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

+ **FAO(OS) (COMM) 27/2018, C.M. APPL.5854-5857/2018**

**SYNERGY MEASUREMENT & ANR** ..... Appellants  
Through : Sh. Sachin Dutta, Sr. Advocate with Sh.  
Venkateshwar Rao Anumolu and Sh. Prabhakar  
Parnam, Advocates.

versus

**SRB INSTRUMENT PRIVATE LTD & ANR** ..... Respondents  
Through : Sh. R. Sathish and Sh. Rajesh Kumar,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE A. K. CHAWLA**

**ORDER**

% **28.02.2018**

1. The appellants are aggrieved by the order of the learned Single Judge whereby their application under Section 14 of the Arbitration and Conciliation Act, 1996 alleging that the arbitrator lost his mandate, was dismissed.
2. Mr. Sachin Dutta, Ld. Senior Counsel highlighted that the proceedings before the Tribunal were the consequence of reference under Section 89 of the Civil Procedure Code (CPC) and the terms were circumscribed by the order of the Court. It was urged that in these circumstances, the respondents' counter claim in respect of several matters was outside the subject matter of reference, which facially excluded them and that, the Tribunal, in refusing to accept the objection, exceeded its mandates.

3. Learned senior counsel relied upon the judgment of the Supreme Court in *State of Goa v. Praveen Enterprises* 2012 (12) SCC 581. This Court notices that the learned Single Judge, who made the impugned order, did not pronounce finally as to the feasibility of the objection but rather went by whether the mandate in the circumstances of the Tribunal is said to have been terminated. It was held further that the objections with respect to the maintainability of the claims allegedly falling outside the reference, were to be first determined by the arbitrator and thereafter appropriate remedy available in law, by way of objections under Section 34, could be availed of.

4. This Court is of the opinion that the judgment in *Praveen Enterprises (supra)* cannot be treated as an authority in a situation where the arbitrator has not even ruled upon the feasibility of an objection as to the exclusion of certain matters that are the subject matter of proceedings before it. Undoubtedly, that decision made some general observations with respect to the scope of the Tribunal's jurisdiction and restated the existing legal position that excluded matters cannot be adjudicated. Such being the position in law, to hold that in the absence of opinion by the arbitrator or Tribunal as to whether a matter is included or excluded, he has lost his mandate, is not permissible. Even otherwise, in the event of negative ruling that certain matters, which are allegedly excluded, are nevertheless proceeded for adjudication, remedy is not Section 14; it is rather

Section 34, in the event of an adverse award.

5. This Court further notices that the maintainability of the appeal itself is suspect given the express provision under Section 13 of the *Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015*. For the above reasons, there is no merit in the appeal. It is accordingly dismissed.

**S. RAVINDRA BHAT, J**

**A. K. CHAWLA, J**

**FEBRUARY 28, 2018/ajk**