

GJJM010043972019	 सत्यमेव जयते	<i>Filed on</i>	:	29/11/2019		
		<i>Registered on</i>	:	29/11/2019		
		<i>Decided on</i>	:	30/06/2026		
		<i>Duration</i>	:	<i>Years</i>	<i>Months</i>	<i>Days</i>
					06	07
CMA DC/157/2019						

BEFORE THE HON'BLE 3rd ADDL. DISTRICT JUDGE
(Special Arbitration Court)

AT JAMNAGAR

CIVIL MISC. APPLICATION No. : 157/2019

Exh. :- 70

Applicant	RAMESH KUMAR KHANDELWAL Age : 63 Years, Occupation : Business, <u>Resi.At</u> : 27, Park Colony, Opp. St. Ann's School, Jamnagar - 361008.						
Versus							
Opponents	1. LEGAL HEIRS OF DECEASED SUSHIL KUMAR KHANDELWAL <table> <tr> <td>1/1</td><td> RUKMANI DEVI KHANDELWAL W/o.SUSHIL KUMAR KHANDELWAL Age : 76 Years, Occupation : Housewife, <u>Resi.At</u> : 27, Park Colony, Opp. St. Ann's School, Jamnagar - 361008. </td></tr> <tr> <td>1/2</td><td> RENU DINESH KHANDELWAL D/o.SUSHIL KUMAR KHANDELWAL Age : 57 Years, Occupation : Housewife, <u>Resi.At</u> : 7th floor, Anusmera, Celeste 3rd Govindi Road, Chembur, Mumbai-400071. </td></tr> <tr> <td>1/3</td><td> REKHA SANJEEV KHANDELWAL D/o. SUSHIL KUMAR KHANDELWAL Age : 55 Years, Occupation : Housewife, <u>Resi.At</u> : 8/1/A, 5th Floor, Bihariji Bhavan, Diamond Harbor Road, Kolkata - 700027 </td></tr> </table>	1/1	RUKMANI DEVI KHANDELWAL W/o.SUSHIL KUMAR KHANDELWAL Age : 76 Years, Occupation : Housewife, <u>Resi.At</u> : 27, Park Colony, Opp. St. Ann's School, Jamnagar - 361008.	1/2	RENU DINESH KHANDELWAL D/o.SUSHIL KUMAR KHANDELWAL Age : 57 Years, Occupation : Housewife, <u>Resi.At</u> : 7 th floor, Anusmera, Celeste 3 rd Govindi Road, Chembur, Mumbai-400071.	1/3	REKHA SANJEEV KHANDELWAL D/o. SUSHIL KUMAR KHANDELWAL Age : 55 Years, Occupation : Housewife, <u>Resi.At</u> : 8/1/A, 5 th Floor, Bihariji Bhavan, Diamond Harbor Road, Kolkata - 700027
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1/4	RACHANA ANIL KHANDELWAL - D/o. SUSHIL KUMAR KHANDELWAL Age : 52 Years, Occupation : Housewife, <u>Resi.At</u> : Flat No. 67/D, Pocket- D, Ashok Vihar Phase-3, New Delhi-110052.
1/5	RAHUL KHANDELWAL - S/O. SUSHIL KUMAR KHANDELWAL Age : 44 Years, Occupation : Business, <u>Resi.At</u> : 27, Park Colony, Opp. St. Ann's School, Jamnagar.
2. LEGAL HEIRS OF DECEASED MAHESH KUMAR KHANDELWAL	
2/1	RUPALI MAHESH KUMAR KHANDELWAL W/O. RAM KHANDELWAL Age : 44 Years, Occupation : Business, <u>Resi.At</u> : Opp. Vijaya Bank, Dariyaganj 4747/23, Ansari Road, New Delhi.
2/2	ABHISHEK MAHESH KUMAR KHANDELWAL Age : 41 Years, Occupation : Business, <u>Resi.At</u> : 27, Park Colony, Opp. St. Ann's School, Jamnagar-361008.
2/3	APURVA MAHESH KUMAR KHANDELWAL Age : 37 Years, Occupation : Business, <u>Resi.At</u> : 27, Park Colony, Opp. St. Ann's School, Jamnagar-361008.
3.	JITENDRA KUMAR KHANDELWAL Age : 49 Years, Occupation : Business, <u>Resi.At</u> : 27, Park Colony, Opp. St. Ann's School, Jamnagar-361008.

APPEARANCE :-

Ld. Advocate for the Appellant	Mr. Devan V. Parikh (Sr.Adv.) Mr. M. L. Patel Mr. A. R. Khandelwal
Ld. Advocate for the Opponents	Ms. Manish Lavkumar (Sr.Adv.) Mr. D. T. Mamtara Mr. S. D. Mamtara Mr. K. N. Pau Mr. S. F. Lokhandwala Mr. T. D. Kanakhara Mr. D. D. Mamtara

**APPLICATION UNDER SECTION 34 OF THE
ARBITRATION AND CONCILIATION ACT,
1996, AGAINST THE AWARD DATED
06/11/2018 PASSED BY THE LEARNED SOLE
ARBITRATOR – Mr. MAHESH P. SARDA – C.A.**

-:: J U D G M E N T ::-

- (1). The Applicant and the Opponents are the family members of Late Radhekrishna Khandelwal and the present Applicant has challenged the Award dtd. 06/11/2018 under Section 34 of the Arbitration and Conciliation Act, 1996, passed by Sole Arbitration – Mr. Mahesh P. Sarda – Chartered Accountant.

- (2). It is the case of the Applicant that Late Shri Radhekrishna Khandelwal was from Alwar, Rajasthan and migrated to Jamnagar and after some time he started a business of brass parts and the family members carries business under various names and style like M/s. Khandelwal Brass Industries, M/s. Jaihind Sales Corporation, M/s. Jaihind Brass Works and M/s. Khandelwal Finstock Pvt. Ltd. and the management as well as growth of all the above name family owned firms/companies was under the joint efforts of the family members and the differences arose among the young family members and it is difficult for them to remain in a family owned joint business environment and therefore, with a view to resolve the differences in the family, a Reference of

Arbitration was made by the family to Mr. Mahesh P. Sarda, Chartered Accountant of the family, who had long association of more than three decades. The Reference was made on dtd. 04/01/2017 by written application and an Award delivered on dtd.06/11/2018 by Learned Sole Arbitrator. Being aggrieved and dissatisfied by the Award dtd. 06/11/2018, the present Applicant being son of Late Shri Radhakrishna Khandelwal, has filed the present application under Section 34 of the Arbitration and Conciliation Act, 1996.

- (3). The Court had registered the Application and issued notice to the Opponents. On service of the process, the Opponents had appeared through their Ld. Advocates and objected the Application and submitted that impugned Award dtd. 06/11/2018 passed by Ld. Sole Arbitrator is just, legal and proper and it does not require any interference by this Hon'ble Court.
- (4). For adjudication of this application, following points for determination arises :-

:: POINTS FOR DETERMINATION ::

1	Whether the Arbitration Award dated 06/11/2018 passed by Sole Arbitrator - Mr. Mahesh P. Sarda, C.A., is erroneous or patently illegal or perverse or manifestly arbitrary or with material irregularity, in view of grounds stated in Section 34 of Arbitration and Conciliation Act, 1996, which requires interference by this Court, to meet with the end of justice and whether the said Award deserves to be
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	quashed and set aside ?
2	What's Order ?

- (5). My findings arrived at, of the above stated points, are as under :

:- FINDINGS :-

1	In NEGATIVE
2	As per FINAL ORDER

- (6). I have heard Ld. Senior Advocate Mr. D. V. Parikh with the Ld. Advocate Mr. M. L. Patel for the Applicant and the Ld. Senior Advocate Ms. Manisha Lavkumar with the Ld. Advocate Mr. D. T. Mamtara, for the Opponents, at great length. I have also gone through the impugned Arbitration Award dated 06/11/2018 passed by Ld. Sole Arbitrator, Mr. Mahesh P. Sarda, Chartered Accountant, at Jamnagar and record and proceedings. I have considered the application at Exh.-1, Reply at Exh.-16 and Rejoinder at Exh.-28 as well as Re-joinder Argument at Exh.-65 of the Applicant.

- (7). The reasons, for the findings arrived at, of the above issues, are as under :

: REASONS :

POINT No. 1 & 2 :

- (7.1). As per the case of the Applicant that Late Shri

Radhekrishna Khandelwal was from Alwar, Rajasthan and migrated to Jamnagar and after some time he started a business of brass parts and the family members carries business under various names and style like M/s. Khandelwal Brass Industries, M/s. Jaihind Sales Corporation, M/s. Jaihind Brass Works and M/s. Khandelwal Finstock Pvt. Ltd. and the management as well as growth of all the above name family owned firms/companies was under the joint efforts of the family members and the differences arose among the young family members and it is difficult for them to remain in a family owned joint business environment and therefore, with a view to resolve the differences in the family, a Reference of Arbitration was made by the family to Mr. Mahesh P. Sarda, Chartered Accountant of the family, vide Application for Arbitration dated 04/01/2017 at Page-57 of Volume-I, who had long association of more than three decades i.e. 33 years. The Reference was made on dtd. 04/01/2017 by written application and an Award delivered on dtd.06/11/2018 by Learned Sole Arbitrator.

Being aggrieved and dissatisfied by the Award dtd. 06/11/2018, the present Applicant being son of Late Shri Radhakrishna Khandelwal, has filed the present application under Section 34 of the Arbitration and Conciliation Act, 1996.

- (7.2). The Ld. Advocate for the Applicant has vehemently argued that the Ld. Arbitrator has not adjudicated any issues. The Ld. Advocate for the Applicant has argued that the Arbitrator has committed breach of provisions of Arbitration Conciliation Act, 1996 and therefore, the same is required to be quashed and set-aside. The Ld. Advocate for the Opponent has vehemently argued that though it is arbitration, but it was the family arrangement of the properties between children of same parents and the Arbitrator is associated as their Chartered Accountant since about 33 years and there is not partition, but the distribution of properties within a family members and no strict procedure were mandated to be followed. It reveals from the record that the Arbitrator was associated with

the parties and their father as Chartered Accountant since about 33 years and parties were respecting them as elderly member of their family. The Arbitrator was a Chartered Account of the father of the parties and also of all the parties thereafter and therefore, he is well aware with the value of the assets of the parties and their father because he used to maintain books of account of the parties. Thus, the arbitrator was not bound to strictly follow the procedure and Arbitrator is free to decide procedure to be adopted as mandated in Application for Arbitration dated 04/01/2017 at Page-57 of Volume-I. Moreover, it clearly shows that parties were massaging the E-mail directly to the Arbitrator without providing copies to other side and were meeting personally even in absence of other parties. Thus, no strict procedure were accepted to be followed by the arbitrator looking their relations with the parties. Hence, even if no issues are being specifically adjudicated by giving specific reasons, the award cannot be said bad in the eyes of laws. Hence, the said submission of the Ld. Advocate for the

Applicant could not accepted.

- (7.3). The Ld. Advocate for the Applicant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice R.V. Raveendran & B. Sudershan Reddy, JJ) in case of ¹**FIZA DEVELOPERS AND INTER-TRADE PRIVATE LIMITED Vs. AMCI (INDIA) PRIVATE LIMITED**, wherein held that it is **not obligatory to frame Issues in Application under Section 34 of Arbitration and Conciliation Act, 1996** and procedures in Application under Section 34 of Arbitration and Conciliation Act, 1996, are **summary proceedings** and **framing of Issues in summary proceedings are not necessary**. It is further held that the **scope of enquiry** in a proceeding under Section 34 of Arbitration and Conciliation Act, 1996, is **restricted to consideration whether any one of grounds mentioned in Section 34(2) of Arbitration and Conciliation Act, 1996**, exists for setting aside award. Whereas in present case, Arbitrator is free to decide procedure to be adopted by

¹ ***FIZA DEVELOPERS AND INTER-TRADE PRIVATE Ltd. Vs. AMCI (INDIA) PRIVATE Ltd.***
: (2009) 17 SCC 796 = CA 5139/09, D/-27/7/09

Application for Arbitration dated 04/01/2017 at Page-57 of Volume-I and is mandated to frame issues. Hence, the said authority will not assist the case of Applicant in present case, due to different facts and circumstances.

(7.4). The Ld. Advocate for the Opponent has vehemently argued that the Applicant has not given equal and fair opportunity as required under Section 18 of Arbitration and Conciliation Act, 1996. The Ld. Advocate for the Opponent has demonstrated from the record that the Applicant was given full opportunity. Not only that but the proposals suggested by the Applicant and his son for distribution of property is duly considered by the Arbitrator. The records shows that the Applicant had submitted their proposals and expectation and the same is duly considered by the Arbitrator while making distribution of the properties. Hence, the said submission of the Ld. Advocate for the Applicant could not accepted.

(7.5). The Ld. Advocate for the Applicant has

vehemently argued that during the proceedings, no Advocate was present and every time, every parties were not present. The communication on record clearly shows the intention of the parties was that they wants to distribute the properties internally without making it known to the public because it will harm their business if the public comes to know that the parties have got separated. The record clearly shows that the parties were meeting the Arbitrator / their Chartered Accountant as per their own convenience and no joint proceedings were going on and even the Applicant and his son seems to have met personally in absence of other parties and have made communication directly to the Arbitrator without marking copies to other side. The record further shows that the son of the Applicant was pursuing the matter by appearing and making communication by Emails. Thus, parties were never intending to carry on arbitration by usual process as per law. Moreover, no advocate on behalf of the any of the parties had appeared. It is not the case that the Opponent had appeared through

the Ld. Advocate and conducted proceedings and the Applicant was not permitted to appear with their Ld. Advocate. Thus, the parties were conducting arbitration without any advocate and individual meeting and making communications directly to the Arbitrator. Thus, only because the Advocate on behalf of the none of the parties were appearing before the Arbitrator, it does not lead the award patently illegal. Hence, the said submission of the Ld. Advocate for the Applicant is not acceptable.

- (7.6). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble Bombay High Court (Coram : Hon'ble Justice R. D. Dhanuka, J) in case of ²**SATPAL P. MALHOTRA Vs. PUNEET MALHOTRA**, wherein observed in Para-80 that the next issue which arises for consideration of this court is whether the refusal on the part of the learned arbitrator to permit the respondents to represent themselves by advocate was in violation of section 34(2)(a)(iii) of the Arbitration & Conciliation Act or that the

² **SATPAL P. MALHOTRA Vs. PUNEET MALHOTRA : (2013) SCC ONLINE BOM 689**

respondents were deprived of the full opportunity to present their case. It is not in dispute that the learned arbitrator was old family friend from 35 years and was well known to the entire family. The learned arbitrator with an intention to avoid any further delay exercised his discretion not to allow any party to engage advocate to represent them.

It is further observed in Para-81 that under section 18 of the Arbitration & Conciliation Act, 1998, it is provided that the parties shall be treated with equality and each party shall be given full opportunity to present his case. If the learned arbitrator would have allowed the appellants to engage an advocate to represent them and would have rejected the application of the respondents to engage advocate. section 18 of the Act would have attracted in that situation. Refusing to permit a party to engage an advocate in the arbitration proceedings by the arbitrator would not violate section 18 of the Arbitration & Conciliation Act, 1996. There was no violation of any equal treatment being given

to both the parties by the learned arbitrator. Both the parties were given full opportunity to present their respective case including filing of written arguments. The learned arbitrator being family friend for 35 years and the dispute being family dispute and to avoid any further delay in the matter, in my view the learned arbitrator was right in exercising his discretion not to allow any of the parties to engage an advocate.

It is held in Para-82 that the learned arbitrator was fully justified in exercising his discretion to conduct the proceedings in the manner he considers appropriate and by refusing to permit either parties to engage advocate. In my view there is no denial of equal opportunity or violation of principles of natural justice by refusing to engage an advocate to both the parties. The impugned order passed by the District Judge setting aside the impugned award on this ground is thus perverse and untenable in law.

(7.7). The Ld. Advocate for the Applicant has vehemently argued that neither stage of

submissions of the documents were fixed, nor document is being exhibited, nor oral evidence were recorded and no record of meeting are being there and therefore, submitted that the award is illegal and unlawful. The Ld. Advocate for the Opponent has vehemently argued that the Arbitration was carried in an informal manner, wherein no strick rules were to be followed and arbitrator can decide the procedure in its own way. The Arbitrator was free to decide procedure to be adopted as mandated in Application for Arbitration dated 04/01/2017 at Page-57 of Volume-I. The record clearly shows that the whole procedure carried on before the arbitrator was in an informal manner because the parties were meeting the arbitrator at their own convenience and in absence of other parties. They were making communications with the arbitrator personally without marking copies to other side. Thus, no procedure were fixed to follow and the whole arbitration was proceeded in an informal manner and the same was never adjudicated by any of the parties. Under such circumstances, the arbitrator was

not required to follow strict rules of arbitration of submitting documents, exhibiting the documents or leading oral evidence. Hence, the said submission of the Ld. Advocate for the Applicant is not acceptable.

(7.8). The Ld. Advocate for the Applicant has vehemently argued that the Applicant was not aware as to what document the Opponent has produced or what communication was made by the Opponent with the Arbitrator. The record clearly shows that the Applicant and his son has made communications directly to the Arbitrator without marking its copy to Opponent. If we go through the communications made by the Applicant and his son by Email to the Arbitrator and Arbitrator has made communications with the Applicant and his son. More particularly if we considered the emails in VolumeII, it is crystal clear that the parties were making communications directly with the arbitrator, even without marking copies to other side. Hence, the said submission of the Ld.

Advocate for the Applicant is not acceptable.

(7.9). The Ld. Advocate for the Applicant has vehemently argued that there is no record of having joint meeting all the times and due to lack of consensus between the parties, the proceedings are ex-parte. As we have discussed, informal procedure were carried on by both the parties and even the parties are meeting with the Arbitrator in absence of other party and when the record clearly shows that the parties were pursuing the procedure in an informal manner, then the absence of joint meeting of all the parties on all the dates will not be required. The Arbitrator was free to decide procedure to be adopted as mandated in Application for Arbitration dated 04/01/2017 at Page-57 of Volume-I. Moreover, all the parties were following informal procedure. Hence, the said submission of the Ld. Advocate for the Applicant is not acceptable.

(7.10). The Ld. Advocate for the Applicant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice

Rohinton Fali Nariman & Aniruddha Bose & V. Ramasubramanian, JJ) in case of ³**VIJYA KARIA Vs. PRYSMIAN CAVI E SISTEMI SRL** and the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice Rohinton Fali Nariman & Vineet Saran, JJ) in case of ⁴**SSANGYONG ENGINEERING AND CONSTRUCTION COMPANY LTD. Vs. NATIONAL HIGHWAYS AUTHORITY OF INDIA (NHAI)**, on the point of natural justice and unable to present case. In present case, none of the party is assisted by any Ld. Advocate and parties have themselves taken part in arbitration proceedings and even their children have actively taken part in it and it was informal procedure as Arbitrator was free to decide procedure of arbitration, in view of Application for Arbitration dated 4/1/2017 at Page-57 of Volume-I. Hence, the said authority will not assist the case of Applicant in present case, due to different facts and circumstances.

³ **VIJYA KARIA Vs. PRYSMIAN CAVI E SISTEMI SRL**
: (2020) 11 SCC 1 = CA 1544/20 WITH 1545/20, D/-13/2/20

⁴ **SSANGYONG ENGINEERING & CONSTRUCTION CO. LTD. Vs. NATIONAL HIGHWAYS AUTHORITY OF INDIA (NHAI)** : (2019) 15 SCC 131 = CA 4779/19, D/-8/4/19

(7.11). The Ld. Advocate for the Applicant has vehemently argued that the arbitrator has not given reasons more particularly as required under law and therefore, the award is bad in the eyes of law. The draft Application of arbitration is produced at Page 65 of Volume II along with the email at Exh.-64 and it is clearly stated therein that the arbitrator shall be free to decide the procedure to be adopted for carrying out the arbitration proceedings. The final Application for arbitration on the stamp paper is dated 04/01/2017 on Page-57 of Volume I and it is clearly stated therein that the Arbitrator shall be free to decide the procedure adopted for carrying out the arbitration proceedings. Thus, the mandate of the parties to the arbitrator is clearly that the arbitrator can choose his own procedure for deciding the dispute referred to him. Thus, the arbitrator is not required to follow strict rules of procedure or arbitration, but can decide its own procedure and the same is being mandated by the parties and thus, the arbitration was totally in an informal manner. Thus, the arbitrator was free to adopt the

procedure as he wish and therefore, the award passed by the Arbitrator by following an informal procedure could not be put at fault and he has jurisdiction to give award based on equity and fairness. Hence, the said submission of the Ld. Advocate for the Applicant is not acceptable.

(7.12). The Ld. Advocate for the Applicant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice S. Abdul Nazeer, Indu Malhotra & Aniruddha Bose, JJ) in case of ⁵GOVERNMENT OF INDIA Vs. VEDANTA LIMITED (FORMERLY CAIRN INDIA LTD.). The Ld. Advocate for the Applicant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice K. Ramaswamy & S. Saghir Ahmad, JJ) in case of ⁶TAMIL NADU ELECTRICITY BOARD Vs. M/s. BRIDGE TUNNEL CONSTRUCTION, wherein the agreement to construct inter-connecting tunnels for Suruliya Hydro-Electric Project and dispute referred to

⁵ *GOVERNMENT OF INDIA Vs. VEDANTA LIMITED (FORMERLY CAIRN INDIA LTD.)*
: (2020) 10 SCC 1 = CA 3185/20, D/-16/9/20

⁶ *TAMIL NADU ELECTRICITY BOARD Vs. M/S. BRIDGE TUNNEL CONSTRUCTION*
: AIR 1997 SC 1376 = CA 1766-67/97 (ARISING OUT OF SLP(C) 1417-18/91, D/-18/2/97)

arbitrator was amount towards work done. It is held that the Arbitration and Conciliation Act, 1996, mandates that the award should **state the reasons** upon which it is based, **unless** (a). the **parties have agreed that no reasons are to be given** or (b). the **award is an arbitral award on agreed terms under Section 30 of the new Act.** The Ld. Advocate for the Applicant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice Tarun Chatterjee & R.M. Lodha, JJ) in case of **⁷SOM DATT BUILDERS LTD. Vs. STATE OF KERALA**, wherein matter was remanded to arbitral tribunal for recording reasons in support of it's award. In the said case, the agreement was for road work of National Highway 47 and all claims of contractor were referred to the Arbitral Tribunal for adjudication and therefore, it was mandatory to give elaborate and detailed reason for Award. The Ld. Advocate for the Applicant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice N.V. Ramana, Mohan M.

⁷ **SOM DATT BUILDERS LTD. Vs. STATE OF KERALA**
: (2009) 10 SCC 259 = CA 3089/06 WITH CA 3090/06, D/-17/9/09

Shantanagoudar & Ajay Rastogi, JJ) in case of ⁸DYNA TECHNOLOGIES PRIVATE LIMITED Vs. CROMPTON GREAVES LIMITED, wherein necessity of giving reason for passing award is observed. In the said case, a contract was entered between parties for an aquaculture unit to be set up and tenders were invited for carrying out certain works for construction of ponds, channels, drains and associated works and the appellant therein claimed compensation for premature termination of the contract and ultimately the dispute was referred to the Arbitral Tribunal and it was therefore, necessary for the Tribunal to give reasons for it's Award and not giving detailed reason was perverse, as it was muddled and confused form of Award, merely restating contentions of both the parties. The Ld. Advocate for the Applicant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice L. Nageswara Rao & S. Ravindra Bhat, JJ) in case of ⁹DELHI AIRPORT METRO EXPRESS PRIVATE LIMITED Vs. DELHI

⁸ *DYNA TECHNOLOGIES PRIVATE LIMITED Vs. CROMPTON GREAVES LIMITED*
: (2019) 20 SCC 1 = CA 2153/10, D/-18/12/19

⁹ *DELHI AIRPORT METRO EXPRESS PRIVATE LIMITED Vs. DELHI METRO RAIL CORPORATION LIMITED* : (2022) 1 SCC 131 = CA 5627/21 WITH 5628/21, D/-9/9/21

METRO RAIL CORPORATION LIMITED,

wherein observed in Para-27(41) relying Associate Builders Vs. DDA : (2015)3 SCC 29 that a finding based on no evidence at all or an award which ignores vital evidence in arriving at it's decision would be perverse and liable to be set aside on the ground of patent illegality. It is observed in Para-29 that Courts are prohibited to re-appreciate the evidence to conclude that the award suffers from patent illegality appearing on the face of Award. In the said case, a concession Agreement was entered between parties for design, installation, commissioning, operation and maintenance of AMEL, being proposed implementation of the Airport Metro Express Line Project from New Delhi Railway Station to Dwarka Sector 21 via Indira Gandhi International Airport, New Delhi and thereafter, termination notice dated 08/10/2012 by DAMEPL and the main issue arose for determination before the Arbitral Tribunal constituted under Concession Agreement was the validity of the termination notice dated 08/10/2012. It was under such set

of facts, it was held that Courts are refrained from appreciation or re-appreciation of matters of fact as well as law and to strictly act in accordance with Section 34 of Arbitration and Conciliation Act, 1996. The Ld. Advocate for the Applicant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice T.S. Thakur, C. Nagappan & Adarsh Kumar Goel, JJ) in case of ¹⁰**ANAND BROTHERS PRIVATE LIMITED Vs. UNION OF INDIA**, wherein observed that application of mind is best demonstrated by disclosure of the mind, mind in turn is best disclosed by recording reasons. In said case, clause 70 was providing mechanism for adjudication and the arbitrator was required to give findings on each on of such items. The Ld. Advocate for the Applicant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice S. Rajendra Babu & S.N. Phukan, JJ) in case of ¹¹**BHARAT COKING COAL Vs. L.K. AHUJA & CO.**, wherein the award was partly non-speaking order and

¹⁰ **ANAND BROTHERS PRIVATE LIMITED Vs. UNION OF INDIA**
: (2014) 9 SCC 212 = CA 76/09, D/- 4/9/14

¹¹ **BHARAT COKING COAL Vs. L.K. AHUJA & CO.**
: (2001) 4 SCC 86 = CA 5489-9/95, D/- 21/2/01

therefore error apparent on face of award. In said case, 2 works for construction of 108 and 72 units of B-Type Quarters at Karmik Nagar, Dhanbad, was given by tender dated 4/7/1981 – 13/7/1981. There was error apparent on face of award as the arbitrator had not applied his mind to that aspect concerned and had lost sight of the importance of Clause 17. The Ld. Advocate for the Applicant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice R. Subhash Reddy & Hrishikesh Roy, JJ) in case of ¹²**I-PAY CLEARING SERVICES PRIVATE LIMITED Vs. ICICI BANK LIMITED,** wherein observed that where there are no findings on the contentious issues in the award, it is patent illegal and matter can be remanded where there is inadequate reasoning or to fill up the gaps in the reasoning, in support of finding recorded in award. In the said case, an agreement was entered to provide technology and manage the operations and processing of the smart card based loyalty programs for HPCL and service provider

¹² ***I-PAY CLEARING SERVICES PRIVATE LIMITED Vs. ICICI BANK LIMITED***
: (2022) 3 SCC 121 = CA 7/22, D/-3/1/22

agreement dated 04/11/2002 was terminated, causing loss of over Rs. 50 Crores.

In all above authorities, firstly, there were contracts / agreements between two different parties and it was purely commercial disputes between two parties, whereas in the present case, the parties are children of same parents and they wanted to distribute their properties in them, but without knowing public about the same as it would adversely affect their business in market. Secondly, the arbitrator is family friend and well-wishers of all the parties since 33 years and is their C.A., who have all records of value of assets of the parties to the arbitration and valuation considered on said books of account of parties and equally distributed the assets between the parties (Page-279 to 281 of Volume-II). Thirdly, Arbitrator is family friend and well-wisher, associated for about 33 years with family of parties and thereby the parties have empowered and expressly authorised the arbitrator to dispense with consideration of law, in view of Section 28(2) of Arbitration and Conciliation Act, 1996 and to take

decision on notions of fairness and equity as it is clearly stated “Arbitrator is free decide procedure to be adopted” in Application for Arbitration dated 04/01/2017 at Page-57 of Volume-I. Fourthly the arbitrator is not mandated to give reasons for his findings in award as it were in case of above authorities. Lastly, it is clearly stated in Application for Arbitration dated 04/01/2017 at Page-57 of Volume-I that award of arbitrator will be final, binding and unconditionally acceptable to all the parties. Matter does not call for remanding to the Arbitrator. The Arbitrator in present case, is exemption from giving reasons in view of Section 31(3)(a) & (b) of Arbitration and Conciliation Act, 1996 and the Arbitrator has not avoided any evidence on record. The Arbitrator has acted as an amicably compositor under Section 28(2) of Arbitration and Conciliation Act, 1996. Hence, the said authorities referred above, will not assist the case of Applicant in present case, due to different facts and circumstances.

(7.13). The Ld. Advocate for the Applicant has

vehemently argued that the Arbitrator has acted as well wisher and not as Arbitrator. If we go through the Application for Arbitration at Page-57 of Volume-I, then it is stated that the parties referred above dispute, having knowledge and awareness that over 33 years of association of Mr. Maheshbhai Sarda (Arbitrator) with their family as a family friend and well wisher for 33 years and the parties have approached and requested Shir Maheshbhai Sarda to be arbitrator. Thus, the mandate of the parties was clear that the Arbitrator do not have to act strictly as the arbitrator as per law, but as a friend and well wisher of the family of Khandelwal. Hence, the said submission of the Ld. Advocate for the Applicant is not acceptable.

(7.14). The Ld. Advocate for the Opponent has vehemently argued that the Arbitrator was required to act in an informal manner and in equity and fairness. The Application for arbitration on Page 57 of Volume-I clearly shows that arbitrator can adopt its procedure and the arbitrator has considered the valuation

and equal share (1/4th) given to each of the son and have acted fairly. Moreover, the award was accepted by the Applicant by accepting B-37 shed. The arbitrator was acting as an amicably compositor under Section 28(2) of Arbitration and Conciliation Act, 1996. Even otherwise it was clearly stated by the parties in their application for arbitration at Exh.-57 of Volume I that the award will be final, binding and unconditionally acceptable to all the parties. Under such circumstances, it does not call for any interference by this Court in view of Section 34 of the Arbitration and Conciliation Act, 1996 and this Application deserves to be dismissed.

(7.15). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble High Court of Bombay (Coram : Hon'ble Justice K.R. Shriram and Hon'ble Justice Rajesh S. Patil, JJ) in case of ¹³**PALMVIEW INVESTMENTS OVERSEAS LIMITED Vs. RAVI ARYA**, wherein held in Para-31 that Section 28 of the Arbitration Act deals with

¹³ ***PALMVIEW INVESTMENTS OVERSEAS LIMITED Vs. RAVI ARYA : (2023) 1 HIGH COURT CASES (BOM) 259 = 2023 SCC ONLINE BOM 966 = COM. A 36947/22, D/-2/5/23***

the question, which law or rules the Arbitral Tribunal shall apply to the substance of the dispute. The expression "substance of the dispute" could have reference only to the merits of the case. It is observed that Section 28 [except clause (a) of sub-section 1] corresponds to Article 28 of the UNCITRAL Model Law. Analytical Commentary on UNCITRAL Draft Model Law 28. Rules applicable to substance of dispute: - (1) The Arbitral Tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute and (3) The Arbitral Tribunal shall decide ex aequo et bono or as amiable compositeur only if the parties have expressly authorised it to do so. In commentary, it is observed that Article 28 deals with the question which law or rules the Arbitral Tribunal shall apply to the substance of the dispute.

It is further held in Para-36 that Section 28(2) of Act provides the Arbitral Tribunal shall decide ex aequo et bono or as amiable compositeur only if the parties have

expressly authorised it to do so. If the arbitrators are appointed as amiable compositerus, they are exempt from the obligations of hearing the parties and their respective proofs, or establish default against them and decide according to the rule of law.

These are clauses used in transactions where the parties are contracting for a long relationship, in which the maintenance of commercial trust between the parties is reasonably assured. These are clauses where the arbitrator is freed from any duty to respect the rule of law when deciding upon the merits of the dispute. The arbitrator can ignore technicalities and strict constructions and need not conform in the ordinary legal procedures when conducting the reference.

- (7.16). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble High Court of Delhi (Coram : Hon'ble Justice Nandrajog and Hon'ble Justice Mukta Gupta, JJ) in case of ¹⁴PRAKASH ATLANTA Vs. NATIONAL HIGHWAY, wherein held in

¹⁴ PRAKASH ATLANTA Vs. NATIONAL HIGHWAY : 2002 SCC ONLINE DEL 215 = 2016 SCC ONLINE DEL 1648 = (2016) 156 DRJ 479 = FAO(OS) 428/07, D/-17/3/16

Para-19 about '**Panchayati Solution**' that as per the Arbitration and Conciliation Act, 1996, the mandate of an Arbitral Tribunal is to decide a dispute in terms of a written agreement between the parties, if the dispute relates to the written agreement. If the language of the written agreement is clear, the Arbitral Tribunal has to give effect to the language. If the language is unclear, giving reasons to justify what was held to be unclear, the Arbitral Tribunal would have the mandate to give a meaning to the clause in question. It is further held in Para-20 that the phrase Ex aequo et bono (Latin for 'according to the right and good' or 'from equity and conscience') is used as a legal term of art. In the context of arbitration, it refers to the power of arbitrators to dispense with consideration of the law but consider solely what they consider to be fair and equitable in the case at hand. An amiable compositor also known as amiable compositeur under international law refers to an unbiased third party, often a king or an emperor, who suggests solution to a dispute between

countries. Amiable compositor acts as a mediator in a dispute between subjects of international law. The concept of amiable compositor has its historical origins in French law. An amiable compositor acts as a conciliator rather than a decision - maker in a dispute. An amiable compositor is also not bound to apply strict rules of civil procedure and substantive law. An amiable compositor is also authorized to modify the effect of certain non - mandatory legal provisions. Traditionally, amiable compositor provided equity correction to strict rules of law. But today, an amiable compositor has the power to depart from the strict application of rules of law and decide a dispute according to justice and fairness.

(7.17). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble High Court of Delhi (Coram : Hon'ble Justice Rajiv Sahai Endlaw, J) in case of ¹⁵JAI SINGH Vs. DDA & OTHERS, wherein held in Para-15 that the legislature obviously was not satisfied with merely requiring the arbitral

¹⁵ *JAI SINGH Vs. DDA & OTHERS : OMP 152/02, D/-4/9/08*

award to state reasons but also expressly provided that, as under the 1940 Act, a mere statement of the arbitrator to the effect that on consideration of entire material or in the entirety of the facts and circumstances of the case or on perusal of the evidence or that no case is made out, the arbitrator shall not be entitled to make an award. Such expressions are used only by an amiable compositeur, whom the parties have chosen owing to his familiarity with the disputes and who, if so authorized by the parties, is permitted by the 1996 Act to make an award in such fashion.

- (7.18). The Ld. Advocate for the Applicant has vehemently argued that the award of the Arbitrator is required to be considered, whether it is right or wrong on its merits. It is well settled law that the Court under Section 34 is not required to appreciate the evidence considered by the Arbitrator. Moreover, the mandate of the party in Application for Arbitration dated 04/01/2017 at Page-57 of Volume-I clearly states that the Arbitrator is free to decide procedure to be adopted and

further that the award of the arbitrator shall be final, binding and unconditionally acceptable to all the parties. Thus, once the parties have mandate so to the arbitrator, then they cannot argue that award is not on merits. Hence, the said submission of the Ld. Advocate for the Applicant is not accepted.

(7.19). The Ld. Advocate for the Applicant has vehemently argued that the Arbitrator is made unequal distribution of the properties and have not considered the valuation of the assets. If we go through the record from Page 192 to Page 269 and Page 275 to Page 293 of Volume II, then it clearly shows that the Arbitrator has considered the valuation of each and every assets and liabilities and the valuation of assets came as follows (Summary is at Page-279 of Volume-II) :

Sr. No.	Page No. / Volume No.	Assets / liabilities	Valuation of Properties
1.	280, Vol-II	Immovable Properties (A)	Rs. 30,69,48,117/-
2.	281, Vol-II	Movable Property (B)	Rs. 14,42,55,620/-
3.	281, Vol-II	Outside Liabilities (C)	- Rs. 14,40,73,244/-
Total (A+B+C)			Rs. 30,71,30,493/-

(7.20). There were four children and three groups of

them were made as follow:-

S/N.	Groups and Name
1.	Mahesh Kumar Khandelwal Group
2.	Ramesh Kumar Khandelwal Group (Petitioner)
3.	Sushil and Jitendra Khandelwal Group

Thus, the group of Sushil & Jitendra Khandelwal will get the double of the applicant because they were two sons and merged in one group and each son will get $\frac{1}{4}$ of the properties. The record shows the allocations of properties between the three groups are as under :-

Sr. No.	Properties	Mahesh Kumar Khandelwal Group	Ramesh Kumar Khandelwal Group (Applicant)	Sushil & Jitendra Khandelwal Group
1.	Immovable Assets	Rs.7,48,74,206/-	Rs.6,26,88,910/-	Rs.10,50,46,251/-
2.	Net Movable Assets	-Rs.1,13,26,484/-	Rs.26,49,860/-	Rs.97,75,000/-
3.	Balance of KFPL	Rs.1,32,34,902/-	Rs.1,14,43,853/-	Rs.3,87,43,995/-
Total		Rs.7,67,82,624/-	Rs.7,67,82,628/-	Rs.15,35,65,246/-
Grand Total Rs. 3,71,30,493/-				

(7.21). Thus, it clearly shows that exhaustive valuation is being considered by the arbitrator and the properties were allocated to the each

group and they are almost equal. Thus, the Applicant is given equal share in the property as given to the other son and their groups. Hence, the said submission of the Ld. Advocate for the Applicant of improper valuation could not be accepted.

(7.22). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice Sabyasachi Mukharji and Hon'ble Justice S. Ranganathan, JJ) in case of ¹⁶**M/S SUDARSAN TRADING CO. Vs. GOVERNMENT OF KERALA**, wherein held in Para-32 that once there is no dispute as to the contract, what is the interpretation of that contract, is a matter for the arbitrator and on which court cannot substitute its own decision. It is further held in Para-33 that an arbitrator deciding a dispute under the contract, is bound by the contract. It is further held in Para-35 that if on a view taken of a contract, the decision of the arbitrator on certain amounts awarded, is a possible view

¹⁶ **M/S SUDARSAN TRADING CO. Vs. GOVERNMENT OF KERALA**
: (1989) 2 SCC 38 = 1989 SCC ONLINE SC 97 = CA 840-842/89, D/-14/2/89

though perhaps not the only correct view, the award cannot be examined by the Court.

(7.23). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble High Court of Delhi (Coram : Hon'ble Justice Dalveer Bhandari and Hon'ble Justice Vikramajit Sen, JJ) in case of ¹⁷DELHI DEVELOPMENT AUTHORITY Vs. SAHDEV BROTHERS, wherein held in Para-8 relying on ¹⁸STATE OF RAJASTHAN Vs. PURI CONSTRUCTION CO. LTD. that the Arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts.

It is observed in Para-9 that in another leading case ¹⁹SUDARSAN TRADING CO. Vs. GOVERNMENT OF KERALA, the Court held that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be

¹⁷ DELHI DEVELOPMENT AUTHORITY Vs. SAHDEV BROTHERS
: 2002 SCC ONLINE DEL 215 = (2002) 64 DRJ 788 = FAO(OS) 195/98, D/-26/2/02
¹⁸ STATE OF RAJASTHAN Vs. PURI CONSTRUCTION CO. LTD. : JT 1994 (6) SC 412
¹⁹ SUDARSAN TRADING CO. Vs. GOVERNMENT OF KERALA : 1989 (2) SCC 38

a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. The Court further observed that if on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the Court. The Court cannot examine the reasonableness of the reasons where the reasons have been given by the arbitrator in making the award. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of evidence. The arbitrator is the sole Judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a judge on the evidence before the arbitrator.

It is observed in Para-10 that the

earlier case of the Supreme Court in ²⁰MUNICIPAL CORPORATION OF DELHI Vs. JAGAN NATH ASHOK KUMAR, held that appraisement of evidence by the arbitrator is ordinarily never a matter which the Court questions and considers. It may be possible that on the same evidence the Court may arrive at a different conclusion than the one arrived at by the arbitrator, but that by itself is no ground for setting aside the award. It has been held in the said decision that it is difficult to give an exact definition of the work 'reasonable reason'. It varies in its conclusions according to the idiosyncrasies of the individual and the time and circumstances in which he thinks. In cases not overed by authority, the verdict of a jury or the decision of a Judge sitting as a jury usually determines what is 'reasonable' in each particular case. The word reasonable has in law prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably knows or ought to know. An arbitrator acting as a Judge has to exercise a

²⁰ MUNICIPAL CORPORATION OF DELHI Vs. JAGAN NATH ASHOK KUMAR
: 1987 SCC (4) 497

discretion informed by tradition, methodize by analogy, disciplined by system and subordinated to the primordial necessity of order in the social life. Therefore, **where reasons germane and relevant for the arbitrator to hold in the manner he did, have been indicated, it cannot be said that the reasons are unreasonable.**

(7.24). The Ld. Advocate for the Applicant has vehemently argued that the valuation is made as per personal knowledge of the arbitrator and therefore, not just and proper. The arbitrator is well wisher and family friend of the parties since 33 years and their chartered accountant who usually maintain all books of account of all the parties and therefore he do have valuation of the assets and based on the same, he has considered the valuation. The arbitrator has considered valuation in details as revealing from Page 192 to Page 269 and Page 275 to Page 293 (more particularly Page 279 to 281) of Volume-II. The Applicant has not produced any valuation from other valuer before the arbitrator. Moreover, the arbitrator

has considered the value of assets as parties have declared in their books of accounts and it clearly shows that properties are being distributed equally in all the four families constituted in three groups. Hence, the said submission of the Ld. Advocate for the Applicant is not acceptable.

(7.25). The Ld. Advocate for the Applicant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice J.C. Shah & K.S. Hegde, JJ) in case of ²¹DEWAN SINGH Vs. CHAMPAT SINGH AND OTHERS wherein the Award by arbitrators was on the basis of their personal knowledge and the agreement therein does not empower the arbitrators either specifically or by necessary implication to decide the disputes referred to them on the basis of their personal knowledge. The Ld. Advocate for the Applicant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice R.V. Raveendran & A.K. Patnair, JJ) in case of ²²P.R. SHAH. SHARES

²¹ *DEWAN SINGH Vs. CHAMPAT SINGH AND OTHERS*
: 1969(3) SCC 447 = CA 1369/66, D/-17/10/69

²² *P. R. SHAH SHARES AND STOCK BROKERS PRIVATE LIMITED Vs. B.H.H. SECURITIES PRIVATE LIMITED* : (2012) 1 SCC 594 = CA 9238/03, D/- 14/10/11

AND STOCK BROKERS PRIVATE LIMITED Vs. B.H.H. SECURITIES PRIVATE LIMITED, on similar line of personal knowledge of arbitrator. Whereas in present case, the arbitrator is family friend and well-wishers of all the parties since 33 years and is their C.A., who have all records of value of assets of the parties to the arbitration and valuation considered on said books of account of parties and not on his personal knowledge. Hence, the said authority will not assist the case of Applicant in present case, due to different facts and circumstances.

(7.26). The Ld. Advocate for the Applicant has vehemently argued that the Arbitrator has made valuation of the properties as on which date is not clear. The record and award clearly shows that valuation of the properties is taken as on cut off date 31/03/2018. Hence, the said submission of the Ld. Advocate for the Applicant is not acceptable.

(7.27). The Ld. Advocate for the Applicant has submitted that no choice, as to which firm is

to be given to whom, is being given to the parties. If we go through the record then the Applicant has made first proposal on Page 62 of Volume II and second proposal from family branch of Shri Ramesh Khandelwal on dated 29/11/2016 on Page 77 of Volume II and the same is being taken into consideration by the arbitrator and the firm / B-37 shed is being allocated accordingly to the Applicant. Thus, the firm is being allotted to the share of Applicant as per their own choice and they have acted upon it and continued the business accordingly. Most of the communications are being made by the son of the Applicant with the arbitrator through emails and if we go through the Page 110 of Volume II, then the Applicants through his son had suggested for giving B-37 shed and the same is being accepted and considered and given to the Applicant by the Arbitrator. Hence, the said submission of the Ld. Advocate for the Applicant is not acceptable.

(7.28). The Ld. Advocate for the Applicant has vehemently argued that on the point of bias of

the arbitrator, the Applicant has produced the Affidavit dated 29/09/2018 of his son in this Application, copy of which is also at Page-83 of Volume-I and not before the Arbitrator. If we go through, the Affidavit at at Page-83 of Volume-I, then it is of dated 29/09/2018 and last communication of the Applicant is dated 26/10/2018 and the award is passed on dated 06/11/2018. Thus, the affidavit by the Applicant's son was made on dated 29/9/2018, prior of passing of award alleging bias, but it was not produced before the arbitrator though available and in custody of the Applicant. It is not the case of the Applicant that they had made any application to the Arbitrator alleging any bias or partiality. On the contrary, the emails communicated by the son of the Applicant to the arbitrator clearly shows that they were satisfied with the procedure going on in the arbitration and have requested the arbitrator as a family friend and their well wisher and the arbitrator was therefore acting as an amicably compositor under Section 28(2) of Arbitration and Conciliation Act, 1996. The said affidavit was in the possession

of the Applicant, but not produced before the Arbitrator and even not made any application alleging bias or partiality. This itself shows that the Applicant has made the said affidavit to use it, only if the award comes against them and if they are not satisfied with the award, by producing in the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996. If award would come in their favour and as per wish of Applicant, then they would have concealed the said affidavit and would not have disclosed it anywhere. Thus, the mala-fide intention of the Applicant clearly shows from the conduct for the said mala-fide and unfair conduct of the Applicant. He is required to be imposed with heavy costs, but as the parties are son of same parents & family members and there was distribution of the properties between the parties internally between family members, this Court imposes just a token costs of Rs.10,000/- to the Applicant, which shall be paid to the Opponents.

(7.29). The Ld. Advocate for the Opponent has relied

on the decision delivered by the Hon'ble High Court of Delhi (Coram : Hon'ble Justice Prathiba M. Singh, J) in case of ²³ALLIED-DYNAMIC JOINT VENTURE Vs. IRCON INTERNATIONAL LTD, DELHI, wherein held in Para-13 that in any event, the Petitioner having participated in the proceedings fully and the Final Award in terms of Section 31 of the Act having been rendered, this Court is of the opinion that the allegation of bias cannot be agitated at this stage as such conduct could also constitute waiver under Section 4 of the 1996 Act.

It is observed in Para-17 that it is well settled in terms of the decisions of the Supreme Court in Haryana Urban Development Authority, Karnal Vs. M/s. Mehta Construction Company [2022 LiveLaw (SC) 348] that under Section 34 of the 1996 Act, this Court cannot go into a fact-finding exercise, and an award cannot be set aside under Section 34(1) of the 1996 Act merely on the ground of mis-appreciation of evidence, which the present petition seeks to indirectly

²³ ALLIED-DYNAMIC JOINT VENTURE Vs. IRCON INTERNATIONAL LTD, DELHI
: O.M.P (COMM) 451/16, D/-10/2/24

manifest.

(7.30). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble High Court of Delhi (Coram : Hon'ble Justice Mukul Mudgel, J) in case of ²⁴DEVIKA MEHRA Vs. AMEETA MEHRA, wherein held that when the arbitrator acted fairly and had given adequate opportunities to both the parties and the correspondence between the parties and the arbitration agreement clearly demonstrated that both the parties agreed that the decision should bind them, then the same could not be set aside under Section 34 of Act. It is further held that division based on valuation is just and legal.

(7.31). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble High Court of Delhi (Coram : Hon'ble Justice Anish Dayal, J) in case of ²⁵UNION OF INDIA THROUGH GENERAL MANAGER Vs. V.K. SOOD ENGINEER &

²⁴ DEVIKA MEHRA Vs. AMEETA MEHRA
: 114(2004) DLT 811 = 2004(77) DRJ 651, D/- 6/10/04

²⁵ UNION OF INDIA THROUGH GENERAL MANAGER Vs. V.K. SOOD ENGINEER & CONTRACTORS THROUGH ITS MANAGING DIRECTOR
: 2025 SCC ONLINE DEL 4399 = OMP (COMM) 486/18, D/-13/5/25

CONTRACTORS THROUGH ITS MANAGING DIRECTOR, wherein held Para-41 that objections as to jurisdiction of Arbitral Tribunal ought to be taken at the first instance, in fact not later than the submission of the statement of defense as per section 16(2) of Act. The omission to take such an objection at the earlier stage, amounts to a waiver of the right to object.

It is further held in Para-43 that objections pertaining have time and to jurisdiction / authority of the Arbitral Tribunal, cannot, for the first time, be raised in a petition under Section 34 of Act, referring ²⁶UNION OF INDIA Vs. PAM DEVELOPMENT (P) LTD.

Upon consideration of the provisions contained in Section 4 of the Arbitration Act, 1996, it has been held in Para-39 in case of ²⁷BSNL Vs. MOTOROLA INDIA (P) Ltd. that pursuant to Section 4 of the Arbitration and Conciliation Act, 1996, a party which knows that a requirement under the arbitration agreement has not been complied with and

²⁶ *UNION OF INDIA Vs. PAM DEVELOPMENT (P) LTD : (2014) 11 SCC 366*

²⁷ *BSNL Vs. MOTOROLA INDIA (P) Ltd. [(2009) 2 SCC 337; (2009) 1 SCC (Civ) 524]*

still proceeds with the arbitration without raising an objection, as soon as possible, waives their right to object. It is held in case of ²⁸GAURI SHANKAR EDUCATIONAL TRUST Vs. RELIGARE FINVEST LTD. that if no objection of lack of jurisdiction of the arbitration tribunal is taken in the arbitration proceedings, then after passing of an award, such an objection cannot be taken. This issue has been also dealt with by the Hon'ble Supreme Court in its judgment in the case of ²⁹MADHYA PRADESH RURAL ROAD DEVELOPMENT AUTHORITY Vs. L.G. CHAUDHARY ENGINEERS AND CONTRACTORS.

It has been held in case of ³⁰QUIPPO CONSTRUCTION EQUIPMENT LTD. Vs. JANARDAN NIRMAN (P) LTD. that if party failed to participate in the proceedings before the arbitrator and did not raise any submission that the arbitrator did not have jurisdiction or that he was exceeding the scope of his authority, the respondent must be deemed to

²⁸ GAURI SHANKAR EDUCATIONAL TRUST Vs. RELIGARE FINVEST LTD.
: 2019 SCC ONLINE DEL 6987

²⁹ MADHYA PRADESH RURAL ROAD DEVELOPMENT AUTHORITY Vs. L.G. CHAUDHARY ENGINEERS AND CONTRACTORS : (2018) 10 SCC 826

³⁰ QUIPPO CONSTRUCTION EQUIPMENT LTD. Vs. JANARDAN NIRMAN (P) LTD.
: (2020) 18 SCC 277

have waived all such objections.

It is further held in Para-54 that Petitioners attempt to rake up the issue at this stage will therefore be hit by the doctrine of waiver. Petitioner cannot take advantage of it at this stage of Section 34 of the Act, having given up its option to raise, what it now professes to be a fundamental ground. It is further held in Para-58 that under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the Court. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the Act.

- (7.32). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice G.B. Pattanaik and Hon'ble Justice S.N. Phukan and Hon'ble Justice S.N. Variava, JJ) in case of ³¹NARAYAN PRASAD LOHIA Vs. NIKUNJ KUMAR LOHIA, wherein held in Para-16 that a conjoint reading of Sections 10

³¹ NARAYAN PRASAD LOHIA Vs. NIKUNJ KUMAR LOHIA AND OTHERS
: (2002) 2 SCC 572 = 2002 SCC ONLINE SC 243 = CA 1382/02, D/-20/2/02

and 16 shows that an objection to the composition of the Arbitral Tribunal is a matter which is derogable. It is derogable because a party is free not to object within the time prescribed in Section 16(2). If a party chooses not to so object there will be a deemed waiver under Section 4.

(7.33). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice Uday U. Lalit and Hon'ble Justice Vineet Saran, JJ) in case of ³²QUIPPO CONSTRUCTION Vs. JANARDAN NIRMAN PRIVATE LIMITED wherein held in Para-24 that considering the facts that the respondent failed to participate in the proceedings before the arbitrator and did not raise any submission that the arbitrator did not have jurisdiction or that he was exceeding the scope of his authority, the respondent must be deemed to have waived all such objections.

(7.34). The Ld. Advocate for the Opponent has relied

³² QUIPPO CONSTRUCTION Vs. JANARDAN NIRMAN PRIVATE LIMITED
: (2020) 18 SCC 277 = 2020 SCC ONLINE SC 419 = CA 2378/20, D/-29/4/20

on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice S.S. Nijjar and Hon'ble Justice Ranjana P. Desai, JJ) in case of ³³UNION OF INDIA Vs. PAM DEVELOPMENT PRIVATE LIMITED, wherein held in Para-17 that Section 16(2) mandates that a plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. Section 4 provides that a party who knows that any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay, shall be deemed to have waived his right to so object.

(7.35). The Ld. Advocate for the Applicant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice D.P. Wadhwa & N. Santosh, JJ) in case of ³⁴STATE OF ORISSA Vs. ORIENT PAPER & INDUSTRIES wherein the arbitrator had not decided points in disputes and the questions

³³ UNION OF INDIA Vs. PAM DEVELOPMENT PRIVATE LIMITED : (2014) 11 SCC 366 = (2014) 4 SCC (CIV) 117 = 2014 SCC ONLINE SC 135 = CA 5618/06, D/-18/2/14

³⁴ STATE OF ORISSA Vs. ORIENT PAPER & INDUSTRIES
: (1999) 3 SCC 566 = CA 522/92, D/-9/4/99

referred were remained unanswered. Whereas in present case, issues referred to arbitrator is decided, by making detailed valuation of assets. Hence, the said authority will not assist the case of Applicant in present case, due to different facts and circumstances.

(7.36). The Ld. Advocate for the Applicant has relied on the decision delivered by the Hon'ble Supreme Court (Coram: Hon'ble Justice Dr. B.S. Chauhan & F.M. Ibrahim Kalifulla, JJ) in case of ³⁵**PREM KAUR Vs. STATE OF PUNJAB**, wherein it was case of rape case punishable under Section 376 of I.P.C., whereas the present case is under Arbitration and Conciliation Act, 1996, which is complete self-Code and law in both the Act is different and in present case, Arbitrator is free decide procedure to be adopted by Application for Arbitration dated 4/1/2017 at Page-57 of Volume-I and thereby permitted to adopt his own procedure as mandated by parties. Hence, the said authority will not assist the case of Applicant in present case, due to different facts and circumstances.

³⁵ **PREM KAUR Vs. STATE OF PUNJAB : (2013) 14 SCC 653 = CA 1364/08, D/-25/4/13**

(7.37). The Ld. Advocate for the Applicant has relied on the decision delivered by the Hon'ble High Court of Delhi (Coram : Hon'ble Justice Vibhu Bakhru, J) in case of ³⁶DELHI METRO RAIL CORPORATION LTD. Vs. KONE ELEVATORS INDIA PVT. LTD. (AND VICE VERSA), wherein the principal dispute remained unadjudicated and the decision delivered by the Hon'ble High Court of Delhi (Coram : Hon'ble Justice Chandra Dhari Singh, J) in case of ³⁷NHPC LIMITED Vs. JAIPRAKASH ASSOCIATES LTD, where contract for giving reason order and not on equity and there was no express consent for award on equity. Whereas, in present case, Firstly, dispute referred is adjudicated and that too based on valuation of assets as per books of accounts and all four children are given equal share / distribution of property and Secondly, the Arbitrator is family friend and well-wisher, associated for about 33 years with family of parties and thereby the parties

³⁶ DELHI METRO RAIL CORPORATION LTD. Vs. KONE ELEVATORS INDIA PVT. LTD. (AND VICE VERSA) : (2022) 96 GSTR 327 = 2021 SCC ONLINE DEL 5048 = (2022) 286 DLT 12 = O.M.P (COMM) 211 & 227/21 & I.A. 9158, 9159 & 14771/21, D/-22/11/21

³⁷ NHPC LIMITED Vs. JAIPRAKASH ASSOCIATES LTD
: 2023:DHC:3866 = O.M.P. (COMM) 482/20, D/-26/4/23

have empowered and expressly authorised the arbitrator to dispense with consideration of law and to take decision on notions of fairness and equity as it is clearly stated “Arbitrator is free decide procedure to be adopted” in Application for Arbitration dated 04/01/2017 at Page-57 of Volume-I. Hence, the said authority will not assist the case of Applicant in present case, due to different facts and circumstances.

(7.38). The Ld. Advocate for the Opponent has vehemently argued that the scope of the Court in application under Section 34 of Arbitration and Conciliation Act, 1996, is very limited and there is no patently error or illegality in Award passed by the Ld. Arbitrator and therefore, this Court should not interfere in just and legal award passed based on proper valuation of properties and giving equal share to each party and even accepted the proposal made by Applicant him self. The Ld. Arbitrator is free to decide procedure to be adopted by Application for Arbitration dated 04/01/2017 at Page-57 of Volume-I and is

final, binding and acceptable to all parties in view of mandate given by Application for Arbitration dated 04/01/2017 at Page-57 and the Opponent has relied on following authorities on the points of scope of Court under Section 34 of Arbitration and Conciliation Act, 1996.

(7.39). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice P.S. Narasimha and Hon'ble Justice Pankaj Mithal, JJ) in case of ³⁸JAN DE NUL DREDGING INDIA PRIVATE LIMITED Vs. TUTICORIN PORT TRUST, wherein held in Para-23 that the primary object of the Act is to provide speedy and inexpensive mode of resolution of disputes through the process of arbitration with the minimum intervention of the law courts. In this context, it would be beneficial to refer and quote Section 5 of the Arbitration and Conciliation Act, 1996, which reads as under :

³⁸ JAN DE NUL DREDGING INDIA PRIVATE LIMITED Vs. TUTICORIN PORT TRUST
: (2026) 3 SCC 186 = 2026 SCC ONLINE SC 33 = CA 98/26, D/- 7/1/26

Section 5 :

Extent of judicial intervention :-

Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, **no judicial authority shall intervene except where so provided in this Part.**

It is further held in it's Para-24 that the above Section 5 of the Act contemplates that in matters of arbitration governed by Part-I i.e. **in relation to domestic arbitration, minimum intervention of the judicial authority is acceptable, unless it is otherwise provided under Part I of the Act.** In other words, in order to speed up the remedial measures under the Act **in relation to domestic arbitration, there has to be minimum intervention of the court** and, **if necessary, it has to be only in strict compliance with the provisions of the Act.**

It is further held in it's Para-25 that the Act provides for the **challenge of the arbitral award before the court on limited grounds as contemplated by Section 34 of the Act** i.e.

where one of the party was under some incapacity; or where the arbitration agreement itself was not valid; or the parties were not given proper notice of the appointment of an arbitrator or the arbitral proceedings; or was unable, for some reason, to present his case before the arbitrator or Arbitral Tribunal; or if the arbitral award deals with the dispute not contemplated or falling within the terms of the arbitration or deals with the matters beyond the scope of the arbitration; or where the constitution of the Arbitral Tribunal was not in accordance with arbitration agreement; and, or where the court finds the subject-matter of the arbitral dispute was incapable of settlement by arbitration or the arbitral award is in conflict with the public policy of India. It is further held in it's Para-26 that **apart from the above grounds, the arbitral award is not open for challenge under Section 34 of the Act on any other ground. So, the intervention of the court is limited.** Therefore, technicalities apart, the main ground for challenge of the arbitral award in the instant case, which survives is that of the award being in conflict

with the public policy of India i.e. whether it is in contravention with the fundamental policy of India or is in conflict with the most basic notions of morality or justice.

It is further held in Para-50 that the Arbitration and Conciliation Act, 1996, is a special enactment which **aims to resolve contractual / commercial disputes through arbitration with the minimum intervention of the court, if not without the intervention of the court.** In the event, the courts are allowed to step in at every stage and the arbitral awards are subjected to challenge before the courts in hierarchy before court of first instance, through regular appeals and finally by means of SLP/civil appeal before the Supreme Court, it would obviate/frustrate and defeat the very purpose of the Act. It is, therefore, **necessary to accept the arbitral award if it is not patently illegal or does not fall within the scope of intervention under Section 34 of the Act.**

(7.40). It is held in case of ³⁹**MMTC LTD. Vs. VEDANTA LTD.**, by the Hon'ble Supreme Court in Para-14 that the court cannot

³⁹ **MMTC LTD. Vs. VEDANTA LTD., : (2019) 4 SCC 163 = (2019) 2 SCC (CIV) 293**

undertake an independent assessment of the merits of the award and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision.

(7.41). It is held in case of ⁴⁰KONKAN RAILWAY CORPN. LTD. Vs. CHENAB BRIDGE PROJECT, by the Hon'ble Supreme Court of India in Para-18 that scope of interference by a court, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act. It is further held in Para-19 that the Courts ought not to interfere with the arbitral award in a casual and cavalier manner and mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal.

(7.42). It is held in case of ⁴¹UHL POWER CO. LTD. Vs. STATE OF H.P. by the Hon'ble Supreme

⁴⁰ KONKAN RAILWAY CORPN. LTD. Vs. CHENAB BRIDGE PROJECT
: (2023) 9 SCC 85 = (2023) 4 SCC (CIV) 458.

⁴¹ UHL POWER CO. LTD. Vs. STATE OF H.P. : (2022) 4 SCC 116 = (2022) 2 SCC (CIV) 401

Court of India in Para-16 that the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, in examining an order, setting aside or refusing to set aside an award.

(7.43). It is held in case of ⁴²NHAI Vs. HINDUSTAN CONSTRUCTION CO. LTD by the Hon'ble Supreme Court of India in Para-16 that there cannot be any dispute that as far as the construction of the terms of a contract is concerned, it is for the Arbitral Tribunal to adjudicate upon. If, after considering the material on record, the Arbitral Tribunal takes a particular view on the interpretation of the contract, the Court under Section 34 does not sit in appeal over the findings of the arbitrator.

(7.44). It is held in Para-15 in the case of ⁴³LARSEN AIR CONDITIONING & REFRIGERATION CO. Vs. UNION OF INDIA, by the Hon'ble Supreme Court of India that the limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the

⁴² NHAI Vs. HINDUSTAN CONSTRUCTION CO. LTD
: (2024) 6 SCC 809 = (2024) 3 SCC (CIV) 329 = 2024 INSC 388

⁴³ LARSEN AIR CONDITIONING & REFRIGERATION CO. Vs. UNION OF INDIA
: (2023) 15 SCC 472

court to interfere with an award, sans the grounds of patent illegality but if an arbitrator construes a term of a contract in a reasonable manner, it will not mean that the award can be set aside on that ground.

(7.45). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice N.V. Ramana, Hon'ble Justice M.M. Shantanagoundar and Hon'ble Justice Ajay Rastogi, JJ) in case of ⁴⁴DYNA TECHNOLOGIES PRIVATE LIMITED Vs. CROMPTON GREAVES LIMITED, wherein held in Para-24 that there is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of

⁴⁴ *DYNA TECHNOLOGIES PRIVATE LIMITED Vs. CROMPTON GREAVES LIMITED*
: (2019) 20 SCC 1 = 2019 SCC ONLINE SC 1656 = CA 2153/10, D/-18/12/19

alternative interpretation which may sustain the arbitral award. **Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction.** The **mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy** to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

It is further held in Para-25 that umpteen number of judgments of the Court have categorically held that the **courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists.** The **courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied** unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.

It is further held in Para-37 that in case

of absence of reasoning the utility has been provided under Section 34(4) of the Arbitration Act to cure such defects. When there is complete perversity in the reasoning then only it can be challenged under the provisions of Section 34 of the Arbitration Act. The power vested under Section 34(4) of the Arbitration Act to cure defects can be utilised in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise and that can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act.

- (7.46). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Chief Justice Dr. D.Y. Chandrachud, Hon'ble Justice P.S. Narasimha and Hon'ble Justice J.B. Pardiwala, JJ) in case of ⁴⁵KONKAN RAILWAY CORPORATION LIMITED Vs. CHENAB BRIDGE PROJECT UNDERTAKING, wherein held in Para-19 that it is well settled that courts ought not to

⁴⁵ KONKAN RAILWAY CORPORATION LIMITED Vs. CHENAB BRIDGE PROJECT UNDERTAKING : (2023) 9 SCC 85 = 2023 SCC ONLINE SC 1020 = CA 2903/23, D/- 17/8/23

interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal. It is further held in Para-25 that the jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. Accordingly, the question of reinterpreting the contract on an alternative view does not arise.

(7.47). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice R.M. Lodha and Hon'ble Justice Tarun Chatterjee, JJ) in case of ⁴⁶STEEL AUTHORITY OF INDIA LTD. Vs. GUPTA BROTHER STEEL TUBES LTD., wherein held in Para-36 that there has to be some sanctity and finality attached to the decision of the arbitrator and new plea cannot be allowed to be raised.

⁴⁶ STEEL AUTHORITY OF INDIA LTD. Vs. GUPTA BROTHER STEEL TUBES LTD.
: 2009 AIR SCW 7191 = 2010 (2) AIR JHAR R 73 = CA 5241/02, D/-9/9/09

(7.48). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice Ajay Rastogi and Hon'ble Justice Sanjiv Khanna, JJ) in case of ⁴⁷HARYANA URBAN DEVELOPMENT AUTHORITY, KARNAL Vs. M/S MEHTA CONSTRUCTION COMPANY, wherein held in Para-15 that Sub-section (2)(a) to Section 34 of the Act inserted with effect from 23rd October 2015 states that the arbitral award may be set aside by the court if the court finds the award is vitiated by patent illegality appearing on the face of the award. The proviso stipulates that the award shall not be set aside merely on the ground of erroneous application of law or by misappreciation of evidence. An award can also be set aside under sub-clause (ii) to clause (b) of Section 34(2) on the ground that it is in conflict with the public policy of India, which expression has been explained in the Explanation(s) to the said Section. It is further held in Para-16 that we have briefly noted the provisions of the Act only to highlight that the

⁴⁷ HARYANA URBAN DEVELOPMENT AUTHORITY, KARNAL Vs. M/S MEHTA CONSTRUCTION COMPANY = CA 2693/22, D/-30/3/22

objections under Section 34 of the Act did require consideration and in-depth examination.

(7.49). The Ld. Advocate for the Opponent has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Chief Justice Sanjiv Khanna, Hon'ble Justice B.R. Gavai, Hon'ble Justice P.V. Sanjay Kumar, Hon'ble Justice Augustine George Masih and Hon'ble Justice K.V. Viswanathan, JJ) in case of ⁴⁸GAYATRI BALASAMY Vs. ISG NOVASOFT TECHNOLOGIES LIMITED, wherein held in Para-49 that a court reviewing an award under Section 34 possesses the authority to rectify computational, clerical, or typographical errors, as well as other manifest errors, provided that such modification does not necessitate a merits-based evaluation. There are certain powers inherent to the court, even when not explicitly granted by the legislature. The scope of these inherent powers depends on the nature of the provision, whether it pertains to appellate, reference, or

⁴⁸ GAYATRI BALASAMY Vs. ISG NOVASOFT TECHNOLOGIES LIMITED
: MANU/SC/0609/2025 = CA 8183/16, D/-30/4/25

limited jurisdiction as in the case of Section 34. The powers are intrinsically connected as they are part and parcel of the jurisdiction exercised by the court. It is further held in Para-54 that under Section 34 of Act, the **court must have no uncertainty or doubt when modifying an award. If the modification is debatable or a doubt arises regarding its appropriateness i.e. if the error is not apparent on the face of the record**, the court will be left unable to proceed, its hands bound by the uncertainty.

(7.50). In the present case, no patent illegality on the face of the award stands established. The Arbitral Award is a speaking award with findings and interpretations based upon reasons. Moreover, there is apparently no violation of the fundamental policy of any Indian law or the basic notions of morality and justice to enable the courts to interfere with the award.

(7.51). In the case at hand, the arbitral award contains logical reasons in arriving at valuation and

division of assets and the view taken by the Arbitral Tribunal is acceptable under Section 34 of the Act as a reasonable and a possible view. Therefore, the arbitral award can not be set aside even if there is a possible second view on the said issue.

(7.52). In the case at hand the Arbitral Tribunal has not ignored the proposal given by the Applicant. Therefore, to say the Arbitral Tribunal by holding that Applicant should be able to correct on irregularity, cannot be stated to have acted as "amiable compositeurs" or "ex aequo et bono". The Arbitral Tribunal has acted according to law and applied principles of natural justice. The Arbitral Tribunal in my view, had not acted contrary to the law or disregarded the law but has applied the correct position in law.

(7.53). In view of the reasons stated here-in-above, evidence on record and settled principles of law, the impugned Arbitration Award dated 06/11/2018 passed by Sole Arbitrator - Mr. Mahesh P. Sarda, C.A., is neither erroneous

nor illegal nor perverse nor with material irregularity, in view of grounds stated in Section 34 of Arbitration and Conciliation Act, 1996 and does not call for any interference by this Court, to meet with the end of justice and the said Award deserves to be confirmed and this application deserves to be dismissed. The Court feels that it will be failing in his duty, if the valuable assistance rendered by the Ld. Senior Advocate Mr. D. V. Parikh with the Ld. Advocate Mr. M. L. Patel for the Applicant and the Ld. Senior Advocate Ms. Manisha Lavkumar with the Ld. Advocate Mr. D. T. Mamtara, for the Opponents, in co-operating in proceedings, assisting in appreciating facts & enlightening with relevant law / authorities and in arriving at a decision and disposing of old pending application, is not appreciated. Admittedly, the assistance provided by them was indeed valuable and appreciable, which has assisted the Court to reach to a conclusion and to dispose off the application on it's merits. Accordingly, I answer the **POINT No. 1** in **NEGATIVE** and answer the **POINT No. 2**

by passing the FOLLOWING ORDER :

-: FINAL ORDER :-

- The application under Section 34 of Arbitration and Conciliation Act, 1996, is dismissed.
- The impugned Arbitration Award dated 06/11/2018 passed by Sole Arbitrator - Mr. Mahesh P. Sarda, C.A., is hereby confirmed.
- The Applicant shall pay the token cost of Rs. 10,000/- to the Opponents.
- Yadi along with the copy of this Order as well as record and proceeding of said Arbitration is ordered to be

sent back to the concerned
Ld. Sole Arbitrator - Mr.
Mahesh P. Sarda, C.A.

Signed, pronounced and declared in the open Court on this 30th day of June, 2026, at Jamnagar.

Date : 30/06/2026
Place : Jamnagar

(Rasikkumar V. Mandani)
Special Arbitration Court
3rd Additional District Judge
Jamnagar. (Code : GJ00715)

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