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

% *Judgment delivered on: 08.09.2017*

+ **O.M.P. (COMM) No.338/2017**

PUNJAB & SIND BANK Petitioner

versus

CORUS INFRASTRUCTURE PVT. LTD. Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Pallav Saxena, Advocate.

For the Respondents : Mr. Ankit Jain & Mr. Sarvesh Rai, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

Caveat No.804/2017

Since the learned counsel has put in appearance on behalf of the caveator, caveat stands discharged.

I.A. No.10339/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

O.M.P. (Comm.) No.338/2017 & I.A. No.10338/2017 (for stay)

1. The petitioner by this petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') impugns award dated 09.05.2017.

2. By the impugned award dated 09.05.2017, the arbitrator has partly allowed the claims filed by the respondents/claimants. The arbitrator has directed refund of Rs.10 lacs deposited by the respondent as earnest money along with the interest @ 9 per cent per annum from the date of deposit. Further, the arbitrator has held that the petitioner/Bank is not entitled to forfeit the amount of Rs.5,18,92,578/- , which was deposited in the form of a fixed deposits and which fixed deposit was appropriated by the petitioner/Bank. The arbitrator has directed refund of the said amount along with the interest @ 9 per cent per annum from 12.05.2008, the date of maturity of the fixed deposits deposited with the petitioner/Bank. Further, the arbitrator has awarded costs in the sum of Rs.13 lacs, which were incurred by the respondent towards the fee of the arbitrator and ancillary expenses.

3. One M/s. Tensile Steel Limited had obtained a loan from the petitioner/Bank. The said M/s. Tensile Steel Limited defaulted in repayment of the loan and accordingly the account became a Non-Performing Assets.

4. The petitioner/Bank sought to assign Non-Performing Assets to

general investors and accordingly on 17.05.2007 issued a notice inviting expression of interest for purchase of the Non-Performing Asset.

5. Several parties submitted their bids. The bid of the respondent was the highest, at Rs.32.13 crores.

6. In the meanwhile, the said M/s. Tensile Steel Limited filed a Civil Suit impugning the notice inviting expression of interest. By an interim order, the petitioner/Bank was restrained from proceeding further with the said notice inviting expression of interest.

7. By letter dated 09.07.2007, the petitioner bank declared the bid of the respondent to be the highest bid. The petitioner/Bank also, by its letter dated 09.07.2007, informed the respondent about the pendency of the Civil suit filed by M/s. Tensile Steel Limited and stated that acceptance of the bid offer would be dependent on the outcome of the concerned litigation pertaining to caption impaired assets and acceptance by the competent authority.

8. Ultimately, the Civil Suit filed by M/s. Tensile Steel Limited was dismissed on 02.02.2008.

9. Subsequent thereto, by letter dated 27.02.2008, the petitioner/Bank communicated the acceptance of bid of the respondent and stated that the petitioner/Bank shall execute appropriate assignment deed after performance of all contractual prerequisites by

the respondent.

10. On 27.02.2008, the Division Bench of the High Court of Gujarat in Letters Patent Appeal No.32/2008 filed by the petitioner/Bank *inter alia* against M/s. Tensile Steel Limited directed that possession of the security asset be restored back to the petitioner/Bank. It further directed that on possession being handed over to the petitioner/Bank, the petitioner/Bank was restrained from alienating or transferring or selling the property in question.

11. The respondent in the meantime in accordance with its bid deposited a sum of Rs.5 crores with the petitioner/Bank in the form of a fixed deposit Receipt.

12. By letter dated 05.03.2008, the petitioner/Bank directed the respondent to deposit the balance consideration amount of Rs.27.13 crores. Since the respondent failed to deposit the amount as demanded by the petitioner/Bank, the petitioner/Bank by its letter dated 29.03.2008 withdrew the decision to assign the debt of M/s. Tensile Steel Limited and appropriated the fixed deposit by encashing the same and forfeited the amount.

13. By letter dated 31.03.2008, the respondent, while referring to the order of the Division Bench of the High Court of Gujarat dated 27.02.2008 and particularly to the restraint on the petitioner/Bank from alienating, transferring and selling the assets of M/s. Tensile Steel Limited, questioned the action of the petitioner/Bank in

withdrawing the decision to assign the debt and forfeiting the amount deposited by the respondent.

14. In response to the letter dated 31.03.2008, the petitioner/Bank by its reply dated 09.04.2008, contented that the assertion of the respondent that the Assignment Deed with respect to the loan account could not be executed was not correct. It contended that the petitioner/Bank had been restrained only from alienating or transferring or selling of the property and the order did not restrain the bank from assigning its rights and claims in the loan account in favour of the assignee. For the purposes of record, the petitioner/Bank reiterated that the offer of sale of impaired financial assets as given by noted dated 17.5.2007, did not, in any way, promise transfer and handing over of properties on signing of assignment deed. It contended that it only contemplated transfer of rights and obligations as available to the assignor in favour of the assignee.

15. In view of the stand of the petitioner/Bank and the action of the petitioner/Bank in withdrawing the offer of transfer and forfeiture of the amount, the respondent invoked arbitration.

16. The claim of the respondent before the Arbitrator was that the petitioner/Bank had sought to transfer entire loan account, which compromised of the actionable claim as well as the underlying security, which was in the form of the property. The stand of the respondent was that the embargo placed by the High Court of Gujarat

by order dated 27.02.2008, thereby restraining the petitioner/Bank from alienating, transferring or handing over the property of M/s. Tensile Steel Limited, would prevent the petitioner/Bank from also transferring the rights in the underlying security in favour of the respondent.

17. It is contended that since the respondent had bid both for the actionable claim as well as underlying security, the contention of the respondent that there was no promise to transfer or handover the properties showed that the intention was that the entire loan account would not be transferred.

18. Per Contra, the contention of the petitioner/Bank is that there is a distinction between transfer of loan account and transfer of assets under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act').

19. The contention of the petitioner/Bank is that what was agreed to be transferred was the entire loan account, which would have included the actionable claim as well as the underlying security. The embargo imposed by the Division Bench of the Gujarat High Court was on transfer of assets in exercise of powers under Section 13 of the SARFAESI Act and did not, in any way, impinge on the right of the petitioner/Bank to transfer the loan account which would have included the transfer of the actionable claim as well as the underlying

security.

20. Learned counsel for the petitioner submits that the petitioner/Bank had rights in the underlying security but did not have title to the same, it was not seeking to transfer the property in terms of Section 13 of the SARFAESI Act. Learned counsel submits that title can only be transferred in exercise of powers under Section 13 of the SARFAESI Act.

21. Learned Counsel submits that this was the distinction, which the respondent failed to appreciate. It is further contended that even the arbitrator failed to appreciate the distinction between the transfer under Section 13 of the SARFAESI Act and transfer of a loan account.

22. It is contended by learned counsel for the petitioner/Bank that there was never any embargo on the petitioner/Bank in transferring of the loan account, which would have included the transfer of rights in the underlying security.

23. Learned counsel for the petitioner/Bank further submits that one M/s. Alchemist Reality Limited had filed a Writ Petition before the High Court for Punjab and Haryana, impugning the action of the petitioner in forfeiting the fixed deposit receipt deposited by the respondent with the petitioner.

24. The said petitioner therein, M/s. Alchemist Reality Limited, had

claimed to have provided the fund of Rs.5 crores to the respondent, which was deposited in the form of the fixed deposits.

25. Learned counsel for the petitioner/Bank submits that by a detailed judgment dated 09.02.2017 in Civil Writ Petition No.7175/2009 (O&M), learned single judge of Punjab & Haryana High Court held that the action of the petitioner in forfeiting the security given by the respondent was bad in law.

26. It is contended that the said judgment also holds that there was an embargo placed on the petitioner by the order of the High Court of Gujarat dated 27.02.2008 and accordingly, the contention that the underlying asset was also being transferred was not accepted.

27. Learned counsel contends that operation of the judgment of the single judge has been stayed by the Division Bench in Letters Patent Appeal filed by the petitioner/Bank.

28. Learned counsel submits that since the Division Bench had stayed the operation of the order of the single judge, learned arbitrator should have stayed his hands and should not have made the award because the findings returned by the single judge, which had been stayed, touched upon the issues that the arbitrator was concerned with.

29. He submits that the view of the arbitrator is clouded by the detailed judgment of the learned single judge, even though the operation of the same had been stayed by the Division Bench by an

interim order.

30. Learned counsel for the petitioner has relied on the decision of the Supreme Court in *ASSOCIATE BUILDERS VS. DELHI DEVELOPMENT AUTHORITY*; (2015) 3 SCC 49 to contend that there is a binding effect of the judgment of a superior court and disregard of the same would be violative of the fundamental policy of the Indian Law.

31. With regard to the proceedings pending before the High Court for Punjab & Haryana, learned counsel for the respondent submits that the arbitrator, by intimation dated 17.02.2017 had informed the parties that the award was ready for being published and also intimated the date of publishing the award. It is contended that it was thereafter only that the order of the single judge dated 09.02.2017 was brought to the notice of the arbitrator. Learned counsel submits that the arbitrator thereafter fixed the matter for clarification. On the date when the matter was fixed for clarification, the order dated 09.02.2017 was placed before the arbitrator and the arbitrator was also informed by learned counsel for the petitioner that the said order had been stayed by the Division Bench.

32. Learned counsel for the respondent submits that arbitrator has returned his findings independent of the said judgment of the single judge dated 09.02.2017. He further contends that there was no embargo on the arbitration proceedings being culminated as they were completely independent of the Writ Proceedings.

33. The notice issued by the Petitioner/Bank dated 17.05.2007, inviting expression of interests for sale of Non-Performing Financial Assets, stipulated that the petitioner/Bank had decided to put on sale certain Non-Performing Financial Assets by way of assignment on “without recourse basis”.

34. The controversy between the parties as has been noticed by the learned arbitrator is as to whether the petitioner/Bank was transferring the entire loan account, which included the actionable claim as well as underlying security?

35. The arbitrator has noticed that there was a confusion created and that the parties were not *ad idem* with regard to what was agreed to be sold.

36. Though contention of learned counsel for the petitioner is that there was no ambiguity and the notice inviting expression of interest was clear that what was being transferred was the entire Non-Performing Assets, which would, by its very definition under the SARFAESI Act, include the underlying security.

37. The embargo which was imposed on the petitioner/Bank by the Gujarat High Court order dated 27.2.2008, which led to the respondent not paying the entire amount reads as under :-

“..... For the time being, we are of the view that the possession should be restored back to the appellant - Punjab and Sind Bank. But if the possession is handed over to the appellant - Punjab and Sind Bank, Bank is

restrained from alienating or transferring or selling of the property in question. If there is any dispute as to whether the consent was given or not for the possession, this order will be subject to modification on the views expressed by the Bank of India on clarifying their intention regarding possession in their third letter dated 3/7/2007.”

(underlining supplied)

38. The Division Bench of Gujarat High Court by its order dated 27.02.2008 directed that restoration of possession of the subject property, which was the underlying security, to the petitioner/Bank. It also directed that if possession was handed over to the bank, the bank could not alienate, transfer or sell the property in question. It is this direction, which created confusion in the mind of the respondent. The respondent thereafter sought a clarification from the petitioner/Bank as to whether the petitioner/Bank could transfer the asset on which impediment was placed by order of the Division Bench of Gujarat High Court. The stand of the petitioner/Bank was that the bank could have transferred the entire Non-Performing Assets.

39. Learned arbitrator while referring to the correspondence between the parties has come to a conclusion that the petitioner/Bank was not intending to transfer or deliver possession of the asset, which was the underlying security.

40. It would be expedient to refer to the correspondence between the parties. By letter dated 29.03.2008, the petitioner/Bank wrote as

under :-

“Reg: Sale of Impaired Financial Assets – M/s Tensile Steel Ltd.

This is in continuation to our letter No.7484 dated March 19, 2008. Since you have failed to deposit the balance bid amount till date, the offer of sale of the above stated debt on assignment basis given by the bank to you vide letter dtd. 27.02.2008 stands withdrawn. The amount deposited by you stands forfeited, which please note.”

41. In response to the letter of the Bank dated 29.03.2008, the respondent wrote a letter dated 31.03.2008. It may be pertinent to note that copy of the letter of the respondent dated 31.03.2008, though extracted in the impugned award, has not been placed on record. The extracted portion reads as under :-

"81. In response to your subject letter dated 29.03.2008, I have to say that the assignment deed for assigning the debt of M/ s. Tensile Steel Limited cannot be executed in light of the order of Hon'ble High Court passed on 27.02.2008 in Letter Patent Appeal No.32 of 2008 because your Bank is restrained from transferring the assets of M/s. Tensile Steel Limited in any manner whatsoever and you are assigning the debt of M/s. Tensile Steel Limited on secured assets which you are required to transfer and hand over to us as soon as the assignment deed is executed. I therefore state that you cannot withdraw your decision to assign the debt of M/s. Tensile Steel Limited without hearing us and also cannot forfeit the amount deposited by us with you.

I request your kind self to wait till the Gujarat High Court finally decided the Letters Patent Appeal No.32 of

2008 which is coming up for hearing on 2.04.2008 and obliged us.”

42. The respondent very categorically, while referring to the order of the Division Bench of Gujarat High Court dated 27.02.2008 stated that the bank had been restrained from transferring assets of M/s. Tensile Steel Limited, in any manner whatsoever and stated that as there was an embargo on the petitioner/Bank in transferring the asset, which was required to be transferred and handed over as soon as the assignment deed was executed, the petitioner/Bank could not withdraw its decision to assign the debt or forfeit the amount deposited by them.

43. The petitioner/Bank by its letter dated 09.04.2008 in response to the letter of the respondent dated 31.03.2008 wrote as under:-

“We are referring to your letter dated 31.03.2008 on the subject in response to our letter dated 29.03.2008.

Your assertion that the Assignment Deed with respect to the above said Loan Account cannot be executed in the light of orders dated 27.02.2008 of Hon'ble High Court of Gujarat in L.P.A. No.32 of 2008, is not correct. You are quite aware that the said orders restrain Punjab & Sind Bank only from alienating or transferring or selling of the property. The said orders in no way restrain the Bank from assigning its rights and claims in this Loan Account in favour of the Assignee.

To set the record straight, we once again reiterate that the offer of Sale of Impaired Financial Assets, as given vide our notice dated 17.05.2007, does not in any way promise transfer and handing over of properties on

signing of Assignment Deed. It only transfers rights and obligations, as available to the Assignor in favour of the Assignee.

We had issued the acceptance letter dated 27.02.08 to you only after the stay on assignment of debt of the subject company ordered by the Civil Court, Vadodra was vacated by the said court on 2.2.2008. You have accepted the offer by sending SMS messages on 02.03.2008 and 18.03.2008 and also vide your letter dated 14.03.2008 and as such execution of the Assignment Deed could not be withheld on flimsy grounds.

You will perhaps appreciate that it being a commercial transaction, Bank cannot wait indefinitely to receive the amount. As you failed to deposit the balance amount by the stipulated date despite repeated reminders, the Bank was constrained to forfeit the amount deposited by you.”
(underlining supplied)

44. Though this letter is extracted in the impugned award, the petitioner/Bank has again not placed a copy of the same on record. The petitioner/Bank by the said letter dated 09.04.2008 stated that the assertion of the respondent that assignment deed with regard to the loan account could not be executed in the light of the order dated 27.2.2008 of the Gujarat High Court was not correct.

45. Though it accepted that there was an order of restraint on the petitioner/Bank from alienating, transferring or selling the property, it contended that the order did not restrain the bank from assigning its rights and claims in the loan account in favour of the assignee. The

letter further recorded that the offer of sale as given by notice dated 17.05.2007 did not, in any manner, promise transfer or handing over of properties on signing of the assignment deed. It contended that it only sought to transfer rights and obligations as available to the assignor in favour of the assignee.

46. Learned arbitrator, after referring to the said letter, has come to the conclusion that the intention of the petitioner/Bank as stated in the letter was not to transfer or hand over the properties of M/s. Tensile Steel Limited, the borrower.

47. In view of the fact that the order of the Division Bench of Gujarat High Court created an embargo on the petitioner/Bank in alienating, transferring or selling the said property, the learned arbitrator opined that the petitioner/Bank could not have transferred the possession of the property.

48. Further, the distinction that is sought to be drawn by learned counsel for the petitioner between the sale of an asset under Section 13 of the SARFAESI Act and the transfer of a loan account, to my mind, does not further the case of the petitioner/Bank.

49. The letter of the Petitioner/Bank dated 09.04.2008 very specifically states that the petitioner/Bank had not promised to transfer or handover the properties on signing of the assignment deed. No doubt, the petitioner/Bank could not have offered to transfer the title to the property which was the underlying security as the said

could only be done in exercise of powers under Section 13 of the SARFAESI Act, however, the rights and obligations vested in the petitioner in the underlying security were to be transferred as contemplated by the notice dated 17.05.2007. The rights would have also meant possessory rights as the possession was with the Petitioner/Bank in terms of the order of the Gujarat High Court.

50. By its letter dated 09.04.2008, the petitioner/Bank had clarified its stand that it had not promised to transfer the title or handover the property on signing of the assignment deed which clearly would be in contravention of the offer of sale of the loan account which would have implied transfer of the actionable claim coupled with rights in the underlying security including and not limited to possessory rights.

51. This clearly shows that even the view of the petitioner/Bank on the embargo imposed by the order of the Division Bench was that the petitioner/Bank in fact could not have transferred possession of the property and that appears to be the reason for the bank to contend by its letter dated 09.04.2008 that there was no promise to transfer or handover the properties.

52. The arbitrator has interpreted the said letter as under :-

83. It would thus be evident from the record that it was for the first time vide letter dated 09.04.2008 that the respondent bank clarified to the claimant that the offer of Sale of impaired Financial Assets, as given vide their notice dated 17.05.2007, does not in any way promise transfer and handing over of properties on signing of

Assignment Deed. It only transfers rights and obligations, as available to the Assignor in favour of the Assignee. All through the claimant remained under the impression that assignment of the debt of Tensile Steel Ltd. is coupled with the secured asset of the said company. That is why the claimant in its letter dated 31.03.2008 categorically told the respondent bank that the assignment deed for assigning the debt of M/s. Tensile Steel Limited cannot be executed in light of the order of Hon'ble High Court passed on 27.02.2008.

84. *The question is whether the respondent bank could forfeit the earnest money of Rs.10 Lacs on the ground that the claimant company has failed to deposit the balance bid amount.*

88. *The question is whether the order dated 27.02.2008 of Hon'ble High Court of Gujarat does not in any way restrain the bank from assigning its rights and claims in the loan account in favour of the proposed assignee i.e. the claimant company. The contention of the respondent's counsel is that the restraint was only qua proceedings under Section 13(4) of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 in respect of the secured asset i.e. the charged / mortgaged property. In case of sale conducted under Section 13(4) of the Act of 2002, the mortgagor loses his right of redemption of mortgage. However, after assignment of NPFA, the mortgagor continues to remain the legal owner of the security, which rights are, of course, circumscribed and subject to embargo of mortgage. The mortgagor continue to enjoy and be vested with right of redemption of mortgage. Sale of NPFA would, thus, not contemplate and consummate transfer of ownership rights in the secured asset but only the rights of the secured creditor in respect thereof. It is*

thus contended by Sh. Pallav Saxena counsel for respondent bank that there was absolutely no embargo on assignment of NPFA under the guidelines promulgated by the Reserve Bank of India. Ld. Counsel also stressed on the fact that the Courts and Tribunals cannot rewrite contracts and as per the contract the respondent bank had only assigned the debt and not the collateral asset i.e. the mortgaged property of the borrower. In this regard he relied upon the judgment LIC of India & Anr. Vs. S. Sindhu; (2006) 2 CPJ 18 (SC). The Ld. Counsel for the respondent bank further contended that the order dated 27.02.2008 of the Hon'ble High Court of Gujarat is limited to the proceeding under SARFAESI Act and nothing more can be read into it. According to him a decision is an authority for which it decides and not what can logically be deduced therefrom. Reliance is placed on the case of UP State Road Transport Corporation Vs. ACP (Traffic); Delhi; (2009) 3 SCC 634 and AIR India Cabin Crew Association & Ors. Vs. UOI & Ors. (2012) 1 SCC 619."

53. In view of the stand taken by the respondent, the arbitrator has returned a finding that the notice inviting expression of interest did not contain all the necessary particulars and did not make it clear that it would not include the collateral assets, namely, the mortgage property of the borrower. The arbitrator has thus concluded that there was vagueness, which gave rise to a mistake of fact in understanding the scope of contract.

54. The arbitrator has noticed that there was variance in the understanding of the parties. The understanding of respondent was that they would be getting the entire Non-Performing Asset, i.e.,

actionable claim as well as underlying security.

55. Even though the stand of the petitioner/Bank is that the said interpretation is correct, however, the rider in the letter dated 09.04.2008 that there was no promise to handover the properties on signing of the assignment deed, brings in the ambiguity in the understanding of the respective obligations, as noticed by the arbitrator.

56. In view of the above, the arbitrator has returned a finding that the action of the petitioner/Bank in forfeiting the security deposits is not sustainable.

57. The arbitrator has also noticed that the bid submitted by the respondent, which was the highest bid, was of Rs.32.13 crores and ultimately, the petitioner/Bank had entered into a One Time Settlement with the borrower and received a sum of Rs.35 crores towards the full and final settlement of the claim of the petitioner/Bank.

58. The arbitrator has accordingly noticed that the notice inviting expressing of interests was vague and it did not clarify as to what was included and what was not included thereby leading to an ambiguity.

59. In view of the same, the arbitrator has held that forfeiture of earnest money is unwarranted and illegal. Accordingly, by applying the principles of Section 65 of the Indian Contract Act, 1872, i.e., of

restitution the petitioner/Bank has been directed to refund the amount of Rs.10 lacs.

60. Similarly, in view of the above findings, the arbitrator has found that the action of the petitioner/Bank in forfeiting the said amount of Rs.5 crores, which was deposited by the respondent, is not sustainable.

61. The arbitrator has awarded costs, which *inter alia* include the fee paid to the arbitrator as well as additional amount of Rs.50,000/- towards legal expenses and ancillary expenses.

62. The arbitrator has accordingly directed refund of the said forfeited amount along with interest @ 9 per cent per annum. Relying on the provisions of Section 73 and 74 of the Indian Contract Act, 1872 the arbitrator has also directed refund the forfeited amount.

63. The arbitrator has taken a plausible view of the matter.

64. Further, there is no gainsaying that the arbitral tribunal is the master of the factual arena and has the right to even go wrong while deciding the factual issues, unless there is something manifest from the face of the award that is so grave as to move the conscience of the court that the error would result in a monumental miscarriage of justice.¹

¹ ***Food Corporation of India v. Shanti Cereals Pvt. Ltd., 2010 (3) ARB. LR 296 (Del.) (DB)***

65. Where the Arbitral Tribunal has assessed the material and evidence placed before it in detail, the court while considering the objections under Section 34 of the said Act does not sit as a court of appeal and is not expected to re-appreciate the entire evidence and reassess the case of the parties. The jurisdiction under section 34 is not appellate in nature and an award passed by an Arbitrator cannot be set aside on the ground that it was erroneous. It is not open to the court to interfere with the award merely because in the opinion of the court, another view is possible. The duty of the court in these circumstances is to see whether the view taken by the Arbitrator is a plausible view on the facts, pleadings and evidence before the Arbitrator. Even if on the assessment of material, the court while considering the objections under section 34 is of the view that there are two views possible and the Arbitral Tribunal has taken one of the possible views which could have been taken on the material before it, the court would be reluctant to interfere. The court is not to substitute its view with the view of the Arbitrator if the view taken by the Arbitrator is reasonable and plausible.²

66. The arbitrator's decision is generally considered binding between the parties and therefore, the power of the court to set aside the award would be exercised only in cases where the court finds that the arbitral award is on the fact of it erroneous or patently illegal or in

² ***Jhang Cooperative Group Housing Society v. P.T Munshi Ram & Associates Private limited: 202(2013) DLT 218.***

contravention of the provisions of the Act. It is a well-settled proposition that the court shall not ordinarily substitute its interpretation for that of the arbitrator. The arbitrator appointed by the parties is the final judge of the facts. The finding of facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him.³

67. Further, the contention of learned counsel for the petitioner, that the arbitrator should have awaited the decision of the Division Bench of the High Court for Punjab and Haryana and should not have pronounced the award after being made aware of the said order of the Division Bench staying the operation of the order of the learned single judge of Punjab & Haryana High Court, in my view, is not sustainable.

68. First of all, the said proceedings in which the order of the learned single judge has been passed were proceedings initiated by a third party to the contract. Secondly, the proceedings would not, in any manner, impinge upon the *inter se* rights between the petitioner/Bank and the respondent, who were arrayed as respondents in the said writ petition and thirdly, proceedings under the Arbitration Act are independent of the proceedings under Article 226 of the Constitution of India.

69. The arbitrator, after appreciating the evidence led by the parties

³ ***Swan Gold Mining Ltd. v. Hindustan Copper Ltd.*, (2015) 5 SCC 739**

and after examining the contention of the parties has decided the lis between the petitioner/Bank and respondent.

70. Furthermore, as pointed out by learned counsel for the respondent, the arbitrator has not based his reasoning on the decision of the learned single judge.

71. In view of the fact that the arbitration proceedings were independent of the writ petition filed by a third party and the fact that the arbitrator has not based his award on the decision of the learned single judge, the judgment in the case of ASSOCIATE BUILDERS (supra) referred to by the petitioner/Bank is not applicable in the facts of the present case.

72. Learned Arbitrator has assessed the material and evidence placed before it and has analysed the relevant clauses of the contract and taken a view that is plausible. I find no infirmity in the view taken by the Arbitrator warranting any interference in exercise of powers conferred by section 34 of the Act. The Petition is accordingly dismissed. There shall be no orders as to costs.

SANJEEV SACHDEVA, J.

SEPTEMBER 08, 2017
‘AA’