

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on January 14, 2015

Judgment delivered on January 27, 2015

+ **O.M.P. 69/2015**

M/S SAI SOFT SECURITIES LTD Petitioner
Through: Dr.Anurag Kumar Agarwal,
Advocate with Mr.Umesh
Mishra and Mr.Varun
Sharma, Advocates

versus

MANJU AHLUWALIA Respondent
Through: Respondent in person

+ **O.M.P. 70/2015**

M/S SAI SOFT SECURITIES LTD Petitioner
Through: Dr.Anurag Kumar Agarwal,
Advocate with Mr.Umesh
Mishra and Mr.Varun
Sharma, Advocates

versus

MANJIT AHLUWALIA Respondent
Through: Respondent in person

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. As these two petitions, under Section 34 of the Arbitration & Conciliation Act, 1996 ('Act' for short), involve identical issues with more or less identical facts, they are being decided by this common order.

Facts

2. It was the case of the respondents that in order to carry out their investments opened trading accounts with National Stock Exchange (NSE) through the respondent in July, 2011 and signed the documents including KYC at Delhi. It was their case before the Arbitral Tribunal that the petitioner had assured to send copies of KYC documents to them from its Moradabad office but the same were not sent. The e-mails sent on November 19, 2011 proved futile. On July 31, 2011, the respondents along with her husband gave first cheque to the petitioner herein for an amount of Rs.25 lacs from a bank account jointly operated by them towards initial deposit. On August 01, 2011, certain trades were conducted in their account, for which they received contract notes from Sai Soft Securities. It was their case that they could not make out the difference between the respondent company and Sai Soft Securities. The respondents have also averred that in addition to signing KYC and other documents, they had also executed a written agreement on September 24, 2011 with Sai Soft Securities signed by Dr. Mayank Dubey as its authorized signatory, wherein they had given specific instructions as to how the trades in their account were to be conducted.

3. According to them, the petitioner had suggested that the respondents could enhance the value of the trade by giving securities as

margin. On such representation, the respondents transferred securities as margin to demat account of the persons nominated by the petitioner. Regular transactions thereafter took place. These transactions were in the name of Sai Soft Securities. According to the respondents, on November 05, 2012 they had noticed that trades were not verified on the exchange's portal. When the matter was taken up by the respondents with the NSE, no response was given, though they had followed up the matter with the Exchange thereafter. It is noted that in consultation with the respondents, on July 26, 2013 the petitioner trading member carried out hedging trades and through e-mail of July 31, 2013 contract notes were forwarded to the respondents with positions to close on October 31, 2013. It was the case of the respondents that the trading transactions took place after July 31, 2013 as well. Certain instructions given by the respondents to the petitioner with regard to trades and return of money to them were not carried out by the petitioner herein. Their complaints made to the Investor Grievances Redressal Forum of the Exchange resulted in an order dated January 09, 2014 whereby amounts of Rs.1.70 Crore and Rs.1.50 Crore became admissible to both the respondents herein. Meaningfully read, it was the case of the respondents that the petitioner had carried out unauthorized transactions fraudulently. The respondents in their claim petition had actually claimed an amount of

Rs.1.93 Crore and Rs.1.57 Crore respectively.

4. The petitioner had contested the claims and filed a counter-claim. The only case set up by the petitioner was primarily against order dated January 09, 2014 passed by the Investor Grievance Redressal Forum being illegal and the action of the Exchange whereby amount of the petitioner has been withheld pursuant to the order of the Forum being without jurisdiction and had sought the setting aside of the said order and release of the amount by the Exchange. It was also the case of the petitioner herein that the Forum or the Arbitral Tribunal had the jurisdiction to consider any claim against the petitioner because it had not conducted any trades on behalf of the respondents on the platform of the exchange. It was also asserted that there was no written agreement between the parties to refer the dispute to the arbitration as per the bye-laws of the Exchange. The petitioner would further state that the agreement dated September 24, 2011 is stated to be of no consequence because it has not been executed by the petitioner and has never been acted upon. The said agreement is in relation to portfolio management. The petitioner also asserted that the contract notes put up by the respondents have never been issued by the petitioner and are fictitious. The petitioner however admitted the receipt of cheque of Rs.25 lacs jointly signed by the respondents.

5. The Tribunal consisting of two Arbitrators and one Presiding Arbitrator considered the issues which fell for their consideration. The first question was whether the Arbitral Tribunal had the jurisdiction to entertain the disputes or not. The Tribunal had referred to the agreement dated September 24, 2011. It was its conclusion that the said agreement was signed by Dr. Mayank Dubey on behalf of Sai Soft Securities. He was one of the Directors of the petitioner herein namely Sai Soft Securities Ltd. while Mr. Mayur Dubey, the other director of the respondent had signed it as a witness, which fact was admitted by the petitioner during the hearing before the Tribunal. The Tribunal was of the view that Sai Soft Securities was represented to be a body corporate and Dr. Mayank Dubey is its authorized signatory. It was also noted that the agreement represented that Sai Soft Securities is registered with SEBI and the Exchange and specific registration numbers have been given. It was the conclusion of the Tribunal that the contract notes were sent to the respondents by Sai Soft Securities. The address of the Sai Soft Securities Ltd. and Sai Soft Securities is the same. Their e-mail addresses admittedly are the same. The conclusion of the Arbitration Tribunal was that there was a representation by the Sai Soft Securities as a duly incorporated company for trading on the Exchange is nothing but Sai Soft Securities Ltd. The Tribunal lifted the corporate veil to ascertain

the real state of affairs, particularly when there were allegations of fraud and serious misdemeanor. In para Nos.20 & 21, the Tribunal was of the following view:-

“20. It has been represented before us that there are two directors of Sai Soft Securities Ltd.; Dr. Mayank Dubey and Mr. Mayur Dubey. Both were present at the hearing. As already noted, Dr. Mayank Dubey had executed the agreement dated 24.09.2011 as an authorized signatory of Sai Soft Securities and Mr. Mayur Dubey signed as a witness to the agreement. It is, therefore, obvious that the directors of the respondent, Sai Soft Securities Ltd. are the persons responsible for execution of the agreement. Both of them have the control over the affairs of Sai Soft Securities Ltd. by virtue of being its directors as well as Sai Soft Securities. Further, the respondent in its reply has admitted that shares of Gabriel India were received from the Demat account of the claimant to the Demat account of Shri Mayur Dubey on 21.01.2012. In addition, certain shares of Gabriel India were transferred to the Demat account of Shri Mayur Deubey from the joint Demat account of the claimant and her husband. These facts clearly establish that Mr. Mayur Dubey, the Director of the respondent, who is also responsible for the affairs of Sai Soft Securities is the real beneficiary of the transfer of shares by the claimant. Mr. Mayur Dubey was able to win confidence of the claimant to transfer shares to his own

Demat account for reason of his status as Director of the respondent company. Cumulatively the above facts establish that the respondent, Sai Soft Securities Ltd. and Sai Soft Securities are the mirror image of each other.

21. The claimant has submitted that she executed KYC and other documents and gave them to the respondent who assured that copies of the documents would be sent to her from Moradabad office. The claimant has stated that the documents have not been received despite follow through e-mail dated 19.11.2011. The respondent in its reply has denied signing of KYC by the claimant. The respondent has asserted that no trading account was opened by the claimant with the respondent. The respondent has, however, admitted to having received the cheque of Rs.25 lakh from the joint bank account of the claimant and her husband, without explaining the purpose for which the deposit was accepted and the specific account to which the money was credited. The respondent as a trading member/broker cannot accept deposits from the public. It can accept margin money from its clients for carrying out the trades in their accounts. Therefore, there appears truth in the contention of the claimant that she executed KYC and other documents. It is, accordingly, held that the deposit was made by the claimant towards initial margin as a client of the respondent after executing KYC and other documents. In fact, in the agreement dated 24.09.2011

further reinforces the finding. It has been clearly recited in the agreement that the claimant has executed the Member-Constituent Agreement. The Member/Constituent Agreement referred to in the agreement dated 24.09.2011 can be none other than the one asserted by the claimant. We, therefore, hold that the claimant executed KYC and other documents and was duly enrolled as a constituent of the respondent after she made initial margin deposit. Therefore, we are satisfied that there exists the Member-Constituent relationship between the claimant and the respondent. Accordingly, the claimant is entitled to take proceeding under the bye-laws and regulations of the Exchange for redressal of her grievances.”

6. On the issue of jurisdiction, the Tribunal rejected the argument on behalf of the petitioner by placing reliance on Clause 1 of Chapter 11 of the bye-laws of the Exchange by holding that the byelaws of the Exchange clearly provides the claims, disputes or differences with reference to anything incidental thereto or in pursuance thereto are also within the jurisdiction of the Tribunal. The plea of the petitioner that no trading done at the portal of the Exchange was also rejected as it was held that the contract notes sent to the respondents by Sai Soft Securities which has been found to be same as Sai Soft Securities Ltd. It was also held that the contract notes clearly state that disputes are to be referred to

the arbitration under the bye-laws of the Exchange.

7. Insofar as the contention that the agreement dated September 24, 2011 relates to portfolio management was also rejected inasmuch as the petitioner being not registered with SEBI or any other authority under portfolio management service regulations, it could not provide the portfolio management services.

8. The petitioner herein challenged the order of the Arbitral Tribunal before the Appellate Arbitral Tribunal ('AAT' for short) of the National Stock Exchange of India Limited. The prayers made before the AAT are as under:

"A. To call for the records of the case titled as "Mrs. Manju Ahluwalia vs. Sai Soft Securities Ltd." from the Arbitration Department, National Stock Exchange of India Ltd., Delhi;

B. To set aside the arbitral award dated 31.05.2014 passed by the Arbitral Tribunal comprising Justice (Retd.) V.S. Aggarwal, Sh. Tejinder Singh Laschar and Sh. K.S. Dhingra, National Stock Exchange of India Ltd., Delhi in case titled "Mrs. Manju Ahluwalia vs. Sai Soft Securities Ltd.";

C. Set aside the order dated 09.01.2014 passed by Investor Grievance Panel in the case titled as "Mrs. Manju Ahluwalia vs. Sai Soft Securities Ltd.";

D. Set aside the action taken by NSE withholding the deposit of Rs.140 lakhs of the petitioner with it.”

9. The AAT in the impugned order dated 12.12.2014 noted the fact that the petitioner had received the amount of initial deposit of Rs.25 lacs paid by the respondents herein for the purpose of trading in their account with the petitioner. The AAT was of the view that the respondents had clearly established that they had made payment to the petitioner for the purpose of trading after they opened trading account with the petitioner. The transfer of securities to the petitioner and other director and employee of the petitioner was also pursuant to the opening of the trading account and was in pursuance of the respondents’ intention to trade with the petitioner. The AAT also holds that the petitioner has not denied the contention of the respondents that they gave instructions to the petitioner not to carry forward or roll over the trades and asked the petitioner to return the money which was admittedly not returned.

10. The AAT justified the lifting of corporate veil to ascertain the real state of affairs, particularly when the Tribunal found that there are serious allegations of fraud and serious misdemeanor against the petitioner. It relied upon the judgment of the Supreme Court in the case of ***Madan Mohan Rajgariha vs. Mahender R. Shah & Brothers 2003 (7) SCC 138*** that even in the absence of a member constituent

agreement, the claims of a stock broker against the client/constituent would be arbitrable in accordance with the bye-laws of the stock exchange. The AAT was of the view that since the transactions have taken place between the petitioner and the respondents, which can fully be attributable to the transactions between a trading member and a constituent and hence the bye-laws of NSE are applicable. The AAT had also held that the two persons namely Dr. Mayank Dubey and Mr. Mayur Dubey, the directors of the petitioner company who were the authorized signatory and the witness to the agreement purported to have been executed by Sai Soft Securities are the persons responsible for the execution of the agreement with Sai Soft Securities. The AAT agreed with the stand of the respondents, that some of the securities transferred by the respondents to the Demat account of Mr. Mayur Dubey along with some securities transferred to the Demat account of one of the employees of the petitioner proves that both the entities were under the control of same set of persons. The AAT relied upon the judgment of the Supreme Court in case of *LIC vs. Escorts Ltd. AIR 1986 SC 1370*, where the Supreme Court approved lifting of corporate veil where a statute itself contemplate lifting of the veil or fraud or improper conduct is intended to be prevented or a taxing statute or a beneficial statute is sought to be evaded or where associated companies are inextricably

connected as to be in reality part of one concern. Meaningfully read, it was the conclusion of AAT that the Arbitral Tribunal was justified in holding that the petitioner and Sai Soft Securities are the mirror image of each other.

11. The AAT rejected the plea of the petitioner that the agreement between Sai Soft Securities and the respondents is a portfolio management. It also rejected the plea of jurisdiction of the Arbitral Tribunal to proceed in the matter.

12. The case of the petitioner in the counterclaim was a challenge to the order dated January 09, 2014 of the Investor Grievance Resolution Panel, and the action of NSE whereby the NSE had withheld the amount of the petitioner.

13. Learned counsel for the petitioner even in these proceedings, under Section 34 of the Act has raised similar pleas as were advanced before the Arbitral Tribunal and the AAT. The said contention of the petitioner is primarily by placing reliance on Clause 1 of Chapter 11 of the bye-laws of the Exchange with respect to matters which can be referred to arbitration. Clause 1 of Chapter 11 of the byelaws which relates to arbitration is reproduced as under:-

“(1) All claims, differences or disputes between the Trading Members inter se and between Trading Members

and Constituents arising out of or in relation to dealings, contracts and transactions made subject to the Bye-Laws, Rules and Regulations of the Exchange or with reference to anything incidental thereto or in pursuance thereof or relating to their validity, construction, interpretation, fulfilment or the rights, obligations and liabilities of the parties thereto and including any question of whether such dealings, transactions and contracts have been entered into shall be submitted to arbitration in accordance with the provisions of these Byelaws and Regulations.”

14. The contention primarily being no contracts or transactions were entered into by the petitioner under the bye-laws of the Exchange. The said submission need to be rejected in view of the conclusion arrived at by the Arbitral Tribunal as well as AAT. Suffice to state, the authorities were correct in lifting the corporate veil to ascertain the relationship between the petitioner and the respondents. It is not denied that trading in the accounts of the respondents had started immediately on the initial deposit of Rs. 25 lacs by them. It is not in dispute that the said payment was received by the petitioner herein. Even the transfer of securities by the respondents to the demat account of Mr. Mayur Dubey and one of the employees of the petitioner was also pursuant to the opening of the trading account and as per the desire of the respondents to trade through the petitioner. Even otherwise, I note that the petitioner herein is

estopped from raising such a plea even before the Arbitral Tribunal as well as before AAT, when the petitioner itself had made a counterclaim before both the authorities challenging the order dated 09.01.2014 and also seeking a prayer for setting aside the action taken by the NSE withholding the deposit of the petitioner in both the cases. The filing of a counterclaim by the petitioner presupposes the understanding of the petitioner that the Arbitral Tribunal and the AAT has jurisdiction to arbitrate the claims and counterclaim of the parties. It is a different issue that the Arbitral Tribunal as well as AAT has rejected the counterclaim of the petitioner on the ground that the counterclaim concerns the Exchange and the petitioner and the reliefs are not within the jurisdiction of the Arbitral Tribunal. In fact I note, the SEBI had issued circular dated September 26, 2013 with regard to Investor Grievance Redressal Mechanism, wherein the following has been decided:-

“2) With a view to streamline and make more effective the investor grievance redressal mechanism at Stock Exchanges, and consequent to discussions with Stock Exchanges and Depositories, it has been decided to shorten the time taken for the proceedings as well as to give monetary relief to the investors, during the course of pendency of proceedings. In this regard, Stock Exchanges are advised as under:

a) Stock Exchanges shall ensure that all complaints are resolved at their end within 15 days as mentioned in the circular no. CIR/MRD/ICC/16/2012 dated June 15, 2012. The correspondence with the Member & investor (who is client of a Member) may be done on email if the email id of the investor is available in the UCC database. The Member (Stock Broker, Trading Member and Clearing Member) shall provide a dedicated email id to the stock exchange for this purpose.

b) In case the matter does not get resolved, conciliation process of the exchange would start immediately after the time lines stated in sub-para (a) above.

c) Investor Grievance Redressal Committee (IGRC) shall be allowed a time of 15 days to amicably resolve the investor complaint.

d) IGRC shall adopt a two-fold approach i.e. for proceedings leading to direction to the Member to render required service in case of service related complaints and proceedings leading to an order concluding admissibility of the complaint or otherwise in case of trade related complaints.

e) In case the matter is not resolved through the conciliation process, IGRC would ascertain the claim value admissible to the investor.

f) Upon conclusion of the proceedings of IGRC, i.e. in case claim is admissible to the investor, Stock Exchanges shall block the admissible claim value from the deposit of the Member.

g) The Stock Exchange shall give a time of 7 days to the Member from the date of signing of IGRC directions as mentioned under sub-para (d) above to inform the Stock Exchange whether the Member intends to pursue the next level of resolution i.e. Arbitration.

h) In case, the Member does not opt for arbitration, the Stock Exchange shall, release the blocked amount to the investor after the aforementioned 7 days.

i) In case, the Member opts for arbitration and the claim value admissible to the investor is not more than Rs. 10 lac, the following shall be undertaken by the Stock Exchange

i. . 50% of the admissible claim value or Rs. 0.75 lac, whichever is less, shall be released to the investor from IPF of the Stock Exchange.

ii. In case the arbitration award is in favour of the investor and the Member opts for appellate arbitration then a positive difference of, 50% of the amount mentioned in the arbitration award or Rs. 1.5 lac, whichever is less and the amount already released to the investor at clause (i) above, shall be released to the investor from IPF of the Stock Exchange.

iii. In case the appellate arbitration award is in favour of the investor and the Member opts for making an application under section 34 of the Arbitration and Conciliation Act, 1996 to set aside the appellate arbitration award, then a positive difference of 75% of the amount determined in the appellate arbitration award or Rs. 2 lac, whichever is less and the amount already released to the investor at clause (i) and (ii) above, shall be released to the investor from IPF of the Stock Exchange.

iv Before release of the said amounts from the IPF to the investor, the Stock Exchange shall obtain appropriate undertaking/indemnity from the investor against the release of the amount from IPF, to ensure return of the amount so

released to the investor, in case the proceedings are decided against the investor.

v If it is observed that there is an attempt by investor/client either individually or through collusion with Member(s) or with any other stakeholders, to misuse the provision of this Circular, then without prejudice to the powers of the Board to take action, appropriate action in this regard shall be taken against any such person, by the Stock Exchange, including disqualification of the person so involved from henceforth accessing the benefits of this Circular.

vi In case the complaint is decided in favour of the investor after conclusion of the proceedings, then amount released to the investor shall be returned to IPF from the blocked amount of the Member by the Stock Exchange and the rest shall be paid to the investor.

vii Total amount released to the investor through the facility of monetary relief from IPF in terms of this Circular shall not exceed Rs. 5lac in one financial year.”

15. From the perusal of the aforesaid circular, it is clear that, the Trading Member (Petitioner) had an option to pursue the next level of resolution i.e. the Arbitration. In fact, it is seen that after the order dated 09.01.2014 was passed by the Investor Grievance Resolution Panel, the respondents filed a claim petition before the Arbitral Tribunal which was responded to by the petitioner by filing a counterclaim. In other words, the petitioner had actually opted for the arbitration, or to say, submitted to the jurisdiction of the Arbitral Tribunal in terms of the clause (g) of circular dated September 26, 2013. If the petitioner had not opted for the arbitration, the consequences were clearly laid down in Clause 2h of the circular inasmuch as the stock exchange would have released the blocked amount to the respondents. The issue decided by the Arbitral Tribunal in the arbitration was the entitlement of the investor to the claims so made against the trading member. The Arbitral Tribunal had rightly decided the claims and had rejected the counterclaim. A favourable decision on the claims of the respondents, has the effect of upholding the order dated January 09, 2014 of the Investor Grievance Resolution Panel and a decision against the petitioner on the counterclaim. It would not be necessary for this Court to go into the question, whether rejection of the counter claim, by the Arbitral Tribunal, on the ground that the relief sought by the petitioner was against NSE, is justified or not, as the effect

of allowing the claims of the respondents, has the effect of upholding the order dated January 09, 2014 of the IGRP and consequently, rejecting the counterclaim.

16. Having exercised the right under the said circular, the petitioner could not have challenged the very jurisdiction of the Arbitral Tribunal to which it has sought recourse. In fact, there is no challenge in the counterclaim filed before the Arbitral Tribunal or in the appeal before the AAT to the vires of the said circular. Hence, I am of the view that the contention of the learned counsel for the petitioner with regard to the jurisdiction of the Arbitral Tribunal to arbitrate the claims filed by the respondents need to be rejected.

17. Insofar as the other findings of the Arbitral Tribunal and the AAT are concerned, the same are finding of facts which this Court in exercise of its jurisdiction under Section 34 of the Act would not like to interfere.

I note, the AAT has noted the judgment of the Supreme Court in ***Paradip Port Trust & Others Vs. Unique Builders, Civil Appeal No. 3683 of 1996 and 4144 of 1996***, wherein it was held that generally, an award passed by the Arbitrator is considered binding and the power to set aside the award will not be exercised unless there appears to be a mistake on the face of the award. No mistake of the fact has been pointed out by the learned counsel for the petitioner. I also note for benefit the judgment of

the Division Bench of this Court in the case of *State Trading Corporation of India vs. Toepfer International Asia Pte. Ltd.* 2014 (3) Arb. LR 105 (Delhi) (DB), wherein at pages 112-115, it has been held as under:-

"6.A Section 34 proceeding, which in essence is the remedy of annulment, cannot be used by one party to convert the same into a remedy of appeal. In our view, mere erroneous/wrong finding of fact by the Arbitral Tribunal or even an erroneous interpretation of documents/evidence, is non-interferable under Section 34 and if such interference is done by the Court, the same will set at naught the whole purpose of amendment of the Arbitration Act.

7. Arbitration is intended to be a faster and less expensive alternative to the courts. If this is one's motivation and expectation, then the finality of the arbitral award is very important. The remedy provided in Section 34 against an arbitral award is in no sense an appeal. The legislative intent in Section 34 was to make the result of the annulment procedure prescribed therein potentially different from that in an appeal. In appeal, the decision under review not only may be confirmed, but may also be modified. In annulment, on the other hand, the decision under review may either be invalidated

in whole or in part or be left to stand if the plea for annulment is rejected. Annulment operates to negate a decision, in whole or in part, thereby depriving the portion negated of legal force and returning the parties, as to that portion, to their original litigating positions. Annulment can void, while appeal can modify. Section 34 is found to provide for annulment only on the grounds affecting legitimacy of the process of decision as distinct from substantive correctness of the contents of the decision. A remedy of appeal focuses upon both legitimacy of the process of decision and the substantive correctness of the decision. Annulment, in the case of arbitration focuses not on the correctness of decision but rather more narrowly considers whether, regardless of errors in application of law or determination of facts, the decision resulted from a legitimate process.

8. In the case of arbitration, the parties through their agreement create an entirely different situation because regardless of how complex or simple a dispute resolution mechanism they create, they almost always agree that the resultant award will be final and binding upon them. In other words, regardless of whether there are errors of application of law or ascertainment of fact, the parties agree that the award will be regarded as

substantively correct. Yet, although the content of the award is thus final, parties may still challenge the legitimacy of the decision-making process leading to the award. In essence, parties are always free to argue that they are not bound by a given "award" because what was labeled an award is the result of an illegitimate process of decision.

9. This is the core of the notion of annulment in arbitration. In a sense, annulment is all that doctrinally survives the parties' agreement to regard the award as final and binding. Given the agreement of the parties, annulment requires a challenge to the legitimacy of the process of decision, rather than the substantive correctness of the award.

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11.A perusal of the various grounds enunciated in Section 34 will show that the same are procedural in nature i.e. concerning legitimacy of the process of decision....

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17. The Supreme Court in Rashtriya Ispat Nigam Ltd. Vs. Dewan Chand Ram Saran (2012) 5 SCC 306 refused to set aside an arbitral award, under the 1996 Act on the ground that the view taken by the Arbitral Tribunal was against the terms of the

contract and held that it could not be said that the Arbitral Tribunal had travelled outside its jurisdiction and the Court could not substitute its view in place of the interpretation accepted by the Arbitral Tribunal. It was reiterated that the Arbitral Tribunal is legitimately entitled to take the view which it holds to be correct one after considering the material before it and after interpreting the provisions of the Agreement and if the Arbitral Tribunal does so, its decision has to be accepted as final and binding. Reliance in this regard was placed on Sumitomo Heavy Industries Ltd. Vs. ONGC Ltd. (2010) 11 SCC 296 and on Kwaliti MFG. Corporation Vs. Central Warehousing Corporation (2009) 5 SCC 142. Similarly, in P.R. Shah, Shares & Stock Broker (P) Ltd. V. B.H.H. Securities (P) Ltd. (2012) 1 SCC 594 it was held that a Court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating evidence and an award can be challenged only under the grounds mentioned in Section 34(2) and in the absence of any such ground it is not possible to reexamine the facts to find out whether a different decision can be arrived at. A Division Bench of this Court also recently in National Highways Authority of India Vs. M/s. Lanco Infratech Ltd. MANU/DE/0609/2014 held

that an interpretation placed on the contract is a matter within the jurisdiction of the Arbitral Tribunal and even if an error exists, this is an error of fact within jurisdiction, which cannot be reappreciated by the Court under Section 34 of the Act. The Supreme Court in Steel Authority of India Ltd. Vs. Gupta Brother Steel Tubes Ltd. (2009) 10 SCC 63 even while dealing with a challenge to an arbitral award under the 1940 Act reiterated that an error by the Arbitrator relatable to interpretation of contract is an error within his jurisdiction and is not an error on the face of the award and is not amenable to correction by the Courts. It was further held that the legal position is no more res integra that the Arbitrator having been made the final Arbiter of resolution of dispute between the parties, the award is not open to challenge on the ground that Arbitrator has reached at a wrong conclusion."

18. The present appeals are accordingly dismissed with no order as to costs.

(V.KAMESWAR RAO)
JUDGE

JANUARY 27, 2015
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