



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-CARB-51-2024 (O&M)

Reserved on: 27.11.2024

Pronounced on: 21.02.2025

M/s DLF Home Developers Ltd.

....Appellant

Versus

M/s Orris Infrastructure Pvt. Ltd. and Others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Argued by: Mr. Randeep Singh Rai, Senior Advocate,
Mr. Chetan Mittal, Senior Advocate,
Mr. Amit Jhanji, Senior Advocate with
Mr. Kunal Mulwani, Advocate,
Ms. Rubina Virmani, Advocate,
Mr. Udit Garg, Advocate,
Ms. Radhika Mehta, Advocate
Ms. Shefali Goyal, Advocate
Mr. Farhad Kohli, Advocate
Ms. Eliza Gupta, Advocate and
Mr. Ritvik Garg, Advocate
for the appellant.

Mr. Puneet Bali, Senior Advocate with
Mr. Surjeet Bhadu, Advocate,
Mr. Veer Singh, Advocate,
Mr. Gagandeep Singh, Advocate
Mr. Agam Bansal, Advocate
for respondent No.1.

Mr. Gurminder Singh, Senior Advocate with
Ms. Sanya Thakur, Advocate,
Mr. Karamanbir Singh, Advocate and
Mr. Nitish Bansal, Advocate
for respondents No.2 to 13.

**VIKRAM AGGARWAL, J****CM-180-FCARB-2024**

Prayer in the instant application preferred under Section 151 CPC is for placing on record Annexures A-13 to A-16 as also to exempt filing certified/true types copies thereof.

For the reasons mentioned in the application, the same is allowed. Annexures A-13 to A-16 are taken on record. The Registry is directed to tag the same at an appropriate place on the case file.

FAO-CARB-51-2024 (O&M)

1. The appellant (M/s DLF Home Developers Ltd.) (hereinafter referred to as the appellant/developer/counter claimant) assails the order dated 09.09.2024 vide which the Exclusive Commercial Court, Gurugram dismissed the petition filed by it under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act').

2. In nutshell, a collaboration agreement dated 26.11.2007 (Annexure P-2) (as annexed with the petition preferred under Section 9 of the 1996 Act which is on record as Annexure A-1) was executed between the appellant/developer/counter claimant and respondents No.2 to 8 (M/s Acme Build Well Pvt. Ltd. and six other companies) through respondents No.9 to 13 (hereinafter referred to as the 'land owners') and respondent No.1 (M/s Orris Infrastructure Pvt. Ltd.) (hereinafter referred to as the 'original developer'). The respondents shall be collectively referred to as the respondents/claimants.

3. The land owners owned 40.084 acres of land (hereinafter



referred to as the 'disputed land') situated in the Revenue Estate of Village Hayatpur, Tehsil and District Gurugram. They had entered into agreements with the original developer to carry out development works of the said land. Subsequently, the collaboration agreement in question was executed between the land owners, the original developer and the appellant/developer/counter claimant for construction of commercial projects. Certain disputes arose between the parties as a result of which arbitration was invoked by the respondents/claimants. Certain claims were raised by the respondents/claimants and a counter claim was set up by the appellant/developer/counter claimant. Award dated 15.07.2024 (Annexure P-4) was passed. After the passing of the award, an application for correction (Annexure P-6) was moved on 30.07.2024 by the appellant/developer/counter claimant. During the pendency of the said application, a petition under Section 9 of the 1996 Act (Annexure A-1) was preferred by the appellant/developer/counter claimant. The final award was passed on 30.08.2024 and the petition under Section 9 of the 1996 Act was dismissed by way of the impugned order dated 09.09.2024, leading to the filing of the instant appeal.

FACTUAL BACKGROUND

4. After disputes having arisen between the parties and the matter having been referred for arbitration in terms of Clause 17 of the Collaboration Agreement which dealt with arbitration, award dated 15.07.2024 was passed by the Sole Arbitrator Mr. Justice Deepak Verma, former Judge of the Supreme Court of India. The respondents/claimants were held entitled to be handed over the unencumbered and vacant possession of the disputed land by



the appellant/developer/counter claimant. They were further held entitled to release of the original title documents of the disputed land which were in joint custody of the appellant/developer/counter claimant and respondents/claimants in a locker with Corporation Bank, Sikanderpur Branch, DLF City, Phase-I, Gurugram. Further, the appellant/developer/counter claimant was directed to do all acts and take all steps necessary in order to release and hand over the unencumbered title deeds of the disputed land. It was further ordered that in the event of such steps not being taken, the respondents/claimants would be entitled to approach the bank concerned directly for release and handover of the original title documents and for sole and exclusive custody thereof. The remaining claims No. d, e, f and g were rejected.

5. Counter claims No. I, II and III were rejected and it was held that declaration and specific performance of the Collaboration Agreement could not be granted. Counter claim No. IV was allowed. The respondents/claimants were directed to refund the security deposit of Rs.35.95 Crores alongwith 12% compound interest on the sum of Rs.26,96,25,000/- from the date of deposit i.e. 26.11.2007 till the date of its actual realization. Counter claim No. V was partly allowed and the respondents/claimants were directed to pay interest @ 10% per annum from the date of deposit of license fee for the first set of license application i.e. 10.12.2007 till the date of refund i.e. 15.01.2009. They were directed to pay scrutiny fee of Rs.26,94,250/- deposited by the appellant/developer/counter claimant on 10.12.2007 alongwith interest @ 10% per annum from 10.12.2007 to the date of actual realization. Claims No.VI and VII were rejected. It was finally



concluded that the amount payable by the respondents/claimants to the appellant/developer/counter claimant as on 31.07.2024 was Rs.197.5 crores.

6. As per award dated 15.07.2024, the directions were to be complied with by the parties within 30 days i.e. by 14.08.2024. An application dated 30.07.2024 (Annexure P-6) was moved for correction of the award in which the prayer was to correct the name of the appellant/developer/counter claimant as DLF Home Developers Limited, for, the name previously was M/s DLF Retail Developers Limited and had as such been mentioned in the award.

7. During the pendency of the said application, a petition under Section 9 of the 1996 Act was preferred by the appellant/developer/counter claimants on 12.08.2024 in which the following substantive relief was prayed for:-

“i. Restrain the Respondents from approaching Union Bank of India (earlier Corporation Bank), A-2/8, Opposite Qutub Plaza, DLF Enclave, Phase-1, Sikanderpur Branch Gurugram, for the release and handover of original Title Deeds fully described in Annexure P12 pertaining to land measuring 40.084 acres situated in Hayatpur village, Tehsil and District Curugram (Sector 88 and Secor 89). Gurugram, Haryana. The respondents may further very kindly be restrained from individually making any attempt to operate locker bearing nos. 733 and 852 in the aforesaid bank or any other alternative locker(s) allocated in lieu of aforesaid lockers. Respondents may also very kindly be restrained from seeking custody and collecting the aforesaid original Title Deeds of Project Land from the aforesaid bank.

ii. Restrain the Respondents from alienating. disposing of or creating any third-party interest/rights or any encumbrance on the Project Land and from dispossessing the petitioner from the same.”



8. The case set up by the appellant/developer/counter claimant was that the award dated 15.07.2024 was to be complied with within 30 days i.e. by 14.08.2022 whereas the time to challenge the said award under Section 34 of the 1996 Act was 03 months which would expire well after 14.08.2024. It was also averred that an arbitral award could not be enforced except in accordance with the provisions of Section 36 of the 1996 Act and that, therefore, at the time of filing of the petition under Section 9 of the 1996 Act, the award was not enforceable. Reference was made to the application dated 30.07.2024 which had been moved for correction of the award and the e-mail dated 03.08.2024 (Annexure P-7) sent by the Hon'ble Arbitrator granting time to the respondents/claimants to file reply to the application.

9. It was averred that the respondents/claimants had not come forward to satisfy the award by fulfilling their financial obligations in discharge of the liabilities. However, a letter dated 05.08.2024 (Annexure P-8) was received by the appellant/developer/counter claimant from the original developer calling upon the appellant/developer/counter claimant to remain present in the Union Bank of India (previously Corporation Bank) on 06.08.2024 at 1:30 PM failing which it would approach the bank for release of the original title deeds. Reply dated 06.08.2024 (Annexure P-9) was sent by the appellant/developer/counter claimant to the original developer stating that the respondents/claimants had sought piecemeal enforcement of the award and that the same was illegal. It was also stated that the action was premature having been made prior to the expiry of time available for challenging the validity of the award and it called upon the original developer to resist from making any



attempt to approach the bank for release of the original deeds under the garb of the award. A similar letter dated 06.08.2024 (Annexure P-10) was issued by the appellant/developer/counter claimant to the bank concerned pointing out that in terms of Clause 14 (K) of the Collaboration Agreement, the locker was a joint locker and that operation of the locker was possible jointly only by one authorized signatory from both sides. Letter dated 03.07.2008 issued by the Manager of the Bank at the time of allotment of the locker and confirming the mode of operation (Annexure P-11) was also annexed with the communication. It also informed the bank that it had a strong apprehension that the original developer would illegally, maliciously and wrongfully approach the bank with the intent of achieving its unlawful objective of wrongful operation of the lockers bearing No.733 and 852 so as to fraudulently lay its hands on the original title deeds.

10. It was averred in the petition that without admitting/acknowledging the legality and validity of the award and without prejudice to its rights to avail legal remedies as regards the award, it would be impossible for the appellant/developer/counter claimant to recover the amounts as per the findings returned by the learned Arbitrator even after taking recourse to execution proceedings if the original titled deeds were taken away by the respondents/claimants.

11. It was further averred that the appellant/developer/counter claimant had come to know from market sources that under the garb of the award dated 15.07.2024 and by misinterpreting the same, the respondents/claimants were intending to alienate the disputed land and to



create third party rights in the same. Under the circumstances, the petition under Section 9 of the 1996 Act was filed.

12. It emerges that the respondents/claimants put in appearance before the Commercial Court, Gurugram on 27.08.2024 and vide order dated 27.08.2024 (Annexure A-4), the matter was posted for arguments to 05.09.2024 as it was stated by the respondents/claimants that no reply was to be filed to the petition filed under Section 9 of the 1996 Act.

13. Ultimately, award dated 30.08.2024 was passed in which the requisite corrections were made.

14. It further emerges from the paper book that on 02.09.2024, the bank authorities broke open the joint safety lockers and handed over the title deeds to the respondents/claimants.

15. This matter was duly brought to the notice of the Commercial Court, Gurugram. However, vide order under challenge, the petition under Section 9 of the 1996 Act was rejected leading to the filing of the present appeal.

16. Learned counsel for the parties were duly heard.

17. Extremely lengthy arguments were addressed by learned Senior counsel representing the parties. The crux of the arguments addressed by learned Senior counsel for the appellant/developer/counter claimant is as under:-

(i) The award was unenforceable till the expiry of 90 days in terms of the provisions of Section 34 read with Section 36 (2) of the 1996 Act and, therefore, neither could the appellant/developer/counter claimant have filed an execution petition nor could the award could



have been enforced forcibly by any side and that the award, in any case, could have been enforced only in accordance with law.

(ii) Even as per the award, there was 30 days time for implementation and, therefore, the said period would start from 30.08.2024 when the application for correction of the award was allowed whereas the respondents/claimants forcibly took away the title deeds on 02.09.2024. Even from 15.07.2024, when the Award was originally passed, 30 days would expire on 14.08.2024 whereas the respondent No.1-claimant initiated the process of opening of the joint lockers even before the expiry of the said period. It is the case of the appellant/ developer/counter claimant that even the limitation of 90 days for filing a petition under Section 34 of the 1996 Act is to be from the date of the correction of the award.

(iii) The respondents/claimants could not have taken law into their own hands to take possession of the title deeds and that, the only remedy with them was to file an execution petition before the Court in terms of the provisions of Section 36 of the 1996 Act.

(iv) The scope of Section 9 of the 1996 Act is very wide and, therefore, a petition under Section 9 would definitely be maintainable.

(v) The Commercial Court, Gurugram had wrongly relied upon certain judgments while non-suiting the appellant/developer/counter claimant.

(vi) The Commercial Court, Gurugram had not gone through the findings in the award carefully as per which, the appellant/developer/counter claimant was *prima facie* entitled to protect and preserve the property and that the Commercial Court, Gurugram failed to take note of the illegal conduct of the respondents/claimants.

(vii) No specific findings had been recorded by the Arbitral Tribunal pertaining to the time period for release of the original title deeds and that the direction was only to both parties to comply with the same within a period of 30 days which, in any case, would not give any



authority to the respondents/claimants to forcibly get the lockers opened.

(viii) The refusal or acceptance of a claim/counter claim could not serve as a pre-requisite to refuse or to grant interim relief under Section 9 of the 1996 Act and that there is no provision in law which states that because a claim/counter claim had been refused, there was no power under Section 9 of the 1996 Act to pass an order for preservation of the property.

(ix) The object and purpose of an interim measure after the passing of an award but before its enforcement is only to secure the property in dispute.

(x) Despite the fact that respondents/claimants had filed an affidavit before the Commercial Court, Gurugram expressing its willingness to secure the amount awarded in the award, even the said order was not passed by the Court.

(xi) The limitation period for filing of objections under Section 34 of the 1996 Act or for filing an executing petition would start from the date of the issuance of the corrected award.

(xii) During the pendency of the present appeal, petitions under Section 34 of the 1996 Act have been filed by both sides but still, the impugned order would have to be tested by this Court.

18. Learned counsel referred to the impugned order in detail as also to various clauses of the Collaboration Agreement and the observations and findings in the award. Learned counsel also extensively referred to Section 9, Section 34 and Section 36 of the 1996 Act and strenuously urged that the impugned order is patently illegal and arbitrary and that the same is in violation of the statutory provisions and settled position of law. In support of their contentions, learned Senior counsel placed reliance upon the **judgments passed by the Supreme Court of India** in ‘USS Alliance Vs. State of Uttar Pradesh and Others’, 2023 SCC Online SC 778, ‘Ved Prakash Mithal and



Sons Vs. Union of India’, 2018 SCC Online SC 3181, ‘P. Radha Bai and Others Vs. P. Ashok Kumar and Another’, (2019) 13 SCC 445, ‘Essar House Private Limited Vs. Arcelor Mittal Nippon Steel India Limited’, 2022 SCC Online SC 1219, ‘Hindustan Construction Company Limited and Another Vs. Union of India and Others’, (2020) 17 SCC 324, ‘National Aluminium Co. Ltd. Vs. Pressteel and Fabrications (P) Ltd. and Another’, (2004) 1 SCC 540, ‘Ultratech Cement Limited Vs. Rajasthan Rajya Vidyut Utpadan Nigam Limited’, (2018) 15 SCC 210, ‘Tanusree Basu and Others Vs. Ishani Prasad Basu and Others’, (2008) 4 SCC 791, ‘Kavita Trehan (Mrs) and Another Vs. Balsara Hygiene Products Ltd.’, (1994) 5 SCC 380, ‘Om Parkash and Another Vs. Amar Singh and Another’, (2019) 10 SCC 136, ‘Meghmala and Others Vs. G. Narasimha Reddy and Others’, (2010) 8 SCC 383, ‘Amitabha Dasgupta Vs. United Bank of India and Others’, (2021) 14 SCC 177, ‘Nand Kishore Marwah Vs. Smt. Samundri Devi’, Law Finder Doc Id#55429, **judgments passed by the Bombay High Court** in ‘Dirk India Private Limited and Others Vs. Maharashtra State Electricity Generation Company Limited and Others’, 2013 SCC Online Bom 481, ‘Home Care Retail Marts Pvt. Ltd. Vs. Haresh N. Sanghavi’, 2015:BHC-OS:12231-DB, ‘Wind World (India) Ltd. Vs. Enercon GmbH and Others’, 2017 SCC Online Bom 1147, ‘Kavis Fashions Pvt. Ltd. Vs. M/s Dimple Enterprises and 3 Ors.’, 2014:BHC-OS:3369, **judgment passed by the Delhi High Court** in ‘Nussli Switzerland Ltd. Vs. Organising Committee Commonwealth Games’, 2010, 2014 SCC Online Del 4834, **judgment passed by the Gujarat High Court** in ‘Gail (India) Ltd. and 1 Vs. Latin Rasayani Private Ltd.’, Law Finder Doc Id#2080929, **judgment passed by the High Court of Telangana at Hyderabad** in ‘Saptarishi Hotels



Pvt. Ltd. and Another Vs. National Institute of Tourism and Hospitality Management (NITHM)', 2019 SCC Online TS 1765 and the **judgment passed by the High Court of Andhra Pradesh at Hyderabad** in 'Sudershan Rao and Others Vs. Evershine Builders Pvt. Ltd.', 2012 SCC Online P 682,

19. Per contra, learned Senior counsel representing the respondents/claimants responded to the arguments addressed by learned Senior counsel representing the appellant/developer/counter claimant with equal force and vehemence and submitted that the impugned order does not suffer from any illegality for the following reasons:-

(i) After execution of the Collaboration Agreement in 2007, the appellant/developer/counter claimant held on to the land of the respondents/claimants for 17 years and did not even secure the license for setting up the project which was to be secured within a period of one year as a result of which the respondents/claimants had been deprived of their land and had not received any portion of the built up area which they were entitled to receive from the years 2011-2014.

(ii) Prior to the initiation of arbitral proceedings, no issue had ever been raised by the appellant/developer/counter claimant with regard to any impediment on the disputed land and all grounds were taken after the arbitral proceedings commenced. Reference was made to the arbitral award wherein, as per the respondents/claimants, the learned Arbitrator had pointed out the failures of the appellant/developer/counter claimant and had held that the appellant/developer/counter claimant had no intention to discharge its obligations.

(iii) Since the request for release of the title deeds in compliance of the directions given in the arbitral award was declined by the appellant/developer/counter claimant, there was no option with the respondents/claimants except to approach the bank seeking compliance of the directions given in the Arbitral Tribunal and that the lockers



were, therefore, opened strictly in accordance with the procedure laid down by the Reserve Bank of India.

(iv) The petition under Section 9 was not maintainable and that the only remedy with the appellant/developer/counter claimant was to file a petition under Section 34 and Section 36 of the 1996 Act. It was also stated that the respondents/claimants were willing to furnish adequate security to the tune of Rs.197 crores which is the amount due to the appellant/developer/counter claimant and that there would be no occasion for the appellant/developer/counter claimant to seek possession of the title deeds of land which is now worth more than Rs.800 crores. It was reiterated that the respondents/claimants were willing to submit original title deeds for three parcels of land worth approximately Rs.236.40 crores to secure the amount due towards the appellant/developer/counter claimant.

(v) For the appellant/developer/counter claimant had not been granted the relief of specific performance etc., they could not have filed the petition under Section 9 of the 1996 Act as the relief sought would be contrary to the directions issued in the award.

(vi) No injunction could have been sought against true owners especially when the award had clearly declared the right of the respondents/claimants to be in possession of the disputed land and also to receive title deeds thereof.

(vii) The parties were obliged to comply with the order and execution proceedings would be filed only where the parties were not complying.

(viii) The conduct of the appellant/developer/counter claimant clearly establishes a complete lack of *bona fides* on its part.

(ix) The findings of the Commercial Court, Gurugam are completely legal and valid as a result of which no interference is called for.

(x) For, petitions under Section 34 have been filed by both sides, nothing survives in the present appeal and now the only remedy is to pursue the said petitions.



In support of their contentions, learned Senior counsel placed reliance upon the **judgment passed by the Supreme Court of India** in ‘Hindustan Construction Company Limited and Another Vs. Union of India and Others’, (2020) 17 SCC 324, **judgments passed by the Delhi High Court** in ‘Nussli Switzerland Ltd. Vs. Organising Committee Commonwealth Games’, 2010, 2014 SCC Online Del 4834, ‘Technimont Private Limited and Another Vs. ONGC Petro Additions Limited’, 2020 SCC Online Del 653, **judgments passed by the Bombay High Court** in ‘Dirk India Private Limited and Others Vs. Maharashtra State Electricity Generation Company Limited and Others’, 2013 SCC Online Bom 481, ‘Wind World (India) Ltd. Vs. Enercon GmbH and Others’, 2017 SCC Online Bom 1147 as also the **judgment passed by the Karnataka High Court** in COMAP No.2 of 2021 titled as ‘Smt. Padma Mahadev and Others Vs. M/s Sierra Constructions Private Limited’, decided on 22.03.2021.

20. We have considered the submissions made by learned counsel for the parties.

21. Before advertng to the merits of the case, it would be apposite to refer to the statutory provisions.

22. Section 9, Section 34 and Section 36 of the 1996 Act lay down as under:-

9. Interim measures, etc., by Court.-

(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a Court:-

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or



(ii) for an interim measure of protection in respect of any of the following matters, namely:

- (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;**
- (b) securing the amount in dispute in the arbitration;**
- (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;**
- (d) interim injunction or the appointment of a receiver;**
- (e) such other interim measure of protection as may appear to the Court to be just and convenient,**

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.

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34. Application for setting aside arbitral award:-

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).



(2) An arbitral award may be set aside by the Court only if (a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]-

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.- For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or



(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2:-

For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:-

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.



(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.

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36. Enforcement:-

(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

Provided further that where the Court is satisfied that a prima facie case is made out that:-

- (a) the arbitration agreement or contract which is the basis of the award; or
- (b) the making of the award,



was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Explanation:-

For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016).

23. After analyzing the statutory provisions, the law on the subject, various documents placed on record and the arguments put forth by both sides, we are of the considered opinion that a gross illegality was committed by the respondents/claimants in collusion with the Union Bank of India by removing the title deeds lying in a locker which was to be jointly operated by the parties. We are all obligated to abide by the rule of law and under no circumstance, can anyone be permitted to take law into his/her/its own hands. The respondents/claimants acted as if the award had become final and that whatever had been held therein was not subject to challenge. In our considered opinion, the Commercial Court, Gurugram also erred in not turning the clock back and restoring the parties to their original status. The order dated 09.09.2024 passed by the Commercial Court, Gurugram which has been impugned in the present appeal is, therefore, not sustainable. We hold so, for the following reasons.

THE AWARD

24. The respondents/claimants raised the following claims before the learned Arbitrator:-



“a) Pass an award directing the respondent to handover vacant and unencumbered possession of the Land;

b) Pass an award declaring that the claimants are entitled to the release of the original title documents to the land currently held in joint custody in a locker with Corporation Bank, Sikanderpur Branch (0440), DLF City, Phase-I, Gurgaon;

c) Pass an award directing the Respondent to do all acts and take all steps necessary in order to release and handover to the Claimant unencumbered title deeds to the Land and further directing that in the event of the Respondent failing to take such steps, the Claimant would be entitled to approach Corporation Bank, Sikanderpur Branch (0440) DLF City Phase-I Gurgaon directly for release and handover of the original title documents to the Claimant and for sale and exclusive custody thereof:

(d) Pass an award in favour of the Claimants and against the Respondent in the sum of Rs. 1,11,46,600 (Rupees One Crore Eleven Lakhs Forty Six Thousand and Six Hundred) towards liquidated damages for the period 31 January 2012 to 14 May 2014 being the balance amount payable to the Claimant after setting off adjusting the security deposit both interest bearing and non-interest bearing along with the all interest accrued and payable by claimants to Respondent;

e) Pass an award in the sum of Rs. 760 (Rupees Seven Hundred Crores) in favour of the Claimants and against the respondent towards general damages to compensate the Claimant for the loss suffered on account of the Respondent's breaches; such damages to include general damages for the loss of monetization of the built up area and on account of failing to handover possession upon termination subject to further enhancement of the amount as may be assessed at the time of evidence.

f) Pass an award in favour of the Claimant for the reference interest and Pendente lite interest @ 15 % per annum on all sums awarded:

g) Pass an award of Costs incurred by the claimants in the present arbitration proceedings and in connection therewith such costs to be assessed at the end of the proceedings:

h) Pass such further orders as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.



25. The appellant/developer/counter raised the following counter claims:-

“(i) Declaration that the purported notice of termination of the CA as null and void having no legal force;

(ii) Declaration that the termination of the Special POA as void *ab initio* and having no legal force or binding effect;

(iii) An award of specific performance in favour of the respondent and against the claimants to fulfill the obligations enshrined under the CA;

(iv) An award in the alternative for grant of award of specific performance for refund in favour of the respondent and against the claimants of a sum of Rs.35,95,00,000/- deposited by the respondents with the claimant as part performance of its obligations under the CA.

(v) An award in the alternative for the grant of award of specific performance directing the claimants to make payment of Rs.352023 lakhs (Rupees three thousand five hundred and twenty lakhs and twenty three thousand only) along with pendent lite and future interest @ 18% per annum which the respondent has been deprived of putting the amounts deposited as license fee and scrutiny fee to use in other gainful pursuits and has thus incurred losses;

(vi) Direct the claimants to pay the respondents an amount of Rs. 1050 crores towards damages for loss of estimated profit, business, good will and reputation of the respondent;

(vii) Direct the claimants to pay the respondent an amount of Rs.5,00,000/- towards reimbursement of litigation and arbitral costs;

(viii) Such other order as may be deemed just, fair and equitable.”

26. While discussing claim No.1, the Arbitral Tribunal held in paragraph No.31 (Page No.206 of the paper book) that the subject land was not free from encumbrances until 03.10.2012. It was held that there had been



a concealment of material facts by the respondents/claimants before entering into the collaboration agreement. The argument of the respondents/claimants that the dispute was only as regards 0.875 Acres which was a negligible portion of the total land was rejected and it was held that despite the dispute being with regard to 0.875 Acres, the respondents/claimants were nonetheless expected to disclose the said information to ensure that the appellant/developer/counter claimant was kept informed about the ongoing litigation so that license applications were filed after making requisite adjustments and modifications. The Tribunal then noticed certain misrepresentations made by the respondents/claimants in Paragraph No.33 (Page Nos.207 and 208 of the paper book). It was held that whereas it had been represented by the respondents/claimants that the subject land had been duly partitioned in the revenue record, a total area of 8.13125 Acres of the subject land was partitioned on two occasions i.e. on 21.07.2008 and 18.03.2011. As regards pending litigation, it was held that the respondents/claimants had represented that they had an unimpeachable absolute right, title and interest despite the fact that there was an ongoing litigation in respect of 0.875 Acres. It was ultimately held that the appellant/developer/counter claimant obtained unencumbered portion of the subject land effectively in the year 2012 i.e. almost 05 years after the execution of the collaboration agreement. Ultimately, in paragraph No.38 (Page No.209 of the paper book), it was held that the subject land was neither duly partitioned nor encumbrance free when the applications seeking grant of license were under scrutiny. On this aspect the following conclusion was arrived at:-



“39. From the above discussion, what bears is that the claimants representations regarding delivery of duly partitioned and unencumbered land were not veracious. The Tribunal cannot overlook the fact that the Claimants were aware of the critical requirement of handing over possession of free and unencumbered land, without which the obligations contemplated under the CA could not have been performed for several reasons explained hereinabove. In the Tribunal's view, the Claimants ought to have been more cautious when making such representations in the CA and should have ensured that the Respondent was kept fully informed about all material facts and matters concerning the subject land.”

27. As regards the appellant/developer/counter claimant, it was held that the subject land was partitioned and cleared of all encumbrances only in March 2011, before the final set of license applications was submitted in September 2011. It was held that the subject land was not entirely contiguous when the first three sets of license applications were filed but despite the same, licenses had not been obtained/granted after almost 17 years of the execution of the collaboration agreement. It was held that even after the withdrawal of the first set of applications in November 2008, the second set was filed in February 2010, i.e. more than one year after the said withdrawal despite the fact that as per the provisions of the collaboration agreement, endeavour had to be made to obtain a license within a period of one year from the date of execution of the collaboration agreement. Ultimately, the Tribunal concluded that even presuming that the timeline was not firm, it did not view the failure of the appellant/developer/counter claimant to obtain licenses in over 16 years as meeting the standard of best endeavours. Such observations continued against both sides. As regards termination of the collaboration agreement, it was held that even after the issuance of letter of



termination dated 14.05.2014, the respondents/claimants carried out transactions pertaining to the subject land on the basis that the collaboration agreement was still a valid and subsisting agreement. Certain financial aspects were also noticed by the Tribunal. It was ultimately held in paragraph No.93 (Page No.233 of the paper book) that termination of the collaboration agreement by the respondents/claimants on 14.05.2014 was not valid. A similar finding was recorded in paragraph No.96 (Page No.235 of the paper book) that the power of attorney could not have been revoked by the respondents/claimants in view of Section 202 of the Contract Act, 1872.

28. In paragraph No.100 (Page No.237 of the paper book), it was held by the Tribunal that the contractual project had failed owing to the failure of the respondents/claimants and the appellant/developer/counter claimant to fulfill their respective obligations under the collaboration agreement. In paragraph No.102 (Page No.237 of the paper book), it was concluded that the respondents/claimants were entitled to the handover of vacant and unencumbered possession of the land obtained by the respondents/claimants to them and claim No.1 was, therefore, allowed. The language is somewhat confusing but the intent is clear that it was held that the vacant and unencumbered possession of the subject land was to be handed over by the appellant/developer/counter claimant to the respondents/claimants. Under claims No.2 and 3, it was held that since the subject land was being handed over to the respondents/claimants, the release of the original title deeds into the exclusive custody of the respondents/claimants was both justified and reasonable. In Paragraph



Nos.105 and 106 (Page No.239 of the paper book), directions as regards handing over the title deeds were passed;

“105. The Tribunal notes that no prejudice will be caused to the Respondent by grant of the said relief to the Claimants as ultimately, the Claimants are the Land Owners of the Subject Land. In view thereof, the Tribunal declares that the Claimants are entitled to the release of the original title documents to the Subject Land currently held in joint custody in a locker with Corporation Bank, Sikanderpur Branch (0440), DLF City, Phase - 1, Gurgaon.

106. The Tribunal also issues a direction to the Respondent to do all acts and take all steps in order to release and handover to the claimants, unencumbered title deeds to the Land and further directs that in the event the Respondent fails to take such steps, the Claimants would be entitled to approach Corporation Bank, Sikanderpur Branch (0440), DLF City, Phase 1 Gurgaon directly for release and handover of the original title documents to the Claimants and for sole and exclusive custody thereof. Accordingly, Claim Nos.2 and 3 are allowed.”

29. Claims No.4 to 7 were rejected.

30. Coming to the counter claims, counter claim No.1 as regards specific performance of the collaboration agreement was rejected. Counter claim No.2 was allowed and the appellant/developer/counter claimant was held entitled to refund to Rs.35,95,00,000/- alongwith compound interest @ 12% per annum on the sum of Rs.26,96,25,000/- from the date of deposit i.e. 26.11.2007 till the date of realization.

31. Under counter claim No.3, the scrutiny fee etc. was allowed to be refunded and counter claim No.3 was partly allowed. Counter claim No.4 was rejected and under counter claim No.5, Rs.5,00,000/- was awarded as litigation expenses. It was ultimately held as under:-

“DISPOSITIVE SECTION



In summary, based on the foregoing discussion, Tribunal Orders, Declares and Awards as follows. For ease of reference, the Tribunal deems it appropriate to use the numbering from the corresponding paragraphs of the Statement of Claim, specifically referring to Para VII (Reliefs) where the claims are made. Similarly, for Counter Claims, numbering of corresponding paragraphs where reliefs are claimed are being used. In view of the same:

A. Claim No. a is allowed: The Tribunal declares that the claimants are entitled to handover of unencumbered and vacant possession of the land by the Respondent to them;

B Claim No. b is allowed: The Tribunal declares that the Claimants are entitled to release of the original title documents to the land currently held in joint custody in a locker with Corporation Bank, Sikanderpur branch (0440), DLE City Phase-I Gurgaon.

C. Claim No. c is allowed: The Respondent is hereby directed to do all acts and take all steps necessary in order to release and handover to the Claimants unencumbered Title Deeds to the Land. It is further declared that in the event of the Respondent's failure to take such steps, the Claimants would be entitled to approach Corporation Bank, Sikanderpur branch (0140), DLF City Phase-I Gurgaon directly for release and handover of the original title documents to the Claimants and for sole and exclusive custody thereof.

D. Claim Nos. d, e, f and g are rejected.

E. Counter-Claim Nos. (i), (ii) and (iii) are rejected. Declaration & Specific Performance of the Collaboration agreement cannot be granted to the Respondent at this point of time,

F. Counter-Claim No. (iv) is allowed: Claimants are hereby directed to refund the security deposit in the sum of R\$.35,95,00,000/- deposited by the Respondent, along with 12% compound interest on the sum of INR 26,96,25,000/- (interest bearing) from the date of deposit i.e., 26.11.2007 till the date of its actual realization;

G. Counter-Claim No. (v) is partly allowed: Claimants are hereby directed to pay interest at the rate of 10% per annum from the date of deposit of licence fee for first set of



licence application i.e. 10.12.2007 till the date of its refund i.e. 13.01.2009. Furthermore the claimants are directed to pay scrutiny fee of Rs. 29,94,250/-deposited by the respondent on 10.12.2007 alongwith interest at the rate of 10% per annum from 10.12.2007 till the date of its actual realization.

H. Counter Claim Nos. (vi) and (vii) are rejected.

I. In view of the findings recorded hereinabove, both the parties are to bear their respective costs

J. Both parties are directed to comply with the directions of the Tribunal within 30 days of receipt of this Award Signed, Sealed and Delivered to the respective parties on this 15th day of July 2024 at New Delhi.”

32. A perusal of the award shows that both sides were found to be at fault and it was not the case that only one side had been found to be at fault.

PROCEEDINGS THAT TOOK PLACE AFTER THE AWARD

33. After the award having been passed on 15.07.2024, an application for correction of the same was moved on 30.07.2024 (Annexure P-6 with Annexure A-1) by the appellant/developer/counter claimant. A petition under Section 9 of the 1996 Act (Annexure A-1) was moved on 12.08.2024. It therefore, means that when the Section 9 petition was moved, the application for correction of the award was pending. Why the Section 9 petition had to be moved is discernible from the petition itself. It has been mentioned that on 03.08.2024, time was granted by the learned Arbitrator to file reply to the application for correction (Annexure P-7). However, vide communication dated 05.08.2024 (Annexure P-8), a letter was received by the appellant/developer/counter claimant from the respondents/claimants to remain present in the Union Bank of India on 06.08.2024 for release of title deeds in compliance with the directions given in the award. Immediately, a reply dated 06.08.2024 (Annexure P-9) was issued stating that since there



were 13 claimants, it could not look into any communication by one of them and further that an application had already been moved for correction of the award. Respondent/claimant No.1, who had issued this letter, was also reminded of its liabilities under the award. It was also mentioned that an award could not be enforced except in accordance with the provisions of Section 36 of the 1996 Act and at that stage, the award was not enforceable. At the same time, a communication dated 06.08.2024 (Annexure P-10) was issued by the appellant/developer/counter claimant to the Manger of the Union Bank of India (earlier Corporation Bank) calling upon them to not permit anyone to operate the joint lockers without following the procedure.

34. On 27.08.2024, the respondents/claimants appeared before the Commercial Court, Gurugram and gave a statement that no reply to the petition under Section 9 of the 1996 Act was to be filed and the matter was accordingly posted to 05.09.2024 for arguments (Annexure A-4).

35. On 30.08.2024, the corrected award was passed making certain corrections in the title deeds etc.

36. On 02.09.2024, the joint locker was opened by the Bank upon the request of respondent/claimant No.1 and the title deeds were removed.

37. In the considered opinion of this Court, as has been observed in the preceding paragraphs also, this act of removal of title deeds was grossly illegal and the same calls for the highest level of condemnation and deprecation. Respondent/claimant No.1 acted as if the award had become final and that it was unilaterally authorized to get the lockers opened and remove the title deeds. At the cost of repetition, it needs to be reiterated that merely because the Tribunal had held that if the appellant/developer/counter



claimant did not act, the respondents/claimants were authorized to approach the Bank directly, would not mean that they could have directly approached the bank and get the lockers opened unilaterally and that too by initiating the process to open the lockers even before the expiry of 30 days from 15.07.2024. This finding was also subject to challenge. It was not open for respondent/claimant No.1 to abide by only one condition which was in its favour. The only remedy, in the considered opinion of this Court, was to approach the Court under Section 36 of the 1996 Act. It has to be borne in mind that there were obligations to be performed by both sides. The award is yet to be tested. It may be set aside under Section 34 of the 1996 Act or may be upheld. The parties should have waited and should have bound themselves by the law of the land rather than taking law into their own hands.

38. A lot has been argued on the maintainability of the petition under Section 9 of the 1996 Act. The basic stand taken by the respondents/claimants is that a losing side could never have instituted a petition under Section 9 of the 1996 Act. This argument, in the considered opinion of this Court, is completely devoid of merit because the findings returned in the award would show that it was not that one side had won and the other side had lost. There were claims and counter claims. Some claims were allowed whereas others were rejected. Same is the case with the counter claims. The argument that a petition under Section 9 of the 1996 Act could not have been maintained is, therefore, rejected. The very language of Section 9 of the 1996 Act says that a petition under Section 9 of the 1996 Act can be filed before the initiation of the arbitral proceedings, during its pendency and after the conclusion of the arbitral proceedings but



enforcement of the award. Admittedly, the arbitral proceedings had concluded, though not strictly because an application for correction of the award was pending. The enforcement had not happened and was in fact, not possible at that stage.

39. The argument, that a petition under Section 34 of the 1996 Act should have been filed, is also devoid of merit because first of all, the application for correction of the award was pending and the award was finally corrected on 30.08.2024. The communications of respondent/claimant No.1 with the Bank started in the first week of August 2024 which led to the filing of the petition under Section 9 of the 1996 Act. Even otherwise, once a remedy is provided, it would be open for a party to choose the remedy that best suits its needs. Law has not been enacted for any particular party to a *lis* and is equal for all.

40. Heavy reliance has been placed by the respondents/claimants on the judgment of the Bombay High Court in the case of ***Dirk India Private Limited*** (supra) wherein it was held that the petition under Section 9 of the 1996 Act filed by Dirk India Private Limited was not maintainable.

41. In the considered opinion of this Court, this judgment would not be applicable to the facts of the present case. In Dirk India's case, an agreement was entered into on 04.10.2000 between the Maharashtra State Electricity Board (MSEB) and Dirk India Private Limited (DIPL). It was provided in the agreement that Pulverized Fly Ash (PFA) generated from the Thermal Power Station of MSEB at Nasik would be transported to four hoppers which were to be constructed by DIPL at the site. The PFA was to be utilized by DIPL in its plant for the manufacture of concrete. The aim was to



protect the environment against the degrading impact of PFA. Disputes arose between the parties. The matter was referred to a Three Member Arbitral Tribunal. Award was passed on 31.03.2011 by which the claim of DIPL and the counter claim of Maharashtra State Electricity Generation Company Limited (MSEGCL) which was the successor in interest of MSEB were rejected. A petition under Section 34 of the 1996 Act was filed by DIPL. During the pendency of the arbitral proceedings, proceedings were also initiated under Section 9 of the 1996 Act. An order was passed in the said proceedings by a Division Bench of the High Court. After the award, DIPL filed an application under Section 9 of the 1996 Act. A preliminary objection was raised that since there was no award in favour of DIPL, a petition under Section 9 of the 1996 Act would not be maintainable. The Single Bench kept the issue of maintainability open and made an interim arrangement and by way of the said arrangement, permitted DIPL to lift around 1/3rd of the PFA in terms of the earlier interim order. Certain other directions were also passed. Two appeals were filed from the said order, one by DIPL and the other by MSEGCL. In the appeal filed by MSEGCL, the maintainability of the petition under Section 9 of the 1996 Act was questioned. While dealing with the appeals, the Division Bench of the Bombay High Court held that since DIPL had not got any award in its favour, the petition under Section 9 of the 1996 Act was not maintainable. It was held that holding that a petition under Section 9 of the 1996 Act would be maintainable after the passing of an arbitral award at the behest of DIPL, whose claim had been rejected, would result in perversion of the object and purpose underlying Section 9 of the 1996 Act.



42. In our considered opinion, this judgment would not apply to the facts of the present case because in the present case, firstly, arbitration was invoked by the respondents/claimants and not by the appellant/developer/counter claimant. Secondly, certain claims of the respondents/claimants were allowed whereas others were disallowed. Same was the case with the counter claims. It cannot, therefore, be even suggested that the claim of the appellant/developer/counter claimant had been rejected. In the case of *'Hindustan Construction Company Limited and Another Vs. Union of India and Others'* (supra) also, the judgment in *Dirk India's* case was noticed and commented upon in the same context. In fact, in the said judgment, it was held that even if an application under Section 34 of the 1996 Act had been filed, interlocutory orders under Section 9 of the 1996 Act could be passed:-

“36. Interpreting Section 9 of the Arbitration Act, 1996, a Division Bench of the Bombay High Court in *Dirk (India) (P) Ltd. v. Maharashtra State Power Generation Co. Ltd.* held that:

‘13. ... The second facet of Section 9 is the proximate nexus between the orders that are sought and the arbitral proceedings. When an interim measure of protection is sought before or during arbitral proceedings, such a measure is a step in aid to the fruition of the arbitral proceedings. When sought after an arbitral award is made but before it is enforced, the measure of protection is intended to safeguard the fruit of the proceedings until the eventual enforcement of the award. Here again the measure of protection is a step in aid of enforcement. It is intended to ensure that enforcement of the award results in a realisable claim and that the award is not rendered illusory by dealings that would put the subject of the award beyond the pale of enforcement.’



37. This being the legislative intent, the observation in NALCO that once a Section 34 application is filed, "there is no discretion left with the Court to pass any interlocutory order in regard to the said award..." flies in the face of the opening words of Section 9 of the Arbitration Act, 1906, extracted above.

38. Thus, the reasoning of the judgments in NALCO, and Fiza Developers & Inter-Trade (P) Ltd. being per incuriam in not noticing Sections 9, 35 and the second part of Section 36 of the Arbitration Act, 1996, do not commend themselves to us and do not state the law correctly. The fact that NALCO has been followed in National Buildings Construction Corpn. Ltd. v. Lloyds Insulation (India) Ltd. does not take us any further, as National Buildings Construction Corpn. Ltd. in following NALCO, a per incuriam judgment, also does not state the law correctly. Thus, it is clear that the automatic stay of an award, as laid down by these decisions, is incorrect. The resultant position is that Section 36—even as originally enacted—is not meant to do away with Article 36(2) of the UNCITRAL Model Law, but is really meant to do away with the two bites at the cherry doctrine in the context of awards made in India, and the fact that enforcement of a final award, when read with Section 35, is to be under the CPC, treating the award as if it were a decree of the court."

43. We also need to emphasize here that we are deciding the case mainly on first principles which would not require excessive reference to case law and we would fall back on the bare statutory provisions juxtaposed with the conduct of the parties.

THE IMPUGNED ORDER

44. Certain portions of the impugned order viz paragraphs 5, 12 to 18 and 24 need to be reproduced:-

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5. Upon notice, the respondents put appearance. Learned counsel for the respondents stated that they do not want to file any reply to the petition since only law point has involved.



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“12. After passing of the impugned award, an application under Section 13(1) of the Act seeking correction of clerical/typographical errors in the name and address of the respondent in the award dated 15.07.2024 passed by the learned Tribunal was moved on 30.07,2024. Notice of this application was issued by the learned Arbitral Tribunal to the respondents and their counsel vide email dated 03.08.2024. On 05.08.2024 a letter was written by respondent no.1 to the petitioner for requesting it to come to the bank for operating the locker and releasing the original title documents on 06.08.2024. On 06.08.2024, the petitioner replied to the said notice informing about the application moved for correction of typographical error in the Award and that the action of the respondent no 1 was premature before the expiry of time available to the petitioner to challenge the aforesaid Arbitral Award and simultaneously, a letter was also written by the petitioner to the Manager of the bank on 06.08.2024 asking them not to allow the operation of the lockers to the respondent no.1 in terms of the Award passed by the learned Arbitrator.

13. Thereafter during the course of arguments, certain additional documents were placed on file by the petitioner. Vide order dated 30.08.2024 passed by the learned sole Arbitrator, the application under Section 33 moved by the petitioner was allowed for changing the name and phrase of the petitioner as mentioned in the final award dated 15.07.2024. A copy of reply dated 02.09.2024 received from the bank by the petitioner was also placed on file. Copy of another letter dated 03.09.2024 written by the petitioner to the Chief Manager, Union Bank of India was also placed on file vide which the petitioner responded to letter dated 02.09.2024 written by the bank to the petitioner. During the course of arguments, it was also informed that the respondents have got released the title deeds from the bank on 02.09.2024. Further, learned counsel for the petitioner also placed on file copy of plaint of a suit filed by the respondents (herein) against the bank and petitioner titled as "Amit Gupta and others Versus Union Bank of India and Anr." seeking relief of injunction against it and the bank on the basis of the title deeds of the lands including the project land.



14. In the aforesaid factual position, it is to be seen whether the present petition filed by the petitioner under Section 9 of the Act after passing of the final Award by the learned Arbitrator can be allowed.

15. After hearing rival contentions and after appreciation of record of the case and after going through the various judgments relied upon by learned counsel for the parties, the court is of the considered view that the relief sought by the petitioner cannot be granted to it under Section 9 of the Act for the reasons given below,

16. First of all, as far as relief no. 1 relating to restraining the bank from releasing the title deeds in favour of the respondents is concerned, the same has already been done by the respondents In terms of award passed by the learned Arbitral Tribunal. The action of the respondents has been assailed by learned counsel for the petitioner arguing that after putting appearance the court in the present case, respondents have done so intentionally in an illegal manner and so the court should ask them to restore the aforesaid title deeds and deposit the same in the court and grant the other interim reliefs sought in the petition. He has argued that the Award passed by the learned Arbitral Tribunal could not have been executed during pendency of application under Section 33 of the Act seeking correction in the award relating to the name of the petitioner. Further, there was time remaining for the petitioner for challenging the impugned award and the respondents are also required to pay court fee/stamp duty on the value of the award for getting the same executed.

17. However, the court is unable to give any benefit of these arguments to learned counsel for the petitioner even though the respondents have acted in haste which is further corroborated from the fact that after getting the title deeds released from the bank they have instituted a civil suit on the basis of said documents. But keeping in view the nature of relief sought and scope of Section 9 of the Act post passing of award by the learned Arbitral Tribunal, it is to be seen whether the petitioner is entitled to the relief as claimed when even the learned Arbitrator had asked the parties to implement the award within 30 days.



18. As per the judgments referred to and relied upon by learned counsel for the respondents, the view taken by a Division Bench of Hon'ble Bombay High Court in *Dirk India Private Limited Versus Maharashtra State Electricity Generation Company Limited (supra)*, Hon'ble Delhi High Court in *Nussli Switzerland Ltd. Versus Organizing Committee Commonwealth Games (supra)*, *Technimont Private Limited and Another Versus ONGC Petro Additions Limited (supra)* and Hon'ble Karnataka High Court in *Smt. Padma Mahadev & Ors. Versus M/s. Sierra Constructions Private Limited (supra)* is that the scheme of Section 9 postulates an application for the grant of an interim measure of protection after the making of an arbitral award and before it is enforced for the benefit of the party which seeks enforcement of the award. An interim measure of protection within the meaning of Section 9(ii) is intended to protect through the measures, the fruits of a successful conclusion of the arbitral proceedings. A party whose claim has been rejected in the course of arbitral proceedings cannot seek its enforcement and so it is not entitled to an interim measure under this Act as even if the petitioner challenges the award under Section 34 of the Act and it may even succeed, still it will not pass an order decreeing the claim. The other judgment relied upon by learned counsel for the respondents also support the same view.

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24. In the light of discussion made above, the petitioner has failed to show a prima-facie case in its favour and balance of convenience is also not in its favour. So, it is not entitled to any interim measures under Section 9 of the Act. Accordingly, the present petition filed by the petitioner under Section 9 of the Act stands dismissed with no order as to costs. Memo of cost be prepared accordingly. File be consigned to record room after due compliance.”

A perusal of the aforesaid discussions/findings of the learned Commercial Court, Gurugram shows that the matter was not examined from the correct perspective. It was held that the Bank could not be restrained from



releasing the title deeds as the same had already been released. While noticing the arguments for restoring *status quo ante* as regards the title deeds, the learned Commercial Court, Gurugram duly observed that though the respondents/claimants had acted in haste which was further corroborated from the fact that after getting the title deeds released from the Bank, they had instituted a civil suit on the basis of the said documents, however, keeping in view the nature of relief sought and the scope of Section 9 of the 1996 Act, it was held that no relief could be given. The learned Commercial Court, Gurugram was also wrong in treating the appellant/developer/counter claimant to be a party whose claim had been rejected. It was, therefore, wrongly held that there was no *prima facie* case in favour of the appellant/developer/counter claimant. In the considered opinion of this Court, there could have been no better *prima facie* case in favour of a party. We, therefore, have no hesitation in holding that the impugned order is not sustainable and deserves to be set aside.

The reliance placed by the Commercial Court, Gurugram on Dirk India's case (*supra*) is erroneous for the reasons set out in the preceding paragraphs.

Learned Commercial Court, Gurugram also did not consider that action for return of the title deeds was initiated by the respondents/claimants even before the lapse of 30 days from 15.07.2024 despite the fact that they were aware that the Award was enforceable only as per the provisions of Section 36 of the 1996 Act and further, an application for correction of the Award had been moved, notice regarding which had been issued to them. Learned Commercial Court, Gurugram could not see through the ill intention



of the respondents/claimants and merely because they had already removed the title deeds, albeit in a grossly illegal manner, the learned Commercial Court, Gurugram merely put things at rest by observing that nothing could be done since the title deeds had already been removed. In our considered opinion, as has been observed above, the impugned order is, therefore, not sustainable.

SOME MORE ASPECTS

45. Another glaring fact which was brought to the notice of the Court, was that on 02.09.2024, a letter was written by the Union Bank of India to the appellant/developer/counter claimant (Page No.481 of the paper book), in which it was stated that respondent/claimant No.1 had informed the Bank that no notice of any application moved by the appellant/developer/counter claimant for correction in the award had been received by them and further no stay had been granted by any Appellate Court/Tribunal against operation of the lockers and the Bank had also not received any such orders from any Court. Notably, this letter was of 02.09.2024. A reply to this letter was given on the very next day i.e. 03.09.2024 by the appellant/developer/counter claimant (Page Nos.483 to 488 of the paper book). Very interestingly, in the affidavit of Ms. Mohini Chobey, authorized representative of M/s Orris Infrastructure Pvt. Ltd.-respondent-claimant No.1 (Page No.512 of the paper book) which was filed in support of the reply to the petition under Section 9 of the 1996 Act, it was submitted that in saying so, the Bank had in fact committed an error which was apparently a typographical error that no notice of any application for correction had been received. It was stated in the affidavit that the Bank had



clearly been informed as regards the application for correction having been moved as well as about the order dated 30.08.2024 having been passed. It is, therefore, manifestly cleared that the respondents/claimants not only committed an illegality but also tried to mislead the Court by filing an affidavit in which it was stated that the bank may have committed a *typographical error*. Such an attempt by the respondents/claimants is deprecated.

46. It is quite shocking to see the manner in which respondent/claimant No.1 and the Bank proceeded. Banks, in normal course, would not budge a centimeter without orders of the Court even where such orders are not required. However, in the present case, without there being any orders from the Court and treating the award to be final, the bank aided the respondents/claimants in opening the lockers which had to be jointly operated by the parties. We are constrained to note that all norms were thrown to the winds and the law was violated in the most brazen manner.

47. The argument that an award can never be modified under Section 34 of the 1996 Act and it can only be set aside is acceptable though the issue is pending before the Supreme Court of India. However, the award could have been set aside at the instance of either party and not only at the instance of the respondents/claimants. The direction regarding handing over of title deeds was a part of the award and, the said finding could also have been set aside. This aspect had to be borne in mind by the respondents/claimants and the Bank. It is apparent that they were conscious of the said fact as well but, still chose to ignore the same.



48. Admittedly, petitions under Section 34 of the 1996 Act have now been filed by both sides. That, however, does not mean that whatever has been done, has been done. Nobody can commit an illegality and get away with it, whatever be the case. No doubt, to balance the equities, even the petition/s under Section 34 of the 1996 Act would be required to be decided in a time bound manner so that the rights of the parties are not affected.

49. The argument that the respondents/claimants are willing to give adequate surety in the form of title deeds for Rs.197 Crores is devoid of merit. The award cannot be implemented in part at their instance and either the Award has to be implemented in its entirety or it has to go in its entirety. Whether an Award can be modified or not will again be a matter of discussion which only the relevant Court would decide while deciding the petitions under Section 34 of the 1996 Act.

50. The judgments referred to by both sides have been examined. However, in view of the discussion in the preceding paragraphs, we do not feel the need to make extensive reference to the judgments relied upon. The basic issues have been addressed and different judgments on a particular point are not required to be discussed.

51. In view of the aforementioned facts and circumstances, as have been discussed, the present appeal is allowed. The impugned order dated 09.09.2024 passed by Commercial Court, Gurugram is set aside. The petition under Section 9 of the 1996 Act is allowed and *status quo ante* is ordered to be restored. The respondents/claimants are directed to forthwith place back

