



Dated: 31/08/2020

The Head- Listing Compliance <b>BSE Limited,</b> Phiroze Jeejeebhoy Towers, Dalal Street, Fort Mumbai- 400001  <b>Security Code: 511611</b>	The Head- Listing Compliance <b>National Stock Exchange of India Ltd.</b> Exchange Plaza, Plot no. C/1, G Block, Bandra-Kurla Complex Mumbai - 400 051  <b>Stock Code: DCMFINSERV</b>	The Manager <b>The Calcutta Stock Exchange Ltd.</b> 7, Lyons Range, Murgighata, BBD Bagh, Kolkata, West Bengal- 700001
---	--	--

**Sub: Intimation under Regulation 30 SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015-Award of Order**

Dear Sir/Madam,

In terms of Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 this is to place on record that an arbitration award dated 17<sup>th</sup> August 2020 was received by us on 29<sup>th</sup> August, 2020.

The said award is given in respect of dispute that has arisen between **NBCC Ltd. (Claimant)** and **DCM Financial Services Limited (Respondent)** in relation to sale of Commercial Space-Upper Ground Floor NBCC Place, Pragati Vihar, New Delhi by the Claimant to the respondent.

The summary position of award is as under:

<b>Party</b>	<b>Amount Claimed (in Rs.)</b>	<b>Awarded (in Rs.)</b>
NBCC Ltd.- Claimant	4,34,95,374/-	41,05,656/-
DCM Financial Services Limited- Counter Claimant/Respondent	32,69,49,945/-	78,97,424/-

In addition to the above, Interest @ 10% is payable by both the parties on their respective amounts.

This is to further inform that, there is no adverse material impact on the working of company, arising out of the aforementioned award, on the business operations of the Company. A copy of award is annexed to this letter for your reference and record.

**DCM FINANCIAL SERVICES LIMITED**

CIN L65921DL1991PLC043087

Regd. Office: D 7/3, Okhla Industrial Area-II, New Delhi-110020

Tel-011-26387750 email ID: [info@dfsionline.com](mailto:info@dfsionline.com)

Website: [www.dfsionline.com](http://www.dfsionline.com)



Kindly take the above information on your records.

**For DCM Financial Services Limited**

A handwritten signature in black ink, appearing to read 'Shantanu Deveshwar', is written over a light blue horizontal line.

**Shantanu Deveshwar  
Whole Time Director  
DIN: 08268523**

**Encl.: As stated**

**Place: New Delhi**

BEFORE THE SOLE ARBITRATOR

S K Kaul

Ex- SENIOR EXECUTIVE DIRECTOR (ENGG), NBCC (I) Ltd.

ARBITRATION BETWEEN:

NBCC Ltd.

Registered office:  
Lodhi Road,  
New Delhi- 110 003

...Claimants

And

M/S DCM Financial Services Ltd. (DFSL)

Registered Office:  
D 7/3, Okhla Industrial Area-II,  
New Delhi- 110 020

...Respondent

Order : 173-2020

By a separate order passed today final Award in the aforesaid matter pronounced and published today on a stamp duty of Rs.100/- . Balance duty is to be paid by both the parties as per Stamp Act within a period of thirty days from today.

Copy of the award has been sent to both the parties through speed post. (31 Pages)

*S K Kaul*  
17/8/20

S K Kaul,  
Sole Arbitrator

**S K Kaul**  
**B Sc., BE (Civil)**  
**DBM. FIE**  
**Chartered Engineer**

BEFORE THE SOLE ARBITRATOR

S. K. Kaul

Ex- SENIOR EXECUTIVE DIRECTOR (ENGG), NBCC (I) Ltd.

ARBITRATION BETWEEN:

NBCC Ltd.

Registered office:  
Lodhi Road,  
New Delhi- 110 003

...Claimant

And

M/S DCM Financial Services Ltd. (DFSL)

Registered Office:  
D 7/3, Okhla Industrial Area-II,  
New Delhi- 110 020

...Respondent

AWARD

1. By this Order, I propose to decide the disputes that had arisen between the Claimant and the Respondent in relation to the sale of Commercial space- Upper Ground floor NBCC Place, Pragati Vihar, New Delhi by the Claimant to the Respondent having sale value of Rs. 11,37,87,644.00.
2. Initially Sh. A K Pruthi, Project Manager of NBCC was appointed as Sole arbitrator by the Chairman & Managing Director of NBCC Ltd. vide letter no: Engg(CC)/Arbtn/271/216 dated February,2001 to decide and make his reasoned award regarding the claims/ disputes raised by the Claimants.

Sh

3. Then Sh. Y.P. Nangia, Project Manager of NBCC was appointed as Sole Arbitrator by the Chairman & Managing Director of NBCC Ltd. vide letter no: Engg(CC)/Arbtn/264/548 dated May,2001 to decide and make his reasoned award regarding the claims/ disputes raised by the Respondents.
4. The respondent approached to the Hon'ble High Court, New Delhi in the said matter regarding appointment of two different sole arbitrators to adjudicate the claims and counter claims and same was numbered as OMP No. 360 of 2001. The Hon'ble High Court vide its order dated 09.11.2001 stayed the Arbitral Proceedings. The Hon'ble High Court vide its final judgment and order dated 08.10.2004 directed CMD, NBCC to refer the claims of both the parties to the third Arbitrator.
5. The Present Arbitrator was nominated by the Chairman & Managing Director of NBCC Ltd. to act as sole Arbitrator to adjudicate upon the disputes vide letter dated November, 2004.

## **1. PRELUDE -**

- 1.1. National Building Construction Corporation Ltd. (herein after called as "NBCC") is a government enterprises and engaged in the field of construction business including real estate Development. The L&DO allotted the plot on lease hold basis for construction and development of community center at Pragati Vihar, Lodhi Road, New Delhi. Accordingly, the claimant/NBCC constructed building on the said plot and named the same as NBCC Place, Pragati Vihar, Lodhi Road, New Delhi.
- 1.2. The DCM Financial Services Private Limited (herein after called as "DCM Finance"), respondent is a Public Limited Company incorporated under the provisions of the Companies Act 1956 as "DCM Financial Services Private Limited on 28.02.1992. The word private was deleted w.e.f. 22.07.1993. The

*Sh*

company is engaged in a non-banking Finance Company (inter alia) in the business of hire purchase and leasing.

- 1.3. The NBCC, published an advertisement in daily newspaper Hindustan Times on 23<sup>rd</sup> June, 1995 for the sale of shops in the premises mentioned at para 1 herein above i.e. at NBCC Place, Pragati Vihar, Lodhi Road, New Delhi.

## **2. SUMMARY OF CLAIMS FILED BY NBCC/ THE CLAIMANT-**

- 2.1. The Terms and condition of the agreement were agreed by the disputing parties herein in their respective commercial wisdom. None of the parties dispute any terms of the agreement. As per agreement, the area of the property was provisional and tentative in nature. The terms such as "approximately", "provisionally" are used throughout the agreement and were identified to the Ld. Arbitration Tribunal.
- 2.2. The agreement also states that the super area mentioned in the agreement is provisional and liable to change. Pursuant to the change in the super area, necessary price/ monetary adjustment would be made accordingly {clause5(b)} of the agreement to sell.
- 2.3. The charges payable by the respondent, as provided prescribed in the agreement would have been proportionate to the actual size of the premise in the respondent's position.
- 2.4. The agreement also described the manner in which "super area" has to be computed. The said clause reads as under :-  
Clause 1— *"it is agreed and understood that the said consideration includes the proportionate cost of super area element due to lift, lobby corridors, substation etc."*  
Clause 2 - *"that the rates are to be charged for cover area, plus proportionate share of common area under circulation, staircase, walls, columns, lifts, electric substation, recessed space below window still etc. i.e.*

*Sh*

*on super area basis. Super area also includes 50% space of balconies which are exclusively attached with the respective space floor."*

- 2.5. On numerous occasions, the claimant has relied on the principle of "ejusdem generis" to state that the word "etc." in the course of clause gives a broad meaning and interpretation to the clause. In light of the said principle, calculation of the super area should not be limited only to (1) lift, (2) lobby corridors, and (3) substation as argued by the respondent. For the purpose of calculation of the super area also include all the other common areas such as lift & Staircase, lobbies of Lift & Staircases, corridors, Common Toilets, Fan Room, A.C Plant, Pump Room, Electric Substation, machine Room, Mumty, Water Tanks, Service Ducts, Fire Hydrants Duct, AC Duct, Service of which are being enjoyed by the Respondent in proportion to its actual built up area.
- 2.6. It was further argued that the word "etc." in the aforesaid clause has to be given due weightage and meaning and cannot be ignored. The claimant has also relied on several legal authorities.
- 2.7. The claimant places reliance on the following:
- i) Section 28(3) and 34 of the Arbitration and Conciliation Act to state that the arbitration and parties are strictly bound by the terms of the agreement and cannot depart from the same.
  - ii) Dictionary meaning of the word "Etc." and "ejusdem generis" as contained in Black's Law Dictionary.
  - iii) Section 3(j) of the Apartment Ownership Act wherein the common areas and facilities are defined, which shall be relevant in assailing the meaning, ingredients and calculation of "Super Area".
  - iv) The judgment of *Ganesh Trading V State of Haryana (1974) (3) SCC 620 (para3)*.
  - v) The judgment of *State of Orissa Vs Titaghur Paper Mills Co. (1985) Supp SCC 280 (para 89)*.
  - vi) The Judgment of *RS Nayak Vs AR Antulay. (1984) 2 SCC 280 (para 89)*.

*Sh*

- vii) The Judgment of *Amar Chandra Chakraborty v Government of Tripura* (1972) 2 SCC 442, (para 9).
- viii) The Commissioner of Sales Tax v *Jabalpur Aerated Water Factory*, AIR 1965 MP 71 (para 6).

2.8. The claimant argued that as per the agreement, respondents obligation are

- Pay differential amounts on account of revision in super area.
- Pay proportional property tax charged by the Municipal Corp. of Delhi.
- Pay ground rent/ vacant land tax charged by L&DO.
- Pay proportionate charges towards the payment made by the claimant to DESU/DBV, i.e. electric service connection, substation security, etc.
- Pay proportionate charges towards the expenditure incurred by the claimant in replacing oil transformer and on augmentation of power from DG sets.

2.9. Since at the time of entering into the agreement, the size of property was tentative/ approximate, the respondent had offered the participation to claimant for measuring the exact size/ super area of the premise.

- i) The claimant had time and again requested the respondent to participate in the measurement of the allotted area in the complex. Despite repeated reminders, the respondent never cooperated. Reference is drawn to letters dated 08.05.1998, 21.08.1998, 31.12.1998 and minutes dated 10.02.1999.
- ii) Further, vide letter dated 08.04.1999, respondent was asked to deposit the amount for difference on account of revised super area as per agreed rates. It was specifically mentioned in the letter that if respondent did not wish to deposit difference amount on account of revised super area, respondent may surrender the space to NBCC and take refund of the amount deposited by the respondent at that time.
- iii) In this regard, the claimant drawn an attention of the Arbitral Tribunal to the proceeding dated 30.07.2014, in which respondents submissions recorded that "if they would known that claimants are going to increase the area by about 20% at a later stage, the respondent may not have purchased this property". In light of letter dated 08.04.1999, it stands

*Sh*



clarified that despite opportunity being granted to the respondents for refund, the respondent did not avail of the same, thereby forfeiting any right of measurement and objection to the revised super area as per agreed rates.

iv) Therefore, the respondent had forfeited its rights of measurement of the property. In this regard, the claimant relied on the concept of "*doctrine of waiver*" and "*doctrine of election*", which states that by conduct the respondent had waived off its right and elected to not to cooperate with the measurement of the premise at the relevant time.

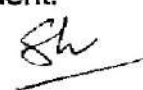
v) Claimant also relied on the following judgments:-

- National Insurance Co. Ltd. Vs Mastan (2006) 2 SCC 641 (para 23).
- Prashant Ramachandra Deshpande Vs Maruti Balaram Haibatti, 1995 Supp (2) SCC 539 (para 511).
- Union of India Vs Shri Hanuman Industries, (2015) 5 SCC 600 (para a,d,f,g).

2.10. Claimant further argued that the Arbitral Tribunal directed both the parties to carry out joint measurement of the premise. Pursuant to the same, both the parties met on occasions to carry out the joint measurement. It was further accepted by the respondents in record of proceedings dated 15.03.2019 that the office plinth area allotted to them was 588.27 sqm. The issue of super area measurements was however not agreed to by between the parties and the same remained inconclusive.

2.11. Claimant argued that so far as calculations of super area is concerned, the observations on the area calculations submitted by the respondents vide letter dated 22.01.2015 are not correct and was explained several times by the claimant during arbitration hearings that several common areas were deducted from the total area calculation arbitrarily by the respondent.

2.12. Regardless of the joint measurement conducted by the parties the arbitration tribunal must pass strict observation against the conduct of the respondent in evading joint measurement at the relevant time i.e. from 1995 to 2001. Being the same is solely attributable to the respondent.



2.13. That the claimant on the above mentioned grounds raised the following claims against the respondent-

- I. Claim towards difference in Super Area for Rs. 2,29,28,254/- along with interest @24% from 08.05.1998 till 20.06.2019.
- II. Claim towards Ground Rents – Rs. 1,66,53,030/-.
- III. Claim towards Property Tax – Rs. 3,19,000/- along with interest @24%.
- IV. Claim towards allied charges –Rs. 7,82,210/- along with interest @24% from 31.10.1999 to 20.06.2019.
- V. Claim towards augmentation of electric substation – Rs. 1,32,880/- along with interest @24% from 07.10.1999 to 20.06.2019.
- VI. Loss of Profit – Rs. 20,00,000/-.
- VII. Arbitration Cost – Rs. 7,00,000/-

**2.14. Claim No.1- Claim Towards Difference in Super Area :**

- i) It is reiterated that at the time of entering into the agreement, the size of the premise mentioned in the agreement was provisional and tentative only. It was agreed by the parties that the respondent will pay the balance amount arising out of the difference in the super area which will be calculated later on.
- ii) It is reiterated that the claimant called upon the respondent to calculate/ verify the area of the premise on numerous occasions. The super area as of today works out to 1147.5657 sqm. The amount charged by the claimant from the respondent in 1995 was for the provisional/tentative super area of 943.94 sqm. Therefore, the respondent has to make the balance payment for the difference in the super area, vis. 203.6257 sqm. The rates agreed between the parties initially was Rs. 1,12,600 per sqm. Therefore, the amount payable by the respondent to the claimant works out to Rs. 2,29,28,254/-. Claimant has written a letter dated 08.01.2001 for the aforementioned amount.
- iii) In addition to Rs. 2,29,28,254/- to be paid by the respondent to the claimant, interest at 24% per annum with effect from 08.05.1998 till the date of payment also needs to be awarded in favor of the claimant. For convenience sake, the interest amount from 08.05.1998 till 20.06.2019 at the rate of 24% per annum (simple interest) works out to be Rs. 11,62,82,054/-.

Sh

- iv) To this effect, attention of the Arbitration Tribunal is drawn to the following agreement provisions:

Clause 5(b) of the agreement – *"That the super area indicated herein is provisional and liable to change. If for any reason, certain changes are made resulting in reduction or increase in area, necessary adjustment will be paid in a total price accordingly"*.

Clause 5(d) of the agreement – *"That the installment due towards payment of space will be paid by the buyer within the time schedule. If payment is not made within the stipulated period, as aforesaid, interest at the rate of 24% per annum for 6 months(\*\*\*) . Alternatively, interest for the period of delay at 24% per annum will be charged. This discretion will absolutely rest with the bidder"*.

- v) Reference is also drawn to clause 1 of General Terms and Conditions annexed with claimant's letter dated 24.11.1995, which reads as follows :-

Clause 1 - *"the super area indicated is provisional and liable to change. If for any reason, certain changes are made, resulting in reduction or increase in area, necessary adjustment will be done in the total price accordingly. No claim monetary or otherwise, will be raised or accepted except that the rates will be applicable on the actual area."*

Clause 6- *"The payment will be made by the buyer within 15 days from issue of demand letter. In case of any default/delay in payment/ said installment, beyond 15 days NBCC shall charge interest @ 24% PA upto 6 months and for further delay to cancel the allotment and forfeit 20% of price of space and the balance amount will be refunded without any interest. Alternatively, interest for the period of delay @24% per annum will be charged. The discretion will absolutely rest with NBCC."*

- vi) The respondent has neither disputed not addressed the aforesaid clauses in its arguments, as seen from its pleadings and recordings of the arbitration proceedings. It is reiterated that the parties and the Arbitration Tribunal bound by the provisions of the agreement and be no deviation/ rewriting of the agreement conditions entered into by the parties in their respective commercial wisdom.

*Sh*

- vii) The tribunal may further observe that the agreement conditions were always known to the respondent and yet, the respondent chose to not to carry out measurements and pay due amount to the claimant. The claimant also provided as option to the respondent to surrender its allotment and refund of deposited amounts, which the respondent in its commercial wisdom chose not to opt for.
- viii) The instant agreement does not prohibit the Arbitration Tribunal from awarding interest as per section 31(7) of the Arbitration & Conciliation Act.
- ix) It is further pertinent to state that the respondent vide submitted dated 22.01.2015 had submitted their alleged calculations regarding super built up area on the calculations submitted by claimant earlier. The calculations of respondent are completely untenable and erroneous.

In this regard, the respondent's assertion that the area of fan room, pump room, AC Plant, FHC Ducts & UG Tanks does not form part of common area is absolutely baseless and misconceived and therefore respondent's deduction of 1315.49 sqm is absolutely incorrect. The alleged method of calculation of super built up area by reducing corresponding area of a single tower in the complex by the respondent is incorrect as the super built up area has to be calculated on the comprehensive complex as a whole and cannot be decided on the whims and fancies of the respondent. Therefore, the contention of the respondent that the super built up area is actually lesser is totally misconceived and erroneous.

It is pertinent to state that in so far as the allegations of additional construction of area by claimant is concerned, it is submitted that the alleged structures did not exist at the time of initiation of the instant arbitration proceedings and moreover the same are temporary in nature and are not meant for sale.

**2.15. CLAIM No. 2 – Claim Towards Grounds Rent :**

- I. Reference is drawn to clause 17 of the agreement to sell, which mandates the respondent to pay ground rent proportionate to its size to its claimant. Payment is irrespective of the fact whether the respondent is enjoying any benefit of the premise. Reference is also drawn to Annexure XVI and XXV annexed with statement of claim. Reference is also drawn to clause 4 of

*Sh*

the general terms and conditions, annexed with the claimant's letter dated 24.11.1995.

- II. The application of the said clause is unconditional in nature. The said clause is neither disputed by the respondent in its pleadings nor in its arguments. Respondent's reference to clause 11 of the agreement is misconceived and misplaced. And apparently leading of clause 17 of the agreement demonstrates that its operation is independent of clause 11. Moreover, the instant arbitration is going on as per the agreement entered into by the parties on 06.12.1995. The objection of lack of conveyance deed is an afterthought and was raised for the 1<sup>st</sup> time by the respondent during the course of its arguments. For arguments sake, there is no document on record, which shows that the respondent requested the claimant for the conveyance deed.
- III. The amount payable under the instant claim as per our books of account by the respondent worked out to Rs. 1,66,53,030/- as on 15.05.2019. The instant agreement does not prohibit the Arbitration Tribunal from awarding interest as per section 31(7) of the Arbitration and Conciliation Act.

**2.16. Claim No. 3 : Claim Towards Property Tax :**

- I. Reference is drawn to clause 17 of the agreement, which mandates the respondent to pay property tax. It is an admitted fact that the MCD (Municipal Corp. of Delhi) was raising common bill on the claimant for property tax. The claimant was promptly making the payment towards property tax to that effect. After paying the property tax. Claimant was raising the bills on the occupant of the premise in proportion of the area of the position. Despite raising demands, respondent did not deposited any amount towards property tax to the claimant.
- II. Payment of property taxes is a statutory payment, and is of mandatory nature. Said payment is unavoidable as per the law. Respondent has not disputed the instant payment. The respondent has not demonstrated that it made the payment towards property tax to the concerned authorities. The

*Sh*

respondent has also not demonstrated any show cause notice, demand notice, assessment order, etc. it received with regard payment/non-payment of property tax to the concerned authorities by the tax authorities.

III. Therefore, ground of the claim has not been rebutted/ disputed by the respondent, claimant is entitled for the instant claim. As per the proportionate share of property tax, the amount payable under the instant claim by the respondent were out to Rs. 3,19,000/-. Further, the claimant is also entitled for the rate of interest at the rate of 24% per annum (simple interest) for delay in payment by the respondent. The interest amounts works out to Rs. 14,91,556/- as on 20.06.2019. To this effect, attention is drawn to clause 5(b) of the agreement, which specifies the rate of interest. The said clause has not been disputed/ challenged by the respondents.

IV. The tribunal must appreciate that the claimant made payment to the tax authorities is promptly so as to avoid any adverse consequences, and penal consequences. It is no one's case that the claimant failed to discharge its obligations to pay the tax amount.

V. The instant agreement does not prohibit the Arbitration Tribunal from awarding interest as per section 31(7) of the Arbitration & Conciliation Act.

**2.17. CLAIM NO. 4 : Claim Towards Allied Charges :**

- I. Attention is drawn to clause 15 of Agreement and Annexure XVII of Statement of Claim. To this effect, attention of the Tribunal is drawn to clause 3, 5(e), 5(f), 12(b), 15 of the agreement to sell. As per the contention of the agreement, the respondent was to pay to the claimant the proportionate share of charges towards payment of electric services connection and substation equipment security paid by the Claimant to DESU/ DVB, etc. Despite demands, respondent has not paid the amount to the claimant.
- II. Respondent has not disputed the instant payment, the respondent has not demonstrated that it made the aforesaid payments to the concerned authorities. The respondent has also not demonstrated any show cause

*Sh*

notice, demand notice, assessment order, etc. it received with regard payment/ non-payment of allied charges to the concerned authorities by the concerned authorities. Therefore, on ground of the claim not been rebutted/ disputed by the respondent, claimant is entitled for the instant claim.

- III. As per proportionate share, the amount payable under the instant claim by the respondent worked out to Rs. 7,82,210/ The claimant vide letter dated 31.10.1999, 02.02.2000, 23.03.2000 and 08.01.2001 called upon the respondent to pay its proportionate share. Despite, reminders, the respondent has not paid any amount to the claimant.
- IV. Claimant is also entitled the rate of interest at the rate of 24% per annum (simple interest) for delay in payment by the respondent. The interest amount works out to Rs. 36,57,400/- from 31.10.1999 to 20.06.2019. To this effect, attention is drawn to clause 5(b) of the agreement, which specifies the rate of interest. The said clause has not been disputed/ challenged by the respondent.
- V. The tribunal must appreciate that the claimant made payment to the concerned authorities promptly so as to avoid any adverse consequences and penal consequences. It is one's case that the claimant failed to discharge its obligations to pay the mandatory amount as envisaged in the agreement. The interest agreement does not prohibit the Arbitration Tribunal from awarding interest as per section 31(7) of the arbitration and conciliation Act.

**2.18. CLAIM NO. 5 : Claim Towards Augmentation of Electric Substation**

- I. Claimant had incurred expenditure in replacing oil type transformer with dry type transformer and on augmentation of power from DG Sets. The claimant vide letter dated 07.10.1999 called upon the respondent to pay its proportionate share. Despite reminders, the respondent has not paid any amount to the claimant. The change in transformer was due to statutory requirements. Since the respondent was also availing the benefit and services of the transformers, the respondent's duty bound to pay its proportionate share of expenditure incurred thereto.

*Sh*

- II. The respondent has not disputed this claim in its arguments. Even earlier, the respondent never objected to the operation of the transformer, respondent is direct beneficiary of the operation of the transformer. To this effect, attention of the tribunal is drawn to clause 3, 5(e), 5(f), 12(b), 15 of the agreement. As per proportionate area as calculated the herein above, the amount payable under the instant claim by the respondent worked out to Rs. 1,32,880/-.
- III. Claimant is also entitled the rate of interest at the rate of 24% per annum (simple interest) for delay in payment by the respondent. The interest amount from 0.10.1999 to 20.06.2019 works out to Rs. 6,28,737/-. To this effect, attention is drawn to clause 5(b) of the agreement, which specifies the rate of interest. The said clause has not been disputed/challenged by the respondent.
- IV. The tribunal must appreciate that the claimant mad payment to the concerned authorities promptly so as to avoid any adverse consequences and penal consequences. It is one's case that the claimant failed to discharge its obligations to pay the mandatory amount as envisaged in the agreement. The instant agreement does not prohibit the Arbitration Tribunal from awarding interest as per section 31(7) of the Arbitration and Conciliation Act. This claim is in the nature of reimbursement and compensation.

**2.19. CLAIM NO. 6 : Loss of Profit :**

- I. The claimant is claiming the loss of profit due to non-payment of balance payment by the respondent. It can be observed that the respondent has also not reimbursed the claimant for the mandatory and statutory expenses incurred by the claimant on respondent's behalf. Respondent was the direct beneficiary of the expenses incurred by the claimant.
- II. Despite calling upon the respondent time and again to make the payment, the respondent has successfully delayed the matter. Attention is drawn to the list of dates.





- III. Due to non-payment by respondent the claimant was not able to make contractual payments to its contractor's and salaries towards employees, which in turn affected performance of work in hand and which in turn resulted in loss of profit for the extra cost. Claimant's primary business work was severely affected due to this.
- IV. Since the claimant was not heard on this claim by the tribunal the claimant is seeking the liberty to place on record the judgment of the Hon'ble High Court – *Mahanagar Gas Ltd. Vs Babulal Uttam Chand & Co. (2013)4 Arb.LR 151*, which states that if and when party is found to be in breach of agreement, the breaching party has to duly compensate the aggrieved party for the losses and damages suffered.
- V. It is apparent that the respondent is in breach of the agreement for it avoided agreement payment to the claimant since the year 1999. It is prayed that the claim of Rs. 20 Lacs be awarded in favor of the claimant.

**2.20. CLAIM NO. 7 : Arbitration Cost :-**

The claimant has incurred significant expenditure in the instant arbitration. The instant arbitration is arising due to the failures lapses and breaches of the respondent in complying with this mandate and the contractual obligations. If it was not due to the breaches at the respondent's end, the claimant would not have spent its valuable time and resources in the instant arbitration.

The claimant has paid an amount of Rs. 7,00,000 towards fee of the Hon'ble Sole Arbitrator and counsel in the instant arbitration.

**3. SUMMARY OF RESPONDENT (DCM FINANCE SERVICES LTD./ DFSL) CASE –**

- 3.1. That the respondent submits that with reference to the advertisement dated 23.06.1995 issued by NBCC/ the claimant, they applied for the allotment of Upper Ground Floor of the South Block of NBCC Tower at Lodi Road, New Delhi. M/s DFSL applied to M/s NBCC for 944 sq. meter

*Sh*

of area @ 1,12,500/- per sq. meter vide its letter dated 29.09.1995 with certain conditions.

- 3.2. That the claimant vide its letter dated 13.10.1995 informed to the respondent that the payment schedule offered was not acceptable and the payment schedule was indicated in the said letter. The claimant also informed that the rate of car parking @ Rs. 5,00,000 per car parking and Rs. 1,00,000 for per scooter parking. They also enclosed the general terms and conditions which were applicable to all space buyers of the complex and at the same breadth stated that these general terms and conditions cannot be deviated and the acceptance may be confirmed in totality.
- 3.3. That the respondent vide its letter no. 311 dated 03.11.1995 agreed to the payment schedule but requested that the payment schedule be changed to 95% of the consideration within 15 days from the date of receipt of letter of acceptance, this was in reference to after having meeting with the CMD of M/s NBCC on 30.10.1995, that the parking for the car shall be allotted @ Rs. 4.5 Lakh per car parking and for scooter @ Rs. 80,000 per scooter parking. They further requested that both the sets of Toilet should be for exclusive use of them. M/s NBCC in reply vide their letter dated 16.11.1995 allotted 943.94 Sq. Meter super area space provisionally @ Rs. 1,12,600/- per sq. meter super area.
- 3.4. That respondent has reproduced the following contents of letter dated 16.11.1995 issued by NBCC-
- \*c) Upon receipt of 95% amount of total consideration as well as bank guarantee as stated above, we shall give you the interim possession for carrying out interior decoration works only, without making any change to the structure, fire-fighting arrangements and external finishes. You shall be allowed the exclusive use of one set of the toilet in the said floor. However, you shall not be allowed to cover common areas like lift-lobby, its adjoining staircase, fire escape staircase area reserved for fire protection panels, gadgets etc. and any encroachment in the central plaza.*

*SL*

e) Enclosed please find a set of our general terms and conditions which are applicable to the space buyers of this complex. No deviation from these terms and conditions shall be permitted.

In case our offer is acceptable to you, you are requested to pay an amount of Rs. 10,75,46,077/- immediately through Bankers Cheque or Demand Draft as detailed below but not later than 15 days from issue of this letter failing which it will be presumed that M/s DCM Financial Ltd. Is not interested to purchase the above space and allotment mad shall be cancelled and EMD forfeited.

95% of the total value (after adjustment of EMD of Rs. 10.00 lacs)	Rs. 10,70,98,262/-
Proportionate amount of property tax	Rs. 4,47,815/-
<b>TOTAL</b>	<b>Rs. 10,75,46,077/-</b>

(Rs. Ten Crore Seventy Five lacs Forty Six Thousand and Seventy Seven Only)

As agreed by you vide letter no. DFS:LEGAL:105 dated 14.11.95, you are requested to furnish a bank guarantee of a nationalized bank to remain valid till the possession of the premises is handed over against the remaining 5% of the total sale value amounting to Rs. 56,89,382/- in favor of NBCC Ltd., Lodhi Road, New Delhi along with above mentioned payment."

- 3.5. The respondent argued that as per terms and conditions, rate of Rs. 1,12,600/- per Sqm. are for covered area plus proportionate share of the area under passage, staircase, walls, columns, lifts and the recessed space below window sills etc. i.e. super area basis. Super area also includes 50% space of balconies which are exclusively attached with the respective floors.

*Sh*

3.6. It is a case of the respondent that an agreement to sell dated 06.12.1995 was signed between the parties which are a sacrosanct document and the terms and conditions stated therein cannot have any other meaning what is expressly stated therein. It is expressly stated as *"it is agreed and understood that the said consideration includes the proportionate cost of super area element due to lift, lobby, corridor, sub-station etc. 2. That the rates are to be charged for covered area plus proportionate share of common area under circulation, staircase, walls, columns, lifts, electric sub stations, recessed space below windows sill etc. i.e. on super area basis. Super area also includes 50% space of balconies which are exclusively attached with the respective floors."*

3.7. Respondent submitted that the main ingredients of the agreement to sell are given at para 1 & 2 of the said agreement, which means as under:

- Para 1 demonstrate the super built up area and the considerations at rate of Rs. 1,12,600/- per sq. m. under this para both the parties have understood and agreed that the consideration of Rs. 1,12,600/- per sq. m. is the proportionate cost of super area element, which is stated as "lift, lobby, corridor, sub-station etc. It means all the likewise items are included in the cost/ rate of Super Area.
- agreement to sell further states that the rate of Rs. 1,12,600 per sq. m. is to be charged for "covered area plus proportionate share of common area under circulation, staircase, walls, columns, lifts, electric substation, recessed space below window sill etc. i.e. on super area basis. In addition to this the said agreement also states that 50% of space of the balconies which are exclusively attached with the respective space floor are also to be included in the rate of super area.
- On conjoint reading of paras 1 & 2 of the agreement to sell are in consonance, para 1 is about the factors considered for determining the rate per sq. m. of the Super Area and para 2 is about the components of the super area and this factors and components will not become different by use of word etc. and the table showing the area of the structures added later on in the super area are given below and which



reveals that these are not the like items as stated in the agreement to sell or in the terms and conditions enclosed with the letter of allotment.

The respondent has further written that the amount of considerations are on the basis of super area as per the terms and conditions set forth at the time of allotment and hence there was no ambiguity for working out the rate per sq. meter area and the super area.

3.8. It is the case of the Respondent that the claimant vide letter dated 08.05.1998 by referring the allotment dated 24.11.1995, informed that the super area has been provisionally finalized as 1147.567 sq. m., on the terms and conditions enclosed with letter 24.11.1995, wherein it is stated that-

- "rate per sq. m. of space is firm except that if cost of construction increases due to statutory increase by government/ Delhi State or any other government body.....".
- Rates are to be charged for covered area plus proportionate share of area under passage, stair case, walls, columns, lifts and the recessed space below window sills etc. i.e. super area basis. Super area also includes 50% space of balconies which are exclusively attached with the respective floors.
- These conditions are similar to as stated in the agreement to sell.
- The rate per sq. m. worked out by the claimant to be charged from the different allotments is derived out from the total cost to be credited to the project.
- Accordingly, the claimant demanded the amount of Rs. 5,17,09,262/- (Rs. 4,80,09,262/- towards super area plus car parking and scoter parking) and Rs. 6,20,78,382/- (Rs. 5,82,78,382/- plus car parking and scoter parking) @ Rs. 1,12,600/- per sq. m.

The respondent has further stated that the amount demanded by the claimant was the total consideration as per the claimants letter dated 24.11.1995 based on the area build and the total area involved in completion of the project and thus when it was a total consideration, then

Sh

the amount at no stage can vary. The entire consideration which includes the area to be charged from the vendors and the claimant has specifically prescribed the items to be part of the super area in the terms and conditions of the letter of allotment and these cannot be stretched at any stage without evidencing properly. The claimant vide this letter has stated that this consideration does not include the allied charges.

- 3.9. That the respondent submits that the letter of allotment dated 24.11.1995 also state that on receipt of 95% payment interim possession shall be given for interior decoration without affecting the structure. Accordingly, letter dated 08.12.1995, was issued by M/s NBCC vide which interim possession was given for interior decoration only and the same letter states that the tentative date of handing over of possession will be June 1996.

Respondent further submits that the building being constructed by the claimant was strictly as per the plans and scheme approved by the relevant authorities and accordingly they were fully aware of the cost and super area involved and there was no evidenced that the plan of facilities ever changed after the initial approval by the relevant authorities.

- 3.10. That the respondent submits that after giving interim possession, the claimant increased the covered area for their own use by constructing their offices at the Basement, Upper Ground Floor, First Floor and Second Floor. The claimant at that time also made several offices in the basement for their own use and purpose.

The respondent further submitted that due to this act of claimant by increasing the covered area for their own use or otherwise, the percentage for the super area gets reduced and this fact was brought during the arbitration meeting on 22.01.2015. According to the calculations submitted on 22.01.2015 the gross super area get reduced from 943.94 sq. m. (517.57 sq. m. + 426.37 sq. m.) to 904.299 sq. m., thus a reduction of 39.641 sq. m., which amounts to Rs. 44,63,576.60/- = Rs.1,12,600 /- per sq. m. x 39.641 sq. m. The statement of reduction in the super area has not been challenged and contradicted by the claimant at all during the



proceedings and thus is an admitted position that there has been reduction of 39.641 sq. m. area in the super area and the amount of Rs. 44,63,576.60/- is a setoff amount.

3.11. That the respondent further submitted that claimant vide its letter dated 04.07.2001 in reply to respondent's letter dated 27.04.2001 has informed that the super area was 1062.3390 sq. m., which reveals that the claimant was not aware, what super area in actual as per terms and conditions works out to. The claimant in the year 2001 had calculated the maintenance on the basis of 944 sq. m. and not at 1062.3390 sq. m. or 1147 sq. m. Thus the area allotted as per the terms and conditions of the allotment letter and agreement to sell was 943. 94 sq. m. only and for which they raised the claim of maintenance.

3.12. That the respondent submitted its observations on the above annexure depicting the areas which do not form part of the super area in accordance to the terms and conditions issued along with the allotment and the agreement to sell. Such area totals to 1315.5081 sq. m. and the area which forms parts of the common area works out to 7750.770 sq. m.

Sl. No.	Particulars	Area (Sq. M.)	Remarks
1	FHC Duct	2.1462	(Not similar to passage, staircase, walls, columns, lifts, the recessed space below window sill etc., as per terms and conditions at the time of allotment) and (Common area under circulation, staircase, walls, columns, lifts, electric sub-station, recessed space below window sill etc. in accordance to agreement to sell.) This item does not fall in any of the category mentioned herein.
2	Fan Rooms	34.8472	-----DITTO-----

*Sh*

3	FHC Duct	2.1462	-----DITTO-----
4	Fan Rooms	34.8172	-----DITTO-----
5	FHC Duct	2.1462	-----DITTO-----
6	Fan Rooms	34.8172	-----DITTO-----
7	PART A/C PLANT	64.8600	-----DITTO-----
8	A/C PLANT RM	230.3163	-----DITTO-----
9	Fan Rooms	12.9528	-----DITTO-----
10	U.G WATER TANK	203.760	-----DITTO-----
11	PUMP ROOM	61.800	-----DITTO-----
12	FHC Duct	2.1462	-----DITTO-----
13	FHC Duct	2.1462	-----DITTO-----
14	FHC Duct	2.1462	-----DITTO-----
15	D G TRANSFORMER	182.5381	-----DITTO-----

The areas mentioned herein above demonstrate the reduction in super area by 39.641 sq. m., which was submitted on 22.01.2015. The respondent further writes that the claimant has neither controverted nor challenged the reduction in area by 39.641 sq.m.

The respondent has stated that the super area allotted to them is 904.229 sq. m. (943.94 sq. m. - 39.641 sq. m.). Thus the amount of Rs. 44, 63,576.60/- is refundable to the respondent.

**3.13. CLAIM NO. 1-**

- a) The respondent was allotted 943.94 sq. m. super area vide allotment letter dated 24.11.1995 as per the terms and conditions at the time of allotment. By this time the building has been substantially constructed as per the plans approved by the respective authorities and the claimant was very much in knowledge of the covered area, common area and area covered by different structures. Moreover the claimant is a professional civil engineering company including other relevant fields such as

*sh*



mechanical and electrical. Even the claimant has its own architecture wing so it cannot be pleaded that the area calculated by them at the time allotment was incorrect instead the same was based on the considerations of price and area both.

- b) The area of 943.94 sq. m. calculated was in conformity of the terms and conditions at the time of allotment and terms and conditions stipulated in the agreement to sell, which in no case can be permitted to be altered at the whims and fancy of the claimants. The claimant at different times worked out the area differently, which demonstrate that the claimant was inconsistent with its working and to fish out more money it had been changing its method of working by ignoring the terms and conditions already finalized with the respondent. The claimant did not reveal out the basis of the calculation of 943.94 sq. m. and 1147.567 sq. m. Further, NBCC vide its letter dated 04.07.2001 informed to the DCM Finance that the super area is 1062 Sq. Meter. The respondent made its observations on the areas and explained that which common area was not part of the agreement to sale and the terms and conditions as per allotment letter. These details were filed on 22.01.2015 by the respondent showing that there was a reduction in the area allotted by a quantity 39.641 sq. m, thus the super area allotted by the claimant to the respondent is 904.299 Sq. M. These calculations of reductions stands admitted as not being controverted by the claimant.
- c) The claimant has never been impartial even though being an institute of the Central Government which duty is not to extract amount to enrich themselves on false pretext. The fact is that the claimant constructed the buildings in addition to the approved plans from the respective authorities and thus reduced the facilities of common area to their uses, which they promised at the time of allotment. Therefore, the claimant is not entitle to any amount, instead the amount works out negative by Rs. 44,63,576.60/-.

**3.14. CLAIM NO.2- CLAIM TOWARDS GROUND RENT-**

*Sh*

- a) The respondent has admitted that he is supposed to pay the ground rent but at the same time which shall be in accordance to the area allotted to it and on the basis of the actual payment made by the claimant. The documents filed by the claimant reveals that a ground rent of Rs. 10,02,817/- for an area of 15,655.4610/- sq. m. for a period of six months, which works out to Rs. 64.05 paisa per sq. meter for six months. The area with the respondent is 904.299. sq. m., accordingly the ground rent works to 57,921/- for six months. The ground rent amount till 15<sup>th</sup> May 2006 amounts to Rs. 9,26,736/- (Rs. 57,921 X 16). These figures have been worked out from the ANNEUXRE-XXV filed by the claimant. This amount may change on the basis of the evidence filed by the claimant in regard to the amount paid by the claimant. The claimant had not revealed the facts in the claim statement. The claimant is not supposed to enrich himself on wrong presentation.

**3.15. CLAIM NO. 3 - CLAIM TOWARDS PROPERTY TAX**

- a) That MCD, HQ/LPN vide their assessment order dated 07.02.2006 finalized the assessment of the premises under the interim possession of M/s DFSL and the ratable value of the premises allotted to M/s DFSL is assessed from 01.03.1998 Rs. 18,79,100 annually and from 15.10.2002, Rs. 14,09,300/- annually. Accordingly, the property tax is being paid by the respondent/ M/s DFSL since 01.03.1998.
- b) It is the contention of the respondent that they has not paid the property tax for the period prior to 01.03.1998 and it is also be not out of place to state that building was energized by the claimant only in year 2000, thus the demand made by the claimant is not tenable as the premises is not in possession of the M/s DFSL.

**3.16. CLAIM NO.4 – CLAIM TOWARDS ALLIED CHARGES**

- a) Claimant has filed the proof of payment of Rs. 24,62,725/- to the Delhi Vidyut Board as ANNEUXRE-XXVII. This payment is towards the estimate forwarded by the Delhi Vidyut Board and there cannot be any

*Sh*

other payment made to the Delhi Vidyut Board in absence of any evidence. Accordingly, the rate per sq. m. works out to Rs. 157.31/- and for 904.299 sq. m. the amounts works out to Rs. 1,42,257/-.

**3.17. CLAIM NO. 5 – CLAIM TOWARDS AGUMENTATION OF ELECTRIC SUB STATION**

- a) It is the case of the respondent that it is not reverse to the replacement of the oil transformer with the Dry Type transformer, but the payment being demanded Sets which was installed for fulfilling the needs of DMRC. The respondent never received any power from the said D.G Set even on request and as same was refused by the claimant. The claimant in the rejoinder statement has stated that the expenditure on replacement of transformer is Rs. 1,10,448/- the proportionate share and allotment does not evidence any expenditure as stated in rejoinder statement, therefore it cannot be said that any evidence has been filed for cost expenditure towards replacement of Oil Type Transformer with Dry Type Transformer.

**3.18. CLAIM NO. 6 – LOSS OF PROFIT**

- a) The claimant's claim towards loss of profit is for non-making payment of the amount demanded by them which is a matter of dispute before this tribunal. Otherwise also non-making of payment never tantamount to loss of profit as the same is always subject to the interest amount. As such in no way the amount of interest can lead to the loss of profit, which otherwise has been demanded by the claimant and that (interest) is also matter of adjudication by the Ld. A.T, whether the amount is payable and the rate of interest also to be decided by the Ld. A. T subject to the relevant interest rate.

**3.19. CLAIM NO. 7 – ARBITRATION COST**

- a) The respondent submit that the claimant to enrich itself at the cost of the respondent raised the disputes about the super area which even they are not sure as brought out herein above, whereas the allotted super area of 943.94 sq. m. get reduced to 904.299 sq. m. The said calculations stands admitted and are not disputed by the claimant at all during the entire

*Sh*

proceedings of arbitration. This itself proves the intention of the claimant and the respondent prays that the claim of the claimant please be rejected. The respondent submit that it has incurred an expenditure of Rs. 10,41,424/-. The respondent prays for reimbursement of the expenditure and prayed accordingly.

4. **COUNTER-CLAIM OF THE RESPONDENT (DCM FINANCE)-**

The Counter Claimant/Respondent filed Counter-Claims which are as under:

- a) Counter-Claim towards shortage/difference in building area for Rs. 1,80,41,898/-, which was reduced during arguments to Rs. 44,63,576.60/-.
- b) Counter-Claim towards interest on excess amount paid for Building Area amounting Rs. 21,57,35,167/-, which was reduced during arguments to Rs.1,45,95,894/-, on the basis of the revised claim amount;
- c) Counter-Claim towards interest, due to delay in possession of parking area to Rs. 8,48,80,087 alternatively claimed for direction to the respondent/ claimant to demarcate the parking area allotted to the counter-claimant;
- d) Counter-Claim towards interest on account of delay in possession amounting to Rs. 44,59,10,853/-, which was reduced during arguments to Rs. 8,60,93,852/-;
- e) Counter-Claim towards cost of Interior amounting to Rs. 1,21,45,312/- which was reduced during arguments to Rs.81,98,085/-;
- f) Counter-Claim towards loss on account of interest on cost incurred on interior amounting to Rs. 9,09,01,820/-, which was reduced during arguments to Rs.98,37,702/-;
- g) Counter-Claim towards cost of rent amounting to Rs. 81,13,000/- which was reduced during arguments to Rs.71,82,000/- along with interest for a period of 2 ¼ years amounting Rs. 29,08,710/-;
- h) Counter-Claim towards miscellaneous expenses Rs. 8,19,817/- which was not pressed during arguments;

*SL*

- i) Counter-Claim towards arbitration cost Rs. 5,00,000 which was enhanced during arguments to Rs.10,41,424/-.

**SUBMISSIONS OF COUNTER - CLAIMANT**

- 4.1. That the counter claimant submits that M/s DCM Finance Services Ltd. (herein after referred as "DFSL") with reference to the advertisement dated 23.06.1995 issued by NBCC, applied for the allotment of Upper Ground Floor of the South Block of NBCC Tower at Lodhi Road, New Delhi. M/s DCM Finance applied to M/s NBCC for 944 sq. meter of area @ 1,12,500/- per sq. meter vide its letter dated 29.09.1995 with certain conditions.
- 4.2. M/s NBCC vide its letter dated 13.10.1995 informed to the DCM Finance that the payment schedule offered was not acceptable and the payment schedule was indicated in the said letter. M/s NBCC also informed the rate of car parking Rs. 5,00,000 per car parking and Rs. 1,00,000 for per scooter parking. They also enclosed the general terms and conditions which were applicable to all space buyers of the complex and at the same breadth stated that these general terms and conditions cannot be deviated and the acceptance may be confirmed in total.
- 4.3. The NBCC vide its letter dated 24.11.1995, informed that they shall give the interim possession for carrying out interior decoration work of the premises on receipt of the 95% of total consideration within 7 days of this letter, for both the offices measuring 517.57 sq. m. and 426.37 sq. m. The 95% payment of total consideration was paid- immediately thereafter on issue of letter dated 08.12.1995 by NBCC, the work of interior decoration was taken up with a view that NBCC will hand over the possession by June 1996.
- 4.4. As per NBCC letter dated 08.12.1995 vide which they granted interim possession for carrying out interior works and also intimated the tentative date of handing over of the final possession by June 1996. Accordingly, the counter-claimant carried out the interior decoration and it was also of



the view that the possession will be available by June 1996, inasmuch as the premises of the entire building were already completed in the month of December 1995.

4.5. It is as per record that the respondent/NBCC procured electrical connections, fire safety and certificate of completion only by September 2002, (the respondent/ NBCC vide its letter no. DVB/2001/538 dated 12.06.2001 requested the DVB to regularize the electric connections.) therefore, the amount invested in purchase of office complex remain unutilized and the counter-claimant had been loosing not only interest on investment but also the amount spent on interior decoration went waste as the interior work had also been deteriorated by September 2002.

4.6. Due to non-availability of the facilities to run the office as stated herein above, the counter claimant had suffered the followings losses –

- i) Interest on Investment
- ii) Loss of rent
- iii) Loss on investment made towards interior decoration.
- iv) Loss of interest on investment made towards interior decoration.

**4.7. COUNTER-CLAIM No.1—CLAIM TOWARDS SHORTAGE/ DIFFERENCE IN BUILDING AREA**

- a) The counter-claimant's claim was for a difference in area for 160.23 sq. m, which was reduced to 39.641 sq. m on 22.01.2015.
- b) The counter-claimant has submitted the arguments that the super area allotted to the counter claimant fell short by 39.641 sq. m. which amounts to Rs. 44,63,576.60/-. The reduction in super area is based on the calculations submitted on 22.01.2015, the gross super area get reduced from 943.94 sq. m. (517.57 sq. m. + 426.37 sq. m.) to 904.299 sq. m. remain un-rebutted by the respondent/ claimant. Thus a reduction of 39.641 sq. m. stands admitted and accepted by the respondent/ claimant. The counter claimant has prayed for refund of Rs. 44,63,576.60/-.

*Sh*

4.8. COUNTER-CLAIM No. 2 – CLAIM TOWARDS INTEREST ON EXCESS AMOUNT PAID FOR BUILDING AREA.

- a) That the counter claimant's has submitted is arguments on the basis of reduction in area for 39.641 sq. m. for an amount of Rs. 44,63,576.60/-. The said amount has been availed by the NBCC and has further submitted that the amount of Rs. 44, 63,576.60/- is subject to interest at the rate as decided by the Arbitral Tribunal. The further arguments are that counter-claimant vide its letter dated 27.04.2001, notified the NBCC about the claim and thus the interest @ 18% starts accruing w.e.f. 27.04.2001. The interest as worked out by the counter claimant @18% for the period from 27.04.2001 to 20.06.2019 is Rs. 1,45,95,894/- (Rs. 44, 63,576.60 x 218/12 @18%).

4.9. COUNTER-CLAIM No. 3 – CLAIM TOWARDS INTEREST DUE TO DELAY IN POSSESSION OF PARKING AREA.

- a) That the counter-claimant has submitted arguments that as per letter of allotment dated 24.11.1995, the counter claimant was to be allotted 10 car (5+5) and 25 scooter (12+13) parking. These parking's were to be allotted based on the standard norms as per building codes and according to which code the area car parking was @ 32 sq. meter per car and scooter parking @16 sq. meter per scooter. The respondent/ claimant also made a demand for maintenance on the above stated area basis. The above document filed before the A.T, reflects the area of car parking @32 sq. m. per car and scooter parking @16 sq. m. per scooter which area has never been handed over to the counter claimant and hence the claim.
- b) The counter claimant has further argued that as per the statement made by the respondent/ claimant that the building was energized in September 2000, accordingly the premises came under use w.e.f. December 2000 and in this regard the letter dated 02.12.2000 and letter dated 11.09.2001

*Sh*

are referred which reveals that the premises came under use only after energizing.

- c) The counter-claimant further argued that no parking area has been allocated to M/s DFSL which is necessary in view of the allotment letter dated 24.11.1995, looking into the facts and circumstances of the case the Ld. A.T. vide its orders dated 21.01.2015, 11.03.2015 and 07.05.2015 directed to the respondent/ Claimant to demarcate the parking area as per allotment which has not been complied by the respondent/ claimant.
- d) The counter-claimant has further argued and requested that Ld. A.T may be please to pass an award for demarcation of the parking area allotted to the counter-claimant @ 32 sq. m for car and @16 sq. m. for scooter.

**4.10. COUNTER-CLAIM No. 4 – CLAIM TOWARDS INTEREST ON ACCOUNT OF DELAY IN POSSESSION**

- a) The counter claimant has submitted its arguments that the NBCC in its reply to the counter claims had affirmed and admits the following facts-
  - Interim-Possession of the Space was handed over on 09<sup>th</sup> December 1995 vide agreement to sell for interior decoration work;
  - The counter-claimant started using the premises w.e.f. 1998, when the DMRC also started using the premises;
  - The building was energized in year 2000 and the counter-claimant was informed accordingly by the NBCC.
- b) The counter-claimant's has further submitted that from the above admissions of the respondent/ claimant it reveals that the building was energized only in year 2000 and it is a fact that without energy the building premises cannot be used, as all the equipment and tools require energy for operation.
- c) That the counter claimant has further argued that NBCC write that the counter-claimant started using building since 1998 when the DMRC also started using it is wrong to the fact that the energy being used by the

*Sh*



DMRC was not made available to the Counter-Claimant and it started using its premises only from December 2000 and in this regard letter dated 02.12.2000 and 11.09.2001.

- d) That the counter-claimant has further submitted that the said premises were not in use till December 2000 i.e. for five years from year 1995 to 2000 because of the reasons that it did not had the requisite facilities and permissions as required for commercial offices.
- e) That the counter-claimant has demanded interest on investment from June 1996 to December 2000 i.e. for a period of four and half year which interest calculates to Rs. 8,60,93,852/- (simple interest @ 18% Rs. 1,91,31,976/- per annum on an amount of Rs. 10,62,87,644/- towards building only).

**4.11. COUNTER-CLAIM No. 5 – CLAIM TOWARDS COST OF INTERIOR.**

- a) That the counter-claimant had submitted that NBCC in reply to counter-claim no.4 that the counter-claimant was using building w.e.f. 1998 when DMRC also started using in December 1998, whereas in the reply to this claim the NBCC states that the counter-claimant is using the building since 1997, it reveals that the reply of the NBCC is inconsistency and the counter-claimant take into consideration the use of premises w.e.f. December 2000, after energizing the building by the NBCC on September 2000 and during that period only the counter claimant requested NBCC for according permission for parking of cars. Thus the investment of Rs. 1,21,45,312/- spent on interior remain unused. This not only put the counter claimant in loss of interest but also loss on account of deterioration in the interior decoration without any use, carried out by the counter-claimant.
- b) The counter-claimant further submitted that the deterioration of the interior decoration even at the rate of 15% per annum for four and half years (depreciation permitted under Income Tax Act) works out to Rs. 81,98,085/- (Rs. 18,21,797/- per annum X 4.5 years). Therefore, it is

*Sh*

prayed that the Ld. Arbitral Tribunal may be please to pass an award for refund of Rs. 81,98,085/- in favor of the counter-claimant.

**4.12. COUNTER-CLAIM No. 6 – CLAIM TOWARDS LOSS ON ACCOUNT OF INTEREST ON COST INCURRED ON INTERIOR.**

- a) That the counter-claimant has submitted that NBCC vide its letter of allotment permitted to the counter-claimant to carry out the interior decoration and same has been admitted in its pleading also, therefore, the NBCC is not entitle to deny the execution of interior decoration work and because of the delay in energizing the building which was the reason for use of the allotted premises, cannot avoid its responsibility of the losses suffered by the counter claimant.
- b) The counter-claimant has further, submitted that every investment had got its implication and accordingly the amount of Rs. 1,21,45,312/- spent on interior decoration has also the implication of interest on investment which is the demand made by counter claimant. Since, the premises could not be used for a period of four and half year and the counter claimant has worked out the interest (simple) @ 18% Rs. 98,37,702/- (Rs. 21,86,156 X 4.5 years).

**4.13. COUNTER-CLAIM No. 7 – CLAIM TOWARDS COST OF RENT.**

- a) The counter-claimant has submitted that it could not shift its office to the premises purchased because of the reasons that it could not become functional due to non-energizing and non-procuring other certificates permitting occupation of the premises by the respondent/ NBCC. The counter-claimant has also stated that it continued to pay a rent of Rs. 15,96,000/- per annum. The amount till December 2000 i.e. for a period of 4 ½ years works out to Rs. 71,82,000/- (15,96,000/- X 4.5) and the amount is further subject to simple interest @ 18% per annum and the amount calculated for an average period of 2 ¼ years Rs. 29,08,710/-.

Sh

4.14. COUNTER CLAIM NO.-8 :- CLAIM TOWARDS MISCELLANEOUS EXPENSES.

- a) That the counter claimant also raised a claim for miscellaneous expenses, but the same was dropped during the arbitral proceedings.

4.15. COUNTER CLAIM NO. 9 – CLAIM TOWARDS ARBITRATION COST.

- a) That the counter-claimant has placed the counter-claims on factual basis before the A.T. for adjudication and has submitted that the NBCC is contesting only for the name sake and in-fact has got no ground to challenge the claims of the counter-claimant and the counter-claimant has spent Rs.10,41,424 and is praying for award.

5. SUMMARY OF THE ARGUMENTS OF COUNTER-RESPONDENT/ NBCC-

5.1. COUNTER-CLAIM No.1–CLAIM TOWARDS SHORTAGE/ DIFFERENCE IN BUILDING AREA

- a)The NBCC has submitted in pleadings that instant claim is hopelessly barred by limitation and is an afterthought and further submitted that NBCC called upon the Counter-Claimant to attend the joint measurement of the premise as back as in 1999. As stated earlier, the Counter-Claimant did not attend the same. The Counter-Claimant neither rebutted to the multiple reminders sent by the NBCC to this effect. In 2007, the Counter-Claimant filed the instant counter claim.
- b)It is the case of the NBCC that the Counter-Claimant has been taking different stands throughout the instant proceedings regarding super area allotted to them. Initially, the Counter-Claimant had stated that the super area allotted to them was 938.42 sq.m, and the NBCC further submits that finally vide submission dated 22.01.2015, Counter-Claimant claimed the super area allotted to them is 904.29 sq.m. It is apparent that the Counter-Claimant themselves are confused about calculation of the super area allotted to them and as such their contentions regarding shortfall in

Sh

allotted area is untenable and deserves to be dismissed and further states that there is no shortfall or negative difference in the size of the premise as wrongly contended by the Counter-Claimant herein. The Counter-Claimant has not made the payment towards the differential super area which the Counter-Claimant is enjoying despite several reminders.

**5.2. COUNTER-CLAIM No. 2 – CLAIM TOWARDS INTEREST ON EXCESS AMOUNT PAID FOR BUILDING AREA**

a) Regarding counter claim no. 2, the NBCC submits that this claim is devoid of merits and deserves to be dismissed.

**5.3. COUNTER-CLAIM No. 3 – CLAIM TOWARDS INTEREST DUE TO DELAY IN POSSESSION OF PARKING AREA**

a) Regarding counter claim no. 3, the NBCC argued that the claim is baseless and is not supported by any condition of the agreement. The counter-claimant is entitle to only parking for 10 cars and 24 two wheelers and same was duly provided.

b) It is the case of the NBCC that the agreement did not provide that the NBCC would sell parking spaces to Counter-Claimant. The same only provide that the NBCC will provide parking for 10 cars and 24 two wheelers to the Counter-Claimant. The NBCC vide its letter dated 16.11.1995 clarified that 10 nos. car parking and 25 nos. of scooter parking would be provided to Counter-Claimant.

c) It is the case of the NBCC that vide letter dated 15.01.2001 it was stated to the counter-claimant that as per agreement between parties, parking for 10 nos. of car and 25 nos. of scooter was to be provided by NBCC and was specifically denied that the NBCC was to handover the possession of 720 sq. meter of parking area as alleged by the Counter-Claimant.

86

- d) The respondent/ claimant relied upon judgments passed by the Hon'ble Supreme Court in the matter of "*Transmission Corporation of AP Vs.. GMR Vemagiri Power Generation Ltd. (2018) 3 SCC 716, Polymat India Vs National Insurance (2005)9 SCC 174, Pure Helium India P. Ltd Vs. ONGC (2003)8 SCC 593, and Nabha Power Vs Punjab State Power Corp. (2018) 11 SCC 508*" in which it is held that the court must give due importance to the party's interpretation of the agreement terms. As apparent herein above, both the parties were ad idem with respect to the facts that merely gate passes will be issued to the counter-claimant for the counter claimant to park its vehicle. The said judgments are placed on record herein as the claimant was not given an opportunity to deliver the same before the tribunal after submitting the documents.
- e) The counter-claimant neither relied upon any applicable agreement clause nor any contemporaneous documents to prove the instant claim. The instant claim is hopelessly barred by limitation and is an afterthought as the alleged issues have only been raised during arbitration. The instant frivolous and no-agreement claim is not maintainable.

**5.4. COUNTER-CLAIM No. 4 – CLAIM TOWARDS INTEREST ON ACCOUNT OF DELAY IN POSSESSION**

- a) The NBCC argued that there was no delay in handing over possession of the premises. The counter-claimant is in occupation and enjoying possession since 9<sup>th</sup> December 1995 i.e. when the premise was still in its advance stages and despite of that they were not paying the maintenance charges, ground rent, property tax etc.
- b) The NBCC further states that the counter-claimant used the premises w.e.f 1998 and at that time the counter-claimant was undergoing a financially turbulent time as stated in rejoinder to the counter claims.
- c) The NBCC argued that the building was energized in the year 2000 and the counter-claimant was informed of the same vide letter dated

*Sh*

25.02.2000. Before energizing of the building all the occupants were having temporary electrical connection and were using the space provided by them. The counter-claimant also not placed any documents on record which states that there was a delay in granting possession of the premises by the NBCC to the counter-claimant. The instant claim is barred by limitation. The counter claim raised by the counter claimant are in deceit and tainted with malice.

**5.5. COUNTER-CLAIM No. 5 – CLAIM TOWARDS COST OF INTERIOR**

- a)The NBCC argued that the claim is wrong, denied and not maintainable also it is an afterthought. After doing the interiors, counter claimant used the premises since 1998. The counter claimant used the premises for Global IT Options till 2002 and M/s New Horizon is operating counter claimant's office since 2003.
- b)The NBCC provided the premises and it was their obligation to get interior done at their own cost. Therefore, no interior damage could have been caused due to the NBCC. It is incorrect to state that the electricity and fire safety was not complete upto September 2002. The NBCC referred to ANNEXURE –XX (C/18), which states that the building was energized on 20.02.2000. The claim is barred by the law of limitation and is an afterthought.

**5.6. COUNTER-CLAIM No. 6 – CLAIM TOWARDS LOSS ON ACCOUNT OF INTEREST ON COST INCURRED ON INTERIOR**

- a) NBCC submits that counter-claim no. 5 and counter claim no. 6 are identical and related. The claim is an afterthought and barred by the law of limitation. It was Counter Claimant's duty to get interior done at its own cost. No loss has accrued on account of any delay in possession to the Counter Claimant, hence deserve to be dismissed.

**5.7. COUNTER-CLAIM No. 7 – CLAIM TOWARDS COST OF RENT**

*Sh*

a. NBCC submits that the Counter Claimant's had interim possession of the area since December 1995. It is incorrect to state that the Counter Claimant's has to stay on rent due to delay at end of NBCC. After doing interior work, Counter Claimant's used the premises since 1998. Since, 1998, the Counter Claimant had let the premises to Global IT Option till 2002. Further M/s New Horizon is operating Counter Claimant's office since 2003. The Counter Claimant did not corroborate its claim with any supporting documents. The instant claim is baseless, barred by limitation.

5.8. **COUNTER CLAIM NO.-8** :- CLAIM TOWARDS MISCELLANEOUS EXPENSES -

a) NBCC submits that the instant claim is completely baseless and not corroborated by any supporting documents. It is reiterated that the premise was being used by the Counter Claimant, after taking temporary electrical connection. The premise was also used by other occupants from 1997. The instant claim is barred by limitation and is an afterthought.

5.9. **COUNTER CLAIM NO. 9** – CLAIM TOWARDS ARBITRATION COST –

a. NBCC argued that it is the counter-claimant who compelled the NBCC to invoke the arbitration clause. It is the counter-claimant who was in perpetual default. Due to counter-claimant they suffered huge loss and distress.

b) The Claimant as well as the Respondent filed their rejoinder objecting to the claims / counter claims. It is not necessary to extract the contents of the rejoinder from both the parties as it runs to a number of pages. Both the parties filed innumerable Exhibits in support of their claims/ counter-claims which will be referred at appropriate place(s).

6. **THE DISPUTE**

*Sh*

- 6.1. NBCC vide its letter dated 08.05.1998 stated to the DCM Finance that the super area has been provisionally finalized as 1147.567 sq. meter and called the respondent for verification of super area.
- 6.2. The DCM Finance vide its letter dated 01.12.1998 raised an objection to increase in super area calculated by the NBCC and sought clarification to the increase in super area.
- 6.3. NBCC vide its letter dated 08.04.1999 called upon the respondent to pay the difference amount towards revised super area. The respondent continue to ask for the clarification for the basis of calculation of earlier super area, and what area had been added in the earlier area and why the area has been mentioned as provisional in letter dated 08.05.1998.
- 6.4. NBCC vide its letter dated 04.07.2001 informed to the DCM Finance that the super area is 1062 Sq. Meter.
7. The Chairman, NBCC Ltd. vide its letter dated 17.11.2004 appointed the self as sole arbitrator to decide the dispute between the parties.
8. After hearing the parties on both sides elaborately, the following issues need to discussed and decided in order to adjudicate the claims and counter-claims raised by the parties:-
  - (i) Whether the claims and counter-claims filed by the parties are barred by limitations?
  - (ii) What was the actual area of the premises handed over by NBCC to M/s DFSL in terms of the agreement to sale or as per terms and conditions enclosed to the letter of allotment?
  - (iii) When NBCC handed over the actual possession to DFSL?
  - (iv) There are claims regarding ground rent, property tax, Allied Charges and Augmentation of Electric Substation, in which the relevant dates and quantum need to be ascertained.
  - (v) Whether the M/s DFSL entitle for claim of interior decoration and rent?
  - (vi) Whether, the parking area has been demarcated?
  - (vii) What should be the rate of interest in case of Award?

*Sh*



9. The issues framed above are discussed to arrive at a conclusion and the discussions are as under -

9.1. Whether the claims and counter-claims filed by the parties are barred by limitations?

a) The claimant on the hearing on 31.12.2019 which was fixed for the purpose of clarifications on the limitations as the same had never been argued or emphasized by any of the parties and the submissions made by the claimant are as under-

i) The claimant submitted that they had vide their letter dated 08.05.1998, informed the respondent that the area finalized provisionally is 1147.567 sqm.

ii) The chairman, NBCC i.e. the claimant, vide its letter dated 15.02.2001 appointed Mr. A.K. Pruthi, Project Manager of NBCC as Sole Arbitrator to decide and make reason award for the matters in dispute.

iii) On 17.11.2004, the Chairman NBCC i.e. the claimant appointed Shri S.K. Kaul, General Manager as Sole Arbitrator to decide and make reasoned award regarding the claims/ disputes of both NBCC and DCM Finance Services Ltd. as raised by them vide their letter dated 02.02.2001 and dated 27.04.2001 respectively.

iv) The claimant argued that the counter claims of the respondent are barred by limitation but did not elaborate the same.

b) The respondent as per the proceeding sheets of 31.12.2019 made the submission on the limitation on 17.01.2020 and submitted the documents indicating the dates of events on which the different events occurred. The submissions made by the respondent are as under-

i) The claimant vide its letter dated 08.05.1998, informed the provisional area 1147.567 sqm. and stated that the area be verified and revised bill for payment shall be raised subsequently.

ii) Sole Arbitrator Mr. A.K. Pruthi was appointed on 15.02.2001.

iii) Respondent lodged counter claim for shortage in area, delay in possession etc. vide its letter dated 27.04.2001 and requested in case

Sh

of failure of settlement of disputes a retire Judge may be appointed as an arbitrator to settle the dispute.

The respondent referred to Section 21 of the Arbitration and Conciliation Act 1996, which states as follows –

*"Section 21 – Commencement of Arbitral Proceedings – unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."*

and submitted that the Chairman, NBCC Ltd. vide its letter dated 11.06.2001, appointed Mr. Y.P. Nangia, Project Manager, as a sole arbitrator to decide and make the reason award regarding the claims submitted by the respondent.

- iv) That the respondent approached to the Hon'ble High Court, New Delhi in the said matter regarding appointment of two different sole arbitrator to adjudicate the claims and counter claims and same was numbered as OMP No. 360 of 2001. The Hon'ble High Court vide its order dated 09.11.2001 stayed the Arbitral Proceedings.
- v) That the Hon'ble High Court vide its final judgment and order dated 08.10.2004 directed CMD, NBCC to refer the claims of both the parties to the same arbitrator.
- vi) Accordingly, the Chairman, NBCC Ltd. appointed Shri S.K. Kaul Addl. General Manager, NBCC as a sole arbitrator to decide and make the reasoned award regarding claims/ disputes of both NBCC and DCM Financial Services Ltd.
- vii) That the Arbitral Tribunal vide its letter dated 28.03.2006 notified both the parties regarding preliminary meeting to be held on 15.04.2006.
- viii) That vide proceeding dated 15.04.2006, the Arbitral Tribunal directed to the claimant to file the claims within a period of two weeks and counter claims within a period of four weeks thereafter and reply to the counter claims if any within two weeks thereafter.
- ix) That the claimant vide its letter dated 29.04.2006 requested the arbitral tribunal to grant further time of 15 days for filing the claim statement.

*Sh*

x) That the claimant filed their statement of claim on 30<sup>th</sup> May 2006 and the respondent requested for extension of time for filing the statement of defence and counter –claims and same was granted by the Arbitral Tribunal. The Arbitral Tribunal granted last and final opportunity to the respondent for filing their counter claims and statement of defence till 15.01.2007. The respondent filed their counter claim and statement of defence on 12.01.2007.

xi) That the respondent further argued that as per section 19 (3) of the Arbitration and Conciliation Act 1996, the Arbitral Tribunal may subject to this part, conduct the proceedings in the manner it considers appropriate. Further, submitted that section 23 (1) of the Arbitration and Conciliation Act 1996, states that "*within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought and the respondent shall state his defence in respect of these particulars unless the parties have otherwise agreed as to the required elements of those statements*"

That after considering the request of the respondent, the Arbitral Tribunal extended the time for filing the counter claim and statement of defence. No objection was ever raised by the claimant for the extension of time granted. Thereafter, no circumstances exist for raising the objection.

xii) That the respondent submitted that the counter claims filed with the claimant and invocation of arbitration has never been barred by limitation and the Arbitral Tribunal was appointed without any demur and moreover the appointment of the present arbitral tribunal is after the orders of the Hon'ble High Court of Delhi. Further, the filing of the counter claims before this arbitral tribunal is also as per the provision of the Arbitration and Conciliation Act 1996.

xiii) That the respondent further submit that in view of the above submissions, issue of limitation as raised by the claimant in regard to



filing of counter claims is unjust and contrary to law also same is not at all legal and justifiable.

c) Observation of the Arbitral Tribunal –

- i) The claimant's submissions were that the counter claims were raised on 12.01.2007 whereas the cause of action had arisen on 08.05.1998, the date when they informed the respondent about the increase in area. In this regard the respondent submitted that the claims were raised to the claimant on 27.04.2001 itself and were within the limitation period.
- ii) After going through the submissions made by the parties it appears that the counter claims raised by the respondent, to the Claimant were on 27.04.2001 and not on 12.01.2007. Infact, the filing of claims before the Arbitral Tribunal on 12.01.2007 were in accordance to the proceedings of the Arbitral Tribunal. Accordingly, it held that the counter claims are not barred by limitation. The respondent did not press their objection of limitation with respect to the claims raised by the claimant.
- iii) Accordingly, the claims and the counter claims are not barred by limitation.

9.2. What was the actual area of the premises handed over by NBCC to M/s DFSL in terms of the agreement to sell or as per terms and conditions enclosed to the letter of allotment?

- i) The claimant had allotted an area of 943.94 Sqm. @ of Rs. 1,12,600/- per sqm. super area vide letter dated 24.11.1995 along with the terms and conditions.
- ii) The para 15 of the terms and conditions enclosed with the letter of allotment states as under :-  
*"para 15 – Rates are to be charged for covered area plus proportionate share of area under passage, staircase, walls, columns, lifts and the recessed space below window sill etc. i.e. super area basis. Super area also include 50% space of balconies which are exclusively attached with respective floors."*
- iii) The para 2 of the agreement to sell states as under –

*Sh*

"2. That the rates are to be charged for covered area plus proportionate share of common area under circulation, staircase, walls, columns, lifts, electric sub stations, recessed space below windows sill etc. i.e. on super area basis. Super area also includes 50% space of balconies which are exclusively attached with the respective floors."

- iv) The above conditions are exactly alike and these conditions limit the rights of the claimant to calculate the super area strictly in accordance to the stipulations. In view of the law of Interpretation, the calculations need to be calculated strictly as per the agreement made between the parties. The considerations charged to the respondent will be on the basis of the wordings stipulated under para 15 of the terms and conditions and para 2 of the agreement to sell. Any other method cannot be imposed for calculating the super area because the considerations to be charged from the allottees are distributed among various allottees and the respondent was one of the allottee who was charged Rs. 10,62,87,644/- excluding the car parking and scooter parking charges for a super area of 943.94 sqm.
- v) As per letter of allotment, the claimant has specifically stated that no deviation from the terms and conditions enclosed with the allotment letter shall be permitted, and accordingly the conditions stated in para 9.2. (ii) herein above will prevail over the conditions stated in para 9.2. (iii) above. According to para 9.2(ii), the likewise item can only become the part of the super area. In the agreement to sell the word 'electric sub-station' has been added and the items fan room, pump room, AC Plant, FHC Ducts & UG Tanks stated by the claimant in para 2.14 (ix) herein above does not in any way are the like items of the sub-station, so these cannot become part of the super area later on because of the specific conditions in the letter of allotment.
- vi) As per para 15 of the terms and condition and para 2 of the agreement to sell, the area to be included in the super area will be for the items (a) covered area; plus (b) proportionate share of area under passage, (c) staircase, (d) walls, (e) columns, (f) lifts and (g) the recessed space below window sill etc. i.e. super area basis. Para 15 further states that

SL

Super area shall also include 50% space of balconies which are exclusively attached with respective floors.

- vii) The claimant filed Annexure 23 in support of the increased super area 1147.567 sqm and this Annexure 23 includes area of FHC, Fan Room, A/C Plant room, which cannot be included in the super area as per the terms and conditions of the letter of allotment. The respondent worked out the details and submitted to the Arbitral Tribunal on 22.01.2015 according to which the area get reduced by 39.641 sqm., which has also not been contested by the claimant at all.
- viii) Since the terms and conditions of letter of allotment use the word "etc." after the word "and" the respondent argued that "etc." used after the word "and" has no value and no other area can be added other than that specified in the para 15 of the terms and conditions of letter of allotment. The word 'electric substation' added in the agreement to sell is also not a like item which claimant tried to include in the super area.
- ix) The claimant had filed judgment titled as "Maharashtra University of Health Vs Satchikista Prasarak Mandal & Ors." having Civil Appeal No. 2050 of 2010 passed by the Hon'ble Supreme Court. The respondent on this judgment submitted that the Hon'ble Supreme Court clearly indicates that the teachers which are under different class are of different classes, and when the word 'and' is used before any object it indicate a different class of category. There is no such or similar item which they (NBCC) have added later on to increase the super area. Accordingly the Claimant was wrong to add more items in order to increase the super area. This contention of the respondent is in line of the Judgment relied upon by the claimant, accordingly, no area other than that specified in the terms and conditions of letter of allotment can be added. Thus, the action of the claimant to increase the super area on the basis of FHC, A/C Plant Room etc. are not in line of the terms and conditions of the letter of allotment and are not even in line of the judgment mentioned herein above.
- x) The respondent also brought to the notice of the Arbitral Tribunal that the claimant had constructed its two offices in the open area which further reduce the percentage of super area, but this construction was after the

86

year 2000 and the respondent after making these submissions did not press for the further reducing the quantum of super area.

- xi) On the basis of above, this Arbitral Tribunal holds that the super area allotted to the respondent cannot be increased rather, when the calculations are made in accordance to the terms and conditions of the letter of allotment, the super area reduces by 39.641 sqm. Accordingly, the claim of the claimant is rejected and the counter claim of the respondent of Rs. 44,63,576.60 is allowed.

9.3. When NBCC handed over the actual possession to DFSL?

- i) The claimant vide its letter dated 08.12.1995 allotted the super area 943.94 sq.m. (517.57 + 426.37) and indicated that the possession of the allotted space will be given in June 1996 and handed over the interim possession for the purpose of carrying out the interior decoration works only.
- ii) The claimant vide letter dated 08.05.1998, informed to the respondent that the building is almost complete and the various statutory approvals are in the process of being obtained. The facilities/ amenities provided in the building are also almost finalized,
- iii) The claimant in reply to the respondent letter dated 27.04.2001, vide letter dated 04.07.2001 informed to the respondent that *"the premises is being used by DCM Fin. Services or by another organization since taking over the possession. M/s DMRC have also occupied the space and are running their activities from the space purchased by them since 1996."*, whereas in reply to Counter claim No. 4, the claimant has stated that *"even the other buyer of the space viz. Castrol, DMRC had started operating their offices from this building from 1997 and 1998 respectively"*. Further, the claimant in their pleadings has stated that the building was energized in the year 2000 and the respondent was informed of the same. The claimant has not placed any documents on record which evidence that the DMRC was in occupation and running their business activities from the premises either from 1996 or 1998.
- iv) The respondent in their counter claim had stated that their investment of Rs. 11,37,87,644/- (Cost of premises is Rs. 10,62,87,644/- excluding

*SL*

scooter and car parking charges) had gone waste till September 2002, whereas in the written arguments it has stated that the energy (power) being used by DMRC was not made available to the respondent. The respondent further states that the said premises were not in use till December 2000.

- v) From the above it reveals that the premises was energized in December 2000 and the DMRC was using its office with the alternate energy since December 1998. It is also stated here that the possession of the building means the possession with all facilities and permission which is necessary for declaration of building as a habitable. This contention is proved from the claimant's letter 08.05.1998, wherein it is stated that the building is almost complete and the various statutory approvals are in the process of being obtained. Thus it can be concluded that the building was not fit for occupation and even the statutory approvals were not obtained. At the most it can be consider that the building was fit for occupation since December 2000, when the premises was energized.
- vi) The respondent has demanded two relief for the same cause i.e. non-availability of possession of premises, the demands are for the rent as the premises could not be occupied and the respondent has demanded interest on investment. It is lawful that there can be one demand for one cause of action and the respondent cannot be entitled for dual relief simultaneously i.e. rent and interest. In my opinion the demand of rent is reasonable being on the lower side and the interest on investment cannot be awarded as the amount has been invested in the which value is also subject to the increase or decrease in its market value. The claim of interest is rejected as there is also a demand of rent.

9.4. There are claims regarding ground rent, property tax, Allied Charges and Augmentation of Electric Substation, in which the relevant dates and quantum need to be ascertained.

9.4.1. Ground Rent –

*Sh*



- i) The respondent in its pleading has admitted that the ground rent is payable but @ of Rs. 57,921, half yearly basis, whereas the claimant has calculated the rate Rs. 70478, half yearly for an area of 953.2672 sqm. If the same is proportioned to 904.299 sqm., it works out to Rs. 66,858 half yearly. The question further arise that from which date the ground rent is admissible to the claimant. It cannot be from the date of allotment of land to the claimant i.e. 1990 in as much as the same is to be charged when the constructive possession has been given. The constructive date of possession at the most can be considered as December 1998 as held herein above otherwise the claimant vide its letter 08.05.1998 has stated that it has almost completed the building and is in the process of approvals. Thus, the amount works out to till December 2019 is Rs. 28,08,036/- (Rs. 66,858 X 2 X 21years) and the same is awarded to the claimant.

**9.4.2. Property Tax –**

- i) The claimant vide its claim no. 3 has claimed a sum of Rs. 3,19,100/-, towards property tax from a period 1997-1998 upto the 2001-2002. The respondent has stated that it has got itself assessed in year 2004 from the MCD and has made the payment from 01.03.1998.
- ii) The claim of the claimant regarding property tax was in hand of the respondent and was thus in knowledge that the claimant is making the payment on his behalf to the MCD. Whereas, the respondent got itself assessed in 2004, therefore it was the duty of the respondent to be in touch with the claimant otherwise the amount paid by the claimant was also in the knowledge of the respondent through claim.
- iii) From the above it is evident that the claimant is entitle to receive an amount of Rs. 3,19,100/- from the respondent. Accordingly, the same is awarded to the claimant.

**9.4.3. Allied Charges:-**

- i) The issue in fact is for the proportionate share of charge towards payment of electric service connections and substation equipment, security etc. paid to DESU/DVB. The denial by respondent is only for name sake and

*Sh*

no reasonable contention for non-making has been given. The claim of Rs. 7,82,210/- is tenable and accordingly awarded.

**9.4.4. Augmentation of Electric Substation –**

- i) The claim is in respect of replacement of Oil type transformer to dry type transformer, which is also as per the applicable law and the claimant is entitled to the Rs. 1,32,880/- as per the demand. Thus, an amount of Rs. 1,32,880/- is awarded in favor of the claimant.

**9.5. Whether the M/s DFSL entitle for claim of interior decoration ?**

- i) The respondent furnished the certificate issued by the M/s SVTG & Co., Chartered Accountant, demonstrating that the amount of Rs. 1,52,61,544/- has been spent on the renovation of the office space during the period 1997-1999 in support of its counterclaim towards reimbursement of interior decoration work.
- ii) The period of the expenditure is during the year 1997-1999 it means that the expenditure was also during the year 1997-1999 and accordingly the renovation was complete prior to March 1999, it further means that the completion of renovation may be during mid of the year 1998-1999 i.e. September 1998 .
- iii) This Arbitral Tribunal has already herein above held that the occupation of the office premises were in December 2000 when the building was energized.

In view of the above there had been idle period of the renovated building from September 1998 to December 2000 in regard to use of the renovation done in the office premises. The counter claimant has demanded the reimbursement of the expenditure which is not tenable, only his entitlement can be un-utilization of the interior decoration work which is justifiable @ 10% per annum. Hence, the counter claim of the respondent is awarded Rs. 34,33,847/- (1,52,61,544\*10%\*2.25).

**9.6. Whether the M/s DFSL entitle for claim of rent?**

- i) The respondent raised a counter claim on account of rent for the period 1996-1997 to September 2002.



- ii) This Arbitral Tribunal while deciding the issue no.3 held that the possession of the premises to the respondent is available from December 2000, and the interior decoration for occupation of office as per the statements of C.A works out to averagely September 1998, thus there was no occasion arises to claim rent from the claimant from period 1996- 1997 till September 2002. The feasible period for the rent is as per the above writings is September 1998 to December 2000 a period of 27 months. In absence of the evidence of the amount of the rent claimed by the respondent, is rejected.

9.7. Whether, the parking area has been demarcated?

- i) The respondent during the course of arguments amended its counter-claim and sought a relief only for demarcation of Car and scooter parking area.
- ii) The Arbitral tribunal vide its proceedings dated 22-01-2015, has already directed to the claimant for demarcating the car parking and scooter parking area allotted to the respondent. The claimant did not raise any objection to the interim award passed by the Arbitral Tribunal and further confirmed that the Parking area will be given in next 10 days.
- iii) Thus, the interim award passed by this Arbitral Tribunal vide proceeding dated 22-01-2015 is an absolute.

9.8. What should be the rate of interest in case of Award?

- i) The claims and counter claims are during the period of 2001 onward against the events of the period 1996 to 2000 mostly.
- ii) The reasonable rate of interest for the period as stated above in my opinion was 10% p.a. simple interest and rate of interest after the date of publication of award shall remain the same.

10. Claim in regard to loss of profit --

- i) The claimant raised a claim towards loss of profit amounting Rs. 20,00,000/-, whereas the claimant has not evidenced any loss suffered by them. The claimant during the course of argument has also not made any submission how they were entitled.



- ii) As per the prevailing law, the party who is claiming loss of profit, they have to prove the losses suffered by way documentary evidence. Hence the claim of the claimant towards loss of profit is dismissed.

11. Summarization of Claims and Counter Claims –

- i) The summary of the claim herein discussed above are as under –

Sr. No.	Claims	Amount Claimed	Amount Awarded
	Claim towards difference in Super Area	2,29,28,254/-	Dismissed
	Claim towards Ground Rents	1,66,53,030/-	28,08,036/- + GST 63,430/-
	Claim towards Property Tax	3,19,000/-	3,19,100/-
	Claim towards allied charges	7,82,210/-	7,82,210/-
	Claim towards augmentation of electric substation	1,32,880/-	1,32,880/-
	Loss of Profit	20,00,000/-	Dismissed
	Arbitration Cost	7,00,000/-	NIL
	<b>Total</b>		<b>41,05,656/-</b>

*SLB*

ii) The summary of the Counter-claim herein discussed above are as under –

Sr. No.	Counter-Claims	Amount Claimed	Amount Awarded
	Counter-Claim towards shortage/difference in building area	1,80,41,898/-	44,63,577
	Counter-Claim towards interest on excess amount paid for Building Area	21,57,35,167/-	This claim is covered under claim 1.
	Counter-Claim towards interest, due to delay in possession of parking area.	Demarcation of parking area	Awarded
	Counter-Claim towards interest on account of delay in possession	8,60,93,852/-	Dismissed
	Counter-Claim towards cost of Interior	81,98,085/-	34,33,847/-
	Counter-Claim towards loss on account of interest on cost incurred on interior	98,37,702/-	Dismissed
	Counter-Claim towards cost of rent	71,82,000/-	Dismissed
	Counter-Claim towards miscellaneous expenses	8,19,817/-	Dismissed as Not Pressed
	Counter-Claim towards arbitration cost	10,41,424/-	NIL
	Total		78,97,424/-

*Sh*

--	--	--	--

12. Now, therefore, on consideration of claims of claimants, counter claims of respondents and my findings above, I do hereby make this Award that Claimants do pay to the respondents an amount of Rs. 78,97,424/- plus Simple interest of 10 % & Respondents do pay to claimants Rs. 41,05,656.00 plus simple interest of 10 %. However, if awarded amounts are not paid within 3 months from the date of the receipt of this award, the interest will be payable @ 12 % p.a. w.e.f November,2004 ( Date on which Competent authority appointed the present arbitrator). This is full and final settlement of all the above claims & counter claims.
13. This award is made by me on a stamp paper of Rs. 100/-, deficiency in the stamp duty shall be made good by the Claimants & Respondents as per prevailing laws within a period of thirty days from today.
14. The award is hereby made and published by me on this day of 17<sup>th</sup> August,2020 under my signature and seal at New Delhi

  
( S K Kaul)  
Arbitrator  
S K Kaul  
B Sc., BE (Civil)  
DBM, FIE  
Chartered Engineer