NON-REPORTABLE

2025 INSC 464

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6162 OF 2016

M/s. PARSVNATH FILM CITY LTD. ...APPELLANT

VERSUS

CHANDIGARH ADMINISTRATION & OTHERS ...RESPONDENTS

WITH

CIVIL APPEAL NO.10490 OF 2017

THE SECRETARY, INFORMATION TECHNOLOLGY, CHANDIGARH ADMINISTRATION ...APPELLANT

VERSUS

M/s. PARSVNATH FILM CITY LTD. & OTHERS ...RESPONDENTS

J U D G M E N T

NAGARATHNA J.

Two appeals, namely, Civil Appeal No.6162 of 2016 and Civil Appeal No.10490 of 2017, are disposed of by this common judgment.

Civil Appeal No.6162 Of 2016

2. The appellant in Civil Appeal No.6162 of 2016, M/s Parsvnath Film City Limited (hereinafter "appellant") has approached this Court against the impugned judgment of the High Court of Punjab and Haryana at Chandigarh in FAO No.5816 of 2015 (O&M) partially allowing the appeal filed by the respondents (i) Chandigarh Administration and (ii) the Secretary, Information Technology, Chandigarh Administration under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, "the Act"). The High Court, *vide* the impugned judgment, set aside the award of the Arbitral Tribunal dated 10.03.2012 and the order of the Additional District Judge, Chandigarh in Arbitration Case No.530 of 2013 dated 08.04.2015, thereby sustaining the respondent's action in forfeiting 25% of the bid amount, i.e. Rs.47.75 crores.

3. The respondents have filed Civil Appeal No.10490 of 2017 against the same impugned judgment on the ground that it did not allow the other claims raised by them, such as i) interest on delayed payment of Annual Ground Rent; ii) forfeiture of Rs. Five crores paid by the appellant towards the bid security; iii) recovery of performance security shortfall of Rs.Five crores

along with interest; and iv) recovery of other miscellaneous expenses.

4. Respondent Nos.3-5 in both these appeals are the members of the Arbitral Tribunal who have been added as only proforma respondents.

5. The facts of the case relate to the respondents deciding to establish a Multimedia-cum-Film City at Chandigarh. To that end, it published an advertisement dated 29.03.2006 inviting "Expression of Interest for Multimedia-cum-Film City" as an integrated project in Sarangpur, Chandigarh on a leasehold land admeasuring thirty acres. The project involved setting up of state-of-the-art facilities for i) a multimedia-cum-film centre; ii) a multimedia park; iii) a multimedia information-cum-entertainment centre; and iv) a multimedia college. The expression of interest complete in all respects was to be submitted on or before 28.04.2006. Out of the fourteen companies which submitted the expression of interest, six were selected, including the appellant herein. Consequent upon technical presentations and submission of technical bids, four companies were shortlisted, including the appellant herein. A copy of the Request for Proposal and the Draft Development

Agreement was sent to the appellant by the respondent on 24.11.2006.

6. On receipt of the same, a pre-bid meeting was held on 08.12.2006 and various clarifications were sought on the proposal, which were furnished by the respondents *vide* letter dated 15.12.2006. Thereafter, the shortlisted companies, including the appellant, submitted their respective bids, and since the offer of the appellant was the highest, the respondents issued letter of acceptance in favour of the appellant on 18.01.2007. In that letter, the appellant was asked to take steps for execution of the Development Agreement within a period of twenty days from the letter and to also arrange the upfront amount.

7. By letter dated 21.02.2007, appellant stated that they would sign the Development Agreement, but requested i) for demarcation of the project site, as without the same, they could not proceed with the work; and ii) preparation of the layout plan to be annexed with the Development Agreement. Thereafter, on 01.03.2007, appellant furnished 25% of the bid amount, i.e. Rs.47.75 crore, by way of Demand Draft.

8. On 02.03.2007, the appellant expressed its readiness to

sign the Development Agreement. However, as the final demarcation was yet not settled, it requested that:

i) The date of start of the development period be the date on which the final demarcation plan is issued to them; and

ii) The payment of next instalment due which was 75% of the bid price to be paid by the appellant within 90 days of signing of the agreement should be read as 90 days from the date the final demarcated plan was issued to them.

9. By a reply letter of the same date, the respondent had agreed to both the requests, and thereafter both the parties entered into the Development Agreement on the same date.

10. The provisions in the Development Agreement relevant to the case at hand are:

"Article 1: DEFINITIONS AND INTERPRETATIONS.

1.1. Definitions

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x(ix) Payment Schedule

Means the schedule as set out in Schedule IV hereto for payment of consideration by Developer to CA for right to participate in the development and operation of the Project.

l) Performance Security

Means the security to be provided by the Developer for performance guarantee to CA in the form of a Bank Guarantee of a Bank as per Article 10.12 hereof.

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Article 2: CONDITIONS PRECEDENT

2.1 CA may, in its sole option, terminate this Agreement and/or the Lease Agreement if the following conditions ("Conditions Precedent") are not (in the reasonable opinion of CA) achieved/fulfilled by the Developer before the expiry of six(6) Months after the Agreement Date or such extended date as may be permitted by CA:

2.1.1 If the Developer fails, refuses or is unable to provide the Bank Guarantee as contemplated in Article 10.12.1 hereof; or

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2.1.3 The Developer obtaining Approvals including environmental clearance from Ministry Of Environment and Forests.

2.2 If the Conditions Precedent are not fulfilled, the CA may agree to extend the time period required to fulfil the Conditions Precedent. In the event that the Condition Precedent in respect of the Approvals are not fulfilled, then the CA may (in its sole discretion) provide the Developer the time required to enable the Developer to obtain the Approvals, provided however that the Scheduled Project Completion Date shall automatically stand extended commensurately.

2.3 If any of the Conditions Precedent have not been fulfilled or waived in writing by the CA, then the CA may, at its sole option, without prejudice to its rights hereunder and under Applicable Laws, terminate this Agreement whereupon the amount paid towards Bid Price and Bid Security/ Performance Security (as the case may be) by the Developer to CA shall forthwith stand forfeited.

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2.5 The Leasehold Right of the Developer shall be deemed to have begun only on fulfilling the Conditions Precedent. Till then the Developer shall be deemed to be acting as a trustee and custodian of the Leasehold Land for and on behalf of the CA.

Article 3: GRANT OF RIGHTS TO THE DEVELOPER

3.1 Grant of Leasehold Right

3.1.1 Subject to the terms hereof, the CA. shall, before the expiry of 90 days after the date of execution hereof, grant to the Developer Leasehold Right upon and in relation to 30 acre of the Leasehold Land more particularly described in the Schedule II hereto, for a period of 99 (ninety nine) years from the date of signing the Leasehold Agreement as per the terms and conditions more particularly set out in Schedule VII hereto.

3.1.2 The right to access and use the Leasehold Land for a period of 99 (ninety nine) years shall be made available to the Developer by the CA free from all Encumbrances and occupations. ("Leasehold Right").

3.3 Development Period

3.3.1 The "Development Period" shall be a total period of 36 (thirty six) Months (including 30 [thirty] Months of construction period) starting from the Agreement Date. The Development Period includes (a) the period of 6 (six) Months starting from Agreement Date within which the Developer shall obtain all requisite Approvals including environmental clearance/s for the Project and (b) construction period of 30 (thirty) Months starting after the said 6 (six) Months period set out at (a) above within which the Project is to be completed by the Developer.

If delay is due to obtaining of environmental clearance then CA may in its sole discretion, upon satisfactory reasons for such delay being provided by the Developer allow extension by such further period as may be

deemed necessary by CA to accommodate the Developer's time-line to procure the said environmental clearance. In case of such extension, the construction period of 30 (thirty) months for development of the Project shall commence from the date of obtaining of environmental clearances.

3.3.2 Provided further that in the event of any delay attributable to the CA in handing over occupation of the Leasehold Land to the Developer, after payment of entire Bid Price, the said period of 36 (thirty six) Months shall be exclusive of the period of any such delay attributable to the CA. For the avoidance of doubts, the Developer shall be obliged to procure from CA a letter recording the date on which such hand over of Leasehold Land would have been effectuated by CA.

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ARTICLE 4: CONSIDERATION

4.1 As and by way of consideration for the CA granting the Development Right, the Developer shall pay to CA the following:

4.2 Annual Ground Rent

4.2.1 Annual Ground Rent (AGR) shall be the amount payable by the Developer to CA at the rate specified in Schedule IV annually in advance from the date of signing the Agreement till end of the Agreement Period. The Developer shall be required to pay the AGR yearly in advance (from the date of signing the agreement).

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4.3 Bid Price

4.3.1 Bid Price means the total amount payable by the Developer to CA i.e. Rs. 191,00,00,000/- [Rupees One hundred and ninety one crores only], being the consideration payable by the Developer for receiving the right to develop the Leasehold Land consistently with the terms hereof CA acknowledges receipt of amount of Rs. 47,75,00,000/- [Rupees Forty seven crore seventy

five lac only]… being a part of the Bid Price required to be paid upfront by the Developer. The Developer shall pay the balance and outstanding Bid Price to CA in accordance with the timelines specified in Schedule IV. Under no circumstances, except provided in this Agreement, the Bid Price accepted shall be altered and this is the essence of this Agreement.

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5.2 Obligations of the CA

In addition to any of its other obligations under this Agreement, during the Development Period, the CA shall;

i) grant to the Developer, the requisite permission(s) to develop the land required for the development of the Project. The Leasehold Land shall be made available to the Developer by Chandigarh Administration free from all Encumbrances and occupations.

ii) assist the Developer in obtaining Approvals required by the Developer in accordance with this Agreement; and

iii) make arrangement for provision of electricity supply, sewerage and drainages to be brought to the periphery of the Leasehold Land.

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5.4 Additional Conditions of Agreement

5.4.1 Leasehold Land Conditions

The Developer shall be deemed to have carefully studied the work and site conditions specifications, schedules and drawings and various other data and shall be deemed to have visited the site of the work and to have fully informed himself regarding the local conditions. Developer shall be deemed to have carried out his own surveys and investigations and assessment of site conditions.

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10.11.5 Delay in completion of the Project

In case of delay in achieving the completion of the construction of the Project within 36 (thirty six) Months from the Agreement Date and subject to satisfaction of CA for the reasons of such delay, the Developer may be allowed extension of 6 (six) Months to complete the development of the Project. If development of the Project is not completed within such extended period, then it shall be treated as Developer's Event of Default.

10.12 Performance Security

10.12.1 In order to ensure that the Project is developed within the stipulated period of 36 (thirty six) Months from the Agreement Date and the development of the Project is as per the provision of this Agreement and to facilitate compliance with the other applicable provisions of this Agreement, the Developer shall furnish to the CA, Bank Guarantee from any Bank through its branch at Chandigarh for an amount of Rs. 10 Cr. (Rupees Ten Crore only) within one Month from the date of execution of this Agreement.

10.12.2 Failure of the Developer to provide the Performance Security in accordance with this Agreement shall entitle the CA to forfeit the Bid Security amount paid and to terminate this Agreement in accordance with the provisions of Article 14.1.1 without being liable in any manner whatsoever to the Developer.

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10.12.6 The Developer undertakes that the Performance Security shall be payable immediately on demand and without the assertion of any defences on part of the Developer.

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ARTICLE 12: EVENT/S OF DEFAULT AND TERMINATION

12.1 The Developer Event of Default

12.1.1 A "Developer Event of Default" shall be deemed to have occurred if any of the following events has occurred, unless the same has so occurred as a consequence of a Force Majeure Event:

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ii) The Developer fails, neglects, refuses, or is unable to pay the consideration in accordance with the Payment Schedule indicated in Schedule IV.

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iv) The Developer repeatedly and persistently remains in breach of any of its obligations under this Agreement; or

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vi) The Developer fails to comply with any of the terms and conditions of the Lease Agreement.

ARTICLE 14: COMPENSATION

14.1 Compensation

14.1.1 Termination due to Developer Event of Default

If the Termination is due to a Developer Event of Default, no compensation shall be payable by the CA to the Developer. Bid Price along with Annual Ground Rent paid by the Developer shall be forfeited. The Security Deposit provided by the Developer shall be encashed by CA.

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ARTICLE 20: DISPUTE RESOLUTION

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20.3 Arbitrators

In the event of a Dispute arising out of or in connection with this Agreement not being resolved in accordance

with the provisions of Article 20.2 above. either Party shall be entitled to, by notice in writing ("Arbitration Notice") to the other Party, refer such Dispute for final resolution by binding arbitration in accordance with the Arbitration & Conciliation Act, 1996.

In case the dispute is referred to arbitration under the Arbitration and Conciliation Act, 1996 the arbitration shall be by a panel of three Arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. A Party requiring arbitration shall appoint an Arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its Arbitrator. If the other Party fails to appoint its Arbitrator, the Party appointing Arbitrator shall take steps in accordance with Arbitration and Conciliation Act, 1996, and subsequent amendments thereto.

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20.7 Enforcement Award

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto hereby waive, to the extent permitted by law, any rights to appeal or to review of such award by any court or tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgement upon the arbitral award may be entered in any court having jurisdiction thereof."

11. There were further communications between the appellant and the respondent over the next few months concerning the demarcation plan. Further, the appellant also requested, *vide* letter dated 14.02.2008, the respondent to remove two HT lines of 11KV each passing through the alignment where the project

was to be set up. It was only on 17.07.2008, i.e. after 16.5 months, that the demarcation plan was provided to the appellant. Due to considerable delay, appellant claimed *vide* letter dated 08.10.2008 to the respondent that their arrangements with various other associates for implementing the project was frustrated; that the project cost escalated; and that the market scenario had changed. Further, they claimed that i) the two HT lines were yet to be removed; ii) necessary infrastructure for the project was yet to be provided; and iii) the Zoning Plans were yet to be released by the respondent.

12. Thereafter, a High Level Committee was constituted by the respondent on 11.11.2008 where all the above issues mentioned by the appellant were discussed. It was unanimously decided that the Administrative Department would work out a proposal with regard to rescheduling of payments by the appellant.

13. As no further action was taken by the respondent despite the decisions made in the High-Level Committee meeting, the appellant declared the development agreement to have been frustrated and required the earnest money deposited to be returned to them with interest, *vide* letter dated 10.12.2008.

However, as there was no response from the respondent, it again sent a letter dated 01.12.2009 pointing out the works that were yet to be undertaken by the respondent, and invoked Clauses 20.1 and 20.2 of the Development Agreement to request the respondent to settle the issues amicably.

14. However, the respondent terminated the Development Agreement on 16.12.2009 on grounds that i) non-obtaining of environmental clearance; ii) failure of the appellant to file bank guarantee of Rs.Ten crores towards the performance security; and iii) non-adherence to payment schedule. It also forfeited the amount of Rs.47.75 crores which was earlier paid by the appellant.

15. Aggrieved, the appellant invoked the arbitration clause in Clause 20.3 of the Development Agreement. As the respondent refused to appoint an arbitrator, the appellant approached the High Court, and *vide* order dated 17.05.2010, the Arbitral Tribunal was constituted.

16. The appellant raised the following claims:

i) an amount of Rs.47.75 Crores paid by the claimants to the respondents towards 25% of bid

price;

ii) interest @ 9% above the prevailing Prime Lending Rate ("PLR") of State Bank of India on the amount of Rs.47.75 Crores from 01.03.2007 till the date of refund;

iii) compensation for all losses and damages suffered by the claimants due to breaches of contract. Commissions and omissions of the respondents along with interest thereon @ 9% above the prevailing PLR of State Bank of India;

iv) an amount of Rs.3,00,00,000 incurred by the claimants for works carried out/commissioned for the Project;

v) Claim for compensation for loss of profit/loss of opportunity;

vi) Claim for pre-suit, pendent-lite and future interest @ 9% above the prevailing PLR of State Bank of India on the above sums/disputes from the date the same were incurred till the date of payment thereof;

vii) Claim for litigation costs (as per actual)

17. The following counter-claims were raised by the respondents:

i) Declaration that the termination of the Development Agreement was valid;

ii) Forfeiture of the amount paid towards the bid price by the appellant to the respondents was valid;

iii) Claim for amount to be deposited by the appellant towards Annual Ground Rent as per the Development Agreement;

iv) Forfeiture of Rs.5,00,00,000/- paid towards bid security by the appellant to the respondents along with interest @ SBI PLR + 9% from 1.4.2007 till 15.9.2010;

v) Recovery of performance security of Rs.5,00,00,000/- from the appellant to the respondents due to non-performance along with interest @ SBI PLR + 9% from 01.04.2007 till date of payment;

vi) Interest on investment of Rs.4,50,00,000/- by the respondents in purchase of land for Film City project remaining unproductive till date due to non-performance of the claimants;

vii) Recovery of Rs.63,13,106/- spent as miscellaneous expenses for the said project along with interest @ SBI PLR + 9% p.a.;

viii) Claim on account of costs of arbitration;

ix) Claim for pre-suit, pendent-lite and future interest @ SBI PLR + 9% on the amount found payable;

18. Based on oral and documentary evidences and the arguments addressed by the learned counsel on both sides, the Arbitral Tribunal held as follows:

i) That on the date of signing of the Development Agreement, the final demarcation plan was not ready, and that without it, the appellant could not have finalised the layout plan for the project;

ii) That there was a delay of sixteen and half months in the issuance of demarcation plan by the respondents, and that the appellant cannot be held responsible for this delay;

iii) Respondents were not in a position to handover encumbrance-free land to the appellant, as required by the Agreement, as even the respondents had acknowledged that development

could not commence without the removal of HT lines;

iv) That till the finalisation of the demarcation plan, the appellant had no means to know whether or not the HT lines would be part of the project site;

v) That a perusal of the minutes of the meeting dated 11.11.2008 would categorically reveal that it was the respondents' own admitted case that they defaulted in providing encumbrance-free land to the appellant;

vi) That the provision concerning bank guarantee had to be read in context and that it presupposes the fulfilment of all obligations by the respondents within the period prescribed in the agreement. Since the respondents had not done so, the development period could not be said to have started;

vii) That the claimants were not responsible for the delay in obtaining environmental clearance since the respondents had not provided the requisite details;

viii) That without serving a notice under Article 12.2

of the Development Agreement, the respondents had no justification or contractual right to terminate the contract;

ix) Thus, the termination of the Development Agreement was illegal and *de hors* the provisions of the contract. Therefore, all consequential effect had to be borne by the respondents.

19. The Arbitral Tribunal awarded to the appellant:

i) Rs.47.75 crores as refund of the amount paid by it towards 25% of the bid price;

ii) 12% p.a. interest on the above sum of Rs.47.75 crores with effect from 01.03.2007;

iii) Rs.47,75,000 as compensation for all losses and damage suffered by the appellant;

iv) Rs.46,20,715 for works carried out/ commissioned for the project; and

v) 12% p.a. interest with effect from 16.12.2009 till date of payment on awards (iii) and (iv);

vi) Rs.50,00,000 towards litigation costs;

20. The Arbitral Tribunal also dismissed the counter-claims of the respondents as they were predicated on the same issues as

noted above.

21. Aggrieved, the respondent filed an application under Section 34 of the Act before the Additional District Judge, Chandigarh in Arbitration Case No.530 of 2013 for setting aside the award passed by the Arbitral Tribunal. However, the Court, *vide* order dated 08.04.2015 dismissed the application holding that it found no reason to interfere under section 34 of the Act. It held that, based on records, the non-complying of the requirements/conditions precedent and the non-adherence to the payment schedule by the appellant was due to non-fulfilling of obligations on the part of the respondents. It also considered the reasoning of the Arbitral Tribunal and observed that the aspect of non-depositing of bank guarantee towards performance security was never raised by the respondents by way of seeking the same from the appellant, which also showed that such a demand was not raised as the respondents were aware of the delay being due to their lapse. Further, it noted that as the schedule of the payment was agreed to be revised, it cannot be said that the condition regarding depositing of 75% of bid price was defaulted by the appellant.

22. Aggrieved by the aforesaid order, the respondent filed an

appeal under Section 37 of the Act in FAO No.5816 of 2015 (O&M) before the High Court of Punjab and Haryana. By the impugned judgment dated 17.03.2016, the High Court partially allowed the application, holding that the appellant had shown unwillingness to carry on with the work and that the said frustration of the contract would not fall within the provisions of section 56 of the Indian Contract Act, 1872, but would rather fall under Section 39 of the said Act, which deals with the effect of refusal of party to perform promise wholly. It observed that both the parties in the meeting dated 11.11.2008 had put their hands together to solve the issue by working out a proposal with regard to the rescheduling of the payments by the appellant, but within a month of that meeting, the appellant frustrated the agreement. That the respondents cannot be faulted in not issuing thirty days' advance notice before termination of the contract as it was the appellant who had shown unwillingness to carry on with the work. The Court further observed that the award of the Arbitral Tribunal granting compensation of Rs.46,20,715 was wrong as the appellant had not even "used the spade or dug a pit" and that such an award puts onerous obligation upon the respondents. It noted that the appellant gave the bid after inspecting the site

and was aware of the HT lines and therefore must have raised the issue before submitting the bid or ought to not have participated in the bidding. It held that the award of the Arbitral Tribunal was against public policy and that the Objecting Court ought not to have dismissed the application under Section 34 of the Act. It further observed that the appellant appeared to have not shown any interest in carrying out the work after submission of the bid, as the prices of the property had fallen, otherwise, till 11.11.2008, both the parties were at *ad idem* in solving the trivial issues. Therefore, it upheld the act of the respondent in forfeiting the earnest money. However, it made no mention of the other claims of the respondent.

23. Being aggrieved by the above judgment dated 17.03.2016 passed by the High Court of Punjab and Haryana in FAO No. 5816/2015 (O&M) in an appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act' for the sake of brevity) by which the order passed by the District Court in an application filed under Section 34 of the Act was set aside and consequently, Award dated 10.03.2012 passed by the Arbitral Tribunal was also set aside,

the claimant in the Arbitral proceeding is before this Court.

24. We have heard Shri V. Giri, learned senior counsel for the appellant(s) and Shri Krishna Kant Dubey, learned counsel for the respondent(s) and perused the material on record.

25. It is noted that the Arbitral Tribunal by its Award dated 10.03.2012 has firstly directed that the initial amount deposited by the appellant herein being Rs.47.75 crores, which was 25% of the total bid amount for Rs.191 crores, to be refunded with interest at the rate of 12% per annum w.e.f. 01.03.2007 till realisation. Secondly, a sum of Rs.47,75,000/- has been awarded as compensation for actual loss. Thirdly, a sum of Rs.46,20,715/- has been awarded towards actual expenses incurred by the appellant herein with interest at the rate of 12% per annum from 16.12.2009, that is, the date of termination till the date of realisation.

26. The said Award was affirmed by the District Court in an application filed by the respondent herein under Section 34 of the Act. It is the aforesaid Award which has now been set aside in the appeal filed by the respondent herein under Section 37 of the Act and hence this appeal has been filed.

27. It is also necessary to observe that the counter claim of the respondent was rejected by the Arbitral Tribunal as well as by the District Court and the High Court.

Reasons of High Court:

28. The reasoning of the impugned judgment to set aside the Arbitral Award dated 10.03.2012 and the order of the Additional District Judge, Chandigarh dated 08.04.2015 was on the basis that:

i. the appellant refused to perform their promise wholly by showing unwillingness to carry on with the work and that such unwillingness cannot fall within the four corners of section 56 of the Indian Contract Act, 1872;

ii. the appellant frustrated the agreement within just a month of the meeting dated 11.11.2018 wherein both the parties resolved to working out a proposal with regard to the rescheduling of the payments;

iii. the appellant must have raised the issue of HT lines before submitting the bid or ought to not have participated in the bidding process;

iv. the issues were trivial and both the parties were ad-

idem in solving them;

Consequently, the impugned judgment held the award to be against public policy and that the award puts onerous obligation upon the respondents.

29. We hold that the impugned judgment proceeded on a wrong basis and has wrongly set aside the arbitral award. We say so for the following reasons:

29.1 Firstly, the Development Agreement was executed between the parties on 02.03.2007. The entire project was based on a 'Right to Participate Model', where the entire cost of development of the Project with all related infrastructure and utilities was to be done under 'Develop-Build-Finance-Maintain-Operate' methodology. Article 3.3 of the Agreement provided for the development period which was "a total period of 36 (thirty six) months (including 30 [thirty] months of construction period) starting from the Agreement date". Further, this development period also included the period of six months within which the appellant had to obtain all requisite approvals for the project. As regards delay in obtaining environmental clearance, the Article allowed for extension due

to delay on the part of the appellant only on satisfactory reasons and subject to the discretion of the respondents. Article 3.3.2 governed a scenario where delay in handing over occupation of leasehold land to the appellant was attributable to the respondents but such a scenario would come into effect only after payment of the entire bid price. However, it obligated the appellant to procure a letter from the respondents recording the date on which such handing over of the leasehold land would be effected by the respondents. Further, Article 10.11.5 provided that if the project was not constructed within 36 months from the agreement date, the appellant would be allowed an extension of six months subject to the satisfaction of the respondents as regards the reasons for such delay.

29.1.1 A reading of the above provisions would indicate that time was of some essence to this project, unless, if the delay was attributable to the appellant, then such delay was to be acceptable to the respondents based on sufficient reason. If the delay was attributable to the respondents, then such delay was to be excluded from the period of 36 months, but the appellant was obligated to procure a letter from the respondents indicating the date on which the handing over of the leasehold

land would be effected.

29.1.2 In the present case, as noted by the Arbitral Tribunal and the District Court, the appellant had been requesting the respondents for the demarcation of the project site since 21.02.2007. On the date of signing of the Development Agreement, i.e. on 02.03.2007 when the period of 36 months was to begin, the respondents even agreed to the appellant's request that the date of start of the development period be the date when the final demarcation plan was issued to them. However, the demarcation plan was issued only on 17.07.2008, i.e. after an unreasonable delay of 16.5 months. In other words, the demarcation plan was issued just before half the period of 36 months was complete. The appellant could not have anticipated that there would be a delay of such duration in the mere issuance of a demarcation plan.

29.2 *Secondly*, the respondents were obligated under Article 5.2 of the Development Agreement to grant the appellant the leasehold land free from all encumbrances and occupations. On a perusal of the minutes of the meeting dated 11.11.2008 held between the appellant and the respondents, it could be observed that the respondents acknowledged that the two HT

lines had to be removed so as to provide encumbrance free land to the appellant. It is relevant to note here that there was no timeline provided for the same. Further, the minutes also provided that the Senior Town Planner had to release the revised zoning plan since the earlier zoning plan was not in accordance with the terms of the Agreement. However, for this action, the timeline provided was till 17.11.2008. Due to the delay in granting even the zoning plan, the appellant had requested for certain reliefs, including an interest amount of Rs.14 crore on the amount of Rs.47.75 crore from 01.03.2007 till 17.07.2008, i.e. the date of delivery of demarcation plan. This was agreed to by the respondents as well. Further, it was unanimously agreed that the Administrative Department would work out a proposal with regard to the re-scheduling of payments by the appellant. However, there was no definitive date provided therein. Despite such decisions being taken in the above meeting dated 11.11.2008, there was no further action even till 10.12.2008. Such non-action led the appellant to declare the agreement to have been frustrated.

29.2.1 If the above facts are read keeping in mind Article 3.3.2 of the Development Agreement, it would be clear that

there was a clear and unreasonable delay attributable to the respondents in handing over encumbrance free land to the appellant. Despite raising this issue several times, the respondents could not provide a definite date on which they would be able to deliver such encumbrance free land. Clearly, about 22 months had passed since the development agreement was signed between the parties, and the development period would have completed in another 14 months, had the respondents completed their obligations on time. In such a scenario, the appellant cannot be held to have shown unwillingness to carry on with the work, as held in the impugned judgment.

29.3 *Thirdly*, the project envisaged by the respondents was commercial in nature. The appellant was engaged after a process of competitive bidding. As there was a definite time period provided for in the Development Agreement to complete the project, the appellant would have had to engage the services of different professional agencies beforehand. All such sub-contracts would have been frustrated due to the delay attributable to the respondents. Further, due to the delay, the appellant would have to engage fresh services of these agencies,

the cost of which would only escalate with time. In these circumstances, the observations in the impugned judgment to the effect that both the parties, in the meeting dated 11.11.2008, resolved to working out a proposal with regard to the rescheduling of the payments and that the appellant frustrated this revised agreement within just a month of that meeting does not appear to be reasonable to us. The meeting dated 11.11.2008 was held not only regarding rescheduling of the payment. Rather, the conclusions arrived at in the meeting dated 11.11.2008 has to be viewed in the context of the terms of the Development Agreement and the commercial nature of the project. It was only when no progress took place despite a month having passed since the meeting that the appellant declared the development agreement to have been frustrated.

29.4 *Fourthly*, we find it unreasonable to agree with the observations of the impugned judgment that the appellant should have raised this issue before submitting the bid or ought to not have participated in the bidding process. Though, according to the Request for Proposal, the bidders shall be deemed to have conducted a due diligence exercise with respect to all aspects of the project, admittedly, the respondents noted

in the meeting dated 11.11.2008 that the two HT lines had to be removed so as to provide encumbrance free land to the appellant. It was resolved in that meeting that the matter would be taken up with the PSEB at the highest level.

29.5 *Fifthly*, the issues involved between the parties cannot be termed trivial. As noted earlier, time was of the essence in this project. Therefore, each day's delay in executing the project after signing of the Development Agreement had commercial consequences and struck at the heart of the Development Agreement. As the delay here extended to more than 16 months, the impugned judgment could not have termed the issues between the parties as trivial and that the parties were *ad idem* in solving them.

30. In the circumstances, we find that the High Court was not justified in setting aside the Arbitral Award dated 10.03.2012 and consequently, the order passed on the application filed under Section 34 of the Act. The reasons assigned for doing so in our view are not in accordance with law. Consequently, we find that the appellant herein is entitled to the sum of Rs.47.75 crores, being the initial deposit and Rs.46,20,715/- being the actual expenses incurred. However, the rate of interest awarded

at 12% per annum, we find, is on the higher side. In the circumstances, we modify the rate of interest to 8% per annum, while retaining the other directions. Having regard to payment of interest, we find that having regard to the fact that payment of interest has been ordered both with regard to initial deposit as well as on the actual expenses, the award of compensation for loss of Rs.47,75,000/- was not in order. In the circumstances, we modify that portion of the Arbitral Tribunal's award and hold that the appellant is not entitled to Rs.47,75,000/- as compensation for loss. The Arbitral Tribunal's Award dated 10.03.2021 is modified in the aforesaid terms and as a result, the order passed under Section 34 of the Act also stands modified *mutatis mutandis*. Consequently, the impugned order passed under Section 37 of the Act is set-aside.

31. As the Arbitral Award was passed as early as on 10.03.2012, we direct the respondent(s) to deposit/pay the amount on or before 30.06.2025 without driving the appellant herein for execution of the said Award. If the amount is not paid to the appellant on or before 30.06.2025, the interest shall be at the rate of 12% per annum instead of the reduced rate of 8% per annum.

32. The appeal is allowed and disposed of in the aforesaid terms. No costs.

Civil Appeal No.10490/2017:

We find no merit in this appeal. The same stands dismissed. No costs.

. . . . . J.
(B.V. NAGARATHNA)

. . . . . J.
(SATISH CHANDRA SHARMA)

NEW DELHI;
MARCH 20, 2025.