

Sh. R.C. Bhalla and Another Vs. N.C. Bhalla and Others

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Court : Delhi

Decided On : Feb-23-1995

Reported in : AIR1996Delhi24

Judge : Ms. Usha Mehra, J.

Acts : [Arbitration Act, 1940](#) - Sections 30

Appeal No. : S. No. 1091-A of 1986 and I.A. No. 6555 of 1986

Appellant : Sh. R.C. Bhalla and Another

Respondent : N.C. Bhalla and Others

Advocate for Def. : U.N. Sharma, Adv.

Advocate for Pet/Ap. : Ms. Pinky Anand, Adv

Judgement :

ORDER

1. M/s. H. R. Bhalla and Sons (P.) Ltd (in short H.R.B.) was a family concern of late Shri H. R. Bhalla, father of the plaintiffs and defendants 1 to 3. After his death, disputes arose between the plaintiffs and defendants 1 to 3 with regard to the business affairs and the properties. All the parties by an agreement dated 7th April, 1984 appointed Sh. P. N. Khanna (retired Judge of this Court) as the Sole Arbitrator, to adjudicate the disputes arisen between the parties. The Arbitrator

made his award on 25th December, 1984 which was called the Interim Award. Petitioners filed a petition which was listed as OMP. No. 205/85. This Court after hearing the parties on the said interim Award observed that since the parties could not arrive at any decision hence the implementation of the interim award became difficult. therefore, with the consent of the parties, the award was remitted to the Arbitrator vide order dated 23rd May, 1985 to decide the manner in which and the time when the division of assets would take place because in the Interim award the Arbitrator had in fact left these decisions open. It was further observed that since parties had failed to arrive at any agreed scheme hence time has come for the Arbitrator to give decision regarding the division of assets and liabilities of H.R.B. Since the parties had principally agreed to abide by the Interim Award, therefore, hence directions were given to the Arbitrator to ensure that the interim award was implemented in letter and spirit.

2. After the matter was remanded, the arbitrator heard the parties. After hearing the parties, the Arbitrator made and published the impugned award called the final award on 24th April, 1986.

3. The respondents felt aggrieved with the impugned award. Hence filed objections vide I.A. No. 6555/86. The impugned award has been challenged by them primarily on the ground that there is a substantial departure made in this award from that of the interim award particularly with regard to the mode of division of assets of the firm. They have alleged that the interim award was accepted by all the parties. It was remitted only for the purpose of proper implementation. Hence, a vested right had accrued in their favor which could not have been altered to their detriment or disadvantage. The impugned final award has substantially and materially altered the rights conferred upon the objectors under the interim award. By the interim award, the show room of M/s. H. R. Bhalla and Sons (P.) Ltd. (hereinafter called the company) was to be sold and 3/5th sale proceeds were to come to the shares of objectors and 2/ 5th was to go to the share of the plaintiffs. But by the impugned award, the show room has been kept entirely for the plaintiffs. Similarly, under the interim award goodwill of the company was valued equivalent to the face value of the share capital of the company. The objectors were to transfer their shares in the company at full face

value i.e. @ Rs. 10/- each share, but in the impugned award, the value has been kept at Re. 1 each share. Under the interim award, share capital and reference of the company were to be divided in five shares. 3/ 5th share was to go to a separate company for the benefit of the objectors and 2/ 5th to the plaintiffs. While in the impugned award entire share capital and reference have been given to the plaintiffs. In the interim award factory land, building and machinery were to be divided so that 3/5th portion thereof go to separate company for the benefit of objectors and the plaintiffs were to get 2/5 shares thereof. A subsidiary company was to be formed for which shares of the objectors were to be transferred. The subsidiary company was to be put under the control of the objectors. Whereas the impugned award contained contrary directions. Similarly, under the interim award, balance assets and liabilities of the company including of Engineering and Leather Division were to be shared amongst all the brothers. But under the impugned award, Leather Division has been given to plaintiffs and the Engineering Division, an unprofitable concern has been given to the objectors. The objectors were to transfer their shares in the company and to resign from the Directorship only after the show room had been sold and the proceeds divided. Instead of implementing the provisions of the interim award in letter and spirit contrary provisions have been made in the impugned award. Even otherwise Arbitrator by the impugned award has made fresh distribution of properties which was beyond his jurisdiction and scope of reference made vide order of this Court dated 23rd May, 1985. The Arbitrator has thus exceeded his jurisdiction.

4. In order to appreciate the challenge to the impugned award, we have to see what was the decision of the Arbitrator when he published his interim award dated 25th December, 1984. What were the directions given by this Court vide order dated 23rd May, 1985.

5. Vide the interim award dated 25th December, 1984, the Arbitrator decided as under:--

1. Shri Romesh Chander Bhalla (RCB) and Shri Prakash Chander Bhalla (PCB) shall cease to attend any meeting of the Directors of the Company Mechanical Movements (P.) Ltd. with immediate effect, leaving the Company under the sole

charge of the other three brothers. Shri Romesh Chander Bhalla was also to handover all records, files and other papers and documents of the Company Mechanical Movements (P.) Ltd. including the files of Bank of Baroda or any other bank, minutes book etc. to Shri Naresh Chander Bhalla (NCB).

2. RCB and PCB, their friends and associates shall transfer their shares of the Company Mechanical Movements (P.) Ltd. to Shri Naresh Chander Bhalla (NCB), Shri Sudesh Chander Bhalla (SCB and 'Shri Avinash Chander Bhalla (ACB) against the price calculated at face value of the said shares.

3. NCB, SCB and ACB shall be responsible for procuring from the Company Mechanical Movements (P.) Ltd. for RCB, a sum of Rs. 2 1/2 lakhs to be paid in installments. Rs. 50,000/- was to be paid by 31st March, 1985 against the delivery to NCB by the arbitrator of the resignation letters referred in para No. 1 above and the share scrips along with the transfer deeds. The balance of Rs. 2 lakhs was to be paid in equal monthly installments in two and a half years from 31st March, 1985 to 30th September, 1987. PCB was to receive Rs. 7,500/-. These amounts when received were to be in full and final payment of the claims of RCB and PCB against the three brothers and against the company Mechanical Movements (P.) Ltd.

4. RCB and PCB were to continue as share holders and Directors of H.R.B. and Sons (P.) Ltd. They were made responsible along with three brothers for procuring from M/s. H.R.B. and Sons (P.) Ltd. transfer of three fifth of land and buildings at Bahadurgarh to a wholly owned subsidiary company. Shares in the subsidiary company were to be transferred to NCB, SCB and ACB or their nominees at such time, as the latter may be advised to be the appropriate time for the purpose. All the five brothers were to receive and were to share in equal proportion.

5. H.R.B. and Sons (P.) Ltd. was to transfer 3/5th of the machinery and plant and furniture to the said subsidiary company. RCB and PCB were responsible for procurement from the company H.R.B. and Sons (P.) Ltd. payment of gratuity due to SCB and PCB. SCB was also entitled to four months salary.

6. As soon as the land and buildings and machinery etc. were transferred and the show room disposed of, his proceeds were to be apportioned and paid as provided hereunder. NCB, SCB and ACB were to resign from the Directorship of H.R.B. and Sons (P.) Ltd. and they were to transfer their shares to RCB and PCB at full face value.

7. The share capital of H.R.B. and Sons (P.) Ltd. and its reserves, if any, were to be divided into five parts in proportion to the shares held by each of the five brothers. The amounts so allocated to NCB, SCB and ACB were to be payable to them in proportion to their respective share holdings. The parties were to prepare an agreed scheme as to how and when it should be paid to them or otherwise adjusted. In case they fail to prepare an agreed scheme, they were to report to the Arbitrator for his decision in this matter.

8. The show room of H.R.B. and Sons (P.) Ltd. situated in Darya Ganj was to be sold and the sale proceeds were to be utilised and divided according to the scheme envisaged in para 9.

9. All the assets and liabilities of M/s. H.R.B. and Sons (P.) Ltd. including Engineering and Leather Divisions were to be shared by the five brothers in proportion to their respective share holdings. Parties were to submit to the arbitrator a mutually agreed and acceptable statement and scheme of division of the assets and liabilities including those mentioned in paras 7 and 8 above. In case, no mutually acceptable scheme is furnished, complete lists of assets and liabilities of H.R.B. was to be furnished to the arbitrator, who will then decide the manner in which and time when the Division of such assets and liabilities was to take place.

10. The Company Self as was to go exclusively to NCB, SCB and ACB. RCB and PCB were to transfer their shares in favor of the above three brothers and RCB and PCB were to resign as Director after being paid full price of their shares at face value.

11. Any amount standing to the debit of RCB and PCB was to be adjusted against any amount that may be due to them under the Award.

6. This Court passed the order on 23rd May, 1985, while remanding the case back to the arbitrator and observed as under:

During the course of hearing of these petitions, the parties have shown their inclination to abide by this interim award. There has, however, been one difficulty which has so far been standing in the way of its implementation. The same arises from the following clause in the interim award: --

'All assets and liabilities of M/s. H. R. Bhalla and Sons (P.) Ltd. including both Engineering and Leather Divisions are to be shared by the five brothers in proportion to their respective share holding. Immediately after the date of this award the parties hereto shall submit to the Arbitrator a mutually agreed and acceptable statement and scheme of division of the assets and liabilities including those mentioned in paras 7 and 8 above. In case no mutually acceptable scheme is furnished, complete lists of assets and liabilities of H.R.B. shall be furnished to the arbitrator who will then decide the manner in which and time when the division of such assets shall take place.' The teamed Arbitrator left the parties to mutually agree upon the mode of division of assets and liabilities of the H.R. Bhalla and Sons (P.) Ltd. Unfortunately, so far no mutual agreement has been arrived at. The learned arbitrator has made provision for this eventuality and provided that he would then decide the manner in which and time when the division of such assets would take place. The occasion for giving this decision by the arbitrator has thus now arisen and the parties are agreed that he should decide the same as early as possible.

Naturally to enable the arbitrator to further proceed with the reference and make this decision, the time for the making of the award has to be further extended the Section 28 application is, therefore, allowed, and the period is extended by four months from today.

7. By the final award dated 24th April, 1986 the Arbitrator has held that the company Mechanical Movement Pvt. Ltd. is already and shall henceforth be in the control and charge of NCB, SCB and ACB. The shares held by RCB and PCB to be trans-ferred immediately in favor of NCB, SCB and ACB or their nominees against full payment of their face value. RCB and PCB shall also immediately

deliver to NCB, SCB and ACB all the documents, registers etc. pertaining to the business and affairs of Mechanical Movements (P.) Ltd. NCB, SCB and ACB shall procure from the company Mechanical Movements (P.) Ltd. a sum of Rs. 2,50,000/- as stipulated in the interim award, to be paid to RCB Rs. 50,000/- out of this has already been paid. Balance of Rs. 2 lakhs is to be paid in installments stipulated therein and Rs.7,500/- to PCB. These amounts when paid were to be in full and final payment of all their claims against the said Company Mechanical Movements (P.) Ltd. and against NCB, SCB and ACB.

8. NCB, SCB and ACB were responsible for paying interest on the said sum of Rs. 2 lakhs at the rate of 18% per annum w.e.f. the date of this award till the first Installment of Rs. 50,000/- was paid. However, if the amount was paid within two months then the said responsibility of NCB, SCB and ACB for payment of interest shall be deemed to be discharged. NCB, SCB and ACB were to get all assets of the Engineering Division of H. R. Bhalla and Sons (P.) Ltd. including all plants, machinery, dies, jigs, spares, furniture, fixtures, telephone, all Engineering Stocks, finished, semi-finished, raw material all of which were lying in, the factory premises 'Forward Works', T-3, Industrial Area at Bahadurgarh and telephone connection at NCB's residence. Tenancy rights in and possession by Mechanical Movements (P.) Ltd. of property situated on Original Road, New Delhi shall continue to remain in full force as at present. NCB, SCB and ACB shall, however, have full rights of succession to the said property, to the exclusion of right, title and interest of RCB and PCB in the said property. After the demise of their mother NCB, SCB and ACB shall be exclusive co-owners in equal shares of that property.

9. RCB and PCB shall deliver the share scrips of Selfast Air Systems (P.) Ltd. together with the transfer deeds, transferring the shares of the said company to NCB, SCB and ACB against the payment of the face value of the said shares. RCB and PCB were to resign, from the Directorship of the said company. RCB and PCB were to arrange transfer and conveyance, within two months of the award by M/s. H. R. Bhalla and Sons for a portion of the factory premises known as 'Forward Works' at T-3, Industrial Area, in Bahadurgarh shown in red coloured line in the plan to and in favor of NCB, SCB and ACB in consideration of adjustment as per this award of all their remaining claims.

10. NCB, SCB and ACB were to deliver their resignations from the Directorship of H.R. Bhalla and Sons (P.) Ltd. on the announcement of this Award. They were to deliver their share scripts, together with transfer deeds, transferring the shares of H. R. Bhalla and Sons (P.) Ltd. to RCB and PCB for a consideration of Re. 1/- per share only. RCB and PCB were to continue to be the exclusive share holders of M/s. H. R. Bhalla and Sons (P.) Ltd. which company continues to own the tenancy rights of the show room on Netaji Subhash Marg, New Delhi and of the portion of the factory premises known as 'Forward Works' at T-3, Industrial Area, Bahadurgarh, shown in blue on the plan filed as Annexure 'B' and all other business and assets not specially transferred to NCB, SCB and ACB, by this award.

11. The main thrust of the arguments of Mr. Kaura against the final award is based on two premises.

(i) That final award is contrary to the spirit of the Interim award. Arbitrator has made completely a new award. The final award varies in material aspects of the interim award and directions given by this Court vide order 23rd May, 85.

(ii) The arbitrator misconducted the proceedings by holding enquiry and proceedings behind the back of the objectors.

12. With regard to the first objection, there is no dispute that the interim award has to be treated in law as final with regards to the disputes settled therein. therefore, so far as the interim award pertaining to the Company Mechanical Movements (P.) Ltd. is concern-ed this interim award was final. With regard to directions given therein pertaining to the Selfast Air Systems (P.) Ltd. is concerned, that was also final. As per the interim award, the Company Mechanical Movements (P.) Ltd. was to go to the share of three brothers i.e. NCB, SCB and ACB and the other two brothers PCB and RCB were ceased to attend any meeting as Director and were to relinquish their rights. Vide the Final Award, the Arbitrator has maintained the same. Similarly, so far as the Company, Selfast Air Systems (P.) Ltd. is concerned, as per the interim award, it was to go exclusively to NCB, SCB and ACB. Even in thermal award directions are the same. The objection narrows down only tq the distribution of assets and liabilities pertaining to M/s. H.R.B. and Sons

(P.) Ltd. Admittedly, in the interim award, the arbitrator did indicate that a subsidiary company should be formed and thereafter share of that subsidiary company be transferred to NCB, SCB and ACB at such time, as the latter may be advised to be the appropriate time for that purpose. But in the final award no such directions are given by arbitrator. The arbitrator has assigned reasons for not doing so. Because according to the arbitrator at the time of making the final award, he found that certain provisions of the interim award were incapable of implementation within any force able and reasonable period and, therefore, he had to make adjustment while giving the final award. therefore, it is not right on the part of Mr. Kaura to contend that the arbitrator has deviated from the interim awards in any manner. Rather harmonious reading of the interim and the final award would show that the parties had left it open to the arbitrator to divide the assets, in case they failed to agree and present mutually agreeable scheme pertaining to the assets and liabilities of M/s. H. R. Bhalla and Sons (P.) Ltd. therefore, when the matter was remanded to the arbitrator all these questions pertaining to the assets and liabilities of M/s. H.R. Bhalla and Sons (P.) Ltd. got revived. It was then left to the arbitrator to adjudicate and divide the assets of H.R.B. He was also to ensure that the award made by him finally could be implemented without any difficulty and within a reasonable period. It was in this background that the arbitrator heard the parties and their representatives and also appointed Chartered Accountants to go into the accounts of H.R.B. It was only after going through the accounts, assets and liabilities of H.R.B. that he thought it fit to make adjustment in the Interim Award. It cannot be said that the arbitrator has materially altered the interim award. On the contrary, the arbitrator has mentioned that in order to see that the award becomes capable of implementation, he had to make these adjustments.

13. The contention of Mr. Kaura that in the Interim Award the show room was ordered to be sold and the sale proceeds were to be appropriated in five shares, this has been answered by the arbitrator himself when in the final award he observed that the show room situated at Netaji Subhash Marg, which was ordered to be sold by the interim award, it was not possible for the brothers to sell it and the reason was obvious i.e. the absence of the permission from the landlord for the sale of tenancy rights. Hence, it is not right for the objectors to contend that

arbitrator materially altered the award. It must be made clear even at the sake of repetition that so far as the division of the assets and liabilities of M/s. H. R. Bhalla and Sons (P.) Ltd. are concerned, the interim award was not final. In paras 7 and 9 of the interim award, it was made clear that the parties shall prepare an agreed scheme as to how and when the amounts were to be paid or otherwise adjusted. They were also to submit mutually acceptable scheme with complete list of assets and liabilities of M/s. H. R. Bhalla and Sons (P.) Ltd. On their failure to do so, the arbitrator was to decide the same. thereforee, it is wrong on the part of the objectors to contend that the Interim Award was final even with regard to the division of assets and liabilities of H.R.B. Keeping in view the difficulties regarding formation of the subsidiary company and that show room could not be sold, which was part of the assets of M/s. H. R. Bhalla and Sons (P.) Ltd., the arbitrator gave his own decision. thereforee, it is not correct on the part of Mr. Kaura to contend that the observation regarding creation of subsidiary company and sale of show room in the Interim award pertaining to the assets and liabilities of M/s. H. R. Bhalla & Sons (P) Ltd. were final. Even at the risk of repetition, it can be said that so far as the assets and liabilities of M/s. H. R. Bhalla & Sons (P) Ltd. were concerned, by the interim award the arbitrator had not given any final decision, rather everything was left open for the parties to present before the arbitrator mutually agreeable schemes. Since they fail to do so, matter was left open to be adjudicated by the arbitrator. thereforee, by the final award he has equitably divided the assets and liabilities of the H. R. B. He has given reasons for making certain adjustments and deviations which according to him he had to do for easy implementation of the award.

14. If what Mr. Kaura contends is accepted that the interim award qua the assets and liabilities of M/s. H. R. Bhalla & Sons (P) Ltd. was also final, then there was no need for remitting the Interim Award. Nor there was any occasion for this Court to ask the arbitrator to proceed with the reference and make his final award nor the Court would have remanded the case to the arbitrator to determine the assets and liabilities of M/s. H. R. Bhalla & Sons (P) Ltd. afresh. In para 7 of the interim award, the arbitrator himself made it clear that the parties shall prepare an agreed scheme as to how and when the payment was to be made or otherwise adjusted. That adjustment has been given in the final award. Similarly, in para No. 9 of the

interim award, scheme of division of the assets and liabilities include those mentioned in para Nos. 7 and 8 were left to the decision of the arbitrator. thereforee, it would not be proper to say that by making adjustment while dividing the assets and liabilities of H. R. B. amongst the parties in the final award, the arbitrator has committed any error.

15. As far as transfer of shares of M/s. H. R. Bhalla & Sons (P) Ltd. by the three brothers i.e. NCB, SCB and ACB to RCB and PCB at full face value is concerned, to my mind, the objection of Mr. Kaura has no force. The arbitrator in the final award, without assigning any reason has ordered that the three brothers would transfer their shares in H.R.B. at the value of Re. 1 per share whereas in the interim award, he had mentioned that transfer would be at full face value. In the final award in para 9 it has been indicated that NCB, SCB, and ACB were to deliver their share scrips together with transfer deeds and transferring the shares of M/s. H. R. Bhalla & Sons (P) Ltd. to RCB and PCB for a consideration of Re. 1 per share only. This, Mr. Kaura rightly contended the arbitrator could not do. By doing so the arbitrator has changed the spirit of the interim award which he could not do. The arbitrator could not have changed the interim award thereby reducing either the shares, percentage or value of the shares. Because it would amount to variation. When this Court remitted the award it was made clear that the interim award in letter and spirit will remain intact meaning thereby that the arbitrator would not change the share of each of the brother in the assets and liabilities of the company nor would he change the face value of the shares nor he could reduce the value of the share arbitrarily. thereforee, so far as the arbitrator's award on this account is concerned, it is liable to be modified, because in the interim award it was held that transfer would be at the face value of the shares concerned. This decision of the arbitrator could not have been changed. Hence, the transfer of shares of H. R. Bhalla & Sons (P) Ltd. by three brothers to RCB and PCB or their nominee has to be at full face value as ordered by the arbitrator vide para No, 6 of the interim award.

16. So far as the second limb of Mr. Kaura's objection against the award it pertains to the conduct of the learned Arbitrator and the proceedings held by him. It has been specifically averred as well as contended at the bar that the arbitrator on

various occasions heard the petitioners behind the back and in the absence of the objectors/respondents. The arbitrator was thus influenced by the petitioners. No opportunity was given to the objectors to explain their part, of the version or to place their point of view in respect of the matter discussed by the arbitrator with the petitioners. To substantiate this objection, the respondents/objectors have failed to point out either from the proceedings or from the documentary or oral evidence placed on record that the arbitrator heard the petitioners behind the back of the objectors. In fact no details have been given as to when the arbitrator heard the petitioners at their back nor it has been mentioned when the arbitrator consulted his son or his friend Shri Vinod Kapur. Rather proceedings held before the arbitrator after the case was remanded back show that the arbitrator had been holding the proceedings in the presence of all the parties. There was no one else present before the arbitrator. After the case was remanded, the arbitrator fixed the matter for the first time on 25th May, 1985. The proceedings of that date show that only RCB, NCB, ACB and PCB were present. Thereafter the case was adjourned to 31st May, 1985. On that date PCB along with his counsel Shri M. G. Ramachandran and others who were present were NCB, SCB, ACB and PCB. No one else was present as is apparent from the arbitrator's record. The matter was thereafter adjourned to 3rd June, 1985, on which date again PCB along with his counsel M. G. Ramachandran, NCB and PCB were present. On that date what transpired has been clearly indicated by the arbitrator. From the proceedings held before the arbitrator it is clear that in none of these proceedings any one else was present, nor it can be inferred from these proceedings that the arbitrator consulted anyone else. Matter was thereafter adjourned to 16th June, 1985 on which date NCB and ACB were present but after some time PCB attended. It is so mentioned by the arbitrator. The case was thereafter taken up on 9th July, 1985 on which date RCB with his counsel Mr. Ramachandran and all other parties were present. What transpired on that date has been stated in so many words and thereafter the case was adjourned to 21st October, 1985. On 21st October, 1985 Shri R. K. P. Shankardas along with RCB was present. PCB was represented by Shri Ramachandran, Advocate. Mr. V. N. Kaura along with NCB and ACB were present. Shri S. C. Mathur and Mr. Ajay Behl, Chartered Accountants were present. On that date, after discussing the matter with the counsel for the parties, the

arbitrator directed the two chartered accountants mentioned above to give him the net figures of amounts that may be due from one to the other. In the proceedings held on 5th December 1985 the arbitrator regretted that no clear net figure had been worked out by the two chartered accounts and the question was left again to be looked into by the arbitrator. However, after considering all the aspects, the arbitrator gave his award on 24th April, 1986. From the proceedings recorded by the arbitrator, the objection raised by the objectors cannot be sustained. If the objector had come to know of any hearing held by the arbitrator behind their back or the arbitrator recording certain proceedings or discussed the matter with the petitioners herein, then the objectors as prudent person ought to have written letter to the arbitrator pointing out these facts and objecting to his conduct. But no such letter has been placed on record. Nor this fact was pointed out in any of the proceedings by the objector to the arbitrator objecting to his consulting his son or his son's friends or that he discussed the matter with the petitioners behind their back. In the absence of any such material merely on oral allegations, it cannot be said that the arbitrator misconducted himself or the proceedings. Without any substance and proof, such an objection cannot be sustained because this is a serious charge against the conduct of the arbitrator, thereforee, it require proof which to my mind, the objectors have miserably failed to lay.

17. The contention of Mr. Kaura that the property at Desh Bandhu Gupta Road Original Road was outside the scope of the first award. This objection appears to be contrary to the fact son record. In para No. 14 of the interim award, the arbitrator had made it clear that the claim of the parties with respect to the premises on Original Road would be decided at a later stage. The left over claim, if any, would be considered and decided. thereforee, how this property was to be divided was left over in the interim award. While giving final award he decided as to how the fight of tenancy in this property was todevolve and, on which party. thereforee, it is not correct to contend that this matter was outside the scope of the arbitration. From the reading of the order dated 23rd May, 1985 quoted above, it cannot be said that the remittance was restricted only to the division of assets as mentioned in Clauses 7, 8 and 9 of the interim award. In fact, order makes it clear that all assets and liabilities of M/s. H. R. Bhalla & Sons (P) Ltd- were to be divided by the arbitrator after hearing the parties, meaning thereby that he was to give his

decision afresh since the parties had failed to arrive at amicable settlement of the division of those assets and liabilities of M/s. H. R. Bhalla & Sons (P) Ltd. So, it would not be proper to contend that the award in this regard is beyond the scope of reference. Even at the risk of repetition, it can be said that the interim award was final with respect to those matters which were finally determined by the arbitrator. But with regard to the division of assets and liabilities of M/s. H. R. Bhalla & Sons (P) Ltd. are concerned, that matter was left open to be determined by the arbitrator after the parties failed to solve the same themselves. Hence no finality can be attached to the interim award qua the assets and liabilities of M/s. H. R. Bhalla & Sons (P) Ltd. therefore, the interim award cannot be said to be final with respect to the matter of M/s. H. R. Bhalla & Sons (P) Ltd. The arbitrator in fact has tried by the impugned award to implement the interim award keeping in view of the directions of this Court vide order dated 23rd May, 1985. He has divided the assets and liabilities of the company M/s. H. R. Bhalla & Sons (P) Ltd. by making adjustments wherever necessary so that the interim award pertaining to the assets and liabilities of M/s. H. R. Bhalla & Sons (P) Ltd. could be easily implemented. Hence, on this account also it cannot be said that the arbitrator misconducted in any manner. It cannot be appreciated that M/s. H. R. Bhalla & Sons (P) Ltd. was a separate entity or not a party to the award. In fact in the interim award, which the objectors want to be implemented, the whole dispute revolved around the assets and liabilities of M/s. H. R. Bhalla & Sons (P) Ltd. and division of the same. Therefore, having argued the matter at length before the arbitrator and having participated in the proceedings pertaining to the division of assets and liabilities of M/s. H. R. Bhalla & ' Sons (P) Ltd. now the objectors cannot be allowed, to say that the assets and liabilities of the said company was not a part of reference or the award made divides its assets and liabilities beyond the scope of arbitration.

18. For the reasons stated above, objections as such are not sustainable. By my above discussion, the award regarding para No. 9 has been modified. The consideration of each share shall be the full face value and not Re. 1 per share. With these observations, the modified award is made rule of the Court and the modified award shall form part of the decree.

19. Order accordingly.

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