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

COMMERCIAL ARBITRATION PETITION NO. 445 OF 2024
WITH
COMMERCIAL ARBITRATION PETITION NO. 690 OF 2024
WITH
INTERIM APPLICATION (L) NO. 28884 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO. 690 OF 2024

Atul Projects India Pvt Ltd ....Petitioner
Versus
Ashadevi Rajendrakumar Gupta ....Respondent

WITH
COMMERCIAL ARBITRATION PETITION NO. 792 OF 2024

Ashadevi Rajendrakumar Gupta ....Petitioner
Versus
Atul Projects India Pvt. Ltd. ....Respondent

Mr. Aspi Chinoy, Senior Advocate *a/w. Mr. Ravi Prakash, Mr. Anirudh Bakhru, Jash Shah and Varun Karla i/b DSK Legal, for Petitioner -Atul Projects India Pvt. Ltd.*

Mr. Simil Purohit, Senior Advocate *a/w. Mr. Anush Mathkar Aastha Kaushal, Vihit Shah i/b Cyril Amarchand Mangaldas, for Respondent- Ashadevi Rajendrakumar Gupta*

CORAM : SOMASEKHAR SUNDARESAN, J.
Reserved on : April 25, 2025
Pronounced on : November 12, 2025

JUDGEMENT :

Context and Factual Background:

1. The captioned petitions all relate to the same arbitral award dated October 19, 2023 ("***Impugned Award***"). Commercial Arbitration

Petition No. 690 of 2024 is a Petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("***the Act***") filed by Atul Projects Ltd. ("***Atul***"), seeking to quash and set aside the Impugned Award. Commercial Arbitration Petition No. 792 of 2024 is a Petition under Section 34 filed by Ashadevi Rajendrakumar Gupta ("***Ashadevi***") seeking a partial setting aside of the Impugned Award to the extent it directs Ashadevi to refund amounts received from Atul and to pay further amounts towards costs and expenses to Atul.

2. Commercial Arbitration Petition No. 445 of 2024 is a post-award Section 9 Petition filed by Atul to secure the amounts awarded in the Impugned Award despite Atul having sought to quash and set aside the Impugned Award.

3. Atul and Ashadevi executed a memorandum of understanding dated November 2, 2010 ("***MOU***") by which Atul had agreed to acquire land admeasuring approximately 15,154.70 square metres ("***Subject Land***") from Ashadevi for a total consideration of Rs. 80 crores. Of such consideration, a sum of Rs. 15 crores was to be discharged by provision of developed area of 22,500 square feet at Ashadevi's option. On signing of the MOU, Rs. 15 crores was paid by Atul to Ashadevi.

4. The Subject Land had been leased by Ashadevi to a company called Himalayan Tiles & Marble Pvt. Ltd. ("***HTML***"), which was but a company owned by the Ashadevi's family ("***Gupta Family***"). HTML had given out a portion of the Subject Land to multinational company PepsiCo's Indian subsidiary ("***PepsiCo***") under a warehousing facility agreement ("***PepsiCo Land***"); licensed another portion of the Subject Land to a company called Bharti Automobiles Pvt. Ltd. ("***BAPL***"), which ran an automobile dealership and support services ("***BAPL Land***"); and sub-leased some portions of the Subject Land back to Ashadevi and each of her three sons – Amit Gupta, Sumeet Gupta and Mohit[1] Gupta ("***Family Sub-Leased Land***").

5. The MOU provided for Ashadevi vacating the lessees, sub-lessees and occupants of the Pepsico Land, the BAPL Land and the Family Sub-Leased Land. However, the MOU also provided Atul an option to take the Subject Land either subject to the BAPL Land continuing to be occupied by BAPL or by taking over the Subject Land without the BAPL Land. The PepsiCo Land and the Family Sub-Leased Land were to be given over free of all encumbrances, with the lessees and occupants having been vacated.

[1] In some parts of the Impugned Award, he is wrongly referred to as Mohan Gupta but without any implications for the decision in the Impugned Award

6. It is Atul's case that Ashadevi proposed arbitration with the lessees and sub-lessees to settle the amount payable to them to compensate them to have them release their rights, which amounts may be set-off against the consideration payable by Atul under the MOU ("***Lease Arbitration***"), which is said to have culminated in an arbitral award dated January 17, 2014 ("***Lease Arbitral Award***"). In the Lease Arbitration, Atul and Ashadevi were said to have jointly been claimants, while the sub-lessees and occupants were meant to be respondents. The Lease Arbitral Award is said to have led to an amount of Rs. 4.5 crores being payable to each of HTML, Amit Gupta, Sumit Gupta and Mohit Gupta. Such payments were meant to be confirmed formally in an agreement for sale. The BAPL Land was not part of the Lease Arbitration, with eviction proceedings against BAPL being underway. The PepsiCo Land is claimed by Ashadevi to have been vacated, with PepsiCo moving out. Suffice it to say, the Lease Arbitral Award covered the Gupta Family and Atul.

7. The eviction proceedings against BAPL continued. The parties negotiated a draft agreement for sale providing for the Subject Land being truncated to 13,153.13 square metres; Ashadevi being paid Rs. 44 crores; and Rs. 18 crores being payable to the lessees and sub-lessees i.e. the Gupta Family. The draft of the Agreement for Sale was

sent for adjudication to the Stamp Duty Authorities but was withdrawn due to differences between the parties.

8. Meanwhile, out of the Subject Land, land admeasuring 3,920.30 square metres became the subject matter of land acquisition at the hands of the Municipal Corporation for Greater Mumbai ("***MCGM***") for a garden. An award dated March 5, 2015 awarded compensation for land acquisition at Rs. 15.10 crores. Atul asked Ashadevi not to accept any compensation finally without consultation with Atul. However, Ashadevi is said to have written to the MCGM, without copying Atul, that the MOU was long terminated, and went on to accept the compensation and hand over the land acquired by MCGM.

9. Atul issued a breach notice on October 16, 2015 to Ashadevi calling upon her to perform the MOU. Atul's claim is that the MOU was a concluded contract and nothing more was needed before executing the conveyance. Atul also issued a public notice about Atul's interest in the Subject Land. On January 6, 2016, Ashadevi would reply stating that the MOU had been terminated way back on May 1, 2012 and that Atul had breached the MOU.

10. The disputes went to arbitration by a three-member arbitral tribunal in terms of the arbitration agreement between the parties. Atul

claimed that Rs. 17 crores had already been paid, and that he was ready and willing to perform the MOU by paying the rest of the amount involved, thereby seeking specific performance. In the alternative, he mounted a claim for damages for loss of profit in the sum of Rs. ~579.40 crores, failing which he sought a refund of all amounts paid to Ashadevi, along with damages and expenses in the sum of Rs. ~5.71 crores with interest.

11. Ashadevi contended in the arbitration that the claim was hopelessly barred by limitation. That apart, it was contended that the MOU was merely an agreement to agree and was incapable of specific performance. Atul was not ready and willing to perform, Ashadevi would contend, to allege that Atul had in fact defaulted in adhering to payments due under the Agreement and kept seeking time to pay the balance amount. It was also claimed that the MOU made it clear that there were many reservations and restrictions on the Subject Land and the MOU; the MOU merely set out a broad understanding; and the amounts received were token money and non-refundable. HTML and the Gupta Family were to be involved in the development and construction too, Ashadevi would claim, contending that unless the precise development area was crystallised, there was no real agreement in place that was worthy of enforcement. No dispute could be said to

exist, Ashadevi would contend, pointing also to the non-monetary consideration, to indicate that it was dependent on crystallisation of the precise development potential.

12. Ashadevi would also contend that PepsiCo had been vacated in time in line with the MOU, on November 17, 2011. This is said to have become known to Atul by December 31, 2011. However, Atul did not cough up the Rs. 38 crores due by this stage. Ashadevi would allege that Atul intended to merely block the Subject Land and not actually perform. Vitally, Ashadevi would claim that the parties executed one more agreement dated May 21, 2012 ("***2012 Agreement***"), under which Atul was to pay Rs. 25 lakh per month for 18 months as additional non-refundable earnest money. Such payment was contracted to compensate Ashadevi for the stoppage of flow of income from PepsiCo, which had been vacated.

13. The 2012 Agreement was purportedly meant to be kept in escrow with one Mr. Madhu Mehta, and that agreement recorded that no rights had been intended to be created under the MOU, thereby firming up the position that the MOU was an agreement to agree. Mr. Madhu Mehta's role would come up for consideration. Ashadevi would dispute his characterisation as a broker, contending that he was the

CEO (Hospitality) for Atul, and yet also contend that escrowed documentation were given to him to hold in trust for the parties.

14. Ashadevi would contend that the very fact that the draft agreement was filed with the Stamp Duty Authorities would indicate that Atul too was of the view that another agreement was due and the MOU was only an agreement to agree. The withdrawal of the draft agreement from the Stamp Duty authorities was only because of defaults by Atul. Ashadevi had offered to return the token money received under the MOU, but after deducting the Rs. 2 crores said to have been received under the 2012 Agreement.

15. Ashadevi would claim that the Lease Arbitration was a sham and the Lease Arbitral Award was fake. She would contend that the Learned Arbitrator had sent a draft award by email to Sumit Gupta ahead of it being made.

Impugned Award:

16. The Learned Arbitral Tribunal, considered all the competing positions canvassed by the parties, examined the evidence led, and analysed the material on record threadbare. In a rather copiously long articulation of positions adopted by the parties and analysis, the

Learned Arbitral Tribunal held that Atul's claim was not barred by limitation. The MOU was held to be a valid and binding contract and in fact an agreement for sale, capable of enforcement. It was found that Atul had not been ready and willing to perform the MOU, and therefore, Atul was held ineligible for seeking specific performance of the MOU. Atul's claim for damages towards loss of profit was also repelled.

17. The Impugned Award holds that the existence of the 2012 Agreement could not be proved by Ashadevi and she could not prove that Atul defaulted on that agreement. The Learned Arbitral Tribunal held that Atul was entitled to a full refund of the amounts paid under the MOU – Rs. 17 crores (Rs. 15 crores paid at signing and Rs. 2 crores paid thereafter). Out of the amount of Rs. ~5.71 crores claimed towards expenses, the main claim of Stamp Duty was disallowed on the ground that Atul had voluntarily paid the Stamp Duty when the Section 11 Application was filed for appointing the Arbitral Tribunal. The aggregate amount awarded under this head is Rs. ~89.37 lakhs. Costs were also awarded at Rs. 20 lakhs as against a claim of over Rs. 1 crore.

18. Interest was awarded at the rate of 12% on the amount of Rs. 15 crores paid by Atul to Ashadevi from November 2, 2010, when it was paid, and until the date of the Impugned Award. Thereafter, until the

actual payment, the entire amount including interest until that date would attract further interest at 8% per annum. An identical relief of interest has been granted on the sum of Rs. 2 crores paid over and above the initial payment – interest at 12% from December 6, 2013 until the date of the award and thereafter on the entire amount including interest, at 8% until payment. The same pattern of computing interest is also awarded on the sum of Rs. 89.37 lakhs starting from January 30, 2016, which was the date of invocation of the arbitration. On the costs awarded, the Learned Arbitral Tribunal has granted 90 days to pay the costs of Rs. 20 lakhs, failing which interest at 8% would be payable on it until realisation.

Contentions of the Parties:

19. I have heard at length, Mr. Aspi Chinoy, Learned Senior Advocate on behalf of Atul and Mr. Simil Purohit, Learned Senior Advocate on behalf of Ashadevi. I have also examined their written submissions filed in this Court and before the Learned Arbitral Tribunal to navigate the material on record, in order to examine the Impugned Award within the framework of review contemplated under Section 34 of the Act.

20. It is noteworthy that Atul has sought that the Impugned Award be quashed and set aside and yet has filed a Section 9 Petition to secure the amounts awarded. Atul's primary ground of challenge is that the Learned Arbitral Tribunal has misread Clause 5 of the MOU, which entails a right for Atul to secure possession in 18 months. Atul has characterised the Learned Arbitral Tribunal's finding that Atul did nothing to secure vacant possession of the Subject Land, as a wrong inversion of of a right as if it were an obligation.

21. Leaning on the content of Clause 5, which provides that Atul was *entitled* to get the property vacated, Atul would contend that the Learned Arbitral Tribunal's finding that Atul did nothing to secure it, is misconceived. Thereby, Atul would contend, the Learned Arbitral Tribunal has committed a perversity by holding that Atul "*ought to have elected*" to take possession. Towards this end, case law of 1998 (***NHB Grindlays***[2]) is cited on how arbitrators going beyond the scope of the pleadings would constitute a jurisdictional error and demonstrate arbitrariness. This is the sheet anchor of Atul's challenge.

22. It is equally noteworthy that Ashadevi has mounted a limited challenge seeking a partial modification of the Impugned Award only to the extent that it directs payment of interest on the refund of amounts

[2] *National Housing Bank v. ANZ Grindlays PLC – (1998) 2 LJ 153*

received by Ashadevi under the MOU and to the extent that expenses and costs are imposed. Ashadevi is therefore willing to refund the entire Rs. 17 crores received, but without interest. Ashadevi would contend that costs have been awarded to Atul, which is itself an unsuccessful party.

23. However, the sheet anchor of Ashadevi's challenge is that the MOU is only an agreement to agree. Therefore, despite Ashadevi's challenge being limited to the interest awarded, its primary grievance is against the finding of the MOU being a binding and enforceable agreement, is the basis of the Impugned Award and the various other findings rendered in it in an interwoven manner.

Scope of Review:

24. At the threshold, a line on the scope of review under Section 34 of the Act would be in order. It is settled law that the Section 34 Court must not lightly interfere with arbitral awards. The jurisdiction lends itself to disturbing arbitral awards strictly within the parameters permitted in Section 34. Arbitral tribunals are the master of the evidence and the best judge of the quality and quantity of evidence. If the findings are plausible, and well reasoned, the Section 34 Court cannot substitute the tribunal's view with its own view. This position in

the law is well laid down in multiple judgments of the Supreme Court including ***Dyna Technologies***[3], ***Associate Builders***[4], ***Ssyangyong***[5], ***Konkan Railway***[6] and ***OPG Power***[7]. Even implied reasons that are discernible and may be inferred to support the just and fair outcome arrived at in arbitral awards must not be ignored. However, if the Section 34 Court comes to the view that the arbitral award suffers from unpardonable perversity such such perversity cutting to the root of the matter, with no possibility of another view, it could interfere.

25. To avoid prolixity, I am not extracting quotations from the aforesaid judgements.

<u>Analysis and Findings:</u>

26. Adopting this well known standard of review, I have examined the analysis by the Learned Arbitral Tribunal on each of the issues formulated in the arbitral proceedings.

27. It is evident to my mind that the finding that the claim was not barred by limitation is not just reasonable but appears to be

[3] *Dyna Technologies Private Limited v. Crompton Greaves Ltd – <u>(2019) 20 SCC 1</u>*
[4] *Associate Builders vs. Delhi Development Authority – <u>(2015) 3 SCC 49</u>*
[5] *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India – <u>(2019) 15 SCC 131</u>*
[6] *Konkan Railways v. Chenab Bridge Project Undertaking – <u>2023 INSC 742</u>*
[7] *OPG Power vs. Enoxio – <u>(2025) 2 SCC 417</u>*

completely accurate. To say the least, Ashadevi's credibility stands eroded with the claim that the MOU was terminated in May 2012. The Learned Arbitral Tribunal found that multiple actions were taken by Ashadevi in furtherance of the MOU way beyond May 2012, even into 2014. Further amounts were received as late as June 14, 2013, which would show that the MOU was not abandoned. On August 2, 2013, Ashadevi wrote to the National Monuments Authority for increase in height of the building (the land is situated close to caves preserved for archaeological value). On July 3, 2014, Ashadevi wrote to the Archaeological Survey of India's state unit requesting an extension of height, which the Learned Arbitral Tribunal has taken as an indication of *subsistence* of the MOU.

28. Even the applications to the Stamp Duty Authorities seeking adjudication of the agreement proposed to be executed by the parties bears Ashadevi's signatures. This exercise, while not precisely dated, took place well after May 2012, which is when Ashadevi claims the MOU stood abandoned. A letter to the City Survey Officer on January 7, 2015 was sent by Ashadevi seeking survey of the Subject Land. While on June 6, 2015, Ashadevi is said to have written to special land acquisition officer that the MOU was not subsisting since 2012, this letter was not marked to Atul, which would give Atul no notice of such a stance. Yet,

after 2012, various actions taken have been held as indicative of a subsisting MOU. Atul claims to have heard of the repudiation of the MOU for the first time from the letter dated January 6, 2016 and the invocation of arbitration was effected on January 30, 2016.

29. Quite apart from the finding that Atul's claim is not barred by limitation, the analysis lays bare the lack of credibility in Ashadevi's contention that the MOU stood terminated in 2012 even while pocketing further sums paid by Atul. The 2012 Agreement came in for analysis too. The Learned Arbitral Tribunal has found that there was simply no proof of such an agreement having been executed. Ashadevi would contend that Mr. Madhu Mehta was not a broker but was the CEO (Hospitality) of Atul and in the same breath also claim that an agreement meant to confidentially be kept in escrow with kept with Mr. Madhu Mehta.

30. It is illogical for an agreement meant to be kept in escrow being kept with one of the parties to the agreement. The Learned Arbitral Tribunal factored in how Ashadevi did nothing to summon Mr. Madhu Mehta in the proceedings.

31. The Learned Arbitral Tribunal held that the sum of Rs. 15 crores, although referred to as token money, could not be considered to

be a measure of tokenism, when the total cash consideration payable under the MOU was Rs. 65 crores – just short of 25% of the amount. Even as a percentage of the total consideration of Rs. 80 crores, the Rs. 15-crore payment is over 18%. What is noteworthy is that in her challenge, Ashadevi has chosen not not quarrel with this direction to refund this amount. She only wishes to set aside the direction to charge her interest for enjoyment of this amount.

32. Analysing the law in connection with Ashadevi's contentions about the MOU being an agreement to agree, the Learned Arbitral Tribunal has summarised the law now well known in India too – that one must consider if the subsequent document is a commemorative iteration; or if it is an instrument whose execution is itself a necessary condition of contract.

33. The Learned Arbitral Tribunal came to a reasonable and logical view that the MOU, on its own, does not refer to a further 'agreement to sell' being required, and that the parties could have well proceeded right into executing the conveyance deed. In other words, the MOU was itself an agreement to sell. The Learned Arbitral Tribunal has rightly stated that the intention of the parties has to be deduced from the language used by the parties in the contract. The Learned

Arbitral Tribunal also looked at corroborative evidence to see that when the MOU was stamped, the Stamp Authorities charged it under the provisions governing assessment of duty on an instrument of conveyance. Atul volunteered to pay the Stamp Duty, when Ashadevi objected to it being under-stamped. When the Collector of Stamps adjudicated it as a conveyance, Atul advocated that it was not a conveyance.

34. Noting all of this, the Learned Arbitral Tribunal still considered whether the MOU required a further 'agreement to sell' to be executed. It returned a finding that this was not a requirement. Even the non-cash consideration that was valued at Rs. 15 crores had been denominated in terms of developed and constructed area of 22,500 square feet and reduced to writing. The Learned Arbitral Tribunal came to a reasonable and commercially commonsensical view that the MOU was to be completed by executing a Deed of Conveyance and not by another intermediate agreement to sell. It appears that the parties engaged on tax planning and structured the Lease Arbitration, to be followed by another agreement to sell. The Lease Arbitration is itself brushed off as fake and sham arbitration by Ashadevi. Therefore, on a complete reading of the factual matrix, one can find no fault with the finding of the Learned Arbitral Tribunal that the MOU itself constituted

a binding and enforceable agreement to sell. This finding does not call for any interference.

35. The Learned Arbitral Tribunal found that while PepsiCo may have vacated, Ashadevi chose not to bring on record any agreement with PepsiCo. There was nothing to show that Ashadevi had obtained possession rather than HTML having obtained possession. Indeed, the Learned Arbitral Tribunal examined Clause 5 and noticed how Atul did not elect to take steps to take possession. In my opinion, such analysis by the Learned Arbitral Tribunal is clearly part of its assessment and consideration of whether Atul had been ready and willing to take the steps contemplated in the MOU, from the perspective of whether a case for grant of specific performance (as opposed to award of damages) has been made out.

36. Characterising such analysis as a treatment of a right as an obligation may sound attractive, what the Learned Arbitral Tribunal was examining was whether specific performance must be considered or whether or consideration of damages would suffice. Therefore, I do not find merit in the primary foundation in Atul's challenge to the Impugned Award.

37. The Learned Arbitral Tribunal's view that although time was not of the essence, despite the MOU contemplating an 18-month period for completion (which would end on May 2, 2012), the first election to call for a conveyance was made by Atul only on May 29, 2012. This is an unexceptionable finding of fact. In that light, the issue really was whether grant of specific performance would be a meritorious relief to grant. The Learned Arbitral Tribunal logically and plausibly held in the negative. Damages would suffice.

38. The Learned Arbitral Tribunal also analysed Atul's conduct and found that it submitted no plans in furtherance of the purported desire to develop the land. Nothing was done in furtherance of securing an Intimation of Disapproval from the municipal authorities that is necessary for development and construction. Essentially, such analysis supported the view that granting specific performance was not justified. Such analysis also put paid to Atul's attempt to project an expensive and inflated claim for damages towards loss of profit. Since no enterprise was demonstrated, one cannot fault the Learned Arbitral Tribunal's finding that that claim for loss of profit was untenable.

39. A word about the Lease Arbitral Award would be in order. The Learned Arbitral Tribunal also came to a view that Ashadevi's

attempt to wish away the Lease Arbitral Award does not stand established. In support of Ashadevi's claim that a draft award had been mailed by the Sole Arbitrator in advance to Mr. Sumit Gupta, no email was produced. To explain why it was not produced, Mr. Sumit Gupta (who was witness on behalf of Ashadevi and appears to have run the proceedings entirely on her behalf) stated that it was not produced due to legal advice. Ashadevi would purport to have written to the Sole Arbitrator expressing surprise about the fake award, but no such letter was produced either. The draft agreement presented for adjudication to the Stamp Duty Authorities made explicit references to the Lease Arbitral Award with the date being left blank.

40. The Lease Arbitral Award was published on stamp paper acquired in HTML's name. Whether the Lease Arbitral Award was a collusive award and whether it was a tax device are all issues that may arise, but such issues are wholly irrelevant to what was in the Learned Arbitral Tribunal's domain to adjudicate – whether the MOU was a binding and subsisting document and whether the parties were meant to act upon it, or whether it merely an agreement to agree. To my mind, the approach of the Lease Arbitration is a bit of a detour the parties may have contemplated and did not finalise, but that does not erode the binding nature of the MOU.

41. Taking a holistic view of the matter, the Learned Arbitral Tribunal has come to a view that the MOU was indeed equivalent to an agreement to sell, and also that Atul did not demonstrate readiness and willingness to perform the MOU. Therefore, while Atul was not entitled to specific relief, Atul was nevertheless entitled to a full refund of what had been paid to Ashadevi. The Learned Arbitral Tribunal dismissed the claim for loss of profit, rejecting the manner of building up this claim to seek a huge amount of Rs ~579.40 crores. There was nothing to show how much FSI would be consumed; what would go towards car parking considering that a commercial development was contemplated; what the construction cost would reasonably be; and what conditions could have been imposed by the archaeological conservators that would impact the scale of the development.

42. Therefore, rather than award damages for loss of profit, the Learned Arbitral Tribunal held that the parties must be restituted to their respective positions, with interest for the monies enjoyed by Ashadevi. Costs and expenses incurred were examined with a fine toothcomb and a portion of it was awarded. This is a fair, just and logical finding.

43. Ashadevi's contention that a losing party has been given damages also does not appeal to me. The denial of specific relief does not mean that Atul suffered no injury by incurring expenses and costs when the credibility of Ashadevi's contentions was completely eroded. The claim of the MOU having been terminated rang false. The claim of the 2012 Agreement being executed and escrowed was unsustainable. The claim that the Gupta Family was meant to be involved in the development and construction was not demonstrated. Meanwhile, Ashadevi pocketed and enjoyed the receipts from Atul – Rs. 17 crores in all.

44. On the Lease Arbitration, Ashadevi appears to have participated in whatever device was intended. The intra-Gupta Family leases and sub-leases also kept the Subject Land just out of Atul's reach. Multiple transactional structures were obviously examined and the parties appear to have zeroed in on the structure of the Lease Arbitral Award. A part of the Subject Land acquired by the MCGM also gave Ashadevi access to a further sum of over Rs. 15.10 crores. It enjoyed the monies received from Atul all along.

45. Against this backdrop, the Learned Arbitral Tribunal has meticulously examined the claim for expenses and compensation. The

real material component of Rs. ~4.83 crores towards Stamp Duty and registration has been rejected on the premise that Atul volunteered to pay it when impounded, upon filing the Section 11 Application. On the rest, the only material component is legal costs of Rs. ~74.44 lakhs.

46. In situations such as this, it is for the arbitral tribunal to examine who has sinned more and who has been sinned against more. While Atul not having been ready and willing has led to Atul being denied specific relief and loss of profits, it would not necessarily follow that Ashadevi's breaches and loss of credibility in its defences, leading to its stance totally coming apart, would go without consequences.

47. The Learned Arbitral Tribunal has fairly and rightly examined this factual position and awarded a portion of the expenses claimed. This is not so much a compensation in the form of damages as an award for reimbursement of expenses incurred in the course of being at the receiving end of breaches by a counterparty. Even the award of costs has been materially discounted by 80% and only Rs. 20 lakhs has been granted. I have no basis to second-guess such assessment and strike it down or substitute it.

48. Likewise, Ashadevi's contentions against the award of interest also do not appeal to me. Ashadevi must pay for the time value

of money enjoyed. The interest rate is also pegged at an extremely reasonable level – 12% pre-award and 8% post award. A 90-day window has been given for paying the award of costs too, and only thereafter the reasonable rate of 8% has been applied.

49. Overall, in my opinion, none of the grounds raised by either party in its respective Section 34 Petition deserves acceptance. The Impugned Award is evidently a product of reason and logic and has been unanimously rendered adopting a fair and acceptable standard of analysis and reasonableness. Atul's Section 9 Petition also undermines its Section 34 Petition – if it truly desired the Impugned Award to be set aside without any modification, it would stand to reason that it would not be anxious to secure what was awarded in it, but would be anxious to have the Impugned Award set aside to start arbitration afresh.

50. In the result, both the Section 34 Petitions are ***dismissed***. Interim Applications, if any, also stand *disposed of* accordingly. Since the Impugned Award can be presented for execution, in my view, nothing further needs to be done with the Section 9 Petition, which is also disposed of without any directions, with liberty to take such measures in accordance with law should circumstances warrant a protective relief.

51. Any amount deposited with the Registry of this Court, along with all accruals thereon, shall be released to Atul within a period of one week after the expiry of four weeks from today.

52. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]