

3. Mr.Lad, learned counsel appearing for the petitioner invited my attention to the floater policy annexed at Ex.A to the petition and also certain findings

rendered by the learned arbitrator in the impugned award. It is contended by the learned counsel that the petitioner was an agent of four companies i.e. Sun Pharmaceuticals Ind.Ltd., M/s.M.J.Pharmaceuticals Ltd., M/s.Unimed Technologies Ltd. and M/s.Sun Pharmaceutical Industries. It is submitted that the learned arbitrator could not have considered the cost price of the goods in possession of these four companies. He submits that the impugned award is contrary to the special condition of the floater policy dated 1st April, 2005 and on that ground the award is in conflict with public policy and shall be set aside.

4. I have perused the floater policy dated 1st April, 2005 and the conditions mentioned therein including the special condition. I have also perused the impugned award rendered by the learned arbitrator. A perusal of the award indicates that the learned arbitrator has dealt with the special condition which is relied upon by the learned counsel for the petitioner in the impugned award and has interpreted the said policy. It is held by the learned arbitrator that the respondent herein had purchased the goods from the manufacturers and had sold them to the retailers at which the respondent has received 6% discount from the manufacturers. It is held that the cost price of the purchaser was equal to the selling price of the manufacturers/vendors. The learned arbitrator has also considered the accounting standards which defines cost price or cost of purchase in the impugned award. It is held by the learned arbitrator that the policy in question admittedly nowhere uses the term physical possession. The policy clearly contemplated that the insured parties were to maintain audited stock registers so as to enable the loss to be computed on the basis of cost price as reflected in the stock register of the concerned insured.

5. A perusal of the impugned award indicates that the learned arbitrator has

also considered the oral evidence led by both the parties. The learned arbitrator has rendered a finding of fact that the respondent herein was the owner of the goods. This evidence of the respondent was not demolished in the cross examination. The learned arbitrator interpreted the terms of the policy and has held that the policy did not provide that there should be a physical movement of stock from the manufacturer to the respondent herein as a pre-condition for the respondent to make a claim provided that the respondent satisfies from the stock registers and other supporting documents that it had purchased the goods in question and was in control thereof.

6. The learned arbitrator has also considered the evidence of the witness examined by the petitioner who had admitted that under the floater policy claim was to be adjudicated only on the basis of stock statements. The respondent herein had duly furnished all the stock statement including the most relevant being auditor certified stock statement.

7. In my view the learned arbitrator interpreted the terms of the policy and has appreciated the documentary as well as oral evidence made by both the parties and has rendered various findings of fact. In my view the interpretation of policy by the learned arbitrator is a possible interpretation which cannot be substituted by another interpretation by this court. The findings of fact rendered by the learned arbitrator are not perverse and thus cannot be interfered with by this court under section 34 of the Arbitration and Conciliation Act, 1996.

8. Mr.Lad, learned counsel for the petitioner then submits that the respondent had accepted the sum of Rs.76,61,065/- in full and final settlement and had signed a discharge voucher in favour of the petitioner and thus the claims made by the

respondent before the learned arbitrator were not arbitrable. Learned counsel invited my attention to the findings rendered by the learned arbitrator on this issue in paragraph 16 of the impugned award.

9. Mr.Cama, learned counsel appearing for the respondent on the other hand invited my attention to the findings also rendered in paragraph 41 of the impugned award. Learned counsel supported the findings rendered by the learned arbitrator and the interpretation of the learned arbitrator in the impugned award and submits that no interference with the award is warranted. Insofar as issue of record and satisfaction raised by Mr.Lad, learned counsel for the petitioner is concerned, a perusal of the award clearly indicates that the petitioner had agitated this issue also while opposing the application filed by the respondent under section 11(6) of the Arbitration and Conciliation Act and the said contention was negated by the learned designate judge. A perusal of the award clearly indicates that the learned arbitrator has considered the correspondence exchanged between the parties in which the respondent had categorically informed the petitioner that the said payment was accepted by the respondent under protest. The learned arbitrator has appreciated the evidence led by both the parties on this issue and has rendered a findings of facts which is not perverse and no interference with these findings of fact is thus warranted.

10. In my view there is no merit in any of the submission of the learned counsel for the petitioner. The impugned award is a well reasoned award and is rendered after considering the pleadings, documents and evidence and does not require any interference under section 34. I, therefore, pass the following order :-

- (a) Arbitration petition is dismissed.
- (b) No order as to costs.

[R.D. DHANUKA, J.]