



O.P.No.363 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **10.03.2020**

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.363 of 2017

M/s.Shriram Transport Finance Company Limited
represented by its Authorized Signatory
Mookambika Complex, 3rd Floor
Mylapore, Chennai – 600 004

... Petitioner

vs.

M/s.Duruva Finance Private Limited
Represented by its Managing Director Mr.T.Senapathy
4th Cross, Karur – 635 002

... Respondent

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 24.01.2017 passed by Arbitrator in the Arbitration proceedings pursuant to the Arbitration Case No.86 of 2016 in the matter of dispute between the petitioner and the Respondent and consequently allow the claim made by the petitioner and thus render justice and to direct the respondent to pay the costs of the proceedings.

For Petitioner : Mr.K.S.Ramakrishnan

For Respondent : Mr.G.Ashokapathy
for M/s.Pass Associates



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ORDER

WEB COPY Instant 'Original Petition' ('OP' for brevity) was dismissed for default by Hon'ble predecessor Judge on 27.06.2018, the same has been restored vide a separate order made today in A.No.9291 of 2019. To be noted, order made today in A.No.9291 of 2019 is a consent order, which has been made without expressing any opinion on the merits of condonation of delay or restoration prayer.

2. Instant 'Original Petition' ('OP' for the sake of brevity) has been filed under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity. Be that as it may, instant OP has been filed assailing an arbitral award dated 24.01.2017 made by an Arbitral Tribunal constituted by a sole Arbitrator qua an 'agreement dated 01.06.2008' (hereinafter 'said contract' for the sake of brevity, clarity and convenience). One covenant in said contract is an arbitration clause and therefore, the same serves as an 'arbitration agreement' between the parties being 'arbitration agreement' within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.



3. PREFATORY NOTE:

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3. Challenge to an arbitral award under Section 34 of A and C Act, going by the language in which Section 34 of A and C Act is couched, is by way of an 'application', but this Court is giving the nomenclature 'Original Petition' for such applications under Section 34 of A and C Act. Therefore, this Court will continue to refer to instant matter as 'OP'. A OP under Section 34 of A and C Act is neither an appeal nor a revision. It is not even a full-fledged judicial review, but it is a limited judicial review within the contours and confines of Section 34 of A and C Act. By 'contours and confines' of Section 34 of A and C Act, this Court refers to 8 designated slots adumbrated in Section 34 of A and C Act. To be noted, 5 slots are adumbrated under Section 34(2)(a), two slots are adumbrated under Section 34(2)(b) and one slot figures as Section 34(2-A). This Court chooses to deploy the term 'slots' in preference to 'grounds' as instant OP is neither an appeal nor a revision and it is not even a full-fledged judicial review as mentioned earlier. To put it differently, it is a mere challenge to an award. When it comes to 'challenge to an award', the principle is, if a petitioner/applicant is able to fit his case into any one or more of the eight



slots snugly, the award will be dislodged or in other words set aside. If that not be so, the award will not be interfered with. This is owing to 'minimum judicial interference' in 'Alternate Dispute Resolution' ('ADR') mechanism, which is one of the important sublime philosophies and salutary principles underlying qua the scheme of A and C Act. In this context, this Court chooses to describe the eight slots adumbrated in Section 34 as eight pigeon holes. To be noted, some of these pigeon holes are even in the nature of keyholes and pinholes, as some of these slots have been circumscribed by limitations. An illustrative list is a) making re-appreciation of evidence impermissible, b) eliminating even erroneous application of law qua patent illegality slot and c) not entailing review on merits qua public policy slot.

4. FACTUAL MATRIX:

4(i) In the light of aforementioned prefatory note, short facts shorn of elaboration or in other words factual matrix in a nutshell containing facts, which are imperative for appreciating this order will suffice.

4(ii) Short facts are that the petitioner and respondent entered into a Franchise Agreement dated 24.02.2006; that the Franchise Agreement was



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in relation to the business of financing purchase of new and used commercial / non commercial (Goods and Passenger) vehicles, besides accessories; that post Franchise Agreement, an agreement captioned 'JOINT VENTURE AGREEMENT' was entered into between the petitioner and respondent on 01.06.2008; that there is an arbitration clause in the 01.06.2008 agreement between the petitioner and respondent, which serves as an arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act; that arbitral disputes arose between the petitioner and respondent as petitioner alleged that there was a running account between petitioner and respondent, a sum of little over Rs.52 lakhs was due as on 30.09.2014 vide the running account; that a former District Judge was appointed by this Court as sole arbitrator to constitute the Arbitral Tribunal by exercise of powers under Section 11 of A and C Act; that the Arbitral Tribunal entered upon reference qua said arbitral disputes; that the petitioner filed a claim statement dated 22.09.2016; that the respondent filed a statement of defence; that the Arbitral Tribunal, after full contest/trial, wherein one witness was examined on the side of the petitioner (Claimant before Arbitral Tribunal) and 8 exhibits, namely Ex.C1 to C8 were marked,



dismissed the petitioner's claim vide the arbitral award dated 24.01.2017 (hereinafter 'impugned award' for the sake of brevity); that instant OP was presented on 29.04.2017 assailing the impugned award; that instant OP was dismissed for default on 27.06.2018; that instant OP has been restored vide a separate order in an application and is being heard out today.

5. SUBMISSIONS AND DISPOSITIVE REASONING:

5(i) A perusal of the factual matrix set out supra, will reveal that this Court has not only given a thumb nail sketch of facts in a nutshell, but has also captured the trajectory of instant OP thus far.

5(ii) In the light of the prefatory note, this Court examined the sixteen grounds which have been raised in instant OP, which read as follows:

'Grounds

- 1. The Award passed by the Learned Arbitrator is against Law, Material Evidence placed before him and against principles of natural justice.*
- 2. The Findings and observation of the Arbitrator that the Joint Venture Agreement dated 01.06.2008 between the petitioner and the respondent amount to a partnership and hence inadmissible for want of insufficient stamp is against accepted*



principle of law and perverse.

3. *The reasoning given by the Arbitrator holding the Joint Venture Agreement amount to partnership is illegal and against well laid provision of law.*
4. *Once the Learned Arbitrator had come to the conclusion that the Joint Venture Agreement amounts to a Partnership and suffer from insufficiency of stamp and inadmissible, he ought to have impounded the document and called upon the petitioner to pay the stamp duty and penalty as soon as the decision had been taken by the Arbitrator.*
5. *The conclusion of the Arbitrator that the Joint Venture Agreement amount to Partnership is hasty in the absence of consideration by him, the entire circumstances and terms and conditions of the said Joint Venture Agreement.*
6. *The Learned Arbitrator failed to note that in the Joint Venture Agreement the Petitioner entrusted to the respondent the finance to be disbursed by them to the customers introduced by them and the respondent alone is liable to collect the amount due from the customers introduced by him who had in turn entered into tripartite Loan Cum Hypothecation Agreement with 1. The Petitioner 2. The Respondent and 3. The Borrower.*
7. *The Learned Arbitrator failed to note that the sharing of the amount between the petitioner and respondent is the remuneration to be paid to the respondent for the job on his part, in collecting the amounts from the borrower due under the respective loan cum hypothecation agreement.*



8. *The findings of the Learned Arbitrator that the Joint Venture Agreement (JVP) shall be in force with effect from 01.06.2008 and shall be for the duration of one year relates to the enforceability of the agreement is unreasonable.*

The said words that the JVP Agreement shall be in force with effect from 01.06.2008 and shall be for the duration of one year relates only to giving of Business by way of entrusting funds to the respondent and does not by any stretch of imagination to the enforceability of the agreement, this is so because of the all 299 loans cum hypothecation agreements entered in to between the petitioner and the respondent. In some agreements the amount due is to be paid in 36 monthly installments, as per the Joint Venture Agreement the respondent had undertaken to collect all the amounts due under 299 Agreements and hence the Joint Venture Agreement is in force till the last date in each of the loan cum hypothecation agreements.

9. *The Arbitrator failed to note that the respondent had not protested or denied that he had entered into 299 tripartite loan cum hypothecation agreements in which the petitioner, respondent, borrower are the parties. Similarly the Arbitrator failed to note that the statement of the respondent in his defense that “even though the loan agreement was for 36 months, the liability of the respondent was till the existence of the Joint Venture Agreement” is self contradictory. In the statement of the defense the respondent had stated that there*



was no continuous relationship between them and the petitioner, but at the same time in Paragraph 12, the respondent had stated “that the claimant (petitioner) had not availed the services of the respondent from mid 2010 onwards is also self contraction”.

- 10. The learned Arbitrator failed to note these contradictions and also failed to note that the respondent had not given any proof and absented himself from appearing before the arbitrator and face the cross examination to clarify his self contraction made in his statement of defense, when the respondent maintains that he had settled and paid all the amounts due ought to have appeared before the Arbitrator and proved the same.*
- 11. The learned arbitrator failed to see that the respondent had not protested or denied his having entered into a joint venture agreement with the petitioner and had not denied the amount entrusted to them by the petitioner for disbursement of loan to customers introduced by him. Equally the respondent had denied entering into by them tripartite loan cum hypothecation agreement by them with the petitioner and the borrower.*
- 12. The findings and observations of the Arbitrator in respect of Limitation period to render accounts in partnership and dissolution is not in respect of the disputes referred to him and are out of scope, and unnecessary.*
- 13. The learned Arbitrator while holding that petitioner/claimant had taken a stand that the last installment falls during the year 2012 and 2013 and from the date of last installment, the claim*



is within 3 years and hence it is not barred failed to give judicial and justifiable or even reasonable consideration to said aspect in respect of the dispute referred to the Arbitration, especially when the respondent had taken the defense that "even though in the loan agreement was for 36 months, the liability of the respondent was till the existence of the Joint Venture Agreement.

14. Even though the Joint Venture Agreement come to an end on 31.05.2009, as per the terms and conditions of the agreement the respondent had under taken to collect the monthly installment from the borrower and hence he is liable till the date of last installment to comply with and fulfill his obligation under taken by him as per requirement of public policy as laid down by law.

15. The learned Arbitrator ought to have taken into account the last date fixed for the payment of the last installment and he ought to have decided the question of limitation only from such date. The Arbitrator had found in Paragraph 23 of the Award that, the last installment falls due for payment in the year 2012 and 2013 and in such cases it is not legal on the part of the Arbitrator to have held that the entire claim is barred by limitation.

16. The learned Arbitrator failed to note that even though the Joint Venture Agreement comes to an end on 31.05.2009 according to him, the Arbitration clause survives even after the agreement comin to an end by efflux of time. '



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5(iii) To be noted, caption to instant OP reads as follows:

'PETITION UNDER SECTION 34 OF THE ARBITRATION
AND CONCILIATION ACT 1996'

5(iv) A perusal of 16 grounds (reproduced supra) reveals that they are more in the nature of grounds of appeal, which are made in a regular first appeal under Section 96 of 'The Code of Civil Procedure, 1908' ('CPC' for brevity). To be noted, the caption also mentions only Section 34 and does not mention any of the eight slots adumbrated in Section 34.

5(v) In the submissions made today also, the grounds were reiterated and none of the slots adumbrated under Section 34 were adverted to. More importantly, learned counsel for petitioner taking this Court through the impugned award drew the attention of this Court to 7 points framed by the Arbitral Tribunal under the caption 'List of Disputes'. These list of disputes are in the nature of issues. It was submitted by learned counsel for petitioner that the grievance of the petitioner is restricted to Dispute No.7 and finding thereto.



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WEB COPY 5(vi) Furthering his submissions in this direction, learned counsel drew the attention of this Court to Clause 1.3 of the Joint Venture Agreement and submitted that the parties have covenanted that it will not amount to a partnership between them.

5(vii) Responding to this submission, learned counsel for respondent submitted that the issue pertaining to whether the Joint Development Agreement is a partnership has been answered by the Arbitral Tribunal by holding that Clause 1.3 violates Section 4 of Partnership Act and there cannot be a covenant in violation of a provision of a Statute. It was also pointed out that Arbitral Tribunal drew inspiration from a judgment of Hon'ble Supreme Court in *Helper Girdharbhai Vs. Saiyed Mohmad Mirasaheb Kadri and other* reported in (1987) 3 SCC 538, wherein Hon'ble Supreme Court has set out the ingredients/determinants of a partnership. To be noted that was a case where relationship between tenant and sub-tenant did not tantamount to sub-letting entailing eviction. However, principle regarding ingredients/partnership are generic legal principles which are



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instructive besides being elucidative. Therefore, learned Arbitral Tribunal cannot be found fault with or faulted for following principles laid down by Hon'ble Supreme Court.

5(viii) Before proceeding further, though there was no specific contention about which of the 8 slots under Section 34 instant OP falls, this Court took it upon itself to examine the grounds in the instant OP in the light of Section 34 slots. To be noted, the grounds have already been extracted and reproduced supra. It has also been observed that the grounds are in the nature of a regular first appeal under Section 96 of CPC. Notwithstanding this, a careful perusal of the grounds brings to light that the closest some of the grounds come to are two slots, namely 'conflict with public policy' and 'patent illegality', which statutorily speaking are 'Section 34(2)(b)(ii) read with Clause (ii) of Explanation 1' and Section '34(2-A)' respectively .

5(ix) Before proceeding further, this Court reminds itself that both the aforementioned slots are circumscribed by an explanation and proviso



respectively. While public policy ground is circumscribed by Explanation 2 which lays down that the test shall not entail a review on merits of the matter, patent illegality slot is circumscribed by a proviso, which lays down that erroneous application of law cannot be a ground to set aside an award and there can be no re-appreciation of evidence. Therefore, while testing the impugned award, qua conflict with public policy (contravention with fundamental policy of Indian law) and patent illegality, this Court has kept in mind Explanation 2 to public policy ground and proviso to patent illegality ground.

5(x) With regard to the lone ground urged before this Court, namely regarding the finding of the Arbitral Tribunal pertaining to whether joint venture is a partnership, it is necessary to extract Dispute No.7 and the verdict rendered on the same by the Arbitral Tribunal. Dispute No.7 and the finding returned on Dispute No.7 read as follows:

'7.DISPUTE NO.7

The Respondent in para 16 of the Defence has taken a stand that "if the joint venture agreement is considered as partnership for the purpose of sharing profit and losses, it shall be deemed that the



document is inadmissible in evidence as the document is deficiently stamped". The Counsel for the claimant submits that, Joint Venture Agreement is not a Partnership Agreement and the Agreement, expressly excludes partnership contract.

8. The learned counsel for the respondent during his argument submits that the joint venture agreement is a partnership deed, if any loss or profit incurred by the claimant it has to be shared equally among them and the claimant cannot collect the loss from the joint venture party.

9) Based on the argument this dispute is resolved as above during arguments. Section 4 of the Partnership Act, 1932, define partnership as follows:

"Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all".

The preamble of joint venture agreement describes the claimant as "a public limited company incorporated under the Companies Act, 1956. Section 3(1) of the Companies Act defines a public company to mean a company which;

- a) is not a private company*
- b) has a minimum paid up capital of five lakh rupees or such higher paid up capital as may be prescribed.*
- c) is a private company which is a subsidiary of a company which is not a private company.*

If this definition is applied to the claimant it is not a private company. Under the above legal position, the Joint Venture



Agreement is to be decided, whether the agreement is a partnership deed or a mere agreement?

a) The apex Court in the case of Helper Girdharbhai Vs.Salyed Mohmad Mirasaheb Kadri (AIR 1987 SC 1782) laid the important elements required to establish partnership.

- 1) An agreement entered into by all the parties.*
- 2) The Agreement must be to share profits of business, and*
- 3) The business must be carried on by all or any of the persons concerned acting for all.*

The claimant examined one Mr.Simon Mahendran as C.W.1. During his chief examination he marked the joint venture agreement as C2. It is entered into between two parties, the claimant and the respondent. Clause 3 provides Risk and Participation. The agreement requires both the parties to participate in the risk and share the rewards in the manner provided in Schedule I of this agreement. Schedule I is not filed in entirety, clause 7 to 10 alone is filed. Clause 9 is to the effect of sharing 50% by STFC and 50% by J.V. party in case of loss on account of irrecoverable or bad debts. The conjoined reading of Clause 3 with clause 9 of the 1st Schedule shows that the rewards also shall be shared equally 50% each. The second element for partnership also made out under clause 1.2 both the parties are allocated work. Therefore the business is carried out by the participation of both the parties. The third element also made out. C.W.1 during cross examination said that the Joint Venture Agreement is not exactly a partnership agreement but it is likely a partnership deed. The agreement is a partnership agreement under law of



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partnership act and the ruling of the apex Court. But the parties excludes the law under clause 1.3. The clause 1.3 is inserted to take away the effect of law. It says "this joint venture shall not amount to a partnership between the parties." In the written argument of the claimant at para 18 clause 1.3 is relied and said that the joint venture agreement shall not amount to partnership agreement. The question to be decided is whether the parties can take away the provision of law?

10) The basic concept of law is that the parties to a contract overrule a law if they have been following a convention in a business. The concept of law is derived from the Latin Maxim "Modus, Et, Convento, Vincunt Legem". It means, the form of agreement and the convention of parties overrule the law. It is the elementary principle. However, there is a limitation to that rule. Where the express provision of any law are violated by the contract, nor in general, where the interest of the public or of a third parties would be injuriously affected by its fulfillment, the rule does not apply. The rule "Pacta quae contra, leges constitutionesque vet contra bonos mores fiunt nullam vim habere indubitati juris est"(Maxim from Latin adopted by lawyers) is applicable. If a contract made against law it is unenforceable. In this dispute by substance, and fact, a partnership is constituted through the joint venture agreement, but the agreement clause 1.3 violated express provision of Section 4 of Partnership Act. Therefore, the claimant cannot enforce the joint venture agreement as a complete agreement under clause 17 against the respondent. This dispute is resolved as above.



5(xi) A careful perusal of the award reveals that the Arbitral Tribunal has drawn inspiration from ***Helper Girdharbhai*** case law wherein the Supreme Court culled out three ingredients to establish partnership. To be noted, this is contained in Paragraph 19 of ***Helper Girdharbhai*** case, which reads as follows:

“19. In the instant case the basic question is whether keeping in background the partnership deeds referred to hereinbefore and the facts that came to light, was there partnership or not. Sharing of profits and contributing to losses were not the only elements in a partnership, existence of agency was essential and whether there was a partnership or not is a mixed question of law and fact, depending upon the varying circumstances in different cases. This view was reiterated by Chief Justice Beaumont, in Chimnanram Motilal v. Jayantilal Chhaganlal [AIR 1939 Bom 410 : 41 Bom LR 899 : 184 IC 397 : ILR 1939 Bom 616] . Ramaswami, J. in Mohammed Musa Sahib (died) v. N.K. Mohammed Ghouse Sahib [AIR 1959 Mad 379 : (1959) 2 Mad LJ 424] observed that whether the relation of partnership between two or more persons does or does not exist must depend on the real intention and contract of the parties and not merely on their expressed intention. He also referred to Section 4 of the Partnership Act about the principles of partnership namely, (1) there must be agreement entered into by all the persons concerned; (2) the agreement must be to share the profits of a



business; and (3) the business must be carried on by all or any of the persons concerned acting for all. In the instant case judged by the aforesaid principles, it is possible to hold that there was a partnership of which the appellant was a partner. The Court of Small Causes considered these principles, evaluated the evidence and held that there was in fact and in law a partnership. Such a view was not an impossible one nor a perverse one. If that was so, there was nothing that could be done about such a view, within the ambit and scope of the power of Section 29(2) of the Rent Act. We may mention that in Gundalapalli Rangamannar Chetty v. Desu Rangiah [AIR 1954 Mad 182] Subba Rao, J. as the learned Chief Justice then was, held that there cannot be a subletting, unless the lessee parted with legal possession. The mere fact that another is allowed to use the premises while the lessee retains the legal possession is not enough to create a sub-lease. “

5(xii) Though ***Helper Girdharbhai*** case may be an authority for the broad proposition regarding whether tenant constituting a partnership firm and permitting the firm to use the demised premises tantamounts to subletting, the ingredients of partnership laid down by Hon'ble Supreme Court is certainly instructive qua the Arbitral Tribunal (as already mentioned elsewhere in this order supra). Therefore, the Arbitral Tribunal



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cannot be found fault with for following ***Helper Girdharbhai*** principle with regard to ingredients of a partnership. More importantly, the finding regarding dispute No.7 has been returned by the Arbitral Tribunal by holding that the Joint Venture between the parties run contrary to Section 4 of Partnership Act and therefore, Clause 17 therein cannot be enforced by the claimant.

5(xiii) Be that as it may, though not canvassed by the learned counsel for petitioner, learned counsel for respondent very fairly submitted that limitation is also one of the issues, which have been considered by the Arbitral Tribunal and the same is Issue No.4, which reads 'whether the claim of the claimant is barred by limitation?'

5(xiv) In this regard, though not cited by both sides, this Court reminds itself that limitation is founded on public policy and this principle was reiterated by Hon'ble Supreme Court in ***N.Balakrishnan Vs. M.Krishnamoorthy*** reported in (1998) 7 SCC 123. As this Court has held that the grounds at best come close to conflict with public policy slot, this Court took it upon itself to examine the finding rendered by the Arbiral Tribunal on limitation aspect also. As mentioned supra, limitation aspect is



Dispute No.4 and answer to the same (as can be culled out from the impugned award) is as follows:

'DISPUTE NO.4

The Franchisee Agreement is filed as C1 by CW1. It is dated on 08.02.2007. This agreement not terminated for the events given from clauses 8.1.1 to 8.1.17 or 8.2 to 8.9. The term of duration under clause 2.2 is until the date of termination in accordance with other provisions of this agreement. One of the condition under Clause 1.1.5 is, to deposit the collection within 72 hours. For termination breaches of any of the terms is also one of the ground for termination of the agreement. From 08.02.2007 to 01.06.2008, the Franchisee Agreement was in force, and it was not terminated for violation of any condition. It shows that he complied all the condition. It also empowers the claimant to set up separate 3rd party machinery to collect the unpaid installments and amounts from the customer on behalf of STFC. The claimant not exercised the sole discretionary right of appointing 3rd party for collection of unpaid installment. It shows that the respondent not violated any of the terms of the agreement. After 1 year 3 months 29 days a new agreement is entered between the parties.

19) The claimant filed Annexure H, as C4: Serial Nos.1, 21, 26, 35, 36, 52, 56, 60, 61, 62, 69, 73, 74, 75, 85, 99, 105, 119, 145, 156, 175, 196, 197, 202, 231, 246, 257 are live loans. Out of the above loans, the loans in SI.No.69, SI.No.73, SI.No.85, SI.No.99, SI.No.105, SI.No.119, SI.No.145, SI.No.156, SI.No.175, SI.No.196, SI.No.197,



SI.No.202, SI.No.231, SI.No.246, SI.No.257 are before 31.05.2009 and the other live loans are later in point of time as per the term of duration under clause 2. There is an obligation for the respondent to collect the installment and deposit within 72 hours of its collection under clause 17.4, but subject to legally satisfied and completed entirely.

20) It is the dispute that the respondent collected the installments after 31.05.2009 and not deposited within 72 hours. The collected amount is also given. Therefore, on execution of the Joint Venture Agreement, the rights and liabilities not extinguished.

21) The defence of the respondent is that the claim is barred by limitation. Since from the date of execution of the loan agreement by the parties during 2009 and 2010, 3 years elapsed, and the claimant cannot maintain the dispute. The claimant has taken a stand that the last installment falls during the year 2012 and 2013 and from the date of last installment the claim is within 3 years, hence, it is not barred by limitation.

22) The expiry dates of SI.No.69 is on 10.09.2011, SI.No.73 on 20.08.2011; SI.No.74 is on 20.08.2011; SI.No.75 is on 05.08.2011; SI.No.85 is on 25.05.2011; SI.No.99 is on 10.03.2011; SI.No.105 is on 10.02.2011; SI.No.119 is on 15.11.2010; SI.No.145 is on 10.08.2010; SI.No.156 is on 10.06.2010, SI.No.175 is on 28.04.2010; SI.Nos.196, 197 on 28.02.2010; SI.No.202 is on 04.02.2010; SI.No.246 is on 13.08.2009; SI.No.257 is on 16.07.2009. The legal notice of the claimant is on 16.02.2015, which is marked as Annexure D with claim statement and C5.



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23) *Before demand notice on 16.02.2015 the limitation of 3 years expired in the loan schedule given in SI.No.54, 56, 60, 61, 62, 74, 75, 99, 105, 119, 145, 156, 175. If the limitation period of 3 years is calculated from the date of last EMI, the live loans are in SI.No.21, 26, 35, 36 and 52. Other loans are time barred as claimed by the claimant. But in case of partnership or agency, when the limitation starts to claim the money as per limitation Act?*

Part I of Limitation Act, 1963 prescribes period to render accounts. Serial No.5, for an account and a share of the profits of a dissolved partnership, the time is 3 years from the date of dissolution.

Considering the subject and facts of the Joint Venture Agreement C1, the claim of the claimant is barred by limitation from 31.05.2009.'

5(xv) With regard to public policy itself, the lead case laws are **ONGC Ltd. v. Western Geco International Ltd.**, reported in (2014) 9 SCC 263 and **Associate Builders Vs. Delhi Development Authority** reported in (2015) 3 SCC 49. A conjoint reading of these two case laws bring to light that Hon'ble Supreme Court culled out three distinct juristic principles with regard to public policy and the three distinct juristic principles are a) judicial approach, b) 'Natural Justice Principles' ('NJP' for brevity), and c) Irrationality / perversity. After culling out the three distinct juristic



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principles, Hon'ble Supreme Court has also laid down the tests for these three distinct juristic principles. Tests for these three distinct juristic principles are a) fidelity of judicial approach, b) *audi alteram partem* and c) time honoured *Wednesbury* principle of reasonableness.

5(xvi) In the instant case, the second juristic principle, namely NJP does not arise and therefore, one need not go into NJP aspect of the matter. Suffice to say that the finding rendered by the Arbitral Tribunal with regard to limitation passes the test of fidelity of judicial approach and *Wednesbury* principle of reasonableness. From the extracted part of the impugned award supra, this Court is unable to find any lack of fidelity of judicial approach or infraction of *Wednesbury* principle of reasonableness attracting lack of judicial approach or irrationality/perversity. Therefore, this Court has no difficulty in coming to the conclusion that the impugned award is not in conflict with public policy of India.

5(xvii) With regard to Joint Venture / partnership issue, this Court is unable to find any patent illegality. To be noted, as already alluded to



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supra, patent illegality ground excludes erroneous application of law and re-appreciation of evidence.

5(xviii) It is also to be noted that conflict with public policy and patent illegality grounds contained in Section 34(2)(b)(ii) read with Clause (ii) of Explanation 1 and 34(2-A) have not been articulated in the grounds or submissions, but have been construed by taking into account grounds that bear a semblance of coming close to that two slots. Therefore, this Court took it upon itself to examine those aspects also and in the light of this Court finding that the impugned award is neither in conflict with public policy nor vitiated by patent illegality, there is no reason to interfere with the impugned arbitral award.

6. DECISION:

Instant OP is dismissed and the parties are left to bear their respective costs.

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Speaking order: Yes/No

Index: Yes/No

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