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

% ***Reserved on: 4th January, 2024***
Pronounced on: 31st May, 2024

\+ **O.M.P. 1/2023, I.A. 22290/2023 (stay)**

SHUTHAM ELECTRIC LTD.
S. No. 283, Chakan Road
Hanumanwadi Karwa Samor, Kelgaon
Taluk: Khed, Pune 412105

....Petitioner

Through: Mr. Ashutosh Kumar, Mr. Aruna Mukherjee, Mr. Nisarg P. Khatrai and Ms. Pranaya Sahay, Advocates.

versus

1. **VAIBHAV RAHEJA**
C-5/6, Vasant Vihar
Delhi 110057.

2. **RAMCHANDANI LACHMANDAS**
Bali Bhavan, Plot No. 7, Road No. 4,
Kalyani Nagar, Pune 411006

Also at:
Office No. 9 & Office Nos. 1 to 8,
Siddhi Complex, Plot No. 84, Gat No. 1361,
Hissa No. B/2/2 (Old S. No. 2347 Hissa No. B/2),
Village Wagholi, Taluka Haveli, Distt. Pune 412207

....Respondents

Through: Mr. H.L. Tiku, Senior Advocate along with Mr. Rahul Regmi, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A. 22291/2023 (Exemption)

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

I.A.22292/2023 (Condonation of delay)

3. The application has been filed on behalf of the petitioner seeking condonation of delay of 37 days in refiling the accompanying Petition.

4. For the reasons stated and in the interest of justice, the delay of 37 days' in re-filing the accompanying Petition is condoned. The application is accordingly allowed.

O.M.P. 1/2023

5. The Petition under Section 34 of the Arbitration and Conciliation Act, 1996 *(hereinafter referred to as 'the Act')*, has been filed by the petitioner, *(who was the respondent No.1 in the Arbitral proceedings, hereinafter referred to as the 'petitioner')* to set-aside the Award dated 02.05.2023, passed by the learned Sole Arbitrator.

6. Briefly stated, the petitioner/Shutham Electric Ltd., and its sister concerns had secured advances/loans from the Greater Bombay Co-operative Bank Ltd. ("GBCB") against the mortgage of two properties. One of the properties was a residential bungalow with a garage situated at Sub Plot No. 6, Galaxy Co-operative Housing Society Limited, Pune, which was owned by Gouri Samarendra Bose, mother of the Managing Director of Shutham Enterprises/petitioner.

7. The respondent No. 1/Vaibhav Raheja *(who was the claimant before the learned Arbitrator, hereinafter referred to as 'respondent No.1')* agreed to purchase this residential property from Gouri Samarendra Bose, for a consideration of Rs.6.5 Crores. There was an outstanding loan amount of

Rs.8,93,50,000/- payable by the petitioner to GBCB and the property in question was under mortgage with the Bank. The respondent No.1 deposited Rs.6,43,50,000/- (after deducting TDS amounting to Rs.6,50,000/-) with GBCB as the Sale consideration. As there was a balance amount of approximately Rs. 2,380,000/- that till remained outstanding, the Petitioner and respondent no.1 claimant entered into the Loan Agreement dated 14.06.2013 whereby the Claimant agreed to give a loan of Rs.2.5 crores.

8. As per the terms of the Loan Agreement, it was agreed that a further sum of Rs.2.5 Crore shall be paid directly to GBCB for off-setting the loan of the petitioner. Consequently, the total amount of Rs.8.9 Crore was paid to GBCB in discharge of its loan liabilities of the petitioner,.

9. In the Loan Agreement, it was also agreed that the loan amount shall be secured by first and exclusive charge created over the Commercial Property, in accordance with the Deed of Mortgage. Consequently, the Deed of Mortgage was executed between respondent No.1, Mr. Vaibhav Raheja and respondent No. 2, Mr. Ramchandani Lachmandas.

10. Since the petitioner did not repay the loan amount, the respondent No. 1 gave Notice of invocation of Arbitration dated 18.11.2019 consequent to which, the learned Arbitrator was appointed. The respondent No. 1 filed its claim against the petitioner and also the respondent No. 2, (with whom the claimant had entered into the Mortgage Agreement) and sought Recovery of Rs.2.5 Crores along with interest @5% p.a. and the costs.

11. **The petitioner *herein* contested the claim of the respondent No.1** by alleging that it was a *time barred claim* as the loan allegedly had been taken *vide* Loan Agreement dated 14.06.2013 while the Notice of invocation was given on 18.11.2019, which is way beyond the period of limitation.

12. It was also claimed that there was no Arbitration Clause in the Mortgage Agreement between the claimant and the respondent No. 2 and the alleged claim against the respondent No. 2 before the learned Arbitrator, was not maintainable.

13. Essentially, the plea that was taken by the petitioner was that no loan amount was disbursed to petitioner and respondent No. 1 had failed to show the disbursal of the amount of Rs.2.5 Crores in the bank account was on behalf of the petitioner.

14. Based on the Reply of the petitioner, respondent No.1 ***filed an application under Order 12 Rule 6, CPC,*** seeking a judgment on admissions, which was contested by the petitioner who filed his detailed **Reply.**

15. The ld. Sole Arbitrator allowed the application by holding that there were admissions made by the petitioner about its existing liability. The claim of the respondent No. 1 was thus, allowed and vide Award dated 02.05.2023, the petitioner was directed to pay Rs.2.5 Crores along with interest @5% p.a. with monthly rests.

16. ***Aggrieved by the said Award, the present Petition under Section 34 of the Act, has been filed***.

17. The petitioner in the present petition, has taken the objections that the respondent No. 2, Mr. Ramchandani Lachmandas with whom respondent No. 1 had allegedly entered into a Deed of Mortgage, did not contain any Arbitration Agreement and thus, the respondent No. 2 could not have been pleaded as a party in the Claim before the learned Arbitrator.

18. It was further asserted that immediately after filing of the Reply to the Claim of the respondent No. 1, the learned Sole Arbitrator instead of

considering the application of the petitioner under Order 7 Rule 11 read with Section 151 CPC or waiting for the admission/denial of the documents, erroneously passed the Award by observing that there were admissions. However, it is asserted that there were in fact, no such admissions that had been made by the petitioner. The impugned Award has, therefore, been made even before the pleadings could be completed and without applying the stringent legal provisions applicable to decision on admissions.

19. The petitioner has further asserted that the learned Sole Arbitrator has relied upon certain e-mails and documents, produced by the respondent No. 1/Claimant to read them as admissions of the petitioner, without these documents either being admitted by the petitioner or without they being proved in evidence. No opportunity has been granted to the petitioner to cross-examine respondent No. 1 or to produce its own witnesses, to prove that there was no such admitted liability.

20. An objection has also been taken that the Claim of the respondent No. 1, was *barred by limitation*. Also, as per the Arbitration Clause, the matter was to be adjudicated by a Tribunal of three Arbitrators while under Section 11 of the Act, 1996, the learned Sole Arbitrator got appointed who delivered the impugned Award, which was against the express Clause of Arbitration, agreed between the parties. It is, therefore, submitted that the impugned Award is suffering from patent illegality and is liable to be set-aside.

21. **Submissions heard and record perused.**

The Constitution of the Arbitral Tribunal*:*

22. A technical/ preliminary objection has been taken by the petitioner about *the Constitution of the Arbitral Tribunal*. It is argued on behalf of the petitioner that as per the Arbitration Clause No. 13 of the Loan Agreement,

the parties had agreed for resolution of their disputes by constitution of an Arbitral Tribunal comprising of three Arbitrators; however, the present proceedings have been conducted before a Single Arbitrator, which is against the express procedure agreed between the parties.

23. Pertinently, the Notice of invocation of Arbitration dated 18.11.2019, was issued by respondent No.1, to agitate its Claims and since the petitioner was not forthcoming for the appointment of the Arbitrator, an application under Section 11 of the Act, 1996, got filed.

24. In the case of *Union of India (UOI) vs. Singh Builders Syndicate* (2009) 4 SCC 523, the High Court rejected the contention on behalf of the Government that the Court was not vested with any powers to appoint a Sole Arbitrator in distinction to the Arbitration Agreement which provided for the Tribunal of three members. The Order of this Court appointing a Sole Arbitrator, was upheld by the Apex Court observing that the objective of alternative dispute resolution process of arbitration is to have expeditious and effective disposal of the disputes through a private forum of parties choice. There can be no hard and fast rule, but there should be a conscious effort to ensure that Arbitral Tribunal is constituted promptly and arbitration does not drag on for years and decades.

25. In the case of *Northern Railway Administration, Ministry of Railway, New Delhi vs. Patel Engineering Company Limited*, (2008) 10 SCC 240, the Supreme Court has again reaffirmed that the bare reading of the scheme of Section 11 of the Act shows that the emphasis is on the terms of the Agreement being adhered to and/or given effect as closely as possible. In other words, the Court may ask to do what has not been done. The Court must first ensure that the remedies provided for are exhausted. While it is

not mandatory to appoint the designated person as an Arbitrator, but due regard must be given to the qualifications required by the Agreement and other considerations. The expression 'due regard' means that proper attention to several circumstances have been focussed. The expression 'necessary' as a general rule, can be broadly stated to be those things which are reasonably required to be done or legally ancillary to the accomplishment of the intended act. Necessary measures can be stated to be the reasonable steps required to be taken. It was reiterated that the appointment of the Arbitrators named in the Arbitration Agreement is not a must, but while making the appointment, the twin requirements of Section 11 (8) of the Act, must be taken into consideration.

26. Once the petitioner itself failed to abide by the agreed procedure and the respondent No. 1 had to resort to the Court under Section 11 of the Act, it is the discretion of the Court to appoint the Arbitrator and it is not bound by the Agreement between the parties of appointing a Tribunal of three Arbitrators.

27. As in the present case, the Arbitration Clause contemplated that a Tribunal of three Judges may be appointed but it is quite evident that the parties could not arrive at a settlement to finalise the names of the panel of Arbitrators which had led to the filing of the Petition under Section 11(6) of the Act, 1996. While the Court appointed the sole Arbitrator, no objection of any kind was taken by either party to the appointment of the Sole Arbitrator. The Court, after due consideration of the submissions, has appointed as a sole Arbitrator which cannot be said to be beyond the jurisdiction of the Court under Section 11 of the Act, 1996. The only requirement under Section 11(8) of the Act which must be satisfied is that

the Court should have regard to any qualifications required by the Agreement of the parties and other considerations as are likely to secure appointment of an independent and impartial Arbitrator. Both these conditions have been satisfied when the sole Arbitrator was appointed under Section 11 of the Act, 1996. There is no denial or challenge that the sole Arbitrator does not possess the requisite qualifications or that he is not an independent and impartial Arbitrator.

28. It is also pertinent to note that this apparent ground which borders to the questioning of the jurisdictional challenge to the appointment of the Arbitrator, was never questioned by the petitioner during the arbitral proceedings. No Petition under Section 16 of the Act, 1996 was filed to assert that the Arbitrator had been appointed against the agreed procedure or that he did not possess the requisite qualifications. Clearly, this objection is an aftermath made without any basis and is not tenable.

29. The first objection taken on behalf of the petitioner, is therefore, held to be not tenable.

Claim barred by Limitation:

30. **The second objection** taken on behalf of the petitioner, is that the Claim of the respondent No. 1, was barred by limitation. Admittedly, the parties entered into a Loan Agreement dated 14.06.2013, whereby the petitioner was given the loan of Rs.2.5 Crores to be re-paid by 31.03.2016.

31. The respondent No. 1 asserted that because the petitioner failed to discharge its liability of repaying the loan, several Letters and e-mails since 08.05.2014 were exchanged between the parties. Some mails were written by the petitioner acknowledging and admitting its liability of repaying of loan. The Letter dated 02.02.2017 had also been written, which has not been

categorically denied by the petitioner. It was vaguely stated by the petitioner that even if it is accepted that this Letter was written by the petitioner, then too, the Claim before the learned Arbitrator, has been filed on 14.10.2020. The Notice of invocation is dated 18.11.2019, which is beyond the period of three years, from the date of cause of action and therefore, the claim of the respondent No. 1, was barred by limitation.

32. It is further asserted that the Notice of Invocation dated 18.11.2019 had been sent at the wrong address and was never received by the petitioner. The date of invocation of Arbitration, therefore, has to be deemed to be the date of filing of the Petition under Section 11of the Act, which is 14.10.2020. The Claim Petition was, therefore, patently barred by limitation from the averments made by the petitioner.

33. Though this argument may seem to have some merit in the first instance, but it is significant to observe that the Letter dated 02.02.2017 has not been denied by the petitioner and the Notice of invocation is dated 18.11.2019. When the limitation is calculated from February 2017 till November, 2019, it is well within a period of three years from the date of acknowledgement of the outstanding liability.

34. The objection taken in regard to the service of Notice of Invocation is that it was sent at incorrect address. The record shows that the Notice was sent at S. No.28, Chakan Road which was the Registered Office of the petitioner. The correct address however is, *S. No. 283, Chakan Road.* It is quite apparent that there is an arithmetical error in mentioning the House Number as 283 but got mentioned as 28. The bare perusal of Notice of Invocation dated 18.11.2019 shows that it had been addressed to the Counsel with a copy to the petitioner. There is no averment that the Notice was not

served or received by learned counsel on behalf of the petitioner. It is apparent that this objection has no feet to stand as the Notice had been duly received for and on behalf of the petitioner by its Counsel which is the proper Service of Notice of Invocation dated 18.11.2019.

35. Section 21 of the Act, itself provide that the date on which the request for referring the dispute to Arbitration, is received by the respondent, shall be the date of commencement of Arbitral proceedings. Therefore, even if all the e-mails to which the respondent No. 1 had made a reference overlooked and ignored then too the Claim of the respondent No. 1, was well within the period of limitation.

36. It is pertinent also to observe that there were various amounts admittedly credited by the petitioner to the account of the respondent No. 1, from time to time, details of which were given in Paragraph Nos. 6 to 10 of the Claim Petition. According to this, the last payment was made by the Petitioner on 18th October 2016. The claimant had asserted that these random payments received from the petitioner, had been appropriated towards the interest payable on the loan amount.

37. Significantly, the petitioner in its Reply to the corresponding paragraphs giving the details of payments received from the petitioner, has simply denied the e-mails and correspondence, exchanges but has maintained stoic silence about the payments, which have been made by it from time to time to the petitioner. This absolute silence of the petitioner in its Reply tantamount to admission by omission.

38. The issue regarding specific admission and denial of the pleadings was considered by this Court in *Badat & Co. v. East India Trading Co* AIR 1964 SC 538, wherein it was observed that '*Order 7 of the Code of Civil*

Procedure prescribes, among others, that the plaintiff shall give in the plaint the facts constituting the cause of action and when it arose, and the facts showing that the court has jurisdiction. The object is to enable the defendant to ascertain from the plaint the necessary facts so that he may admit or deny them. Order 8 provides for the filing of a written statement, the particulars to be contained therein and the manner of doing so'.

39. It was further observed that '*The written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary.*'

40. It is a fundamental Rule of pleadings that each averment in the plaint must be denied specifically as has also been held in the case of *Thangam and Another vs. Navamani Ammal* (2024) 4 SCC 247. The Apex Court referred to the case of *Badat & Co.* (Supra) and observed that Order 8 Rules 3 and 5CPC clearly provides for specific admission or denial of the pleadings in the plaint. The same would necessarily mean dealing with the allegations in the plaint para-wise; a general or evasive denial is not treated as sufficient.

41. Thus, each averment made in the Plaint, has to be categorically denied and explained in the Written Statement. Mere simplicitor denial without any further explanation, is in fact no denial and tantamounts to admission under law.

42. There is a clear admission by omission on behalf of the petitioner, in regard to the various payments made till October, 2016. These payments till

October, 2016, also is an admission of the outstanding liability and thus, it cannot be said that the Claim of the petitioner is barred by limitation.

43. It is also pertinent to note that in Paragraph No. 11 of the Claim Petition, the respondent No. 1 had specifically referred to *legal lawyers Notice dated 05.07.2019, followed by Letter dated 08.08.2019, written by the petitioner to the respondent No. 1's lawyer alleging that claimant was a Money Lender within the meaning of Maharashtra Money Lending Act, 1946 and sought a copy of the license thereunder*. Pertinently, in response to Paragraph No. 11 of the Claim in the corresponding paragraphs of Reply, the petitioner has stated that it maintains and believes that the claimant is in the business of money lending without a license. Again, it is absolutely silent about the Notices sent for and on behalf of the petitioner. *Pertinently, these Notices also contain a categorical admission of having taken a loan of Rs.2.5 Crores.* Aside from all these Letters and the admissions by the petitioner by omission in his Reply, the respondent has admitted even its Reply to the Claim that the loan of Rs.2.5 Crores had been taken *vide* Loan Agreement dated 14.06.2013.

44. It is significant to observe that even if the Ledger accounts and other documents relied by the respondent No. 1, are overlooked, there is no denial by the petitioner that there is an outstanding loan amount due to the respondent No. 1, which is reflected in its Balance Sheets from 2014 to 2019 The only explanation sought to be given on behalf of the petitioner, is that there is an error in the Balance Sheet, which is nothing but an excuse and an attempt to wriggle out of its own documents which contain a clear admission of the outstanding loan liability.

45. The admissions of the outstanding liability have been made in February, 2017 and again in the Letters written by the respondent in 2019, whereby extending the period of limitation under Section 18 of the Limitation Act. Therefore, the Claim of the respondent No. 1 is well within the limitation. This argument taken on behalf of the respondent, has no merit and the claim had been filed by the respondent No.1, is well within the limitation.

Non-disbursal of Loan*:*

46. The respondent No. 1 has then taken an objection that there is no proof of disbursement of Rs.2.5 Crores to the account of the respondent. This again is a frivolous claim made by the respondent as in the Loan Agreement dated 2013, it had been specifically stated that the loan amount of Rs.2.5 Crores shall be paid in the account of GBCB for and on behalf of the petitioner to satisfy its outstanding liability with the bank, which in fact had been done.

47. That the loan had been disbursed is also evident from various correspondences and admissions, as referred to above. Moreover, in the Reply as well, there is no denial of the loan amount being paid by the Claimant to GBCB, in discharge of the outstanding liability of the petitioner.

48. The petitioner has asserted that the respondent No. 1 is required to prove how and in what manner this amount of Rs.2.5 Crores had been disbursed for and on behalf of the petitioner. A lumpsum amount of Rs.8.9 Crores had been given and there is nothing to show that this amount included the loan of Rs.2.5 Crores in respect of which the Loan Agreement was executed between the parties.

49. There cannot be a more specious ground taken by the petitioner for the simple reason that not only was there an express Agreement between the parties of disbursal of this loan amount to GBCB, on account of the petitioner but this outstanding liability has not been denied either in the Reply or in various correspondences admittedly made by the petitioner, to the respondent. The claim of the petitioner is that the *Certificate of Payment from the Bank*, had been undertaken to be placed on record, but never got filed. Again, the Certificate of Payment would have been required to be produced by the respondent No. 1 only if there was a dispute in regard to the disbursal of loan and admitted fact need not be further corroborated by additional documents.

50. There is a clear admission about the loan of Rs.2.5 Crores along with interest @ 5% p.a not being re-paid by the petitioner. Much has been contended by the petitioner that immediately after filing of the Reply by the petitioner to the Claim of the respondent, the application under Order 12 Rule 6 of CPC had been filed and also aallowed without giving an opportunity of admission/denial of the documents or of adducing evidence. The petitioner could have brought out the true facts from the cross-examination of respondent No. 1. Moreover, no opportunity whatsoever has been given to it to adduce its own evidence to rebut the Claims of the respondent No. 1. In this respect, one may reiterate the law on admission.

51. The Hon'ble Supreme Court in *Himani Alloys Ltd. V. Tata Steel Ltd.* (2011) 7 SCR 60 that Order XII Rule 6 is an enabling provision and the court has to exercise its judicial discretion after examination of facts and circumstances, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way

of an appeal on merits. Therefore, unless the admission is clear, unambiguous and unconditional, the discretion should not be exercised to deny the valuable right of a defendant to contest. It is only when the admission is clear that it may be acted upon. Similar are the observations made in S.*M. Asif Vs. Virender Kumar Bajaj* (2015) 9 SCC 287, *Hari Steel and General Industries Limited and Another Vs. Daljit Singh and Others* (2019) 20 SCC 425, *Jeevan Diesels and Electricals Limited Vs. Jasbir Singh Chadha (HUF) and Another* (2010) 6 SCC 601.

52. The Division Bench of Delhi High Court in *Vijay Myne vs. Satya Bhushan Kaura* 142 (2007) DLT 483 (DB) explained the scope of Order XII Rule 6 of CPC as follows: -

> *"12. ...Purpose would be served by summarizing the legal position which is that the purpose and objective in enacting the provision like Order 12 Rule 6, CPC is to enable the Court to pronounce the judgment on admission when the admissions are sufficient to entitle the plaintiff to get the decree, inasmuch as such a provision is enacted to render speedy judgments and save the parties from going through the rigmarole of a protracted trial. The admissions can be in the pleadings or otherwise, namely in documents, correspondence etc. These can be oral or in writing. The admissions can even be constructive admissions and need not be specific or expressive which can be inferred from the vague and evasive denial in the written statement while answering specific pleas raised by the plaintiff. The admissions can even be inferred from the facts and circumstances of the case. No doubt, for this purpose, the Court has to scrutinize the pleadings in their detail and has to come to the conclusion that the admissions are unequivocal, unqualified and unambiguous. In the process, the Court is also required to ignore vague, evasive and unspecific denials as well as*

inconsistent pleas taken in the written statement and replies. Even a contrary stand taken while arguing the matter would be required to be ignored."

53. In *Anil Khanna v. Geeta Khanna* 2013 SCC OnLine Del 3365, this Court had observed that the preliminary objections are based on legal advice, the same are not reply on merits wherein the party is required to plead facts specifically. In the preliminary objections, parties can even take contrary pleas and same would not amount to an admission. Further, the facts stated in the preliminary objections are without prejudice and do not constitute reply on merits and the averments cannot be read in isolation. Further, in the verification it is clearly stated that the averments in the preliminary objections are believed to be true on the basis of legal information.

54. The Division Bench of this Court in *Delhi Jal Board v. Surendra P. Malik*, 104 (2003) DLT 151 laid down the following tests: -

"9. The test, therefore, is (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment."

55. In *Rajeev Tandon & Anr. Vs. Rashmi Tandon* CS (OS) 501/2016 decided by this Court on 28.02.2019 it was held that while considering an application under Order XII Rule 6 CPC the court can ignore vague and unsubstantiated pleas.

56. In *A.N. Kaul Vs Neerja Kaul & Anr*. 2018 SCC OnLine Del 9597 it was observed by the Apex Court that even if there is no express admission in the written statement but an intelligible reading of the written statement shows propositions or pleas taken to be not material and no issue to be arising therefrom, the Court is still entitled to pass a decree forthwith.

57. Once the relevant facts necessary for adjudication of the disputes are established on record, the same do not require further corroboration by way of evidence. The pleadings and the Reply of the respondent to the Claim, as well as to the Application under 12 Rule 6 of CPC, did not refute the facts and they contain sufficient admissions for allowing the claim. When there are such clear unequivocal admissions, no purpose whatsoever would have been served in recording of the evidence of the parties. The entire objective of Judgment on admissions, is to curtail a prolonged litigation and wastage of time by recording evidence of facts, which are admitted. It is a fundamental principle of law of evidence that only such facts which are in dispute, are required to be proved by leading of evidence by the parties.

58. Here is a case where all facts stood admitted and no purpose would have been served by proceeding further with admission/denial of the documents or recording of evidence. This ground sought to be taken by the petitioner, again has hold no water.

No proper quantification of the amount payable to the petitioner:

59. *In the end, an objection has been taken that there is no proper quantification of the amount payable to the petitioner*. This again has no basis because it has been clearly held that the petitioner is liable to pay Rs.2.5 Crores along with the interest of 5% p.a. with monthly rests, in terms of the Loan Agreement. There has been full quantification of the amount, which has been done. It goes without saying that the amounts which have admittedly been paid on behalf of the petitioner, have been offset against the interest that had become during the period and therefore, due credit has been given to the petitioner for the amounts that have been paid by it from time to time to the respondent No. 1.

no Arbitration Clause in the Mortgage Agreement between the Respondent No. 1/Claimant and respondent No. 2:

60. *Another objection taken on behalf of the petitioner is that there was no Arbitration Clause* in the Mortgage Agreement entered between the respondent No. 1 and respondent No. 2 and respondent No. 2 could not have been made a party. It is pertinent to observe that the reference to respondent No. 2 in the Claim Petition is only to explain that the respondent No. 1 had entered into a Mortgage Agreement with respondent No. 2, to secure the loan, which had been granted to the petitioner. There is no relief claimed against the respondent No. 2. It is evident that the respondent No. 2 merely a proper party with no relief claimed against it.

Scope of Interference with an Award under Section 34 of the Act, 1996.

61. At the end it is pertinent to note the scope of challenging an Award under Section 34 of the Act, 1996.

62. In the case of *Ssangyong Engineering and Construction Co. Ltd. v. NHAI,* (2019) 15 SCC 131, it was observed that re-appreciation of

evidence which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award. The terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short that the arbitrator's view is not even a possible view to take. Similar observations were made in the case of *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181.

63. Thus, the interpretation of a Contract is in the realm of the jurisdiction of the Arbitrator which cannot be interfered in by the Court unless it is found that there exists any bar on the face of the Award.

64. The scope of the objections under Section 34 of the Act, 1996 are limited. The petitioner has not been able to satisfy that the Award suffers from any patent illegality or is against the Public Policy which encompasses morality and justice.

65. The Award is well-reasoned, based on the admissions made by the petitioner in its Replies and other documents, and does not merit any interference.

66. The petition under Section 34 of the Act is hereby dismissed. The pending application also stands disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 31, 2024/R/S