2025 INSC 523

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2575-2578 OF 2016

Larsen and Toubro Limited ... Appellant

versus

Puri Construction Pvt. Ltd. and Others ... Respondents

with

CIVIL APPEAL NOS. 2580-2581 OF 2016

and

CIVIL APPEAL NO. 2579 OF 2016

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. These appeals arise out of the judgment and order dated 30th April, 2015, passed by the Division Bench of Delhi High Court on the appeals preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Arbitration Act'). The appeals before the Division Bench were preferred against the judgment dated 26th November, 2008 of the learned Single Judge in a petition under Section 34 of the Arbitration Act by which the award of the Arbitral Tribunal

was set aside. The Division Bench, by the impugned judgment, has disagreed with some of the findings recorded by the learned Single Judge. To that extent, the appeals preferred by Puri Construction Private Limited and Mohinder Puri have been allowed. The appeal by Larsen and Toubro Limited was dismissed. However, the Division Bench observed that the parties are left to pursue the appropriate course of actions under law.

2. In these appeals, we are concerned with a company, Puri Construction Limited and its sister concerns (collectively referred to as 'PCL'). We are also concerned with another company, Larsen and Toubro Limited (hereafter referred to as 'L&T'). PCL was in possession of lands in the Gurgaon District, Haryana, as the owner thereof. PCL had obtained licenses from the Director Town and Country Planning, Haryana (for short, 'the DTCP') to develop the lands for residential group housing schemes. Earlier, PCL had entered into a joint venture with ITC Classic Real Estate Finance Limited (for short, 'ITCREF') under the name Florentine Estates of India Limited for the development of the lands.

Ultimately, ITCREF exited from the business. An Exit Agreement dated 30th July, 1997 was made, which, inter alia, stipulated that PCL would transfer to ITCREF the built-up space of 1,95,000 sq. ft. in the project. Thereafter, L&T was introduced to complete the project.

3. L&T and PCL entered into an agreement for land development (for short 'the Development Agreement') on 19th January, 1998, but the date mentioned therein was 10th March, 1998. Subsequently, since L&T was of the opinion that there was a recessionary trend in the real estate market due to which the project was required to be down-sized, a supplementary agreement was entered into between L&T and PCL on 30th December, 1999 (for short 'the Supplementary Agreement'). Based on the Supplementary Agreement, a Tripartite Agreement dated 10th January, 2000 (for short, 'the Tripartite Agreement') was entered into between PCL, L&T and Lord Krishna Bank (for short 'the Bank').

4. Broadly, in the Development Agreement, it was provided as under:

(a) L&T will develop the entire property mentioned in Schedule 'A' of the Agreement, including the part allocated to PCL, at its own cost;

(b) In phase-I of development, L&T will develop a portion of Schedule 'A' property as described in Schedule 'B'. An area of 18.025 acres will be developed by L&T within 60 months in phase-I. In phase-II of the development, L&T was to develop the remaining portion as mutually acceptable to the parties in view of the prevailing market conditions;

(c) The ratio of division in the developed property between PCL and L&T was agreed to be 25% and 75% respectively;

(d) ITCREF was to get an area of 2,20,416 sq. ft. from the property allocated to PCL;

(e) PCL agreed to pay all External Development Charges (for short, 'EDC') up to the date of the development agreement. The liability to pay EDC

was to be of L&T after receiving No Objection Certificate (for short 'NOC');

(f) L&T was to complete the construction of Phase-I in 60 months, which was subject to extension in view of prevailing market conditions; and

(g) L&T will not be deemed to be in default if performance of its obligations under the development agreement is delayed, inter alia, due to the prevailing market conditions.

5. The Supplementary Agreement incorporated the following clauses:

(a) The terms of the Development Agreement will continue to bind the parties unless otherwise agreed in the in the Supplementary Agreement, which shall come into effect after happening of the following events:

i. L&T taking over or replacing bank guarantees furnished by PCL to DTCP;

ii. The bank paying EDC amounting to Rs. 6 crores to DTCP;

iii. Reimbursement of expenses incurred by PCL by L&T; and

iv. Compliance with the terms and conditions of the Tripartite Agreement made by L&T by paying Rs.5.14 crores to the Lord Krishna Bank ("the Bank").

(b) L&T will furnish bank guarantees to DTCP after approval of the term loan by the bank to PCL;

(c) L&T will pay the EDC of Rs. 6 crores paid by PCL through the bank and the remaining EDC Charges within 18 months;

(d) L&T agreed to commence construction work for 3.84 lac sq.ft. of the development, subject to achieving a confirmed booking/selling target of 75% in phase-I area; and

(e) The Agreement would not be construed as a waiver of any right that has accrued for the extension or termination under the Development Agreement.

6. In the Tripartite Agreement, it was provided as under:

(a) The Bank will pay a sum of Rs. 6 crores towards EDC to DTCP on behalf of PCL, which will constitute a term loan to PCL. The loan will be secured by 15 acres of land already mortgaged by PCL to the Bank;

(b) The Bank will issue a bank guarantee of Rs. 4.66 crores to DTCP on behalf of L&T; and

(c) L&T will pay the Bank a sum of Rs. 5.19 crores on behalf of PCL to discharge the loan availed for payment of EDC on or before 19th January, 2000.

7. We may note here that there was an arbitration to which ITCREF and PCL were parties. A consent award was passed on 13th May, 2000, in favour of ITCREF requiring PCL to allot 1,06,200 sq. ft. to ITCREF.

8. PCL by letter dated 18th December, 2000, terminated the Development Agreement with L&T *inter alia,* on the grounds of:

(a) Failure to allocate area to ITCREF;

(b) Non-sanctioning of funds towards the development; and

(c) Non-payment of EDC; and

(d) Other breaches in relation of non-commencement of work.

9. Delhi High Court referred the dispute between PCL and L&T to a Sole Arbitrator. Broadly, the following were the prayers made by PCL before the Arbitral Tribunal:

(a) Direct L&T to satisfy the loan availed from the Bank and to obtain the release of the title-deeds in respect of 15 acres of land placed by PCL with the Bank as security;

(b) Direct L&T to return the title-deeds of the rest of the lands to PCL;

(c) Direct L&T to return the sanctioned development plans and other documents, including licences, permits, permissions etc;

(d) Issue a permanent injunction against L&T restraining it from interfering with any of PCL's rights to develop the property; and

(e) For grant of compensation and damages to the tune of Rs. 300 crores and Rs. 100 crores respectively.

10. L&T filed a counter-claim before the Arbitral Tribunal, making the following prayers:

(a) Declare that PCL has no authority to rescind the contract;

(b) Grant compensation and damages to L&T to the tune of Rs. 280 crores due to the wrongful rescission of the agreement by PCL. Rs. 280 crores were claimed as the reimbursement amount of profit which L&T would have received by developing 75% of the area; and

(c) Grant reimbursement to L&T of Rs. 8,31,53,968/- as the amount spent by it towards fulfilling the obligations under the Development Agreement.

11. The Arbitral Award was made on 28th December, 2002. The Arbitral Tribunal held that:

(a) L&T jeopardised PCL's obligations towards ITCREF;

(b) L&T resiled from and went back upon its original contractual obligations and tried to effect sales without sanction under the revised development plan and without making any provision for the responsibility towards ITCREF;

(c) L&T had consciously decided to abandon the Development Agreement and omitted to pay EDC and also defaulted in the fulfilment of its obligation to the statutory authorities, ITCREF, as well as the Bank;

(d) The object of the Supplementary Agreement was unlawful as it sought to defeat the beneficial

interest of ITCREF, which was a signing party to the Development Agreement; and

(e) The Supplementary Agreement was tainted by economic coercion, and the signatures of PCL were obtained by fraud.

12. The operative award is as follows:

> " I. An Award in favour of the Claimants directing the Respondent to pay Rs. 35 Crores to the Claimants on account of damages suffered by the Claimants within four weeks from the date of the award;
>
> II. An Award in favour of the Claimants, directing the Respondent to settle the claim of Lord Krishna Bank within 4 weeks of the Award by repayment of loan of Rs. 6 Crores with such interest that may be due and payable to Lord Krishna Bank and further directing the Respondent to secure the release of title deeds from the said bank and to reimburse the claimant's interest charges paid by Puri Construction Ltd. to Lord Krishna Bank in interregnum; within a period of four weeks from the date of this award. In default thereof, the Respondent will pay to the Claimants a sum of Rs. 75 Crores for loss of saleable area in respect of 15 acres of land placed in mortgage with the said bank within a period of four weeks from the date of this Award.;

III. An Award in favour of the claimants directing the Respondent to return licences permits and permissions obtained by the Claimants from the statutory authorities in respect of the lands covered by the Development Agreement dated 10.3.1998 within 4 weeks of this Award to the Managing Director of Puri Construction Ltd. and obtain a certificate of discharge to that effect granted by the said Puri Construction Ltd. or in lieu thereof the Respondent will pay to the Claimants a sum of Rs. 5 Crores by way of damages within a period of four weeks from the date of this Award;

IV. An Award in favour of the Claimants directing that the Respondent or anybody claiming under the Respondent is permanently injuncted by restraining them from interfering in any way or manner with the rights of the claimants to develop the property covered under the said Agreement dated 10.3.1998;

V. An Award in favour of the Claimants, directing the Respondent to indemnify the Claimants in terms of Clauses 4(b) and 25 of the Development Agreement dated 10.3.1998 for any action or decree or settlement to be enforced by ITCREF against the Claimants or in lieu thereof shall pay to the Claimants a sum of Rs. 50 Crores on such date as such action or decree or settlement to be enforced by ITCREF against the Claimants becomes crystallized;

VI. An Award in favour of the Claimants, directing the Respondent to pay cost of the Arbitration proceedings quantified at Rs. 30 lakhs within a period of four weeks from the date of the Award;

VII. An Award in favour of the Claimants, directing the Respondent to pay interest to the Claimants @ 12% p.a. on the sums awarded hereinabove commencing on four weeks from the date of this Award till actual payment made by the Respondent."

13. The learned Single Judge in a petition under Section 34 of the Arbitration Act had set aside the Arbitral Award. The Division Bench by the impugned judgment upheld the dismissal of L&T's counter-claim. The Division Bench upheld the findings of the Arbitral Tribunal that the Supplementary Agreement was a non-starter as it was vitiated by economic duress. The Division Bench also upheld the Arbitral Tribunal's finding that the Development Agreement was not novated by the Supplementary Agreement. Division Bench also upheld the Tribunal's finding that conditions to be fulfilled by L&T, subject to which the Supplementary Agreement was to come into force, were not fulfilled. However, the Tribunal's quantification of damages for breach of contract, amounting to a sum of Rs. 35 crores, and

compensation in lieu of securing title deeds with respect to 15 acres of land, amounting to Rs. 75 crores, as well as compensation for default in returning licences and permits, amounting to Rs. 5 crores, was set aside. The permanent injunction granted in favour of PCL, restraining L&T from interfering with PCL's development of the Schedule 'A' property under the Development Agreement, was upheld. Even the relief granted of indemnification in favour of PCL for ITCREF's claim was set aside without prejudice to the indemnification for ITCREF's claim relating to the transfer of 2,20,416 sq. ft of land to the extent envisaged under the Development Agreement. The Division Bench upheld the Arbitral Tribunal's order to the extent that it awarded the cost of arbitration to PCL. The title deeds deposited with the Registrar of the High Court were ordered to be released to PCL. In the light of the above directions and conclusions, the parties were allowed to pursue their appropriate course of action. The Division Bench allowed three appeals preferred by PCL in part and dismissed the appeal preferred by L&T. Both PCL and L&T, aggrieved by the Division Bench's decision, preferred the present Civil Appeals.

SUBMISSIONS

14. Very detailed submissions have been made on behalf of both parties. We are reproducing the gist of the submissions made by the counsel appearing for the parties.

15. Learned senior counsel appearing on behalf of L&T has made detailed submissions after inviting our attention to the findings recorded by the Arbitral Tribunal and by the courts under Sections 34 and 37 of the Arbitration Act. The learned senior counsel submitted that though Division Bench of the High Court has referred to the decision of this court in the case of ***Project Director, National Highways No. 45 E and 220, National Highways Authority of India v. M. Hakeem and Another***[1], which holds that the court dealing with a petition under Section 34 cannot modify the award, the Division Bench purported to modify the award. He submitted that it is not permissible for the court to uphold a part of the award and remand the remaining part back to the Tribunal. He submitted that the decision of the Division Bench is akin to setting aside the decree for upholding judgment. He submitted that the reasoning in the award and its operative

1 (2021) 9 SCC 1

part are intrinsically linked and the same cannot be severed. Moreover, this is not a case where there are distinct and severable claims. He submitted that the effect of the impugned judgment of the Division Bench is that PCL would get a chance to improve upon the pleadings by initiating fresh arbitration before the Tribunal. But, L&T's doors would be closed for a fresh adjudication in view of the findings rendered in the award.

16. According to the learned senior counsel, the Division Bench has set aside the award directing payment of Rs. 35 crores as damages to PCL. He pointed out that the award contains a direction to L&T to settle the claim of the Bank by repayment of the loan of Rs. 6 crores and to secure release of the title deeds from the Bank; in default, L&T was directed to pay PCL a sum of Rs. 75 crores. The first part of the relief for payment of Rs. 6 crores has been upheld by the Division Bench, but the portion of the award in respect of Rs. 75 crores has been set aside. The award contains a direction against L&T to return licences, permits and permissions obtained by PCL from statutory authorities in respect of the

lands. On failure to return the documents, L&T was directed to pay Rs. 5 crores to PCL. However, the Division Bench has upheld the award directing return of the documents, but has rejected the award to the extent of payment of Rs. 5 crores. Moreover, an award-granting injunction against L&T from interfering in any manner with the rights of PCL to develop the property has been upheld. The award directed L&T to indemnify PCL for any action, decree, or settlement to be enforced by ITCREF or, in lieu thereof, to pay to PCL Rs. 50 crores. The Division Bench has set aside this part of the award in its entirety. There was an order of costs of arbitration to the tune of Rs. 30 lakhs in favour of PCL, which has been confirmed. He submitted that, in fact, no licences, permits, or permissions obtained from statutory authorities were in possession of L&T. Moreover, the award in favour of the Bank is perverse as L&T has sought specific performance of the contract; there was no need to grant an injunction.

17. Now, coming to the interplay between the Development Agreement, Supplementary Agreement and the Tripartite Agreement, he submitted that the rights and obligations of

the parties under the said agreements have been decided by the Arbitral Tribunal without recording reasons. He submitted that even PCL admitted that the conditions contained in Sub-clauses (a) to (d) of Clause I of the Supplementary Agreement were conditions precedent. However, the Tribunal misread the plain terms of the Supplementary Agreement contrary to the pleadings and without assigning any reason, has held that conditions precedent in Clauses (I), (II) and (III) of the Supplementary Agreement have not been fulfilled and therefore, the Supplementary Agreement was a non-starter. He relied upon the decision of this Court in the case of ***Dyna Technologies Private Limited v. Crompton Greaves Limited***[2].

18. The learned senior counsel further submitted that in Section 34 proceedings, reasons cannot be supplanted to the reasons recorded in the award. He invited our attention to sub-clauses (a) to (d) of Clause I of the Supplementary Agreement. His submission is that the terms of the Supplementary Agreement were totally disregarded by the Tribunal and relied on the original terms of the Development

2 (2019) 20 SCC 1

Agreement. He submitted that the award is vitiated due to lack of reasons. He submitted that the award made was contrary to the pleadings. The learned senior counsel invited our attention to the findings of the learned Single Judge in a petition under Section 34. He submitted that the Division Bench supplanted its own reasons to uphold the award. Further, the Division Bench tried to rewrite the contract by including other clauses as conditions precedent. His submission is that the Tribunal mixed up various unrelated issues with issue no. 2 which pertains to economic coercion. He submitted that the entire focus was on the alleged breach committed by L&T of the Development Agreement and abandonment of the site. Unreasoned finding has been given that the Supplementary Agreement and the Tripartite Agreement were entered under compulsion. The Tribunal failed to note that in the Statement of Claim as well as in the rejoinder filed by PCL, there was assertion regarding the binding nature of the Supplementary Agreement. One Mr. Mohinder Puri on behalf of PCL filed an affidavit which was not only beyond the pleadings, but also contrary to the same as he, for the first time, alleges exercise of coercion to enter

into Supplementary Agreement. Learned counsel relied upon several documents to show that there was no coercion and submitted that the Tribunal ignored the documents. He would, therefore, submit that the award was vitiated in view of Section 28(1)(a) of the Arbitration Act. He relied upon a decision of this Court in the case of ***Associate Builders v. Delhi Development Authority***[3]. Learned counsel submitted that the view taken by the Tribunal is not even a plausible view.

19. Learned senior counsel submitted that a finding was recorded by the learned Single Judge in the Section 34 petition that the Arbitral Tribunal could not have ignored all the correspondence and evidence showing why the Supplementary Agreement was signed. The learned Single Judge held that the award was self-contradictory and the findings were mutually destructive inasmuch as while holding that the Supplementary Agreement was entered into by compulsion, the Tribunal, thereafter, purported to enforce the Tripartite Agreement. Learned senior counsel pointed out that the Division Bench rejected the objection of L&T that the plea

3 (2015) 3 SCC 49

of coercion was not taken by holding that the Statement of Claim is not specific on the point of coercion, but the plea taken in paragraph 136(5)(a) of the Statement of Claim can be deemed sufficient. In fact, what is quoted was part of PCL's letter dated 18th December, 2000, in response to L&T's letter dated 10th July, 2000. It was urged that the above allegation has nothing to do with economic coercion to compel PCL to enter into Supplementary Agreement. It is submitted that Division Bench has supplied reasons to justify the award which reasons were not there in the award itself. In fact, the Division Bench went to the extent of converting the plea of coercion into undue influence even when there was no pleading to that effect.

20. The Arbitral Tribunal has rendered a contradictory finding that the Supplementary Agreement was not operative, but, L&T cannot be relieved of its obligations under the Tripartite Agreement and thus, is bound to pay the Bank. Learned counsel reiterated that the Tripartite Agreement flows from the Supplementary Agreement. He pointed out that the Arbitral Tribunal held that L&T was bound by the

Tripartite Agreement and at the same time observed that the Supplementary Agreement and the Tripartite Agreement were signed by PCL under compulsion and in dire need of funding of EDC payment. He submitted that the learned Single Judge has rightly held that when the Supplementary Agreement was a non-starter, as per the Tribunal, no relief could have been granted under the Tripartite Agreement. Unfortunately, this argument has not been dealt with by the Division Bench.

21. He invited our attention to Clause 26 of the Development Agreement which provided that L&T was entitled to extension of time for completing the construction in case of adverse market conditions. As per Clause 34, L&T could not be treated in default of performance of its obligation if it is delayed or prevented due to adverse market conditions. He submitted that there were enough documents on record to show that land prices were falling and prevailing market conditions did not encourage development of land. He submitted that though there was a specific pleading to that effect, the Arbitral Tribunal did not record any finding in the award with regard to the market conditions and in fact,

Clauses 26 and 34 of the Development Agreement have been completely ignored. However, the learned Single Judge noticed that there was material on record with respect to the fall in real estate market and held that Arbitrator could not have ignored all those correspondences and evidence showing why the Supplementary Agreement was signed. The Division Bench recorded the submission that the Tribunal has ignored Clauses 26 and 34 of the Development Agreement, but, has not dealt with the submission and tried to supply its own reasons which were not found in the award. Thus, the Division Bench acted beyond the scope of Section 37 of the Arbitration Act.

22. The Arbitral Tribunal committed an error by directing L&T to make payment to the Bank on the ground that L&T cannot be relieved of its obligation to the Bank under the Tripartite Agreement. It is submitted that the Bank was not a party to the proceedings and therefore, the claim by the Bank was not before the Arbitral Tribunal. In fact, in the affidavit in lieu of evidence filed by PCL, it was contended that the Bank is a third party and any action by the Bank can be tried only

by the Debt Recovery Tribunal. Therefore, the submission is that the award in favour of the Bank is vitiated under Section 28(1)(a)(iv). He submitted that the said argument of L&T was accepted by the learned Single Judge on the ground that the Bank was not a party before the Tribunal and the Tripartite Agreement did not have an arbitration clause. On this aspect, he pointed out the finding of the Division Bench that the principal amount of Rs. 6 crores with interest was an amount payable by L&T to the bank under the Development Agreement. He submitted that, in fact, the said obligation can be read only in the Tripartite Agreement.

23. Learned senior counsel submitted that L&T has suffered a loss of Rs. 5.44 crores towards EDC. Though, the Tribunal had noted that the EDC payment would normally be reimbursed, but it failed to offset the same. Learned counsel pointed out that the sum of Rs. 8.10 crores was deposited under an interim order dated 24th January, 2003 passed by the learned Single Judge in Section 34 petition subject to the outcome of the proceedings. An application for restitution was filed by L&T in Section 34 proceedings. By order dated 8th

January, 2011, it was directed to be listed along with the appeal before the Division Bench. However, the Division Bench has not dealt with the same. A prayer was made that L&T may be permitted to file an appropriate application for restitution before the High Court.

24. The submission of the learned senior counsel is that the order of the learned Single Judge in the Section 34 petition deserves to be upheld.

25. The learned senior counsel appearing for PCL pointed out that basically two issues arise for consideration. The first is whether there was a breach committed by L&T as held by the Arbitral Tribunal, and the second question is whether, if the finding of breach committed by L&T is upheld, the finding of the Arbitral Tribunal regarding damages can be revived.

26. The learned senior counsel submitted that the scope of interference in a petition under Section 34 of the Arbitration Act is now well settled. He relied upon a decision of this Court in the case of ***S.V. Samudram v. State of Karnataka and Another***[4]. If the Arbitral Tribunal's view is a plausible view, it

4 (2024) 3 SCC 623

ought not be interfered with. To arrive at a decision as to whether a plausible view has been taken, the court would consider whether the Arbitrator has considered the material forming part of the record and arrived at a plausible view in an overall sense and not expect the Arbitrator to deal with the matter and render a judgment with the detailed reasoning as is normally found in decisions of the civil courts.

27. Learned senior counsel submitted that to examine the award in supervisory jurisdiction under Section 34 of the Arbitration Act, the court must be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied. If the reasons recorded by the Arbitral Tribunal are intelligible, the award cannot be set aside just because there were gaps in the reasoning of conclusions reached by the Arbitral Tribunal. The submission is that the award of the Arbitral Tribunal in the present case is intelligible and contains adequate reasons. He pointed out several findings recorded by the Arbitral Tribunal with reasons.

28. He submitted that L&T's submission that Clause 26 read with Clause 34 of the Development Agreement permitted it to seek extension of time is wholly misplaced considering the fact that L&T abandoned the project because a decision was taken by L&T to do so. Only in case L&T had paid EDC and there was no risk of losing the licences, L&T could have invoked Clauses 26 and 34 of the Development Agreement for delayed completion of construction. Admittedly, no request was made by L&T for the grant of extension of time for completing the construction with the undertaking of making payment of EDC in terms of Clauses 19 and 25 of the Development Agreement, which were never modified. Learned senior counsel submitted that L&T was holding title deeds in relation to 25 acres of land and did not return the title deeds. The title deeds in respect of the remaining 15 acres of land were with the Bank for securing the loan availed for payment of EDC. The payment of EDC was the liability of L&T as per the Development Agreement. He also pointed out that L&T did not lead any of the evidence. The stand of L&T in considerations of the overall findings of the learned Tribunal on breach of contract, abandonment etc. is completely out of

place and without any basis. In fact, no issues were framed on the basis of Clauses 26 and 34 of the Development Agreement.

29. The conditions precedent in the Supplementary Agreement may be read with their true intent and purport. Condition precedent no.1 also contains the binding nature of the Development Agreement, except as agreed otherwise. Under the Supplementary Agreement, payment of EDC, as per Clause 19 read with Clause 27 of the Development Agreement, was continued. The developer was liable to pay EDC over a period of 18 months in terms of the licence. Condition precedent no. 1(a) expressly requisited the 'replacing or taking over' of the bank guarantee furnished by PCL. He pointed out the letter dated 15th March, 2000, addressed by PCL to the Bank, where the request was made to continue with the bank guarantee of PCL. However, at the same time, the request was made to the bank to forthwith release the margin money of PCL. Learned counsel submitted that L&T has made a false statement on oath that the bank guarantee of PCL, with margin money and interest, was

released. Altogether, a new case was made out by L&T before this court, as it was not pleaded before the Tribunal that the margin money had been refunded and bank guarantees had been released. In fact, PCL by letter dated 12th April, 2000 reminded L&T that fresh bank guarantees were to be served as PCL's guarantee was not released. According to the specific pleading of PCL in the Statement of Claims, a condition precedent for the coming into effect of the said agreement was replacing and taking over the bank guarantee. In the Statement of defence-cum-counterclaim of L&T, it was claimed that L&T had executed a counter bank guarantee. It was submitted that attributing insufficient reasons in relation to non-satisfaction of the condition precedent of the Supplementary Agreement is incorrect. On 07th October, 1999, L&T had taken a clear stand that the report submitted by the consultant was not favourable to pursue the project and hence, they shall not pay EDC. Reliance was placed by learned counsel on the Statement of Claims of L&T. He invited our attention to the fact that on 26th October, 1999, PCL was again constrained to put L&T on notice that there were serious defaults of the terms of licences and the Development

Agreement. It was submitted that L&T was in possession of title deeds of area of 25 acres from 15th and 16th October, 1998. A submission was made that there were sufficient facts pleaded in the pleadings to show coercion. He submitted that non-payment of EDC as per Clause 19(b) of the Development Agreement led to issuance of notice for cancellation of licences of PCL. In the letter dated 07th October, 1999, L&T had taken a clear stand that they will not pay EDC. Initially, on 8th December, 1998, L&T's stand was that it was their responsibility to pay EDC from 01st July, 1998. Thereafter, a stand was taken on 02nd April, 1999 that they will pay EDC only after launch of the project. L&T did not pay Rs. 5 crores refundable advance to PCL. L&T instructed PCL not to collect any cheque and on 08th April, 1999, L&T internally instructed to demobilize resources from the site. The title deeds were in possession of L&T and the same was pleaded in the Statement of Claims. Learned counsel submitted that these all facts constituted coercion. He also pointed out that with the consent of the parties, the issue was framed on the plea of coercion being an issue no. 2, and in fact, L&T accepted that there could be no grievance with the procedure followed by

the Arbitral Tribunal in framing issues. In fact, in the final submission before the Arbitral Tribunal, L&T admitted that the plea of economic duress was pleaded by PCL by pointing out that the Supplementary Agreement was signed out of economic duress and coercion.

30. He submitted that on the question whether the condition precedent for the Supplementary Agreement was satisfied, L&T did not lead evidence and evidence of PCL remained uncontroverted.

31. As regards the contention that the relief granted in the award was beyond the jurisdiction, learned counsel submitted that the arbitration clause in the Development Agreement even covered disputes in connection with the agreement. In fact, the Supplementary Agreement refers to the fact that parties to the Development Agreement have agreed to enter into a tripartite agreement with the Bank. In turn, the tripartite agreement records that L&T and PCL had entered into Development Agreement on 10th March 1998. The notice invoking the arbitration clause refers to the three agreements, and even in the petition filed under Section 11 of the

Arbitration Act, the disputes were set out in relation to the three agreements. By consent of the parties, *vide* order dated 14th February, 2001, the disputes in relation to all three agreements, including the determination of the liability of ITCREF and the Bank, were referred to the Arbitral Tribunal. Before the Arbitral Tribunal, L&T took the stand that it was its liability to ensure payment to the Bank. Also, L&T took a stand through its counsel that the obligation was cast upon L&T with respect to the liability of ITCREF. Moreover, L&T did not take recourse to Section 16 of the Arbitration Act for challenging the jurisdiction of the Arbitral Tribunal.

32. Learned senior counsel pointed out the issues framed by the Tribunal concerning damages and compensation. He submitted that perusal of L&T's Statement of Defence shows that the parties were *ad idem* on the question of valuation at which sales could be made as L&T had itself based the claim for damages on such valuation. As regards valuation, the Tribunal considered the evidence of Shri Mohinder Puri adduced on behalf of PCL. Therefore, the Tribunal relied upon agreed valuation based on L&T's demands in its counter-claim

as a reasonable estimate of the loss suffered by PCL. L&T had pleaded that they were entitled to 75% of the total constructed area while PCL was entitled to 25%. In fact, the Arbitral Tribunal used L&T's computation of loss of profit made by L&T at Rs. 280 crores as the basis to arrive at PCL's loss of profit as Rs. 93 crores. In fact, the estimate of loss caused to PCL was taken at Rs. 93 crores, which is on the lower side. After considering the fact that ITCREF had initiated action to forfeit licenses, the Tribunal reduced the amount awarded as damages to Rs. 35 crores. Therefore, the findings recorded by the Tribunal on this behalf are reasonable. Learned counsel submitted that the Division Bench ought not to have set aside the Tribunal's findings on damages awarded to PCL. This was not a case of no evidence before the Tribunal. The basis of damages was L&T's own valuation of the built-up space. Evidence of Shri Mahendra Puri had gone unchallenged. As the damages granted to PCL were based on evidence on record, the said finding should not have been interfered with in a petition under Section 34 or in an appeal under Section 37 of the Arbitration Act. He submitted that in view of the decision of this Court in the case of ***Associate Builders v.***

Delhi Development Authority[3], incorrect quantification of damages by the Arbitral Tribunal will not be covered by either "patent illegality" or "violation of public policy". Even as regards the indemnity in favour of ITCREF, the concerned issue was issue no. 10 before the Tribunal on which detailed statements were made and findings were recorded by the Arbitral Tribunal based on the appreciation of the evidence on record. The finding of the Division Bench that L&T's obligation to indemnify was only in terms of the built-up space is wholly incorrect. Learned senior counsel pointed out that on one hand, there was non-payment of EDC by L&T, on the other hand, there were repeated notices sent by DTCP for cancellation of licences. Moreover, ITCREF had filed a civil suit in the District Court seeking recovery of rupees 73 crores plus interest against PCL and also against L&T. In addition to all this, L&T was holding title deeds of 25 acres of licensed land of PCL and 15 acres of PCL's licensed land with the Bank for which the Bank had invoked securitization laws and also filed proceedings before the Debt Recovery Tribunal. During the Arbitral proceedings, L&T always resisted returning the title deeds in respect of 25 acres of land. Therefore, the

argument that the land remained with PCL has no relevance at all.

33. Lastly, it was submitted that the dispute between the parties was of the year 2000. The award was made on 28th December, 2002, after a very detailed hearing before the Tribunal. Thereafter, the dispute remained *sub-judice* continuously before the courts. Therefore, considering the findings of the Tribunal, as upheld by the Division Bench, this court will consider exercising extraordinary powers to do complete justice. Therefore, appeals preferred by L&T may be dismissed, and PCL may be compensated for the huge legal expenditure incurred during the last 21 years. It was submitted that the appeal preferred by PCL be allowed while upholding the damages and compensation awarded by the Arbitral Tribunal in terms of the award.

ISSUES FRAMED BY THE ARBITRAL TRIBUNAL

34. The Arbitral Tribunal framed 14 issues which read thus:

Issue No. 1: Whether the Development Agreement dated 10.03.1998 entered into between the Respondent and the

Claimants is binding on the parties or the same stand novated by the Supplementary Agreement dated 30.12.1999?

Issue No. 2: Whether the Supplementary Agreement dated 30.12.1999 and the Tripartite Agreement dated 10.01.2000 were tainted by coercion and economic duress on the claimants? If not, whether the claimants and the Respondent performed respective obligations according to tenor and terms of the Supplementary Agreement dated 30.12.1999 and the Tripartite Agreement dated 10.01.2000?

Issue No. 3: Whether the Claimants committed breaches of the fundamental terms of the Development Agreement dated 10.03.1998 to enable the Respondent to resile from the agreement of development?

Issue No. 4: Whether the respondent's Board of directors in pursuance of reports of Boston Consulting Group (for short 'BCG'). Richard Ellis and Jones Lang La Salle decide to down-size/exit the business of real estate development and not to pay EDC or commence development work?

Issue No. 5: Whether there had been non provisions of security of the development site and unprovoked unilateral abandonment of the site by L&T. If so whether such actions had resulted in encroachments causing monetary loss to the Claimants and in the event of such monetary loss caused to the Claimants what is the extent of such loss?

Issue No. 6: Whether the Claimants entitled to terminate the development agreement for the reasons stated in the letter of termination dated 16.12.2000 or even otherwise?

Issue No. 7: Was the Respondent under any obligation to commence construction in phase I for development of 3.84 Lac sq. ft. before the Claimants had confirmed booking/selling targets as per the Supplementary Agreement dated 30.12.1999?

Issue No. 8: Whether termination of the contract by the Claimants amounts to wrongful repudiation and entitles Respondent to rescind the contract and claim damages under Section 73 and 75 of the Indian Contracts Act?

Issue No. 9: Whether the Respondent is entitled to be relieved of its obligations under the Tripartite Agreement dated 10.01.2000 and be put in the same position as if such agreement had not been entered into?

Issue No. 10: Is the Respondent liable to compensate the Claimants under the agreement of indemnity and if so what effect?

Issue No. 11: Is the Respondent liable to be compensated by Claimants by a sum of Rs.8,31,53,968/- including a sum of Rs.5.19 Crores paid by the LKB as claimed by the respondent?

Issue No. 12: Is the Respondent entitled to be compensated by the Claimants a sum of Rs.280 Crores as net profit being difference in the cost of construction estimated at Rs.800/- per sq. ft. with the total cost being Rs. 320 Crores as claimed by the respondent?

Issue No. 13: Are the Claimants entitled to compensation from the Respondent and damages of a total values of Rs. 300

crores and are the Claimants entitled to a further sum of Rs. 100 crores as punitive damages?

Issue No. 14: Whether Mr. Mohinder Puri has the authority to institute the instant claim petition and to carry out acts necessary to prosecute the instant claim petition on behalf of Claimants other than Puri Construction Limited? If not whether the claim petition for other Claimants is maintainable?

ARBITRAL TRIBUNAL'S AWARD

35. The Arbitral Tribunal recorded detailed findings. The findings recorded by the Arbitral Tribunal can be summarised as under:

Issue No. 1: The conditions precedent in Clauses (I), (II), and (III) of the Supplementary Agreement were not fulfilled. Therefore, the Supplementary Agreement was a non-starter, hence, only the Development Agreement was binding on the parties which was not novated by the Supplementary Agreement.

Issue No. 2: The Supplementary Agreement and the Tripartite Agreement were tainted by coercion. These agreements were executed as PCL was in dire need of money for making EDC payments. It was the obligation of L&T to provide funds for payment of EDC and the Tripartite Agreement was signed since L&T failed to provide the requisite funds.

Issue No. 3: PCL substantially discharged its obligation under the Development Agreement. However, by unilaterally abandoning the project, L&T committed fundamental breach in its obligation under the Development Agreement.

Issue No. 4: The site inspection conducted by the Arbitral Tribunal revealed that L&T had not commenced the development work. L&T did not lead any oral evidence and failed to produce the relevant documents that were called upon to be produced by the Tribunal. Thus, L&T took a conscious decision to abandon the development, not to pay EDC or fulfil its obligations towards statutory authorities, ITCREF and the Bank. Therefore, monetary loss was caused to PCL.

Issue No. 5: L&T did not fulfil its obligations under the development agreement. L&T failed to fund the project. It also failed to provide sufficient security arrangements at the site, resulting in encroachment of some sites.

Issue No. 6: PCL was entitled to terminate the Development Agreement in view of the breaches committed by L&T as recorded in issue No. 5.

Issue No. 7: Before PCL had confirmed bookings/selling targets as per the Supplementary Agreement, L&T was not under an obligation to commence construction in phase 1. The reason was that the Supplementary Agreement was not operative and binding, and no responsibility contrary to the Development Agreement could be fastened on L&T.

Issue No. 8: The termination of the contract by PCL does not amount to wrongful repudiation, and it does not entitle L&T to rescind the contract and claim damages under Sections 73 and 75 of the Contract Act.

Issue No. 9: As the Tripartite Agreement was negated due to L&T's default, and since it imposes liability on L&T, it

cannot be relieved of its obligation under the Tripartite Agreement.

Issue No. 10: L&T had complete knowledge of PCL's obligation to ITCREF. Under Clause 25 of the Development Agreement, L&T was responsible for indemnifying PCL against any loss, liability, cost, or claim that may arise against PCL due to L&T's failure to discharge its obligations. The obligations under Clause 25 shall subsist even after the termination of the Development Agreement.

Issue No. 11: As L&T had abandoned the project, it cannot take advantage of its own wrong. Therefore, L&T is not entitled to compensation from PCL.

Issue No. 12: The claim of Rs. 240 crores made by L&T was negatived on the ground that L&T itself had abandoned the project and therefore, it cannot take advantage of its own wrong.

Issue No. 13: PCL was entitled to compensation from L&T amounting to Rs. 93 crores in relation to its 25 percent share. It was based on L&T's calculation of profit for its 75 percent

share. The Tribunal observed that PCL was entitled to damages of Rs. 35 crores in lieu of L&T's failure to pay EDC in a timely manner. However, it was held that PCL was not entitled to any punitive damages.

Issue No. 14: The authority of Mr. Mohinder Puri to institute a claim on behalf of PCL was acquiesced by L&T, as it did not object to the affidavit filed by Mr. Puri. Moreover, Mr. Puri supplied copies of the board resolutions of the respective companies granting him power of attorney.

36. We have already reproduced the operative part of the Award in paragraph 12 above.

FINDINGS RECORDED BY LEARNED SINGLE JUDGE IN SECTION 34 PETITION

37. Now, coming to the findings recorded in a petition under Section 34, the findings can be summarised as under:

Issue No. 1: The conditions precedent for the Supplementary Agreement were satisfied substantially. Clause (I) was the only condition required to be fulfilled, and Clauses (II) and (III) were not required to be fulfilled by L&T. It

was held that the Arbitral Tribunal gave inconsistent findings by holding that the Supplementary Agreement was a non-starter and void. However, the Tripartite Agreement was not found to be void, though it was entered into as a result of the Supplementary Agreement.

Issue No. 2: Both the Supplementary Agreement and the Tripartite Agreement were not tainted by coercion as parties to it recognized that the market prices had gone down and it was not advisable to launch the project. In fact, Clause 26 of the Development Agreement stipulated that construction was contingent upon prevailing market conditions, and parties were permitted to rescind the contract in the event of adverse market conditions.

Issue No. 3: It seems that no submissions were canvassed in the petition under Section 34.

Issue No. 4: The Tribunal's conclusion could not be based solely on the reports of BCG; instead, the inference was to be drawn by the Tribunal based on the actions.

Issue No. 5: The learned Single Judge did not record a finding on this issue.

Issue No. 6: PCL was not entitled to terminate the Development Agreement. Although PCL made a commitment to ITCREF to provide an area of 153,500 sq. ft., it allocated only 88,320 sq. ft. itself.

Issue Nos. 7 and 8: It appears that no submissions were made before the learned Single Judge on these issues.

Issue No. 9: The Tribunal exceeded its jurisdiction by directing L&T to fulfil its obligations towards the Bank. It was held that the Bank was not a party to the proceedings and the Tripartite Agreement did not contain any arbitration clause.

Issue Nos. 10, 11 and 12: There were no specific findings recorded by the learned Single Judge.

Issue No. 13: PCL was not entitled to any compensation from L&T as it had already paid the price of the land to ITCREF. Moreover, PCL committed an area to ITCREF, which was more than its share. PCL's losses would arise only when ITCREF

files a suit for recovering damages for non-fulfilment of the commitment and failing to hand over the land in due time.

FINDINGS RECORDED BY DIVISION BENCH IN SECTION 37 APPEALS

38. Now, we must consider the findings recorded by the Division Bench in appeals under Section 37 of the Arbitration Act.

Issue No. 1: The Division Bench relied upon the conditions included in Clause II of the Supplementary Agreement. The Division Bench observed that PCL had spent 17.28 crores towards EDC out of which payment of Rs. 6 crores was made by PCL by mortgaging 15 acres of its land. Under Clause II, L&T was required to make good a plurality of bank guarantees and assume responsibility for payment of EDC. However, there was complete failure on the part of L&T to do so.

Issue No. 2: The Division Bench found that the finding of the Tribunal that the Supplementary Agreement and the Tripartite Agreement were tainted by coercion was correct. It was observed that the Arbitral Tribunal rightly found that economic duress has vitiated the Development Agreement.

Issue No. 3: The Division Bench observed that L&T has not urged any ground with respect to rejection of its counter-claim before the learned Single Judge.

Issue No. 4: The Division Bench agreed with the finding of the Tribunal that L&T decided to abandon the project on the basis of the BCG Report. The Division Bench held that the award was well supported by evidence. Inspection conducted by the Arbitral Tribunal showed that L&T had not even commenced the development work. Though, PCL handed over the title deeds to L&T on 16th October, 1998, no progress was made in construction by L&T. Moreover, L&T delayed the project and was planning it till 18th December, 1999. L&T was fully aware about PCL's obligation to ITCREF which was expressly set out in the Development Agreement.

Issue No. 6: There may not be separate findings recorded by the Division Bench, but the Division Bench, as stated earlier, agreed that the Tribunal accepted the breaches committed by L&T.

Issue No. 7: There is no specific finding recorded by the Division Bench.

Issue No. 8 and 9: The Division Bench held that L&T did not urge any ground with respect to the rejection of its counter-claim before the learned Single Judge.

Issue No. 10: The Division Bench held that the Tribunal's direction to L&T to pay Rs. 50 crores to PCL on crystallization of ITCREF's claim deserves to be set aside. The loss suffered by ITCREF would not be reasonably foreseeable for PCL to be indemnified against. It was held that L&T's failure to transfer the built-up area would have to be accounted for under the heading damages for the breach of the Development Agreement by L&T.

Issue Nos. 11 and 12: The Division Bench held that L&T did not raise any ground with respect to the rejection of its counter-claim before the learned Single Judge.

Issue No. 13: The Division Bench held that actual loss was not established by PCL. It was observed that after the rejection of L&T's counterclaim, it would be an illegality to rely on L&T's calculation of profit. However, the Tribunal's finding regarding L&T's failure to pay EDC timely was affirmed.

Issue No. 14: It is evident that the Tribunal's findings were not seriously challenged.

39. We now turn to the conclusions recorded in paragraph 119 of the impugned judgment. In substance, the Division Bench agreed with the findings recorded by the Arbitral Tribunal that the Supplementary Agreement was a non-starter, it was vitiated by economic duress, and that the Development Agreement was not novated by the Supplementary Agreement. The Division Bench also approved the finding of the Arbitral Tribunal that L&T committed a fundamental breach of the Development Agreement. The Division Bench also upheld the dismissal of L&T's counterclaim. Furthermore, the Division Bench concluded that the permanent injunction granted in favour of PCL was also justified. However, the quantification of damages and compensation, as well as indemnification for ITCREF's claim, was found to be contrary to the record. The net effect was that the operative part of the award fixing the monetary liability of L&T was set aside while leaving open the remedy of PCL for the quantification of the monetary claim. In view of the

confirmation of findings on merits, the award regarding costs was confirmed. But, in view of the legal position that the award cannot be varied or modified, the Division Bench did not restore any part of the arbitral award and held in paragraph no. 120 that the parties are left to pursue the appropriate course of action.

CONSIDERATION

40. Firstly, we will deal with the issue of the power of the Court under Section 34 of partly setting aside the award. This issue was dealt with by this Court in the case of ***Project Director, National Highways No. 45 E and 220, National Highways Authority of India v. M. Hakeem and Another***[1]. This Court, in the said decision, considered its earlier decision in the case of ***McDermott International Inc. v Burn Standard Co. Ltd. & Ors.***[5] Ultimately, in paragraph 42, this Court held thus:

> "42. It can therefore be said that this question has now been settled finally by at least 3 decisions [*McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181] · [*Kinnari Mullick* v. *Ghanshyam Das Damani*, (2018) 11

5 (2006) 11 SCC 181

SCC 328 : (2018) 5 SCC (Civ) 106] · [*Dakshin Haryana Bijli Vitran Nigam Ltd.* v. *Navigant Technologies (P) Ltd.*, (2021) 7 SCC 657] of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the Uncitral Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in *Redfern and Hunter on International Arbitration*, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996."

41. We are conscious of the fact that a larger bench is seized with the issue of the power of the Court to modify the award under Section 34. However, we are respectfully bound by the decision in the case of ***Project Director, National Highways No. 45 E and 220, National Highway Authority of India v. M. Hakeem and Another***[1]. As we have noted, after recording

its conclusions in paragraph 119, the Division bench, in the last paragraph of the impugned Judgment, has not modified the award.

42. We have perused the three agreements subject matter of controversy. The Development Agreement is a contract between PCL and L&T. Clause 4 of the Development Agreement refers to the obligations of PCL under the agreement entered into by it on 30th July, 1997 with ITCREF. It refers to the fact that PCL had agreed to hand over 1,95,000 sq. ft. of built-up area in the Schedule 'A' property, after its development, comprising high-rise and low-rise buildings, inclusive of a car park, to ITCREF. It also refers to the fact that the extent of the built-up area to be allocated to ITCREF was 2,20,416 sq. ft., which formed part of the allocation made under the Development Agreement to PCL. The Development Agreement also provides that PCL had agreed that 15 acres of land mortgaged to the Bank would be in the remaining portion of Schedule 'A' property and that PCL would get the mortgage discharged on this 15 acres of land comprised in Schedule 'A' property before commencement of development

work in the remaining portion of Schedule 'A' property. The Agreement also provides for the deposit of original documents in relation to Schedule 'A' property (except to the extent of 15 acres of land mortgaged with the Bank). Paragraph 19 records L&T's obligation to pay the EDC after receiving the NOC from the appropriate authority. The Agreement provides that L&T shall complete the construction of the building on the Schedule 'B' property within 60 months or such mutually extended period from the date of obtaining sanction for the building plan, or tax clearance under Section 37-I of the Income Tax Act, and making the said property available for development, whichever is later. It has also stipulated that construction shall be carried out in phases. After completion of phase of 3,00,000 sq. ft. on Schedule 'B' property, L&T, in consultation with PCL, by mutual consent, shall have the option and liberty to renew and revise the specifications/amenities and built-up area of the balance development and extend the period of completion by a further period of 12 months, depending upon the prevalent market conditions.

43. Now, we refer to the Supplementary Agreement. In the recital of the Supplementary Agreement, it is mentioned that L&T has made only partial compliance with the requirement under the Development Agreement to pay EDC to DTCP. Moreover, L&T has failed to furnish a bank guarantee for the balance payment of EDC. In fact, it records that L&T had taken a stand that in view of the adverse market conditions, the project had become unviable and sought further time from PCL to allow the prevailing real estate market conditions to improve. Clauses I, II and III of the Supplementary Agreement read thus:

> **I. "That the terms of the Development Agreement will continue to bind the parties hereto, unless otherwise agreed to in these presents, which shall come into effect on happening of the following events :**
>
> (a) DEVELOPER replacing or taking over the Bank Guarantees furnished by the OWNERS through their Banker to DTCP, Haryana;
>
> (b) Payment of EDC amounting to Rs. 6 Crore by Lord Krishna Bank to DTCP

Haryana, in terms of the Tripartite Agreement between the parties hereto with Lord Krishna Bank;

(c) Reimbursement of expenses incurred by the OWNER as detailed in Annexure I, on production of proof of payment thereof;

(d) Compliance of the terms and conditions of the tripartite agreement between the parties hereto with Lord Krishna Bank, inter-alia the DEVELOPER paying Rs. 5.19 Crore to Lord Krishna Bank, on behalf of OWNERS towards discharge of the loan availed by the OWNERS for payment of EDC. The said sum of Rs. 5.19 Crore shall be a secured interest free loan by the DEVELOPER to the OWNERS.

II. The Bank Guarantees would be furnished by the DEVELOPER to the DTCP after final approval of term loan by Lord Krishna Bank to the OWNER and escrow account arrangement finalisation, either through the Bankers of the OWNERS or any other Bank acceptable to DTCP. The said bank guarantees shall remain valid and in force upto the date of receipt of completion Certificate of the I phase of the project.

III. The parties hereto agree that the Clause 19 of the Development Agreement shall stand modified as under:

(a) The EDC Charges of Rs. 1013.14 Lacs paid so far by the OWNERS shall be reimbursable only after receipt of the same from the prospective purchasers of the apartments in the Project.

(b) The Developer agrees to pay the balance EDC as under:

i. Rs. 6 Crore through M/s. Lord Krishna Bank as provided in Clause I(b) supra;

ii. Pay the remaining EDC charges over a period of 18 months in terms of licenses.

(c) The EDC paid by the parties shall be reimbursable to each of the parties from out of the sale proceeds, as agreed in the Agreement for Development."

(emphasis added)

44. We may note here that, as stated in Clause (I) of the Supplementary Agreement, the terms of the Supplementary Agreement were to come into effect upon the occurrence of the events mentioned therein, which included the condition that

L&T would replace or take over the bank guarantees furnished by PCL through their banker to DTCP. Other condition was of compliance of the terms and conditions of the Tripartite Agreement which provided for L&T paying sum of Rs. 5.19 crores to the Bank on behalf of PCL. The Arbitral Tribunal found that Clauses (I) and (II) were not fully complied with by L&T. The Tribunal also found that Clause (III) was not complied with by L&T due to non-payment of EDC charges as provided therein. On a plain reading of these three clauses, the learned Single Judge's finding that Clauses (II) and (III) were not required to be fulfilled is based on a complete misreading of Clauses (II) and (III). The Division Bench rightly agreed with the Tribunal that conditions included in the said clauses were required to be complied with, but were not complied with. The Division Bench noted that even the Supplementary Agreement revealed that the DTCP had issued a show-cause notice for non-payment of EDC, threatening cancellation of licenses. Clause (I) of the Supplementary Agreement makes it very clear that the Supplementary Agreement shall come into effect only upon the occurrence of

the four events specified therein. That is how the Supplementary Agreement remained a non-starter.

45. We now turn to the Tripartite Agreement, which in turn refers to the Supplementary Agreement. It is recorded that PCL and L&T had approached the Bank to avail a term loan of Rs. 6 crores for payment of EDC charges. Under the said agreement, the Bank agreed to pay Rs. 6 crores EDC to DTCP on behalf of PCL. It was agreed that the 15 acres of land already mortgaged by PCL with the Bank will continue to serve as a guarantee for the said term loan of Rs. 6 crores. The Tripartite Agreement provides that the Bank shall forthwith release, in favour of the PCL, the counter-guarantees outstanding for the bank guarantees given by the Bank for a sum of Rs. 466.175 lakhs in favour of DTCP, Haryana. It was provided in the Tripartite Agreement that L&T will open an Escrow account with the Bank in New Delhi, wherein all sale proceeds of the proposed flats will be deposited. Out of the funds in the escrow account, the Bank will first appropriate the interest part for the respective period and out of the balance portion, appropriate 50 per cent

towards repayment of the term loan and release the remaining 50 per cent balance to L&T, subject to review on a later date. It was provided that PCL and L&T have undertaken to launch the sale of apartments in the Schedule 'A' property, covering an area of 3.84 lakhs sq. ft., by 15th February, 2000. L&T had also undertaken to complete the said development within 30 months of the commencement of construction. Even all sale proceeds were to be collected by L&T and deposited with the Bank in an escrow account. The Tripartite Agreement provided that L&T shall pay to the Bank a sum of Rs. 5.19 crores on behalf of PCL towards discharge of the loan availed by PCL for payment of EDC on or before 19th January, 2000. Lastly, it was provided that upon full set-off and/or repayment of the term loan of Rs. 6 crores, including interest thereon, PCL shall be relieved of its obligation under this Agreement.

46. Looking to the clauses in the Supplementary Agreement, the finding recorded by the Tribunal that, as the conditions precedent in the relevant clauses were not complied with by L&T, the Supplementary Agreement was a non-starter is undoubtedly a possible finding which could not

have been interfered with under Section 34 of the Arbitration Act. Moreover, it is a finding of fact.

47. Coming to the issue no. 2, it is apparent from the recitals in the Supplementary Agreement as well as Tripartite Agreement that as L&T did not discharge its obligation under the Development Agreement to pay EDC, the Bank was required to be brought into the picture so that it could advance a sum of Rs. 6 crores by way of loan for making payment of the said amount to DTCP. We must mention here that Clause 19 of the Development Agreement provided that L&T shall reimburse PCL the EDC amount already paid up to the date of the Development Agreement by mutually agreed instalments. The amounts paid by PCL towards EDC up to the date of execution of the Development Agreement were also mentioned, as L&T did not pay the amount already paid by PCL towards EDC. By Clause (III) of the Supplementary Agreement, Clause 19 was modified. The main reason for the execution of the Supplementary Agreement and the Tripartite Agreement was the default on the part of L&T. The Tribunal looked into various terms and conditions of the Development

Agreement and the obligation of L&T to carry out its activities in a time-bound manner. The Tribunal considered the pleadings of PCL and the failure of L&T to deny material paragraphs. The tribunal also referred to a letter dated 7th October, 1999, addressed by L&T that its consultant had reported that it would not be favourable to pursue the project and therefore requirement of payment of EDC by L&T does not arise. In fact, L&T relied upon the report of BCG. However, in respect of order dated 08th November, 2001, L&T did not produce the relevant documents. The Tribunal has noted that L&T was aware about PCL's financial conditions and its obligations towards ITCREF. The Tribunal also referred to the fact that on 02nd November, 1999, DTCP issued a show cause notice proposing cancellation of licenses due to non-payment of EDC. These facts and the default by L&T left no choice to PCL but to execute the Supplementary Agreement as well as the Tripartite Agreement.

48. The Division Bench referred to Section 16(3) of the Contract Act which provides that where a person who is in a position to dominate the will of another, enters into a contract

with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that there was no undue influence is on the person in a position to dominate the will of the other. Illustrations (c) and (d) of Section 16(3) of the Contract Act were also relied upon, which deal with cases of economic duress and undue influence. After examining the evidence, the Division Bench held that there was no patent illegality in the findings recorded by the Arbitral Tribunal that the Supplementary Agreement and the Tripartite Agreement were tainted by coercion. On consideration of the facts discussed before, such a view by the Arbitral Tribunal cannot be said to be contrary to justice and morality. We agree with the view taken by the Division Bench.

49. Dealing with issue no. 3, the Division Bench referred to Clause 26 of the Development Agreement and Clause 5 of the Supplementary Agreement. The Tribunal found that L&T committed a breach of Clause 19 of the Development Agreement by not making payment of a single instalment of EDC. Moreover, interest free deposit of Rs. 5 crores in terms of

Clause 12 of the Development Agreement was not paid by L&T to PCL. The Tribunal found that there was no Development work carried out and not a single floor of any residential building was constructed for which development plans were sanctioned. Therefore, the finding recorded by the Tribunal that L&T committed fundamental breaches of the agreement cannot be interfered within the limited jurisdiction under Section 34 of the Arbitration Act.

50. As regards issue no. 4 and 5, the Division Bench has considered material on record. The Division Bench recorded that approval of the competent authority under the Income Tax Act, 1961 was given on 30th June, 1998 and the building plans were sanctioned on 30th September, 1998. The title deeds were handed over by PCL to L&T on 16th October, 1998. There are letters on record addressed by PCL complaining to L&T about failure to make any progress on the site. No EDC payments were made by L&T. Even planning of the project was not completed by L&T till December, 1999. That is how the inspection of the Arbitral Tribunal revealed that L&T did not commence the development work. From the recital of

clauses in the Development Agreement, it is apparent that L&T was aware of the obligations of PCL towards ITCREF. Considering the material on record, the Arbitral Tribunal recorded that there was a conscious decision on the part of L&T to abandon the development and not to fulfil its obligations under the contract. Therefore, the Division Bench accepted the correctness of the finding recorded by the Tribunal that there was an abandonment of the project on the part of L&T. The Division Bench rightly declined to find fault with the findings recorded by the Tribunal on this aspect based on evidence. Obviously, such conduct on the part of L&T caused loss to PCL, which ultimately resulted in the termination of the Development Agreement. The issues based on the rejection of the counter-claim of L&T have been rightly addressed by the Division Bench on the ground that there were no submissions made on the rejection of the counter-claim before the learned Single Judge in a petition under Section 34 of the Arbitration Act.

51. The Division Bench dealt with the Tribunal's direction to L&T to pay Rs. 50 crores to PCL on crystallization of

ITCREF's claims. The Division Bench held that the type and kind of losses incurred by ITCREF would not be reasonably foreseeable for PCL to be indemnified against. Therefore, the Division Bench rightly observed that while granting a sum of Rs. 50 crores to PCL, the Tribunal had gone overbroad. The said finding of the Division Bench cannot be faulted with.

52. As regards the damages of the sum of Rs. 35 crores to be paid by L&T to PCL on account of breach of the Development Agreement, the basis taken by the Tribunal was the figures given by L&T in its counter-claim. Mr. Mohinder Puri estimated the loss of PCL at Rs. 117 crores. However, PCL did not prove the said loss, and the Tribunal did not rely upon any evidence to arrive at a fair assessment of the loss actually incurred by PCL. The Division Bench held that instead of basing the findings on the figures set out by L&T in its counter-claim, the correct approach would have been to determine the prevailing market rate for sale of built-up area at the time of the breach and thereupon determine the proceeds that PCL would have received from the sale of its 25 per cent share under the Development Agreement. Therefore,

the award of Rs. 35 crores as damages was fundamentally contrary to Section 73 of the Contract Act. Such an approach was completely contrary to substantive law in the form of Section 73. This finding cannot be disturbed.

53. As regards the direction to pay the amount of Rs. 6 crores with interest, we need not record any finding as the amount has been paid by L&T. The award in the alternative of Rs. 75 crores, without proof of the value of land, cannot be sustained at all. There was no evidence on record to indicate that the value of the 15-acre area would be Rs. 5 crores per acre. Similarly, there was no basis for granting Rs. 5 crores to PCL due to L&T's failure to return the licenses and other statutory permits. In these circumstances, we find the view taken by the Division Bench to be correct.

54. As the termination of the Development Agreement is upheld, obviously, L&T cannot deal with the property in any manner and PCL can always deal with the same.

55. In para 119, the Division Bench held thus:

> "119. In the circumstances, the Court concludes as follows:

a. The finding of the Tribunal that the Development Agreement was not novated by the Supplementary Agreement is upheld; similarly the Tribunal's findings that the conditions which were to be fulfilled by L&T subject to which the said Supplementary Agreement was to come into force (but were not fulfilled) are upheld;

b. The finding of the Tribunal that the Supplementary Agreement was a non-starter as it was vitiated by economic duress is upheld. The impugned judgment's ruling to the contrary is set aside.

c. The finding of the Tribunal that L&T committed fundamental breach of the Development Agreement is upheld. The impugned judgment's ruling to the contrary is set aside.

d. The Tribunal's dismissal of L&T's counterclaim is upheld.

e. The Tribunal's quantification of damages for breach of contract (35 crores), compensation in lieu of securing title deeds with respect to 15 acres of land (75 crores) and compensation for default in returning licences and other permits is set aside (5 crores). The permanent injunction granted in favour of PCL restraining L&T from interfering with PCL's development

of Schedule A property of the Development Agreement is upheld. The relief granting indemnification in favour of PCL for ITCREF's claims is set aside. It is clarified that this is without prejudice to the indemnification for ITCREF's claims relating to the transfer of 2,20,416 sq. ft. of land to the extent envisaged under the Development Agreement, The Tribunal's order to the extent that it awards costs of arbitration to PCL is upheld.

f. Title deeds deposited with the Registrar of this Court pursuant to the directions in FAO 319/2001 are directed to be released to PCL."

56. The powers of the Appellate Court under Section 37 of the Arbitration Act are not broader than those of the Court under Section 34 of the Arbitration Act. Therefore, what cannot be done in the exercise of the powers under Section 34 cannot be done in an Appeal under Section 37. An Arbitral Award cannot be modified. Thus, even after recording the conclusions in paragraph no. 119, the Division Bench has not modified the Award by partly setting aside the Judgment under Section 34. In paragraph 121 of the Judgment, the Division Bench held thus:

> "121. In light of the above conclusions, parties are left to pursue the appropriate course of action under law. This Court notices that since the dispute has been in subsistence for a considerable period of time, an attempt may be made at settling the claims through mediation. FAO (OS) 21/2009, 22/2009 and 23/2009 are partly allowed to the above extent; FAO (OS) 194/2009 is dismissed, for the same reason."

On a conjoint reading of Paragraph 119 and 121, we find that the remedy of PCL has been kept open to pursue appropriate course of action under law as there cannot be a remand to the Arbitral Tribunal for quantification of monetary claim. As the finding of the Arbitral Tribunal regarding breaches committed by L&T was affirmed, the Division Bench has rightly segregated that part of the Award by which, cost of arbitration was ordered to be paid to PCL by L&T. This part has been severed from rest of the Award. Therefore, this part of the Award must be complied with by L&T, if not already done. As documents of title were deposited with the Registrar, the direction to hand over the same to PCL cannot be faulted with. We cannot find any fault with the operative part in paragraph 120.

57. Before we part with Judgment, we must reproduce what is observed by Division Bench in paragraph no. 120 with approval:

> "120. Before concluding, the court would like to highlight - more as a post script, the prolix and near interminable arguments which were addressed by senior counsel on either side, who were insistent that the arbitral records, such as pleadings and documents, had to be examined, and read out in court. The court unsuccessfully entreatied them to limit oral arguments; equally unsuccessful were attempts at ensuring that written briefs were kept within limits. The citation of numerous authorities on similar propositions, and reference to factual material, reduced an arbitration appeal (against the decision in Section 34) to the Division Bench into an appeal on facts, which Section 37 was clearly not intended to be. One hopes that there is some clarity within the legal system about the kind of time limit to arguments in such cases, to ensure timely disposal of appeals."

58. We agree with the views expressed by the Division Bench which we have quoted above. In several appeals arising out of Sections 34 and 37 proceedings, we have noticed that there is a tendency on the part of the senior members of the

Bar to argue as if these proceedings were regular appeals under Section 96 of the Code of Civil Procedure, 1908 (for short 'CPC'). In this case, while making submissions, the learned counsel appearing for both the parties have gone into the minutest factual details. As the Members of the Bar are aware of the limited jurisdiction of the Courts in proceedings under Sections 34 and 37 of the Arbitration Act, they must show restraint. Similarly, we observe a tendency on the part of the Members of the Bar to rely upon a large number of decisions, whether relevant or irrelevant, while arguing Section 34 petitions and Section 37 appeals as well as appeals arising therefrom. Multiple decisions are cited on the same proposition of law. This makes hearing time-consuming. As there are long oral arguments, the Courts permit written submissions to be filed. That is how very long written submissions come on record. The Courts have to devote page after page for dealing with many submissions which ought not be made considering the limited jurisdiction under Section 34 of the Arbitration Act. This results in very lengthy judgments. The high monetary stakes involved in the proceedings should not result in unnecessarily long oral submissions or bulky

written submissions. All this results in the criticism about the arbitrations in India. Therefore, there is a need to impose time limit on oral submissions in such cases. We cannot forget that this Court and the High Courts have the appellate jurisdiction in civil and criminal cases. These Courts should be in a position to also devote sufficient time to the cases of the common man. What we have expressed is a matter of serious concern and introspection for everyone.

59. In view of what we have held earlier, there is no merit in the appeals and the same are dismissed.

.....J.
(Abhay S Oka)

.....J.
(Pankaj Mithal)

New Delhi;
April 21, 2025.