

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION**

The Hon'ble Justice Sabyasachi Bhattacharyya

**APO/98/2023
IA NO: GA/1/2023**

**PRASHANT MOHTA
Vs
MANOJ KUMAR BOTHRA AND ORS.**

For the petitioner	:	Mr. Anirban Ray, Mr. Debangshu Dinda, Adv. Mr. Snehal Kakrania, Adv. Ms. Nikita Khaitan, Adv.
For the respondents	:	Mr. Sarvapriya Mukherjee, Adv. Mr. Shoham Sanyal, Adv. Mr. Kunal Saraogi, Adv.
Hearing concluded on	:	26.06.2024
Judgment on	:	09.07.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner was one of the partners, along with the respondent nos.1 and 2, in the respondent no. 3-partnership firm, Ultra Carbon Industries, till he executed a Deed of Retirement on September 17, 2022. The firm is a registered partnership firm running a business of manufacturing carbon brushes, carbon components and silver impregnated graphite contact for railway signalling relays, etc.
2. Subsequently a dispute having arisen between the parties regarding the alleged dues of the petitioner from the partnership firm, the petitioner invoked the arbitration clause in the Retirement Deed and appointed an Arbitrator. Thereafter the petitioner filed his statement

of claim, thereby alleging manipulation of accounts by the respondents and claiming his alleged dues to the tune of Rs. 74,78,622.78 p. and his share of goodwill of the firm as on September 16, 2022, in the alternative seeking an enquiry into the accounts of the firm between April 1, 2022 and September 16, 2022 by appointment of a surveyor and/or independent auditor and also to carry out the formalities in terms of the Deed of Retirement, along with consequential reliefs.

3. The respondents filed their statement of defence with a counter claim, seeking a declaration that the stock-in-trade of the firm as on September 16, 2022 included 3,00,000 SIG semi-finished contacts and claiming sums of Rs. 12,31,553.50p as the petitioner's share in loss of the firm as well as Rs. 8,12,63,041/- as the share of the respondent nos. 1 and 2 in the goods allegedly retained by the petitioner.
4. An independent auditor was appointed by the learned Arbitrator on the prayer of the petitioner.
5. In an application filed by the respondents under Section 17 of the Arbitration and Conciliation Act, 1996, the learned Arbitrator passed an order dated May 19, 2023 directing the claimant/petitioner to sign financial statements of the partnership firm caused to be prepared by the respondents, upon the auditor recording discrepancies found by the petitioner therein in the form of notes to accounts. Challenging the said order, the petitioner has taken out the present appeal under Section 37 of the 1996 Act.

6. Learned counsel for the petitioner argues that the petitioner has challenged in his claim before the learned Arbitrator the veracity of the very books of accounts on the basis of which the financial statements, including the balance sheet and profit and loss accounts of the firm, are to be prepared. Therefore the petitioner would be compelled to sign by virtue of the impugned order statements which are inaccurate as per the petitioner.
7. It is contended that such signatures on incorrect statements would make the petitioner liable to penal action under Sections 271 and 271A of the Income Tax Act. Thus, he cannot be compelled to incriminate himself. The learned Arbitrator, despite recording the disputes raised by the petitioner against the entries in the accounts which are to be filed with the Registrar of Firms, observed that such apprehension expressed by the claimant/petitioner is not very relevant for the adjudication of the present dispute as the notes are to be inserted by the auditor explaining the objection of the claimant with regard to the disputed entries and the said document is to be signed under directions and/or orders of the arbitral tribunal; the question of the claimant being hauled up for active concealment of income under Sections 271 and 271A of the Income Tax Act, 1961 does not and cannot arise.
8. The claimant/petitioner was directed to formulate specific “matter paragraphs” which would be asked by the respondents to be incorporated by the auditors as notes in the accounts as far as possible.

9. It was also recorded in the order that the claimant should not be hauled up for any concealment of income or any other non-compliance, penalty or coercive action from any statutory authorities for signing the said balance sheet and profit and loss account under the orders of the tribunal and without prejudice to its rights and contentions, subject to the outcome of the proceedings.
10. Learned counsel for the claimant/petitioner argues that the Arbitrator does not have the jurisdiction or authority to pass binding directions on third parties/statutory authorities within the limited scope of the arbitral proceeding. As such, the petitioner, if forced to sign on the incorrect entries, even if with objection, the petitioner would be at the mercy of the Income Tax authorities and would be exposed to their perception of whether the petitioner has violated Section 271 or 271A of the Income Tax Act and would be at the risk of penal action. The Arbitrator does not have the power to force the petitioner to do so against his will.
11. Secondly, since the allegation of erroneous entries in the balance sheet is the sub-stratum of the dispute, the impugned direction to sign the same would amount to granting the main relief sought in the counter claim.
12. Thirdly, it is argued that the said direction is beyond the reliefs claimed by the parties. The respondents have not sought the relief of specific performance of Clause 6 of the Retirement Deed, which contemplates signing of the documents, in their counter claim. Interim reliefs under Section 17 of the 1996 Act can only be granted in aid of

the main reliefs. No direction regarding signing of the financial statements having been sought by either party, the impugned order is *de hors* the purview of the dispute referred to the Arbitrator.

- 13.** Learned counsel for the petitioner contends that Clause 5 of the Retirement Deed provides that the profit and loss accounts and balance sheet as on the date of retirement of the petitioner, that is till the end of business hours of September 16, 2022 are to be duly prepared and the amounts standing to the credits of the petitioner to be settled.
- 14.** Only upon such settlement of accounts does Clause 6 come into play, as per which the said financial statements are to be jointly signed by all parties “as a token of confirmation and acceptance of each of the parties”. However, the balance sheet as it stands now is not accepted but disputed by the petitioner. If he is compelled to sign the same, it would be contrary to Clause 6 and *de hors* the law.
- 15.** Learned counsel challenges the binding effect of the Accounting Standards on the basis of which the learned Arbitrator proceeded to direct introduction of “matter paragraphs”, that too, “as far as possible”.
- 16.** Learned counsel for the petitioner next submits that the partnership firm ceased to exist on the petitioner’s retirement. A newly reconstituted partnership firm has to be re-registered now. Hence, no relief can be claimed on behalf of the old firm. Insofar as the new partnership firm to be started by the respondent nos. 1 and 2 is

concerned, the same was not a party to the arbitration agreement and cannot seek relief under the reference.

- 17.** The reliefs granted under Section 17 of the 1996 Act, it is contended, are premature at this stage and could not be passed without taking evidence.
- 18.** Lastly, while dealing with the insinuation of the respondents that the petitioner has started a competing business similar to the respondent no. 3-firm and is stalling the signature so that the respondents cannot start business and/or file returns in time, learned counsel for the claimant submits that there was no anti-competition clause in the Retirement Deed. The petitioner is not carrying on any such business in any event; although other members of the petitioner's family have been operating a similar business since 2021, much before the execution of the Retirement Deed itself.
- 19.** In reply, learned counsel for the respondents places reliance on Clause 3 of the Retirement Deed, which provides that the entire business of the firm with its trade name and style, assets and liabilities etc. have been taken over and/or be deemed to have been taken over on and from September 17, 2022 by the remaining two partners, respondent nos. 1 and 2, who shall be entitled to carry on the said business in such manner as they may deem fit without any hindrance or objection from the retiring partner, that is, the petitioner.
- 20.** The said clause has not been controverted by the claimant; however, he is patently flouting the same by refusing to sign the financial statements, for which returns of the firm cannot be filed within the

statutory timeline, nor can the respondents carry on with the business of the firm. Such hindrance is being created by the petitioner with the ulterior motive of facilitating his competing business, it is alleged.

- 21.** It is contended that upon the petitioner's retirement, the partnership firm remains the same and is merely reconstituted. There is no dissolution of the firm; hence there is no new firm. To substantiate the point, learned counsel relies on Sections 39 to 44 and in particular Section 42 of the Partnership Act. Therefore, the respondents can very much maintain their counter claim and interlocutory application on behalf of the firm, which is still continuing.
- 22.** The relief of the claimant on the strength of Clause 5 of the Retirement Deed is dependent on Clause 6, which mandates the petitioner to sign the financial statements.
- 23.** Insofar as the petitioner's argument that no evidence was taken by the Arbitrator before passing the impugned order is concerned, it is contended that the claimant/petitioner himself has chosen not to adduce any evidence till date, for which the arbitral proceeding is continuing without evidence.
- 24.** Learned counsel for the respondents reiterates that due to deliberate dilatory tactics of the petitioner in not signing the documents, the respondents are suffering and the timeline for filing tax returns along with balance sheet is running out, affecting the business of the firm severely, for which the impugned direction was passed.

- 25.** Learned counsel places reliance on the Accounting Standards framed by the Institute of Chartered Accountants of India to highlight that there is ample scope of the auditor introducing “matter paragraphs” for additional communication and to highlight specific matters. In the illustrative format given in the said guidelines, uncertainty relating to a pending “exceptional litigation matter has been referred to as a circumstance where matter paragraphs can be introduced.
- 26.** In such context, learned counsel for the respondents cites *Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal and Another*, reported at (2021) 6 SCC 366, where the Supreme Court held that the auditor’s report may enter caveats with regard to acknowledgments made in the books of accounts including the balance sheet. There is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission.
- 27.** The respondents also rely on *Reliance Asset Reconstruction Company Limited vs. Hotel Poonja International Private Limited*, reported at (2021) 7 SCC 352 where it was held that balance sheet cannot be treated as an acknowledgment of liability.
- 28.** Lastly, it is contended that the view taken by the learned Arbitrator is not irrational and well within the bounds of law. The said order is justified and hence this court ought not to substitute its view for that of the Arbitrator.
- 29.** Learned counsel next argues that the scope of interference in orders passed by the arbitral tribunal is extremely limited. To elaborate the scope of such interference, learned counsel cites a coordinate Bench

judgment of this Court in *Concrete Developers LLP vs. Gaurav Churiwal and Others*, where it was observed that the 1996 Act places the arbitral tribunal and the court at par in terms of the power to pass interim measures of protection and as such, it does not envisage a party knocking at the doors of the Court at every turn of the arbitration proceeding. The test of interference would be somewhat similar to that of an intra-court appeal, where the challenge is to be tested on the plank of perversity and jurisdictional infirmity. It was held that in view of the almost limitless powers conferred on the tribunal under Section 17 of the 1996 Act, the appeal court should take a hands-off approach.

- 30.** Learned counsel next cites another coordinate Bench judgment of this Court in *GainwellCommonsales Private Limited vs. Minsol Limited*, where the limited scope of interference with orders of the tribunal under Section 37 of the Act, even if passed under Section 17, was highlighted, drawing parallels between the considerations under Section 37 (2) (b) with Section 34.
- 31.** The respondents further rely on *Max Healthcare Institute Limited vs. Touch Healthcare Private Limited and Others*, reported at 2023 SCC OnLine Bom 2715, where a learned Single Judge of the Bombay High Court held that so long as the learned Arbitrator has considered the relevant material and a plausible view has been adopted in the facts and circumstances of the case, the court would be loathe to interfere with orders under Section 17 of the 1996 Act.

- 32.** The first issue which falls for consideration before this court is, thus, the scope of interference in an appeal under Section 37 of the 1996 Act. It is well-settled, as borne out by the cited judgments, that such scope is extremely limited. It is equally settled that judicial intervention in the arbitral process is to be minimal.
- 33.** However, Section 5 of the 1996 Act provides that such judicial interference shall only be restricted to the circumstances provided in the Act itself. Even going by such standards, it is seen that Section 37, unlike Section 34, does not stipulate any parameters or yardsticks for interference. Generally speaking, whereas Section 34 provides for a challenge to the final award, rendered upon taking evidence and hearing parties conclusively, Section 37 provides for a challenge against orders of interim nature, be it by an arbitral tribunal or the court. As such, somewhat akin to the distinction between appeals against a final decree and those against interim orders as provided in the Code of Civil Procedure (although a first appeal under Section 96 of the Code is much wider than a challenge under Section 34 of the 1996 Act), the meticulous methodology and elaborate scrutiny in a final challenge need not be gone into at the interlocutory stage. The rigours of an appeal against a final order need not attend challenges against interim orders.
- 34.** Nevertheless, it is true that the court should be careful while deciding a challenge under Section 37 of the 1996 Act so as not to interfere with the arbitral process at the drop of a hat. Frequent interdiction by the court at every stage of an arbitral proceeding would defeat the very

purpose of arbitration as a mode of Alternative Dispute Resolution (ADR). Hence, the court while dealing with an appeal under Section 37 has to be cautious, not to interfere unless there is a palpable illegality, perversity, or patent jurisdictional error, apart from cases of unconscionable injustice or matters shocking to the conscience of court.

- 35.** Although the tests of Section 34, which have been enumerated in the said Section but are conspicuously absent in Section 37, need not be read into the latter Section, fact remains that the court has to be judicious in interfering only in cases where such interference is absolutely necessary to protect the interest of justice.
- 36.** Examining the matter at hand from the said focal point, we are to ascertain the validity of the impugned order.
- 37.** In order to decide the present application, the following issues are required to be decided:
 - (i) Whether the impugned order is in aid of the main relief;
 - (ii) Whether the impugned order has the effect of granting the final relief, thus rendering the arbitral proceedings infructuous;
 - (iii) How far are the Accounting Standards binding on the Income Tax Authorities;
 - (iv) Whether the order of the Arbitral Tribunal is binding on the Income Tax Authorities;
 - (v) Whether the claimant/petitioner can be compelled to sign the financial statements at this stage despite the disputes raised by him to the accounts.

Issue:**(i) Whether the impugned order is in aid of the main relief**

38. In order to decide this issue, the scope of relief sought in the arbitral proceeding is to be considered. In the statement of claim, the following reliefs have been sought—

“The claimant claims:

- a. For an Award for directing the Respondents no.1 and 2 to pay a sum of Rs. 74,78,622.78/-(Seventy Four Lakhs Seventy Eight Thousand Six Hundred and Twenty Two Rupees Only) as mentioned in the paragraphs 19 and 27 of the statement of claim and along with an interest of 18% per annum pendent lite upon the Awarded amount;*
- b. In addition thereto, the claimant claims his share of goodwill of the partnership firm as on 16th September, 2022 as shall be provided by an audit by appointment of a surveyor and/or independent auditor;*
- c. In the alternative the claimant claims an enquiry into accounts for the time period 1st April, 2022 to 16th September, 2022 by appointment of a surveyor and/or independent auditor and also to carry out the formalities as enumerated in the retirement deed as on 17th September, 2022;*
- d. Costs of arbitration;*
- e. Such further order and/or orders and/or direction and/or directions as the learned Arbitrator may deem fit and proper.”*

39. On the other hand, the counterclaim in the defence statement of the respondents seeks the following reliefs.

“The respondents claim-

- a) Declaration that the stock in trade of the respondent no.3 as of 16th September 2022 included SIG semi-finished contacts of quantity 3,00,000 and not SIG finished 3,00,000 goods;*
- b) A sum of Rs. 12,31,553.5/- as pleaded in paragraph 51 above;*

- c) An award for a sum of Rs. 8,12,63,041/- as pleaded in paragraph 37 hereinabove;*
- d) Interim interest and interest upon judgment @12% per annum;*
- e) Receiver;*
- f) Injunction;*
- g) Costs;*
- h) Such further and/or other relief of reliefs.”*

- 40.** Hence, the reliefs claimed by both parties relate to a period primarily during April 1, 2022 to September 16, 2022, immediately before the petitioner executed the Retirement Deed.
- 41.** The premise of the impugned order is that due to the petitioner refusing to sign the balance-sheet and the profit and loss account to the partnership firm, the current business of the firm is being hampered. The reconstitution of the firm cannot take effect in the absence of such signature and the partnership firm cannot file its income tax returns for the same reason. Hence, the plinth of the interim prayer made in the application under Section 17 of the 1996 Act is the loss being suffered regularly by the partnership firm currently, whereas the reliefs sought by both parties in the main arbitral proceeding primarily pertain to the period up to September 16, 2022. Hence, the relief cannot be said to be in aid of the main relief sought in the arbitral proceeding. The tests to be applied to Section 17 are somewhat akin to those applicable to interim measures passed in a civil suit under Order XXXIX of the Code of Civil Procedure. Although Section 19(1) of the 1996 Act stipulates that the provisions of the Code are not applicable to arbitral proceedings,

nevertheless, the principles thereof apply, as the nature of interim measures which can be granted under Section 17 are equivalent to that under Order XXXIX of the Code. Section 17(1)(ii) envisages interim measures of protection in respect of certain matters, including the preservation, interim custody or sale of goods which are the subject-matter of the arbitration agreement, securing the amount in dispute in the arbitration, detention, preservation or inspection of any property etc. which may be necessary or expedient for the purpose of obtaining full information or evidence, interim injunction or appointment of receiver and such other interim measures of protection as may appear to the Arbitral Tribunal to be just and convenient. A broad analogy between interim measures under Order XXXIX of the Code and Section 37 of the 1996 Act is thus inevitable.

- 42.** Thus, the nature of such an order implies that the measures to be granted are for the protection of the subject-matter of the dispute till the passing of the final award. An interim order divorced from the ultimate relief would be beyond the scope of Section 17 as such, being not in aid of preservation or protection of the property or the subject-matter of the dispute till the final disposal of the arbitral proceeding.
- 43.** The last part of Section 17(1) provides that for such purpose, the arbitral tribunal shall have the same power for making orders as the Court has for the purpose of and in relation to any proceedings before it, thereby importing the governing guidelines of similar orders passed by a Civil Court. In fact, sub-section (2) of Section 17 clearly stipulates that any order so issued under Section 17 shall be deemed to be an

order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure in the same manner as if it were an order of the Court, further strengthening the above view. Hence, the entire focus of Section 17 is to preserve the property *in statu quo* till final disposal of the arbitral proceeding.

44. Seen in such context, the direction of the learned Arbitrator in the present matter for the petitioner to sign the financial statement of the partnership firm is not directly in aid of the main relief, which relates to a period prior to September 16, 2022.
45. Hence, this issue is decided in the negative, holding that the impugned order is not in aid of the main relief.

Issue:

ii) Whether the impugned order has the effect of granting the final relief, thus rendering the arbitral proceedings infructuous.

46. The petitioner has sought to make out a point that the relief granted by the Learned Arbitrator tantamounts to grant of the final relief, since it is the veracity of the financial statement of the firm which is in dispute before the Arbitrator. The relief sought by the claimant/petitioner in the arbitral proceeding is encapsulated in paragraph nos. 19 and 27 of the Statement of Claim. In paragraph no. 19 of the Statement of Claim, the claimant alleges that there are glaring flaws in the books of accounts and the accountants of the firm, under the aegis of the respondents, have manipulated the numbers and figures in a way so as to ensure that the books of accounts reflect

an alleged loss of the business of the partnership firm. The details of such alleged irregularities have also been set out in the sub-clauses of paragraph 19. For example, although the respondent no.1 claims that there has been no production on and from March 31, 2022, the book value of the stock-in-trade was close to Rs.3,00,00,000/- and market value close to Rs. 4,00,00,000/- and above, which has not been accounted for in the closing stock as on September 16, 2022.

- 47.** It has been alleged further that the respondents have deliberately added up gratuity benefits for employees who have not yet completed the statutory period of employment for availing gratuity benefits in the firm, thus showing expenses and payments whereas there were no documents to support the same. Hence, the very premise of the claim is alleged manipulation of the financial accounts of the firm by the respondent nos.1 and 2.
- 48.** Again, the respondents, in their counterclaim, seek a declaration that the stock-in-trade of the partnership firm included SIG semi-finished contacts of quantity 3,00,000 and not SIG finished 3,00,000 goods.
- 49.** Thus, the core of the dispute is the veracity of the very accounts which have been directed to be signed by the claimant/petitioner as per the impugned order.
- 50.** In the impugned order, the learned Arbitrator has opined that the auditors of the firm shall freshly draw up the balance-sheet, reflecting in the “matter paragraphs” the objections cited by the claimant, upon which the respondents are to forward a final copy of the accounts containing the profit and loss account and balance-sheet of the firm

with the notes by its auditors in respect of the three entries where the claimant has raised objection, which will be perused by the claimant in its draft form.

- 51.** Crucially, thereafter the claimant has been directed to sign the same and return it to the respondents. Hence, the respondent is put in such a situation that he will be signing the very accounts, the veracity of which he has challenged in the arbitral proceeding, although with a rider by the auditors as to the nature of objections raised, which will then be filed by the partnership firm with the income tax returns.
- 52.** Hence, although the impugned order is not in aid of the main relief, if it is implemented, the effect will be that the very plinth of the claimant's challenge might be rendered infructuous. In the event the claimant succeeds, the financial accounts of the firm will already be a part of the income tax returns filed by the firm, containing the claimant's signature as well. The learned Arbitrator would not have the jurisdiction to reverse such filing even if the claimant ultimately succeeds in his challenge, since the same is not only beyond the scope of the dispute before the Arbitrator but the Income Tax Authorities are not parties to the arbitration agreement. Hence, in a sense, the impugned order has the effect of rendering the arbitral proceedings infructuous. Thus, this issue is held in the positive.

Issue:**iii) How far are the Accounting Standards binding on the****Income Tax Authorities;**

- 53.** Coming to the question of accounting standards, the documents in support of the arguments of the respondents are to be looked into. The very first clause of the Guidelines issued by the Institute of Chartered Accountants and its sub-clauses clearly state that the Standards on Auditing deals with additional communication in the Auditor's report when the auditor considers it necessary to draw the users' attention to certain matters which are relevant to the users' understanding of the audit. All through the relevant provisions of the Accounting Standards (SA 706) in respect of emphasis on "matter paragraphs", which are relied on by the respondents, the common refrain is that the emphasis on matter paragraphs in the auditor's report is basically explanatory material, primarily relevant to the users' understating of the audit and also intended to explain why it is not possible for the auditor to resign from the engagement and/or otherwise.
- 54.** Clause A10 of the said document provides that the content of Other Matter Paragraphs should reflect clearly that such other matter is not required to be presented and disclosed in the financial statements. An Other Matter Paragraph does not include information that the auditor is prohibited from providing by law. More importantly, an Other Matter Paragraph also does not include information that is required to be provided by the management.

- 55.** Hence, such provisions clearly divorce the Other Matter Paragraphs from information required to be provided by the management. As such, over-reliance on such Other Matter Paragraphs in the context of the dispute between the present parties would be extremely risky and fraught with the possibility of the Income Tax Authorities ultimately choosing not to connect the same with the information provided by the management. The Other Matter Paragraph falls within the exclusive domain of the auditor seeking to elaborate the understanding of the users but is not relatable to information required to be provided by the management. Hence, irrespective of the auditor putting in such Other Matter Paragraphs indicating the objections of the petitioner, the liability of the petitioner, as a part of the management (erstwhile partner of the firm) regarding the information provided in the financial statement cannot be avoided.
- 56.** Again Clause A11 of the document stipulates that when an Other Matter Paragraph is included to draw users' attention to a matter relevant to their understanding of the audit of the financial statements, the same is included immediately after the Opinion Paragraph and any emphasis on Matter Paragraph.
- 57.** Thus, the entire emphasis of other paragraphs or matter paragraphs is on giving hints to the users of the audit report as to different aspects of the financial statement.
- 58.** A telltale sign of the Other Matter Paragraph not excluding the liability of the management for the information provided is found in Page I.539 of the Guidelines for auditors. In the second paragraph thereof, it is

categorically stated that the management is responsible for the preparation of the financial statements that give a true and fair view of the financial position, financial performance and cash flows of the company in accordance with the accounting standards. This responsibility includes the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error. The auditors' responsibility, on the other hand, is restricted to express an opinion on such financial statements furnished by the management, based on their audit.

- 59.** Hence, a comprehensive assessment of the document relating to accounting standards issued by the Institute of Chartered Accountants of India, on which the respondents rely to support the impugned order, itself clearly enumerates that the auditors are entitled to disown their liability for the statements made therein. It is entirely the responsibility of the management for the preparation of the financial statements giving a true and fair view of the financial position and it is the management which gets the flak for inaccuracy or suppression in the same.
- 60.** Moreover, the accounting standards are merely guidelines for the auditors to prepare the reports in a certain way and have no manner of applicability to the conduct of the management. It is entirely the responsibility of the management to give a true and fair picture of the financial status by the company/firm and the management is not

absolved at all from such liability by whatever Matter Paragraph is introduced by the auditor in his/her report.

- 61.** In fact, SA 706, the Auditing Guideline, is issued by the Institute of Chartered Accountants of India and comprise of mere guidelines to its own members. Hence, those can at best guide the auditors in their functioning. In fact, there is some doubt as to how far they are binding on the auditors themselves as well. The said accounting standards cannot be stretched so far has to be binding on any third party apart from the institute and its members. Those are not even binding on the clients of the auditors, let alone the Income Tax Authorities. Hence, there is nothing in any law produced before this Court or the accounting standards themselves to indicate that they are binding in any manner on the Income Tax Authorities. Thus, Issue: iii) is decided in the negative, observing that the accounting standards are not binding on the Income Tax Authorities at all.

Issue:

(iv) Whether the order of the Arbitral Tribunal is binding on the Income Tax Authorities

- 62.** The question arises whether the order of the Arbitral Tribunal is binding on the Income Tax Authorities. The Income Tax Authorities are a creature of statute, being the Income Tax Act, 1961 (in short, “the 1961 Act”). They are not governed at all by any observation or rider by any court, unless the lis pending before the court directly concerns the actions of the Income Tax Authorities. Even in a civil

suit, if the Income Tax Authorities are not parties, a decree passed *inter se* parties cannot be binding on the Income Tax Authorities in any manner whatsoever. Unless the matter is in the nature of a judgment *in rem*, there is no binding effect on the Income Tax Authorities at all.

- 63.** It is well-settled that legal causes in the nature of matters *in rem* are not inherently arbitrable and fall beyond the pale of the Arbitration and Conciliation Act, 1996, being under normal circumstances non-arbitrable. Hence, from the perspective of the Income Tax Authorities, no order of the arbitral tribunal, which is an adjudicatory Authority of issues confined to the signatories to the arbitration agreement, can bind the said authority in any manner. The Income Tax Authorities are bound by the provisions of the statute which creates them that is the Income Tax Act, 1961 and function within the confines of the said statute. The observation of an Arbitrator, that too in an interlocutory matter in a dispute restricted to private parties who were signatories to the arbitration agreement, cannot even concern the Income Tax Authorities, let alone to be binding on them. Hence, the present issue is decided in the negative, holding that the order of the arbitral tribunal is not binding on the Income Tax Authorities at all.

Issue:

(v) Whether the claimant/petitioner can be compelled to sign the financial statements at this stage, despite the disputes raised by him to the accounts.

- 64.** In a sense, this issue is the central point of adjudication in the present matter. The claimant has objected to being compelled to sign the financial statement in the teeth of his objection to the same. To properly appreciate the merits of such objection, we are required to look into the provisions of Sections 271 and 271A of the 1961 Act. Section 271 provides the consequences of failure to furnish returns, comply with notices, concealment of income, etc. Sub-section (1)(c) confers power on the Assessing Officer or Commissioner (Appeals) or the Principal Commissioner or Commissioner to penalise any person who has concealed the particulars of his income or furnished inaccurate particulars of such income.
- 65.** Thus, there are two components of such violation - deliberate concealment of such particulars of income and furnishing inaccurate particulars. In case of concealment of particulars, there may be an element of *mens rea* in deliberately doing so by a positive act of concealment. However, even such proposition is arguable, since the word “deliberately” is absent in Section 271(1)(c). Any concealment of particulars of income could invite the wrath of the Authorities under the said provision.

- 66.** The next limb of the Clause is far more dangerous, having serious implications. Even furnishing inaccurate particulars, which may not amount to outright concealment, may attract penalty under the said provision.
- 67.** In the present case, the claimant/petitioner is, in no uncertain terms, claiming that the particulars of the financial statement prepared at the behest of the respondent nos. 1 and 2 are inaccurate and conceal the actual income and expenditure of the firm. In such scenario, any possible defence of the petitioner before the Income Tax Authorities, if proceedings are initiated under Section 271, is a non-starter, since it is the declared stand of the claimant/petitioner that the financial statements are inaccurate and conceal the real income of the firm.
- 68.** Section 271A speaks about failure to keep, maintain or retain books of accounts, documents, etc. For such violation, a person who is a part of the management (which includes, by necessary implication, a partner of a firm) may be imposed with penalty up to a sum of Rs. 25,000/-. In the present case, if the financial statements, which are faulty as per the allegation of the claimant, are filed with the income tax returns, the failure itself to keep proper books of account and documents may invite penalty on the partnership firm and, for the relevant period till September 16, 2022, on the petitioner as well.
- 69.** Hence, it is clear that irrespective of whatever comment is made as per accounting standards by the auditor, fact remains that the financial statements prepared would be as per the information supplied by the respondent nos. 1 and 2 over which the petitioner would not have any

control whatsoever apart from going through the same and recording his objections. There is no provision for recording of objections in Sections 271 and 271A of the 1961 Act or any exemption on such count. The “matter paragraphs” referred to by the learned Arbitrator are authored by the auditor, as per whose own accounting standards, the management is responsible for a fair and true picture being given in respect of the financial accounts which are depicted in the auditor’s report. Hence, there is no nexus whatsoever between any recording of objection or other Matter Paragraphs used by the auditor with the liability of the petitioner, as a partner of the firm at the relevant point of time, in respect of the concealment of particulars, if any, and/or furnishing inaccurate particulars and/or improper keeping of the books of account. The matter paragraphs, thus, would do scant little or nothing at all to mitigate the criminal liabilities of the petitioner under Section 271 and 271A of the Income Tax Act.

- 70.** The spirit enshrined in Article 20(3) of the Constitution of India, which prevents any person from being compelled to incriminate himself, is thoroughly violated by the impugned order inasmuch as it compels the petitioner, knowingly, to incriminate himself by signing on financial statements which contain accounts and entries which are, in his own opinion, not only inaccurate but fraudulent, having been based on manipulated books of accounts. Hence, such component of the impugned order is against the fundamental principles of law in India and militates against notions morality and justice on which, even a final arbitral award could be set aside.

- 71.** Passing such direction at the interim stage would be all the more *de hors* the jurisdiction of the Tribunal.
- 72.** The respondents have cited *Asset Reconstruction Company (India) Limited (supra)* in which the Supreme Court, while considering certain provisions of the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016, observed that a perusal of the said Sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory and any transgression of the same is punishable by law. It was observed, *inter alia*, that the notes that are annexed or forming part of such financial statements are expressly recognized by Section 134(7). It was further observed that equally, the auditor's report may also enter caveats with regard to acknowledgements made in the books of accounts including the balance sheet. The Supreme Court observed further that the perusal of the aforesaid would show that the statement of law contained in *Bengal Silk Mill's* case, that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgment of liability has been made, thereby extending limitation under Section 18 of the Limitation Act.

- 73.** The context of the said case was completely different than the present *lis*. The Supreme Court was considering as to how far the filing of a balance sheet under compulsion of law amounts to acknowledgement of a debt.
- 74.** In the present case, however, we are not concerned with the acknowledgement of any debt otherwise within the contemplation of the Bankruptcy Law by virtue of filing of balance sheet, which consequences are civil in nature, but with illegalities committed by the very act of entering inaccurate statements deliberately in the balance sheet itself. The 1961 Act operates in a completely different footing, at least insofar as Sections 271 and 271A are concerned. The said provisions stipulate penalties for deliberate suppression or concealment of the real state of affairs in financial statements and in documents as well as returns and also penalize inaccurate recordings in the financial statements of a firm. Such consequences are direct and criminal in nature, whereas the evidentiary value of recordings in a balance sheet as admission, which was being considered in *Asset Reconstruction Company (India) Limited (supra)* was merely in respect of a rule of evidence.
- 75.** Hence, no parity can be drawn between the ratio of the said cited judgments and a violation of Section 271/ 271A. A non-admission of a civil debt by filing of balance sheets is entirely different from penalties imposed for deliberately filing inaccurate balance sheets or concealment of the actual state of affairs in financial statements, which operate in entirely different fields.

- 76.** Similar view was expressed in *Reliance Asset Reconstruction Company (supra)* where the Supreme Court went on to observe that the balance sheet cannot be treated as an acknowledgement of liability. The context of the same was also the interplay between Section 18 of the Limitation Act and Section 7 of the Insolvency and Bankruptcy Code, where it was held that the balance sheet of the corporate debtor does not constitute any acknowledgement of liability. The same logic as above applies, since the acknowledgement of a civil liability by way of filing of a balance sheet was held by the Supreme Court in both the cases not to occur. That does not necessarily mean that repercussions of a penal nature cannot visit the person filing the balance sheet for violation of the specific provisions which govern such filing. A parity cannot be drawn between the two concepts.
- 77.** Hence, in the event the petitioner is compelled to sign the financial statement which according to him is incorrect and a product of manipulation, nothing in the order of the Arbitrator can protect him from the penal consequences of such misstatement and concealment as well as inaccurate depiction of the accounts, if penal action is taken by the Income Tax Authorities. The so-called 'matter paragraphs' introduced by the auditor in its report, as discussed above, is of utter irrelevance in such context and cannot furnish a valid defence to the claimant/petitioner in case any penal action is taken by the Income Tax Authorities for such misstatement.
- 78.** Hence, the claimant/petitioner cannot be compelled, at least at this stage, before deciding the veracity of the accounts which is the

premise of challenge before the Arbitrator and before passing the final award upon assessment of evidence and hearing the parties, to sign the very financial statements which he challenges and which would incriminate him in to his own perception.

- 79.** As such, this issue is answered in favour of the claimant/petitioner and against the respondents inasmuch as the claimant/petitioner cannot be compelled to sign the financial statements at this stage, in the teeth of the disputes raised by him regarding the accounts, before adjudication of the cardinal issue of veracity of the accounts, which is the subject-matter of dispute in the main arbitral proceeding.
- 80.** In view of the above discussions, the impugned order suffers from utter lack of jurisdiction and authority and is vitiated by a patent misreading of the provision of Section 271 and 271A of the Income Tax Act, 1961. The order is also passed beyond the authority and jurisdiction of the arbitral tribunal as well as violative of the principle embodied in Article 20 (3) of the Constitution of India and thus cannot survive judicial scrutiny.
- 81.** A word of caution may be added here. This Court is fully aware of its limitation in upsetting the order of an arbitral tribunal at the interlocutory stage. Frequent interference by courts has been deprecated and a non-interventionist approach is undoubtedly the norm in arbitral proceedings. However, Section 5 of the 1996 Act merely provides that judicial authorities shall not intervene except where so provided in this part. The functioning of a court under Section 37 falls in the penumbra region of the statute, the modality

and the parameters of exercise of such jurisdiction having not been provided specifically.

- 82.** Even going by the standard of strict and restrictive interference, the tests of intervention are amply made out in the present case in view of the palpable illegality and exercise beyond its authority by the arbitral tribunal. Thus, this is a fit case where such interference is justified. Section 5 cannot be interpreted in such an absurd manner that the same prevents interference under any circumstance, meaning thereby that the court would shut its eyes even to gross jurisdictional errors or legal violations which are contrary to the fundamental principles of justice and Constitutional morality.
- 83.** In such view of the matter, A.P.O. No. 98 of 2023 allowed on contest, thereby setting aside the impugned order dated May 19, 2023 passed under Section 17 of the Arbitration and Conciliation Act, 1996 by the learned Arbitrator in the dispute pending before the said Arbitrator between the parties. Consequently, GA 1 of 2023 also stands disposed of.
- 84.** There will be no order as to costs.
- 85.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)