

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Krishna Rao

AP-COM No. 272 of 2024

(Old No. A.P. 501 of 2022)

Bengal Shrachi Housing Development Ltd.

Versus

Eneroil Offshore Drilling Ltd.

(Steel Fabs Offshore Drilling Ltd.)

Mr. Samrat Sen, Sr. Adv.

Mr. Chayan Gupta

Mr. Swarajit Dey

Mr. Saptarshi Kar

Ms. Debarati Das

Mr. Ayaan Ahmed

... For the petitioner.

Mr. Dhruba Ghosh, Sr. Adv.

Mr. Soumyajit Ghosh

Mr. Arijeet Doss Mullick

Ms. Madhurima Halder

Ms. Pallabi Sarkar

... For the respondent.

Hearing Concluded On : 09.09.2025

Judgment on : 14.11.2025

Krishna Rao, J.:

1. The petitioner has filed the present application being A.P. (Com) No. 272 of 2024 (Old No. AP 501 of 2022) under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the award passed by the Arbitral Tribunal dated 1st February, 2022.
2. On 31st December, 2006, the petitioner and the respondent entered into an agreement with respect to Unit No. 10C measuring an area about 11,407 sq.ft. together with car parking spaces located in Synthesis Business Park at New Town, Rajarhat, District - 24 Parganas (North), West Bengal. As per agreement, the petitioner assured that it would procure tenants or lessees for the entire booked area on behalf of the respondent at the best available rental, and the respondent would receive by way of rental for the entire booked area on a minimum return of 13.421043% being an assured amount on the aggregate of the booked amount along with car park booking amount and extra expenses towards stamp duty, registration fee and any other extra expenses such as deposits, etc., for transfer by the petitioner of the booked area in favour of the respondent. The possession date is defined as the date on which the respondent will start to receive the rentals from the entire booked area to be given under the tenancy or lease by the petitioner. That is the date that will be deemed to be the possession date and tentative possession was given as December' 2008. The

respondent has made full payment of the said unit to the petitioner. The petitioner never informed the respondent at any point of time about any arrangement for tenancy of the booked area as required under the agreement nor has the petitioner given possession of the said unit to the respondent according to the agreement.

- 3.** The petitioner issued a letter to the respondent on 12th April, 2017, calling upon the respondent to make payment of Rs. 43,25,758/- towards common area maintenance charges. The respondent sent reply to the said notice denying the claim of the petitioner. As a dispute arose between the parties with respect to the agreement, the respondent by a letter dated 6th June, 2018 invoked clause 14 of the agreement and nominated Mr. Malay Ghosh, Senior Advocate of this Court as a member of the Arbitral Tribunal and requested the petitioner to nominate the second member of Arbitral Tribunal. The petitioner did not appoint any Arbitrator as per Clause 14 of the Agreement, the respondent filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitral Tribunal. By an order dated 1st October, 2018, the Hon'ble Court has constituted Arbitral Tribunal.
- 4.** The respondent has filed Statement of Claim before the Arbitral Tribunal claiming the following amount:

<u>Particulars</u>	<u>Amount</u>
(i) Interest on principal amount	- Rs. 4,92,84,355/-
(ii) Assured amount	- Rs. 6,74,61,023/-
(iii) Interest on assured amount	- Rs. 7,27,30,907/-
<i>Total – Rs. 18,94,76,285/-</i>	

5. The petitioner has filed Counter Claim before the Arbitral Tribunal claiming the following amount:

“(a) An Award for a sum of Rs. 60,71,887/- as pleaded in paragraph 42 of the Counter Claim hereof:

(b) An Award for a sum of Rs. 17,38,849/- on interest on the aforesaid amount calculated at the rate of 15% from 1st October, 2012 to 31st December, 2018 as pleaded in paragraph of the Counter Claim hereof;

(c) Interest;

(d) Interest pendente lite;

(e) Cost and incidental to the Arbitral proceeding;

(f) Injunction;

(g) Receiver;

(h) Attachment;

(i) Such further or other relief.”

6. Learned Tribunal has passed an award directed the petitioner (Respondent before the Arbitral Tribunal) to pay the following sum to the respondent (claimant before the Learned Arbitral Tribunal):

“38. WE AWARD AND DECLARE that the respondent, Bengal Shracchi Housing Development Limited should pay the following sums to the claimant, Enroil Offshore Drilling Limited:

- (a) Rs. 6,85,55,484.00 – As per Clause 6 of the Agreement;
- (b) Rs. 4,48,34,121.00 – As per Clause 7 of the Agreement;
- (c) Rs. 6,67,64,051.00 – As per Clauses 9 and 10 of the Agreement.

39. *The respondent should pay the said aggregate sum of Rs. (a+b+c) (Rs. 18,01,53,656/-) (Rupees Eighteen Crores One Lakh Fifty-Three Thousand Six Hundred Fifty-Six only) to the claimant within a period of 30 days from the date of publishing this Award, in default, the respondent should remain liable to pay interest at the rate of 12% per annum until such liability is fully discharged.*

40. *We also award and direct that the respondent should pay a further sum of Rs. 50 lakhs only towards costs of this proceedings in favour of the claimant.”*

The Learned Arbitral Tribunal has rejected the counter claim of the petitioner.

- 7.** The petitioner has filed the present application challenging the award dated 1st February, 2022, on the following grounds:

(a). The Arbitral Tribunal granted reliefs in favour of the respondent based on the agreement dated 31st December, 2006, disregarding the fact that the agreement dated 31st December, 2006 had stood modified. The Arbitral Tribunal ignored/disregarded vital evidence in order to reject the contentions of the petitioner that the agreement dated 31st December, 2006 stood modified, therefore, the award is perverse and liable to be set aside.

(b) The agreement dated 31st December, 2006, could not affect the immovable property or be received as evidence of any transaction affecting

such property in as much as the same was unregistered and insufficiently stamped.

(c) Perversity in the award.

(e) Claim of the respondent is barred by limitation.

(f) Variance between pleadings and proof.

8. Mr. Samrat Sen, Learned Senior Advocate representing the petitioner submits that after the Minutes of Meeting dated 27th September, 2012 i.e. modified agreement, the petitioner has sent an invoice to the respondent on 1st October, 2012 and the respondent has acted upon the said invoice and paid an amount of Rs. 2,53,32,334/- and not Rs. 3,43,58,233/- which was payable as per original agreement dated 31st December, 2006. He submits that before the Learned Arbitral Tribunal, the respondent has admitted that the respondent has paid the said amount in terms of the invoice dated 1st October, 2012 but it is contended that the same was made in a routine fashion, without application of mind or verification of actual position as to the liability.
9. Mr. Sen submits that in the invoice dated 1st October, 2012, the petitioner has raised Electrical Charges at the rate of Rs. 180/- per sq.ft., Generator Charges at the rate of Rs. 50/- per sq.ft., Legal Documentation Charges at the rate of Rs. 30/- per sq.ft., Sinking Fund at the rate of Rs. 20/- per sq.ft., Property Tax at the rate of Rs. 25/- per sq.ft. and Maintenance Security Deposit Charges for 6 months at the rate of Rs. 36/- per sq.ft. All the said charges raised by the petitioner upon the respondent in terms of the Minutes of Meeting dated 27th

September, 2012. He submits that in the original agreement dated 31st December, 2006, neither the Common Area Maintenance nor the above mentioned charges is mentioned.

10. Mr. Sen submits that Shri Sanjeev Dalmia, the Director of the respondent was examined before the Arbitral Tribunal and in his evidence, he has categorically admitted that the respondent has made final payment of Rs.87,39,824/- on 6th January, 2013 in terms of the invoice dated 1st October, 2012 towards the booked area. He submits that the letter dated 19th December, 2006 being RD-5, Letter dated 26th December, 2006 being RD-6, Supplementary Agreement with other purchasers being RD-10, Letter dated 28th September, 2012 being RD-12, Letter and Invoice dated 1st October, 2012 being RD-11, Three (3) cheques issued by the respondent being RD-18 (on page 417) and RD-24 (on page 466), Email dated 2nd December, 2013 being RD-13, Email Dated 5th January, 2014 being RD-13, Email dated 9th October, 2012 by which draft Agreement was shared being RD-1, Letter dated 22nd June, 2018 being RD-18 (on page 416 to 421) and RD-24 (on pages 465 to 470), and Email dated 3rd December, 2013 being RD-13 have not been considered by the Learned Arbitral Tribunal and by ignoring the said documents of the petitioner, the Learned Tribunal has passed the award against the petitioner, thus the award is perverse and vitiated by patent illegality.

In support of his submissions, Mr. Sen has relied upon the judgment in the case of ***Ssangyong Engineering and Construction***

Company Limited Vs. National Highway Authority of India reported in **(2019) 15 SCC 131** and in the case of **Associate Builders Vs. Delhi Development Authority** reported in **(2015) 3 SCC 49** and in the case of **Delhi Metro Railway Corporation Ltd. Vs. Delhi Airport Metro Express Private Limited** reported in **2024 SCC OnLine SC 522**.

11. Mr. Sen submits that the instrument dated 31st December, 2006, is compulsorily registrable within the meaning of Section 17(b) of the Registration Act, 1908 and required stamp duty in terms of Schedule IA of the West Bengal Amendment to the Indian Stamp Act, 1899 and no award could have been passed without having the document impounded. He submits that the document provided for making over possession of the subject property to the respondent and its entitlement to get tenants. The said document is a non-testamentary instrument which purports or operates to create, declare, assign whether in present or future, any right, title or interest whether vested or contingent, of the value of Rs. 100/- and upwards, to or in immovable property as would be evident from Section 17(1)(b) of the Registration Act, 1908. He submits that registration is compulsory and the document could not have been looked into in view of Section 49(c) of the said Act. In support of his submissions, Mr. Sen relied upon the judgments in the case of **Raghunath and Ors. Vs. Kedar Nath** reported in **(1969) 1 SCC 497**, in the case of **Sunil Kumar Roy Vs. Bhowra Kankanee Collieries Ltd.** reported in **(1970) 3 SCC 565**, in

the case of ***Bajaj Auto Ltd. Vs. Behari Lal Kohili*** reported in **(1989) 4 SCC 39** and in the case of ***K.B. Saha and Sons Vs. Development Consultant Ltd.*** reported in **(2008) 8 SCC 564**.

12. Mr. Sen Submits that the agreement required payment of mandatory stamp duty. The objection with regard to the stamp and registration was taken by the petitioner by filing an application and the said application was kept in abeyance to be decided later but the Learned Tribunal failed to consider the issue raised by the petitioner. He submits that the document which has insufficient stamp cannot be received as evidence for any purpose. In support of his submissions, he has relied upon the judgment in the case of ***Omprakash Vs. Laxminarayan*** reported in **(2014) 1 SCC 618**. He submits that the agreement is clearly covered under Entry-5 of Schedule IA of the West Bengal Amendment to the Indian Stamp Act, 1899.
13. Mr. Sen submits that the claim of the respondent is on account of interest on principal amount, assured amount and interest on assured amount. The claim of the respondent is based on Clauses 6(a) and 6(b) of the Agreement, assured amount is based on Clauses 7 and 9 of the Agreement and the claim of interest on the assured amount is based on Clause 10 of the Agreement. He submits that Clause 6 casts an obligation on the petitioner to pay interest till the possession date at the rate mentioned in the said clause whereas the obligation to pay the assured amount in respect of Clauses 7 and 9 would only accrue from the date of possession. The respondent's witness admitted in his

evidence and the Tribunal has also held that possession was not given, the claim on account of assured amount could not have been allowed by the Learned Tribunal.

14. Mr. Sen further contended that the calculation made by the respondent under Clauses 7 and 9 of the Agreement is contrary to the contract between the parties. Clauses 7 and 9 envisage the return of 13.421043% on the total invest amount made by the claimant towards booking amount, car parking booking amount etc. expenses towards stamp duty, registration fees and other expenses etc. He submits that the return of 13.421043% ought to have been calculated on the principal amount i.e. 2,53,32,334/- and not on Rs. 3,96,10,745.62/- which includes interest.
15. Mr. Sen submits that the notice under Section 21 of the Arbitration and Conciliation Act, 1996 was issued by the respondent on 6th June, 2018, thus the claim of assured amount till 6th June, 2015, is barred by limitation. He submits that the respondent could have at the highest, claimed the assured amount for a period of 3 years immediately preceding the date of issuance of notice under Section 21 of the said Act. He submits that the claim on account of interest on the sum of Rs. 1,49,71,688/- from January, 2007 to 19th January, 2008 arises from Clause 6(a) of the Agreement. The respondent has claimed an interest at the rate of 9.5% per annum compounded yearly on Rs. 1,49,71,688/- and the same has been quantified by the respondent in CD 30. He submits that the said claim is a self-contained claim which

became due on 18th January, 2008. The same is not and cannot be carried forward to the claim under Clause 6(b) of the Agreement, which is separate and independent claim for interest on a different principal amount at a different rate of interest, starting from 19th January, 2008, thus the claim of the respondent under Clause 6(a) first arose on 18th January, 2008 and is barred by limitation. In support of his submissions, he has relied upon the judgment in the case of ***State of Gujarat Vs. Kothari and Associates*** reported in **(2016) 14 SCC 761**.

16. Mr. Sen submits that in the Statement of Claim (SOC), the respondent has claimed Rs. 4,92,84,355 as per paragraph 31(i) on the basis of Clause 6 of the Agreement. In the affidavit of evidence, the amount mentioned is Rs. 5,06,33,090.18. In course of hearing, a separate chart which was not proved by any of the witness of the respondent has handed over to the Learned Tribunal which formed on the basis of the award and the award for the claim on account of such head was passed for a sum of Rs. 6,85,55,484/-. He submits that in the Statement of Claim (SOC), the respondent has claimed Rs. 6,76,61,023/- as per paragraph 32(ii) on the basis of Clauses 7 and 9 of the Agreement. In the affidavit of evidence, the amount claimed is Rs. 4,56,48,071.72. In course of hearing, a separate chart was provided to the Learned Tribunal which was not proved by any of the witnesses of the respondent but the award for the claim on account of such head was passed for a sum of Rs. 4,48,34,121/-.

- 17.** Mr. Sen further contended that the respondent has claimed Rs. 7,27,30,907/- as per paragraph 32(iii) on the basis of the Clauses- 9 and 10 of the Agreement. In the affidavit of evidence, the witness has claimed Rs. 5,90,07,236.05 and in course of hearing, a separate chart was provided which was not proved by any of the witnesses of the respondent which formed the basis of award and the award for the claim on account of such head was passed for a sum of Rs. 6,67,64,051/-. He submits that the Learned Tribunal had specifically held that the respondent has not given the correct computation of its claims and computation sheets were handed over at the time of hearing which shows that the respondent has not proved the calculations in accordance with law. He submits that though the Learned Tribunal has awarded the entire amount on the basis of “computation sheets” but the same was not appended to the arbitral award.
- 18.** Mr. Dhruba Ghosh, Learned Senior Advocate representing the respondent/claimant submits that the issues raised in the present application were expressly argued before the Learned Tribunal which was duly considered and rejected by the Learned Tribunal. He submits that the issues raised by the petitioner were wholly within the domain and jurisdiction of the Arbitral Tribunal for consideration of factual and concerning interpretation of the contract. He submits that the Learned Arbitral Tribunal has arrived at a plausible view on each of the issues raised by the petitioner and thus there is no scope to interfere with the award dated 1st February, 2022.

- 19.** Mr. Ghosh submits that during hearing before the Learned Tribunal, the respondent has placed entire agreement dated 31st December, 2006 and demonstrated that the claim under Clauses 6, 7 and 9 and submitted that the nature of the agreement was an investment agreement and not an agreement for sale. The Tribunal has accepted the submissions of the respondent and passed the award which required no interference.
- 20.** Mr. Ghosh submits that in the present application under Section 34 of the Arbitration and Conciliation Act, 1996, there is no specific pleading with regard to the insufficiently stamped. He submits that there is no dispute that pursuant to the agreement dated 31st December, 2006, the respondent has invested a sum of Rs. 2,53,32,224/-. The claim of the respondent before the Tribunal was not in respect of refund of the said amount or for specific performance of any agreement for sale but for the interest and for the assured amount of return as per agreement. He submits that the agreement dated 31st December, 2006, is not an instrument within the meaning of Section 2(14) of the Stamp Act nor is defined in Article 5 Schedule I of the said Act.
- 21.** Mr. Ghosh submits that the petitioner never objected to the agreement on the ground of stamp or registration. The petitioner has made counter claim in the arbitration proceeding on the basis of agreement. The petitioner did not take any objection with regard to stamp and registration in reply to the notice under Section 21 of the Arbitration and Conciliation Act, 1996. Mr. Ghosh further submits that the

petitioner has not raised any objection in the proceeding under Section 11 of the Act. The petitioner has admitted about the existence of arbitration Clause 14 in the Agreement.

22. Mr. Ghosh submits that the petitioner has not raised nay objection regarding the admissibility of agreement either in the counter statement or at the time of tendering the said agreement as Exhibit during evidence of the respondent's witness. He submits that in the sixth sitting of the Arbitral Tribunal at the time of opening of the case, the petitioner submitted that the agreement is not in dispute. He submits that no application under Section 16 of the Arbitration was filed before filing counter statement. Later, during the course of the arbitration proceeding, the petitioner has filed an application taking the point of stamp but the same was not seriously pressed and at the time of final hearing, the Learned Tribunal has considered the submissions of the petitioner and rejected the same.
23. Mr. Ghosh submits that if an agreement was required to be registered and was not registered, the arbitration clause (which is treated as separate agreement) is held to be valid and separable. In support of his submissions, he has relied upon the judgment in the case of **SMS Tea Estates (P) Ltd. Vs. Chandmari Tea Co. (P) Ltd.** reported in **(2011) 14 SCC 66**.
24. Mr. Ghosh submits that no written supplementary agreement signed by the parties modifying the terms and conditions of the agreement dated

31st December, 2006. The respondent did not attend any meeting. The contention raised by the petitioner was duly considered by the Learned Arbitral Tribunal and rejected the same. He submits that the supplementary agreement for sale allegedly entered into by the petitioner with third parties, the same are not binding on the respondent. He submits that payments were made as and when requested by the petitioner as required under Clause-4 of the Agreement dated 31st December, 2006. The claim of the respondent is based on return on investment and the interest is calculated on the basis of the principal amount paid by the respondent.

25. Mr. Ghosh submits that the issue of limitation was also raised before the Learned Arbitral Tribunal and the Tribunal comes to the conclusion that the claim of the respondent is not barred by limitation. He further contended that interest is payable as and when demanded and there is no definite date for repayment. The jural relationship between the parties is still subsisting as the petitioner is still holding the principal amount and the interest accrued therein.

26. Mr. Ghosh further contended that the calculation of the awarded amount is based on the method explicitly described in Clauses 6 to 9 of the agreement dated 31st December, 2006. There is no dispute that the principal amount is Rs. 2,53,32,334/-. Both the parties submitted their calculation of interest as recorded in the Minutes dated 1st March, 2021. Thus, the Learned Tribunal has rightly passed the award by

considering all the issues raised by the petitioner and requires no interference.

- 27.** The petitioner has raised first issue that the Learned Arbitral Tribunal passed award in favour of the respondent by ignoring the original agreement dated 31st December, 2006, was modified by a Minutes of Meeting dated 27th September, 2012.
- 28.** The agreement dated 31st December, 2006, entered between the petitioner and the respondent reads as follows:

***"THIS AGREEMENT** made this 31st day of December, 2006*

:-BETWEEN:-

***Steelfabs Offshore Drilling Limited**, having its office at 405, Sidharth Building, 96-Nehru Place, New Delhi 100019, hereinafter called the "**First Party**", which expression shall, unless repugnant to or inconsistent with the subject or context, include its successors-interest, of the **One Part**;*

-AND:-

***Bengal Shrachi Housing Development Limited**, a company within the meaning of the Companies Act, 1956 and having its registered office at "Shrachi Towers", 686 Anandapur, E.M. Bypass-R.B. Connector Junction, Kolkata- 700 107, hereinafter referred to as the "**Second Party**", which expression shall, unless repugnant to or excluded by the subject or context, mean and include its successors-in-interest of the **Other Part**.*

WHEREAS:

A. West Bengal Housing Infrastructure Development Corporation Limited (the HIDCO) owns

the plot of land measuring about 5 (five) Acres described in the **Schedule-A** (the "Plot).

B. By an Agreement dated 24 July 2006 HIDCO had appointed the Second Party to develop the Plot where under the Second Party is to construct a building and/or buildings on the Plot (the "**Buildings**") and 77% of the total constructed area and all open/covered spaces of the Buildings and/or the Plot will belong to the Second Party (the "**Saleable Area**").

C. In pursuance of the aforesaid, the Second Party had a design for the Buildings, to be ecologically and environmentally friendly, prepared by the renowned architect Karan Grover according to which there will be a common basement and ground floor and two independent towers thereafter, one of which will comprise the HIDCO Area and the other of 11 stories will comprise the Second Party's Area to be called "**Synthesis Business Park**" (the "**Synthesis Building**"). The common basement and the ground floor will comprise the covered car parks of the Buildings of which 77% will be comprised in the Saleable Area and the balance in the HIDCO Area. The Saleable Area will however have a total of 500 car parks, which will include both open and covered.

D. Contemplating good investment prospects in the Synthesis Building, the First Party has offered to invest in it, which the Second Party has accepted on the terms and conditions herein contained.

Now it is agreed that:

1. Agreement: The First Party is hereby booking 11407 Square Feet of area in the Synthesis Building detailed in **Schedule-B** (the "**Booked Area**") at the rate of Rs. 2,325/- (Rupees Two Thousand Three Hundred Twenty Five only) per Square Feet aggregating to Rs. 2,65,21,275/- (Rupees Two Crores Sixty Five Lacs Twenty One

Thousand Two Hundred Seventy Five Only) (the **"Booking Amount"** and the Second Party has accepted such booking on the terms and conditions hereinafter contained.

2. Present Payment: At or before execution hereof the First Party has paid to the Second Party the sum of Rs. 1,49,71,688/- (Rupees One Crore Forty Nine Lacs Seventy One Thousand Six Hundred Eighty Eight Only), the receipt whereof the Second Party hereby confirms, admits and acknowledges.

3. Balance Booked Amount: The Second Party may call upon the First Party to pay a maximum of Rs. 3,20,822/- (Rupees Three Lacs Twenty Thousand Eight hundred Twenty Two Only), but not earlier than 12 (twelve) months from the date hereof but within 15 (fifteen) days of the notices for the same (the **"Notice Period"**). The remaining balance of the Booking Amount will be payable at or before the Possession Date mentioned in Clause 8 but within 15 (fifteen) days of the notices for the same (the "Notice Period").

4. Other Payments: Besides the Booking Amount, the First Party shall pay to the Second Party, as and when called upon to do so, all other amounts in proportion attributable to the Booked Area towards other costs (the **"Extra"**) for installation of generator/s, deposit to the electric energy supplier and other payments and/or deposits to such authorities for obtaining the utilities for the Building. The amount of the Extra as calculated by the Second Party, being attributable to the Booked Area, will be equivalent to the amount charged to all unit holders.

5. Car Park: The First Party has booked 8 Nos of Covered car parking space and 4 Nos of Open Car Parking Space (the **"Car Parks"**) at the rate of Rs. 2,50,000/- (Rupees two lacs and fifty thousand) for

each covered Car Park and Rs. 1,50,000/- (Rupees one lac and fifty thousand) for each open Car Park by paying one-half of the total booking price being a sum of Rs 1300000/-(Rupees Thirteen Lacs Only) (the "**Car Park Booking Amount**") for the Car Parks the First Party has booked (the "**Booked Car Parks**"). The balance of the Car Park Booking Amount (the "**Balance Car Park Booking Amount**") will be payable by the First Party to the Second Party at the time of handing over of possession of the Booked Area (the "**Possession Date**") in the manner envisaged hereafter.

6. Interest: From the Date hereof till the Possession Date the Present Payment will carry an interest at the following rate

a) From January 2007 to 18th January 2008 will carry an interest @ 9.5% per annum compounded yearly.

b) From 19th January 2008 after payment of Rs. 3,20,822/- (Rupees Three Lacs Twenty Thousand Eight hundred Twenty Two Only) the total amount paid (i.e. Booking amount =1,49,71,688 + Car Parking Booking amount =13,00,000/- + Interest as per clause 6 a) on both the amount + 3,20,822/-) will carry an interest @11.2923% per annum Compounded yearly till the date of possession. This Interest amount will accrue towards the account of the First Party and will be adjusted towards the final balance payment made by the first party to the second party.

7. Return: The Second Party shall procure tenants and/or lessees for the entire Booked Area by the Possession Date at the best available rentals provided the First Party receives by way of rental for the entire Booked Area a minimum return

of 13.421043% (the "**Assured Amount**") on the aggregate of the following:

- 7.1 The Booked Amount;
- 7.2 Car Park Booking Amount
- 7.3 The Extra
- 7.4 The expenses towards stamp duty, registration fee and any other extra expenses such as deposits etc. for the transfer by the Second Party of the Booked Area in favor of the First Party.

8. Possession Date: The date on which the First Party will start to receive the rentals from the entire Booked Area to be given under tenancy or lease by the Second Party, will be deemed to be the Possession Date. The tentative date of possession will be December'08.

9. Assurance of the Second Party: The Second Party is hereby assuring the Assured Amount, mentioned in Clause 7, and for the period as mentioned in that Clause, and in the event the rental receipts of the First Party is less than the Assured Amount, the Second Party hereby covenants to pay to the First Party the Assured Amount and keep the First Party saved, harmless and indemnified for all losses and/or damages that the First Party may suffer for non-receipt of the Assured Amount. Such Indemnification may be in the form of capital value reduction commensurate to the First Party achieving a return of 13.421043% on their total Investment as envisaged in clause no 7.

10. Essence: Timely and due payment by the First Party to the Second Party of the Balance Car Park Booking Amount by the Possession Date and the Balance of the Booked Amount, if any as envisaged in Clause 3, as and when called upon to do so but by the Notice Period is the essence of this Agreement. In the event the First Party fails to pay any part or portion of the Balance Booked Amount

within the Notice Period, as mentioned in Clause 3, the Second Party will be entitled to interest at the rate of 12% per annum compoundable quarterly from the Notice Date till the date such payment is made and in the event any three of such payments falling due, the Second Party shall no longer be liable to pay the Assured Amount, as mentioned in Clause 7.

11. *It is agreed by and between the parties that a formal Agreement for Sale will be given by the Second Party to the First Party within 15 (fifteen) days for approval and due execution. On approval of the same the said Agreement shall be executed forthwith failing which the First Party reserves the right to terminate this Agreement and will be entitled to refund of the amounts paid till date along with compounded interest.*

12. First Right of Purchase: *In the event the First Party intends to dispose of any part or portion of the Booked Area and/or the Booked Car Parks, if any, the First Party shall have to first offer to the Second Party to purchase the same at the then prevailing market price.*

13. Duties, fees and penalties: *All stamp duties, registration fees, penalties thereon if any, and costs, charges and incidental expenses for the registration will be solely borne and paid by the First Party.*

14. Arbitration: *In case of any dispute between the Parties the same will be referred to a tribunal (the "**Tribunal**") consisting of three members out of whom, the Parties will appoint one member each and the two members so appointed will appoint the third. The proceedings of the Tribunal shall in English, held in Kolkata and in accordance with the Indian Arbitration & Conciliation Act, 1996, or any enactment in effect in*

its place or stead as on the date the Tribunal enters into reference. The Tribunal shall be at liberty to dispense with such rules and/or procedures that it may with the consent of the referring parties to arbitration and such consent will be deemed to be hereby given by both the Parties. The Tribunal shall not grant any adjournments except in emergent circumstances, endeavor to pass its award within 6 (six) months of entering into reference and its award shall be final and binding upon both the Parties.

SCHEDULE-A
[The Plot]

All that piece and parcel of land measuring about 5 Acres situate at CBD/ 1 at Action Area II New Town Kolkata, free from all encumbrances, in the District of 24 Parganas (North), P.S. Rajarhat and delineated on the Map or Plan annexed hereto, and butted and bounded by:

On the North : *Central Business District,*

On the East : *Central Business District.*

On the South : *Central Business District.*

On the West : *Major Arterial Road.*

SCHEDULE-A
[The Booked Area]

*All that the 11407 Square Feet of super built up area being Block No- 'C' in the 10TH floor delineated in '**Red**' in the annexed **Plan-A**, of the Synthesis Building to be constructed at the Plot described in **Schedule-A**.*

In witness whereof *the Parties have signed this Agreement at Kolkata on the day, month and year first above written.*

*Signed and **executed** by the **First***

***Party** in the presence of:*

Signed and executed** by the **Second

***Party** in the presence of:*

SCHEDULE-A

[The Plot]

All that piece and parcel of land measuring about 5 Acres situate at CBD/ 1 at Action Area II New Town Kolkata, free from all encumbrances, in the District of 24 Parganas (North), P.S. Rajarhat and delineated on the Map or Plan annexed hereto, and butted and bounded by:

On the North : Central Business District.

On the East : Central Business District.

On the South : Central Business District.

On the West : Major Arterial Road.

SCHEDULE-A

[The Booked Area]

*All that the 11407 Square Feet of super built up area being Block No- 'C' in the 10TH floor delineated in '**Red**' in the annexed **Plan-A**, of the Synthesis Building to be constructed at the Plot described in **Schedule-A**.*

***In witness whereof** the Parties have signed this Agreement at Kolkata on the day, month and year first above written.*

***Signed and executed** by the
First Party in the presence of:*

Signed and executed** by the **Second

Party in the presence of:.”

29. The petitioner relied upon the Minutes of Meeting dated 27th September, 2012, being respondent’s document no. 9 which reads as follows:

“Minutes of the meeting with respect to some SBP customers under Special Scheme namely IGE India Ltd., MIS Consultants Pvt. Ltd., Naman Ispat Pvt. Ltd., Manan Business Centre Pvt. Ltd. & Eneroil Offshore Drilling Ltd. (Formerly Steelfabs Offshore) held on 27.09.2012 at Shrachi Towers, 686, Anandapur, Kolkata.

Members present:

1. Mr. Rahul Todi - M.D. of BSHDL
2. Mr. Sanjeev Agarwal - Director of BSHDL
3. Mr. Rishabh Bengani - Representative of SBP Customer
4. Mr. Sundeep Bansal - Representative of SBP customer
5. Mr. Subha Chakrabarti - Senior Vice President of BSHDL

In the said meeting it was agreed that after giving adjustment on account of interest payable in terms of the agreement a final statement of accounts duly accepted by all parties is prepared. The statement clearly reflects the total dues i.e. finally payable by all the aforesaid parties. In terms of Clause 4 under Other Payments it has been agreed that other than booking amount the purchaser will be liable to pay other amounts such as Installation of Generator, Electric Charges and such other payments and/or deposits payable to other authorities for obtaining various facilities and utilities for the building. Accordingly the following adjustable charges have been agreed upon:

1. Electrical Charges @ Rs.180/- per sq. ft.
2. Generator Charges @ Rs.50/- per sq. ft.
3. Legal Charges @ Rs.30/- per sq. ft.

Further on account of deposits the following rates have been agreed upon:

- 1. Sinking Fund @Rs.20/- per sq. ft.*
- 2. Property Tax @Rs.25/- per sq. ft.*
- 3. Maintenance Charges for 6 months @ Rs.36/- per sq. ft.*

It has been specifically agreed that BSHDL shall not be required to procure tenants and/or lessee for the entire booked area at a minimum return of 13.421043% on the aggregate of booked amount, car parking amount and extra as stated in the main agreement and the said provision shall be treated as deleted and all the parties concerned shall have consented in that regard and accordingly a Supplementary Agreement would be executed between all the above SBP customers the draft of which was circulated and forms part of the minutes.

In order to accommodate the interest of the parties each of the party would be offered a concessional rate. Accordingly the rate per sq. ft. stood reduced for the following SBP customers under Special Scheme as under:

<i>SL. No.</i>	<i>Name of the SBP customers</i>	<i>Revised rate per sq.ft. of the respective unit</i>	<i>Revised consolidated rate per car parking (both for Covered and Open)</i>
1.	IGE India Ltd.	<i>Earlier rate:</i> 2625 <i>Revised rate:</i> 1765	<i>Earlier rate:</i> 2600000 <i>Revised rate:</i> 1300000
2.	MIS Consultants Pvt. Ltd.	<i>Earlier rate:</i> 2625 <i>Revised rate:</i> 1765	<i>Earlier rate:</i> 2600000 <i>Revised rate:</i> 1300000

3.	<i>Naman Ispat Pvt. Ltd.</i>	<i>Earlier rate: 2325</i> <i>Revised rate: 1765</i>	<i>Earlier rate: 2600000</i> <i>Revised rate: 1300000</i>
4.	<i>Manan Business Centre Pvt. Ltd.</i>	<i>Earlier rate: 2325</i> <i>Revised rate: 1765</i>	<i>Earlier rate: 2600000</i> <i>Revised rate: 1300000</i>
5.	<i>Enroil Offshore Drilling Ltd.</i>	<i>Earlier rate: 2325</i> <i>Revised rate: 1765</i>	<i>Earlier rate: 2600000</i> <i>Revised rate: 1300000</i>

Since the Completion Certificate has been obtained possession of units for fit outs shall be given with immediate effect and the parties have agreed to commence fit out Thereafter Common Area Maintenance (CAM) charges @ Rs.6/- per sq. ft. would be effective from 01.10.2012. This will be binding on all parties.

Based on the above calculation Demand Invoice would be raised on 01.10.2012 and all the above parties have been requested to clear up their dues to enable BSHDL to execute transfer documents after execution of the Supplementary Agreement.”

- 30.** To modify an original agreement, a written amendment is to be signed by all the parties, detailing the specific changes and the original agreement information. The process involves amending the original agreement, discussing proposed changes with all parties to gain their mutual consent, drafting a new document that clearly outlines the modifications, and ensuring all involved parties sign the new

amendment. To amend in the original agreement/ contract the title, date and parties to the original agreement is required to be mentioned. The amendment should clearly describe the changes using specific and concise language to avoid ambiguity. It is to be ensuring that all parties involved in the original agreement consent to the changes.

- 31.** The Minutes of Meeting dated 27th September, 2012, is signed only by the representative of the petitioner and none has signed on behalf of the respondent. No document disclosed by the petitioner to show that the said Minutes of Meeting was ever communicated to the respondent. The Minutes of Meeting has not specified which clause of the agreement is amended or modified and from which date the amendment would be given effect to. In the said Minutes of Meeting, it is also mentioned that a supplementary agreement would be executed but no supplementary agreement was executed between the petitioner and the respondent.
- 32.** The petitioner has mainly relied upon the invoice dated 1st October, 2012, on the basis of which the respondent has paid the amount to the petitioner. Clause 2, Clause 3 and Clause 4 of the agreement are with regard to the present payment, balance booked amount and other payment. At the time of examination-in-chief of CW-2, in question no.20, he has stated that *“20Q. Where is the original bank statement from which the photocopy of the cheque has been taken which is at page 34, being CD-10? //We have taken this from the portal of the Bank through internet”*.

During cross-examination of the CW.2, the petitioner has not denied the said statement of CW-2 by giving suggestion that the said amount was not in terms of original agreement and in terms of the modified agreement.

33. Learned Tribunal in paragraphs 24 to 28 elaborately discussed the issue raised by the petitioner and come to the conclusion that in a commercial transaction, one would expect that such emerging situation would be clearly spelt out which clearly has not been done in the present case.

34. Mr. Sen relied upon the judgment in the case of **Ssangyong Engineering and Construction Company Ltd. (supra)** wherein the Hon'ble Supreme Court held that:

“41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA, while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.”

35. Mr. Sen relied upon the judgment in the case of **Associate Builders (supra)** wherein the Hon'ble Supreme Court held that:

“31. *The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:*

(i) a finding is based on no evidence, or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision,

such decision would necessarily be perverse.

32. *A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, it was held:*

“7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.”

In Kuldeep Singh v. Commr. of Police, it was held :

“10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.”

- 36.** Mr. Sen further relied upon in the case of ***Delhi Metro Railway Corporation Ltd. (supra)*** wherein the Hon'ble Supreme Court held that:

“40. A judgment setting aside or refusing to set aside an arbitral award under Section 34 is appealable in the exercise of the jurisdiction of the court under Section 37 of the Arbitration Act. It has been clarified by this Court, in a line of precedent, that the jurisdiction under Section 37 of the Arbitration Act is akin to the jurisdiction of the Court under Section 34 and restricted to the same grounds of challenge as Section 34.”

- 37.** The petitioner contended that the Learned Arbitral Tribunal has not considered the documents i.e. letter dated 19th December, 2006 being RD-5, Letter dated 26th December, 2006 being RD-6, Supplementary Agreement with other purchasers being R.D.-10, letter dated 28th September, 2012, being R.D-12, letter dated 1st October, 2012, being R.D- 11, three cheques issued by the respondent being RD-18 and RD-24, Email dated 2nd December, 2013 being RD-13, Email dated 6th January, 2014, being RD-13, Email dated 9th October, 2012 by which draft agreement was shared being RD-1 and Invoice dated 1st October, 2012 being RD-11. The contention of the petitioner is that all the above documents are connected with the modified agreement which proves that the respondent has acted upon the modified agreement. The Learned Tribunal while considering the said issue categorically come to the finding that *“the developers case for modification of the terms, as contended by the respondent, is further weakened by the facts that as the minutes of 27th September, 2012 itself records that a supplementary*

agreement recording the modification would be executed in due course, which has not happened. Hence, the arrangements as it stood was akin to provision “subject to contract” an expression common in agreement of Sale and purchase of land that the oral agreement was at most a tentative contract, not intended to take effect until a further formal document is duly executed, the whole episode taking a generous view may be best described viewed as the respondent feeling its way towards an agreement intimating negotiation from which an agreement might or might not result. Even if, the new set of terms viewed, as new offer the same have not been accepted by the claimant”.

- 38.** Learned Tribunal by considering the entire facts including documents relied upon by the parties came to the definite finding and this Court did not find any perversity in the finding arrived by the Learned Arbitral Tribunal. The judgments relied upon by the petitioner are the settled position of law but the facts and circumstances of the present case, the judgments are not applicable in the present case.
- 39.** The second issue raised by the petitioner that the agreement dated 31st December, 2006, is compulsorily registerable within the meaning of Section 17(1)(b) of the Registration Act, 1908 and required stamp duty in terms of Entry-5 of Schedule-IA of the West Bengal Amendment to the Indian Stamp Act, 1899 and no award can be passed without having the document impounded.

Section 17(1)(b) of the Registration Act, 1908, reads as follows:

“Section 17. Documents of which registration is compulsory .-

(1)(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.”

Entry-5 of Schedule-IA of the West Bengal Amendment to the Indian Stamp Act, 1899, reads as follows:

Description of Instruments	Proper Stamp-duty
5. Agreement or Memorandum of an Agreement— <i>(a) if relating to the sale of a bill of exchange;</i> <i>(b)(i) if relating to the sale of a Government security;</i> <i>(ii) if relating to the sale of a share in an incorporated company or other body corporate;</i> <i>(c)if relating to storing of agricultural produce in Cold Storage;</i> <i>(d)if relating to sale or lease-cum-sale of immovable property;</i>	<i>Fifty paise.</i> <i>Subject to a maximum rupees fifty, twenty-five paise for every Rs.10000 or part thereof, of the value of the security.</i> <i>Fifty paise for every Rs.5000 or part thereof, of the value of the share.</i> <i>Rupees one for every 1000 kilograms of agricultural produce or part thereof.</i> <i>The same duty as Conveyance (No. 23) for the market value.</i> <i>Provided that in case of agreement relating to sale or assignment or lease-cum-sale for flats or apartments or units which are under construction or to be constructed, the stamp-duty shall be charges at the</i>

	rate of two per centum of the market value of the property subject to fulfillment of conditions as mentioned in article 23. <i>Explanation.- For the flats or apartments or units whose plan has been sanctioned within the period from the 1st day of January, 2015 to the date of effect of this section, the above provision shall, mutatis mutandis, apply at the time of registration of such agreement, subject to the conditions that the final conveyance shall be completed within the 31st day of January, 2019.</i>
(e) if relating to matters not otherwise provided for, except matters relating to cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies or receipts. (f) if relating to an agreement giving authority to a promoter or developer, by whatever name called, for construction on, or sale of, or transfer (in any manner whatsoever) of, any immovable property –	Rupees ten.
(i) where the market value of the property does not exceed rupees thirty lakh;	Rupees five thousand.
(ii) where the market value of the property exceeds rupees thirty lakh but does not exceed rupees sixty lakh;	Rupees seven thousand.
(iii) where the market value of the property exceeds rupees sixty lakh but does not exceed	Rupees ten thousand.

rupees one crore; (iv) where the market value of the property exceeds rupees one crore but does not exceed rupees one and half crore; (v) where the market value of the property exceeds rupees one and half crore but does not exceed rupees three crore; (vi) where the market value of the property exceeds rupees three crore; <i>Explanation.- The expression "Agreement or Memorandum of an Agreement", if relating to a sale, shall include an agreement to sell or any memorandum or acknowledgment in relation to transfer or deliver of possession of immovable property with an intent to transfer right, interest in, or title to, such property at any future date.</i> <i>Exemptions:</i> <i>Agreement or Memorandum of Agreement —</i> <i>(a)for or relating to the sale of goods or merchandise exclusively, not being a note or memorandum chargeable under No. 43;</i> <i>(b)made in the form of tenders to the Government of India for, or relating to any loan.</i> AGREEMENT TO LEASE. See Lease (No. 35).	<i>Rupees twenty thousand.</i> <i>Rupees forty thousand.</i> <i>Rupees seventy-five thousand.</i>
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40. Agreement dated 31st December, 2006, contemplating good investment prospects in the Synthesis Building. The respondent has offered to invest in it, which the petitioner has accepted as per the terms and conditions mentioned in the agreement. The respondent has booked 11407 Sq.ft of the Synthesis Building at the rate of Rs. 2,325 per sq.ft. aggregating to Rs. 2,65,21,275/-.

41. Clause-11 of the agreement dated 31st December, 2006, reads as follows:

“11. It is agreed by and between the parties that a formal Agreement for Sale will be given by the Second Party to the First Party within 15 (fifteen) days for approval and due execution. On approval of the same the said Agreement shall be executed forthwith failing which the First Party reserves the right to terminate this Agreement and will be entitled to refund of the amounts paid till date along with compounded interest.”

As per Clause 11, a formal agreement for sale will be given by the petitioner to the respondent and on approval the same, agreement will be executed forthwith. Upon reading of the said clause, it is clear that the agreement dated 31st December, 2006, is not an agreement of sale. If the agreement is read as a whole, it reveals that the agreement provides for investment of money by the respondent and mode of payment by the respondent to the petitioner and on receipt of the amount by the petitioner, the obligation of the petitioner. Clause 8 provides with regard to the possession of the property. It is categorically mentioned that the date on which the respondent will start to receive the rentals from the entire booked area will be deemed to be the

possession. Admittedly, no possession is given to the respondent. It is crystal clear that neither sale agreement was entered between the petitioner and respondent nor possession was given to the respondent.

- 42.** An investment agreement is a legally binding contract between an investor and a company or other entity that outlines the terms and conditions of an investment. It protects both parties by defining their respective rights, responsibilities, and expectations, and it typically includes details about the investment amount, the form of investment, expected return and dispute resolution procedure. The contents of the agreement dated 31st December, 2006, fulfil the requirements investment agreement.
- 43.** Though the petitioner has argued at length with regard to the registration of the agreement and stamp duty but in none of the grounds in an application the petitioner has taken the ground of registration of agreement or stamp.
- 44.** At the time of evidence of the Claimant's Witness No. 1, namely, Pushkar Raj Koushik in paragraph 4 of the affidavit of evidence, the claimant's witness has brought the agreement dated 31st December, 2006 as CD-2 but the petitioner has not objected to admit the said agreement. Section 36 of the Indian Stamp Act, 1899, provides an exception to Section 35 of the said Act by stating that once an instrument is admitted in evidence, its admission cannot be questioned later on the ground that it was not duly stamped. During the

arbitration proceeding on its sixth sitting, the Counsel for the petitioner submitted that *“the agreement of December, 2006, is not disputed between the parties”*.

45. After admission of the agreement dated 31st December, 2006, the petitioner has filed an application before the Learned Arbitral Tribunal on 15th June, 2020. This Court finds that once the party has admitted the document and brought the same by way of evidence without any objection, the party cannot take any objection to the said document subsequently.

46. The petitioner has relied upon the judgment in the case of ***Raghunath and Others (supra)*** wherein the Hon’ble Supreme Court held that:

“3. Section 4 of the Transfer of Property Act states:

“The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Registration Act, 1872.

And Sections 54, para 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908.”

Section 54 of the Transfer of Property Act reads:

“‘Sale’ is a transfer of ownership in exchange for a price paid or promised or part paid and part promised.

Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property, of a value less than one hundred rupees, such

transfer may be made either by a registered instrument or by delivery of the property.”

Section 17 of the Registration Act states:

“17. (1) The following documents shall be registered if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act 16 of 1864 or the Indian Registration Act, 1866 or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or in immovable property.”

Section 49 of the Registration Act prior to its amendment in 1929 read:

“No document required by Section 17 to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.”

By Section 10 of the Transfer of Property (Amendment) Supplementary Act, 1929, Section 49 was amended as follows:

“No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be affected by registered instrument.”

The inclusion of the words “by any provision of the Transfer of property Act, 1882”, by the Amending Act, 1929, settled a doubt entertained as to whether the documents of which the registration was compulsory under the Transfer of Property Act, but not under Section 17 of the Registration Act, were affected by Section 49 of the Registration Act. Section 4 of the Transfer of Property Act enacts that

“Section 54, paras 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908”. It was previously supposed that the affect of this section was merely to add to the list of documents of which the registration was compulsory and not to include them in Section 17 so as to bring them within the scope of Section 49. This was the view taken by the Full Bench of the Allahabad High Court in Sohan Lal case. The same view was expressed in a Madras case Rama Sahu v. Gowro Ratho and by MacLeod, C.J., in a Bombay case Dawal Piranshah v. Dharma Rajaram Manggaruddi. We are however absolved in the present case from examining the correctness of these decisions. For these decisions have been superseded by subsequent legislation i.e. by the enactment of Act 21 of 1929, which by inserting in Section 49 of the Registration Act the words “or by any provision of the Transfer of Property Act, 1882”, has made it clear that the documents in the supplemental list i.e. the documents of which registration is necessary under the Transfer of Property Act but not under the Registration Act fall within the scope of Section 49 of the Registration Act and if not registered are not admissible as evidence of any transaction affecting any immovable property comprised therein, and do not affect any such immovable property. We are accordingly of the opinion that Ex. A-26 being unregistered is not admissible in evidence. In our opinion, Mr Sinha, is unable to make good his argument on this aspect of the case.”

The case relied by the petitioner is in connection with a mortgage deed and the document was registrable under Section 54 of the Transfer of property Act. In the present case no right is created. It is categorically mentioned in the agreement dated 31st December, 2006 that formal agreement for sale will be executed subsequently and the respondent reserves its right to terminate the agreement and will be entitled to refund of the amounts paid by the respondent along with

compound interest. The judgment relied by the petitioner is distinguishable from the facts of this case.

47. The petitioner has relied upon the judgment in the case of ***M/s Bajaj Auto Limited (supra)*** and submits that if the document is inadmissible for non-registration, all its terms are inadmissible including the one dealing with landlord's permission to his tenant to sublet. The case referred by the petitioner was in respect of an unregistered lease deed. But in the present case, this Court already held that the agreement is an investment agreement, thus the said judgment is not applicable in the present case.

48. Mr. Sen relied upon the judgment in the case of ***K.B. Saha & Sons (P) Ltd. (supra)*** wherein the Hon'ble Supreme Court held that:

“34. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

- 1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.*
- 2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.*
- 3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.*
- 4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that*

is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. *If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.”*

In the said judgment, it is held that unregistered document can, however, be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act, 1908.

- 49.** The Learned Arbitral Tribunal while considering the said issue come to the finding which reads as follows:

“34. The respondent’s last argument, argued with least gravity relates to admissibility of the agreement dated 31st December, 2006, on ground that the document seeking to transfer an interest in land should have been properly stamped under provisions of Section 17 of the Registration Act, 1908. Neither the said contentions is tenable. First, the document has been exhibited and relied on both parties without any objection from either party at the outset. Secondly, the agreement dated 31st December, 2006 itself provided in clause 11 thereof that the parties would enter into a formal agreement for sale subsequently. Hence under Section 17(2)(b) of the Registration Act, 1908, it was not necessary to have the said agreement registered to be admissible.”

- 50.** Considering the above, this Court did not find any reasons to interfere in the findings of the Learned Tribunal.

- 51.** The respondent has made the following claim in the Statement of Claim:

<u>Particulars</u>	<u>Amount</u>
(iv) Interest on principal amount	- Rs. 4,92,84,355/-
(v) Assured amount	- Rs. 6,74,61,023/-
(vi) Interest on assured amount	- Rs. 7,27,30,907/-
<i>Total – Rs. 18,94,76,285/-</i>	

- 52.** The contention of the petitioner is that there is a variation between pleading and proof. The respondent has claimed Rs. 4,92,84,355/- being an interest on principal amount. The Arbitral Tribunal has awarded Rs. 6,85,55,484/- as per Clause 6 of the Agreement. The respondent has claimed an amount of Rs. 6,74,61,023/- being the assured amount as per Clauses 7 and 9 of the Agreement. Learned Tribunal has awarded an amount of Rs. 4,48,34,121/- as per Clause 7 of the Agreement. The respondent has claimed Rs. 7,27,30,907/- being the interest on assured amount as per Clause 10 of the agreement. Learned Tribunal has awarded an amount of Rs.6,67,64,051/- as per Clauses 9 and 10 of the Agreement. At the time of evidence of claimant's witness on oath, the witness stated that the petitioner is liable to pay Rs. 4,56,48,072/- as assured amount. Claimant's witness further stated that the petitioner is liable to pay interest on the assured amount, being a further sum of Rs. 5,90,00,236/-. In the course of

hearing, a separate chart was handed over to the Learned Arbitral Tribunal and the Learned Tribunal without any proof of the said chart has passed an Award.

- 53.** On 34th sitting of the Learned Tribunal dated 21st March, 2021, it is recorded that Mr. Samrat Sen, Learned Senior Advocate for the respondent elucidated his notes of calculation against the calculation sheet submitted by the claimant earlier and today. It is also finds from record that on 19th February, 2021, the Counsel for the respondent has communicated the calculation sheet to the Learned Counsel for the petitioner. Learned Tribunal on 1st March, 2021, has recorded summary of submissions made on behalf of the petitioner as well as on behalf of the respondent.
- 54.** Considering the above, this Court did not find any merit on the contention raised by the petitioner.
- 55.** As regard to the issue of limitation raised by the petitioner, the Learned Tribunal has dealt with the said contention of the petitioner and held that:

“11. Counsel for the respondent also urged in the same vein that since the interest under clause 6(b) was to be compounded yearly, each year's interest comprises an independent and self-contained claim and as such, interest accruing in years (i. e. January, 2008 to January 2014) were all barred by limitation, The fallacy of this contention lies in the obvious fact that interest for each year, in terms merges with the principal for the next year. This is further corroborated by the expressed provisions in clause 6(b), as noted earlier, to the effect that "the interest amount will

accrue towards the account of the first party (meaning the claimant) and will be adjusted towards the final balance payment made by the first party to the second party (meaning the respondent). Consequently, the interest accrued for each year formed part of the principal until claimed separately at any time thereafter.

12. *From reading of the clauses 6(a) and 6(b), it is clear that amount payable on account of interest on either account is not payable on any definite date; in other words, there is no starting point to be found for calculating the limitation and what Article of Limitation Act would be attracted. The nature of payment made or to be made by the claimant or interest accrued on such payment towards purchase price pertain the character of principal subject to the right of the claimant to claim such accrued interest as and when it accrues. Such right should exist is pure commercial sense, given the fact, that sale transaction might take indefinitely long time. Even in the event the Contemplated Sale and transfer does not materialize or the agreement is determined earlier the claimant's right to recover the total amount paid or the accrued interest would not be extinguished but the respondent would continue to hold the total amount as trustees for the claimant and would remain liable to return the same to the claimant. Here, demand has been made by the claimant for a part of the total amount represented by accrued interest say on 7th June, 2018 when the notice dated 6th June, 2018 issued by the claimant under Section 21 of the Arbitration and Conciliation Act was received by the respondent. It is from such date only, the period of limitation may be reckoned. It is also significant to bear in mind that the claim has been made on basis of damages by way of interest on account of denial of the use of money adding a new dimension to the nature of the claim in the context of limitation. In passing, we might say that Counsel's argument as to lack of jural relationship is equally misconceived because, firstly, the contract of sale and purchase is still subsisting and secondly, in seeking to set up a case of modification of the relevant provisions for payment of interest the respondent must acknowledge jural relationship between the parties, Finally, the claim for interest*

is part of a wider transaction of sale and purchase under the agreement dated 31st December, 2006, which still subsists and principal sum towards purchase price has not been claimed back and the same is not barred by limitation This is further evidence of subsisting jural relationship between the parties.

13. *The argument on basis of limitation is thus based on clear misunderstanding of the real nature of the transaction contemplated in the agreement dated 31st December, 2006 and true purport and effect of the relevant provisions of the relevant clauses therein.”*

Clause 6 of the agreement provides for interest. As per Clause 6(a), the petitioner is liable to pay interest from January, 2007 to 18th January, 2008 at the rate of 9.5% per annum compounded early. Clause 6(b) provides that from 19th January, 2008, the amount paid by the petitioner to the respondent shall carry interest at the rate of 11.2923% per annum compounded yearly till the date of possession. On combined reading of the said clauses, it is clear that the petitioner is liable to pay compound interest.

56. This Court did not find any merit on the contention raised by the petitioner with regard to limitation. In the case of **MMTC Limited Vs. Vedanta Limited** reported in **(2019) 4 SCC 163**, the Hon’ble Court held that:

“10. Before proceeding further, we find it necessary to briefly revisit the existing position of law with respect to the scope of interference with an arbitral award in India, though we do not wish to burden this judgment by discussing the principles regarding the same in detail. Such interference may be undertaken in terms of Section 34 or Section 37 of the Arbitration and Conciliation

Act, 1996 (for short “the 1996 Act”). While the former deals with challenges to an arbitral award itself, the latter, *inter alia*, deals with appeals against an order made under Section 34 setting aside or refusing to set aside an arbitral award.

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 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.

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts.

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act,

contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.”

57. In the present case, the issues raised by the petitioner in an application under Section 34 of the Arbitration and Conciliation Act, 1996 were also the issues before the Learned Arbitral Tribunal. The Learned Arbitral Tribunal has considered each and every issue raised by the petitioner and passed an award. This Court did not find any justification for interfering with the award passed by the Learned Arbitral Tribunal dated 1st February, 2022.

58. In view of the above, **AP-COM No. 272 of 2024 (Old No. AP 501 of 2022)** is thus **dismissed**.

(Krishna Rao, J.)