canvassed by the Developer. The Learned Arbitral Tribunal has carefully examined the pleadings of the Developer and has quoted chapter and verse, how the Developer has, in its own affirmed pleadings, clearly indicated that the Trust should be happy with a lower area, and how delivery of less than the Agreed Area is justifiable. The justification flows from the legitimacy of the fifth floor of the hostel building, that was demolished, being in doubt. According to the Developer, the legitimacy of the fifth floor is not borne out in the property records, and therefore, it is not open for the Trust to claim performance of the delivery of the Agreed Area. Even taken at its highest, this would mean that the agreement was incapable of specific performance, which could at best, lead to a potential claim in damages.

23. The Developer would contend that the very finding that the Developer was not ready and willing to perform on the obligation to deliver 32,000 square feet was perverse. This is untenable since the very pleadings of the Developer in the arbitration proceedings indeed point to how the obligation to deliver the Agreed Area was no longer valid. The Developer indeed has contended that if certified by the municipal authorities, and it gets additional incentive FSI under Regulation 33(7) of the DCR, it would be open to delivering the Agreed Area. This would indicate that there is no precision of a clear executable nature in the

bargain sought to be enforced at the behest of the Developer as a matter of specific relief.

24. The Developer had indeed pleaded that the Trust cannot seek any area beyond what is approved and accepted by the planning authority. Therefore, it is rightly contented by the Trust that when the pleadings are read as a whole and the contemporaneous correspondence is examined, the finding by the Learned Arbitral Tribunal that the Developer was never ready and willing to provide a rehabilitated Hostel building of 32,000 square feet is not just a plausible and reasonable finding but an accurate finding. Indeed, as contended by the Trust, the phrase "ready and willing" is not a *mantra* to be peppered into pleadings in a mechanical and formulaic recitation without an actual and real depiction of how the actual readiness and willingness to perform an agreement is discernible from the record, and what precise obligation such party is ready and willing to perform.

25. Indeed, this calls for comment on the parties moving away from Regulation 33(7) to Regulation 33(6) as an interim measure to give the Hostel its priority as agreed by the parties. Whether the project was amenable to Regulation 33(7) at all and whether it was amenable to part processing under Regulation 33(6) and subsequently by migration to Regulation 33(7) is an issue that has remained at large. What the Learned Arbitral Tribunal has done, and fairly so, is interpret the

provisions of the agreement and the pleadings of the parties to examine whether specific relief can be granted. There is not a whisper of a provision or subsequent correspondence with the Trust having agreed to a lower bargain – of taking less than the Agreed Area for such movement across regulatory provisions under which the development would be pursued. That being so, it would not have been possible for the Learned Arbitral Tribunal to substitute the Agreed Area with the Reduced Area or any other area and to uphold that as the basis of specific performance.

26. Even in the proceedings before this Court, a more novel argument was made by the Developer, which only underlines the inchoate nature of the bargain of which specific performance was sought. The Developer would contend that the area allocated to the Temple may be added to the Reduced Area, which would in turn show that the shortfall was just about 393 square feet. While the Trust would stridently oppose this submission on the premise that this submission is being made for the very first time in the Section 34 proceedings, it must be said that the Developer's contention, while attractive at first blush (particularly when seen in the context of the consensual deviation from Regulation 33(7) of the DCR), it would still not constitute that the parties had consensus *ad idem* on what revised area the Trust had settled for. The fact remains that the IOD is for nearly 7,000 square feet lesser than the Agreed Area.

27. The Learned Arbitral Tribunal has rightly held that oral evidence and oral arguments have to be consistent with the pleadings. A holistic reading of the pleadings has been rightly interpreted to indicate that the Developer is not ready and willing to assuredly deliver the Agreed Area as contracted. The right to get 32,000 square feet was never made conditional on certification by any Planning Authority. Each party has sought to explain how the evidence must be interpreted. It is not for this Court to re-appreciate evidence. I must say that the reading of evidence as canvassed by the Developer falls in the realm of re-appreciation of evidence which this Court must not resort to. The overall reading of the evidence and the contemporaneous correspondence by the Learned Arbitral Tribunal would indicate that the finding of absence of readiness and willingness to perform is an eminently plausible view that does not call for interference.

28. Indeed, the Trust had delivered an approval from the Government of Maharashtra for development under Regulation 33(7) of the DCR, which informed the basis of the bargain between the parties. The Municipal Commissioner rejected this on the premise that the department that gave the permission was the wrong one (Housing Department instead of Urban Development Department), but then the parties had entered into the arrangement with eyes open and the Developer has also confirmed satisfaction with examination of all facets of

the matter when entering into the bargain with the Trust. The hurdle posed by the Municipal Commissioner rejecting the very basis of Regulation 33(7) being applicable, even when taken as a facet outside the scope of the parties' expectations and control, it would undermine the specific performance of the Development and not further the same. Indeed, the departure into Regulation 33(6) could be said to fall within the zone of consideration of acquiescence to the situation but it would still not point to a sharp and precise revised bargain that is amenable to specific performance.

29. The Learned Arbitral Tribunal has also examined the fact that there is a pointer to the fifth floor being legitimate from the records obtained under the law governing right to information. The Learned Arbitral Tribunal has fairly held that the Developer was aware of the project it was getting into and ought to have done its due diligence before executing a contract of which it is seeking specific performance.

30. The Termination Notice was issued two years after the Trust is contended to have lauded the Developer for managing to secure approvals for the Hostel, and indeed the Learned Arbitral Tribunal has held that the Termination Notice was illegal as being contrary to contract. However, to grant specific relief, the Developer would still need to have demonstrated readiness and willingness to perform on a precise, binding and committed revised contract and that is not discernible from the record – in itself, a

matter of adjudication and appreciation of evidence. Therefore, to my mind, the finding that the Termination Notice is "illegal" would at worst be a problematic finding but it is not a finding that presents a perversity of such a magnitude that it would go to the root of the matter of specific relief, for the Impugned Order to be interfered with.

31. I find that the Learned Arbitral Tribunal has instead adopted a practical, commonsensical and commercially logical interpretation even while holding that the Development Agreement was incapable of termination – that even the termination was not contractually envisaged (indeed the Learned Arbitral Tribunal terms the termination "illegal" a few times), the Development Agreement was not capable of specific performance. Therefore, specific relief could not have been granted for the asking in the teeth of the principles governing specific relief, which at the least, requires a specific committed obligatory element that can be enforced under supervision of the Court. That being the case, no fault can be found with the finding that specific relief was not worthy of being granted.

32. To reconcile the two positions, namely, that termination was illegal and yet specific relief could not be granted, it is apparent to me that the Learned Arbitral Tribunal has simply adopted the principle of restitution to place the parties in the respective positions that they were in before executing an apparently interminable contract that is incapable of specific

performance. The Learned Arbitral Tribunal rejected the competing claim for damages; directed that the Trust be put in possession; and directed that the Trust must return the amount of Rs. 3.69 crores paid by the Developer to the Trust, along with interest. The Learned Arbitral Tribunal has indeed reconciled the two positions presented as being inherently contradictory and to my mind there is no fatal contradiction or inconsistency in the analysis that flows through this issue in the Impugned Award.

33. The contention that the MCGM Order constitutes vital evidence that has been ignored also does not appeal to me. Each party has made submissions on how the MCGM Order helps its respective case, but suffice it to say, the Section 34 Court must resist the temptation of being drawn into interpreting the true import of this document and should instead examine whether that document contains any vital evidence that has been ignored. I find that the core elements and contents of the MCGM Order have indeed been analysed in the Impugned Order to factually arrive at a finding of a shortfall in the commitment of the Developer to deliver the Agreed Area and therefore, it cannot be said that any vital evidence has been ignored. At worst, the Developer could be said to be unhappy with the interpretation of the evidence by the Learned Arbitral Tribunal, but one cannot say that the Learned Arbitral Tribunal

failed to appreciate vital evidence to render the Impugned Award patently illegal.

34. For the foregoing reasons, in my view, the interpretation of Clauses 28 and 29 of the Development Agreement is not in foundational conflict with the finding that the core and essential term of the contract was delivery of Agreed Area to the Trust. Therefore, whether or not the Termination Notice is illegal, the finding that no case for specific relief has been made out cannot be faulted. Presented with this seemingly dilemmatic situation, the Learned Arbitral Tribunal has fairly and reasonably held that the parties need to put back in their respective positions, without any award of damages since both sides entered into the bargain with eyes open and ran the risk of the costs and damages they have respectively suffered. The Learned Arbitral Tribunal has fairly held that neither party deserves to be saddled with damages for a contract incapable of specific performance. Therefore, in my opinion, the Impugned Award does present a wholesome outcome that is plausible, logical and reasonable, and does not lend itself to interference under Section 34 of the Act.

35. This brings me to the contentions of the PSCC Act, namely, that the Developer is a licensee and is a protectee of the statutory tenant-protection provisions of that legislation and the ouster of forums other than the Small Causes Court from adjudication of a licensee eviction. The

Learned Arbitral Tribunal has examined this squarely, to return a finding that the license or the right to enter upon the property is incidental and inextricably linked to the right to develop the Subject Property. If the right to specific performance of the obligation to permit the Developer to develop the Subject Property is not found worthy of acceptance, it would follow that the incidental right to enter upon the Subject Property and develop it would come to an end.

36. In my view, the contention of the Developer that it is a statutory protectee of the PSCC Act is extreme and unreasonable. Provisions of beneficial and ameliorative legislation must be interpreted in the context of the objectives of the legislation. It is well settled that if more than one view is possible, the view that furthers the remedy and suppresses the mischief in the objective of the legislation would need to be adopted. The Developer is hardly a tenant or a licensee who has been given the right to use the Subject Property for a license fee. On the contrary, the Developer in the same breath claims an interest in the Subject Property with a right to exploit it and sell units from the free sale component, which itself stands undermined. The license to enter the Subject Property is an incidental and ancillary right and can simply not be elevated to a tenancy-protection right under the PSCC Act. No fault can be found with the Learned Arbitral Tribunal's analysis of this issue to reject the jurisdictional challenge.

37. Finally, the purported absence of permission from the Charity Commissioner to litigate should be stated to be rejected. This is another novel argument in the process of throwing the kitchen sink at the problems the Impugned Award poses to the Developer. While this may not have been raised before, it is evident from the record that the Charity Commissioner is not unaware of the litigation that the parties have been engaged in, and has postponed consideration of an extension of approval for the redevelopment, to await the outcome of the arbitration. This ground is based on the regulatory scheme relating to governance of charities. This is of no avail for a contractual counterparty to place reliance on, and that too after the arbitral proceedings have been concluded, of course, the outcome being unsatisfactory to such counterparty.

38. The Learned Arbitral Tribunal has also analysed the absence of consent from 70% of the tenants. However, I do not think it necessary to delve into the issue of tenants' consents not having been obtained since the Developer is not pressing anything related to this issue except in defence of the contentions of the Trust that invokes this issue. The analysis in this judgement, bearing in mind the scope of jurisdiction under Section 34 of the Act, is restricted to the grounds on which the Developer has assailed the Impugned Award.

Some Relevant Case Law Extracts:

39. Before parting, a word about the scope of review under Section 34 would be in order. Without intending to undertake a prolix reproduction from the numerous judgements that now well settle the standard, in the context of incoherence and inherent inconsistency being alleged by the Developer, the following extracts from ***Associate Builders***[1] would be appropriate (for ease of reference, the footnote in the judgement inserted in the extracted paragraph is also set out in the extract below):

> *It must clearly be understood that* ***when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected****. A possible view by the arbitrator on facts has necessarily to pass muster as* ***the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award****. Thus* ***an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score***
>
> *[Inserted Footnote – extracted below:]*
>
> ***Very often an arbitrator is a lay person not necessarily trained in law****. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:*
>
> > *" General, you have a* ***sound head, and a good heart****; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to* ***make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may***

1 Associate Builders v. Delhi Development Authority – (2015) 3 SCC 49

> *be substantially right, although your reasons may be very bad, or essentially wrong".*
>
> -
>
> *It is very important to bear this in mind when awards of lay arbitrators are challenged.*
>
> *[Emphasis Supplied]*

40. Indeed, the Sole Arbitrator manning the Learned Arbitral Tribunal is not a lay man and is a former Chief Justice of a High Court. However, I felt the need to extract the foregoing not because the Impugned Award reads like one by a layman but for emphasising the principle involved – where the reasons for two separate findings are logical and reasonable, and the two can be reconciled in a manner that does not make the findings mutually repugnant, if the outcome is just, logical and commonsensical, the arbitral award need not be interfered with. The reasons for which the Learned Arbitral Tribunal has held the Termination Notice to be "illegal" and the allusions to the Development Agreement subsisting to some extent may make the denial of specific relief illogical, but one cannot lose sight of the fact that the reconciliation of the two seemingly conflicting positions is quite commonsensical and logical. I have already given my reasons as to how the two positions are not inherently conflicting. Even if this reconciliation is contended as not being explicitly and expressly set out in the Impugned Award, it is also well settled that even implied reasons that are discernible and are capable of being inferred to support a just and fair outcome in arbitral awards

would make it appropriate not to interfere with arbitral awards. In this regard, the following extract from the decision of the Supreme Court in ***Dyna Technologies***[2] would be appropriate:

> *24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts.* ***We need to be cognizant of the fact that arbitral awards should not be interfered with*** *in a casual and cavalier manner,* ***unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award****. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction.* ***The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.***
>
> *25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists.* ***The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act****.*
>
> ***[Emphasis Supplied]***

Summary of Conclusions:

41. In the result, the points determined by me may be summarised thus:

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2 Dyna Technologies Private Limited v. Crompton Greaves Limited – (2019) 20 SCC 1

A] The finding that the Termination Notice is illegal for not being supported by Clauses 28 and 29 of the Development Agreement is plausible and falls within the realm of interpretation that the Learned Arbitral Tribunal is entitled to make;

B] Such interpretation on legality of termination is not inherently and necessarily inconsistent with the refusal to grant specific relief to the Developer in view of the other logical, reasonable and plausible finding that the obligation to deliver the Agreed Area of 32,000 square feet of redeveloped area is an essential term of the agreement between the parties;

C] The Learned Arbitral Tribunal has rightly found that there has been no revised area that had been agreed between the parties, for a Court-supervised enforcement of specific relief to be possible;

D] The refusal to grant specific relief is not irreconcilable with the finding that the Termination Notice was “illegal”;

E] The objection on arbitrability on the ground of exclusive jurisdiction under the PSCC Act is untenable since the license granted to the Developer was incidental to the development rights conferred on the Developer. Once such development rights are not held as being amenable to enforcement by way of specific relief, the license would also become irrelevant. The Learned Arbitral

Tribunal's findings that the statutory tenancy protection provisions in the PSCC Act have no relevance to the Development Agreement cannot be faulted;

F] The objection on the ground of lack of approval for litigation by the Charity Commissioner is untenable for the reasons set out above. The Charity Commissioner has been aware of the litigation and even if regulatory action were to be contemplated, it would not have a foundational and jurisdictional basis to undermine the Impugned Award.

42. In the result, the Section 34 Petition is ***finally disposed of*** without any interference with the Impugned Award.

43. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]