

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION APPLICATION NO. 375 OF 2019**

Villayati Ram Mittal	...Applicant
<i>Versus</i>	
Schindler India Pvt Ltd	...Respondent

Mr Chaitanyaa Bhandarkar, *for the Applicant.*
Mr Chirag Mody, *with Ms Prachi Garg & Ms Saloni Shah, i/b DSK*
Legal, for the Respondent.

CORAM: G. S. Patel, J.
DATED: 5th November 2019

PC:-

1. The application is thoroughly misconceived. It is ostensibly filed under Section 11 of the Arbitration and Conciliation Act 1996. The contract in question was for the installation of an elevator. A copy of the agreement is from page 23 onwards. It is today contended that this contract was with a partnership firm called Villayati Ram Mittal. What is curious is that the Respondent, Schindler India Private Limited, invoked arbitration under this very agreement for this very elevator at this very site against one “Villayati Ram Mittal Pvt Ltd”. It filed an Arbitration Application No. 282 of 2016. Prior to this, it issued a notice which was in the name of M/s. Villayati Ram Mittal “through its directors”. The

response to this notice came from M/s. Srivastava and Co. saying they were representing M/s. Villayati Ram Mittal “through its directors” and further saying that they had instructions from M/s. Villayati Ram Mittal Pvt Ltd. It was thus that the private limited company was made a respondent to Schindler India Pvt Ltd’s Arbitration Application. On that application, SJ Kathawalla J made an order on 15th December 2016 appointing an Advocate as a Sole Arbitrator. The learned Sole Arbitrator entered upon a reference to this Arbitration. Villayati Ram Mittal Pvt Ltd was the Respondent to this Petition. It appeared. It led the evidence of one Vinod Saraf. There was extensive cross-examination. It is not disputed that at least one of the partners of the so-called firm, one Surinder Kumar Mittal, the person who has affirmed the present Petition, was at all relevant times a director of this company. Similarly, Vinod Saraf, the witness on behalf of the private limited company in arbitration, was a partner of the partnership firm.

2. Unfortunately for the Mittal entities, the arbitration resulted in an Award of 30th November 2018 against them *inter alia* rejecting a quite extraordinary Counter Claim and making an award of costs. The private limited company filed a challenge petition under Section 34. That was dismissed. It is, therefore, indebted to Schindler India Private Limited in the amount of Award. It is after the Award that the present application was filed by the partnership firm. Obviously, this is nothing but an attempt to either confuse matters or to frustrate enforcement of an existing arbitral award which was fully contested and a challenge to which failed. It is inconceivable that for the same contract, the same work and in

respect of which there is already an Award there can be a second round like this.

3. This is, of course, quite apart from the fact that even under Section 4 of the Arbitration and Conciliation Act, there is undoubtedly a waiver by the present Applicant.

4. The Commercial Arbitration Application is dismissed.

5. For the present, no order of costs.

(G. S. Patel, J)