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

% **Judgment reserved on: 11.05.2026**
Judgment pronounced on: 18.05.2026

\+ O.M.P. (COMM) 432/2023
M/S SARVPRIYA SECURITIES PVT LTD .....Petitioner

Through: Mr. Ashish Aggarwal, Mr. O.P. Faizi, Mr. Anand Aggarwal, Mr. Madhur Sapra, Ms. Nishtha Verma, Ms. Lisha Arora, Mr. Himanshu Singh, Ms. Anjali Kashyap & Ms. Ishita, Advs.

versus

M/S ANK HOTELS PVT LTD .....Respondent

Through: Mr. Manu Bajaj & Ms. Parul, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') seeking setting aside of the arbitral award dated 01.07.2023 (for brevity 'the award').

2. The relevant facts are that the petitioner is engaged in business of developing real estate projects. In the year 2017 petitioner was developing Signature Global Mall (for short 'the Mall') in Ghaziabad, Uttar Pradesh under its own brand name. The parties to the *lis* entered into a Memorandum of Understanding (MoU) dated 18.05.2018 whereby the respondent agreed to operate and maintain service apartments/hotels at 3rd to 6th floor of the Mall under the name of

'Clark Premier'.

2.1 In terms of clause 14 of the MoU, the petitioner had to pay a sum of Rs.50,00,000/- plus GST after deduction of TDS towards one time brand collaboration fee and an amount of Rs.50,00,000/- towards technical support fee. The respondent was entitled to an additional amount of Rs.1,70,00,000/- (rupees one-crore seventy lakhs) plus GST towards administrative marketing of the property, operational and pre-opening expenses to commence service apartment/hotel operation, within a period of six to eight months from the date of signing of the MoU. As per Clause 20 of the MoU, the prior discussions between the parties were agreed to be merged in the MoU and no further modification would be effected unless mutually agreed between the parties in writing.

2.2 The respondent through emails dated 08.08.2018 and 18.11.2018 sought additional space beyond what was initially agreed between the parties. The request was denied by the petitioner through communications dated 10.08.2018 and 01.12.2018. Thereafter, the respondent sent three emails in December, 2018 agreeing to the denial for the additional space. Meeting was held between the parties on 18.12.2018 and on 08.02.2019, the petitioner sent an email attaching undertaking for mutual termination of the MoU.

2.3 Thereafter in September, 2019 the petitioner demanded a refund of Rs.1,18,00,000/- (rupees one-crore eighteen lakhs) paid as advance. The respondent vide communication dated 21.09.2019, declined the refund and instead demanded payment of the balance amount of

Rs.1,70,00,000/- (rupees one-crore seventy lakhs).

2.4 Dispute arose between the parties and arbitration was invoked at the instance of the respondent by issuing notice dated 09.01.2020. The arbitrator was appointed by this court on 30.11.2021 and the arbitral proceedings culminated in the impugned award. The claim of the respondent of rupees one-crore seventy lakhs was rejected and the counter-claim of the petitioner seeking refund of rupees one-crore eighteen lakhs was also dismissed.

3. Learned counsel for the petitioner contends that the award is non-speaking and suffers from patent illegality. The arbitrator erred in concluding that the advance paid by the petitioner was not subject to incurring of expenses.

3.1 The submission is that the MoU contained no clause for forfeiture of the advance paid and that the sums paid were not earnest money.

3.2 Reliance is placed upon the decisions of the Supreme Court in *Kailash Nath Associates v. DDA & Anr.* 2015 4 SCC 136, *Union of India v. Rampur Distillery & Chemical Co. Ltd.* AIR 1973 SC 1098, *Rajesh Gupta v. Ram Avtar* 2022 SCC OnLine Del 1482, *Amrit Pal Singh v. Kawaljeet Singh* 2022 SCC OnLine 1619, *ONGC v. Saw Pipes Ltd.* (2003) 5 SCC 705 and *Patel Engineering Ltd. v. North Eastern Electric Power Corporation Ltd.* (2020) 7 SCC 167 to contend that for awarding of damages or for forfeiture of the amounts, breach of terms of the MoU and the actual loss suffered by the respondent had to be proved.

3.3 The argument is that retention of advance was not justified as neither the brand name of the respondent was used nor the respondent suffered actual damage.

4. *Per contra*, the scope of interference under Section 34 of the Act is limited. Reliance is placed upon the decisions of the Supreme Court in *Delhi Airport Metro Express (P) Ltd. v. DMRC* 2022 (1) SCC 131 and *Reliance Infrastructure Ltd. v. State of Goa* 2024 (1) SCC 479. The arbitral award cannot be interfered for another possible view and that re-appreciation of evidence is impermissible under Section 34 of the Act. The submission is that the impugned award is not vitiated with perversity.

4.1 It is emphasized that the MoU contained no clause obligating the respondent to refund the advance received. It is canvassed that the respondent successfully proved usage of the brand name by the petitioner and that the respondent provided technical support service to the petitioner. It is further submitted that rupees fifty lakh amount paid was towards brand collaboration fee and was not dependant on the actual usage of the brand name.

4.2 It is argued that the MoU does not provide for refund of the advance. Further that the present case does not pertain to awarding of damages and the judgments relied upon by the petitioner are not applicable.

5. Heard the learned counsel for the parties at length. No other issues than the ones noted above were pressed during the course of hearing.

6. Before proceeding further, it would be apposite to reproduce clauses 1, 3, 14 and 16 of the MoU.

> "**1**. **Project**
>
> The Developer/First Party is in process of developing Service Apartments/Hotel consisting of 80 (Eighty) Rooms, Restaurant having 60 Covers, Bar having 40 Covers, Gym, Spa, Swimming Pool, Banquet area approx 10000 Sqft & Open Terrace space of about 4000 to 4500 Sqft to the Second Party.
>
> **3. Brand**
>
> The Service Apartments/Hotel shall be branded as:
>
> "**Clarks Premier**" or any other brand name as per the discretion of the Second Party.
>
> **14. Payment to the Second Party**
>
> Rs.50,00,000/- (Rupees Fifty Lakhs Only) plus GST & less TDS as applicable as Brand Fee's payable at the time of Signing of This MOU paid via cheque number 000113 dated 18/05/2018 drawn on HDFC Bank, KG Marg New Delhi
>
> Rs.50,00,000/- (Rupees Fifty Lakhs Only) plus GST & less TDS as applicable as Technical support and Promotional activities charges payable at the time of signing of this MOU paid via cheque number _____dated drawn on_____
>
> Second Party shall be entitled to utilize an additional amount of Rs.1,70,00,000/- (Rupees One Crore Seventy Lakhs Only) plus GST & less TDS as applicable towards administrative, marketing of the property, operational and pre-opening expenses to commence the Service Apartments/Hotel Operation. Such aforestated pre-opening amount shall be borne by the Developer/First Party. This aforestated amount shall be paid by the First Party to Second Party within 6-8 months from the date of signing this MOU.
>
> Apart from above the First Party/Developer shall arrange the Procurement of Vehicles & Miscellaneous equipment to the tune of Rs 45 Lacs. The details are annexed in Annexure-1

16. Hand Over Date

> Developer/First Party shall handover the fully furnished Service Apartments/Hotel on or before 2 years from the date of execution of this MOU. Developer/First Party shall inform to the Second Party at least three months before it intention to the handover so that Second Party shall be able to start Service Apartments/Hotel marketing and trial run."

7. As per the MoU the petitioner shall give 3rd to 6th floor of the Mall to the respondent for management and operation of the service apartment/hotel comprising of eighty rooms, restaurants, bar, gyms, SPA, swimming pools, banquet area and open terrace. The hotel was to operate under the brand name of the respondent. The fully furnished hotel was to be handed over on or before two years from the date of execution of the MoU. The service apartment/hotel was initially for a term of thirty years from the date of commencement of the operation along with amenities and there was lock-in period of twenty years after commencement of the operation.

8. The arbitrator dealt with the issue of breach of the MoU. It was considered that the respondent caused delay by repeatedly demanding additional space beyond the terms of the MoU. It was factored that there was no document produced whereby the parties mutually agreed to terminate the MoU. The petitioner sent an email dated 08.02.2019 attaching an undertaking for mutual termination and started advertising the floor in issue in MoU as office space. The conclusion was that none of the parties adhered to the terms and conditions as stipulated in the MoU. It was observed that within three months of execution of the MoU, the respondent started demanding additional

space which continued up to December, 2018 and thereafter neither any work was done nor did any meeting take place between the parties. The claim of the respondent for the payment of rupees one-crore seventy lakhs was rejected.

9. The counter-claim of the petitioner for refund of rupees one-crore eighteen lakhs was rejected holding that there was no clause in the MoU that the payments made were subject to the respondent incurring expenses.

10. Before dealing with the merits of the issue, it is of utmost importance that Section 31(3) of the Act mandates a reasoned award. The law is well settled that the requirement of Section 31(3) of the Act is not a mere formality. The reasoning in an appropriate case can be implied upon a fair reading of the award and the documents referred to therein. Reference in this regard be made to the following decisions of the Supreme Court :-

10.1 In **Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.** (2019) 20 SCC 1 it was held as under:

> "34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute."

10.2 In **Som Datt Builders Ltd. v. State of Kerala** (2009) 10 SCC

259 it was held as follows:

> "25. The requirement of reasons in support of the award under Section 31(3) is not an empty formality. It guarantees fair and legitimate consideration of the controversy by the Arbitral Tribunal. It is true that the Arbitral Tribunal is not expected to write a judgment like a court nor is it expected to give elaborate and detailed reasons in support of its finding(s) but mere noticing the submissions of the parties or reference to documents is no substitute for reasons which the Arbitral Tribunal is obliged to give....."
>
> (emphasis supplied)

11. A perusal of the impugned award reveals that after adjudicating the issue of breach of terms of the MoU, the contentions of both the parties were noted and the counter-claim was rejected by stating that the submission of the respondent carried force and there existed no clause in the MoU stipulating that the payments made were subject to incurring of expenses. The issues requiring determination before the arbitrator were:- (i) whether the MoU contained clause for forfeiture of the advance amount paid; (ii) whether there is clause for refund of the amount received and most importantly (iii) whether the respondent was legally entitled to retain the advance amounts after the breach of the MoU. Rejection of the counter-claim of the petitioner is bereft of reasons. The impugned award contains no discussion or reasoning on the aforesaid aspects and is non-speaking and unreasoned. The award dismissing the counter-claim is liable to be set aside on this ground alone.

12. The contention of learned counsel for the respondent that there

was no clause for refund of advance amount is of no avail. It is not disputed that there was no clause for forfeiture and in such circumstances the settled principles for invoking Section 73 of the Indian Contract Act, 1872 (for short 'the Contract Act) are to be applied. The judgment relied upon by learned counsel for the petitioner are for the proposition that the twin condition for award of damages encapsulated that firstly, there has to be breach of the contract and secondly, the party suffering actual loss or damage for the breach of the contract has to be compensated for the actual damage or loss suffered. The only exception being the cases where it is not possible to proof actual loss or damages suffered. These principles would equally apply to the advance payment received and when there is no clause agreed between the parties for forfeiture of the payment received.

12.1 The Supreme Court in ***Central Bank of India v. Shanmugavelu,*** **(2024) 6 SCC 641** held:

> "88. The observations of Mellish, L.J., in *Ex parte Barrell* [*Ex parte Barrell*, (1875) LR 10 Ch App 512] assume importance. The learned Judge observed that even when there is no clause in the contract as to the forfeiture of the deposit if the purchaser repudiates the contract, he cannot have back the money if it was a deposit, as the contract has gone off through his default. It is characteristic of a deposit to entail forfeiture if the depositor commits breach of his obligation. On the contrary it is inherent in a part-payment of price in advance that it should be returned to the buyer if the sale does not fructify. The buyer is not disentitled to recover, even if he is the party in

> breach, because breach of contract on the part of the buyer would only entitle the seller to sue for damages but not to forfeit the advance. A specific forfeiture clause might operate to defeat the buyer's right of recovery of even an advance payment. But equity might step in to relieve the buyer from forfeiture. If the amount forfeited cannot stand the test of a genuine pre-estimate of damages, it would be unconscionable for the seller to retain it. The question whether the amount is a deposit (earnest) or a part-payment cannot be determined by the presence or absence of a forfeiture clause. Whether the sum in question is a deposit to ensure due performance of the contract or not is not dependent on the phraseology adopted by the parties or by the presence or otherwise of a forfeiture clause. The proportion the amount bears to the total sale price, the need to take a deposit intended to act *in terrorem*, the nature of the contract and other circumstances which cannot be exhaustively listed have to be taken into account in ascertaining the true nature of the amount. In essence the question is one of proper interpretation of the terms of a contract."

12.2 The division bench of Kerala High Court in ***Varkey Thomas v. G. Vijayendra Kurup,*** **2017 SCC OnLine Ker 100** held:-

> "12. The penalty of forfeiture of the amount paid as advance in Ext.A1 agreement in terms of Section 74 is subject to the reasonable compensation to be awarded under Section 73 of the Contract Act, 1872. The defendants are not liable to be compensated in the absence of proof of legal injury and therefore there cannot be a forfeiture of the amount paid as advance by the plaintiff.
>
> 13. The court below erred in holding that the plaintiff has to forfeit the amount paid as advance even in the absence of proof of damages sustained by the

> defendants. The court below has blindly acted on the terms of Ext.A1 agreement without reference to Sections 73 and 74 of the Contract Act, 1872.....”
>
> (emphasis supplied)

13. It is not the case set up by the respondent that actual loss or damage was suffered or it was not possible to prove the actual loss or damage suffered. The defence is that there is no clause for the refund of the money. The arbitrator committed patent illegality in not proceeding in accordance with Section 73 of the Contract Act. The project was a non-starter. The MoU from the initial stage faced rough weather and from the beginning the respondent insisted for the additional space than the one stipulated in the MoU. None of the parties adhered to the terms of the MoU and this finding recorded by the arbitrator is not under challenge, the natural consequence is that breach of contract by one of the parties is not proved. There is no finding recorded of proportionate role of each of the parties in breach of the terms and conditions. The foundation to proceed under Section 73 of the Contract Act is missing.

14. The contention that the respondent proved the utilisation of brand name by the petitioner and technical support provided is factually ill-founded. There is no evidence on record that the brand name was ever used by the petitioner. The brand name was not to be used for the Mall but for the hotel to be maintained and made operational by the respondent, and which never saw the light of the day. The contention that the respondent provided technical support is contrary to the unchallenged findings recorded by the arbitrator.

Arbitrator held that after denial of additional space neither any meeting took place between the parties nor any work was done.

15. The matter needs to be considered from another angle that on the one hand, the claim of the respondent was rejected for the reason that the project was a non-starter and no work was done and on the other hand the counter-claim of the petitioner for refund of advance money was rejected in spite of the fact that neither there was technical support granted nor the brand name was used.

16. There is no quarrel with the proposition proposed by the learned counsel for the respondent vis-a-vis the scope of interference under Section 34 of the Act and authorities of ***Delhi Airport Metro Express (P) Ltd.*** (supra) and ***Reliance Infrastructure Ltd.*** (supra) are relied in support thereof.

17. The dismissal of the counter-claim is in violation of Section 73 of the Contract Act and is against the public policy. Moreover, the dismissal by non-reasoned award falls within the teeth of Section 31(3) of the Act and is liable to be set aside.

17.1 The Supreme Court in ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.***, **(2025) 7 SCC 1** held that while an arbitral award cannot be modified under Section 34 of the Act, a severable part of the award may be set aside. The relevant paragraphs are quoted below:

> "32. In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-

submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a twofold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of *kompetenz- kompetenz*, that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the Court to sever and preserve the "valid" part(s) of the award while setting aside the "invalid" ones. [The "validity" and "invalidity", as used here, does not refer to legal validity or merits examination, but validity in terms of the proviso to Section 34(2)(a)(iv) of the 1996 Act.] Indeed, before us, none of the parties have argued that the Court is not empowered to undertake such a segregation.

33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.

34. To this extent, the doctrine of *omne majus continet in se minus*—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified."

(emphasis supplied)

18. The dismissal of counter-claim of the petitioner by a non-reasoned award in violation of Section 73 of the Contract Act is severable, not dependent or intricately connected on other claims.

19. The petition is allowed. The award is set aside to the extent of dismissal of the counter-claim of the petitioner for refund of advance amount.

AVNEESH JHINGAN, J

MAY 18, 2026
Ch

Reportable:- **Yes**