

Ramesh Kumar and anr Vs. Mandeep Singh and anr

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Court : Delhi

Decided On : Oct-21-2013

Judge : Manmohan Singh

Appellant : Ramesh Kumar and anr

Respondent : Mandeep Singh and anr

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Pronounced on: October 21, 2013 + O.M.P. No.294/2010 RAMESH KUMAR & ANR Through Petitioners Mr.Jayant Nath, Sr.Adv. with Mr.Subhash Mishra, Adv. versus MANDEEP SINGH & ANR Through Respondents Mr.Jagjit Singh, Adv. CORAM: HON'BLE MR.JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. The petitioners have filed the present objections/appeal under Section 34 (2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) for setting aside the award dated 15th April, 2010 published by the sole arbitrator on the grounds mainly that it is violative of law and against public policy.

2. The petitioner No.1 is a resident of Patna. He had 50% of the paid up capital of Maty Pharmaceuticals Ltd. The petitioner 2 is a company registered under the Companies Act, having its registered office at New Delhi. Respondents No.1 and 2 were the shareholders of the petitioner No.2 company and together had 50% of the total issue share capital.

3. Brief facts as per petitioners pleadings are that in the course of business, the respondents expressed their intent to exit the pharmaceutical business. The petitioner No.1 agreed to buy the shares of the respondents. Accordingly, on 2nd November, 2006, a shareholding agreement for rearranging the share holding pattern was executed.

4. It was agreed between the parties in the agreement that the respondents would sell and transfer all their shares in favour of petitioner No.1 who shall make payments in five instalments by way of issuance of post-dated cheques. As per payment of the consideration, the respondents shall proportionately transfer their shareholding in the company.

5. It was also agreed between the parties that upon receipt of cheques the respondents shall resign from the Board of Directors of the company. The petitioner No.1 shall also get the property papers belonging to the respondents released from Allahabad Bank wherein the same had been kept as collateral purposes.

6. In terms of the said agreement, the petitioner No.1 paid a sum of `18,00,000/- as per the schedule of payment agreed between the parties and also got the property papers released from the Bank and requested the respondents to transfer the proportionate number of shares in his favour. The petitioner No.1 further paid a sum of `12,00,000/- and again requested the respondents for transfer of shares. As per the case of the petitioners they came to know that the respondents were spreading misleading information to the employees/consultants at Uzbekistan and had instructed them not to remit the funds or clear invoice receipts without any written instructions from the respondents.

7. Feeling aggrieved by the acts of the respondents, the petitioner No.1 by notice dated 14th July, 2007 terminated the agreement and intimated the respondents to not to present the post dated cheques issued by him.

8. When the respondents presented the post dated cheques in bank which were returned with the endorsement payment stopped-insufficient funds in account. The respondents, thereafter, sent an email to petitioner No.1 asking him to clear the

cheques otherwise they would initiate proceedings under the Negotiable Instruments Act, 1881 against him.

9. Again by letter dated 19th July, 2007 the petitioner asked the respondents by notice dated 14th July, 2007 not to present the cheques but the respondents presented the cheques for payment which were again returned unpaid with remark Payment Stopped.

10. The respondents thereafter issued a legal notice dated 1 st August, 2007 under Section 138 of the Negotiable Instruments Act, 1881 to which the petitioner No.1 sent a reply dated 13th August, 2007.

11. The petitioner No.1 issued a legal notice dated 20th September, 2007 calling upon the respondents to refund a sum of `30,50,000/- paid towards the purchase of shares in terms of the agreement and further to pay a sum of `1,25,00,000/- towards the loss of business suffered due to misrepresentations made by the respondents.

12. Thereafter, disputes having arisen between the parties, the petitioners invoked the arbitration clause vide letter dated 23rd July 2008 and asked the respondents to propose the name of the arbitrator(s). On 25th March, 2009 the respondents instituted proceedings under Section 9 & 11 (6) of the Act before this court seeking ad-interim directions against the petitioner also for appointment of Arbitrator by court.

13. By order dated 15th September, 2009 the petition under Section 9 the Act was dismissed. By order dated 23rd October, 2009 Mr.Bharat Bhushan Jain was appointed the sole Arbitrator after the respondent moved to this court under Section 11(6) of the Act.

14. Respondents/claimants in the arbitration proceedings submitted their claim before the Arbitral Tribunal pleading that:(i) Respondents (claimants therein) and petitioners (respondents therein) floated business by incorporating one Private Limited Company under the name and style of Maty Pharmaceuticals Pvt. Ltd.

having its registered office at New Delhi. (ii) Shareholders in the said company are respondents and the petitioners. (iii) Respondents and the petitioners through shareholders in the said Private Limited Company were also Directors and were controlling all business affairs. Company is engaged in the business of pharmaceuticals and has an extensive overseas market. (iv) During the course of the said business, disputes cropped up. (v) Disputes were ultimately finalized/settled between the parties by recording terms under Share Holders Agreement :

(a) Respondents as shareholders shall sell their entire shareholding held in petitioner No.2 company to the petitioners. (b) Respondents to resign forthwith as directors of petitioner No.2 company. (c) Sale of shares and resignation from directorship of petitioner No.2 company by respondents. As per this agreement, various clauses governing rights were recorded:-

SALE AND TRANSFER OF EQUITY SHARES AND RELINQUISHMENT OF OTHER RIGHTS

The parties clearly understand that upon payment of agreed consideration in installments herein below mentioned in clause 2, the First Seller having 1,00,000 equity shares of ₹10/each and Second Seller having 20,000 equity shares of ₹10/each in the company, transferred to the buyer proportionate shares and release of all their rights in the Company in his favour and undertake all actions required to hand over the operation of company to the buyer.

CONSIDERATION

The total consideration agreed to be paid by the buyer to the First Seller and Second Seller for transfer of above said shares and releasing of other rights in the Company and hand over the operation of the company shall be ₹1,22,00,000/- (Rupees One Crore twenty two lacs only). Following shall be payment to the party of the First Part and Second Part. First Seller ₹1,01,66,667.00 Second Seller ₹0,20,33,333.00

PAYMENT OF CONSIDERATION

The party of third part shall pay the consideration in following installments:

First installment on or before 31st December, 2006 to: First Seller ₹15,25,000.00 Second Seller ₹03,05,000.00 ₹18,30,000/-

Second installment on or before 31st March, 2007 to: First Seller ₹10,16,667.00 Second Seller ₹02,03,333.00 ₹12,20,000/-

st Third installment on or before 31 May, 2007 with flexibility of 45 additional days to: First Seller ₹25,41,667.00 Second Seller ₹05,08,333.00 ₹30,50,000/-

Fourth installment on or before 30th September, 2007 to: First Seller ₹25,41,666.00 Second Seller ₹05,08,334.00 ₹30,50,000/-

Fifth installment on or before 29th February, 2008: First Seller

Second Seller (vi) `25,41,667.00 `05,08,333.00 `30,50,000/- Post to execution of shareholders agreement, the respondents resigned as directors of the company. The petitioners gained exclusive control over the said company. (vii) In terms of the shareholders agreement, post-dated cheques were delivered by the petitioners to the respondents which were to be paid/encashed on due dates. (viii) Entire amount is agreed to be paid in five installments latest by 29th February, 2008. The petitioners paid only first and second installments amounting to `30.50 lac. Remaining three installments though fallen due remains unpaid. Cheques are dishonoured, amount due is `91.50 lac (Rupees Ninety One Lacs Fifty Thousand only) as principal amount. (ix) The respondents are under an obligation to transfer their entire 50% shareholding held in petitioner No.2 company in favour of petitioner No.1 subject to and on receipt of the entire consideration. Relevant clause to this effect under shareholders agreement is as under:

The parties clearly understand that upon payment of agreed consideration in installments, here in below mentioned in clause 2, the first seller having 1,00,000 equity shares of `10/- each and second seller having 20,000 equity shares of `10/- each in the company, transfer to the buyer proportionate shares and release off all their rights in the company, in his favour and undertake all actions required to hand over the operations of company to the buyer.

(x) Therefore, no obligation had to be performed by the respondents save and except receiving of payment of cheques in terms of agreement and post to receipt of entire consideration were required to transfer their share capital.

15. It was alleged by the respondents that the petitioners committed breach of agreement by making false grounds that shareholding deserves to be transferred simultaneously to part payments received by the respondents. The petitioners made allegations against the respondents for having dealings with overseas buyers of pharmaceutical goods which resulted in withholding of payments of goods sold/realizable.

16. It was alleged by the respondents that after the petitioners levelled such allegations upon the respondents inquired from overseas buyers at Uzbekistan & other countries who confirmed that funds stand transferred to petitioner No.2

company on different dates. It is confirmed from Uzbekistan that in pursuance of contract funds stood transferred on 16 th June, 2005, 14th December, 2005 and 2nd January, 2007 in all about 75,000 U.S. Dollars (equivalent to `37.50 lacs).

17. Correspondence exchanged between both parties post to execution of shareholders agreement is as follows:(i) Letter dated 14th July, 2007 from petitioners to the respondents alleging termination of shareholders agreement; (ii) Notice dated 18th July, 2007 from the respondents in answer to e-mail dated 17th July, 2007 from the petitioners; (iii) E-mail dated 19th July, 2007 from the petitioners to the respondents. (iv) E-mail from respondents to the petitioners dated 19th July, 2007. (v) Notice dated 1st August, 2007 from the respondents under Section 138 of the Negotiable Instruments Act to the petitioners. (vi) Reply dated 13th August, 2007 by the petitioners to the respondents to notice dated 1st August, 2007 under Section 138 of the N.I. Act. (vii) Petitioners notified through Dubey and Partners, Advocates taking somersault of entire factual position by narrating that according to shareholders agreement, shares deserve to be transferred simultaneously to part payments and further levelled allegation that their funds are blocked in Uzbekistan on account of overt acts of the respondents. (viii) Petitioners further communicated to the respondents on 28th September, 2007 not to present cheques for realization of payment.

18. The following amount demanded by the respondents from the petitioners:(a) Amounts payable in terms of contract - balance (b) Interest accrued thereupon @ 18% p.a. (simple) for 3 years Total (c) Monthly loss of income in earning of respondents on account of nonpayment of amount of capital @ `1 lac per month computed for 3 years `91,50,000.00 `49,41,000.00 -----`1,40,91,000.00 ----- `36,00,000.00 (d) Costs incurred in litigation by respondents due to breach committed by petitioner No.1 `5,00,000.00 -----Total claim amount is `1,81,91,000.00 -----(Rupees One Crore Eighty One Lacs and Ninety One Thousand only) 19. The petitioners filed reply to the claim petition. Basic contentions raised in the reply are:i) Shareholders agreement was determined; ii) The respondents acted in breach of said agreement inasmuch as they violated clause 9 of the shareholders agreement because they have given negative input and payments are not received from overseas buyers at Uzbekistan

and other places; iii) Petitioners paid to the respondents first two installments amounting to `30.50 lacs and proportionate shares were not transferred by the respondents. This was also breach of agreement. iv) Finally in para 14 of the petition pleaded that the petitioners are ready and willing to settle amounts due and payable to the respondents in accordance to the terms of shareholders agreement. Amount claimed in claim petition is excessive. v) The details contained in claim petition about remittance of payment by overseas buyers to the petitioners are not disputed.

20. The Arbitral Tribunal after examining the said pleadings and after discussing the matter with the petitioners came to a conclusion that issues which require determination and adjudication are narrowed down to:- a) Validity of action taken by the respondents vide letter dated 14.07.2007 to claimants for termination of shareholders agreement dated 2.11.2006; b) Assessment of claim to claimant if termination of agreement was not on valid grounds; c) Assessment of counter claim to respondents if termination of agreement was on valid grounds. Both the parties submitted to adjudication of these issues before the Tribunal. Documents which were relied upon are:(i) (ii) Letter dated 18th July, 2007 was admitted - Exhibit C-2. (iii) Letter dated 19th July, 2007 was admitted - Exhibit C-3. (iv) 21. Letter dated 14th July, 2007 was admitted - Exhibit C-1. Letter dated 19th July, 2007 was admitted - Exhibit C-4. The respondents submitted that Exh.C-1 was received on 20th July, 2007. Allegations made by the petitioners are false as there is no material to support averments and allegations contained in letter Exh.C-1. It was submitted that there is no breach on the part of the respondents warranting the determination of shareholders agreement. Clause-9 of the shareholders agreement is specific to the effect stating:

In case, they (respondents herein) give any negative input about the company or the management to any of the existing employee and consultant and in clause 2 in case they discourage any third party from doing business with the company The petitioners alleged breach on the part of the respondents to the ingredients of the said clause, though neither any material was placed on record nor there were any pleadings on this aspect. Exhibits C-1 to C-4 are documents constituting event of default on the part of the respondents on touch stone of clause 9 of the

shareholders agreement. Clause 9 reads:

9. EVENT OF DEFAULT FOR FIRST AND SECOND SELLOR Following shall constitute event of default for first and second sellers:

1. In case they give any negative input about the company or the management to any of the existing employee and consultant; 2. In case they discourage any third party from doing business with the company.

22. Requirement of clause 9(1) to be considered as default for respondents are:(a) Giving negative input about company or management to any of the existing employees or consultant. The respondents referred to letter dated 14th July, 2007 wherein there is no mention about any employees name or consultants name or date or facts which constitute negative input about company or management given by respondent herein. Text or details or particulars of negative input is lacking in all respects.

23. The case of the respondents is that no pleadings are made even in the reply to claim petition. In so far as dealing resting between petitioner and overseas buyer, claim petition specifically pleaded, details of payment received by company from overseas buyer, which details are admitted on account of non denial.

24. It was alleged by the respondents that the other requirement in sub clause (2) of clause 9 of shareholders agreement is, that in case they discourage any third party from doing business with the company. Exhibits C-1 to C-4 does not state name of any third party to whom claimants/respondent ever made any statement of fact discouraging from doing business with company with back up of facts/details of day, date, event etc. Therefore, ingredients of clause (2) to be termed as an event of default on part of claimants/respondent is also not made out. Resultantly there is no basis or reason which can be termed as cause for petitioner to determine shareholders agreement.

25. The allegation made against respondents of non receipt of payment from overseas buyer is that it does not fall under clause 9. Even if payment is considered as part of said clause, there is no allegation whereby mentioning any

name specifically of third party to whom claimants have given any negative input amounting to discourage from doing business with company. No day or date or any event is stated or mentioned.

26. It was submitted by the respondents that non receipt of payment therefore cannot be considered as an act covered under clause 9. But even if it is considered, still there is no material or basis or reasons or substance to support the said allegation.

27. It was also submitted by the respondents that the said issue loses its importance and significance because petitioners herein did not deny in para 11 of reply or anywhere in his reply about fact of non receipt of payment from Uzbekistan or elsewhere, which details are furnished by claimant extensively in claim petition. The facts admitted need no proof. The petitioners have no grievance or any suffering on issue of payment. Thus, all pleas from all directions for purposes of constituting an event of default to be attributed to claimant is missing/lacking. The petitioners thus did not have any right to cause alleged termination of agreement. The termination is also not pressed in view of reply of para 14 filed before Arbitral Tribunal.

28. The respondents referred to clause 9 wherein there is no such mention of performance of obligation of doing positive publicity. Further the shares were required to be transferred by claimants proportionately to receipt of payment in installments. Two installments were paid and no shares were transferred.

29. Issue No.1 was the primary issue and issues No.2 and 3 were consequential to it. Based on the terms of the agreement, claim petition, reply to the claim petition and discussions, the Arbitrator answered issue No.1 in favour of the respondents. It is stated in the award that the letter dated 14th July, 2007 does not contain either any facts or any material governed by clause 9 of the shareholders agreement. Clause 11 provides procedure for termination of the agreement by either party giving 30 days written notice to the other party on occurrence of event of default and in the absence of facts and material required for invocation of clause 9 of the said agreement the action initiated by respondent (petitioner herein) is not valid.

30. After considering all the evidence and arguments, the learned Arbitrator passed the award and ordered the petitioner No.1 herein to pay ₹119.39 lac in total to the respondents, i.e. ₹91.50 lac as per the shareholders agreement against installment Nos.3, 4 and 5, for which post-dated cheques were issued and which were dishonoured; interest @ 12% p.a. from respective date of installment due to the date of Award to the tune of ₹27.14 lac; and costs of arbitral proceedings to the tune of ₹0.75 lac. The interest was also awarded to the respondents from date of the arbitral award to the date of payment @ 12% p.a. on ₹91.50 lac.

31. As per the Award rendered by the Arbitral Tribunal, findings are that:(i) Petitioner No.1 to pay to the respondents ₹91.50 lac, plus (ii) Interest @ 12% p.a. from respective date of installment due to the respondents to date of award, amounting to ₹27.14 lac, plus (iii) Costs of arbitral proceedings ₹0.75 lac Grand Total amount awarded is ₹119.39 lacs (iv) Interest is also awarded in favour of the respondents @ 12% per annum on ₹91.50 lac from the date of award till date of payment.

32. The main case of the petitioners, in the objections under Section 34 of the Act is that the learned Arbitrator passed the said award only on the basis of the pleading without giving any opportunity to examine the witnesses. By adopting a summary procedure impermissible under the law. The Arbitrator did not appreciate the fact that the petitioners have terminated the shareholders agreement on account of committing defaults on the part of the respondents. The said dispute could have only been established by leading evidence of witnesses and just from documentary evidence. The sole Arbitrator failed to appreciate that once an agreement had been terminated then specific performance of the same could not be directed and the only remedy available to the aggrieved was to claim damages. In the impugned award, various reliefs were granted even those are not claimed statement of claim. The petitioners argue that no doubt, the Tribunal is empowered to adopt its own procedure but there are certain norms which are mandatory.

33. It is submitted that the impugned award is against the public policy as the same has been passed without following the due process of law as the impugned award deals and decides the matters beyond the scope of the submission

(statement of claim) to arbitration. The award in effect gives directions of specific performance of the agreement dated 2 nd November, 2006 to the petitioners to pay the balance sum of `91.50 lacs and thereafter directing the respondents to transfer 50% of the shareholding to the petitioners.

34. It is argued that even otherwise the stand of the respondents is correct and that even assuming that the petitioners were guilty of breach of contract (though this is denied) then also the impugned award ignores Section 73 of the Contract Act. While awarding compensation or breach of contract, the explanation to Section 73 clearly elaborates that in estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account. Hence, if the shareholders agreement was not properly implemented, the respondents were obliged to show the steps taken to sell the shares in the market i.e. to mitigate the damages. There is no pleading to this effect and no attempt is made by the impugned order to go into the mitigation of the damages. Counsel for the petitioners has referred the following decisions : a. Satya Narain Garg Vs. DCM Ltd. & Ors., 187 (2012) DLT25 b. Trojan & Co. Ltd. Vs. Nagappa Chettiar, AIR 1953 SC235 35. It is the case of the petitioner is that instead of the interpretation placed on the contract terms by the Arbitral Tribunal, another interpretation of the contract terms is possible.

36. The respondents case is that there was only one interpretation possible and the same was resorted to by the Arbitral Tribunal in the arbitral award. However even if it were to be assumed, without admitting, that an alternative interpretation is possible it is submitted by the respondent that the Supreme Court has repeatedly held that even if two interpretations are possible and if the interpretation given by the Arbitral Tribunal is a possible view, even though the Court may have a different view, the Award will not be interfered with by the Court under Section 34 of the Act. The Supreme Court in the case of M/s. Arosan Enterprises Ltd. Vs. Union of India & Anr., (1999) 9 SCC449 in paragraph 39 of the said judgment, has held as under:

39. The court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view the award or the reasoning contained therein cannot be examined.

37. The Arbitral Tribunal is the final arbiter of the disputes between the parties referred to it. In the present case the parties by themselves have agreed in the contract to accept the Award as final and conclusive. The Supreme Court has expounded on the principle as to the sanctity of the decision of the arbitrator in the case of *Markfed Vanaspati and Allied Industries Vs. Union of India*, (2007) 7 SCC679 where in paragraph 17 of the said judgment it was observed as under:

17. Arbitration is a mechanism or a method of resolution of disputes that unlike court takes place in private, pursuant to agreement between the parties. The parties agree to be bound by the decision rendered by a chosen arbitrator after giving hearing. The endeavour of the court should be to honour and support the award as far as possible.

38. With regard to the payments from the companys customers in Ukraine and Maldovia, due payments were made. The respondents further submit that this fact was not denied by the petitioners in the pleadings before the arbitral tribunal. This would falsify the entire claim of the petitioners, who did not have any right to terminate the shareholders agreement as the petitioner had consented to the procedure to be followed and that he was not denied any chance in being heard by the tribunal during the course of the disputes.

39. The undisputed fact is that according to the shareholders agreement, the 50% stake in the share capital of the petitioner company was to be transferred after the petitioner had paid the amount in full. Further, this payment should have been completed in five installments, as per the wishes of the parties. The respondents allege that the petitioners have illegally breached the terms of the contract and thereby, claim damages for the same before the tribunal. It is settled law that a person who has not complied with the terms of contract and has acted in contravention to the terms of agreement cannot be entitled to take advantage of its own wrong and claim damages/compensation.

40. In the case of A.T. Brij Paul Singh vs. State of Gujarat, AIR 1984 SC1703 while interpreting the provisions of Section 73 of the Indian Contract Act, 1972, the Apex Court held that damages can be claimed by a contractor where the government is proved to have committed breach by improperly rescinding the contract and for estimating the amount of damages, court should make a broad evaluation instead of going into minute details. It was specifically held that where in the works contract, the party entrusting the work committed breach of contract, the contractor is entitled to claim the damages for loss of profit which he expected to earn by undertaking the works contract. Claim of expected profits is legally admissible on proof of the breach of contract by the erring party. It was further observed that :

10.what would be the measure of profit would depend upon facts and circumstances of each case. But that there shall be a reasonable expectation of profit is implicit in a works contract and its loss has to be compensated by way of damages if the other party to the contract is guilty of breach of contract cannot be gainsaid.

41. In BSNL vs. Reliance Communication Ltd., (2011) 1 SCC394 this Court held as under:

53. Lastly, it may be noted that liquidated damages serve the useful purpose of avoiding litigation and promoting commercial certainty and, therefore, the court should not be astute to categorise as penalties the clauses described as liquidated damages.

42. In the case of M.S. Madhusoodhanan & Anr. Vs. Kerala Kaumudi (P) Ltd., (2004) 9 SCC204 In paras 140 and 141 it is held as under :

140. That decision must be understood and read after enunciating certain basic principles relating to the transfer of shares and in the background of earlier decisions on the subject. It is settled law that shares are movable properties and are transferable. As far as private companies like Kerala Kaumudi are concerned, the Articles of Association restrict the shareholders right to transfer shares and prohibit any invitations to the public to subscribe for any shares in, or debentures

of, the company. This is how a private company is now defined in section 3(1)(iii) of the Companies Act, 1956 and how it was defined in section 2(13) of the 1913 Act.

141. Subject to this restriction, a holder of shares in a private company may agree to sell his shares to a person of his choice. Such agreements are specifically enforceable under section 10 of the Specific Relief Act, 1963, which corresponds to section 12 of the Specific Relief Act, 1877. The section provides that specific performance of such contracts may be enforced when there exists no standard for ascertaining the actual damage caused by the nonperformance of the act agreed to be done; or when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief. In the case of a contract to transfer movable property, normally specific performance is not granted except in circumstances specified in the explanation to section 10. One of the exceptions is where the property is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market. It has been held by a long line of authority that shares in a private limited company would come within the phrase not easily obtainable in the market (see *Jainarain Ram Lundia vs. Surajmull Sagarmull*, AIR 1949 FC211AIR at 218). The Privy Council in *The Bank of India Ltd. vs. J.A.H. Chinoy*, AIR 1950 PC90(AIR P.96, para

21) said : it is also the opinion of the board that, having regard to the nature of the company and the limited market for its shares, damages would not be an adequate remedy. The specific performance of a contract for transfers of shares in a private limited company could be granted.

43. In the case of *Rashtriya Ispat Nigam Limited Vs. Dewan Chand Ram Saran*, (2012) 5 SCC306 the Apex Court in paras 21 to 23 and 43 to 45 held as under :

21. The learned counsel submitted that interpretation of Clause 9.3 by the arbitrator was the correct one, and in any case, was a possible if not a plausible one. The courts were, therefore, not expected to interfere therein. He submitted that the dispute in the present case was concerning the interpretation of a term of the contract. It has been laid down by this court that in such situations, even if one is of the view that the interpretation rendered by the arbitrator is erroneous, one is

not expected to interfere therein if two views were possible.

22. Mr. Ganesh referred to the following observations of this Court in H.P. SEB v. R.J.

Shah & Co., 1999 (4) SCC214 at the end of para 27, which are to the following effect:

27. ...The dispute before the arbitrators, therefore, clearly related to the interpretation of the terms of the contract. The said contract was being read by the parties differently. The arbitrators were, therefore, clearly called upon to construe or interpret the terms of the contract. The decision thereon, even if it be erroneous, cannot be said to be without jurisdiction. It cannot be said that the award showed that there was an error of jurisdiction even though there may have been an error in the exercise of jurisdiction by the arbitrators.

23. It was also submitted by the learned counsel that the court is not expected to substitute its evaluation of the conclusion of law or fact arrived at by the arbitrator and referred to the following observation in paragraph 31 in M/s Sudarsan Trading Company v. Govt. of Kerala, 1989 (2) SCC38:

31.....in the instant case the court had examined the different claims not to find out whether these claims were within the disputes referable to the arbitrator, but to find out whether in arriving at the decision, the arbitrator had acted correctly or incorrectly. This, in our opinion, the court had no jurisdiction to do, namely, substitution of its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties.

43. In any case, assuming that Clause 9.3 was capable of two interpretations, the view taken by the arbitrator was clearly a possible if not a plausible one. It is not possible to say that the arbitrator had travelled outside his jurisdiction, or that the view taken by him was against the terms of contract. That being the position, the High Court had no reason to interfere with the award and substitute its view in place of the interpretation accepted by the arbitrator.

44. The legal position in this behalf has been summarized in paragraph 18 of the judgment of this Court in *SAIL v. Gupta Brother Steel Tubes Ltd.*, (2009) 10 SCC 63 and which has been referred to above. Similar view has been taken later in *Sumitomo Heavy Industries Limited. v. ONGC Ltd.*, 2010 (11) SCC 296 to which one of us (Gokhale, J.) was a party. The observations in paragraph 43 thereof are instructive in this behalf.

45. This paragraph 43 reads as follows:

43. ...The umpire has considered the fact situation and placed a construction on the clauses of the agreement which according to him was the correct one. One may at the highest say that one would have preferred another construction of Clause 17.3 but that cannot make the award in any way perverse. Nor can one substitute one's own view in such a situation, in place of the one taken by the umpire, which would amount to sitting in appeal. As held by this Court in *Kwality Mfg. Corpn. v. Central Warehousing Corpn.*, 2009 (5) SCC 142 The Court while considering challenge to arbitral award does not sit in appeal over the findings and decision of the arbitrator, which is what the High Court has practically done in this matter. The umpire is legitimately entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the agreement. If he does so, the decision of the umpire has to be accepted as final and binding.

44. It is settled law that the Court cannot sit in appeal over the award of the tribunal, nor can it go into the reasonableness of the contents of the award. Clearly, in this case, both the parties have been given the opportunity to present their case and the arbitral tribunal had applied its mind while coming out with a reasoned order. The arbitrator had complete jurisdiction to decide on the dispute; his jurisdiction is limited by the contract and not the statement of claim. Therefore, it cannot be said that the award is defective. The court cannot substitute the view of the arbitrator with its own interpretation. The award of the arbitrator is tenable and cannot be set aside under Section 34 of the Act.

45. The scope of section 34 of the Arbitration and Conciliation Act, 1996 is limited to the stipulations contained in Section 34(2) of the Act. The jurisdiction of the

Court to interfere with an Award of the Arbitrator is always statutory. Section 34 is of mandatory nature, and an Award can be set aside only on the Court finding the existence of the grounds enumerated therein and in no other way. The words in Section 34(2) An Arbitral Award may be set aside by the Court only if are imperative and take away the jurisdiction of the Court to set aside an Award on any ground other than those specified in the Section. The Court is not expected to sit in appeal over the findings of the Arbitral Tribunal or to re-appreciate evidence as an appellate court.

46. The petitioner has challenged the arbitral award in the grounds as set out in the petition and there is not even a whisper in the said grounds as to how they fall under the limited and narrow mandate of Section 34 of the Act. Even if the additional grounds under Section 34, as laid down by the Supreme Court in the case of ONGC vs. Saw Pipes Ltd., AIR 2003 SC2629 are considered, which are patent illegality arising from statutory provisions or contract provisions or that the award shocks the conscience of the Court, no such facts are narrated in the petition. The endeavor of the petitioner is thus to convert the challenge to the arbitral award into an appellate proceeding involving a total re-hearing of the matter and re-appreciation of evidence, and which endeavor as per the consistent dicta of the Supreme Court is impermissible in law.

47. Arbitral Tribunal heard both parties, examined documentary evidence, called for comments on facts and law from both parties and after hearing and affording full opportunities to make any statement of fact or law that the matter was decided and the award was fixed for publishing. Even if there is scope for two interpretations of shareholders agreements and/or clauses governing rights of the parties, yet it is fundamental law that court cannot substitute its own views to that of Arbitral Tribunal because court is not functioning as a court of Appeal but is exercising its powers and jurisdiction subscribed by the act with limited scope.

48. The Award is not open to challenge on the ground that the Arbitral Tribunal has reached a wrong conclusion or that the interpretation given by the Arbitral Tribunal to the provisions of the contract is not correct. The entire objections of the petitioner, as contained in the grounds, are contrary to the scheme of Section 34

of the Act. There is no averment in the petition as to the existence of any illegality that is apparent on the face of the arbitral award. The learned Arbitrator has actually decided the main disputes arisen between the parties and has the requisite direction while passing the award.

49. In the present case there is no error in the interpretation of the contract clauses by the Arbitral Tribunal. However even if it were to be assumed, the proper procedure for recording of evidence of witnesses was not followed by the Arbitral Tribunal, the same cannot be set-aside as the procedure followed by the learned Arbitrator with consent of parties as at that time no protest was raised by the petitioners. All the submissions of the petitioner in the present case are afterthought, there is no force in any submission which covers the scope of interference under Section 34 of the Act. The said pleas of the petitioners do not cover the preview of public policy. The contention of the respondents are correct even then this Court would not interfere with the arbitral award for the reason that it is settled law that an error relatable to interpretation of the contract by an arbitrator is an error within his jurisdiction. The Supreme Court in the case of Steel Authority of India Ltd. vs. Gupta Brother Steel Tubes Ltd., (2009) 10 SCC63 has summarized the law on this point, in paragraph 18 of the said judgment, as follows:

18. (ii) An error relatable to interpretation of the contract by an arbitrator is an error within his jurisdiction and such error is not amenable to correction by Courts as such error is not an error on the face of the award.

50. Thus, there is no merit in the petition filed by the petitioner under Section 34 of the Act. The objections are dismissed.

51. No costs. (MANMOHAN SINGH) JUDGE OCTOBER 21 2013

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