IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 81 OF 2020

Zenobia Poonawala (nee Jinwalla) ... Petitioner
vs.
Rustom Ginwalla and others ... Respondents

WITH
INTERIM APPLICATION NO. 1010 OF 2020

ALONGWITH

ARBITRATION PETITION (LODGING) NO. 15 OF 2020
WITH
INTERIM APPLICATION NO. 1339 OF 2020

Mr. Aseem Naphade a/w. Mr. Premlal Krishnan, Mr. Rehmat Lokhandwala and Mr. Prashant Bothre, i/by. Pan India Legal Services LLP for petitioner in CARBP/81/2020 and ARBPL/15/2020.

Mr. Sameer Pandit and Ms. Sarrah Khambati, i/by. Wadia Ghandy & Co. for applicants in EXA/322/2022 and EXA/323/2022 and for respondent Nos.1 to 3 in CARBP/81/2020 and ARBPL/15/2020

CORAM : MANISH PITALE, J
RESERVED ON : 6th DECEMBER, 2022
PRONOUNCED ON : 25th JANUARY, 2023

JUDGMENT

. The petitioner has filed these two petitions, challenging awards passed by a sole arbitrator, concerning disputes in two partnership firms, wherein the petitioner and the respondents were partners. The parties are family members and disputes arose between them, leading to issuance of notices for dissolution of the firms. The parties are members of the Ginwalla family, wherein the father Farhad Ginwalla, along with his son and daughters, were

running the business of the two partnership firms, M/s. Shroff & Co, Colaba (hereinafter referred to as the Colaba firm) and M/s. Shroff & Co, Grant Road (hereinafter referred to as the Grant Road firm). The Grant Road firm was in the business of wholesale distribution of wines and spirits, since 1908 and the Colaba firm was in the retail business of wines and spirits.

2. On 14th March 1995, Farhad Ginwalla i.e. the father of the parties herein and Cherie Ginwalla, both original claimants, executed partnership deed, introducing the petitioner Zenobia Poonawalla as a partner in the Colaba firm for profits only. The share of partnership was, Farhad Ginwalla 40%, Cherie Ginwalla 40% and the petitioner Zenobia 20%. On 29th November 1996, the said parties executed an indenture, whereby the petitioner Zenobia was made a partner with share in profits and losses.

3. On 17th May 2012, the partners in the Grant Road firm executed partnership deed, introducing petitioner Zenobia as a partner of the firm. The partnership share was Farhad Ginwalla 33%, Rustom Ginwalla 19%, Rashna Ginwalla 19% and Zenobia (petitioner) 29%. Between 2012 and 2014, petitioner Zenobia and her father Farhad Ginwalla were involved in the day-to-day management of both the firms. In January 2014, the relationship between petitioner Zenobia and other family members, who were partners in the two firms, broke down and according to the partners, other than petitioner Zenobia, a decision was taken by them to wind up the business of the two firms.

4. On 25th/27th October 2014, petitioner Zenobia transferred ₹ 70 lakhs from the account of the Colaba firm to the account of the Grant Road firm. Thereafter, she transferred ₹ 79 lakhs from the account of the Grant Road

firm into her personal account. It was alleged that both the transfers were made without the knowledge or consent of the other partners.

5. On 30th May 2016, Farhad Ginwalla, Rustom and Rashna, being the partners of the Grant Road firm and together holding 71% shares, issued notice of dissolution of the said firm. Similarly, on 7th June 2016, Farhad Ginwalla and Cherie, being partners of the Colaba firm holding 80% share, issued notice for dissolution of the said firm. Disputes arose between petitioner Zenobia on the one hand and the other family members and partners in the two firms on the other hand. In this backdrop, on 28th July 2016, a petition came to be filed, under section 11 of the Arbitration and Conciliation Act, 1996, for constitution of an arbitral tribunal. Mr. Pradeep Sancheti, Senior Advocate, was appointed as the sole arbitrator, with the consent of the parties, by an order of this Court, for resolving the disputes that arose between the parties, in the context of the two firms.

6. The learned arbitrator entered upon the reference and the proceedings stood initiated. Considering the fact that the accounts of the two firms had to be settled, the learned arbitrator appointed M/s Dhanboora & Co., Chartered Accountants, as the auditor for accounts of both the firms. It is the case of the Respondents in these two petitions that the said auditor came to be appointed with the consent of all the parties, including petitioner Zenobia. It appears that during the course of proceedings before the learned arbitrator, the parties were granted liberty to communicate with the auditor as regards any information or documents, which they desired to show to the auditor. While undertaking the exercise, as directed, the auditor sought direction from the learned arbitrator, for interacting with one Mr. Nambiar, a longtime manager of the firms, in order to seek clarifications, relating to accounts of

the firms. The learned arbitrator issued directions, allowing the auditor to hold meetings with the said Mr. Nambiar.

7. On 5th September 2018, the said auditor submitted its report along with financial statements. The learned arbitrator took into consideration the report of the auditor along with the documents filed therewith. The learned arbitrator heard the parties and on 19th August 2019, passed the impugned awards, thereby upholding the dissolution of the firms, directing the partners with negative balances, to pay their dues to the firms and the learned arbitrator passed consequential directions.

8. The petitioner filed these two petitions, challenging the awards passed by the learned arbitrator. It is relevant to note that in the award pertaining to the Colaba firm, the petitioner was directed to pay ₹ 7,36,755/-, to the firm and direction was given for payment of costs of ₹ 2,50,000/-. In the award pertaining to the Grant Road firm, the petitioner was directed to pay ₹ 95,44,764/- to the firm and costs of ₹ 20,00,000/-.

9. The petitioner had filed applications for stay in these petitions. By order dated 3rd December 2020, this Court directed that the petitions would be taken up for final disposal at admission stage itself. The learned counsel appearing for the respondents in the petitions submitted that although execution proceedings were filed, adjournment would be taken in those proceedings. On 7th January 2021, while adjourning the petitions, it was recorded that the respondents would not proceed with the execution proceedings. The said statement remained in operation, while the petitions were adjourned from time to time. As directed by the earlier order, the petitions were finally heard at admission stage.

10. Mr. Aseem Naphade, learned counsel, appearing for the petitioner in both the petitions, submitted that the impugned awards deserved to be set aside, under section 34 of the aforesaid act on various grounds. He submitted that although both the awards were based on report submitted by the auditor i.e. the chartered accountant, appointed to audit the accounts of both the firms, the report of the auditor was not proved in evidence by its author. It was submitted that even if the learned arbitrator, under the provisions of the said Act, was not bound to follow the procedure specified in the Code of Civil Procedure, 1908 (CPC), he was required to follow the procedure, adhering to the principles of natural justice and the basic rules of evidence. It was submitted that the appointment of the auditor was without prejudice to the rights and contentions of the parties and since the petitioner had objected to the report of the auditor in her statement of defence, the auditor ought to have been examined by the learned arbitrator. The learned counsel emphasized that the report of the auditor, like any other document, ought to have been proved in evidence, by the author of the report, stepping into the witness box. It was submitted that alternatively, if the report of the auditor was to be treated as an expert opinion, it ought to have been proved in accordance with law.

11. On this basis, it was submitted that when the author of the report was not examined, the learned arbitrator could not have placed reliance upon the same. Yet, the findings of the learned arbitrator, in both the awards, pertaining to the accounts of the firms, were completely based on the report of the auditor. It was submitted that this totally vitiated the impugned awards. The learned counsel placed reliance on the following judgments in support of the aforesaid contention:

(i) *Vilas Dinkar Bhat v/s. State of Maharashtra and others* [**(2018) 9 SCC 89**],

(ii) *Pradyuman Kumar Sharma and another v/s. Jaysagar M. Sancheti and others* [**2013 (5) Mh.L.J.**],

(iii) *Rashmi Housing Private Limited v/s. Pan India Infraprojects Private Limited* (**2014 SCC Online Bom 1874**); and

(iv) *Nazim H. Kazi v/s. Kokan Mercantile Co-operative Bank Limited* (**2013 SCC Online Bom 209**).

12. It was further submitted that the since the respondents i.e. the original claimants in both the arbitration proceedings, chose to rely upon the report of the auditor, the burden was on the respondents to prove the same. It was further submitted that only Rustom Ginwalla, a partner in the Grant Road firm, adduced evidence and his evidence was of no consequence, insofar as the Colaba firm was concerned. A perusal of the awards would show that the learned arbitrator, in any case, did not base his findings on the deposition of the said lone witness of the respondents and instead, based his findings entirely upon the report of the auditor, which was not proved in evidence. It was further submitted that even the report recorded that due to incomplete information, it was not possible to conduct comprehensive audit of the firms. The learned counsel for the petitioner further sought to demonstrate the missing links in the report of the auditor and claimed that the report itself was extensively based on verbal explanations given by the manager of the firms.

13. It was further submitted that the petitioner had, throughout, stated that the accounts of the firms were never shown to her. In that light, it was

all the more necessary for the report of the auditor to be proved, in accordance with law and in the absence of any evidence, led in support of the report, the entire findings of the learned arbitrator, on the aspect of accounts of the two firms, were rendered unsustainable. It was further submitted that the objections raised by the petitioner were completely ignored by the learned arbitrator.

14. Learned counsel for the petitioner further submitted that the mode of dissolution of the firms was contrary to Section 48 of the Partnership Act, inasmuch as the awards called upon the petitioner and Farhad Ginwalla to contribute towards liabilities of the firms, before the assets of the firms being liquidated, although the claimants had sought relief only in terms of Section 48 of the aforesaid Act.

15. On the other hand, Mr. Sameer Pandit, learned counsel appearing for the respondents in both the petitions, submitted that the nature of challenge, raised on behalf of the petitioner in both the petitions, did not satisfy the requirements of Section 34 of the aforesaid Act. He placed reliance on the judgments of the Supreme Court in the cases of *Ssangyong Engineering & Construction Company Ltd. v/s. National Highway Authority of India (NHAI)*, [**(2019) 15 SCC 131**], *Dyna Technologies Private Limited v/s. Crompton Greaves Limited*, [**(2019) 20 SCC 1**), *Delhi Airport Metro Express Private Limited v/s. Delhi Metro Rail Corporation Limited*, [**(2022) 1 SCC 131**], *UHL Power Company Limited v/s. State of Himachal Pradesh*, [**(2022) 4 SCC 116**] and judgment of this Court in the case of *Jagannath Parmeshwar Mills Pvt. Ltd. v/s. Agility Logistics Private Limited*, (**2022 SCC Online Bom 1462**). By relying upon the said judgments, learned counsel for the respondents submitted that the insistence on the part of the petitioner that

the auditor, in the present case, ought to have been examined as a witness, for the report of the auditor to be taken into consideration, was unsustainable. It was submitted that the arbitrator is the best judge of the quantity and quality of the evidence in the proceedings.

16. By referring to the judgment of the Supreme Court in the case of **Ssangyong Engineering & Construction Company Ltd. v/s. National Highway Authority of India (NHAI)** (*supra*), it was highlighted that after amendments brought about by the Amending Act of 2015, the scope of interference in the arbitral awards, under Section 34 of the said Act, was further clarified. In the said judgment, the Supreme Court noted that Section 26 of the said Act, pertaining to appointment of expert by the arbitral tribunal, gave sufficient indication about the manner in which, reports of experts were to be treated in an arbitral proceeding. It was further submitted that in the present case, the auditor was appointed by the consent of the parties and if the petitioner had any objection to the report of the auditor, she ought to have taken recourse to Section 26 of the said Act. It was submitted that, so long as the report of the auditor was based on a reasonable exercise and the learned arbitrator proceeded to accept the same, in the light of the material available on the record, no fault could be found with the approach adopted by the learned arbitrator. Learned counsel for the respondents sought to distinguish the judgments on which reliance was placed on behalf of the petitioner.

17. As regards objections raised about the validity of the dissolution notice, it was submitted that the main ground, raised on behalf of the petitioner, pertained to alleged unsoundness of mind of Farhad Ginwalla, at the time, when the dissolution notice was issued. It was submitted that the aspect of alleged unsoundness of mind could never be an arbitrable issue,

since special law, providing for a special forum was available for determining such an issue. In fact, the petitioner had initiated such proceeding under the Mental Health Act, which was inconclusive and therefore, there was no substance in the said contention raised on behalf of the petitioner. As regards failure on the part of the respondents to examine one of the witnesses, specified in the list of their witnesses, it was submitted that no adverse inference could be drawn against the respondents, merely because they did not examine one of the witnesses. There was no mandatory requirement to examine each and every witness, mentioned in the list.

18. As regards the ground pertaining to Section 48 of the said Act, it was submitted that the said provision applies only to the losses of the firm and not money owed by partners of the firm. In the light of the specific charge levelled by the respondents against the petitioner, of having unlawfully withdrawn funds from the firm, it was submitted that the direction given in the impugned awards was justified. As regards costs imposed in the arbitral awards, it was submitted that Section 31-A of the Act specifically provided for the same and that therefore, no interference was warranted on the said aspect also.

19. Having heard the learned counsel for the rival parties, this Court is of the opinion that it would be appropriate to examine the scope of jurisdiction exercised by the Court, under Section 34 of the said Act, while considering the challenge raised against the arbitral award. In the present case, the contention raised on behalf of the petitioner, pertained to defective procedure adopted by the learned arbitrator, by relying upon the report of the auditor, without insisting upon the auditor entering into the witness box. It was claimed that in the absence of examination of the author of the report,

the same could not have been considered at all, by the learned arbitrator. According to the petitioner, the said approach adopted by the learned arbitrator demonstrated that the award was in conflict with the public policy of India, as it violated the basic tenets of the law of evidence, leading to miscarriage of justice.

20. In the case of **Ssangyong Engineering & Construction Company Ltd. v/s. National Highway Authority of India (NHAI)** (*supra*), the Supreme Court considered the scope of Section 34 of the said Act, upon changes made by the Amending Act of 2015. After referring to earlier judgments of the Supreme Court and the 246th Report of the Law Commission, recommending amendments to the said Act, the Supreme Court laid down as to which portions of the judicial precedents continued to operate and how some portions stood superseded by the amendments, brought about in the year 2015. The relevant portion of the said judgment reads as follows:

> "34. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paras 18 and 27 of *Associate Builders*[14] i.e. the fundamental policy of Indian law would be relegated to "Renusagar" understanding of this expression. This would necessarily mean that *Western Geco*[11] expansion has been done away with. In short, *Western Geco*[11], as explained in paras 28 and 29 of *Associate Builders*[14] would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of *Associate Builders*[14].

35. It is important to notice that the ground for interference insofar as it concerns "interest of India" has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". This again would be in line with paras 36 to 39 of *Associate Builders*[14], as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.

36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of *Associate Builders*[14], or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of *Associate Builders*[14]. Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that *Western Geco*[11], as understood in *Associate Builders*[14], and paras 28 and 29 in particular, is now done away with.

37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

38. Secondly, it is also made clear that reappreciation 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.

39. To elucidate, para 42.1 of *Associate Builders*[14], namely, a

mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of *Associate Builders*[14] however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in *Associate Builders*[14], namely, that the construction of 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. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders[14], while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse."

21. It is significant that in paragraph No.51 of the judgment, the Supreme Court held as follows:

"51. Sections 18, 24(3) and 26 are important pointers to what is contained in the ground of challenge mentioned in Section 34(2)(a)(iii). Under Section 18, each party is to be given a

> full opportunity to present its case. Under Section 24(3), all statements, documents, or other information supplied by one party to the Arbitral Tribunal shall be communicated to the other party, and any expert report or document on which the Arbitral Tribunal relies in making its decision shall be communicated to the parties. Section 26 is an important pointer to the fact that when an expert's report is relied upon by an Arbitral Tribunal, the said report, and all documents, goods, or other property in the possession of the expert, with which he was provided in order to prepare his report, must first be made available to any party who requests for these things. Secondly, once the report is arrived at, if requested, parties have to be given an opportunity to put questions to him and to present their own expert witnesses in order to testify on the points at issue."

22. Thus, it becomes clear that the arbitral awards cannot be casually interfered with, only because the Court finds that on merits, another view was possible. The scope of interference at the hands of the Court, under the said provision, has been specifically restricted, in tune with the object of the said Act, accentuated by the reasons for which, the Amending Act of 2015, was brought into force. The Supreme Court, in the above-quoted paragraph No.51 of its judgment, in the case of **Ssangyong Engineering & Construction Company Ltd. v/s. National Highway Authority of India (NHAI)** (*supra*), referred to Section 26 of the Act and held that if a party requests for the report of the expert alongwith documents in possession of the expert, the same ought to be made available to the party and if requested, the parties have to be given an opportunity to put questions to the expert and to present their own expert witnesses, in order to decide the points at issue. The said provision reads as follows:

> "26. Expert appointed by arbitral tribunal. —
> (1) Unless otherwise agreed by the parties, the arbitral tribunal may—
> (a) appoint one or more experts to report to it on

specific issues to be determined by the arbitral tribunal, and

(b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

(3) Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report."

23. In the facts of the present case, this Court is of the opinion that the respondents are justified in relying upon the above-quoted provision, to oppose the contentions raised on behalf of the petitioner, as regards the report of the auditor.

24. In the present case, since a dispute had indeed arisen about the accounts of both the firms, the learned arbitrator thought it fit to appoint an auditor to audit the accounts of both the firms. The material on record does indicate that the auditor, in the present case, was appointed with the consent of both the parties. By a specific order, the parties were given liberty to communicate with the auditor and place any information or documents before the auditor, during the process of audit of both the firms. This Court does not find anything amiss in the direction issued by the learned arbitrator, on the request made by the auditor, for meeting a long-time manager of both the firms, for seeking clarification pertaining to accounts of both the firms.

Such a step was in aid of resolving the disputes on the question of accounts of both the firms.

25. This Court is not impressed with the contention raised on behalf of the petitioner that the respondents ought to have examined the auditor, merely because consent of the petitioner was given to the appointment of the auditor, without prejudice to her rights and contentions. There is substance in the contention raised on behalf of the respondents that, in the facts and circumstances of the present case, Section 26 of the Act, quoted hereinabove, applied and that as per the aforesaid provision, if the petitioner so desired, she could have requested the learned arbitrator to call the auditor to participate in the hearing, where the petitioner could have put questions to the auditor, under sub-section (2) of Section 26 of the said Act. In fact, the petitioner could have presented expert witnesses, in order to testify on the points at issue. It was the petitioner, who claimed to have certain doubts in the matter and therefore, she could have either put questions to the auditor, or examined expert witnesses, in support of any points at issue. Having failed to do so, it cannot lie in the mouth of the petitioner that the respondents ought to have examined the auditor, for the report to be taken into consideration by the learned arbitrator.

26. A perusal of the judgments on which, reliance is placed on behalf of the petitioner i.e. **Vilas Dinkar Bhat v/s. State of Maharashtra and others** (*supra*), **Pradyuman Kumar Sharma and another v/s. Jaysagar Sancheti and others** (*supra*), **Rashmi Housing Private Limited v/s. Pan India Infraprojects Private Limited** (*supra*) and **Nazim H. Kazi v/s. Kokan Mercantile Co-operative Bank Limited** (*supra*), shows that the same are distinguishable on facts. In the said cases, the Court was of the opinion that when a party relies

upon certain documents and the other party disputes the same, then it would be necessary for the arbitrator to refer the documents to an expert witness *suo motu* or when a letter or any other document is produced to establish a fact, the author must be produced or an affidavit in respect thereof be filed, with an opportunity afforded to the opposite party, to challenge such a fact.

27. As noted above, in the present case, the auditor had to be appointed, as the affairs of the two firms were not properly managed and in the light of the dissolution notices, issued by the respondents the question of settlement of accounts had arisen. In these circumstances, the auditor was appointed with the consent of the parties and the report of the auditor had come on record. The respondents did not dispute the same and if the petitioner had objection to the same, under Section 26(2) of the said Act, she could have applied for the auditor to participate in the hearing and requested to put questions to him and also, to present expert witnesses, in order to testify on the points at issue. There is nothing to indicate that the petitioner took such steps in the matter. The learned arbitrator proceeded to rely upon the report, in order to render findings on the question of accounts. It is settled law that the arbitrator is the master of the evidence in the proceedings, including the quantity and quality thereof. It is only in cases of no evidence, that a ground is made out for interference under Section 34 of the Act. In the facts and circumstances of the present case, this Court is convinced that no such ground is made out and the judgments relied upon on behalf of the petitioner, cannot be of any assistance.

28. The learned counsel for the respondents is justified in relying upon the judgments of the Supreme Court in the case of **Dyna Technologies Private Limited v/s. Crompton Greaves Limited** (*supra*) and in the case of **Delhi**

Airport Metro Express Private Limited v/s. Delhi Metro Rail Corporation Limited (*supra*). In fact, in the said judgments, the Supreme Court has deprecated the tendency of Courts of setting aside arbitral awards, after re-assessing the factual position of the case and then, dubbing the awards to be vitiated by either perversity or patent illegality. Relevant portion of the said judgment reads as follows:

> 28. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions."

29. The said position of law has been reiterated by the Supreme Court in the case of **UHL Power Company Limited v/s. State of Himachal Pradesh** (*supra*) and it is followed by this Court, in the case of **Jagannath Parmeshwar Mills Pvt. Ltd. v/s. Agility Logistics Private Limited** (*supra*).

30. The learned arbitrator also correctly found that the dissolution notices were valid, as the majority partners of the firms had issued such notices for

dissolution. The ground pertaining to unsoundness of mind of Farhad Ginwalla is unsustainable, for the reason that the question of unsoundness of mind could never have been decided in the arbitral proceedings. Such an issue cannot be an arbitrable issue and it can be decided only by the special forum created by the special law in that regard. It is an admitted position that the petitioner had initiated such a proceeding under the Mental Health Act, against Farhad Ginwalla, before the Bombay City Civil Court, but the same was inconclusive. Therefore, no error can be attributed to the learned arbitrator for having held against the petitioner on the said ground. The other grounds raised on behalf of the petitioner, about the respondents having failed to examine all the witnesses named in their list of witnesses and that the arbitral tribunal could not have permitted the auditor to seek clarifications from the long-time manager of the two firms, are also without any substance, since they do not raise any ground, relatable to various clauses under Section 34 of the said Act.

31. As regards non-compliance with Section 48 of the Partnership Act, this Court is of the opinion that the peculiar facts of the present case need to be appreciated. It was the case of the respondents that the petitioner had unlawfully withdrawn funds from the firm and she had placed the same in her personal accounts. In fact, the petitioner admitted such withdrawal, but claimed that she had kept the amount for safe-keeping. In such a situation, when the learned arbitrator directed the petitioner to bring back the amount, it could not be said that the direction was issued for her to contribute to the losses of the firm. Thus, there is no substance in the said ground. Even otherwise, the proviso to Section 34(2-A) of the said Act specifically states that an arbitral award shall not be set aside, merely on the ground of an erroneous application of law. Therefore, this Court finds no substance in the

contention raised on behalf of the petitioner, in that regard.

32. Having applied the law laid down by the Supreme Court, in the case of **Ssangyong Engineering & Construction Company Ltd. v/s. National Highway Authority of India (NHAI)** (*supra*), in the light of the amendments brought about in the said provision, as per the Amending Act of 2015, this Court finds that no ground is made out by the petitioner for interference in the arbitral awards.

33. On the question of costs also, no ground for interference is made out, because Section 31-A, again inserted by the Amending Act of 2015, leaves the discretion with the arbitral tribunal to give direction as regards costs. In the present case, the costs awarded by the arbitral tribunal are in tune with the parameters indicated in the said provision and therefore, no interference even as regards costs, is warranted in the facts and circumstances of the present case.

34. In view of the above, the petitions are found to be without merit and accordingly, they are dismissed. In that light, pending applications also stand disposed of. No order as to costs.

(MANISH PITALE, J)

Priya Kambli