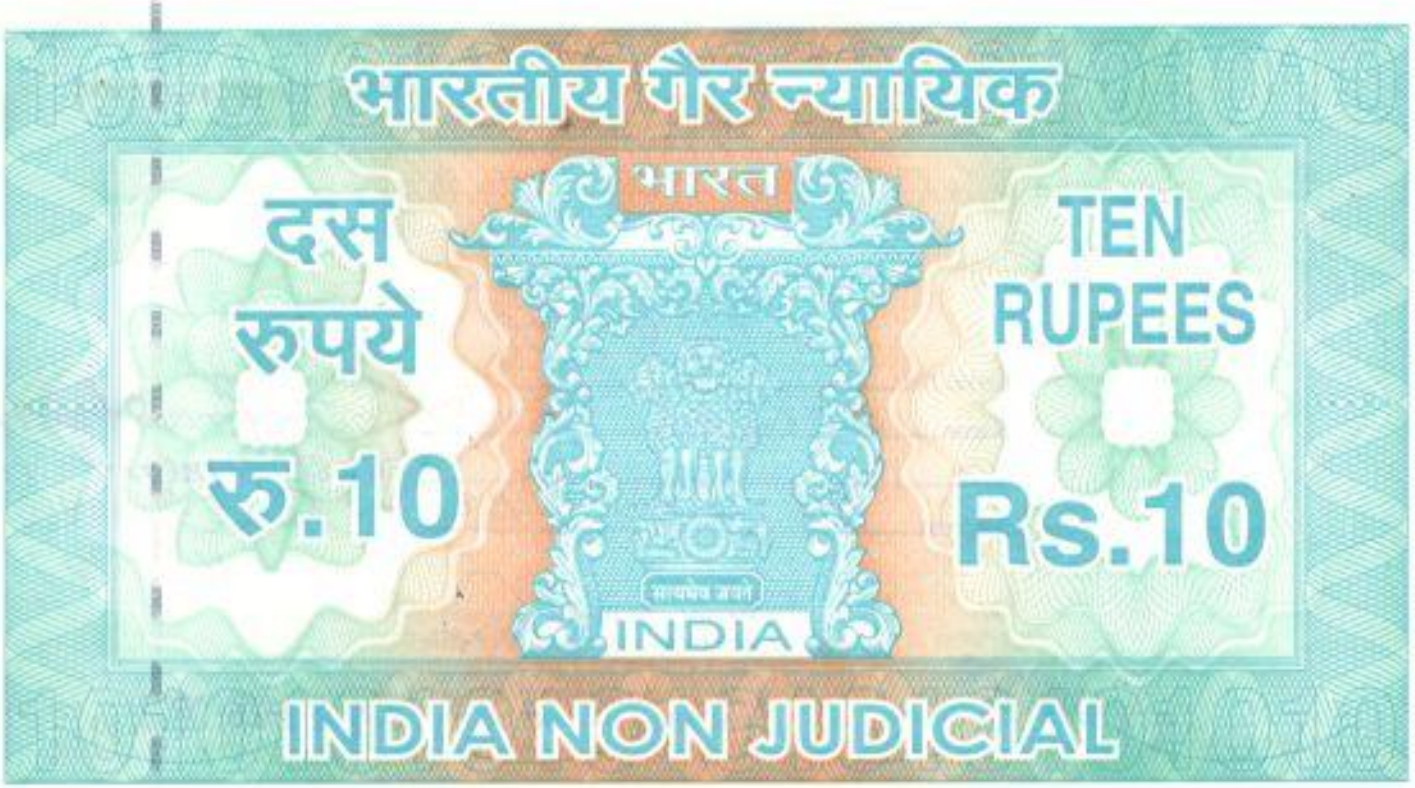

पश्चिमबङ्ग पश्चिम बंगाल WEST BENGAL

37AB 716994

BEFORE THE NOTARY PUBLIC
AT BIDHANNAGAR
DIST.-NORTH 24 PARGANAS

SUDIP CHAUDHURI
NOTARY
6584/2008
BIDHANNAGAR COURT 24 PGS. GOVT. OF INDIA

AFFIDAVIT CUM DECLARATION

I, Sahil Surendra Saharia, son of Mr. Surendra Kumar Saharia, residing at Flat No. 5, 7th floor, Govind Mahal, 3 Wood Street, P.O. – Park Street, Kolkata – 700 016 being the Chief Executive Officer and Authorised Signatory of Bengal Shristi Infrastructure Development Limited, having its Registered Office at BUG-5, Upper Ground Floor, Durgapur City Centre, Durgapur – 713 216, being the promoter Company of the proposed Project "Sangati Phase I" do hereby solemnly affirm and declare as follows:

1. That by a Memorandum of Understanding dated 17.08.2010 and a Joint Venture Agreement dated 11.12.2000, Asansol Durgapur Development Authority [hereinafter referred to as "ADDA"] and Shristi Infrastructure Development Corporation Limited [hereinafter referred to as "SIDCL"] inter-alia

S. CHAUDHURI
* NOTARY *
GOVT. OF INDIA
Regd. No.-6584/08
Bidhannagar Court
Dist.-North 24 Pgs

Bengal shristi Infrastructure
Development Ltd.

Authorised Signatory

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agreed to participate in shareholding and management of a proposed Joint Venture Company for the purpose of carrying on the business of infrastructure development and urban structure development works.

2. That pursuant to the said Joint Venture Agreement, a Joint Venture Company namely 'Bengal Shristi Infrastructure Development Limited' [hereinafter referred to as "BSIDL"], the Promoter herein was incorporated.

3. That a Memorandum of Understanding dated 25.06.2004 was executed by and between ADDA, SIDCL and BSIDL. Thereafter, ADDA had executed a Development Agreement dated 05.07.2004 in favour of BSIDL for development of a larger land at Kanyapur, Asansol.

4. That ADDA had contributed land as part of their contribution in the equity capital of BSIDL and for said purpose the said land was valued and equity shares were issued by BSIDL to ADDA. The land value as reduced by equity share capital issued to ADDA was considered as loan carrying interest @ 12 % p.a. BSIDL is making payment of the said loan along with interest to ADDA.

5. It was agreed that none of the parties shall be entitled to challenge or dispute valuation of land contributed by ADDA.

6. That ADDA obtained conveyance of the land in the year 2008 and decided to divide the larger land into four phases i.e. phase 1A, 1B, 1C and 2. Consonantly four Supplemental Development Agreement and Power of Attorney were executed by ADDA for each such phase.

7. That the project Sangati Phase I falls within above said phase 2 and the Supplemental Development Agreement in respect of phase 2 was entered into as late as on 27.07.2010 and Power of Attorney on 09.09.2010. The said Power of Attorney states that this Power of Attorney will be automatically cease to operate after completion of the projects in all respect.

8. That a perusal of the various agreements executed between ADDA, SIDCL and BSIDL would reveal that the same are non-terminable in nature and time was never intended to be and was not the essence of the agreement. It will also reveal that there is no provision in the agreements which provides for termination of the same in the event of failure to complete the projects in any particular time frame.

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Bengal shristi Infrastructure Development Ltd.

Authorised Signatory

9. That the performance of obligations on the part of BSIDL were clearly dependent on the performance of reciprocal obligations on the part of ADDA including timely completion of the land documentation, decision of phasing of the project, entering into requisite Development Agreement and granting the requisite Power of Attorney within time beside facilitating the granting of approvals and sanction of requisite plans within time by the concerned authorities particularly Asansol Municipal Corporation.

10. That withholding by ADDA of NOC required to raise funds for implementation of the projects, had delayed the implementation of project and as a result difference of opinion cropped up between ADDA and BSIDL regarding extension of Development Agreement and in order to resolve such difference it was decided to resolve the difference through Arbitration.

11. That ADDA had proposed the name of retired Hon'ble Justice Mr. S. P. Talukdar to be appointed as the Sole Arbitrator. BSIDL as well as SIDCL had accepted the said proposal and accordingly retired Hon'ble Justice Mr. S. P. Talukdar was appointed as Sole Arbitrator.

12. That after hearing the comprehensive and exhaustive submissions, pleadings, examination and cross examination of evidences and witnesses, citations of various case references and arguments of all the parties, Hon'ble Justice Mr. S. P. Talukdar was pleased to pass an Award on 05.10.2016 whereby ADDA was directed for specific performance of its obligations under Memorandum of Understanding and Development Agreement entered into between BSIDL and ADDA and was further directed to furnish/issue no objection certificates and other consents as required for execution of the projects.

13. The Award dated 05.10.2016 passed by Hon'ble Sole Arbitrator is in full effect. A copy of said Award dated 05.10.2016 is enclosed herewith.

14. That a joint meeting was held on 05.12.2018 at the Chamber of Joint Secretary, Department of Urban Development & Municipal Affairs to resolve the pending issues by and between ADDA and BSIDL and according steps are being taken for smooth progress of the project. A copy of Minutes of Meeting dated 05.12.2018 is enclosed herewith.

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Bengal shristi Infrastructure Development Ltd.

Authorised Signatory

SUDIP CHAUDHURI NOTARY 6584/2008

15. Till date all the Deeds in respect to the other components of the larger project are being executed by ADDA and confirmed by BSIDL as Developer on regular basis. Simultaneously, the development of the project – Sangati Phase – I is in progress.

16. All the statements made herein above are true to the best of my knowledge.

Bengal shristi Infrastructure Development Ltd.

Authorised Signatory

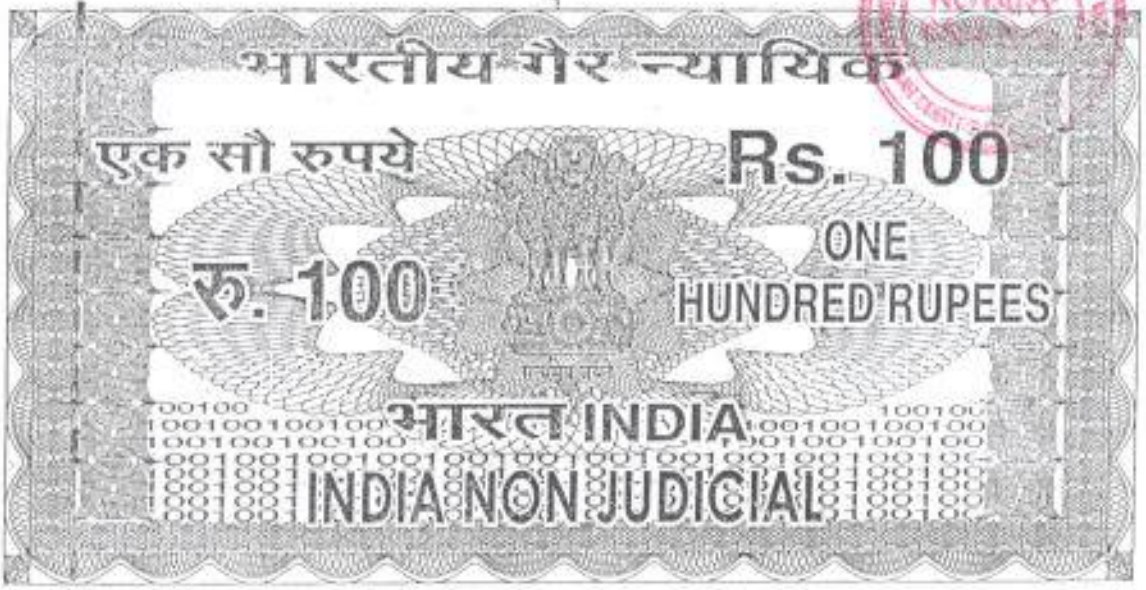
Identified by me:

Deponent

Advocate

S. CHAUDHURI
* NOTARY *
GOVT. OF INDIA
Regd. No.-6584/08
Bidhannagar Court
Dist.-North 24 Pgs

17 SEP 2019



पश्चिमबङ्ग पश्चिम बंगाल WEST BENGAL X 181133

BEFORE THE HON'BLE JUSTICE SAILENDRA PRASAD TALUKDAR
(RETIRED),
SOLE ARBITRATOR

In the matter of :

ARBITRATION

BETWEEN

1. Bengal Shristi Infrastructure Development Limited;
2. Shristi Infrastructure Development Corporation Limited.

..... Claimants

-And-

Asansol Durgapur Development Authority

..... Respondent

Mr. Utpal Bose, Advocate
Mrs. Hasnuhana Chakraborty, Advocate
Mr. Kaushik Chakravortty, Advocate
..... for Bengal Shristi Infrastructure Development Limited/Claimant No.1

Contd...p/2

ATTESTED
S. CHAUDHURI
* NOTARY *
GOVT. OF INDIA
Regd. No.-6534/08
Bidhannagar Court
Dist.-North 24 Pgs

17 SEP 2019

Received copy of

Mr. Bhaskar Prasad Banerjee, Advocate
..... for Shristi Infrastructure Development Corporation Limited/Claimant No.2.

Mr. Raja Basu Chowdhury, Advocate
Mr. Sayantan Bose, Advocate
Mr. ParthaPratimNaskar, Advocate
..... forAsansol Durgapur Development Authority/Respondent.

AWARD

Dated : 05.10.2016,

The backdrop of the present controversy, as raised in the instant arbitration proceedings, may briefly be stated as follows:-

On February 07, 2001, Bengal Shristi Infrastructure Development Limited, hereinafter referred to as Claimant no.1, was incorporated as Joint Venture Company of Asansol Durgapur Development Authority, being respondent herein and Shristi Infrastructure Development Corporation Limited, being claimant no.2. The claimant no.1 company commenced its business on February 27, 2001.

49.50% shareholding of the claimant no.1 company is held by the respondent; 49.50% of the shareholding of the claimant no.1 company is held by the claimant no.2 and the remaining 1% shareholding is held by the public, as may be determined by the claimant no.1 and the respondent.

The respondent agreed to enter into a Memorandum of Understanding with the claimant no.1 and the claimant no.2, *inter alia*, for the purpose of construction and implementation of various projects at City Centre, Durgapur, Kanyapur and Mangalpur. Accordingly, on June 25, 2004 a Memorandum of Understanding was entered into by and

between the respondent, the claimant no.1 and claimant no.2 whereby and where under, the claimant no.1, *inter alia*, agreed to undertake the Projects at City Centre, Durgapur, Kanyapur and Mangalpur on the terms and conditions, as mentioned in the said MOU. The respondent agreed to appoint claimant no.1, as its developer and/or agent for construction and implementation of the projects at City Centre, Durgapur, Kanyapur and Mangalpur.

The Memorandum of Understanding dated August 17, 2000, the Joint Venture Agreement dated December 11, 2000 and the Modification Agreement dated March 17, 2001 and the Memorandum of Understanding dated June 25, 2004 reveal that the only contribution of the respondent in the claimant no.1 company was the land. Apart from contribution of 50% of the equity capital, the claimant no.2 was responsible for arranging finances and for the performance of all the obligations of the claimant no.1. It relates to day to day operative, administrative, financial activities to attain the objective in terms of the MOA and AOA of the claimant no.1.

By Development Agreement dated 5th July, 2004 the respondent authorized the claimant no.1 to develop 74.97 acres of land at Kanyapur and Mangalpur owned by the respondent by constructing an integrated township for providing housing and allied facilities and to enter into contracts on behalf of the respondent with prospective allottees for the transfer for any or all portions of the projects.

Pursuant to the Development Agreement dated 5th July, 2004, the respondent handed over the permissive possession of land at Kanyapur and Mangalpur to the claimant no.1.

By a Memo dated August 9, 2005, the respondent informed the claimant no.2 that on scrutiny of records and survey plan, it has been found that the total area of the land, which had been handed over by the respondent to the claimant no.2 was 89.55 and not 74.97 acres. It was agreed by a letter dated September 13, 2005 that 50% of the value of the additional land contributed by the respondent would be treated as a loan to the claimant no.1 in terms of clause 8.9 of the MOU dated June 25, 2004 and 50% of the value of the land will be paid to the respondent by the claimant no.2.

On May 12, 2006, the respondent executed a Power of Attorney in favour of the claimant no.1 thereby authorizing it to take various steps for development of the 89.55 acres of Kanyapur land.

Subsequently there had been a change in complexion with the parties agreeing to develop the project at Kanyapur in a phase-wise manner. 4 (four) Supplemental Development Agreements were entered into by and between the respondent and the claimant no.1 for phase-wise development of specific portions of the Kanyapur Land. For facilitating phase-wise development in terms of the Supplemental Development Agreements, the respondent revoked the Power of Attorney dated May 12, 2006 granted by the respondent in favour of the claimant no.1 and executed 4 (four) Specific Powers of Attorney in connection with each of the Supplemental Development Agreements. Copies of such Supplemental Development Agreements have been duly annexed. As a follow up measure, the claimant no.1 had mobilized manpower, materials, resources and also applied to various financial institutions for loans, financial assistance etc. The respondent agreed to render all reasonable assistance to claimant no.1 in securing the required

sanctions/licenses/permissions/approvals from the appropriate authorities (vide clause 8.20 of the MOU dated 25th June, 2004 and clause 6.2 of the Development Agreement dated 5th July, 2004). But unfortunately, there was little support or co-operation from the respondent and this resulted in an inordinate delay in getting sanction of the building plans in respect of each of the phases.

The claimant no.1 despite such odd circumstances completed Phase 1A and part of Phase 1B and work is ongoing at Phases 1C and 2, since the plans for these phases have been sanctioned only on 25th July, 2013. Due to the delay in sanction of the plans and negligence of the respondent to take up the matter with the Asansol Municipal Corporation, the claimant no.1 had to incur substantial expenses on account of idle labour, manpower, materials. tools, tackles etc. The claimant no.1 had applied for obtaining financial facilities from various financial institutions like LIC Housing Finance Limited, West Bengal Infrastructure Development Finance Corporation Limited etc. In the past, various financial institutions had sanctioned grant of financial facilities in favour of the claimant no.1 subject, however, to the claimant no.1 providing No Objection Certificate from the respondent for mortgage of land. The claimant no.1, on or about March 2012 (LIC Housing Finance Ltd) and from time to time, requested the respondent to issue necessary No Objection Certificate for creation of mortgage in respect of the land in favour of the claimant no.1 for financial facilities to be issued by the said authority.

Surprisingly enough, by a letter dated April 27, 2012, the respondent contended that the MOU dated June 25, 2004 had not been executed and that the Powers of Attorney had expired and therefore, the

request for a No Objection Certificate could not be granted. By letter dated 27th September, 2012, it called upon the claimant no.1 to comply with certain terms and to make certain payments. The respondent claimed a sum of Rs.3,82,46,378/- (Rupees three crores eighty two lakhs forty six thousand three hundred and seventy eighty) only as upfront payment. This was on account of loan extended by the respondent to BSIDL in respect of land in Asansol and Raniganj. Regarding dividend payment for financial year 2008-09 amounting to Rs.99,82,800/- (Rupees ninety nine lakhs and eighty two thousand) only was also demanded. It was further intimated by the respondent that the Board had decided for the purpose of extension of MOU and subsequent POA, the respondent shall impose Difference in Land Premium (DLP) rate on the land where no construction of work has started as on the date of expiry of the original MOU. It was further intimated that the respondent shall charge BSIDL 50% of the prevailing ADSR value for the purpose of calculation of the DLP, the average of value, which comes to Rs.68,16,535/- (Rupees sixty eight lakhs sixteen thousand five hundred and thirty five) only. The total DLP payable was Rs.31,74,32,402/- (Rupees thirty one crores seventy four lakhs thirty two thousand four hundred and two) only.

Summing up the aforesaid claims, the claimant no.1 was requested to pay an amount of Rs.36,56,60,780/- (Rupees thirty six crores fifty six lakhs sixty thousand seven hundred and eighty) only within 15 days from the date of issuance of the letter dated 27th September, 2012, a copy of which has been annexed and marked as Annexure "L".

According to claimant no.1, such stand of the respondent was in clear violation of the Development Agreement dated 5th July, 2004 as well

as MOU dated 25th June, 2004. Such hostile approach on the part of the respondent and it's refusing and/or withholding the required No Objection Certificate put the claimant no.1 in serious difficulties and caused enormous loss and damage to all concerned. This prevented the claimant no.1 from servicing their debt including the loan obtained from the respondent. By 2 (two) letters dated October 4, 2012 and November 26, 2012, the claimant no.1 denied and disputed all allegations made in the letter dated September 27, 2012 and denied that the claimant no.1 had any liability to make payment of any amounts as mentioned in the letter dated September 27, 2012. The claimant no.1 continued to request the respondent to grant No Objection Certificate so as to enable it to create mortgage in respect of financial facilities sanctioned by WBIDFCL. Instead of discharge of its obligations, the respondent informed the claimant no.1 that unless the demands in terms of the letter dated 27th September, 2012 issued by the respondent were met, the respondent would explore the option of termination of the Joint Venture with the claimant no.1.

The claimant no.1 has claimed that no amount is due and payable to the respondent and the purported letters dated September 27, 2012 and July 22, 2013 are based on false and baseless allegations and are liable to be declared null and void.

Referring to the MOU dated June 25, 2004, Development Agreement dated July 5, 2004 and 4 (four) Supplemental Agreements dated June 24, 2006, March 28, 2007, July 12, 2010 and July 27, 2010, it had been claimed that there is no provision for enhancement of valuation of land and therefore, question of making payment to the respondent on account of 'Difference in Land Premium' does not arise. It had been further claimed that the total value of the land was kept provisional upon

measurement of the actual area of land with value being fixed at Rs.4,00,000/- (Rupees four lakhs) only per acre without any provision for price escalation. The claimant no.1 had been prevented from completing work on account of non-cooperation on the part of the respondent and its failure to perform the obligations and as such, the claimant no.1 does not deserve to be saddled with the liability of purported 'Difference in Land Premium'.

The claimant no.1 has thus claimed that the said letters dated September 27, 2012 and July 22, 2013 issued by the respondent deserve to be adjudged null and void.

The claimants had invested substantial amount in the projects, which are at different stages of completion and delay in issue of No Objection Certificate had put the claimants in a difficult situation causing huge financial loss and loss of credibility. The consistent negligence and failure on the part of the respondent resulting in inordinate delay has put the claimants into serious hardship and it also could not keep its commitment to the allottees of various premises / areas.

Many of the intending allottee(s)/purchasers/lessees cancelled their allotment/agreement of the claimant no.1 and initiated legal proceedings. In most of such legal cases, the claimant no.1 has been directed to pay monetary compensation.

Both the claimants are jointly and severally entitled to recover such expenses incurred in connection with legal proceedings and so on and so forth.

Amongst breach and violation of the MOU dated June 25, 2004 and the development agreements, the following are worth mentioning:-

(a) No Objection Certificate as necessary for obtaining loans from financial institution were not issued by the respondent in favour of the claimant no.1 in time. This resulted in lapse of already obtained sanctions from financial institution and this hindered the progress of the project;

(b) The respondent did not provide any assistance in the matter of obtaining sanction of building plans from the appropriate authorities;

(c) The respondent acted in a manner prejudicial to the interest of the project as well as the claimants. The claimants as a result have suffered loss and they are entitled to claim the same from the respondent;

By letter dated 31.08.2007 the respondent informed that as per it's policy, leases in respect of residential units would be for a period of 999 years and for commercial units for 99 years in respect of projects at Raniguni and Asansol. The respondent executed many lease deeds for residential units for 999 years till 28th August, 2014. Surprisingly, it stopped registration of lease deeds and suddenly by letter dated 28th of August, 2014 it changed its policy and informed that the lease deed for residential units would be for a lease period of 99 years only. This sudden stoppage of registration resulted in cancellation of many allotments and claimants are apprehending civil and criminal litigations against them. The claimants have been compelled to agree to the execution of lease deed having 99 years lease period, though this cannot restrain the claimants from claiming their right to get the lease deeds executed by the respondents for a period of 999 years. It is not possible to quantify the extent of damage suffered by the claimants due to change of policy

and decision on the part of the respondent and as such, the claimant no.1 has claimed an inquiry into damage suffered and prayed for an award for such sum.

Disputes and differences have thereafter been referred to arbitration.

The claimant no.1 has thus prayed for declaration that the letters dated September 27, 2012 and July 22, 2013 issued by the respondent being Annexure 'L' and 'O' to the claim petition are illegal, null and void. The claimant no.1 has also prayed for an award for cancellation of the said letters. Award for specific performance of the obligations of the respondent under various clauses of the MOU dated August 17, 2000 and the Development Agreement entered into by and between the respondent and the claimant no.1 and the respective clauses of the Powers of Attorney granted by the respondent has been sought for. There is prayer for perpetual injunction restraining the respondent from taking any further steps and/or acting on the basis of the letter dated September 27, 2012 and July 22, 2013. Prayer has also been made for mandatory injunction directing the respondent to act in terms of and in accordance with the MOU dated June 25, 2004. Order of mandatory injunction directing the respondent to issue NOCs/permissions/approvals within a time frame of 15 days from the date of submission of such requests by the claimant no.1 and an enquiry into damages suffered by the claimant no.1 on account of the respondent and an award of the same have also been sought for.

In response to this, the respondent has filed a Counter Statement, *inter alia*, denying all the material allegations made by the claimant no.1. It is stated that the respondent and the claimant no.2 had entered

into a MOU on 17th day of August, 2000 where under both the parties agreed to jointly develop marketing, high quality school, labour education, quality health services, product design and market facilities supported by quality housing and water supply infrastructure to promote entrepreneurs capable of quick penetration of export market.

Pursuant to such understanding a Joint Venture Agreement was entered into on 11th December, 2000. Apart from agreeing the parties to have equal share, it was mutually decided that both the parties would participate in the management of the Joint Venture Company. By virtue of modification of clause, it was proposed that Managing Director of the said Joint Venture Company shall be appointed/nominated by Shristi Infrastructure Development Corporation Limited, being claimant no.2 herein. It was thus decided that the Managing Director would be responsible for looking after the day to day affairs of the said company under the superintendence of the Board of Directors of the Company. Subsequently, Bengal Shristi Infrastructure Development Limited, the claimant no.1 herein, was incorporated and a MOU was entered into by and between the claimant no.1 and the respondent on 25th of June, 2004.

The respondent was made responsible for offering lands, which were to be developed by the Joint Venture Company. Three projects were identified, of which the first being the City Centre Project was for development of the City Centre land at Durgapur by construction of commercial-cum-market complex, community and recreational facilities and residential building; the second project being the Asansol Project at Kanyapur was for construction for of integrated township and residential building, commercial-cum-market complex, community and recreational facilities and the third being the Ranigunj Project which was identified as

Mangalpur Project and involved construction of modern truck terminus-cum-highway facilities.

In terms of the MOU as referred to earlier, the respondent handed over possession by way of allotment of 89.67 acres of land at the rate of Rs.7 (seven) lakhs per acre at Kanyapur, Asansol and 18.83 acres of land at the rate of Rs.2 (two) lakhs per acre at Mangalpur for development of Ranigunj Truck Terminus. The land premium at Kanyapur and Mangalpur worked out to Rs.3,96,34,000/- (Rupees three crores ninety-six lakhs and thirty four thousands) only, out of which Rs.1,10,36,000/- (Rupees one crore ten lakhs and thirty six thousands) only was to be paid by the claimant no.1 at the first instance to the respondent and the balance amount of Rs.2,85,98,000/- (Rupees two crores eighty five lakhs and ninety eight thousands) only was to be treated as loan advanced by the respondent to the claimant no.1 after adjusting the amount of equity shares issued to the respondent in the claimant no.1.

Subsequently, a Development Agreement was executed on 5th of July, 2004. It was followed by execution of necessary Power of Attorney and Supplementary Development Agreement for Phases 1A, 1B, 1C and 2. The claimant no.1 failed to honour its commitment for which a report dated 24th October, 2011 was prepared on the financial status of the project undertaken by the claimant no.1. The report reflects that 27.04 acres of land for Phases 1A, 1B and 1C have been mortgaged for obtaining loans from the financial institutions and it was in breach of the terms of the MOU and Development Agreement. The claimant no.2 was managing the affairs of the claimant no.1. The terms of the MOU provided that within a period of 7(seven) years from the date of execution of the MOU dated 25th of June, 2004, the claimant no.1 shall be

obliged to pay to the respondent in installments the sum of Rs.1,10,36,000/- (Rupees one crore ten lakhs and thirty six thousand) only at the first instance and the balance of Rs.2,85,98,000/-(Rupees two crores eighty five lakhs and ninety eight thousand) only after adjustment of equity shares allotted to the respondent in the claimant no.1 within a period of seven years from 25th June, 2004. After necessary adjustment, a sum of Rs.1,97,93,000/- remains outstanding to the respondent from the claimant no.1 as a loan in terms of clause 8.9 of the agreement dated 25th of June, 2004. The claimant is liable to pay interest at the agreed rate of 12% per annum on the said sum till realization.

The time for execution of project expired on 24th June, 2011. But on 25th July, 2011 the claimant no.1 requested the respondent to extend the period of the Development Agreement for the different phases of Shrishtinagar and Ranigunj Square for a period of seven years.

Admittedly, the claimant no.1 had defaulted. In order to make the claimant no.1 accountable, the respondent decided to impose conditions for granting extension. The claimant no.1 was asked to make upfront payment of Rs.1,97,93,000/- being the outstanding amount of loan extended by the respondent to the claimant and interest of the agreed rate of 12% per annum, which worked out to Rs.1,84,53,378/- (Rupees one crore eighty four lakh fifty three thousand and three hundred seventy eight) only as on 31st of March, 2012. The other conditions set forth for granting extension would be corroborated from the letter dated 27th September, 2012 issued by the respondent.

The claimant no.1 by letter dated 5th October, 2012 while responding to the respondent's proposal, proceeded on the premise that notwithstanding expiry of the original tenure of the Memorandum of

Understanding, the claimant was entitled to continue with the loan and there was no question of the respondent demanding repayment of such loan at that stage. The said letter was followed up by a letter dated 26th November, 2012.

The present proceeding is in itself a non-starter, since it has been initiated on the basis of letter dated 31st July, 2013 issued by Bengal Shristi Infrastructure Development Limited, the claimant no.1. In the claim petition, Shristi Infrastructure Development Corporation Limited has also been added as a claimant, but it does not have any cause of action for initiating the present arbitral proceeding. The present proceeding has been initiated with the sole object of delaying and/or avoiding the obligations that the claimant no.1 was required to comply in terms of the letter dated 27th September, 2012.

It is the specific stand of the respondent/ADDA that the claimant no.1 failed to execute the project in one go and at its instance, it was agreed that Kanyapur Project would be developed in a phased manner for which four Supplemental Agreements would be entered into. Those were executed to facilitate the execution of the project by the claimant no.1. The claimant no.1 failed to execute the Project within the stipulated time and this would be reflected from a report dated 24th October, 2011, which was prepared on the financial status of the Project. Original Power of Attorney in favour of the claimant no.1 was revoked in the changed circumstances and fresh Powers of Attorney were subsequently executed and this was done at the instance of the claimant no.1.

It has been further claimed that the respondent is not the authority for issuance of the sanctioned plan for construction of building. It was the obligation of the claimant no.1 to obtain sanctioned building

plan. Delay in obtaining such sanctioned plans cannot be attributed to the respondent. There had been no failure or negligence on the part of the respondent. The claimant no.1 had no authority under the MOU dated 25th June, 2004 or under the subsequent Development Agreements to mortgage any part or potion of the lands, which form part of the Development Agreements. Consequently, the question of the respondent providing 'No Objection Certificate' to the claimant no.1 to mortgage the lands covered under the Development Agreements could not have arisen.

On account of failure on the part of the claimant no.1, it could not generate revenue and/or profits for which it did not pay the dividends. Failure to pay the dividends is directly attributable to the claimant no.1. It is emphatically claimed that contents of the letters dated 4th October, 2012 and 26th November, 2012 were wholly unacceptable to the respondent. Obviously, by such letters the claimant no.1 was attempting to illegally absolve itself of the contractual terms, which was not permissible. Mere fact that the Board of Directors of the claimant no.1 has representative of the respondent does not in any way suggest that loan obtained from the respondent can only be repaid upon availing finance facilities from financial institution and not otherwise. The Memorandum of Understanding dated 25th June, 2004 or the Development Agreements dated 5th July 2004 or the Supplemental Agreements dated 24th June, 2006; 28th March, 2007; 12th July, 2010 and 27th July, 2010 could not contain any provision for enhancement of valuation of lands or the respondent cannot be permitted to ask for difference in land premium while considering the claimant no.1's request for granting extension. Admittedly, the claimant no.1 had failed to execute the contract within the contractual period and it was thus open to the respondent to claim difference in land premium while granting

necessary extension. The claimant no.1 cannot be permitted to fall back on the original terms of the contract to disentitle the respondent from claiming difference in land premium while granting extension.

The respondent has categorically denied that it had failed to comply with the obligations under the Memorandum of Understanding dated 25th June, 2004 or the various Development Agreements or on account of refusal on the part of the respondent to fulfill its obligations under the Memorandum of Understanding dated 25th June, 2004 or the various Development Agreements entered into with the claimant no.1, it was unable to hand over the contracted areas to the intending purchasers within the agreed period of time. The respondent has further claimed that it was under no obligation to make over any 'No Objection Certificate' to enable the claimant no.1 to obtain loans from financial institution. It is denied that the aforesaid can be summarized as a breach under the Memorandum of Understanding or the Development Agreements or Powers of Attorney as alleged. The respondent has then claimed that it was the responsibility of the claimant to obtain sanctioned building plans and failure to obtain such plan in time had resulted in delay and same cannot be attributed to the respondent. It has been submitted that as of today the contract has already been determined and nothing remains to be done by the respondent.

Thus, while categorically and specifically denying the allegations made by the claimant and asserting that the claimant no.1 is any no way entitled to get reliefs prayed for in the claim petition, the respondent has sought for its dismissal with costs.

The claimant no.1 has filed rejoinder to the counter statement of facts submitted by the respondent. While denying all the material

allegations made by the respondent in such counter statement, such claimant no.1 has mentioned that such counter statement suffers from gross suppression and misrepresentation of materials facts. There had been no failure on the part of the claimant no.1 to honour any commitment. It has denied that 27.04 acres of land in Phase 1A, 1B and 1C were mortgaged for obtaining loans from the financial institution in breach of terms of the MOU and Development Agreements. It has further denied that no permission was sought from the respondent or that it did not have its approval. The respondent had itself issued 'No Objection Certificate' in connection with the aforesaid development. It is further allegations that loan of the respondent, who is one of the promoters can be repaid only after repayment of liabilities pertaining to lender(s) / financial institution(s) of the claimant no.1 from whom they have taken term loan for development of the Project. When the respondent demanded repayment of its loan, the claimant no.1 had a running term loan from LIC Housing Finance, which was yet to be repaid and thus no question could arise of making any payment to the respondent before repaying a term loan.

The claimant no.1 has specifically alleged that the respondent did not provide any assistance in expediting the process of sanction of the building plans with the result that the building plans were sanctioned belatedly and the construction could only commence thereafter. The claimant no.1 has denied that it did not have any right to mortgage any part or portion of the land for the purpose of obtaining finance facilities under the agreements between the parties. Such claimant no.1 has repeatedly alleged that it was due to failure on the part of the respondent to discharge its legal obligations, the claimant no.1 had to incur heavy

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loss. It has been further denied that the contract between the parties has been determined and nothing remains to be done by the respondent.

When hearing of the matter reached its penultimate stage, learned counsel for the parties expressed their desire to file Written Notes of Arguments. Unfortunately there was belated response on the part of the claimant in this regard.

After due consideration of the pleadings on record and having regard to the submission, the following points are formulated for adjudication:-

Points for adjudication

1) Is the present proceeding maintainable in its present form and prayer?

2) Had there been any laches on the part of the respondent so as to entitle the claimants to get relief in the manner, as sought for?

3) Is it within the competence of this Tribunal to grant relief by way of directing specific performance of contract?

4) Are the claimants entitled to get an award for declaration and specific performance in terms of prayers made?

Decision with reasons

Point no.1.

At the time of hearing of the matter, nothing specific was urged challenging the maintainability of the proceeding.

Upon careful consideration of the facts and circumstances and the various materials on record, this Tribunal is inclined to hold that the

present proceeding is very well maintainable. This point accordingly gets decided in favour of the claimants.

Point nos. 2, 3 and 4.

All these points are taken up at a time for the sake of convenience as well as for proper appreciation.

Inviting attention of this Tribunal to the Statement of Claim, it is contended that the respondent/Asansol Durgapur Development Authority (hereinafter referred to 'ADDA') failed, neglected and refused to fulfill its obligations contained in the Memorandum of Understanding dated August 17, 2000 and Development Agreements entered into by and between the respondent and the claimant no.1 and respective clauses of the powers of attorney granted by the respondent to the claimant no.1. The respondent after having failed and neglected to issue no objection certificates/consent certificates/permissions/approvals and without fulfilling its obligations under the various agreements as referred to earlier and powers of attorney, is preventing claimant from performing their reciprocal obligations. According to the claimant, the respondent by letter dated September 27, 2012 and July 22, 2013 has contended that the agreement between the parties had expired and had raised various demands on the claimants contrary to the terms of the Memorandum of Understanding dated August 17, 2000 and the Development Agreements as well as respective clauses of the powers of attorney.

Learned Counsel, Mr. Bose has categorically submitted that the aforesaid documents would convincingly establish that the agreements between the parties are not terminable save and except in specific cases provided in the agreements themselves. Since no such case has arisen, the said two letters are void *ab initio*. According Mr. Bose, learned

counsel for the claimant no.1, the respondent was under obligation to co-operate and assist the claimant in execution of the projects and to issue/grant no objection certificate, permissions, approvals etc. Referring to annexure' K', 'M' and 'N' to the statement of claim, Mr. Bose mentioned that there had been no lack of initiative on the part of the claimant to get such permissions and/or approval. It was further submitted that the respondent is represented on the board of the claimant no.1 and no resolution can be passed without the approval and at least one nominee of the respondent as per clauses in the MOU. It was then contended that the respondent was well aware that without its permission, building plan would not be sanctioned, loans against mortgage of land would not be granted by the banks and financial institutions. This would consequently hinder and delay the execution of the project besides causing substantial monetary loss to the claimants.

In this context, attention of the Tribunal was drawn to the evidence of the witness examined on behalf of the claimant no.1, who deposed that the respondent was supposed to provide various support to the claimant, but it was not so done. Such witness further deposed that the respondent had not provided land free from all encumbrances and this was brought to the notice of the respondent by making a written complaint. It is further evidence of such witness by the claimant that the respondent did not facilitate in the matter of sanction of the building plan and did not get land free from all encumbrances, which delayed the sanction of the building plan.

It was then submitted that the claimant no.1 commenced the development works diligently and completed phase 1A and 1B. According to the claimant no.1, work is going on at Phase 1C and 2, since the plan

for these phases have not been sanctioned until 25th of July, 2013. Such delay in sanction of the plans and failure/negligence on the part of the respondent resulted in claimant incurred substantial expenses on account of idle labour, manpower, materials, tools, tackles etc. Evidence on behalf of the claimant no.1 in this regard has virtually remained unassailed.

Mr. Bose, learned counsel, categorically submitted that the various clauses in the Joint Venture Agreement dated December 11, 2000 (Clause A – page 36; Clause 5.2 – page 39; Clause 9 – page 42), Memorandum of Understanding dated June 25, 2004 (claus 14 – 71) and Development Agreement dated July 5, 2004 (clause 4.3 – 87 and clause 7.1 – page 9) would clearly demonstrate that even the execution of the project, the agreements between the parties were non-terminable. According to him, issuance of a letter by the claimant seeking extension cannot lead to the conclusion that the agreement is terminable. He has referred to the evidence of witness, Sunil Jha, in cross examination in this regard.

On behalf of the claimant it was thus submitted that the respondent had no scope to threaten the termination of the agreements and had acted illegally by proposing to extend the agreements only upon fulfillment of various conditions. It was further submitted that there is no provision for payment of differential land premium in any of the agreements and the claim made by the respondent on such account in the letters dated September 27, 2012 and July 22, 2013 are thus illegal and void.

Referring to evidence of respondent's witness, Bratin Chatterjee, who he was associated with the respondent since December 2, 2013, it was submitted by the learned counsel for the claimants that such witness

could have had no knowledge about the pertinent facts of the case, which have all occurred prior to December 2, 2013. According to Mr. Bose such witness on behalf of the respondent, Mr. Bratin Chattejee, suffers inherent hollowness and latent weakness. The respondent has not been able to prove the performance its reciprocal obligations under the agreements between the parties.

On the other hand, in the Written Notes of Argument filed on behalf of the respondent it has been contended that the Memorandum of Understanding was originally entered into by and between the claimant on the one hand and the respondent on the other on 17th August, 2000, *inter alia*, with the object of entering into a Joint Venture within a period of two years therefrom for the purpose of carrying out development work. On 11th December, 2000 a Joint Venture Agreement was executed whereunder the modalities in connection with formation of the joint Venture Company and the administration of such company was set forth. It was, *inter alia*, provided that such Joint Venture shall subsist so long the parties to which joint Venture continues to retain interest therein. Accordingly, Bengal Shristi Infrastructure Development Limited was incorporated on 7th February, 2001. On 25th June, 2004 another fresh MOU was executed which had overridden all previous agreements between the parties. In terms of the same, the respondent no.1 agreed to appoint the respondent no.2 i.e., Joint Venture Company as developer for development of certain lands in an around Asansol and Durgapur area for and at a consideration as set forth therein and *inter alia*, providing for repayment of financial accommodation given to the Joint Venture Company within a period of seven years. The terms of the development were noted in a subsequent development agreement dated 5th July, 2004. The revised memorandum had the effect of overriding and

novating the previous terms. The same, *inter alia*, provides that the projects was to be completed within a period of seven years or such extended time as may be agreed.

A power of Attorney was subsequently executed in favour of the Joint Venture company. The said company could not execute the development project in one go and for these, development commenced at the instance of the claimant in phases as detailed herein below:-

	Date of supplemental Development Agreement	Phase Number	Description of Land	Date of power of Attorney
1.	June 24, 2006	1A	22.044 acres in MouzaKumarpur	June 29, 2006
2.	March 28, 2007	1B	26,472 acres in Mouza-Ganrui, Gobindapur and Kumarpur	March 28, 2007
3.	July 12, 2010	1C	19.676 acres in Mouza-Gopalpur and Kumarpur	September 9, 2010
4.	July 27, 2010	2	21,478 acres at Mouza – Ganrui and Gobindapur	September 9, 2010

Consequently, Power of Attorney was also executed for execution of work in phases and accordingly Power of Attorney and supplemental Agreement for Phase 1A, 1B, 1C and 2 were executed, *inter alia*, for effective execution of the project. The claimant had defaulted in adhering to the repayment schedule. It applied for extension of the development agreements. The delay in execution was found unjustified. As such, the application dated 5th February, 2012 seeking extension of MOU as also permission to mortgage was conditionally granted by the respondent subject to the following :

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i) Repayment of the loan extended by the respondent to the joint Venture Company;

ii) Payment of dividend;

iii) Payment of additional loan premium;

Being aggrieved, the claimant had referred such matter to Arbitration seeking reliefs as mentioned in the Statement of Claim.

Mr. BasuChowdhury, learned counsel for the respondent submitted that the claimant had not pleaded that it was ready and willing to adhere to the terms of the contract nor it proved its readiness and willingness.

In this context, learned counsel Mr. BasuChowdhury submitted that perusal of the MOU dated 25th June, 2004 and in particular its clause (f) would demonstrate that the terms of the same shall prevail over others and previous agreements between the parties. Clause 8.12 of the said MOU makes it abundantly clear that at the first instance, the claimant no.1 would be obliged to pay the respondent no.1 amounts mentioned in clause 8.8 of the MOU within the maximum period of seven years from the date of execution of the revised MOU. Learned counsel then contended that admittedly the said sum has not been paid in full. The claimant having failed to act in terms of the agreement/MOU cannot be entitled to specific performance thereof.

Referring to Section 16 (c) of the Specific Relief Act, it was submitted that it bars grant of above relief inasmuch the claimant had failed to aver and prove that he had performed and or is always ready and willing to perform the essential terms of the agreements, which are

to be performed by him. In this context, reference had been made to the judgment reported in ***AIR 1967 SC 869*** and ***AIR 1968 SC 682***.

Mr. Basu Chowdhury submitted that though the claimant has asked for specific performance e of the MOU dated 17th August, 2000 yet perusal of paragraphs 7 and 8 of the statement of claim read with Clause (f) of the MOU dated 25th June, 2004 makes it abundantly clear that clauses of the said MOU dated 25th June, 2004 shall override and/or prevail over previous agreement. Mr. Basu Chowdhury further submitted that the claimant must stand in the proceeding on its own strength and certainly not on any illusory weakness in the defence case.

Before proceeding further it may be necessary to refer to Section 16 of the Specific Relief Act, which had been strongly relied upon by the learned counsel for the respondent. The same reads as follows:

"**16. Personal bars to relief.** – Specific performance of a contract cannot be enforced in favour of a person -

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or willfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.

not arbitrarily as adumbrated under Section 20 of the Specific Relief Act, 1963. It was emphatically contended that Section 16(c) of the Specific Relief Act, 1963 envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. No doubt, the continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. Such proposition of law finds support in the decision of the Supreme Court in the decision of Supreme Court in the case ***of Ouseph Varghese v. Joseph Aley, (1969) 2 SCC 539.***

In this context, it is worth mentioning that an averment of readiness and willingness in the plaint is not a mathematical formula, which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfill his part of the obligations under the contract which is the subject matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale ***(Ref.AniglaseYohannan v. Ramlatha, 2005 AIR SCW 4789)***.

Deriving inspiration from the decision in the case of ***M/s Hindustan Shipyard Ltd. V. State, 2000 (4) Civil LJ 524 (SC),*** it can very well be held the compliance of 'readiness and willingness" has to be in spirit and substance and not in letter and form". It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the

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plaintiff to fulfill his part of the obligations under the contract which is subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit of specific performance of contract for sale.

The explanation 'readiness and willingness' in law does not demand or deserve an interpretation with mathematical precision. Law does not necessarily demand dotting of every 'i' and cutting of every 't'. The Court or Tribunal cannot afford to miss the wood for the trees and overall reading of the averment in the application in the present proceedings clearly indicate anxiety on the part of the claimants to proceed with assignment.

Deriving support and strength from the decision in the case between ***A.E.G. Carapiet v. A. Y. Derderian*** reported in ***AIR 1961 Calcutta 359 (V 48 C 74)*** it was submitted by Mr. Bose the learned counsel for the claimant that a party should put his case in cross-examination of witnesses of the opposite party. 'This is not merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses.'

It was then submitted by Mr. Bose that evidence on record clearly indicate that there was no such effort on the part of the respondent to establish that there had been no 'readiness and willingness' on the part of the claimant. While answering to the point raised by Mr. Basu Chowdhury the learned counsel for the respondent, Mr. Bose relied upon the decision in the case between ***Olympus Superstructures Pvt. Ltd. Vs. Meena***

*Vijay Khetan and Ors.*reported in *(1999) 5 Supreme Court Cases 651*. The Apex Court in the said case held that merely because there is need for exercise of discretion in case of specific performance, it cannot be said tht only the civil court can exercise such a discretion. Disputes relating to specific performance of a contract can be referred to arbitration. There is no provision in the Specific Relief Act , 1963 that issues relating to specific performance of contract relating to immovable property cannot be referred to arbitration.

Claimants' witness, Sunil Jha, has referred to the evidence in chief and his signature therein. He had been cross-examined at length. In cross-examination, the said witness stated that as per Memorandum of Understanding, they were required to pay 50% of the land premium at the prevailing rate and they made such payments. It is in evidence in cross- examination that it was obligation upon both the parties, the claimants as well as the respondent, to discharge their respective obligations.

While agreeing that it was obligation of the claimants, according to the Development Agreement, to take step for sanction of the plan for the project under ADDA, latter was supposed to provide the claimants with land free from all encumbrances.

In cross-examination, such witness, Sunil Jha, has referred to various documents, which have been marked Exhibits A series. Specific suggestion was given to such witness that the Development Agreement was for a period of seven years only and not till completion of the project but such witness clearly disagreed. It appears that witness Sunil Jha firmly stood the test of cross examination.

By letter dated 27th of September, 2012 (Annexure 'L') Chief Executive Officer of Asansol Durgapur Development Authority asked the CEO of BSIDL to pay up an amount of Rs.36,56,60,780/- within 15 days from the date of issue of the letter. It was categorically stated that ADDA would consider the matter of extension of MOU and POA and permission for mortgage of land, as prayed for, only after all the outstanding dues are cleared by the BSIDL within the stipulated time.

Attention of the Tribunal was drawn to the Memorandum of Understanding dated 25th of June 2004 being Annexure –'E' to the claim application. Reference was made to the various clauses of the said MOU as well as the Schedule II, Schedule III and Schedule IV of the same. Similarly Mr. Basu Chowdhury referred to Development Agreement dated 5th of July, 2004 and Schedule I to the same. According to him, proper appreciation of the various clauses and the schedules would clearly indicate that it was for the claimants to execute the work as mutually agreed upon. He further submitted that Supplemental Development Agreements one after another, were done at the instance of the claimants.

On the other hand, Mr. Bose, Learned Counsel for the claimant no.1 after referring to the various clauses of the relevant documents categorically submitted that there was no provision for termination of the agreement except on the grounds as clearly indicated. It was submitted that the agreement could only terminate (A) on the date when the company is wound up; (B) for Shristi or ADDA, when they cease to be a shareholder in the company. According to Mr. Bose, combined reading of four agreements would clearly point out that without effective support and co-operation of the ADDA, it was virtually impossible for the

claimants to move; even they could not properly convince the bank and financial institution. Referring to annexure 'L', it was submitted that there had been unjust assertion made by the ADDA and the direction for claiming of Rs.36 crores and odd as well as the future consideration for extension of MOU and POA and permission for mortgage of land etc. could not be justifiably thrust upon the claimants. Referring to the copy of the letter dated 22nd July, 2013, being Annexure 'O' addressed to the Chief Executive Officer, BSIDL, it was submitted by Mr. Bose that there had been further threat of cancellation, which is not permissible under the agreement. He also submitted that a point of law, which need not necessarily be pleaded, ought to have been put in cross-examination.

Attention was invited to the evidence of the two witnesses examined in the proceeding. While submitting that the categorical stand of the claimants in the present proceeding has virtually remained unassailed, Mr. Bose went on to add that evidence of the respondent suffers from inherent vagueness as such witness admittedly does not seem to have any direct knowledge of the facts and circumstances and his evidence cannot inspire confidence of the Tribunal.

Considering all the facts and circumstances of the present controversy and having regard to the various documents and materials on record, I am inclined to hold that any threat of cancellation in the factual back drop of the present proceeding is not permissible. The categorical stand of the respondent that the agreement subsists cannot just be brushed aside.

On careful scrutiny of the various clauses in the Agreement, MOU and POA, it appears that there had been initially lapses on the part of the ADDA. There is no scope for controversy that without support of the

ADDA the claimants could not effectively proceed with various other follow up steps for proper implementation of the project. It appears that initial vice persists.

It was emphatically mentioned on behalf of the claimants that there is no demand for compensation. But the two documents, as referred to earlier, being annexure 'L' and annexure 'O', do not seem to have any legs to stand upon and as such, they are liable to be declared void.

The scope for this Tribunal to grant relief by directing specific performance had been already dealt with. There is no statutory restriction and perhaps no reason for not giving an award for specific performance in a manner as sought for.

All the points raised during hearing thus stand disposed of.

The claim application succeeds to the following extent:-

Claimant no.1 thus is given an award by way of adjudging the letter dated September 27, 2012 and July 22, 2013 being Annexures 'L' and 'O' void and the said two documents thus stand cancelled. The claimant no.1 further gets an award for specific performance of the obligation of the respondents under the various clauses of the Memorandum of Understanding dated August 17, 2000 and the Development Agreement entered into by and between the respondent and the claimant no.1 and the respective clauses of the Power of Attorney granted by the respondent to the claimant no.1. The claimants do get an order of mandatory injunction directing the respondent to act in terms of the MOU dated June 25, 2004 being annexure 'E', by furnishing / issuing no objection certificate and other consent in favour of

the claimant no.2 as required for execution of the projects. The respondent is further directed to act in terms of the development agreement entered into by and between the respondent and the claimant no.1 and the respective clauses of the power of attorney granted by the respondent to the claimant no.1. The respondent is also directed to issue 'NOCs' / permissions / approvals within a period of four weeks from the date of receipt of request for the same.

Having regard to the nature and the background of the controversy, the parties are directed to bear their own respective costs.

The arbitration proceedings were conducted during the period from 22.12.2014 to 05.10.2016 and 'award' given at my residence at 25B, South End Park (Top Floor), Kolkata – 700 029.

I hereby make and sign this arbitration award – this 05th day of October, 2016.

Signed copy of this award be supplied to the parties in compliance with sub-section (5) of Section 31 of the Arbitration and Conciliation Act, 1996.

Dated : October 05, 2016.

Justice Sailendra Prasad Talukdar (Retd.)
Sole Arbitrator

Copy of the award
05/10/16.

Government of West Bengal
Department of Urban Development & Municipal Affairs
Town and Country Planning Branch
"Nagarayan", DF-8, Sector-I, Bidhannagar,
Kolkata-700 064.

SUDIP CHAUDHURI NOTARY 6584/2008 BIDHANNAGAR COURT 24 PGS. (N) GOVT. OF INDIA

No.2976-T&CP/C-2/1M-11/2014 Dated, Kolkata, the 11th December, 2018

From : The Joint Secretary to the
Government of West Bengal

To : i) The Chief Executive Officer
Asansol Durgapur Development Authority

ii) The Director, Bengal Shristi Infrastructure Development Limited
Administrative Block No.-I, City Centre, Durgpur – 713 216,
West Bengal.

Sub. : Minutes of the meeting held on 05.12.2018 at 12.00 noon in the Chamber of the Joint Secretary, Department of Urban Development & Municipal Affairs, in connection with the Issues of Arbitration between ADDA & BSIDL along with other Issues.

Sir,

I am directed to state that a meeting was held on 05.12.2018 at 12.00 noon in the Chamber of the Joint Secretary, Department of Urban Development & Municipal Affairs, in connection with the Issues of Arbitration between ADDA & BSIDL along with other Issues. Minutes of the meeting is enclosed herewith for kind information and taking necessary action accordingly.

Yours faithfully,

Encl. : As Stated.

Joint Secretary to the
Government of West Bengal

No.2976/1(1)-T&CP/C-2/1M-11/2014 Dated, Kolkata, the 11th December, 2018

Copy forwarded for information to :

The P.S. to the Principal Secretary of this Department.

Joint Secretary to the
Government of West Bengal

...at Venture Projects/6/jk

ATTESTED
S. CHAUDHURI
★ NOTARY ★
GOVT. OF INDIA
Regd. No.-6584/08
Bidhannagar Court
Dist.-North 24 Pgs

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Minutes of the meeting held on 05.12.2018 at 12.00 noon in the Chamber of the Joint Secretary, Department of Urban Development & Municipal Affairs, in connection with the Issues of Arbitration between ADDA & BSIDL along with other Issues.

The following officers were present in the meeting (Copy of attendance sheet annexed) :-

1. Smt. Sumita Bagchi, Joint Secretary, Department of Urban Development & Municipal Affairs.
2. Sri S. Arun Prasad, CEO, ADDA.
3. Sri Soumya Chattopadhyay, AEO, ADDA
4. Sri Bratin Kumar Chatterjee, Sr. Law Officer, ADDA
5. Sri Sunil Jha, Director, Bengal Shristi Infrastructure Development Ltd.
6. Sri Ashish Jha, DGM-Legal, Bengal Shristi Infrastructure Development Ltd.
7. Sri S. Thakurata, Chief Town Planner, Department of Urban Development & Municipal Affairs.
8. Dr. S. Das, Sr. Law Officer, Department of Urban Development & Municipal Affairs.

Smt. Sumita Bagchi, Joint Secretary, Department of Urban Development & Municipal Affairs, Govt. of West Bengal took the chair. The meeting had been convened in connection with the Issues of Arbitration between ADDA & BSIDL along with other Issues.

The Chairperson requested the Chief Executive Officer, Asansol - Durgapur Development Authority to state the cases of dispute between ADDA & BSIDL.

The Chief Executive Officer, Asansol - Durgaour Development Authority stated that the Bengal Shristi Infrastructure Development Limited & Asansol – Durgapur Development Authority entered into a joint venture in 2001 signing MOU with equal partnership for the purpose of construction and implementation of various projects at City Centre, Durgapur, Kanyapur and Mangalpur. The MOUs, the Joint Venture Agreement, the Modification Agreement, were signed between the parties. As a party, ADDA contributed a quantum of land admeasuring 74.97 acres at Kanyapur and Mangalpur to develop integrated township for providing housing and allied facilities. During scrutiny of records and survey plan, it was found that the total area of land which had been handed over was 89.55 acres and not 74.97 acres. Then the 50% of the land premium for this excess 14.58 acres of land, was treated as loan to BSIDL. The rest 50% was deposited as land premium. After the promulgation of the new Land Allotment Policy of the Govt. of West Bengal in 2012, ADDA claimed Differential Land Premium for the portion of land over which any work was not started from the date of handing over possession. ~~When~~ BSIDL refused to give any payment on account of DLP due to a clause in the Development Agreement in which it was stated that land premium was final and could not be re-negotiated/enhanced/escalated.

The Director, Bengal Shristi Infrastructure Development Ltd. explained that BSIDL needed fund to carry ou the projects at that time. Financial Institutions were then demanding NOC of ADDA from BSIDL against th loans offered to BSIDL for mortgaging the demised land. Without having such NOC, BSIDL is still sufferin from paucity of fund. Besides that registration of several projects are also pending with ADDA. In spite of suc financial situation, BSIDL paid Rs. 30 Lakh recently to ADDA. The Director, BSIDL assured to repay th interest of the loan as on 2012 in 05 instalments, Dividend in 02 instalments and the principal amount of loan i instalments too. He also requested ADDA to process the pending issues now.

ADDA appointed an arbitrator to settle the issues but the judgement was awarded against ADDA. Being no satisfied with the award, ADDA filed an appeal against that award in the Hon'ble District Court, Burdwan.

The CEO, ADDA requested to settle at least the interest part of the loan, disbursement of dividend an principal amount of the loan as early as possible.

After a long, thread bare discussion on these disputed issues, the following decisions were unanimously taken :-

1. The interest on the loan component to be re-paid by BSIDL to ADDA in 5 instalments.
2. Repayment of remaining outstanding dues of dividend & the principal amount to be done as pe instalments. The Director, BSIDL may furnish instalment chart specifying time of repaying instalments.
3. The pending registrations will be taken up from the end of ADDA.
4. Other issues will be resolved as usual in due course through joint sitting of ADDA and Shristi.
5. The notice of the Board meeting of Shristi may be communicated to the CEO, ADDA at least 01 (one week prior to the meeting.

As there was no other relevant topic on the present issue, the meeting ended after giving thanks to all th members with the expectation for resolving the dead lock and ensuring smooth progress of the project

Joint Secretary
to the Govt. of West Benga