

\$~16(2022)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 16th February, 2022*

+ **ARB. A. (COMM.) 10/2022 and IA No. 2325/2022**

M/S RANDHAWA CONSTRUCTION
PVT LTD.

..... Appellant

Through: Mr Pragyan Sharma and Mr
Parmanand Yadav, Advocates.

Versus

M/S HCBS PROMOTERS AND DEVELOPERS
PVT LTD.

..... Respondent

Through: Mr Sankalp Goswami, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. (ORAL)

[Hearing held through videoconferencing]

1. The appellant (hereafter 'RCPL') has filed the present appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (hereafter 'the A&C Act') impugning a common order dated 15.12.2021 passed by the Arbitral Tribunal constituted of a Sole Arbitrator (hereafter 'the Arbitral Tribunal'). By the said order the Arbitral Tribunal disposed of five applications: two moved by RCPL on 04.06.2021 and 03.08.2021 (the appellant) and three moved by the respondent on 06.10.2021 and 13.09.2021 (hereafter 'HCBS').

2. Before proceeding further, it would be relevant to note the factual context in which the present disputes arise:-

2.1 On 11.06.2013, the parties entered into a Collaboration Agreement (hereafter 'the Agreement'). In terms of the Agreement, HCBS had agreed to develop an 'Affordable Residential Group Housing Complex' on the land owned by RCPL (land admeasuring 6.85625 acres located in Sectors 2 and 35, Tehsil Sohna, District Gurgaon). Further, in terms of Clause 2 of the Agreement, HCBS had agreed procure, at its expense, the requisite licenses, permissions, sanctions, and approvals from the competent authorities. It had also agreed to bear all costs and expenses for the Project. RCPL agreed to place the land owned at the disposal of HCBS and to grant HCBS "*all the authority of the OWNERS as may be necessary for obtaining the requisite licence, permissions, sanctions and approvals for development, construction and completion of the proposed complex*" on the subject land. It was agreed that the revenue generated from the sale of saleable residential area would be shared between HCBS and RCPL in the ratio of 72:28. The commercial area would be shared in the ratio of 86:14.

2.2 Thereafter, on 07.09.2013, 29.10.2013 and 08.11.2013, three Addendum Agreements were executed between the parties, in addition to the Agreement.

2.3 Pursuant to execution of the Agreement, HCBS was granted the Letter of Intent dated 04.12.2013. Thereafter, on 11.06.2014, the license for development of the said land was issued by the Directorate of Town

and Country Planning (DTPC), Haryana and the building plans were approved on 01.10.2014.

2.4 In terms of the Agreement, the parties entered into an Escrow Agreement dated 02.07.2015 (with respect to account no. 000280200000419) with Yes Bank Ltd., for receipt of all the proceeds received from the sale of the apartments (hereafter the 'Escrow Agreement').

2.5 RCPL claims that pursuant to a request made by HCBS, it paid an advance of ₹2,07,66,666/- to HCBS and to the contractor engaged by HCBS (M/s Millennium Engineers Ltd.) to develop the housing complex as HCBS was facing financial constraints.

2.6 The Real Estate Regulation Act, 2017 (hereafter 'RERA') came into force on 01.04.2017. In view of the same, HCBS, by a letter dated 09.05.2017, requested RCPL to revise the Escrow Agreement in accordance with Section 4(2)(I)(D) of the RERA and to provide for deposit of 70% of the amount realized for the Project from the allottees in a separate bank account to be maintained with a scheduled bank to cover the costs associated with construction and the land. RCPL claims that the same was unnecessary as the amounts were already being deposited in an earmarked escrow account.

2.7 Thereafter, by a letter dated 13.12.2017, HCBS informed the petitioner that out of the payment received from the clients and customers in the escrow account, (a) 10.714% was being transferred to HCBS Sports Ville Statutory Dues account; (b) the balance amount was

being transferred to the HCBS Promoters and Developers Private Limited Sports Ville collection in RERA account number ending with 000266300000506; and (c) the amount received in the HCBS Promoters and Developers Private Limited Sports Ville collection RERA account number ending with 000266300000506 would be transferred in accordance with the stipulated share allocations stated out in the Agreement, to the respective accounts of the parties.

2.8 RCPL alleges that in the month of July, 2018, it came to know that HCBS had, without its consent, diverted the funds from its existing escrow account no. 000280200000419 to another account no. 000280200003755 maintained with Yes Bank Ltd.

2.9 By a communication dated 23.07.2018, RCPL sought explanation for the same from HCBS. HCBS responded to the aforesaid communication on 24.07.2018 and stated that it was following the same procedure as before.

2.10 Thereafter, on 07.08.2018, HCBS through its representative sent a collection summary to RCPL. RCPL alleged that an amount of ₹75,09,332/- was payable by HCBS, in addition to the amounts that had already been transferred from one escrow account to the other and the amounts deposited in the non-escrow account.

2.11 In view of the disputes between the parties, RCPL issued a legal notice dated 12.09.2018 and called upon HCBS to revert all payments received under the Project, which were made to the personal/other account of HCBS and to ensure that in the future, all further payments

were transferred to the escrow account and allocated as per the share allocation of the parties as contained in the Agreement. RCPL states that the said notice did not invoke any response from HCBS.

2.12 RCPL has also averred that in the year 2019-2020, HCBS had changed the layout plan of the Project without its consent and shifted the areas allocated for the commercial activities, to the stilt areas of the Project. And, the same has resulted in causing huge losses to RCPL. It is further alleged that HCBS had encroached on an area of approximately 500 sq. meters. of adjoining land belonging to the petitioner, and constructed a park thereon.

2.13 RCPL also alleges that several attempts were made by it to reconcile the accounts with HCBS, however, such attempts were in vain. Since the Escrow Agreement had expired on 31.03.2020, the same was extended till 31.03.2021.

2.14 HCBS received the Occupation Certificate in respect of the Project on 04.06.2020.

2.15 Thereafter, HCBS, by a communication dated 18.06.2020, informed RCPL that it had undertaken overall reconciliation of the accounts, sold the inventory and demarcated the units to be allotted to RCPL. HCBS further called upon RCPL to refund the security deposit of ₹31 lacs paid by it, as according to it, no sum was payable to RCPL as the units had been allotted to it. RCPL responded to the aforesaid communication by its emails dated 19.06.2020 and 06.08.2020 and requested HCBS to settle the disputes.

2.16 RCPL alleges that in the month of January, 2021, it became aware that HCBS had sold more than a hundred housing units/apartments, without crediting the payment in the designated escrow account, as stipulated in the Escrow Agreement and Agreement.

3. In view of the disputes, RCPL filed a petition under Section 9 of the A&C Act [being OMP (I) COMM 27/2021] seeking interim relief. This Court, by an order dated 25.01.2021, directed HCBS to ensure that all amounts received from the Project, under all heads including, *inter alia*, amounts paid by the allottees of the housing units, are credited into Escrow Account no. 000280200000419, held with Yes Bank. This Court further restrained HCBS from receiving the funds in any other account. HCBS had filed a reply seeking vacation of the aforementioned *ex-parte* interim order.

4. By an order dated 25.03.2021, this Court disposed of the said petition. This Court appointed the Sole Arbitrator to adjudicate the disputes between the parties and directed that the reply filed by HCBS be treated as an application under Section 17 of the A&C Act before the learned Arbitrator.

5. On 04.05.2021, RCPL filed a Statement of Claims before the Arbitral Tribunal which it termed as “Preliminary Arbitration Claim”. The prayers made by RCPL in its Statement of Claims are relevant and set out below:-

“A. Rendition of accounts (As already prayed for in the application under section 17 of the Act).

B. Payment of a sum amounting to Rs. 20 Crores (In Estimation to the share of the claimant in the sale proceeds in accordance with clause 15 of the collaboration agreement).

C. Allotment of 27% commercial FAR of the entire available Commercial FAR with the consent of the claimant.

D. Return of the land earmarked for commercial FAR construction and not utilised for the same by the respondent.

E. Compensation for Non-Construction of the Commercial FAR at the designated site to the extent of Rs. 3 Crores

F. Compensation for money saved by the respondent for non constructing the Commercial FAR at the designated site to the extent of Rs. 2.25 Crores.

G. Return of possession of the land encroached (580 Sq metres i.e. 1 Kanal 04 Marlas) upon by the respondent with continuous unfettered access from inside the project to the encroached land and/or in the alternative a sum of Rs. 1,55,00,000/- (Rupees One Crore Fifty Five Lacs Only) as compensation for the same.

H. Award of interest @ 18% per annum on a sum of Rs. 2,07,66,666/- (Two Crores Seven Lacs Sixty-Six Thousand Six Hundred Sixty-Six Only) w.e.f from 01.02.2019 upto the date of the grant of occupation certificate i.e. 04.06.2020 i.e. a total sum of Rs. 52,95,499/- (Rupees Fifty-Two lacs Ninety-Five Thousands Four Hundred Ninety Nine Only).

I. Award Cancellation and/or direct the respondent to cancel the allotments issued to the near and dear ones of the respondent and/or where the customers have not made complete payments despite having received offer

of possession and/or demands for possession and have not taken possession upto today. Especially those where the customers have not made the payment of more than 40% of the amount and have not come forward to make the payments.

J. Direct the respondent to continuously comply with the terms and conditions of the collaboration agreement until the entire sale consideration and the sums due towards the claimant are not received from the sale of the apartments and also the completion certificate of the project is not received by the respondent.

K. Pass an award to the effect that the fourth addendum dated 20th January 2016 and the Letter Dated 24th May 2016 allegedly relied upon by the respondent are illegal, null and void ab-initio and not binding upon the rights of the claimant in any manner whatsoever.

L. Compensation to the tune of Rs. 5 Crores for mental agony, harassment and non-compliance of the terms and conditions of the collaboration agreement.

M. With any other order which this Hon'ble Tribunal may deem fit and proper be also passed in favour of the claimant and against the respondent.”

6. HCBS contested the aforesaid claims and filed its Statement of Defence on 24.05.2021. It had also raised counter claims before the Arbitral Tribunal.

7. Thereafter, on 04.06.2021 and 03.08.2021, RCPL filed applications before the Arbitral Tribunal to direct HCBS to place on record certain documents/data and provide information in response to the interrogatories sought by RCPL.

8. On 10.07.2021, the Arbitral Tribunal disposed of RCPL's application (which was filed before this Court as a petition under Section 9 of the A&C Act) under Section 17 of the A&C Act. The Arbitral Tribunal modified the interim order dated 25.01.2021 passed by this Court and, *inter alia*, restrained the parties from creating any charge on commercial space of the subject complex by way of sale, mortgage, lien, lease etc. till further orders were passed by the Arbitral Tribunal.

9. Aggrieved by the aforesaid order passed by the Arbitral Tribunal on 10.07.2021, HCBS filed an appeal under Section 37 (2) (b) of the A&C Act [being ARB A. (COMM) 43 of 2021], *inter alia*, impugning the direction restraining the parties from selling, transferring or encumbering the commercial space.

10. By an order dated 08.09.2021, this Court set aside the order passed by the Arbitral Tribunal to the extent that it interdicted the parties from dealing with the commercial space in the Project and remanded the matter back to the Arbitral Tribunal.

11. Thereafter, on 13.09.2021, HCBS filed an application before the Arbitral Tribunal seeking directions in terms of the order dated 08.09.2021 passed by this Court. HCBS prayed that directions be issued to RCPL to demarcate 27% of the commercial area of its choice and pass injunction/stay only *qua* the said 27% of the commercial area demarcated in terms of the order dated 08.09.2021 passed by this Court.

12. On 06.10.2021, HCBS filed two applications before the Arbitral Tribunal seeking to (i) amend the Counter-claims to include a claim on account of refund given to the customers in case of cancellations, which amounted to ₹17,71,402/- along with interest; and (ii) directions be passed to RCPL to comply with the Affordable Housing Policy and pay 27% of the share in respect of refunds made to the customers on cancellation of bookings amounting to ₹40,28,474/-.

13. By the impugned order, the Arbitral Tribunal, *inter alia*, directed as under:

“(ii) The claimant is given option to identify 27% of the commercial FAR of the project within two weeks and communicate his choice in writing to the Tribunal and the respondent / his counsel and that the respondent shall be restrained from creating any charge on the aforesaid 27% FAR of the commercial space by way of sale, mortgage, lien etc. It is clarified that the respondent shall be at liberty to deal with the remaining FAR of the commercial space.

(iii) In order to balance the equities, the claimant, if he so desires, is given option to split the 27% opted by him in two parts, namely, first preference 14% and second preference 13%. In that eventuality, the claimant shall be entitled to transfer or sell or deal with first preference 14% in any manner whatsoever but the parties shall be restrained from creating any charge on the second preference 13% commercial space by way of sale, mortgage, lien etc.”

14. Thereafter, on 30.12.2021, RCPL requested the Arbitral Tribunal to grant it further two weeks' time to comply with the impugned order. However, HCBS, by an email dated 05.01.2022, communicated to RCPL that they were “*treating the earmarking of 27% commercial area*

given by you in the email dated 21.06.2021 as final and shall be proceeded accordingly”.

15. RCPL filed the present appeal assailing the impugned order and praying as under:

“A. Allow the present appeal and set aside the impugned order dated 15.12.2021;

B. Allow the Prayer B, C and D of the appellant in its application under Section 17 of the Act, thereby directing the following:

(i) Restrain the respondent from transferring or alienating or receiving a booking in respect of the any apartment or commercial shop or any other charge in respect of the apartments without the permission of this Hon'ble Court.

(ii) Appoint a Forensic Auditor to audit the accounts of the entire project and the entire accounts books of the respondent in the interest of justice.

(iii) Direct the respondent to handover all the details of all the customers whether live or cancelled, all/ any amount received from all the customers, details of interest charged from the customers, details of unsold flats etc.

C. Allow the application dated 03.08.2021 of the claimant to seek the documents praying for the documents as detailed therein.

D. Dismiss the application dated 13.09.2021 of the respondent on account of the forgery committed while obtaining the changed building plan approval of commercial component and restrain the respondent from alienating any part of the commercial component owing to such acts;

E. Restrain the respondent from receiving any monies out of the escrow account so that the claims of the claimant could be protected and are not vitiated in any manner;

F. Direct the respondent to furnish Bank guarantee to protect the claim amount of the claimant i.e. Rs. 25 Crores owing to the worsening financial condition of the respondent and the respondent fast selling all its assets i.e. apartments.

G. With any other order which this Hon'ble Court may also pass as considered just fit, proper and expedient in the circumstances of the case.”

Submissions

16. Although several prayers have been made, the learned counsel appearing for RCPL has assailed the impugned order on two fronts. First, he submitted that the Arbitral Tribunal had grossly erred in permitting HCBS from dealing with the commercial space (other than 27% to be demarcated by RCPL) as the Arbitral Tribunal had failed to consider that HCBS had obtained an approval of the changed building plan with respect to the commercial component, by committing forgery.

17. Second, he submitted that the Arbitral Tribunal had erred in not allowing RCPL's application for providing necessary documents and the necessary access to software. He submitted that the Arbitral Tribunal had failed to appreciate that the documents necessary for adjudication of the dispute were not provided to RCPL.

Reasons and Conclusion

18. At the outset, it is relevant to note that the appellant had initially filed an application under Section 9 of the A&C Act before this Court

seeking the following reliefs [as noted by this Court in the order dated 25.01.2021 passed in OMP(I)(COMM) 27/2021]:

“A. Direct the respondent to ensure that all the funds received in respect of the project from the customers in all heads must be credited to the escrow account No. 000280200000419 held with Yes Bank under the escrow agreement and restrain the respondent from receiving the funds in any other account other than the escrow account during the pendency of the present proceedings;

B. Restrain the respondent from transferring or alienating or receiving a booking in respect of any apartment or commercial shop or any other charge in respect of the apartments without the permission of this Hon'ble Court.

C. Appoint a Forensic Auditor to audit the accounts of the entire project and the entire accounts books of the respondent in the interest of justice.

D. Direct the respondent to handover all the details of all the customers whether live or cancelled, all/any amount received from all the customers, details of interest charges from the customers, details of unsold flats etc.

E. Direct the respondent to remove the encroachment from the land of the petitioner as reflected in Red colour in the map.

F. Direct the respondent to provide the petitioner with the copies of the consent letter of the respondent received from the customers in respect of the change of the location of the commercial part of the project.

G. With any order which his Hon'ble Court may also pass as considered just fit proper and expedient in the circumstances of the case.”

19. This Court had noted the rival contentions and had passed an *ad interim* order, *inter alia*, directing that all amounts received from the project be credited into the Escrow Account No. 000280200000419 maintained with Yes Bank Ltd. In addition, the Court had directed that any booking of the housing unit by HCBS would be at its own risk and would abide by the outcome of the proceedings.

20. It is important to note that this Court had not granted any blanket stay restraining HCBS from dealing in the commercial space. HCBS filed a detailed reply contesting the allegations made by RCPL and sought vacation of the said *ad interim* order. As noted above, this Court disposed of the stay petition under Section 9 of the A&C Act by directing that the same be treated as an application under Section 17 of the A&C Act.

21. The said application was heard and disposed of by the Arbitral Tribunal by an order dated 10.07.2021. The operative part of the said order reads as under:

“19. In view of the discussion above, in order to balance the equities and to protect the rights of the respective parties, the interim order dated 25.01.2021 is modified and the modified order shall read as under:

(i) Respondent is directed to ensure that all amounts received from the allottees of the housing units excluding (a) Meter Charges, (b) Security Deposit, (c) Cess, (d) Interest free maintenance security, (e) Common area maintenance charges, (f) Electricity consumption

charges, (g) VAT, (h) GST and other taxes payable to the Government shall be credited into Escrow account No. 000280200000419 with the YES Bank provided that the respondent shall maintain upto date accounts of the above referred excluded charges received from the allottees and produce the same whenever required.

(ii). Both the parties are restrained from creating any charge on commercial space of the subject complex by way of sale, mortgage, lien, lease etc. till further orders.”

22. It is clear from the aforesaid order that other reliefs sought by RCPL including the appointment of a forensic auditor; removal of alleged encroachment; and directions to provide documents, were not granted at that stage.

23. The controversy at that stage related to the directions regarding stay of commercial space. The Arbitral Tribunal had restrained both the parties (HCBS and RCPL) from selling, transferring or encumbering the commercial space as the exercise to demarcate the space with respect to share allocation of the respective parties had not been carried out. In addition, there was also a dispute whether RCPL is entitled to 14% of the total commercial space as contended by HCBS or 27% as claimed by RCPL.

24. RCPL did not prefer any appeal against the order dated 10.07.2021 passed by the Arbitral Tribunal. However, HCBS being aggrieved by the Arbitral Tribunal’s direction restraining it from selling or dealing with the commercial space, filed an appeal under Section 37(2)(b) of the A&C Act [ARB.A.(COMM)43/2021].

25. In the said appeal, it was contended by HCBS that it could not be interdicted from selling any part of the commercial space as RCPL's share was limited to 14%. However, RCPL had claimed 27% of the total commercial space. Thus, in any event transactions in respect of not more than 27% of the total commercial space could be interdicted. HCBS made a concession allowing RCPL to demarcate 27% of the total commercial space (except that area, which had already been sold) as that would address any controversy regarding lack of mutual agreement for allocation of any commercial space amongst the parties. Since HCBS had also accepted that 27% of the total commercial space as earmarked by RCPL would not be dealt with, the dispute as to whether RCPL's share was 14% of the total space or 27% was rendered irrelevant at the interim stage. Since these were the only reasons that persuaded the Arbitral Tribunal to interdict sale of any part of the commercial space in terms of the order dated 10.07.2021, the interim order granted by the Arbitral Tribunal required to be modified accordingly. However, at that stage, the learned counsel appearing for RCPL submitted that there were certain other grounds, which were not stated in the order dated 10.07.2021 that had persuaded the Arbitral Tribunal to grant a blanket order restraining the parties from selling the commercial space. In view of the statement, this Court set aside the order dated 10.07.2021 to the limited extent that the Arbitral Tribunal had interdicted any transaction in relation to the commercial space in access of 27% of the total commercial space and remanded the matter to the Arbitral Tribunal to consider afresh after taking into account the concession made by HCBS.

26. The order dated 08.09.2021 passed by this Court in Arb. A.(Comm) 43/2021 is set out below:

1. The appellant (hereinafter 'HCBS') has filed the present appeal impugning an order dated 10.07.2021 passed by the Arbitral Tribunal. HCBS further prays that the said order be modified to the extent that both the parties be restrained from creating any charge on 14% of the commercial space or in the alternate that the parties be restrained from creating any charge on 27% of the commercial space chosen by the respondent (hereinafter 'RCPL').

2. The parties had entered into a Collaboration Agreement dated 11.06.2013 whereby HCBS had agreed to develop the land owned by RCPL in accordance with the Affordable Group Housing Policy, which was expected to be notified at the material time. It is admitted that in terms of the Collaboration Agreement, the parties agreed that certain land owned by RCPL would be developed by HCBS. Such development would be in two parts; one a residential complex and the other a commercial space. The controversy in the present appeal is limited to the sharing of the commercial space.

3. The Arbitral Tribunal had restrained the parties from dealing with the commercial space in any manner on the ground that the parties had not allocated the specific space amongst themselves. In addition, there was also a dispute as to whether RCPL is entitled to 14% of the commercial space or 27% of the same. The relevant extract of the impugned order that notes the aforesaid controversies is set out below:

“11. Learned counsel for the respondent has also submitted that while obtaining the ex parte interim order under Section 9 of the 1996 Act,

the claimant has suppressed from the Court that so far as commercial portion of the project is concerned, it was to be shared between the parties in the ratio of 14 : 86 between the claimant and the respondent and as a result obtained undue advantage on the basis of sharing agreement pertaining to the residential portion which is in the ratio of 27 : 73.

13. Learned counsel for the respondent has referred to clause 16 of the Development Agreement and contended that on perusal of the said clause, it is clear that commercial space in the complex was to be shared between the parties in the ratio of 14 : 86. Therefore, the ex parte order dated 25.01.201 passed by the Hon'ble High Court of Delhi directing the respondent to ensure that amounts paid by the allottees of the housing unit is detrimental and unjust qua the respondent because as per the Escrow agreement, the amount credited into the relevant account held with YES Bank is automatically transferred to the accounts of the claimant and respondent in the ratio of 28 : 72 [Sic rect 27:73].

14. On the contrary, learned counsel for the claimant has contended that sharing of the claimant in commercial FAR was agreed to be reduced from 27% to 14% owing to representation of the respondent that he would maintain project free of cost "for a period of five years from the date of completion of the project" which is reflected from the conjoint reading of clause 5 and clause 16 of the Development Agreement. It is contended that respondent, however, has charged meter charges, security deposit, cess, interest free maintenance security, common area maintenance charges and

electricity consumption charges from the allottees, which not only includes common area maintenance charges but also "IFMS" and other maintenance related charges. Thus, there can be no doubt that respondent is not entitled to the concession given regarding commercial FAR by reducing the claimant's share from 27% to 14%.

15. The above dispute regarding claimant's share of FAR of commercial space relates to the merit of the case and I do not find it advisable to dwell on the same at this initial stage."

4. HCBS states that it has no objection if RCPL earmarks 27% of the total commercial space (except the area that has already been sold) and, the said commercial space is preserved till the disputes are decided. It is contended on behalf of HCBS that there is no ground to restrain HCBS from dealing with its share of the commercial space. The controversy as to the lack of mutual agreement regarding allocation of a particular commercial space would not survive in view of HCBS's decision to yield to the demarcation as made by RCPL.

5. This Court is, *prima facie*, of the view that in view of the concession made by HCBS permitting RCPL to demarcate the commercial space that it would claim as part of its share, the question that the parties have not been able to arrive at a mutual agreement regarding the same, can no longer be a ground for restraining HCBS from entering into any transaction in respect of the commercial space falling to its share.

6. Mr Sharma, learned counsel appearing for RCPL has also stated, on instructions, that RCPL would be willing for modification of the impugned order subject to the condition that RCPL be joined as a signatory to any agreement relating to the sale of the commercial

space that falls to the share of HCBS. HCBS is not agreeable to the same. This Court is also of the view that such a condition is clearly unreasonable as RCPL's interest in the commercial space is limited to its allocation. Once HCBS is willing to earmark sufficient space to satisfy RCPL's claim with regard to the commercial space, if RCPL succeeds before the Arbitral Tribunal, there appears to be no reason for RCPL to join as a signatory to such agreements.

7. The learned counsel appearing for RCPL now states that there are other grounds as well on which the sale of the commercial space is required to be interdicted. Although the Arbitral Tribunal had not specifically dealt with the same, it is contended that the Arbitral Tribunal had passed the impugned direction interdicting the parties from dealing with the commercial space keeping the aforesaid grounds in mind. This Court does not find much strength in the aforesaid contention. Nonetheless, since it is contended that there are other unstated grounds on which the Arbitral Tribunal had interdicted the parties from dealing with the commercial space in the project in question, this Court considers it apposite that the said contentions be considered by the Arbitral Tribunal in the first instance.

8. Accordingly, this Court sets aside the impugned order to the extent that it interdicts the parties from dealing with the commercial space in the project and remands the matter to the Arbitral Tribunal to consider afresh after taking into account the concession made by the HCBS in these proceedings.

9. The appeal is disposed of in the aforesaid terms.”

27. Before the Arbitral Tribunal, RCPL contended that HCBS was suffering a financial crunch and if it was permitted to dispose of the

commercial area, it would frustrate RCPL's claim, which was approximately ₹25 crores and the said claim could increase further on conciliation of accounts. RCPL further alleged that the plans regarding the commercial space had been changed by the promoter of HCBS (Mr Bhupinder Singh) by submitting forged documents before the Department of Town and Country Planning, Haryana.

28. The Arbitral Tribunal considered the rival contentions and concluded that *“blanket stay order in relation to the commercial space would be unjust because it would block the source of revenue to the respondent (HCBS) resulting in the financial crunch and irreparable loss to the respondent (HCBS)”*.

29. Insofar as RCPL's contention that HCBS was required to be restrained from transferring or creating any charge of any portion of the residential premises or that the change of plans had been obtained by forgery, the Arbitral Tribunal held as under:

“31. I do not find merit in the above plea. The claimant has not been able to convince me as to on what basis, he is apprehensive that his financial interest would be defeated if the restraint order is not passed against the respondent particularly when he has not shown me any material indicating that the respondent is diverting the revenue received in respect of the project in order to defeat the interest of claimant. As regards the plea that respondent has managed to get change in the plan of the commercial space on the basis of forged document, it is suffice to say that aforesaid plea relates to the merits of the case which requires evidence for determination and at this stage said plea cannot be

made basis for restraining the respondent from selling the commercial space.”

30. It is apparent from the above that RCPL has sought to re-agitate its prayer for seeking a blanket stay for the commercial space on more than one occasion. In the first instance, it sought to secure an *ex parte* order in its petition filed under Section 9 of the A&C Act, however, no such interim order was passed and the parties were relegated to seek their relief before the Arbitral Tribunal. Before the Arbitral Tribunal, RCPL sought a blanket stay on the sale of commercial space on the ground that there was no mutual agreement regarding demarcation of the space falling to its share and further that its share was not 14% of the total commercial space but 27%. RCPL was successful in securing a blanket order on that ground. This Court considered contentions in this regard in the appeal filed by HCBS [being Arb. A. (COMM.) 43/2021] and found that both the aforesaid grounds were addressed by the concession granted by HCBS and therefore, a blanket stay order restraining HCBS from selling the commercial space falling to its share, was not sustainable. However, at that stage, it was contended on behalf of RCPL that there were some unstated grounds, which it persuaded before the Arbitral Tribunal to pass the interim order and therefore, the matter was remanded to the Arbitral Tribunal. It is clear from the impugned order that there was no unstated ground on behalf of RCPL before this Court in Arb. A. (COMM.) 43/2021 and RCPL merely wanted to re-agitate the issues for interim relief, which ought to have been settled at that stage.

31. HCBS has, at various stages, expressed its grievance that the object of RCPL is to somehow delay the arbitral proceedings. *Prima facie*, the said contention appears merited.

32. It is relevant to note that RCPL had filed its Statement of Claims but has termed it as 'Preliminary Arbitration Claim'. Presumably, RCPL seeks to reserve its right to file further claims or amend its claims. It would be virtually impossible for an Arbitral Tribunal to complete the arbitral proceedings, in view of the conduct of the RCPL to delay completion of the pleadings.

33. The second ground on which RCPL has assailed the impugned order is that the Arbitral Tribunal has rejected its application dated 03.08.2021 for directions to be passed to HCBS to provide certain documents.

34. RCPL had sought reconciliation of accounts and other documents to ascertain the revenue generated by HCBS. The Arbitral Tribunal had directed the parties to jointly reconcile the accounts. Admittedly, the representatives of RCPL had visited the office of HCBS and certain accounts had been shared with the said representatives. RCPL alleges that during the reconciliation, HCBS had shown a ledger maintained in Tally (an accounting software). RCPL claims that the ledger maintained in the said software (Tally) does not reflect the correct state of affairs and there is another software developed by one ASG Software Private Limited, which would reflect the correct details. This is disputed by HCBS. It claims that it had provided all the necessary details regarding the project to RCPL.

35. In regard to the aforesaid disputes, the Arbitral Tribunal had noted that on 05.10.2021, HCBS had provided additional documents and, *prima facie*, the necessary information had been supplied to RCPL. The relevant extract of the impugned order is set out below:

“15. I have considered the submissions made by the parties. It may be noted that on 05.10.2021, the respondent filed an additional documents namely, Ledger Accounts of Cancellation from 01.06.2020 to 24.08.2021, Complete Occupation Certificate dated 18.03.2020, List of customers with flat nos., proof of payment of EDC with ledgers, details and proof of EEC payments, details of license renewal fees, details of property tax, pen drive containing entire Tax Returns, Entire Ledger Accounts, Entire Bank Statements – Password for yes bank statements – Yes bank escrow account 0419 : 247471701011800, Yes Bank pre escrow account 3755 : 202898801011800, Yes bank account 4113 : 238998201011800.

16. On perusal of the above and the documents earlier shown to the claimant during exercise of reconciliation, it *prima facie* appears that necessary information has already been supplied to the claimant and the claimant is not justified in seeking information in the format convenient to him. Otherwise also, perusal of the claim statement filed by the claimant would reveal that first prayer of the claimant is for the rendition of accounts. The documents sought to be produced vide this application are also in the nature of seeking the accounts from the respondent, which prayer in my view cannot be granted at this initial stage as such an order would amount to allowing the prayer of rendition of accounts even before the recording of evidence, which is not permissible under law. In view of the discussion above, I do not find any merit in the application. It is accordingly dismissed.”

36. According to RCPL, the Arbitral Tribunal's conclusion in this regard is erroneous and the necessary documents have not been provided to RCPL.

37. It is seen from the above that the controversy sought to be raised by RCPL is regarding the discovery of documents and data. It is doubtful whether the procedural orders passed by the Arbitral Tribunal fall within the scope of interim measures of protection under Section 17 of the A&C Act. Indisputably, RCPL has sought the relief of rendition of accounts and therefore, the conclusion of the Arbitral Tribunal that grant of any further prayers at the interim stage without considering the evidence that may be led by the parties, would not be apposite.

38. In terms of Section 5 of the A&C Act, the scope of judicial intervention is limited and as is specifically provided under the A&C Act. There is no provision in the A&C Act permitting recourse to courts in respect of procedural orders.

39. It is material to note that the Arbitral Tribunal was constituted by an order dated 25.03.2021 and almost ten months have passed. However, RCPL has not yet filed its final Statement of Claims.

40. This Court is of the view that the contentions advanced by RCPL in the present appeal are not substantial and RCPL has unjustifiably imposed on judicial time.

41. In view of the above, the present appeal is dismissed with costs quantified at ₹25,000/-. The costs shall be deposited with the Delhi High

Court Legal Services Committee within a period of two weeks from date.

42. The pending application is also disposed of.

FEBRUARY 16, 2022
RK/v

VIBHU BAKHRU, J

