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

Judgment reserved on: 06.08.2025

Judgment pronounced on: 11.11.2025

+ **O.M.P. (COMM) 42/2021, I.A. 1681/2021**

SUNLIGHT PROJECT PVT LTDPetitioner

Through: Mr. Amit Khemka, Ms. Himani
Singh, Advs.

versus

DELHI DEVELOPMENT AUTHORITYRespondent

Through: Mr. Vaibhav Agnihotri, ASC,
DDA, Mr. Vidit Pratap Singh,
Adv. and Mr. Ankit Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") seeking to set aside the Arbitral Award dated 14.09.2020 passed in the arbitration proceedings titled as "*M/s Sunlight Project Pvt. Ltd. vs. Delhi Development Authority*", wherein the Sole Arbitrator rejected all the claims of the petitioner.

FACTUAL BACKGROUND

2. The petitioner i.e., Sunlight Projects Pvt. Ltd., incorporated and registered under the Companies Act, 1956, is engaged in real estate business.



3. The respondent i.e., Delhi Development Authority (“**DDA**”) is a statutory authority established under the Delhi Development Act, 1957.
4. The respondent through an open auction advertised for sale of plots located at Sector 20, Part II, Dwarka, New Delhi, including commercial Plot No. 8, Service Centre, Sector 20, Part II, Dwarka, New Delhi (“**the subject plot**”). The petitioner participated in the same and tendered its bid for a total amount of Rs. 17.51 crores for the subject plot.
5. On 16.01.2007, the Auction (“**Auction**”) was conducted and the petitioner emerged as the successful bidder. The General Terms and Conditions of the Auction contained an arbitration clause being Clause No. 8, which reads as under:-

“8. PROVISION FOR SETTLEMENT OF DISPUTES:

In case of any dispute between the parties in respect of interpretation of this agreement, such disputes shall be referred to the Vice-Chairman of the Authority. The Vice-Chairman, DDA shall be empowered to adjudicate and decide the disputes, if any, between the parties and his decision shall be final, conclusive and binding on both the parties. The venue of the arbitration shall be in Delhi.”

6. As per the General Terms and Conditions of the Auction, the petitioner deposited earnest money @ 25% of the total sale consideration, of Rs. 4.45 crores on the same day. Subsequently, the respondent issued a letter dated 04.05.2007 communicating the acceptance of the petitioner’s bid and directing the petitioner to pay



the balance sale consideration of approximately Rs. 13.06 crores within 90 days from the date of issuing of the said letter.

7. The petitioner wrote a letter dated 16.07.2007 seeking extension of time to pay the balance sale consideration on ground of “some unforeseen circumstances”. Later, the petitioner wrote another letter dated 12.11.2007 again seeking extension of time on the ground that it has not been able to raise loan as it has not received permission from the respondent. The respondent *vide* letter dated 09.01.2008 granted final extension till 28.01.2008.
8. It is the case of the petitioner that it addressed various letters requesting the respondent to provide infrastructural amenities/facilities like sewerage facility, water connection, roads and electricity connection etc. so as to enable the petitioner to use the subject plot. As per the petitioner, since the respondent paid no heed to its requests the petitioner filed a Writ Petition being W.P. (C) No. 685/2008 before this Court, seeking direction to the respondent to provide said infrastructural facilities at the subject plot. The said Writ Petition was dismissed *vide* judgment dated 06.01.2017, wherein this Court held as under:-

“20. In any event, in view of DDA’s short affidavit dated 13th February, 2008 and affidavit dated 7th October 2009, the issue whether adequate infrastructural facilities were provided on the date of auction is a disputed question of fact which cannot be adjudicated upon in writ proceedings.

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24. Also, this Court is of the view that as the petitioner had visited the site in question and had familiarised itself as to the prevalent conditions, particularly, the infrastructural facilities, and as the plot had been sold on 'as is where is basis', the petitioner immediately on acceptance of the bid could not have asked for provisions of all infrastructural facilities.

25. It is common knowledge that civic agencies, like DDA use the amount received in auction to create or improve infrastructural facilities.

26. Delay in construction of an infrastructure project like a commercial plot cannot be condoned as a commercial plot is of public utility and any delay in its construction causes prejudice to the public at large. If the petitioner after construction of the building had found that the infrastructural facilities had not been provided, then its grievance would have been well founded as without basic civic amenities no purchaser can occupy and/or use the said plot.

27. Moreover, from the correspondence reproduced hereinabove, it is apparent that the real reason for not making payment of the balance 75% bid amount was the fact that the petitioner did not have adequate funds. The alibi that due to lack of civic amenities the balance bid amount was not paid, is an afterthought and contrary to contemporaneous documents."



9. It is the case of the petitioner that on 28.01.2008, when the said Writ Petition was listed, the petitioner offered to pay the balance amount before the Court subject to the respondent providing the essential amenities and the respondent took time to seek instructions and the matter was adjourned. However, the respondent forfeited the earnest money without asking the petitioner to deposit the balance consideration, especially when the petitioner had the drafts of the balance amount ready with it.
10. Aggrieved by the judgment dated 06.01.2017, the petitioner preferred an appeal being LPA No. 378/2017, which was disposed of by a Division Bench of this Court *vide* order 21.09.2017, with the following observation:-

“This Court finds no infirmity with the learned Single Judge’s findings with respect to the alleged arbitrary action of the DDA in cancelling the allotment. However, the impugned judgment has not dealt with - nor could have properly dealt with - the reasonableness of the forfeiture and possible contentions of the parties. In these circumstances, the appellant is granted liberty to agitate its rights, in accordance with law before a civil court. This Court also clarifies that the time spent in present litigation i.e. writ petition and the subsequent appeal, shall be excluded, from consideration of limitation under Section 14 of the Limitation Act.”

11. In view of the said liberty granted by the Division Bench of this Court, the petitioner invoked the arbitration process. This Court in ARB.P.



No. 254/2018 *vide* order dated 17.07.2018 appointed the Sole Arbitrator.

12. The petitioner raised the following claims before the Sole Arbitrator:-

S. No.	Particulars/ Claims	Amount (In INR)
1.	Refund of earnest money	4,45,00,000/-
2.	Compensation towards damages, loss of business and loss of goodwill	2,00,00,000/-
3.	Harassment and mental agony	20,00,000/-
4.	Interest @ 12% on the Claim No.1 till date of actual payment	6,30,27,000/-
5.	Pendent-lite and future interest @ 12% on Claim No. 1	To be calculated at the time of final payment
6.	Court fees, Arbitrators fees and expenses	10,00,000/-

13. The Sole Arbitrator after hearing both the parties and considering the evidence and documents on record passed the Arbitral Award dated 14.09.2020 and rejected all the claims of the petitioner.

14. Aggrieved by the said Award, the petitioner has filed the present petition.

SUBMISSIONS ON BEHALF OF PETITIONER

15. Mr. Amit Khemka, learned counsel for the petitioner states that the impugned Award is based on assumptions and not on facts documents and evidence on record. Hence, it is against the justice, morality and



public policy and is patently illegal and therefore, liable to be set aside.

16. It is submitted that the Sole Arbitrator has failed to appreciate that “cancellation of the bid” is distinct from “reasonableness of forfeiture of amount of earnest money”. It is stated that a perusal of paragraphs No. 30 to 38 of the impugned Award show that the Sole Arbitrator has only considered the grounds of “cancelation of the bid” that is non-payment of balance consideration as ground for adjudging “reasonableness of forfeiture of amount”, basing the same on the pleadings and decision in the W.P. (C) No. 685/2008. In doing so, the Sole Arbitrator has completely ignored the reference order of the Division Bench of this Court dated 21.09.2017, wherein it was categorially stated that *“the impugned judgment has not dealt with-nor could have properly dealt with-the reasonableness of the forfeiture and possible contentions of the parties”*.
17. It is further stated that the respondent informed about the forfeiture of earnest money for the first time only in the short affidavit dated 13.02.2008, filed by it in W.P. (C) No. 685/2008. Hence, the Sole Arbitrator’s observation that the petitioner had not written to the respondent informing that forfeiture of earnest money was unreasonable or imposition of presumptive damages is unreasonable, as there was no such opportunity for the petitioner to make any representation before that. Also, the said question was specifically left open by the Division Bench of this Court *vide* its order dated 21.09.2017.
18. It is stated that to assess the reasonableness of the forfeiture of earnest



money, the Sole Arbitrator should have assessed whether the respondent suffered “any actual loss”. It is stated that it is settled law that even in cases where there is a provision for forfeiture in the contract, forfeiture can only be to the extent of the actual loss suffered and the tests for determination of compensation is as provided in Sections 73 and 74 of the Indian Contract Act, 1872 (“ICA”). Reliance is placed on: (A) ***Kailash Nath Associates v. DDA, (2015) 4 SCC 136;*** (B) ***Fateh Chand v. Balkishan Dass, AIR 1963 SC 1405;*** (C) ***Fiberfill Engineers v. Indian Oil Corporation Limited, 2019:DHC:2316;*** and (D) ***Traffic Media India Pvt. Ltd. v. Delhi Metro Rail Corporation, 2019:DHC:3145.***

19. It is stated that the Sole Arbitrator has erroneously held that the onus to prove that no loss was suffered by the respondent was upon the petitioner. It is settled law that the party claiming compensation must prove the loss suffered by it. Reliance is placed on: (A) ***Maula Bux v. Union of India, AIR 1970 SC 1955;*** (B) ***Kailash Nath (supra);*** (C) ***Sudha Gupta v. DLF Ltd., 2019 INSC 325;*** and (D) ***National Highways Authority of India v. IJM-Gayatri Joint Venture, 2020:DHC:1901.***
20. It is further submitted that the Sole Arbitrator failed to apply his judicial mind to fact that the respondent has till date failed to produce any order showing forfeiture of the earnest money, which shows details such as date, designation of the officer of respondent etc. passing such an order. The only time that the respondent has mentioned the same is in the short affidavit dated 13.02.2008 filed in W.P. (C) No. 685/2008. Further, there is nothing in the said short



affidavit about any loss suffered by the respondent. The respondent has not only failed to produce any evidence to show that it suffered loss but has not even claimed once that any actual loss or damage has been suffered by the respondent.

21. It is stated that the Sole Arbitrator himself observed that there is no evidence to ascertain as to what exact loss has been suffered by the respondent. However, in paragraphs No. 51 to 56 of the impugned Award the Sole Arbitrator has done guess work of loss allegedly incurred by respondent, without there being any evidence on record to support the same.
22. It is further submitted that the Sole Arbitrator has erred in observing that no contract was concluded between the parties before the auction, on the basis of which he has justified forfeiture of entire 25% of sale consideration. It is submitted that contract between the parties was concluded when the respondent accepted petitioner's bid and issued allotment letter. Also, the Sole Arbitrator has erred in observing that forfeiture clause amounts to pre-estimate quantum of loss, since at no point of time there was any pre-estimation of damages done by the parties. In any case '25%' is not an actual figure but a percentage and thus, in any case cannot be termed as genuine pre-estimated loss.
23. It is submitted that the Sole Arbitrator has erred in observing that the judgment of *Kailash Nath (supra)* is not applicable to the present matter and has distinguished it on five grounds in paragraph No. 82 of the impugned Award. In respect of the first, second and fourth grounds it is submitted that the question of default by petitioner does not arise, since, the petitioner was ready and willing to pay the balance



sale consideration and had produced demand drafts in respect thereto. Though the petitioner was asking to provide basic amenities but it was ready and willing to pay the balance sale consideration. For the third ground, it is stated that the Sole Arbitrator failed to appreciate that the onus to prove any damage caused was upon the respondent. Lastly, it is submitted that the Sole Arbitrator has failed to appreciate that the ‘similarly situated persons’ as mentioned in *Kailash Nath (supra)* are the persons who were declared winners of the tender and were not the persons who remained unsuccessful in the tender of plot.

24. It is further contended that the RW1– Sunil Gupta had no authority on record to depose and prove the case of the respondent, as admitted by RW1 himself during cross-examination. Consequently, there is no evidence on record on behalf of the respondent. However, without prejudice to the aforesaid, it is further stated that the said witness of the respondent has stated in affidavit of evidence that amount of forfeiture is “close to presumptive loss” and that the inclusion of forfeiture clause does not amount to penalty. The said witness of the respondent has admitted in the cross-examination that the subject plot has not been re-auctioned. Further, it is stated that the Sole Arbitrator has failed to appreciate that the said witness has stated during his cross-examination, that the forfeiture was done in 2007, while it is an admitted fact that the Vice Chairman of the Authority had already extended the time for deposit of balance amount till 28.01.2008. The said witness has also admitted that there existed no evidence on record to show the dispatch of the said alleged forfeiture letter/ notice, though it was allegedly sent. These facts show that the amount was never



forfeited by the respondent.

25. It is stated that the Sole Arbitrator has also erred in rejecting the evidence produced by the petitioner to show that the value of the subject plot was Rs. 30 crores as on the date of the value report dated 25.09.2019 i.e., Ex. CW1/38 and Ex. CW1/39. The Sole Arbitrator erred in appreciating that once Ex. CW1/38 and Ex. CW1/39 were allowed to be exhibited and hence proved, then the question of bringing the author of the said document did not arise. It is further stated that there is no assertion or document on record to show as on what date the subject plot was cancelled and forfeiture was made, therefore the question of any disclosure of market value at the time of cancellation and forfeiture does not arise.
26. Hence, the learned counsel for the petitioner submits that the impugned Award is contrary to public policy of India and liable to be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

27. Mr. Vaibhav Agnihotri, learned ASC for the respondent submits that the present petition should be dismissed as the petitioner has failed to bring out any infirmity or patent illegality in the impugned Award.
28. It is stated that the justifiability of forfeiture of the earnest money is not an issue in dispute and only the reasonableness of forfeiture was to be adjudicated by the Sole Arbitrator, as held by the Division Bench of this Court in LPA No. 378/2017. It is further stated that the case before the Sole Arbitrator with respect to cancellation and forfeiture was admitted, as the petitioner's default in making balance payment was admitted.



29. It is submitted that the Sole Arbitrator rightly relied upon the decision passed in W.P. (C) No. 685/2008 to the affect that delay in construction of commercial plot itself causes loss and prejudice to the general public. It is further stated that the Sole Arbitrator rightly relied upon decisions of the Hon'ble Supreme Court as well as this Court to hold that such loss cannot be quantified and the petitioner being the party challenging the clause of liquidated damages, is required to prove that the said amount was in the nature of a penalty or that no loss was caused or that loss caused was not proportionate to the amount forfeited. Since, the petitioner failed to prove the same, the Sole Arbitrator correctly rejected the claims of the petitioner.
30. It further stated that the valuation report dated 25.05.2019 and the re-sale valuation report relied upon by the petitioner have not been proved as the author of the said documents has not been examined. The petitioner's witness in his cross admitted that neither was he the author of the said documents nor was he aware of the basis for the same. It is stated that the petitioner failed to prove that the documents which were taken on record with specific condition of proof and conditional permission to bring documents on record does not mean that the same are proved and can be relied upon.
31. Lastly, it is submitted that the findings of the Sole Arbitrator are plausible views and the Court under Section 34 of the 1996 Act shall not re-appreciate the evidence placed before the Sole Arbitrator. Hence, the present petition be dismissed as the impugned Award needs no interference.

ANALYSIS AND FINDINGS



32. I have heard learned counsels for the parties and perused the material available on record.
33. The Court under Section 34 of the 1996 Act has very limited and narrow scope of interference against an Arbitral Award and the same has been reiterated time and again by the Hon'ble Supreme Court, reliance is placed on ***Consolidated Construction Consortium Limited v. Software Technology Parks of India, 2025 INSC 574*** and more particularly paragraph No. 23, which reads as under:-

“23. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has perforce to limit its jurisdiction within the four corners of



Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.”

(Emphasis added)

34. A bare perusal of the paragraph reproduced above shows that under Section 34 of the 1996 Act the Court does not sit in appeal over an Arbitral Award or re-appreciates the evidence. The Court can only set aside an Arbitral Award under the limited grounds expressly provided in Section 34 of the 1996 Act or when the Arbitral Award is contrary to terms of the contract or provisions of law. The Court is not to reassess the factual findings or substitute its own view with those arrived at by the Arbitral Tribunal.
35. Under Section 34 of the 1996 Act, one of the ground to set aside an Arbitral Award is when the same is in conflict with the public policy of India. Explanation 1 of Section 34(2)(b)(ii) of the 1996 Act provides that an Award is in conflict with the public policy of India when it is in contravention with the fundamental policy of Indian law or the most basic notions of morality or justice.
36. Another ground for setting aside an Arbitral Award is when it is found to be patently illegal. As per Section 34(2A) of the 1996 Act an Arbitral Award, arising out of arbitrations other than international commercial arbitrations, can be set aside if patently illegal on the face of the Award. The proviso of the said sub-section further provides that



an Award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence, reliance is placed on *Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131*.¹

37. With said principles in mind, I shall now proceed to consider the rival contentions raised by both the parties.
38. Before proceeding further, it is pertinent to refer to the relevant clauses from the General Terms and Conditions of the Auction. The same are extracted below:-

“2. BIDDING AT AUCTION AND SUBMISSION OF AUCTION APPLICATION FORM:

i) The Entry into the auction hall be restricted to only such persons who carry the demand draft for a sum of Rs. 10,00,000/- (Rupees Ten Laks) in favor of Delhi Development Authority. The draft will be deposited with the officer conducting the auction before commencement of the auction & this amount will be adjusted in 25% EMD as described at Para (vi) below.

It is clarified that this draft would entitle to bid for only one plot that is to say in case a person is highest bidder for one plot, Rs. Ten Lakhs deposited by him/her would be adjusted against the plot. He/she would therefore be required to deposit another draft of Rs. Ten Lakh in case he/she desired to bid for another plot.

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¹*Refer: paragraphs No. 37 and 38.*



iii) *The bid shall be for the amount of the premium offered for the Free Hold rights in the plot. The plot is being auctioned is on 'as is where is basis'. It is presumed that the intending purchaser has inspected the site and familiarized himself with the prevalent conditions in all respects including status of infrastructural facilities available etc. before giving the bid.*

iv) *No person whose bid has been accepted by the officer conducting the auction shall be entitled to withdraw / modify / surrender his bid on any ground whatsoever. If he does so the entire amount of Earnest Money Deposit (EMD) shall be forfeited. This shall be without prejudice to other rights or remedies that may be available to DDA.*

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vi) *The person whose bid has been accepted by the officer conducting the auction, shall be required to pay at the fall of hammer i.e. latest by 4:00 P.M. on the day of auction a sum equivalent to 25% of the bid offered as Earnest Money Deposit (EMD) which shall have to be deposited in Central Bank of India or State Bank of India, vikas Sadan, INA, New Delhi Branch through demand Draft/ Pay Order. If the Earnest Money is not paid by 4:00 P.M. on the day of the auction, it shall be deemed that the bid has been revoked / withdrawn and the amount of Rs. Ten Lakhs shall stand forfeited to the DDA & bid shall be cancelled.*

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4. ISSUE OF ALLOTMENT-CUM-DEMAND LETTER TO THE SUCCESSFUL BIDDER & DEPOSIT OF BALANCE PREMIUM:

i) The allotment cum demand letter will be issued by the Commercial Land Branch, DDA to the highest bidder after acceptance of the bid by the competent authority. The highest bidder is required to deposit the balance 75% amount of the premium offered (i.e. the bid offered for the plot) within 90 (Ninety) days of the issue of allotment cum demand letter through a Bank Draft/ Challan only in the branches of Central Bank of India / State Bank of India, Vikas Sadan, I.N.A., New Delhi and submit a copy of Challan to the Dy. Director (CL), DDA as proof having done so. PROVIDED THAT the Vice-Chairman, DDA may extend the last date of payment of the balance premium where he is satisfied that sufficient reasons exist for doing so, up to a maximum of 180 days subject to payment of interest on the balance premium / amount @ 12.5% per annum where the delay is 30 days or less and 15% per annum where the delay exceeds 30 days, provided that any such application for seeking extension of time should be submitted in person to the Deputy Director concerned, at least 7 days before the last date for making the payment of the balance premium.

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iii) In case the payment of balance premium is not received within the stipulated period as indicated above and in the demand-cum-allotment letter, the auction bid shall automatically stand cancelled and the entire Earnest Money Deposit (EMD) shall stand forfeited without any notice. In that eventuality, DDA shall be competent to re-auction the plot.”

39. The petitioner is primarily aggrieved by rejection of its claim No. 1 pertaining to refund of the forfeited ‘Earnest Money Deposit’ of Rs. 4.45 crores.
40. The Sole Arbitrator rejected the claim No. 1 of the petitioner on the following grounds: (a) the petitioner failed to establish that there was an ‘understanding’ between the parties that the respondent will provide basic civic amenities first and then the petitioner will pay the remaining balance 75% of the bid amount; (b) the non-payment of the balance consideration was due to lack of funds and not due to non-availability of basic civic infrastructure; (c) the petitioner plea for non-payment of balance consideration due to non-availability of basic civic infrastructure was rejected by the Court in W.P. (C) No. 685/2008 and the contentions of the parties have been crystallised and cannot be re-agitated; (d) the petitioner never challenged the reasonableness of the forfeiture prior; (e) the burden to prove that the stipulated condition was by way of ‘penalty’ or that the compensation was ‘unreasonable’ or that the respondent did not suffer any loss was on the petitioner and the petitioner failed to prove the same; (f) the valuation reports relied upon by the petitioner to show that the respondent will earn more on



re-sale were unreliable and not proved; (g) the respondent would suffer loss in terms of cost of re-auction, loss on interest on the unpaid balance amount, revenue that could have been generated from the vacant subject plot, delay in development of public utility which caused inconvenience and loss to general public etc.; (h) quantum of loss suffered by Public Authorities in such cases is difficult to prove and for this reason the forfeiture clause is stipulated as a pre-estimate quantum of loss; and (i) ***Kailash Nath (supra)*** is not applicable in the present matter, as also held by the Coordinate Bench of this Court in W.P. (C) No. 685/2008. The Sole Arbitrator relied upon a catena of judgments in support of his said findings.

41. The question that needs to be answered first is what is the nature of the ‘Earnest Money Deposit’ made by the petitioner, which was forfeited by the respondent. Most recently, the Hon’ble Supreme Court in ***K.R. Suresh v. R. Poornima, 2025 SCC OnLine SC 1014*** has explained as to what amounts to ‘earnest money’, as under:-

“31. .. On the other hand, the word “earnest” stands for a sum of money given for the purpose of binding a contract, which is forfeited if the contract does not go off and adjusted in price if the contract goes through. ...

32. The principles governing the scope of “earnest money” were succinctly explained in the case of Shree Hanuman Cotton Mills v. Tata Air Craft Ltd., (1969)3 SCC 522, reproduced as under:

“21. From a review of the decisions cited above, the following principles emerge regarding ‘earnest’:



'(1) It must be given at the moment at which the contract is concluded.

(2) It represents a guarantee that the contract will be fulfilled or, in other words, "earnest" is given to bind the contract.

(3) It is part of the purchase price when that transaction is carried out.

(4) It is forfeited when the transaction falls through by reason of the default or failure of the purchaser.

(5) Unless there is anything to the contrary in the terms of the contract, on default committed by the buyer, the seller is entitled to forfeit the earnest.'""

(Emphasis added)

42. In the present case, as per Clause No. 2 (vi) of the General Terms and Conditions of the Auction (reproduced above) the person whose bid has been accepted in the Auction is required to submit 25% of the bid offered as 'Earnest Money Deposit' on the day of the auction itself. Consequently, after acceptance of the bid an allotment-cum-demand letter will be issued to the highest bidder. As per Clause No. 4 (i) of the General Terms and Conditions of the Auction (reproduced above), the highest bidder is required to deposit the remaining 75% of the bid offered and accepted by the Authorities within 90 days of the issuance of allotment-cum-demand letter or within the extended period as granted. Further, as per Clause No. 4 (iii) of the General Terms and Conditions of the Auction (reproduced above) in case such person fails to pay the remaining 75% of the bid offered and accepted by the



Authorities within the stipulated period, the auction bid shall stand automatically cancelled and the 'Earnest Money Deposit' shall stand forfeited without any notice.

43. A conjoint reading of these clauses from the General Terms and Conditions of the Auction show that the 'Earnest Money Deposit' deposited by the bidder is part of the purchase price i.e., 25% of the total bid amount. Further, the forfeiture of the said 'Earnest Money Deposit' on failure on part of the bidder to pay the remaining bid amount within the stipulated period represents a guarantee that the bidder will make good on its bid after having accepted the allotment-cum-demand, and if it fails to do so the 'Earnest Money Deposit' will be forfeited. Hence, the 'Earnest Money Deposit' in the present case falls within the parameters of the 'earnest money' as described in ***K.R. Suresh (supra)***.
44. The next issue that needs consideration is whether the petitioner was in violation of Clause No. 4 (iii) of the General Terms and Conditions of the Auction, thereby entitling the respondent to forfeit the 'Earnest Money Deposit'.
45. The Sole Arbitrator has made a factual finding that the reason for delay in payment of the remaining 75% of the sale consideration by the petitioner was not due to non-availability of civic amenities but on account of insufficiency of funds with the petitioner. In paragraph No. 30 of the impugned Award, the Sole Arbitrator has observed that the petitioner wrote letters dated 16.07.2007 and 12.11.2007 to the respondent seeking extension of time in depositing remaining 75% of the sale consideration. The petitioner in letter dated 16.07.2007 sought



extension of 90 days on the ground of ‘unforeseen circumstances’ and in letter dated 12.11.2007 the petitioner sought extension on the ground that it has not been able to raise loan due to non-receipt of permission from the respondent and hence, could not manage the balance payment. Nowhere in these letters has the petitioner mentioned about non-availability of civic amenities as reason for non-payment of the balance sale consideration.

46. Subsequently, the respondent *vide* letter dated 09.01.2008 granted extension to the petitioner till 28.01.2008. However, the petitioner instead filed a Writ Petition being W.P. (C) No. 685/2008, which was dismissed *vide* judgment dated 06.01.2017. In the said judgment a Coordinate Bench of this Court also took into consideration the said letters dated 16.07.2007 and 12.11.2007 and observed that the actual reason for not paying the balance bid amount was the fact that the petitioner did not have adequate funds. Further, the Division Bench of this Court while dismissing the LPA No. 378/2017 filled against the judgment dated 06.01.2017 granted liberty to the petitioner only to challenge “*the reasonableness of the forfeiture*”. In view of the said judgment and order by this Court, the Sole Arbitrator observed that the Court has already adjudicated that non-availability of civic infrastructural amenities was not the reason for non-payment of the balance consideration and hence, the same cannot be re-agitated in the arbitral proceedings.
47. Further, the Sole Arbitrator observed that the burden to establish that there was an ‘understanding’ that the respondent will provide civic amenities before full payment was upon the petitioner. The Sole



Arbitrator was of the view that the petitioner failed to establish that any such ‘understanding’ was arrived at or it had any legal sanctity. The petitioner in the arbitral proceedings contended that it addressed various letters requesting the respondent to provide the civic amenities. However, the Sole Arbitrator was of the view that the petitioner has failed to establish that any such representation was made to the respondent, since the petitioner failed to prove that any such letter was served by it to the respondent or produce copy of any such letters or summon any witness to prove delivery of such letters.

48. I find no infirmity with the said findings of the Sole Arbitrator. The said findings of the Sole Arbitrator are based on the pleadings of both parties and after applying judicial mind to the documents on record and examination of the witness evidences. This Court in a petition under Section 34 of the 1996 Act is not to re-examine the evidences or reassess the facts of the matter. Further, a Coordinate Bench of this Court in W.P. (C) No. 685/2008 has already taken a view that non-availability of civic infrastructural amenities was not the reason for non-payment of balance 75% balance consideration and same has also been observed by the Sole Arbitrator.
49. The Sole Arbitrator further observed that as per the General Terms and Conditions of the Auction the subject plot was auctioned on ‘as is where is basis’. The petitioner is bound by the General Terms and Conditions of the Auction and hence, the petitioner was expected to know of the infrastructural facilities on the subject plot before bidding for it. In support of the said finding, the Sole Arbitrator has correctly placed reliance on *Punjab Urban Planning & Development*



Authority v. Raghu Nath Gupta, (2012) 8 SCC 197 and Municipal Corpn., Chandigarh v. Shantikunj Investment (P) Ltd., (2006) 4 SCC 109.

50. In view of the aforesaid, it is clear that the respondent had auctioned the subject plot on 'as is where is basis' and hence, the petitioner cannot contend that it withheld the payment of balance sale consideration as the respondent turned deaf ears to its request for providing civic infrastructural amenities.
51. In ***Aggarwal Associates (Promoters) Ltd. v. DDA, (2010) 15 SCC 380***, the Hon'ble Supreme Court dealt with a similar issue of forfeiture of earnest money. Therein too DDA invited bids for the sale of a commercial plot and the petitioner therein being the successful bidder deposited a sum equivalent to 25% of its bid and was further required to make the payment of the balance 75% amount within 45 days from the date of issue of the demand letter. However, the appellant therein failed to collect the demand letter and DDA henceforth forfeited the earnest money. The Hon'ble Supreme Court upheld such forfeiture and observed as under:-

“10. ... The appellant could claim possession of the property only after collecting the allotment-cum-demand letter and on deposit of 75% of the balance bid money. Admittedly, the appellant had not deposited the amount and instead started projecting the case as if DDA was not in a position to deliver the possession of the auctioned property to him as DDA had already transferred the possession of the auctioned property to MCD. The appellant could take all



these pleas only after performing his part of the obligation under the terms and conditions of the auction-notice. ... We are of the considered view that since the appellant had failed to comply with the terms and conditions of auction, he had no right to claim either the possession or the allotment of the plot in his favour. The plot was sold to him on an “as-is-where-is basis”. It had been made clear in the terms and conditions of the auction that it would be presumed that the intending purchaser has inspected the site and had familiarised himself with the prevalent site conditions in all respects before giving the bid. Since the appellant failed to comply with the terms and conditions of the auction-notice there was no concluded contract between the parties.

***11.** The counsel in the end prayed that in equity and fairness the earnest money deposited by him should be refunded to him. We do not find any merit in this submission. As the transaction fell through by reason of the default or failure of the purchaser, the earnest money could be forfeited as per terms and conditions of the auction-notice. The terms agreed between the parties have to be considered while considering the question of the forfeiture of the earnest money. ...*

(Emphasis added)

- 52.** The present case is squarely covered by the said judgment and the Sole Arbitrator has rightly relied upon it. Just as in **Aggarwal Associates (supra)**, in present case as well the transaction fell through



due to default on part of the petitioner and hence, the respondent forfeited the earnest money deposit as per the terms and conditions of the Auction. It is undisputed fact that the respondent *vide* letter dated 09.01.2008 granted final extension to the petitioner till 28.01.2008 to pay the balance bid consideration and the petitioner failed to do so. Therefore, as per Clause No. 4 (iii) of the General Terms and Conditions of the Auction, the respondent was well within its right to forfeit the 'Earnest Money Deposit' on petitioner's failure to pay the balance sale consideration within in the stipulated time.

53. Further, the Sole Arbitrator has also referred to ***HUDA v. Kewal Krishan Goel, (1996) 4 SCC 249*** wherein the Hon'ble Supreme Court held as under:-

“8. The next question that arises for consideration is that, where the allottee accepts the allotment and indicates the same within the stipulated period and makes additional deposits on instalment basis and thereafter intimates the authority that he will not be in a position to pay up the balance amount and makes a request for refund of the money deposited, would the authority be justified in forfeiting the earnest money which had been deposited along with the application form?....

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12. This being the legal position and the allottee having accepted the allotment and having made some payment on instalment basis then made the request to surrender the land, has committed default on his part and therefore the



competent authority would be fully justified in forfeiting the earnest money which had been deposited and not the 10% of the amount deposited as held by the High Court.”

(Emphasis added)

54. Lastly, the Sole Arbitrator relied upon ***Seven Heaven Buildcons (P) Ltd. v. D.D.A., 2013 SCC OnLine Del 4909***, wherein too the petitioner deposited 25% of the bid amount towards earnest money with the DDA and by an allotment letter DDA demanded the balance amount of the bid price and informed the petitioner that if the payment is not made within the stipulated period, the allotment would stand automatically cancelled and earnest money forfeited. In the said judgment, a Coordinate Bench of this Court held that DDA was entitled to forfeiture of earnest money as the same was in terms of the tender.
55. The Sole Arbitrator has relied upon all these judgments to reach the finding that the ‘Earnest Money Deposit’ was rightly forfeited by the respondent as it was the petitioner who breached its obligation to pay the balance consideration even after grant of extension, as per the terms and conditions of the Auction. The findings of the Sole Arbitrator are reasonable and plausible view, supported by such judgments as mentioned above. It cannot be said that the Sole Arbitrator has not applied judicial mind or not considered pleadings or evidences on record.
56. Having reached the aforesaid conclusion that the forfeiture of the ‘Earnest Money Deposit’ by the respondent was as per the General Terms and Conditions of the Auction, the only issue that falls for



consideration is whether the forfeiture of 25% of the sale consideration i.e., Rs. 4.45 crores was reasonable. As already mentioned above, the judgment dated 06.01.2017 passed in W.P. (C) No. 685/2008 and order dated 21.09.2017 passed in LPA No. 378/2017 have crystallized the contentions of the parties and the Sole Arbitrator was only to adjudicate upon the reasonableness of the forfeiture of the 'Earnest Money Deposit'.

57. At this juncture, it is pertinent to take note of Section 74 of the ICA, which deals with compensation for loss/ damage caused by a breach of the contract when a particular sum of liquidated damages or penalty is already set forth under the terms of the contract. It provides that such compensation must be reasonable and it cannot, in any circumstance, exceed the amount stipulated in the contract. Section 74 of the ICA is extracted below:-

“74. Compensation for breach of contract where penalty stipulated for.— When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

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58. The ambit of Section 74 of the ICA has been interpreted by the



Hon'ble Supreme Court in catena of cases, especially in regards to earnest money. The Hon'ble Supreme Court in ***K.R. Suresh (supra)***, while referring to ***Fateh Chand (supra)*** and ***Maula Bux (supra)***, observed that clause for the forfeiture of earnest money is not penal in nature and hence, Section 74 of the ICA is not applicable to such situations. The relevant paragraphs of the said judgment are extracted below:-

“45. It is imperative to mention herein that in Fateh Chand (supra), this Court, while setting “earnest money” apart from a “penalty”, held that insofar as forfeiture of earnest money is concerned, Section 74 of the 1872 Act will not apply.

46. To the same effect is the decision of this Court in Maula Bux v. Union of India, (1969) 2 SCC 554, wherein it was held that forfeiture of earnest money is not deemed as penal and that Section 74 of the 1872 Act will only apply where the forfeiture is in the nature of a penalty.

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48. A different view was taken by this Court in Kailash Nath Associates v. DDA, (2015) 4 SCC 136, wherein it held that Section 74 of the 1872 Act applies to the forfeiture of earnest money deposit. It further held that proof of actual damage or loss is a sine qua non for invoking the said section and thereby, only a reasonable amount will be permissible for forfeiture upon the breach of contract.

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51. On a conspectus of the aforementioned authorities, it is evident that a clause for the forfeiture of earnest money is not penal in the ordinary sense, rendering Section 74 of the 1872 Act, inapplicable.

(Emphasis added)

59. A perusal of the paragraphs reproduced above from ***K.R. Suresh (supra)***, shows that forfeiture of ‘earnest money’ is not ‘penal’ in nature and hence, principles of Section 74 of the ICA are not applicable when forfeiting ‘earnest money’. Applying the said principle to the present case, the forfeiture of the ‘Earnest Money Deposit’ deposited by the petitioner cannot be regarded as penal in nature.
60. Importantly, the Hon’ble Supreme Court in ***Desh Raj and Others v. Rohtash Singh, (2023) 3 SCC 714***, while taking note of ***Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705***, held as under:-

“42. We may at this juncture also note the following observations made by this Court in ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705]: (ONGC case [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705], SCC pp. 740-41, para 64)

“64. ... Section 74 emphasises that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not actual loss is proved to have been caused by such breach. Therefore, the emphasis is on reasonable compensation.



If the compensation named in the contract is by way of penalty, consideration would be different and the party is only entitled to reasonable compensation for the loss suffered. But if the compensation named in the contract for such breach is genuine pre-estimate of loss which the parties knew when they made the contract to be likely to result from the breach of it, there is no question of proving such loss or such party is not required to lead evidence to prove actual loss suffered by him. Burden is on the other party to lead evidence for proving that no loss is likely to occur by such breach.”

(emphasis supplied)

43. Hence, in a scenario where the contractual terms clearly provide the factum of the pre-estimated amount being in the nature of “earnest money”, the onus to prove that the same was “penal” in nature squarely lies on the party seeking refund of the same. Failure to discharge such burden would treat any pre-estimated amount stipulated in the contract as a “genuine pre-estimate of loss”.

(Emphasis added)

61. From the perusal of the paragraphs reproduced above the proposition of law is that in cases where the terms of the contract provides that factum of the pre-estimate amount is in the nature of earnest money, the burden is on the party seeking refund/ reduction to prove that the same is penal in nature and failure to prove so would lead to treating any pre-estimated amount as a genuine pre-estimate of loss. Similarly,



in the present case it was on the petitioner to prove that forfeiture of 'Earnest Money Deposit' was in fact penal in nature and not genuine pre-estimate of loss.

62. To that effect, the Sole Arbitrator in paragraphs No. 46 and 47 of the impugned Award, observed that the petitioner failed to establish that the stipulated condition was by way of 'penalty' or that the compensation was 'unreasonable'. The Sole Arbitrator relied upon ***Construction & Design Services v. DDA, (2015) 14 SCC 263*** to observe that the burden of proof is on the person committing breach to show that no loss was suffered by the other party or that the amount specified in the contract was not reasonable. In the said judgment the DDA awarded a contract to the appellant therein for constructing a sewerage pumping station and since the appellant failed to complete the same, the DDA levied compensation for delay. Pertaining to burden of proof the Hon'ble Supreme Court in the said judgment observed as under:-

"2. The question raised for our consideration is when and to what extent can the stipulated liquidated damages for breach of a contract be held to be in the nature of penalty in the absence of evidence of actual loss and to what extent the stipulation be taken to be the measure of compensation for the loss suffered even in the absence of specific evidence. The further question is whether burden of proving that the amount stipulated as damages for breach of contract was penalty is on the person committing breach.

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14. There is no dispute that the appellant failed to execute the work of construction of sewerage pumping station within the stipulated or extended time. The said pumping station certainly was of public utility to maintain and preserve clean environment, absence of which could result in environmental degradation by stagnation of water in low lying areas. In these circumstances, loss could be assumed, even without proof and burden was on the appellant who committed breach to show that no loss was caused by delay or that the amount stipulated as damages for breach of contract was in the nature of penalty. Even if technically the time was not of essence, it could not be presumed that delay was of no consequence. Thus, even if there is no specific evidence of loss suffered by the respondent-plaintiff, the observations in the order of the Division Bench that the project being a public utility project, the delay itself can be taken to have resulted in loss in the form of environmental degradation and loss of interest on the capital are not without any basis.

15. Once it is held that even in the absence of specific evidence, the respondent could be held to have suffered loss on account of breach of contract, and it is entitled to compensation to the extent of loss suffered, it is for the appellant to show that stipulated damages are by way of penalty. In a given case, when the highest limit is stipulated instead of a fixed sum, in the absence of evidence of loss,



part of it can be held to be reasonable compensation and the remaining by way of penalty. The party complaining of breach can certainly be allowed reasonable compensation out of the said amount if not the entire amount. If the entire amount stipulated is genuine pre-estimate of loss, the actual loss need not be proved. Burden to prove that no loss was likely to be suffered is on the party committing breach, as already observed.

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17. Applying the above principle to the present case, it could certainly be presumed that delay in executing the work resulted in loss for which the respondent was entitled to reasonable compensation. Evidence of precise amount of loss may not be possible but in the absence of any evidence by the party committing breach that no loss was suffered by the party complaining of breach, the court has to proceed on guesswork as to the quantum of compensation to be allowed in the given circumstances. Since the respondent also could have led evidence to show the extent of higher amount paid for the work got done or produce any other specific material but it did not do so, we are of the view that it will be fair to award half of the amount claimed as reasonable compensation.”

(Emphasis added)

- 63.** The Sole Arbitrator took note of the losses suffered by the respondent and also observed that the petitioner has failed to prove that the



respondent will earn profit on re-sale of the subject plot. The relevant paragraphs from the impugned Award are extracted below:-

“47. In the present case, the claimant has, however, failed to lead any credible evidence to establish that the stipulated condition was by way of 'penalty' or the compensation contemplated was 'unreasonable' or that DDA did not suffer any loss. It is on record that till date the plot in question has remained vacant without generating any revenue to the DDA; DDA has been deprived of the huge consideration of Rs. 13.6 crores from the date of allotment till date which it could have got from the other bidders had the claimant not given the highest bid; the plot in question could not be developed for the welfare and convenience of the public at large; lot of expenses are expected to be incurred if the plot in question is to be re-auctioned; DDA has suffered litigation since 2008. It thus can't be said that the DDA did not suffer any loss due to breach of condition of auction document. ...

48. In the entire pleadings, the claimant did not disclose the approximate value of the plot in question if re-auctioned at present. The claimant also did not elaborate as to how it was inferred that due to non payment of the balance consideration for such a long period, the respondent DDA would not suffer any loss. CWI Mukesh Aggarwal in his evidence by way of affidavit Ex. PX merely reiterated the averments made in the SOC regarding 'no loss suffered by



the DDA due to non payment of balance sale consideration'. It was not elaborated as to how DDA would receive much higher money/profit and if so, to what extent on re-auction of the plot in question.

49. For the first time in the affidavit Ex. PX, the claimant put reliance on Valuation Report (Ex.CW1/38) and print of valuation of similarly situated commercial plots from website 'magicbricks.com' (Ex.CW1/39). On the basis of these two documents, it was deposed by the claimant that the plot in question would fetch Rs.30 crores if re-auctioned as on 25.05.2019.

50. No document has been filed with the Valuation Report dated 25.05.2019 (Ex. CW1/38) to substantiate the 'opinion' given by the valuer. No independent witness was examined by the claimant to establish that the present market value of the plot is around Rs. 30 crores. No documents pertaining to the adjacent properties has been produced to prove the approximate market value of the property in question. Suffice it to say, there is no credible evidence to prove that on re-auction, the plot would fetch Rs. 30 crores. It was also not disclosed as to what was the market value of the plot on the day the bid was cancelled and the earnest money was forfeited. The Tribunal can't be oblivious of the fact that once a property becomes subject matter of litigation, it has adverse impact on its value and sale.



51. The claimant at the time of submitting the bid was aware of the comprehensive terms of the auction (Ex.CW1/3) but had participated, among other bidders, in the auction process voluntarily after going through it with eyes open. The claimant was also conscious of the consequences of the default in compliance of the conditions. At no stage, the claimant had challenged the reasonableness/validity of any of the terms and conditions of the auction. Apparently, the other participants/bidders in the auction did not have the opportunity to purchase the plot in question. The very purpose to seek deposit of earnest money is that the intending purchaser would abide by the terms and conditions and the transaction would not fail. It also keeps check on speculative transactions. In this case, the claimant deliberately did not make the payment thereby depriving other bidders of an opportunity to purchase the plot in question.

52. The value of the plot auctioned on 16.01.2007 was 17.51 crores as per the highest bid of the claimant. Out of that, the claimant paid only Rs. 4.45 crores. Needless to say, DDA was deprived of the utilization of Rs. 13.6 crores for such a long period or else it could have earned interest over blocked capital for these years. The loss of interest on unpaid consideration is writ large.

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56. In such like cases of open public auction, determination of precise quantum of loss suffered by the public authority due to default in the terms and conditions of the auction is difficult to prove. It is for this reason, the forfeiture clause is incorporated in the auction document itself for it to be a pre-estimate of the quantum of loss, which would be difficult to ascertain with any degree of exactitude. The object of specifying the quantum of forfeiture in the auction document is primarily to obviate the need to demonstrate/prove the actual loss that might be incurred. Having taken the benefit of allotment in its favour to the exclusion of other bidders, the claimant cannot at this stage characterize the forfeiture clause of entire earnest money as being penal in nature or in terrorem.

57. The Tribunal has no evidence before it to ascertain as to what exact loss has been suffered by DDA if not 25% of the total sale consideration as urged by the claimant. The claimant has failed to establish as to what else could be the extent of loss suffered by DDA and how it is to be measured in the absence of any evidence on record. It can't be the guesswork of the Tribunal to decide that the DDA had suffered a particular percentage of the sale consideration as loss due to claimant's fault. The Tribunal can't substitute its own opinion."

- 64.** A brief review of the paragraphs reproduced above from the impugned Award shows that the Sole Arbitrator has returned findings that the



respondent suffered loss in terms of loss of revenue, sale consideration, expected expenses during re-auction, litigation cost, loss of interest on un-paid consideration and others. The Sole Arbitrator further observed that in cases of open public auction, it is difficult to prove precise quantum of loss suffered by the public authority and therefore, the forfeiture clause work as pre-estimate of the quantum of loss. The Sole Arbitrator further stated that the petitioner after having been allotted the subject plot, in exclusion of others bidders, cannot later contend that the forfeiture clause is in nature of penalty. Lastly, the Sole Arbitrator held that since there is no evidence establishing exact quantum of loss suffered by the respondent as the petitioner has failed to establish the same, hence 25% of the sale consideration was a correct pre-estimate of loss.

- 65.** The said findings of the Sole Arbitrator are plausible views given after due application of mind and reasoning. In light of the said findings and law as discussed above, I am unable to agree with the averments of the petitioner that the burden to prove loss was upon the respondent. In the present case, the ‘Earnest Money Deposit’ was in nature of pre-estimate of loss and not penalty and in such case the burden was on the party seeking refund i.e., the petitioner to prove that the forfeiture was in nature of penalty, which the petitioner failed to do so, as also observed by the Sole Arbitrator and hence, it is treated as ‘genuine pre-estimate of loss’.
- 66.** The petitioner in favour of its contention that burden to prove loss was upon the responded has relied upon *IJM-Gayatri Joint Venture (supra)*. However, the said judgment is distinguishable from the



present case, as in instant case the dispute is regarding forfeiture of earnest money whereas in *IJM-Gayatri Joint Venture (supra)* the dispute was pertaining to damages for loss of profit. Further, the petitioner has also relied upon *Sudha Gupta (supra)*, wherein the Hon'ble Supreme Court allowed refund of the earnest money as the first respondent therein earned a much higher price on re-sale of the plot and clearly suffered no loss. Hence, clearly this case too is distinguishable from the present case as it is an undisputed fact that the subject plot remains un-auctioned.

67. Additionally, the petitioner in support of its contention that forfeiture can only be to the extent of actual loss suffered and test of compensation is as provided in Sections 73 and 74 of the ICA, has referred to *Traffic Media India (supra)*. In the said case, the loss suffered was only in terms of license fee unlike in the present case where the loss suffered is not only expected expenses related to re-auction etc. but also in terms of public utility and loss of opportunity to other bidders. Further, the petitioner has also relied upon *Fiberfill Engineers (supra)*, wherein a Coordinate Bench of this Court observed that the Arbitrator committed patent illegality in awarding liquidated damages by way of price adjustment without recording a finding as to whether or not the respondent therein had suffered loss/injury. However, this is clearly not the case here, as the Sole Arbitrator has given a detailed analysis of the loss/ damages suffered by the respondent. In my view, this is a quality distinction between the matter at hand and the judgment of *Fiberfill Engineers (supra)*.
68. The only other averment of the petitioner is that the Sole Arbitrator



has erred in holding that judgment of *Kailash Nath (supra)* is not applicable to the present case. In paragraph No. 82 of the impugned Award, the Sole Arbitrator has distinguished the said judgment to the case at hand on the following 5 grounds: i) In the present case, the petitioner is at default, whereas in *Kailash Nath (supra)* DDA was at fault; ii) In *Kailash Nath (supra)*, the appellant did not put any condition before paying the balance amount unlike the petitioner herein; iii) In *Kailash Nath (supra)*, DDA on re-auction of the plot got much more than what the appellant had originally bid for, whereas in the present case the subject plot remains un-auctioned and the petitioner has failed to prove that on re-auction of the subject plot the respondent would fetch more; iv) In *Kailash Nath (supra)*, the Hon'ble Supreme Court held that forfeiture without notice was unsustainable and the appellant therein was willing to pay with interest, whereas in the instant case, the petitioner reason for non-payment was lack of basic civic amenities, which was rejected by the Court too; and lastly v) In *Kailash Nath (supra)*, Article 14 of the Constitution of India was invoked as DDA being a public authority could not discriminate against the appellant, while granting other similarly situated persons extension, whereas in the present case, there is no case of discrimination against the petitioner as the terms and conditions of the Auction are equally applicable to all bidders.

69. Pertaining to first, second and fourth grounds on which the Sole Arbitrator has distinguished *Kailash Nath (supra)*, as mentioned above, the petitioner has contended that the question of default by petitioner does not arise, as it was ready and willing to pay the balance



sale consideration and had produced demand drafts in respect thereto. The said contention is not relevant in light of the finding made above that it was petitioner who defaulted in fulfilling its payment obligation. Hence, petitioner's willingness would not matter. Pertaining to the third ground on which the Sole Arbitrator has distinguished from *Kailash Nath (supra)*, the petitioner has contended that the Sole Arbitrator failed to appreciate that the burden to prove loss suffered was upon the respondent. The said contention of the petitioner has already been rejected, as discussed above. Lastly, pertaining to the fifth ground on which the Sole Arbitrator has distinguished from *Kailash Nath (supra)*, the petitioner has submitted that the Sole Arbitrator has failed to appreciate that the 'similarly situated persons' as mentioned in *Kailash Nath (supra)* are the persons who were declared winners of the tender and were not the persons who remained unsuccessful in the tender of the plot. The said distinguishment and contention is not relevant in the present case, and the main contentions have already been dealt with.

70. Further, the petitioner's contention that the Sole Arbitrator has only deliberated on the grounds for "cancellation of bid" i.e., non-payment of balance consideration as ground for adjudicating "reasonableness" of forfeiture is also not agreeable with me. In paragraphs No. 30 to 38, the Sole Arbitrator has deliberated upon reasons for "cancellation of bid" and forfeiture of 'Earnest Money Deposit' but later the Sole Arbitrator has also adjudicated upon the "reasonableness" of forfeiture, by observing that the petitioner failed to establish that the stipulated condition was by way of 'penalty' or that the compensation



was ‘unreasonable’. Eventually holding that the forfeiture was reasonable.

71. As for the petitioner’s argument that the Sole Arbitrator erred in appreciating Ex. CW1/38 and Ex. CW1/39, which once allowed to be exhibited stood proved and hence the question of bringing the author of the said document did not arise. In my view, the Sole Arbitrator duly acknowledged the Valuation Report (Ex.CW1/38) and valuation of similarly situated commercial plots from website ‘magicbricks.com’ (Ex.CW1/39) submitted by the petitioner to substantiate its contention that the subject plot would fetch Rs. 30 crores if re-auctioned as on 25.05.2019. However, no document was filed with the said reports to substantiate the ‘opinion’ given by the valuer and no independent witness was examined by the petitioner to establish that the market value of the subject plot is around Rs. 30 crores. Hence, the Sole Arbitrator observed that the petitioner has brought no credible evidence to prove that on re-auction, the subject plot would fetch around Rs. 30 crores. I find no infirmity with the said findings of the Sole Arbitrator and as reiterated above, in a petition under Section 34 of the 1996 Act I am not to re-examine the evidences.

CONCLUSION

72. In the present case, the findings of the Sole Arbitrator are plausible views, based on analysis of contentions raised by both parties, including the case laws cited. The findings provided by the Sole Arbitrator in the impugned Award cannot said to be perverse or impossible, that no reasonable person could have arrived at. The



above discussion answers all the objections raised by the petitioner in the present petition.

73. In view of the aforesaid, the impugned Award is not in contravention with the public policy of India or patently illegal and I find no merit in the contentions raised by the learned counsel for the petitioner to set aside the impugned Award.
74. Consequently, the present petition is dismissed along with all pending applications, if any.

JASMEET SINGH, J

NOVEMBER 11, 2025/(HG)