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

ARBITRATION PETITION NO.629 OF 2017

|                              |               |
|------------------------------|---------------|
| J.M. Financial Services Ltd. | ...Petitioner |
| V/s.                         |               |
| Manju P. Bhargava            | ...Respondent |

Mr.Ravikumar Varanashi I/b M/s.Ravikumar Varanashi & Co. for the Petitioner.

Mr.C.G. Gavnekar with Mr.Ashutosh Gavnekar I/b Mr.Gautma S. Hiranandani for the Respondent.

**CORAM : R.D. DHANUKA, J.**  
**DATE : 18TH JUNE, 2019.**

**P.C. :-**

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996, the petitioner has impugned the arbitral award dated 9<sup>th</sup> March, 2017 and the order dated 29<sup>th</sup> March, 2017 under section 33 of the Arbitration & Conciliation Act, 1996 rendered by the Appellate Tribunal allowing the appeal filed by the respondent (constituent).

2. With the assistance of the learned counsel for the parties, I have perused the documents annexed to the arbitral petition as well as the findings rendered by the two arbitral tribunals. It is the case of the respondent that vide an email dated 3<sup>rd</sup> November, 2016

addressed to the petitioner by the respondent, the respondent had disputed the transactions resulting into a loss of Rs.4,91,658/- i.e. the cash transactions without consulting the respondent. The respondent came to know about such transaction only after receiving the details of profit and loss statement furnished to the respondent to enable the respondent to file the income tax returns for the financial year 2015-16.

3. The claims made by the respondent were rejected by the lower appellate tribunal. Being aggrieved by the said award, the respondent preferred an appeal. By an award rendered by the appellate tribunal on 9<sup>th</sup> March, 2017, the appeal preferred by the respondent came to be allowed. The appellate arbitral tribunal has directed the petitioner to pay a sum of Rs.4,91,658/- with interest at the rate of 12% p.a. from the date of statement of claim to the respondent.

4. Mr. Varanashi, learned counsel appearing for the petitioner invited my attention to the documents annexed to the petition and some part of the ledger account and would submit that the respondent was already paid the amount due and payable to the respondent on 18<sup>th</sup> December, 2015. No transactions were carried out by the respondent for the petitioner thereafter. He relied upon some of the findings rendered by the lower arbitral tribunal and

would submit that though the findings rendered by the lower arbitral tribunal was based on the pleadings and the documents relied upon by both the parties, the appellate arbitral tribunal has reversed the findings rendered by the lower arbitral tribunal.

5. It is submitted by the learned counsel that the respondent was fully aware of the transactions carried out by the petitioner on behalf of the respondent and thus the appellate tribunal could not have awarded any award in favour of the respondent.

6. Mr.Gavnekar, learned counsel appearing for the respondent on the other hand strongly placed reliance on an email sent by the respondent to the petitioner directing the petitioner not to carry out any further transactions. He submits that inspite of such instructions, the petitioner has carried out the transaction without the consent of the respondent. The petitioner did not produce any instructions in writing from the respondent before the lower arbitral tribunal for carrying out transactions. The appellate arbitral tribunal has rendered a finding of fact that no such transactions without the instructions of the respondent could have been carried out and the finding being not perverse cannot be interfered with by this Court under section 34 of the Arbitration & Conciliation Act, 1996.

7. A perusal of the record indicates that though the respondent had instructed the petitioner not to carry out any further

transactions and had disputed the earlier transactions before the appellate arbitral tribunal, the petitioner carried out the transactions and could not produce the instructions from the respondent to carry out such transactions. The finding of facts rendered by the appellate arbitral tribunal being not perverse, cannot be interfered with by this Court under section 34 of the Arbitration & Conciliation Act, 1996. The petition is devoid of merits and is accordingly dismissed. There shall be no order as to costs.

***(R.D. DHANUKA, J.)***