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

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Date of decision: 16.10.2019

+ **ARB.A.(COMM) 30/2019**

SHININGKART ECOMMERCE PVT LTD. Petitioner

Through: **Mr. Anoop G. Chaudhary & Mr.
Sandeep Agarwal, Sr. Advocate with
Mr. Joseph Koshy & Ms. Binita
Shahi, Advocates**

versus

JIAYUN DATA LIMITED Respondents

Through: **Mr. Rajiv Nayar, Senior Advocate,
Mr. Darpan Wadhwa, Senior
Advocate with Mr. Ajay Bhargava,
Ms. Trishala Trivedi, Advocates**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

I.A. No. 14332/2019 (exemption)

Allowed, subject to all just exceptions.

ARB.A.(COMM) 30/2019

1. The present appeal has been filed under Section 37 (2)(a) of the Arbitration & Conciliation Act, 1996 ('Act') challenging the order dated 04.09.2019 passed by the Arbitral Tribunal on an application filed by the respondent under Section 17 of the Act.
2. The appellant and the respondent had entered into Brand & Technical License Agreement dated 15.05.2017 vide which the respondent had granted a license to the appellant to use the Brand I.P. and provide Brand Know How in the course of operating an e-commerce website.

3. It is the case of the appellant that in accordance with the said agreement, the appellant had been operating under the name of Club Factory India Pvt. Ltd. since May 2017 and upto 31.10.2018. As per the agreement, the appellant was to pay a fee for KnowHow to the tune of 6% on the net sales or as mutually decided, in case of a loss as provided under clause 1.1.11 of the said Agreement. As per clause 2.1.1, respondent had given exclusive rights to the appellant to use the Brand and provide multiple KnowHow for which the appellant had agreed to pay a hefty sum towards the fees.
4. It is the case of the appellant that the purchase for the products was to be made from the respondent directly at prices stipulated by the respondent. The payments towards all purchases have been made to the respondent and as per the appellant no dispute with respect to the same can be raised by the respondent.
5. It is pleaded that the respondent unilaterally terminated the agreement vide a Termination Deed dated 04.12.2018 giving it a retrospective effect from 31.10.2018. Appellant was forced to sign the said Deed in the light of the fact that there was a GST investigation and the appellant required some documents to provide the same to the GST Authorities, which were in possession of the respondent. Despite the fact that the respondent caused the appellant to sign the Termination Deed, in return of handing over the documents, the said documents have not been handed over, till date.
6. The appellant has pleaded that under the Termination Deed vide clause 3.3, an independent Auditor had to be appointed who would have

independently assessed the net sales and the amount of fee for the period 01.04.2017 to 31.10.2018, but even this has been violated by the respondent, as the Auditor appointed was already the Auditor of the respondent and his report would indicate that he went far beyond the scope of his appointment.

7. Disputes having arisen between the parties with regard to the payments allegedly due to the respondent, an OMP (I) (COMM) 71/2019 was filed by the respondent before this Court under Section 9 of the Act. Vide order dated 16.04.2019, this Court dismissed the petition as withdrawn with liberty to file the pleadings of the said petition as an application under Section 17 of the Act, before the Arbitral Tribunal appointed between the parties.
8. On 17.04.2019, the Arbitral Tribunal entered upon reference.
9. The appellant raised an objection before the Arbitral Tribunal regarding the procedure being adopted in conduct of the proceedings as well as to the jurisdiction of the Arbitral Tribunal vide application dated 04.05.2019. A ground was also raised that no application under Section 17 of the Act had been filed.
10. The Arbitral Tribunal dismissed the application vide order dated 31.05.2019. An appeal filed by the appellant against the said order under Section 37 of the Act in this Court was dismissed vide order dated 05.07.2019.
11. The Arbitral Tribunal thereafter heard the application under Section 17 of the Act and passed the following order:

“V. DISPOSITIVE SECTION

Pursuant to the above discussion, Tribunal, passes the following order:-

(a) The Respondent is hereby restrained from operating, withdrawing, disposing off amounts in its Bank accounts (stated (Account no. 3211920501, Account no. 3212847180 and Account no. 0313025561 maintained at Kotak Mahindra Bank-Preet Vihar Branch, New Delhi, IFSC-KKBK0000183; Account no. 629505502421 maintained at ICICI Bank, Sardar Bazar Branch, New Delhi IFSC-ICIC0006295), and/or any other Bank Accounts being owned and operated by Respondent) directly or indirectly to the extent that it shall at all times maintain an amount of Rs. 30 Crores in its Bank Accounts till the arbitral award is rendered. The Interim Order passed earlier in this regard stands modified to the aforesaid extent.”

12. It is this order which has been challenged by the appellant in the present petition.
13. Learned senior counsel for the appellant contends that the impugned order is totally without jurisdiction. It does not give any reasonable finding/conclusion and is based on conjectures and surmises. The Arbitral Tribunal has not given any reasons as to how the respondent had established a prima facie case in its favour, entitling it to an order under Section 17 of the Act.
14. It is contended that it is beyond reasonable comprehension as to how the Arbitral Tribunal has decided the amount with which the appellant would conduct his business and there is no plausible reasoning to

reach at a figure of Rs. 30 Crores, which has been directed to be maintained by the appellant at all times, in its accounts.

15. It is next contended that the Arbitral Tribunal has passed an order against a third party Bank Account which is neither under the control of nor operated by the appellant herein.
16. It is further contended that the only basis for the claim of the respondent was the Auditor's report, which was seriously disputed by the appellant before the Arbitral Tribunal on various grounds. The Arbitral Tribunal had itself noted that at this stage reliance could not be placed on the report of the Auditor and would be considered after evidence is led, yet the Tribunal completely erred in passing the impugned order against the appellant, ignoring that there was no other basis of the claim of the respondent.
17. Learned counsel submits that the Arbitral Tribunal has completely erred in basing its interim order on certain transactions whereby the appellant had transferred amounts of Rs. 8 Crores to Weblink Trading Co. Ltd. on 07.03.2019 and Rs. 5 Crores to New Term Deposit, on 07.03.2019. It is submitted that these transactions were made by the appellant during its routine and usual course of business and could not be the reason for the Tribunal to come to a conclusion that the alleged amounts payable to the respondent were not secured. The Tribunal has completely ignored the principles of Order XXXVIII Rule 5 CPC and the tests laid down therein. The Apex Court in the case of *Arvind Constructions Co. (P) Ltd. v. Kalinga Mining Corpn. [(2007) 6 SCC 798]* and *Adhunik Steels Limited v. Orissa Manganese and Minerals*

(P) Ltd. [(2007) 7 SCC 125] has held that the principles of Order XXXVIII Rule 5 and Order XXXIX and Rule 1 and 2 CPC would apply to Section 9 of the Act.

18. It is vehemently contended that before passing such a drastic order, the Tribunal should have satisfied itself that there was material available on record to support the apprehension of the respondent that in the event the Award was passed in favour of the respondent, the appellant would have no security to execute the said Award. The Tribunal has completely overlooked the principles for granting such a relief that the order passed should not convert an unsecured debt into a secured one and in fact the present is a case where the claim of the respondent is not even a debt, but a mere claim for damages, for the present.
19. Learned senior counsel submits that the interim order directing the appellant to maintain at all times an amount of Rs. 30 Crores in its Bank account till the Award is rendered and restraining from operating, withdrawing, disposing the amounts in its various Bank accounts, including Account No. 3211920501, Account No. 3212847180 and Account No. 0313025561 maintained at Kotak Mahindra Bank, Preet Vihar Branch, New Delhi, IFSC-KKBK0000183; Account no. 629505502421 maintained at ICICI Bank, Sardar Bazar Branch, New Delhi IFSC-ICIC0006295, and/or any other Bank Accounts being owned and operated by appellant so as to maintain the said minimum amount, is having serious repercussions on its business transactions and is unprecedented in commercial matters.

20. Per contra, learned senior counsel for the respondent submits that while filing the claim, the respondent had relied on the e-mail dated 30.10.2018 sent by the appellant itself, wherein it had clearly and categorically admitted the outstanding payment of license fee to the respondent and had further stated that the amount would be processed once the invoice was issued. Though under the agreement there was no requirement to issue the invoice, yet the invoice was also given to the appellant, but the outstanding payments were never released.
21. Learned senior counsel further submits that it is completely wrong for the appellant to contend that the Termination Deed was signed under coercion. This was purely by way of a mutual agreement between the parties and the same is expressly recorded in the Termination Deed. Learned senior counsel submits that it is not open to the appellant to even contest the report of the Auditor inasmuch as his appointment was never disputed by the appellant at any stage, besides the fact that the appellant has been throughout corresponding with the Auditor and providing data on various issues. In fact, the appellant himself has claimed certain amounts from the respondent, based on the Auditor's report and thus it cannot take contradictory stands, today.
22. Learned senior counsel submits that as per the Auditor's report, the appellant owes to the respondent an amount of USD 5,621,267/- on account of accumulation of license fee and USD 5,897,395.05/- towards procurement fee. Learned senior counsel submits that the amounts due to the respondent had to be secured by the Arbitral Tribunal inasmuch as it was found that the appellant was transferring

the amounts from its accounts to other accounts and therefore, even if the respondent was to succeed, the Award would have become unexecutable.

23. Learned senior counsel for the appellant in the rejoinder has contended that the claims of the respondent towards the license and procurement fee are completely untenable. It is the respondent who had failed to provide the required KnowHow, consultancy services, customer database etc. to the appellant. The respondent had breached clause 2.1.1 of the agreement and violated the terms of granting exclusive license to the appellant. The procurement fees in any case was not a part of the agreement. It is reiterated that the Auditor was not appointed in accordance with the terms of the Termination Deed.
24. Learned senior counsel further submits that interim relief on the basis of speculative claim is not maintainable. The respondent had not adduced any proof that the appellant was attempting to remove or dispose its assets to defeat the alleged claims of the respondent. Reliance is placed on the judgment of this Court in the case of ***Lanco Infratech Ltd. v. Hindustan Construction Company Limited*** 2016 ***SCC OnLine Del 5365***, for the proposition that an interim relief in terms of attachment of property before judgment will not be granted, if the claimant fails to establish a prima facie case.
25. I have heard the learned senior counsels for the parties and examined their rival contentions.

26. The Arbitral Tribunal, after hearing the parties at length, formulated the following questions to decide the application under Section 17 of the Act.

“(1) Whether Tribunal can direct a party to furnish security at the interlocutory stage as an interim measure of protection under Section 17 of the Act, 1996 and;

(2) Whether Claimant has established a Prima Facie case in its favour?”

27. The Tribunal extracted Section 17 of the Act and examined the powers of the Tribunal to pass interlocutory orders under the said provision. Reliance was placed on several judgments on this aspect.
28. Having examined the various judgments, the Tribunal came to a conclusion that even in the case of claims involving monetary reliefs, the Tribunal is vested with powers to secure the claim of the party subject to the party establishing a prima facie case and the opposite party can be directed to furnish adequate security. The Tribunal observed that the paramount consideration in granting an interim relief should be that the party having its claims adjudicated should be in a position to reap the benefits of the Award by being able to execute it. Principles of Order XXXVIII Rule 5 CPC were also considered by the Tribunal and it came to a finding that power under Section 17 of the Act cannot be restricted to the powers conferred under CPC.
29. Having examined the scope of its powers, the Tribunal concerned itself with examining whether the respondent had been able to make out a prima facie case. Insofar as the Auditor's report was concerned, the Tribunal only observed that at the stage of Section 17 of the Act, it

could not place reliance on the said report since no evidence had been led by either party to prove the true nature of the document or the amounts payable under the report. In fact, at the cost of repetition, it may be noted here that the learned senior counsel for the appellant has laid a lot of emphasis on this observation of the Tribunal to contend that once the Tribunal itself observed that the report could not be relied upon, it had no basis to hold that the respondent had made out a prima facie case.

30. As is evident from the reading of the impugned order, the Tribunal perused the Bank Account statement furnished by the appellant and noticed that the appellant had transferred huge amounts to Weblink Trading Co. Ltd. and on the same day, another sum of Rs. 5 Crores was transferred to New Term Deposits. The Tribunal noted that neither the appellant denied the transactions nor explained the true nature of such transactions. It is in this background that the Tribunal was of the opinion that a restraint order was required to be passed against the appellant so that the amounts claimed by the respondent are secured.
31. Insofar as the issues regarding the outstanding payments to the respondent or excess payment due, if any, to the appellant as well as the validity of the Termination Deed are concerned, in my view, the same would be decided by the Arbitral Tribunal at the time of final adjudication of the disputes. The aspect of the appointment of the Auditor being in accordance with the agreement or not and the correctness and sanctity of its report, would also be considered by the

Arbitral Tribunal after the parties have led evidence and it is not for this Court in an appeal under Section 37 of the Act to enter into this arena. All that this Court is concerned in the present appeal is about the correctness and legality of the order dated 04.09.2019 passed by the Tribunal by way of interim measures on an application under Section 17 of the Act, filed by the respondent.

32. This Court in the case of ***Intertole ICS(Cecons) O&M Company Pvt. Ltd v. NHAI, (2013) 1 LR 2 Delhi 1018*** has laid down the scope and powers of the Arbitral Tribunal under Section 17 of the Act relying upon the judgment of the Apex Court in ***MD, Army Welfare Housing Organisation v. Sumangal Services (P) Ltd: (2004) 9 SCC 619***. Relevant part of the judgment is as under:

“ ...

13. The interim measure of protection under section 17 of the Act has to be understood with reference to the “subject-matter of the dispute”. A plain reading of the provision shows that an arbitral Tribunal can in exercise of its powers thereunder direct a party “to take any interim measure of protection” “in respect of the subject-matter of the dispute”. The words “take” and “protection” give an indication as to the legislative intent behind the words “subject-matter of the dispute.” The protection envisaged is in relation to some tangible property and not an indeterminate monetary claim.

14.. The scope of the powers of an arbitral Tribunal under section 17 of the Act has been explained by the Supreme Court in MD, Army Welfare Housing Organisation v. Sumangal Services (P) Ltd: (2004) 9 SCC 619 as under (SCC p. 649):

58. A bare perusal of the aforementioned provisions would clearly show that even under section 17 of the 1996 Act the power of the arbitrator is a limited one. He cannot issue any

direction which would go beyond the reference or the arbitration agreement. Furthermore, an award of the arbitrator under the 1996 Act is not required to be made a rule of court; the same is enforceable on its own force. Even under section 17 of the 1996 Act, an interim order must relate to the protection of the subject matter of dispute and the order may be addressed only to a party) to the arbitration. It cannot be addressed to other parties. Even under section 17 of the 1996 Act, no power is conferred upon the Arbitral Tribunal to enforce its order nor does it provide for judicial enforcement thereof.

18. However, for examining the question as to what could constitute the 'subject-matter of the dispute' in the context of section 17 of the Act, it would be useful to draw a comparison with Section 9 of the Act. A reading of the various sub-clauses of Section 9 makes it apparent that a distinction. has been drawn between the words 'subject-matter of the dispute' [used in Section 9(ii) (a) and (c)] and 'amount in dispute' [used in Section 9(ii)(b)]. It is arguable that where the legislature in the same provision uses the words 'subject-matter of the dispute' in two sub-clauses and uses the words 'amount in dispute' in another sub-clause it intends to draw a distinction between the two. When Section 9(ii)(a) use the words 'subject matter of the dispute', they refer to 'goods' in respect of which there could be an order of 'preservation' or 'interim custody'. The same words in Section 9(ii)(c) refer to 'any property or thing' in respect of which there could be an order of 'detention, preservation or inspection of'. Where the claim is of a monetary nature Section 9(ii)(b) talks of 'securing the amount in dispute in the arbitration.' By the same analogy the words 'subject-matter of the dispute' in section 17 should be understood as referring to a tangible 'subject matter of dispute' different from an 'amount in dispute'."

33. Kerala High Court in the case of ***K.G. Rathish Kumar v. N.P.R. Finance Ltd.*** 2012 SCC OnLine Ker 29908 has held that an interim measure of protection can be granted by the Arbitral Tribunal which

may include providing appropriate security. Relevant para of the judgment is as under:

“3. We are satisfied that the impugned order is a non-speaking one and hence it is unsustainable. Further, learned counsel for respondent submitted that even if the said order is set aside, the order of attachment may be allowed to continue for a particular or until respondent gets an order from the arbitrator. Admittedly, arbitration proceedings are initiated. Therefore, going by Section 17 of the Arbitration and Conciliation Act, 1996 any interim measure of protection can be afforded to a party by Arbitral Tribunal. The Tribunal may also require the party to provide appropriate security in connection with the measure ordered under Section 17(1) of the Arbitration and Conciliation Act, 1996. Therefore, having initiated arbitral proceedings it is possible to obtain an order from the Arbitral Tribunal itself.”

34. It is thus a settled law that once the party makes out a prima facie case in its favour, the Arbitral Tribunal can grant an interim relief under Section 17 of the Act so as to ensure that the successful party is assured that the Award in its favour would be executable.
35. In the facts of the present case, the respondent had set out certain claims which were outstanding payments to be made by the appellant. The Bank account statements furnished by the appellant itself had indicated two transactions on the same day, whereby a total amount of Rs. 13 Crores had been suddenly transferred to some other accounts. The appellant had in the petition under Section 9 of the Act before this Court disclosed on an affidavit all their properties along with their values. The relevant portion of the affidavit is as under:

“... 2. That the Club Factory India Pvt. Ltd., the Respondent No. 1 now M/s Shiningkart Commerce Pvt. Ltd. Possess the following:

<i>S. No</i>	<i>Particulars</i>	<i>As on 13th March, 2019</i>	<i>As on 01.02.2019</i>
(a)	<i>Balance with Banks (Including FD)</i>	26,84,93,008/-	33,68,45,809/-
(b)	<i>Stocks and shares</i>	1,96,50,000/-	1,08,50,000/-
(c)	<i>Other property</i>	79,09,873/-	79,09,873/-
(d)	<i>Other Securities and advances</i>	12,95,00,839	7,37,05,140/-
<i>Total</i>		42,55,53,720/-	42,93,10,822/-

36. After perusing the said affidavit, the Tribunal came to a finding that if the financial state of the appellant as evident from the said affidavit was correct then it would be unable to provide security as prayed for by the respondent and an order directing to secure or deposit an amount of Rs. 81.78 Crores would be nugatory. In this background, the Tribunal passed an order directing the appellant to maintain at all times an amount of Rs. 30 Crores in its Bank accounts leaving the balance to be utilized by the appellant in its business transactions. Even before this Court the appellant has not been able to explain the said transfers. There was no argument on how else the alleged amounts claimed by respondent could be secured.
37. Section 17 of the Act has been specifically enacted by the Legislature to provide a party, during the arbitral proceedings or after the Award is made, but before it is enforced, a right of seeking detention and preservation of property or thing, which is subject matter of the dispute in arbitration.

38. Prior to the Amendment to Section 17 of the Act, it had a restricted scope. However, after the Amendment, Section 17 of the Act is virtually at par with Section 9 of the Act granting powers to the Arbitral Tribunal to make orders of interim protections on a wider canvass. The High Court of Bombay in the case of ***Shakti International Private Limited v. Excel Metal Processors*** 2017 SCC OnLine Bom 321 has summed up the scope of power under Section 17 of the Act as under:

“48. Even after the enactment of the 1996 Act, as pointed out by Mr. Jagtiani, different Courts took different views and approaches on the scope of the arbitral tribunals' power to grant interim reliefs or 'interim measures of protection' under Section 17 of the 1996 Act. For instance, in the case of Intertoll ICS Cecons O & M Co. Pvt. Ltd. v. National Highways Authority of India (supra), the Delhi High Court at paragraphs 15-18 on pages 1026-1027 dealt with the scope of powers under Sections 9 and 17 of the Act. In brief, the Court expressed the view that the powers of an arbitral tribunal under Section 17 of the 1996 Act are much narrower than that of a Court under Section 9 of the Act, although there may be some overlap. The Court in Intertoll (supra), held that an arbitral tribunal can only protect the subject matter of the dispute, which must be tangible property, and therefore it cannot order the furnishing of a security for securing a money claim.

49. As against this, this Court in Baker Hughes Singapore Pte. v. Shiv-Vani Oil and Gas Exploration Services Ltd. (supra) took a broader view (at paragraphs 40, 50-51) of the arbitral tribunals powers under Section 17 of the 1996 Act. This Court also distinguished the Judgment in the case of Intertoll (supra). This Court held, in Baker Hughes (supra), that an arbitral tribunal can, in a given case, make an appropriate order of security.

50. A perusal of these decisions is helpful because it brings into focus the reason why Section 17 as amended, was enacted.

51. Under the 1940 Act, the position was, as stated by the Hon'ble Supreme Court in MD, Army Welfare Housing Organization (supra), that an arbitral tribunal is not a Court of law and its orders are not judicial orders and its functions are not judicial functions.

52. This position changed under the 1996 Act, but in relation to Section 17 of the 1996 Act, the same Judgment of Army Welfare (supra), says that the power is a limited one, and that the arbitral tribunal has no power to enforce its own order nor is it made judicially enforceable.

53. Even though different Courts may have taken different views on the scope of the powers under Section 17 of the 1996 Act, it is very clear that the powers were narrower than Section 9 of the 1996 Act. Ex facie, Section 17 of the 1996 Act did not provide for any power for the appointment of a Receiver. Also, as noted by the Hon'ble Supreme Court, there were difficulties in matters relating to the enforcement of order passed by an arbitral tribunal under Section 17 of the Act.

54. Whereas Section 9 of the 1996 Act expressly provided for various interim orders that a Court could pass, Section 17 of the 1996 used the expression 'any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute'. Therefore, it was always necessary for a party applying for interim relief before an arbitral tribunal to show that a specific interim orders, covered by the express provisions of Section 9, was also covered by the limited language of Section 17 of the 1996 Act. These challenges and difficulties perhaps led to parties applying for interim measures to a Court under Section 9 of the 1996 Act, even after a tribunal had been constituted.

55. It is in this background that Section 17 of the Amended Act obviously came to be enacted. Section 17 of the Amended Act is now in para materia or very similar in content to the provisions of Section 9 of the Amended Act. The powers to make different types of interim orders of protection are now enumerated in Section 17 of the Amended Act, as they are under Section 9 of the Amended Act.

56. The powers, of an arbitral tribunal, to make orders is put on par with that of a court. The language appearing after Section 17(1)(ii)(e) of the Amended Act makes this clear. It states “and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceeding before it.”

57. The issue of enforceability of such orders is now expressly addressed by Section 17(2) of the Amended Act, which provides that such orders of the arbitral tribunal, “... shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.”

58. In light of the enhanced powers and efficacy of recourse under Section 17 of the Amended Act, there have been corresponding changes to Section 9 of the Amended Act as well. Section 9(3) of the Amended Act states that, “once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.”

39. There is thus no merit in the contention of the appellant that powers of Arbitral Tribunal are very restricted and it had no powers to pass the impugned order. Tribunal in the present case has looked into the alleged claims of the respondent as well as the transactions made by the appellant, transferring Rs. 13 Crores into other accounts, coupled

with its financial status. Having examined the matter in depth, the Arbitral Tribunal has passed the impugned order securing the alleged claims of the respondent. A perusal of the impugned order shows that the view taken by the Tribunal is certainly a plausible view and does not suffer from any perversity requiring interference by this Court under Section 37 of the Act. It is well settled that the Act of 1996 contemplates very little or no interference in the orders passed by the Arbitral Tribunal. In examining the orders passed by the Arbitral Tribunal, the Court has to examine whether the view taken is a plausible view and not a perverse view or against public policy. Even though this Court may find that another view was possible, the interference is not called for. A Division Bench of this Court in the case of **NHAI v. BSC-RBM-Patil Joint Venture [2018 SCC OnLine Del 6780]** while examining the scope of interference held that minimal interference is called for under Section 37 of the Act in an order passed by the Arbitral Tribunal. This decision has been followed by the High Court of Bombay in the case of **Artha Vruddhi Securities Ltd. v. Mahavir Prasad Gujjar [Arbitration Petition No. 547 of 2018 decided on 25th January, 2019]** and the Court held as under:

“26. On going through the impugned order, I do find that the view taken by the Arbitral Tribunal is certainly a plausible view. I do not find that the order suffers from any perversity that would require my interference in appeal as held by the Delhi High Court in the case of NHI v. BSCRBM-Patil Joint Venture (supra). The position that emerges from the law, as it stands crystallized today, is clearly, that findings, of fact as well as of law, of the Arbitrator/Arbitral Tribunal are ordinarily not

amenable to interference either under Section 34 or Section 37 of the Act. It is only where the finding is either contrary to the terms of the contract between the parties, or, ex facie, perverse, that interference, by the Court, is necessary. The Arbitrator/Arbitral 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. Paragraph 66 of this decision culls out the aforesaid proposition and reads thus:—

“66. We have already highlighted, herein above, the limited arena of the jurisdiction of this Court, in the matter of interference with arbitral awards, under Sections 34 and 37 of the Act. The position that emerges from the law, as it stands crystallized today, is, clearly, 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. It is only where the finding is either contrary to the terms of the contract between the parties, or, ex facie, perverse, that interference, by this Court, is necessary. The arbitrator/Arbitral 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. Insofar as the ultimate view of the learned arbitrator/Arbitral Tribunal, on any issue is concerned, so long as the view is plausible, and not merely possible, this Court would be loath to interfere therewith. We may usefully make reference, in this regard, to the following postscript, entered by this Court in its judgment in P.C.L. Suncon (JV) v. N.H.A.I.:—

“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 petition 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”.”

40. This being the position of law, I am of the opinion that the view taken by the Tribunal is a plausible view and there is no perversity calling for any interference. The impugned order of the Tribunal has balanced the equities between the parties. Transferring of huge amounts on a single day prima facie does create an impression that the transfers were made with an intent to defeat the claims of the respondent. Securing the respondent was thus required so that on his succeeding in the proceedings the Award is not rendered unexecutable. There is no infirmity in the order of the Tribunal impugned herein.
41. It is however made clear that the observations made herein are only prima facie observations. The Arbitral Tribunal is free to adjudicate the disputes between the parties uninfluenced by the observations made herein.

42. It is also clarified that the facts and the disputes mentioned above is only by way of a narrative in order to examine the correctness of the impugned order and not to decide the main disputes between the parties, which will be finally adjudicated by the Arbitral Tribunal.
43. There is no merit in the appeal and the same is hereby dismissed.

JYOTI SINGH, J

OCTOBER 16, 2019

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