

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

% *Judgment reserved on: 23rd May, 2016*
Judgment pronounced on: 8th July, 2016

+ **O.M.P. (COMM) No.231/2016**

M/S L.G ELECTRONICS INDIA(P) LTD Petitioner
Through: Mr. Anil Sapra, Sr. Adv. with
Mr. Gajinder Kumar, Ms. Ishita
Yadu, Mr. Siddharth Handa,
Mr. Rajiv Jai and Mr. Chandra
Shekhar, Advs.

versus

DINESH KALRA Respondent
Through: Mr. Sachin Datta, Sr. Adv. with
Mr. Manikya Khanna and
Ms. Nauras Sahrawardy, Advs.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act") for setting aside the arbitral award dated 28th June, 2013 passed by the Arbitral Tribunal presided by Justice P. K. Bahri (Retd.), Justice Usha Mehra (Retd.) and Justice R.C. Chopra (Retd.) on the ground that the Arbitral Tribunal had exceeded its jurisdiction to give an award pertaining to other products also which violates the mandate of Section 7 of the Act.

2. The petitioner used to offer various incentives to boost its sales in the market/ make its prices more competitive vis-a-vis its competitors. The Distributors (including the respondent) would purchase the products at a price and once the target (of the scheme)

was achieved, the respondent would issue credit notes for the incentive which was due and payable.

3. The brief facts of the case are that the petitioner and the respondent entered into an Agreement for Distribution on 24th October, 2002. The said Agreement was initially for colour TVs, however the petitioner admittedly under the said agreement also started supplying its other products to the respondent including refrigerators, washing machines, air conditioners, microwaves etc.

4. The incentives were payable to the respondent in terms of Clause 24 of the Agreement dated 24th October, 2002, wherein it has been agreed as under:-

"24. The distributor shall not incur or commit itself or on behalf of the company any expenditure in regard to advertisements /schemes or of whatsoever nature without written approval of the company's authorized representative."

5. As the petitioner had not cleared the outstanding dues of the respondent, the respondent filed Suit No. 1242 of 2007 in the Court of Civil Judge, Varanasi seeking a decree of accounting in respect of its outstanding dues against the petitioner.

6. Thereafter, the petitioner moved an application under Section 8 of the Act in the aforementioned suit. The aforementioned suit pertained to all products provided by the petitioner to the respondent and not confined to colour televisions. It was the case of the petitioner before the Civil Court that the suit fell within the scope of the Arbitration Clause embodied in the Distributorship Agreement dated 24th October, 2002.

7. After filing of the application under Section 8 of the Act, the respondent issued notice dated 22nd January, 2009 for invoking the arbitration clause. The dispute mentioned in the notice dated 22nd January, 2009 pertained to all products supplied by the petitioner to the respondent and was not restricted to colour televisions. The respondent thereafter moved an Arbitration Application No. 179 of 2009 titled as 'M/s. Kalra Electronics vs. LG Electronics India (P) Ltd.' before this Court seeking appointment of an Arbitrator and the said application was disposed of vide order dated 11th September, 2009.

8. The respondent around March, 2010 moved an application under Order 23 Rule 1 CPC in Suit No. 1242 of 2007 before the Court of Civil Judge, Varanasi seeking withdrawal of the said suit in view of the fact that all disputes/ claims of the respondent in the said suit had been referred to arbitration and an Arbitral Tribunal had been constituted to adjudicate the same as alleged by the respondent.

9. The aforesaid application was allowed vide order dated 23rd October, 2011.

10. Clause 1 of the Distributorship Agreement dated 24th October, 2002 clearly mentions the respondent's appointment as Distributor is for "the specified product colour TV or as modified in writing from time to time...". A bare reading of this clause makes it evident that the range of products covered by the Agreement is not intended to be confined to Colour TV. As a matter of fact, the petitioner supplied various other products to the respondent as "Distributor" thereof.

11. The invoices issued by the petitioner in respect of such products refer to the respondent as Distributor. The said invoices (Ex. PW-1/2) also refers to a "Distributor's Discount" and to "Cash Discount - Distributors". These written invoices meet the requirement of Clause 1 of the Distributorship Agreement dated 24th October, 2002.

12. It has come during evidence before the Arbitral Tribunal that a common customer code was allotted to the respondent for all products; common credit notes were issued for all products; and the account statement drawn was also common.

13. The said facts were admitted by Mr.Tanesh Kwatra (RW-1), the petitioner's witness in his cross examination on 23rd October, 2010. It was further stated by Mr.Tanesh Kwatra (during cross examination on 23rd October, 2010) that "the respondent has never appointed anywhere in country any person as a distributor without a written agreement". There was no "oral" distributorship agreement between the petitioner and the respondent for products other than colour TVs.

14. The Branch Manager of the petitioner is the authorized representative of the petitioner. The same has also been stated by RW-2, Mr.Abhay Sood in his cross examination on 27th November, 2010 as also by RW-1, Mr.Tanesh Kawatra in his affidavit in evidence. During the period April- June, 2005, the petitioner through its Branch Manager Mr.Vivek Mishra introduced an incentive scheme (Ex. PW-1/8, Ex. PW-1/9 and Ex. PW-1/26).

15. RW-1, Mr.Tanesh Kawatra in his affidavit in evidence had alleged that Ex. PW-1/8-10 and Ex. PW-1/26 are forged and fabricated documents.

16. The said allegation of RW-1, is belied from the Report of the Forensic Science Laboratory which has noted that the said documents bear the handwriting of Mr.Vivek Mishra, Branch Manager of the petitioner. A copy of the Final Report and Report of Forensic Science Laboratory and Document by Director, Forensic Science Laboratory with translated copy has been marked as ANNEXURE R-5(Colly).

17. The petitioner despite being granted various opportunities has failed to place on record the incentive schemes which were applicable at the prevalent period.

18. The respondent had also moved an application under Order XI Rules 1 and 2 CPC in this regard before the Arbitral Tribunal, however, the petitioner failed to disclose the same. RW-1, Mr.Tanesh Kawatra during his cross-examination on 25th November, 2010 had undertaken to place the same on record within 2 weeks, however the same was not done.

19. It is alleged by the respondent that during the hearing held on 23rd October, 2010 the petitioner was requested to produce certain documents by the respondent, however the petitioner failed to do the same.

20. The respondent had also placed on record (Ex. PW-1/6) an invoice dated 31st August, 2005 of another distributor namely, Chiragdeep Video and Audio Pvt. Ltd. showing that it was selling products to other shops at a rate which was viable only if incentive schemes (Ex. PW-1/8- 9 and Ex. PW-1/26) were applicable. A chart showing the aforestated position has been set out here as under:

Model No.	Price with incentive	Sale Price by Chiragdeep	Price without incentive
20F69	5500	5700	6800(p.373)
21FA20V	7300	7550	8700(p.387)

21. After recording the evidence of the parties and hearing both the sides, all the claims raised by the respondent were discussed in details, most of the contentions of the respondent were rejected except few were accepted and on limited amount of award is passed directing the petitioner under claim No.1 to pay Rs.36,71,067/- along with interest @ 6% p.a. on the amount w.e.f. 1st November, 2005 till the date of the award, within three months failing which the petitioner would pay interest @ 12% p.a. from the date of award till the date of payment.

22. The main contention of the petitioner is that the claim with respect to the scope of arbitration as per the Distributorship Agreement dated 24th October, 2002, was with regard to specific product, i.e., colour television only. The respondent under the garb of the agreement unlawfully enhanced its alleged claims against the entire product line which are beyond the ambit of the present arbitration agreement and the scope of the arbitration proceedings were restricted to the alleged claims relating to color television only, if at all there are any claims and adjudicating the issues pertaining to the products other than the colour television is beyond the scope of the authority of this Tribunal. The petitioner filed its defence to the claim of the respondent and at the first instance filed an application under Order 43 Rule 21 CPC with respect to limitation. It was mentioned that the petitioner only filed its defence with respect to the product colour television and reserved its right to file the defence with the documents, if the Tribunal decided to include all

other products and finally the petitioner could not file the documents related to other products beyond the distribution agreement and the claim was decided against the petitioner.

23. Mr. Anil Sapra, learned Senior counsel appearing on behalf of the petitioner has referred the clause 1 of the agreement pertains to specific product, i.e. colour T.V and the agreement has never been modified in writing since its execution so as to include the entire range of products as alleged by the respondent in the statement of claims. The said fact was admitted by the respondent during his cross-examination.

24. Mr. Sapra submits that only claims pertaining to the Colour T.V were covered by the Arbitration clause...." The application under Section 8 was filed with respect to the Arbitration agreement dated 24th October, 2002 and not the entire claim as observed by Tribunal.

25. Mr. Sapra admits on behalf of the petitioner that the petitioner had started supplying products other than mentioned in the said Agreement to the respondent, but the same cannot be the subject matter of the present proceedings in terms of the Act in terms of Section 7 (1) &(3) of the Act which provides that the scope of dispute referred in Distributorship Agreement has to be read under Section 7(1) which reads as "Arbitration Agreement means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of the defined legal relationship, whether contractual or not" and Section 7(3): "Arbitration agreement shall be in writing".

26. He also argued that the claims of the respondent were time barred as the respondent cannot deny the benefit of the period spent

during the suit filed by the respondent. The advantage of Section 14 of the Limitation Act is wrongly given to the respondent without any written applications.

27. Mr. Sapra has also relied upon the judgment of the Supreme Court in the matter of **FCI v. Chandu Construction & Anr** (2007) 4 SCC 697, wherein it was observed that the arbitrator being a creature of the agreement between the parties, has to operate within four corners of the agreement and if he ignores the specific terms of the contract, it would be a question of jurisdictional error on the face of the award. It was further observed that where there is an express term, the arbitrator cannot find on construction of the contract, an implied term inconsistent with such express terms and an arbitrator derives his authority from the contract and if he acts in disregard of the contract, he acts without jurisdiction. An arbitrator derives his authority from the contract and if he acts in disregard of the contract, he acts without jurisdiction. A deliberate departure from the contract amounts to not only manifest disregard of his authority or misconduct on his part, but it may amount to malafide action.

28. Mr. Sapra has also referred the following decisions in support of its submissions:-

- a) In **Bharat Cooking Coal Ltd. v. Annapurna Constructions** (2003) 8 SCC 154 it was observed that the arbitrator's jurisdiction is confined to the four corners of the contract. He cannot ignore provisions of the contract otherwise he would be acting without jurisdiction". Relying upon various judgments the Supreme Court further observed that-"There lies a clear distinction between within the jurisdiction and error in excess of

jurisdiction. Thus, the role of the arbitrator is to arbitrate within the terms of the contract. He also has no power apart from what parties have given him under the contract. If he has travelled beyond the contract, he would be acting without jurisdiction, whereas if he has remained inside the parameters of the contract, his award cannot be questioned on the ground that it contains an error apparent on the face of the record", and also in **Vivek Jain v. UOI and Ors** (2008) 148 DLT 333, this Court observed that "arbitrator is bound by contract between parties, to find out whether the arbitrator has acted in accordance with the contract and can look into, the claim made by the Applicant/ Respondent/Claimant and whether the claims have been decided in accordance with law or not.

b) The judgment relied upon by the respondent **P. R. Shah, Shares & Stock Brokers (P) Ltd v. B. H. H. Securities (P) Ltd.**, (2012) 1 SCC 594 is not applicable in the present case firstly there is no reassessing or re appreciating of evidence. The petitioner has challenged the Impugned award on the ground that Arbitral Tribunal has exceeded its jurisdiction.

29. Admittedly, out of eight claims, only claim No.1 was allowed and on the said basis, the impugned award was passed. While passing the award on the claims, the Arbitral Tribunal has assigned detailed reasons. The said details are mentioned in para Nos.47 to 54. The same are extracted as under :

"47. We have already found that the claimant was acting as a Distributor of the respondent not only for Colour. Televisions but for other products also in terms of the Distributors Agreement and as such there was nothing wrong if the Branch Manager of the respondent offered

certain incentive schemes for the sale of other products also. It can be safely held that for the period April to June, 2005 RW-3 Mr. Vivek Mishra had offered incentive schemes to the claimant for refrigerators and also offered an additional sum of Rs.1,000/- for the sale of every Frost Free Refrigerator, the minimum purchase requirement being 75 and assured for purchasing at least 30 units of airconditioners of 1.35 ton each. For different models of Televisions, incentives were consolidated sum of Rs, 35,000/- was offered vide Exhibit PW 1/9 and for achieving sale of certain models of refrigerator and colour televisions, incentives were offered regard to the schemes prevalent in January and February 2005. The plea of the respondent is that applicable incentives have already been paid to the claimant and nothing is due.

48. It is interesting to note that respondent's own witness Mr. Tanesh Kwatra has stated that as per business module of the respondent, all price circulars, schemes circulars, rate promotion circulars were signed by Branch Manager and those were not sent directly from the Corporate Office as dealers were dealing with the Branch only. He also admitted that dealings inter-se the clients and the Branch were verbal also. In his cross-examination held on 23.10.2010, he was specifically asked by the claimant's counsel in regard to the circulars but he stated that he wanted a fortnight for searching the records. However no such records were produced.

49. RW-2 Mr. Abhey Sood also admitted that the Branch Manager and the Accountant of the Branch were authorized agents of the respondent and even RW-3 Mr. Vivek Mishra stated that the Corporate Office never had any direct dealings with the Distributor and the dealings were through Branch only. Branch was communicating with the defendants dealers either orally or in writing. Therefore we have no hesitation in holding that the incentive/schemes as pleaded by the claimant in claim No. 1 were issued by the respondent through its Branch Manager RW-3 Mr. Vivek Mishra.

50. The claimant has already proved on record the handwritten notes of Mr. Vivek Mishra in respect of giving such incentives in respect of particular Televisions, Washing

Machines and Refrigerators. The claimant has given the details of the amount due to the claimant in terms of the said schemes and incentives. The respondent has not placed on record the schemes and incentives issued by the respondent to the similarly placed distributors in Varanasi and has also not placed on record any schemes and incentives issued to the claimant. It is admitted by the respondent's witnesses that similar schemes and incentives have been issued to other distributors. The best evidence was available with the respondent to contradict the schemes and incentives relied upon by the claimant on the handwritten notes of Mr, Vivek Mishra, who was branch manager at Varanasi. So, we accept the claim of the claimant in this regard and allow Rs.36,71,067/- to the claimant on this account as the respondent has not been able to show that the respondent has given such incentives to the claimant in consonance with the schemes mentioned in the said handwritten notes.

51. The claimant is claiming Rs.4,00,100/- in respect of expenses incurred by the claimant in meetings and exhibitions etc., as mentioned in para 18 of the affidavit of the claimant. The claimant has placed on record the invoices Ex. PW-1/13 (Colly.). There is no document to support the plea of the claimant that the claimant was given any assurance by the respondent for reimbursing him any such expenses incurred by the claimant. This claim is not borne out of any of the clauses of the Distribution Agreement. It is not possible to believe the claimant that on verbal assurance of the officials of the respondent that such expenses would be reimbursed to the claimant and on such assurance the claimant has incurred such expenses. Thus, this part of the claim is rejected.

52. The claimant is claiming Rs.1,32,098/- as the amount wrongly debited to the claimant in debit notes issued from 29.3.2005 to 31.3.2005 as mentioned in para 20 of the affidavit of the claimant, Such a claim was not raised in the suit and there is no convincing evidence present on record that such debit notes were not justified. Thus, this part of the claim is also rejected.

53. The claimant is claiming Rs.96,534/- the amount shown as due to the claimant in the month of August 2005

in the books of accounts of respondent. Such a claim was not raised in the civil suit and thus, is disallowed.

54. Rs.2,00,000/- are claimed in the statement of claim in this claim no. 1 as the amount committed to the Claimant by the respondent for liquidation of unordered stock material. It is pleaded that this amount was so committed by the Respondent in its communication dated 26.7.2005. It is true that in a communication dated 26.7.2005, Mr. Vivek Mishra had assured reimbursement of Rs.2,00,000/- as claimed by the Claimant, but this claim cannot be allowed, as it was not raised in the civil suit and stands time barred."

30. The details of other claims i.e. claim No.2 to 8 are also given as under :

"30. Claim No. 2:

Rs.77,92,425/- are claimed towards handling and transportation charges payable to the claimant by the respondent in terms of clauses 6 and 10 of the Distribution Agreement. This claim was not there in the civil suit. It has been raised for the first time in a notice served by the claimant in 2009, invoking the arbitration clause. The cause of action for claiming this amount accrued to the claimant in August 2005 when the Distribution Agreement stood withdrawn. The claimant has not chosen to seek this amount in the civil suit. In case, there has been no arbitration clause governing the disputes between the parties, obviously, the suit would have been barred by time on the day the notice was issued by the claimant in 2009 for invoking the arbitration clause. Thus, this claim is barred by limitation.

31. Claim No.3 :

Rs. 96,49,304/- are claimed as the losses suffered by the claimant towards the market outstanding, which could not be recovered by the claimant from its dealers/ customers, as the Distribution Agreement stood withdrawn.

32. Claim No.4 :

Rs. 5,32,000/- Rs. 8,60,000/- are claimed as the salaries paid by the claimant to its staff and costs towards maintenance of infrastructure between August 2005 till December 2008.

33. Claim No. 5 :

Rs. 32,25,000/- are claimed by the claimant towards amount recoverable on account of defective stocks supplied by the respondent.

34. Claim No.6 :

Rs.53,89,050/- are claimed by the claimant towards interest paid by the claimant to the Canara Bank again for the period August 2005 to December 2008.

35. Claim No.7 :

Rs. 2, 58,37,500/- are claimed as loss of profit suffered by the claimant till December 2009 due to illegal withdrawal of the Distribution Agreement.

36. Claim No.8 :

Rs. 1,00,00.000/- is claimed by the claimant as compensation for mental agony caused to the claimant and his family members."

31. All the aforesaid claims 2 to 8 have been rejected.

32. The Distributorship Agreement dated 24th October, 2002 clearly mentions the Respondent's appointment as Distributor is for "the specified product colour TV or as modified in writing from time to time...". A bare reading of this clause makes it evident that the range of products covered by the Agreement is not intended to be confined to Colour TV.

33. The petitioner admittedly supplied various other products to the respondent as "Distributor" thereof. The invoices issued by the petitioner in respect of such products refer to the respondent as Distributor. The said invoices (Ex. PW-I/2) also refers to a "Distributor's Discount" and to "Cash Discount - Distributors".

34. These written invoices meet the requirement of Clause 1 of the Distributorship Agreement dated 24th October, 2002 which amounting to the expression "as modified".

35. The Arbitral Tribunal held that a common customer code was allotted to the respondent for all products; common credit notes were issued for all products; and the account statement drawn was also common. The said facts were admitted by Mr. Tanesh Kwatra (RW-I), the petitioner's witness in his cross examination on 23rd October, 2010. It was further stated by Mr. Tanesh Kwatra (during cross examination on 23rd October, 2010) that "the respondent has never appointed anywhere in country any person as a distributor without a written agreement".

36. It is thus clear that there was no "oral" distributorship agreement between the petitioner and the respondent for products other than colour TVs.

37. The Branch Manager of the petitioner is the authorized representative of the petitioner. The same has also been stated by RW-2, Mr. Abhay Sood in his cross examination on 27th November, 2010 as also by RW-I, Mr. Tanesh Kawatra in his affidavit in evidence. During the period April-June, 2005, the petitioner through its Branch Manager Mr. Vivek Mishra introduced an incentive scheme (Ex. PW-I/8), Ex. PW-I/9 and Ex. PW-I/26.

38. RW-I, Mr. Tanesh Kawatra in his affidavit in evidence had alleged that Ex. PW-I/8-10 and Ex. PW-I/26 are forged and fabricated documents. The said allegation of RW-I, is belied from the Report of the Forensic Science Laboratory which has noted that the said documents bear the handwriting of Mr. Vivek Mishra, Branch

Manager of the petitioner. Mr. Vivek Mishra admittedly appeared before the Arbitral Tribunal, as a witness on behalf of the petitioner. The Arbitral Tribunal has independently applied its mind to ascertain the authenticity of the aforesaid documents. The respondent had filed an application before the Tribunal for sending Ex. PW-I/8-10 and Ex. PW-I/26 to CFSL for expert examination, which was opposed by the petitioner on the ground that the Police was well equipped to investigate the issue and the respondent should join the Police Investigation. The Tribunal in view of the stand taken by the petitioner had directed the parties vide order dated 5th September, 2011 to place on record the records of the investigation being done by the Police.

39. By order dated 21st April, 2010, the Tribunal had decided that the plea of the respondent regarding the alleged scope of the distribution agreement could only be decided after the parties had led evidence to prove the facts and the said plea would be examined at the final stage after the parties had led evidence on all the issues. The petitioner despite being granted various opportunities has failed to place on record the incentive schemes which were applicable at the prevalent period. The respondent had also moved an application under Order XI Rules 1 and 2 CPC in this regard before the Arbitral Tribunal, however the petitioner failed to disclose the same. RW-I, Mr. Tanesh Kawatra during his cross-examination on 25th November, 2010 had undertaken to place the same on record within 2 weeks, however the same was not done. During the hearing held on 23rd October, 2010 the petitioner was requested to produce certain documents by the respondent, however, the petitioner refused to do the same.

40. Even if the said documents were in possession of the petitioner since 2007 when the Civil Suit was filed, however, it is only in the year 2010 that the petitioner has for the first time raised an allegation that the said documents were forged and fabricated. Infact the stand taken by the petitioner in the statement of defence before the Arbitral Tribunal was that the schemes are not based on the records maintained in the office of the petitioner.

41. With regard to the criminal proceeding initiated by the petitioner against the respondent, the Police have already filed a final report to the effect that no offence has been found proved against the accused i.e. Mr. Dinesh Kalra. The Police has further observed in the Final Report that Mr.Krishan Murari (representative of the petitioner/ complainant before the Police) and Mr.Vivek Mishra (ex-employee of the petitioner) had impleaded the respondent under a conspiracy. It is submitted that Mr.Vivek Mishra at the time of issuing the said letters was working as the Branch Manager in the petitioner Company. The allegation of petitioner is belied from the Report of the Forensic Science Laboratory which has noted that the said documents bear the handwriting of Mr.Vivek Mishra, Branch Manager of the petitioner.

42. The disputes mentioned in the notice dated 22nd January, 2009 pertained to all products supplied by the petitioner to the respondent and were not restricted to colour televisions. The judgment of the Supreme Court referred to in the corresponding ground has no applicability in the facts and circumstances of the present case. It is pertinent to mention that the disputes mentioned in the notice dated 22nd January, 2009 pertained to all products supplied by the

petitioner to the respondent and was not restricted to colour televisions.

43. It is thus evident that there was no "oral" distributorship agreement between the petitioner and the respondent for products other than colour TVs. Infact, by implication, as per invoices, it amounts to written contract between the parties within the meaning of Section 7 of the Act and the judgments of the Supreme Court referred to in the corresponding grounds have no applicability in the facts and circumstances of the present case.

44. The next argument of Mr. Sapra is pertaining to limitation. Issue No.1 reads as under :

"Whether the claims of the claimant are within limitation?"

45. The legal issue on limitation has been discussed in para 20 and findings arrived by the Arbitral Tribunal at para 25 to 29 of the award. The same are extracted as under :

"25. In para 3 of the plaint, the claimant referred to its claims against the respondent, which were as follows :

- a) The claimant pleaded that respondent had specifically promised to fulfil entire commitments for reimbursing the amounts to be spent by the plaintiff on works and items orally directed to be carried out;
- b) The claimant pleaded that believing such promises and understandings, the claimant acted in all good faith;
- c) The claimant pleaded that it spent money in arranging meetings and exhibitions of the products of the respondent and also spent money for purchasing uniforms for the cricket matches organized for promotion of L.G. Products;
- d) The claimant is stated to have spent Rs.4,00,130/- for such meetings, exhibitions and uniforms of cricket

matches etc., which the claimant claimed from the respondent.

e) The claimant then referred to schemes issued by the company for marketing its products in between the period January 2005 to August 2005 and the claimant is stated to have successfully executed those schemes and thus, became entitled to Rs.41,56,817/- and it gave all the details of such schemes for that period in Schedule-A attached with the plaint.

f) The claimant thus claimed in all Rs.45,56,947/- with interest.

26. In para 4 of the plaint, the claimant referred to exchange of legal notices and replies in between the period 7th July, 2006 to 4th December, 2007. Copies of such correspondences/notices exchanged have not been produced on the record, except a reply sent by respondent to the notice dated 7th July, 2006.

27. Significantly, although, the claimant sought relief of rendition of accounts but the reading of the whole plaint reveals that it was a suit for recovery of the amount of Rs.45,56,947/- only. The suit was obviously instituted within limitation in respect of the said relief claimed by the claimant.

28. However, the respondent had moved an application under Section 8 of the Arbitration and Conciliation Act, 1996 in the said suit, pleading that there existed an arbitration clause in the Distribution Agreement entered into between the parties and disputes raised in the suit are liable to be adjudicated in arbitration, in terms of the said arbitration clause and prayed that the suit should be stayed. The claimant had opposed the said application and matter remained pending in the said court and ultimately, after this Tribunal has been constituted on the basis of the order made by the High Court under Section 11 of the Arbitration and Conciliation Act, 1996 in the petition filed by the claimant in the High Court of Delhi and thereafter the arbitration proceeding continued before this Tribunal and the claimant withdrew the said suit by moving an application, stating that the matter is under adjudication in arbitration. The suit was dismissed on 23rd October, 2011.

29. The claimant has raised eight claims in the present case. In claim No.1, the claimant is seeking Rs.42,99,943/- towards incentives payable to the claimant on the schemes floated by the respondent from January, 2005 to April 2005. The total amount claimed in relation to such incentives and schemes is mentioned as Rs.36,71,067/-. Apart from the said amount, the claimant is claimed Rs.2,00,000/- as the amount allegedly committed by the respondent in liquidation of unordered stock material. Rs.4,000,100/- is the amount claimed by the claimant towards the expenses incurred by the claimant, which was agreed to be reimbursed by the respondent orally in the meetings, exhibitions etc. Then the claimant has claimed a Rs.1,32,098/-, which were allegedly wrongly debited in the account of the claimant and then Rs.96,534/- are claimed as the credit balance shown in favour of the claimant in the books of accounts of the claimant in respect of month of August, 2005. The claimant is entitled to benefit of Section 14 of the Limitation Act for bonafide pursuing its relief in the civil suit and thus, claim No.1 considered to be within time."

46. Thus, as per limited scope of interference, the objections of the petitioners have no merit as this Court is not sitting in appeal court wherein all objections cannot be reconsidered. It is noticed by the Court that the Arbitral Tribunal has passed the detailed award, after considering rival submissions of the parties. The detailed findings are given on fact on the basis of evidence on record. Nitty-gritty things which are of technical nature or any procedural law of Code of Civil Procedure cannot be re-considered on the objections filed under Section 34 of the Act, once the award itself on merit does not suffer from merit of the case.

47. The words in Section 34(2) that "*An arbitral award may be set aside by the court only if*" are imperative and take away the jurisdiction of the court to set aside an award on any ground other than those specified in the Section. The Court is not expected to sit in appeal over the findings of the Arbitral Tribunal or to re-

appreciate evidence as an appellate court. Even if the additional grounds under Section 34, as laid down by the Supreme Court in the case of **ONGC v. Saw Pipes Ltd.** AIR 2003 SC 2629 are considered, which are patent illegality arising from statutory provisions or contract provisions or that the Award shocks the conscience of the Court, no such facts are narrated in the petition. The endeavor of the petitioner is thus to convert the challenge to the arbitral award into an appellate proceeding involving a total re-hearing of the matter and re-appreciation of evidence, and which endeavor as per the consistent dicta of the Supreme Court is impermissible in law. A recent observation of the Supreme Court in the case of **P.R. Shah, Shares and Stock Brokers Private Limited v. B.H.H. Securities Private Limited and Others** (2012) 1 SCC 594, is apposite in this regard and is reproduced as under:

"21. A Court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or re-appreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34 (2) of the Act. Therefore, in the absence of any ground under section 34 (2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at".

48. The Supreme Court has expounded on the principle as to the sanctity of the decision of the Arbitrator in the case of **Markfed Vanaspati and Allied Industries v. Union of India** (2007) 7 SCC 679, wherein it was observed as under:

"17. Arbitration is a mechanism or a method of resolution of disputes that unlike court takes place in private, pursuant to agreement between the parties. The parties agree to be bound by the decision rendered by a chosen arbitrator after giving hearing. The endeavor of the court should be to honor and support the award as far as possible".

49. The limited scope of interference under Section 34 of the Act has also been succinctly elucidated by a Division Bench of this Court in the case of **State Trading Corporation of India Ltd. vs. Toepfer International Asia PTE Ltd.**, 2014 (3) Arb.LR 105 (Delhi), wherein it was held as under :

“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 is placed on **Sumitomo Heavy Industries Ltd. v. ONGC Ltd.** (2010) 11 SCC 296 and on **Kwality Manufacturing Corporation v. Central Warehousing Corporation** (2009) 5 SCC 142. Similarly, in **P.R. Shah, Shares & Stock Broker (P) Ltd.** (supra) 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 re-examine 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 v. M/s. Lanco Infratech Ltd.** ILR (2014) 2 Del 1187 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. v. 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 disputes between the parties, the award is not open to challenge on the ground that Arbitrator has reached at a wrong conclusion.

50. The Supreme Court has also recently reiterated the aforesaid consistent principle of limited interference with the findings of the Arbitral Tribunal in the case of ***Navodaya Mass Entertainment Ltd. v. JM Combines***, 2014 (3) Arb.LR 460 (SC) wherein it was held as under :

"5. In our opinion, the scope of interference of the Court is very limited. Court would not be justified in reappraising the material on record and substituting its own view in place of the Arbitrator's view. Where there is an error apparent on the face of the record or the Arbitrator has not followed the statutory legal position, then and then only it would be justified in interfering with the award published by the Arbitrator. Once the Arbitrator has applied his mind to the matter before him, the Court cannot reappraise the matter as if it were an appeal and even if two views are possible, the view taken by the Arbitrator would prevail...."

51. In view of the above, this Court is of the view that the findings of the Arbitral Tribunal are in consonance with the contract between the parties as well as with the law. The objections of the petitioner are thus without any merit and the same are accordingly dismissed.

52. No cost.

(MANMOHAN SINGH)
JUDGE

JULY 08, 2016

