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

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Decision delivered on: 13.09.2024+ **FAO(OS) (COMM) 211/2024 & CM 53997/2024****KUNAL FOOD PRODUCTS PVT. LTD.**

.....Appellant

Through: Mr Ajay Kumar, Adv.

versus

DELHI DEVELOPMENT AUTHORITY

.....Respondent

Through: Mr Gaganmeet Singh Sahdeva and
Mr Akshay Pratap Singh, Advs.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):****CM No.53997/2024**

1. Allowed, subject to just exceptions.

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2. This appeal is directed against the judgment dated 14.08.2024 passed by the learned Single Judge.

3. Via the impugned judgment, the learned Single Judge dismissed the petition preferred by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 [in short, "1996 Act"]. Being aggrieved by the judgment of the learned Single Judge, the instant appeal has been filed.

4. Mr Ajay Kumar, learned counsel, who appears on behalf of the appellant, says that the only grievance that the appellant has *qua* the impugned judgment and award concerns denial of pre-reference and



pendente lite interest by the learned arbitrator on the amount wrongfully retained by the respondent, i.e., Delhi Development Authority [in short, “DDA”] upon encashment of the bank guarantee furnished by the appellant.

5. In this context, we may note that the learned arbitrator has returned a finding of fact that the delay in completion of the subject hotel is attributable to both parties.

6. Having regard to the fact that the hotel was completed before the commonwealth games, which was the purpose with which the plot was sold to the appellant and no injury was caused to the respondent/DDA, the learned arbitrator concluded that the amount retained by the respondent/DDA against the bank guarantee should be refunded to the appellant.

7. It is in these circumstances that the learned arbitrator granted interest at the rate of 12% per annum on the principal amount, i.e., the amount which was retained by the respondent/DDA on encashment of the bank guarantee, i.e., Rs.70,01,000/- from the date of the award till its realization.

8. We must indicate that there is a weight in the contention advanced on behalf of the appellant with regard to the grant of interest at least during the *pendente lite* period.

8.1 We are told that the arbitration proceedings continued for over 12 years.

9. That said, we are unable to persuade ourselves to reverse the view taken by the learned arbitrator or the learned Single Judge as the test is not what the court would have done if faced with the same set of facts. The test is that whether the conclusion reached by the arbitral tribunal is perverse or patently illegal.



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10. The point of view expressed by the learned arbitrator after assessing the material on record does not fall within the categories indicated above. Therefore, we are not inclined to interfere with the impugned judgment.
11. The appeal is, accordingly, dismissed. Consequently, the pending application shall stand closed.
12. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

SEPTEMBER 13, 2024/aj