



2025:DHC:8920-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Judgment reserved on: 26.09.2025*
Judgment pronounced on: 09.10.2025

+ CO.APP. 15/2024, CM APPL. 30057/2024, CM APPL. 31879/2024, CM APPL. 31994/2024 and CM APPL. 49077/2024

COSMIC VICTIMS ASSOCIATIONAppellant
Through: Mr. Ashish Dholakia, Senior
Adv. with Mr. Kalyan Dutt and
Mr. Subhoday Banerjee, Advs.

versus

SURYA JYOTI SOFTWARE PVT LTD AND OTHERS
.....Respondents
Through: Mr. Manish K. Bishnoi with
Mr. Sahil and Mr. Khubaib
Shakeel, Advs. for R-1.
Ms. Ruchi Sindhwani, Senior
Standing Counsel with Ms.
Megha Bharara, Adv. for
Official Liquidator.
Mr. Shlok Chandra and Mr.
Abhishek Keer, Advs. for
Alpha Corp Development Pvt.
Ltd.

+ CO.APP. 16/2024, CM APPL. 33791/2024, CM APPL. 33792/2024 and CM APPL. 33794/2024

NISHANT MUTTREJAAppellant
Through: Ms. Vrinda Bhandari,
DHCLSC with Mr. Nishant
Mutteja, Advs. with Appellant
in-person

versus



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SURYA JYOTI SOFTWARE PRIVATE LIMITED
(THROUGH ITS DIRECTOR) & ORS.Respondents

Through: Mr. Manish K. Bishnoi with
Mr. Sahil and Mr. Khubaib
Shakeel, Advs. for R-1.
Ms. Ruchi Sindhvani, Senior
Standing Counsel with Ms.
Megha Bharara, Adv. for
Official Liquidator.

+ CO.APP. 21/2024, CM APPL. 39894/2024
CUBA & ANR.Appellants

Through: None.

versus

SURYA JYOTI SOFTWARES PVT LTD & ORS.

....Respondents

Through: Ms. Ruchi Sindhvani, Senior
Standing Counsel with Ms.
Megha Bharara, Adv. for
Official Liquidator.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

1. Vide this common Order/Judgment, three connected Company Appeals 15/2024, 16/2024, and 21/2024 challenging the common Order passed by the learned Company Judge on 16.04.2024 in Company Petition 152/2016 captioned ***Rajni Anand v. Cosmic Structures Ltd.***, shall stand disposed of.



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2. In the facts of the present case, the question which requires adjudication by this Court is whether, by virtue of an Agreement to Sell [hereinafter referred to as 'ATS'], any right in the property is created in favour of the Company in Liquidation.

FACTUAL MATRIX:

3. In order to comprehend the issues involved in the present case, the relevant facts in brief are required to be noticed.

4. M/s Surya Jyoti Software Pvt. Ltd. [hereinafter referred to as 'SJS'] was allotted Plot No.1, Sector-154, Noida- 201301 [hereinafter referred to as 'Lease Plot'], on a 90 year leasehold basis *vide* allotment letter dated 03.07.2008. M/s Cosmic Structures Limited [hereinafter referred to as 'CSL'] is another Company, which is in liquidation.

5. SJS entered into an ATS with CSL on 16.04.2013, whereby it was agreed that CSL would take over the entire shareholding of SJS for consideration of Rs. 44,80,97,177/- (including a one-time lease rent of Rs. 2,80,46,777/-). Further, as per Clause 5 of the ATS, it was also agreed that, besides the above consideration, CSL shall also pay the interest payable to the NOIDA Authority against the outstanding dues. Clauses 3, 4, 12, and 16 of the ATS deal with the mode and method of the payment of the Consideration, which read as under:

“....

3. That the total period for payment of entire consideration has been mutually agreed between both the Parties as Twelve Months starting from payment date of First Installment as per the payment Schedule mentioned below in Clause 4.



4. That the balance consideration of Rs. 39,80,97,177/- (Rupees Thirty Nine Crore Eighty Lac Ninety Seven Thousand One Hundred Seventy-Seven only) shall be paid by the Second Party to the First Party in the following time-bound installments:

No.	Installment Date	Amount
1.	07 th June, 2013	Rs. 4 crore (Four crore)
2.	07 th July, 2013	Rs. 4 crore (Four crore)
3.	22 nd July, 2013, 2013	Rs. 3 crore (Three crore)
4.	07 th August, 2013	Rs. 4 crore (Four crore)
5.	07 th September, 2013	Rs. 4 crore (Four crore)
6.	07 th October, 2013	Rs. 4 crore (Four crore)
7.	07 th November, 2013	Rs. 4 crore (Four crore)
8.	07 th December, 2013	Rs. 4 crore (Four crore)
9.	07 th January, 2014	Rs. 4 crore (Four crore)
10.	07 th February, 2014	Rs. 4 crore (Four crore)
11.	07 th March, 2014 i.e. at the time of transfer of remaining shareholding in favour of the Second Party or its Nominee and resignation of all the Directors of the First Party from the Board)	Rs. 80,97,177/- Only (Rupees Eighty Lac Ninety Seven Thousand One Hundred Seventy-Seven Only)

.....

12. That it is agreed between the parties that timely payment of consideration is essence of this Agreement. The Second Party shall be liable to pay an interest @ 24% p.a. on late payment. It is further agreed that the Second Party shall be entitled to deduct/ set off interest @ 24% p.a. in case of early payment by the Second party, subject to maximum delay of 2 (two) months. In case, there is a delay of more than 2 months, the Second Party shall be liable to pay liquidated damages of Rs. 10,00,000 /- per month to the First Party (OR this Agreement shall be terminated and 20% of total consideration shall be forfeited by the First Party).

....

16. That upon execution of this Agreement, it is agreed among the parties that the Second Party shall be entitled, competent and authorized to take bookings in the project, receive



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consideration in its own name and at its own risk w.e.f. 07th April'2013. The Second Party shall keep the First Party completely indemnified in respect of the same. However, the Second party shall have no right to execute a sub lease or transfer unless and until all consideration mentioned in the agreement has been received by First Party."

6. It is pertinent to note that CSL failed to adhere to the payment schedule, which would be evident from the following table, extracted from Paragraph no.32 of the Impugned Order/Judgment:

"32. ...it would be apposite to highlight that the payments commenced from 09.09.2013 and lasted till 10.12.2015, as per the tabular details provided in the Affidavit of the applicant, reproduced as under:

Date	Amount (in Rs.)
09-09-2013	50,00,000
09-09-2013	25,00,000
23-09-2013	50,00,000
07-10-2013	1,00,00,000
14-10-2013	50,00,000
18-10-2013	1,00,00,000
18-10-2013	50,00,000
21-10-2013	50,00,000
23-10-2013	50,00,000
12-11-2013	50,00,000
16-11-2013	10,00,000
06-02-2014	60,00,000
18-02-2014	50,00,000
04-03-2014	50,00,000
11-03-2014	50,00,000
12-03-2014	50,00,000
28-07-2014	50,00,000
25-08-2014	25,00,000



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27-08-2014	25,00,000
09-09-2014	25,00,000
30-10-2014	25,00,000
30-10-2014	25,00,000
07-11-2014	35,00,000
07-11-2014	25,00,000
06-08-2015	25,75,000
17-09-2015	23,00,000
30-09-2015	9,50,000
10-12-2015	2,00,000
Total	11,40,25,000

Total Receipt 16,40,25,000/-Only.”

7. Pursuant to the breach of the payment schedule, a Petition for winding up CSL was filed, in which an Interim Order was passed on 23.02.2016, whereby a Provisional Liquidator was appointed while admitting the Petition on 11.01.2017. Thereafter, on 25.02.2016, SJS issued a notice terminating the ATS. Pursuant thereto, CSL filed a Petition under Section 9 of the Arbitration and Conciliation Act, 1996, [hereinafter referred to as ‘Section 9 Petition’], which was dismissed on 19.12.2016.

8. Thereafter, SJS filed a Miscellaneous Application before the Company Judge for de-sealing and handing over the physical, vacant, and peaceful possession of the Lease Plot, and for removal of security guards deputed by the Official Liquidator from the Lease Plot. The Miscellaneous Application was allowed by the Company Judge, which is the subject matter of challenge in the three Company Appeals before this Court. Herein, two Company Appeals were filed by the



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alleged Unit Holders, whereas one Company Appeal was filed by the Former Director of the CSL.

CONTENTIONS OF THE PARTIES:

9. Heard learned counsel representing the parties at length and, with their able assistance, perused the paper book.

10. Mr. Ashish Dholakia, learned senior counsel for the Appellant, i.e., alleged Unit Holders, while drawing the attention of the Court to Clause 16 of the ATS, submitted that CSL was permitted to take booking of units, which were duly booked, hence, a right has been created in favour of the Unit Holders which cannot be permitted to be defeated, particularly when the ATS permits the same.

11. It is further contended that equity is in favour of the Unit Holders who have invested their hard-earned money and have held it for a sufficiently long time. It was also contended that as many as six Revival Schemes are pending before the Company Judge to revive CSL.

12. In the end, while referring to certain communications sent by Mr. Sandeep Pahwa, who was a Director in CLS, however, was communicating on behalf of SJS as Project Director, it was contended that, in fact, SJS and CSL are acting in collusion.

13. Learned Senior Standing Counsel for the Official Liquidator has supported the Appellant, while submitting that SJS issued a notice dated 25.02.2016 terminating the ATS after an Interim Order was passed in the Company Petition on 23.02.2016. Moreover, while



granting the relief of release of the property, the relief of refund of the earnest money has not been granted by the Court. Further, she, while referring to Section 446(2) of the Companies Act, 1956¹, submits that the Tribunal has jurisdiction to entertain and decide all the claims with respect to the Company in Liquidation. In the end, it was contended that, as per Section 73 of the Contract Act, 1872², SJS does not have the right to forfeit the amount to the extent of 20% of the total sale consideration unless actual damages suffered are proved.

14. Ms. Vrinda Bhandari, learned counsel for Mr. Nishant Muttreja, Appellant in Company Appeal 16/2024, submits that she has adopted the arguments of learned counsel for the Appellant in Company Appeal 15/2024. She further stated that the Appellant, Mr. Nishant Muttreja has communicated his intention to engage another lawyer, however, no lawyer has been engaged.

15. *Per contra*, learned counsel for SJS contends that the Section 9 Petition filed by the CSL was dismissed on 19.12.2016. Further, while referring to the Orders dated 30.05.2016 and 27.07.2016 in the Section 9 Petition, it was submitted that no inference is called for in the Order passed by the Court.

ANALYSIS & FINDINGS:

16. At the very outset, it is necessary and expedient to analyse the rights created under the ATS. 'Contract for Sale' has been defined

¹ Section 446(2).

² Section 173.



under Section 54 of the Transfer Property Act, 1882³. The provision makes it evident that an ATS does not create any right in the property.

The same has been reproduced hereunder:

“54. “Sale” defined. — *“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

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

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—*A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.*

It does not, of itself, create any interest in or charge on such property.”

(Emphasis Supplied)

17. Therefore, SJS continued to hold the rights in the property in question, and no rights have been transferred to CSL on the basis of a contract for sale.

18. Furthermore, upon a bare perusal of the ATS, it is evident that the schedule of payment was specified in the ATS, and the entire payment was to be made within a period of 12 months starting from the payment date of the first installment as per the payment Schedule. As per Clause 12 of the ATS, SJS was entitled to forfeit 20% of the total sale consideration while terminating the ATS. It was also provided that timely payment of consideration is the essence of the

³ Section 54.



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ATS, and a maximum delay of two months shall be respected. Subsequently, it was provided that if there is a delay of more than two months, CSL shall be liable to pay the liquidated damages of Rs. 10 lakhs per month, while giving the right to the First Party to terminate the ATS and forfeit 20% of the total sale consideration. Hence, once there is a default committed by CSL, SJS can terminate the ATS, while forfeiting 20% of the total sale consideration.

19. At the cost of repetition, the Company in Liquidation, i.e., CSL, is not the owner of the property. On careful reading of Clause 16 of the ATS, it becomes evident that although CSL was permitted to take bookings in the Cosmic Masterpiece Project [hereinafter referred to as 'the Project'], however, it was specified that CSL shall have no right to execute a sub-lease or transfer unless and until the entire sale consideration mentioned in the ATS has been paid by CSL to SJS. In these circumstances, the contention of the learned counsel that permission to take bookings, granted under the ATS, creates a right in favour of the alleged Unit Holders, lacks substance. Further, the attention of the Court has not been drawn to any statutory provision which enables CSL to create a right in favour of its Unit Holders/Prospective Buyers, particularly when CSL does not possess any right in the Lease Plot except enabling right to enforce the ATS.

20. The second argument of learned counsel lacks substance as Section 54 is clear and categorical. Thus, it is evident that on mere entering into an ATS, no right in the property is created in favour of the Prospective Buyers.



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21. Further, this Court has carefully examined the communications sent by SJS under the signature of Mr. Sandeep Pahwa, Project Director on behalf of SJS, who is also the Director of CSL. However, it is noticed that according to the ATS, the Lease Plot was to be developed by CSL, and till the transfer of the leasehold rights, some steps were required to be taken in the name of SJS. Hence, communications addressed under the signature of Mr. Sandeep Pahwa, on behalf of SJS, is not sufficient to conclude that there was a collusion between SJS and CSL, particularly when the Section 9 Petition was hotly contested between CSL and SJS. Moreover, even before this Court, the litigation is being contested by the Official Liquidator on behalf of CSL. Additionally, reference to communications dated 09.03.2015 and 24.06.2016 is not sufficient to come to a conclusion that there was a collusion between CSL and SJS. Therefore, before returning a finding on the aspect of collusion, some substantial material is required to be produced.

22. With respect to the last submission, it is noticed that the Lease Plot does not belong to CSL, hence it cannot be part of the Revival Schemes, which are pending.

23. At this juncture, it is pertinent to refer to Clause 18 of the ATS, which reads as under:

“18. That the First Party shall have the option to forthwith terminate this Agreement in case of any default by the Second Party of any of its timely payment of consideration amount hereunder if such default continues for a continuous period of 60 days and which shall give right to the First Party to either return the consideration amount paid by the Second Party within 30 days time after deducting interest at the rate of 18% for the delayed period after completion of 60 days of default



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period or without prejudice to the First Party's right to terminate as aforesaid, it shall be open to the First Party to waive off the termination of this Agreement on the Second Party making payment of the defaulted amount along with interest at the rate of 18% per annum for the delayed period. It is however clarified that this waiver of the termination of the Agreement is purely discretionary in nature and this discretion will lie with the First Party alone."

24. On a careful reading of Clause 18 of the ATS, it is evident that SJS has not waived its right to terminate the ATS, particularly when SJS *vide* notice dated 25.02.2016 terminated the ATS.

25. The second submission of the learned Senior Standing Counsel for the Official Liquidator also lacks merit because the learned Company Judge had examined the matter, and it is evident that SJS is entitled to forfeit 20% of the total sale consideration. Certain payments were made to the NOIDA Authority, however, for the remaining amount; CSL has never filed a suit which could be tried by the Company Judge in view of Section 446 (2).

26. Further, in an Appeal, this Court is not expected to decide such disputes without permitting the parties to lead evidence. SJS is required to be given an opportunity to prove the actual damages/loss suffered by it, particularly on account of the consistent default of CSL to pay the amount to the NOIDA Authority. The total dues are stated to be more than Rs. 25 crores, which is payable by CSL to the NOIDA Authority.

27. Similarly, the argument based upon Section 73 cannot be accepted because there is a liquidated damages condition in the ATS for which the actual loss is not required to be proved by SJS.



However, with regard to unliquidated damages, an opportunity is required to be given to SJS to prove loss, which, in the absence of a claim by CSL, cannot be adjudicated.

28. Learned counsel for the Appellants have relied upon the judgment passed in *Shikha Birla v. Ambience Developers Pvt. Ltd.*⁴. The aforesaid judgment is distinguishable because while deciding applications under Order XII, Rule 6; Order XXXIX, Rules 1 and 2; Order XXXIX, Rule 4; and, Order VII, Rule 11 of the Code of Civil Procedure, 1908, the learned Single Judge proceeded to pass Order while drawing distinction between an understanding to enter into a legally binding agreement and an execution of ATS signed by the parties. In this case, a legally binding contract, namely, an ATS signed between the parties was executed. Hence, the aforesaid judgment is distinguishable.

29. Learned Senior Standing Counsel for the Official Liquidator has also relied upon the judgment passed by the Supreme Court in *Kailash Nath Associates v. Delhi Development Authority & Anr.*⁵. In this judgment, it was found that the Delhi Development Authority was not justified in forfeiting the earnest money as there was no breach of contract on the part of Kailash Nath Associates. The facts of the aforesaid case are entirely different, as Kailash Nath Associates did not commit any breach of contract, whereas in this case, breach of contract on the part of CSL is apparent, particularly when it failed to adhere to the payment schedule.

⁴ Manu /DE/2524/2008.

⁵ (2015) 4 SCC 136.



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30. The concept of forfeiting earnest money is well established by the series of judgments passed by the Supreme Court, including the judgment rendered in *Satish Batra v. Sudhir Rawal*⁶.

31. Keeping in view the aforesaid discussion, it is evident that all three Appeals lack merit and are hence dismissed. All pending applications stand closed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
OCTOBER 09, 2025/sp/sh

⁶ (2013) 1 SCC 345.