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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPEAL (L) NO.24096 OF 2024

IN

COMMERCIAL ARBITRATION PETITION NO.44 OF 2016

1. **E-square Leisure Pvt. Ltd.**,]
(formerly known as Ganatra Hotels]
Private Limited) a company incorporated]
under the Companies Act, 1956 and]
having its registered office at 132A,]
University Road, Ganeshkhind,]
Pune 411 016]

2. **Rita Nitin Panchamia**,]
Aged about 58 years, residing at,]
1101, Sai Baba Tower, 11th Floor,]
N. Dutta Marg, Near Church Lane,]
4 Bungalows, Andheri (W),]
Mumbai – 400 053]

3. **Sohum Nitin Panchamiya**,]
aged about 30 years, residing at]
1101, Sai Baba Tower, 11th Floor,]
N. Dutta Marg, Near Church Lane,]
4 Bungalows, Andheri (W),]
Mumbai – 400 053]

4. **Prachi Nitin Panchamiya**,]
aged about 33 years, residing at]
1101, Sai Baba Tower, 11th Floor,]
N. Dutta Marg, Near Church Lane,]
4 Bungalows, Andheri (W),]
Mumbai – 400 053]

5. **Hemant Manmohan Panchamia**,]
of Mumbai, Indian inhabitant, residing]
at Bungalow No.27/2, Cascade,]
Forest Trails, Paud Road, Bhugaon,]
Bhukum, Pune – 412 115]

6. **Nitin Manilal Thakkar**,]
of Mumbai, Indian inhabitant, residing]
at 270, Kothari Sadan 11th Road,]
Khar (West), Mumbai 400 052.] …Appellants/
Original Petitioners

VERSUS

1. **Kiran Ranchodas Ganatra**,]
of Mumbai, Indian inhabitant,]
residing at 2102-2103, 'B' Wing,]
Park Royale, M.M. Malaviya Road,]
Mulund (West), Mumbai – 400 080.]

2. **Kalpana Kiran Ganatra**,]
of Mumbai, Indian inhabitant,]
residing at 2102-2103, 'B' Wing,]
Park Royale, M.M. Malaviya Road,]
Mulund (West), Mumbai – 400 080.]…Respondents/
Original Respondents

WITH
INTERIM APPLICATION (L) NO.24317 OF 2024
IN
COMMERCIAL ARBITRATION APPEAL (L) NO.24096 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.44 OF 2016

E-square Leisure Pvt. Ltd. and ors. ...Applicants/
Appellants

In the matter between

E-square Leisure Pvt. Ltd. and ors. ...Appellants

vs.

Kiran Ranchodas Ganatra and anr. ...Respondents

APPEARANCES-

Dr Veerendra Tulzapurkar, Senior Advocate, a/w Mr Sandeep Parikh, Mr Prakash Shah, Mr Durgaprasad Poojari, Mr Jas Sanghavi i/b. PDS Legal, for the Appellants/Applicants.

Mr Sharan Jagtiani, Senior Advocate, a/w Mr Nirman Sharma, Mr Vikrant Shetty, Ms Tanjul Sharma, Mr Kush Shah i/b. Dhruve Liladhar & Co., for the Respondents.

CORAM : M.S.Sonak &
Jitendra Jain, JJ.

RESERVED ON : 14 December 2024

PRONOUNCED ON : 17 December 2024

JUDGMENT (*Per MS Sonak J*):-

1. Heard learned counsel for the parties.

2. Admit. At the request of and with the consent of the learned counsel for the parties, the Appeal is taken up for final disposal.

3. The Appellants impugned judgment and order dated 12 July 2024, dismissing the Appellants' Petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("ACA"), challenging the arbitral award dated 5 April 2016.

APPELLANTS CONTENTIONS

4. Dr Tulzapurkar, learned Senior Advocate for the Appellants, at the outset submitted that the arbitral award conflicted with the policy of India, was contrary to the terms

of the agreement, and had returned findings without any evidence to sustain the same. He submitted that the award was entirely unreasoned in some respects, particularly valuation. He submitted that the crucial findings on which the award was based were perverse, and the award suffered from patent illegality. He submitted that the arbitral award must be set aside for all these reasons given the provisions of Sections 34 read with Explanation I(ii) and (iii) of the ACA. He relied on **South East Asia Marine Engineering & Construction Ltd. vs. Oil India Ltd.**[1], **Renusagar Power Co. Ltd. vs. General Electric Co.**[2], **Associate Builders vs. Delhi Development Authority**[3], **Ssangyong Engineering & Construction Co. Ltd. vs. National Highways Authority of India**[4], **M.R. Hitech Engineers Pvt. Ltd. vs. Union of India**[5] and **S. Pandi Meenakshi vs. Hinduja Leyland**[6] regarding the scope of a judicial review under Section 34 of the ACA.

5. Dr Tulzapurkar submitted that the arbitral award, to the extent it directed the Appellants to pay the value of 7,71,650 shares of E-square Leisure Pvt. Ltd. (1st Appellant) at the rate of Rs.94.43 per share is liable to be set aside because according to him, the same was contrary to law; based on no evidence, ignored the vital and relevant material on record; based on misreading of evidence; in excess of jurisdiction; violation of the terms of contract; and in any event the findings recorded on this aspect were *ex-facie* wrong,

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1 (2020) 5 SCC 164

2 1994 Suppl. (1) SCC 644

3 (2015) 3 SCC 49

4 (2019) 15 SCC 131

5 2020 SCC Online Madras 7127

6 2019 SCC Online Madras 5415

erroneous and contrary to the settled principles of law regards burden of proof.

6. Dr Tulzapurkar, by referring to correspondence dated 8 July 2000 and 10 July 2000, submitted that the Respondents claimed a novation in the original contract. He submitted that this novation was not established by leading any cogent evidence. Based on this, the arbitrator should have concluded that the Respondents were never ready and willing to perform their part in the original agreement. He submitted that evidence established that the Respondents were neither willing nor in a position to pay the agreed price and thereby comply with their obligations. This crucial evidence was overlooked. The agreement, admittedly, was with respect to shares, i.e., movable property. Therefore, the time was of the essence. Despite all this, the Arbitral Tribunal has awarded compensation in lieu of specific performance, and such award is patently and manifestly illegal, thereby warranting interference under Section 34 of the ACA.

7. Dr Tulzapurkar submitted that the Respondents, by the correspondence, claimed that the time for payment "*stood extended",* based upon an alleged novation that they would exit from the company by accepting compensation instead of actual shares. Based upon such alleged novation, which was never proved, Respondents failed to pay the agreed amount to the Appellant Nos 2 to 4. In the cross-examination of the Respondent recorded on 13 July 2004, it was admitted that the documents produced in arbitration do not contain anything which will show that the said Respondent had, on or about 11 July 2000, available a sum of Rs.1,54,33,000/- towards the repurchase of the shares. Based upon all this, Dr

Tulzapurkar submitted that the only possible conclusion was that the Respondents were not ready and willing to fulfill their part of the agreement. He submitted that despite all this, the arbitral award could not have directed the Appellants to pay compensation in lieu of specific performance. He relied on **Sundeep Khanna vs. A. Das Gupta and others**[7], **Rahat Jan vs. Hafiz Mohammad Usman (deceased by LR's) and others**[8], **Bharat Barrel & Drum Mfg. Co. Pvt. Ltd. vs. Hindusthan Petroleum Corporation Ltd. and others**[9], **Suman Parmananddas Mundhada and others vs. Saroj Screens Private Ltd. and others**[10] and **Suresh Kumar Lal vs. Smt. Lalti Devi**[11], **Umabai and another vs. Nilkanth Dhondiba Chavan (dead) by LRs. And another**[12], **Vijay Kumar vs. Om Prakash**[13], **N. P. Thirungnanam vs. Dr. R. Jagan Mohan Rao and others**[14], **Shri Chandrashekhar vs. M/s. Yogi Construction and another**[15] in support of these contentions.

8. Dr Tulzapurkar submitted that the award for payment of compensation regarding 5,00,050 shares was in excess of the agreed terms between the parties. He submitted that the contention that these shares were handed over to the Appellants as alleged security for payment of premium towards 7,71,650 shares was never established. In any event, this issue was not even the subject matter of the original

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7 AIR 2013 Del 189

8 AIR 1983 All 343

9 AIR 1989 Bom 170

10 1992 Mh.L.J. 1460

11 AIR 2011 Pat 118

12 (2005) 6 SCC 243

13 2018 SCC OnLine SC 1913

14 (1995) 5 SCC 115

15 2018 SCC OnLine Bom 2441

reference. He submitted that there was no further agreement to refer to arbitration this issue of 5,00,050 shares. He submitted that this part of the arbitral award, which was distinctly severable, deserves to be set aside on this ground alone.

9. Dr Tulzapurkar submitted that the arbitral award, to the extent it directs the Appellant Nos 2 to 4 to pay the value of 5,00,050 shares at the rate of Rs. 94.43 per share, is contrary to the contract, the law and backed by no evidence. He submitted that these shares were not the subject matter of the shareholder's agreement or the amended agreements. They were not a part of the arbitral reference order dated 28 October 2002. Assuming that these shares were given to the Appellant Nos 2 to 4 as security for the premium to be paid by the Respondents on 7,71,600 shares agreed to be purchased by the Respondents was correct, then there was no question of recording the finding that the Respondents were entitled to these shares and based thereon, awarding compensation in lieu of such shares. He reiterated that the agreement between the parties concerned only 7,71,650 shares and had nothing to do with 5,00,050 shares.

10. Accordingly, Dr Tulzapurkar maintained that this part of the award was entirely without jurisdiction. Since the same was severable, the same should be set aside, irrespective of the decision regarding 7,71,650 shares. He submitted that the arbitral award regarding compensation in lieu of 5,00,050 shares was contrary to Section 34(2)(a)(iv) of the ACA and, in any event, entirely perverse.

11. Dr Tulzapurkar, in response to the Court's query as to how Appellants 2 to 4 could retain 5,00,050 shares, submitted on instructions that the arbitrator could have, at the highest, ordered the restoration of these shares to the Respondents. Without prejudice to the contention that the issue of these shares was not a part of the arbitration agreement, Dr Tulzapurkar, on instructions, submitted that even now, the Appellants 2 to 4 were agreeable to restore these shares to the Respondents.

12. Dr Tulzapurkar submitted that even in the pleadings, the Respondents had only sought the restoration of these shares. He submitted that the arbitrator, without assigning any cogent reasons and without any pleadings or evidence, assumed that the Respondents wished to exit from the 1st Appellant company, valued these shares and awarded compensation in lieu thereof to the Respondents. He submitted that this was a clear case of perversity and patent illegality.

13. Dr Tulzapurkar submitted that the award of compensation for 1,79,700 shares in the arbitral award was also a case where the arbitrator exceeded the terms of the agreement and the terms of reference. He submitted that the treatment of these shares was a part of the consent award. Therefore, no further order could have been made concerning these shares in the impugned arbitral award. He submitted that the bar of *res judicata* was attracted and, in any event, since the issue of transfer of 1,79,700 shares was not the subject matter of reference, the arbitral award, to that extent, warrants interference because the same is severable.

14. Dr Tulzapurkar submitted that the arbitrator completely misconstrued the further agreed terms dated 26 July 2007 and, based upon such misconstruction, has decided on the issue of 5,00,050 and 1,79,700 shares when, in fact, these shares were not the subject matter of any shareholders agreement, further agreement, terms of reference or the agreed terms dated 26 July 2007 the arbitral award concerning these shares, which is severable, therefore warrants interference on the grounds of excess of jurisdiction, perversity and patent illegality.

15. Dr Tulzapurkar submitted that the valuation of shares at Rs.94.43 per share was an *ipse dixit*. He submitted that though the parties had agreed about the arbitrator adopting a summary procedure, this agreement had to be construed in the background of the parties agreeing not to lead any oral evidence or allowing the arbitrator to engage his valuers and accessors. This clause, however, did not dispense with the requirement of recording reasons or explaining the basis of valuation.

16. Dr Tulzapurkar submitted that the valuation is based on no evidence since the arbitrator rejected the documentary evidence presented by both parties. Thus, the arbitrator had no material to arrive at the valuation of Rs.94.43 per share. He submitted that this valuation is perverse, patently illegal, manifestly arbitrary, and backed by no reasons whatsoever. On all these grounds, the valuation is liable to be set aside.

17. Dr Tulzapurkar submitted that the award of interest was at a rate of 10% per annum and that, too, from 31 March 2007, it suffered from perversity and patent illegality. He

submitted that there was no demand for such interest either before the reference or in the statement of claim, even the interim consent terms dated 29 December 2014, which had conclusively dealt with the issue of 1,79,700 shares, and no interest was awarded. He submitted that no notice claiming interest was ever served upon the Appellants. The compensation in lieu of specific performance was wrongly awarded, and in any event, such amount crystallized only on the award date, i.e. 5 April 2016. Therefore, no interest was payable before such date. He relied on **Assam State Electricity Board and others vs. Buildworth Private Limited**[16] to support his contention.

18. Dr Tulzapurkar submitted that the award of Rs.1 crore towards land is also without jurisdiction and vitiated by perversity and patent illegality. He submitted that once an award was made towards the shares in the Appellant company, there was no question of separate valuation concerning the land. He submitted that this was a clear case of overlapping and duplication.

19. For all the above reasons, Dr Tulzapurkar submitted that the impugned arbitral award is liable to be set aside, and the learned Single Judge failed to apply the mandate of Section 34 of the ACA in not setting aside the impugned arbitral award either in its entirety or by severing the claims in respect of 5,00,050 shares and 1,79,700 shares.

RESPONDENT'S CONTENTIONS

20. Mr Sharan Jagtiani learned Senior Advocate for the

[16] (2017) 8 SCC 146

Respondents, defended the impugned arbitral award and the impugned judgment and order made by the learned single judge based upon the reasoning reflected therein. He submitted that the scope of interference with an arbitral award under Section 34 of the ACA is minimal.

21. Relying upon **UHL Power Company Ltd. Vs. State of Himachal Pradesh**[17], Mr Jagtiani submitted that the jurisdiction of an appellate Court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. He submitted that the impugned arbitral award was not in excess of jurisdiction, perverse or patently illegal. He, therefore, submitted that this appeal may be dismissed. Mr Jagtiani relied upon several rulings concerning the scope of interference with arbitral awards under Section 34 of the ACA.

22. Mr Jagtiani submitted that the correspondence on record has been read and construed by the learned arbitrator after appreciating this correspondence was between businessmen and, therefore, had to be construed from the commercial perspective. He submitted that the correspondence has been reasonably construed, and no case of perversity and patent illegality is even remotely made out. He submitted that the issue of readiness and willingness is mainly factual. He submitted that the findings on this issue are correct and supported by the evidence on record. In any event and without prejudice, He submitted that the arbitrator has taken a possible view and no case that would shock the conscience of the Court is event remotely made out. He,

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[17] (2022) 4 SCC 116

therefore, submitted that there is no warrant to interfere with the factual finding regarding readiness and willingness. He relied upon several decisions regarding readiness and willingness to submit that the view taken in the arbitral award aligned with these precedents.

23. Mr Jagtiani submitted that the learned arbitrator was entitled to and had correctly considered all the material before him and the parties' conduct, leading to the settlement of several disputes through consent terms and interim consent awards. He submitted that initially, the respondents claimed specific performance or transfer of shares. However, for explained developments, the parties agreed that the Respondents would exit from the 1st Appellant company by not insisting upon specific performance but accepting compensation in lieu of specific performance, should the respondent succeed in making out a case for specific performance or entitlement.

24. Mr Jagtiani submitted that there was no dispute concerning 7,71,650 shares, 1,79,770 shares and further shares, which were the subject matter of the suit with the Popats. He submitted that in such circumstances, it was too much to suggest that the terms of reference or further agreement of 2007 did not encompass the issue of valuation and award of compensation towards 5,00,050 shares. He submitted that the learned arbitrator has construed all the agreements reasonably and there is no error, much less in perversity or patent illegality involved. He, therefore, submitted that the award of compensation towards 5,00,050 shares was within jurisdiction and the same was not vitiated

by any perversity or patent illegality as alleged.

25. Mr Jagtiani referred to clause 2 of the further agreement dated 26 July 2007. He submitted that if this further agreement was restricted only to 7,71,650 shares, there was no reason to include a clause about quantifying the shares the Respondents might be entitled to and for valuation of such quantified shares.

26. Mr Jagtiani submitted that even this further agreement dated 26 July 2007 was construed correctly by the learned arbitrator, and the award in respect of 5,00,050 shares is not without jurisdiction, perverse or patently illegal. He submitted that the objection now raised in the Section 34 application, or this appeal, was significantly not even raised before the arbitrator because all parties understood and construed the further agreement dated 26 July 2007 to include the disputes and differences regarding the 5,00,050 and 1,79,750 shares and not just 7,71,650 shares.

27. Mr Jagtiani submitted that neither before the arbitrator nor the learned single judge was any plea taken about the Appellants being agreeable to restore 5,00,000 shares to the Respondents. He submitted that this plea was for the first time raised in this appeal. He submitted that this plea was raised with full knowledge and the same is misconceived and the offer of such shares in specie to the respondents at this stage was useless. He submitted that the entire material on record and the conduct of the parties which the arbitrator was entitled to take into account made it clear that the Respondents were to exit from the 1st Appellant company

instead of having a 50 percent stake each and being in joint management of the 1st Appellant company. The only dispute was about the quantification of the shares and their valuation in the context of the Respondent's entitlement to the same.

28. Mr Jagtiani therefore, submitted that there was nothing wrong in the award relating to the 5,00,050 shares and 1,79,770 shares.

29. Mr Jagtiani submitted that in terms of the interim consent award, all that was agreed that 1,79,770 shares should be transferred to the Appellants. However, the issue of valuation and payment to the Respondents regards these shares was to be decided by the arbitrator. He submitted that there was no serious dispute of an entitlement and the only dispute was about valuation. He submitted that the Appellant's contention, virtually suggested that these 1,79,770 shares were to be given without any consideration or price by the Respondents to the Appellant Nos 2 to 4.

30. Mr Jagtiani submitted that no document, evidence, or pleadings supported this contention. He submitted that the reasons for the valuation have been given by the arbitrator. He submitted that the valuation is closer to the rate suggested in the valuation reports submitted by the Appellants. He submitted that the parties had agreed to vest the arbitrator with summary powers and agreed not to lead any oral evidence on this aspect. The arbitrator has merely pointed out and corrected an obvious arithmetical error in the valuation report submitted on behalf of the Appellants. As against the valuation of approximately Rs.86/- per share determined by

the valuation report produced on behalf of the Appellants (after the apparent error being corrected by the arbitrator), the arbitrator determined the rate Rs.94.43/- per share. The arbitrator, in fact rejected the valuation of over Rs.270/- per share indicated in the valuation reports submitted by the Respondents. Thus, there was no case of the valuation award being unreasoned, perverse or patently illegal.

31. Mr Jagtiani submitted that in terms of the original agreement between the parties, the valuation was only about 50 per cent of the land value, i.e. Rs.3.25 Crores. After that, by interim consent award, it was agreed that the Respondents would pay Rs.2.25 Crores to the 1st Appellant or certain expenses allegedly incurred. Therefore, after adjusting this amount, the arbitrator awarded Rs.1 Crore. Reasons were evident from the award and, in any event, discernible from the pleadings and evidence on record.

32. Mr Jagtiani submitted that the provisions of Section 31 of the ACA afford a complete answer to the argument about interest. He submitted that interest at only 10 per cent per annum is awarded. He further submitted that the arbitrator was entitled to award interest from the accrual date of the cause of action, given the statutory scheme of Section 31 of the ACA. He submitted that there was no requirement to make any demand through a written notice for interest as provided in the Interest Act relied upon by the Appellants.

33. For all the above reasons, Mr Jagtiani submitted that this Appeal may be dismissed.

APPELLANTS REJOINDER

34. Dr Tulzapurkar, by way of rejoinder, submitted that the contention about the scope of this appeal being further circumscribed and consequently extremely narrow is not tenable given the decision of the Hon'ble Supreme Court in **Delhi Metro Rail Corporation Limited Vs Delhi Airport Metro Express Private Limited**[18]. He submitted that the powers of the Appeal Court are akin to the powers of a Court exercising jurisdiction under Section 34 of the ACA. He submitted that if the scope of Section 37 is restricted in this manner, then, the valuable right of appeal granted by the legislature would be defeated.

35. Dr Tulzapurkar submitted that the Court exercising appellate powers under Section 37 of the ACA cannot blindly accept the Court's decision under Section 34 of the ACA. He submitted that if the arbitral award is not based on any evidence or the arbitrator has ignored the material evidence, then, the Court under Section 37 has not only the power but also the duty to interfere with the arbitral award. The only restriction is that the Section 37 Court must not interfere on grounds other than those provided in Section 34 of the ACA.

36. Dr Tulzapurkar submitted that the letter of 08 July 2000 had not merely proposed for an extension of time to pay but this letter had stated that the time stood extended until the parties allegedly sort out other issues regarding the exit of the Respondents. He submitted that this was a clear case of pleading a different contract or a contract with variations.

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[18] 2024 6 SCC 357

However, such a plea was not substantiated and proved by the Respondents. On this ground alone, the Respondents were not entitled to any specific performance and the only inference possible was that the Respondents were not ready and willing to perform their part or had no means and capacity to perform their part of the obligations. He submitted that the arbitrator failed to notice the legal position that the burden of proofing readiness and willingness was squarely upon the Respondents which burden they had reasonably failed to discharge.

37. Dr Tulzapurkar, in the context of 5,00,050 shares, submitted that the plea of exit from the 1st appellant company was not found in any agreement or in any further agreement or terms of reference. Even in the statement of claim, the plea was for the return of these shares. Accordingly, the award of any compensation in lieu of such shares was entirely beyond the terms of the scope of the arbitration agreement between the parties. The arbitrator thus has travelled beyond the scope of his jurisdiction and Section 34 Court should have interfered. In any event, Dr Tulzapurkar submitted that it will be the duty of Section 37 Court to interfere with this severable portion of the arbitral award.

38. Dr Tulzapurkar submitted that the arbitrator may have been given summary powers, but such summary powers did not entitle the arbitrator to dispense with the requirement of recording reasons. This clause meant that the parties would not lead any oral evidence. This clause did not mean the arbitrator could arrive at an arbitrary valuation without reason. An unreasoned award warrants interference under

Sections 34 and 37 of the ACA.

39. Dr Tulzapurkar submitted that the issue of 1,79,700 shares has already been decided in the consent award made by the arbitrator. This decision was binding, and the arbitrator had no jurisdiction to revisit the issue or the claim. The award in this regard is ex-facie without jurisdiction and warrants interference.

EVALUATION OF THE RIVAL CONTENTIONS

40. The rival contentions now fall for our determination.

41. At the outset, we refer to the background facts set out in paragraph 3 of the impugned judgment and order dated 12 July 2024, by which the learned Single Judge declined to set aside the impugned award dated 05 April 2016. A repetition is unnecessary given the nature of the challenges now raised or the nature of challenges permissible under Section 34 of the ACA.

SCOPE OF SECTION 37 ACA APPEAL ASSUMED AKIN TO SCOPE OF A SECTION 34 ACA PETITION

42. Secondly, we do not propose to decide Mr Jagtiani's contention about the scope of appellate powers under Section 37 of the ACA being even more circumscribed than the powers of the Court exercising jurisdiction under Section 34 of the ACA. However, we note that *UHL Power Company Ltd. (supra)* in paragraph 16 holds that as it is, the jurisdiction conferred on Courts under Section 34 of the Arbitration Act is fairly narrow, and when it comes to the scope of an appeal

under Section 37 of the ACA, the jurisdiction of an appellate Court in examining an order, setting aside or refusing to set aside an award, *is all the more circumscribed.*

43. However, Dr Tulzapurkar referred to *Delhi Metro Rail Corporation Ltd.* (supra) in which it is observed that the powers of the Court under Section 37 '*are akin to the powers under Section 34 of the Arbitration and Conciliation Act, 1996*'. Dr Tulzapurkar also referred to **MMTC Vs. Vedanta**[19] and **Konkan Railway Corporation Limited vs Chenab Bridge Project Undertaking**[20] which again suggest that the scope of the appellate Courts' powers under Section 37 are akin to the scope of a Court exercising powers under Section 34 of the ACA. Dr Tulzapurkar also submitted that the scope of the Court exercising powers under Section 37 is not the same as that of a Court exercising appeal powers against interlocutory or discretionary orders like granting or refusing an injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure. He submitted that the appeal Court under Section 37 of the ACA has the power and the duty to see whether the Court exercising powers under Section 34 has failed to exercise those powers or has exceeded the purported exercise of those powers.

44. In the facts of this case, we need not address the above issues because we are satisfied that even if we apply and exercise the powers under Section 34 of the ACA, still, no case is made out to interfere with the impugned arbitral award, given the restrictive parameters of Section 34 of the ACA. Dr

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19 2019 4 SCC 163

20 (2023) 9 SCC 85

Tulzapurkar did not dispute that the restrictive parameters of Section 34 of the ACA would, in any event, apply to the appeal Court exercising powers under Section 37 of the ACA. Therefore, even the appeal Court exercising powers under Section 37 of the ACA cannot interfere with an arbitral award on grounds other than those set out in Section 34 of the ACA.

SCOPE OF SECTION 34 ACA PETITION.

45. The law is now well settled that a Court exercising powers under Section 34, when called upon to interfere with an arbitral award, does not act as a Court of Appeal against a decree in a civil suit, where all questions of fact and law could be generally revisited. A possible view by an arbitrator on facts must pass muster because it is usually accepted that the arbitrator is the sole Judge of the quantity and quality of evidence. Insufficiency of evidence is generally not grounds for interference with an arbitral award. Re-appreciation or re-evaluation of the evidence on record is also not a permissible exercise under Section 34 of the ACA.

46. An award can be set aside on grounds of perversity or patent illegality. However, for this, a case of no "no evidence" instead of a case of insufficient evidence will have to be made out. Ignoring relevant and crucial evidence may also be a ground to interfere with an arbitral award. Basing the award on some irrelevant or extraneous material may also be grounds for interference. However, the illegality must go to the root of the matter and not be of some trivial nature. Generally, arbitral awards can be interfered with when they shock the conscience of the Court.

47. A reasonable construction of the terms of the contract or the arbitration clause should not be interfered with by the Court. An error of construction is usually regarded as an error within jurisdiction warranting no interference. If the terms of the contract admit two possible interpretations, then the arbitrator's interpretation should not be rejected by a Court by substituting its opinion. As long as two interpretations are reasonably possible, the circumstance that, in the Court's opinion, the alternate interpretation would be better is not grounds to interfere with the arbitral award and thereby undermine party autonomy. In matters of valuation, which involve some element of guesswork and subjectivity, the scope of interference is minimal. This is more so where the parties have agreed to confer summary powers upon the arbitrator.

48. The above principles concerning the scope of the powers to be exercised by a Court under Section 34 of the ACA are culled out in the several precedents on the subject, including but not restricted to *South East Asia Marine Engineering & Construction Ltd. vs. Oil India Ltd.* (supra), *Renusagar Power Co. Ltd. vs. General Electric Co.* (supra), *S. Pandi Meenakshi vs. Hinduja Leyland* (supra), *M.R. Hitech Engineers Pvt. Ltd. vs. Union of India* (supra) and *Delhi Metro Rail Corporation Limited* (supra). Therefore, the challenge to the impugned arbitral award will have to be examined, bearing in mind the restrictive parameters of Section 34 of the ACA.

BROAD DISPUTES BETWEEN THE PARTIES

49. The impugned award broadly deals with the disputes relating to the following shares: -

(a) 7,71,650 shares expressly agreed to be sold/transferred by Appellants Nos. 2 to 4 to the Respondents under Clause 6 of Deed of Amendment ("DOA") dated 12 January 2000.

(b) 5,00,050 shares handed over to the Appellants as alleged security for payment of premium of 7,71,650 shares by the Respondents.

(c) 1,79,770 shares agreed to be transferred or transferred by the Respondents to the Appellants under the interim award.

REGARDING 7,71,650 SHARES [Readiness and Willingness]

50. Regarding the 7,71,650 shares, there was no dispute about Appellants. 2 to 4 having agreed to transfer the same to the Respondents in terms of Clause 6 of DOA dated 12 January 2000 which reads as follows:-

> "That the Panchamias agree to transfer to Ganatras Rs. 77,165 lacs Equity Shares within a period of 6 months of the signing hereof at a premium not exceeding 100% per share. This offer is made with a view to give the Ganatra's the opportunity to regain back 50% equity holding in the Company. "

51. The Appellants nowhere dispute the above agreement. Their case, however, is that whilst they were always ready and willing to perform their part of the contract, the Respondents were never ready and willing and did not even have the means to fulfil their part of the contract. Accordingly, the Appellants contend that no relief of specific performance was available to the Respondents. Consequently, there was no question of the arbitral award directing the Appellants to pay any compensation in lieu of specific performance for the transfer of 7,71,650 shares to the Respondents.

52. The six-month period referred to in Clause 6 of DOA was to expire on 11 July 2000. On 8 July 2000, the respondents wrote to the Appellants informing them about the proposition of exiting from the 1st appellant company given the subsequent developments. They claimed that the transfer period of the said shares stands extended till the settlement of all such issues between the parties. This letter concludes with, "*We assume that you will be agreeable to this proposition".*

53. On 10 July 2000, the Appellants addressed the following fax message to the respondents: -

> "EXTENSION OF TIME NOT CONSIDERED. SHARES CAN BE TRANSFERRED TO YOU AT RS.20/- PER SHARE. BRING TOMORROW I.E., 11TH JULY 2000 DEMAND DRAFTS PAYABLE AT MUMBAI FOR RS.5144000/-, 5144000/- 5145000/- FAVOURING NITIN M PANCHAMIYA, HEMANT M PANCHAMIYA & **NITIN M T**HAKKAR RESPECTIVELY.
>
> NITIN M PANCHAMIYA, HEMANT M PANCHAMIYA & NITIN M THAKKAR"

54. On the same date, i.e., on 10 July 2000, the Appellants wrote to the respondents that they were not agreeable to extension of time. Still, they stated that the shares could be transferred to the respondents at Rs 20/- per share if three demand drafts payable at Mumbai for Rs 51,44,000/-, 51,44,00/- and 51,45,000/- each set out therein were brought on 11 July 2000 towards consideration of transfer of shares.

55. On 10 July 2000 itself, the respondents wrote to the appellants. 2 to 4 to please send the share certificates along with the transfer forms duly completed and stamped to the head office of the company at Pune so as to enable the respondents to complete the other formalities subject to the

procedure of transfer of shares and other terms and conditions set out in the shareholders' agreement.

56. The record shows that on 11 July 2000, neither the respondents nor Appellants 2 to 4 tendered any demand drafts to Appellants 2 to 4 at their Mumbai office, nor did Appellants 2 to 4 send the share certificates along with the share transfer forms to the respondents at their Pune office. However, there is some evidence about one of the Appellants visiting Pune without any share certificates or share transfer forms.

57. Based mainly upon the above correspondence, Dr Tulzapurkar submitted that the respondents, by their letter dated 8 July 2000, had set up a case of novation of the initial agreements between the parties. He submitted that since such novation was never proved, the only inference that could be drawn was that the respondents were never ready and willing to perform their part of the agreement of paying the consideration for the transfer of the shares by 11 July 2000.

58. Dr Tulzapurkar also contended that the respondents had no means or financial capacity to arrange for Rs 1,54,33,000/-. In this regard, Dr Tulzapurkar referred to the cross-examination in which the respondents stated thus:-

> "The documents produced in arbitration do not contain anything which will show that I had on or about 11 July, 2000, available a sum of Rs. 1,54,33,000/-"

59. Dr Tulzapurkar also contended that the Respondents' response dated 10 July 2000 did not tender or even offer to tender the amount of Rs. 1,54,33,00/- to the Appellant 2 to 4. He submitted that even this indicated that the respondents

were not ready and willing to discharge their part of the agreement.

60. Mr Jagtiani, however, submitted that there was no question of any novation, and the respondents had merely proposed about the respondents exiting from the first appellant company by selling their shares to Appellants 2 to 4. He pointed out that this letter was addressed because there would be no point in the respondents purchasing the shares and then re-transferring them to Appellants 2 to 4 or their nominees. He, therefore, pointed out that the letter dated 8 July 2000 had quarried about the Appellants being agreeable to the proposition made.

61. The arbitrator has also construed the letter dated 8 July 2000 as suggested by Mr Jagtiani. Such construction can hardly be styled as an unreasonable or perverse construction. There is no clarity whether the plea of any alleged novation was even raised before the arbitrator as clearly as was sought to be now raised in Section 34 or Section 37 proceedings. Even the Appellants do not appear to have regarded the letter dated 8 July 2000 as some novation of the original agreement between the parties. Not too much emphasis can be given to the expression “stood extended.” The letter must be construed in its entirety and the circumstances in which it was issued. The arbitrator’s construction was undoubtedly a possible construction.

62. In any case, the Appellants maintained that there would be no extension of time, and the transaction had to be completed by 11 July 2000. Further, what is significant is that Clause 6 of the DOA dated 12 January 2000 had not fixed the

final price at which the shares were to be transferred by Appellant 2 to 4 to the respondents. The price could range between Rs 10/- to Rs. 20/- because Clause 6 referred to a "premium not exceeding 100% per share". The face value of the share was Rs. 10/-; therefore, the price could range between Rs. 10/- and Rs. 20/-.

63. At no stage, before the receipt of the respondent's letter dated 8 July 2000, the Appellants 2 to 4 gave any indication of the price at which they were willing to sell 7,71,650 to the respondents. It was only by letter dated 10 July 2000, for the first time, that the Appellants 2 to 4 offered to sell 7,71,650 shares at Rs. 20/- per share. This was barely 24 hours before what the Appellants chose to style, the deadline for completing the transaction.

64. The respondents responded immediately by letter dated 10 July 2000, not insisting upon the proposition for an extension of time or exiting from the 1st appellant company (as made in the letter dated 8 July 2000). Instead, the respondents called upon Appellants 2 to 4 to send the share certificates along with the duly completed and stamped transfer form to the company's head office.

65. Mr Jagtiani explained that there was a reason why the respondents wished to see the actual share certificates. He referred to the correspondence on record and agreements or amendments to agreements in writings dated 14 June 1999 and 12 June 2000, suggesting that Appellants 2 to 4 were to pledge all their shares in the 1st appellant company with IDBI and TFCI. Dr Tulzapurkar pointed out that as of 11 July 2000, Appellants 2 to 4 had the share certificates with them because

they were eventually pledged with the financial institutions only in December 2000. The question is not exactly when the share certificates were pledged to the financial institutions. The question is whether the respondents entertained a bona fide and serious reason to believe that the shares had already been pledged with the financial institutions. Therefore, they wished to ascertain whether the shares were really with Appellants 2 to 4.

66. Based on these factors, the arbitrator has concluded that the Respondents were justified in calling upon the Appellants 2 to 4 to come with the share certificates and the share transfer forms at their office in Pune so that the transfers could be effected after seeing the actual shares. The arbitrator has held that merely because the letter dated 10 July 2000 did not tender the amount of Rs.1,54,33,000/- was not reason enough to conclude that there was no readiness and willingness on the part of the Respondents. Mr Jagtiani cited several rulings on the issue of readiness and willingness. He pointed out how even turning up at the Sub Registrar's office or waiting at the Registrar's office could be considered readiness and willingness in a given case. The arbitrator has held that it was implicit that the Respondents would pay for the transfer because the parties were businessman and there was no question of expecting any transfer without receipt of consideration.

67. Further, after considering the so-called admission in the cross-examination, the arbitrator has held that there was no

evidence to suggest that the Respondents had no means to arrange the amount of Rs 1,55,33,000/- towards the re-purchase of the shares. The arbitrator was dealing with these arbitration proceedings for almost a decade, during which several disputes between the same parties were settled by filing consent terms and making the consent interim awards.

68. In any event, considering the restrictive scope of interference with arbitral awards, we cannot say that the view taken by the arbitrator was perverse, patently and manifestly illegal or a view that was not even possible based upon the evidence on record. As noted earlier, under Section 34, a Court is not expected to re-appreciate or re-evaluate the evidence on record and substitute its opinion to the arbitrator. The view taken by the arbitrator on an issue of fact like readiness and willingness was undoubtedly plausible. The circumstance that some other arbitrator or even a Court perhaps exercising regular first appellate jurisdiction could have been persuaded to take some different view is not a ground to interfere with the arbitral award on the issue of readiness and willingness.

69. The record shows that the price at which the shares were to be transferred was disclosed by the Appellants 2 to 4 hardly 24 hours earlier. The record also indicates documentary evidence of the Appellants discussing the arrangement of finances from financial corporations inter alia by pledging all their shares. As of 10 July 2000, these

7,71,650 shares belong to the Appellants 2 to 4. Therefore, if the Respondents entertained reasons to believe that these shares have already been pledged to the financial institutions and required the Appellants to produce the same for verification, we cannot fault the arbitrator for concluding that there was no lack of readiness and willingness on the part of the respondents to pay the necessary consideration towards the transfer of shares.

70. The arbitrator has referred to **Smt. Indira Kaur & Ors vs Sheo Lal Kapoor**[21] in which the Hon'ble Supreme Court has held that the issue of readiness and willingness is essentially a question of fact. The Court has held that the real test as to whether or not the plaintiff was ready and willing to perform his part of the contract was for the defendant to call his bluff, in case it was a bluff, by remaining present at the Sub-Registrar's on the appointed date as he was bound to do if he on his part was ready and willing to execute the sale deed.

71. As noted earlier, the view taken by the arbitrator was undoubtedly a possible and plausible view. Therefore, given the restrictive parameters of Section 34, when it comes to interference with findings of fact, no case is made out to interfere with the impugned arbitral award regarding the transfer of 7,71,650 shares and the award of compensation in lieu of such transfer. Admittedly, the parties had agreed that if the respondents succeeded in establishing their entitlement of

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[21] (1988) 2 SCC 488

specific performance, they would not be granted such specific performance. Still, they would be awarded compensation in lieu of such specific performance. Therefore, quite correctly, no contentions contrary to this position were even raised on behalf of the Appellants.

REGARDING THE 5,00,050 SHARES

72. The second issue relates to the 5,00,050 shares. The main challenge was the absence of any agreement or terms of reference under which the arbitrator could have directed the Appellants 2 to 4 to pay compensation for these shares to the respondents.

73. Unlike in the case of 7,71,650, it is correct that there was no specific agreement for the transfer of these shares by the Appellants to the Respondents. However, there is no dispute that the Respondents only handed these shares to the Appellants. The Appellants have not given any clear and categorical explanation as to why these were handed over and the status of these shares in the larger scheme. The respondents have, however, explained that these shares were handed over to the Appellants as a security in the context of the re-purchase of 7,71,650 shares. Thus, it is clear that the Appellants had no right as such to retain these 5,00,050 shares.

74. The only question was whether the arbitrator was justified in awarding the Respondents any compensation in

lieu of such shares or whether the arbitrator was bound only to order the Appellants to return these shares to the Respondents. To the query from this Court as to whether the Appellants were ready to return these shares to the Respondents, Dr Tulzapurkar, after obtaining instructions on the adjourned date, stated that the shares were available and could be returned in specie to the Respondents.

75. Though we do not wish to allow any parties to draw any mileage out of the without prejudice offer as aforesaid, the evidence on record amply establishes that the Appellants had no right to these 5,00,050 shares, and they had to be either returned to the Respondents or the Respondents had to be compensated for those shares. In the arbitration proceedings, or even before the learned Single Judge, the Appellants made no offer for the return of these shares.

76. The record shows that 7,71,650 shares had initially been agreed to be transferred. However, as the arbitration proceedings progressed, the parties agreed that the Respondents would not press for specific performance but would be satisfied with compensation. The record also shows, though the Appellants do not admit this, that the Respondents would only get compensation towards 1,79,770. There were some shares about which there was a dispute between the Popats and the Ganatras (Respondents), and a suit was pending in that regard. Ultimately, it was agreed that should

the Respondents secure those shares, they would be made over to the Appellants against some consideration.

77. Thus, the record does suggest an arrangement by which the Respondents were to exit from the 1st Appellant company by accepting a financial settlement. The earlier agreement contemplated not only an opportunity for the Respondents to acquire a 50% stake in the 1st Appellant company but also be in joint management. There is evidence about a meeting in Peninsula Hotel, in which the Appellants claim that one of the Respondents, the Joint Managing Director, resigned. This Joint Managing Director denied that there ever was such a meeting or that he resigned at the said meeting. The record also suggests that the relationship between the parties deteriorated particularly after one of the Ganatra brothers joined hands with the Appellants (Panchamias). In these circumstances, the parties filed a further agreement dated 26 July 2007 before the arbitrator, restricting the scope of their disputes.

78. Clauses 2 and 3 of this agreement dated 26 July 2007 read as follows:-

> "2. With regard to the Claimant's claim for specific performance of the Shareholders Agreement dated 5th January 1999 and Deed of Amendment thereto, dated 12th January 2000, the Parties have agreed as follows:
>
> a) The Claimant is restricting his claim to compensation in lieu of specific performance.
>
> b) The Arbitral Tribunal shall determine the quantum of shares to which the Claimant/his group are entitled to

> and the compensation payable by the Respondents to the Claimant in respect of such shares.
>
> c) The Arbitral Tribunal shall also determine the compensation any, payable by the Respondent to the Claimant in respect of the land.
>
> 3. The Respondents shall also pay compensation to the Clamant on the same basis in respect of 1,81,700 shares held by the Claimant's Group as described in Annexure "C". In case the Claimant succeeds High Court Suit No. 1579 of 2006 and gets the shares claimed by him in the said Suit, the Claimant shall transfer the said shares to the Respondent Nos. 2 to 4 or as directed by the Respondent Nos. 2 to 4 against payment of the price to be fixed between the parties. In case the parties do not agree upon the price, the same will be determined by the person to be appointed as Sole Arbitrator by the parties."

79. Apart from the other material on record, the arbitrator has taken cognisance of the above clauses and made an award for compensation about the 5,00,050 shares and 1,79,770 shares. Clause 3 quoted above refers to 1,81,700 shares. However, perusing the documents on record, including the distinctive numbers of those shares, it is apparent that the correct figure should have been 1,79,770 shares, which is what is meant by Clause 3 of the agreement dated 26 July 2007.

80. Further, Clause 2(b) refers to the Arbitral Tribunal determining the quantum of shares to which the claimants/his group are entitled and the compensation payable by the Respondents to the claimants in respect of such shares. There was no issue of quantification of 7,71,650 shares because this figure was clearly stated in the DOA. Therefore, if the arbitrator, by construing this clause along with all the attendant circumstances suggesting the complete exit of the

Ganatras from the 1st Appellant, has determined the compensation in respect of the 5,00,050 shares and awarded the same to the Respondents, again, we do not detect any perversity or patent illegality.

81. Ultimately, this is a matter of appreciation of the evidence on record. Though Dr Tulzapurkar tried to elevate this into some jurisdictional error or that the arbitrator had decided a matter which did not form a part of the reference, we do not think that this would be the correct line to pursue or for us to accept.

82. This is more so because we do not find any serious protest or objection to the arbitrator's jurisdiction to determine the valuation of these shares. The valuation itself may have been disputed. But that is different from objecting to the very jurisdiction of the tribunal. In any event, the arbitrator’s construction of the agreement dated 26 July 2007 and the several agreements under which several disputes between the parties came to be settled. The fact that almost all shares were agreed to be retained by the Appellants and the Respondents were only entitled to compensation in lieu of such shares suggests that even the parties agreed on the course of action undertaken and adopted by the arbitrator. We cannot allow these objections based on the alleged lack of jurisdiction to prevail because the Appellants may not be satisfied with the valuation made.

83. Therefore, the impugned award, so far as it deals with the 5,00,050 shares, also does not warrant any interference given the restrictive parameters of Section 34 of the ACA.

REGARDING 1,79,770 SHARES

84. As regards the 1,79,770 shares, again, Clause 3 of the agreement dated 26 July 2007 is quite clear. There is, and there can be no serious dispute that 1,79,770 shares are subsumed in the figure of 1,81,700 shares referred to Clause 3 of the agreement dated 26 July 2007. There are documents showing the distinctive numbers of such shares, and they tally.

85. The interim consent award only referred to these shares being transferred to the Appellants. However, suggesting that such a transfer was gratuitous or for some other consideration is too much. The material on record does indicate that upon the exercise of valuation of the shares, which was pending before the learned arbitrator was completed, the Respondents would be compensated for these 1,79,770 shares at the valuation determined.

86. Therefore, this is not some case of *res judicata* or the arbitrator determining matters which did not form the subject matter of the arbitration proceedings. The challenge to the award on this ground is also liable to the rejected.

AWARD OF RS. ONE CRORE

87. The challenge to the award of Rs 1 Crore is also quite frivolous. There is ample evidence on record to show that the parties had agreed to value the land at Rs 6.5 Crores, i.e the book value. The transfers of shares were, therefore, linked with 50% of the land value, i.e., Rs. 3.25 Crores. In the interim consent award, the expenses made by the 1st appellant company were determined as rather were agreed at Rs.2.25 Crores. The respondents agreed to pay this amount to the 1st appellant company. Accordingly, there was a balance of Rs 1 Crore that had to be paid to the respondents. Again, there is no perversity or patent illegality in this award. This is not the case of overlapping or paying separate amounts towards the land. The award is consistent with the agreement between the parties and the terms of reference. Accordingly, no case was made to interfere with the Rs. 1 Crore award to the Respondent.

REGARDING VALUATION OF SHARES

88. Regarding valuation, the parties expressly agreed not to lead any oral evidence. They produced reports of their respective valuers. They also granted summary powers to the arbitrator. They empowered the arbitrator to engage any chartered accountants or valuers for assistance.

89. The valuation reports submitted by the Appellants' valuers suggested a rate of Rs 72/- per share or thereabouts.

However, for this, the valuers considered the total number of equity shares issued by the 1st Appellant company at 1,12,09,000 shares. However, the records indicated that the company at the relevant time, had issued 94,50,000 shares. Thus, the correct denominator should have been 94,50,000 shares and not 1,12,09,000 shares. Upon applying the correct denominator, the arbitrator valued each share at Rs.86/-. Thus, going by the valuation reports submitted on behalf of the Appellants (with the correction) would be Rs.86/- per share.

90. In contrast, the valuation report submitted on behalf of the Respondents spoke of the rate of Rs. 270/- or thereabouts. The arbitrator has arrived at the rate of Rs 94.43/-, which is much closer to the rate of Rs 86/- based on the Appellants' valuers. The allegation about these rates being arbitrary or supported by no reason is incorrect. The arbitrator noted that he had considered all the reports and finally concluded that the rate of Rs 94.43/ per share would be the fair price. There is no case made out for interference with the valuation.

INTEREST @ 10 PER CENT PER ANNUM

91. The arbitrator has awarded interest only at 10% per annum. Section 31(7)(a) of the ACA provides that unless otherwise agreed by the parties, where and insofar as an arbitral award is for the payment of the money, the arbitral tribunal by include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole, or

any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

92. Accordingly, Dr Tulzapurkar's arguments about the arbitrator lacking jurisdiction to award interest from the date of cause of action for alleged failure to comply with the provisions of the Interest Act 1978 or because the compensation allegedly becomes payable only from the date of its determination by the tribunal, cannot be accepted. The position will have to be examined in the context of the specific statutory provision contained in Section 37(7)(a) of the ACA, empowering the arbitrator to award interest for the whole or any part of the period between the date on which cause of action arose and the date on which the award is made. Therefore, the decisions relied upon, or the arguments on the interest aspect, are insufficient to interfere with the interest awarded by the arbitrator.

CONCLUSIONS

93. The learned Single Judge has considered the matter from the proper perspective, given the restrictive interference parameters under Section 34 of the ACA. There is neither a failure to exercise jurisdiction nor a case made of the learned Single Judge exceeding the jurisdiction under Section 34. Therefore, even by proceeding on the premise that our jurisdiction is akin to the jurisdiction of the Court exercising

powers under Section 34 of the ACA, we see no ground to interfere with the impugned arbitral award.

94. The arbitrator has adopted a judicial approach throughout. Relevant materials have been considered, and the award is not based on some irrelevant or extraneous material. Full opportunity was granted to the rival parties, and there was no complaint of violation of natural justice. The arbitrator's construction of the arbitral agreements, the share transfer agreement or the correspondence on record was well within the bounds of reasonability. Given the restrictive parameters of interference, no case for interference is made out.

95. The decisions relied upon by Dr Tulzapurkar turn on their peculiar facts. They are concerned with suits for specific performance and appeals from the same. The principles laid down therein are relevant, and no case is made out to suggest that the arbitrator was not alive to such principles or that he has ignored them. The arguments primarily concerned the application of those principles to the established facts. This involves re-evaluation or re-appreciation of the evidence. This involves delving into the quantity and quality of the evidence. This a Court exercising powers under Section 34 of ACA should not or cannot do.

96. For all the above reasons, we dismiss this Appeal. Interim order, if any, is vacated. The Pending Interim

Application also stands disposed of. There shall be no order for costs.

(Jitendra Jain, J) (M. S. Sonak, J)

After pronouncement :-

97. After the pronouncement, Mr Parikh learned counsel for the appellants seeks for continuation of the interim relief granted by this Court on 18 January 2018.

98. Mr Jagtiani, learned senior advocate for the respondents, opposes the continuation of the interim relief. Mr Jagtiani points out that till date, the respondents have spent close to Rs.4.69 Crores towards the renewal of the bank guarantees. He submits that if the bank guarantees are to be renewed for a further period of even 6 weeks, the respondents would have to pay an amount of Rs.32,74,500/-, which is a renewal fee for every 6 months. He has placed before us a note giving details of amounts spent by the respondents towards renewal of bank guarantees, the next date of renewal of bank guarantees and charges payable. We have no reason to disbelieve the details set out in this note. Mr Jagtiani states that these details have also been set out in the affidavit filed by the respondents.

99. In this case, the arbitrator, learned Single Judge and now this Court have held in favour of the respondents. Therefore, considering all these factors cumulatively we extend the interim order granted by us on 18 January 2018 for a period of 6 weeks from today subject to the appellants

depositing in this Court the amount of Rs.32,74,500/- within two weeks of the uploading of this order.

100. If the above amount is not deposited within two weeks, then, the interim order granted by us on 18 January 2018 will stand vacated.

101. If the amount of Rs.32,74,500/- is indeed deposited within two weeks, then, the respondents shall be at liberty to withdraw the same so that they can use the same for renewal of the bank guarantees.

102. Liberty is granted to the respondents to apply for withdrawal of the balance amount deposited by the appellants in this Court.

(Jitendra Jain, J) **(M. S. Sonak, J)**