

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Sugato Majumdar

AP-COM/709/2024

[OLD NO AP/802/2023]

MANI'S DEVELOPMENT MANAGEMENT

VS

RISHINOX BUILDWELL LLP AND ORS

WITH

AP-COM/403/2024

RISHINOX BUILDWELL LLP AND ORS.

VS

MANI'S DEVELOPMENT MANAGEMENT LLP

For the Rishinox Buildwell LLP : Mr. Krishnaraj Thaker, Sr. Adv.
Mr. Suddhasatva Banerjee, Adv.
Mr. Souvik Majumdar, Adv.
Mr. Soumabho Ghose, Adv.
Mr. Rishabh Karnani, Adv.
Mrs. Anyapurba Banerjee, Adv.

For the Mani's Development
Management LLP : Mr. S. N. Mookherjee, Sr. Adv.
Mr. Jishnu Saha, Sr. Adv.
Mr. Aditya Kanodia, Adv.
Mr. D. Shaw, Adv.
Mrs. Shreya Trivedi, Adv.
Mr. Yash Singhi, Adv.

Hearing concluded on : 16/09/2025

Judgment on : 31/10/2025

Sugato Majumdar, J.:

Both these applications are filed under Section 34 of the Arbitration and Conciliation Act, 1996 for assailing the Award dated 17th August, 2023 passed by the Learned Arbitral Tribunal.

Genesis of the arbitration proceeding was a development management agreement dated 18/07/2017. Claims and counter-claims were made. In terms of the final award both the claims and counter-claims were rejected. Both the parties, therefore, filed separate applications under Section 34 of the Arbitration and Conciliation Act, 1996.

AP-COM 403 of 2024 is filed under Section 34 of the Arbitration and Conciliation Act, 1996 by Rishinox Buildwell LPP (“Rishinox” in short) and 52 others against Mani’s Development Management LPP (“Mani’s” in short) since the claim case was dismissed by the Learned Arbitral Tribunal.

AP-COM 709 of 2024 is filed by Mani’s against Rishinox and others since the counter-claim made by Mani’s before the Learned Arbitral Tribunal was dismissed, too.

Claim case, as placed before the Arbitral Tribunal by Rishinox may be summarized as follow:

- a) Petitioner no. 2 to 52 herein, being the Claimants before the Arbitral Tribunal are owners of several pieces and parcels of land admeasuring contained in an area of 4.94 acres situated at Mouza-Kalikapur, J.L. No. 40, under Police Station - Rajarhat, in the District of North 24 Parganas. Rishinox is one of the Rishi Group of Companies with whom the land owners executed a development

agreement dated 25th April, 2017 for construction of a residential building complex in the said premises which is the subject matter project.

- b) To facilitate the development project Rishinox decided to appoint a development manager who would provide development services including causing and supervising the construction and completion of buildings, marketing and selling of the project and conduct post construction maintenance and others against an agreed consideration. Initially, a term sheet was executed between Rishinox and Mani Square Limited, one of the companies of Mani's Group, on 05th/06th January, 2017. Subsequently, a special purpose vehicle for the development management works was created being the Mani's on 26th April, 2017. Thereafter, Development Management Agreement (DMA hereinafter) was executed on 18/07/2017 between Rishinox and Mani's.
- c) Under the DMA, the Mani's had no right, title and interest whatsoever in the project except to development management entitlement fee and development management incentives being monetary in nature.
- d) Rishinox invested a substantial sum of money in the project. The management of Rishinox arranged from out of their personal resources a loan of Rs.6 crores to meet initial costs.
- e) At the time of entering into the DMA itself the parties prepared a summarized business plan being part of the DMA which worked out estimated construction area, estimated costs of construction,

estimated date of handing over of each face and life. This detailed business plan would also to be prepared containing further particulars of the project. This detailed business plan was to be prepared within ninety days from the date of entering into the DMA, that to say within 17th October, 2017 and was the first of the critical milestone to be achieved by the Mani's in terms of the DMA.

f) Mani's, it was alleged by Rishinox, neglected and failed to provide the business plan which failure was a fundamental and material breach of DMA. It was submitted by Rishinox that Mani's neglected and failed to form joint committee, failed to submit drawings for the purpose of sanction, failed to submit drawings, no objection certificate from fire department, green buildings certificate, environment clearance or other statutory certificates. This apart, there were various other allegations raised by Rishinox against Mani's alleging failure to perform in terms of the DMA. All these failures caused undue delay of the project attributable solely to Mani's. After September 2018, Mani's did not take any step for performing the DMA. On the contrary, Mani's made it clear to Rishinox that unless and until the DMA is revised as per requirements and dictates of the former, they would not proceed with the work.

g) On 25/09/2018, Mani's forwarded a proposed revised DMA to Rishinox. To avoid litigations Rishinox went to the extent of renegotiating the terms of DMA though no final agreement was reached. Mani's, it was alleged, by e-mail dated 27th October, 2018 renounced the contract/DMA by stating that they will not engage

themselves in the project till such time as a revised DMA is reached.

In fact, as alleged, Mani's refused to perform the contract in terms of DMA.

- h) Rishinox, by notices dated 29/10/2018, 31/10/2018, 24/01/2019, 31/01/2019, 02/02/2019 and 08/02/2019 called upon Mani's to perform the contract and remedy the breach. But nothing happened. Mani's, in terms of their e-mails dated 27/10/2018, 30/10/2018 and 17/12/2018 made it clear that they will not perform the contract.
- i) After more than three months of renouncing DMA, Mani's sent one e-mail communication to Rishinox on 06/02/2019 seeking for further addendum and/or amendment of DMA which was refused by Rishinox. It is the case of Rishinox that Mani's renounced DMA and in spite of repeated notices failed to cure their breach and perform the contract. Rishinox ultimately accepted the renunciation of contract by Mani's.
- j) Rishinox raised monetary claim for such breach and/or renunciation of contract by Mani's. Since the development agreement contains arbitration clause dispute was referred to arbitration. On or about 16/04/2019, Rishinox through their advocate issued notice under Section 21 of the Arbitration and Conciliation Act, 1996 invoking the arbitration clause and nominating their arbitrator. The Arbitral Tribunal, constituted at the instance of the parties, initiated arbitration proceeding to resolve the dispute.

Mani's filed Statement of Defense before the Learned Arbitration Tribunal denying all material allegations made in the Statement of Claim. A counter claim was also raised. Sum and substance of the Statement of Defense were:

- i. Mani's is a part of well-known Mani's Group which includes companies and limited liability partnerships. The Group achieved substantial good will and reputation in the fields of real estate, retail, hospitality, education and health care. Since 1980, the Group has been engaged in various development of properties in or around the states of West Bengal, Rajasthan, Maharashtra, Karnataka and Odisha.
- ii. The Rishi Group, through Rishinox, owns a property containing 4.94 acre of land situated at Mouza – Kalikapur, J. L. No. 40, P.S.: Rajarhat, Kolkata – 700135. The Rishi Group was desirous of undertaking and developing had a project with several high rise towers in the said property. The Rishi Group had also appointed one firm of architects who prepared a concept plan for the project.
- iii. The Rishi Group lacked expertise to construct, develop, promote and market large projects and were unable to undertake the project of their own. Therefore, the Rishi Group was desirous of involving the Mani's Group in the project as the Development Manager and also by using the brand name "MANI" in the project as this brand name was associated with large projects. Another object was to raise confidences among the intending purchasers of flats in the said project. It was agreed that the Mani's Group, apart from allowing usage of its brand name would also be required to provide development services as would be required from time to time and as would be agreed between the parties. As a result, initially, a Term Sheet was

- executed with Mani's Square Limited on 05th/06th January 2017 and subsequently the development agreement was executed.
- iv. Mani's suggested name of architect took steps for obtaining power supply connection at the construction site for appointing suitable soil testing agency, for sinking borewell for finalizing marketing, modules required for launching project and others. Though not under obligation, the Mani's help Rishinox in approaching banks for obtaining requisite loans. Subsequently, a tripartite agreement dated 18/07/2017 being the development management agreement was executed.
 - v. On 25th April, 2017, a registered joint development agreement was executed between the Claimant No.2 to 52 on the one hand and Rishinox on the other hand whereby the Claimant No.2 to 52 appointed Rishinox as Developer of the land. The said Mani's Group formed a special purpose vehicle for the project as the Development Manager instead of Mani's Square Ltd. Accordingly, Mani's, the Respondent in the arbitration proceeding was formed and incorporated on 26th April, 2017. Subsequently, a tripartite agreement dated 18th July, 2017 was executed, termed as Development Management Agreement ('DMA') and Mani's was appointed as Development Manager.
 - vi. In term of DMA, Mani's, apart from providing development services and others was also obliged to grant license to use the brand "Mani" in respect of the project. Because of use of that brand name in respect of the project all the works in furtherance of the project were to be commensurate to the goodwill of the group.
 - vii. The project, with the name of "Mani" was widely publicized.

- viii. The DMA specifically provided a negative covenant regarding termination of the appointment of the Respondent except on a very limited grounds and that both Mani's and Rishinox, shall not, during the term of the agreement acquired any third party services similar to or identical to the services provided by Mani's.
- ix. It is stated that Mani's work completely in accordance with the DMA. It was advertised extensively and the name Mani was used extensively in the advertisement.
- x. On 09/10/2018 Rishinox by an e-mail had forwarded to the Mani's a revised break up and project specifications for consideration and had requested for a meeting. Mani's, in terms of e-mail dated 15/10/2018, suggested certain changes. Then discussion and finalization of addendum to the Development Management Agreement was in process. However, as alleged, it became manifest to the Mani's that the Rishinox was trying to wriggle out of the agreement in terms of e-mail dated 08/02/2019. Rishinox refused to accept the proposed changes in the DMA contained in drafts addendum. There was failure between the parties to agree on addendum or modification of DMA.
- xi. Since September, 2018 when discussions commenced between the parties for modification of the terms of the DMA, by entering into an addendum thereto, there was no scope of carrying out any structural civil work at the project. Therefore, Mani's disengaged men and machineries to avoid idle labour and machinery charges.
- xii. It was contended that Mani's received a letter dated 12th March, 2019 on 13th March, 2019 from the Advocate of Rishinox alleging breach of agreement on

the part of Mani's and in spite of several reminders and demands, the later failed to remedy the breach. It was also alleged that Mani's repudiated and renounced the DMA and refused to perform its obligation. Accordingly, Rishinox accepted the alleged repudiation and renunciation and termination of the DMA. According to Mani's, contents of the letter were false and was an attempt to wriggle out of the DMA by Rishinox.

- xiii. It was further contended that conceptualization, finalization and execution of works under agreement was prolonged and delayed for reasons solely attributable to Rishinox.
- xiv. Since DMA was not amended, it is pleaded it was subsisting and had binding effect on the parties.
- xv. In this conspectus of facts, pleading breach of agreement by Rishinox, Mani's raised their counter-claim before the learned arbitral tribunal. Mani's claimed compensation for sum of Rs.53,68,71,357/-, on account of the aforesaid grounds, more fully stated hereinbelow. Mani's denied all other allegations made in Statement of Claim by Rishinox.

PARTICULARS

DM Entitlement as per clause 8.1 of DMA	Rs.29,16,00,000/-
Outstanding dues of the Respondent on account of the said project	Rs.1,45,01,219/-
Cost of resources utilized from Mani's Group	Rs.2,75,70,138/-
Losses and Damages	Rs.20,00,00,000/-

Legal Expenses	Rs.32,00,000/-
Total:	Rs.53,68,71,357/-

The Learned Tribunal, after considering rival claims concluded:

“**42.** Since this Tribunal is of the view that the Claim-application is not maintainable for want of any valid notice to remedy the breaches in spite of those being remediable and curable in nature, **or otherwise** the offending party can **substantially mitigate the effects of (if cure is not possible)** if any, as provided in the DMA, for the selfsame reason, in the absence of the three notices issued by the Respondent to remedy the breach of the Claimant by withdrawing the order of wrongful termination, it has decided not to enter into those factual allegations of the Respondent in its defence to the claim of the Claimants.”

So far as the counter claim was concerned, it was concluded that the Claim-application was not maintainable for want of any valid notice to remedy the alleged breaches and was dismissed as not maintainable. The relevant observation was:

“**46.** In view of the specific finding recorded by this Tribunal while accepting the Respondent's contention that the Claimants terminated the DMA by its notice dated 12th March, 2019, without giving opportunity to the Respondent to remedy the breaches, if at all, by violating a fundamental breach of obligation provided in the DMA, on the selfsame reason, the

Respondent is also unable to maintain any counterclaim without giving any opportunity to the Claimants to remedy the said breach although by simple revocation of the said notice dated 12th March, 2019, the said breach could be cured. Even the Respondent has also not given any notice to cure or otherwise remedy or substantially mitigate the effects of other breaches alleged (if cure is not possible).”

The Arbitral Tribunal concluded that the counter-claim was not maintainable as it deprived the claimants of its opportunity to remedy the illegal termination by withdrawing the notice dated 12th March, 2019 and also to cure or otherwise remedy or substantially mitigate the effects of other breaches alleged (if cure is not possible).

Both the parties, therefore, filed two separate applications under Section 34 of the Arbitration and Conciliation Act, 1996 against dismissal of respective the claim and counter-claim.

Mr. Mookherjee, the Learned Senior Counsel appearing for the Mani’s made two limbs of arguments. Firstly, he argued justification of the Tribunal in rejecting the claim of Rishinox. In the second limb of argument, on the contrary, he argued that the Tribunal was not justified in dismissing the counter-claim filed by the Mani’s.

It was contended by Mr. Mookherjee, the Learned Senior Counsel, that the Learned Arbitral Tribunal had rightly held that the Mani’s had not abandoned the project. A bare perusal of the e-mails dated 27/10/2018, 31/10/2018 and 17/12/2018 by the Mani’s to the Rishinox that part of negotiation to resolve the dispute between the parties and the same could not be treated to be abandonment of

the project. In fact, Mani's had continued the work on the project pursuant to the said e-mails and all the Respondents including Rishinox had accepted such work.

It was submitted that Section 39 of the Indian Contract Act, 1872 does not apply to the instant case *inter alia* for following reasons:-

(i) As stated hereinabove, the emails relied upon by the Respondents evince that the parties were negotiating an addendum to the DMA. Such negotiation was not unilateral, and the Respondent was participating in it;

(ii) Assuming whilst denying that the said emails evince the Petitioner's failure to perform its obligations under the DMA, even then, such failure would constitute breach of contract and not abandonment; and

(iii) Pertinently, Section 39 allows the promise to put an end to the contract, however, such termination/repudiation of the contract shall be in accordance with the mode of termination provided in the contract i.e. as per Clause 18 of the DMA.

It was contended that Clause 18 of the DMA provided that the Respondents were required to serve three notices at an interval of 90 days, 60 days and 30 days respectively to Mani's, highlighting the breaches committed by the Mani's and calling upon them to cure the breaches within the timeline. However, a bare perusal of the letter dated 12/03/2019 would evince that the Rishinox wrongfully and illegally terminated the DMA without following the procedure set out in the clause. Rishinox's reliance on the e-mails dated 29/10/2018, 31/10/2018, 31/01/2019, 02/02/2019 and 08/02/2019 to allege that the procedure under Clause 18 was

followed, is false and incorrect. A perusal of the said e-mails would evince that none of the said e-mails called upon the Petitioner to cure the alleged breaches and more importantly the said e-mails were not issued in accordance with the timelines set out in Clause 18.

It was contended that the law is well-settled on the proposition that Arbitral Tribunal is a creature of contract. The Arbitral Tribunal cannot pass any Award contrary to the terms of the contract and more particularly the mode of termination agreed therein. The Learned Senior Counsel relied upon **Indian Oil Corporation Ltd. vs Shree Ganesh Petroleum Rajgurunagar [(2022) 4 SCC 463]**. For the reasons as argued, according to Mr. Mookherjee, the Learned Arbitral Tribunal rightly dismissed the claim of the Respondents including Rishinox.

In challenging the Award for rejection and/or dismissal of the counter-claim, Mr. Mookherjee argued that the Learned Arbitral Tribunal dismissed the counter-claim without assigning any reasons. On behalf of Mani's in depth oral arguments were made and notes of arguments as well as judgments in support thereof were placed but those were not considered why passing the impugned Award.

Mr. Mookherjee pointed out, referring to Section 31(3) of the Arbitration and Conciliation Act, 1996 that unless otherwise agreed upon by the parties the Arbitral Award must provide reasons on which it was based. However, in the instant case, as argued, the Learned Arbitral Tribunal passed the impugned Award without dealing with any of the contentions raised by the Petitioner. According to Mr. Mookherjee the impugned Award is, therefore, *ex facie* passed in complete disregard of Section 31(3) of the Act. Referring to **Som Datt Builders Ltd. Vs. State of Kerala [(2009) 10 SCC 259]**, Mr. Mookherjee argued that the requirement of reasons in support of the Award under Section 31(3) is not an empty formality; it guarantees

fair and legitimate consideration of controversy by the Arbitral Tribunal. Referring to **Dyna Technologies Private Limited Vs. Crompton Greaves Limited [(2019) 20 SCC 1]**, it was argued by Mookherjee that Section 31(3) mandates passing of a reasoned order which must be intelligible and adequate; requirement of a reasoned order are three, namely, proper, intelligible and adequate. According to Mr. Mookherjee, the impugned order is devoid of that. According to Mr. Mookherjee dismissal of the counter-claimed by the Learned Arbitral Tribunal is perverse and contrary to the facts on record. The Arbitral Tribunal failed to take into consideration that the Petitioner in terms of its advocate's letter dated 10/06/2019 stated that DMA was valid and subsisting and the Petitioner was ready and willing to perform its obligation under DMA; the same was again reiterated by Mani's in the statement of defence filed before the Arbitral Tribunal; most importantly, the said point was expressly argued by the Mani's before the Learned Arbitral Tribunal as well as recorded in the written submission filed before the Tribunal. The impugned Award was passed, as submitted, incomplete, ignorance of those submissions. It was further argued that the Mani's had always treated DMA as valid and subsisting and as such the question of the terminating the DMA that to once the Respondents have illegally terminated.

It was argued by Mr. Mookherjee the Learned Senior Counsel that the impugned Award passed by the Arbitral Tribunal is patently illegal and no reasonable man could come to such a conclusion. In extension of this argument, it was submitted that the Award is *ex facie* in conflict with the public policy of India. Therefore, the impugned order is liable to be set aside under Section 34(2) (b) (ii) of the Arbitration and Conciliation Act, 1996. Mr. Mookherjee, the Learned Senior Counsel referred to and relied upon the following decisions **Associate Builders Vs. DDA [(2015) 3 SCC 49]**; **Ssangyong Engineering and Construction**

Company Limited Vs. National Highway Authority of India [(2019) 15 SCC 131].

It was further argued that Clause 14.5 of the DMA *inter alia* provides that the same cannot be terminated unless under specified circumstances mentioned therein. Section 32 of the Specific Relief Act, 1963 *inter alia* provides that an agreement to perform negative covenant is specifically enforceable. It was argued that the DMA is subsisting reserving scope of specific performance of the DMA. Furthermore, Clauses 18.2 and 18.3 of the DMA *inter alia* provided that right to seek specific performance of the DMA was in addition to the right to terminate DMA. It was submitted that error in passing the impugned Award lies in the observation that Mani's ought to have terminated the DMA and dismissal of the counter-claim.

Another limb of argument advance was that Section 40 of the Specific Relief Act, 1963 provides that a Court may grant damages in addition to or in lieu of specific performance of contract. In the present case, it is undisputable that Mani's had discharged the entire pre-construction obligation under the DMA. In fact, Mani's had led oral evidence to prove that the Respondents including Rishinox used drawings prepared by it for construction of the project even after termination of the DMA. Thus, as submitted, once the Learned Arbitral Tribunal had dismissed the Respondent's claim, the Mani's is entitled to claim damages in view of loss of profit that it had anticipated to earn had the DMA not been breached. Mr. Mookherjee relied upon **Oil and Natural Gas Corporation Vs. Saw Pipes Limited [(2003) 5 SCC 705]**.

Per contra, Mr. Thaker, the Learned Senior Counsel, on behalf of Rishinox, submitted at the outset that the scope of challenge of an award under Section 34 of the Arbitration and Conciliation Act, 1996 is restricted and limited to the grounds

mentioned in the section. Referring to **Punjab State Civil Supplies Corporation Limited & Anr. Vs. Sanman Rice Mills & Ors. [(2014 SCC OnLine SC 2632)]** the Learned Counsel explained the scope of Section 34 of the Arbitration and Conciliation Act, 1996. Referring to **UHL Power Company Limited Vs. State of Himachal Pradesh [(2022) 4 SCC 116]**, it was submitted that a jurisdiction conferred on the court under Section 34 of the Arbitration and Conciliation Act, 1996 is fairly narrow. It was further contended that Court does not sit in appeal over and arbitral award and may interfere on merits on limited grounds provided in Section 34 itself. It was submitted by the Learned Counsel Mr. Thaker that the Arbitral Tribunal considered the counter-claim filed by Mani's and after due consideration thereof as well as considering all materials evidences on record, rightly rejected the counter-claim.

It was contended by Mr. Thaker the Learned Senior Counsel that there was no prayer was specific performance of the DMA in the counter-claim. There was no relief for declaration that the termination of the DMA by Rishinox was wrongful which is mandatory in case of specific performance. Mr. Thaker, referred to **I. S. Sikander (dead) by Lrs. Vs. K. Subrakani & Ors. [(2013) 15 SCC 27]**; **R. Kandaswamy (since Dead) & Ors. Vs. T.R.K. Sarawathy & Anr. With Civil Appeal No. 3016 of 2013 ABT Ltd. Vs. T.R. K. Sarawathy & Ors. [(2025) 3 SCC 513]**, It was submitted that counter-claim was for damages, for breach of contract and perpetual injunction; counter-claim for damages was the main relief. Mani's was not entitled to any injunctive relief whether under Section 38 of the Specific Relief Act, 1963 or under Section 42 of the same for the reason that it failed to perform the contractual term 18.1.2 (v) which was binding on it. No perpetual injunction could have been granted for post termination period of DMA as it would tantamount to restrain of trade. In so far as, Section 42 is concerned, no injunction

to in respect of any negative covenant in the DMA could have been granted, because the claim was hit by the proviso to Section 42 of the Specific Relief Act, 1963 in view of the fact that the Mani's had failed to perform the contract in so far as it was binding on it and failed to comply with Clause 18.1.2 (v) of the DMA. Mr. Thaker referred to **Gujrat Bottling Co. Ltd. & Ors. Vs. Coca Cola Co. & Ors. [(1995) 5 SCC 545]**.

Mr. Thaker, also distinguished application of ratio in **Som Datt Builders Ltd.** (supra), **Dyna Technologies Private Limited** (supra) and other decisions and **Associate Builders** (supra) as well as **Indian Oil Corporation** (supra) since they are decided on different facts and circumstances and the propositions of law, made therein, are squarely applicable against Mani's.

Mr. Thaker also referred to **OPG Power Generation Private Limited Vs. Enexio Power Cooling Solutions India Private Limited & Anr. [(2025) 2 SCC 417]** to argue that a Court, exercising authority under Section 34 of the Arbitration and Conciliation Act, 1996 does not sit as a court of appeal in ordinary sense. Powers exercisable under Section 34 are limited and circumvented by Section 34 itself.

It was further submitted by Mr. Thaker that a plausible view by the Arbitrator on facts is to be respected as the Arbitrator is the ultimate master of the quantity and quality of the evidence relied upon. It is only when an Arbitral Award could be categorised as perverse and there exist an error of fact, an award can be set aside. It was further argued by Mr. Thaker that a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an Award as is clear from the provisions of Section 34 (2-A) of the 1996 Act.

According to Mr. Thaker the application filed under Section 34 of the Arbitration and Conciliation Act, 1996 by the Mani's, namely, AP-COM 709 of 2024 should be dismissed.

I have heard rival submissions.

In this case, the Learned Tribunal dismissed both the claim and counter-claim. The Learned Tribunal was of the view that claim application was not maintainable for want of any valid notice to remedy the breaches in spite of those being remediable and curable in nature, or otherwise the offending party can substantially mitigate the effects of (if cure is not possible), if any, as provided in the DMA. The Learned Tribunal also observed that there was also absence of any notice on behalf of the Respondent (Mani's) asking the Claimant (Rishinox) to remedy the breach. The Learned Tribunal was of the view that the Respondent was also unable to maintain any counter-claim without giving any opportunity to the claimant to remedy the breach although by simple revocation of the said notice dated 12th March, 2019 the breach could be cured. Even the Respondent did not issue any notice to cure or otherwise remedy or substantially mitigate the effects of other breaches alleged (if cure is not possible).

Now before considering, the findings of the Learned Tribunal, it is necessary to look into the respective clauses of the agreement. Clause 18 of the Development Management Agreement (DMA) provides for defaults and consequences.

“18.1 Events of default: The parties have agreed that this agreement may be terminated only and only in the following events and no others:

18.1.1 The Developer may, at its option, terminate this Agreement in the following events:-

- (i) If the Development Manager commences a case or other proceeding of its voluntary winding up, reorganization, dissolution, insolvency or liquidation or similar law of any Jurisdiction during the Term or otherwise suffers any order of winding up or dissolution or is insolvent or suffers any appointment of any custodian or the like for it or any substantial part of Its property or calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts; or
- (ii) If the development Manager no longer having the ownership and/or registration of the trademark in respect of its Brand "Mani" or suffering injunctions or stay in its use of the same which remain enforce for more than 180 days; or
- (iii) If the Development Manager fails to achieve any Milestone that is identified as a "critical milestone" by the date set forth therein (except for any unavoidable Delay Events) and/or fails to materially comply with, or cause the material compliance with any of its other obligations under this Agreement; and in either eventualities fails to cure (if cure is possible) or otherwise remedy or substantially mitigate the effects of (if cure is not possible) such breach within ninety (90) days of the date that first written notice thereof is given from Developer to the Development Manager and a further 60 days of the date that a second written notice is given from Developer to the Development Manager and a last 30 days of the date that a third written notice is given from the Developer to the Development Manager In respect thereof.

18.1.2 The Development Manager may, at its option, terminate this Agreement in the following events:-

- (i) If the Developer commences a case or other proceeding of its voluntary winding up, reorganization, dissolution, insolvency or liquidation or similar law of any jurisdiction during the Term or otherwise suffers any order of winding up or dissolution or is Insolvent or suffers any appointment of any custodian or the like for it or any substantial part of its property or calls a meeting of Its creditors with a view to arranging a composition, adjustment or restructuring of its debts; or
- (ii) The Land Owners no longer having the ownership or Assured Attributes of the said premises (or of such part thereof, whose exclusion will in the opinion of the Development Manager make it unviable to continue with this agreement) and fails to cure the same (if cure is possible) to Development Manager's reasonable satisfaction within thirty 60 days of the date of arising of lack of ownership or Assured Attributes. Notwithstanding the foregoing, if such lack of ownership or Assured Attributes can be cured but cannot be cured solely by the payment of money or within such thirty (30) day period and Development Manager shall have commenced the cure thereof within such thirty (30) day period and shall diligently prosecute the cure thereof to completion, then Developer shall have a reasonable period of time to cure the same not to exceed one hundred eighty (180) days in the aggregate, Including such initial thirty (60) day period; or
- (iii) No building plans for construction of the New Buildings is submitted for approval with the appropriate Government Authority within the stipulated period or is sanctioned within 12 months of such submission (except for any Unavoidable Delay Events, in which event, such deadline shall be deemed extended one (1) day for each day of Unavoidable Delay Events of

which Developer gives notice of promptly in writing to Development Manager), unless Developer and Development Manager shall mutually agree to an extension thereof in writing; or

(iv) No mandatory Approvals required for the Project is obtained within 12 months from the date of submission of Building Plans for sanction (except for any Unavoidable Delay Events, in which event, such deadline shall be deemed extended one (1) day for each day of Unavoidable Delay Events of which Developer gives notice of promptly in writing to Development Manager), unless Developer and Development Manager shall mutually agree to an extension thereof in writing, or

(v) If the Developer falls to materially comply with, or cause the material compliance with any of its other obligations under this Agreement and fails to cure (if cure is possible) or otherwise remedy or substantially mitigate the effects of (if cure is not possible) such breach within ninety (90) days of the date that first written notice thereof is given from Development Manager to the Developer and a further 60 days of the date that a second written notice is given from Development Manager to the Developer and a last 30 days of the date that a third written notice is given from the Development Manager to the Developer in respect thereof.

18.1.3 In the event of period of Unavoidable Delay Events resulting in the stoppage of the Project beyond 180 days, either party may terminate this agreement by giving a notice of 30 days to the other.”

Ambit of Section 34 should be considered in this context. Relevant part of Section 34 of the Arbitration & Conciliation Act may be quoted:

“34. Application for setting aside arbitral award.—(1)

Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that— —

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”

From time to time, scope of the section has been explained by the Supreme Court of India. In **Som Datt Builders Ltd. Vs. State of Kerala [(2009) 10 SCC 259]**, the principal of law explained by the Supreme Court of India is that the requirement of reasons in support of the award under Section 31(3) is not an empty formality. It guarantees fair and reasonable consideration of the controversy. It was explained that, however, brief it may be, reasons must be indicated in the award as that would reflect the thought process leading to a particular conclusion. In **Dyna Technologies Pvt. Ltd. Vs. Crompton Greaves Ltd. [(2019) 20 SCC 1]**, three Judges Bench of the Supreme Court of India observed, so far as reasoned order under section 31 of the Act is concerned:

“34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.”

It was further observed that so far as the requirement of a reasoned order is concerned, three characteristics can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or

perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act.

In spates of judgments, the Supreme Court of India and the High Courts observed that an arbitral tribunal cannot pass an award beyond the terms of the contract. In **Indian Oil Corporation Ltd. Vs. Shree Ganesh Petroleum Rajgurunagar [(2022) 4 SCC 463]**, it was explained that an Arbitral Tribunal being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract. In **Associate Builders v. DDA, [(2015) 3 SCC 49]** it was observed:

“**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.”

In **Ssangyong Engg. & Construction Co. Ltd. v. NHAI, [(2019) 15 SCC 131]**, it was observed by the Supreme Court of India that under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the Court. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the 1996 Act, as has been noted earlier in this judgment. It was observed in **Dyna Technologies** case (supra)

“**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.

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.”

Three Judges Bench of the Supreme Court of India in **UHL Power Company Ltd. Vs. State of Himachal Pradesh [(2022) 4 SCC 116]** referring to **Dyna Technologies** case (supra) observed and reiterated the principal that if there are two plausible interpretations of the terms and conditions of the contract then no fault can be found if the arbitrator proceeds to accept one interpretation as against the other. The Court referred to **Parsa Kente Collieries Ltd. Vs. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. [(2019) 7 SCC 236]** where it was observed:

“9.1. ... It 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 para 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.”

Coming to the case in hand, the Learned Tribunal considered the ambits of Clause 18 which is termination clause. The Learned Tribunal considered that both the parties committed breach of Clause 18. Neither of the parties issued curative notices as contemplated in Clause 18. These observations of the tribunal are very much based on the terms of contract. The Learned Tribunal considering and interpreting the contract, being confined in the terms of the contract came to a reasoned conclusion. Mr. Kanodia, the Learned Counsel for Mani’s argued that once the Learned Tribunal considered that the termination is bad and invalid should also hold, in sequel and consequentially, that the contract is living and in that perspective should consider the counter-claim of specific performance of Mani’s. This argument is not baseless or is devoid of merit. But this argument addresses the interpretation of contract or its existence or revival. Even though, this argument be accepted it cannot be said that this is a sole conclusion which a reasonable man would draw. The Learned Tribunal interpreted the award from a specific point of view and with specific reasons. The conclusion is reasonable and based in contract itself, as stated above. Only because a different interpretation is possible should not be ground to set aside or interfere into the award passed by the Learned Arbitral Tribunal.

While considering an application under Section 34 of the Arbitration & Conciliation Act, 1996, a Court is not hearing an appeal from a decree for a civil suit where scope of interference by the Appellate Court is wide. The Appellate Court is also empowered to consider and allow additional evidence. But in case of an appeal under Section 34 of the Arbitration & Conciliation Act, 1996, scope of interferences is

limited, as discussed above. Merely because another interpretation is possible is not a ground of interference, as stated above.

For reasons stated above, this Court is of opinion that the Learned Tribunal passed an award which is reasonable based on the contract and demands no interference.

Accordingly, both the applications AP-COM/709/2024 & AP-COM/403/2024 demands dismissal and are hereby dismissed.

Both the applications AP-COM/709/2024 & AP-COM/403/2024 stands disposed of.

(Sugato Majumdar, J.)