

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) No.115/2006

UNION OF INDIA

.....Appellant through
Mr.A.K. Bhardwaj, Adv.

versus

M/S ARCTIC INDIA

.....Respondent through
Mr. Ravi Verma &
Mr. Sarojanand Jha, Adv.

WITH

FAO(OS)431/2010 & CM Nos.11295-96/2010

FOOD CORPORATION OF INDIA

..... Appellant through
Mr.K.A. Dewan, Adv.

versus

BRAHMA RICE&GENERAL MILLS

....Respondent through
None

WITH

FAO(OS)358/2010 & CM No.9472/2010

DHRUMESH GOPAL SHAH

..... Appellant through
Mr. Neeraj Malhotra with
Mr. Nishant Kumar, Advs.

versus

RELIGARE FINVEST LIMITED

....Respondent through
None

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Date of Decision : July 29, 2010

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether reporters of local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Judgment should be reported in the Digest? | Yes |

VIKRAMAJIT SEN, J.

1. These Appeals pertain to the scope of interference of Courts in the Award pursuant to filing of Objections under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act for short). While answering this legal nodus, we must not lose sight of the fact that Parliament had carried out widespread amendments to the law, principally with a view to remedy protracted litigation. Arbitration was conceived as an adjunct to law Court in the process of dispute resolution. Rampant interference in Awards had virtually emasculated this objective, thus necessitating a legal regime. The endeavour of Parliament was to impart finality to arbitral Awards which has been sought to be achieved by circumscribing and curtailing challenges to the Award by confining it to cases where the arbitral verdict manifestly is in conflict with the public policy of India.

2. In the nascent stages of arbitration, when it was still to be ubiquitously accepted as an alternative forum for dispute resolution, Courts exercised supervision on these proceedings.

Arbitration, as an alternative dispute resolution mechanism, has now developed into a robust institution, capable of effectively and expeditiously deciding disputes, especially because of specialized knowledge of the Arbitral Tribunals. With this metamorphosis, the superintendence of the Courts has expectedly and exponentially waned. Initially, jural interference was allowed wide amplitude by the Supreme Court, leading to a proliferation in the grounds on which Awards could be assailed. Whilst initially Awards were susceptible to being set aside if all questions raised were not discussed in the Award, with the passage of time the fiction that all points had been duly considered and rejected came to be adopted to insulate Awards from jural censure. Similarly, whilst it was earlier accepted that Awards should contain reasons in clear terms, it was subsequently opined that if the trend/chain of thought was discernible, the Award was impregnable to attack. Most significantly, their Lordships have gone to the extent of enunciating that judicial interference is not called for even in those instances where the arbitrator may have committed an error of fact. The following passage from *Union of India –vs- Rallia Ram*, AIR 1963 SC 1685, even though in the context of the repealed Arbitration Act, 1940 ('Arbitration Act' for short), is worthy of reproduction:-

An award being a decision of an arbitrator whether a lawyer or a layman chosen by the parties, and entrusted with power to decide a dispute submitted to him is ordinarily not liable to be challenge on the ground that it is erroneous. In order to make arbitration effective and the awards enforceable, machinery is devised for lending the assistance of the ordinary Courts. The Court is also entrusted with power to modify or correct the award on the ground of imperfect form or clerical errors, or decision on questions not referred, which are severable from those referred. The Court has also power to remit the award when it has left some matters referred undetermined, or when the award is indefinite, or where the objection to the legality of the award is apparent on the face of the award. The Court may also set aside an award on the ground of corruption or misconduct of the arbitrator, or that a party has been guilty of fraudulent concealment or wilful deception. But the Court cannot interfere with the award if otherwise proper on the ground that the decision appears to it to be erroneous. The award of the arbitrator is ordinarily final and conclusive, unless a contrary intention is disclosed by the agreement. The award is the decision of a domestic tribunal chosen by the parties, and the Civil Courts which are entrusted with the power to facilitate arbitration and to effectuate the awards, cannot exercise appellate powers over the decision. Wrong or right the decision is binding if it be reached fairly after giving adequate opportunity to the parties to place their grievances in

the manner provided by the arbitration agreement. But it is now firmly established that an award is bad on the ground of error of law on the face of it, when in the award itself or in a document actually incorporated in it, there is found some legal proposition which is the basis of the award and which is erroneous.

Acknowledging that the Arbitrator is the final judge of facts, the Apex Court in *State of Orissa -vs- Kalinga Construction Co. (P) Ltd.*, 1970 (2) SCC 861 held that the High Court erred in considering the matter as a Court of Appeal by re-evaluating the evidence.

3. In *Hindustan Iron Co. -vs- K. Shashikant & Co.*, AIR 1987 SC 81, the Court held that the Award of the Arbitrator ought not to be set aside for the reason that, in the opinion of the Court, the Arbitrator reached wrong conclusions or failed to appreciate some facts. That this was a well settled proposition of law was reiterated in the decision of the Apex Court in *Coimbatore District Podu Thozillar Sangam -vs- Balasubramania Foundary*, AIR 1987 SC 2045. It was opined that it is only an error of law and not a mistake of fact committed by the arbitrator, which is justiciable in the application/objection before the Court. If there is no legal proposition in the Award, which is erroneous and the alleged mistakes are in the nature of errors of fact, the Award is not

amenable to corrections of the Court provided the Award is made fairly, after giving adequate opportunity to the parties to articulate their grievances in the manner provided by the arbitration agreement. Similar views were again expressed in *Indian Oil Corporation Ltd. -vs- Indian Carbon Ltd.*, (1988) 3 SCC 36; *Jawahar Lal Wadhwa -vs- Haripada Chakroberty*, (1989) 1 SCC 76; *Puri Construction Pvt. Ltd. -vs- Union of India*, (1989) 1 SCC 411; *M/s. Sudarsan Trading Co. -vs- Government of Kerala*, (1989) 2 SCC 30; *Food Corporation of India -vs- Joginderpal Mohinderpal*, AIR 1989 SC 1263 where even a plausible view taken by the Arbitrator was held not to be open to Court interference. In *Municipal Corporation of Delhi -vs- M/s. Jagan Nath Ashok Kumar*, AIR 1987 SC 2316, the Court held that if the reasons appear *per se* to be not unreasonable and irrational, the Court ought not to reappreciate the evidence. In *Hind Builders -vs- Union of India*, AIR 1990 SC 1340 the Court cautioned that where two views were possible, it could not be predicated that there was an error apparent on the face of the Award. In *Bijendra Nath Srivastava -vs- Mayank Srivastava*, AIR 1994 SC 2562, the view was expressed that the reasonableness of reasons given by the arbitrator was not open to challenge and that the proper approach would be for the Court to support the Award. Similarly, in *Hindustan*

Construction Co. Ltd. -vs- Governor of Orissa, AIR 1995 SC 2189, it was repeated that the Court cannot reappreciate the material on the record. In *Trustees of the Port of Madras -vs- Engineering Constructions Corporation Ltd.*, (1995) 5 SCC 531, the decision of a Division Bench of the High Court of Madras, which reversed the Award on a question of fact and not a question of law, was set aside by the Supreme Court. After considering its previous decisions, the Apex Court in *B.V. Radha Krishna -vs- Sponge Iron India Ltd.*, (1997) 4 SCC 693 again held that the Court could not substitute its own view in place of that of the Arbitrator. In *Army Welfare Housing Organisation -vs- Gautam Construction & Fisheries Ltd.*, (1998) 7 SCC 290, the Court declined to vary an Award for the reason that without reappreciating evidence it would not be possible to fault the quantum awarded towards anticipated expenses. The A&C Act has given statutory expression to the judicial view that Courts' interference in arbitration matters is to be eschewed.

4. The interpretation or construction of a contract or a contractual clause is also the province of the Arbitrator to whom a dispute is referred for final determination by the parties. The construction imparted by the Arbitral Tribunal to a contract or a contractual clause should remain impervious to another view

which may happen to be proffered by the Judge. Once there is no dispute as to the existence of a contract, the interpretation of clauses thereof is a matter for the Arbitral Tribunal to expound upon. Suffice it is to mention *Sudarsan Trading Co. v. Govt. of Kerala*, (1989) 2 SCC 38; *Tarapore & Co. -vs- Cochin Shipyard Ltd.* (1984) 2 SCC 680 and *Numaligarh Refinery Ltd. -vs- Daelim Industrial Co. Ltd.*, (2007) 8 SCC 466 in reference to this settled position of law.

5. The Apex Court lamented two decades ago, on the procedural delays that has suffocated the system spreading even to the disposal of disputes by the channel of Arbitration, in the following passage in *Guru Nanak Foundation -vs- Rattan Singh and Sons*, AIR 1981 SC 2075:-

Interminable, time consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedy for resolution of disputes, avoiding procedural claptrap and this led them to Arbitration Act, 1940 ("Act" for short). However, the way in which the proceedings under the Act are conducted and without exception challenged in courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Informal

forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the courts been clothed with 'legalese' of unforeseeable complexity.

6. In *Olympus Superstructures Pvt. Ltd. -vs- Meena Vijay Khetan*, (1999) 5 SCC 651, it has been observed that Section 34 of the A&C Act is based on Article 34 of the UNCITRAL MODEL LAW and that the scope of the provisions of setting aside the Award is far less than what was envisaged and permissible under Section 30 or 33 of the Arbitration Act. In *Sundaram Finance Ltd. -vs- NEPC India Ltd.*, AIR 1999 SC 565, the Apex Court has enunciated the law in these words:-

The 1996 Act is very different from the Arbitration Act, 1940. The provisions of this Act have, therefore, to be interpreted and construed independently and in fact reference to 1940 Act may actually lead to misconception. In other words, the provisions of 1996 Act have to be interpreted being uninfluenced by the principles underlying the 1940 Act. In order to get help in construing these provisions it is very relevant to refer to the UNCITRAL MODEL LAW rather than 1940 Act.

7. The departure made by the 1996 Act from the Act of 1940 vis-à-vis grounds for setting aside the Award are highlighted by the Hon'ble Supreme Court in *McDermott International Inc. -vs- Burn Standard Co. Ltd.*, (2006) 11 SCC 181 in these words:-

51. After the 1996 Act came into force, under Section 16 of the Act the party questioning the jurisdiction of the arbitrator has an obligation to raise the said question before the arbitrator. Such a question of jurisdiction could be raised if it is beyond the scope of his authority. It was required to be raised during arbitration proceedings or soon after initiation thereof. The jurisdictional question is required to be determined as a preliminary ground. A decision taken thereupon by the arbitrator would be the subject-matter of challenge under Section 34 of the Act. In the event the arbitrator opined that he had no jurisdiction in relation thereto an appeal there against was provided for under Section 37 of the Act.

52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.

8. In light of our analysis of these precedents, it can be conclusively held that the provisions of the A&C Act are intended to confine to a narrow point, objections that can be

raised in Court where an Arbitral Award is assailed. To widen the scope of Section 34 would be ignoring and setting at nought the legislative intent, which perhaps was itself a response to the judicial lament extracted above. Section 34 is not a panacea for remedying any defect which the parties allege. Therefore, the Courts exercising their powers have to be extremely circumspect in admitting Objections under Section 34. The effect of admitting a petition under Section 34 has the automatic effect of staying of the execution of the Award and this defeats the entire purpose of the arbitration regime which is sought to be established and promoted as an alternate to the curial legal set up. This fact has been reflected upon by the Supreme Court in the case of *National Aluminum Company -vs- Presteel and Fabrication Pvt. Ltd.*, (2004) 1 SCC 540.

9. It is oftentimes argued that their Lordships have restored the law to the position prevailing in the Arbitration Act in *ONGC -vs- Saw Pipes*, (2003) 5 SCC 705 : AIR 2003 SC 2629. This, however, is too wide a generalization. So far as violation of statutory proceedings is concerned, the Arbitral Tribunal must remain within the parameters drawn by the statute, and if it ventures beyond those boundaries, jural interference under Section 34 of the A&C Act would be justifiable. The other avenue available for being traversed is if the Award shocks the

conscience of the Judge. It is an unjustifiable misconstruction that the ***Saw Pipes*** enjoins the Court to look into the merits of the case as if it possessed and, therefore, was expected to exercise appellate jurisdiction. These observations have been necessitated also because of the fact that the learned Single Judge has, in the impugned Judgment in FAO(OS) 115/2006, needlessly and avoidably gone threadbare into the factual matrix that was presented to the Court even though towards the end of the impugned Order a Reference has been made to *Food Corporation of India –vs- Joginderpal Mohinderpal*, AIR 1989 SC 1263, *Puri Construction Pvt. Ltd. –vs- Union of India*, AIR 1989 SC 777, *Gujarat Water Supply & Sewerage Board –vs- Unique Erectors (Gujarat) Pvt. Ltd.*, AIR 1989 SC 973, *Hind Builders –vs- Union of India*, AIR 1990 SC 1340 as well as *Sudarshan Trading –vs- Govt. of Kerala*, AIR 1989 SC 890, all of which dealt with the regime set into place by the Arbitration Act. We reiterate that the intention of the Parliament in enacting the A&C Act is to combat and change the jural approach away from conducting an appellate scrutiny of Awards by the Court.

FAO(OS) 115/2006

10. This Appeal assails the Judgment of the learned Single Judge dated 8.11.2005, dismissing the Objections of the Appellant/Union of India filed under Section 34 of the A&C Act

in respect of the Award dated 23.1.2001. There are, thus, concurrent findings against the Union of India which, regrettably, continues to adhere to its practice of pointlessly litigating to the very end, in utter disregard to public statements made by the Hon'ble Union Law Minister as well as the learned Attorney General of India decrying this attitude. Both the adversaries before us had filed Claims before the Sole Arbitrator. The subject contract was for providing central air-conditioning to the technical as well as administrative buildings of the Appellant/Union of India in the Delhi Cantonment. The value of the Contract was ₹1,41,96,000/-. It appears that the plant supplied by the Respondent did not fully and formally comply with all the specifications, as appears to have been immediately pointed out by the Appellant/Union of India. The fact remains that the air-conditioning plant was not rejected by the Appellant/Union of India and has been used and enjoyed by it for several years. The Respondent had raised a claim for ₹17,13,388.10/- as the balance outstanding amount and has been awarded only ₹2,61,725/- together with ₹20,000/- against the claim of ₹4,75,350/-; costs were not awarded; and interest at the rate of twelve per cent with effect from 1.1.1999 and fifteen per cent after the date of the Award was allowed. The Respondent has reconciled itself to the Arbitral Award.

However, the Appellant/Union of India has assailed the Award before the learned Single Judge and with obduracy, which is the characteristic of the Union of India, has carried the matter further in Appeal before us.

11. The learned Arbitrator, despite noting the timely Objections raised by the Appellant vis-à-vis the non-conformity of microprocessor control unit with the catalogue/agreed specifications, had looked into the facts of the case and returned a finding that the Union of India was entitled only for a sum of ₹1,80,000/-. So far as the claim for ₹50,00,000/- was concerned, the learned Arbitrator as well as the learned Single Judge have noticed the complete absence of documentary or any other evidence in support of the Appellant's Claim.

12. The impugned Arbitral Award is not contrary to the public policy prevailing in India. The Findings are cogent and thus no interference is called for under Section 34 of the A&C Act.

13. Finally, it is clear that the dispute, in large measure, is governed by the Sale of Goods Act, 1930 ('Goods Act' for short). The Appellant ought not to have accepted the delivery of air-conditioning plant if it was of the view that there was a substantial and material deviation from specifications. Section 26 of the Goods Act stipulates that once property is transferred to the buyer, the risk is transferred to it. Section 32

of the Goods Act further clarifies that delivery of goods and payment of price are concurrent conditions. Section 37 of the Goods Act is extremely important as it ordains that where the seller delivers to the buyer a quantity of goods, less or different to that which has been contracted for, the buyer may reject them, but if the buyer accepts the goods so delivered, he shall pay for them at the contract rate. Indubitably, if the air-conditioning plant was defective, the Appellant had the right to claim damages. This is what has been done by it and there are concurrent findings in favour of damages awarded in this regard.

14. The Appeal is devoid of all merits and is dismissed with costs of ₹20,000/-. Consequently, the Respondent is released from the obligation to keep alive the Bank Guarantee issued by the Bank of India, Bangalore.

FAO(OS)431/2010

15. This Appeal arises from the Order of the learned Single Judge dated 19.1.2010, dismissing the Objections filed by the Appellant against the Award dated 23.5.2002 of the learned Arbitrator. The dispute between the parties concerned an alleged breach of an agreement regarding storage and milling of paddy. As per the said Agreement, the Respondents Brahma Rice & General Mills were to lift and mill about 3000 metric

tons of paddy as per Appellant's (Food Corporation of India) Terms and Conditions. The Appellant alleges that out of the total quantity agreed to be milled, 143 metric tons of fine paddy and 322 metric tons of common paddy was not milled as per Agreement and the same deteriorated in quality and had to be sold at a much lower price.

16. The Claim aggregating ₹28,65,105/- raised by the Appellant before the learned Arbitrator was under the following main heads:-

1. Cost of paddy against which no rice was delivered by the Respondent.
2. The penalty to pay one and a half times the economic cost of the shortfall in the recovery of rice in terms of Clause g(i) of the Agreement.
3. The cost of unmilled paddy which got deteriorated in quality because the miller did not lift the requisite paddy from FCI's godown.

After considering the Claim of both the sides and on the reading of the sundry clauses of the Agreement between them, the learned Arbitrator came to a conclusion that the case was not that of "shortage" or "shortfall" as the balance quantity was never even lifted by the Respondent/Miller. Thus, it was a simplicitor case of breach of contract on account of the Miller's default. In the light of these findings, the learned Arbitrator held that the Miller is liable under Clause 5 of the Storage

Agreement dated 20.5.1996 which reads thus – “entire paddy will be milled by the party failing which work will be got done at their risk and cost” and Clause M(2) of the Milling Agreement which reads thus - “If the Miller fails or neglects to complete the lifting of paddy by the time stipulated in clause G(3), penalty shall be recovered from him at the rate of Rs.2/- per quintal on stocks which remained un-lifted by the stipulated date”.

17. The learned Arbitrator also opined that the penalty of Rupees two per quintal was a genuine pre-estimate.

18. As regards the Clause under which the Appellant had claimed compensation, which stipulates that the compensation has to be paid at the penal rate of one and a half times the economic cost of the short supply of paddy, the learned Arbitrator has held, after considering in detail the purpose, intent and import of the Clauses, that Clauses O(iii) and g(i) stipulate penalties and not genuine pre-estimation of damages and thus cannot be invoked in calculating the actual damage in the present case. The learned Arbitrator holds that these Clauses are in the nature of threat being held over the Miller *in terrorem* to secure the performance of the contract. Secondly, the learned Arbitrator has also rejected the Claim on the finding that the case was not that of “shortage” and “shortfall” as, in fact, the balance quantity was never lifted by the Respondents.

It was thus concluded by the learned Arbitrator that the case was of failure and neglect to mill the balance paddy by the Respondents which, according to the learned Arbitrator, attracted Clause 5 of the Shortage Agreement dated 20.5.1996 and Clause M(2) of Milling Agreement as noted earlier.

19. The learned Single Judge, on perusing the Award and considering the arguments on both the sides, observed that the learned Arbitrator had rightly held that the liability of the Respondents was only to pay the liquidated damages at the rate of Rupees two per quintal and that the Respondent was not responsible for the deterioration of the paddy, for which damages due to the inaction of FCI could not be laid at the door of the Miller. It is further held by the learned Single Judge that there cannot be any interference in the interpretation imparted by the learned Arbitrator to the various Clauses of the Contract unless the same is perverse.

20. The decision of the learned Single Judge is in line with our own analysis of law, and various Supreme Court decisions discussed earlier which hold that Courts, while exercising their power under Section 34 of A&C Act, should abjure from interfering with the interpretation imparted by the Arbitral Tribunal even if another view was favoured by the Court.

21. The learned Arbitrator has given categorical findings after looking into the evidence on record and considering the arguments of both the parties that the matter is not that of “shortfall” and “shortages” and that compensation that is payable by the Respondents is only on account of paddy which, if neglected or omitted to lift and mill for this, the Arbitrator has awarded the compensation at the rate of Rupees two per quintal as provided under the Contract itself. These findings, being findings of fact, cannot be traversed by us even if the same are incorrect.

22. We find no error in the impugned Judgment of the learned Single Judge in opining that the Award was impervious to challenge under Section 34 of A&C Act. The Appeal is devoid of merit and has needlessly exhausted a large part of judicial time in view of the law settled by the Supreme Court on several occasions and is dismissed with costs of ₹20,000/-. All pending applications are also dismissed.

FAO(OS) No.358/2010

23. This Appeal impugns the Judgment of the learned Single Judge dated 6.4.2010, dismissing the Objections of the Appellant filed under Section 34 of A&C Act. The said Objections were filed against the Award of the learned Arbitrator dated 30.4.2009 wherein the Arbitrator had awarded ₹19,45,940.85/-

along with fifteen per cent interest with effect from 9.4.2008 till the date of realization and ₹1,75,000/- towards arbitration cost in favour of the Claimant.

24. The dispute has arisen between the parties from the breach of a Loan Agreement dated 12.6.2006 between them. The learned Arbitrator, at the very outset, noted that the Respondent neither appeared himself nor was represented through an advocate despite ample opportunities granted to parties on several hearings. However, the Respondent raised his defense by way of correspondence from time to time and the same were taken on record in the interest of justice. The learned Arbitrator held that the relevant documents evidencing the existence and validity of Loan Agreement between the parties were duly proved by the Claimant, though there was no cross-examination by the Respondent despite opportunities granted.

25. The case of the Respondent before the Arbitral Tribunal was that the Respondent/Claimant is engaged in the business of granting loans against securities. The Appellant had entered into an Agreement with the Respondent/Claimant wherein it was stipulated that the Appellant was required to maintain adequate margin at all the times *vis-à-vis* the loan amount in the form of Securities acceptable to the Claimant. The Claimant/Respondent

alleged that the Appellant failed to maintain the said margin which was required under the Loan Agreement. The Claimant was constrained to invoke Clause 3.3 of the Agreement whereby the Claimant was empowered to dispose of the securities deposited with it and transfer the proceeds to the Borrower Account for liquidation. The said Securities fetched an amount of ₹9,63,739,31/-, leaving a balance of ₹19,45,940.85/- outstanding. This amount was claimed by the Claimant/Respondent through various letters which, according to the Claimant, were not replied to by the Appellant.

26. The Arbitrator notes that though the Appellant had raised defences by means of correspondence, however, no evidence was adduced on their behalf. The learned Arbitrator records that:-

10. The Respondent did not file any Affidavit in support of its defence. None of the documents produced were duly proved by Respondent. The evidence of Respondent was closed by my separate order dated 17.04.2009 which was maintained by order dated 30.04.2009. It was clearly held that Respondent did not file its Affidavit by way of evidence on 16.04.2009 and there is no explanation for the delay either. Respondent was also not present on 16.04.2009. No arguments were addressed.

27. Before the learned Single Judge, by means of Objections filed under Section 34 of A&C Act, the Appellant for the first time raised contentious issues regarding an erroneous entry in the Statement of Accounts and that the Securities, being sold by the Respondent, were at a lower price to its own sister concern. After noting these Objections, the learned Single Judge has held that the scope of interference by Court under Section 34(2) of A&C Act, being extremely limited, he could not traverse these issues. He, however, after perusing the record and evidence available before the learned Arbitrator, observed that the Loan Agreement dated 10.6.2006 is not denied by the Appellant and as regards Clause 3.3 of this Agreement, the Securities were sold at the prevalent market rates. The argument of error in the Account Statement is said to have not been raised in the Objection Petition filed by the Appellant and in light of the fact that no plausible explanation was forthcoming from the Appellant for his non-appearance before the Arbitral Tribunal and raising these grounds before the Tribunal, the explanation of Respondent/Claimant was taken as correct.

28. We find no error in the approach of the learned Single Judge. Section 34 of the A&C Act does not allow the Courts to enter into the factual arena and reanalyze the evidence available on record and alter the factual findings of the Arbitral

Tribunal. The opportunity of adducing and appreciating evidence rests with the Arbitral Tribunal. The findings of fact that follow in light of this evidence recorded by the Arbitral Tribunal is final and to be taken as correct by the Courts unless perverse.

29. By his non-participation in the arbitral proceedings, the Appellant ran the fatal risk of losing out on the opportunity to prove his case and disproving the Respondent's case. This fatality cannot be cured by any curial proceedings available in A&C Act.

30. The Appeal is without merit. Appeal as well as the pending application is hereby dismissed.

(VIKRAMAJIT SEN)
JUDGE

(MUKTA GUPTA)
JUDGE

July 29, 2010
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