IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.629 OF 2009

1. Aidek Tourism Services Private Limited)
A private limited company incorporated)
under the Companies Act, 1956 having its)
registered office at 12, Kalindas Udyog)
Bhavan, Century Bazar Lane, Prabhadevi,)
Mumbai - 400 025.)

2. Kamal Kedia)
Director of petitioner no.1 residing at)
32, Kedia Apartment, 29F Dongershi Road,)
Malabar Hill, Mumbai – 400 006.) .. Petitioners

Vs.

Aditya Birla Nuvo Ltd., a public limited)
company incorporated under the Companies)
Act, 1956 having its registered office at)
Apeejay, 2nd flr., Shahid Bhagat Singh Road)
Fort, Mumbai - 400 001.) .. Respondent

Mr.M.S.Bhandari i/by Ms. Pranjali Bhandari for the petitioners.
Mr.J.P. Sen, Senior Advocate a/w Mr. Cyrus Bharucha a/w Mr. D.J. Kakalia a/w Ms. Bhavna Singh a/w Mr.Paresh Patkar i/by M/s. Mulla & Mulla and C.B.C. For the respondent.

CORAM : R.D. DHANUKA, J.
Reserved on : 10th March 2015
Pronounced on : 8th April 2015

JUDGMENT :-

. By this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “the said Arbitration Act), the petitioners have impugned the arbitral award dated 23rd March 2009 as modified by an order dated 22nd May 2009 and also additional award dated 30th November 2013 and corrected by an order dated 9th January

2014. Some of the relevant facts for the purpose of deciding this petition are as under :

2. The petitioner no.1 was formerly known as Ramniranjan Kedia Tourism Services Pvt. Ltd. The name of the petitioner no.1 was changed to "Aidek Tourism Services Private Limited" with effect from 1st December 2010. The petitioners herein were the respondents in the arbitral proceedings whereas one M/s.Birla Global Asset Finance Ltd. (hereinafter referred to "the said Finance Co.") was the original claimant in the arbitral proceedings.

3. On or about 15th December 1995, the petitioner no.1 entered into a hire purchase agreement with the said Finance Co. for taking 1 Cielo car on hire purchase basis on the terms and conditions recorded therein. The total agreement value was Rs.7,07,000/- including interest which was payable in 36 monthly installment of Rs.79,650/- per month from 11th February 1996 to 11th January 1999. The petitioner no.1 committed default in making payment as per the hire purchase agreement.

4. The said Finance Co. terminated the agreement vide its advocate's letter dated 28th July 2000. On 19th March 2000, the said Finance Co. thereafter advertised for sale of repossessed vehicles from the petitioner no.1. The petitioner no.1 objected to the said advertisement by its advocate's letter dated 27th September 2000. The said Finance Co. claimed a sum of Rs.5,31,233/- as on 5th April 2001 under the Hire Purchase Agreement along with further interest @36% p.a. on the sum of Rs.2,16,161/- with effect from 5th April 2001 till payment and/or realization.

5. On 24th August 2001, the petitioner no.1 through its advocate addressed a letter to the Indian Merchants Chamber nominating a retired Chief Justice of the Supreme Court as an arbitrator, without prejudice to the rights and contentions of the petitioner no.1 that there was no claim and the arbitration agreement did not exist. The said Finance Co. filed a statement of claim before the learned arbitrator appointed by the Indian Merchants Chamber. The petitioner no.1 filed a written statement and also counter claim against the said Finance Co. on 6th October 2001. The said Finance Co. filed a reply to the counter claim of the petitioner no.1.

6. It is the case of the petitioner that during the period between 1st February 2002 and June 2002, the said Finance Co. had given inspection of various alleged hire purchase agreements and furnished copies thereof to the petitioners. The petitioners came to know that there were two alleged Hire Purchase Agreements dated 15th December 1995 and 11th December 1995 respectively and both were numbered as 96296.

7. The petitioner no.1 filed an application for seeking amendment to its written statement before the learned arbitrator to bring on record the factum of fraud alleged to have been committed by the said Finance Co. The learned arbitrator allowed the said application for amendment by an order dated 29th March 2003. The learned arbitrator also granted liberty to the respondents to file supplementary pleadings to the said amended portion of the written statement.

8. During the pendency of the arbitration proceedings, the erstwhile learned arbitrator appointed by the Indian Merchants Chamber expressed his inability to continue with the arbitration petition and

resigned. The Indian Merchants Chamber thereafter appointed a former Judge of this Court as a sole arbitrator. The learned arbitrator framed 14 issues. Before the learned arbitrator, the petitioners raised an issue of jurisdiction under Section 16 (1) of the Arbitration and Conciliation Act, 1996.

9. The said Finance Co. led oral evidence of Mr.Pawan Gupta, Mr. Manoj R.Parvatkar and Mr.K.G. Ajmera who were cross-examined on behalf of the petitioners. The petitioners examined Mr.Vishal Kedia, Director of the petitioner no.1 and Mr. Anil Kumar Mathur. Both the witnesses examined by the petitioners were cross-examined by the respondent. Both the parties tendered various documents during the course of evidence. The objection raised by the petitioners is that the Hire Purchase Agreement was inadequately stamped. The said agreement was initially marked as 'X-4' for identification. Pursuant to the order passed by the learned arbitrator on 29th April 2004, the said agreement was forwarded by the Indian Merchants Chamber to the Superintendent of Stamps, Old Custom House, Mumbai for adjudication of the correct stamp duty. The said agreement was accordingly adjudicated by the Superintendent of Stamp's office on 3rd December 2005. The respondent accordingly paid the deficit stamp duty and penalty in accordance with the order of adjudication passed by the Superintendent of Stamp's office on 12th January 2007. The said document was accordingly marked as exhibit by the learned arbitrator in the impugned award.

10. On 23rd March, 2009 the learned arbitrator rendered an award thereby directing the petitioners to jointly and severally pay to the

respondents a sum of Rs.5,31,233/- together with interest on principal sum of Rs.2,16,161/- to be calculated at the rate of 12% per annum from 5th April 2001 till payment and also directed to handover possession of the Cielo car to the respondent under the said agreement dated 15th December, 1995 and the schedule annexed thereto. The learned arbitrator rejected the counter claims filed by the petitioner no.1 for want of jurisdiction. The learned arbitrator directed the petitioners to pay cost of arbitration quantified at Rs.2,58,317/-.

11. The petitioners impugned the said arbitral award dated 23rd March, 2009 by filing this petition. During the pendency of this arbitration petition, the petitioners applied for amendment of the arbitration petition. By an order dated 25th March, 2011, this court allowed the chamber summons filed by the petitioners thereby permitting the petitioners to amend the arbitration petition.

12. By an order dated 18th April, 2013, this court remanded the matter to the learned arbitrator with the limited purpose of consideration of the averments made by the petitioners made in the paragraphs 7 to 10 of the order dated 18th April, 2013 and to give an additional award after giving an opportunity to both parties and if necessary by framing additional issues. Pursuant to the said order passed by this court, the learned arbitrator after hearing both the parties rendered an additional award on 30th November, 2013 holding that the original claimant i.e. M/s.Birla Global Finance Limited, the said finance company did not cease to have any right, title or interest to initiate arbitration proceedings against the petitioners herein and had locus to invoke and initiate

arbitration proceedings against the petitioners. The learned arbitrator also rendered a finding that the said finance company had not played any fraud on the arbitral tribunal by not disclosing of the said agreement dated 29th March, 2001 between the said finance company and the respondent herein. It is also held that the arbitral proceedings were neither nullity nor void ab initio nor without jurisdiction.

13. The respondent herein thereafter made an application under section 33(1) (a) of the Arbitration Act for correction of the typographical error in the said award. By an order dated 9th January, 2014, the learned arbitrator corrected the typographical error crept in paragraph (22) of the supplementary award. The petitioners thereafter impugned the said additional award dated 30th November, 2013 and also the corrected award dated 9th January, 2014 by carrying out amendment in the arbitration petition.

14. Mr.Bhandari, learned counsel for the petitioners submits that transaction if any in respect of the said Cielo car was between the petitioners and the said finance company and not with the respondent herein. He submits that under an agreement dated 29th March, 2001 between the finance company and the respondent no.1 herein all the assets of the said finance company had been transferred to the respondent herein. The name of Birla Global Asset Finance Company Limited was changed to Birla Global Finance Company Limited and was subsequently changed to Aditya Birla Nuvo Limited. He submits that the said finance company ceased to exist w.e.f. 30th June, 2006.

15. It is submitted that even after order of amalgamation passed by this court, the original claimant continued to represent itself even before Supreme Court and thus committed fraud upon the court, the petitioners and the learned arbitrator. He submits that there was a complete transfer lock stock barrel of all the assets, properties excluding the liabilities of the said finance company in favour of the respondent. After such transaction, the original claimant could not have even lodged their claims against the petitioners. He invited my attention to the definition of assets under clause 1.1.4 and Schedule I and would submit that the expression all assets is not limited to the assets described in the schedule but all the assets which were held by the original claimant. He submits that merely because the transaction entered into with the petitioners was not mentioned in the schedule in view of the definition of the assets, all the assets were transferred or deemed to have been transferred to the assignee.

16. Learned counsel for the petitioners placed reliance on the definition of the bad debts under clause 1.1.6 and the definition of business under clause 1.1.7 of the agreement. Reliance is also placed on the definition of employee under clause 1.1.11. He submits that all the employees of the original claimant were transferred to the assignee including Mr.Manoj Parwatkar who had signed the statement of claim on behalf of the original claimant claiming to be the Manager and Mr.Pawan Gupta who also represented the original claimant in the arbitration proceedings. He states that both these employees of the erstwhile company could not have represented the original claimant as they were no longer employees of the original claimant and thus the proceedings

filed by them were without any authority. Thus no award thereon could have been passed by the learned arbitrator. He submits that under clause 3.1 of the agreement between the finance company and the respondent, all the assets listed in the account would include the account of the petitioners. Since the respondent did not produce the account of the respondent deliberately, the learned arbitrator ought to have drawn adverse inference against the respondent.

17. Learned counsel for the petitioners then submits that though the petitioners did not ask the question in cross examination on the entire annual report, the learned arbitrator has marked complete annual report as exhibit in violation of principles of natural justice. The learned arbitrator could not have relied upon all the other parts of the annual report on which there was no cross examination. He submits that the respondent had deliberately issued notice to produce the correspondence with the income tax department by the original claimant to a wrong officer. The learned arbitrator took a photocopy of the said document on record in evidence though the same was disputed by the petitioners. The said document relied upon by the learned arbitrator in the impugned award was a fabricated document. The respondent did not produce the best evidence. The respondent though did not file any proceedings under section 27 of the Arbitration Act for production of those documents by issuing a summons to the concerned income tax department to produce documents, the learned arbitrator relied upon the said notice to produce filed by the respondent on the record of the proceedings and considered such unproved and disputed documents.

18. Learned counsel for the petitioners placed reliance on the assessment order passed by the income tax officer and would submit that though the learned income tax officer had referred to various other correspondence entered into between the original claimant and the income tax officer in the said order, there was no reference to any such alleged notice issued by the original claimant for production of the document. The learned arbitrator completely overlooked this fact though the petitioners had strongly relied upon the said assessment order at the time of hearing before the learned arbitrator. No original acknowledgement of the said letter was produced by the respondent before the learned arbitrator.

19. Learned counsel submits that the learned arbitrator did not mark the papers and proceedings filed by the petitioners in respect of the criminal investigation carried out by the police on the complaint made by the petitioners as exhibit. He submits that the learned arbitrator did not allow the petitioners to call upon the respondent to produce the original of the letter dated 16^{th} February, 2004 alleged to have been addressed by the respondent to the income tax officer. He submits that the respondent failed to produce any document to prove as to whether the account of the petitioners was treated as bad debt and was written of and thus not transferred to the assignee. The respondent did not produce any accounting entry in that regard.

20. Learned counsel for the petitioners submits that the learned arbitrator has ignored the evidence led by the petitioners and also the contentions raised in the written statement as well as at the time of oral arguments. He submits that the findings rendered by the learned

arbitrator are totally perverse. The petitioners had disputed the existence of the hire purchase transaction.

21. Learned counsel for the petitioners submits that only four cars were subject matter of the transaction under the separate agreement and not five cars as alleged by the respondent. The transaction in respect of the fifth car never took place. The respondent did not produce any evidence before the learned arbitrator in respect of the fifth car which was subject matter of this arbitration proceedings. The finance in respect of the fifth car and/or consideration if any, paid by the respondent in respect of the said fifth car to the dealer of the vehicle was not proved by the respondent. In so far as other four cars are concerned, the respondent had taken a forcible possession thereof from the petitioners. Learned counsel in support of this submission invited my attention to the alleged agreement for hire purchase dated 15th December, 1995 and would submit that even the said agreement would indicate that no details of the Cielo cars were mentioned in the agreement.

22. He submits that the petitioners had signed several agreements in blank. Learned counsel submits that the respondent had taken several postdated cheques from the petitioners in respect of several transactions carried out between the petitioners and the original claimant and thus the petitioners did not notice that the respondent was appropriating those payment in respect of the alleged transaction which is subject matter of this proceedings. He submits that though the petitioners were not made liable to make payment, the petitioners had made proposal for settlement without prejudice to their rights and contentions and had

addressed a letter dated 11th May, 1999. The said letter of 11th May, 1999 was addressed in continuity with the other letters addressed prior thereto which were also without prejudice to the rights and contention of the petitioners. He submits that thus the said letter dated 11th May, 1999 was also without prejudice to the rights and contentions of the petitioners and could not have been marked as exhibit by the learned arbitrator and could not have been considered for the purpose of alleged acknowledgement of the liability on the part of the petitioners. He submits that the learned arbitrator has exhibited the said document in violation of principles of natural justice and against principles of Evidence Act. Learned counsel submits that the petitioners had never received the said fifth Cielo car but inadvertently continued to make payment for all the five vehicles. There were transaction for 31 vehicles entered into between the petitioners and the original claimant. In support of this submission, learned counsel placed reliance on the letter dated 15th February, 1996 which was addressed by the respondent to the petitioners and it is submitted that the petitioners never took delivery of the said vehicle at all and thus not liable to make any payment to the respondent either under Hire Purchase Agreement or under any other writing.

23. Learned counsel invited my attention to some portion of the oral evidence led by both parties and would submit that though the witness examined by the respondent could not produce any proof of giving any finance to the petitioners or delivery of the Cielo car, the learned arbitrator has overlooked the oral evidence led by the respondent and allowed the said claim in toto.

24. Learned counsel for the petitioners then submits that the notice under section 21 of the Arbitration Act dated 13th July, 2001 issued by the respondent was received only by the petitioner no.1. The said notice was issued by the Indian Merchant Chamber. No such notice was issued to the petitioner no.2 who was impleaded as a guarantor. He submits that the statement of claim was filed by the respondent on 14th July, 2001. The agreement was terminated on 28th July, 2000. The letter dated 11th May, 1999 which was addressed by the petitioners to the respondent came in evidence for the first time in the year 2003. The learned arbitrator could not have considered the balance-sheet of the petitioner no.1 as an acknowledgement of the liabilities. He submits that in so far as petitioner no.2 is concerned, limitation would stop only when the statement of claim was served upon the petitioner no.2 which was beyond the period of three years from the date of the alleged liability of the petitioner no.2. He submits that the issue of limitation has to be pleaded and proved. There was no pleadings filed by the respondent as to how the limitation was extended in so far as petitioner no.2 is concerned.

25. Learned counsel for the petitioners then submits that since there was no application made by the original claimant under Order 22 Rule 3 or it has no locus for bringing the assignee on record in the arbitration proceedings. Arbitration proceedings thus stood abated. The original claimant did not make any application for setting aside the abatement. The learned arbitrator rejected this submission of the petitioners contrary to the provisions under Order 22 Rule 3 of the Code of Civil Procedure. The entire proceedings were thus nullity. In support of this submission, learned counsel for the petitioners placed reliance on

the judgments of various court. Mr.Bhandari, learned counsel also placed reliance on the judgments of Supreme Court, this court and various other courts in support of various propositions and rendered compilation of such judgments for consideration.

26. Mr.J.P. Sen, learned senior counsel appearing for the respondent on the other hand submits that no ground is made out by the petitioners under section 34 of the Arbitration & Conciliation Act, 1996 in the present petition. The petitioners seek re-appreciation of evidence and interference with findings of fact which is not permissible. He invited my attention to the relevant documents, oral evidence and pleadings of both the parties in support of his submissions.

27. It is submitted that the respondent had forwarded Hire Purchase Agreement to the petitioners on 11th November, 1997. Five vehicles were to be supplied to the petitioners. Out of five vehicles, four vehicles were hypothecated in favour of the petitioners under one agreement and were to be supplied at Delhi, whereas one Cielo car was to be supplied at Mumbai. The parties accordingly entered into two separate agreement i.e. one in respect of four vehicles and another in respect of Cielo car to be delivered at Mumbai. He invited my attention to a letter dated 11th May, 1999 addressed by the petitioners to the respondent. Both the agreements however, were given the same agreement numbers. He submits that the petitioners were liable to pay amounts under the agreement in respect of one Cielo car in installments. Insofar as the agreement in respect of other four vehicles is concerned, the petitioners had committed default and thus the respondent repossessed those vehicles. No arbitration proceedings have been filed by the

respondent in respect of the said vehicles. Since the petitioners committed default in respect of the agreement in question, the respondent invoked arbitration agreement.

28. learned senior counsel invited my attention to the affidavit of evidence filed by Mr.Ajmera, who was examined as one of the witness by the respondent. He submits that the respondent had maintained separate accounts in respect of five vehicles. The installment amount as well as interest was also worked out accordingly. The petitioners were paying a consolidated cheque of Rs.84,045/- in respect of all five vehicles. It is however, not in dispute that separate accounts in respect of all five vehicles were maintained. EMI was divided in five accounts.

29. Learned senior counsel submits that the petitioners were taking delivery from the dealer and used to give the details of chasis number, engine number, registration number etc. to the respondent upon taking such delivery. Such details used to be filled in later at the time of execution of the agreement. Insofar as the Cielo car which was subject matter of this proceeding is concerned, the petitioners did not give any details of the chasis number, registration number etc. to the respondent. The agreement thus signed between the parties did not contain the details of the chasis number and registration number etc. of the said vehicle.

30. Learned senior counsel invited my attention to the oral evidence led by the petitioners, written statement, including the amended written statement and would submit that at no point of time the petitioners raised a plea that the said Cielo car did not exist. Only after the evidence of the respondent was closed, the petitioners raised such

false allegation in evidence for the first time that the Cielo car did not exist. The petitioners led evidence to that effect for the first time without any pleadings, which was not permissible.

31. Learned senior counsel invited my attention to the evidence led by petitioner No.2 and in particular his cross-examination. It is submitted that the petitioners had paid 25 installments in respect of five vehicles. The petitioners have not returned the allotment card in respect of the vehicle in question. The petitioners also did not produce any receipt of the delivery of allotment card. He submits that the witness examined by the petitioners admitted that the petitioners used to follow the procedure of taking delivery of vehicle directly from the dealer. He submits that the petitioners have taken advantage of the non-disclosure of the details of the Cielo car to the respondent by raising a false plea that the said car was never delivered to the petitioners.

32. Learned senior counsel submits that the petitioners themselves have referred to the agreement number in their proposal dated 11th May, 2009 and the details of the EMI etc. The said letter clearly shows admission of the obligations of the petitioner. The number of installments which the petitioners had agreed to pay were also mentioned therein. The petitioners however, did not make any payment after 11th May, 2009. Learned senior counsel invited my attention to the findings referred to by the learned arbitrator on this issue. The learned arbitrator held that there was no plea that Cielo car did not exist raised by the petitioners in the pleadings.

33. Learned senior counsel submits that the conduct of the

petitioners that they made payment of several installments under the agreement in question without raising any dispute that the car did not exist itself makes it clear that the said issue belatedly raised in the affidavit of evidence for the first time was totally frivolous and dishonest. The petitioners never applied for cancellation of the said hire purchase agreement at any point of time.

34. Insofar as the issue of locus of the respondent herein is concerned, learned senior counsel submits that M/s.Birla Global Finance Co. Ltd. was a non banking finance company. In the year 1994-1995, the said finance company had entered into various Hire Purchase Agreements with petitioner No.1 on the terms and conditions mentioned therein. On 29th March, 2001, the said finance company entered into an agreement with Birla Global Asset Finance Co. Ltd. The said finance company sold its business comprising all its assets and liabilities as a going concern to the said Birla Global Asset Finance Co.Ltd. for a lump sum consideration on the terms and conditions mentioned therein.

35. He submits that on 30th March, 2001, the said finance company entered into further agreement with the said Birla Global Asset Finance Co. Ltd. By the said agreement, the said finance company assigned all receivables accruing to it *inter-alia* including lease rentals, hire purchase installments and other receivables to the said finance company. The hire purchase receivables transferred to the said company were set out in Schedule I and II. There was no reference to the Hire Purchase Agreement entered into between the said finance company and petitioner No.1 herein in the said schedules. The receivables with respect to the petitioners' agreement were not assigned to the said Birla Global

Asset Finance Co. Ltd.

36. Learned senior counsel placed reliance on the annual report of the said finance company for the year ending 31st March, 2001 and more particularly under the head “management discussions and analysis” which provided that only high quality assets pertaining to retail asset financing have been transferred to the said Birla Global Asset Finance Co. Ltd. He submits that in the month of July, 2001, the said finance company initiated arbitration proceedings against the petitioners for recovery of receivables agreed under the said hire purchase agreement with petitioner No.1.

37. Learned senior counsel submits that on 16th February, 2004, the said finance company had addressed a letter to the Assistant Commissioner of Income Tax pertaining to the assessment year 2001-2002 and had furnished a list of bad debts written off by the said finance company during the said assessment year. The Hire Purchase Agreement entered into with the petitioners was listed at serial No.613 in the list annexed to the said letter. He submits that the total bad debts amounts mentioned in the said list annexed to the said letter addressed by the Assistant Commissioner of Income Tax at Rs.3402.52 lacs tallied with the figures appearing in the annual report of the finance company for the year ending 31st March, 2001.

38. He submits that on 27th January, 2006 the scheme of amalgamation of the said finance company with Aditya Birla Nuvo Ltd. came to be sanctioned by the High Court. Pursuant to the said scheme, the said erstwhile finance company merged with Aditya Birla Nuvo Ltd..

The said scheme provided that all the assets and liabilities of the said finance company including their right to prosecute and defend legal actions of the said finance company vested in Aditya Birla Nuvo Ltd., the respondent herein. On 14th August, 2007, the said finance company original claimants carried out formal amendments in the statement of claim in the arbitral proceedings.

39. Learned senior counsel placed reliance on the letter dated 10th September, 2012 from the Assistant Commissioner of Income Tax, stating that in the assessment year 2001-2002, Rs.3402.52 lakhs classified as bad debts were accepted and written off by the said finance company as set out in the letter dated 16th February, 2004, addressed by the said finance company. He submits that the amounts due from petitioner No.1 under the said Hire Purchase Agreement were in fact classified as bad debts of the said finance company and were thus not assigned to the said Birla Global Asset Finance Co. Ltd. He submits that only high value quality assets were transferred to the said Birla Global Asset Finance Co. Ltd. The account of petitioner No.1 was not high value quality asset and since it was doubtful to recover, the same was not transferred to the said Birla Global Asset Finance Co. Ltd. He submits that the respondent had led oral evidence in support of their claim that the account of the petitioners was not transferred to the said Birla Global Asset Finance Co. Ltd. He submit that the agreement between the respondent and the said finance company is not challenged by the respondent. The petitioners had no locus to challenge the validity of the said agreement entered into between the said finance company and the said Birla Global Asset Finance Co. Ltd.

40. Learned senior counsel submits that pursuant to an order passed by this Court, the matter was referred back to the learned arbitrator under Section 34 (4) of the Arbitration Act for the purpose of eliminating the grounds of challenge. Pursuant to the said order, the learned arbitrator after giving an opportunity of being heard to both the parties and after complying with the principles of natural justice made a supplementary award. The learned arbitrator in the said supplementary award also has considered the facts and documentary evidence and has rendered findings of facts which are not perverse and thus, no interference can be made by this Court with such findings of facts.

41. On the issue as to whether the arbitration proceedings stood abated or not, the learned senior counsel invited my attention to the finding rendered by the learned arbitrator on this issue. He submits that in the case of amalgamation, there was no question of abatement. When the original claimant had applied for substitution of the original claimant with the respondent herein, the petitioner did not oppose the said application for abatement on the ground that the proceedings had already been abated. Learned arbitrator, therefore, has rightly allowed the application for substitution of the original claimant with the respondent herein.

42. On the issue of limitation raised by the petitioners, learned senior counsel invited my attention to the written arguments filed by the respondent before the learned arbitrator. Learned arbitrator has rendered a finding of fact on the issue of limitation. The petitioner no.2 was already added as respondent no.2 in the statement of claim who was attending the arbitration proceedings all throughout. Even if no notice

invoking the arbitration agreement was issued to the petitioner no.2 separately, limitation in such case would stop on the date of filing the claim before the learned arbitrator which was within the period of limitation.

43. In so far as the submission of the petitioners that the letter dated 11th May 1999 addressed by the petitioner no.1 which was marked as 'X-6' could not have been marked as exhibit by the learned arbitrator is concerned, learned senior counsel submits that in view of the objection raised by the petitioners that the said letter was to be read as the letter, without prejudice to the rights and contentions of the petitioners, the same was initially marked as 'X-6.' The said objection was deferred till the date of final hearing. After considering the said objection, the learned arbitrator rightly exhibited the said document as proved by overruling the said objection.

44. In so far as the submission of the learned counsel for the petitioners that the respondent could not have relied upon the said letter dated 11th May 1999 addressed by the petitioners and balance sheet of the petitioner no.1 in evidence is concerned, it is submitted by the learned senior counsel that the evidence need not be pleaded. In the list of documents relied upon before the learned arbitrator, the respondent had placed reliance thereon.

45. In so far as the challenge to the authority of Mr. Manoj Parvatkar and another officer of the respondent to file pleadings and to represent the respondent in the arbitration proceedings is concerned, learned counsel placed reliance on the findings of facts rendered by the

learned arbitrator on this issue holding that those officers were authorised by the respondent to file pleadings and to represent the respondent. He further submits that since none of those officers were transferred to the respondent-company, the respondent did not suppress any fact as canvassed by the petitioners.

46. In the rejoinder, Mr. Bhandari, learned counsel for the petitioners submits that the learned arbitrator had not treated both the parties equally. Some of the documents which were third party documents produced by the respondent were marked as exhibits without being proved whereas some of the third party documents produced by the petitioners were marked for identification. He submits that the proceedings before the learned arbitrator were already abated and the learned arbitrator had thus ceased to have jurisdiction to entertain such claims. The entire award was thus without jurisdiction. He submits that the respondent had failed to prove that the account of the petitioner no.1 which was allegedly an asset of the respondent was not transferred to the respondent herein by virtue of the order of amalgamation. He submits that the findings rendered by the learned arbitrator are perverse and thus such findings can be interfered with by this Court under Section 34 of the Arbitration Act.

REASONS AND CONCLUSIONS

47. A perusal of the agreement for hire purchase dated 11th December, 1995 which was marked as exhibit before the learned arbitrator indicates that the said agreement was made at Delhi and had been signed by the parties. The said agreement was between

M/s.Ramniranjan Kedia Tourism Services (P) Ltd. as a hirer and Birla Global Finance Ltd. as the owner. The said agreement was also signed by petitioner no.2 as the guarantor. The said agreement for hire purchase was in respect of four vehicles i.e. two numbers of Contessa and two numbers of Cielo GL. The said agreement was numbered as 96296. It is not in dispute that the respondent had repossessed those four vehicles in view of the petitioners having committed default under the terms and conditions of the said Hire Purchase Agreement and no arbitration agreement proceedings have been filed by the respondent against the petitioners under the said agreement.

48. On 15th December, 1995 the parties entered into another agreement for hire purchase in respect of one Cielo car. The said agreement was executed at Mumbai. A perusal of both these agreements indicate that the registration/product serial number, chasis number and engine number of the vehicles were not mentioned in both the agreements in the schedule annexed to both these agreements and were blank. The petitioners were given inspection of various documents including both these agreements relied upon by the respondent.

49. Before invoking the arbitration agreement by the respondent, the respondent had issued demand notice calling upon the petitioners to pay the claim amount under the said agreement dated 15th December, 1995 to the petitioners. The petitioners never alleged at any stage prior to the date of filing affidavit in lieu of examination in chief which was after closure of evidence led by the respondent that the said Cielo car was never in existence and was not delivered to the petitioners at all. The

petitioners also did not apply for cancellation of the said Hire Purchase Agreement in any of the proceeding including the arbitration proceedings.

50. A perusal of the record clearly indicates that the petitioners had made payment of 25 installments which was in respect of all the five vehicles including the vehicle in question. The petitioners had at no point of time raised this issue that the said amount was illegally recovered by the respondent from the petitioners though there was no delivery of the said Cielo car to the petitioners. In my view since there was no such issue raised in the written statement as well as in the additional written statement alleging that the said Cielo car did not exist or that it was never delivered to the petitioners, the petitioners could not have led any oral evidence to prove such allegations in absence of such pleadings.

51. The respondent in the arbitration proceedings when this issue was raised in the affidavit in lieu of examination in chief has demonstrated that since four vehicles were to be supplied at Delhi, out of five vehicles a separate agreement of hire purchase was entered into with the petitioners in respect of those four vehicles at Delhi and since once Cielo car was to be taken delivery by the petitioners at Mumbai, a separate agreement in respect of the said vehicle was entered into between the parties at Mumbai. The petitioners were paying the consolidated cheque of Rs.84,045/- in respect of all five vehicles. The said payment was credited in five accounts including the account in question as per the amount of equated monthly installments.

52. A perusal of the record indicates that the witness examined by the petitioners admitted in the cross examination that the petitioners used to follow the procedure of taking delivery of the vehicle directly from the dealer. The respondent had no role in the delivery of the vehicle to the petitioners. Only after such delivery was taken by the petitioners from the dealer, the petitioners used to give the details of the chasis number and engine number etc. to the respondent and those details used to be filled in the agreement of hire purchase. In this case the petitioners did not furnish any details of chasis number and engine number for the said Cielo car to the respondent. Even in respect of the other four vehicles, no such details were furnished to the respondent and those details remained blank in the agreement of hire purchase. The petitioners however did not dispute that even those four vehicles were not received by the petitioners.

53. A perusal of the letter dated 11th May, 2009 addressed by the petitioners to the respondent also clearly indicates that the petitioners themselves have referred to the agreements numbers in their proposal and have also given details of the equated monthly installment. In the said letter it was not the case of the petitioners that since such Cielo car was not delivered to the petitioners by the dealer or by the respondent, the petitioners had wrongly paid 25 installments to the respondent in respect of the said Cielo car or that the respondent had illegally collected the same without delivery of the said vehicle. Petitioners did not ask for refund of the amount alleged to have been illegally recovered.

54. A perusal of the impugned award on this issue clearly

indicates that the learned arbitrator has rendered a finding that there was no plea raised by the petitioner that the said Cielo car did not exist in the pleadings. It is held by the learned arbitrator that the petitioner no.1 was seeking to take advantage of their default in denying the existence of Cielo car. It was the practice followed by the original claimants and the petitioner no.1 herein that the petitioner no.1 shall take delivery of the concerned vehicles from the dealer and furnish the particulars thereof to the original claimant for being written in the Hire Purchase Agreement entered into by and between the parties. The learned arbitrator has also rendered a finding that in this case the petitioner no.1 contrary to their contractual obligations failed to furnish the particulars regarding registration number, engine number and chassis number etc. of the said Cielo car taken on hire purchase from the original claimants to them.

55. The learned arbitrator also held that even in the correspondence ensued between the parties and also through their respective legal advisers prior to the initiation of the arbitration proceedings, at no point of time the petitioners denied the existence or supply of the said Cielo car. The learned arbitrator accordingly held that it was inconceivable that the petitioner no.1 would have paid to the original claimants equated monthly installment as the petitioner no.1 had done for the vehicle that according to the petitioner no.1 did not exist. In my view, the learned arbitrator has rightly rendered a finding of fact described aforesaid and rightly rejected the submission of the petitioners that the said Cielo car did not exist and/or delivered to the petitioners. In my view there is thus no merit in the submission of Mr.Bhandari, learned counsel for the petitioners that the claim was illegal and made against the

petitioners though no consideration was passed under the said agreement for hire purchase or that no delivery of the vehicle was effected to the petitioners. In my view, the said stand taken by the petitioners and that also at the belated stage is totally after thought and without any basis and thus deserves to be rejected.

56. In so far as issue raised by the petitioners that the arbitral proceedings had abated in view of the original claimants not having made application of bringing its successor on record within the time prescribed under the Code of Civil Procedure is concerned, a perusal of the order passed by the learned arbitrator on 1st August, 2007 on the application for amendment to the statement of claim filed by the original claimants to bring the respondent herein on record in place and stead Birla Global Finance Limited indicates that the learned arbitrator has held that the effect of the scheme of amalgamation approved by the company court was that as from effective date of the said scheme i.e. 30th June, 2006, all suits, actions and proceedings by or against the original claimants i.e. Birla Global Finance Limited pending or arising on or before the 30th June, 2006 were to be continued by or against the applicants as effectively as if the same had been pending or arising by and against the applicants i.e. the respondent herein. He has held that under clause 9 of the said scheme, it was obligatory for the applicants to continue those proceedings in the name of the applicants and as such it was necessary that the applicants were to be brought on record of the arbitral proceedings in place of the original claimants for continuation of the arbitral proceedings. In clause 9(b) of the said scheme, the original claimants had given an undertaking.

57. A perusal of the said order indicates that the petitioners herein had raised an issue of delay caused in making the said application for bringing the respondent herein on record. The learned arbitrator has rejected the said submission by holding that Article 120 of the Limitation Act relied upon by the petitioners had no application in the facts of this case. The said application for bringing the respondent herein on record of the arbitral proceedings was made consequent upon the said amalgamation order of this court and High Court of Gujarat and the said scheme became effective as from 30th June, 2006 pursuant to the said order passed by the High Courts. The application made by the respondent herein for bringing itself on record of the arbitral proceedings was a sequence of amalgamation of the original claimants with the respondent herein and as such the respondent were to be brought on record of the arbitral proceedings. In my view, the learned arbitrator has considered the said order passed by this court and the High Court of Gujarat to the effect that the said amalgamation became effective as from 30th June, 2006 and thus the said application made by the respondent herein to bring them on record of the arbitral proceedings was a sequence of amalgamation and thus was maintainable. In my view there is no infirmity with the order passed by the learned arbitrator allowing such amendment.

58. On the contrary it was the argument of the petitioners themselves that all the assets of the original claimants stood transferred to the respondent herein and thus the original claimants could not have filed such statement of claim against the petitioners. The petitioners cannot be

allowed to approbate and reprobate at the same time. In my view there is thus no merit in the submission of the learned counsel for the petitioners that the arbitral proceedings stood abated or that no such amendment as permitted by the learned arbitrator by order dated 1st August, 2007 could be permitted at all.

59. A perusal of the impugned award indicates that on the basis of the pleadings filed by the parties, the learned arbitrator has framed various issues for consideration including the issue of jurisdiction and limitation. A perusal of the award indicates that the learned arbitrator has recorded a finding that there was no denial of the fact that the parties did enter into an arbitration agreement for rest of the dispute for arbitration for adjudication. It is held by the learned arbitrator that even if the said Hire Purchase Agreement is void, it would not result in the automatic invalidity of the said arbitration agreement. The learned arbitrator held that he had jurisdiction to entertain the claims. In my view the learned arbitrator has rightly held in the reasons recorded therein that the Hire Purchase Agreement as well as arbitration agreement existed and that he had jurisdiction to entertain the claims made by the respondent. In my view there is no merit in the submission of the learned counsel for the petitioners that the learned arbitrator had no jurisdiction to entertain the claims made by the respondent.

60. In so far as submission of the learned counsel for the petitioners that the Hire Purchase Agreement could not have been marked as exhibit by the learned arbitrator since the same was already marked as X-4 for identification is concerned, a perusal of the award indicates that

in view of the petitioners having raised an objection to the admission of the said document in evidence on the ground that it was inadvertently stamped, the learned arbitrator had marked the said document as X-4 for identification. At the hearing held on 29th April, 2004, the learned former arbitrator had directed the Indian Merchant Chambers to forward the said agreement alongwith other agreements which were subject matter of the said other four connected arbitration proceedings to the Superintendent of Stamps for adjudication of the correct stamp duty.

61. At the hearing held on 29th September, 2009, the learned arbitrator was informed by the learned senior counsel for the respondent that the issue as to the requisite stamp duty on the said agreement had been dissolved. The respondent paid the requisite stamp duty on 12th January, 2007 payable thereon as adjudicated by Superintendent of Stamps on 3rd December, 2005 and pursuant to the demand dated 28th December, 2006. The learned arbitrator accordingly marked the said agreement as exhibit. In my view there is no merit in the submission of the learned counsel for the petitioners that the learned arbitrator could not have marked the said Hire Purchase Agreement as exhibit which was initially marked as X-4 for identification. The said document was admittedly stamped as adjudicated by the Superintendent of Stamps and the respondent had already paid the deficit stamp duty and penalty thereon.

62. In so far as submission of the learned counsel for the petitioners that the learned arbitrator has violated the principles of natural justice by not taking the copies of the criminal proceedings in evidence is

concerned, a perusal of the record indicates that the learned arbitrator had refused to take copies of the criminal proceedings in evidence on the ground that the same were tendered on 29th November, 2007 after completion of the recording of oral evidence which was completed on 28th September, 2004 and also in view of the objections raised by the respondent that there was no occasion to cross examine the petitioners' witness thereon. The learned arbitrator however took copy of the loan agreement dated 1st February, 1995 between the original claimants and the petitioners herein forming part of the compilation of documents forwarded by the learned advocate of the petitioners in evidence and marked as exhibit. In my view the learned arbitrator has not committed any violation of principles of natural justice by refusing to take the copies of the criminal proceedings in evidence which was tendered after completion of the oral evidence. There is no merit in this submission of the learned counsel for the petitioners.

63. In so far as submission of the learned counsel for the petitioners that the said Hire Purchase Agreement was forged and/or fabricated is concerned, a perusal of the award indicates that the learned arbitrator has rightly noticed that the written statement of the petitioner no.1 filed on 10th October, 2001 did not contain any such allegation of forgery and fabrication. The petitioner no.1 had for the first time in the amendment to their said written statement filed on 5th April, 2003 alleged that the said agreement was forged and fabricated. The learned arbitrator has rejected the said plea of forgery and fabrication after perusing the oral evidence as well as documentary evidence and has rendered a finding of fact that the said agreement was filled in material respect before they

were signed by the petitioners. The witness examined by the respondents herein Mr.Pawan Gupta had categorically denied the suggestion put to him in the cross examination that at the time when the said agreement was given to the petitioners for signature, none of the blank portions were filled in by hand. The said witness had identified the handwritten portions in the said agreement. It is held that the burden lies upon a person claiming that the agreement was signed in blank to prove that it has been filled in a manner not in consonance with the understanding between the parties and therefore void which burden the petitioners had failed to discharge.

64. The learned arbitrator has also rendered a finding that it was evident from the contemporaneous documentation and conduct of the parties to the said agreement that the contents of the said agreement had been perfectly in consonance with the understanding between the parties which was acted upon. The petitioners had forwarded consolidated cheques in respect of the said vehicle, being subject matter of the said agreement, and in respect of two other Cielo and two Contessa cars which were the subject matter of another separate hire purchase agreement dated 11th December, 1995. A perusal of the award also indicates that the learned arbitrator has rejected the allegations of the petitioners that the said agreement was forged and fabricated on the ground that a copy of the said agreement was forwarded by the original claimants to the petitioner no.1 and the petitioner no.1 had sought certain concession in the payment term vide their letter dated 11th May, 1999 contending the said agreement. In my view the learned arbitrator has rightly rendered the said finding by relying upon documentary as well as oral evidence which finding is not

perverse and thus no interference is permissible under section 34 of the Arbitration Act, 1996.

65. In so far as submission of the learned counsel for the petitioners that no reliance on the letter dated 11th May, 1999 addressed by the petitioner no.1 could be placed by the learned arbitrator and the said letter could not be marked as exhibit on the ground that the said letter also ought to have treated as a letter 'without prejudice' is concerned, a perusal of the award indicates that the learned arbitrator has held that by the said letter the petitioner no.1 had sought certain concessions from the original claimants pleading financial difficulty. In the said letter, the petitioner no.1 had annexed a statement in which the petitioner no.1 had referred to the said agreement and other agreement entered into between the parties by mentioning numbers. Schedules to the said letter also reflected accurately the agreement value and the amounts in fact paid by the petitioner no.1 under each of the said agreements including the agreement in question. Those installments tallied with the EMI amounts mentioned in the Hire Purchase Agreement.

66. The learned arbitrator held that the said letter dated 11th May, 1999 did not state that it was addressed 'without prejudice'. Even in their advocates' letter date 7th July, 2000 addressed by the petitioners to the original claimants, though the petitioner no.1had referred to the said letter dated 11th May, 1999 it was not alleged that it was addressed 'without prejudice'. In my view the learned arbitrator has rightly held that the evidence was not required to be pleaded in the statement of claim by the claimants and thus it was not necessary for the original claimants to plead

the said letter dated 11th May, 1999 in their statement of claim. The learned arbitrator has rightly admitted the said letter dated 11th May, 1999 in evidence and marked the same as exhibit.

67. The learned arbitrator has also rightly rendered a finding that the claimants had proved the said agreement and due execution thereof and the same was neither void nor voidable as alleged by the petitioners herein. In my view the learned arbitrator has rightly held that the said letter dated 11th May, 1999 was not addressed 'without prejudice' to the rights and contentions of the petitioners, rightly marked the said document in evidence and has rightly placed reliance thereon. In my view the respondent was not required to plead the evidence in the statement of claim.

68. In so far as issue of limitation raised by the petitioners is concerned, a perusal of the impugned award indicates that the learned arbitrator has rejected the said plea of limitation on the ground that by the letter dated 11th May, 1999, which was addressed by the petitioner no.1, they had clearly acknowledged the existence of the jural relationship between the original claimants and the petitioner no.1 and their liability under the said agreement after due date of last EMI instalment payable under the said agreement and before commencement of arbitral proceedings by the original claimants. The arbitration proceedings admittedly commenced in July, 2001 and the same was within time. The learned arbitrator has rendered a finding of fact that in view of the clear acknowledgment of liability under the said agreement well within a period of three years prior to the date of invocation of arbitration by the

original claimants, the claim of the original claimants was within time. The learned arbitrator also placed reliance on audited accounts and the balance-sheet of the petitioner no.1 year ended on 31st March, 1996 to 31st March, 2001 which had been signed by the petitioner no.1.

69. In so far as issue of limitation raised on behalf of the petitioner no.2 is concerned, the learned arbitrator has held that the same is also not barred by law of limitation. It is not in dispute that the petitioner no.2 herein was impleaded as a party respondent in the statement of claim filed by the original claimants in the month of July 2001. Even if the petitioner no.2 was not served with the copy of the said statement of claim for sometime, once petitioner no.2 was impleaded as a party respondent to the statement of claim filed before the learned arbitrator and even if no notice was issued under section 21 to the petitioner no.2, limitation would stop in such a situation on the date of filing statement of claim before the learned arbitrator and not from the date of service of the statement of claim. In my view the learned arbitrator has rightly rejected the plea of limitation after considering the oral as well as documentary evidence including the contents of the letter dated 11th May, 1999 and also audited balance-sheet of the petitioner no.1. I do not find any perversity in the findings rendered by the learned arbitrator and thus no interference with such finding of fact is permissible under section 34 of the Arbitration Act.

70. In so far as submission of the learned counsel for the petitioners that the learned arbitrator has ignored the evidence or contentions raised by the petitioners in the impugned award is concerned, a perusal of the record clearly indicates that the learned arbitrator has

dealt with each and every issue raised by the parties in great detail and has rendered a reasoned award. In my view there is thus no merit in this submission of the learned counsel for the petitioners.

71. In so far as submission of the learned counsel for the petitioners that the respondent did not produce any proof of giving any finance to the petitioners or delivery of the said Cielo car and the learned arbitrator overlooked the evidence led by the respondent is concerned, a perusal of the record clearly indicates that the petitioners had not denied the receipt of the finance and delivery of the vehicle till the petitioners filed their affidavit in lieu of examination in chief which was after closure of the evidence by the respondent. The learned arbitrator has rightly rendered a finding of fact that there was a Hire Purchase transaction between the parties under the said agreement and the car was delivered to the petitioners. There is thus no merit in this submission of the learned counsel for the petitioners.

72. In so far as the issue of locus raised by the petitioners is concerned, the learned arbitrator, after passing of an order under Section 34 (4) of the Arbitration and Conciliation Act, 1996 by this Court, framed additional issues and also allowed the parties to lead oral evidence. The learned arbitrator has decided those issues by a supplementary award dated 30th November 2013. A perusal of the said supplementary award indicates that the learned arbitrator has discussed the issue of locus at length in the supplementary award and has rejected the said issue raised by the petitioners. It is held by the learned arbitrator that with effect from 30th June 2001, the Birla Global Finance

Limited-original claimant ceased to have right, title or interest to recover any amount from the petitioners and as such ceased to have any right, title or interest to initiate the arbitration proceedings. It is held by the learned arbitrator that the agreement dated 29th March 2001 was admittedly entered into between the Birla Global Finance Limited and Birla Global Asset Finance Company Limited to which neither of the petitioners nor erstwhile petitioner no.1 had been a party thereto.

73. The learned arbitrator observed that it was strange that a party which is not a party to a solemn agreement between the two parties alleged that dues payable to one of such party to the agreement were transferred to another party to the agreement when the parties to such agreement did not say so. The learned arbitrator has dealt with the provisions of the said agreement dated 29th March 2001 which was marked as exhibit and has held that the high value assets were agreed to be transferred by Birla Global Finance Limited to Birla Global Asset Finance Company Limited and what were considered as then not recoverable were not agreed to be transferred by Birla Global Finance Limited to Birla Global Asset Finance Company Limited. The learned arbitrator also considered the Annual Report of the Birla Global Finance Limited for the year 2000-2001 and held that only high quality assets pertaining to retail assets financing have been transferred to Birla Global Asset Finance Company Limited. The learned arbitrator also noticed that the caption 'Bad Debts and Provisions for Non-performing Assets' in the said annual report indicated that the said Birla Global Finance Limited had written off all doubtful assets/receivable which resulted in higher provisioning of Rs.3,481/- lacs which was also borne out from the balance sheet of Birla Global Finance Limited, statement of

accounts for the year ended 31st March 2001. The learned arbitrator rendered a finding that the amount recoverable/receivable from the erstwhile petitioner no.1 by the erstwhile claimant was part of the said aggregate sum of Rs.3,481/- lacs which did not form part of the high value assets which were agreed to be transferred by the erstwhile claimant in favour of Birla Global Asset Finance Company Limited under the said agreement dated 29th March 2001.

74. A perusal of the award indicates that the learned arbitrator has also considered the copy of the letter dated 16th February 2004 addressed by Birla Global Finance Limited to the Assistant Commissioner of Income Tax, Central Range-I, Mumbai-20. The witness examined by the respondent herein identified the said copy of the letter addressed to the Assistant Commissioner of Income Tax, Central Range, Mumbai-20 and his signature thereon as Assistant Vice President of Birla Global Finance Limited. The said witness also verified the correctness of the contents therein. The learned arbitrator has held that as per the said assessment order, the bad debts written off as mentioned therein were exactly the same as mentioned in the balance sheet/statement of accounts for the year ended 31st March 2001. It is accordingly held that there was no reason to doubt even the certificate issued by the Assistant Commissioner of Income Tax being certificate dated 30th September 2012. The learned arbitrator had held that the witness examined by the respondent who had personal knowledge about the facts in relation thereto, has deposed and has proved the said documents and the genuineness thereof. The learned arbitrator has, therefore, rightly rejected the submission of the learned counsel for the petitioners that the original claimant had no locus to file the arbitration

proceedings. In my view, there is no substance in the submission of the learned counsel for the petitioners that the original claimant had no locus to file it.

75. Similarly, there is no substance in the submission of the learned counsel for the petitioners that all the assets including the amount recoverable, if any, from the petitioners were transferred to the transferee and thus the claim was without jurisdiction on that ground. The learned arbitrator in the impugned reasoned award has dealt with this issue at length and has rightly rejected the submission of the learned counsel for the petitioners. I do not find any perversity in the findings rendered by the learned arbitrator on this issue and thus no interference is warranted with such findings of the facts.

76. In so far as the submission of the learned counsel for the petitioners that Mr. Manoj R.Parvatkar who had signed the statement of claim on behalf of the original claimant and Mr.Pawan Gupta who had represented the original claimant in the arbitration proceedings were no longer employees of the original claimant and thus the proceedings filed by them were without authority is concerned, a perusal of the award indicates that the learned arbitrator has dealt with this issue also in detail and has rendered a finding of fact that it was not the case of the petitioners in the amended arbitration petition that Mr.Manoj Parvatkar had no authority to sign the statement of claim filed in the arbitration proceedings. It is held that if Birla Global Finance Limited had locus standi and had not ceased to have interest then there was no challenge to the authority of the said Mr. Parvatkar who signed and verified the statement of claimed filed on behalf of Birla Global Finance

Limited in the arbitration proceedings. The authority of the Said Mr. Manoj Parvatkar was not challenged before the arbitral tribunal in those arbitration proceedings. It is held that only in the evidence of the witness examined on behalf of the petitioners, it was alleged that the said Mr.Manoj Parvatkar had no authority to sign and verify the statement of claim filed in the arbitral proceedings. A perusal of the supplementary award indicates that the learned arbitrator has also rendered a finding of fact that the statement of claim filed in the arbitral proceedings was properly signed and verified by the said Mr.Manoj Parvatkar and the said submission of the petitioners was devoid of any merit.

77. It is held that there was no fraud committed and no fraud is alleged to have been committed so as to vitiate the said award. The learned arbitrator has held that there was no strict demarcation of the duties amongst the employees which could be ascertained without positive evidence being produced before adjudicating and/or deciding the authority. In my view, the learned arbitrator has rendered a finding of fact that statement of claim was properly signed and verified by Mr.Parvatkar who was an authorized employee of the original claimant after giving detailed reasons and after considering the pleadings, documents and oral evidence and such finding is not perverse. No interference with such finding of fact is permissible under Section 34 of the Arbitration Act.

78. In so far as the submission of the learned counsel for the petitioners that the learned arbitrator could not have marked the entire annual report of the petitioners since the petitioners had not asked the

question in the cross-examination regarding the entire annual report is concerned, in my view, there is no merit in this submission of the learned counsel for the petitioners. Once the entire annual report was shown to the witness, the learned arbitrator was justified in marking the entire report as exhibit. There is thus no merit in this submission of the learned counsel for the petitioners.

79. In so far as the submission of the learned counsel for the petitioners that in the assessment order passed by the Income Tax Officer, there was no reference to any alleged notice issued by the original claimant for production of documents is concerned, the learned arbitrator has dealt with this issue also in detail in the impugned supplementary award. In my view, in the assessment order passed by the learned Income Tax Officer, there was no issue as to whether any notice to produce documents was given by the original claimant or not. Even if there was no reference to such letter to produce documents in the said assessment order, no conclusion can be drawn that such letter was not received by the concerned Income Tax Officer. There is thus no merit in the submission of the learned counsel for the petitioners.

80. A perusal of the supplementary award indicates that the learned arbitrator has marked the letter dated 16th February 2004 which was addressed by Birla Global Finance Limited to the Assistant Commissioner of Income Tax, Central Range-I in evidence after considering the oral evidence led by the witness Mr.K.G. Ajmera who was examined by the respondent herein. The learned arbitrator has rendered a finding that in view of the assessment order of the erstwhile

claimant for the assessment year 2001-02 which was admitted in evidence, the bad debts written off as mentioned therein were exactly the same as mentioned in the balance sheet/statement of accounts for the year ended 31st March 2001. It is held that there was no reason to doubt the said certificate issued by the Assistant Commissioner of Income Tax dated 30th September 2012.

81. In so far as the submission of the learned counsel for the petitioners that the learned arbitrator has not treated both the parties equally on the ground that some of the third party documents produced by the petitioners were marked for identification whereas some of the third party documents produced by the respondent were marked as exhibits without being proved is concerned, in my view, there is no merit in the submission of the learned counsel for the petitioners. The learned arbitrator has followed appropriate procedure and thus has not violated the principles of natural justice or principles of Evidence Act as canvassed by the learned counsel for the petitioners. Similarly, there is no substance in the submission of the learned counsel for the petitioners that there was no equal treatment afforded to both the parties and that the learned arbitrator was biased or partial as canvassed by the petitioners. The learned arbitrator, in my view, has given full opportunity to both the parties and has rendered a reasoned and reasonable award. I am not inclined to accept the submission of the petitioners that the respondent has taken several post dated cheques from the petitioners and thus the petitioners could not notice that the respondent was appropriating part of the payment towards agreement in question under which no car was alleged to have been delivered to

the petitioners.

82. In so far as the judgments relied upon by the petitioners in support of his submission that if the findings of facts rendered by the learned arbitrator are perverse, the Court can interfere with such findings of facts under Section 34 of the Arbitration Act is concerned, in my view, the learned arbitrator has considered all the pleadings, documents and oral evidence and has dealt with each and every submission made by both the parties in the original award as well as the supplementary award and such findings are not perverse and thus no interference is warranted. The judgment thus relied upon by the learned counsel for the petitioners on those grounds do not assist the case of the petitioners but assist the case of the respondent.

83. In so far as other judgments relied upon by the learned counsel for the petitioners are concerned, in my view, considering the facts of this case and from the reasons rendered by the learned arbitrator, in my view, none of those judgments relied upon by the petitioners will assist the case of the petitioners. I need not deal with each and every judgment relied upon by the petitioners in detail in this judgment as most of them are found irrelevant and not applicable to the facts of this case. In my view, the petition is devoid of merits.

84. The petitioners had raised several issues before the learned arbitrator which were misconceived and untenable. The learned arbitrator in the impugned award has dealt with each and every issue at length and has rightly rejected those issues. The petitioners have raised similar

frivolous issues in this petition also which are found totally untenable by this Court and are accordingly rejected. In my view, thus in so far as the award of arbitration costs passed by the learned arbitrator is concerned, the same is justified and proper. I do not find any infirmity with the said part of the award also. I, therefore, pass the following order :

a) Arbitration petition is dismissed.

b) There shall be no order as to costs.

R.D. DHANUKA, J.