 SCC 747.

34. Learned senior counsel submitted that the Tribunal has erred in recording the alternative finding of fraud or misrepresentation as the same are two independent concepts defined in section 17 and 18 of the Contract Act. Learned senior counsel submitted that the respondent could have discovered the title documents with ordinary diligence within the meaning of exception to section 19 of Contract Act, as they are available in public domain. Reliance has been placed upon *Ramanathapuram Market Committee v. East India Corp*, 1975 SCC OnLine Mad 22, *LIC v. Rangnath Prasad Amal*, 1991 SCC Online Del 240, *Paragon Finance PLC v. DB Thakerar*, (1999) 1 All ER 400 and *Schweppe v. Closier*, (2017) EWHC 1486 (TCC).
35. Learned senior counsel further submitted that the plea of the respondent that the sanction of building plan was not granted by the MCD due to lack of demarcation or sub-division in the revenue record is actually based on no evidence. It has been submitted that there no requirement of demarcation/sub-division for sanction of plans. Learned senior counsel submitted that the municipal authorities never rejected the plan on the aforesaid ground or on any other ground. Learned



senior counsel invited the attention of the court to the opinion of Chief Law Officer of the MCD dated 28.07.2015 said that there is no discrepancy in land. Learned senior counsel submitted that in fact the respondents abandoned the project by invoking the deemed termination clause by its letter dated 25.05.2015.

36. Learned senior counsel further submitted that claim of Rs. 132 crores were specifically considered and rejected in Arbitration II up to the Supreme Court and is barred by *res-judicata*, and therefore the same could not have been awarded in the present award. Learned senior counsel submitted that the impugned award is in conflict with the award in Arbitration II which is affirmed by the Supreme Court. Reliance has been placed upon *Daryao v. State of U.P.* 1961 SCC OnLine SC 21, *Gulabchand Chhotalal Parikh v. State of Gujarat* 1964 SCC OnLine SC 99, *Satish Kumar v. Surinder Kaur* (1969) 2 SCR 244, *Hope Plantations v. Taluk Land Board* (1999) 5 SCC 590, *State of Karnataka v. All India Manufacturers Organisation* (2006) 4 SCC 683, *Asgar v. Mohan Verma* (2020) 16 SCC 230, *Himachal Sorang Power Ltd. v. NCC Infrastructure Holdings* (2019) SCC OnLine Del 7575, *Venture Global Engineering Ltd. v. Satyam Computer*, (2010) 8 SCC 660 and *Virgin Atlantic v. Zodiac Seats UK Ltd.* (2013) 3 WLR 299.
37. Learned senior counsel submitted that the respondent having acknowledged in Arbitration I and II that the petitioner is entitled to forfeit Rs. 132 crores is now estopped from claiming the said amount in present Arbitration. Learned senior counsel further submitted that the award of Rs. 132 crores is barred on the principle contained in Order II



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Rule 2 CPC which is a matter of public policy. Reliance has been placed upon *KV George v. Secy. to Govt. Water and Power Dept.* (1989) 4 SCC 595, *Gammon India v. NHAI*, 2020 SCC OnLine Del 659 and *Golden Chariot v. Mukesh Manika* (2021) SCC OnLine Del 3767.

38. Learned senior counsel further submitted that the claim is also barred by limitation since the cause of action arose when the Development Agreement was signed on 31.05.2013 and payment was made between 25.11.2010 and 25.08.2013. Learned senior counsel submitted that Section 21 notice was issued on 30.05.2018 and the claim pursuant to the said notice is ex facie time barred. It has been submitted that the alleged discovery of fraud from July 2016 to March 2017 as per para 9.8 of the statement of claim (SOC) was made only to overcome the limitation without any foundation. Reliance has been placed on *Shanti Conductors (P) Ltd. v Assam SEB* (2020) 2 SCC 677 and *State of Goa v. Praveen Enterprises* (2012) 12 SCC 581.
39. Learned senior counsel further submitted that the Tribunal could not have awarded costs allegedly incurred by the respondent in Arbitration I and II. In Arbitration I the petitioner was awarded a cost of Rs. 97 lakhs, and in Arbitration II parties were left to bear their own cost. Learned senior counsel further submitted that the Tribunal in exercise of power under section 33 could not have increased the rate of interest from 6.5% to 8.5%. It has further been submitted that the application under section 33 was made on 20.05.2023 and the Tribunal had jurisdiction to make correction within 30 days i.e. up to 18.06.2023; and thereafter the Tribunal became *functus officio*. Learned senior



counsel submitted that as per record no cognizance of application was taken by the Tribunal till 18.06.2023 and thus, invocation of power under section 33(6) is without jurisdiction. Learned senior counsel submitted that the gross miscarriage of justice has resulted from the impugned award directing payment of Rs.146 crores and is liable to be set aside by this Court. Reliance has been placed upon *Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd.* 2024 INSC 292.

40. Additionally, in the written submission filed by the petitioner dated 14.05.2024, it has been submitted that the claim of the respondent was based on the premise that the project land (15.5 Ha) is not subdivided and demarcated in the revenue record from the larger Railway Land (17.93 Ha) and as such the land is not capable of development and the petitioner committed fraud by suppressing the same. The petitioner has submitted that the absence of sub division and demarcation of project land was directly and substantially in issue in Arbitration I between the parties. Reliance has been placed upon Arbitration I Statement of Claim, Evidence of CW1 Mukesh Jain, Evidence of CW3 P K Jain, Majority Award, Dissenting Award and Section 34 application. The petitioner has submitted that both Arbitration I and III are based on the same grounds claiming different relief.

(C) SUBMISSION ON BEHALF OF RESPONDENT

41. Mr. Rajiv Nayyar and Mr. Ciccu Mukhopadhyay, learned senior counsels for the respondents submitted that the first arbitration was filed in connection with execution of DA wherein the claim of the respondent were rejected. Learned senior counsel submitted that



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subsequently the financial closure “Financial Close” could not be achieved despite extensions asked for and granted by the petitioner, because of the reason that there were problems relating to the land in question. Learned senior counsel submitted that ultimately the financial close could not be achieved upto the last extended date of 15.06.2015 and resultantly the Development Agreement got “deemed terminated” on 15.06.2015 before the last date for payment of the 4th installment on 22.06.2015. Learned senior counsel submitted that a dispute arose between the parties, on account of deemed termination of the DA on 15.06.2015 pursuant to which the respondents were entitled to a refund of Rs. 1034,53,77,913/- from the petitioner, which was after deduction of Rs. 132,12,08,000/- (the amount equivalent to the PBG of Rs. 82,57,55,000/- and 15 percent of the First Installment of the Lease Premium, i.e., Rs. 49,54,53,000/-) under Article 7.2.2 of the DA which forms the subject matter of second arbitration. Learned senior counsel submitted that the respondents had specifically reserved their right to claim Rs. 132.12 crores and which forms the subject matter of the present dispute against which the petitioner has filed the present petition.

42. Learned senior counsel submitted that after the award on arbitration-II was passed, which has attained finality upto the Supreme Court, the present arbitration was invoked by the respondents on 30.05.2018 based on illegal detention of INR 132 crores by the petitioner. The respondents had inter alia also sought for refund of the amounts retained as losses by the petitioner along with sum of Rs.3247,27,75,155/- towards losses on account of petitioner’s breach of



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its representations and warranties in respect of the land sought to be leased. Learned senior counsel submitted that the issue involved in the present arbitration “i.e., Third Arbitration” was based on fraud or misrepresentation when the respondents came to know only in March 2017. Learned senior counsel submitted that the grounds taken by the petitioner in the present case are outside the scope of Section 34 of the Act.

43. Learned Senior Counsels submitted that the award under challenge is a reasoned award and the learned Tribunal has taken a plausible view. Learned senior counsel submitted that in the present proceedings this court cannot re-appreciate the evidence and arrive on a different conclusion that what was arrived at by the learned Arbitral Tribunal. Reliance has been placed upon *Govt. of NCT of Delhi Vs. R.S. Sharma Contractors Pvt. Ltd.* [2023 SCC Online Del 8174], *Dyna Technologies (P) Ltd. Vs. Crompton Greaves Ltd.* [(2019) 20 SCC 1] and *MMTC Limited Versus Vedanta Limited* [(2019) 4 SCC 163].
44. Learned senior counsel submitted that in fact the endeavour of the petitioner in the present proceedings is to reargue the matter on merits and re-appreciation of evidence, which is just beyond the scope of Section 34 of the Arbitration and Conciliation Act. Learned senior counsel submitted that the learned Arbitral Tribunal has already dealt with the issue of land being incapable of development and fraud played upon by the petitioner by concealing the defects with land issues to the respondents. Learned senior counsel submitted that the learned AT has observed that in 2011 itself, the petitioner had identified certain **divergences/discrepancies** in the land which had been entrusted to it



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by the Northern Railway, and the petitioner was intending to seek clarification in the regard from Northern Railways. However, this information regarding the discrepancies was withheld from the respondents.

45. Learned senior counsel submitted that the internal file notings and letters subsequently written to the statutory authorities reveal this decision of the petitioner to demarcate the Khasra Nos. which the project land was comprised on. However, the petitioner did not succeed in doing so. Learned senior counsel submitted that the learned Arbitral Tribunal has rightly held that the non-disclosure of the essential facts within the knowledge of petitioner pertaining the absence of demarcation of the parcel of land on which development was to be carried out amounts either to fraud or to misrepresentation. Learned senior counsel submitted that had the respondent been aware of the fraud on misrepresentation of the petitioner prior to the institution of First Arbitration or Second Arbitration, the respondents would not have resorted to 'Deemed Termination' as the fraud or misrepresentation vitiates the entire contract. Learned senior counsel submitted that in the present arbitration the respondents had merely sought a refund of the amount already paid by the respondents to the petitioner toward Lease Premium on the basis that when there was no Grant, there could be no consideration and hence, the petitioner cannot retain any amount paid by the respondent to them. Learned senior counsel submitted that the learned Arbitral Tribunal vide the impugned award has only allowed the refund of the amount already paid by the respondents to the petitioner.



46. In respect to Order II Rule 2, learned senior counsel submitted that this plea was also taken before the learned Arbitral Tribunal which was rejected by speaking order inter-alia holding that the requisite conditions to attract Order-II Rule 2 were absent. Learned senior counsel submitted that even the petitioner in its statement of defence in Second Arbitration stated that the provisions of Order-II Rule 2 will not apply to arbitration and both the parties have proceeded on the premises that Second Arbitration was limited to the claims made therein as even petitioner did not make any counter claim seeking the amounts being forfeited by them. Learned senior counsel further submitted that the plea of limitation was heard considered and rejected by the learned Arbitral Tribunal. Learned senior counsel submitted that once the tribunal has rejected the same vide a detailed and reasoned order there is no jurisdiction of this court for re-appreciation of the same.
47. Learned senior counsel submitted that the plea of reasonable diligence was also considered and rejected by the learned Arbitral Tribunal by inter alia holding that any party having knowledge of a crucial of pivotal fact is legally duty bound to explicitly disclose it to the other. In respect of the constructive *res-judicata*, learned senior counsel submitted that this plea was also raised considered by the petitioner and rejected by the learned Arbitral Tribunal on the ground that it was raised only during the course of argument and without any pleading. In respect of the plea to *res-judicata* relating to first arbitration was also rejected by the learned Arbitral Tribunal and it was inter alia held that the award in Arbitration-I by the doctrine of sub-judice and not of *res-*



judicata. The plea of *res-judicata* with respect of the Second Arbitration was also rejected by learned Arbitral Tribunal by inter alia observing that the respondent's prayer in second arbitration was limited to the scope of seeking a refund of Rs. 1034,53,77,913/-.

48. Learned senior counsels submitted that in the present petition the petitioner is raising the same plea of claims barred by principles of waiver acquiescence, conduct and estoppels which was rejected by learned Arbitral Tribunal by inter alia holding that the respondent had issued the letters pursuant to deemed termination, wherein it called upon petitioner either to accept the proposal of the respondents for granting a further extension to it to pay the fourth installment off the lease premium, or in event of non-extension to reimburse the amounts paid by it after adjustments in accordance with clause 7.2.2 of the DA.
49. Learned senior counsels submitted that, therefore, it cannot be assumed that the respondents while issuing the letters were explicitly made aware of insurmountable impediment in the Project land caused due to the lack of clear demarcation. Learned senior counsels submitted that, therefore, inference of any admissions waiver or abandonment cannot be drawn from these letters, which were made "without prejudice." Learned senior counsels submitted that the learned Arbitral Tribunal has carefully dealt with the issue of whether the respondents are entitled to any sum towards reimbursement of expenses incurred by the respondents in respect of the project. Learned Arbitral Tribunal has awarded the amount after having being fully satisfied.



(D) FINDING IN ANALYSIS

50. The scope of the jurisdiction under section 34 of the Arbitration and conciliation act has repeatedly come up for discussion before the Courts.

51. In **MMTC Limited v. Vedanta Limited (2019) 4 SCC 163**, it was inter-alia held that: *the reasons for vesting such a limited jurisdiction on the High Court in the exercise of powers under Section 34 of the Arbitration Act has been explained in the following words: —*

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the —fundamental policy of Indian law would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., [1948] 1 K.B. 223 (CA)] reasonableness. Furthermore, —patent illegality itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.”

52. In **K. Sugumar v. Hindustan Petroleum Corporation Ltd. (2020) 12 SCC 539**, where it has been observed as follows:

“2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral



award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator.”

53. ***In Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. (2019) 20 SCC1*** , the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus:

“24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

54. ***In Dyna Technologies (P) Ltd.*** (supra), it was further inter alia held as under;

“25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning



provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.

55. In ***ParsaKente Collieries Limited v. Rajasthan Rajya Vidyut Utpadan Nigam Limited*** (2019) 7 SCC 236 , adverting to the previous decisions of this Court in *McDermott International Inc. v. Burn Standard Co. Ltd.* and *RashtriyaIspat Nigam Ltd. v. Dewan Chand Ram Saran*, wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside on this ground, it has been held thus:

“9.1It is further observed and held that 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. It is further observed by this Court in the aforesaid decision in paragraph 33 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. It is further observed that 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.”

56. Similarly, in ***South East Asia Marine Engg. & Constructions Ltd. [SEAMAC Limited] v. Oil India Ltd.***(2020) 5 SCC 164, it has been *inter alia* held that it is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. It was further *inter alia* held that:



“24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.”

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning. This Court in Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1 : 2019 SCC OnLine SC 1656] observed as under : (SCC p.12, para 25) 25. Moreover, umpteen number of judgments of this Court have categorically held that the Court should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act. [emphasis supplied]

22. It was also inter alia held in UHL Power Company Ltd.”s case (supra) that if the view taken by the arbitrator regarding the interpretation of the relevant clauses is both possible and plausible then merely because another view could have been taken, can hardly be a ground to interfere with the Arbitral award. Thus, a bare perusal of the settled legal proposition, it is crystal clear that the scope of the jurisdiction under Section 37 of the Act of this Court is very limited. Thus, we have to see whether, within this limited jurisdiction, the case of the appellant is sufficient to exercise that jurisdiction.”



57. In *Delhi Development Authority v. M/s Erore Resorts and Hotels Ltd.*(2022) SCC Online Del 978 : (2022) 290 DLT 397 in FAO (OS)(COMM)75/2022 2022/DHC/001247 (of which undersigned was a part delivered the judgment), it was inter alia held as under;

“20. The endeavor of the legislation is to make arbitration more responsive to the contemporary requirement as an alternative dispute redressal mechanism. One of the objectives is to minimize the supervisory role of the Courts. It has repeatedly been held by the Constitutional Courts that a court while dealing with objections under Section 34 of the Arbitration and Conciliation Act (hereinafter referred to as „the Act) does not sit in appeal over the arbitral award. The courts can exercise their jurisdiction to interfere and can travel on the well-settled limited grounds. An award can be set aside only if it is contrary to substantive provisions of the law or the provisions of the Act or against the terms of the contract. Interference can be made only if the award suffers from patent illegality. (M.V.Elisabeth vs. Harwan Investment and Trading Private Limited (1993) Suppl (2) SCC 433.

21. In Oil and Natural Gas Corporation Ltd. vs. Saw Pipes Limited 2003 SCC online SC 545, it was inter alia held that the award would 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. It was further inter alia held that illegality must go to the root of the matter. If the illegality is of trivial nature it cannot be held that award is against the public policy. The Apex Court said that Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court and the award is opposed to public policy and is required to be adjudged void.”

58. Thus, it is no longer *res integra* and position is well settled that there has to be minimum judicial intervention in this regard, the reference can also be made to Section 5 of the Arbitration and Conciliation Act,



1996 (Act). The Court can set aside the award only on the grounds which are available in Section 34(2) of the Arbitration and Conciliation Act. The Court keeping in mind, the contours of its jurisdiction has examined the award.

59. The Apex Court in ***Bombay Slum Redevelopment Corporation Private Limited vs. Samir Narain Bhojwani*** in Civil Appeal No. 7247/2024 vide its judgment dated 08.07.2024 inter alia held that the legislative intention as reflected in Section 19(1) of the Act, provides that an Arbitral Tribunal is not bound by the provision of the CPC. In ***Bombay Slum Redevelopment Corporation Private Limited vs. Samir Narain Bhojwani (Supra)*** it was further inter alia held that the object of the Arbitration Act is to provide an Arbitral procedure that is fair, efficient and capable of meeting the needs of specific arbitration. It was further inter alia held that the object is to ensure that arbitral proceedings filed for challenging the award are concluded expeditiously. The proceedings have to be cost effective. It was further inter alia held that the supervisory role of the Court is very restricted. The Apex Court noted that arbitration is one of the mode of Alternative Disputes Redressal Mechanism provided in Section 89 CPC. In ***Bombay Slum Redevelopment Corporation Private Limited (Supra)***, the Apex Court before parting made certain observations which are advantageous to reproduce here.

“21. Before we part with the judgment, we must record some serious concerns based on our judicial experience. Case after case, we find that the arbitral proceedings have become synonymous with very bulky pleadings and evidence and very long, time-consuming submissions, leading to very lengthy awards. Moreover, there is a



tendency to rely upon a large number of precedents, relevant or irrelevant. The result of all this is that we have very long hearings before the Courts in Sections 34 and 37 proceedings.

22. By way of illustration, we are referring to the factual aspects of the present case. The award runs into 139 pages. The petition under Section 34 of the Arbitration Act runs into 93 pages and incorporates 151 grounds. The judgment of the learned Single Judge dealing with the petition under Section 34 consists of 101 pages. One of the contributing factors is that more than 35 decisions were relied upon by the parties before the learned Single Judge. On the same point, multiple judgments have been cited, taking similar views. As per the practice in the High Court of Judicature at Bombay, a memorandum of appeal under Section 37 of the Arbitration Act does not contain the facts but only the grounds of challenge. In the memorandum of appeal preferred by the respondent consisting of 46 pages, 164 grounds have been incorporated. Considering the narrow scope of interference under Sections 34 and 37 of the Arbitration Act, we cannot comprehend how there could be 151 grounds in a petition under Section 34 and 164 grounds in an appeal under Section 37. It is not surprising that this appeal has a synopsis running into 45 pages, and it contains as many as 54 grounds of challenge.

23. In many cases, the proceedings under Sections 34 and 37 are being treated as if the same are appeals under Section 96 of the CPC. When members of the bar take up so many grounds in petitions under Section 34, which are not covered by Section 34, there is a tendency to urge all those grounds which are not available in law and waste the Court's time. The time of our Courts is precious, considering the huge pendency. This is happening in a large number of cases. All this makes the arbitral procedure inefficient and unfair. It is high time that the members of the Bar show restraint by incorporating only legally permissible grounds in petitions under Section 34 and the appeals under Section 37. Everyone associated with the arbitral proceedings must remember that brevity will make the arbitral proceedings and the proceedings under Sections 34 and 37 more effective. All that we say is that all the stakeholders need to introspect. Otherwise, the very object of adopting the UNCITRAL



model will be frustrated. We are not called upon to consider whether the arbitral proceedings are cost-effective. In an appropriate case, the issue will have to be considered. Arbitration must become a tool for expeditious, effective, and cost-effective dispute resolution.”

60. Suffice it to say that in the present case as many as 80 grounds have been taken for setting aside the impugned award and the numerous judgments have been cited at bar. The Court taking into account the basic tenets of law and the scope of jurisdiction laid down by the Apex Court in catena of judgments has examined that whether there are any grounds in the present petition to interfere with the same. It may be repeated even at the sake of brevity that this court can interfere into the impugned award only on the grounds provided under Section 34 of the Arbitration and Conciliation Act. This Court cannot sit in an appeal against the order passed by the learned Arbitral Tribunal nor can it replace it's opinion with the opinion of the learned Arbitral Tribunal.
61. Learned senior counsel for the petitioner has argued at length and cited several judgments on the issue that the fraud or misrepresentation has not been pleaded and proved and established in accordance with law. It is pertinent to mention here that this issue was also taken before the learned Arbitral Tribunal. The learned Arbitral Tribunal in para 114 to 129 has thread bare examined this issue. Learned Arbitral Tribunal also took into account the various file notings of the petitioner and inter alia held as under:

“117. No discrepancy/dispute exists pertaining to the ownership of the Northern Railways of the entire 17.973 hectares. The internal file notings of the Respondent together with its conduct while preparing Annexure L underlines the concealment of crucial information by the Respondent pertaining to the Project Land. It is also noteworthy that



the Respondent made no reference in Annexure L (infra paragraph 12) about the balance 1.249 hectares of the Railway Land beyond the Project Land. It is due to this non-disclosure that clarifications were repeatedly sought by North MCD as the shape and size of the Project Land did not match the entire Railway Land due to which requisite approvals were not forthcoming. It appears to the Tribunal that the Respondent created a situation that made it impossible to get the Plans sanctioned, which directly prevented the attainment of Financial Close within the period postulated in the DA.”

62. Learned Arbitral Tribunal also noted that the petitioner made several attempts to get the project land demarcated in the revenue record unsuccessfully. It was also noted that the petitioner in its subsequent endeavor to develop the same project land on 21.02.2019 (Exhibit Y-12) clarified that the onus lies on the successful bidder to undertake any sub-division of the site, if required, at its own risk and costs. Thus the plea of the petitioner that sub-division was not required falls flat. The arguments of due diligence was also considered and rejected by the learned Arbitral Tribunal and inter alia held as under:

“119. The Tribunal is not persuaded by the Respondent's argument that with due- diligence the Claimants could have gained knowledge of the internal discussions of the Respondent regarding the segregation/ demarcation of the Project Land from the entire Railway Land. The Respondent had from the inception represented in the RFQ, RFP and in the DA that the successful bidder has to undertake the development of the Railway Land admeasuring approximately 15.50/ 15.27 hectares. The disclosure pertaining to the existence of a larger Railway Land only came forth when the Respondent provided the Title Documents of the Project Land. It is all the more astounding that the Respondent while providing the title documents being- Aks Shajra, Nakal Khatouni, the Jamabandi, (HB-D/ Pg. 2651), projected that the Project Land admeasuring 15.5 hectares has been demarcated/ subdivided from the larger railway land of 17.94 hectares. The Respondent admits to have instead



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superimposed the Project Land on the Aks Shijra for facilitating approvals from the North MCD (RWI's Cross-examination-Question 123). Whereas in the revenue records this demarcation, as denoted by the Respondent, was never carried out. This accentuates the indispensable requirement of demarcation/ sub-division of the Project Land from the Railway Land, to enable a third party, such as the Claimants, to develop the Project Land as contemplated in the DA."

63. It is pertinent to mention here that the learned Arbitral Tribunal has specifically taken into account Clause 6.3 of the Development Agreement which requires either of the parties to immediately bring to the notice of the other party any issue which has the consequence of rendering any representation or warranty to be true inaccurate or correct. However, the petitioner for the best reasons known to them did not bring to the attention of the respondent the necessity of carrying out the demarcation of the Project Land. It is pertinent to mention here that the learned Arbitral Tribunal noted that Clause 3.1.2 of the DA provided that the ownership of the site and the redevelopment of the land shall remain at all times vested with the Railways Administration. Thus, unless a clear bifurcation or severance or segregation of the project land from the entire railway land was affected, there could have been no grant in favour of the respondents. Learned Arbitral Tribunal noted that in these circumstances there were no basis to make deposit of any amount toward Lease Premium. It is pertinent to mention here that learned Arbitral Tribunal specifically inter alia noted that in such situation where there was a failure of consideration the contract was rendered void in terms of Section 65 of the Indian Contract Act and the petitioner could not have retained any



amount and the amount being retained have to be restored to the respondents.

64. The letters written by the respondents to the petitioner were also considered by the learned Arbitral Tribunal in para 122 to para 124 and inter alia held that inference of any admissions waiver of abandonment cannot be drawn from these letters, which were made “without prejudice”.
65. In respect of the objection taken as to Order-II Rule 2 the learned Arbitral Tribunal has also examined this objection minutely. Reference can be made to para 106, 107 and 108. The learned Arbitral Tribunal in further paragraphs also examined the claims being made in Arbitration-I and Arbitration-II and the awards passed in them. Learned Arbitral Tribunal while rejecting this claim inter alia held as under:

“125. The objective of Order II Rule 2 is twofold. Firstly, to ensure that a defending party is not vexed multiple times in connection with the same cause of action; and secondly, to prevent a party which has approached a legal forum from splitting its claim and relief based on the same cause of action. The Constitution Bench, while considering the scope and applicability of Order II Rule 2, in Gurubux Singh v. Bhoorala AIR 1964 SC 1810, held-

“6. In order that a plea of a bar under Order 2 Rule (3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the



previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of bar.

126. This provision shall have no applicability to cases where the Plaintiff Claimants bases his suit on separate and distinct causes of action. The Claimants has built the present claim on the foundation of fraud, misrepresentation and/or breach of warranties by the Respondent leading to a failure of consideration. In this regard Section 17 and 18 of the Indian Contract Act, 1872 are of relevance and are extracted for convenience:

17. 'Fraud' defined.- 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation. Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence, is, in itself, equivalent to speech.

18. "Misrepresentation" defined.- "Misrepresentation" means and includes-



(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage of the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

127. After closely perusing the documents and considering the extensive cross- examination, it appears to the Tribunal that it stands established that on the date when the Claimants had invoked and thereafter had commenced Arbitration-II, it was not manifest and lucid that the execution of the Project was unattainable until the Project Land stood demarcated, and that this fact had not been explicitly disclosed by the Respondent. The Respondent had represented the Project Land to be clearly demarcated, not only to the Claimants but also to North MCD. Indeed, this position came to be openly revealed only during the cross-examination of Mr. Jatinder Kumar (RW-1) held on 08th March, 2017 and 15th March, 2017 during Arbitration I.

128. It is trite that fraud is a matter of inference and direct evidence is seldom available. In the case in hand, the non-disclosure of the essential facts within the knowledge of Respondent pertaining to the absence of demarcation of the parcel of land on which development was to be carried out amounts either to fraud or to misrepresentation. This bundle of facts or this cause of action would have arisen when the relevant facts manifested themselves to the Claimants. The Respondent has not preferred any persuasive reason that this did not occur for the first time in the course of the cross-examination of RW-1, Shri Jitender Kumar.

129. Ergo, if the Claimants were not aware of the fraud or the mischief when Arbitration was initiated or instituted, they cannot stand disentitled to the reliefs sought by them in their subsequent suit



or arbitration [*The State of Madhya Pradesh v. The State of Maharashtra*, (1977) 2 SCC 288.] In the case of *Mahammad Khalil Khan v. Mahbub Ali Mian*, AIR 1949 PC 78, the Privy Council succinctly laid down the principles for testing whether or not a suit falls within the rigours of Order II Rule 2:

“(1) The correct test in cases falling under Order II Rule 2 is “whether the claim in the new suit is, in fact, founded on cause of action distinct from that which was the foundation for the former suit (*Moonshee BulzoorRuheem v. Shumssonmissa Begam*). (2) The cause of action means every fact which will be necessary for the plaintiff to prove, if traversed, in order to support his right to judgments (*Read v. Brown*). (3) If the evidence to support the two claims is different the cause of action are also different (*Brunsdan v. Humphery*). (4) The cause of action in the two suits may be considered to be same if in substance they are identical. (5) The cause of action has no relation whatsoever to the defense set up by the defendant, nor does it depend on the character of the relief prayed for by the plaintiff.”

130. Applying the aforesaid principles the Tribunal finds that the requisite conditions for attracting Order II Rule 2 are absent. The cause of action in the Arbitration-II was the failure to achieve the Financial Close within the time period postulated in the DA; whereas in the present proceedings, it is premised on the discovery by the Claimants of fraud or misrepresentation perpetrated by the Respondent leading to a failure of consideration. The Tribunal is of the opinion that the bar of Order-II Rule 2 of the CPC is not operative against the Claimants in the present action.”

66. The perusal of the finding of the learned Arbitral Tribunal makes it clear that the claim in the third arbitration was on a separate and distinct cause of action. The finding of the learned Arbitral Tribunal in this regard in no way can be held to be perverse in any manner. It is pertinent to mention here that the record amply makes it clear that the essential conditions for Order-II Rule 2 are not present in the present



case. The cause of action in the second arbitration and third arbitration are totally different. The plea of limitation was also taken by the respondent before the learned Arbitral Tribunal. The learned Arbitral Tribunal inter alia held that the period of limitation in the case of fraud or misrepresentation only begins to run when the right to sue accrues i.e., when the fraud is discovered. It was noted that the discovery of the fraud/misrepresentation in the present matter was subsequent to the termination of the development agreement. Learned Arbitral Tribunal Inter alia held that the cause of the action in the present matter arose on 15.03.2017 during the cross-examination of RW-1 Jitender Kumar in the first arbitration and the arbitration was invoked on 30.05.2018. It is also pertinent to mention here that the Arbitral Tribunal has duly noted that the petitioner in their statement of defence had not made out any case that the respondents were aware of the alleged fraud or could have discovered it on exercise of due or ordinary diligence. The issue of discovery of fraud by due diligence has also been considered by the learned Arbitral Tribunal and was rejected by its detailed discussion in para 119 and 120.

67. Learned senior counsel for the petitioner has also argued at length the issue of constructive *res-judicata*. This plea was also raised and considered by learned Arbitral Tribunal it was noted that no such plea of constructive *res-judicata* was made in the pleading and was raised during the course of arguments. It is no longer *res-integra* that a plea of constructive *res-judicata* is a mixed question of law and fact.



Learned Arbitral Tribunal *inter alia* held that the principal of constructive *res-judicata* cannot operate against the respondent.

68. Similarly, the plea of *res-judicata* in respect of the first arbitration will also not help the petitioner as the limited scope of dispute in the first arbitration was only relating to the respondent seeking award of interest on the amount of two installment (first and second of Lease Premium) paid by them to the petitioner. The plea of the respondents were that the same were wrongfully received by the petitioner prematurely much before they were due and liable to be paid.

69. Learned Arbitral Tribunal has rightly concluded that there is no overlap claims between first arbitration and third arbitration and there was no claim for a refund of Rs. 132.12 crores in the first arbitration. Similarly, in regard to the plea of *res-judicata* with respect to second arbitration that is also liable to be rejected. The prayer in the second arbitration was only confined to seeking a refund of Rs. 1034,53,77,913/- in this the respondents had reserved their rights to initiate separate arbitration proceedings to claim a refund of Rs. 132.12 crores.

70. In respect of reimbursement of expenses the learned Arbitral Tribunal has specifically noted that on account of failure of the respondent demarcate/sub-divide the project land, the claimants incurred huge and avoidable expenditure. Learned Arbitral Tribunal only allowed some of the expenses as mentioned in para 157 of the impugned award.

71. Learned senior counsel for the petitioner has made extensive arguments on the ground that a “fraud” or “misrepresentation” has not been pleaded in detail and the findings of the learned Arbitral Tribunal



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are not sustainable in absence of such pleadings. Learned senior counsel has also cited various judgments on this issue. However, the scope of the jurisdiction to be exercised by the Court while dealing with the challenge under Section 34 is very limited. Learned Arbitral Tribunal has given detailed findings which are discussed in detail herein. In fact, if the arguments advanced on behalf of the petitioner are to be accepted that would need the jurisdiction as provided to the learned Appellate Court, which is not available in the present case. Hence, in presence of the specific detailed and reasonable finding written by the learned Arbitral Tribunal, this Court considers that the arguments advanced on behalf of the petitioner are liable to be rejected.

72. It is also pertinent to mention here that the petitioner has taken the plea there was no concealment/withholding of information regarding the demarcation of sub division the land. However, this ground has only been taken in the objection and nothing has been shown to the Court to substantiate the same. The arguments that the fraud has not been stated in the notice under Section 21 are also noted to be rejected. The notice under Section 21 is only meant to demonstrate the intention of initiating the arbitration and the parties invoking the arbitration is not required to detail the complete facts. The point of limitation is also liable to be rejected as it would start only after the discovery of the fraud. The arguments on behalf of the petitioner that the claim in the arbitration-I was also on non-demarcation and non-division of land are also contrary to the record. It is relevant to note that at the time when arbitration –II was invoked, the fraud had not been discovered.



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73. The petitioner has taken also an objection that the corrections made under Section 33 was illegal as the time provided of 30 days under Section 33(1) of the Arbitration and Conciliation Act, 1996 was expired. However, Section 33(6) of the Arbitration and Conciliation Act, 1996 specifically provides that the learned Arbitral Tribunal may extend the period of time within which it may make correction or make an additional award.
74. The Court finds that the award is not contrary to substantive provision of any law or against the terms of the contract. This Court has constricted power to interfere with an arbitral award. The learned Arbitral Tribunal is the final authority to arbitrate on the facts and the Courts are required to show the deference to the view taken by the Tribunal unless it's found to be perverse.
75. This court considers that the first arbitration and the present arbitration were entirely of different nature. The pendency of objection in the first arbitration petition will have no consequences. The first arbitration was regarding the advance payments made to the petitioner and regarding interpretation of the Development Agreement. However, since the agreement has itself been found to be vitiated by fraud thus it will have no consequences on first arbitration.
76. In view of the above, the present petition along with pending applications stands dismissed.

DINESH KUMAR SHARMA, J

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