

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF APRIL, 2024

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

COMMERCIAL APPEAL NO. 60 OF 2024

BETWEEN:

M/S. AZEEM INFINITE DWELLING
(INDIA) PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE INDIAN COMPANIES ACT
HAVING ITS OFFICE AT NO.06, G.M. PEARL
BTM LAYOUT, 1ST STAGE
1ST PHASE, BANGALORE-560 068
REP. BY ITS MANAGING DIRECTOR
MR. GHULAM MUSTAFA

... APPELLANT

(BY SHRI. K.N. PHANINDRA, SENIOR COUNSEL A/W.
SHRI. SUNIL P. PRASAD, ADVOCATE)

AND:

M/S. PATEL ENGINEERING LTD.,
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE INDIAN COMPANIES ACT
HAVING ITS OFFICE AT
PATEL ESTATE ROAD, JOGESHWARI (WEST)
MUMBAI-400 102
REP. BY ITS MANAGING DIRECTOR
MR. RUPEN PATEL

... RESPONDENT

(BY SHRI. K.G. RAGHAVAN, SENIOR COUNSEL A/W.
SHRI. ADITYA SWAROP, ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1-A) OF THE COMMERCIAL COURTS ACT R/W SECTION 9 OF THE ARBITRATION AND CONCILIATION ACT, 1996, PRAYING TO CALL FOR THE ENTIRE RECORDS IN COM.A.A.NO.353/2023 PASSED ON THE FILE OF LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT AT BANGALORE (CCH-84) AND SET ASIDE THE IMPUGNED ORDER DATED 09.02.2024 PASSED IN COM.A.A.NO.353/2023 PASSED ON THE FILE OF LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT AT BANGALORE (CCH-84) VIDE ANNEXURE-A AND CONSEQUENTLY ALLOW THE COMMERCIAL A.A.NO.353/2023 AND ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 01.04.2024 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.**, PRONOUNCED THE FOLLOWING:

JUDGMENT

This is an appeal preferred under Section 13(1-A) of the Commercial Courts Act, 2015 read with Section 9 of the Arbitration and Conciliation Act, 1996 against the order dated 09.02.2024 of the LXXXIII Additional City Civil and Sessions Judge, Commercial Court, Bengaluru (CCH-84) in Commercial Arbitration Application No.353/2023.

2. The appellant had filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 ('the Act' for short) at the pre-arbitration stage, seeking to restrain the respondent from alienating or encumbering the petition schedule property, pending the contemplated arbitration proceedings. It was contended that the appellant

- Company had entered into a proposal to the respondent and its sister concern for a Joint Development of several items of properties measuring 103 acres and 17 guntas of land situated at Hulimangala, Thirupalya and Maragondanahalli, Jigani Hobli, Anekal Taluk, Bengaluru Urban District for constructions and a few parcels of land for outright purchase. The offer was accepted by the respondent herein and its sister concern and a Memorandum of Understanding ('MOU' for short) was entered into on 15.03.2016 for the above said project. As per the said MOU, the appellant was to build up substantial parcels of properties on the basis of sanctioned plans approved by the competent authority. The appellant had also agreed to purchase certain land on outright purchase. It is stated that the parties had successfully entered into and completed various contracts in respect of various properties in accordance with the MOU during the period from 2016-17 to 2022-23 and large scale construction activities had also been carried out by the appellant and about 500 crores of rupees had been paid as sale consideration towards the purchase and huge amounts were also expended by the

appellant. It is stated that in terms of the MOU referred above, the respondent had agreed to sell 14.5 acres of land situated at Maragondanahalli Village, Jigani Hobli, Anekal Taluk, in favour of the applicant. The respondent had sold 9 acres 15 guntas in favour of the applicant by registered Sale Deed dated 21.11.2017, the remaining 5 acres 15 guntas was the subject matter of the dispute before the Commercial Court. It is contended that the property forms a composite whole and the 5 acres and 15 guntas of property is surrounded by the properties which are already sold either by outright sale or by Joint Development Agreement in favour of the applicant or its nominee.

3. It is stated that on 08.12.2022, the applicant and the respondent entered into a "Termsheet for Buyout" as evidenced by Annexure 'C', whereby the respondent agreeing to sell 5 acres and 18 guntas of land on an agreed sale consideration of Rs.38 Crores on payment of the sale consideration on the respondent handing over the property documents subject to satisfactory due diligence. It is submitted that the respondent sought time for making available the documents for due diligence. The applicant had

to face legal problems and disputes relating to company affairs before the National Company Law Tribunal ('NCLT' for short) on an application filed by one Piramal Group and could not insist on the completion of the transaction. It is contended that the appellant assured the respondent that the entire transaction will be completed at the earliest. It is stated that M/s. Piramal Enterprises Limited and the sister concern of the applicant entered into the compromise petition as evidenced by Annexure 'H' and that the moratorium imposed by the NCLT stood lifted. Thereafter, in the last week of August 2023, the appellant approached the respondent and expressed its willingness to conclude the transaction by paying the amount as provided in Termsheet for Buyout produced as Annexure 'C'. However, further time was sought by the respondent and the necessary documents were not handed over. It is stated that the respondent thereafter took steps for sale of the property to others and the appellant therefore approached the Commercial Court since the entire sale consideration had been arranged through various sources. However, though Annexure 'J', an IA., was moved seeking interim measure and an order was

initially granted restraining the respondent from alienating or creating third party rights over the property; after hearing the respondent and considering Annexure 'L' objections, the injunction was vacated, which has led to filing of this appeal.

4. We have heard Shri. K.N. Phanindra, learned senior counsel along with instructing Counsel Shri. Sunil P. Prasad, appearing for the appellant as well as Shri K.G.Raghavan, learned senior counsel along with instructing Counsel Shri. Aditya Swarop appearing for the respondent.

5. Learned senior counsel appearing for the appellant contended that the appellant is the permitted assignee of a regulatory to the MOU dated 15.03.2016. The appellant had also entered into Annexure 'C' - Termsheet for Buyout on the basis of the MOU. It is submitted that the appellant was always ready and willing to perform its part of the contract and it was only on account of the delay on the part of the respondent to make available the necessary documents that there was a delay in paying the sale consideration. It is submitted that the Termsheet for Buyout

having been entered into on the basis of MOU, the Commercial Court erred in declining the relief which was sought for by the appellant.

6. The learned senior counsel appearing for the appellant placed reliance on the decision of the Apex Court in *Kollipara Sriramulu (Dead) by his Legal Representative v. T. Ashwatha Narayana (Dead) by his Legal Representative*¹. In support of the contention that the mere fact that a further formal agreement being drawn up will not lead to the conclusion that the earlier agreement was not a concluded contract. It is contended that the intention of the parties has to be considered in the facts of each case.

7. Learned senior counsel appearing for the respondent, on the other hand, contended that there was no concluded contract between the appellant and the respondent. It is contended that the MOU entered into on 15.03.2016 is evidently between M/s. Patel Engineering Limited, M/s. Patel Realty (India) Limited and Mr. Rupen Patel on the one part and M/s. Gulam Mustafa Enterprises

¹ AIR 1968 SC 1028

Private Limited on the other. The said MOU provides for joint development of certain items of properties and for outright purchase of certain other extents of properties.

8. The learned senior counsel appearing for the respondent placed the following decisions:

- *Winn v. Bull (1877 W.197);*
- *W.I. Rossiter georgecurtis and Ors. v Daniel Miller (1878) 3 Appeal Cases 1124;*
- *Von Hatzfeldt-Wildenburg v. Alexander (1911 V.326);*
- *Rossdale v. Denny (1921)1 Ch.57;*
- *Coope v. Ridout (1921) 1 Ch.291;*
- *Chillingworth v. Esche (1924) 1 Ch.97;*
- *May and Butcher, Limited v. The King (1934) 2 K.B.17;*
- *Shamjibhai v. JagooHemchand and Others (AIR 1952 Nag 220);*
- *Courtney & Fairbairn Ltd., v. Tolaini Brothers (Hotels) Ltd. and another (1975) 1 W.L.R. 297;*
- *H.G. Krishna Reddy v. M.M. Thimmaiah and another AIR 1983 Mad 169;*
- *Dresser Rand S.A v. Bindal Agro Chem Limited (2006) 1 SCC 751;*
- *R & D Construction Group Limited v. Hallam Land Management Limited (2009) CSOH 128, 2009 WL 2848132;*

- *M.K. Modi v. U.K. Modi OMP No.95/2010;*
- *Kalpataru v. Middle Class Friends Coop Hsg Ltd 2021 SCC Online Bom 5564;*
- *Wavelength Entertainment Limited v. Next Radio Limited Commercial Arbitration Petition (lodg) No.362 OF 2019;*
- *A.P. 165 of 2017 - High Court of Calcutta Hinduja Leyland Finance Ltd v. Avinandan Mukherjee & Anr;*
- *A.P. 461/2017 High Court of Calcutta Tata Capital Financial Services Ltd v. Harjit Singh;*
- *2017 SCC Hyd 469 :High Court of Hyderabad Velugubunti Hari Babu v. Parvathini Narasimha Rao and another;*
- *2021 SCC Online Bom 3169 High Court of Bombay K. Metha & Co. v. Jay Shrinath CHSL and Another;*
- *AIR 2017 Karnataka 135 Karnataka High Court Misc. First Appeal No.1440/2014 (AA) M/s. Paton Constructions Private Limited, Mumbai v. Lorven Projects Ltd. Hyderabad and Anr.*

The essential point sought to be urged is that mere negotiations will not give rise to a binding contract and there must be formal acceptance of the offer made for a contract to be presumed to have come into effect.

9. The Termsheet for Buyout dated 08.12.2022, which is on record as Annexure 'C' along with this appeal states that the subject property is 5 acres and 18 guntas in Sy.Nos.30/1, 30/3 and 31 and Sy.No.43 and 44/6 of

Maragondanahalli Village, Jigani Hobli, Anekal Taluk, Bengaluru Urban District. Rs.38 crore is fixed as upfront consideration to buy the subject property from the purchaser. A time is provided for due diligence and the obligations of the purchaser and the seller are also provided in the Termsheet for Buyout. Further, it is specifically provided that within 60 days of the Execution Date of the OFFER after acceptance of the OFFER, the customary agreements ("Definitive Agreements") are to be entered into between the relevant parties. The Termsheet for Buyout also specifically provides that the OFFER is valid for 90 days from the date of execution thereof or till execution of the Definitive Documents, whichever is earlier.

10. From a reading of the Termsheet for Buyout dated 08.12.2022, it is clear that the said document is only in the nature of an offer, which is valid till Definitive agreement is entered into or for a period of 90 days from the date of execution, whichever is earlier. It is not in dispute before us that no Definitive Agreements had been entered into within a period of 60 days from the date of execution of the Termsheet for Buyout. It is also not in

dispute that no amount has changed hands on the basis of the Termsheet for Buyout between the parties to the same.

11. We also notice that the Commercial Court has specifically taken note of the factual aspects of the matter and has found that the appellant herein was not a party to the MOU. The subject matter of the dispute was the rights of parties in terms of the Termsheet for Buyout entered into between the appellant and respondent. In the circumstances, the Commercial Court had come to the definite conclusion, after considering the wordings specifically, that the Termsheet for Buyout was only an offer and not a contract and that the interim relief was not liable to be granted. Though several decisions have been relied on by the learned counsel appearing on either side, we are of the opinion that the essential question which requires to be considered at this stage of the proceedings is only whether there was a concluded contract between the parties which contained an arbitration clause and whether the order of the Commercial Court is liable to be interfered with.

12. Having considered the contentions advanced on either side, we are of the opinion that the findings entered by the Commercial Court in the order impugned before us are liable to be upheld. We do not find any error in the reasoning of the Trial Court which requires interference in this appeal.

13. The appeal therefore fails and is accordingly ***dismissed.***

**Sd/-
JUDGE**

**Sd/-
JUDGE**

cp*