The learned counsel for the DHR and JDR are present and submitted that the instant Execution has been filed based on the Award which passed by the Sole Arbitrator and the award was not arising out of the Commercial dispute, it was arising out of the agreement to develop the schedule property as Residential Apartment and requested to return back to the original Court, as this instant Execution petition do not fall with the ambit of Commercial dispute.

Now the question arises whether the facts which pleaded in the Execution Petition comes within the purview of commercial dispute or not? Thus this court drawn its attention on Sec.2(c)(i) of Commercial Courts Act, which reads like this:

> **(*c*) "commercial dispute" means a dispute arising out of–**
>
> > **(*i*) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;**
> >
> > **(*ii*) export or import of merchandise or services;**
> >
> > **(*iii*) issues relating to admiralty and maritime law;**
> >
> > **(*iv*) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;**

(*v*) carriage of goods;

(*vi*) construction and infrastructure contracts, including tenders;

(*vii*) agreements relating to immovable property used exclusively in trade or commerce;

(*viii*) franchising agreements;

(*ix*) distribution and licensing agreements;

(*x*) management and consultancy agreements;

(*xi*) joint venture agreements;

(*xii*) shareholders agreements;

(*xiii*) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;

(*xiv*) mercantile agency and mercantile usage;

(*xv*) partnership agreements;

(*xvi*) technology development agreements;

(*xvii*) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;

(*xviii*) agreements for sale of goods or provision of services;

(*xix*) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;

(*xx*) insurance and re-insurance;

> **(*xxi*) contracts of agency relating to any of the above; and**
>
> **(*xxii*) such other commercial disputes as may be notified by the Central Government.**

On careful perusal of the above, it is clear the definition of commercial dispute is of high importance because the definition decides whether the dispute comes within the jurisdiction of commercial court or not, as there are in all 21 categories of the disputes described in the definition and the last 22nd category empowers the central government to include additional categories of disputes within the definition, so as to bring them within the jurisdiction of Commercial Courts, thus this court drawn its attention on Sec.3 of Commercial Courts Act, 2015 which reads like this:

> **3. (1) The State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act:**
>
> **2[Provided that with respect to the High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute Commercial Courts at the District Judge level:**

Provided further that with respect to a territory over which the High Courts have ordinary original civil jurisdiction, the State Government may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts, as it may consider necessary.]

3[(1A) Notwithstanding anything contained in this Act, the State Government may, after consultation with the concerned High Court, by notification, specify such pecuniary value which shall not be less than three lakh rupees or such higher value, for whole or part of the State, as it may consider necessary.]

(2) The State Government shall, after consultation with the concerned High Court specify, by notification, the local limits of the area to which the jurisdiction of a Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits.

(3) The 4[State Government may], with the concurrence of the Chief Justice of the High Court appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of a 5[Commercial Court either at the level of District Judge or a court below the level of a District Judge].

The above provision is very much clear that the State Government after consultation with the High Court by notification specified the pecuniary jurisdiction of the Commercial Courts shall not be less than Rs.3,00,000/- or such higher value by virtue of amendment of Commercial Courts Act 2018 i.e. from

03.05.2018, prior to the said amendment the pecuniary jurisdiction of Commercial Court is of Rs.1 Crore and above. So, in the instant EP has been filed based on the Arbitral Award prior to the amendment of Commercial Courts Act 2018, so, prior to the amendment pecuniary jurisdiction of this Court is of Rs.1 Crore and and above. In the instant EP as per the fair submission of the both counsels the Award was not arising out of the Commercial dispute, which was arising based on the agreement for construction of Residential Apartments, which do not fall under the ambit of Commercial dispute. Therefore, it is just and necessary to direct the office to place this file before the Hon'ble Prl. City Civil & Sessions Judge, Bengaluru for appropriate orders to transfer this case to the original court.

Hence, I proceed to pass the following;

ORDER

Office is hereby directed to place this file before Hon'ble Prl. City Civil & Sessions Judge, Bengaluru for appropriate orders to return the same to the original court, since the present Execution petition do not fall within the ambit of Commercial dispute in view of Sec.2(c)(i) of Commercial Courts Act 2018.

For await orders from the Hon'ble Prl. City Civil & Sessions Judge, Bengaluru by 09.08.2021.

(P.J. Somashekara)
LXXXVIII Addl. City Civil & Sessions Judge,
(Exclusive Commercial Court),
Bengaluru City.