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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement Reserved on: 13th February, 2018

Judgement Pronounced on: 3rd May, 2018

+ **FAO (OS)(COMM.) 201/2017**

ADTV COMMUNICATION PVT. LTD.(FORMERLY AEZ

INFRATECH PVT LTD)Appellant

Through: Ms. Kaadambari Singh Puri, Mr.
Harish Garg, Mr. Ratul Sen and Ms.
Puran Kumari Advocates.

Versus

VIBHA GOEL & ORS.Respondents

Through: Mr. Raghavendra Mohan and Mr.
Bajaj Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (Oral)

1. Present appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') read with Section 13 of the Commercial Court Act, assailing the judgment dated 23.08.2017 (impugned judgment) passed by the Single Judge of this Court in OMP(Comm.) No.322/2016, whereby the objections to the Award dated 19.03.2016, filed under Section 34 of the Act have been dismissed.
2. The brief facts of this case as noticed by the learned Single Judge are that, one Col. Devesh Goel (retd.) was employed with

M/s Aerens Builders Pvt. Ltd (hereinafter referred as 'Aerens') which was a sister concern of the appellant company. During the course of his employment, the wife and son of Col. Devesh Goel advanced a loan of Rs.70,00,000/- to Aerens at an agreed rate of interest, upon which Aerens paid monthly interest for about two years. In 2008-2009, Aerens defaulted in payment of monthly interest to the respondents and moved its operations to the appellant company. On failure to repay the loan amount and interest due thereupon, the appellant company entered into an Agreement to Sell dated 09.09.2009, with the respondents whereby the appellant company agreed to sell to the respondents a flat bearing No.D5/702(having super area measuring about 2244 sq.fts) in its AEZ Aloha Project, situated in Villlage Tigra, District Gurgaon for a total sale consideration of Rs.78,00,000/-. The loan amount advanced by the respondents to Aerens as well as the interest accrued thereupon upto 30.06.2009 i.e. Rs.7,84,875/- was duly adjusted towards the sale consideration and the balance consideration of Rs.15,125/- remained payable by the respondents. Simple interest @18% per annum i.e. Rs.1,41,148/- per month w.e.f. 01.07.2009, was also agreed to be paid by the appellant company to the respondents till the date of handing over the possession of the aforesaid flat. However as the appellant company defaulted in making payment of agreed interest after July, 2011 and possession of the flat was also not handed over to the respondents, a petition under Section 9 of the Arbitration

and Conciliation Act, 1996, bearing OMP No. 1112/2012 was filed by the respondents wherein this Court vide interim order dated 03.12.2012 restrained the appellant company from transferring, alienating, creating any third party interest or parting with the possession of the said flat. Further this Court vide order dated 18.07.2013 also directed the appellant company to deposit the keys of the flat with the Registry of this Court. In this background, arbitration clause was invoked and a Sole Arbitrator was appointed by this Court in Arb.P.No. 120/2014 on 23.09.2014, to adjudicate upon the claims of the parties.

3. The following issues were framed by the learned arbitrator on 10.04.2015:

"(1) Whether the Agreement to sell dated 09.09.2009 entered into between the Claimants and the Respondent Company in respect of flat No. D-5/702, alongwith four covered car parkings in the Aloha Project, Gurgaon, was cancelled/novated, if so, to what effect, on the claim of the claimants for specific performance of the said contract? OPR

(2) Whether there was a fresh Agreement dated 22.11.2011 between the Respondent Company and the claimants through Col. Devesh Goel for sale of two shops No. AF-17-B and AF- 19, to the claimants by the Respondent Company in its A.E.Z. Commercial Project in Vaishali, Ghaziabad, after the alleged cancellation/novation of the earlier Agreement dated 09.09.2009, as is the case of the Respondent? OPR.

(3) If issues No. 1 and 2 are both decided in favour of the Respondent then to what relief the claimants are entitled in these proceedings.

(4) If issues No. 1 and 2 are decided in favour of the claimants, to what relief they are entitled?

(5) Whether the claimants are entitled to an award for payment of interest amounting to Rs.1,10,87,435/- till 31.12.2014 and further interest as per clause-10 of the Agreement dated 09.09.2009? OPC

(6) Whether the Respondent Company has already created a third party interest in respect of the property in dispute, as is being claimed by it, if so, to what effect on the Claimants' claim in the event of their succeeding in these proceedings? OPR

(7) Whether the claimants are entitled to cost of the Arbitration proceedings? OPC"

4. On 19.03.2016, the learned Arbitrator passed an Award in favour of the claimants (respondent herein) and against the appellant company for Specific Performance of the Agreement dated 09.09.2009 and for payment of interest of Rs.1,41,148/- per month from August 2011 till the date of delivery of possession of the flat in dispute.
5. The said Award was challenged by the appellant company under Section 34 of the Act before this Court in OMP (Comm.) No.322/2016, wherein the appellant company raised the following grounds:
 - That agreement dated 09.09.2009 was merely in the nature of a security offered to the respondents against the loan advanced to the appellant company;

- That the respondents failed to lead any evidence and fulfill their reciprocal obligations as per the agreement and pay the balance sale consideration;
- That the Agreement to Sell dated 09.09.2009 stood novated/modified by the document dated 22.11.2011 duly executed by Col. Devesh Goel (retd.) as per which the appellant company agreed to sell two shops bearing Nos. AF-17B and AF-19 in AEZ Vaishali and paid a sum of Rs.1,41,148/- in consideration/repayment of the loan amount and interest thereupon;
- That as per Section 54 in part II of the Schedule to the Limitation Act, 1963 the limitation in a suit for Specific Performance is 3 years, Therefore the claim petition filed by the respondents is barred by limitation as the cause of action would arise from May 2010 and the claim for specific performance was preferred after a lapse of 3 years i.e. on July, 2013;
- That the learned arbitrator erred in granting Specific Performance of the Agreement to Sell as well as interest @18% per annum, in the favour of the respondents as a matter of right which though in fact is a discretionary relief.

6. After considering the aforesaid objections to the Arbitral Award, the learned Single Judge dismissed the petition on 23.08.2017 (hereinafter referred as 'Impugned Order'). Hence the present appeal.

7. Ms. Kadambari Singh Puri, learned counsel for the appellant submits that the Impugned Order dated 23.08.2017 is liable to be set aside as the same is against the facts and law; that the learned Single Judge ignored the fact that Specific Performance could not be granted in respect of the Agreement to Sell dated 09.09.2009 which in effect was executed as a security document and there has been a clear admission by the respondents themselves in their claim petition before the learned Arbitrator wherein it has been averred that the agreement to sell was made *"to specifically secure the claimants interests"*; that the application filed by the appellant company seeking amendment of its reply to statement of claim filed by the respondents ought to have been allowed to arrive at a just decision of the case; that the learned Arbitrator has erred in granting Specific Performance in favour of the respondents as the respondents have led no evidence whatsoever to show that they were ready and willing to perform their part of the agreement including the payment of balance consideration and the requisite expenses of the sale deed and hence the bar under Section 16(c) of the Specific Relief Act, 1963 shall operate against the respondents; that Specific Performance of the Agreement to Sell dated 09.09.2009 could not have been granted as the said agreement already stood cancelled/novated by a fresh voucher dated 22.11.2011 duly issued by Col. Devesh Goel; that Specific Performance of the Agreement to Sell dated 09.09.2009 has been granted as a matter of right to the respondents which in

turn has given them an unfair advantage as the respondents have become entitled to both Specific Performance of the Agreement to Sell dated 09.09.2009 as well as the interest payable till the date of possession of the flat, besides the escalation in the price of flat in last seven years i.e. between 09.09.2009 (i.e. date of agreement to sell) and 19.03.2016 (i.e. when specific performance was granted by the Arbitral Award); that the claim for Specific Performance raised by the respondents is barred by limitation in view of Section 54 in part II of the Schedule to the Limitation Act, 1963; that hence in view of the aforesaid the impugned order is liable to be set aside.

8. Refuting the submissions of the learned counsel for the appellant, Mr. Raghavendra Mohan, learned counsel for the respondents, submits that the impugned judgment does not call for any interference as the Id. Single Judge has rightly upheld the award passed by the Id. Arbitrator on 19.03.2016, by taking into consideration all the relevant facts and evidence placed on record.
9. We have heard the learned counsel for the parties and perused the material available on record.
10. It is an admitted case that both the parties entered into an Agreement to Sell dated 09.09.2009 which contains an Arbitration clause as per which all the disputes in relation to the performance of the agreement were to be settled through Arbitration in accordance with the Arbitration and Conciliation Act, 1996 at New Delhi. It is clear from the agreement dated

09.09.2009 that the appellant company agreed to sell Flat No. D-5/702, situated in village Tigri, Gurgaon for a sale consideration of Rs.78,00,000/- out of which 99% i.e. Rs.77,84,875/- was already paid to the appellant company by the respondents and the appellant in default of offer of possession was to pay Simple Interest @ 18% per annum i.e. Rs.1,41,148/- per month w.e.f. 01.07.2009 till the delivery of possession of flat.

11. Learned counsel for the appellant company has sought setting aside of the impugned order on the ground that the Agreement to Sell dated 09.09.2009 was merely in the nature of security offered to the respondents to secure the loan advanced by them and has also submitted that the said ground was raised before the Id. arbitrator by filing an amendment application, which was however erroneously dismissed. In support of the above plea, it was further urged by the learned counsel for the appellant company that the respondents have themselves made specific averments in their claim petition filed before the arbitrator, about the nature of the document by stating that the agreement to sell was made "*to specifically secure the claimants interests.*"
12. The Id. Arbitrator in its award dated 19.03.2016, has observed as under:

"Reading of paras 9 and 10 of the claim statement does not show that the parties had meant the agreement in question to be merely a security agreement and not an agreement to sell.

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So I reject the argument that even in the absence of a plea in the reply that the transaction between the parties was really not of a seller and purchaser and the agreement in question was actually a security agreement the claim statement itself makes it a case of security transaction and not of sale purchase of the flat in dispute."

13. Further the Id. Arbitrator, in the award dated 19.03.2016, has referred to the claim petition filed by the respondents and observed that the same does not show that the parties had meant the agreement in question to be a mere security document and that the sale of the flat in dispute was to take place only in case of default on the part of Aerens to repay the loan amount. The Id. Arbitrator has referred to the cross-examination of RW-1/Mr. K.K Aggarwal who was the Vice President of appellant company wherein he has stated that *"It is correct that with execution of agreement to sell dated 09.09.2009 between the claimants and the respondent company Ex.RW1/2, all liabilities of Aerens Jai Realty Pvt Ltd towards the claimants came to an end. It is correct that the liabilities under the said agreement Ex.RW1/2 towards the claimants are of the respondent company."*
14. Therefore in view of the above discussion we are of the considered opinion that the Id. Single Judge vide the impugned order, has rightly disallowed the plea raised by the appellant whilst upholding the observations so made by the Arbitrator in the said award, as there is no reason whatsoever why the said

Agreement to Sell dated 09.09.2009 should be treated as a security transaction and not as a sale transaction.

15. The *next plea* raised by the appellant company is that the discretionary relief of Specific Performance ought not to have been granted in favour of the respondents as they have failed to lead any evidence whatsoever 'to aver' and 'to prove' that they were ready and willing to perform their part of the agreement including the liability to pay the balance amount and other charges of registration, stamp duty etc., and hence the bar under Section 16(c) of the Specific Relief Act, 1963 shall operate against them.
16. In the impugned order, the Id. Single Judge has taken into consideration the averments made in para.29 of the respondents' claim petition that they are ready and willing to pay the balance sale consideration of Rs.15,125/- alongwith other charges and noted that the said fact has not been refuted by the appellant company in the reply filed to the claim petition.
17. We fail to agree with the above plea raised on behalf of the appellant company for the reason that 99% of the principal amount stood paid by the respondents to the appellant company and only a balance amount of Rs.15,125/- was due. Thus the only conclusion which can be derived is that the respondents were ready and willing to perform their reciprocal obligations under the agreement and the same was never disputed by the appellant company during the arbitral proceedings.

18. It has been further urged by the learned counsel for the appellant company that Specific Performance of Agreement to Sell dated 09.09.2009 could not have been granted also on the ground that the said agreement already stood cancelled/novated by a payment voucher/ fresh agreement dated 22.11.2011, duly executed by Col. Devesh Goel wherein he accepted the payment of Rs.1,41,148/- from the appellant company and had agreed to buy two shops in its AEZ Vaishali Project.
19. As per the Award dated 19.03.2016, neither Col. Devesh Goel was examined by the appellant company nor any evidence was led to prove that Col. Devesh Goel was authorised by the respondents to cancel the agreement dated 09.09.2009. Further no particulars of the shops or the price at which the shops were being sold were mentioned on the voucher, allegedly executed by Col. Devesh Goel. The appellant company had also failed to prove the legality, validity and authenticity of the said voucher. Therefore it was only on the failure of the appellant company to lead any evidence to the contrary, that the Id. Arbitrator observed that the Agreement to Sell dated 09.09.2009 cannot be treated to have been cancelled.
20. Further the Id. Single Judge has also observed that the said voucher is an absolutely vague document as the hand-written endorsement on the voucher right above the signature of Col. Devesh Goel, stating that the Agreement dated 09.09.2009 is cancelled, appears to have been superimposed on the said receipt. It was also observed that the appellant company has

further failed to prove the valid execution of the said voucher. Therefore in the said circumstances we find no infirmity in the observations so made by the Id. Single Judge in the impugned order thereby rejecting the plea of the appellant company that the Agreement to Sell dated 09.09.2009 stood cancelled/novated by the subsequent issuance of voucher dated 22.11.2011.

21. Learned Counsel for the appellant has proceeded further to submit that an unfair advantage has been given to the respondents by awarding both Specific Performance of the Agreement to Sell and interest @18% per annum on the loan amount from August 2011, till the date of delivery of possession and that the learned Single Judge has also ignored the fact that in the award dated 19.03.2016, the escalation in the price of flat in last seven years i.e. between 09.09.2009 (i.e. date of agreement to sell) and 19.03.2016 (i.e. when specific performance was granted by the Arbitral Award) has not been taken into account. Counsel also submits that the rate of interest awarded by the Arbitrator was in excess of the principal loan amount which is violative of the principle of natural justice.
22. Before determining the said issue it would be relevant to rummage through clause 10 of the Agreement to Sell dated 09.09.2009 entered into between the parties. The said clause reads as under:

"10. ... The First Party shall also pay to the Second Party a simple interest @ 18% P.A. i.e.Rs.1,41,148/-(Rupees One Lac Forty One Thousand One Hundred and Forty Eight Only)

P.M. with w.e.f. 01.07.2009 which will be payable monthly in arrears in the following month till the date of offer of possession of the said unit or the date the Second Party opts to return the same to the First Party and the entire amount of Rs.94,09,875/-(Rupees Ninety Four Lac Nine Thousand Eight Hundred Seventy Five Only) as aforesaid is received by him from the First Party provided that the Second Party shall not create any third party interests in the said unit during the period of one year as stated herein."

23. From a bare reading of clause 10 of the Agreement to Sell dated 09.09.2009, it is implicit that the appellant company has in unequivocal terms, agreed to pay to the respondents, interest @ 18% per annum, i.e. Rs.1,41,148/-(Rupees One Lac Forty One Thousand One Hundred and Forty Eight Only) per month w.e.f. 01.07.2009 till the date of offer of possession of the subject flat. However as per records, the appellant company paid the agreed rate of interest only upto July 2011 and thereafter failed to carry out its obligations under the said agreement. Besides this, the appellant company had also agreed to pay interest @ 18% per annum on the principal loan amount offered to them by the respondents and in furtherance of the same the appellants paid the agreed monthly rate of interest regularly for following two years. Thereafter as the appellant company defaulted in the payment of interest, the aforementioned Agreement to Sell was entered into between the parties wherein an acknowledgment has been made under clause 10, of the outstanding interest of

Rs.77,84,875/- which accrued on the principal loan amount upto 30.06.2009.

24. It was only in this background that the Arbitral Tribunal proceeded to award both Specific Performance of the Agreement to Sell dated 09.09.2009 and interest of Rs.1,41,148/- per month from August 2011, till the date of delivery of possession of the flat in dispute to the respondents, whilst observing as under:

"There is no dispute about the fact that the respondent had agreed to pay monthly interest of Rs.1,41,148/- to the claimants till possession of the flat was offered to them since it had received almost entire sale consideration at the time of execution of Agreement dated 09.09.2009 with the claimants. It is admitted case of the parties that the said interest money was paid by the respondents to the claimants till July 2011. So, as per the agreement between the parties the respondent has to pay agreed monthly interest till possession of the flat in dispute is actually delivered to the claimants. The claimants are however not claiming compound interest for which there is no justification. Therefore, the respondents liability shall be for payment of simple interest of Rs.1,41,148/- p.m. from August, 2011 onwards. This issue No.5 stands answered accordingly. "

25. The next ground raised by the counsel for the appellant is that the Specific Performance of the Agreement to Sell dated 09.09.2009 ought not to have been granted as the said relief is barred by limitation. It is the case of the appellant company that as under the Agreement to Sell dated 09.09.2009, the possession

of the flat in dispute was expected to be delivered to the respondents around end of May 2010, the limitation period for the relief of specific performance ought to have commenced immediately thereafter and the same would expire after three years. However the respondents invoked their claim for Specific Performance only in July 2013 when the Sole Arbitrator was appointed. Therefore it is argued that as the claim was raised after the expiry of 3 years commencing from June 2010, the bar under first part of Article 54 under the Schedule of the Limitation Act 1963, would be attracted.

26. The law is well settled under Article 54 of Schedule to the Limitation Act, 1963, that the limitation period for Specific Performance starts either from the date on which a period is fixed for the performance of the agreement or three years from the date when the performance is refused.
27. In the present case, it has been rightly observed by the Arbitral Tribunal in its Award dated 19.03.2016 and further upheld by the learned Single Judge vide Impugned order dated 23.08.2017, that as no time was fixed under the Agreement to Sell dated 09.09.2009 for the performance thereof, hence the limitation period was to commence from the date of refusal of the appellant company to perform the agreement. Moreover in the said agreement no period for handing over the possession of the subject flat was fixed as the same was to be transferred to the respondents upon completion of the project and it is a mere assertion made by the appellant company that the possession of

the flat was expected to be delivered to the respondents by the end of May 2010 as the agreement nowhere reflects a clause to that effect. Till the possession was handed over to the respondents, the appellant company was liable to pay simple interest @ 18% per annum which the appellant company continued to pay upto July 2011. Hence it is clear that till July 2011 there was no refusal on the part of the appellant company to perform the said agreement, which also implies that till July 2011 the construction of the said flat was not complete. Therefore there is no merit in the ground raised by the appellant company as the relief so claimed by the respondents was within the prescribed limitation period.

28. Moreover, the position of law stands crystallized today, that findings, of fact as well as of law, of the arbitrator/Arbitral Tribunal are ordinarily not amenable to interference either under Sections 34 or Section 37 of the Act. The scope of interference is only where the finding of the tribunal is either contrary to the terms of the contract between the parties, or, ex facie, perverse, that interference by this Court is absolutely necessary. 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. This Court in the case of ***P.C.L Suncon (JV) v N.H.A.I., 2015 SCC Online Del 13192*** , in para 24 stated that :

“24. As a postscript, this Court believes that it is imperative to sound a word of caution.

Notwithstanding the considerable jurisprudence advising the Courts to remain circumspect in denying the enforcement of arbitral awards, interference with the awards challenged in the petitions before them has become a matter of routine, imperceptibly but surely erasing the distinction between arbitral tribunals and courts. Section 34 jurisdiction calls for judicial restraint and an awareness that the process is removed from appellate review. Arbitration as a form of alternate dispute resolution, running parallel to the judicial system, attempts to avoid the prolix and lengthy process of the courts and presupposes parties consciously agreeing to submit a potential dispute to arbitration with the object of actively avoiding a confrontation in the precincts of the judicial system. If a court is allowed to review the decision of the arbitral tribunal on the law or on the merits, the speed and, above all, the efficacy of the arbitral process is lost.”

29. 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)11SCC181** 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."

30. It has been repeatedly held that while entertaining appeals under Section 37 of the Act, the Court is not actually sitting as a Court of appeal over the award of the Arbitral Tribunal and therefore, the Court would not re-appreciate or re-assess the evidence. In the case of ***State Trading Corporation of India Ltd. v. Toepfer International Asia Pte. Ltd.***, reported at 2014(144) DRJ 220(DB), in para 16 it has been held as under:

"16. The senior counsel for the respondent has in this regard rightly argued that the scope of appeal under Section 37 is even more restricted. It has been so held by the Division Benches of this Court in Thyssen Krupp Werkstoffe Vs. Steel Authority of India MANU/DE/1853/2011 and Shree Vinayaka Cement Clearing Agency Vs. Cement Corporation of India 147 (2007) DLT 385. It is also the contention of the senior counsel for the respondent that the argument made by the appellant before the learned Single Judge and being made before this Court, that the particular clause in the contract is a contract of indemnification, was not even raised before the Arbitral Tribunal and did not form the ground in the OMP filed under Section 34 of the Act and was raised for the first time in the arguments."

31. In the case of ***Steel Authority of India v. Gupta Brothers Steel Tubes Limited***, (2009) 10 SCC 63, the Supreme Court has laid down that an error relatable to interpretations of the contract by

an Arbitrator is an error within his jurisdiction and such error is not amenable to correction by Courts as such error is not an error on the face of the award. The Supreme Court has further laid down that the Arbitrator having been made the final arbiter of resolution of disputes between the parties, the award is not open to challenge on the ground that the Arbitrator has reached a wrong conclusion. The courts do not interfere with the conclusion of the Arbitrator even with regard to the construction of contract, if it is a plausible view of the matter.

32. The Apex Court in ***J.G. Engineers (P) Ltd. v. Union of India, reported at (2011) 5 SCC 758***, demarcated the boundary while explaining the ambit of section 34(2) of the Act. The Court in the aforesaid judgement relied upon the pronouncement of ONGC Ltd. Vs. Saw Pipes , in paragraph 19 , held as under:-

“27. Interpreting the said provisions, this Court in ONGC Ltd. v. Saw Pipes Ltd. [MANU/SC/0314/2003 : (2003) 5 SCC 705] held that a court can set aside an award Under Section 34(2)(b)(ii) of the Act, as being in conflict with the public policy of India, if it is (a) contrary to the fundamental policy of Indian law; or (b) contrary to the interests of India; or (c) contrary to justice or morality; or (d) patently illegal. This Court explained that to hold an award to be opposed to public policy, the patent illegality should go to the very root of the matter and not a trivial illegality. It is also observed that an award could be set aside if it is so unfair and unreasonable that it shocks the conscience of the court, as then it would be opposed to public policy.”

33. 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 Byelaw 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.”

34. This Court, time and again has emphasized on the narrow scope of section 37. In the case of ***MTNL Vs. Fujitsu India Private Limited, reported at 2015(2)ARBLR332(Delhi)***, the division bench held as under:

“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.

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.”

35. The abovementioned view was further upheld by the division bench in ***Mahanagar Telephone Nigam Ltd. vs Finolex Cables Limited*** **FAO(OS) 227/2017** reported at **2017(166)DRJ1**, stated as follows:-

“It is apparent, therefore, that, while interference by court, with arbitral awards, is limited and circumscribed, an award which is patently illegal, on account of it being injudicious, contrary to the law settled by the Supreme Court, or vitiated by an apparently untenable interpretation of the terms of the contract, requires to be eviscerated. In view thereof, the decision of the Id. Single Judge that reasoning of the arbitral award in this regard was based on no material and was contrary to the contract, cannot be said to be deserving of any interference at our hands under Section 37 of the Act. In a pronouncement reported at MANU/DE/0459/2015, MTNL v. Fujitsu India

Pvt. Ltd. (FAO(OS) No. 63/2015), the Division Bench of this court has held that "an appeal under Section 37 is like a second appeal, the first appeal being to the court by way of objections under Section 34". Being in the nature of a second appeal, this court would be hesitant to interfere, with the decision of the learned Single Judge, unless it is shown to be palpably erroneous on facts or in law, or manifestly perverse."

36. Having regard to the law laid down by this Court as well as the Apex Court in number of decisions rendered and applying the law laid down to the facts of the present case, we do not find any merit in the appeal. Therefore, on no count does the impugned order dated 23.08.2017 passed by the Id. Single Judge under Section 34(2) of the Arbitration and Conciliation Act, 1996, call for any interference.
37. Under the circumstances, the appeal being bereft of merit is dismissed.
38. Accordingly, the appeal stands disposed of, so also pending application(s), if any.

SANGITA DHINGRA SEHGAL, J.

G.S.SISTANI, J.

MAY 3, 2018