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

ARBITRATION PETITION NO.619 OF 2017

Prabhat Steel Traders Pvt. Ltd.)
a company incorporated under the)
Indian Companies Act, 1956 having its)
registered office at Office No.535,)
Vyapar Bhavan, 49, P'Dmello Road,)
Carnac Bunder Masjid,)
Mumbai - 400 009.) ...Petitioner

....Versus....

1. Excel Metal Processors Pvt. Ltd.)
132/B, Mittal Towers,)
210 Nariman Point,)
Mumbai - 400 021.)
2. Shakti International Private Limited)
36, Arihant Industrial Estate,)
Sakinaka, Andheri (E),)
Yadav Nagar, Chandivali Powai,)
Mumbai - 400 072.)
3. Arisha Metal Precisions Pvt. Ltd.)
48-B, Mittal Towers,)
Nariman Point, Mumbai- 400 021.) ...Respondents

WITH
ARBITRATION PETITION NO. 633 OF 2017

Kothari Steel Syndicate)
A proprietary concern,)
having its registered office at 202,)
Gupta Bhavan, Carnac Bunder,)
Masjid (East), Mumbai 400 009.)Petitioner

....Versus....

1. Excel Metal Processors Pvt. Ltd.)
132/B, Mittal Towers,)
210 Nariman Point,)
Mumbai - 400 021.)
)
 2. Shakti International Private Limited)
36, Arihant Industrial Estate,)
Sakinaka, Andheri (E),)
Yadav Nagar, Chandivali Powai,)
Mumbai - 400 072.)
)
 3. Arisha Metal Precisions Pvt. Ltd.)
48-B, Mittal Towers,)
Nariman Point, Mumbai- 400 021.)
- ...Respondents

WITH
ARBITRATION PETITION NO. 642 OF 2017

Shah Fabricators Pvt. Ltd.)
Indian Partnership Act,)
having office at 104, Sheraton Classic,)
A-Wing, 127, Dr.Charat Singh Colony,)
Road, Chakala, Andheri (E),)
Mumbai - 400 093.)

....Petitioner

....Versus....

1. Excel Metal Processors Pvt. Ltd.)
132/B, Mittal Towers,)
210 Nariman Point,)
Mumbai - 400 021.)
)
 2. Shakti International Private Limited)
36, Arihant Industrial Estate,)
Sakinaka, Andheri (E),)
Yadav Nagar, Chandivali Powai,)
Mumbai - 400 072.)
)
 3. Arisha Metal Precisions Pvt. Ltd.)
48-B, Mittal Towers,)
Nariman Point, Mumbai- 400 021.)
- ...Respondents

WITH
ARBITRATION PETITION NO. 621 OF 2017

Rajendrakumar & Co.)
Partnership Firm incorporated under the)
Indian Partnership Act,)
having office at 203, Lodha Bhavan PD,)
P'Dmello Road, Carnac Bunder Masjid,)
Mumbai - 400 009.)Petitioner

....Versus....

1. Excel Metal Processors Pvt. Ltd.)
132/B, Mittal Towers,)
210 Nariman Point,)
Mumbai - 400 021.)
2. Shakti International Private Limited)
36, Arihant Industrial Estate,)
Sakinaka, Andheri (E),)
Yadav Nagar, Chandivali Powai,)
Mumbai - 400 072.)
3. Arisha Metal Precisions Pvt. Ltd.)
48-B, Mittal Towers,)
Nariman Point, Mumbai- 400 021.) ...Respondents

WITH
ARBITRATION PETITION NO. 622 OF 2017

Narmada Iron Associates Pvt. Ltd.)
a company incorporated under the)
Indian Companies Act, 1956 having its)
registered office at A-802,)
Nirman Complex, N.R. Stadium Circle,)
Navrangpura, Ahmedabad – 380 009.)Petitioner

....Versus....

1. Excel Metal Processors Pvt. Ltd.)
132/B, Mittal Towers,)
210 Nariman Point,)
Mumbai - 400 021.)
2. Shakti International Private Limited)
36, Arihant Industrial Estate,)

Sakinaka, Andheri (E),)
Yadav Nagar, Chandivali Powai,)
Mumbai - 400 072.)
)
3. Arisha Metal Precisions Pvt. Ltd.)
48-B, Mittal Towers,)
Nariman Point, Mumbai- 400 021.) ...Respondents

WITH
ARBITRATION PETITION NO. 623 OF 2017

M.J. Steel)
a proprietary concern having office at)
501, Arihand Building,)
Ahmedabad Street, Carnac Bunder,)
Masjid Bunder (E), Mumbai – 400 009.)Petitioner

....Versus....

1. Excel Metal Processors Pvt. Ltd.)
132/B, Mittal Towers,)
210 Nariman Point,)
Mumbai - 400 021.)
)
2. Shakti International Private Limited)
36, Arihant Industrial Estate,)
Sakinaka, Andheri (E),)
Yadav Nagar, Chandivali Powai,)
Mumbai - 400 072.)
)
3. Arisha Metal Precisions Pvt. Ltd.)
48-B, Mittal Towers,)
Nariman Point, Mumbai- 400 021.) ...Respondents

WITH
ARBITRATION PETITION NO. 668 OF 2017

Neel Trading Co.)
a proprietary concern having its)
registered office at 30, Baroda Street,)
Off. No.12, Above Vora Street Traders,)
Carnac Bunder, Mumbai – 400 009.)Petitioner

....Versus....

1. Excel Metal Processors Pvt. Ltd.)
132/B, Mittal Towers,)
210 Nariman Point,)
Mumbai - 400 021.)
)
 2. Shakti International Private Limited)
36, Arihant Industrial Estate,)
Sakinaka, Andheri (E),)
Yadav Nagar, Chandivali Powai,)
Mumbai - 400 072.)
)
 3. Arisha Metal Precisions Pvt. Ltd.)
48-B, Mittal Towers,)
Nariman Point, Mumbai- 400 021.)
- ...Respondents

WITH
ARBITRATION PETITION NO. 667 OF 2017

True Value Engineering Pvt. Ltd.)
a company incorporated under the)
Indian Companies Act, 1956 having office)
at 203, Loha Bhavan PD, P'Dmello Road,)
Carnac Bunder Masjid,)
Mumbai - 400 009.)

....Petitioner

....Versus....

1. Excel Metal Processors Pvt. Ltd.)
132/B, Mittal Towers,)
210 Nariman Point,)
Mumbai - 400 021.)
)
 2. Shakti International Private Limited)
36, Arihant Industrial Estate,)
Sakinaka, Andheri (E),)
Yadav Nagar, Chandivali Powai,)
Mumbai - 400 072.)
)
 3. Arisha Metal Precisions Pvt. Ltd.)
48-B, Mittal Towers,)
Nariman Point, Mumbai- 400 021.)
- ...Respondents

WITH

ARBITRATION PETITION NO. 643 OF 2017

Khushi Alloys Pvt. Ltd.)
a company incorporated under the)
Indian Companies Act, 1956 having office)
at 108, Ashirwad Building,)
Ahmedabad Street, Carnac Bunder,)
Masjid Bunder, Mumbai - 400 009.)Petitioner

....Versus....

1. Excel Metal Processors Pvt. Ltd.)
132/B, Mittal Towers,)
210 Nariman Point,)
Mumbai - 400 021.)
2. Shakti International Private Limited)
36, Arihant Industrial Estate,)
Sakinaka, Andheri (E),)
Yadav Nagar, Chandivali Powai,)
Mumbai - 400 072.)
3. Arisha Metal Precisions Pvt. Ltd.)
48-B, Mittal Towers,)
Nariman Point, Mumbai- 400 021.) ...Respondents

WITH
ARBITRATION PETITION NO. 646 OF 2017

Viraj Impex Pvt. Ltd.)
a company incorporated under the)
Indian Companies Act, 1956 having office)
at 47, P'Dmello Road,)
Carnac Bunder Masjid,)
Mumbai - 400 009.)Petitioner

....Versus....

1. Excel Metal Processors Pvt. Ltd.)
132/B, Mittal Towers,)
210 Nariman Point,)
Mumbai - 400 021.)
2. Shakti International Private Limited)

36, Arihant Industrial Estate,)
Sakinaka, Andheri (E),)
Yadav Nagar, Chandivali Powai,)
Mumbai - 400 072.)
)
3. Arisha Metal Precisions Pvt. Ltd.)
48-B, Mittal Towers,)
Nariman Point, Mumbai- 400 021.) ...Respondents

WITH
ARBITRATION PETITION NO. 574 OF 2017

Vsc Steelers Pvt. Ltd.)
a company incorporated under the)
Indian Companies Act, 1956 having its)
registered office at 14/8 Lakdi)
Bunder Road, Darukhana, Reay Road,)
Mumbai - 400 010.)Petitioner

....Versus....

1. Excel Metal Processors Pvt. Ltd.)
132/B, Mittal Towers,)
210 Nariman Point,)
Mumbai - 400 021.)
)
2. Shakti International Private Limited)
36, Arihant Industrial Estate,)
Sakinaka, Andheri (E),)
Yadav Nagar, Chandivali Powai,)
Mumbai - 400 072.)
)
3. Arisha Metal Precisions Pvt. Ltd.)
48-B, Mittal Towers,)
Nariman Point, Mumbai- 400 021.) ...Respondents

WITH
ARBITRATION PETITION NO. 634 OF 2017

Dmson's Metal Pvt Ltd)
a company incorporated under the)
Indian Companies Act, 1956 having its)
registered office at 502, Peninsula Heights)
Near BMW Showroom, Juhu Lane,)

Andheri (W), Mumbai - 400 058.)Petitioner

....Versus...

1. Excel Metal Processors Pvt. Ltd.)
132/B, Mittal Towers,)
210 Nariman Point,)
Mumbai - 400 021.)
)
2. Shakti International Private Limited)
36, Arihant Industrial Estate,)
Sakinaka, Andheri (E),)
Yadav Nagar, Chandivali Powai,)
Mumbai - 400 072.)
)
3. Arisha Metal Precisions Pvt. Ltd.)
48-B, Mittal Towers,)
Nariman Point, Mumbai- 400 021.) ...Respondents

WITH
ARBITRATION PETITION NO. 620 OF 2017

Vinayaga Marine Petro Ltd.)
a private limited company having office)
at Viraj Impex House,)
5th Floor, 47 P D'Mello Road,)
Masjid (East), Mumbai - 400 009.) ...Petitioner

....Versus....

1. Excel Metal Processors Pvt. Ltd.)
132/B, Mittal Towers,)
210 Nariman Point,)
Mumbai - 400 021.)
)
2. Shakti International Private Limited)
36, Arihant Industrial Estate,)
Sakinaka, Andheri (E),)
Yadav Nagar, Chandivali Powai,)
Mumbai - 400 072.)
)
3. Arisha Metal Precisions Pvt. Ltd.)
48-B, Mittal Towers,)
Nariman Point, Mumbai- 400 021.) ...Respondents

Dr.Birendra Saraf with Mr.Rohan Savant, Ms.Nafisa Khandeparkar, Monisha Mane, Ms.Raksha Thakkar and Mr.Shivam Nimbalkar i/b ALMT Legal for the Petitioner in the Arbitration Petitions.

Mr.Gautam Ankhad with Mr.Rohan Cama, Mr.Omkar Chandurkar, Mr.Abhishek Adke, Mr.Nitin Jain and Mr.Lalit Munshi i/b Abhishek Adke for the Respondent No. 2 in the Arbitration Petitions.

Mr.Javed Hussein, Mr.Mubashir Hussein, Ms.Munibah Iram, Ms.Saba Shaikh, Ms.Reshma Khatri, Ms.Firdous Khan and Mr.Sagar Tambe i/b Mr.S.M. Kazi for the Respondent Nos.1 and 3.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 17TH APRIL, 2018
PRONOUNCED ON : 31ST AUGUST, 2018

JUDGMENT :-

1. By consent of parties, the matters are heard finally at the admission stage.
2. Mr.Gautam Ankhad, learned counsel appearing for the respondent no.2 in the arbitration petition raises a preliminary objection about the maintainability of these arbitration petitions on the ground that none of these petitioners were parties to any arbitration agreement between the respondent no.1 and the respondent no.2 and thus cannot invoke section 37 of the Arbitration & Conciliation Act, 1996. This Court however directed all the parties to address this Court on the issue of maintainability of the arbitration petitions raised by the respondent no.2 and also on the merits of these arbitration petitions. Both the parties have accordingly addressed this Court. Though this Court had heard the Notice of Motion No.628 of 2017 in Commercial

Suit No.669 of 2017 filed by Karamtara Engineering Private Limited against Excel Metal Processors Private Limited & others, for sake of convenience, a separate order is passed in the said notice of motion and more particularly in view of there being no issue of maintainability of suit raised by the defendants therein.

3. By these 13 arbitration petitions filed under section 37 of the Arbitration & Conciliation Act, 1996 (for short the "Arbitration Act"), the petitioners have prayed for leave to appeal against the order passed by the learned sole arbitrator dated 27th December, 2016 and also prayed for setting aside the said impugned order dated 17th November, 2017 granting interim measures against the respondent no.1 and in favour of the respondent no.2 which is causing prejudice to the interest of the petitioners.

4. This Court shall first summarize the facts in one of the arbitration petition which was argued as lead matter and in view of the statement made by the learned counsel for the parties that the facts in other petitions are identical, judgment in the lead matter will apply to the other petitions. The petitioner company is dealing in various steel items including steel coils. The respondent nos.1 and 3 are undisputedly sister concerns / group companies. The respondent no.1 is the parent company of the respondent no.3 and have common directors. The respondent no.2 is the original claimant in the arbitral

proceedings before the sole learned arbitrator Shri Justice Dr.S. Radhakrishnan (Retd.).

5. It is the case of the petitioner that the petitioner had purchased 46 HR steel coils from (i) Win Faith Trading Limited and (ii) M/s.Hyundai Corporation. The petitioner had imported these coils from the said vendors and possessed the documents of title including the bills of entries / Mill Test Certificates / Inspection Certificate issued by the Vendors / Manufacturers. The said certificate bears the unique coil number on the basis of which each HR coils can be identified. These coil numbers are also embossed on the respective coils which makes the identification of the coils certain. The documents in possession of the petitioner contains various other details like thickness, grading, length, width, chemical composition and weight of coils.

6. Insofar as the respondent no.3 is concerned, the said party undertakes the work of slitting / cutting HR steel coils from various concerns at the warehouse at Plot No.1-3, MIDC, Taloja, Raigad District. It is the case of the petitioner that the respondent no.3 represented that the said warehouse was owned by the respondent no.1. The respondent no.1 and its directors being Mr.Mohammed Iqbal Khan and Mr.Imran Khan provided a written declaration dated 11th December, 2014 whereby the respondent no.1 declared that they

are the owners of the said warehouse and that the respondent no.1 had allowed the respondent no.3 to conduct its business in the said warehouse on a no rental basis.

7. On or about 8th December, 2016, the petitioner entered into a Conducting Agreement with the respondent no.3 whereby the petitioner gave the said coils to the respondent no.3 for storing, handling and recoiling on job work basis. In some of the petitions, the arrangement for conducting was oral but in all of the said petitions, acknowledgements have been issued by the respondent no.3 acknowledging the delivery and receipt of the respective coils from the petitioner.

8. Between 15th December, 2016 and 5th January, 2017, the petitioners delivered coils owned by them to the respondent no.3 for storing, processing and recoiling the same. The respondent no.3 acknowledged the receipt of those coils vide a stock list / letter dated 9th January, 2017. The said stock list / letter issued by the respondent no.3 records the serial number of the coils, weight, date, CTL number etc. All these details were written on the said coils by the respondent no.3 by white paint. The coils at the said warehouse even presently bear the white paint markings of the respondent no.3.

9. It is the case of the petitioner that on 15th January, 2017, the petitioner visited the said warehouse to take delivery of the said

coils from the respondent no.3. The petitioner however, noticed that some of the coils including the said coils of the petitioner were marked as "SIPL" in yellow paint. At that point of time, the offices of the respondent no.1 and the respondent no.3 informed the petitioner about some arbitration proceedings pending between the respondent no.1 and the respondent no.2 and that the coils of the petitioner were identified amongst 5092.860 MT HR coils which were purportedly claimed by the respondent no.2 and have been attached / injunctioned pursuant to an order dated 27th December, 2016 passed by the learned arbitrator. The petitioner was provided with a copy of the impugned order dated 27th December, 2016 passed by the learned arbitrator by the respondent no.3

10. It is the case of the petitioner that the petitioner once again visited the warehouse on 16th January, 2017 and requested the officers of the respondent no.1 and the respondent no.3 to return the said coils. It is the case of the petitioner that the officers of the respondent no.1 and the respondent no.3 assured the petitioner to return the said coils, however, failed and neglected to return the said coils.

11. The petitioner thereafter came to know that the respondent no.2 had invoked the arbitration proceedings against the respondent no.1. The respondent no.1 was given a notice by the respondent no.2

to appear at the hearing of the application under section 17 of the Arbitration Act filed by the respondent no.2 against the respondent no.1 before the learned arbitrator. The respondent no.1 however, failed to appear before the learned arbitrator. By an order dated 27th December, 2016, the learned arbitrator appointed the Court Receiver, High Court, Bombay in respect of the said 5092.860 MT HR coils and also granted injunction against the respondent no.1 from dealing with the entire coils at the said warehouse. The Court Receiver thereafter filed a report bearing C.R.R. No.476 of 2016 before this Court on 28th December, 2016, seeking directions from this Court as to whether the Court Receiver could act pursuant to the order of the learned arbitrator. In the said report, the respondent no.1 and the respondent no.2 were parties.

12. The said report appeared before this Court on 29th December, 2016. The director of the respondent no.1 was present in the Chamber of Mr.Justice S.J. Kathawalla, where the said report was heard, made a statement that the respondent no.1 had no objection if the inventory of the goods lying in Taloja godown were taken on the same day at 1:00 p.m. by the representative of the respondent no.2 as well as the representative of the respondent no.1. He further made a statement that the respondent no.1 shall not deal with, sell, alienate, encumber, part with possession of and / or create any third party

rights in respect of any of those goods till next date of hearing. This Court accepted the statements made by the respondent no.1 and adjourned the hearing of the said report to 2nd January, 2017 at 10.00 a.m. in the Chamber.

13. On 2nd January, 2017 the inventory report was submitted on the basis of the joint inventory carried out by the representatives of the respondent no.1 and the respondent no.2 on 29th December, 2016. The representative of the Court Receiver was not present at the time of preparing the said joint inventory by the respondent nos.1 and 2. It was recorded that there were 815 HR coils in the said warehouse, out of 217 HR coils of 5092.860 MT were sought to be earmarked and kept separately as coils claimed by the respondent no.2. The petitioner was also not a party to the said joint inventory conducted by the respondent nos.1 and 2. The petitioner has disputed the correctness of the said alleged joint inventory.

14. On 2nd January, 2017, this Court framed an issue as to whether under section 17 of the Arbitration Act, Court Receiver, High Court, Bombay can be appointed as the Receiver or whether private receivers needs to be appointed in the arbitral proceedings before the learned arbitrator.

15. On 2nd January, 2017, this Court passed an order by consent of the respondent nos.1 and 2 without prejudice to the rights

and contentions of those parties. This Court took the said inventory report dated 29th December, 2016 on file and marked "X". The parties to the said report agreed that without prejudice to their rights and contentions, including to seek the same reliefs as also all other reliefs under section 17 of the Arbitration Act, *ad-interim* order passed by the learned arbitrator on 27th December, 2016 be modified by that order which shall remain in force until final hearing of the application filed by the respondent no.2 herein under section 17 of the Arbitration Act and for two weeks thereafter. The respondent no.1 herein agreed to submit a stock statement of weights/thickness of each of the 217 coils within a period of one week. It was further agreed that if there was a shortfall in the weight qua 5092.86 MTs, the respondent no.1 and its directors undertake to forthwith supplement the same.

16. It was directed in the said order that the said 217 coils identified HR coils shall be marked by the claimant be painted or inked and be kept in the existing Taloja godown of the respondent no.1 in a separate identifiable zone. The respondent no.1 through its directors also gave their personal undertakings to the Court not to sell, transfer, alienate, move, part with possession of or create any third party rights in the said goods 217 HR coils which were as on that date unencumbered. The respondent no.1 and its directors gave an undertaking jointly and severally that they shall permit the respondent

no.2 to deploy their / a third party security staff inside the godown, for the subject goods and will permit the claimant's staff to inspect the subject goods, twice a day.

17. The respondent no.1 also agreed not to file an appeal against the order dated 27th December, 2016 passed by the learned arbitrator. The respondent no.2 herein agreed to give daily inspection report which was to be countersigned by the respondent no.1 forthwith with regard to the status of the subject goods. It was further provided in the said order that all the rights, contentions and issues on merits of the sustainability / grant of interim reliefs in the section 17 of the Arbitration Act including the prayers of respondent no.2 for grant of reliefs granted in the order dated 27th December, 2016 are expressly kept open. The respondent no.1 waived its objection to the appointment / jurisdiction of the learned arbitrator. The undertakings given by the respondent no.1 were accepted by this Court.

18. It is the case of the petitioner that on the basis of the said order dated 2nd January, 2017 passed by this Court, the same form of the markings by way of yellow paint and "X" marked by white chalk was carried out by the representatives of the respondent nos.1 and 2. The said markings of coils have been recorded by the arbitrator in its order dated 13th January, 2017. It was observed in the said order that there was over lapping of coils with the chalk marks as well as yellow

paint by SIPL. It is the case of the petitioner that the marking done earlier are completely arbitrary and not on the basis of the documents of title. Those markings were done in haphazard manner and without any reasonable basis.

19. On 24th January, 2017, the petitioner through its advocate's letter to the learned arbitrator recorded that the petitioner was the owner of the said coils which were the subject matter of the order dated 27th December, 2016 passed by the learned arbitrator. The petitioner provided the details of the transaction between the petitioner and the respondent nos.1 and 3 and also about the documents of title and other related documents evidencing the transaction. The petitioner requested the learned arbitrator to issue appropriate directions to lift the attachment in respect of the said coils, to permit the petitioner to take possession and/or remove the said coils from the said warehouse and to give a personal hearing to the petitioner before any order was passed with respect to the said coils. Some of the petitioners addressed similar letter on 30th January, 2017 to the learned sole arbitrator.

20. The respondent no.1 filed an affidavit to the said application filed under section 17 of the Arbitration Act by the respondent no.2 (claimant). The respondent no.1 contended that the transaction between the respondent nos.1 and 2 was in essence a

money lending transaction and the purported transaction of sale between them was sham and bogus. On 25th January, 2017, the respondent no.2 filed an affidavit in reply before the learned arbitrator in the said application filed under section 17 of the Arbitration Act alleging that almost all HR coils which were identified on 29th December, 2016, had been replaced by the respondent no.1. It was alleged in the said rejoinder that the original marked goods were removed / moved / substituted by the respondent no.1 themselves with other HR coils in an obvious attempt to defeat the rights of the respondent no.2 as the owner thereof. It was alleged that as per the stock statement of the HR coils lying in the said warehouse as on 29th December, 2016, there were 815 HR coils overall. The respondent no.1 company however has gradually over a period of time systematically removed / replaced HR coils including HR coils of the respondent no.1 in order to defeat their claim. The respondent no.2's stand now is that there were only totally of 274 HR coils remaining in the godown as on 24th January, 2017.

21. On 31st January, 2017, the learned arbitrator directed the respondent no.2 to furnish the documents and to file affidavit to show its right and entitlement in respect of 5092 MT coils as claimed by it. The respondent no.2 filed affidavit dated 4th February, 2017 along with compilation of documents to prove their alleged right, title and interest

to the said 5092.86 MT of coils. It is the case of the petitioner that the said documents produced by the respondent no.2 did not prove any right, title or interest by the respondent no.2 in those coils. According to the petitioner, the documents produced by the respondent no.2 reflected that the purported contract between the respondent no.1 and the respondent no.2 was between November, 2015 to April, 2016 and the invoices produced by the respondent no.2 were also of the period November, 2015 to April, 2016. It is the case of the petitioner that since most of the said coils of the petitioner were manufactured on or after August, 2016 and were delivered to the respondent no.3 between 15th December, 2016 to 5th December, 2017, and thus could never form part of the alleged transaction between the respondent no.1 and the respondent no.2.

22. Since the petitioner did not receive any response to the letter dated 24th January, 2017 from the learned arbitrator, the petitioner addressed a letter dated 8th February, 2017 to the respondent nos.1 and 3 calling them to inform the learned arbitrator that the said coils at the said warehouse exclusively belonged to the petitioner. It is the case of the petitioner that the respondent nos.1 and 3 assured the petitioner that the said coils shall be returned to the petitioner at the earliest.

23. On 12th February, 2017, the respondent no.1 filed an

additional affidavit before the learned arbitrator and admitted that the said coils belonged to the petitioner. The respondent no.1 also recorded that the coils lying at the said warehouse belonged to the petitioners and the plaintiff in Arbitration Petition No.619 of 2017 and Commercial Suit No.669 of 2017 respectively.

24. On 7th February, 2017, the respondent no.2 filed a Contempt Petition (Lodging) No.9 of 2017 in the Court Receiver's Report No.476 of 2016 against the respondent no.1 alleging that the respondent no.1 had breached the order dated 2nd January, 2017 passed by this Court. In the said contempt petition, the respondent no.2 admitted that the coils lying at the said godown as on the date did not belong to the respondent no.2 and alleged that the respondent no.1 had shifted / removed the coils which were marked by the parties pursuant to the joint inspection dated 29th December, 2016. In the said contempt petition, the respondent no.2 has also submitted that third parties are now asserting their rights as the owners on some of the HR coils which are lying in the godown of the respondent no.1 where names were disclosed in the said contempt petition i.e. out of 13 petitioners and also disclosed the name in the notice of motion claiming rights in 237 coils. It was contended by the respondent no.2 in the said contempt petition that the respondent no.1 had misled this Court by giving a false undertaking that HR coils were

unencumbered.

25. On 9th February, 2017 and 13th February, 2017, this Court passed an order in the Contempt Petition (Lodging) No.9 of 2017 directing the Court Receiver's representative to visit the said godown forthwith and to make a report.

26. The petitioner thereafter filed a Notice of Motion (Lodging) No.491 of 2017 in the Contempt Petition (Lodging) No.9 of 2017 in the Court Receiver's Report No.476 of 2016 for intervening in the Court Receiver's Report and the Contempt Petition. The other petitioners in the commercial arbitration petition and the plaintiff in the commercial suit also filed the notice of motion in the Contempt Petition (Lodging) No.9 of 2017 for seeking similar reliefs. In the said notice of motion, the respondent no.2 filed affidavit in reply contending that they had documents to prove the title of the said coils and that the said documents were produced before the learned arbitrator. The respondent no.2 filed affidavit dated 23rd March, 2017 in the Contempt Petition (Lodging) No.9 of 2017 and once again contended that the coils were marked pursuant to the joint inventory on 27th January, 2017 had been removed.

27. The respondent no.2 sought to set out purported transaction between the respondent no.1 and the respondent no.2 in the said affidavit. It is the case of the petitioner that the story

concocted by the respondent no.2 in the said affidavit was totally false and frivolous. It is the case of the petitioner that in the hearing of the notice of motion held on 3rd March, 2017, this Court orally directed the Court Receiver to go to the said warehouse for the purpose of identifying / verifying the HR coils claimed by the petitioner and / or third parties in their respective notice of motions.

28. On 3rd March, 2017, the representative of the Court Receiver along with the representatives of the petitioner, the respondent no.1, respondent no.2, the petitioners in the connected arbitration petitions and Karamtara Engineering Private Limited visited the said godown for the purpose of identification of coils. The parties produced the respective title documents for the purpose of verifying the title to the coils at the warehouse. The Court Receiver after verifying the title documents and the coils lying at the godown came to a conclusion that the ownership of 237 out of 255 coils were owned by and belonged to the petitioners in those 13 petitions and Karamtara Engineering Private Limited in the connected suit. The Court Receiver submitted the report dated 6th March, 2017 identifying 255 HR coils. The details of coils identified and verified by the Court Receiver in respect of which all these 14 parties were mentioned in the said report. One of the parties i.e. D.M. Sons Metal Private Limited did not claim one coil. Two parties did not come forward i.e.

Raviraj Iron Steel and Darukhana Steel Pvt. Ltd. for identification / verification of seven and three coils respectively.

29. On 21st April, 2017, the petitioner in each of the aforesaid petitions and Karamtara Engineering Private Limited the applicant in the notice of motion were permitted to withdraw their respective notice of motions in the Court Receiver's Report No.476 of 2016 and were granted liberty to take out appropriate proceedings. The orders passed by this Court in the Court Receiver's Report were continued upto 2nd May, 2017. By the orders dated 27th April, 2017 and 4th May, 2017, this Court clarified the order dated 21st April, 2017 and it was provided that the order dated 2nd January, 2017 passed in the Court Receiver's Report No.476 of 2016 would remain unaffected.

30. In the meanwhile by an order dated 17th November, 2017, the learned arbitrator observed that the arrangement reflected by the order passed by this Court on 2nd January, 2017 in the Court Receiver's Report will continue as an interim arrangement till final disposal of the proceedings. The director of the respondent no.1 gave the same undertaking as was given before this Court on 2nd January, 2017 before the learned arbitrator.

31. The petitioner applied for clarification of the order dated 2nd January, 2017 in the Court Receiver's Report No.476 of 2016 before Mr.Justice S.J. Kathawalla. By an order dated 7th December, 2017,

this Court clarified that the petitioner would not be precluded from challenging the impugned order dated 17th November, 2017 passed by the learned arbitrator under section 17 of the Arbitration Act by filing an appeal under section 37 of the Arbitration Act, in view of the earlier orders passed by the Court in the Court Receiver's Report No.476 of 2016. In the meanwhile, the petitioner vide its letter dated 28th April, 2017 addressed to the learned arbitrator reiterated its case of ownership of the said coils and pointed out that the report dated 6th March, 2017 had been filed by the Court Receiver, High Court, Bombay in this Court wherein the coils lying at the warehouse were identified to be those of the petitioner in these 13 petitions and the applicant in the notice of motion. The respondent no.2 however, vide letter dated 3rd May, 2017 objected to the request of the petitioner for intervention. Since there was no response from the learned arbitrator to the applications made by the petitioner, the petitioner filed these 13 petitions under section 37 of the Arbitration Act for seeking leave of this Court and also thereby impugning the impugned order passed by the learned arbitrator under section 17 of the Arbitration Act.

32. Dr.Saraf, learned counsel appearing for the petitioner first dealt with the preliminary objection raised by the respondent no.2 of maintainability of these petitions filed under section 37 of the Arbitration Act. Learned counsel made the following submissions :-

a). Reliance is placed on section 2(1)(h) which defines “party”, sections 3, 4, 7, 8, 9, 11, 17 and 34. The word “party” has to be read in the context of its use in each of these provisions. After amendment of the Arbitration Act in the year 2015, extremely wide ranging powers have been conferred on the arbitrator and exercising all such powers by the arbitrator would seriously prejudice the rights of the third parties who are not the parties to the arbitration agreement or arbitration proceedings. Learned counsel led emphasis on section 17(1)(a) which contemplates custody or sale of the goods which are subject matter of the arbitration agreement and would submit that there can be situations where the goods are in the possession of a third party who claims rights in respect thereof.

b). Learned counsel led emphasis on section 17(1)(b) which provides for securing the amount in dispute in arbitration, may result in order in the nature of attachment before judgment and may result in attachment of properties which belong to third parties. Section 17(1) (c) contemplates detention, preservation or inspection of property which is the subject matter of arbitration and authorizes any person to enter upon any land or building in the possession of any party, authorizing samples to be taken, experiments to be done etc. These powers if exercised by an arbitrator on an application of a party to the arbitration proceedings may result in affecting the rights of the third

party seriously. A property belonging to the third party can also be made subject to the arbitration petition. The parties to the arbitration proceedings may obtain a drastic order in respect of the properties of a third party collusively.

c). Reliance is placed on section 17(1)(b) which grants power of appointment of the Court Receiver. It is submitted that there could be situation where pursuant to certain disputes between the parties to the arbitration agreement, the Receiver is appointed in respect of the properties belonging to the third parties, or which are in possession of third parties which order would seriously prejudice the rights of such third parties. Reliance is placed on section 17(1)(e) of the Arbitration Act and it submitted that the said provision empowers the arbitrator to grant such interim measures as the arbitrator may deem fit and convenient subject to any orders being passed by the learned arbitrator being appealable under section 37 of the Arbitration Act. The order passed by the arbitrator under section 17 is deemed to be an order of the Court and is enforceable under the provisions of the Code of Civil Procedure, 1908 in the same manner as if it were an order by a Court. Now the powers of the arbitrator under section 17 are made at par with the powers of the Court under section 9 of the Arbitration Act.

d). If any order is passed by the Court exercising powers

under section 9 of the Arbitration Act affecting third party, such third party can always approach the Court for vacating or modification of such order passed by the Court. An illustration is given by the learned counsel that if the Court Receiver is appointed in respect of the property which is owned or in possession of a third party, such third party can approach the Court and can seek appropriate relief of vacating of the said order. Any proceedings filed under section 9 of the Arbitration Act by the party to the arbitration agreement, a third party which is likely to be affected by any orders, if passed or if any relief is sought against such third party are at times made party to such proceedings under section 9 of the Arbitration Act.

e). This third party can file an appeal under section 37 of the Arbitration Act in the Court defined under section 2(1)(e) of the Arbitration Act. Such third party, who is affected by an order passed by the arbitrator cannot be allowed to make an application before the learned arbitrator to modify and/or vacate such an order passed under section 17 of the Arbitration Act since such a third party is not a party to the arbitration agreement.

f). The petitioner in this case had brought these facts to the notice of the learned arbitrator and had applied for modification / vacating the order passed by the learned arbitrator under section 17 of the Arbitration Act. The said application was opposed by the

respondent no.2. Learned arbitrator did not give any response to the application / letter addressed by the petitioner.

g). Though while various other provisions including sections 8, 9, 17 and 34 of the Arbitration Act expressly contemplated an application being made by a party, no such condition is placed under section 37 of the Arbitration Act which is open ended and merely states that "An appeal shall lie from the following orders" The Arbitration Act thus surely entitled a third party who is aggrieved by an order passed by the learned arbitrator under section 17 of the Arbitration Act to invoke the remedy under section 37 of the Arbitration Act for seeking modification / vacating the order of interim measures passed by the learned arbitrator under section 17 of the Arbitration Act. A party cannot be without any remedy.

h). It is a fundamental rule of law that any order in any adjudication between two parties which affects the rights of a third party cannot be done without offering a hearing to the third party. Merely because in the arbitration, third party cannot intervene, it cannot lead such party to remedy less. No restriction is thus imposed under section 37 of the Arbitration Act for a third party who is affected by the impugned order passed under section 17 of the Arbitration Act to file an appeal under section 37 of the Arbitration Act.

i). If such third party who is affected by an order of interim

measures granted by the learned arbitrator is not allowed to challenge such an order by way of an appeal under section 37 of the Arbitration Act, the arbitration proceedings can be used as instrumentally to abuse and can cause grave prejudice to such third parties and would lead to great injustice to such third party. A third party has a right to file an appeal with the leave of the Court if his rights are prejudiced by any order passed in the proceedings in which such third party was not a party. Such rights of the third party to apply for leave to file an appeal from the paragraph are recognized under the provisions of the Code of Civil Procedure, 1908. In support of this submission, reliance is placed on the following judgment :

- (i). The judgment of the Supreme Court in case of **Harvinder Singh vs. Paramjit Singh & Ors. (2013) 9 SCC 261** (paragraphs 17, 18 and 22).
- (ii). The judgment of the Supreme Court in case of **Smt. Jatan Kumar Gollcha vs. M/s. Golcha Properties Limited, (1970) 3 SCC 573** (paragraphs 3 and 4),
- (iii). This Court in case of **Province of Bombay vs. Western India Automobile Association, 1948 (LI) BLR 58,**
- (iv). The Division Bench of the Delhi High Court in case of **Bhisham Sawhney & Anr. vs. Union of India & Ors., 1994 (30) DRJ 318** (paragraphs 4, 10 and 11) and

(v). This Court in case of **Narayan Manik Patil & Ors. Jayawant Patil, (2009) 2 BCR 247** (paragraphs 18, 20, 21, 26 to 28, 30, 35 and 37).

j). A right to grant leave to file an appeal can be exercised by this Court under the provisions of the Code of Civil Procedure, 1908 and such a right is absolute right. Such leave can be granted by this Court *ex-parte* and notice can be given to other parties only if the Court is of the view that other parties would be prejudiced. If a third party is prejudiced, leave has to be granted by the Court hearing an appeal.

k). Learned counsel for the petitioner also made the following submissions on right of a third party to intervene and/or file appeals. Learned counsel placed reliance on the following judgments :

(i). In the matter of **Mohammad Ishaq Bhat vs. Tariq Ahmad Sofi & Anr. (2010) 3 Arb.LR 107** (paragraph 9, internal page 3) in support of the submission that the stranger to the arbitration agreement was allowed to intervene in the proceedings under section 9 of the Arbitration Act by the High Court,

(ii). The Kerala High Court in case of **Muthoot Leasing & Finance Ltd. vs. N.P. Asiya, (2013) 3 Arb.LR 42** (paragraphs 10 and 15, internal page 4 and 5) in support of the submission that Kerala High Court allowed a third party to file an appeal,

(iii). This Court in case of **Bharat Sanchar Nigam Limited vs. Siemens Financial Services Limited, 2016 SCC Online Bom. 5317**

(paragraph 6, internal page 3),

(iv). The Supreme Court in case of **Municipal Council, Hansi vs. Mani Raj & Ors. (2001) 4 SCC 173** (paragraphs 5 and 6, pages 174 and 175).

l). Relying upon the aforesaid judgments, it is submitted that if a preliminary objection raised by the respondent no.2 about maintainability of an appeal by a third party under section 37 of the Arbitration Act is accepted, it would be contrary to the legislative intent or the purpose of the Arbitration Act. The Act shall be interpreted in such a manner that it would prevent abuse of process of law and prompt justice. When the literal construction of the statute leads to absurdity or mischief, such an interpretation should be avoided and the interpretation which would make the statute rational and sensible must be eschewed.

m). Reliance is placed on the judgment of the Supreme Court in case of **Sanjay Dutt vs. State, (1994) 5 SCC 410**, the judgment of the Supreme Court in case of **Oxford University Press vs. Commissioner of Income Tax**, the judgment of this Court in case of **Fullerton India Credit Company Limited** in the matter of **Prithipal Chadha vs. Jitendra Chadha** in Chamber Summons No.993 of 2007

in Execution Application No.765 of 2015 in Award No.83 of 2014.

n). Insofar as the merits of the arbitration petition is concerned, Dr.Saraf, learned counsel invited my attention to some of the documents which were forming part of the arbitral proceedings and also the documents and pleadings annexed to the compilation filed by the parties. Learned counsel also submitted a comparative chart showing the issues raised by the respondent no.2 in each of the petitions and the response of the petitioner to those issues raised by the respondent no.2 in detail. It is submitted that the petitioner had job work contract with the respondent no.3. The respondent no.3 was the sister concern of the respondent no.1. Some job work was carried out in the premises of the respondent no.1. The petitioner had purchased all these coils from a supplier from Korea. Learned Court Receiver has verified these goods and had submitted a report which would indicate that the petitioners in the arbitration petition as well as the applicant in the notice of motion were the owners of different quantifies of such coils.

o). The respondent no.2 has admitted in the pleadings before the learned arbitrator as well as in these proceedings that the coils in respect of which the respondent no.2 was claiming rights are not now available and the same are alleged to have been moved or shifted by the respondent no.1 from the said warehouse to some other place. In

view of the interim measures granted by the learned arbitrator in the impugned order, the respondent no.1 is not able to comply with its obligations to the petitioner by returning those coils which were handed over to the respondent no.1 for job work. If those coils of which the respondent no.2 claimed certain alleged rights are already allegedly removed by the respondent no.1, the respondent no.2 cannot be allowed to claim any rights in respect of the coils now kept in the custody of the Court Receiver and/or lying in the warehouse of the respondent no.1.

p). The statement, if any, made by the respondent no.1 before the learned arbitrator or before this Court not to deal with or remove those coils which belongs to the petitioner does not bind the petitioner. Since it is established beyond reasonable doubt that all such coils which are lying in the warehouse of the respondent no.1 are owned by the petitioner and Karamtara Engineering Private Limited respectively in respect of different quantities as set out in the Court Receiver's Report, injunction granted by the learned arbitrator against the respondent no.1 deserves to be set aside and/or modified to enable the respondent no.1 to comply with its obligation.

q). After the respondent no.1 has allegedly committed breach of the orders passed by the learned arbitrator or by this Court, the respondent no.2 cannot be allowed to make any claim over the goods

of the petitioner. The respondent no.2 has not produced any documents in respect of claiming any lien or ownership in those coils lying in the warehouse of the respondent no.1. At the most the respondent no.2 may have money claim, if any, against the respondent no.1 and cannot claim any lien or ownership over those coils which exclusively belong to the petitioner in these 13 petitions and the applicant in the notice of motion.

33. Learned counsel for the respondent nos. 1 and 3 made following submissions:-

a). The learned arbitrator has already disposed of an application under section 17 filed by the respondent no.2. The learned arbitrator has permitted the respondent no.2 to file a fresh statement of claims and application under section 17 of the Arbitration Act for interim measures and has directed the respondent no.1 to file its reply in the said application. The learned arbitrator has by its oral order has set aside the entire arbitration proceedings. There is thus no bar or obstruction from any judicial order by this court or by the learned arbitrator against the respondent nos. 1 and 3 to enable them to return the HR Coils belonging to the petitioners to them.

b). The respondent no.1 had borrowed money from the respondent no.2 i.e. unsecured loan at the rate of interest approximately 24% to 30% per annum with penal additional interest

for delayed payment in the range of 2% to 2.5% per month. The respondent no.1 obtained term loan and working capital from bank against security of the plant and machinery. The sister concern of the respondent no.1 M/s.Arisha Metal Precisions Pvt. Ltd. had the processing facility to carry out job work processing of third party coils. Western India Metal Processors Ltd., another sister concern is in the business of trading of metal and chemicals and has also stored HR Steel Coils at the same premises in Taloja.

c). The respondent no.2 had borrowed funds from their bankers as working capital loan and since the said bank did not permit the money to be lent for further lending purposes the respondent no.2 structured a transaction of loan from respondent no.2 to the respondent no.1. The commercial purchase transaction was structured with respondent no.3 and was sold further to respondent no.1. Such transactions of purported sale and purchase were merely transactions to enable respondent no.2 to raise finance with its bankers and lend the same to the respondent no.1. The respondent no.2 would raise funds at an interest rate of approximately 12% to 13% per annum and lend at approximately 24% to 30% to the respondent no.1 or any party.

d). The transaction of sale and purchase between the respondent no.1 and the respondent no.2 remained only on paper and

there was never any physical movement of the goods either by Western India Metal Processors Limited to the respondent no.2 or by the respondent no.2 to the respondent no.1. The ownership of the goods lying at Taloja plant were never a matter of contention as the respondent no.2 only required equivalent amount of quantity of the goods to be shown to their bankers at the time of stock audit and bank visits. There was never any monitoring of inventory by the respondent no.2 or its surveyors in normal course while the loan was being furnished with interest.

e). The constituents of a genuine sale transaction, *inter alia*, include minimum a purchaser order and excise cum tax invoice, a product quality certificate, a weigh bridge receipt etc. which are absent in the sale and purchase transaction between the respondent no.1 and the respondent no.2. The exact quality, specification and size of the goods sold and purchased under a genuine transaction are expressly setout in the invoice raised by the supplier. However, in this case there are simple and summary commercial tax invoices raised by Western India Metal Processors Limited on the respondent no.2 and then by the respondent no.2 on respondent no.1 which merely state the product, but not its specification, origin etc.

f). No personal guarantee is normally insisted in case of a business or a regular business transactions wherein in this case for

such purported sale and purchase transaction, personal guarantee of the respondent no.1 was insisted which would indicate that there was a money lending transaction between the respondent nos.1 and 2 and not a sale and purchase transaction. No surveyor was ever appointed by the respondent no.2 to monitor stock and the quality and quantity of the said HR Goods.

g). The respondent no.1 vide their e-mail dated 22nd December,2016 had already informed the respondent no.1 that the respondent no.1 did not have any stock of any nature whatsoever belonging to the respondent no.2 at their premises. The respondent no.2 did not purchase any goods from the sister concern of the respondent no.1 and they do not hold any inventory which belongs to the respondent no.2. The statement was given to the respondent no.2 for their bankers audits by the respondent no.2.

h). In e-mail dated 19th November,2016, there is specific mention that it was being provided specifically for their bank audit purposes and there was mention of only 192 coils in the sheet relied upon by the respondent no.2. The respondent no.2 prepared a handwritten report claiming 217 coils which is not more than what they purportedly claim to have bought and marked more than 217 coils and is in sharp contrast to the inventory relied upon by the respondent no.2 in their prayer before the learned arbitrator which was 192 coils.

i). A fraudulent case of the respondent no.2 is that there was a trade finance between the respondent no.1 and the respondent no.2 as against the earlier stand of genuine sale and purchase transaction. The stand now taken before this Court by the respondent no.2 is contradictory to the earliest stand.

j). Since the respondent no.2 is unable to prove its claim and its ownership over the coils, the respondent no.2 has now come out with a case that all the coils have been systematically removed by the respondent no.1 from the warehouse.

k). A reliance placed on the invoice by the respondent no.2 which mentions HR Coils without any indication of size, thickness, grade etc. Reliance is placed by the respondent no.2 on the invoice of the Western India Metal Processors Limited. None of those invoices state about the quality and the grade there are no agreements or sale or purchase invoices tender in support of their claim before the learned arbitrator or even in these proceedings.

l). The case of the respondent no.2 is that it had purchased the coils in January, February and April 2016 which is *ex-facie* false in view of the fact that several of the HR Coils identified and marked by the respondent no.2 claiming ownership on them were indeed manufactured post August 2016.

m). The respondent no.2 had deployed their own security in the

premises of the respondent no.1 and the respondent no.2 inspects respondent no.1 premises on daily basis. His allegation of whole sale removal/replacement of HR Coils is not supported by its own daily reports and complaint from their security. The Court Receiver's report dated 10th February, 2017 confirmed availability of 233 respondent no.2 marked coils marked by the respondent no.2 in the premises of the respondent no.1.

n). The respondent no.1 is not in a position to return the said coils which were handed over to the respondent no.1 by the petitioner as well as the applicant in the notice of motion for job work in view of the impugned order passed by the learned arbitrator and this Court. If any order is passed by this Court in these proceedings vacating/modifying of the impugned order passed by the learned arbitrator and if the respondent no.1 is directed to return any part of the coils to the petitioner or the applicant. The respondent no.2 is ready and willing to comply with the said order.

34. Mr.Ankhad, learned counsel for the respondent no.2 in the arbitration petitions vehemently opposed the arbitration petitions on the ground of maintainability and also on merits. Learned counsel submits as under :

a). The respondent no.2 has no privity of contract with the petitioner or the applicant. The Arbitration Act is self-contained code.

None of the petitioners are parties to the arbitration agreement with the respondent no.2 and thus these appeals thus filed under section 37 of the Arbitration Act by the petitioners are not maintainable. The objects and the reasons of the Arbitration Act is to monitor the supervisory role of Courts. Reliance is placed on section 5 of the Arbitration Act in support of the submission that only such proceedings which are provided in the Arbitration Act can be filed and that also only by the parties to the arbitration agreement and not a third party. In view of such minimum intervention permissible under the Arbitration Act, this Court can neither grant any leave in favour of the petitioners nor can entertain these appeals filed by these third parties.

b). There is no scope of any interference by a third party in the arbitration process. The entire scheme of the Arbitration Act and more particularly Chapter V to VII relates to the arbitration process between two parties to the arbitration agreement and thus there is no question of invocation of section 37 of the Arbitration Act by a third party.

c). Since none of the petitioners or the applicant were admittedly parties to the arbitration agreement, none of them could be party to the arbitration proceedings before the learned arbitrator and thus none of them could invoke the provisions of section 37 of the Arbitration Act by way of an appeal against any order passed by the

learned arbitrator in this Court. The remedy of the petitioner, if any, would be to wait for the outcome of the arbitral proceedings and if any application for execution of the arbitral award is made by the respondent no.2, the petitioner at that stage can be permitted to oppose the execution application as and when filed by the respondent no.2. If any intervention by a third party in the arbitral process is allowed, it would destroy the arbitral process.

d). There is a statutory bar against a third party from entering in the arbitral proceedings since beginning. This Court thus cannot entertain these appeals in the middle of that process. The supervisory role of the Court is very limited in view of section 5 of the Arbitration Act. If an appeal by a third party is permitted by this Court under section 37 of the Arbitration Act, it would open the flood gate of litigation. Section 17 applies only qua the parties and thus section 37 of the Arbitration Act can be invoked only by such parties and not a third party. This Court cannot set aside the order granting or refusing interim measures under section 17 of the Arbitration Act at the instance of a third party.

e). Section 37(2) of the Arbitration Act is to be read with section 17 of the Arbitration Act. Since section 17 can be invoked only by a party to the arbitration agreement, section 37 of the Arbitration Act also can be invoked by a party to the arbitration agreement. The

scope of section 37 of the Arbitration Act cannot be expanded. Though the powers of the arbitral tribunal are expanded under section 17 of the Arbitration Act, the remedy under section 37 of the Arbitration Act is not expanded and has been retained as it was earlier.

f). The petitioners in all the arbitration petition are strangers to the arbitration agreement between the respondent no.1 and the respondent no.2. The third parties have alleged to have job work arrangement with the respondent no.3 who is the subsidiary of the respondent no.1. The petitioners thus have a claim against the respondent no.3 and has no privity of contract of whatsoever nature with the respondent no.2. Out of 13 petitions, there is no written contract between all the third parties with the respondent no.3. No particulars of the oral agreement by and between those parties have been disclosed in the petitions by these third parties. The arbitration petitions are full of discrepancies. This Court will have to decide the issue of maintainability first before hearing the parties on merits. In support of this submission, learned counsel placed reliance on the following judgments :-

- i). **T.K. Lathika vs. Seth Karsandas Jamnadas (1999) 6 SCC 632** (Paragraph 9),
- ii) **Mukesh Nanji Gala vs. Heritage Enterprises (2015) 5 MHLJ 620** (Paragraphs 6, 28 and 35) and

iii). **Masusmi SA Investment LLC vs. Keystone Realtors Pvt. Ltd. (2012) SCC Online Bom 1688/2013 (7) Bom CR 264**
(Paragraphs 2, 3, 60 and 61).

g). Since there are disputes on title and several disputed questions of facts arise, the correct remedy of the petitioners as well as the applicant is that of the civil suit. It is not the case of the petitioners or the applicant that the civil suit is not maintainable. The only argument of the petitioners as well as the applicant is that the petitioners are not required to wait for 20 years in a civil litigation when section 37(2) appeal option is available. Section 37(2) appeal is not the remedy for the petitioners in this case. The civil suit and the arbitration petition are mutually destructive and cannot co-exists.

h). Any stranger to the arbitration processes cannot be granted any relief under section 37 of the Arbitration Act. There is no concept of leave to appeal available to the stranger under the Arbitration Act. No power is available to a Court to set aside any order passed under section 17 of the Arbitration Act by the learned arbitrator. Under section 5 of the Arbitration Act, a Court has limited power of intervention only in the proceedings permitted under the provisions of the Arbitration Act. Such limited role and judicial intervention has been repeatedly accepted by various Courts. Arbitration Act is a complete and self contained code on matters

pertaining to the arbitration.

i). Reliance is placed on the following judgments :-

(i) The judgment of Supreme Court in case of **Fuerst Day Lawson Limited vs. Jindal Exports Limited (2011) 8 SCC 333** and more particularly paragraphs 89 and 90.

(ii) The judgment of Supreme Court in case of **Chandra Prakash Agarwal vs. Bhagirath Agarwal, (2008) 17 SCC 700** (paragraphs 1 to 3)

(iii) The judgment of this Court in case of **Mukesh Nanji Gala vs. Heritage Enterprises (2015) 5 Mh.L.J. 620**, (Paragraphs 10 to 34)

(iv) The judgment of this Court in case of **Masusmi SA Investment LLC vs. Keystone Realtors Pvt. Ltd., (2012) SCC OnLine Bom 1688**, (paragraphs 41 to 52)

(v) The judgment of Supreme Court in case of **Prema Gera vs. Co-operative Bank Ltd., (2017) SCC OnLine 72** (Paragraphs 72 to 74)

(vi) The judgment of this Court in case of **NHAI vs. You One Maharia J.V. in Arbitration Appeal No.6 of 2010** (paragraphs 1 to 10, 21 to 27)

(vii) The judgment of Supreme Court in case

of **IndusInd Bank Limited vs. NHAI (2009) SCC OnLine Del 1352** (paragraphs 13, 14, 17, 18, 40 & 42)

(viii) The judgment of Supreme Court in case of **IndusInd Bank Limited vs. Ram Laxman Hotels Ltd.,(2009) SCC OnLine Del 1951**

(ix) The judgment of Supreme Court in case of **B.D. Bhanot vs. Narmada Enterprises, (2007) SCC OnLine MP 575** (Paragraphs 10 and 13).

j). There is no provision permitting a stranger to intervene in the pending arbitration and the arbitral processes between two parties who had contracted for arbitration. A party who is not a party to the arbitration agreement cannot enter the Court for protection under section 9 of the Act. The same principles would apply to section 37 as well. An appeal is maintainable under section 37 against an order passed under sections 8, 9, 16, 17 and 34. If a stranger cannot enter the Court under section 9 and cannot challenge an order under section 37, it is not permitted for a third party to challenge an order under section 17. Reliance is placed on the judgment of Supreme Court in case of **Firm Ashok Traders vs. Gurmukhdas Saluja and Chennai Container Terminal.**

k). Appeal under section 37 is also stipulated as a part and parcel of the arbitration. The appeal is limited only to parties to the

arbitration agreement. Though in some cases such as bank guarantee furnished by a bank who is though not party to the arbitration agreement, is added as a party respondent and if such third party is aggrieved by an order under section 9, an appeal can be preferred under section 37 in view of such third party having been implemented under section 9. The said remedy however cannot be exercised by the third party who is not a party to the arbitration agreement and also not party to the proceedings before the learned arbitrator.

l). Section 37(1)(a) of the Arbitration Act operates qua parties to an arbitration contract. Admittedly in this case, none of the petitioner as well as the applicant were parties to any arbitration agreement with the respondent nos. 1 to 3. Admittedly, none of the petitioner as well as the applicant were parties to the proceedings under section 17 before the learned arbitrator and thus even if any of them are aggrieved by any order passed by the learned arbitrator under section 17, such party cannot be permitted to file an appeal under section 37(1)(b) of the Arbitration Act.

m). Appeal under section 37(2) lies to the Court i.e. defined under section 2(1)(e) from an order of arbitral tribunal which would indicate that the said remedy is intended to operate only in presence of arbitration agreement. Section 37(2)(b) would also operate where the interim measures are granted or refused during the course of

arbitral proceedings only to a party under the arbitration agreement. If a stranger cannot invoke the jurisdiction under section 17, it certainly cannot invoke the appellate power and the jurisdiction of the Court under section 37(2)(b). section 37(3) prohibits a second appeal.

n). The absence of the word 'party' or 'parties' under section 37 does not indicate any wider legislative intent nor does it permit strangers to enter into the arbitral process or seek protection under the Act. The 2 sub-sections of section 37 are manifestly a part of a single legislative pattern. It is limited only to arbitration process and arbitration agreement. The absence of word 'party' under section 37(2) makes no difference because the word 'party' is already covered and provided for in section 16 and section 17 of the Arbitration Act. The appellate power to apply for reliefs has to be read in the context of who can apply for reliefs under section 16 or section 17 i.e. only parties to the arbitration agreement.

o). Section 37 extends the legislative scheme of minimum judicial interference and cannot be extended in favour of a stranger to the arbitration contract. Section 37 can be invoked only by the parties and does not permit any person aggrieved who is not a party to the arbitration agreement or the parties. Such third party has to wait till the final award is passed and cannot obstruct the arbitral process. Reliance is placed on the judgment of Supreme Court in case of **SBP**

& Co. vs. Patel Engineering Limited, (2005) 8 SCC 618 [paragraphs 5, 45 and 47(vi)] and in case of **S.N. Prasad vs. Monnet Finance Limited & Ors., (2011) 1 SCC 320** (paragraphs 25)

p). There are several disputed questions of fact including on the title of the goods in these proceedings. Even under Code of Civil Procedure, 1908, a stranger cannot file an application in a suit or even appeal proceedings to challenge a consent decree as he is not a party to the suit. Reliance is placed on the judgment of this Court in case of **Khalil Haji Salar vs. Parveen (2013) 3 Mh.L.J. 182** (paragraphs 16 and 17) and also judgment of this Court in case of **Mahavji Kotak vs. Jayalakshmi, (2007) 5 Mh.L.J.797** (paragraph 4).

q). The respondent no.2 distinguishes the judgment of this Court in case of **Girish Mulchand Mehta vs. Mahesh Mehta and Anr., 2010(2) Mh.L.J. 657** on the ground that the said judgment would not apply to the facts of this case. In that case, there was a development agreement between the developer and the society. The appellants were impleaded as parties under section 9 proceedings. Rule 803E of the Bombay High Court Original Side Rules were also relied upon.

r). Reliance is placed on the judgment of Madhya Pradesh High Court in case of **Dhulabhai & Ors. vs. State of Madhya Pradesh & Anr., AIR 1969 SC 78** in support of the submission that

the jurisdiction of a civil Courts and scope of civil suit is extremely wide. Every civil suit is cognizable unless it is barred. Civil Court shall have jurisdiction to try all suits of civil nature unless expressly or impliedly barred. Reliance is placed on section 9 of the Code of Civil Procedure, 1908. The minimum Court interference and supremacy to arbitral process is further strengthened by the Arbitration and Conciliation (Amendment) Act, 2015.

s). The legislature is deemed to be aware of all the laws in existence and the consequences of the laws enacted by him. The Parliament was conscious when it expanded the scope of arbitrator's powers under section 17 of the Act. However, it has consciously not expanded the powers or scope of interference by way of appeals against section 17 order. The Parliament has thus inserted limited amendment to section 37 i.e. section 37(1)(a) by providing an appeal against an order passed by the judicial authority under section 8 and only to mirror section 50(1)(a) of the Arbitration Act. Right of an appeal is neither natural nor an inherent right vested in a party. An appeal is a continuation of the original proceedings. An appeal only reviews and corrects the proceedings in a cause already instituted but it does not create a cause. The appeal Court rehears the fact that are on record before the trial Court.

t). If the argument of the petitioner is accepted, then a

stranger will challenge the trial Court order without any record of the arbitration papers which is not permissible. A right of appeal is a statutory right and cannot be either assumed or can be interfered in favour of the stranger. The Court cannot interpret a statute in different manner only because of harsh consequences arising therefrom and more particularly where a statute is plain and unambiguous. Permitting strangers to file under section 37(2) appeals will adversely affect the legislative intent of the Arbitration Act and will result in rewriting or recasting the Arbitration Act which prohibits strangers from entering into the arena of arbitral process. In support of this submission, reliance is placed on the following judgments :-

(i) The judgment of Supreme Court in case of **Competition Commission of India vs. SAIL, (2010) 10 SCC 744**, (Paragraphs 45 to 56)

(ii) The judgment of Supreme Court in case of **Principal Committee, Hoshiarpur vs. Punjab Electricity Board, (2001) Volume 13 SCC 216** (paragraphs 13 to 16)

(iii) The judgment of Supreme Court in case of **Nasseeruddin vs. Sitaram Agarwal, 2003 Volume II SCC 577** (paragraphs 35 to 37, 41).

u). The respondent no.2 distinguished the judgments relied upon by the petitioners in the arbitration petitions on various grounds

which would be dealt with by this Court in the later part of this judgment while dealing with those judgments.

v). Without prejudice to the rights and contentions of the respondent no.2 that none of the arbitration petitions are maintainable under section 37, learned counsel for the respondent no.2 submitted a chart to buttress the submission that the respondent no.2 has clear title in respect of HR Coils in question. The ownership in respect of those HR Coils claimed by the petitioner are seriously disputed by the respondent no.2.

w). In some of the arbitration petitions, there were no agreements in writing produced by the petitioner. No particulars of any alleged consideration is provided for by most of the petitioners. No particulars of oral agreements have been provided for in some of the petitions by the petitioners, invoices produced by the petitioners do not identify the coils claimed by the petitioners. The corresponding Mill Test Certificate states that the coils were not purchased by the petitioners from G.S.Global name of the YE Steel Trading Company Limited and Khanna Delta Private Limited, nor the petitioner's name is mentioned in the Mill Test Certificate in Arbitration Petition No.667 of 2017. Similar defence is raised in almost all the matters by the respondent no.2.

35. Learned counsel for the petitioner in rejoinder submits as under :-

a). The submission of the respondent no.2 that the petitioner will have to wait till the execution proceedings are filed by the successful party in the arbitration proceedings and can obstruct the execution proceedings and cannot file an appeal under section 37 on that ground is concerned, it is submitted that an execution of order to the Court is necessary only if there is any need to do so. The execution proceedings may not take place in all the situation. The respondents in collusion with each other may implement the order passed by the learned arbitrator and thus the successful party may not even apply for execution. If these submissions of the respondent no.2 are accepted by this Court, the petitioner will have no remedy in law in this situation.

b). It is open to the learned arbitrator to pass an order of appointing private receiver to take possession and if necessary with the help of the police which order is placed on the same status as the order of the Court. In this eventually, there would be no occasion to the third party to oppose any execution proceedings as the order would be already implemented by the receiver with the help of the police.

c). It is not the case of the respondent no.2 that the order

passed by the learned arbitrator under section 17 or under section 34 can be set aside by a civil Court. A civil Court has no supervisory jurisdiction over the arbitral proceedings outside the scheme of the Act. This in fact runs contrary to the section 5 of the Arbitration Act. If the arguments of the respondent no.2 are accepted, the order of the arbitrators and the proceedings in arbitration can be disturbed by the Civil Courts entertaining suits which is neither the intent nor the purpose of the statute and is in fact contrary to the scheme thereof.

d). In such an event, the arbitration proceedings can be used as an instrumentality of abuse and can cause grave prejudice to third parties. The respondent no.2 has not replied to the submission that the powers vested with the arbitral tribunal now under section 17 after Arbitration and Conciliation (Amendment) Act, 2015 may affect a third party drastically in various situation and thus such parties would be without a remedy. Such third party cannot be allowed to appear before the learned arbitrator and seek modification and/or vacating such order which would cause prejudice to the rights of such third party.

e). There is a specific provision in the Code of Civil Procedure empowering the appellate Court to grant leave to a third party to file an appeal in an appropriate case. Reliance is placed on the following judgments in support of the submission that that the Court has ample

power to grant leave to a third party to intervene/file an appeal :-

(i) The judgment of Supreme Court in case of **Harvinder Singh vs. Paramjit Singh & Ors., (2013) 9 SCC 261** (Paragraphs 17, 18 and 22)

(ii) The judgment of Supreme Court in case of **Smt.Jatan Kumar Golcha vs. M/s.Golcha Properties Ltd., 1970 (3) SCC 573** (paragraphs 3 and 4).

(iii) The judgment of this Court in case of **Province of Bombay vs. Western India Automobile Association, 1948(LI) BLR 58** (Page 65 last paragraph)

(iv) The judgment of Delhi High Court in case of **Bhisham Sawhney & Anr. vs.Union of India & Ors., 1994(30) DRJ 318** (paragraphs 4, 10 and 11)

(v) The judgment of this Court in case of **Narayan Manik Patil & Ors. vs. Jayawant Patil, (2009) 2 BCR 247** (paragraphs 18, 20, 21, 26, 27, 28, 30, 35 and 37).

f). In series of judgments, various Courts have held that a third party who is likely to be affected by any order in proceedings under section 9 may intervene in those proceedings and oppose the

grant of reliefs and/or apply for vacating of any orders passed therein.

The appellate Court has entertained such appeals filed by such third party under section 37 of the Arbitration Act. Reliance is placed on the judgment of Jammu and Kashmir High Court in case of **Mohammad Ishaq Bhat vs. Tariq Ahmad Sofi & Anr., (2010) 3 Arb.LR 107** (paragraph 9), the judgment of Kerala High Court in case of **Muthoot Leasing and Finance Ltd. vs. N.P.Asiya, (2013) 3 Arb.LR 42** (Paragraphs 10 and 15).

g). There is no total bar for the maintainability of an arbitral appeal by a third party and it had to be decided in the facts of each case. In support of this submission, reliance is placed on the judgment of this Court in case of Bharat Sanchar Nigam Ltd. s. Siemens Financial Services Ltd., 2016 SCC OnLine Bom 5317 (paragraph 6) and also judgment of Supreme Court in case of **Municipal Council, Hansi vs. Mani Raj & Ors.,(2001) 4 SCC 173** (paragraphs 5 and 6).

h). It is submitted that though the petitioner as well as this Court had repeatedly enquired from the respondent no.2 as to whether the respondent no.2 was willing to implead the petitioner as parties before the learned arbitrator so that all the disputes could be resolved once for all, the respondent no.2 deliberately did not agree to implead the petitioners though petitioners were agreeable to become

parties to the arbitration proceedings with a view to resolve all the disputes between all the parties amicably. The sole intention of the respondent no.2 is to harass the third party and to compel the third party to file a civil suit.

i). The petitioner does not dispute the proposition that the Act was intended for expeditious resolution of dispute between the parties to arbitration agreement with least intervention of the Court. However that by itself does not exclude an appeal under section 37 by a third party. The remedy of a third party is provided in section 37 itself. The submission of the respondent no.2 that the suit can be filed in such fact situation runs contrary to section 5 of the Arbitration Act and the scheme of the Act which contemplates a remedy of appeal provided under the Act.

j). There is no rule which requires that the issue of maintainability must be decided first and that the hearing of the facts ought to take place only after the maintainability is decided. This Court can hear both the parties on maintainability as well as on merits and if this Court comes to the conclusion that those appeals filed under section 37 are maintainable, the Court can decide the matters on its own merits. Since several issues are raised by the parties, the Court has to render a finding on all the issues in order to avoid multiplicity of the proceedings.

k). It is not the case of the petitioner that the appeal under section 37 is by implication. The petitioner has placed reliance on section 37 which according to the petitioner can be invoked even by an aggrieved third party against the order passed by the learned arbitrator under section 17. Learned counsel distinguished the judgment relied upon by the learned counsel for the respondent no.2 on various grounds which will be dealt with by this Court in the later part of the judgment.

l). Insofar as submission made by the respondent no.2 on merits of the petitions and more particularly by submitting a chart is concerned, learned counsel for the petitioner also submitted a table thereby summarizing the objection of the respondent no.2 with response of the petitioner in great detail and would submit that each and every objection raised by the respondent no.2 is totally frivolous and in any event afterthought.

m). It is the case of the respondent no.2 itself that all the HR Coils on which the respondent no.2 had claimed the alleged rights and interest are already removed/replaced by the respondent no.1. The Court Receiver's report would clearly indicate that the HR Coils purchased by the petitioner have been identified by the learned Court Receiver after considering the documents produced by the petitioner. Since the respondent no.2 is not able to even prima facie prove their

right, title or interest of whatsoever in those coils, this Court has ample power to set aside the order passed by the learned arbitrator and to direct handing over possession of those HR Coils to the petitioner. The respondent no.2 having money claims against the respondent no.1 in the arbitration proceedings, even otherwise cannot claim any title right, title or interest in those HR Coils. Reliance is placed on various photographs taken by the Court Receiver to demonstrate that the number of coils embossed on each of the coil which can be related to the coil number mentioned in the Mill Test Certificate and other title documents as produced by the petitioner.

n). The document produced by the respondent no.2 in support of its title even *prima facie* does not disclose that the coils now admittedly lying in the warehouse in any manner belongs to the respondent no.2. The purchase and sale agreement have not been produced by the respondent no.2 in these proceedings. The purported receipts issued by the respondent no.1 in favour of the respondent no.2 does not refer to any identity of any coils. The transaction between the respondent no.1 and the respondent no.2 is *ex-facie* fraudulent and false. If the respondent nos.1 and 2 could not agree upon the supplier and if the respondent no.1's own sister concern viz. Western India Metal Processors Ltd. was in a position to supervise the coil, there was no reason to involve respondent no.2 in

the entire transaction.

o). The respondent no.2 has no role whatsoever to play in this purported transaction for sale of the HR Coils. The coils never exchanged and all along were lying with the respondent no.2 at its warehouse. The respondent no.1 has already admitted before the learned arbitrator and before this Court that the transaction for sale and purchase of coils between the respondent nos.1 and 2 was a sham transaction and in fact a money lending transaction.

p). The learned arbitrator though was aware of the dispute as regard title of the respondent no.2, both by the respondent no.1 as well as the petitioner, in the final order passed under section 17 on 17th November,2017, has not even *prima facie* rendered a finding that those HR Coils belong to the respondent no.2. The impugned order passed by the learned arbitrator which affects the rights of the petitioner is illegal and contrary to law. The learned arbitrator could not have passed any order in respect of the goods of the third party.

q). Insofar as the submission of the learned counsel for the respondent no.2 that the goods have been converted is concerned, it is submitted that the order dated 2nd January,2017 was an ad-interim order and the inspection carried out on 29th December,2016 was also done at an interim stage to secure the purported claim of the respondent no.2 which cannot be construed to be in any form of

conversion of coils. This contention of the respondent no.2 is clearly an afterthought and is not pleaded in their pleadings and runs contrary to the contentions raised in various affidavits. The respondent no.2 has not claimed the ownership rights in respect of these coils which are presently lying in the warehouse and the ownership is claimed till such time till the amounts are paid.

r). The impugned order passed by the learned arbitrator is causing grave and irreparable prejudice to the petitioner who are deprived of their goods which legitimately belongs to them. Balance of convenience is in favour of the petitioner and not the respondent no.2.

REASONS AND CONCLUSIONS :

36. I shall first decide the issue as to whether these 13 appeals numbered as arbitration petitions filed under section 37 of the Arbitration & Conciliation Act, 1996 filed by third parties arising out of the interim measures granted by the learned arbitrator and are aggrieved by those orders are maintainable or not.

37. It is an admitted position that none of these petitioners in these 13 petitions were parties to the arbitration agreement entered into between the respondent nos.1, 2 and 3. Section 37(1) and (2) of the Arbitration & Conciliation Act, 1996 reads thus :-

“37. Appealable orders.—

(1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

(a) granting or refusing to grant any measure under section 9;

(b) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal.—

(a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.”

38. Section 2(1)(h) defines “party” means a party to an arbitration agreement. Sections 2(1)(h) to 36 refers the “party” for different purposes. However, section 37 does not provide that an appeal under the said provision can be filed only by the parties to the arbitration agreement. By virtue of the amendment inserted by the Act 2 of 2016 with effect from 23rd October, 2015 thereby amending section 17 of the Arbitration & Conciliation Act, 1996, powers which are available with the Court under section 9 for grant of interim measures, identical powers are now also granted to the arbitral tribunal.

39. A perusal of section 17(1)(ii) clearly indicates that though such interim measures under section 17 can be applied only by a

party to the arbitral tribunal and more particularly specified in section 17(1)(ii)(a) to (e), such reliefs may in some of the cases affect even third parties.

40. The said provision clearly indicates that a party to the arbitration agreement who is permitted to apply for interim measures to the arbitral tribunal under the said provision and seek interim measures of protection in respect of any goods which are subject matter of the arbitration agreement or even to enter upon any land or building in possession of any party. Under section 17(1)(d) such party to the arbitration agreement can even apply for interim measures for appointment of a Court Receiver or for such interim measures or protection as may be appeared to the arbitral tribunal to be just and convenient. There may be a situation that a property or goods may belong to a third party who is not a party to the arbitration agreement but still a relief may be applied in respect of such goods or properties belonging to a third party and more particularly if a party to the arbitration agreement is either in possession or custody thereof claiming any right therein in any manner whatsoever.

41. In such a situation, where third party who is the owner of such goods or properties or claiming any right, title or interest in respect of such goods or properties but may not be in physical possession thereof and such goods or properties being in possession

of one of the party to the arbitration agreement, such a third party is obviously going to be affected if any order is passed by the arbitral tribunal for interim measures under section 17 of the Act. There is no dispute about the proposition of law that a third party cannot appear before the arbitral tribunal and seek any interim measures under section 17 of the Arbitration & Conciliation Act, 1996 or seek any modification or variation of the interim measures if granted by the arbitral tribunal against such third party though he may be aggrieved by such interim measures granted by the arbitral tribunal.

42. The question therefore arises for consideration of this Court is whether a third party who is aggrieved by any such order of interim measures granted by the arbitral tribunal can file an appeal under section 37 of the Arbitration & Conciliation Act, 1996 after obtaining the leave of the Court or otherwise and whether can impugn such order of the arbitral tribunal in respect of any goods or properties in respect of any such right, title or interest claimed by such third party or in any other manner affected by such interim measures or not.

43. This Court in case of **Narayan Manik Patil & Ors.** (supra) in the notice of motion filed by a third party who was affected by an order of the Court appointing the Court Receiver in respect of his property held that such third party aggrieved by the appointment of the Court Receiver himself can approach the Court and have the

Court Receiver discharged. It is held that the power of the Court to be justified to a third party who is adversely affected by an order passed without affording him an opportunity of being heard could in any event be traced to section 151 of the Code of Civil Procedure, 1908.

44. This Court held that where the Court finds that any order appointing the Court Receiver affects the rights of a third party and the circumstances disclose that such third party ought to have been impleaded or proceeded against in accordance with law before affecting its rights, it is open to the Court to discharge the Court Receiver and to leave it to the parties to the proceedings to adopt appropriate proceedings against the third party and to apply therein for interlocutory reliefs against such third party including by appointment of a Court Receiver. In the said judgment, it is held by this Court that even as a matter of practice, the Courts refuse to pass interlocutory orders which would adversely affect third party in the matters where it is brought to the notice of the Court that the third party rights have been created and are in existence. The principles laid down by this Court in the said judgment in my view would apply to the facts of this case. Even in this matter, the respondent no.1 had placed before the learned arbitrator that the goods in respect of which the relief or interim measures were sought by the respondent no.2 did not belong to the respondent no.1, but belong to the third parties.

Learned arbitrator however, did not go to the said crucial aspect and appointed the Court Receiver in respect of various Coils which were admittedly claimed by these petitioners in the arbitration petitions and the plaintiffs in the suit.

45. The only distinction which can be drawn in the said judgment of this Court in case of **Narayan Manik Patil & Ors.** (supra) is that the third party who is not a party to an arbitration agreement, cannot apply before the arbitral tribunal for modification and for vacating the order of interim measures passed by such arbitral tribunal. However, in case of a party to the arbitration agreement applying for interim measures under section 9 of the Arbitration & Conciliation Act, 1996 before a Court defined under section 2(1)(e) of the Arbitration & Conciliation Act, 1996, if any third party is likely to be affected if any such order of interim measures is granted as prayed by a party to the arbitration agreement or directly or indirectly any interim measures are prayed against such third party, no such interim measures can be granted by a Court against such third party unless such party is impleaded as a party to the said application under section 9 of the Arbitration & Conciliation Act, 1996.

46. Be that as it may, even if such third party is not impleaded as a party to such application filed under section 9 of the Arbitration & Conciliation Act, 1996, such third party can certainly apply for

impleadment or intervention in such proceedings filed under section 9 of the Arbitration & Conciliation Act, 1996 and can apply for modification and/or variation of the order of interim measures passed by a Court. In my view, such third party cannot be asked to file a civil suit and to challenge the order of interim measures granted by the arbitral tribunal. The validity of the order passed by the arbitral tribunal under section 17 of the Arbitration & Conciliation Act, 1996 cannot be challenged in a civil suit. The Civil Court does not sit in an appeal against an order of the arbitral tribunal passed under section 17 of the Arbitration & Conciliation Act, 1996.

47. The question thus arises for consideration of this Court is that whether the remedy of an appeal under section 37 of the Arbitration & Conciliation Act, 1996 can be availed off by such a third party who is affected by an order of interim measures granted by the arbitral tribunal under section 17 of the Arbitration & Conciliation Act, 1996. Learned counsel for the respondents did not dispute the proposition that if a third party is impleaded in the proceedings under section 9 of the Arbitration & Conciliation Act, 1996 filed by a party to the arbitration agreement or the rights of any third party is affected by an order passed by a Court in an application under section 9 of the Arbitration & Conciliation Act, 1996 filed by a party to the arbitration agreement, such third party can apply for impleadment or intervention

in such proceedings and to apply for modification and/or for variation of such order. If such third party does not succeed in such application for modification or variation of the order passed by a Court in favour of a party to the arbitration agreement affecting the right, title and interest of such third party, such third party can file an appeal under section 37 of the Arbitration & Conciliation Act, 1996 before the Court under section 2(1)(e) of the Act.

48. The Division bench of this Court in the case of **Girish Mulchand Mehta and Durga Jaishankar Mehta vs. Mahesh S. Mehta and Harini Cooperative Housing Society Ltd.** (supra) has dealt with an issue whether the appeal under section 37 of the Arbitration and Conciliation Act, 1996 could have been filed by the third party arising out of the order passed under section 9 of the Arbitration Act. It is held by the Division bench that there is no room to hold that by an interim measure under section 9, the rights of third party holding possession on the basis of Court sale could be interfered with, injuncted or subjected to proceedings under section 9 of the Act.

49. The Division bench construed Rule 803E of the Bombay High Court (Original Side) Rules and has held that section 9 is distinct from Section 17 in as much as Petition under section 17 is moved before the Arbitrator for an order against a party to the proceedings,

whereas section 9 vests remedy in a party to arbitration proceedings to seek interim measure of protection against a person who need not be either party to the arbitration agreement or to the arbitration proceedings. In the said proceedings under section 9, third party was also impleaded since the grant of the proposed relief was to incidentally affect those third parties. This Court entertained an appeal under section 37 of the Arbitration Act filed by such third party who was affected by the order passed by the learned Single Judge under section 9 though dismissed the said appeal on merit.

50. In view of the fact that powers of Court under section 9 to grant interim measures and powers of the arbitral tribunal under section 17 of the Arbitration Act are identical in view of the amendment to section 17 with effect from 23rd October 2015, in my view, even a third party who is directly or indirectly affected by interim measures granted by the arbitral tribunal will have a remedy of an appeal under section 37 of the Arbitration Act. The principles of law laid down by the Division bench of this Court in the case of **Girish Mulchand Mehta and Durga Jaishankar Mehta vs. Mahesh S. Mehta and Harini Cooperative Housing Society Ltd.** (supra) can be extended to this situation.

51. The Jammu and Kashmir High Court in the case of **Mohammad Ishaq Bhat vs. Tariq Ahmad Sofi & Anr.** (supra) has

held that if a person is materially and substantially interested in subject matter of the arbitration agreement and is likely to be materially affected by the order, section 9 cannot be interpreted to forbid impleadment of a person, not a party to arbitration agreement, to the proceedings under section 9. A person having vital interest in the subject matter of arbitration agreement can not be asked to watch proceedings from the fence and leave the arena for the parties to the arbitration agreement to cut swords, when the victim of the outcome of the dispute is none else but the person pushed to the fence.

52. The Jammu and Kashmir High Court in the said judgment has held that the Court is required to arrive at just conclusion and do justice between the parties. In order to enable the Court to discharge its mandate, it is necessary to a person who is interested in the subject matter of arbitration agreement and is in a position to render assistance to the Court is allowed to become a party to the proceedings. Jammu and Kashmir High Court in that matter had considered a situation where the person though stranger to arbitration agreement, was not allowed to become a party to the proceedings under section 9 of the Act. The petitioner claimed to be running business in the suit shop, in tenancy of his father for decades together and now in possession as a tenant thereof whereas the respondent had claimed to have entered into a partnership with the another party

to the arbitration agreement. The Court without hearing the petitioner in that matter passed an order which caused disastrous consequence for the petitioner.

53. The Jammu and Kashmir accordingly has held that though a stranger to an arbitration agreement cannot be allowed to seek interim measures under section 9 of the Arbitration and Conciliation Act, 1997, a stranger may be impleaded as a party where the Court is convinced that the applicant is a proper and necessary party to the proceedings and his presence is bound to enable the Court to arrive at a just and proper conclusion. I am in respectful agreement with the views expressed by the Jammu and Kashmir High Court in the case of **Mohammad Ishaq Bhat vs. Tariq Ahmad Sofi & Anr.** (supra).

54. Though a stranger to an agreement cannot be allowed to be impleaded as party to the arbitral proceedings before the arbitral tribunal and more particularly under section 17 of the Arbitration Act nor can such third party seek impleadment to the proceedings before the arbitral tribunal, he is however not precluded from challenging the said order before the arbitral tribunal under section 17 if he so aggrieved by such order by invoking the remedy of an appeal under section 37 of the Arbitration Act.

55. The Division Bench of this Court in the case of **Bharat Sanchar Nigam Limited vs. Siemens Financial Services Limited**

(*supra*) after adverting to the judgments of the Supreme Court in the case of **Taiyo Membrane Corporation Pty. Ltd. vs. Shapoorji Pallonji & Company Ltd., (2016) 1 SCC 736** and in the case of **Chloro Controls (I) Pvt. Ltd. vs. Severn Trent Water Purification Inc., (2013) 1 SCC 641** has held that depending upon the facts of the case, even the third party can be added or joined as party for appropriate reliefs and for its effective implementation, specially in section 9 Petition. There is no total bar, but subject to the interconnected and interdependent facts and the contract conditions between the parties, a third party can be impleaded. Division bench of this Court entertained the appeal filed by a third party under section 37 of the Arbitration and Conciliation Act, 1996 arising out of an order passed by the learned Single Judge under section 9 of the Arbitration Act however dismissed the said appeal on merit.

56. The Supreme Court in the case of **Municipal Council, Hansi, District Hissar, Haryana vs. Mani Raj & Ors.** (*supra*) while considering the provisions of Order I Rule 8-A of the Code of Civil Procedure, 1908 has held that a party was in possession of the disputed property and was not party in the award case and the earlier two orders passed by the Court on the basis of which direction was given to such third party to deliver possession of the disputed property. Application for intervention made by such third party ought

to have been allowed when the direction adversely and seriously affected the valuable rights of such third party over the immovable property in dispute. The principles of law laid down by the Supreme Court in the case of **Municipal Council, Hansi, District Hissar, Haryana vs. Mani Raj & Ors.** (supra) can be extended to this case where admittedly the petitioners in all these arbitration petitions were adversely affected in view of the interim measures granted by the learned arbitrator in the proceedings between the respondent nos.1, 2 & 3.

57. This Court by an order dated 7th December, 2017 in the Notice of Motion (Lodging) No.491 of 2017 and other companion matters filed by these petitioners in Court Receiver's Report No.476 of 2016 has clarified that in view of earlier orders passed by this Court in the said Court Receiver's Report, the applicants were not precluded from impugning the order dated 17th November, 2017 i.e. the order of interim measures passed by the learned arbitrator under section 17 of the Arbitration and Conciliation Act, 1996. None of the respondents has impugned the order dated 17th November 2017 passed by this Court in this group of notices of motion.

58. This Court in the case of **Mukesh Nanji Gala & Ors. vs. M/s.Haritage Enterprises, Mumbai & Anr.** (supra) had considered an issue as to whether a stranger to an arbitration agreement could

challenge the arbitral award under section 34 of the Arbitration Act or not. This Court interpreted section 34 read with section 2(1)(h) of Arbitration and Conciliation Act, 1996 and has held that an arbitral award can be challenged only by a party to an arbitration agreement unless covered by sections 40 and 41 of the Act. It is held that however if a person is wrongly impleaded as party to the arbitration proceedings and is aggrieved by arbitral award, he can invoke section 34 of the Act. This Court has also held that the proceedings under section 34 of the Arbitration and Conciliation Act, 1996 are not by way of an appeal. This Court has also adverted to the judgment Division bench of this Court in the case of **Girish Mulchand Mehta and Durga Jaishankar Mehta Vs. Mahesh S. Mehta and Harini Cooperative Housing Society Ltd.** (supra).

59. In my view, section 34 of the Arbitration and Conciliation Act, 1996 also refers to the expression “party” which is absent in section 37 of the Arbitration Act. The fact that the expression “party” is absent in section 37 of the Arbitration Act makes the legislative intent clear that the said expression “party” is deliberately not inserted so as to provide a remedy of an appeal to a third party who is affected by any interim measures granted by the arbitral tribunal or by the Court in the proceedings filed by and between the parties to the arbitration agreement. There is a possibility of the collusive

proceedings and the collusive order of interim measures being filed and obtained by the parties to the arbitration agreement which may affect the interest of those third parties.

60. A perusal of section 17 and section 9 which provide for interim measures which can be granted by the arbitral tribunal or the Court respectively clearly indicates that very exhaustive powers are given to the arbitral tribunal as well as to the Court for granting interim measures which may affect a third party. Such party whose interest is prejudiced by such interim measures obtained by the parties to the arbitration agreement cannot be forced to wait till the outcome of the arbitration proceedings culminating into an award and till such time, an execution application is filed by a successful party after the other party exhausting all his remedies provided under the Arbitration Act and fails. In my view, submission of the learned counsel for the respondent no.2 that the remedy of the petitioners would be to wait and watch till the entire arbitration proceedings culminating into an arbitral award and as and when the application for execution of such arbitral award is made by successful party, such third party would be only to resist the execution proceedings by obstructing the execution of such award is without any merit and is *ex-facie* contrary to the plain reading of section 37 and the legislative intent.

61. In my view, this argument of the learned counsel for the respondent no.2 also cannot be accepted for the simple reason that such a party to arbitration agreement may obtain collusive award or interim measures and may not apply for execution of the award by resorting to the provisions of section 36 of the Arbitration Act read with Order XXI of the Code of Civil Procedure, 1908 and may implement such collusive award or collusive order of interim measures. In such a situation, an application for execution of the award may not be even warranted.

62. This Court in the case of **Smt.Prema Amarlal Gera vs. The Memon Co-operative Bank Ltd. & Anr.** (supra) has entertained the petition under section 34 of the Arbitration and Conciliation Act, 1996 filed by an aggrieved third party stranger to the arbitration agreement and to challenge an arbitral award in view of the fact that the learned arbitrator had allowed such third party to intervene in the arbitral proceedings and passed an order seriously affecting the rights of such third party in the arbitral award. This Court has held that if a person is wrongly impleaded as a party to the arbitration proceedings and is aggrieved by an arbitral award, he can invoke section 34 of the Arbitration Act. In this case, each of these petitioners had brought to the notice of the learned arbitrator their alleged right, title and interest in the coils in respect of which an order of interim

measure was passed by the learned arbitrator and had requested the learned arbitrator to vacate the order of interim measure against the petitioners. The said application was opposed by the respondent no.2. The learned arbitrator however ignored these facts and passed the impugned order.

63. The learned arbitrator even did not vacate his order which seriously affected right, title and interest of the petitioners in those coils which were subject matter of the arbitral proceedings before the learned arbitrator. These petitioners in the arbitration petition and the plaintiffs in the suit were allowed to participate in the report submitted by the Court Receiver in this Court who was appointed by the learned arbitrator in those proceedings under section 17 of the Arbitration Act. The respondent no.2 at that stage did not oppose that the petitioners being not parties to the arbitration agreement could not have been allowed to intervene in those proceedings before this Court on the ground that they were strangers to the arbitration agreement.

64. This Court itself granted liberty to the petitioners to challenge the interim measures granted by the learned arbitrator which order has not admittedly impugned by any of these petitioners. The principles of law laid down by this Court in the case of **Smt.Prema Amarlal Gera vs. The Memon Co-operative Bank Ltd. & Anr.** (supra) can be extended to this fact situation where third

parties are admittedly affected by an order of interim measures passed by the learned arbitrator.

65. Insofar as interpretation of section 36 of the Arbitration and Conciliation Act, 1996 is concerned, Supreme Court in the case of **Sanjay Dutt Vs. State through C.B.I., Bombay (II)** (supra) has held that it is the duty of courts to accept a construction which promotes the object of the legislation and also prevents its possible abuse even though the mere possibility of abuse of a provision does not affect its constitutionality or constitution. Abuse has to be checked by constant vigilance and monitoring of individual cases and this can be done by screening of the cases by a suitable machinery at a high level.

66. In this case also, a perusal of the record before the arbitral tribunal and also before this Court clearly indicates that the respondent no.1 had made various statements and had given an undertaking not to part with possession of coils in which these petitioners had claimed right, title and interest. Similar undertaking came to be rendered by the respondent no.1 also before this Court in the Court Receiver's report as well as in the contempt proceedings filed by the respondent no.2. In view of such order obtained by the parties to the arbitration agreement directly affecting the independent rights to the petitioner, such third parties cannot be made to suffer on

the ground that the remedy of appeal under section 37 could not be availed of by such third parties though the said provision does not specifically bar the appeal filed by the third parties. This Court cannot accept the interpretation of section 37 as canvassed by the learned counsel for the respondent no.2 which if accepted would amount to a gross abuse of the said provision and would invite harsh and unreasonable result. I am thus inclined to accept the interpretation canvassed by the learned counsel for the petitioners that the expression "party" having been absent under section 37 of the Arbitration Act, the third party who is affected by an order of interim measures is entitled to avail of the remedy of appeal provided therein.

67. The Supreme Court in the case of **Oxford University Press Vs. Commissioner of Income Tax** (supra) has held that statutory provision must be so construed, if possible, that absurdity and mischief may be avoided and makes the provision rational, sensible, unless of course, the hands of the Court are tied and it cannot find any escape from the tyranny of literal interpretation. It is held that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the Court may modify the language used by the legislature or even "do some violence" to it

so as to achieve the obvious intention of the legislature and produce a rational construction. In such a case, the Court may read into the statutory provision a condition which, though not express, is implicit in construing the basic assumption underlying the statutory provision. In my view, the principles of law laid down by the Supreme Court in the case of **Oxford University Press vs. Commissioner of Income Tax** (supra) can be pressed in service in this matter for the purpose of interpretation of section 37 of the Arbitration Act so as to achieve the obvious legislative intent.

68. If submission of the learned counsel for the respondent no.2 that even if the petitioners are aggrieved by an order of interim measures granted by the learned arbitrator, such parties would have no remedy of appeal under section 37 of the Arbitration Act but will have to wait till the application for execution of the award, if any, made by the successful party are accepted, the same would lead to absurdity and would produce manifestly absurd and unjust result which could not be the intention of the legislature while enacting the remedy under section 37 of the Arbitration Act by intentionally not inserting the word "party" in section 37 of the Arbitration Act. In my view, with a view to avoid any absurd and unjust result, a third party has to be permitted to file an appeal if he is aggrieved by an order passed by the learned arbitrator under section 17 of the Arbitration

Act. The remedy of an appeal to a third party will have to be read in section 37 of the Arbitration Act with leave of the Court.

69. Learned counsel for the petitioners also placed reliance on several judgments of the Supreme Court and Delhi High Court in support of the submission that this Court has ample power to grant leave to the petitioners to file an appeal under section 37 of the Arbitration Act in view of the fact that the petitioners were not the parties to the arbitration agreement or to the arbitral proceedings before the learned arbitrator and in view of the fact that the petitioners are seriously prejudiced with the order of interim measures passed by the learned arbitrator.

70. The Supreme Court in the cases of **Smt.Jatan Kumar Golcha vs. Golcha Properties (P) Ltd.** (supra), **Hardevinder Singh vs. Paramjit Singh & Ors.** (supra), this Court in the case of **Province of Bombay Western India Automobile Association vs. Western India Automobile Association** (supra) and Delhi High Court in the case of **Bhisham Sawhney and Anr. vs. Union of India & Ors.** (supra) has dealt with an issue as to when a party who is not a party to the proceedings to the lower Court can be granted leave to file an appeal if he is aggrieved by such order or he is prejudicially affected by it. It has been held by the Supreme Court, this Court and Delhi High Court in the aforesaid judgments that it

would be a travesty of justice if a party is driven to file a suit which would involve long and cumbersome procedure when an order has been made directly affecting that party and redress can be had by filing an appeal which is permitted by law. It is held that a person who is not a party to the suit may prefer an appeal with the leave of the appellate court and such leave should be granted if he would be prejudicially affected by the judgment.

71. The petitioners have prayed for such leave in each of the arbitration petitions from this Court for filing an appeal. Though the aforesaid judgments referred to and relied upon by the learned counsel for the petitioners have dealt with powers of appellate Court for granting leave to file an appeal under the provisions of Code of Civil Procedure, 1908, in my view, since the power to grant such leave under the provisions of the Code of Civil Procedure, 1908 are procedural in nature can be exercised by this Court for granting leave to file an appeal under section 37 of the Arbitration Act. In view of the fact that the petitioners are admittedly affected by the impugned order of interim measures granted by the learned arbitrator, the petitioners are entitled to seek leave of this Court for filing an appeal under section 37 of the Arbitration and Conciliation Act, 1996. This Court has ample power to grant such leave to the petitioners and to hear the arbitration petitions filed under section 37 on its own

merits. The principles of law laid down by the Supreme Court, this Court and the Delhi High Court in the aforesaid judgments can be extended to the facts of this case while granting leave to file appeal under section 37 of the Arbitration and Conciliation Act, 1996. The petitioners have made out a case for grant of such leave and it is ordered accordingly.

72. The Kerala High Court in the case of **M/s.Muthoot Leasing and Finance Ltd. vs. N.P. Asiya W/o. Mammooty, Naduviledath** (supra) has dealt with the right of a third party to intervene in the proceedings under section 9 of the Arbitration Act and to apply for vacating such order of interim measures if he is affected and cannot be driven to institute a suit questioning the legality of the order of attachment. The Kerala High Court considered the situation where a third party was aggrieved by an order of attachment of his property who claimed ownership right in respect of such property by way of registered sale deed and had applied for lifting the attachment before the Court which has passed an order under section 9 in favour of the party to the arbitration agreement. A party to the arbitration agreement had filed an appeal challenging the said order passed by the learned Judge passing an order under section 9 against the third party on the ground that the District Court could not have entertained the application for vacating the order of

attachment on the application of a third party. The Division Bench of the Kerala High Court had rejected the said appeal on the ground that such third party who is affected by an order passed under section 9 by a Court cannot be driven to institute a suit questioning the legality of the order of attachment. I am respectfully in agreement with the views expressed by the Kerala High Court in the case of **M/s.Muthoot Leasing and Finance Ltd. vs. N.P. Asiya W/o. Mammooty, Naduviledath** (supra).

73. I am not inclined to accept the submission of the learned counsel for the respondent no.2 that the remedy of the petitioners would be to file a civil suit in addition to the remedy to obstruct the execution application if made by the successful party. In my view, the validity of the order of interim measures passed by the learned arbitrator even otherwise cannot be challenged before a Civil Court. On this ground also, the petitioners cannot be driven to institute a civil suit questioning the legality and validity of the order of interim measures passed by the learned arbitrator. Learned counsel for the respondent no.2 could not dispute the proposition of law that the order of interim measures simplicitor could not have been challenged by the petitioners by challenging the validity of such order before a Civil Court.

74. Insofar as the Delhi High Court in the case of **National**

Highways Authority of India vs. M/s.You One Mahria J.V. & Ors.

(supra) relied upon by the learned counsel for the respondent no.2 is concerned, Delhi High Court has considered an appeal under section 37(2) of the Arbitration and Conciliation Act, 1996 filed by the party to the arbitration agreement impugning an order passed by the arbitral tribunal allowing a third party to make an application for the purpose of seeking release of equipment claimed by it as its equipment and machinery. With these facts at hand, Delhi High Court has held that stranger to the arbitration agreement could not have applied for interim measures before the learned arbitrator under section 17 and could not have been permitted to seek any interim measures by the arbitral tribunal. Delhi High Court accordingly allowed the appeal filed by the party to the arbitration agreement on that ground. Admittedly, in this case, none of the petitioners were allowed to intervene in the arbitral proceedings filed by the respondent no.2 against the respondent nos.1 and 3 nor the petitioners had applied for any interim measures or had filed any application for vacating order of interim measures granted by the learned arbitrator. The judgment of the Delhi High Court in the case of **National Highways Authority of India vs. M/s.You One Mahria J.V. & Ors.** (supra) would be of no assistance to the respondent no.2 and is clearly distinguishable in the facts of this case.

75. Insofar as the judgment of the Madhya Pradesh High Court in the case of **B.D. Bhanot & Sons vs. Narmada Enterprises & Ors.** (supra) relied upon by the learned counsel for the respondent no.2 is concerned, the issue before the Madhya Pradesh High Court was whether a writ petition could be filed by a third party challenging the arbitral award by invoking the inherent and extraordinary jurisdiction of the writ Court under Article 226 of the Constitution of India. Madhya Pradesh High Court has held that even a party to the agreement would not be in a position to challenge the award in a writ petition. There was no issue before the Madhya Pradesh High Court as to whether an appeal under section 37 could be filed by stranger to the arbitration agreement or not. Be that as it may, I am not in agreement with the views expressed by the Madhya Pradesh High Court in the case of **B.D. Bhanot & Sons Vs. Narmada Enterprises & Ors.** (supra) for various reasons rendered aforesaid on the issue as to why a third party is entitled to avail of the remedy of appeal under section 37 of the Arbitration and Conciliation Act, 1996. The judgment of Madhya Pradesh High Court in the case of **B.D. Bhanot & Sons Vs. Narmada Enterprises & Ors.** (supra) thus would not assist the case of the respondent no.2.

76. Insofar as the judgment of this Court in the case of **Masusmi SA Investment LLC vs. Keystone Realtors Pvt. Ltd. &**

Ors. (supra) relied upon by the learned counsel for the respondent no.2 is concerned, the question before this Court in the said matter was whether an appeal filed under section 10F of the Companies Act, 1956 against the order passed by the Company Law Board allowing the application made by a party under section 8 of the Arbitration and Conciliation Act, 1996 who was a party to the arbitration agreement and referring a dispute between the parties filed under section 397 and 398 of the Companies Act, 1956 to the arbitration was maintainable or not. The question arose before this Court whether the said order is appealable under section 37 of the Arbitration and Conciliation Act, 1996 or not. After referring to the pleadings and documents, this Court has held that the order passed by the Company Law Board was under section 8 of the Arbitration and Conciliation Act, 1996 and not under the Companies Act, 1956. It is held that since the Arbitration Act, 1996 is a self contained, complete and exhaustive code in all respects, all the remedies from the orders passed and action taken in Arbitration Act, 1996 must flow from the said statute itself. The said judgment of this Court in the case of **Masusmi SA Investment LLC vs. Keystone Realtors Pvt. Ltd. & Ors.** (supra) would not apply to the facts of this case.

77. Insofar as the judgment of Delhi High Court in the case of **Indusind Bank Ltd. vs. National Highways Authority of India &**

Anr. (supra) relied upon by the learned counsel for the respondent no.2 is concerned, the appeal filed by a third party under section 37 of the Arbitration and Conciliation Act, 1996 challenging an order passed by the learned arbitrator rejecting an application filed by such third party for its impleadment under Order I Rule 10 of the Code of Civil Procedure, 1908 read with section 17 of the Arbitration and Conciliation Act, 1996 was dismissed. Delhi High Court held that a party who is not a party to the arbitration agreement cannot be impleaded as a party to the arbitral proceedings and thus the learned arbitrator had rightly rejected the said application filed under Order I Rule 10 of the Code of Civil Procedure, 1908 read with section 17 of the Arbitration and Conciliation Act, 1996. The said appeal before the Delhi High Court was admittedly filed by a third party. The said appeal under section 37 filed by a third party was not rejected by the Delhi High Court as not maintainable but was entertained by the Delhi High Court and was rejected on merit. The said judgment would in fact assist the case of the petitioners and not the case of the respondent no.2.

78. Insofar as the judgment of the Delhi High Court in the case of **Indusind Bank Ltd. vs. Ram Laxman Hotels Ltd. & Ors.** (supra) relied upon by the learned counsel for the respondent no.2 is concerned, Delhi High Court has considered an issue as to whether

a third party who was not a party to the arbitration agreement or the arbitration proceedings could file a petition under section 34 of the Arbitration & Conciliation Act, 1996 with respect to an arbitral award on the ground of the same affecting the said third party. Delhi High Court held that a petition under section 34 of the Arbitration Act could not have been filed by a stranger to the arbitration agreement and who was not a party to the arbitration proceedings. There is no dispute about the proposition of law laid down by the Delhi High Court in the said judgment. These proceedings are filed by the petitioners, who were not the parties to the arbitration agreement and were not parties to the arbitral proceedings, and have filed the proceedings under section 37 of the Arbitration and Conciliation Act, 1996 and not under section 34 of the Arbitration and Conciliation Act, 1996. The judgment of the Delhi High Court in the case of **Indusind Bank Ltd. vs. Ram Laxman Hotels Ltd. & Ors.** (supra) thus would not assist the case of the respondent no.2.

79. Insofar as the judgment of the Supreme Court in the case of **Chandra Prakash Agarwal vs. Bhagirath Agarwal & Ors.** (supra) relied upon by the learned counsel for the respondent no.2 is concerned, a third party had applied for interim relief before the Supreme Court directly seeking direction against a party to the arbitration agreement. Hon'ble Supreme Court has held that such

third party cannot be allowed relief either by way of intervention or by way of any substantive relief in those proceedings either by that Court or by directing the arbitrator to entertain its prayer. Such applicant would be at liberty to pursue such remedy as may be available to it under the law for vindicating its grievance raised in the application filed before the Hon'ble Supreme Court. The applicant before the Hon'ble Supreme Court in that matter had also applied for a direction from the Supreme Court against the order of interim measures passed by the learned arbitrator. Supreme Court has held that once an arbitrator has been appointed by the Court any party feeling aggrieved by any interim order or direction made by the arbitrator is at liberty to pursue such remedy as may be available to him under the law. The judgment of the Supreme Court in the case of **Chandra Prakash Agarwal vs. Bhagirath Agarwal & Ors.** (supra) is not applicable to the facts of this case and is clearly distinguishable in the facts of this case.

80. Insofar as the judgment of the Supreme Court in case of **Fuerst Day Lawson Limited** (supra) relied upon by the learned counsel for the respondent no.2 is concerned, the Supreme Court in the said judgment has held that the Arbitration Act is self-contained code and thus Letters Patent Appeal is excluded by examining the scheme defined by the provisions of sections 49 and 50 of the

Arbitration Act. No Letters Patent Appeal will lie against the order which is not appealable under section 50 of the Arbitration & Conciliation Act, 1996. The petitioners in this case have invoked section 37 of the Arbitration Act for filing these appeals against an order of interim measures granted by the learned arbitrator. The judgment of the Supreme Court in case of **Fuerst Day Lawson Limited** (supra) thus would not assist the case of the respondent no.2.

81. Insofar as the judgment of the Supreme Court in case of **SBP & Co.** (supra) is concerned, the Supreme Court has held in the said judgment that once the matter reaches the arbitral tribunal or the sole arbitrator, High Court would not interfere with the orders passed by the arbitrator or the arbitral tribunal during the course of the arbitration proceedings and the parties could approach the Court only in terms of section 37 of the Arbitration Act or in terms of section 34 of the Arbitration Act. It is held that the party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under section 37 of the Arbitration Act, has to wait until the award is passed by the arbitral tribunal. There is no dispute about the proposition of law laid down by the Supreme Court in the said judgment. Since this Court is of the view that the petitioners have a right of appeal under section 37 of the Arbitration Act, the judgment of the Supreme Court in case of **SBP &**

Co. (supra) would assist the case of the petitioners and not the respondent no.2.

82. Insofar as the judgment of the Supreme Court in case of **S.N. Prasad, Hitek Industries (Bihar) Limited** (supra) relied upon by the respondent no.2 is concerned, the Supreme Court has held that since there was no arbitration agreement between the parties i.e. before the Hon'ble Supreme Court, impleadment of the appellant as a respondent in the arbitration proceedings and the award against the appellant in such arbitration cannot be sustained and accordingly the arbitration awards were liable to be set aside. It was held that if the first respondent wanted to enforce the alleged guarantee of the appellant, it would be open to the first respondent to do so in accordance with law. In my view the judgment of the Supreme Court in case of **S.N. Prasad, Hitek Industries (Bihar) Limited** (supra) would not assist the case of the respondent no.2. In this case, the petitioners were neither impleaded as parties to the arbitration proceedings nor the learned arbitrator entertained the application of the petitioner to modify / vacate the order of interim measures. Learned arbitrator however, has passed interim measures which would affect the petitioners. The petitioners are thus entitled to invoke the remedy under section 37 of the Arbitration Act.

83. Insofar as the judgment of this Court in case of **Madhavji**

Jeyram Kotal & Ors. (supra) relied upon by the respondent no.2 is concerned, this Court has considered the issue as to whether a third party to the suit could file an application under Order 39 Rule 4 of the Code of Civil Procedure, 1908 or not. The expression “party” is not defined in the Code of Civil Procedure. The counsel for such third party made a statement before this Court in the said judgment that his client had no intention to be joined as party defendant to the suit. In these circumstances, this Court did not allow the third party to invoke provisions of Order 39 Rule 4 of the Code of Civil Procedure, 1908. In my view, the said judgment of this Court in case of **Madhavji Jeyram Kotal & Ors.** (supra) would not even remotely apply to the facts of this case.

84. Insofar as the judgment of this Court in case of **Khalil Haji Bholumiya Salar & Anr.** (supra) relied upon by the learned counsel for the respondent no.2 is concerned, this Court while dealing with the provisions of Order 43 Rule 1-A of the Code of Civil Procedure, 1908 held that the stranger to the suit is obviously a stranger to the agreement of compromise. He cannot file an application either in the suit or in the appeal proceedings to challenge a compromise decree as he is not a party to the suit. This Court considered the bar under Order 23 Rule 3-A of the Code of Civil Procedure, 1908 and held that the said bar cannot be extended to such third party. It is held that the

said provision under Order 23 Rule 3-A of the Code of Civil Procedure, 1908 must confine to a party to the suit which are the parties to the agreement of compromise. In these circumstances, this Court dismissed the application filed by a third party as not maintainable. In my view, the said judgment of this Court does not even remotely apply to the facts of this case and would not assist the case of the respondent no.2.

85. Insofar as the judgment of the Supreme Court in case of **Municipal Committee, Hoshiarpur** (supra) relied upon by the learned counsel for the respondent no.2 is concerned, the Hon'ble Supreme Court has held that the right of appeal under section 100 of the Code of Civil Procedure, 1908 is creation of statute and it cannot be created by acquiescence of the parties or by the order of the Court. This Court is of the view that since the petitioners are entitled to invoke the right of appeal under section 37 of the Arbitration & Conciliation Ac, 1996 which is a statutory right, the judgment of the Supreme Court will not assist the case of the respondent no.2.

86. Insofar as the judgment of the Supreme Court in case of **Competition Commission of India** (supra) relied upon by the learned counsel for the respondent no.2 is concerned, the Supreme Court in the said judgment has held that right of appeal is a creation of statute and it does require an application of rule of plain

construction. Such provisions are neither be construed too strictly nor too liberally, if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. The Supreme Court held that in absence of any provision creating right in a party to file an appeal, such right can neither be assumed nor acquired in favour of a party. In my view, since the word “party” is absent in section 37 though specifically inserted in section 2(1)(h) to section 36, it is clear that it was the legislative intent to provide the remedy of appeal to a third party who is not a party to the arbitration agreement. The judgment of the Supreme Court in case of **Competition Commission of India** (supra) thus would not assist the case of the respondent no.2. The judgment of Madhya Pradesh High Court in case of **Bhulabhai & Others** (supra) is of no assistance to the respondent no.2.

87. Insofar as reliance placed by the learned counsel for the respondent no.2 on section 5 of the Arbitration Act is concerned, since this Court is of the view that the remedy of appeal under section 37 would be available even to the stranger to the arbitration agreement, who is seriously prejudiced by the interim measures passed by the learned arbitrator, reliance placed on section 5 of the Arbitration Act by the respondent no.2 is misplaced. In my view, there is no interference of these third parties in arbitration process as sought to

be canvassed by the respondent no.2.

88. Insofar as the submission of the learned counsel for the respondent no.2 that since the petitioners or the applicants were admittedly not the parties to the arbitration agreement, none of them could be a party to the arbitration proceedings before the learned arbitrator is concerned, there is no dispute about this proposition. However, since the order passed by the learned arbitrator for interim measures at the behest of one of the parties to the arbitration agreement which would prejudice the right, title and interest of a third party, such third party who is not allowed to seek impleadment in the arbitration proceedings or to apply for modification and/or vacating the order of interim reliefs, will have a right of appeal under section 37 of the Arbitration & Conciliation Act, 1996 against such order. I am not inclined to accept the submission made by the learned counsel for the respondent no.2 that there is any statutory bar against a third party from filing an appeal under section 37 of the Arbitration Act though an order is passed by the arbitral tribunal in the proceedings filed by the parties to the arbitration agreement under the provisions of the Arbitration & Conciliation Act, 1996 would affect the rights of such third party. It is not the case of the respondent no.2 that even a party to the arbitration agreement could not have filed an appeal under section 37 of the Arbitration & Conciliation Act, 1996, before the Court

defined under section 2(1)(h) on the ground that such appeal would be in the middle of the arbitration process.

89. This Court having taken a view that the appeals filed by the petitioners under section 37 of the Arbitration & Conciliation Act, 1996 are maintainable against the order of interim measures passed by the learned arbitrator, this Court shall now decide as to whether any of the petitioners are entitled to any reliefs as prayed or not.

90. Insofar as the petitioners in the arbitration petitions are concerned, the petitioners had produced various documents in respect of their case that they had purchased huge quantity of HR steel coils from various parties and produced the documents of title including all the bills of entries, Mill Test Certificates / Inspection certificates issued by the vendors / manufacturers. A perusal of the photographs annexed to various pleadings filed by the petitioners indicates that those certificates bears the unique coil number on the basis of which each HR steel coils can be identified. Those coil numbers are also embossed on the respective coils which mentioned the identification of the coils certain. Each of the petitioners has also produced the documents which contained various other details like thickness, grading, length, width, chemical composition and weight of coils.

91. It is the case of the petitioners that most of these petitioners had entered into a Conducting Agreement with the

respondent no.3 whereby they had given their respective coils to the respondent no.3 for storing, handling and recoiling on job work basis. Some of the petitioners have alleged oral arrangement for conducting with the respondent no.3 and have produced the documents acknowledging the delivery and receipt of the respective coils from those petitioners. It is the case of the petitioners that those coils were delivered to the respondent no.3 during the period between 15th December, 2016 and 5th January, 2017 for the purpose of storing, processing and recoiling the same. A perusal of the record indicates that the respondent no.3 had acknowledged the receipt of those coils vide a stock list / letter dated 9th January, 2017. The said list issued by the respondent no.3 also indicates the serial number of the coils, weight, date, CTL number etc. All these details were written on the said coils by the respondent no.3 by white paint.

92. It is not in dispute that pursuant to the visit of the representative of the Court Receiver as directed by this Court, all the parties were allowed to produce their respective documents before the Court Receiver. The Court Receiver has submitted a report before this Court which also indicates that various quantities of those coils belonged to the petitioners. The respondent no.2 has also admitted in the affidavit in reply as well as during the course of arguments before this Court that at least those coils lying in the warehouse as on date

did not belong to the respondent no.2 and has alleged that either the coils on which the respondent no.2 had claimed certain alleged rights are either replaced by the respondent no.1 or have been removed from the warehouse of the respondent no.1.

93. A perusal of the record further *prima-facie* indicates that there was money lending transaction between the respondent no.1 and the respondent no.2. I am inclined to accept the submission of the learned counsel for the petitioners and also the respondent no.1 that for the purpose of availing the loan by the respondent no.2 from the bankers and for the purpose of advancing the loan to the respondent no.1, the alleged transactions between the respondent no.1, respondent no.2 and the respondent no.3 were reflected as the transaction of sale of those coils. The respondent no.2 could not give any details as to when those goods were purchased by the respondent no.2 either from the respondent no.1 or from the respondent no.3 or from the third party and for what purposes those coils were handed over to the respondent no.1.

94. On the other hand, it is the case of the respondent no.2 that the respondent no.2 had allegedly purchased those goods from the respondent no.3 and sold those goods to the respondent no.1. The respondent no.2 could not explain before this Court as to why such transactions were carried out between the respondent no.1 and

the respondent no.3 by the respondent no.2 though the respondent no.1 and the respondent no.3 were admittedly the sister concern of each other. Be that as it may, the facts remains that as on date, none of the goods on which the respondent no.2 claimed their alleged rights, title and interest are found in the custody of the Court Receiver or are available in the warehouse of the respondent no.1.

95. Insofar as the respondent no.1 and the respondent 3 are concerned, it is the case of the respondent no.1 and the respondent no.3 that the respondent no.1 had borrowed the money from the respondent no.2 at the rate of interest approximately 24% to 30% per annum with penal additional interest. The sister concern of the respondent no.1 had processing facility to carry out job work processing of the third party coils. The respondent no.2 had borrowed the funds from their borrowers as working capital and since the said bank did not permit money lending for further lending purpose, the respondent no.2 structured the transaction of loan from the respondent no.2 to the respondent no.1. Such transaction of purported sale and the purchase were merely the transactions to enable the respondent no.2 to raise the finance with its bankers and to loan the same to the respondent no.1 at much higher rate of interest.

96. In my view, there is substance in the submission made by the learned counsel for the petitioners and the respondent nos.1 and 3

that the transaction of the alleged sale and purchase between the respondent no.1 and 2 remained only on paper and there was no physical movement of the goods either by Western India Metal Process Limited to the respondent no.2 or by the respondent no.2 to the respondent no.1. In my *prima-facie* view, since the transaction between the respondent no.2 and the respondent no.1 was money lending transaction which was camouflaged as sale transaction, the respondent no.2 could not claim any right, title or interest of any nature whatsoever in respect of such coils which belongs to the petitioners to the extent claimed by the petitioners.

97. The respondent nos.1 and 3 never admitted the claim of the respondent no.2 that those coils which were in the custody of the respondent no.1 ever belonged to the respondent no.2. The respondent no.2 did not purchase any goods from the sister concern of the respondent no.1 and they did not hold any inventory which belongs to the respondent no.2. The respondent no.2 itself has admitted in the arbitral proceedings and also before this Court that there was a trade finance between the respondent nos.1 and 2. In my view, the respondent no.1 thus could not be prevented from complying with its obligation to deliver those coils which were handed over to the respondent no.1 by the petitioners. There is no merit in the case of the respondent no.2 that this Court is bound to decide the issue of

maintainability of these petitions first. Be that as it may, this Court has decided the issue of maintainability first and having held that petitions filed under section 37 are maintainable has decided the matter on merits.

98. Learned counsel for the respondent nos.1 and 3 have made the statement in the affidavits as well as before this Court that the coils belong to the petitioners and Karamtara Engineering Private Limited and did not belong to the respondent no.2 and that the respondent no.1 was always ready and willing to hand over possession of those coils to the petitioners as well to the said Karamtara Engineering Private Limited however in view of the order of injunction granted by the learned arbitrator, the respondent no.1 is unable to comply with its obligation to return those coils to the petitioners and the applicant respectively.

99. Insofar as the submission of the learned counsel for the respondent no.2 that no particulars of the oral agreements have been provided though pleaded in some of the petitions or that the invoices produced by the petitioners did not identify the coils claimed by the petitioners is concerned, there is no substance in this submission of the learned counsel for the respondent no.2. The identity of the coils claimed by each of the petitioners has been established in the reports submitted by the learned Court Receiver. Be that as it may, it is the

case of the respondent no.2 itself that none of those coils now lying in the custody of the learned Court Receiver or in the godown or in the warehouse of the respondent no.1 are the coils in respect of which the respondent no.2 claims the ownership in view of the alleged sale transaction between the respondent no.2 and other two respondents. The contention of the respondent no.2 that the coils are converted into other form is without any pleadings, afterthought and is without any merit.

100. The petitioners have produced a chart showing the title in respect of the coils, the details of the agreements entered into between the petitioners and the third parties, the names of sellers from whom the petitioners had purchased, the names of the manufacturers, the dates of issuance of inspection certificate / Mill Test Certificate etc. Several photographs are produced before this Court which were taken by the learned Court Receiver while taking the inventory of those coils showing various marks on those coils which would tally with the details furnished by the petitioners on the title documents in respect of those coils. In my *prima-facie* view, each of the petitioners have produced sufficient material before this Court to demonstrate that the petitioners are the owners of those coils and are entitled to those coils. All such coils were admittedly purchased by the petitioners and the delivery was taken by the petitioners much

after the alleged transaction of sale between the respondent no.2 and the respondent no.1. The question of the respondent no.2 thus claiming right, title and interest in respondent of such coils based on the alleged sale transaction between the respondent no.2 and the respondent no.1 does not arise.

101. Insofar as the prayers in the arbitration petition are concerned, the petitioners have prayed for setting aside the order dated 27th December, 2016 passed by the learned arbitrator, the order dated 17th November, 2017 passed by the learned arbitrator and for leave to file appeals under section 37 of the Arbitration & Conciliation Act, 1996. The petitioners have also prayed for an order and directions against the respondents, their agents, servants, employees and the learned sole arbitrator to permit the petitioners to take possession and/or removal of such coils from the said warehouse which belonged to the petitioners without any hindrance from the respondents and the learned sole arbitrator. This Court with a view to do substantial justice to the petitioners who are seriously prejudiced and affected by the impugned orders in the matter and in view of the petitioners proving their case has granted reliefs to the petitioners.

102. In my view, since the petitioners have demonstrated before this Court their right, title and interest in those coils, the respondent no.1 and the respondent no.3 have also admitted before the learned

arbitrator and also before this Court that those coils belonged to the petitioners as well as Karamtara Engineering Private Limited respectively and in view of the fact that the respondent no.2 has also admitted that those coils have been allegedly removed / replaced by the respondent no.1 which were alleged to have been purchased by the respondent no.2, the impugned order passed by the learned arbitrator granting injunction against the respondent no.1 and the respondent no.3 from handing over possession thereof to any third party deserves to be set aside. The injunction order against the respondent no.1 and the respondent no.3 granted by the learned arbitrator is set aside. The petitioners would be at liberty to call upon the respondent no.1 and the respondent no.3 to hand over the custody of those coils to the petitioners. In my view, the petitioners are entitled to grant of leave to file appeal against the impugned order dated 27th December, 2016 and others orders causing prejudice to the interest of the petitioners. The petitioners have also made out a case for setting aside the order passed by the learned arbitrator insofar as the injunction granted by the learned arbitrator against the respondent nos.1 and 3 is concerned.

103. I therefore, pass the following order :-

a). Leave to file appeal is granted to the petitioners against the impugned order passed by the learned arbitrator on 27th December, 2016 and the order dated 17th November, 2017.

b). The impugned order dated 27th December, 2016 passed by the learned arbitrator granting an injunction against the defendant no.1 and the defendant no.3 in respect of the coils reflected in the Court Receiver's Report claimed by each of the petitioners is set aside. The defendant no.1 is relieved from all the undertakings rendered by it in the arbitral proceedings as well as before this Court not to hand over possession of the coils to anybody.

c). The petitioners would be at liberty to ask for delivery of those coils from the defendant no.1.

d). All the aforesaid arbitration petitions are made absolute in aforesaid terms. Parties to act on the authenticated copy of this judgment.

e). There shall be no order as to costs.

(R.D. DHANUKA, J.)

104. Mr.Ankhad, learned counsel for the respondent no.2 seeks continuation of ad-interim order passed by this Court for a period of 12 weeks from today. Learned counsel for the petitioner states that the order passed by this Court will not be executed for a period of 6 weeks from today. The statement is accepted. If any Special Leave Petition is filed by the respondent no.2, a copy thereof shall be served upon the petitioner's advocate in advance.

(R.D. DHANUKA, J.)