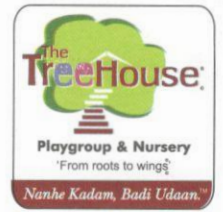


Tree House Education & Accessories Ltd.

Office No.101, Sapphire Plaza, Dadabhai Road, Opp. CNMS School, Vile Parle West, Mumbai - 400 056.
Tel: +91 22 26201029 CIN : L80101MH2006PLC163028



January 12,2021

To, BSE Ltd. Phiroze Jeejeebhoy Tower Dalal Street, Fort Mumbai - 400 001	To, The National Stock Exchange of India Ltd. Bandra Kurla Complex (East) Mumbai - 400 051	To, Metropolitan Stock Exchange of India Ltd. Exchange Square, CTS No. 25, Suren Road, Andheri (East), Mumbai - 400 093
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Dear Sir/Madam,

Sub: Disclosure under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Ref.:Scrip Code: 533540 / Symbol: TREEHOUSE

With reference to Regulation 30 of SEBI (LODR), 2015 please find attach herewith award passed by the Arbitrator in the matter of Tree House Education & Accessories Limited and Janodhar Shikshan Prasarak Mandal and others.

Kindly take the same on your record.

For Tree House Education & Accessories Limited



Jugal Shah
Director

DIN: 08334114





In the matter of Arbitration between :

M/s. Tree House Education & Accessories Ltd.

A Public Limited Company incorporated

Under the provisions of the Companies Act,

1956, having its registered address at

702 C, Morya House, Off New Link Road,

Andheri (W), Mumbai 400 053

... Claimant

And

1. Janodhar Shikshan Prasarak Mandal

A society registered under the Societies

Registration Act, 1960 and

Also a Public Charitable Trust registered

Under the Bombay Public Trusts Act, 1950,

Having its registered address at

(i) RHC- 123, Sector 4, Airoli,

Navi Mumbai – 400 708; and

(ii) 1st floor, N. V. Thakkar House

Road No. 22, Veer Savarkar Nagar,

POJK Gram Thane (W)- 400 606

2. Suresh V. Thakkar

of Mumbai, an Adult, Indian inhabitant

having his address at

(i) RHC- 123, Sector 4, Airoli,

Navi Mumbai – 400 708; and

(ii) 1st floor, N. V. Thakkar House

Road No. 22, Veer Savarkar Nagar,

POJK Gram Thane (W)- 400 606

3. Om Khemraj Gahlot

of Mumbai, an Adult, Indian inhabitant

having his address at

(i) RHC- 123, Sector 4, Airoli,

Navi Mumbai – 400 708; and

(ii) 1st floor, N. V. Thakkar House

Road No. 22, Veer Savarkar Nagar,

POJK Gram Thane (W)- 400 606.

... Respondents

Appearance

For the Claimant :

Advocates Ms. Kausar Banatwala, Ms. Gauri Sakhardande, i/b. Tushar Goradia.

For the Respondent :

Advocates Mr. Vachan Bodke, Ms. Pinky Sharma i/b. V & M Legal.

AWARD

1. The Claimant is a public limited company incorporated under the provisions of the Companies Act, 1956. The Claimant establishes and runs a chain of educational institutions/pre-schools/play schools under the brand name "Tree House". The Claimant also collaborates with established schools/new schools for this purpose. The Claimant has developed innovative methods of teaching which are proprietary and shared with its collaborators on certain terms and conditions.
2. Respondent No 1 is a Society registered under the Societies Registration Act, 1860 and is also a public charitable trust registered under the Bombay Public Trusts Act, 1950. Respondent No. 2 is the President and Respondent No. 3 is the Secretary and/or trustee of the First Respondent. Respondent No. 1 operated a school named "Gothivali Madhyamik Vidyalaya" for standards 8th, 9th and 10th and was affiliated to the Maharashtra State Education Board. The Respondent Trust is the licensee of 3517.40 sq. mtrs. land in Sector 4 Ghansoli, Thane under a Lease Agreement dated 3rd February 2004 executed by CIDCO and were in the process of acquiring rights in an additional piece of land admeasuring 5000 sq. mtrs. which was contiguous to their existing property. The 5000 sq. mtrs. land was to be used as a playground.
3. The parties entered into a Memorandum of Understanding (MOU) dated 10th June 2010¹ whereby the Respondents were to construct, at their own cost and expense², a school on their land as per the specifications of the Claimant. The MOU required 50% of the total built up area of 3166 sq. mtrs. to be ready by 30th June 2011 and the remaining 50% by 30th June 2012. The school which was to be called "Janodhar

¹ Exhibit C-2

² Clause 1.10 of Exhibit C-2 MOU

Shikshan Prasarak Mandal's Tree House International Public School"³ was to be run and managed by the Claimant under the brand name "Tree House". The Respondents were required to obtain affiliation from the CBSE/ICSE/IGCSE and IB Boards for the new school⁴. Under the MOU a total amount of Rs. Four crore was to be paid by the Claimant to the First Respondent Trust by way of interest free security deposit on the following milestones being achieved⁵:

- a. Rs. One crore and fifty lakhs on execution of the MOU;
- b. Rs. Fifty lakhs on obtaining permission for use 5000 sq. mtrs. land as playground;
- c. Rs. One crore on completion of school building construction upto the plinth level; and
- d. One crore on completion of the first slab of the school building.

4. The Claimants have admittedly⁶ paid a sum of Rs. three crore under the MOU. The construction did not proceed as per the agreed timeline. According to the Claimant⁷ the Respondents requested for extension of time and the Claimant granted the extension provided the main wing of the school building was completed prior to the commencement of the academic year 2013-14. On this understanding the Claimant and Respondents commenced the admission process for the academic session 2013-14⁸. However, in April 2013 the construction of the main wing was still not complete and only the first floor of the main wing was completed and parents started reconsidering the admission of their children. The Respondents had also failed to obtain the permission to use the 5000 sq.mtrs. adjoining land as play ground. The CBSE certification was therefore not obtained. These grievances were recorded by the Claimant in a letter dated 18th June 2013 addressed to the Respondents⁹. By this letter the Respondents were informed that if the construction was not completed by 30th June 2013 they would be held to be in breach of the MOU.

³ Clause 1.14 of Exhibit C-2 MOU

⁴ Clause 1.17 of Exhibit C-2 MOU

⁵ Clauses 2.2 and 2.3 of Exhibit C-2 MOU

⁶ Exhibit C-6 para 4 Respondents acknowledge receiving Rs. 3 crores and in paragraph 4 of the Statement of Defence

⁷ Para 8 in their Statement of Claim

⁸ Para 10 of the Statement of Claim

⁹ Exhibit C-5

5. The Respondents replied to the letter dated 18th June 2013 vide letter dated 24th June 2013¹⁰ wherein they admitted receipt of Rs. 3 crore as security deposit, admitted that the construction was delayed and assured the Claimants that the construction would be completed shortly. On commencement of the academic year 2013-14 the Claimant was allowed to use the first floor of the building for conducting classes since there was no other place to accommodate students already granted admission.
6. On 21st October 2013¹¹, the NMMC issued a notice calling upon the Respondents to discontinue use of the school building since no occupation certificate had been obtained in respect of the same. The Respondents sought more time for completion of the said school building by addressing letters dated 13th January 2014¹² and 15th January 2014¹³ to NMMC and CIDCO respectively. The Respondents vide letter dated 3rd February 2014¹⁴ informed NMMC that they had suspended all further construction in respect of the school building. Thereafter a hearing was given by NMMC and by an order dated 14th August 2014¹⁵ the NMMC cancelled the commencement certificate granted to the Respondents for construction of the school building. The order records several findings where the Respondents have been held to have either violated the terms of the commencement certificate or the conditions of the lease agreement with CIDCO. It is also noted that the Respondents did not obtain a plinth certificate or submit revised maps as they were required to do. The Respondents filed an appeal against this order before the Hon'ble Minister, Urban Development Department but the same was dismissed¹⁶.
7. The Claimant submits that students cancelled their admissions and the Claimant had to make alternative arrangements for these students. It is claimed that the reputation of the Claimant was affected due to these events¹⁷. The Claimant, through their

¹⁰ Exhibit C-6

¹¹ Exhibit C-7 in Marathi and the English translation is marked as Exhibit G-1

¹² Exhibit C-8

¹³ Exhibit C-9

¹⁴ Exhibit C-10

¹⁵ Exhibit C-11 in Marathi and the English translation is marked as Exhibit K-1

¹⁶ Para 19 of the Statement of Claim

¹⁷ Para 20 of the Statement of Claim

advocate, terminated the MOU vide letter dated 7th July 2017¹⁸ and called upon the Respondents to refund the sum of Rs. 3 crore paid as security deposit and claimed an additional amount of Rs. Two crore ten lakhs as damages/compensation for loss allegedly incurred by the Claimant.

8. Since the termination of the MOU was disputed and the monies as demanded were not paid by the Respondents, the Claimant filed Arbitration Petition (ST) No. 18770 of 2019 before the Hon'ble Bombay High Court. By an order dated 16th October 2019, I was appointed as the sole arbitrator with the consent of both parties. Pleadings by way of Statement of Claim, Statement of Defense, Counter Claim, Written Statement to the Counter Claim and Rejoinder to the Statement of Defense were filed by respective parties and pleadings were completed on 4th March 2020.
9. In their Statement of Defense the Respondents firstly claimed that the MOU was neither stamped nor registered and the document ought to be impounded¹⁹. It is further claimed that the Claimants had not made full payment of Rs. four crore as required under the MOU and that even the amount of Rs. three crore was not paid as per the schedule specified in the MOU and the delay in making payments was the reason for the delay in the construction of the school building²⁰. The Respondents further contend that the construction work was stopped by the NMMC due to the illegal act of the Claimant in starting to use the school building without obtaining the occupation certificate²¹. It was contended that there was no delay/default on their part in complying with the MOU and that the termination of the MOU is illegal and arbitrary²². The Respondents contend that the Rs. three crore security deposit paid by the Claimants has been utilized in the construction of the school building and there is no question of returning the same.²³

¹⁸ Exhibit C-12

¹⁹ Para 2 Statement of Defence

²⁰ Para 4 Statement of Defence

²¹ Para 5 Statement of Defence

²² Para 6 Statement of Defence

²³ Para 8 Statement of Defence

10. The Respondents separately filed a Counterclaim against the Claimants for Rs. five crore in damages. The Claimant filed a statement of defense in response to the same. No documentary or oral evidence was, however, tendered by the Respondents in support of their counterclaim and the same was not pressed.

11. Applications under sections 17 and 31(6) of the Arbitration Act were filed by the Claimant for interim relief but the same were not pressed. Respondents have filed an Affidavit of disclosure of assets dated 4-3-2020.

12. Admission and denial of documents and inspection of documents and discoveries were completed. Draft issues were circulated by both sides and after perusal of the pleadings and documents on record the following issues were framed at the hearing on 4th March 2020:

- i) Whether the Claimant proves that the Claimant has validly terminated the Memorandum of Understanding dated 10th July 2010?
- ii) Whether the Claimant has proved that the Claimant is entitled to refund of a sum of Rs. 3 Crore paid as security deposit under the said Memorandum of Understanding dated 10th July 2020?
- iii) Whether the Claimant is entitled to compensation for loss / damages of Rs. 2,10,00,000/- as claimed in the second item of the Particulars of Claim?
- iv) Whether the Claimant is entitled to interest @18% per annum on Rs. 5,10,00,000/- from the date of termination of the MOU i.e. 7th July 2017 till payment and/or realization?

Issues in counter claim:

- i) Whether the Respondent proves that the Claimant was responsible for the stop work order issued by the Navi Mumbai Municipal Corporation and/or for the delay in the completion of the construction?
- ii) Whether the Respondent proves that the Trust has incurred a loss of Rs. 5 Crore as per the schedule to the counter claim because of the actions of the Claimant?
- iii) Whether the Respondent proves that the Claimant has committed breach of the MOU by: (a) failing to make payment as per schedule specified in the MOU, and (b) illegal user of the school building causing the stop work order to be issued?

13. Due to the COVID-19 pandemic hearings were suspended for a few months and thereafter conducted virtually via zoom with the consent of both parties. Both parties

lead evidence of one witness each and filed Affidavits in lieu of evidence in chief. Cross examination of both witnesses was conducted via zoom.

14. Mr. Rajesh Bhatia, CEO of the Claimant, gave evidence on behalf of the Claimant.

The Respondents during the cross examination of Mr. Bhatia questioned his authority to lead evidence on behalf of the Claimant. Mr. Bhatia, in his response submitted that there was a board resolution authorizing him to lead evidence. The Respondents did not call upon Mr. Bhatia to produce the board resolution and there was no further cross examination on this issue. However, in their written submissions and final arguments the Respondents objected to Mr. Bhatia's evidence being taken into account for lack of authorization. Thereupon the Claimant has filed a copy of the resolution passed by the Board of Directors on 21-1-2019 authorizing Mr. Bhatia to file pleadings and lead evidence on behalf of the Claimant. No objection was raised by the Respondents to the same.

15. In his Affidavit in lieu of Examination in Chief, Mr. Bhatia has stated that the letter dated 7th July 2017²⁴ terminating the MOU was addressed by the Claimant's advocates to the Respondents and forwarded by RPAD to the Respondent Trust and to Respondents 2 and 3. The RPAD receipts were produced along with the Affidavit and Mr. Bhatia deposed that none of the RPAD packets were returned to the Advocates. Mr. Bhatia deposes in his Affidavit that the letter dated 7-7-2017 was prepared under his instruction, signed by the Advocate under his instructions, the contents of the letter are true and correct and that he identified the Advocate's signature. The said letter was taken on record and marked as Exhibit C-12. Mr. Bhatia stated that vide the said letter the Claimant validly and legally terminated the MOU²⁵. Mr. Bhatia also similarly proved letters dated 22nd July 2017 addressed by the Claimant's Advocates to the Senior Inspector of Police, Economic Offences Wing²⁶ and the Joint Commissioner of Police, Economic Offences Wing (EOW)²⁷. The latter bears a stamp showing receipt of the same by the office of the Joint

²⁴ Exhibit C-12

²⁵ Para 22 of the Affidavit dated 19th October 2020 in lieu of Evidence in Chief.

²⁶ Exhibit C-13

²⁷ Exhibit C-14

Commissioner of Police EOW on 24-7-2017. Mr. Bhatia has stated that several meeting took place between the Claimant and the Respondents when assurances were given by the Respondents that the security deposit of Rs. three crore would be repaid to the Claimant. However, the same was not done. Hence the Claimant's Advocates again forwarded a letter dated 20th May 2019²⁸ to the Senior Inspector of Police EOW. This letter was similarly proved by Mr. Bhatia and the office copy bearing acknowledgment of the office of the Senior Inspector EOW, was taken on record.

16. The cross examination of Mr. Bhatia mainly centered around the premature use of the incomplete school building by the Claimant to conduct classes even though no occupation certificate was granted to the school and the non-payment of Rs. one crore by the Claimant which the Respondents alleged amounted to a breach of the MOU. The following cross examination²⁹ goes to the crux of these issue:

Q.10 I put it to you that as on 18th June 2013 (Exhibit C-5) i.e. the date of the letter addressed by the Claimant to the Trustee of the Respondent, you were conducting classes from the subject premises and that the construction of the 2nd floor was in process. What do you have to say ?

A: Yes. We were constrained to move the children of Grade 1 and 2 into the said premises because we had given them admission based on the assurance given by Mr. Shankar Thakkar, Mr. Suresh Thakkar and Mr. Om Gehlot, the Trustees of the Respondent that by the time the academic year was to commence, the premises would be ready and an Occupation Certificate would be obtained by the Respondent in respect thereof.

Q.11 I put it to you that you have committed a breach of the MoU at Exhibit C-2 by failing to make payment of the sum of Rs.1 crore which was payable on the completion of the first slab of the building to the Respondents out of the total agreed sum of Rs.4 crores. What do you have to say ?

A: No. As per Clause (ii) of Clause 2.2, the Claimants were to pay Rs.0.5 crores on the Respondent obtaining permission to use the playground. This permission was never obtained. There was a violation of CRZ lines by the Respondent which needed to be rectified as per the Architect's Report. Though promised, this was not done. I also submit that the Respondent had not submitted to us the plinth checking report and till such report was not submitted, we were not required to make payment

²⁸ Exhibit C-15

²⁹ Notes of Evidence recorded on 26-10-2020

which was to be made on the completion of the plinth.

Q.15 I put it to you that by conducting classes from the school building which did not have Occupation Certificate from the municipal corporation, you have committed an illegality. What do you have to say ?

A: No. The owners of the building were the Respondent Trust and when the students were admitted, the payment of fees was also made to the Respondent Trust. The Claimants company was merely a conductor of the school for the Respondent Trust. We were primarily responsible for the academic content of the school curriculum.

Q 16 With reference to your answer to Q.15, are you suggesting that the Claimants have no role to play in the admission process and conducting of classes from the subject premises ?

A: Yes. This is correct. The entire admission process was handled by the Trust and we are only concerned with conducting classes. When the school was shut down, the education department issued the letter to the Trust and not to the Claimants. The School Leaving Certificates, for all children who had to shift to other schools, were issued by the Trust and not by the Claimants.

17. Mr. Bhatia has given³⁰ detailed particulars of the expenses incurred by the Claimant towards advertisements for the Respondents' school amounting to Rs. 25,00,000/- and for making/purchasing furniture and fixtures amounting to Rs. 21,11,115/- with supporting invoices³¹ and photographs. Mr. Bhatia was not cross examined on any of the documents produced in support of these expenses other than a general suggestion being put to him that the documents at Exh. C-16 and 17 did not prove that the Claimants had spent any money on the Respondents' school. This suggestion was denied.

18. On behalf of the Claimant Mr. Bhatia further claimed Rs. 1,53,88,885/- towards brand damage/reputation damage/loss/compensation³². However, other than a statement in this regard in the Affidavit in lieu of Evidence in Chief, no other documentary evidence or details were produced in support of this claim. Mr. Bhatia was not cross examined in respect of this claim.

³⁰ Para 30 of Affidavit dated 19th October 2020 in lieu of Evidence in Chief.

³¹ Exhibit C-16 colly. relate to furniture and fixtures and Exhibit C-17 colly. Relate to Advertisement expenses

³² Para 30 of Affidavit of Evidence dated 19th October 2020

19. On behalf of the Respondents Mr. Shankar Thakker, Authorised Officer of the First Respondent Trust filed his Affidavit dated 19th November 2020 in lieu of Evidence in Chief. A resolution dated 8th November 2020 of the board of trustees of the First Respondent Trust was filed along with the said Affidavit. The resolution appears to be backdated since it records events that transpired on 19th November 2020 in the resolution dated 8-11-2020. However, the Claimants did not object to the evidence of Mr Shankar Thakker being recorded for the Respondents and hence the Affidavit was taken on record and Mr. Thakker was cross examined by the Claimants. In his Affidavit in lieu of Evidence in Chief Mr. Thakker deposed that since the MOU envisaged execution of a further Agreement and was only a preliminary document, the same could not be enforced³³. He further deposed³⁴ that Rs. three crore received by the Trust from the Claimant was not the full amount payable and fell short by Rs. one crore and that the payments received were delayed and hence construction could not be completed on time. He deposed that the Claimants insisted upon commencing the admission process and use of the incomplete building despite the Respondents informing them that it would be illegal to use the premises without obtaining the Occupation Certificate. He alleged that the stop work notice was a result of the Claimant's said illegal actions. He further deposed³⁵ that Rs. 3 crore received from the Claimant was utilized for construction of the school building and as such there was no question of returning the same and that had the construction been completed the Respondents would have earned a profit of at least Rs. 5 crore and are, therefore, entitled to recover the same from the claimants.

20. During Mr. Thakker's cross examination³⁶ it was pointed out that the resolution dated 8-11-2020 was restricted to permitting Mr. Shankar Thakker to appear via video conference and did not specify that he was authorized to give evidence on behalf of the Respondent Trust. The cross examination as regards the failure to refund of the Rs. 3 crore security deposit was as follows:

³³ Para 2 of the Affidavit of Evidence dated 19-11-2020

³⁴ Para 4 of the Affidavit of Evidence dated 19-11-2020

³⁵ Para 8 of the Affidavit of Evidence dated 19-11-2020

³⁶ Q. 2 of notes of evidence recorded on 19-11-2020

Q.18 I put it to you that the interest free security deposit had to be returned by the trust to the Claimant after completion of the tenure or on termination of the MoU. Did you refund this amount?

Ans: We have not refunded the amount because the Claimants were in breach of the MoU and the MoU is still in existence.

21. Both parties filed written submissions along with case law and were given opportunity of hearing final arguments via zoom. The Claimant's submissions were as under:

- CW-1 was the CEO of the Claimant and authorized by board resolution to give evidence on behalf of the Claimant. Resolution was produced before the Tribunal.
- The issue of inadequate stamp duty was argued before the Hon'ble Bombay High Court at the time of the hearing of the Arbitration Petition and it is recorded in para 4 of the order of the Hon'ble Bombay High Court dated 16th October 2019 that the Respondents were satisfied that the document was adequately stamped.
- The Claimant entered into the MOU with the Respondent Trust on the understanding that the new school building was to be constructed by the Respondent by 30th June 2012. Even in 2017 the building was not complete hence there was a breach of the MOU by the Respondents and the Claimant was entitled to terminate the MOU vide notice dated 7th July 2017. The Claimant relied on clauses 3.2 and 8 of the MOU which permit termination if there is a breach of the conditions of the MOU and submitted that the postal record shows that this notice was received by the Respondents.
- Assuming without admitting that the notice of termination dated 7th July 2017 was not received by the Respondents, the MOU stood terminated on service of the Arbitration Petition filed by the Claimants. The lock in period under the MOU was 9 years. Even assuming without admitting that the termination was without cause, since the lock in period had expired, the termination was valid and legal.

- The Claimant admittedly paid Rs. three crore out of Rs. four crore to be paid as an interest free security deposit. The deposit was to be repaid on termination of the MOU or on completion of the tenure, whichever was earlier. Respondents could not refuse to return the money on the ground that it was used for construction of the school since the expense for construction of the school was to be borne by the Respondents. Rs. one crore was not paid since the Respondents had neither acquired rights to use the 5000 sq. mtrs. playground nor submitted the plinth completion certificate and were delaying the completion of the construction of the school building.
- Admissions were granted for the academic year 2013-14 by the Respondents and fees were collected by the Respondents. The Claimant was compelled to start classes in the incomplete school building as they had no other place to house the students. Since there was no Occupation Certificate for the school building the Claimant was ordered by the NMMC to discontinue use of the same. Students cancelled their admissions and the brand "Tree House" suffered considerable damage.
- The stop work notice was issued to the Respondents on account of various irregularities and lapses on the part of the Respondents in the construction of the school building which were in breach of the conditions of the Commencement Certificate. The Claimant submits that this is reflected in Exh. C-11. According to the Claimant the appeal filed before the Minister, Urban Development Department was dismissed.
- The Claimant is entitled to the refund of the Rs. three crore paid as security deposit and a further amount of Rs. two crore and ten lakhs which included amounts spent for advertising the new school as a Tree House school and in purchasing furniture and fixtures for the new school as also damages for loss of reputation. The address mentioned in the invoices at Exh C-16 and 17 colly were the office address of the Claimant. The endorsement on the invoices showed that they were in respect of the Respondents' school.
- The Claimant is entitled to interest @ 18% p.a. on Rs. Five crore ten lakhs from the date of termination of the MOU.

The Claimant relied upon the following case law:

- *Chaurangi Builders & Developers v. Maharashtra Airport Development Company Ltd.*³⁷ and *M/s Srushti Raj Enterprises (India) Ltd. v. Tilak Safalaya Co-operative Housing Society Ltd.*³⁸ to support their contention that a party can terminate an agreement in the event of default on the part of another party even if there is no specific clause allowing for termination.
- *Nagindas Ramdas v. Dalpatram Ichharam*³⁹ and *United India Insurance Co. Ltd. v. Samir Chandra Chaudhary*⁴⁰ to contend that an admission is the best proof of a fact.
- *Pannalal Jankidas v. Mohanlal*⁴¹ where, relying on the dissenting judgment of Hon'ble Justice Sastri the Claimant advanced the proposition that when a contract has been broken the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him.
- *Ajay Kumar D. Amin v. Air France*⁴² to contend that an adverse inference ought to be drawn against a party who fails to produce documents in spite of an order for discovery to produce the same even if the onus of proof does not lie on him to produce the same.
- *Raveechee & Co. v. Union of India*⁴³ in support of their claim for interest pendent lite.

22. The Respondents' submissions were as under:

- The MOU was insufficiently stamped and ought to be impounded.
- The evidence of CW-1 should be disregarded since he did not have any authority from the Board of Directors to appear and give evidence. The Respondents relied upon *State Bank of Travancore v. M/s Kingston Computers*⁴⁴ in support of this contention.

³⁷ 2013 SCC OnLine Bom 1530 para 18

³⁸ 2018 SCC OnLine Bom 1954 paras 9 and 12

³⁹ (1974) 1 SCC 242

⁴⁰ (2005) 5 SCC 784

⁴¹ 1950 SCR 979 para 27

⁴² (2016) 12 SCC 566 para 6 and 7

⁴³ (2018) 7 SCC 664

⁴⁴ Supreme Court Civil Appeal No. 2014 of 2011

- The Claimant was in breach of the MOU because it commenced unauthorized use of the school building before the occupation certificate was obtained.
- The Claimant was in breach of the MOU because it failed to make the balance payment of Rs. one crore from the total security deposit of Rs. four crore.
- Claimant being in breach of the MOU could not terminate the same and the MOU was still valid and subsisting.
- The Respondents did not receive the termination letter dated 7-7-2017.
- The stop work order and cancellation of the commencement certificate were due to the illegal action of the Claimant i.e. using the school building without obtaining the Occupation Certificate and cancellation of the Commencement Certificate could not be attributed to the Respondents.
- Rs. three crore received from Claimant was used to obtain permissions and the Respondents spent five crore over and above this three crore in the construction of the school building and the question of returning three crore did not arise.
- Invoices at Exhibit C-16 colly and C-17 colly were in respect of another property of the Claimant and not in respect of the Respondents' school.
- CW-1 has admitted in reply to Q. 17 that the Claimant has not expended any amount towards the Respondents' school.
- There was no breach of the MOU by the Respondents and construction was being carried out as per sanctioned plans.
- No question of refunding Rs. three crore arose since this money was utilized in the process of construction of the school building.

23. After considering the pleadings, evidence, written and oral submissions and citations relied on by both parties my findings on each of the issues are as follows:

- | | | |
|-----|--|-----|
| i) | Whether the Claimant proves that the Claimant has validly terminated the Memorandum of Understanding dated 10 th July 2010? | Yes |
| ii) | Whether the Claimant has proved that the Claimant is entitled to refund of a sum of Rs. 3 Crore paid as security | Yes |

deposit under the said Memorandum of Understanding dated 10th July 2020?

- | | | |
|------|--|---|
| iii) | Whether the Claimant is entitled to compensation for loss / damages of Rs. 2,10,00,000/- as claimed in the second item of the Particulars of Claim? | Partially for
Rs. 21,11,115/-
& Rs. 25,00,000/- |
| iv) | Whether the Claimant is entitled to interest @18% per annum on Rs. 5,10,00,000/- from the date of termination of the MOU i.e. 7 th July 2017 till payment and/or realization? | Partially |


Issues in counter claim:

- | | | |
|------|---|----|
| v) | Whether the Respondent proves that the Claimant was responsible for the stop work order issued by the Navi Mumbai Municipal Corporation and/or for the delay in the completion of the construction? | No |
| vi) | Whether the Respondent proves that the Trust has incurred a loss of Rs. 5 Crore as per the schedule to the counter claim because of the actions of the Claimant? | No |
| vii) | Whether the Respondent proves that the Claimant has committed breach of the MOU by: (a) failing to make payment as per schedule specified in the MOU, and (b) illegal user of the school building causing the stop work order to be issued? | No |

My reasons for arriving at the abovementioned findings are as follows:

24. The Claimant proves that the Claimant has validly terminated the Memorandum of Understanding dated 10th July 2010 through the pleadings, the evidence of CW-1, and the admissions made by the Respondents in their own pleadings and evidence. The Respondents submitted that the evidence of Mr. Bhatia should be disallowed on the ground that Mr. Bhatia was not authorized by the Board of Directors. However, the resolution of the Board of Directors authorizing Mr. Bhatia, CEO of the Claimant, to give evidence was produced and there was no objection raised to the same being taken on record. The decision in *State Bank of Travancore v. M/s Kingston Computers* relied upon by the Respondents is not applicable in light of the resolution of the Board of Directors produced by the Claimants. The evidence of Mr. Bhatia has accordingly been taken into account by me. Mr. Bhatia has deposed that the termination notice dated 7th July 2017 (Exh. C-12) was prepared under his instruction, that its contents were true and correct, that he authorized his advocate to sign the same and he identified the signature as that of his advocate. He further produced the

RPAD receipts which were inspected by the Respondents. Mr. Bhatia further deposed that none of the letters was received back by his Advocates. There was no cross examination of Mr. Bhatia in respect of these averments. Furthermore Mr. Bhatia has proved the letter addressed by his Advocate to the Sr. Inspector of the Economic Offences Wing dated 20th May 2019 (Exh. C-15) which mentions that the termination notice dated 7th July 2017 was sent to the Respondents and that thereafter a meeting was held in October 2018 where the Respondents agreed to refund Rs. 3 crore in 2-3 months. Mr. Bhatia also deposed to meetings being held and assurances being given for the refund of the security deposit⁴⁵ in his Affidavit of Evidence dated 19th October 2020. There was no cross examination of Mr. Bhatia in respect of these averments.

25. In both the Statement of Defense and the Counter Claim there is not a single denial /averment in respect of the termination notice dated 7th July 2017. Whilst the ~~Written~~ ^{of Claim} Statement  contains the averment that the said notice was sent by RPAD to the Respondents, there is no denial in the Statement of Defense in this regard nor any averment that the same was not received by the Respondents. Even in the Affidavit in Lieu of Evidence of Shri Shankar Thakker dated 19th November 2020, there is no averment that the said notice was not sent as alleged by the Claimant or that the said Termination Notice was not received by the Respondents. On the contrary the Respondents have themselves admitted termination of the MOU in paragraph 7 of their Statement of Defense. The relevant portion reads as follows:

“In the circumstances it is now clear that there is no breach whatsoever committed in respect of the MOU and the termination of the subject agreement is completely illegal and arbitrary on the part of the Claimant”

In paragraph 7 of the Counter Claim the Respondents have stated as follows:

“Respondents have spent huge amount of money for the construction of the school on the said plot of land, due to which the Respondent has suffer huge financial losses as also due to the illegal termination of the MOU dated 10th June 2010.”

In paragraphs 7 and 8 of Mr. Thakker’s Affidavit he has stated as follows:

⁴⁵ Para 25 of the Affidavit

“There is no breach whatsoever committed by the Respondents respect of the MOU and the termination of the subject agreement is completely illegal and arbitrary on the part of the claimants.”

“The Claimants have wrongfully terminated the agreement and as such are not entitled for any reliefs as claimed for.”

By these statements the Respondents admit that the MOU stands terminated. They merely dispute the legality of the termination.

26. On the basis of the foregoing I find that the Claimant had terminated the MOU vide Termination Notice dated 7th July 2017 and that the said termination notice had been received by the Respondents.

27. The Respondents, however, dispute the validity of the said termination. They contend that they were not in breach of the MOU and the claimant was in breach of the MOU and hence the termination was neither valid nor legal. The Claimant on the other hand contends that the Respondents failed to complete the construction of the school building and to get necessary permissions and that the same amounted to a breach of the MOU and that they were entitled to terminate the MOU. On perusal of the MOU I find that it requires the Respondents, at their cost and expense, to construct and develop the school on their land with all fixtures and facilities as specified by the Claimant⁴⁶. The MOU further provides that 50% of the built up area was to be constructed on or before 30th June 2011 and the balance 50% by 30th June 2012⁴⁷. In case of any default, the MOU provides that the Respondents shall return any payments made by the Claimant within 60 days of such default⁴⁸. Though any default could be condoned or the time limit extended, the same was at the sole discretion of the Claimant⁴⁹. The Claimant has through the evidence of CW-1 Mr. Bhatia, proved that the construction of the school building had not been completed as on 18th June 2013 when the Claimant recorded⁵⁰ the lapses on the part of the Respondent and called upon them to complete construction by 30th June 2013. By this

⁴⁶ Clauses 1.10 and 3.1(v) of the MOU dated 10th June 2010

⁴⁷ Clause 1.11 of the MOU dated 10th June 2010

⁴⁸ Clause 8 of the MOU

⁴⁹ Clause 3.2 of the MOU

⁵⁰ Exh. C-5 letter dated 18th June 2013

letter the Respondents were put to notice that failure to comply would result in serious breach of the MOU⁵¹. In their reply dated 24th June 2013⁵² the Respondents accepted responsibility and assured the Claimant that they are trying their best to complete the work. The Respondents thereafter addressed a letter dated 13th January 2013⁵³ to the Assistant Town Planner NMMC stating therein as follows:

"Our construction work is almost complete and we will be submitting the file for OC very shortly. We assure you that we will start our school only after receiving the OC."

By letter dated 15th January 2014⁵⁴ the Respondents address the Estate Officer of CIDCO as follows:

"Due to lack of funds we could not complete the construction work on time, We request you to please extend the time for completion by one year."

The Claimants have produced the order dated 14-8-2014 passed by NMMC⁵⁵. This document was admitted by the Respondents in their Admission and Denial statement and hence marked as Exhibit. The order records that the Respondents have violated several conditions of the Commencement Certificate and hence the same is being cancelled and action is being initiated against the architect. Some of the violations recorded are that the Respondents have not obtained a plinth certificate on completion of the Plinth, they have not obtained NOC from the firefighting department and that they have breached the conditions of their lease with CIDCO. According to the Claimants an appeal filed against this order has been dismissed. According to the Respondents the appeal is still pending. In any event the Respondents have not shown that the said order was stayed or set aside or that the school building has even now been completed and Occupation Certificate obtained. The MOU clearly put the responsibility for construction of the school building on the Respondents and the same was to be completed by 30th June 2012. Even assuming that the Claimant condoned the delay initially, by addressing letter dated 18th June 2013, the Claimants clearly and unequivocally informed the Respondents that a delay beyond 30th June 2013 would not be condoned. The subsequent documents referred to above show that

⁵¹ Para 5 of Exh. C-5

⁵² Exh. C-6

⁵³ Exh. C-8

⁵⁴ Exh C-9

⁵⁵ Exh. 11 taken on record and marked as Exhibit with consent of the Respondents

the Respondents admitted that there was a delay on their part in completing construction and that the construction was never completed in view of the cancellation of the Commencement Certificate. I find that by failing to complete construction of the school building the Respondents have acted in breach of the MOU.

28. The Respondents have sought to shift the blame for failure to complete construction and the cancellation of the Commencement Certificate onto the Claimant by alleging that the same was a result of the use of the incomplete school building for conducting classes before receipt of the Occupation Certificate. The Order cancelling the Commencement Certificate dated 14-8-2014 shows that this is not true. It records several breaches on the part of the Respondents which resulted in the said order being passed. Moreover, the evidence of Mr. Bhatia reproduced hereinabove shows that the Respondents were in charge of the admission process and collected the fees of the students granted admission for academic year 2013-14. I find that without the agreement and approval of the Respondents the Claimant could not have granted admission or conducted classes in the incomplete school building. As owners of the school building, the onus of obtaining the Occupation Certificate was on the Respondents and the onus of ensuring that the building was not used prior to obtaining the Occupation Certificate was also on the Respondents. The Respondents actively facilitated use of the building prior to the Occupation Certificate being granted by giving admission to students and collecting their fees. Hence, I find that even if the premature use of the school building were one of the causes for the cancellation of the Commencement Certificate, the Respondents themselves were responsible for this and cannot shift the blame onto the Claimant. I, therefore, find that the Respondents have failed to prove that the Claimant was responsible for premature use of the school building prior to the OC being obtained and have further failed to prove that the use of the school building prior to obtaining the OC was the reason for cancellation of the Commencement Certificate.

29. The Respondents have further sought to shift the blame for delay in completion of the construction onto the Claimant by alleging that the Claimant failed to pay the full security deposit of Rs. 4 crore as required under the MOU. The Respondents further allege that this amounted to a breach of the MOU on the part of the Claimant. The explanation given by CW-1, Mr. Bhatia for non-payment of Rs. 1 crore was that 50 lakhs was to be paid only upon the Respondents acquiring permission to use the playground, which was not obtained, and 50 lakhs was withheld since the plinth completion certificate was not obtained by the Respondents. The Respondents, in their letter dated 24th June 2013⁵⁶ state as follows:

*"I would like to bring to your kind notice that the work of the school building is in full swing. Due to some unavoidable circumstances like unavailability of raw materials, due to change in government policies like non availability of royalty in sand the strike of traders due to LBT and delay in art of the contractors an d many other issues which were not in our hands.
..We agree that you have extended all reasonable support. But I would like to bring to your notice that there was delay in transferring the funds."*

This indicates that the Respondents themselves did not link the delay in receipt of Rs. 3 crore or the non-payment of Rs. 1 crore to the delay in completion of construction. Moreover, the MOU clearly stated that the Respondents were to construct the building at their own cost and expense⁵⁷ and that Rs. 4 crore was an interest free security deposit to be refunded on termination of the MOU⁵⁸. The Respondents have addressed no correspondence to the Claimant linking the delayed receipt of funds or the non-payment of Rs. 1 crore to their failure to complete the construction work. The Respondents have also failed to produce any evidence to show that they treated the non-receipt of Rs. 1 crore as a breach of the MOU prior to the termination of the MOU vide letter dated 7th July 2017. This plea was raised for the first time in the Statement of Defense. I, therefore, find that the delay, if any, in payment of Rs. 3 crore by the Claimant was condoned by the Respondents. I further find that delay, if any, in payment of Rs. 3 crores or the non-payment of Rs. 1 crore by the Claimant was never linked to the delay in completion of construction by the Respondents prior to the termination of the MOU. I find that the Respondents have failed to prove that

⁵⁶ Exh. C-6

⁵⁷ Clause 1.10 of the MOU

⁵⁸ Clauses 2.3 and 8 of the MOU

the delay in payment of Rs. 3 crore or the non-payment of Rs. 1 crore is responsible for the Respondents' failure to complete construction of the school building. The responsibility for constructing the building and the cost of construction was always solely that of the Respondents as per the terms of the MOU. I further find that the explanation given by CW-1 for withholding Rs. 1 crore is valid. I, therefore, find that there was no breach of the MOU by the Claimant and that the Claimant was not responsible for the delay in completion of the construction of the school building.

On the basis of the foregoing I find that the MOU was validly and legally terminated by the Claimant on the ground of breach of the terms of the MOU by the Respondents.

30. The Claimant is entitled to a refund of Rs. 3 Crore paid as security deposit under the said Memorandum of Understanding dated 10th July 2020. The MOU is an admitted document. The Respondents have admitted receipt of Rs. 3 crore as security deposit in their correspondence⁵⁹ and pleadings⁶⁰. The terms of the MOU⁶¹ require the security deposit to be repaid within 60 days of the termination of the MOU. I have already held that the MOU was validly terminated by the Claimants vide their letter dated 7th July 2017⁶². I, therefore, find that the Claimant is entitled to the refund of Rs. 3 crore paid as security deposit to the Respondents.

31. The Claimant has produced documents at Exh. C-16 colly. which are invoices in respect of plywood and office furniture amounting to Rs. 21,11,115/- allegedly purchased by them for use at the Respondents' school. Some of these invoices are addressed to Tree House – Khar (W), some to Tree House – Andheri (W) and some to Tree House-Ghansoli School. Some of the Invoices have an endorsement on them which states that the material was for use at the Ghansoli School i.e. the Respondents' school.

⁵⁹ Exh. C-6 letter dated 24th June 2013

⁶⁰ Para 4 of the Statement of Defence

⁶¹ Clauses 2.3 and 8 of the MOU

⁶² Exh. C-12

32. The Claimant has produced documents at Exh. C-17 colly to show an expense of 25,00,000/- towards advertisements for the new school. Photographs of these advertisements put up in respect of the Respondents' school at bus stops and other places along with invoices have been produced. The invoices are addressed to "Janordhar Shikshan Prasarak Mandal – Tree House School" and copies of cheques and payment vouchers are produced which are issued by "Janodhar Shikshan Prasarak Mandal".

33. Mr. Bhatia, CW-1, in his Affidavit of Evidence dated 19th October 2020 has stated⁶³ that the Claimant incurred expenses of Rs. 21,11,115/- towards furniture and fixtures and Rs. 25,00,000/- towards advertising expenses for the Respondents' school as per the invoices produced at Exh. C-16 and C-17 collectively. He has stated that the Claimant has made payments towards the invoices produced at Exh. C-16 and C-17 colly. These documents were offered for inspection by the Claimant to the Respondent and inspection was taken prior to evidence being recorded. During the cross examination of CW-1 the Respondents put forward two submissions in respect of the documents at Exh. C-16 and C-17 which are :

Q.27 I put it to you that the documents at Exhibits C-16 (Colly.) and C-17 (Colly.) do not in any manner prove that you have expended any amounts for the subject property. What do you have to say ?

A: No. These documents prove that we have spent the money.

Q.28 I put it to you that no amount whatsoever is recoverable by you from the Respondent on the basis of documents at Exhibits C-16 (Colly.) and C-17 (Colly.). What do you have to say ?

A: No. Our claim for the amount of Rs.2 crore stands.

At the time of final arguments the Respondents submitted that the invoices in Exh. C-16 were addressed to the Claimant at Khar (W) or Andheri (W) and were not in respect of the Respondents' school and hence should be disregarded. There were no submissions made in respect of the documents at Exh. C-17. Counsel for the Respondents sought to place reliance on the answer given by CW-1 to question 17 in the cross examination to suggest that the

⁶³⁶³ Paras 30 and 31

Claimant has admitted that it had not expended any money towards these expenses. The same is reproduced:

Q.17 Is it therefore correct to state that you have not expended any amount whatsoever apart from what was necessary for conducting classes as referred to Q/A.16 ?

A: No.

I do not find the answers to Q.17, Q. 27 or Q.28 in any manner suggest that the Claimant has not spent any of the amounts mentioned in Exh. C-16 and C-17. The answer to questions 17 rejects the suggestions put by the Respondents. No further or other cross examination was conducted in respect of these expenses categorically claimed by the Claimant's witness to have been made by the Claimant. The cross examination of CW-1 has failed to disprove the statements of CW-1 that these amounts were spent by the Claimant for the Respondent school. During final arguments, counsel for the Claimant has explained that the Claimant has offices in Khar (W) and Andheri (W) from where orders used to be placed for material and furniture for the Respondents' school. Hence the invoices were addressed to the Claimant at these addresses. The statement of CW-1 that these invoices relate to expenditure incurred by the Claimant for the Respondents' school has not been discredited or disproved. The MOU⁶⁴ requires the Claimant to spend a minimum of Rs. 10 lakhs on advertisements in the first year, 8 lakhs in the second year and 7 lakhs in the third year. The expenses incurred by the Claimant are as required by the MOU. There is no suggestion from the Respondents that the advertising expenses were not incurred by the Claimant. I, therefore, find that the Claimant has proved that it has incurred an expense of Rs. 21,11,115/- towards furniture and fixtures and an expense of Rs. 25,00,000/- towards advertisement charges in respect of the Respondents' school. The MOU was validly terminated on account of breach on the part of the Respondents before the school could become functional, and the Claimant had no opportunity to receive any return on its investment made under the MOU. These

⁶⁴ Clause 4.10

expenses were a complete loss to the Claimant. I, therefore, find that the Claimant is entitled to recover as damages the sums of Rs. 21,11,115/- and Rs. 25,00,000/- from the Respondents.

34. The Claimant has claimed Rs. 1,53,88,885/- towards brand damage/reputation damage/loss/compensation. However, no documentary or oral evidence supporting this claim was produced by the Claimant. It is a settled position in law⁶⁵ that where loss in terms of money can be determined, the party claiming compensation must prove the loss or damage suffered. In *Kailash Nath* the Supreme Court has held that the expression “whether or not actual damage or loss is proved to have been caused thereby”, in Section 74 of the Contract Act, means that where it is possible to prove actual damage or loss, such proof is not dispensed with. To claim damages, the party making such claim has to lead evidence and establish loss. In the present case no evidence whatsoever has been led by the Claimant to prove the loss or damage caused to the Claimant, or the reason for quantification of that loss at Rs. 1,53,88,885/- . Moreover, this Tribunal cannot award compensation for damage to reputation in these proceedings. I, therefore, reject the Claimant’s claim for damages/compensation for Rs. 1,53,88,885/-.

35. Similarly, the Respondents have failed to adduce any evidence in support of their counterclaim for Rs. 5 crore. I, therefore, reject the Respondents’ claim for damages/compensation for Rs. 5 crore.

36. The Claimant has claimed interest @18% per annum on Rs. 5,10,00,000/- from the date of termination of the MOU i.e. 7th July 2017 till payment and/or realization. I have allowed the claim for refund of Rs. three crore paid by the Claimant to the Respondent as a security deposit. The Claimant has claimed interest pendent lite on the said Rs. 3 crore security deposit. It is a settled position of law⁶⁶ that if the agreement between the parties expressly bars payment of interest, no interest shall be

⁶⁵ *Kailash Nath Associates Vs. Delhi Development Authority* (2015) 4 SCC 136 para 43
Raheja Universal Pvt. Ltd. v. B.E. Bilimoria & Co. Ltd. (2016) 3 AIR Bom 637

⁶⁶ *Sayed Ahmed & Co. v. State of U. P. & Ors.* 2009 12 SCC 26
State of Rajasthan v. Ferro Concrete Construction (P) Ltd. 2009 12 SCC 1
Reliance Cellulose Products Ltd. V. ONGC Ltd. 2018 9 SCC 266

awarded by an arbitrator. The Supreme Court in *Union of India v. Bright Power Projects India (P) Ltd*⁶⁷ makes a distinction between the 1940 and 1996 Arbitration Acts and as regards the position under the 1996 Act has held as follows:

“18. Section 31(7)(a) of the Act ought to have been read and interpreted by the Arbitral Tribunal before taking any decision with regard to awarding interest. The said section, which has been reproduced hereinabove, gives more respect to the agreement entered into between the parties. If the parties to the agreement agree not to pay interest to each other, the Arbitral Tribunal has no right to award interest pendent lite”

Clauses 2.2 and 2.3 of the MOU specify that the security deposit shall be treated as “interest free”. The parties have agreed in the MOU that the security deposit will not attract any interest. The Claimant admits that the MOU refers to the deposit as interest free. The Claimant has nevertheless sought to rely on *Raveechee & Co. v. UOI*⁶⁸ to support its contention that they are entitled to interest pendent lite on the said refund of security deposit. The decision in the *Raveechee case* does not help the Claimant. In this case the interest pendent lite was claimed and awarded not on interest free security deposits but on damages awarded on account of non-contractual losses suffered for various reasons such as a ban on mining. As regards interest on security deposit the Hon’ble Supreme Court reiterates that the agreement between parties is paramount. Paragraph 9 of the judgment reads as follows:

“..In terms, the clause only bars interest upon earnest money and security deposits or amounts payable to the contractor under the contract. The abovementioned amounts are amounts which in a sense belong to the contractor. They are amounts voluntarily deposited with the other contracting party in order to be refunded or forfeited depending on the performance of the contract. As such they are not amounts of which the contractor is deprived the use of against his wishes, so as to attract interest.”

In view of the foregoing I reject the claim for interest pendent lite on the amount of Rs. three crore.

37. I have awarded the Claimants sums of Rs. 21,11,115/- and Rs. 25,00,000/- as damages for the losses incurred towards furniture and fixture costs and advertisement costs respectively. There is no provision in the MOU barring the award of interest

⁶⁷ 2015 9 SCC 695

⁶⁸ 2018 7 SCC 664

pendent lite in respect of these amounts. The Hon'ble Supreme Court in the *Raveechee* case has distinguished between the award of interest pendent lite in respect of deposits where interest is expressly barred by the contract between the parties and interest pendent lite on the sum awarded in respect of other losses suffered. The relevant observations of the Hon'ble Supreme Court are as follows:

"10. In fact, the arbitrators have awarded amounts to the claimant on account of the losses suffered by them for various reasons, mainly due to eh ban on mining. These amounts are not awarded on account of any payment due under the contract but are awarded on losses determined in the course of arbitration or the "lis". A claimant becomes entitled to interest not as compensation for any damage done but for being kept out of the money due to him. Obviously, in a case of unascertained damages such as this, the question of interest would arise upon the ascertainment of the damages in the course of the lis. Such damages could attract interest pendete lite for the period from the commencement of the arbitration to the award. Thus, the liability for interest pendent lite does not arise from any term of the contract, or during the terms of the contract, but in the course of determination by the arbitrators of the losses or damages that are due to the claimant. Specifically, the liability to pay interest pendent lite arises because the claimant has been found entitled to the damages and has been kept out from those dues due the pendency of the arbitration i.e. pendent lite."

In the present case I have held that the Respondents are responsible for breach of the MOU and that the Claimant is entitled to damages of Rs. 21,11,115/- and Rs. 25,00,000/- from the Respondents, for the loss caused due to expenses incurred by them. These amounts were claimed in the termination notice dated 7th July 2017. I see no reason to deny interest on these amounts from the date of institution of the Arbitration – by filing the Arbitration Petition (ST) No.18770 of 2019 in the Hon'ble Bombay High Court i.e. 4th July 2019 till the date of this Award ie. till 11th January 2021. The Claimant has claimed interest at the rate of 18% p.a. which I find to be excessive. In my opinion interest @9% p.a. which is roughly 2% higher than the present rate of interest paid by banks on fixed deposits, would be a fair and reasonable rate of interest to award. I, therefore, award the Claimants interest on the sums of Rs. 21,11,115/- and Rs. 25,00,000/- @ 9% p.a. from 4th July 2019 till 11th January 2021.

38. As regards the issues framed in respect of the Respondents' Counter Claim, I have already dealt with them hereinabove. No evidence of whatsoever nature either

documentary or oral was produced in support of the claim for Rs. 5 crore by the Respondents. I, therefore, find that the Respondents have not proved any of the issues framed in the Counter Claim and find that the Respondents are not entitled to any of the reliefs prayed for in the Counter Claim.

39. In these circumstances, and in view of my findings recorded above, I hereby pass the following award:

AWARD

1. Respondents Nos. 1, 2 and 3 shall jointly and/or severally pay to the Claimant a sum of Rs. 3,46,11,115 (Rs. three crore, forty six lakhs, eleven thousand, one hundred and fifteen only) with interest @ 9% p. a. from the date of the Award till payment and/or realization
2. Respondents Nos. 1, 2, and 3 shall jointly and/or severally pay to the Claimant interest on Rs. 46,11,115 (forty six lakhs, eleven thousand, one hundred and fifteen only) @ 9% p.a. from 4th July 2019 till 11th January 2021.
3. Parties shall bear their own arbitral costs.

Dated this 11th day of January 2021



Ayesha Damania

**Ayesha Damania
Sole Arbitrator**

