

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION PETITION NO. 489 OF 2022

K. V. Naidu ... Petitioner
Versus
Integrated Home Solutions Pvt. Ltd. & Anr. ... Respondents

**WITH
INTERIM APPLICATION NO. 462 OF 2024
WITH
INTERIM APPLICATION NO. 457 OF 2024
WITH
INTERIM APPLICATION NO. 458 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO. 489 OF 2022**

Mr. Rahul Kamerkar a/w Ms. Aparajita R. Jha for Petitioner.
Mr. Piyush Raheja a/w Mr. Bhuvan Singh, Ms. Jyoti Ghag, Mr.
Shailesh Prajapati and Mr. Ankit Singhal i/by Dua Associates for
Respondents.

**CORAM: MANISH PITALE, J.
RESERVED ON : 7th OCTOBER 2025
PRONOUNCED ON : 14th OCTOBER 2025**

ORDER :

. By this petition, filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Arbitration Act' for short), the petitioner has challenged arbitration award dated 24th January 2022 passed by a sole arbitrator, whereby the claim of the respondents was allowed and the counter-claim filed by the petitioner was rejected. As a consequence, the petitioner is

liable to pay an amount of Rs.18 crores along with interest, as indicated in the operative portion of the arbitral award, to the respondents.

2. The petitioner and the respondents entered into transactions concerning properties consisting of residential apartment units. The documents on record show that there were two sets of transactions concerning properties at Yelahanka and Yeshwanthpur. While it is the case of the petitioner that the two transactions were interconnected, according to the respondents these were two distinct transactions and that the mutual obligations pertaining to these two transactions were independent of each other.

3. One set of transaction concerns such residential units pertaining to the year 2014-15 under which the respondents paid certain amounts, as regards identified residential units and in that context, specific amounts exchanged hands. The other transaction consisted of a series of agreements executed between the parties, styled as a Development Agreement dated 11th November 2015, an Exclusive Marketing and Collection Agency Agreement (EMCA) also dated 11th November 2015, a Security Deposit Agreement (SDA) dated 12th November 2015 and eventually, a Final Agreement dated 15th November 2017. These agreements pertained to development of property at Yeshwanthpur, as also the aspect of marketing the residential units under the initial transaction pertaining to residential units at Yelahanka. Under the

SDA a sum of Rs.18 crores was agreed to be paid to the petitioner, as refundable security deposit for the purposes of securing the obligations and it was supposed to be refunded by the petitioner over a period of time. In the interregnum, on 20th March 2017, the petitioner executed an equitable mortgage by deposit of titles, whereby specific residential units were mortgaged as against some of Rs.5 crores advanced as loan. Eventually, the aforesaid final agreement dated 15th November 2017 had to be executed, as the petitioner was unable to refund amount of Rs.15 crores under the SDA upto November 2017. The final agreement reaffirmed and reiterated the earlier agreements and acknowledged the liability of the petitioner to refund the said amount deposited under the SDA. This final agreement referred to a “statement of amounts receivable”, upon which the petitioner has placed much emphasis. It is to be noted that the aforementioned agreements contained arbitration clauses and one of the issues sought to be raised on behalf of the petitioner concerns the applicability of particular arbitration clause, which also has a bearing on the question as to whether the arbitral tribunal in the present case was constituted as per the arbitration agreement between the parties.

4. It is matter of record that over the aforesaid period of time between 2014-2019, business and financial transactions did continue between the parties. But, disputes arose, as a consequence of which, the petitioner received an email on 15th June 2020 from the respondents, stating that a petition had been

filed in this Court under Section 9 of the Arbitration Act, seeking interim measures. On 19th June 2020, this Court granted limited interim relief in favour of the respondents to the effect that pending the arbitral proceedings, the petitioner herein stood restrained from dealing with and disposing of 16 residential units in the project specifically mentioned in the final agreement dated 15th November 2017. This Court further recorded an undertaking of the respondents that they would initiate arbitration proceeding within six weeks.

5. On 29th July 2020, the respondents invoked arbitration under Section 21 of the Arbitration Act by sending notice to the petitioner, specifically relying upon the arbitration clause contained in the final agreement dated 15th November 2017 executed between the parties. The arbitration clause therein, in fact, recorded that the arbitration clause under the EMCA dated 11th November 2015 would apply. On this basis, while invoking the arbitration, the respondents declared their intention of appointing a sole arbitrator (a former Judge of this Court and former Chief Justice of Allahabad High Court), calling upon the petitioner to respond to the notice and to join in a preliminary meeting with the sole arbitrator.

6. On 6th August 2020, the petitioner responded to the aforesaid notice invoking the arbitration, disputed the claims made by the respondents and did show willingness to participate in the arbitration. In the reply, the petitioner also specifically stated that

he was ready to participate in the arbitration proceeding, so as to avoid *ex-parte* order being passed, without prejudice to his rights to challenge the agreements and to claim compensation against the respondents for cheating, fraud, forgery and breach of trust, as also seeking remedies under criminal law.

7. On 31st October 2020, the petitioner caused a FIR be registered at Bengaluru against the respondents, alleging forgery and fabrication on their part. It was also claimed that unauthorized withdrawals were made from the bank account of the petitioner by the respondents, giving rise to criminal offences. The FIR was registered for offences under Section 406, 420 and 506 read with 34 of the Indian Penal Code, 1860 (IPC).

8. The sole arbitrator entered upon reference and the arbitral proceedings proceeded with filing of a claim, written statement with counter-claim and other procedural formalities. Evidence was recorded upon issues being framed. During the pendency of the arbitral proceedings, on 18th March 2021, the petitioner filed a private complaint before the Additional Chief Metropolitan Magistrate, Bengaluru, reiterating the allegations of cheating, forgery and criminal breach of trust against the respondents. In the meanwhile, the petitioner had also filed an application under Section 16 of the Arbitration Act, challenging the very jurisdiction of the sole arbitrator and also claiming that the arbitration could not take place at Mumbai, by relying upon arbitration clauses contained in the Joint Development Agreement and the SDA. It

was claimed that since both these agreements contained arbitration clauses, requiring a tribunal of three members with the place of arbitration being Bengaluru, the sole arbitrator appointed and having entered reference at Mumbai, was wholly without jurisdiction. By an order dated 21st November 2020, sole arbitrator rejected the aforesaid contention of the petitioner by relying upon the arbitration clause contained in the final agreement dated 15th November 2017, read with the arbitration clause contained in the EMCA dated 11th November 2015. Since the objection raised under Section 16 of the Arbitration Act on behalf of the petitioner was rejected by the aforesaid order, in the present petition filed under Section 34 of the Arbitration Act, the petitioner has also assailed the aforesaid order and the findings rendered therein by the sole arbitrator.

9. On 13th December 2020, the petitioner filed an application under Section 17 of the Arbitration Act, seeking a direction against the respondents for producing details of bank transactions related to the respondents. By an order dated 21st December 2020, the sole arbitrator deferred decision on the said application, observing that the petitioner could elicit required information during cross-examination of the relevant witnesses. It is alleged on behalf of the petitioner that during the course of the arbitration proceedings, on recording of evidence of the witnesses, certain vital questions sought to be put on behalf of the petitioner during cross-examination, were disallowed, thereby demonstrating an unfair

procedure adopted by the sole arbitrator.

10. On 30th March 2021, the sole arbitrator passed an order rejecting the aforesaid application filed on behalf of the petitioner under Section 17 of the Arbitration Act. It was observed that rejection of the application would not preclude the counsel for the parties from arguing their case on the basis of the material/documents produced on record and also the evidence led by the parties to prove their case. According to the petitioner, this was a glaring procedural infirmity, substantially preventing the petitioner from effectively placing his case before the arbitral tribunal.

11. Eventually on 24th January 2022, the impugned arbitral award was pronounced. Subsequently, on an application moved by the respondents for correction of certain errors in the arbitral award, in July 2022, the sole arbitrator communicated the order on the said application.

12. Since the claim of the respondents was granted and the counter-claim of the petitioner was rejected, the petitioner was constrained to file the present petition under Section 34 of the Arbitration Act. The learned counsel for the parties were heard at length, during the course of hearing.

13. Mr. Rahul Kamerkar, learned counsel for the petitioner submitted that even if the scope for interference in an arbitral award is limited and specific grounds under Section 34 of the

Arbitration Act are required to be demonstrated, in the present case, the arbitral award deserves to be set aside on the grounds contained in Section 34(2)(a)(iii), (iv), (v) and Section 34(2)(b)(ii) of the Arbitration Act. It was submitted that the sole arbitrator also erred in rejecting the application under Section 16 of the Arbitration Act and this was also an independent ground for demonstrating the grave error committed by the learned arbitrator. It was further submitted that since the petitioner had raised issues pertaining to forgery, fabrication and such acts on the part of the respondents that gave rise to criminal proceedings, the dispute itself was rendered non-arbitrable. These specific grounds were raised to demonstrate that this Court ought to exercise jurisdiction under Section 34 of the Arbitration Act to set aside the impugned arbitral award. It was also prayed that the counter-claim of the petitioner deserved to be granted.

14. In order to demonstrate that the said grounds indeed arise in the facts and circumstances of the present case, the learned counsel for the petitioner invited attention of this Court to the contents of the application filed under Section 17 of the Arbitration Act. It was submitted that the respondents, who were claimants before the arbitral tribunal, were required to first demonstrate that the amount of Rs.18 crores was actually transferred to the petitioner under the subject agreement and that for the said purpose, details in the form of a table showing actual dates of transfer of the amounts along with details of the instruments and the modes of

such transfers, were required to be placed on record. The arbitrator deferred the said application, observing that the petitioner could ask appropriate questions in cross-examination and indicated that the prayer could be taken up for consideration subsequently. According to the learned counsel for the petitioner, at the stage of cross-examination, vital questions sought to be put by the petitioner, were disallowed and when the petitioner sought to press reliefs in the aforementioned application filed under Section 17 of the Arbitration Act, by order dated 30th March 2021, it was rejected. In other words, the defective procedure adopted by the sole arbitrator resulted in the petitioner being prevented to present his case in a wholesome manner before the arbitrator. On this basis, it was submitted that the specific ground for challenge under Section 34(2)(a)(iii) of the Arbitration Act arises in the present case and on this ground alone, the impugned arbitral award deserves to be set aside. Much emphasis was placed on the “statement of amounts receivable” forming a part of the final agreement dated 15th November 2017 executed between the parties. It was submitted that the said document was completely ignored by the sole arbitrator, despite repeated requests made on behalf of the petitioner. An attempt on the part of the petitioner to put questions to the witnesses during cross-examination on the basis of the aforesaid document, was also thwarted by the arbitrator, thereby demonstrating that the petitioner was unable to present his case in the proper perspective before the arbitrator.

15. It was further submitted that if the said documents i.e. statements of amounts receivable, was to be appreciated by the tribunal, it would have come to light that the respondents could not isolate the amount of Rs.18 crores from the entire set of transactions between the parties, including those pertaining to the Yelahanka property, thereby demonstrating that certain amounts were receivable even by the petitioner from the respondents. On this basis, it was alleged that the learned arbitrator failed to properly appreciate the nature of disputes between the parties and the arbitral award consequentially dealt with disputes that were not contemplated and contained decisions beyond the scope of the disputes submitted for the arbitration. On this basis, the learned counsel for the petitioner raised the ground under Section 34(2)(a) (iv) of the Arbitration Act, to challenge the impugned arbitral award.

16. As regards jurisdiction of the sole arbitrator and the place of arbitration being Mumbai, it was submitted that an objection in the first instance was raised on behalf of the petitioner under Section 16 of the Arbitration Act. The learned arbitrator failed to appreciate the contentions of the petitioner in that regard, as a consequence of which, the application under Section 16 of the Arbitration Act stood erroneously dismissed. The arbitration clauses in the said development agreement dated 11th November 2015 and SDA dated 12th November 2015 required an arbitral tribunal of three members and the place of arbitration to be

Bengaluru. Due to failure in appreciating the said aspect of the matter, the sole arbitrator fell in error in rejecting the application under Section 16 of the Arbitration Act, which went to the very root of the matter concerning jurisdiction of the arbitrator. On a proper appreciation of the documents on record, the application ought to have been allowed, thereby demonstrating that the very composition of the arbitral tribunal was vitiated, giving rise to ground under Section 34(2)(a)(v) of the Arbitration Act to challenge the impugned award.

17. The learned counsel for the petitioner further emphasized that the entire approach adopted by the learned arbitrator, while deciding the issues, arising between the parties demonstrated that it not only suffered from procedural infirmity, but the manner in which the oral and documentary evidence on record was appreciated, gave rise to a ground under Section 34(2)(b)(ii) of the Arbitration Act. The entire approach contravened the fundamental policy of Indian law and on this ground also, the arbitral award deserved to be aside.

18. It was further submitted that the petitioner realised the extent of fraud committed by the respondents when the actual disputes arose between the parties. According to the petitioner, documents were got signed from him in a clandestine and fraudulent manner, giving rise serious questions of fraud, forgery and fabrication. This had also led to initiation of criminal proceedings, thereby demonstrating that the disputes arising in the

present case were non-arbitrable. It was submitted that upon realizing the nature of disputes, the sole arbitrator should have held his hands and left it to the parties to approach the competent Court for determination of such serious questions of fraud, forgery and fabrication. On this count also a serious challenge was raised to the impugned arbitral award.

19. In support of the said submissions, the learned counsel for the petitioner relied upon judgments of the Supreme Court in the case of *Oil and Natural Gas Corporation Limited v/s. Western Geco International Limited*, (2014) 9 SCC 263, *Ssangyong Engineering and Constructions Company Limited v/s. National Highways Authority of India (NHAI)*, (2019) 15 SCC 131 and *Associate Builders v/s. Delhi Development Authority*, (2015) 3 SCC 49. It was submitted that therefore, the impugned arbitral award ought to be set aside.

20. On the other hand, Mr. Piyush Raheja, learned counsel appearing for the respondents submitted that a fundamental flaw in the contentions raised on behalf of the petitioner pertained to mixing up two distinct transactions executed between the parties. One concerning the Yelahanka property and the other concerning Yeshwanthpur property. It was submitted that the relevant agreements in the present case, eventually culminating into the final agreement dated 15th November 2017, would show that when the petitioner defaulted on his commitments under the development agreement dated 11th November 2015, EMCA dated

11th November 2015 and SDA dated 12th November 2015, that the said final agreement had to be executed. This final agreement recorded acknowledgement on the part of the petitioner about his failure to abide by commitments and it provided for the way forward, along with a specific arbitration clause, which bodily lifted the arbitration clause in the EMCA for resolution of disputes. Thus, the attempt on the part of the petitioner to mix up other transactions with the specific transaction of the respondents having given Rs.18 crores to the petitioner, ought not to be permitted and the dispute pertaining to entitlement of the respondents for refund of that specific amount with interest only needs to be taken into consideration.

21. It was submitted that once this clarity is achieved, the elaborate contentions sought to be raised on behalf of the petitioner can be demonstrated to be unsustainable, thereby showing that the impugned arbitral award does not deserve interference.

22. It was submitted that the learned arbitrator correctly appreciated the nature of dispute raised by the respondents (original claimants), thereby applying arbitral clause contained in the EMCA to hold against the petitioner while rejecting the application under Section 16 of the Arbitration Act. The learned arbitrator also went into great detail while appreciating the documents to conclude that amounts totaling to Rs.18 crores were indeed transferred into the account of the petitioner in pursuance

of the SDA.

23. Having appreciated such evidence and material on record, the learned arbitrator correctly found that the respondents had proved transfer of such amounts as the basis for their claim for refund of the same along with interest. In the face of such findings, the insistence of the petitioner upon a table with details to be produced by the respondents was wholly misplaced and in that context, the application under Section 17 of the Arbitration Act was correctly rejected. There was no procedural infirmity and hence, no question of the petitioner being deprived of the opportunity to present his case before the arbitrator. It was submitted that the ground under Section 34(2)(a)(iii) of the Arbitration Act clearly does not arise in the facts and circumstances of the present case.

24. It was further submitted that once the nature of dispute being restricted to the amount advanced to the petitioner and the claim of the respondents for its refund, is appreciated, it becomes clear that the ground under Section 34(2)(a)(iv) also does not arise in the facts and circumstances of the present case. The learned arbitrator clearly decided the dispute that actually arose between the parties and there is no question of the arbitrator having gone beyond the dispute that actually arose between the parties. As regards the ground under Section 34(2)(a)(iv), it was submitted that the order passed under Section 16 of the Arbitration Act is a complete answer to the same. There is no question of there being

any defect in the constitution of the arbitral tribunal, for the simple reason that the learned arbitrator applied the only arbitration clause that could apply to the dispute that arose between the parties. The aforesaid clause stipulated that a sole arbitrator and the place of arbitration as Mumbai. Therefore, the insistence of the petitioner that an arbitral tribunal of three members at Bengaluru ought to have been constituted is wholly without any substance.

25. On the question of non-arbitrability of the dispute, it was submitted that the allegations of fraud, forgery and fabrication made by the petitioner were clearly an afterthought. The arbitrator discussed the aforesaid aspect in detail in the impugned arbitral award. The position of law in this regard was correctly applied. Reference was made to judgments of the Supreme Court and this Court on the aforesaid aspect to conclude that, if such an objection on the ground of fraud and allegations, regarding criminal activities was raised only as a pretext to avoid arbitration, the same was required to be shot down by the arbitrator. The approach of the arbitrator was clearly in consonance with the position of law and hence, no error could be attributed to the learned arbitrator in that regard.

26. As regards scope of interference in an arbitral award under Section 34 of the Arbitration Act and reliance placed on the aforesaid judgments by the learned counsel appearing for the petitioner, it was submitted that there can be no quarrel with the

position of law laid down therein, but it would inure to the benefit of the respondents rather than the petitioner. It was submitted that the arbitrator was alive to the position of law with regard to the manner in which the disputes referred to arbitration were to be decided and hence, none of the grounds raised on behalf of the petitioner justify interference with the arbitral award. As regards the ground under Section 34(2)(b)(ii) of the Arbitration Act, it was submitted that there was nothing to indicate any error on the part of the arbitrator and that it could not be said that the respondents had taken advantage of their own “illegal acts”. On this basis, it was submitted that the petition deserved to be dismissed.

27. This Court has considered the rival submissions. The scope of interference under Section 34 of the Arbitration Act is necessarily limited to the grounds specifically enumerated under the said provision. On behalf of the petitioner, specific clause of the said provision has been invoked in order to demonstrate that the impugned arbitral award deserves interference. This Court has considered the material on record in that perspective.

28. A frontal attack has been launched on behalf of the petitioner on the procedure adopted by the learned arbitrator, while dealing with the application under Section 17 of the Arbitration Act. It is claimed that the application was deferred in the first instance and therefore, it was rejected, thereby preventing the petitioner from properly presenting his case before the learned arbitrator. A perusal of the prayer made on behalf of the petitioner

in the application under Section 17 of the Arbitration Act would show that he was insisting upon a direction to the respondents to place on record a table giving the details of each transaction between the parties, including the date of transfer, method of transfer, the number of cheques/instruments/modes of such transfer, bank account number and the amounts transferred. The learned arbitrator passed an order on 21st December 2020, deferring decision on the said application, observing that the petitioner could cross-examine witnesses of the respondents in respect of the transactions as the affidavits-in-lieu of examination-in-chief were already on record. It was also observed that an appropriate inference could be drawn on the basis of the answers given by the witnesses during cross-examination. Subsequently, by an order dated 30th March 2021, the learned arbitrator rejected the application under Section 17 of the Arbitration Act. This was after the evidence of the witnesses was over. In this order, the learned arbitrator observed that fullest opportunity was given to the petitioner to cross-examine the witnesses when numerous questions were put and in such a situation, the petitioner could not be permitted to fill lacuna.

29. In that context, much emphasis was placed on behalf of the petitioner, on the manner in which the learned arbitrator conducted the evidence and the manner in which cross-examination of the witnesses was undertaken. Although, allegations have been made that certain vital questions were not

permitted, this Court is of the opinion that the petitioner in this context has not been able to demonstrate how he was prevented from placing his case before the learned arbitrator. The insistence on his part of information and details of transactions being placed by the respondents in the form of a table before the learned arbitrator, appears to be misplaced in the light of the entirety of the material and documents on record. While there can be no dispute about the fact that the respondents as the original claimants were required to stand on their own legs and to demonstrate that they had transferred the aforesaid amount of Rs.18 crores into the account of the petitioner, at the same time, the petitioner could not have insisted upon the mode and manner of proof of such transfer by the respondents.

30. In this context, the findings rendered by the learned arbitrator in paragraph 17.10, assumes significance. In this paragraph, the learned arbitrator has referred to the specific bank account number of Allahabad Bank, Andheri Branch, of the petitioner and the manner in which the amounts were transferred by the respondents into that bank account of the petitioner. The learned arbitrator has also referred to the certificate issued by the said bank (exhibit 'C' – 43), proving that cheques pertaining to the amounts were actually credited into the bank account of the petitioner. Once such material was placed on record and appreciated by the learned arbitrator to reach positive findings in favour of the respondents, the petitioner cannot claim that a

procedure infirmity had occurred, preventing him from presenting his case before the learned arbitrator. In fact, it was the case of the respondents that they had transferred specific amounts under the SDA with the petitioner and it was for them to prove that such transfers had taken place. The petitioner could never be expected to prove the negative. The prayer in the application under Section 17 of the Arbitration Act was for a direction to the respondents to produce material, proving such transfer of amounts. So long as the respondents placed cogent material in the form of details of bank account of the petitioner, details of the cheques through which payments were made and even certificate issued by the bank, acknowledging such transfer of amounts was produced, it cannot be said that a procedural infirmity occurred while dealing with the application under Section 17 of the Arbitration Act, giving rise to a ground under Section 34(2)(a)(iii) of the Arbitration Act, pertaining to the petitioner being prevented from presenting his case before the learned arbitrator. This Court finds no substance in the said ground raised on behalf of the petitioner and the hence, the same is rejected.

31. As regards ground under Section 34(2)(a)(iv) of the Arbitration Act, this Court agrees with the contentions raised on behalf of the respondents that since the specific claim of the respondents was based on the final agreement dated 15th November 2017, regarding acknowledgment on the part of the petitioner about failure to abide by the obligations to refund

amount of Rs.18 crores, the dispute should only be limited to the said aspect of the matter and the learned arbitrator indeed decided only the said dispute. The entire attempt on the part of the petitioner appears to be to mix up the transactions and mutual obligations pertaining to independent transactions to somehow demonstrate that the learned arbitrator rendered decisions on disputes that were beyond the scope of the arbitral proceedings. It is a matter of record that even while invoking arbitration, the respondents specifically claimed refund of amounts that were deposited with the petitioner amounting to Rs.18 crores, with specific reference to the final agreement dated 15th November 2017. The learned arbitrator was alive to this situation and hence, he proceeded to render decision only with regard to the aforesaid dispute. Hence, no case is made out under Section 34(2)(a)(iv) of the Arbitration Act and the contentions raised on that regard on behalf of the petitioner are rejected.

32. As regards ground raised under Section 34(2)(a)(v) of the Arbitration Act, the same also pertains to the contentions raised on behalf of the petitioner with regard to the manner in which the learned arbitrator rejected the application filed under Section 16 of the Arbitration Act. The petitioner had specifically placed reliance on the development agreement dated 11th November 2015 and the SDA dated 12th November 2015 to claim that the arbitration clause under the said two agreements mandated constituting an arbitral tribunal of three members with the place of

arbitration being Bengaluru. On this basis, the very jurisdiction of the learned arbitrator to enter upon reference and conducting the arbitral proceedings at Mumbai was challenged.

33. In this context, it would be necessary to refer to the final agreement dated 15th November 2017 executed between the parties. A perusal of the same shows that the parties referred to the development agreement dated 11th November 2016, EMCA dated 11th November 2015, as also the SDA dated 12th November 2017 and after recording acknowledgment on the part of the parties about the obligations, including the liability of the petitioner to pay amount of Rs.18 crores, stipulated that the disputes would be resolved with regard the said final agreement on the basis of arbitration clause contained in the EMCA. Clause 9 pertaining to resolution of disputes contained under the final agreement dated 15th November 2017, clearly records the said stipulation.

34. Clause 10.6 of the EMCA dated 11th November 2015, specifically stipulated that arbitration proceedings would be conducted by a sole arbitrator and that the seat of the arbitration would be Mumbai. In this context, the notice dated 29th July 2020 issued by the respondents to the petitioner also needs to be perused. It shows that after referring to the liability of the petitioner to repay the amount of Rs.18 crores deposited as security deposit by the respondents, in paragraph 17 specific reliance was placed on clause 9 of the final agreement dated 15th

November 2017 read with clause 10.6 of the EMCA dated 11th November 2015, while invoking arbitration. In paragraph 19, the respondents specifically appointed/nominated the sole arbitrator at Mumbai for resolution of the dispute. A perusal of the reply sent on behalf of the petitioner dated 6th August 2020, shows that the petitioner did not raise any objection, either with regard to the appointment/nomination of the sole arbitrator or the place of the arbitration being Mumbai. In fact, the petitioner stated that he would willingly participate in the arbitration before the sole arbitrator, subject to his right to challenge the agreements and availing remedies under criminal law for cheating, forgery and breach of trust. Thus, at the first opportunity available to the petitioner, no such objection with regard to the constitution of the arbitral tribunal or the place of arbitration was raised on behalf of the petitioner. Therefore, the objection raised under Section 16 of the Arbitration Act and the ground now raised under Section 34(2) (a)(v) of the Arbitration Act, is nothing but an afterthought on the part of the petitioner. In any case, the clause 9 of the final agreement dated 15th November 2017 read with clause 10.6 of the EMCA dated 11th November 2015 clearly demonstrate that there can be no fault found with the constitution of the arbitral tribunal or the place of arbitration in the facts of the present case. Therefore, the aforesaid contentions raised on behalf of the petitioner are rejected.

35. The petitioner has specifically raised a ground of non-

arbitrability of the disputes between the parties, emphasizing upon the alleged fraud, forgery and fabrication committed by the respondents. It is alleged that since such questions arose between the parties, the disputes could not have been resolved through arbitration.

36. The basis for raising the aforesaid ground appears to be the filing of criminal proceedings at the behest of the petitioner against the respondents. In this context, the chronology of events assumes significance. The first point in time when the petitioner made allegation of criminal liability concerning fraud, forgery and fabrication against the respondents was when FIR dated 31st October 2020 was caused to be registered at Vidyaranyapura Police Station, Bengaluru City, bearing No. 0196 of 2020 for offences under Sections 406, 420 and 506 read with 34 of the IPC. The petitioner also filed a private complaint against the respondents before the Additional Chief Metropolitan Magistrate, Bengaluru on 18th March 2021, by which time, the arbitration proceedings were well underway. The allegations in the said complaint reiterated the stand taken on behalf of the petitioner, which had led to registration of the FIR dated 31st October 2020.

37. It is relevant to note that the allegations made in these criminal proceedings, all pertained to fraud, forgery and fabrication on the part of the respondents in the context of the aforementioned agreements executed between the parties. It is a matter of record that the development agreement and the EMCA

were executed on 11th November 2015, SDA was executed on 12th November 2015 and the final agreement was executed on 15th November 2017. The FIR was registered more than five years after the development agreement, EMCA and the SDA. It was registered about three years after execution of the final agreement. These dates clearly demonstrate that the petitioner launched the criminal proceedings as an afterthought and that in any case, such proceedings suffered from delay of three to five years. The learned arbitrator took into consideration the said aspect of the matter specifically in paragraphs 17.11 to 17.16 of the arbitral award. The learned arbitrator correctly took into consideration the fact that the petitioner is an Engineer from Bengaluru University, holding qualification of B.E. (Civil) in English medium and that the material on record demonstrated that he was in business since 1994-1995, owning and controlling business not only in India, but also in the United States of America (USA), where he had employed citizens of the USA and he had also appointed attorney on his behalf. It is inexplicable how such a person was unable to realize that the respondents had committed fraud and forgery upon him and that they had indulged in fabrication for a long period of three to five years. It was only after the respondents raised their claims and disputes arose between the parties that the petitioner seems to have turned around to claim that he was cheated and that the respondents had indulged in fraud, forgery and fabrication.

38. The position of law was also correctly appreciated by the learned arbitrator by referring to judgment of the Supreme Court in the case of *Abdul Kadir Shamsuddin Bubere v/s. Madhav Prabhakar Oak & Anr.*, AIR 1962 SC 406, wherein it was held that if the objection of fraud and criminal proceeding was raised only as a pretext to avoid arbitration, the arbitral proceedings would not be jeopardized and the dispute could certainly be resolved by arbitration. The learned arbitrator also referred to subsequent judgments of the Supreme Court in the cases of *A. Ayyasamy v/s. A. Paramasivam & Ors.*, (2016) 10 SCC 386 and *Amit Lalchand Shah & Ors. v/s. Rishabh Enterprises & Anr.*, (2018) 15 SCC 678, which reiterated the said position of law.

39. This Court finds no error in the said findings rendered by the learned arbitrator and hence, the petitioner cannot claim that the impugned arbitral award deserves to be set aside as non-arbitrable disputes were considered and decided by the learned arbitrator in his arbitral award. The said ground raised on behalf of the petitioner is also rejected.

40. Much emphasis was placed on behalf of the petitioner on the “statement of amounts receivable”, which was a document referred to in the final agreement dated 15th November 2017 executed between the parties. It was claimed that the said document being completely ignored vitiated the findings of the learned arbitrator. It was alleged that relevant materials were ignored. On this basis, Section 34(2)(b)(ii) of the Arbitration Act

was invoked, which pertains to the arbitral award being in contravention of the fundamental policy of Indian law. Reliance was also placed on judgments of the Supreme Court in the cases of *Oil and Natural Gas Corporation Limited v/s. Western Geco International Limited* (supra), *Ssangyong Engineering and Constructions Company Limited v/s. National Highways Authority of India (NHAI)* (supra) and *Associate Builders v/s. Delhi Development Authority* (supra) to claim that the most crucial document in the present case was ignored and hence, the fundamental policy of Indian law was violated.

41. This Court is unable to appreciate the said contention raised on behalf of the petitioner, for the reason that the aforesaid document titled as “statement of amounts receivable”, in no manner demonstrates that the petitioner could escape his liability of refunding the amount of Rs.18 crores along with interest, as agreed between the parties. The final agreement dated 15th November 2017 shows that by the time the said agreement was executed, the petitioner acknowledged the fact that he was unable to abide by his obligations. It is crucial to note that in the interregnum, he had also executed an equitable mortgage by deposit of title deeds on 28th March 2017, being another factor showing acknowledgment on his part about default in the context of the refundable deposit of Rs.18 crores made by the respondents. As noted herein above, the respondents were able to prove to the hilt about having transferred the said amount of

Rs.18 crores into the bank account of the petitioner. In the face of such material and the inability of the petitioner to give any plausible explanation as to how he was not liable to refund the said amount as per the terms agreed between the parties, pointing towards the aforesaid document titled as “statement of amounts receivable”, would not be of any consequence. It cannot be said that the learned arbitrator violated the fundamental policy of Indian law. As a matter of fact, the position of law clarified by the Supreme Court in the aforementioned judgments shows that the Court under Section 34 of the Arbitration Act does not sit an appeal over the award and the findings rendered therein. It is for the petitioner challenging the award to demonstrate how any of the specific grounds enumerated under Section 34 of the Arbitration Act are made out for the Court to assume jurisdiction to interfere with the arbitral award. This Court is of the opinion that the petitioner in the present case has failed to make out any such ground and therefore, no case is made out for interference with the arbitral award. This Court also finds that the petitioner miserably failed to support his case pertaining to the counter-claim and therefore, no error can be attributed to the learned arbitrator in rendering findings against the petitioner in the arbitral award.

42. It is a settled position of law that a Court would not lightly interfere with an arbitral award and that unless the petitioner is able to make out a specific ground under Section 34 of the Arbitration Act, the Court would not interfere with the arbitral

award. A perusal of the arbitral award in the present case shows that the learned arbitrator appreciated the entire material as well as oral and documentary evidence on record in the correct perspective and rendered cogent findings, leading to the claim of the respondents being allowed and the counter-claim of the petitioner being rejected.

43. In view of the above, the petition is dismissed.

44. Pending applications, if any, also stand disposed of.

MANISH PITALE, J.