

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL UNDER ARBITRATION NO. 15 OF 2019

1. Auduth Timblo, son of Late Shri Modu Timblo, Aged 70 years, residing at G-9 La Marvel Colony, Dona Paula, Goa 403 004.

2. Prashant Timblo, son of late Shri Modu Timblo, Aged 64 years, residing at “Samudra Darshan”, Taleigao, Goa 403 206, represented herein by his duly constituted attorney, Appellant No.1 herein (Auduty Timblo).

3. Mormugao Maritima, a sole proprietorship concern of Shri Auduth Timblo, with office at Villa Flores de Silva, Erasmo Carvalho Street, Margao-Goa, 403 601, represented herein by its sole proprietor, Appellant no.1 herein (Auduth Timblo)

4. Sociedade De Fomento Industrial Private Limited, a company registere4d under the Companies Act, 1956, having its Registered Office at Villa Flores de Silva, Erasmo Carvalho Street, Margao-Goa, 403 601, represented herein by its Chairman & Managing Director, Appellant No.1 herein (Auduth Timblo)

...Appellants/Original
Applicants/Claimants

V e r s u s

1. Ravi Kant Jaipuria (Hindu

Undivided Family), carrying on business at 8, Prithviraj Road, New Delhi 110 011 represented herein by its Karta, Shri Ravi Kant Jaipuria;

2. Surya Kant Jaipura, major of age, businessman, residing at 8, Prithviraj Road, New Delhi 110 011.

3. Devyani International Pvt. Ltd., (formerly Universal Ice Creams Private Limited), a company registered under the Companies Act, 1956 and having its Registered Office at F-2/7, Okhla Industrial Area, New Delhi 110 020.

4. S. M. V. Agencies Private Limited, a company, registered under the Companies Act, 1956 and having its Registered Office at 1862, Mahalaxmi Market, Bhagirath Palace, Chandni Chowk, New Delhi 110 006.

5. Dilip Timblo, son of Late Shri Modu Timblo, major in age, residing near "Zaivanti", Gogol Margao, Goa, 403 601.

...Respondents

Mr. Rafique Dada, Senior Advocate with *Mr. Sudesh Usgaonkar and Ms. Marie Rosette Pereira, Advocates for the Appellants.*

Mr. H. L. Tikku, Senior Advocate with *Mr. R. Agrawal, Mr. C. A. Coutinho and Mr. Ivan Santimano, Advocates for the Respondents.*

CORAM: MANISH PITALE, J
Reserved on: 10th February 2022
Pronounced on: 3rd March 2022

JUDGMENT

1. Heard finally with the consent of the learned Counsel appearing for the parties.

2. Admit. Mr. Santimano, learned Counsel, waives notice on behalf of Respondent nos. 1 to 4.

3. By this Appeal, the Appellants have challenged Judgment and Order dated 19.11.2018, passed by the Court of District Judge-I South Goa, (herein after referred to as the *District Court*), whereby an application filed by the Appellants under Section 34 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as '*the said Act*') for setting aside of arbitral award was only partly allowed and rejection of claim of no.1 in the arbitral award was confirmed. Although the Appeal and the documents filed therewith, as also the reply filed on behalf of the Respondents are voluminous, only one point really arises for consideration in the present Appeal.

4. The facts in brief leading up to filing of the present Appeal are that, the Appellants and Respondent no.5 entered into a Share Purchase Agreement (herein after referred to as the '*SPA*') with Respondent nos. 1 to 4, pertaining to share holdings of Goa Bottling Company Limited. The Appellants alongwith Respondent no.5 were the sellers while Respondent nos. 1 to 4 were the purchasers under the said SPA. The said SPA was executed on 14.06.2000, wherein the agreed consideration was ₹42,71,00,000/-, of which as per the said agreement ₹10,00,000/- as part payment was to be made on the date of the SPA.

5. The SPA specifically defined terms used in the Agreement and such terms or expressions were to be the basis for construing various clauses of the SPA. The said SPA provided for arbitration in case of disputes between the parties.

6. On the very same day i.e. 14.06.2000, the parties also executed a Supplemental Share Purchase Agreement (herein after referred to as the '*First Supplemental SPA*'). By the First Supplemental SPA, some modifications were made in the SPA to add definition of the expression "*additional consideration*" and to amend the definition of the expression "*Balance Purchase Price*". A new clause was also added, stating that Respondent no.1 shall issue a promissory note for a specific sum, being the amount corresponding to the additional consideration.

7. Thereafter, on 24.09.2000, the parties executed a Second Supplemental Agreement (herein after referred to as the '*Second Supplemental SPA*'). By the aforesaid document, amendment was made to the First Supplemental SPA, on the basis of which the parties agreed to close the transaction envisaged under the SPA. Clause 2.2 of the First Supplemental SPA stood deleted and the expression "*Balance Purchase Price*" was stated to remain the same as set out in the SPA. It was specified that "*additional consideration*" was always deemed to have meant and shall mean interest payable by the Respondent-Purchasers on the balance purchase price. It was also recorded that the promissory note given by the Respondent no.1 to the Appellants, would be handed over to the Escrow Agent and it was recorded that interest to be paid under the First Supplemental SPA was still to be paid. Cheques aggregating to a particular amount, less than the amount specified

in the promissory note, were handed over to the Escrow Agent till resolution of outstanding issues by the Mediators.

8. It is significant that by the time the Second Supplemental SPA was executed on 24.09.2000, disputes had already arisen between the parties and they were in the process of mediation. It is also an admitted position that although the SPA recorded that part payment of ₹ 10,00,000/- was to be made by the Appellants on the date of execution of the SPA and the First Supplemental SPA, in addition to the amount of ₹ 10,00,000/-, the Respondent-Purchasers had also paid an amount of ₹ 12 Crores to the Appellants. Consequently, the balance amount was reduced from ₹ 42.61 Crores to ₹ 30.61 Crores. As per the SPA, the balance consideration was to be paid by 28.09.2000 and it is also an admitted position that by 24.09.2000 i.e. the date on which the Second Supplemental SPA was executed, the balance amount was paid by the Respondent-Purchasers to the Appellants. Disputes had arisen between the parties, where the Respondent-Purchasers were raising certain claims against the Appellants.

9. The parties undertook arbitration as per the arbitration clause in the Agreement and claims were raised against each other. During the pendency of the arbitral proceedings, the parties settled some of the disputes and executed consent terms dated 09.08.2010. The dispute remained in respect of claim no.1, under which the Appellants claimed interest from the Respondent-Purchasers on the balance consideration, on a conjoint reading of the SPA, First Supplemental SPA and the Second Supplemental SPA. The other outstanding claim pertained to interest on amount claimed from 10.11.2000 to 31.01.2004 at the rate of 14% per annum with

quarterly rests and from 01.02.2004 to 10.08.2010 at the rate of 18% per annum with simple interest till the date of the Award. The present Appeal is concerned only with the rejection of claim no.1 in the Arbitral Award and confirmation of the same by the District Court in the impugned Judgment and Order.

10. Mr. Rafiq Dada, learned Senior Counsel appearing for the Appellants, submitted that insofar as claim no.1 was concerned, the Arbitral Tribunal rejected the claim on a misinterpretation and misquoting of the terms of the Agreement between the parties and as per settled law, this was a good ground for setting aside the Arbitral Award, which the District Court completely failed to appreciate. According to the learned Senior Counsel appearing for the Appellants, the District Court committed a grave error in holding that the Arbitral Tribunal had applied a reasonable construction to the terms of the contract/agreement between the parties, thereby refusing to interfere with the Arbitral Award.

11. It was submitted that since the application under Section 34 of the Act was filed before the District Court on 22.05.2015, the jurisdiction to be exercised by the District Court was on the basis of Section 34 of the Act, as it stood prior to the amendment brought about in the aforesaid Act as per the Act no. 3 of 2016, which had retrospective effect from 23.10.2015. Reliance was placed on the Judgment of the Hon'ble Supreme Court in the case of ***Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI)***¹, particularly paragraph 19 thereof. Reliance was also placed on the Judgments of the Supreme Court in the cases of ***Oil and Natural Gas Corporation Limited vs.***

¹ (2019) 15 SCC 131

*Western Geco International Limited*² and *Associate Builders vs. Delhi Development Authority*³ to contend that the parameters within which the District Court could have interfered with and set aside the Arbitral Award pertaining to claim no.1 of the Appellants, was not appreciated by the District Court while passing the impugned Order.

12. The learned Senior Counsel appearing for the Appellants invited attention of this Court to the SPA, the First Supplemental SPA and the Second Supplemental SPA, particularly clauses pertaining to definitions of certain expressions crucial for determination of claim no.1. It was contended that a proper reading of the terms of the said Agreement would show that the Respondent-Purchasers had taken over the entire business of the Company of the Appellants from the “*accounts date*” defined in the SPA to mean 05.05.2000. The entire consideration was not paid before taking over of the said Company. Hence, the reference to “*additional consideration*” in First Supplemental SPA and its amendment in the Second Supplemental SPA, clarifying that the expression “*additional consideration*” was always deemed to mean and shall mean interest payable by the Respondent-Purchasers on the balance purchase price, clearly indicated that even if the balance purchase price was paid before the due date i.e. 28.09.2000, the component of interest was certainly payable under claim no. 1. It was submitted that deletion of clause 2.2 from the First Supplemental SPA did not mean that no interest was payable if the balance purchase price was paid before the due date i.e. 28.09.2000. The crucial aspect of the matter was that the amount towards

² (2014) 9 SCC 263

³ (2015) 3 SCC 49

interest termed as *additional consideration* under the First Supplemental SPA was specifically confirmed to mean interest payable by the Respondent-Purchasers on the balance purchase price, because the consideration amount was not paid at one go and yet the entire company had changed hands in favour of the Respondent-Purchasers from the accounts date i.e. 05.05.2000. It was submitted that in commercial transactions like the one entered into between the parties in the present case, the amount of interest payable could never be construed as a penalty, to be paid only if the balance consideration was not paid by the due date i.e. 28.09.2000. By emphasising upon the true scope and purport of the clauses of the three Agreements, the learned Senior Counsel appearing for the Appellants submitted that the Arbitral Tribunal had completely misdirected itself in holding that claim no.1 could not be granted.

13. It was submitted that the Arbitral Tribunal had misquoted crucial clauses of the Second Supplemental SPA, leading to perverse interpretation of the Agreement between the parties. The aspect of return of promissory note was misconstrued because the fact recorded under the Second Supplemental SPA pertaining to cheques handed over to the Escrow Agent towards interest payable under the First Supplemental SPA was completely ignored by the Arbitral Tribunal. It was further submitted that linking the obligation of the Respondent-Purchasers to pay amounts towards interest, with clause 3.1 (d) of the SPA was also untenable, rendering the findings of the Arbitral Tribunal against the express terms of the Agreement. This was a ground for setting aside the Arbitral Award pertaining to claim no.1, which the District Court failed to appreciate. In fact, in the impugned Judgment and Order, the District Court also misquoted the relevant clause of the Second

Supplemental SPA, repeating the grave mistake committed by the Arbitral Tribunal. In the present appeal the Appellants not only sought setting aside of the Arbitral Award, insofar as it rejected claim no.1, but further relief was sought for a direction to the Respondent-Purchasers to pay a specific amount towards interest along with further interest upon the said amount from 10.11.2000 till realisation. It was stated that the second limb of the relief sought on behalf of the Appellants could perhaps not be granted in view of the law laid down by the Supreme Court in the case of *Mc Dermott International vs. Burn Standard Co. Ltd.*⁴ as reiterated by the Supreme Court in its subsequent Judgment in the case of *The Project Director vs. M. Hakeem & anr.*⁵

14. On the other hand, Mr. H. L. Tikku, learned Senior Counsel appearing for Respondent nos.1 to 4, submitted that the Appellants had failed to make out a case for interference. The Arbitral Tribunal had placed a reasonable construction on the terms of the contract/agreements between the parties and even it was to be termed as erroneous, the District Court could not have exercised jurisdiction under Section 34 of the Act to set aside the award pertaining to claim no.1. On this basis, it was submitted that the law laid down by the Supreme Court in various Judgments on the scope of interference in an Arbitral Award, indicated that in the present case, the District Court was justified in passing the impugned Judgment and Order and no case for interference was made out on behalf of the Appellants.

⁴ 2006 (11) SCC 181

⁵ (2021) 9 SCC 1

15. The learned Senior Counsel also referred to various clauses of the SPA, First Supplemental SPA and the Second Supplemental SPA. Much emphasis was placed on the Second Supplemental SPA, deleting clause 2.2 of the First Supplemental SPA, which pertained to the definition of balance purchase price and restoring the definition of the said expression “*balance purchase price*” as given in the SPA. It was submitted that once such deletion of clause 2.2 of the First Supplemental SPA came into effect, the balance purchase price as per the SPA remained only as defined under the SPA to mean a sum of ₹ 42.61 Crores. Admittedly, the said sum was reduced to ₹ 30.61 Crores, in view of the fact that on the date of execution of SPA itself, the Respondent-Purchasers had paid additional amount of ₹ 12 Crores. It was also an admitted position that the balance amount of ₹ 30.61 Crores was already paid from time to time when the Second Supplemental SPA was executed on 24.09.2000. It was emphasized that the Arbitral Tribunal correctly took into consideration the impact of deletion of clause 2.2 from the First Supplemental SPA, to conclude that there was no question of payment of any amount towards interest as long as the balance purchase price was paid before the due date i.e. 28.09.2000.

16. The fact that the promissory note given by the Respondent no.1 was handed back to the Respondent-Purchasers as recorded in the Second Supplemental SPA, demonstrated that no amount was due towards interest and, that therefore, the very basis of claim no. 1 was fallacious. It was further submitted that the Appellants were not entitled to any mileage for the cheques deposited with the Escrow Agent because they were linked to outstanding issues under clause 4(vi) of the Second Supplemental SPA and that this aspect

was correctly accepted by the Arbitral Tribunal. The default on the part of the Appellants pertaining to clause 3.1 (d) of the SPA was also properly appreciated by the Arbitral Tribunal to reject claim no.1. On this basis, it was submitted that the Appeal deserved to be dismissed.

17. On the basis of the rival contentions raised on behalf of the parties, the following points arise for consideration before this Court:

(1) Whether the Appellants are justified in contending that Arbitral Tribunal construed the terms of the SPA, read with the First Supplemental SPA and the Second Supplemental SPA, in such a manner that it amounts to interpretation against the very terms of the said Agreements, thereby justifying interference with the Arbitral Award under Section 34 of the Act, which the District Court failed to appreciate?

(2) Whether the interpretation of the terms of the aforesaid Agreements adopted by the Arbitral Tribunal and accepted by the District Court, could be said to be a reasonable construction of the said terms?

(3) Whether the terms of the said Agreements provided for payment of amount towards interest to the Appellants on the balance purchase price

*even when the same was paid before the due date
i.e. 28.09.2000?*

18. The answer to the aforesaid three points/questions, requires application of the position of law pertaining to the circumstances in which an Arbitral Award can be interfered with or set aside.

19. In the case of ***Oil and Natural Gas Corporation Limited vs. Western Geco International Limited*** (supra), in this context, the Supreme Court held as follows:

“40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest.”

20. In the case of *Associate Builders vs. Delhi Development Authority* (supra), the Supreme Court considered the principles governing interference with an Arbitral Award and in this context, it was observed as follows:

“31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

- (i) a finding is based on no evidence, or*
- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
- (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.*

32. A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons(1992 Supp (2) SCC 312), it was held: (SCC p. 317, para 7)

“7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.”

In Kuldeep Singh v. Commr. of Police(1999) 2 SCC 10¹, it was held: (SCC p. 14, para 10)

“10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.”

33. 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 score. 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 & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. (2012) 1 SCC 594.”

21. In the very same judgment, the Supreme Court has quoted with approval the observations in the case of **DDA vs. R. S. Sharma**⁶, which reads as follows:

“From the above decisions, the following principles emerge:

(a) An award, which is

(i) contrary to substantive provisions of law; or

(ii) the provisions of the Arbitration and Conciliation Act, 1996; or

(iii) against the terms of the respective contract; or

(iv) patently illegal; or

(v) prejudicial to the rights of the parties;

is open to interference by the court under Section 34(2) of the Act.

(b) The award could be set aside if it is contrary to:

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality.

(c) The award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.

(d) It is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.

With these principles and statutory provisions, particularly, Section 34(2) of the Act, let us consider whether the arbitrator as well as the

⁶ (2008) 13 SCC 80

Division Bench of the High Court were justified in granting the award in respect of Claims 1 to 3 and Additional Claims 1 to 3 of the claimant or the appellant DDA has made out a case for setting aside the award in respect of those claims with reference to the terms of the agreement duly executed by both parties.”

22. Thus, when an Arbitral Tribunal passes an Award against the very terms of the contract between the parties, it is held to be a good ground for setting aside the Arbitral Award. It was held that the Arbitral Award would be open to challenge when vital evidence is ignored or the finding is based on an irrational approach, although a possible view adopted by the Arbitral Tribunal would not warrant interference. Thus, the contentions of the parties have to be examined considering the scope of Section 34 of the Act, which in the present case is to be applied prior to its amendment brought into effect from 23.10.2015.

23. In order to appreciate the contentions of the rival parties, certain admitted facts deserve to be noted. The Respondent-Purchasers were handed over the Company on the accounts date i.e. 05.05.2000, prior to the appointed date i.e. 01.06.2000 and even before the date of the execution of the SPA i.e. 14.06.2000. The entire affairs of the said Company in respect of which the SPA was executed, including the cheque books, statutory registers and other such documents came into possession of the Respondent-Purchasers. They took charge and started running the Company. It is also an admitted position that when the SPA was executed on 14.06.2000, the entire agreed consideration of ₹ 42.71 Crores was

not paid to the Appellants i.e. the sellers. Although the SPA recorded that part payment of ₹ 10,00,000/- was made on the date of the execution of the SPA, it is an admitted position that the Respondent-Purchasers paid a further amount of ₹ 12 Crores on the said date. Yet, admittedly, the balance purchase price of ₹ 30.61 Crores was still payable, which was to be paid before the due date i.e. 28.09.2000.

24. In a commercial transaction, where a party sells shares and effectively the entire Company to the other party, the entire control of such Company and its affairs would normally stand transferred upon payment of full consideration. But, as noted above, the Company was entirely handed over to the Respondent-Purchasers, much prior to the payment of the entire consideration. In the commercial transaction entered into between the Appellants and the Respondent-Purchasers, the payment of the balance purchase price was staggered up to the due date i.e. 28.09.2000 and it is in this backdrop that in the First Supplemental SPA, the component of “*additional purchase price*”, was specified to be part of the balance purchase price defined in the SPA. Subsequently, in the Second Supplemental SPA it was clarified that the expression “*additional consideration*” was deemed to have meant interest payable by the Respondent-Purchasers on the balance purchase price. It is in this backdrop that the deletion of clause 2.2 in the First Supplemental SPA deserves to be appreciated. But, before further analysing the contentions raised by the rival parties, it would be appropriate to refer to the relevant clauses of the three Agreements.

“SPA dated 14.06.2000

2.1 The following definition shall be inserted in the definitions section of the Share Purchase Agreement :

“Additional Consideration” shall mean the additional purchase consideration to be paid by the Purchasers for acquiring the Shares, calculated at the rate of 14% per annum with quarterly rests from the Appointed Date (first quarter being 1st June 2000 till 31st August 2000) on the Balance Purchase Price outstanding from time to time during the period from the Appointed Date till the Due Date.

2.2 : The definition of “Balance Purchase Price”, as appearing in the Share Purchase Agreement, shall stand amended as follows :

“Balance Purchase Price” shall mean a sum of Rs. 42,61,00,000 (Rupees Forty Two Crores sixty one Lakhs only) as increased by the Additional Consideration, that shall be paid either in a bullet payment or in instalments not later than the Due Date.”

First Supplemental SPA dated 14.06.2000

2.1 The following definition shall be inserted in the definitions section of the Share Purchase Agreement :

“Additional Consideration” shall mean the additional purchase consideration to be paid by the Purchasers for acquiring the Shares,

calculated at the rate of 14% per annum with quarterly rests from the Appointed Date (first quarter being 1st June 2000 till 31st August 2000) on the Balance Purchase Price outstanding from time to time during the period from the Appointed Date till the Due Date.

2.2 : *The definition of “Balance Purchase Price”, as appearing in the Share Purchase Agreement, shall stand amended as follows:*

'Balance Purchase Price' shall mean a sum of Rs.42,61,00,000 (Rupees Forty Two Crores sixty one Lakhs only) as increased by the Additional Consideration, that shall be paid either in a bullet payment or in instalments not later than the Due Date.”

2.3 : *The following new clause shall be inserted and shall be numbered as clause 3.2(1)*

“Ravi Kant Jaipuria shall issue a promissory note favouring Sociedade de Fomento Industrial Limited for a sum of Rs.1,97,73,758/-(Rupees One Crore Ninety-seven lakhs seventy-three thousand seven hundred and fifty-eight only) being the amount corresponding to the Additional Contribution for the period from the Appointed Date till the Due Date. In the event of Default, the Sellers shall be entitled to present the Promissory Note for payment. In the event Default does not occur, the Sellers shall not have any right to present the Promissory for payment and the original Promissory Note shall stand discharged and

shall be promptly returned to Shri Ravi Kant Jaipuria.”

Second Supplemental SPA dated 24.09.2000

“WHEREAS the Parties have mutually agreed to modify and/or amend the aforesaid SPA and/or the Supplemental SPA, as provided hereinafter.

...

Amendment to the Supplemental SPA

2. The Parties agree and confirm that the expression “Additional Consideration” appearing in the Supplemental SPA was always deemed to mean and shall mean interest payable by the Purchasers on the “Balance Purchase Price” (as defined in the SPA), outstanding from time to time and to be calculated in the manner prescribed in the Supplemental SPA.

*3. Clause 2.2 of the Supplemental SPA shall stand deleted and accordingly, the definition of the expression “**Balance Purchase Price**” shall remain that as set out in the SPA. The consideration for the sale of the Shares shall be Rs. 42.71 Crores, as set out in the Share Purchase Agreement.*

4. *The Parties have agreed to close the transaction envisaged under the SPA, as follows:*

(i) The Purchasers will arrange for the release of the demand drafts/banker's cheques aggregating Rs.30.61 Crores, handed over by the Purchasers to the Escrow Agent, to the Sellers forthwith, in exchange for the documents listed in paras (ii), (iii), (iv) and (v) below. The aforesaid drafts/cheques represents the final instalment of the "Balance Purchase Price" (as defined in the SPA, i.e. Rs. 42.61 Crores, less first instalment of the Balance Purchase Consideration of Rs. 12 Crores, paid by cheque on June 14, 2000). The interest to be paid under the Supplemental SPA, is still to be paid, as described in more detail hereinafter. The Purchasers shall also hand over to the Escrow Agent, cheques aggregating an amount of Rs.1,39,45,562/- (Rupees One Crore Thirty Nine Lakh Forty Five Thousand Five Hundred and Sixty-Two only) (hereinafter referred to as "the said Cheques"), to be held by the Escrow Agent till the resolution of the Outstanding issues by the Mediators, in the manner provided below.

(ii) ...

(iii) The Sellers shall hand over to the Escrow Agent the resignation letter of Mr. Prashant Timblo from the board of directions of GBC and NBL. The Sellers shall also hand over to the Escrow Agent, the promissory note issue by Mr. Ravi Kant Jaipuria, dated June 14, 2000, for an amount of Rs. 1,97,73,758/-. These shall be handed over to the Purchasers forthwith. In

the meantime, the Sellers undertake not to take any action and/or assert any right under and/on the said promissory note;

(iv) ...

(v) ...

(vi) There are certain issues outstanding between the Parties, including amount of interest to be paid and certain claims and counter claims (hereinafter referred to as "Outstanding Issues")"

...

(xiii) In the event that the Outstanding Issues are referred to arbitration, as above, the said Cheques shall be retained by the Escrow Agent and shall be dealt with by the Escrow Agent as per directions of the arbitrators."

25. A perusal of the Arbitral Award, particularly the discussion therein pertaining to claim no.1, shows that the Arbitral Tribunal after referring to the relevant clauses of the Agreement, has placed much emphasis on deletion of clause 2.2 of the First Supplemental SPA. It was held that once the definition of balance purchase price specified in the SPA stood restored, there was no question of payment of any further amount by the Respondent-Purchasers, since they had already paid the balance amount of consideration of ₹ 30.61 Crores by the time the Second Supplemental SPA dated 24.09.2000 was executed. The Arbitral Tribunal has referred to the fact that under the Second Supplemental SPA, a promissory note given by the Respondent no.1 under the First Supplemental SPA

was handed back by the Appellants and cheques given for specific amount to the Escrow Agent, were relatable to clause 4(vi) of the Second Supplemental SPA. At this stage, the Arbitral Tribunal quoted clause 4(vi) of the Second Supplemental SPA, as follows:

“the amount of interest to be paid would be paid on outstanding issues to be settled between the parties.”

26. On this basis, the Arbitral Tribunal gave a finding that the question of interest was relatable to outstanding issues to be settled between the parties and the amount of interest had nothing to do with interest payable on the balance purchase price. Thereafter, the Arbitral Tribunal referred to the alleged failure of the Appellants to fulfil their obligation under clause 3.1 (d) of the SPA and in that context, adverse findings were rendered against the Appellants. The Arbitral Tribunal then proceeded to hold that the reference to payment of interest in the Agreements at the rate of 14% with quarterly rests, was added only as a penal clause to compel the Respondent-Purchasers to pay the balance purchase price before the due date i.e. 28.09.2000. On this basis, the Arbitral Tribunal concluded that the liability to pay interest would have arisen as a matter of penalty only if the Respondent-Purchasers had failed to pay the balance purchase price before the due date. According to the Tribunal, as long as the balance purchase price was paid before the due date, no question of payment of interest arose, particularly because definition of the expression “*balance purchase price*” was restored to be the definition under the SPA dated 14.06.2000.

27. A perusal of the impugned Judgment and Order of the District Court shows that clause 4(vi) of the Second Supplemental SPA as referred to and quoted by the Arbitral Tribunal, was again quoted and relied upon to conclude that the Arbitral Tribunal had placed a reasonable construction on the terms of the Agreement, thereby showing that no ground was made out for exercise of jurisdiction under Section 34 of the Act, for setting aside the Arbitral Award insofar as the findings on claim no.1 were concerned.

28. A perusal of the clauses of the Second Supplemental SPA quoted above, particularly clause 4(vi) thereof, would show that the said clause reads as follows:

“Clause 4(vi): There are certain issues outstanding between the Parties, including amount of interest to be paid and certain claims and counter claims (hereinafter referred to as “Outstanding Issues”)”

29. A bare perusal of the above quoted clause from the Second Supplemental SPA shows that what is quoted in the Arbitral Award, is materially different and, in fact, it is wrongly quoted. As noted above, the District Court proceeded on the basis of such wrong contents of clause 4(vi) quoted in the Arbitral Award. This Court finds that such manner of misquoting or wrong quotation of clause 4(vi) of the Arbitral Award, has led to findings rendered in the Arbitral Award that can be said to be perverse and against the terms of the Agreement executed between the parties.

30. Apart from this, the emphasis placed in the Arbitral Award on the deletion of clause 2.2 from the First Supplemental SPA and on that basis rendering findings against Appellants, is also wholly misplaced. A proper reading of the SPA along with the First Supplemental SPA and the Second Supplemental SPA, would show that although the component of additional consideration was specified in the First Supplemental SPA and the expression “*balance purchase price*” was amended to include such additional consideration, deletion of clause 2.2 of the First Supplemental SPA, did not lead to a situation where the Appellants could be deprived of claim no.1. This is because, the Arbitral Tribunal on the basis of deletion of clause 2.2 of the First Supplemental SPA, directly concluded that the expression “*balance purchase price*” as defined in the SPA stood restored, thereby meaning the amount of ₹ 42.61 Crores. It further reached a finding that the effect of the Second Supplemental SPA was that there was no question of any interest payable as long as the aforesaid balance purchase price was paid by the due date i.e. 28.09.2000.

31. The Arbitral Tribunal failed to take note of clause 2 of the Second Supplemental SPA which specifically clarified that the expression “*additional consideration*” in the First Supplemental SPA was always deemed to mean and shall mean the interest payable by the Respondent-Purchasers on the balance purchase price as defined in the SPA. Therefore, the obligation on the part of the Respondent-Purchasers to pay interest on the balance purchase price was recognised. It is also crucial that in clause 4(i) of the Second Supplemental SPA, it was recorded that the interest to be paid under the First Supplemental SPA, was still to be paid. It is in the context of this stipulation that the interest was still payable and

that the Respondent-Purchasers were required to hand over cheques aggregating to an amount of ₹1,39,45,562/- to the Escrow Agent. It is an admitted position that such cheques were indeed handed over to the Escrow Agent by the Respondent-Purchasers. This has to be appreciated in the context of clause 3(i) of the Second Supplemental SPA, whereby the Appellants handed over the promissory note given by Respondent no.1 to the Escrow Agent which, in turn, was handed over to the Respondent-Purchasers. The amount towards which the aforesaid cheques were deposited with the Escrow Agent, was less than the amount for which the promissory note was issued for the reason that the balance purchase price recorded in the SPA as ₹ 42.61 Crores was reduced to ₹ 30.61 Crores, as the Respondent-Purchasers had paid amount of ₹12 Crores to the Appellants when the SPA was executed. In this backdrop, when clause 4(vi) of the Second Supplemental SPA is appreciated, it becomes clear that there were outstanding issues between the parties, including amount of interest to be paid and certain claims and counter claims. This clearly indicates that the obligation to pay interest on the part of Respondent-Purchasers was recognised and incorporated in the Second Supplemental SPA, read with the earlier Agreements. This becomes further clear from clause 4(xiii) of the Second Supplemental SPA, which stipulated that if the outstanding dues between the parties were referred to arbitration, the said cheques would be retained by the Escrow Agent to be dealt with as per directions of the Arbitrators.

32. This Court finds that the Arbitral Tribunal misconstrued the terms of the contract/agreements between the parties, leading to perverse findings on claim no.1 raised by the Appellants. In this context, the emphasis on clause 3.1(d) of the SPA and the purported

failure of the Appellants to abide by the same for drawing adverse inference against them also indicates that the Arbitral Tribunal reached perverse findings. As noted above, the entire affairs of the Company, including its cheque books, registers and other books were handed over to the Respondent-Purchasers on the accounts date itself, indicating that they were in charge of entire affairs of the Company for steps to be taken in pursuance of clause 3.1(d) of the SPA. The Arbitral Tribunal could not have linked the aspect of clause 3.1(d) to draw adverse inference in the context of claim no.1 raised by the Appellants. When the interpretation of the aforesaid clauses of the Agreements is done in terms of the express words used, it is found that the finding rendered by the Arbitral Tribunal holding that the stipulation of interest was incorporated only for ensuring that the Respondent-Purchasers paid the balance purchase price before the due date, is wholly unsustainable and against the terms of the Agreement entered into between the parties. The Respondent-Purchasers are not justified in contending that deletion of clause 2.2 of the First Supplemental SPA completely destroyed the claim of the Appellants for payment of interest on the balance purchase price.

33. The District Court failed to appreciate these aspects of the matter pertaining to interpretation of clauses of the terms of the Agreement, primarily for the reason that the District Court proceeded on the misquoted clause 4(vi) of the Second Supplemental SPA, on the basis of which the Arbitral Tribunal had proceeded to render perverse findings against the terms of the Agreement between the parties. As a result, the District Court erroneously failed to exercise jurisdiction under Section 34 of the

Act to interfere with the Arbitral Award, insofar as claim no.1 was concerned.

34. In view of the above, it is found that the Appellants have made out a case in their favour and the three questions/points framed above, deserve to be answered in their favour and against the Respondent-Purchasers. But, as per the settled law recognised by the Supreme Court in the case of *Mc Dermott International vs. Burn Standard Co. Ltd.*(supra) and *The Project Director vs. M. Hakeem & anr.*(supra), this Court while allowing the Appeal can only grant prayer (A) for setting aside the Arbitral Award and no further relief can be granted as per the said position of law. The Arbitral Award to the extent deserving interference, can be quashed, leaving the parties to avail of remedy of beginning Arbitration afresh, if so advised.

35. Accordingly, the Appeal is partly allowed in terms of prayer clause (A). Consequently, the Arbitral Award dated 03.03.2015, rejecting claim no.1 of the Appellants is set aside, leaving the parties free to begin arbitration on claim no.1 afresh, if so advised.

36. The Appeal is disposed of. No orders as to costs. Pending applications, if any stand disposed of.

MANISH PITALE, J.