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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO. 44 OF 2016

Ganatra Hotels Private Limited & Ors. …Petitioners

Versus

Kiran Ranchodas Ganatra & Anr. …Respondents

WITH

COMMERCIAL ARBITRATION PETITION NO. 113 OF 2017

Kiran Ranchoddas Ganatra …Petitioner

Versus

Ganatra Hotels Pvt Ltd & Ors. …Respondents

Dr. Veerendra Tulzapurkar, Senior Counsel a/w Ms. Anjali Chandurkar, Mr. Sandeep Parikh, Mr. Durgaprasad Poojari, Mr. Bhushan Kanchan i/by PDS Legal for Petitioner in CARBP/44/2016 and Respondent in CARBP/113/2017.

Mr. Sharan Jagtiani, Senior Counsel, Mr. Nirman Sharma, a/w Mr. Vikrant Shetty and Ms. Tanjul Sharma i/by Dhruve Liladhar & Co. for Respondents in CARBP/44/2016 and for Petitioner in CARBP/113/2017.

CORAM : R.I. CHAGLA J

Reserved on : 9 May 2024

Pronounced on : 12 July 2024

JUDGMENT :

1. By the Commercial Arbitration Petition No. 44 of 2016, the Petitioners are seeking setting aside of the impugned Award dated 5th April 2016 as corrected vide Sole Arbitrator's letter dated 27th May 2016. Both the Commercial Arbitration Petitions are connected and arise from the same impugned Award dated 5th April 2016. During the course of arguments, Mr. Sharan Jagtiani, learned Senior Counsel appearing for the Respondents in Commercial Arbitration Petition No. 44 of 2016 and the Petitioner in Commercial Arbitration Petition No. 113 of 2017 on instructions states that the Petitioner in Commercial Arbitration Petition No. 113 of 2017 is not pressing the Commercial Arbitration Petition.

2. By the impugned Award dated 5th April 2016, the Petitioner Nos. 2 to 4 (referred to hereinafter as "**Panchamias**"/ "**Pachamias Group**") and the Petitioner No. 1 (referred to as "**Ganatra Hotels**"), who were the Respondents in the arbitration proceedings were directed to make payment of sums of money to the Respondents herein and Claimants therein (referred to as "**Ganatras**"/"**Ganatra Group**"), and which payment is

corresponding to the Ganatra Group's shares in Ganatra Hotels. The impugned Award has thus granted a complete exit to the Ganatra Group from Ganatra Hotels by giving them monetary value of their shareholding and entitlement.

3. The brief background of facts are necessary and which are set out as under :-

i. Ganatra Hotels was incorporated in the year 1985 and at the relevant time, Kiran Ganatra, i.e. Respondent No. 1, was the Promoter and Chairman cum Managing Director of the Ganatra Hotels.

ii. In the year 1987, Ganatra Hotels purchased land at Shivaji Nagar, Pune bearing Survey 132 A/2A/2/1, corresponding to C.T.S. 2687/A admeasuring about 3991.5 sq.mtrs.

iii. After acquisition of the property Anil Popat and

Girish Popat ("the Popat Group") joined Ganatra Hotels as shareholder. Under the two groups i.e. Ganatra Group and Popat, the Company i.e. Ganatra Hotels operated its business of two divisions namely construction and hotel division.

iv. Post 1996-97 the Panchamias approached the Ganatra Group for setting up a star category hotel and multiplex centre by joining as shareholders. It is necessary to note that the Popat Group was not interested in the hotel and multiplex entertainment centre. Hence, it was contemplated by the parties that the construction business will be a separate division under the control of the Ganatra Group.

v. On 5th January 1999, a Shareholders Agreement was executed by and between the Ganatra Group and the Panchamias and Ganatra Hotels as the Confirming Party.

a. The Shareholders Agreement recorded that the Ganatra Hotels owned land admeasuring 3891.50 sq.mtrs at Village Shivaji Nagar, Pune on which Ganatra Hotels was constructing a star category hotel comprising of 96 rooms.

b. The object of the Shareholders Agreement was to enable the Panchamias and the Ganatra Group to jointly own and manage the hotel business of Ganatra Hotels after the exit of the Popat Group therefrom.

c. Under Clauses 3.3.1 to 3.3.3, the Ganatra Group was to ensure transfer of the construction business, which was thereafter to be separately carried out by the Ganatras and the Popat Groups.

d. Further, under Clause 3.3.4, the Ganatra Group was to ensure within 90 days from the execution

of the Shareholders Agreement that Ganatra Hotels issued 70,00,000 shares of each Types 'A' and 'B' which were to relate to and facilitate the ownership and control of the construction business and of the hotel business respectively.

e. Under Clause 3.5 of the Shareholders Agreement, till separation of construction business, the Panchamias were to be allotted Fully Convertible Debentures which were thereafter to be converted into Type 'B' shares.

f. Under Clause 4.1 of the Shareholders Agreement, the value of Ganatra Hotels' land was quantified at Rs. 6,50,00,000/-. The Ganatra Group's initial contribution was to be 50% of the cost of the land.

g. Under Clause 4.4 of Shareholders Agreement, additional fund requirement of Ganatra Hotels

for the hotel project (which was to be run as a joint venture) was to be brought in by Ganatra and Panchamias Groups in the ratio of their respective shareholding.

h. Under Clause 5 of the Shareholders Agreement, provisions were made to provide for equal directorial representation of Ganatra and Panchamias Group on the Board of Ganatra Hotels. Similarly, under Clause 5.3 of the Shareholders Agreement,there would be two Managing Directors of Ganatra Hotels, each appointed by the Ganatra and Panchamias Group.

i. Under Clause 11 of the Shareholders Agreement, provisions were made for termination of the Shareholders Agreement and for resolution of disputes by arbitration.

vi. A Memorandum of Understanding ("**MoU**") was

executed by and between Kiran Ganatra - Respondent No. 1, his brother Dr. Kishore Ganatra and Petitioner Nos. 2 and 3 on 23rd December 1999. The said MoU provided as under:

a. Respondent Nos. 1 and 2 – Ganatra Group agreed to hive-off the construction division of Ganatra Hotels on or before 31st March 2000.

b. Post such transfer of the construction division, the Ganatra Group was required to transfer at par value in favour of the Petitioner Nos. 2 and 3 – Panchamias, 1/3rd of the then equity shares of Ganatra Hotels (Rs. 3,24,51,000/-).

c. Under Clause 4 of the MoU, the parties agreed that there would be further allotment of shares to both Ganatra and Panchamias Group at premium of Rs. 10/- per share and/or at any such rate as to enhance the shareholders value.

d. Under Clause 5 of the MoU, Ganatra Group accepted that an amount of Rs. 75 Lakhs was overdrawn by them and the same would be returned on or about 31st March 2000. This amount was to be raised by the Ganatra Group by selling shares of Ganatra Hotels to the Panchamias at premium.

e. Under Clause 6 of the MoU, it was accepted that the Panchamias had already introduced Rs. 3,02,00,000/- in Ganatra Hotels and they were to introduce a further sum of Rs. 63,00,000/-. For this contribution of Rs. 3,65,00,000/-, Panchamias were to be issued equity shares at premium.

f. Under Clause 7 of the MoU, the Ganatras were required to pay face value plus premium to the Panchamias for repurchase of equity shares of Ganatra Hotels so as to make shareholding

between the two groups equal (50% each).

g. Under Clause 8 of the MoU, an additional sum of Rs. 1,82,50,000/- each was required to be introduced by both Panchamias and Ganatras into the Ganatra Hotels.

vii. On 12th January 2000, a Deed of Amendment was executed by and between Ganatra Group and Panchamias as well as Ganatra Hotels. In the recitals of the Deed of Amendment, execution of Shareholders Agreement is recorded. The joint venture (JV) was being executed through Ganatra Hotels who had been sanctioned loan of Rs. 10,00,00,000/- and Rs. 6,50,00,000/- by the Tourism Finance Corporation India Limited and Industrial Development Bank of India and one of the terms of the sanction of the lending was that the construction division of Ganatra Hotels was to be hived off into an entity before any disbursal of

lending took place.

The Clauses of the MoU records:

a. Under Clause 1 of the MoU that the Ganatra Group decided to sell equity shares of the value of Rs. 108.17 Lakhs at par to Panchamias. The consideration of which is Rs. 75.33 lakh introduced in Ganatra Hotels by Panchamias on behalf of the Ganatra Group and balance of Rs. 32.84 lakh to be paid by Panchamias to Ganatra Group.

b. Under Clause 2 of the Deed of Amendment the Ganatra Group for purpose of buying in the stake of the Company of the Popat Group decided to sell Panchamias equity shares amounting to Rs. 40,00,000/- at a premium of 25%, consideration of which amounting to Rs. 50,00,000/- to be paid on the signing of this amendment.

c. Under Clause 3 of the Deed of Amendment the Panchamias alone were to contribute fully to Rs. 3,65,00,000/- of equity, the minimum amount stipulated by the financial institutions before any portion of the term loan can be disbursed.

d. Under Clause 4 of the Deed of Amendment, in respect of the contribution of Rs. 3,65,00,000/-, the Panchamias were to be allotted equity shares of the Ganatra Hotels at the premium of 100%.

e. Under Clause 5 of the Deed of Amendment, the Panchamias out of the aforementioned contribution of Rs. 3,65,00,000/- and over and above the sum of Rs. 75.33 lakh, had already contributed as share application moneys a sum of Rs. 246.67 lakh.

f. Under Clause 6 of the Deed of Amendment, the Panchamias agreed to transfer to the Ganatra

Group Rs. 77.165 lakh of equity shares within a period of six months of the signing of the agreement at a premium not exceeding 100% per share. This offer is made with a view to give the Ganatras the opportunity to regain back the 50% equity shareholding in Ganatra Hotels.

g. Under Clause 7 of the Deed of Amendment, that for further contribution required for the Project, the Ganatras and Panchamias may contribute either fully by themselves or may approach outside parties for contributing to the equity capital of Ganatra Hotels at such premium as may be decided mutually.

h. Under Clause 8 of the Deed of Amendment, that the Ganatra Group undertake unconditionally to complete by 31st March 2000 at their own cost and responsibility all formalities legal and otherwise for hiving off the construction division

of the Ganatra Hotels.

i. Under Clause 9 of the Deed of Amendment, from 1st April 2000, all equity shares of Ganatra Hotels were to rank *parri passu* and that there was to be no distinction amongst the share capital viz. A Type shares or B Type shares as mentioned originally in the Shareholders Agreement.

j. Under Clause 17 of the Deed of Amendment, this Deed of Amendment was to supercede all relevant Clauses of the original Shareholders Agreement and treated as a part of the original Shareholders Agreement (as amended by a Deed dated 14th June 1999).

viii. Post 12th January 2000, Ganatra Group deposited 5,50,000/- shares with the Panchamias for the premium contemplated in the Agreement of 12th January 2000 as collateral and which was agreed

to be returned on purchase of 7,71,650 shares.

ix. On 3rd February 2000, Ganatra Hotels entered into an Agreement with IDBI for a term loan of Rs. 6.5 Crores. There was a requirement in this agreement (Clause 3.5) of pledging shares of Ganatra Hotels and Directors with IDBI.

x. Between 14th June 2000 and 15th June 2000 emails were exchanged between the parties recording that Title Deeds of Land and all shares of Panchamias were being arranged to be deposited with financial institutions since if this was pending an additional 1% interest would be levied by financial institutions.

xi. By 22nd June 2000, disputes had commenced between the parties in relation to management of Ganatra Hotels. The Panchamias who were controlling a larger shareholding during the

interregnum period contended that on strength of their holding a Board Meeting was held on 22nd June 2000 at Mumbai, Hotel Peninsula, Sion, wherein Kiran Ganatra vacated position of Chairman and Managing Director. It is necessary to note that the Ganatras have disputed any such Board Meeting at Hotel Peninsula as well as the power of Panchamias to convene and holding a meeting without seven days' notice.

xii. On 8th July 2000, Kiran Ganatra sent a communication addressed to the Panchamias stating that instead of acquiring shares from Panchamias for acquiring 50% equal shareholding, there are discussions for exploring the possibility of transferring the entire shareholding of the Ganatra Group to the Panchamias. In such circumstances, the Ganatra Group proposed extension of time to repurchase, the 7,71,650 equity shares from the Panchamias.

It is mentioned in the said communication that the Panchamias had not communicated the price at which they offered to transfer the said shares to the Ganatra Group. It is necessary to note that the said communication from the Ganatra Group and proposal made was much before the due date of 11th July 2000 i.e. expiry of six months as contemplated under the agreement. Further, upto this date, the exit of Popat Group had not been achieved.

xiii. On 10th July 2000, the Panchamias responded to the Ganatras communication declining the proposal of the Ganatras. By the said communication, Panchamias called for payment by 11th July 2000 of INR 51.44 lakh against which buyback arrangement could be honoured under Clause 6 of the Deed of Amendment. It is necessary to note that this was the first time on the second last day of the six month period that

price was offered only after the letter from the Ganatras.

xiv. Panchamias addressed a communication on 10th July 2000 to Ganatras seeking to transfer shares at Rs. 20/- per share and asked for three Demand Drafts of Rs. 51,44,000/-, Rs. 51,44,000/- and Rs. 51,45,000/- respectively payable at Mumbai.

xv. Ganatras on the same day i.e. 10th July 2000 addressed a communication seeking share transfer forms at the Head Office at Pune to enable completion of the transfer. It is necessary to note that there was no response to this letter.

xvi. The time to seek transfer of shares expired on 12th July 2000.

xvii. On 18th July 2000, in view of disputes over alleged Board Meeting and management,

Ganatras filed Suit No. 1246 of 2000 before the Court of Civil Judge, Junior Division, Pune for restraining the Panchamias from removing Kiran Ganatra as the Chairman and Managing Director of the Ganatra Hotels. It is necessary to note that the City Civil Court passed an order that it did not have territorial jurisdiction to entertain this Suit.

xviii. In the year 2001, Kiran Ganatra filed the second Suit No. 1631 of 2001 in the Bombay City Civil Court. In the said Suit, Notice of Motion No. 1537 of 2001 was taken out by the Ganatras and relief sought for therein was allowed by order dated 30th March 2001.

xix. The Panchamias' Notice of Motion No. 1671 of 2001 for trying the issue related to arbitration and maintainability as a preliminary issue was disposed of by the Bombay City Civil Court on 30th April 2001. Thereafter, Panchamias took out

Notice of Motion No. 1833 of 2001 to refer the matter to arbitration. The City Civil Court allowed the Panchamias' Notice of Motion No. 1833 of 2001 on 25th February 2002 and referred the matter to arbitration.

xx. On 8th April 2002, this Court dismissed the Kiran Ganatra's Writ Petition preferred from the order dated 25th February 2002.

xxi. The Supreme Court passed an order dated 2nd August 2002 in Kiran Ganatra's Special Leave Petition preferred from the said order dated 8th April 2002, leaving the question of correctness of the Arbitrator's jurisdiction open for the Arbitrator to decide under Section 16 of the Arbitration and Conciliation Act, 1996.

xxii. This Court in Kiran Ganatra's Petition under Section 9 of the Arbitration and Conciliation Act,

1996 for interim relief passed an order dated 28th October 2002 appointing a common arbitrator and directing the parties to apply before him for interim reliefs.

xxiii. In December, 2002, Kiran Ganatra in order to protect his position of Chairman and Managing Director, filed Statement of Claim. The reliefs in the said Statement of Claim as filed (prior to the Interim Settlement dated 26th June 2007) sought specific performance wherein the Ganatra Group would continue in Ganatra Hotels and hold the shares which it was entitled to.

xxiv. The Statement of Defence and Counterclaim were filed by the Panchamias on 7th March 2003. It is necessary to note that in paragraph 27 of the Statement of Defence, it is stated that the Panchamias did not have the share certificate which were required to complete the transfer on

11th July 2000.

xxv. Kiran Ganatra filed Affidavit in Rejoinder and the Written Statement to the Counterclaim in 2003. Thereafter, the Affidavits of Evidence were filed by the parties and Cross Examination of Panchamias' witnesses was recorded in 2005-06.

xxvi. On 26th July 2007, the parties arrived at interim settlement and this was recorded in Terms Agreed Between the Parties dated 26th July 2007. In Clause 2 thereof, it is recorded that the Ganatras restrict their claim for compensation in lieu of performance. It further records the agreement that the Arbitral Tribunal shall determine the compensation payable for the land to the Ganatras. Clause 4 records the agreement that the Parties are entitled to produce evidence for valuation/compensation but clarifies that no further oral evidence will be led on Ganatras

entitlement on the shares.

xxvii. Parties agreed to the terms of valuation which were recorded in the "Agreed Terms on Valuation" on 14th June 2011. In Clause 1 thereof it is recorded that the parties do not wish to lead formal evidence on the question of the valuation of shares of the Ganatra Hotels (which will include the valuation of the immovable property) and have no objection to the Arbitrator to decide this question on the basis of the documents, oral arguments and the material submitted by them. The parties further agreed in Clause 2 that the Arbitrator will have summary powers to decide the question of valuation of shares and the immovable property of the Ganatra Hotels. In Clause 3 of the agreement, parties have agreed that the Arbitrator may take the assistance of an independent valuer/Chartered Accountant while deciding the valuation of Ganatra Hotels.

xxviii. Post 2011, the parties submitted their Valuation Reports before the Arbitrator. The Ganatra Group's Valuation Report valued the shares at Rs. 265.57 and Rs. 279.74 per share. Panchamias's Valuation Report valued the shares at Rs. 72.91.

xxix. On 29th December 2014, the parties executed interim Consent Terms which recorded settlement of part disputes relating to construction division. The settlement contemplated transfer of 1.79 lakh shares by Ganatra Group in favour of Panchamias. Further, there is reference to value of shares to be decided at final hearing.

xxx. The Arbitrator passed interim Consent Award on 30th December 2014 in terms of the interim Consent Terms.

xxxi. The Arbitrator passed impugned Arbitral Award on 5th April 2016.

xxxii. Ganatras made an Application for rectification of certain typographical errors in the impugned Award on 26th April 2016. The Panchamias by their Advocate's letter dated 6th May 2016 gave their no objection to the Ganatra's Application and the Arbitrator, accordingly, passed order dated 25th May 2016 rectifying Arbitral Award dated 5th April 2016.

xxxiii. Parties have thereafter filed the present Commercial Arbitration Petitions under Section 34 of the Arbitration and Conciliation Act, 1996.

xxxiv. On 18th January 2018, this Court passed order staying the impugned Award subject to the condition that the Panchamias who are the Petitioners in the present Commercial Arbitration Petition deposited the entire awarded sum within six weeks from the date of the said order. If the amount was deposited by the Panchamias, the

Ganatras who are the Respondents herein would be at liberty to withdraw such amount upon furnishing bank guarantee of a nationalised bank in favour of the Prothonotary & Senior Master, which shall be kept alive for a period of two years initially and for like period after obtaining further orders from this Court. It is necessary to note that the said Stay Order has thereafter been complied with.

4. Dr. Veerendra Tulzapurkar, the learned Senior Counsel appearing for the Petitioners – Panchamias has submitted that although the scope of judicial review under the Arbitration and Conciliation Act, 1996 ("**the Arbitration Act**") is limited, the impugned award deserves to be set aside as the same falls foul of the provisions of Section 34(2)(b)(ii) Explanation 1(ii) and (iii) of the Arbitration Act. He has submitted that it is settled law that if a party demonstrates that the Award is in conflict with the public policy of India, the Court is entitled to set aside the Award. He has placed reliance on the following decisions :-

a. **South East Asia Marine Engineering & Construction Ltd. Vs. Oil India Ltd. (2020) 5 SCC 164 at paragraphs 12, 13 & 15**;

b. **Renusagar Power Co. Ltd. Vs. General Electric Co. 1994 Suppl. (1) SCC 644, paragraphs 43, 46, 47 and 85. In this case, the issue of public policy of India was considered by the Supreme Court**;

c. **Associated Builders Vs. Delhi Development Authority (2015) 3 SCC 49, paragraphs 16, 18, 19, 22, 23, 27, 37, 38 and 42.1**;

d. **Ssangyong Engineering & Construction Co. Ltd. Vs. National Highways Authority of India (2019) 15 SCC 131, paragraphs 36 to 59**;

e. **S. Pandi Meenakshi Vs. Hinduja Leyland 2019 SCC Online Madras 5415, paragraphs 32 onwards**;

f. **M.R. Hitech Engineers Pvt. Ltd. Vs. UOI 2020 SCC Online Madras 7127, paragraphs 26 onwards**.

5. Dr. Tulzapurkar has submitted that the operative part of the impugned Award directs Panchamias to pay the value of 7,71,650 shares of the Ganatra Hotels. Such direction is contrary to law, based on no evidence; ignores the evidence on record; based on misreading of evidence; based on findings which are *ex-*

facie wrong, erroneous and contrary to the settled principles of law as regards the burden of proof; beyond or in excess of jurisdiction; and in violation of the terms of the contract.

6. Dr. Tulzapurkar has submitted that the finding that the Ganatra Group were entitled to 7,71,650 shares of Ganatra Hotels and in lieu of the said shares, the Ganatras are entitled to receive compensation deserves to be set aside on the ground of it being contrary to the public policy. He has submitted that the specific performance claim is in respect of Clause 6 of the Deed of Amendment dated 12th January 2000. The purchase of the said 7,71,650 shares, according to the said Clause, was to be completed within six months from 12th January 2000, viz. 11th July 2000. He has referred to the letter dated 8th July 2000 addressed by the Ganatras to the Panchamias, wherein while referring to Clause 6 of the Deed of Amendment, the Ganatras stated that the period of transfer of the said shares stands extended till settlement of all issues between the parties. He has submitted that the Ganatras' alleged variation of contract was not proved. The Ganatras' therefore, were not ready and willing to perform the contract for

transfer of shares.

7. Dr. Tulzapurkar has submitted that the contract is in respect of shares i.e. movable property and therefore, time was of the essence. The Ganatras were neither willing nor capable of paying the price which is clear from the documents on record. He has referred to the letter dated 10th July 2000, whereby the Panchamias did not accept the Ganatras' request for extension of time, but stated that the shares can be transferred to the Ganatras at Rs. 20/- per share, if three Demand Drafts for Rs.51,44,000, Rs.51,44,000 and Rs.51,45,000 each payable at Mumbai were brought on 11th July 2000. This letter was addressed by the Panchamias from Mumbai to the Ganatras at Pune. He has submitted that the Ganatras had not tendered the demand drafts payable at Mumbai on 11th July 2000. However, by a letter dated 10th July 2000, the Ganatras requested the Panchamias to send Share Certificates along with transfer forms duly completed and stamped to the head office of the Ganatra Hotels at Pune to enable the Ganatras to complete other formalities, subject to procedure of transfer of shares and other terms and conditions laid down in the

Shareholders Agreement. He has submitted that there was no offer to pay the price and on the contrary the Ganatras wanted Panchamias to deliver the share certificates with transfer forms duly signed.

8. Dr. Tulzapurkar has submitted that the Ganatras' letter dated 10th July 2000 was not in compliance with the requirement as set out in the Deed of Amendment or the Petitioner's letter dated 10th July 2000 and was a conditional offer. The Ganatras did not tender any amount or show readiness or willingness to make payment of the amount as per the Deed of Amendment. He has submitted that on 11th July 2000, the Ganatras did not tender demand drafts payable at Mumbai. The Ganatras do not claim to have visited the Head Office of Ganatra Hotels at Pune on 11th July 2000. The Ganatras have not averred or proved their readiness to pay or the source or the means to pay the price. The Ganatras were required to prove the amount they had to pay was available. He has placed reliance on the decision in **Umabai Vs. Nilkanth Dhondiba Chavan**[1] at paragraphs 30, 31, 32, 33 to 41.

1 **(2005) 6 SCC 243**

9. Dr. Tulzapurkar has submitted that the material on record clearly shows that the Respondents were not ready and willing to pay for the shares on 11th July 2000 nor did they tender the price on 11th July 2000 or at any time thereafter. The Ganatras repudiated the contract by pleading a variation of the contract viz. that the time stood extended till all issues were settled between the parties before transfer. This shows that the Ganatras were not ready and willing to abide by the contract.

10. Dr. Tulzapurkar has submitted that in the original pleadings, the Ganatras who are the Claimants in the statement of claim sought claim for specific performance and contended that they were ready and willing to perform their obligations to repurchase the said shares. However, by the Terms Agreed between the Parties on 26th July 2007, the Ganatras restricted their claim to compensation in lieu of specific performance.

11. Dr. Tulzapurkar has referred to the relevant portion of Ganatras' Evidence in Chief, in particular, paragraph 29 thereof, wherein Kiran Ganatra has contended that he was ready and

willing to transfer by making payment of consideration of Rs.1,54,33,000/- and that compensation in money for non-performance of the Agreement would not be adequate relief. Further, Kiran Ganatra has alleged that the Panchamias had pledged all their shares including the said 7,71,650 shares with IDBI as security for loan to be taken by the Panchamias in the name of the Ganatra Hotels and as such the Panchamias were not in a position to transfer the said 7,71,650 shares to the Ganatras on 10th July 2000.

12. Dr. Tulzapurkar has submitted that the allegations of pledge of shares was not substantiated and in any event is factually incorrect. He has placed reliance upon the evidence of Petitioner No. 3, which brings out the factual position that 7,71,650 shares were pledged only in December, 2000 and thereafter. He has submitted that the learned Arbitrator has misread this evidence.

13. Dr. Tulzapurkar has submitted that the burden to prove that the Ganatras had funds to pay was on the Ganatras and they

failed to discharge that burden. No material was produced by the Ganatras to show the availability of funds. In the Cross–examination of the Kiran Ganatra that took place on 13th July 2004, Kiran Ganatra admitted in paragraph 21 that there was no material to show the availability of funds viz. that the documents produced in arbitration do not contain anything which will show that on or about 11th July 2000, there was available a sum of Rs.1,54,33,000/-.

14. Dr. Tulzapurkar has submitted that the learned Arbitrator has not taken into consideration the aforementioned admission and has ignored the most crucial part of the evidence. Admittedly, Kiran Ganatra nowhere in the Statement of Claim or Affidavit in Rejoinder or Affidavits of Evidence has demonstrated and/or has been able to prove that on 11th July 2000, he had money ready and available for making payment to the Panchamias against the shares. Kiran Ganatra has also not demonstrated that he had or was capable of arranging the funds.

15. Dr. Tulzapurkar has submitted that the finding on

readiness and willingness is contrary to the principles of law laid down by the Supreme Court in **Vijay Kumar Vs. Om Prakash**[2] at paragraph 7. Further, it is contrary, the decision of the Supreme Court in **N.P. Thirungnanam Vs. Dr. R. Jagan Mohan Rao & Ors.**[3], wherein it is held that the amount of consideration which is to be paid must of necessity be proved to be available. It is further contrary to the decision of this Court in **Shri Chandrashekar Vs. M/s. Yogi Construction & Anr.**[4]. He has submitted that the findings in the Award in paragraph 16 on readiness and willingness is perverse and based on no evidence. He has submitted that there is a clear and categorical admission in the cross examination on the part of Kiran Ganatra of there being no evidence whatsoever on record of his readiness and willingness to make payment of consideration. Accordingly, Ganatras were not entitled to the said shares and there is no question of awarding any compensation in lieu of specific performance.

16. Dr. Tulzapurkar has submitted that in the alternative,

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2 2018 SCC Online SC 1913

3 (1995) 5 SCC 115

4 2018 SCC OnLine Bom 2441

the Respondents were not ready and willing to perform the contract, because they pleaded in the correspondence that the contract was varied or modified. This alleged variation is in the letter dated 8th July 2000. This was not proved nor pleaded. He has placed reliance on the following decisions in this context.:-

(i) **Sundeep Khanna Vs. A. Das Gupta & Ors. Reported in 2013 SCC OnLine Del 57 : AIR 2013 Del 189 : (2014) 1 CCC 725 (DB)**;

(ii) **Rahat Jan Vs. Hafiz Mohammad Usman (deceased by LR's) and others reported in 1983 SCC OnLine All 165 : AIR 1983 All 343 : (1983) 9 ALR (SUM 129) 91**;

(iii) **Bharat Barrel & Drum Mfg. Co. Pvt. Ltd. Vs. Hindusthan Petroleum Corporation Ltd. and others reported in 1988 SCC OnLine Bom 200 : AIR 1989 Bom 170**;

(iv) **Suman Parmananddas Mundhada and others Vs. Saroj Screens Private Ltd. and others reported in 1992 Mh.L.J 1460**;

(v) **Suresh Kumar Lal vs. Smt. Lalti Devi reported in 2011 scc OnLine Pat 85 : AIR 2011 Pat 118 : (2012) 1 CCC 590 : (2011) 4 Civ LT 11s : (2011) 4 BBCJ 47**;

17. Dr. Tulzapurkar has accordingly, submitted that the

impugned Award is contrary to substantive law of India and in contravention with the fundamental policy of Indian Law which goes to the root of the matter.

18. Dr. Tulzapurkar has submitted that with regard to 5,00,050 shares, the learned Arbitrator has gone beyond the agreed terms between the parties in awarding compensation in lieu of return of 5,00,050 shares handed over to the Panchamias as alleged security for payment of premium of 7,71,650 shares which was never the subject matter of reference nor there is any agreement to refer to arbitration in respect of the said 5,00,050 shares. He has submitted that the impugned Award directing the Panchamias to pay value of 5,00,050 shares is without any basis and is contrary to the contract, law and any evidence. He has submitted that the said shares were not the subject matter of any agreement. Further, they were not part of arbitral reference order dated 28th October 2022. Thus, the finding that the Ganatras are entitled to receive the said 5,00,050 shares is beyond reference and beyond jurisdiction of the Arbitrator.

19. Dr. Tulzapurkar has submitted that it is the contention of the Respondents that the said shares were given to Panchamias as security for the premium to be paid by the Ganatras on 7,71,600 shares agreed to be purchased by the Ganatras. Thus, there is no question of giving a finding that the Ganatras were entitled to these shares nor any justifiable reason for awarding compensation in lieu of those shares. By valuing the said shares, the learned Arbitrator has travelled beyond the Agreement between the parties and the terms of reference.

20. Dr. Tulzapurkar has submitted that the Statement of Claim merely requires the Ganatras as per prayer (iii) to return of the share certificates of the said 5,00,050 shares. The learned Arbitrator has proceeded on the basis that Kiran Ganatra agreed to furnish the security and it was agreed that the shares would be returned to the Ganatras upon repurchase of 7,71,650 shares. The learned Arbitrator has held that the contention of Kiran Ganatra has not been denied by the Panchamias. This is contrary to paragraph 28.VI of the Statement of Defence of the Panchamias. Assuming while not admitting the same, he has submitted that on

this basis the only prayer before the learned Arbitrator of Kiran Ganatra was for return of the said 5,00,050 shares.

21. Dr. Tulzapurkar has submitted that as per the Terms Agreed between Parties on 26th July 2007, issues were restricted to compensation in lieu of specific performance of 7,71,650 shares under the Shareholders' Agreement dated 5th January 1999 and Deed of Amendment. He has submitted that there is no Agreement whatsoever under the Terms dated 26th July 2007 giving the learned Arbitrator the power to Award compensation in lieu of returning 5,00,050 shares and thus, the Award to compensate is beyond the scope of reference. There was no claim by Kiran Ganatra for compensation in lieu of return of the said 5,00,050 shares, nor did Kiran Ganatra lead any evidence for the same. A perusal of paragraph 19 of the impugned Award shows that even the learned Arbitral Tribunal understood its jurisdiction, which was restricted to re-transfer of the shares, but wrongly determined the value for the same and awarded compensation. This is despite there being no agreement between the parties that the shares would be valued by the learned Arbitrator and the value will be

paid by Panchamias. He has accordingly, submitted that the Award is contrary to Section 34(2)(a)(iv) of the Arbitration Act and in any event perverse. The Award is also in breach of principles of natural justice.

22. Dr. Tulzapurkar has submitted that regarding the 1,79,700 shares, the said shares and executed Share Transfer Forms (in blank) were deposited with the Arbitrator as security for expenses incurred by Panchamias on the Construction Division of the Ganatra Hotel amounting to Rs. 3.25 crores as per Interim Consent Terms dated 29th December 2014. He has submitted that the impugned Award regarding the 1,79,700 shares of Respondent No.1 is totally wrong, beyond reference and beyond jurisdiction. The said shares form part of the interim consent Award dated 30th December 2014. They were already dealt with by the learned Arbitrator in the interim consent Award. The said shares were returned to the Ganatras and therefore, there is no question of any value being paid for those shares by Panchamias to the Ganatras. This fact has been ignored by the learned Arbitrator who has assumed jurisdiction. The impugned Award in this behalf is totally

perverse.

23. Dr. Tulzapurkar has submitted that in any event, the Ganatras were entitled to the shares only on the said interim Consent Terms and/or Interim Award in terms of Interim Consent Terms being registered/admitting execution before the concerned Registrar or Sub-registrar of Assurances at Pune, which is not done. Thus, transfer of 1,79,700 shares was not the subject matter of reference.

24. Dr. Tulzapurkar has referred to paragraph 1(e) of the Terms Agreed between Parties dated 26th July 2007, which refers to certain expenses incurred by the Panchamias in respect of the Construction Division. This has also been discussed in the Award with regard, to the aforesaid Terms of Reference and he has referred to paragraph 7 of the impugned Award in this context. He has submitted that there is no decision on the Term of Reference dated 26th July 2007 with regard to sub-paragraph 1(e). Insofar as the said sub-paragraph is concerned, the parties have arrived at an amount of Rs. 2,25,00,000 to be paid by Kiran Ganatra to the

Panchamias, as is clear from paragraph 29(g) of the impugned Award. As a consequence, the shares deposited as security for expenses incurred by the Panchamias were at the highest required to be returned. There was no agreement in the Terms of Reference dated 26th July 2007 to empower the learned Arbitrator to determine the value of the said shares or to award any compensation with regard to the said shares.

25. Dr. Tulzapurkar has submitted that in paragraph 21 of the Award, the learned Arbitrator has observed that the said shares must now be transferred to the Panchamias as directed by them. However, inclusion of the said shares for valuation thereof in paragraphs 29(b) and (c) is clearly contrary to the aforementioned finding in paragraph 21 and in any event, beyond the terms of reference.

26. Dr. Tulzapurkar has submitted that the valuation fixed by the learned Arbitrator at Rs.94.43 per share is contrary to the terms of the contract, under which the price per share was Rs.10/- plus 100% of the face value maximum. He has placed reliance on

Clause 3.4 of Shareholders Agreement and Clause 6 of the Amendment Agreement in this context. He has submitted that the learned Arbitrator exceeded the jurisdiction and acted contrary to the terms of the contract by fixing valuation in excess of Rs.20/- per share.

27. Dr. Tulzapurkar has submitted that the learned Arbitrator by fixing valuation at Rs.94.43 per share has acted without there being any evidence. The learned Arbitrator in fact admits that there is no evidence in support of such finding. However, there are no reasons for fixing the value at Rs.94.43 per share. The impugned Award is *ex-facie* wrong and is liable to be set aside.

28. Dr. Tulzapurkar has submitted that the material in the impugned Award regarding the valuation is hypothetical, imaginary and without any foundation. One Mr. Vepari was appointed by the learned Arbitrator as a Valuer. However, there no mention of the same in the impugned Award. The Report submitted by the Ganatras was not accepted by the learned

Arbitrator.

29. Dr. Tulzapurkar has submitted that the learned Arbitrator's decision to fix 31st March 2007 as the relevant date for valuation is arbitrary and without any basis. There are no reasons for fixing that date nor any material to show the value as on that date. He has submitted that in any event, the assumption of the cut-off date for valuation as being 31st March 2007 is arbitrary and perverse and in breach of principles of natural justice. He has submitted that though the learned Arbitrator has in paragraph 23 stated that the parties did not object to the date of valuation of shares being taken as on 31st March 2007, the parties were never put to notice with regard to the learned Arbitrator assuming the date as being 31st March 2007. Thus, the impugned Award is in breach of principles of natural justice.

30. Dr. Tulzapurkar has submitted that the operative part of the Award in paragraph 23 grants interest at the rate of 10% per annum on value of 7,71,650 shares, 5,50,000 shares, 1,79,700 shares from 31st March 2007. He has submitted that there is no

prayer seeking interest in the Statement of Claim, since no compensation in lieu of specific performance of 7,71,650 shares is claimed by Respondent No. 1. Further, no compensation is claimed in respect of 5,00,050 shares, since the Claim was only for return of shares. In respect of 1,79,700 shares, the same were given under the Interim Consent Terms dated 30th December 2014 and there was no monetary claim in the Statement of Claim. Even Interim Consent Terms dated 29th December 2014 did not provide for any interest.

31. Dr. Tulzapurkar has submitted that the Award for interest is thus clearly contrary to the provisions of law, viz. Section 31(7) of the Arbitration Act, Section 3(1)(b) read with 3(a) of the Interest Act, 1978 and judgment of the Supreme Court in **Assam State Electricity Board & Ors. Vs. Buildworth Private Ltd.**[5].

32. Dr. Tulzapurkar has submitted that no notice was given claiming any interest on the alleged compensation. In any event, the alleged compensation payable to Ganatras crystallised only on

5 **(2017) 8 SCC 146**

the date of Award i.e. 5th April 2016. Hence, no interest is payable prior to such date.

33. Dr. Tulzapurkar has submitted that the Award for grant of Rs.1,00,00,000/- to be paid by Panchamias is contrary to the contract. There is no basis for granting that amount. The construction division has already been given to the Ganatras. There is no question of the valuation of the land as a part of the asset of the Company for making payment to the Respondents. The Award for Rs.1,00,00,000/- is without jurisdiction and without any legal basis.

34. Dr. Tulzapurkar has accordingly, submitted that the impugned Award is required to be quashed and set aside.

35. Mr. Sharan Jagtiani, the learned Senior Counsel appearing for the Respondents – Ganatras has referred to the material facts which have been reproduced hereinabove and has submitted that the impugned Award grants an exit to the Ganatras from the Company – Ganatra Hotels.

36. Mr. Sharan Jagtiani has submitted that there is a limited scope of interference under Section 34 of the Arbitration Act. He has submitted that the Court under Section 34 of the Arbitration Act does not act as a Court of Appeal while applying the ground of "*patent illegality*" to an Arbitral Award and consequently, errors of fact cannot be corrected. He has submitted that a possible view by the learned Arbitrator on facts has necessarily to pass muster, as the Arbitrator is the sole Judge of the quantity and quality of the evidence. Insufficiency of evidence cannot be a ground for interference by the Court. Re-examination of the facts to find out whether a different decision can be arrived at is impermissible under Section 34 of the Arbitration Act. An Award can be set aside, only if it shocks the conscience of the Court. Thus, illegality must go to the root of the matter and cannot be of a trivial nature for interference by a Court. Error of construction is within the jurisdiction of the learned Arbitrator. Hence, no interference is warranted. Further, if there are two possible interpretations of the terms of the contract, the Arbitrator's interpretation has to be accepted and the Court under Section 34 cannot substitute its opinion over the Arbitrator's view.

He has submitted that the scope for interference is even less when on aspects of valuation parties agree that there will be no oral evidence for the purpose of valuation and that the Arbitral Tribunal shall have summary powers to decide the valuation of shares and immovable property and that the Arbitral Tribunal can take assistance of a Chartered Accountant. He has placed reliance upon the decisions of the Supreme Court, on scope of interference under Section 34 of the Arbitration Act being extremely narrow. These are as under:-

(i) **Associate Builders Vs. Delhi Development Authority (2015) Supreme Court Cases 49**;

(ii) **Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India (NHAI), (2019) 15 Supreme Court Cases 131**;

(iii) **UHL Power Company Limited Vs. State of Himachal Pradesh (2022) 4 Supreme Court Cases 116**

37. Mr. Sharan Jagtiani in support of his submission, as to interpretation of contract is a matter to be determined by the Arbitrator; and for which correspondences exchanged between the

parties may be taken into consideration has relied on the following decisions:-

(i) **McDermott International Inc. Vs. Burn Standard Co. Ltd. & Ors. (2006) 11 SCC 181**;

(ii) **Welspun Speciality Solutions Limited Vs. Oil and Natural Gas Corporation Limited (2022) 2 Supreme Court Cases 382**

38. Mr. Sharan Jagtiani has submitted that the readiness and willingness of the Ganatras and in particular, in relation to their financial capacity to purchase the said shares is a question of fact and must be seen in the light of reciprocal promises and that no interference by the Court under Section 34 of the Arbitration Act is warranted unless perversity is shown. He has referred to the Commercial relationship of joint venture between the parties with ad hoc contribution and inter-se transfer of shares. He has referred to the Shareholders Agreement dated 5th January 1999, which contemplated the venture between the parties will be a '*joint venture*' with 50:50 shareholding to be maintained. He has placed reliance upon Clause 2.1 read with Clauses 3.1, 3.2 of the

Shareholders Agreement, wherein such venture as "joint venture" is mentioned. The joint venture is to manage a star category hotel and multiplex centre. He has also referred to Clause 4.1 of the Shareholders Agreement which is in relation to valuation of the land, which establishes the contribution of the Ganatras, which was with regard to 50% of the cost of the said land only.

39. Mr. Sharan Jagtiani has thereafter referred to MoU dated 23rd December 1999, which once again records that the value of land appearing in the books of accounts of the Ganatra Hotels is 3.25 crores and which continue to remain so. He has referred to Clauses 3 to 8 to MoU and he has submitted that an examination of Clauses 3, 4 and 6 and 7 indicate that parties have consciously agreed to an ad hoc price of shares and the formula of par/premium value is not the same for each transfer. In fact, Clause 4 (Clause 7 applies the same formula of Clause 4) contemplates allocation of shares refers to allotment of shares "at a premium of Rs.10/– each or at such rate as to enhance the total shareholder value". He has submitted these Clauses indicate ad-hoc values being fixed for internal allocation of shares and belies

the contention of Panchamias that the maximum price of shares granted in the Award could not cross Rs.20/-.

40. Mr. Sharan Jagtiani has also referred to the Deed of Amendment/Amendment Agreement dated 12th January 2000, which is in furtherance of the understanding of joint-venture and reference to the entire background of the relationship between the parties. He has placed reliance on recital D of the Agreement, which is the primary understanding of joint-venture. In this Agreement, once again, the parties have done an internal allocation of transfer of shares and amounts on an ad hoc basis. The Agreement contains Clauses which contemplated different formula of premium value for distinct sets of shares. Clause 2 contemplates 25% premium, whereas Clause 4 refers to a specific pre-determined price of 100% premium and Clauses 6 and 7 contemplate transfer of shares or further contribution at a premium not exceeding 100% or at a premium to be decided mutually.

41. Mr. sharan Jagtiani has submitted that the

Agreements and Clauses contained therein indicated the commercial relationship between the parties being that of partners in a joint venture. There is a common thread running through each of the Agreements which accepts the contribution of the valuable piece of land by Ganatras and allotment/transfer of shares to Panchamias with the underlying understanding being 50:50 shareholding being maintained.

42. Mr. Sharan Jagtiani has submitted that there was no specific timeline to commencing or implementing this joint venture. The parties repeatedly reworked the modalities. Instead of time being of the essence, the focus was on the relationship of joint venture. He has submitted that the relationship of a joint venture totally militates against the argument of time being of essence when repeated agreements emphasis on preservation of joint shareholding and control.

43. Mr. Sharan Jagtiani has submitted that the disputes between the Panchamias and Ganatras triggered in June 2000 before the due date of the transfer of shares on 12th July 2000. He

has referred to the communication of the Panchamias received by the Ganatras on 27th June 2000 and has submitted that it has been falsely alleged by the Panchamias that a special emergency meeting of board of directors was convened on 22nd June 2000 at Hotel Peninsula, Sion. There is a false allegation that Kiran Ganatra was removed as a Chairman and Managing Director. He has submitted that the Minutes were fabricated to this effect to indicate Panchamias purporting to take charge as the Chairman and Managing director with immediate effect. Thus, it is clear from the communication that the Panchamias had started playing tricks in an attempt to oust the Ganatra Group.

44. Mr. Sharan Jagtiani has submitted that the Panchamias have falsely contended that the Ganatras vide letter dated 8th July 2000, proposed a unilateral novation of the agreement in respect of the re-transfer of shares. He has referred to paragraph 5 of the said letter dated 8th July 2000, wherein the Ganatras have only suggested a possible solution and have subsequently, conveyed that even otherwise they are prepared to take the shares once the price for re-transfer is fixed.

45. Mr. Sharan Jagtiani has submitted that pursuant to the Agreements between the parties, after January 2000, the Panchamias handed over 7,71,650 shares and additional 5,00,050 shares. Both these sets of shares were handed over for the same arrangement for repurchase and for the same consideration. The performance of the Clause 6 of the Agreement dated 12th January 2000 for 7,71,650 shares would apply to 5,00,050 shares as well. He has referred to Clause 6 of the Agreement, which makes it clear that return of shares is at the price which is not definite on the date when the parties executed the Agreement. The price was to be determined and the only indication is an upper cap of the price limit. This price had to be determined by the Panchamias and logically communicated by them. The date by which the exercise was to be undertaken was six months i.e. 12th July 2000.

46. Mr. Sharan Jagtiani has submitted that from January 2000 all the way up to 8th July 2000, the Panchamias did not address any communication fixing the price for re-transfer. This reason was clear, as the retention of shares by Panchamias would have been consistent with their attempt to usurp control and drive

out/oust the Ganatras.

47. Mr. Sharan Jagtiani has submitted that the Ganatras have invoked Clause 6 of the Agreement by their letter dated 8th July 2000. Panchamias were called upon to communicate the price at which the shares are to be transferred since the Panchamias had not addressed a single communication fixing any price for the shares. Ganatras in the said letter dated 8th July 2000 have referred to the subsequent developments (the events of dispute of June 2000) and referred to negotiations in relation to transferring the entire shareholding in favour of Panchamias.

48. Mr. Sharan Jagtiani has submitted that the contention of the proposal of 'unilateral proposal extension of time' and 'variation of contract' is totally without merit since on this date the price of purchase itself was not known or fixed. In any case, the entire trial before the Arbitrator and the Award is based on performance of contract as originally contemplated. The readiness and willingness in the Award has also been tested of the contract as originally contemplated.

49. Mr. Sharan Jagtiani has relied upon the letter of the Ganatras dated 10th July 2000 addressed to the Panchamias in response to the letter of the Panchamias of even date, unequivocally and immediately accepting the price to purchase the shares communicated by the Panchamias by the said letter. Further, since the shares were in physical form, Ganatras called upon the Panchamias to bring the physical shares certificates. He has submitted that the insistence by the Ganatras that the physical shares be presented was entirely justified and reasonable. Any party seeking to acquire any movable property, such as shares, has a legitimate right to insist on its presentation before payment. He has also referred to the letter dated 24th July 2000 addressed by the Ganatras. By this letter, Ganatras once again called upon the Panchamias to complete the formalities of transfer of shares. This was in view of the Panchamias not having presented the shares as called upon by the Ganatras to do so. He has submitted that there is a failure on the part of the Panchamias to deliver the shares.

50. Mr. Sharan Jagtiani has referred to the Statement of Claim, in particular paragraphs 25 to 27, wherein the case of the

Ganatras ascertaining the performance by the Panchamias and failure on the part of by the Panchamias to present the shares when called upon to do so was expressly pleaded. This has also been pleaded in the Affidavit of Evidence of Kiran Ganatra, paragraphs 27 to 29. This case has not been refuted in the evidence of witness of Panchamias. There is an admission in cross examination by Hemant Panchamia, which is fatal to the entire case of Panchamias. He has in paragraph 109 stated "*It is true that I did not present to the Claimants the 7,71,650 shares on 10th July 2000.*". Thus, there is an admitted position that the Panchamias as vendor did not present the shares when called upon to do so. For this reason, this Award correctly renders the finding that Ganatras were ready and willing to perform their obligation but Panchamias did not perform their obligation.

51. Mr. Sharan Jagtiani has referred to the findings in the impugned Award on the aspect of readiness and willingness and which findings were arrived at by the learned Arbitrator after considering the entire record, including examining the agreements, the correspondence and the evidence. The findings

are recorded in Clauses 10 to 12 of the impugned Award and there is clear finding that Ganatras were ready and willing to perform their obligations and the Panchamias did not perform their obligation to resell the said shares.

52. Mr. Sharan Jagtiani has submitted that for the purpose of readiness and willingness, the Court has to examine whether a party was ready and willing to perform the "essential terms" of the contract. This has been held by the Supreme Court in **Narinderjit Singh Vs. North Star Estate Promoters Limited**[6] at paragraphs 15, 20, 21, 22. This is the mandate of Section 16 of the Specific Relief Act, 1963 (Unamended Act is applicable to the present case). Once Ganatras called upon the Panchamias to present the shares at the head office at Pune, they have performed the essential terms of the contract.

53. Mr. Sharan Jagtiani has submitted one more important aspect of the matter, which was before the Arbitral Tribunal and for which no response was given at the time of arguments before this Court. This pertains to the reason why Panchamias did not

6 **(2012)5 SCC 712**

present the shares when called upon to do so. He has submitted that there is absolutely no answer given at the time of arguments to the two emails which were before the Arbitral Tribunal referring to the arrangement of submitting shares to financial institutions much before the deadline of 12th July 2000 being the deadline for seeking re-transfer. This was almost a month before this due date i.e. on 14th and 15th June 2000. He has referred to the relevant portion of the emails and submitted that the emails establish that shares could not be presented since there was already an arrangement of shares being tendered to IDBI. He has referred to the arguments before this Court, when this Court posed a specific query in this regard, the only response on behalf of the Panchamias was that there is no evidence on this aspect. He has submitted that the submission is contrary to the emails which were on record of the Arbitral Tribunal. Thus, there is no answer to the documentary evidence, which was the basis of findings rendered by the Arbitral Tribunal i.e. in paragraph 15 of the impugned Award.

54. Mr. Sharan Jagtiani has submitted that the submission

of the Panchamias at the time of arguments before this Court that "there is no evidence that shares is not available with Panchamias" is also unsustainable. This is because the consistent case of Ganatras, as expressly pleaded in the statement of claim and in their affidavit of evidence, can only be disproved by Panchamias by leading evidence to show that the shares were physically available with them on 12th July 2000. It is an elementary principle of law of evidence, that a party is not required to prove the 'negative'. Failure on the part of Panchamias to lead positive evidence to disprove this case of Ganatras cannot now be justified by a mere denial or an argument that there is no evidence. He has submitted that this establishes that submissions in the petition under Section 34 are contrary to the record before the Arbitral Tribunal.

55. Mr. Sharan Jagtiani has submitted that the repudiation and failure to perform obligations on the due date is attributable singularly to the Panchamias. He has submitted that once the price was accepted by Ganatras on 10th July 2000, neither on 11th July 2000 nor on 24th July 2000 or into initiation of legal proceedings were shares ever produced. He has submitted that the reason was

obvious that Panchamias had retained the shares so as to oust the Ganatra Group.

56. Mr. Sharan Jagtiani has submitted that for the purpose of applying the test of readiness and willingness, the sequence of performance of obligations is also relevant. It is a settled position of law that there is no straight jacket formula for the test of readiness and willingness. Each case depends on the facts, the agreement between parties and the manner of performance of obligations as contemplated. This is also because there is no question of readiness and willingness being applied against the innocent party, when it is prevented from performing by the counter party. He has placed reliance on the decision of this Court in **Jayant Maniklal Lunawat Vs. Kamal Arjan Hingorani**[7] in support of his contention that readiness and willingness has to be tested on the basis of sequence of obligations.

57. Mr. Sharan Jagtiani has submitted that the only sequence by which the agreement to re-transfer shares could have been performed is after communication of the price; and once the

7 **(2018) SCC OnLine Bom 695**

price was communicated and accepted, by presenting the shares in order to complete the formalities of transfer.

58. Mr. Sharan Jagtiani has submitted that the enquiry of financial capacity of Ganatras is not relevant when Ganatras have done what is required of them and have performed their obligations strictly as per the timelines contemplated between the parties. He has submitted that the Award correctly finds that the only question asked in the entire cross-examination was, whether the "documents produced in the arbitration" contained anything which will show that the Ganatras had an amount of Rs. 1,54,33,000/-. No other question was asked despite the position of law being clear that, for the purpose of showing readiness and willingness, a party should not be required to actually produce cash. This position has been recognised by the Privy Council and consistently applied by the Supreme Court and for which reliance has been placed upon judgment in **A. Kanthamani Vs. Nasreen Ahmed**[8] at paragraph 24 and 25.

59. Mr. Sharan Jagtiani has submitted that the impugned

8 **(2017) 4 Supreme Court Cases 654**

Award refers to the judgment of the Supreme Court in case of **Indira Kaur Vs. Sheo Lal Kapoor**[9] and on the basis of a holistic examination of the record, the impugned Award rightly finds by the Ganatras were ready and willing. The correctness of law laid down by the Privy Council followed consistently including the judgment in **Indira Kaur** (supra) is not in doubt. The Award in the present case applies exactly this principle as laid down by the Supreme Court and cannot be faulted with.

60. Mr. Sharan Jagtiani has submitted that the Award rightly finds that time is not of essence in view of the facts and circumstances of the case. In fact, the issue of time of essence was not even raised before the Arbitral Tribunal, because the same was not even pleaded in the statement of defence. Hence, the finding of time not being of essence is absolutely correct. He has submitted that it is also an admitted position that from inception i.e. from the agreement of 5th January 1999, all the way upto 12th July 2000, the agreement was never terminated. He has submitted that this is critical since several versions of amendments were executed between the parties during this period of almost 18 months. He

9 **(1988) 2 Supreme Court Cases 488**

has submitted that the test of surrounding circumstances has been applied by the Supreme Court repeatedly to the Issue of time being of essence. These are as under:-

(i) **McDermott International Inc. Vs. Burn Standard Co. Ltd. & Ors. (2006) 11 SCC 181**

(ii) **Welspun Speciality Solutions Limited Vs. Oil and Natural Gas Corporation Limited (2022) 2 Supreme Court Cases 382**

61. Mr. Sharan Jagtiani has accordingly, submitted that the Ganatras have established their case of readiness and willingness. He has submitted that in any event and without prejudice to the above submissions, it is a well settled principle of law that a finding of readiness and willingness is a finding of fact and cannot be the basis of interference if the jurisdiction does not permit re-appreciation of evidence. He has placed reliance upon the following decisions :-

(i) **A. Kanthamani Vs. Nasreen Ahmed (2017) 4 Supreme Court Cases 654**

(ii) **Indira Kaur Vs. Sheo Lal Kapoor (1988) 2 Supreme Court Cases 488**

(iii) **Jayant Maniklal Lunawat Vs. Kamal Arjan Hingorani (2018) SCC OnLine Bom 695**

(iv) **Narinderjit Singh Vs. North Star Estate Promoters Limited (2012) 5 Supreme Court Cases 712**

(v) **Suresh Lataruji Ramteke Vs. Sau. Sumanbai Pandurang Petkar & Ors. 2023 SCC Online SC 1210**

(vi) **Kamal Kumar Vs Premlata Joshi & Ors. (2019) 3 Supreme Court Cases 704**

(vii) **Banvirsingh Motiram Punjabi Vs. Gopinath K. Vidhate & Anr. (2018) SCC OnLine Bom 16502**

62. Mr. Sharan Jagtiani has referred to the Terms Agreed between the Parties on 26th July 2007 in support of his contention that the parties had agreed before the Arbitral Tribunal that the Ganatras would exit Ganatra Hotels. He has submitted that in Clause 2 of the Terms Agreed between the Parties the Ganatras restricted their claim to compensation in lieu of specific

performance. Further, in Clause 3 of the Terms Agreed between the Parties, it is absolutely clear that even the 1,81,700 shares, which were not deposited with Panchamias, being the entire balance shareholding of Ganatras, was agreed to be made part of the claim for compensation. The Arbitral Tribunal was conferred the power to decide the price on the basis of valuation without leaving any further oral evidence. He has placed reliance upon Clauses 3, 4 and 5 of the Terms Agreed between the Parties in this context.

63. Mr. Sharan Jagtiani has submitted that in view of the Terms Agreed between the Parties on 26th July 2007, the scope of the Statement of Claim was expanded, which in turn expanded the scope of arbitration. This is permissible as a matter of law as laid down by the Supreme Court in **Waverly Jute**[10] at paragraph 4 and in **State of Goa Vs. Praveen Enterprises**[11] at paragraphs 10, 11, 25-33 and 41-44. He has submitted that the argument urged by the Panchamias that only the claim of specific performance was converted into monetary claim and there was no understanding of complete exit is totally mischievous and dishonest. He has

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10 **1962 SCC Online SC 70**

11 **(2012) 12 SCC 581**

submitted that not only Panchamias are estopped from arguing contrary to the agreed terms, the entire petition lacks *bona fides* and ought to be dismissed.

64. Mr. Sharan Jagtiani has referred to the Second Agreement between the parties in relation to valuation i.e. the meeting held before the Arbitral Tribunal on 5th January 2011, where the parties arrived at one more agreement. In this agreement, the parties also agreed to the method of valuation which included EBIDTA method. He has submitted that this is crucial since it completely falsifies the ground urged in the petition that there is no basis for the manner in which the valuation has been considered in the Award.

65. Mr. Sharan Jagtiani has thereafter, referred to the Third Agreement between the parties in relation to methods of valuation and on the basis of valuation Report. This is recorded in the Agreement dated 14th June 2011 conferring summary powers on the Arbitral Tribunal to decide the valuation of shares and immovable property. He has referred to the said Agreement and

has submitted that in Clause 3 of the Agreement between the parties, the Arbitrator may also take assistance of an independent valuer/Chartered Accountant while deciding the question of valuation.

66. Mr. Sharan Jagtiani has thereafter, referred to the Fourth Agreement executed between the parties being interim Consent Terms dated 29th December 2014. He has referred to Clauses 3 to 5 of the interim Consent Terms and has submitted that these Clauses indicated that on the final amount being determined for exit, expenses of Rs.2.25 crores were to be adjusted. He has submitted that there is an unequivocal understanding to exit. There is complete clarity that each and every share held by Ganatras were added in the pool for the claim for exit by way of monetary compensation. It was absolutely clear between the parties that the valuation of shares can be worked out at the stage of final arguments.

67. Mr. Sharan Jagtiani has submitted that these Agreements and their Clauses, indicate the source of the final

operative directions in the Award. This would include the direction with regard to 1,79,700 shares. Moreover, the amount of Rs.1,00,00,000/- worked out after deducting 2.25 crores from the amount of Rs.3.25 crores. He has submitted that additionally, these Agreements and their Clauses indicated that each and every submission in the petition under Section 34 of the Arbitration Act is contrary to the record and the agreement between the parties before the Arbitral Tribunal.

68. Mr. Sharan Jagtiani has submitted that in similar matters, where the parties have agreed to summary powers, the Supreme Court has clearly observed that once parties have arrived at an agreement on specific issues during arbitration, no grievance can be raised in that regard to challenge the Award. He has placed reliance upon **Jagjeet Singh Vs. Unitop Apartments**[12] at paragraphs 14 to 18 in this context.

69. Mr. Sharan Jagtiani has submitted that it is shocking that despite all the above Agreements accepted in writing before the Arbitral Tribunal, detailed grounds have been urged in the

12 **(2020) 2 SCC 279**

petition that the Award does not consider aspects of valuation and there are no reasons. He has submitted that the Petition ought to be dismissed on this ground alone.

70. Mr. Sharan Jagtiani has submitted that the entire working towards valuation is clear from the reading of the Award. He has referred to the valuation Report and the Minutes which have been produced by the Panchamias in a separate volume being Volume II. These documents indicate that while the Ganatras sought valuation of Rs.344.55/- per share, in the Award, the Arbitral Tribunal has declined the same. On the contrary, the Award grants a valuation much closer to that of the Panchamias. Volume II produced by the Panchamias produces detailed Reports where there is a reference to the EBITDA methodology and the conclusion of Rs.72.91/-. He has submitted that the Award while rejecting the valuation of Ganatras refers to this valuation on behalf of Panchamias. The working methodology relied upon by the Valuer of Panchamias indicates application of EBITDA method as agreed between the parties. He has referred to the EBITDA multiple, as on 31st March, 2007 ascertained by the Valuer of

Panchamias and the value per share of 72.91 arrived at based upon the same. Thereafter, the Valuer separately considered the EBITDA multiple of a much lower figure of 2.64. This is on the basis of a completely different date being that of 31st March 2011. On the basis of the distinct date of 2011, the Valuer applied an average EBITDA multiple of 2.64, and arrived at a significantly low share price of Rs.18.39/-.

71. Mr. Sharan Jagtiani has submitted that after considering that the parties agreed to the modality of monetary value being given in lieu of shares; agreed to include valuation of the land for arriving at the value of shares; agreed to the method of valuation of EBITDA; accepted the date of valuation; agreed to the Arbitrator taking assistance of a Chartered Accountant; and most importantly agreed to confer summary powers on the Arbitral Tribunal, the Award grants a valuation of Rs.94.43/- per share. He has submitted that both the parties agreed to the date of valuation taken as 2007 and not 2011 and this is borne out from the Award. Further, the Arbitral Tribunal has given reasons for accepting 72.91 which was as per valuation Report of the Panchamias and rejecting

the discount added to the same. Further, the Arbitral Tribunal refers to the number of shares being 94,50,000 by specifically rejecting Panchamias contention of total number of share being 1,12,09,000 which was the position before the interim order passed by the Arbitral Tribunal on 5th September 2006. Accordingly, the Award arrives at valuation of Rs.94.43/-.

72. Mr. Sharan Jagtiani has submitted that the valuation does not warrant any interference since the same is pursuant to agreements between the parties on a large part of the process of valuation. He has submitted that the Award contains the relevant reasons apart from the valuation being agreed to be done summarily. He has placed reliance upon the settled position of law that valuation is not an exact science. So long as a process has been followed and necessary formula adopted, there is no scope for interference. In this regard, he has placed reliance upon the decision of this Court in **Cadbury India Limited**[13] at paragraphs 1.10, 4.7, 5.9, 7.1.9, 7.1.10 and 7.1.11.

13 **Company Petition No. 1072 of 2009 decision dated 09.05.2014**

73. Mr. Sharan Jagtiani has accordingly, submitted that the Petition ought to be dismissed and the Registry be directed to release the Bank Guarantees which had been submitted by the Ganatras for the purpose of withdrawing the money deposited by the Panchamias in the present proceedings.

74. Having considered the submissions, the Panchamias have challenged the Award of the learned Arbitrator under Section 34 of the Arbitration Act. It is well settled as has been submitted by Mr. Sharan Jagtiani on behalf of the Ganatras that there is a limited scope of challenge to an Award under Section 34 of the Arbitration Act. This would be moreso where the challenge is a finding on readiness and willingness as in this case. The finding on readiness and willingness is a finding on fact and thus, such finding cannot be the basis of interference in exercise of jurisdiction under Section 34 of the Arbitration Act, unless there is a patent illegality that shocks the conscience of the Court. There can be no reappreciation of evidence. The interpretation of the contract is within the domain of the Arbitrator and where there is a possible interpretation of the contract by the Arbitrator, it does

not warrant any interference.

75. In the decisions which have been relied upon by Mr. Sharan Jagtiani, viz. **Associated Builders** (supra); **Ssangyong Engineering & Construction Co. Ltd.** (supra) and **UHL Power Company Limited** (supra), the Supreme Court has consistently held that the scope of interference under Section 34 is extremely narrow and that there can be no interference or an alternate view taken of facts as well as errors of facts cannot be corrected unless perversity goes to the root of the matter.

76. Having perused the impugned Award, I find that the learned Arbitrator has examined the pleadings, correspondence and documentary evidence as well as oral evidence led by the parties and is thus a well considered Award. The learned Arbitrator has on the basis of such appreciation held that the Panchamias have failed to communicate the price for transfer from January 2000 to July 2000 and it was the Ganatras who had by their letter dated 8th July 2000 i.e. four days before the due date, called upon the Panchamias to communicate the price. Upon the Panchamias

having communicated the price, Ganatras did not refuse to pay the price, but rightly called upon the Panchamias to present the physical shares for completion of formalities. This was necessitated by the fact that there were two emails dated 14th June 2000 and 15th June 2000 referring to the arrangement of submitting the subject shares to the financial institutions by Ganatra Hotels much before the deadline of 12th July 2000 being the deadline for seeking retransfer. These emails establish that the shares could not be presented since there was already an arrangement of shares being tendered to IDBI. I find that there is no answer to this documentary evidence, which has been appreciated by the learned Arbitrator and is the basis of the findings rendered by the Arbitral Tribunal.

77. The Arbitral Tribunal has in my view correctly held that the Ganatras were ready and willing to perform essential terms of the contract, but it was the Panchamias who failed to perform their obligation to present the shares at the head office at Pune on the due date i.e. on 12th July 2000 when called upon to do so by the Ganatras. Further, the learned Arbitrator has appreciated the fact

that the subject shares were never presented even thereafter, though there was a follow up letter sent on 24th July 2000.

78. With regard to the contention of Dr. Tulzapurkar that there has been a novation of the Agreement between the Ganatras and Panchamias, I do not find any merit in the same. The material on record including the agreements entered into between the parties are to the contrary.

79. I find from the impugned Award that the learned Arbitrator has correctly examined the agreements, both pre-arbitration and post-arbitration and applied the same. It is not the case of Ganatras that the letters of 8th July 2000 and 10th July 2000 novate the agreement or that an altered agreement came into existence. The learned Arbitrator has examined readiness and willingness of Ganatras as per the agreement entered into between the parties. Further, the trial in the arbitral proceedings proceeded on the basis of Agreements as executed and as understood by the parties. Thus, I find no infirmity in the impugned Award on this aspect.

80. The decision on readiness & willingness relied upon by Mr. Sharan Jagtiani, viz. **Jayant Maniklal Lunawat** (supra) clearly indicates that readiness and willingness has to be tested on the basis of sequence of reciprocal obligations. In the present case, the Panchamias have failed to produce and present the subject shares, but at the same time contend that the Ganatras lacked financial capacity. The learned Arbitrator has referred to the well settled law laid down by the Supreme Court including the case of **Indira Kaur** (supra), which has held that a party is not required to produce actual cash for the purpose of establishing readiness and willingness. This principle has been accepted by the Supreme Court in **A. Kanthamani** (supra), which has followed the decision of the Privy Council in **Bank of India Limited & Ors. Vs. Jamsetji A.H. Chinoy and Chinoy and Company**[14] and such view has not been departed from as has been attempted to be made out during the oral arguments on behalf of Panchamias.

81. The Judgment relied upon by Dr. Tulzapurkar namely **Umabai Vs. Nilkanth Dhondiba Chavan** (supra) is clearly distinguishable. In that case, the detailed cross examination of the

14 **AIR 1950 PC 90**

witness was undertaken and several questions were put to the witness as regards financial capacity. These have been referred to in paragraphs 28, 29 and 31 of the said decision. Neither these questions not the answers in cross-examination of the witness were limited to the record produced before the Court. It can be seen from paragraph 30 of the said decision that even the offer made by the party was a conditional offer. Thus, the said decision would be confined to the facts of that case as well as the evidence recorded therein and will have no bearing on the present case. In the present case, there is no conditional offer and there was only a singular question which had been put to the witness of the Ganatras in an arbitration which lasted for several years, namely as to whether there is a document on record of the Tribunal which would show that the Ganatras has the funds to pay. Further the singular question put to the witness in cross-examination in the present case does not go into financial capacity at all, but it is only a question of record.

82. Thus, I find that the decision in **Umabai Vs. Nilkanth Dhondiba Chavan** (supra) does not lay down any new law. The

Supreme Court has not declared in the said decision that the judgment of the Privy Council or the judgment of the Supreme Court in **Indira Kaur** (supra) is incorrect law. The judgment in **Indira Kaur** (supra) has been applied by the Supreme Court in **A. Kanthamani** (supra), which has been cited by the Ganatras. Further, the judgment in **Bishandayal and Sons Vs. State of Orissa and Ors.**[15], which has been relied upon by Panchamias is irrelevant on facts since the primary issue before the Court in that case was whether the contract itself was concluded. No such controversy exists in the present case. Thus, the said judgment has no relevance.

83. The Ganatras desired a complete exit from Ganatra Hotels and it was upon such desire that subsequent agreements were entered into between the Ganatras and Panchamias, even after the arbitration had commenced. It can be seen from the material on record including the Agreement entered into between the parties in the year 2007, during the arbitration proceedings, that the parties had sought to resolve their dispute over joint management and control by a complete exit of the Ganatras from

15 **(2001) 1 Supreme Court Cases 555**

Ganatra Hotels. The dispute arose in June 2000, when the Panchamias claimed to have removed Kiran Ganatra as Chairman cum Managing Director of the Ganatra Hotels in an alleged emergency meeting of Board of Directors convened on 22nd June 2000. The minutes of the meeting have been disputed by the Ganatras who have contended that the minutes were fabricated to indicate that the Panchamias purported to take charge as Chairman and Managing Directors, with immediate effect. Thus, there was a clear intention of the Panchamias to oust the Ganatra Group and which has been appreciated by the learned Arbitrator.

84. In the Terms Agreed between the Parties during the arbitral proceedings i.e. on 26th July 2007, the Ganatras' claim for specific performance of the Shareholders Agreement dated 5th January 1999 and Deed of Amendment dated 12th January 2000 has been expressly referred to and the Ganatras have restricted their claim to compensation in lieu of specific performance. This was in furtherance of Ganatras desire to exit the Ganatra Hotels. In Clause 3 of the said Terms Agreed between the Parties even the 1,81,700 shares which have not deposited with the Panchamias i.e.

being the entire balance shareholding of the Ganatras in Ganatra Hotels would be made part of the compensation. Thus, the scope of arbitration was expanded. It is a settled position of law that it is permissible to expand the scope of arbitration during the arbitral proceedings as held by the Supreme Court in **Waverly Jute** (supra) and **State of Goa Vs. Praveen Enterprises** (supra) which decisions have been relied upon by the Ganatras.

85. In considering the challenge to the impugned Award, namely that the learned Arbitrator had gone beyond the scope of reference while granting relief in relation to 5,00,050 shares and 1,79,700 shares in addition to the 7,71,650 shares for which specific performance had been sought and thereafter restricted to compensation in lieu of specific performance, the subsequent agreement entered into between the parties during the Arbitral Proceedings are required to be taken into consideration particularly since by this agreement the scope of arbitration was expanded. In my considered view the Arbitral Tribunal has acted within jurisdiction in granting compensation in view of specific performance with respect to the 5,00,050 and 1,79,700 shares.

86. I find much merit in the contention of Mr. Sharan Jagtiani for the Ganatras that for exit of Ganatras from Ganatra Hotels, the entitlement of shares was converted into entitlement towards monetary value for such shares. Thus, there was an agreement between the parties as to the shares of Ganatras being transferred to Panchamias for monetary consideration. I do not find any flaw in the reasoning of the learned Arbitrator in this context.

87. I do not find any merit in the contention on behalf of the Panchamias that as regards 1,79,700 shares this was dealt with in the interim Consent Terms and hence, could not have been a part of the impugned Award. Upon a perusal of the interim Consent Terms and in particular, paragraph 4 thereof, it is clear that the share transfer forms in respect of the said 1,79,700 shares were to be deposited with the Arbitral Tribunal and Clause 5 thereof refers to the valuation of shares required to be decided by the Arbitral Tribunal. It is also agreed between the parties that from the total amount payable to the Ganatras which was to be determined, expenses of 2,25,00,000/- were to be deducted. This

exercise has been carried out by the learned Arbitrator by giving adjustment of 2,25,00,000/- while arriving at the share valuation and awarding the compensation to Ganatras.

88. With regard to the contention of the Panchamias that the valuation arrived at by the learned Arbitrator i.e. Rs. 94.43 per share is without any basis. This contention overlooks the well settled law that an award of valuation does not warrant any interference, particularly, when the valuation is pursuant to an agreement between the parties on the process of valuation. Further, as long as the process has been followed and necessary formula adopted, there is no scope for interference under Section 34 of the Arbitration Act. Further, it is a well settled position of law that valuation is not an exact science. This has been held by this Court in **Cadbury India Limited** (supra).

89. In the present case, there have been as many as four agreements entered into between the parties during the arbitral proceedings and by which the parties have agreed to the following :-

(i) agreed to the modality of monetary value being given in lieu of shares;

(ii) agreed to include valuation of the land for arriving at the value of shares;

(iii) agreed to the method of valuation of EBITDA;

(iv) accepted the date of valuation;

(v) agreed to the Arbitrator taking assistance of a Chartered Accountant;

(vi) agreed to confer summary powers on the Arbitral Tribunal.

90. Thus, the parties were aware when they entered into the four agreements that the aspects of the methodology of valuation was left to be summarily decided by the learned Arbitrator who was not required to give detailed reasoning. Thus, it is now not open for the Panchamias to challenge the valuation arrived at by the learned Arbitrator in exercise of such summary powers.

91. It can be seen from the impugned Award that there are sufficient reasons for the valuation arrived at, although such

reasons had been dispensed with by the parties in the aforementioned agreements. There is a reference to the valuation Reports and Minutes produced by the Panchamias and Ganatras. The learned Arbitrator has in fact, acted in conformity with the agreements between the parties and has ascertained the EBITDA multiple as on 31st March, 2007. The learned Arbitrator has rejected the valuation of the Ganatras and has given reasons for accepting the valuation of the Panchamias i.e. Rs. 72.91 per share and rejecting the discount added to the same. Further, the learned Arbitrator has taken the number of shares as 94,50,000 instead of 1,12,09,000 taken into account by the Panchamias, on the ground that this was the position before the interim order passed by the learned Arbitrator on 5th September 2006. It is on the basis of the documents and material on record as well as assistance of independent Chartered Accountant that the Award arrives at a valuation of Rs. 94.43. Thus, apart from aforementioned finding that the learned Arbitrator has followed the agreed process of valuation by adopting the necessary formula, sufficient reasons for arriving at the valuation have been given by the learned Arbitrator and the same does not warrant any interference under Section 34

of the Arbitration Act.

92. Regarding the contention on behalf of the Panchamias that the Award grants interest when there is no prayer for interest, such contention is contrary to the prayers in the amendment to the Statement of Claim which has sought compensation with interest thereto @ 18% per annum from 5th January 1999 i.e. date of Shareholders Agreement till payment is effected. There are averments in support of this prayer which can be seen from the amendment to the Statement of Claim.

93. With regard to the contention on behalf of the Panchamias that there is no basis for granting of Rs. 1 Crore, this contention is without any merit. The amount of Rs. 1 Crore has been arrived at after deducting expenses of Panchamias of Rs. 2.25 Crores as per the interim Consent Terms dated 29th December 2014 from the amount of Rs. 3.25 Crores, being the part of the contribution of the Ganatras i.e. 50% of the value of the land as borne out from the agreement between the parties.

94. Insofar as the decisions relied on behalf of the Panchamias with regard to scope of interference, these judgments in fact emphasis the narrow scope of interference under Section 34 of the Arbitration Act. Thus, these judgments, on the contrary, come to the aid of the Ganatras.

95. Thus, in my considered view, the Panchamias have failed to make out any ground for challenge of the impugned Award under Section 34 of the Arbitration Act. There is no violation of public policy as sought to be contended by the Panchamias and thus the impugned Award does not foul of the provisions of Section 34(2)(b)(ii) Explanation I (ii) and (iii) of the Arbitration Act.

96. In view thereof, Commercial Arbitration Petition No. 44 of 2016 is dismissed.

97. There shall be no order as to costs.

98. Commercial Arbitration Petition No. 113 of 2017 has not been pressed by the Petitioners therein and accordingly, is dismissed as withdrawn.

[R.I. CHAGLA J.]

99. Mr. Sandeep Parikh, learned Counsel appearing for the Petitioners in Commercial Arbitration Petition No. 44 of 2016 has sought stay of this Judgment and Order.

100. Considering that there is an order of stay of the impugned Award vide order dated 18th January 2018, for a period of four weeks from the date of this order, the said order is continued.

[R.I. CHAGLA J.]