

+ **FAO(OS) No. 38/2010 and CM No. 691/2010 (for stay)**

versus

% Date of Reserve : July 8, 2010
Date of Decision : July 30 , 2010

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: REVA KHETRAPAL, J.

1. This appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 arises out the judgment and order dated 30th October, 2009 passed by the learned Single Judge, dismissing the objections filed by the appellant against the award dated 14th/23rd August, 2009 passed by Mr. J.S. Sood, Sole Arbitrator.

2. The facts relevant for deciding the appeal are as follows: -

a. The respondent no.2, Smt. Sushila Bajaj filed a claim before the Arbitrator against Sh.S.C. Aneja, predecessor-in-interest of the appellant alleging thereunder that Sh.S.C. Aneja, who was allotted a commercial land bearing no.P-2, Sector-5, Noida measuring about 850 sq. yds. for the construction and running of a temporary cinema, had entered into a Collaboration Agreement with her on 5th January, 1983. The said Collaboration Agreement was entered into by Sh.S.C. Anejha as he was not in a position to pay the amount demanded by the Noida Authority towards the allotment as well as for raising the construction and running the cinema thereon. In pursuance to the said Agreement, the respondent no.2 paid money to the Noida Authorities and invested a sum of Rs.20 lakhs on the construction of the temporary cinema and thereafter started running the cinema. Sometime in the year 1986, the administration of the Noida Authority agreed to allot more land to Sh.S.C.Aneja for the purpose of construction of a regular cinema hall at the existing site of the temporary Alka Cinema in Sector-V, Noida Complex, District Ghaziabad. Thereupon, Sh.S.C. Aneja requested the respondent no.2 to invest another sum of Rs.30 lacs, that is, a sum of Rs.26 lacs as the allotment value and Rs.4 lacs as penalty, etc. The respondent no.2 and her husband – Sh. Inderjeet Bajaj, agreed to do so upon entering into another Agreement dated 10th January, 1987. The parties to the said agreement were Sh. Inderjeet Bajaj, the husband of the respondent no.2

and Sh. S.C. Aneja. The investment of Rs.30 lacs was made by Sh. Inderjeet Bajaj by paying a sum of Rs.14 lacs in cash to the Noida Authority and for the balance amount of Rs. 16 lacs, a bank guarantee was given to ensure payment of Rs. 1 lakh per month by Sh. Inderjeet Bajaj. Thus, the respondent no.2 and her husband together invested a sum of Rs. 50 lacs in the cinema plot which is now known as Alka Cinema. The said cinema was being managed and run by them in accordance with the Agreement. In terms of the Agreement, the parties also created a private limited company in the name of 'S.C. Aneja Theatres Pvt. Ltd.', in which Sh. S.C. Aneja was one of the directors and the remaining three directors were Smt. Sushil Bajaj (respondent no.2), Sh. Inderjeet Bajaj (husband of the respondent no.2) and Sh. Sanjay Bajaj (a family member of the respondent no.2). Sh. Inderjeet Bajaj was the Managing Director of the company and by a further communication sent to the Noida Authority, the latter was requested to transfer the allotment of cinema plot to the Company. As per the Agreement dated 10th January, 1987, as well as the Articles of Association of the Company, the ratio of the parties in the shareholding of the Company was 75% and 25% , that is, 75% to Sh. Inderjeet Bajaj and his family and 25% to Sh. S.C.Aneja and his family.

b. The case of the respondent no.2, who was the claimant before the learned Arbitrator was that while the respondent no.2 and her husband were running the Alka Cinema as per the Agreement between the

parties, they were suddenly and forcibly dispossessed from the occupation of the cinema by Sh. S.C. Aneja on the night of 2nd April, 1998. Allegedly, Sh. S.C. Aneja, with the help of an Inspector of police and other police officials broke open the locks of the building, abused and manhandled the representatives and employees of the respondent no.2 and thereby illegally occupied the cinema premises. Consequent to this aforesaid forcible occupation of the cinema by Sh. S.C. Aneja with the help of the local police, the respondent no.2 invoked the arbitration clause and filed a claim before the named Arbitrator, i.e. Sh. J.S. Sood. A notice was issued to Sh. S.C. Aneja by registered post and UPC letter dated 23rd April, 1998. Both the parties ultimately appeared before the Arbitrator on 7th August, 1999, on which date Sh. S.C. Aneja delivered the letter dated 7th August, 1999 wherein it was contended that the Agreement between the parties was forged and the appointment of the Arbitrator was the subject matter of adjudication in proceedings pending before the High Court of Delhi. The matter was accordingly adjourned from time to time till Sh. S.C. Aneja, through his counsel, filed a reply along with copy of the order dated 12th November, 1999 passed by this Court (Hon'ble Mr. Justice Mukul Mudgal) whereunder it was ordered that the arbitration proceedings would continue but no award would be passed.

c. During the pendency of the proceedings, however, Sh. S.C. Aneja died and his legal representatives (the appellants herein) were brought on

record on 13th May, 2002. None of the legal representatives appeared despite service and the case was posted for the evidence of the respondent on 26th June, 2002. In the meanwhile, the learned Arbitrator was informed that the legal representatives of the deceased Sh. S.C. Aneja were negotiating for the transfer of the property in dispute. On 6th May, 2002, in exercise of the powers vested in him under Section 17 of the Arbitration and Conciliation Act, 1996, the learned Arbitrator passed an interim measure for the protection of the subject matter of the property under reference, i.e., Alka Cinema. The appellants herein preferred an appeal against the said order in this Court being FAO No. 307/2002, which was dismissed on 31st May, 2002. Thereafter, on 22nd June, 2002 the appellants appeared through counsel and brought two witnesses. Their affidavits were not available on the record and the case was accordingly adjourned to 9th July, 2002 for cross-examination of the said witnesses and thereafter adjourned to 18th October, 2002. On 1st November, 2002, the respondent and her counsel abandoned the arbitration proceedings. On 14th /23rd August, 2003, the Sole Arbitrator made the award which was assailed by the appellants in OMP No. 491/2003.

d. The appellants in their petition under Section 34 (OMP No. 491/2003) assailed the award on the following grounds: -

“I. Because the Award given by Shri J.S. Sood the sold Arbitrator is wholly illegal as the same is based on so called Arbitration agreement which is not valid in law and thus the Award is illegal.

II. Because even otherwise neither the petitioner was given proper information and notice about the Arbitration proceedings and therefore the entire Arbitration proceedings before Shri J.S. Sood the so called Arbitrator was illegal and bad in law.

III. Because Shri Indrajeet Bajaj himself filed a suit in Civil Court Ghaziabad in the name of M/s. S.C. Aneja Theatre Pvt. Ltd. And M/s. S.C. Aneja Theatre Pvt. Ltd. was a different entity and as such was having no value and having any connection with the property of ALKA Cinema.

IV. Because in the instant case the Stand taken by the Noida Authorities clearly shows that M/s. S.C. Aneja Theaters Pvt. Ltd. was having legal entity and thus the action of the Arbitrator in giving an award covering the personal property of Shri S.C. Aneja namely Alka Cinema was purely illegal and arbitrary action of the Arbitrator.

V. Because in the instant case the Award was not only against the public policy but was also against the admission of the Opposite party as well as the record of the called forged Arbitration agreement.

VI. Because the instant case as per own showing of the respondents the company M/s. S.C. Aneja Theaters Private Limited never came into existence and it is only a paper creation and more so the property of Alka Cinema was the proprietorship property of Shri S.C. Aneja and now of M/s. Alka Cinema Pvt. Ltd.”

3. Similar grounds for impugning the judgment of the learned Single Judge have been raised in the present appeal. Mr. R.S. Suri, the learned counsel for the appellant, in the course of arguments in this appeal, vigorously contended that even solemn legal proceedings stand vitiated if they are actuated by fraud, and the present case was a clear case of fraud. The following observations made by the Supreme Court in the

matter of *S.P. Chengalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead) by L.Rs and Ors., AIR 1994 SC 853 : (1994) 1 SCC 1* were relied upon by the learned counsel in this context: -

“The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that “there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence”. The principle of “finality of litigation” cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property grabbers, tax evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who’s case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

4. Mr. Suri contended that the husband of the respondent no.2 did not sign the agreement in question and even if it is assumed that the said documents are not forged, they have no sanctity in the eyes of law as there was no valid consideration for executing the said documents. It was Mr. S.C. Aneja, who was the owner of the property and had spent a huge amount of money, and it is unthinkable that he being the sole owner would be entitled to only 25% share as alleged by the respondent

no.2. It was further submitted by Mr. Suri that the respondents had failed to explain as to how they had generated the funds and spent it over the disputed property. The appellants on the other hand, had spent a total amount of Rs. 2,19,28,635/- by taking loan from the market to clear all liabilities of the property, out of which Rs.1,05,26,385/- was paid to the Noida Authorities towards the payment of premium and penalties, and Rs.1,14,02,250/- was paid towards repayment of loan taken from Vaish Co-operative Adarsh Bank, Darya Ganj, Delhi.

5. Finally, it was contended by Mr.Suri that the Hon'ble Supreme Court had also affirmed another award dated 25th August, 1999 passed by a learned Sole Arbitrator pertaining to the same property, by judgment dated 12th December, 2008, reported in **(2009) 1 SCC 732** titled as **Kailash Rani Dang vs. Rakesh Bala Aneja and Anr.**, wherein and whereunder the appellant has to pay 50% share of the profits in running the cinema in cash as well as 50% share in the commercial plot/land to one Smt. Kailash Rani Dang. If in case the present award which is based on a forged Agreement is allowed to stand by this Court, then the appellant who has spent a huge amount on this property will be left high and dry.

6. Adverting to the first contention of the appellant that the Sole Arbitrator had no jurisdiction as the Agreement dated 5th January, 1983 was a forged Agreement. The learned Single Judge, in our opinion, relying upon the judgment of the Supreme Court in **DDA vs. R.S.**

Sharma and Company, New Delhi JT 2008 (9) SC 362, has rightly held that this court does not sit in appeal over the judgment of the Arbitrator and cannot re-appreciate the evidence for coming to a different conclusion on facts. Nevertheless, we have ourselves examined the matter and we find that the learned Arbitrator has fully considered the contention of the appellants that the Agreement is a forged one and has also considered the evidence of the two hand-writing experts in juxtaposition with the correspondence addressed by Sh. S.C. Aneja himself to the Noida Authorities and the other authorities in pursuance of the Agreements dated 5th January, 1983 and 10th January, 1987, and held both the Agreements to be valid and genuine. Reference in this regard may be made to the extracted portion given below.

“Firstly, on the point of validity of Agreement between the parties

i) The documents Exht C-1 (the agreement dated 5.1.1983) was proved by the Marginal witnesses R.K. Dhamija (CW-4) and Amar Ashok Ahuja (CW-5) and in addition to the statement of claimant. The agreement dated 10.1.1987 (Exht C-4) was proved by its marginal witnesses Rajinder Vaid (CW-7) and Naresh Mehta (CW-6) by their duly sworn affidavits Exht C-5 and C-6. **They were duly cross examined but there is no suggestion to the effect that these are forged documents. Nor the validity of these documents were questioned.** The cross examination was recorded in the question and answer forms on the request of the parties so as to avoid any ambiguity or objection of either side.

ii) **Nowhere in the cross examination, even a single question was put by the respondents disputing the agreement dated 05.01.1983 and**

agreement dated 10.1.1987. That stands proved beyond any doubt.

iii) In addition to this for further verification and to ascertain their genuineness, I was of the view that I must have the opinion of an independent hand writing expert before deciding the controversy and jurisdiction. I required both the parties to deposit the fees of hand-writing expert by means of Bank Drafts totalling to Rs.6000/- i.e. Rs.3000/- for each. The respondent did not deposit her share of Rs.3000/- which was directed by me and so the claimant was ordered to pay the complete fees.

iv) That I also sought an opinion of an independent hand-writing expert and I took the opinion of Shri S.P. Singh of M/s. R.P. Singh & Co. with regard to the disputed agreement dt. 05.01.1983 and 10.01.1987 with the admitted signatures on the Vakalatnama and Memorandum of Association. **The earlier reports of Shri B. Lal was also given to Shri S.P. Singh, hand-writing expert. He gave the opinion which is on the record in which he was of the opinion that the signature of S.C. Aneja on Vakalatnama and in the Agreement dt. 05.01.1983 and 10.01.1987 are of the same person.** The Expert rejected the report of Shri B. Lal on the ground that the same is not based on the original signatures and as such it has inherent and basic defect and cannot be accepted. Because the material i.e. photocopy is un-fit for comparison and as such is not fit to form any opinion. I also compared the signatures on the Agreements with the admitted signature on Vakalatnama with the magnifying glass. I am also of the considered view that the signature on the Vakalatnama are same as on the Agreements dated 05.01.1983 and 10.01.87 (Exht C-1 and Exht C-4).

The respondent did not produce the hand writing expert Sh. B. Lal for cross examination nor the respondent opted to cross examine the hand writing expert Sh. S.P. Singh despite several opportunities. Seeing the testimony of the witnesses and the well considered opinion of the hand-writing expert as well as of my own by minutely observation (sic.) the signature's on these

documents are that of S.C. Aneja. So I am of the considered view that the agreement Exht C-1 and C-4 (i.e. agreements dt. 5.1.1983 and 10.1.87) are the genuine and valid agreements and they were duly executed between the parties and were duly acted upon upto 1998.”

7. From the aforesaid, in our view, it is clear that the plea of forgery and fraud is being raised by the appellants herein only with a view to divest the respondent no.2 from the fruits of the award. Even otherwise, it is trite law that on the basis of the evidence recorded by the Arbitrator this Court cannot form an opinion different from that formed by the Arbitrator. This ground taken by the appellant for assailing the award is, therefore, liable to be rejected and has been rightly rejected by the learned Single Judge.

8. The second ground taken by the appellants, on the face of the award is baseless, in as much as it is apparent from the record that Sh. S.C. Aneja appeared before the learned Arbitrator and even filed counter claim and all through participated in the proceedings. On the death of Sh. S.C. Aneja, the appellants as his legal representatives were impleaded by the learned Arbitrator on 13th May, 2002 and they chose to abandon the proceedings on 1st November, 2002, when it became crystal clear to them that the balance was heavily tilted against them. The following observations made by the learned Arbitrator are apposite in this context: -

“The respondent from the very inception had been avoiding the arbitral proceedings. They were

firstly represented by M/s. Sen and Sen Advocates through their counsel Ms. Renu Sehgal. During the proceedings, Sh. S.C. Aneja- respondent died leaving behind a widow Smt. Rakesh Bala, mother, one son and one daughter. Notices were issued to them and they were being represented by Sh. S.K. Sharma, Advocate, who contested the proceedings and produced the witnesses upto 18th October, 2002 and thereafter, Sh. Rakesh Bala and her counsel abandoned the proceedings.”

9. As regards the third ground raised by the appellants in their petition under Section 34, this ground is wholly irrelevant, inasmuch as the filing of a suit by Sh. Inderjeet Bajaj in Ghaziabad in the name of M/s. S.C. Aneja Theatres Pvt. Ltd. has no bearing on the award passed in the instant case.

10. The fourth objection taken by the appellants in their petition under Section 34 that Alka Cinema being the personal property of Sh. S.C. Aneja could not have been the subject matter of the award, is again wholly misconceived. This is clear from a bare reading of the Agreement dated 10th January, 1987 between Sh. Inderjeet Bajaj and Sh. S.C. Aneja, the relevant portion of which reads as under: -

“WHEREAS by means of an agreement dated 5.1.1983 and made between Smt. Sushil Bajaj wife of the FINANCIER Shri Inderjit Bajaj and the ALLOTTEE Shri S.C.Aneja, the ALLOTTEE had agreed to collaborate with Smt. Sushil Bajaj wife of the Financier for the purpose of construction and running of Touring Cinema and on which Smt. Sushil Bajaj wife of Shri Inderjit Bajaj had already spent a sum of Rs.20 lacs and had constructed a temporary cinema which is being run by her.

WHEREAS a proposal for converting the temporary allotment of cinema into a regular

allotment of 2500 sq. meters for a consideration of Rs.26 lacs plus interest and penalties, amounting to Rs.30 lacs in total, was sent to Noida Authority on 8.11.1985, which allotment was done by the Authority on 18.2.1986 this time in the name of S.C.ANEJA & CO. and not S.C.Aneja alone, so as to enable the formation of the PRIVATE LIMITED COMPANY, with Shri Inderjit Bajaj as Managing Director.

AND WHEREAS Shri Inderjit Bajaj and his wife Smt. Sushil Bajaj had further invested & sum of Rs.30 lacs for payment to the Authority in the following manner:

- a) Rs.10 lacs by various demand drafts.
- b) Rs.16 lacs by a bank Guarantee of VAISH CO-OPERATIVE BANK LTD. Daryaganj, New Delhi, given at the instance of the cousin of Shri Inderjit Bajaj, who mortgaged his property for the purpose, to ensure the payment of Rs.1 lac per month.
- c) About Rs.4 lacs by demand drafts towards interest etc.

AND WHEREAS various meetings and discussion were held between the proposed managing Director and Mrs.Uma Pillai, the then C.E.O. of Noida Authority, who also advised for the change of the Constitution of the company from S.C.Aneja & Co. to PRIVATE LIMITED COMPANY.

AND WHEREAS to facilitate the requirements of the Noida Authorities, Shri S.C.Aneja had already written to various Noida authorities agreeing to the formation of the PRIVATE LIMITED COMPANY.

NOW THIS AGREEMENT WITNESSETH

That the formation of the PRIVATE LIMITED COMPANY shall henceforth be expedited which will include the name of Shri Inderjit Bajaj as the Managing Director and the ratio of the parties in the share-holdings of the proposed company will be 75% & 25% i.e. 75% to Shri Inderjit Bajaj and his family and 25% to Shri S.C. Aneja and his family.

That it is further agreed and understood by and between the parties that terms and conditions as incorporated in the agreement dated 5.1.1983 made between Smt. Sushil Bajaj and Sh. S.C. Aneja shall remain intact.

That it is further agreed and understood that the possession will continue to remain with Smt. Sushil Bajaj and the Party of the SECOND PART Shri S.C. Aneja will under no circumstances whatsoever, mortgage or part with the possession of a part or whole in any manner, encumber the property and all terms and conditions as per agreement dated 5.1.1983 made with him and Smt. Sushil Bajaj shall remain intact and shall form part of this agreement wherever feasible.”

11. Apart from the above, as noted by the learned Arbitrator, there exists on record the uncontroverted evidence to show that in terms of the Collaboration Agreement dated 10th January, 1987, the respondent no.2 and her husband Sh. Inderjeet Bajaj had been managing the affairs of the Cinema and were in control and possession thereof, including the deposit challans of Entertainment Tax of Alka Cinema in question (Ex.C-1 to C-77), the Daily Collection Reports of Alka Cinema (Ex. CW-222 to CW-232), the Agreements with various film distributors for exhibiting films (Ex. CW-1/78 to CW-1/261), the receipts of various art press for printing cinema tickets (Ex.CW-1/262 to CW-1/308), the challans of deposit of Fire Fighting and Generator Sets (Ex. CW-1/309 to CW-1/313). There is also on record a letter dated 6th April, 1998 addressed to the Hon’ble Chief Minister, U.P. , written by M/s. S.C. Aneya Theatres Pvt. Ltd., signed by Sh.Inderjeet Bajaj, which shows that Sh. Inderjeet Bajaj had been running Alka Cinema since its

establishment in 1983 and he had invested huge amount in the cinema, whereas Sh. S.C. Aneja was only a licensee of the plot. Further there is on record the complaint lodged with the Home Minister, Govt. of India, Director Civil Vigilance Commission, D.I.G. Vigilance, Govt. of U.P and other complaints dated 4th April, 1998 by Sh. Inderjeet Bajaj to the same effect duly supported by Ex. CW-1/320 which is the copy of Memorandum and Articles of Association of M/s. S.C. Aneja Theatres Pvt. Ltd., a certified copy of Form 18, (Ex. CW-1/322) and a certified copy of the Chartered Accountant's Declaration, (Ex. CW-1/323).

12. Apart from the above documentary evidence, the learned arbitrator has relied upon the record produced by the Noida Authorities bearing out the transfer of Alka Cinema in the name of M/s. S.C. Aneja Theatres Pvt. Ltd., which is unchallenged on record, including a letter written by Sh. S.C. Aneja himself to the Noida Authorities, stating therein that he had no objection if the licence in the name of "S.C. Aneja and Company" was transferred in the name of "M/s. S.C. Aneja Theatres Pvt. Ltd." since the constitution of M/s. S.C. Aneja and Company had been changed to M/s. S.C. Aneja Theatres Pvt. Ltd. As noted by the arbitrator all the aforesaid documents were put to the respondent witness RW5 Sh. Sushil Kumar in his testimony, who admitted the documents. Significantly also, the appellants led no evidence to disapprove the voluminous evidence placed on record by the respondent-claimant.

13. Adverting next to the fifth objection taken before the learned Single Judge that the award was not only against public policy but was also against the admission of the opposite party as well as the records of the forged Arbitration Agreement, a perusal of the order of the learned Single Judge shows that during arguments it was urged before the learned Single Judge that since the licence of the plot was granted in favour of Sh. S.C. Aneja on the condition that it could not be further assigned, the agreement dated 5th January, 1983 itself was void and contrary to public policy, and the award is, therefore liable to be set aside. It is further borne out from the judgment of the learned Single Judge that reliance in this regard was placed by the learned counsel for the appellants upon the judgment of this Court in the case of **Ocean Investment and Finance Pvt. Ltd. and others vs. Union of India** 40 (1990) DLT 225. Having perused the said judgment, we are in agreement with the learned Single Judge that this judgment would not be applicable to the award of the Arbitrator in the instant case since the Arbitrator has not prohibited the Noida Authorities from taking action against any party for violation of the terms of the licence. The Arbitrator has only adjudicated upon the dispute between the appellants and the respondents in respect of a commercial transaction entered into between the two. The award made by the learned Arbitrator is no bar against the Noida Authority in instituting proceedings for violation of the terms of the licence allotted by it to late Sh. S.C. Aneja, which stood

subsequently transferred to M/s. Aneja Theatres Pvt. Ltd. Moreover, as noted above, in the instant case a communication had been addressed by Sh.S.C. Aneja himself to the Noida Authorities for affecting the transfer of the licence in the name of M/s. S.C. Aneja Theatres Pvt. Ltd. There is nothing on record to show that the said permission was declined by the concerned authorities. This brings us to the sixth objection taken to the award that M/s. S.C. Aneja Theatres Pvt. Ltd. is only a paper creation and that the property of Alka Cinema was the proprietorship property of Sh. S.C. Aneja and now of M/s. S.C. Aneja Theatres Pvt. Ltd.” While dealing with this objection, in our opinion, it has been rightly observed by the learned Single Judge that the said plea taken by the appellants in ground no.6 is at complete variance to the plea taken by the appellants in ground no.4. In ground no.4, it is stated that M/s. S.C. Aneja Theatres Pvt. Ltd. is a separate legal entity while the plea taken in this ground is that it is a paper creation. Both pleas are repugnant to each other.

14. As noted above, during arguments in this appeal, the counsel for the appellants submitted that even assuming the documents are not forged, they have no sanctity in the eyes of law, as there was no valid consideration for their execution.

15. The further contention raised by the learned counsel for the appellant was that the respondents have not explained how they had generated such huge amounts of money, whereas the appellants had produced voluminous documents to show her bonafides as to how and

from where she and her husband had arranged the funds. These contentions are altogether fortified by the record of the arbitral proceedings and the findings of the learned Arbitrator to the effect that the respondent no.2 and her husband had invested about Rs. 50 lakhs in Alka Cinema for the construction as well as running of the Cinema and this stands duly proved by the marginal witnesses as well as the other witnesses. The learned Arbitrator has gone on to record as under: -

“But interestingly it is to be noted that the respondent despite of his claim of investment and denying the finance of the claimant and her husband, he has not brought an iota of evidence of his expenditure on any count regarding payment to the Noida Authority and for the construction and payment to the contractors who were undertaking the work of construction nor the respondent has brought any source of his investment of finance for all the required payments to the Noida Authority or to the others when the agreement dated 5.1.1983 (Exht C-1) clearly came into existence and because of his complete incapacity he entered into this agreement with the claimant for the investment of finance. It was the heavy onus on him to prove this factum of finance and to refute the claim of the claimant. Nor he could bring anything in evidence that why the possession and control remained with the claimant from 1983 to April 1998. The respondent completely stands falsified of having spent even a single penny in this project while the claimant has proved this factum of investment by cogent evidence of finance through bank and by oral testimony of the witnesses and as well as by the marginal witnesses of agreements C1 and C4 beyond any doubt. He had the immense resources to invest. Under the circumstances I am of the considered view shall the claimant and her husband invested the entire finance in construction and made payment to the Noida Authority and that also stands established by the voluminous documents brought by the witness of Noida Authority.”

16. The contention of Mr. Suri, the learned counsel for the appellants that if the present award is allowed to stand along with the award dated 25th August, 1990 passed by another Arbitrator pertaining to the same property wherein the appellant has to pay 50% of the profits in running the cinema in cash as well as 50% share in commercial plot/land to one Smt. Kailash Rani Dang, the appellant will be left high and dry, is also devoid of any substance. A bare glance at the said award, a copy whereof was handed over in the Court during arguments, is enough to show that the same pertains to a family arrangement/partnership deed entered into between Late Sh. S.C. Aneja and Smt. Kailash Rani Dang, and has no bearing on the award made by the learned Arbitrator in the instant case. Moreover, the said family arrangement is stated to have been entered into on 21st July, 1998 during the pendency of the arbitration proceedings and could possibly be a subterfuge adopted by the appellants herein for avoiding the consequences of the award in the instant case. In any case, the said family arrangement/partnership agreement was entered into much after the Collaboration Agreement dated 5th January, 1983 and the Agreement dated 10th January, 1987 between Sh. S.C. Aneja and the respondents, and also after the M/s. S.C. Aneja Theatres Pvt. Ltd. had been incorporated on 25th September, 1987 pursuant to the Agreement dated 10th January, 1987.

17. For all the aforesaid reasons, we find no infirmity or illegality in the judgment and order of the learned Single Judge impugned in the present appeal. The appellants have not been able to show a single ground for assailing the award. There is no merit in the appeal and the same is accordingly dismissed. The application for stay also stands disposed of.

**REVA KHETRAPAL
(JUDGE)**

**A.K. SIKRI
(JUDGE)**

July 30, 2010
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