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

Date of Judgment : 20th February, 2018

+ **FAO(OS) (COMM) 24/2018**

AIRPORTS AUTHORITY OF INDIA

..... Appellant

Through Mr. K.K. Rai, Sr. Adv. with Mr.
Digvijay Rai, Ms. Chetna Rai, Mr.
Anshul Rai, Mr. Chandershekhar
A.C., Mr. Pulkit Tyagi, Advocates.

versus

M/S SIKKA ASSOCIATES

..... Respondent

Through Mr. Virender Kumar Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. This is an appeal under section 37 of the Arbitration and Conciliation Act, 1996 read with section 13 of the Commercial Courts Act, 2015 against the judgment dated 21.12.2017 passed by a learned Single Judge of this Court by which the award dated 23.03.2015 passed by the sole arbitrator has been upheld and the objections to the award stand dismissed.
2. The necessary facts to be noticed for disposal of this appeal are that the Board of the appellant in its 96th Board Meeting held on 16.03.2006 granted approval for inviting Expression of Interest for the New Domestic Passenger Terminal at NSCBI Airport, Kolkata for short listing and then holding Global Design Competition as per the

Guidelines of the Council of Architecture and Engineering Services for the New Domestic Passenger Terminal at NSCBI Airport, Kolkata.

3. The appellant had organized a Global Design Competition for execution of comprehensive architecture and engineering services for the proposed New Domestic Passenger Terminal Building at NSCBI Airport at Kolkata (West Bengal). The competitive design submitted by the respondent (SA) was approved by the Assessment Committee of the appellant and the respondent was appointed as a consultant on 01.06.2007 for air side of the project. Owing to the nature and based on the blue prints of the building, which was to cater the footfall of 20 millions annually, the appellant also appointed M/s Virender Khanna & Associates (M/s VKA), another Architectural Consultant for city side work of the Airport.
4. The parties entered into an agreement dated 21.08.2007 for execution of 'Architectural/ Engineering Consultancy Services'. The agreement laid down the terms and conditions pertaining to the services to be rendered, the stipulated time period, professional fee to be paid, stages & schedule of payments etc. The relevant terms of the agreement are reproduced below:-

2.0 PROFESSIONAL FEE

2.1 Professional fee shall be paid only for the items of works for which professional services have been rendered by the Consultant.

*2.2 In consideration of the professional services rendered by the Consultant, he shall be paid a professional fee of **5% of the actual cost of the work or the awarded cost whichever is lower** of the subhead of the works for which consultant*

has rendered Professional services. In addition to the professional fee, service tax will be paid as per the Act in vogue at the time of the payment of the bill. The initial payment shall be made on approval preliminary estimated cost. The cost of the work shall not include costs of aerobridges, in-line Baggage handling Conveyor system, Baggage claim Belts, telephone exchange equipment, Specialized hand/ Baggage security scanning items, DG Sets, FIDs, CCTV, Surveillance CCTV, check-in counters, custom and immigration counters and dust bins. For effecting stage wise payments the cost of works shall be as specified in clause 4.1. Nothing extra shall be paid to the Consultant on account of Soil investigation site survey, vetting from IIT, presentations, model, computer simulation, presentation, drawing etc.

Items like travellers, escalators, elevators, counters, concourse and security hold chairs and furniture would be included towards payment till stage 4.

The payment to State Electricity Board for dedicated power supply may be included in the cost estimate of the project but not to be included for payment to Consultant.

3.0 SCHEDULE OF PAYMENT

3.1 *Details of services to be rendered at various stages shall be as mentioned in Annexure 'A'.*

3.2 *The Consultant shall be paid professional fee in the following stages consistent with the work done plus other charges and reimbursable expenses as agreed upon. On submitting the bill the consultant shall certify completion of stage work.*

4.0 EFFECTING PAYMENT TO THE CONSULTANT

4.1 *The fee payable to the Consultant shall be computed on the actual cost of works or the awarded cost whichever is lower. The payment due to the Consultant at different stages shall be computed on the following basis:*

- | | | |
|-------|-----------------|---|
| (i) | At Stage 1 | : On rough estimate of cost |
| (ii) | At Stage 2,3 &4 | : On preliminary estimate of cost |
| (iii) | At Stage 5 | : On preliminary estimate of cost.
excluding the estimated cost of
works/ items specified in clause
4.4 |
| (iv) | At Stage 6 & 7 | : <u>On Awarded cost or actual cost
whichever is lower of the
Packages specified in para 2.20
of Annexure A</u>
(Emphasis Added) |

5. The cost estimated for the entire project was Rs 1123.418 crores, which included all the civil and E& M works. The ratio of proportionality among the two consultants i.e. M/s VKA and the respondent was 27.02% :72.98%

6. After nearly four years from the date of commencement of the project, the Appellant by a communication dated 24.01.2011, brought to the notice of the respondent that in its 110th Board resolution passed on 17.05.2007, the appellant had approved the professional services rendered by the consultant being paid a professional fee @ 5% of the estimated cost of work or the awarded cost whichever is lower. The respondent was informed about this omission and owing to inadvertence, clause 2.2 of the agreement had wrongly recorded that the consultant shall be paid a professional fee @ 5% of the actual cost of the work or the awarded cost whichever is lower. The respondent was called upon to submit its acceptance to the change in the agreement and post the change, the agreement would read as the consultancy services

shall be paid @ 5% of the estimated cost of the work or the awarded cost whichever is lower. By a communication dated 14.03.2011, the respondent refused to give its consent for the modification of the terms of the agreement. The respondent contented that it has already completed majority of the work for which, 70% of the fee had already been paid. It was further submitted that as the respondent was performing the work in joint collaboration with an international firm of architects namely RMJM-Hong Kong, and there were other financial commitments, which were directly based on the fee receivable by the respondent under the agreement so executed. Hence, the change suggested by the appellant was unworkable and no such unilateral change in the terms was acceptable to the respondent.

7. Post the communication dated 24.01.2011 and its reply dated 14.03.2011, the respondent continued to provide the necessary services as per the agreement till the completion of the building in March 2013, pursuant to which, a final bill was raised. Since the appellant had suddenly stopped making payment on the running Account Bills, a sole Arbitrator, Shri. H.S. Dogra, was appointed by an order dated 08.10.2012 in Arbitration Petition no.363 of 2012 to adjudicate the claims/ counter- claims of the parties pursuant to agreement dated 07.04.2006.

8. The Sole Arbitrator vide its impugned award dated 23.03.2015, awarded the total sum of Rs. 19,02,47,938/- in favour of the respondent under Claim no.1 along with the service tax at the rate of 12.36% and

10% of simple interest towards the Claim No.2 and 3 of the respondent.

9. Mr. Rai, learned senior counsel for the appellant submits that in the meeting held in the Planning office of the appellant on 13.07.2007 in the presence of the respondent and M/s VKA, where both the parties (SA and VKA) agreed to follow the Madurai Agreement with modifications as mentioned in the minutes of the meetings. However the written note of the appellant wrongly recorded the consultancy fee to be paid to the consultants. Learned senior counsel further submits that the Single Judge and the Arbitrator have failed to consider that vide 96th Board meeting held on 16.03.2006 and 110th Board Meeting held on 17.05.2007, the Board of the appellant had approved consultancy fee of 5% of the estimated cost or the awarded cost whichever is lower. The same was incorrectly reflected in the agreement as 5% of the 'actual' cost instead of the 'estimate', which was in the knowledge of the respondent. Therefore, the appellant in view of the said letter re-worked the fee payable to the respondent based on the decision of the Board of the Airports Authority of India and stopped further release of payments.
10. It is further submitted that the learned Arbitrator has erred in observing that the complete Board Resolution of the 110th Board Meeting was not placed on record and only an extract of the meeting was placed. However, the Arbitrator failed to appreciate that various agendas are put before the Board and only the relevant extract concerning the issue was filed before the Arbitrator. Therefore, the abovementioned reasoning of the Arbitrator further upheld by the learned Single Judge is

erroneous and perverse. Moreover, the resolution itself has not been disputed by the Respondent.

11. It is further contended that the learned Single Judge has erred in holding that instead of taking any further action on its letter dated 24.01.2011, further work was awarded to the respondent on the same terms and conditions which is against the pleadings and evidence on record. It is submitted that for such a large and strategic project, the consultancy agreement could not have been terminated at the 6th stage when 70% work was complete. It is strongly denied that any further work was awarded to the respondent by the appellant on the same terms and conditions.
12. It is also contended by counsel for the appellant that the learned Single Judge has failed to appreciate that till stage 5, consultancy charges were to be paid to the respondent on rough estimate of cost and on preliminary estimate of cost. It was only at the 6th and 7th stage when the consultant was to be paid on awarded cost or actual cost, whichever is lower, as per the contract and it is during this period the appellant came to know of the anomaly which had crept in the agreement and prior to the said stages, there was no occasion to detect such an anomaly/mistake.
13. Counsel for the appellant has also submitted that the learned Single Judge has erroneously held that there was no mistake of fact in the award whereas, the documents on record clearly show that there was a mistake of fact, which is evident from the fact that what was agreed to

between the parties was not put into writing. Counsel submits that the learned Single Judge has failed to appreciate that the entire agreement was vitiated by fraud inasmuch as it was signed in violation of the Madurai Agreement as well as the 110th Board meeting. Moreover, the person i.e. Shri Sarwan Singh was not authorized to make any changes in the approval accorded by the Board of the AAI in its 110th Board meeting.

14. Mr. Sharma, counsel for the respondent submits that the agreement is clear and unambiguous in nature and therefore, should be read in its entirety. He contended that the plea of the appellant that there was a genuine mistake in the agreement does not hold any ground, as the same term has been repeatedly used in the agreement. He further submits that the appellant raised such a grievance only after four years, when admittedly most of the work was complete. Moreover, even upon realizing the purported 'inadvertent mistake' in the agreement, the appellant never rescinded the contract, but, infact gave additional work to the respondent.
15. The Counsel for the respondent further submitted that the Board Resolutions are not binding on the respondent as they were not brought to the notice of the respondent and therefore, cannot bind the respondent.
16. Counsel for the respondent also submits that the appellant has now, at this stage, sought to improve its case by relying upon the noting dated 13.07.2007. Mr. Sharma contends that the purported minutes and the file notings pre-date the agreement between the parties, and inspite of

which no amendment was made to the agreement ; secondly, these purported minutes and notings were never communicated to the respondent, nor the respondent were privy to them; thirdly, the purported file notings were never placed or even pleaded before the Ld. Arbitral Tribunal; and lastly, these purported file notings are a matter of indoor management and cannot possibly bind the respondent.

17. Mr. Sharma lastly submitted that the learned Arbitrator had considered the evidence and passed a speaking and reasoned award. He further submitted that appellant cannot unilaterally novate/ modify an agreement and it is not for the courts to rewrite the agreement between the parties.
18. We have heard the learned Counsel for the parties and given our thoughtful consideration to the matter.
19. Mr. Rai, learned Senior Counsel appearing for the appellant has submitted that clause 2.2 of the agreement had wrongly recorded that the consultant shall be paid a professional fee at the rate of 5% of the actual cost of the work or the awarded cost whichever is lower. Mr.Rai has highlighted the fact that in fact the Board of Airport Authority of India had approved the professional services rendered by the consultant on being paid a professional fee at the rate of 5% of the estimated cost of the work or the awarded cost whichever is lower. It is also the case of the appellant that although the agreement was entered into between the parties on 21.08.2008, the error was detected in the year 2011 and the same was brought to the notice of the respondent vide letter dated 24.01.2011. Counsel has also submitted that the minutes of the 96th

Board Meeting of the appellant held on 16.03.2006 and 110th Board Meeting held on 17.05.2007 had recorded the terms whereas the learned Arbitrator and the learned Single Judge have ignored the same. He has also submitted that as the Board had accorded its approval only on the fee being 5% of the estimated cost or the awarded cost whichever is lower, the agreement by mistake records that such fee would be paid at 5% of actual cost or the awarded cost whichever is lower, and the appellant could not have been held liable under the same. He further submitted that this mistake in the agreement was known to the respondent as in a meeting held between the respondent and the Member(Planning) of the appellant on 13th July, 2007, the respondent had been informed that the latest agreement signed between the appellant and the consultant for the Integrated Passenger Terminal Building at Madurai Airport in Tamil Nadu would be followed and in the said agreement, there was a term correctly recording the fact that the consultant was to be paid 5% of the estimated cost or the awarded work whichever is lower. He, however, concedes that this agreement was not placed before the Arbitrator.

20. The sum and substance of arguments of Mr.Rai is that since the agreement executed between the parties was not in terms of the Board Resolution, the same would not be binding upon the parties. Per contra, Mr.Sharma, learned counsel for the respondent has submitted that the terms of the agreement were clear and explicit. The terms regarding the fee not only find mentioned in clause 2.2 but also in clause 4.1 of the agreement. It is contended that the appellant cannot be allowed to raise the plea of inadvertence after a gap of 3½ years of execution of the

agreement. Mr.Sharma has also highlighted the fact that even post the communication dated 24.01.2011 the appellant took no steps to terminate the agreement but allowed the respondent to continue with the work and in fact awarded further work as per the terms of the agreement which is apparent from the fact that the agreement was not terminated. It has also been submitted by Mr.Sharma that reliance of Board Resolutions by the appellant are misplaced as the same are not binding on the respondent and is an internal document of the appellant.

21. The learned arbitrator has considered this aspect in the following paragraph of the award which we deem appropriate to reproduce:

“(vi) After carefully going through all the documents and records produced by the parties and hearing at length both the parties, I have come to the following conclusion. It is undisputed that clause 2.2 of the agreement between the parties clearly stipulates that “In consideration of the professional services rendered by the consultant, he shall be paid a professional fee of 5% of the actual cost of the work or the awarded cost whichever is lower of the sub head of the works for which consultant has rendered professional services.” This contract was entered into on 21st August, 2007 whereas the board meeting of AAI is stated to have been held on 17th May, 2007 i.e. nearly three months prior to the signing of the agreement. Since the decision of the board was well known to the respondents as on the date of signing of this agreement, the respondents could not explain or place before me any documents or circumstances explaining as to how this clause got written differently in the contract document in the first place.

Further, a careful study of the contract document reveals that similar provisions (as at clause 2.2) are repeated at least at two more places in the contract. At clause 4.1, the contract states that “the fee payable to the consultant shall be computed on

the actual cost of the works or the awarded cost whichever is lower”. Again at sub clause 4.1 (vi) relating to the payment at stage 6 and 7 it states “on awarded cost or actual cost whichever is lower of the packages specified in para 2.20 of Annexure A”. It therefore appears that the contract document was framed with the clear intent and understanding that the fee is to be paid on the basis of lower of the awarded cost or the actual cost since this aspect is reflected at least at three different clauses in the contract document. This therefore cannot be accepted as an inadvertent error or a typing mistake as argued by the Respondents.

The argument of the respondents that upto stage 5 payment was to be made on rough cost estimate and therefore this omission escaped their attention also does not appear to be plausible. Clause 4.1 of the agreement clearly states that payment at stage 1 only shall be made on rough estimated cost. Payment at stage 2,3 and 4 is to be made on preliminary estimate of cost. Similarly, payment at stage 5 is to be made on the preliminary estimate of the cost excluding the items specified in clause 4.4. Payment at stage 6 and 7 is to be made on awarded cost or the actual cost whichever is lower. It is undisputed that when the matter was raised by the respondent in January 2011, the consultancy works had reached stage 6b(ii) which means 70% of the total fees was payable at that stage and some payments had already been made on the awarded costs (which is now proposed to be replaced by estimated cost by the Respondent). One cannot fault the field units of AAI on this, as the payments released were as per the contract.

In the face of large number of judgments of the apex court and High Courts cited above, and the fact that for nearly four years parties continued to act as per the provisions of the clause 2.2 of the agreement, the principle of estoppel also comes into play. Considering all the factors mentioned above, I hold that the modifications proposed to be carried out in clause 2.2 of the agreement cannot be sustained in view of the objections raised by the Claimant and a large number of citations of the Apex court barring such unilateral actions. Therefore, the letter of the

respondents dated 24th January, 2011 proposing changes in clause 2.2 of the contract is struck down. The respondent has to finalize the final bill based on the terms and conditions of clause 2.2 as it existed in the original agreement entered into between the two parties.”

22. The learned arbitrator has carefully analysed the terms of the contract entered into between the parties and observed that clause 2.2 of the agreement clearly stipulates the terms regarding the professional services to be rendered by the consultant. The arbitrator has further taken note of the fact that similar clause has been repeated at two more places in the contract and thus, it cannot be said that the same was an inadvertent error or a typing mistake. We also find that the arbitrator has also taken note of the fact that payments were made to the respondent not on the basis of a rough cost estimated as was urged before the arbitrator and urged before us as well. Taking note of clause 4.1 of the agreement, the arbitrator has held that payment at stage 1 only was to be made on rough estimated cost and while payments at stages 2 to 4 were required to be made on the preliminary estimated cost. We may also note that the consultancy work had reached stage 6b(ii) which means that 70% of the total fees was payable at that stage and payments had already been made on the awarded costs and not on estimated cost as is sought to be urged by the appellant. We are unable to find any fault in the reasoning of the learned arbitrator. We do not find the award to be either perverse, unreasonable, not violative of public policy of India.
23. It is not in dispute that the respondent had refused to give its consent to the modification of the terms of the contract vide its letter dated

14.03.2011 and in the absence thereof the appellant could not have unilaterally modified the terms of the contract entered into between the parties on 21.08.2008. In ***Bharat Sanchar Nigam Limited And Another Vs. BPL Mobile Cellular Limited And Others*** reported in (2008) 13 SCC 597, the Supreme Court held that:-

“44. If the parties were ad idem as regards terms of the contract, any change in the tariff could not have been made unilaterally. Any novation in the contract was required to be done on the same terms as are required for entering into a valid and concluded contract. Such an exercise having not been resorted to, we are of the opinion that no interference with the impugned judgment is called for”.

24. Similarly, in ***Delhi Development Authority And Another Vs. Joint Action Committee, Allottee Of SFS Flats And Others*** reported in (2008) 2 SCC 672, the Supreme Court reiterated the above position of law as under :-

“62. It is well-known principle of law that a person would be bound by the terms of the contract subject of course to its validity. A contract in certain situations may also be avoided. With a view to make novation of a contract binding and in particular some of the terms and conditions thereof, the offeree must be made known thereabout. A party to the contract cannot at a later stage, while the contract was being performed, impose terms and conditions which were not part of the offer and which were based upon unilateral issuance of office orders, but not communicated to the other party to the contract and which were not even the subject-matter of a public notice. Apart from the fact that the parties rightly or wrongly proceeded on the basis that the demand by way of fifth installment was a part of the original Scheme, DDA in its counteraffidavit either before the High Court or before us did not raise any contra plea. Submissions of Mr. Jaitely in this behalf could have been taken into consideration

only if they were pleaded in the counter- affidavit filed by DDA before the High Court.

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66. The stand taken by DDA itself is that the relationship between the parties arises out of the contract. The terms and conditions therefor were, therefore, required to be complied with by both the parties. Terms and conditions of the contract can indisputably be altered or modified. They cannot, however, be done unilaterally unless there exists any provision either in contract itself or in law. Novation of contract in terms of Section 60 of the Contract Act must precede the contract-making process. The parties thereto must be ad idem so far as the terms and conditions are concerned. If DDA, a contracting party, intended to alter or modify the terms of contract, it was obligatory on its part to bring the same to the notice of the allottee. Having not done so, it, relying on or on the basis of the purported office orders which are not backed by any statute, new terms of contract could (sic not be) thrust upon the other party to the contract. The said purported policy is, therefore, not beyond the pale of judicial review. In fact, in the realm of contract, it cannot be stated to be a policy decision as such.

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80. A definite price is an essential element of binding agreement. A definite price although need not be stated in the contract but it must be worked out on some premise as was laid down in the contract. A contract cannot be uncertain. It must not be vague. Section 29 of the Contract Act reads as under:

“29. Agreements void for uncertainty- Agreements, the meaning of which is not certain, or capable of being made certain, are void.”

A contract, therefore, must be construed so as to lead to a conclusion that the parties understood the meaning thereof. The terms of agreement cannot be vague or indefinite. No mechanism has been provided for interpretation of the terms of the contract. When a contract has been worked out, a fresh liability cannot be thrust upon a contracting party.

81. It is well settled that a definite price is an essential element of a binding agreement. Although a definite price need not be stated in the contract, but assertion thereof either expressly or impliedly is imperative”.

25. The Learned Single Judge rightly upheld that an alteration in the contract can be made only where the parties are ad idem to the same. In the case of **National Highways Authority of India vs. BSCPL**, (2015) 217 DLT 321, this court held as under:-

“A party cannot unilaterally act on a different interpretation to its advantage. In this regard the Claimant has referred to the decision of Hon'ble Supreme Court of India in Delhi Development Authority vs. Joint Action Committee Allottee of SFS Flats MANU/SC/0202/2008 : (2008) 2 SCC 672 where the Hon'ble Supreme Court has laid down in paragraph 61 as under:-

".....Terms and conditions of the contract can indisputably be altered or modified. They cannot, however, be done unilaterally unless there exists any provision either in contract itself or in law. Novation of contract in terms of Section 60 of the Contract Act must precede the contract making process. The parties thereto must be ad idem so far as the terms and conditions are concerned. If DDA, a contracting party, intended to alter or modify the terms of contract, it was obligatory on its part to bring the same to the notice of the allottee. Having not done so, it, relying on or on the basis of the purported office orders which is not backed by any statute, new terms of contract could (sic not be) thrust upon the other party to the contract."

It was further held by the Hon'ble Supreme Court in paragraph 80 of the said case as under:-

"A contract, therefore, must be construed so as to lead to a conclusion that the parties understood the meaning thereof. The terms of agreement cannot be vague or indefinite. No mechanism has been provided for interpretation of the terms

of the contract. When a contract has been worked out, a fresh liability cannot thrust upon a contracting party."

The Supreme Court in *Bharat Sanchar Nigam Limited Vs. BPL Mobile Cellular* MANU/SC/7717/2008: 2008(8) SCALE 106.

The Supreme Court in the said case has held as under:

"26. If the parties were *ad idem* as regards terms of the contract, any change in the tariff could not have been made unilaterally. Any novation in the contract was required to be done on the same terms as are required for entering into a valid and concluded contract. Such an exercise having not been resorted to, we are of the opinion that no interference with the impugned judgment is called for.

32. Indisputably, mistakes can be rectified. Mistake may occur in entering into a contract. In the latter case, the mistake must be made known. If by reason of a rectification of mistake, except in some exceptional cases, as for example, where it is apparent on the face of the record, mistake cannot be rectified unilaterally. The parties who that would suffer civil consequences by reason of such act of rectification of mistake must be given due notice. Principles of natural justice are required to be complied with. The fact that there was no mistake apparent on the face of the records is borne out by the fact that even the officers wanted clarification from higher officers. The mistake, if any, was sought to be rectified after a long period; at least after a period of three years. When a mistake is not rectified for a long period, the same, in law, may not be treated to be one."

The findings of Lord Denning in *Amalgamated Investment & Property Co. Ltd. vs. Texas Commerce International Bank Ltd.* cited as (1981) 3 ALL ER 557 (Volume C-3 Page 175-183). The relevant paragraph is reproduced in Award:-

"If the parties to a contract, by their course of dealing, put a particular interpretation of the terms of it, on the faith of which each of them to the knowledge of the other acts and conducts their mutual affairs, they are bound by that

interpretation just as if they had written it down as being a variation of the contract. There is no need to inquire whether their particular interpretation is correct or not or whether they were mistaken or not, or whether they had in mind the original terms or not. Suffice it, that they have, by the course of dealing, put their own interpretation on their contract, and cannot be allowed to go back on it."''

26. The Hon'ble Supreme Court in *Essar Steel Ltd. Vs. Union of India (UOI) and Ors.*, (2016)11 SCC, the court held as under:-

"23.The learned Senior Counsel further contends that the power to unilaterally alter the terms and conditions of an agreement is not available even to a party to a contract and such a unilateral exercise affects the integrity of the contract and therefore it is illegal."

27. The law is well settled that the scope of interference by courts under Section 34, and Section 37 of the Arbitration Act, 1996 is limited. The court cannot sit in appeal and reassess the evidence. The Arbitrator/ Tribunal is the final arbiter on facts as well as in law, and even errors, factual or legal, which stop short of perversity, do not merit interference under Sections 34 or 37 of the Act.
28. The scope of judicial scrutiny and interference by an appellate court under Section 37 of the Act is even more restricted, while deciding a petition under Section 34 of the Act. The Hon'ble Supreme Court in the case of *McDermott International Inc. v. Burn Standard Co. Ltd. and Ors*, (2006) 11 SCC 181 held as under:

"52.The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court

cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

29. In the case of ***MP Housing Board vs. Progressive Writers and Publishers***, (2009) 5 SCC 678, the Supreme Court was of the view that unless there is a gross error apparent on the face of the award, or that the award is perverse, the courts should refrain from interfering with the award.

30. The mere adoption of one view by the Arbitral Tribunal where there are two plausible views is not a ground that merits judicial interference. The Apex Court in ***G. Ramachandra Reddy and Co. Vs. Union Of India (UOI) and Anr.***, (2009) 6 SCC 414 held as under:-

"Error apparent on the face of the record does not mean that on closer scrutiny of the import of documents and materials on record, the finding made by the arbitrator may be held to be erroneous. Judicial decisions over the decades have indicated that an error of law or fact committed by an arbitrator by itself does not constitute misconduct warranting interference with the award."

31. In ***Associate Builders vs. Delhi Development Authority***, reported at (2015) 3 SCC 49, the Supreme Court while further explaining the scope of judicial intervention under the appeal in the Act held as under:-

"It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors

of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score¹. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares and Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. MANU/SC/1248/2011 : (2012) 1 SCC 594, this Court held:

21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or re-appreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second Respondent and the Appellant are liable. The case as put forward by the first Respondent has been accepted. Even the minority view was that the second Respondent was liable as claimed by the first Respondent, but the Appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the Appellant did the transaction in the name of the second Respondent and is therefore, liable along with the second Respondent. Therefore, in the absence of any ground Under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.”

32. This Court, time and again has emphasized on the narrow scope of section 37. In the case of **MTNL Vs. Fujitshu India Private Limited**, reported at 2015 (2) ARB LR 332 (Delhi), in paragraph 17 and 19 , the division bench held as under:

“17.The law is settled that where the Arbitrator has assessed the material and evidence placed before him in detail, the court while considering the objections under Section 34 of the said Act does not sit as a court of appeal and is not expected to re- appreciate the entire evidence and reassess the case of the parties. The jurisdiction under section 34 is not appellate in nature and an award passed by an Arbitrator cannot be set aside on the ground that it was erroneous. It is not open to the court to interfere with the award merely because in the opinion of the court, another view is possible. The duty of the court in these circumstances is to see whether the view taken by the Arbitrator is a plausible view on the facts, pleadings and evidence before the Arbitrator. Even if on the assessment of material, the court while considering the objections under section 34 is of the view that there are two views possible and the Arbitral Tribunal has taken one of the possible views which could have been taken on the material before it, the court would be reluctant to interfere. The court is not to substitute its view with the view of the Arbitrator if the view taken by the Arbitrator is reasonable and plausible Jhang Cooperative Group Housing Society v. P.T Munshi Ram & Associates Private limited: MANU/DE/1282/2013 : 202(2013) DLT 218.

19. The extent of judicial scrutiny under section 34 of the Act is limited and scope of interference is narrow. Under section 37, the extent of judicial scrutiny and scope of interference is further narrower. An appeal under section 37 is like a second appeal, the first appeal being to the court by way of objections under section 34. Where there are concurrent findings of facts and law, first by the Arbitral Tribunal which are then confirmed by the court while dealing with objections under section 34, in an appeal under section 37, the Appellate Court would be very cautious and reluctant to interfere in the findings returned in the award by the Arbitral Tribunal and confirmed by the court under section 34.”

33. A careful reading of the award would show that the same is neither patently illegal nor violative of the public policy of India nor it shocks

the conscience of the Court. The appellant has failed to point out any error apparent on the face of the record, which would justify our interference.

34. We do not find any merit in the appeal. Hence, no grounds are made out to interfere in the impugned order passed by learned Single Judge under Section 34 of the Arbitration and Conciliation Act, 1996. Resultantly, the appeal is dismissed.

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35. Both the applications stands disposed of, in view of the order passed in the appeal.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

FEBRUARY 20, 2018

--/rb/pst