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

COMMERCIAL ARBITRATION PETITION NO. 210 OF 2023
ALONGWITH
INTERIM APPLICATION NO. 379 OF 2025
IN
COMMERCIAL ARBITRATION PETITION NO. 210 OF 2023

Ramesh Venkateshwar Somani

....Petitioner

Versus

1. Rajesh Somani
2. Jyoti Somani
3. Rajesh Somani
4. Vinay Somani
5. Shrilekha Somani

....Respondents

Mr. Rahul Narichania, Senior Advocate *a/w Mr. Siddharth Chabbria and Mr. Inayat Ali Qureshi i/b K.K. Associates for Petitioner.*

Mr. Devanshu Desai *for Respondent Nos. 1 to 3.*

Mr. J. P. Sen, Senior Advocate *a/w Mr. Jatin Pore, Mr. Suddhasattwa Roy and Mr. Karan Jain i/b DSK Legal for Respondent Nos. 4 and 5.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 7, 2026

JUDGEMENT :

Context and Factual Background:

1. This is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("***Arbitration Act***") impugning an Arbitral Award

dated June 1, 2022 passed by the Learned Sole Arbitrator (***"Impugned Award"***).

2. The Petitioner, the claimant in the arbitration, Mr. Ramesh Somani (***"Ramesh"***) is aggrieved by the Impugned Award not granting him relief in connection with the disputes raised against Ramesh's brother, Respondent No.1, Rajesh Somani (***"Rajesh"***), Respondent No.2, Jyoti Somani (wife of Rajesh, ***"Jyoti"***), Respondent No.3, Rajesh Somani HUF, a Hindu Undivided Family (***"HUF"***) of Rajesh, Respondent No.4, Vinay Somani, a cousin of Ramesh (***"Vinay"***) and Respondent No.5, Shrilekha Somani, wife of Vinay (***"Shrilekha"***).

3. For convenience, for all practical purposes, references to ***"Rajesh"*** in this judgement would include a collective reference to Rajesh, Jyoti and the HUF while references to ***"Vinay"*** would include a collective reference to Vinay and Shrilekha.

4. The disputes and differences between the parties were referred to arbitration by consent of the parties reduced to writing and recorded in an order dated January 19, 2018 (***"Reference Order"***) in Arbitration Petition No. 30 of 2017, which approved the Minutes of an Order presented by the parties based on which all disputes relating to an Agreement dated March 30, 2011 (***"2011 Agreement"***) and another

Agreement dated December 6, 2012 (“**2012 Agreement**”) were referred to arbitration.

5. At the heart of the dispute lies the sale by Rajesh of all rights to shares of a company called Shreeniwas House and Abode Limited (“**Shreeniwas Abode**”) that would emerge from a demerger of Shreeniwas Cotton Mills Ltd. (“**Shreeniwas Cotton**”) to Vinay. Shreeniwas Cotton, among others, owned a building called Shreeniwas House situated in Fort, Mumbai (“**Shreeniwas House**”).

6. Shreeniwas Cotton had been ordered to be wound up by an order dated July 24, 1984. All immovable properties of Shreeniwas Cotton had been mortgaged in favour of the State Bank of India to secure various credit facilities availed of. Eventually, a Scheme of Arrangement was propounded to this Court, which was approved on December 5, 2014, in Company Scheme Petition No. 592 of 2014. The Scheme allowed the demerger of Shreeniwas Cotton, by which, Shreeniwas Abode would emerge by way of a demerger. Shares of Shreeniwas Abode were to be issued to the shareholders of Shreeniwas Cotton, and the dispute in question relates to the entitlement to 9.06% of the equity share capital of Shreeniwas Abode, that would emerge from the Scheme of Arrangement.

7. It is Ramesh's case that mill land belonging to Shreeniwas Abode was to be developed by the Lodha Group ("**Lodha**"), but Shreeniwas House, which would be held by the demerged entity, namely Shreeniwas Abode, was meant to be handed over to the Somani family. The crux of the submission by Ramesh before the Learned Arbitral Tribunal was that while shareholders of Shreeniwas Cotton would be allotted shares in Shreeniwas Abode in the same pattern, Ramesh and Rajesh, being brothers and sons of the late Venkateshwar Somani ("**Venkateshwar**"), were to get a 27.19% shareholding in Shreeniwas Abode.

8. On July 3, 2007, a letter was executed between Lodha and the Somani family comprising the father Venkateshwar, Ramesh and Rajesh, whereby Lodha confirmed that Rajesh's entitlement to the shares in Shreeniwas Abode would be sold to Ramesh. By the 2011 Agreement, Rajesh further confirmed that all his rights in Shreeniwas Abode, arising out of the letter dated July 3, 2007 (executed with Lodha), stood assigned to Ramesh and his nominee for a total consideration of Rs. 4 crores payable by Ramesh. The manner in which the said sum of Rs. 4 crores was to be paid by Ramesh to Rajesh was set out. The 2011 Agreement is asserted by Ramesh as a valid and subsisting Agreement, for which Ramesh has paid part consideration,

and which he claimed, needs to be specifically performed. Ramesh alleged that he became aware of the 2012 Agreement, which is a letter dated December 6, 2012, addressed by Rajesh, among others, to one Adinath Builders Private Limited of the Lodha Group (“*Adinath*”), which claimed that Rajesh had transferred shares in Shreeniwas Abode to Vinay.

9. This purported transfer recorded in the 2012 Agreement was alleged to be in breach and violation of the 2011 Agreement. Ramesh alleged that having executed the 2011 Agreement, Rajesh had no subsisting right, title or interest in the shares of Shreeniwas Abode that would emerge from the demerger. Therefore, any transfer by them in favour of Vinay was said to be *ex-facie* illegal, null and void. Ramesh also asserted that Vinay had always been aware about the 2011 Agreement and the correspondence between Vinay and Adinath would indicate that Vinay was aware of the arrangement contained in the 2011 Agreement and had indulged in a conscious violation of Ramesh’s rights under the 2011 Agreement.

10. Ramesh offered to pay in advance the balance consideration of Rs. 2 crores under the 2011 Agreement, although such amount was payable only within 30 days after Shreeniwas Abode came into existence

with its shares being issued, and the obligation to pay the balance consideration had not yet arisen. Rajesh rejected this offer and returned the Demand Draft issued by Ramesh by a letter dated November 4, 2015.

11. Ramesh would contend that in March 2016, Mr. Abhishek Lodha had informed Vinay that Rajesh was bound by the 2011 Agreement and that Rajesh could not have sold or created any rights in respect of the future shares that would emerge in Shreeniwas Abode, the emerging company upon demerger. According to Ramesh, Vinay was indeed aware of the prior commitment in the 2011 Agreement, and yet, he went on to strike a deal with Rajesh in direct conflict with the 2011 Agreement.

12. Eventually, after the demerger was completed, Shreeniwas Abode came into being. On March 14, 2016, Ramesh wrote to Adinath confirming that he had received 1,79,388 shares of Shreeniwas Abode, and that Rajesh had already assigned his entitlement to the shares of Shreeniwas Abode, and that due to disputes, a Section 9 Petition had been filed. Adinath expressed an inability to transfer the said shares owing to the matter being *sub judice*, and Mr. Abhishek Lodha refused to act as an Arbitrator. Eventually, this is what led to the Reference

Order, disposing of the Section 9 Petition as well as the Section 11 Application.

Contentions in the Arbitration:

13. In the arbitration, Ramesh sought a declaration that a further 89,694 shares, representing 9.06% of the total and all benefits accruing thereon, were the legitimate entitlements of Ramesh, and a declaration that Vinay had no right, title, or interest in such shares. Ramesh sought a declaration that the purported 2012 Agreement, by which Vinay is said to have acquired interest in the 9.06% shares from Rajesh was to be declared as illegal, null and void, and not capable of affecting Ramesh's entitlement. In addition, Ramesh sought damages in the sum of Rs.10 crores. As an alternative, should specific performance not be granted, Ramesh demanded a refund of the Rs.2 crores that had already been paid, along with interest @ 18% per annum, as well as damages in a sum quantified at Rs.35 crores along with interest @ 18% per annum.

14. Rajesh contended that the members of Somani family were promoters and shareholders with a 51.62% shareholding of Shreeniwas Cotton, which had two primary businesses, namely, a textile factory in Lower Parel and commercial establishment in the building called Shreeniwas House. Owing to disputes, Rajesh is said to have

dissociated from Shreeniwas House and to avoid any heartburn, he separated from the Somani family. Rajesh would confirm that by the letter dated July 3/4, 2007, he had agreed to sell his stake to Ramesh with the expectation that the transaction would be completed smoothly, and that Rs.2 crores had been paid, while the balance amount of Rs. 2 crores was to be paid within 30 days from the date on which the shares were ready for transfer. It was Rajesh's case that right until December 2012, he waited for completion and also had informed Ramesh that he needed funds for other ongoing projects, however, Ramesh gave him the impression that he was not interested in completing the transaction and would not pay the balance amount until the shares were ready for transfer.

15. Rajesh contended that Vinay was indeed aware of the prior agreement between Ramesh and Rajesh, which is why the 2012 Agreement also entailed the purchase of office premises admeasuring 400 square feet on the ground floor of Shreeniwas House, together with the balance beneficial right, title, and interest in the shares of Shreeniwas Abode. The total consideration for this transaction was agreed at Rs.8 crores and on this basis, quiet, vacant, and peaceful possession of the office premises was handed over by Rajesh to Vinay. According to Rajesh, Vinay had been categorically informed about the

2011 Agreement and that even copies of the 2011 Agreement had been handed over to Vinay. Yet, Rajesh contended that Ramesh had no subsisting rights and resisted the grant of any other reliefs in favour of Ramesh.

16. On his part, Vinay submitted that there was an Agreement on April 16, 2007 with Adinath as well as with the Somani Group on the basis of which all the rights of Rajesh had been acquired by Vinay. The rights held by Rajesh, including the subject matter of the letter dated July 3, 2007, are said to have been acquired by Vinay from Rajesh under the 2012 Agreement, and towards this end, Rajesh was paid a cumulative sum of Rs.8 crores on the very same date, i.e., December 6, 2012. Rajesh also executed an irrevocable Power of Attorney authorising Vinay to attend any meeting with respect to the rights of Rajesh and to deal with his interest in Shreeniwas House, and to substitute Rajesh's name with Vinay's. Based on the 2012 Agreement, Rajesh also addressed a letter to Adinath and its promoters, namely Mr. Mangal Prabhat Lodha, Mr. Abhishek Lodha, and Mr. Abhinandan Lodha, apprising them of the fact that Rajesh had transferred his right, title and interest accruing under the letter dated July 3, 2007, in favour of Vinay, and that Vinay would now be entitled to directly receive the

shares from Lodha, which would have otherwise have been transferred by Adinath to Rajesh.

17. It was communicated to Adinath that, going forward, in all dealings related to the said shares, Adinath may deal with Vinay instead of dealing with Rajesh. It was also stated that the fact of such a transfer of interest was set out in a declaration which was pasted at Shreeniwas House, informing the world at large that Rajesh had ceased to have any interest and had transferred all his right, title and interest in Shreeniwas Abode, included the premises admeasuring 400 square feet, possession of which was also handed over to Vinay on December 6, 2012.

Contentions of the Parties:

18. I have heard Mr. Rahul Narichania, Learned Senior Advocate on behalf of Ramesh, and Mr. J. P. Sen, Learned Senior Advocate on behalf of Vinay, and have examined the record with their assistance. The key grounds pressed to assail the Impugned Award at the hearing may be summarised thus :-

- (a) That the Learned Arbitral Tribunal decided matters beyond the scope of the Arbitration Agreement by returning findings on the sale of office premises when the

Reference Order was specific about the scope being restricted to shares of Shreeniwas Abode;

(b) That the Learned Arbitral Tribunal ignored vital evidence by not commenting on specific correspondence that would indicate Vinay's knowledge about the 2011 Agreement; and

(c) That the Learned Arbitral Tribunal has construed the 2011 Agreement read with the 2012 Agreement in a manner so perverse that no fair minded or reasonable person would take the same view – this leads to Impugned Award also being hit by patent illegality.

Analysis and Findings:

19. At the threshold, it would be necessary to note the approach of the Learned Arbitral Tribunal in rendering the Impugned Award to see if anything perverse transpired in its manner of analysing the evidence and the material on record. Needless to say, the Learned Arbitral Tribunal, as the master of evidence, is the best judge as to the quality and quantity of evidence. It must also be stated that the Learned Arbitral Tribunal had to draw its best judgement of what actually

transpired between the parties based on the evidence led, since it was quite clear that Rajesh had changed his stance from opposing Ramesh to supporting Ramesh, and simply refused to enter the witness box despite having filed his Examination-in-Chief. The very grievance of Ramesh is that Rajesh violated the 2011 Agreement. Yet, Ramesh did not assail the conduct of Rajesh and instead, enlisted Rajesh's support by contending that Rajesh had repented violating the 2011 Agreement.

20. The Learned Arbitral Tribunal had to deal with the material before him and take a view on who was speaking the truth. In the jurisdiction under Section 34, this Court has to be mindful that this is not a full-blown appeal and must examine whether the ingredients of the permissible assault to an Arbitral Award have been made out.

21. The Learned Arbitral Tribunal analysed the documentation between the parties, the examination of witnesses, and the evidence led by the parties. The Learned Arbitral Tribunal also recorded the submissions made by the parties and analysed their contentions. Based on the same, the Learned Arbitral Tribunal noted that, by the letter dated July 4, 2007, Rajesh had written to Ramesh with the subject line "My rights in Shreeniwas House", recording that Ramesh was aware that, together with Rajesh, 15580 shares of Shreeniwas Cotton had been

sold by them to Adinath by the Agreement dated July 2, 2007. Pursuant to such agreement, Adinath had agreed to assign shares in the demerged entity, namely Shreeniwas Abode, among Venkateshwar, Ramesh, and Rajesh, with each getting a one-third share.

22. Analysing the letter dated July 3, 2007, from Adinath to Venkateshwar, Ramesh, and Rajesh, the Learned Arbitral Tribunal noted that Shreeniwas House, being an asset of Shreeniwas Cotton, was to be demerged into a new company (Shreeniwas Abode) within 12 months and that, prior to the demerger taking effect, 15580 shares in Shreeniwas Cotton were sold to Adinath on July 2, 2007. It was also found that if any additional shares were acquired in Shreeniwas Cotton from anyone, the same would be passed on to Venkateshwar, Ramesh, and Rajesh so that when the shares of Shreeniwas Abode would come into being, they shall be transferred to these parties.

23. The Learned Arbitral Tribunal found that there may have been an agreement to transfer or sell the shares of Shreeniwas Abode after they came into existence by way of the demerger, but it was not the case that all rights and entitlements were to be transferred *in praesenti*. The subject matter of the transfer was shares that would emerge in the future. The Learned Arbitral Tribunal found that Vinay had informed

Lodha that Rajesh's interest had already been bought *in praesenti* on December 6, 2012. This was further informed again to Lodha on January 16, 2013.

24. A further letter dated March 11, 2013, from Vinay dealing with Ramesh's letter dated February 22, 2013, addressed to Rajesh and Vinay, a copy of which was marked to Mr. Abhishek Lodha, was dealt with by the Learned Arbitral Tribunal, stating that Vinay had irrevocably acquired the complete right, title, and interest of Rajesh and had also discharged the consideration. The Learned Arbitral Tribunal found that it would be erroneous to assume that there was an agreement to sell future goods between Ramesh and Rajesh. On the other hand, the Agreement between Rajesh and Vinay was not restricted only to future shares of a future company that would come into being, but was a divestiture of Rajesh's entire right, title, and interest in the physical property at Shreeniwas House and of all existing interests and rights therein, which included an *in praesenti* transfer of interests in Shreeniwas Abode. It was found that every existing right and benefit that would be available under the Agreement dated July 3, 2007, thereby vested in Vinay.

25. The Learned Arbitral Tribunal noted that if Ramesh had in the same manner, acquired the benefit and advantage of the Agreement with Lodha *in praesenti*, he would have been in the same position as Vinay. However, Ramesh had been satisfied with only agreeing to acquire future shares of Shreeniwas Abode, as and when they were eventually issued, but not the entirety of all existing rights of Rajesh relating to Shreeniwas House and Shreeniwas Abode.

26. According to the Learned Arbitral Tribunal Vinay had informed Lodha in December 2012 as well as in January 2013, asserting that all the rights pertaining to Shreeniwas House had been acquired and they must disregard the letter addressed by Ramesh to Rajesh with a copy marked to Lodha. By this transaction, Vinay had acquired a majority shareholding in Shreeniwas House, and he indicated that he would get in touch with others pertaining to repairs and related matters of Shreeniwas House, which was communicated by a letter dated April 23, 2013.

27. The Learned Arbitral Tribunal analysed the 2011 Agreement, which was a letter from Ramesh to Rajesh which forms the basis of Ramesh's contention that an agreement amenable to specific performance had been reached. The Learned Arbitral Tribunal found

that by this letter, Rajesh informed Ramesh explicitly that an arrangement had been reached between Rajesh and Ramesh pursuant to discussions revolving around the one-third share entitlement in Shreeniwas Abode attributable to Rajesh. These shares were to be assigned to Ramesh for a total consideration of Rs. 4 crores. The consideration payable to the respective constituents of Rajesh was payable on or before April 18, 2011, preferably by April 15, 2011, with the rest being payable within 30 days of intimation from Adinath that they were in a position to transfer the shares. Rajesh was entitled to 15% interest on the said amount of Rs. 2 crores from 30 days after the date of such letter from Adinath until the date of actual payment.

28. The Learned Arbitral Tribunal noted Ramesh's contention that Venkateshwar had transferred the right, title and interest, including his own rights relating to shares in Shreeniwas Cotton, and indeed shares in Shreeniwas Abode in favour of Ramesh. Venkateshwar died on June 19, 2015, and during his lifetime, he had transferred his share to Ramesh. At this time, the demerger had not taken place, yet there was a total transfer of Venkateshwar's interests to Ramesh. However, an actual agreement that Rajesh would sell his entitlement in his entirety to Ramesh was reached only in the 2011 Agreement. The Learned Arbitral Tribunal found that Ramesh's understanding was that

the shares of the demerged entity namely Shreeniwas Abode were not issued until 2015, and therefore there was no occasion to pay the balance consideration of Rs. 2 crores. Therefore, the Learned Arbitral Tribunal found that notwithstanding any subsequent settlement, the Agreement between the parties appeared to have been that the demerger ought to have been completed in 2007 itself or at least expeditiously. Rajesh had waited for Ramesh right until December 2012, and as he needed funds for other projects, he formed a reasonable impression that Ramesh was not interested in paying him such an amount unless the shares came into existence. On December 6, 2012, Rajesh handed over quiet, vacant, and peaceful possession of the 400 square feet of ground floor office in Shreeniwas House to Vinay and even handed over the keys, as well all existing rights, title and interest, *in praesenti* to Vinay.

29. The aforesaid office premises had been occupied right from 2007 and even two of Rajesh's companies had their registered offices in these premises. The outgoings of the past years had continued to be the liability of Rajesh, with the risk and reward being transferred to Vinay with effect from December 6, 2012.

30. The Learned Arbitral Tribunal also had to deal with the changing stances of the parties, who were all related to one another. The Learned Arbitral Tribunal found that Rajesh changed his version of the facts set out in his Statement of Defence and in the course of the arbitration, got aligned with Ramesh. Towards this end, the Learned Arbitral Tribunal analysed the 2012 Agreement and was shocked and surprised by Rajesh's stance that the balance consideration payable under the 2011 Agreement would become payable only in 2015, when the shares of Shreeniwas Abode would actually be issued. Earlier, Rajesh had taken a stand that he could not wait indefinitely and therefore struck a deal in December 2012 with Vinay.

31. In the 2012 Agreement between Rajesh and Vinay, the Learned Arbitral Tribunal found that Rajesh had recorded in categorical terms that he had sold his entire interest in Shreeniwas Cotton, and thereby in Shreeniwas House to Adinath and that there had been a family arrangement by which Rajesh was entitled to one-third interest in the said shares. Even though the shares of Shreeniwas Cotton had been sold, a demerger of Shreeniwas House would be effected to create Shreeniwas Abode, and the shares of Shreeniwas Abode would then be transferred to Rajesh and Ramesh. The demerger had not taken place as of December 6, 2012, but the rights and interests in the agreement

with Lodha executed on July 3, 2007, stood transferred to Vinay in consideration of Rs. 8 crores which had been entirely received by Rajesh.

32. The Learned Arbitral Tribunal also took note of the fact, that despite filing an affidavit in lieu of Examination-in-Chief, Rajesh refrained from entering the witness box. So also, Rajesh refrained from cross-examining Ramesh. Yet, Rajesh sought to support Ramesh and desired to cross-examine Vinay. The Learned Arbitral Tribunal found that Rajesh was bound by the Agreement with Vinay and the Agreement had already been fully acted upon. Consideration had been received and the disinvestment was complete. Since the nature of the 2012 Agreement and the transfer of all entitlements to Vinay were completed in this manner, it was but obvious that Ramesh would urge that there was no assignment of rights effected by the 2012 Agreement.

33. However, the Learned Arbitral Tribunal also found that Rajesh cross-examined Vinay and asked him about the quality of his relations with Rajesh in the year 2011-12, to which the reply was that the relations were cordial. The next question was about the occupation of Shreeniwas House, and in particular, Question No. 99 referred to immovable property in the form of an office and whether it was covered

by the 2012 Agreement. The quality of questioning by Rajesh of Vinay and questions about the alleged knowledge of the 2011 Agreement between Rajesh and Ramesh (all of which were repelled by Vinay) led the Learned Arbitral Tribunal to arrive at the view that the deposition by Vinay remained unshaken and that it was proved that Vinay had neither been in touch with Ramesh nor with Lodha.

34. The evidence was also analysed to find that the commitment in writing by Rajesh to Vinay, that they had no prior agreement or transaction in relation to his rights, was noticed by the Learned Arbitral Tribunal; and Rajesh had empathically confirmed to Vinay that there had been no understanding or arrangement to deal with Ramesh or with Venkateshwar.

35. The Learned Arbitral Tribunal which is the master of the evidence, came to a view that there was no doubt that Vinay had no knowledge or notice of any prior transaction. Taking note of the conflicting positions of Ramesh and indeed Rajesh, the Learned Arbitral Tribunal held that the transaction was not a transaction to sell future goods i.e. shares of a demerged entity but was a transaction of complete assignment and divestment of all interests *in praesenti*, by which, on

December 6, 2012, a firm and clear divestiture of Rajesh's entire entitlement was completed by Rajesh in favour of Vinay.

36. The contention that the 2011 Agreement was a binding Agreement capable of specific performance did not find favour with Arbitral Tribunal. In any case, right until December 2012, there had been no payment at all, and even if there had been such an Agreement there was no question of drawing the attention of Vinay to the existence of the 2011 Agreement.

37. The Learned Arbitral Tribunal found that it was logical that after discussions with Ramesh, Rajesh waited for nearly four years (since 2007) to execute a formal agreement in 2011, and that too with conditions attached. On the other hand, Rajesh is said to have received Rs. 2 crores in April 2011 and thereafter no further payments. Rajesh was in dire need of funds and therefore entered into a conclusive deal with Vinay in 2012, executing the necessary documents, receiving the full consideration of Rs. 8 crores, and putting Vinay in possession of the office premises. No such conclusive steps had been taken by Ramesh.

38. The Learned Arbitral Tribunal held that in the business and commercial world, this mode of concluding such transactions is not unknown or unheard of. If one is hesitant or uncertain, particularly

about payment and the finalisation of a transaction, it is natural that a tentative and incomplete transaction is not taken to its logical end. In other words, the Learned Arbitral Tribunal stated that Ramesh must blame himself for the arrangement reduced to writing in the 2011 Agreement. While rights were agreed to be assigned, the assignment was conditional upon making complete payment and the Lodhas discharging their responsibility to complete the demerger and transfer the shares. The effect of such assignment would only take place after the shares of Shreeniwas Abode not only came into being but also came into the hands of Rajesh.

39. In sharp contrast, the Learned Arbitral Tribunal noted that Vinay, without prior notice of the 2011 Agreement, paid the entire consideration to Rajesh and took over all the rights that would accrue even *in praesenti* and in the future from Rajesh. Ramesh had no intent to enter into such a comprehensive transaction with Rajesh, despite having had the opportunity to do so. Nothing was final and complete about his transaction with Rajesh, about which, in any event, Vinay had no prior notice, according to the Learned Arbitral Tribunal.

40. Therefore, the Learned Arbitral Tribunal held that if Ramesh was not willing to part with a substantial sum immediately upon

execution of the Agreement with Rajesh, Rajesh chose to enter into a conclusive and complete transaction with Vinay in which he obtained immediate results. The only meeting proven between Vinay and Lodha was of March 22, 2011, according to the Learned Arbitral Tribunal. No meeting or correspondence between Ramesh and Vinay before December 6, 2012 (the date of the 2012 Agreement), was proven. There is also no evidence of a meeting between March 30, 2011 (the date of the 2011 Agreement), and December 6, 2012 (the date of the 2012 Agreement). Therefore, the Learned Arbitral Tribunal found the plea that there had been no assignment in favour of Vinay, or assuming there was an assignment, that it was to fail owing to the prior assignment in favour of Ramesh, having no merit whatsoever.

41. The Learned Arbitral Tribunal found that Ramesh could not at all urge that there had been an assignment of right, title, and interest of Rajesh in favour of Ramesh, as it was Ramesh's consistent case that the Agreement was for the sale of future shares of a company that was yet to come into existence. On the other hand, the Agreement between the Vinay and Rajesh was neither a sale of future goods nor even an Agreement for the sale of goods which are yet to come into existence, since it was indeed an agreement for a comprehensive assignment *in praesenti* of all rights, title, and interest, and even the immovable

property of 400 square feet in Shreeniwas House, in favour of Vinay, with effect from December 6, 2012.

Jurisdiction not Exceeded:

42. I find that while the Learned Arbitral Tribunal's jurisdiction may have been restricted to deciding the dispute in relation to the 9.06% shares that would come to the entitlement of Rajesh, the contention that the Learned Arbitral Tribunal's reliance on the 2012 Agreement to form a view that the said Agreement was emphatic and superior in its nature was not a matter falling outside the scope of what needed to be adjudicated. The finding that the 2012 Agreement was a much wider Agreement would not mean that the Learned Arbitral Tribunal exceeded its scope. The Learned Arbitral Tribunal was fully entitled to compare the competing considerations that were clamouring for favourable consideration by the Learned Arbitral Tribunal, between the two instruments, in order to adjudicate the disputes between the parties.

43. Likewise, the Learned Arbitral Tribunal's reference to and reliance on the sale of office premises does not result in the Learned Arbitral Tribunal having gone outside the scope of the reference to arbitration as set out in the Reference Order. I am unable to agree

because this finding is an incidental and integral element of the disputes between the parties. The transfer of the office premises is an integral part of the 2012 Agreement, and the Learned Arbitral Tribunal would but have to deal with it. Ignoring it would have led to the approach being unreasonable. In any case, the Learned Arbitral Tribunal has taken pains to analyse the elements of the evidence meticulously, to render findings of fact, which support the conclusions drawn by the Learned Arbitral Tribunal. The core finding is that Rajesh's transfer to Vinay was of all entitlements, present and future, while Ramesh's agreement to acquire from Rajesh was of future shares that would come into being in the future. It is in aid of this finding that there is a reference to the purchase of the office premises as an integral, composite transaction between Rajesh and Vinay.

Vital Evidence not Ignored:

44. As regards the contention that the Learned Arbitral Tribunal ignored vital evidence in the form of a letter dated March 15, 2013, addressed by Lodha to Vinay, and a letter dated March 29, 2013, addressed by Vinay to Lodha, on a careful reading of the Learned Arbitral Tribunal's findings, it cannot be said that the findings were impossible to return. The Learned Arbitral Tribunal being the best

judge of the quality and quantity of evidence, has analysed the evidence led by the witnesses, including Vinay, and both the examination-in-chief and the cross-examination. The Learned Arbitral Tribunal has found that Vinay remained unshaken, and the findings based on evidence fall within the ambit of reasonable findings by the Learned Arbitral Tribunal. In my opinion, the analysis of the evidence has not led to an impossible view being taken by the Learned Arbitral Tribunal for the Impugned Award to be vitiated.

45. The Learned Arbitral Tribunal also studied the cross-examination of Ramesh and returned a finding that, in response to several questions, Ramesh replied that he did not remember contacting Rajesh either by himself or through anyone else, despite the reply filed by Rajesh in the Section 9 Application in the Bombay High Court. According to Ramesh, he contacted Rajesh only after the Statement of Defence was filed in the arbitration proceedings, but he did not recollect the date of such contact. Ramesh even denied any settlement post commencement of arbitration proceedings but ultimately admitted that there had been a settlement. The Learned Arbitral Tribunal found that Ramesh always took time to answer questions and quite often stated that he did not understand the question, necessitating the Tribunal to further ‘simplify’ matters for him.

46. The Learned Arbitral Tribunal found Ramesh's demeanour to be peculiar and that he always wanted repetition of the same question or a correction to his answer, which was suggestive of his evidence being suspect in nature. Vinay's advocate had also questioned Ramesh in relation to the letter dated March 16, 2013, asking whether he replied to the said letter and Ramesh could not recollect replying to that letter. However, with regard to the suggestions given to him, the Learned Arbitral Tribunal found it apparent that Ramesh wanted to contend both ways, namely, that the 2011 Agreement was not an agreement to sell any existing rights but only for the sale of future shares, and at the same time, he desired to ensure that his need to pay would only emerge in future.

47. Ramesh not cross-examining Rajesh is also an element that cannot be brushed aside. The Learned Arbitral Tribunal is entitled to draw an adverse inference from such conduct and the changed stance in the course of the proceedings. When presented with such inherently conflicting and contradictory positions adopted by the key person involved in both the agreements – the 2011 Agreement and the 2012 Agreement – the Learned Arbitral Tribunal has to draw its own inference by analysing the evidence on record, which it has done. No

fault can be found with the findings that have been explained and justified in the Impugned Award.

Sale of Goods – Future Shares:

48. Ramesh has contended that the definition of the term “goods” would include equity shares. It is further contended that the Sale of Goods Act, 1930 provides that in a contract for the sale of specific goods necessitating the seller to be bound to do something to the goods in order to put them into a deliverable stage, the property does not pass until such thing is done and the buyer has notice thereof. On this element, the Learned Arbitral Tribunal has taken a view that has undermined Ramesh’s stance. What is apparent from the Impugned Award is that the Learned Arbitral Tribunal was satisfied that the transaction in the 2012 Agreement between Rajesh and Vinay was a transaction *in praesenti* with all the rights, title, and interest, in whatever form enjoyed by Rajesh, getting vested in Vinay with the consideration for the same getting discharged. In sharp contrast, the transaction between Rajesh and Ramesh under the 2011 Agreement was confined to a transaction of shares that would emerge in the future, and it is Ramesh’s own stance that unless the shares came into existence, Ramesh was not obligated to pay.

49. The finding that the transaction between Vinay and Rajesh explicitly covered the existing rights, which would lead to the emergence of future rights, cannot be faulted. The 2012 Agreement constituted a complete assignment. The Learned Arbitral Tribunal held that the mere use of the word “assigned” in the 2011 Agreement between Rajesh and Ramesh would not mean that there was an assignment *in praesenti* between them, when it is Ramesh’s own case that nothing was payable unless and until the shares actually emerged. This finding is eminently reasonable and logical, and is not an impossible finding.

Other Observations:

50. Having considered the analysis by the Learned Arbitral Tribunal and the record analysed by the Learned Arbitral Tribunal, it is apparent that the Learned Arbitral Tribunal had to draw its conclusions from the complicated stances adopted by Ramesh and by Rajesh. The evidence led by Ramesh did not inspire the Learned Arbitral Tribunal’s confidence, which opinion, the Learned Arbitral Tribunal was entitled to form. Even in the proceedings in this Petition, Ramesh’s stance has been both attacking and protective of Rajesh. Such inherent contradictions presented the Learned Arbitral Tribunal with a situation of having to examine the evidence before it and draw conclusions about

whether the acquisition of all rights by Vinay from Rajesh was an immediate acquisition, as compared with a future right enjoyed by Ramesh against Rajesh. What is writ large is that Shreeniwas Cotton was sold to Lodha by the Somani family, but it was also agreed that Shreeniwas House would be demerged to create Shreeniwas Abode, and the shares of Shreeniwas Abode would be transferred to the Somani family in the proportion in which its constituents held shares in Shreeniwas Cotton. This arrangement with Lodha was reached in 2007.

51. Rajesh's entitlement to Shreeniwas Abode's shares was agreed to be sold by Rajesh to Ramesh, under the 2011 Agreement for Rs. 4 crores. An initial payment of Rs. 2 crores was made and the balance of Rs. 2 crores would be paid as and when the shares would come into being and would actually be transferred to Ramesh. However, Rajesh entered into a different nature of transaction with Vinay under the 2012 Agreement, by which, all rights to the interests in Shreeniwas Abode including the right to receive shares and indeed also the existing right to the office premises that Rajesh actually had in Shreeniwas House were sold to Vinay. The Learned Arbitral Tribunal's consideration of the difference between the two transactions in the context of specific relief sought by Ramesh is logical, rational and eminently plausible. It does not call for interference.

52. The Learned Arbitral Tribunal can also not be faulted for finding that if Ramesh was meant to acquire future goods, it is not logical that a substantial sum of 50% of the amount was paid to Rajesh immediately after executing the 2011 Agreement. Ramesh did not trust Rajesh, as there were disputes between them. Therefore, the Learned Arbitral Tribunal's findings that Ramesh had made a conditional deal, and that he was not to pay the entire consideration unless and until shares in the demerged entity came to be issued, is clearly logical and reasonable. There is nothing perverse about it.

53. In other words, the Learned Arbitral Tribunal took a view that Ramesh took a chance, and there were disputes other than the subject shares between Ramesh and Rajesh, and therefore, he did not trust Rajesh fully. On the other hand, Vinay, fully trusting Rajesh, parted with the entire consideration of Rs. 8 crores upfront and got Rajesh to totally divest the shares, rights, title, and interest in the entitlements that were to come to Rajesh from Lodha. According to Learned Arbitral Tribunal this difference in approach clinched the issue, and I see no basis to disturb such a reasonable finding.

54. The Learned Arbitral Tribunal's view that the principle of Vinay being a *bona fide* purchaser for value without notice would apply

to his purchase, since there was an explicit finding that Vinay did not have any specific or constructive notice of the alleged prior transaction, is also a finding based on the appreciation of evidence. This is not perverse at all. It is not for the Section 34 Court to reappraise evidence and substitute its findings in place of the Learned Arbitral Tribunal's appreciation of evidence. When Ramesh invites the Section 34 Court to look at the evidence and come to another plausible view, I have to say that is not an approach that can be adopted. It is settled law that unless the view taken by the Learned Arbitral Tribunal is an impossible view to take, there would be no scope for interference in the Section 34 jurisdiction.

Conclusion:

55. It is now well-settled law that the Supreme Court has repeatedly iterated that Courts must not lightly interfere with arbitral awards. The scope of review by the Section 34 Court is also well covered in multiple judgements of the Supreme Court including ***Dyna Technologies¹***, ***Associate Builders²***, ***Ssyangyong³***, ***Konkan Railway⁴*** and

¹ *Dyna Technologies Private Limited v. Crompton Greaves Ltd – (2019) 20 SCC 1*

² *Associate Builders vs. Delhi Development Authority – (2015) 3 SCC 49*

³ *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India – (2019) 15 SCC 131*

⁴ *Konkan Railways v. Chenab Bridge Project Undertaking – 2023 INSC 742*

OPG Power⁵. Even implied reasons are discernible and may be inferred to support the just and fair outcome arrived at in arbitral awards. To avoid prolixity, I do not think it necessary to burden this judgement with quotations from these judgements. Suffice it to say (to extract from just one of the foregoing), in **Dyna Technologies**, the Supreme Court held thus:

“24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.”

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.”

[Emphasis Supplied].

56. For the aforesaid reasons, I find no basis to interfere with the Impugned Award in exercise of the jurisdiction under Section 34 of the

⁵ *OPG Power vs. Enoxio – (2025) 2 SCC 417*

Act. As to the grounds pressed into service to assail the Impugned Award, for the reasons set out above, the Impugned Award is not amenable to being interfered with. A number of submissions on behalf of Ramesh on how the evidence ought to have been read by the Learned Arbitral Tribunal fall in the realm of requesting the Section 34 Court to adopt a competing plausible view in place of the plausible view taken by the Learned Arbitral Tribunal. This is entirely impermissible, and therefore, no case for interference is made out.

57. Therefore, the Section 34 Petition is *dismissed* without any interference. No costs. In view of disposal of the main Petition, nothing survives in the Interim Application and the same is also *finally disposed of* accordingly.

58. After the judgement was pronounced, a request is made for a stay of the judgement. The request is strenuously opposed. Considering the discussion contained in the Judgement, I am not inclined to stay this Judgement.

59. 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.]