IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
[COMMERCIAL DIVISION]

BEFORE:
The Hon'ble Justice Ravi Krishan Kapur

AP-COM/167/2024

PERCEPT TALENT MANAGEMENT LIMITED AND ANR.
VS
SOURAV CHANDIDAS GANGULY

For the petitioner : Mr. Surojit Nath Mitra, Senior Advocate
Mr. Rajarshi Dutta, Advocate
Mr. Sarbajit Mukherjee, Advocate
Mr. Ranajit Kr. Basu, Advocate
Mr. Prayag Kandhar, Advocate

For the respondent : Mr. Samrat Sen, Senior Advocate
Mr. Paritosh Sinha, Advocate
Mr. Amitava Mitra, Advocate
Mr. S. Dutt, Advocate
Ms. Sonia Nandy, Advocate
Mr. Naman Agarwal, Advocate

Judgment on : 22.07.2025

Ravi Krishan Kapur, J.:

1. This is an application under section 34 of the Arbitration and Conciliation Act, 1996, challenging an award dated 9th December, 2018, read with the supplementary award dated 8th March, 2019 (collectively referred to as "the award").
2. Briefly, the respondent, a cricketer of international repute had entered into a Player Representation Agreement (PRA) dated 22 October, 2003 with the petitioner No.2, whereby the respondent appointed the petitioner No.2 as his sole and exclusive manager and agent on terms and conditions morefully enumerated in the PRA.

3. During the subsistence of the PRA, by a deed of assignment dated 21 April 2007 executed between and the petitioner no.1, the rights and obligations of the petitioner no.2 under the PRA were assigned to the petitioner no.1.

4. The present controversy arises out of the termination of the PRA by the petitioner No.1 and for consequential reliefs. By this time, the relationship between the parties had turned acrimonious and the respondent claimed that substantial sums were due and payable by the petitioners. The respondent alleged that the revenue received from different contracts had not been deposited in the escrow account as contemplated by the PRA. In addition, there were unauthorized withdrawals made by the petitioners from the escrow account to the prejudice of the respondent.

5. The arbitral reference was made to an Arbitral Tribunal comprising of three Arbitrators. There is no challenge to the constitution of the Tribunal. The Arbitral Tribunal unanimously found that the respondent was entitled to the balance of the minimum guaranteed amount which was assured by the petitioners under the PRA, after making necessary deductions and adjustments for the sums received directly in various heads. By the award, the Arbitral Tribunal awarded a sum of Rs.14,49,91,000/- with additional interest thereon @ 12% p.a from 21 November 2007 till the date of passing of the arbitral award with further interest @12% p.a. from the date of passing of the award till realization. The manner of quantification of the amount awarded has been fully enumerated in the award. In addition, the respondent has been granted costs quantified at Rs. 50,00,000/-.

6. It is contended on behalf of the petitioner that the impugned award passed by the Tribunal is ex facie, perverse, contrary to the express terms of the contract, unreasoned and as has been passed in violation of the principles of natural justice. The petitioners assail the award on the following grounds:

   A. *Error of the Arbitral Tribunal in holding that the termination of the contract by the petitioners on November 21, 2007 was invalid.*
   B. *Failure of the Arbitral Tribunal to give the petitioners the benefit of the consideration received by the respondent under the KKR contract dated August 21, 2008 between Knight Riders Sports Private Limited and the respondent.*
   C. *Failure of the Arbitral Tribunal to give due credence to the purported audit reports of M/s. Patkar & Pendese which were disclosed on behalf of the petitioners before the Arbitral Tribunal.*
   D. *Failure of the Arbitral Tribunal to hold that the petitioners could not be jointly liable in view of the assignment whereby the rights and liabilities of the petitioner No. 2 had been assigned in favour of the petitioner no. 1.*

7. It is contended on behalf of the petitioners that the Arbitral Tribunal erred in holding that the right of the petitioners to terminate the PRA came to an end after November, 2006. This conclusion is perverse and contrary to the terms of the PRA. On a combined reading of Schedule IV of the PRA read with clause 15 of the PRA, the petitioner unequivocally had a right of termination of the contract of the PRA without prejudice to other remedies available in law. It is urged that the Arbitral Tribunal erred in holding that the marketability in the brand value of the respondent continued after his re-selection in the Indian Cricket Team. As a consequence, the Arbitral Tribunal erred in holding that the positive act of continuing to deal with

the respondent's other contracts by the petitioners post the alleged period of termination amounted to waiver and indicated that the petitioners continued with the PRA.

8. The Tribunal also erred in holding that the amount paid to the respondent under the Kolkata Knight Riders (KKR) contract was outside the scope of the PRA. This finding of the Tribunal is perverse, unreasonable and ignores the true meaning, scope and purport of the PRA. The Tribunal also erred in not accepting the case of the petitioner on the issue of the auditor's certificate being an excepted matter under the PRA. In such circumstances, the Tribunal erred in allowing the deduction of Rs.83,89,000/- towards non-selection as computed by the respondent. In view of the above, the impugned award is unsustainable and liable to be set aside. In support of such contention, the petitioner relies on the decisions in *A.C. Muthiah v. Board of Control for Cricket in India, (2011) 6 SCC 617* and *Board of Control for Cricket in India v. Cricket Association of Bihar, (2015) 3 SCC 251.*

9. On behalf of the respondent, it is submitted that there are no grounds to interfere with the impugned award. The impugned award is reasoned and adequately deals with each of the contentions raised by the petitioners. In view of the above, the termination of the PRA was unwarranted and contrary to the terms of the PRA. In any event, the interpretation of the terms of the PRA is exclusive domain of the Arbitral Tribunal and there is no scope for interference. In support of such contentions, the respondent relies on *Ssangyong Engineering and Construction Company Ltd. vs. NHAI (2019) 15 SCC 131, Associate Builder vs. DDA (2015) 3 SCC 49, Dyna*

Technologies (Private) Limited vs. Crompton Greaves Limited (2019) 20 SCC1 and *Welspun Speciality Solutions Limited vs. Oil and Natural Gas Corporation Limited (2022) 2 SCC 382*.

10. The primary contention of the petitioners is that the Arbitral Tribunal erred in holding that the petitioners had no right to terminate the PRA since the right of the petitioners to terminate the PRA came to an end upon the respondent's re-selection in the Indian Cricket Team on 25 November 2006. It is contended that this finding is perverse, incorrect and contrary to the terms of the PRA. Clause 15 of the PRA provides for termination of the PRA in the event of variation as stipulated in clauses 1 and 2 of Schedule IV of the PRA. Clause 15.3 provides that the petitioners shall have an unconditional right to terminate the PRA by providing a written notice to the respondent in case where events prescribed in sub-clauses (a) and (b) of Clause 15.3 of the PRA occur. Under sub clause 15(3)(b), two eventualities are contemplated: (i) one of mere non-selection (ii) non selection for continuous period of exceeding six months. In both events, the petitioners were conferred with *additional* and *unconditional* rights to terminate the PRA. The terms additional and unconditional provided in the said clause indicated that such right may be exercised at any point of time once the period of six months expired. Such a clause must be given its plain and ordinary meaning. The petitioners terminated the PRA on 21 November 2007 subsequent to the expiry of 6 months i.e., from February 2006 to November 2006. Thus, it is alleged that any such termination was legal and valid and within the parameters prescribed under clause 2.2 of Schedule IV of PRA. The word "forthwith" appearing in

the last portion of the clause 2.2(c)(ii) suggests that the termination of the PRA came into effect immediately upon notice being served on the personality and not at any later stage. Accordingly, it is contended that an unconditional right cannot be diluted under the guise of interpretation as the same is contrary to the terms of the PRA and constitutes rewriting of the contract between parties. The Arbitral Tribunal also erred in holding that the marketability in the brand value of the respondent continued after the respondent's re-selection in the Indian Cricket Team and that the act of the petitioners in continuing with the dealing with the other contracts of the respondent post termination resulted in waiver of such rights of the petitioners.

11. On this aspect, the Arbitral Tribunal held as follows:

> *"6. We have no hesitation in holding that the Percept's right to terminate the agreement came to an end after 25th November, 2006, being the date on which SG was reselected to play for the Indian team. Our reasons follow.*
>
> *(a) The inclusion of SG in the Indian team was central to the marketability of the personality. In fact, the respondent admits this position in paragraph 4(v) of its Statement of Defense.*
>
> *(b) On the question of construction of the expression "at any time" several authorities were cited by both the sides. Diverse rules of construction were discussed. It was the Claimant's case that the construction must be such as to give effect to the commercial intent underlying the Contract. On the other hand, the Respondent contended that a literal construction needs to be adopted, inter alia, because the words used in the expression were very clear and admit of no grammatical difficulties. In our opinion, however clear the expression might be as a matter of the English language, we have to give effect to it as men of commerce would in similar circumstances. The Contract between the Claimant and the Respondent was one for exploitation of the Claimant's status as a Personality and his marketability in the field of advertisement and endorsement. The Claimant's status, as a player representing India in Test Matches, One Day Matches and Twenty 20 Matches, was eminently marketable. The marketability continued generally as long as the player concerned was chosen to represent India. To construe the expression "at any time" as advocated by the Respondents would be to permit the Respondents to terminate the Contract even a long period after the*

Claimant's non-selection as a player to represent India. The Claimant has submitted that if that construction of "at any time" was permitted, the Respondents could terminate the Contract a day prior to the Contract coming to an end by efflux of time. We find it difficult to persuade ourselves to hold that this could have been the intention of men of commerce. The Contract provided for a minimum guarantee payment. It is obvious that the Respondents considered that the Claimant was eminently marketable as a Personality so long as the Claimant continued to represent India. If he did not represent India for any period of time then the reduction in payment contemplated by the Contract came into effect. It is impossible to conceive of a situation where men of commerce could have decided that even when the Claimant was reselected to represent India a right to terminate the Contract inhered In the Respondents to be exercised "at any time" irrespective of such reselection. Both the Claimant and the Respondents have cited numerous authorities. We are not setting them out over here because in the Written Submissions filed by both the sides extensive references were made to the law on the point.

(c) Clause 15.3 provides that Percept shall have an unconditional right to terminate the Agreement. That right is to be exercised In the event of events listed in Clause 15.5 (a) happening. The words of Clause 15.3 read - "Percept shall have the unconditional right to terminate this agreement forthwith on written notice to the Personality in the event that....."

It is obvious that Clause 15.3 relates to a right in Percept to terminate the Agreement. The use of the words "forthwith" in this Clause is, in our opinion, merely to vest Percept with an unconditional and immediate right of termination in the event of the events in Clause 15.5 (a) happening. Of course, that Immediate and unconditional right can only be exercised by a written notice as provided by Clause 15.3.

(d) But it is not this part of the Clause which causes difficulty. Clause with which we are concerned, is Clause 15.3 (b). Reading It grammatically Clause 15.3 (b) would read as follows:-
"Notwithstanding anything to the contrary herein and without prejudice to any of the other provisions of this clause 15, Percept shall have the unconditional right to terminate this agreement forthwith on written notice to the Personality in the event that any of the provisions of paragraphs 2.2 (C) and 2.2 (e) of Schedule 4 apply".

(e) Let us now consider the applicability of para 2.2 (c). [Para 2.2 (e) is not attracted to this case at all]. Para 2.2 of Schedule 4 deals with several possible events. The present controversy is only confined to happening of an event of non-selection of the Personality as amplified in para 2.2 (C). Para 2.1 (c) is further qualified by para 2.2 (c). Para 2.1 (c) describes that event contemplated is the non-selection of the Personality for any Indian National Team etc. That non-selection might be for reasons like illness or non-selection might be for reasons attributable to the player such as, breach by him of the conditions of selection for the Indian Team or the selectors not finding him good enough or any other reason. If the non-

selection is traceable to an injury then para 2.2 (c) (1) applies and if it is traceable to any reason other than injury then para 2.2 (c) (ii) applies.

(f) The contention of the Percept is that once there is a happening of an event of variation, (in this case the non-selection of SG for a period greater than 6 months from 1st February, 2006 to 25 November, 2006) a vested right of termination came into existence in favour of Percept which vested right could be exercised by Percept at its absolute discretion by a written notice to forthwith come into effect but that such a right could be exercised by Percept (at any time). In other words, what Percept submits is that once its right to terminate the Agreement had come into effect it could terminate the Agreement at any time in its absolute discretion. On the other hand, the Claimant has contended that the reselection of SG for the Indian team automatically brought an end to the right to terminate.

(g) In our view, both sides seem to have lost sight of a portion of para 2.2(c) (ii) which deals with the subsistence of the event of variation. The event of variation in this case, (being non-selection of SG) quite clearly occurred on 01st February, 2006. Immediately, thereafter there was a right to reduce MQD payable to SG as provided in para 2.2 (C) (ii) for a period as long as the event of variation occurs and/or subsists. Now, as is the admitted fact, SG was reselected for the Indian team. By such reselection, the event of variation which occurred by reason of his non-selection on 01t February, 2006 ceased to subsist. If it ceased to subsist, then by virtue of the Agreement, Percept would be called upon to pay the full amount of the MQD or MYD i.e. without any variation as contemplated by para 2.2 (c) (ii). [It was for this reason that the Agreement was terminated by Percept]. In our view, it is clear that both the reduction of the MQD and/or MYD and the right to terminate exist only so long as the event of variation subsists. It is quite obvious to us that the entire Agreement deals with the right to represent SG, the right to exploit his celebrity status and the recognition of the commercial rights available to such Personality. It appears to us indefensible for Percept to contend that even after SG became eminently marketable by reason of his reselection in the Indian team, an event of variation which had occurred in the past and which had ceased to subsist can be used by Percept to terminate the Agreement.

7. As a matter of construction, we have no hesitation in holding that the Respondents have no right to terminate the agreement by its letter dated 21st November, 2017.

8. We may dispose of a small ancillary point in issue. Percept contends in paragraph 4 (v) of the statement of defense that the claimant was not a member of the Indian team on several other occasions in 2007. We don't find any evidence to support this. At any rate, the notice of termination is based only on SG's non-selection in 2006."

9. Waiver

This is an alternative contention. SG contends that even after termination by letter dated 21 November, 2007, the parties continue to conduct their relationship as before.

12.In our opinion, the aforesaid evidence clearly shows a positive act on the part of Percept to continue with the Agreement with SG regardless of termination letter dated 21 November, 2007. In our opinion, there is a clear waiver by Percept of the notice dated 215 November, 2007."

12. The respondent lost his place in the Indian Cricket Team in February 2006. The event of variation entitling the petitioners to terminate was triggered on August 1, 2006 i.e. on completion of six consecutive months of the respondent's non selection. The respondent was again re-selected as a regular player on November 30, 2006. During this period there is not a single letter nor document which would demonstrate that the petitioners contemplated termination. It was only 16 (sixteen) months after the occurrence of the event i.e. the event which entitled the petitioners to terminate and 12 (twelve) months after his re-selection that the petitioners ultimately purported to terminate the PRA. In light of the above facts, the interpretation of the clauses of the PRA after considering the words "forthwith" and "at any time" in the PRA by the Arbitral Tribunal justify no interference. The Arbitral Tribunal has elaborately taken into account all the above aspects in arriving at the conclusion that the petitioner had no right of termination. The Arbitral Tribunal has dealt with each of the points raised by the petitioners and also taken into account the contemporaneous conduct of the parties. There is nothing arbitrary nor capricious in the award. The view of the Arbitral Tribunal is both a possible and plausible view and warrants no interference. In such circumstances, there is no merit in the contention that the termination of the PRA was valid or lawful.

13. A possible view by an Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus, an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. In deciding an application under section 34 of the Act, the Court does not act as an Appellate Court nor re-appreciate evidence findings rendered by the Tribunal. There is a limited and circumscribed scope of interference only on the grounds enumerated under section 34 of the Act. The construction of the terms of the contract is exclusively for the Arbitral Tribunal. The findings in the award are based on a detailed consideration of the PRA, correspondence and evidence of the parties including their respective financial records. There is nothing perverse in the view of the Arbitral Tribunal. The award discusses the nature of obligations under the PRA and elaborately deals with the impugned letter of termination and also the lack of prior protest. The award also takes into account the conduct of the parties. Though the petitioners alleged non-performance, the Tribunal found that no contemporaneous proof had been furnished and this squarely fell within the domain of the Arbitral Tribunal. Once it is found that the Tribunal's approach is not arbitrary nor capricious, then the Tribunal is the last word on facts. In such circumstances, there is also nothing which warrants interference with the view taken by the Arbitral Tribunal. *[Associate Builders vs. Delhi Development Authority (2015) 3 SCC 49*, *Ssanyong Engineering and Construction Company Limited vs. National Highways Authority of India (NHAI) (2019) 15 SCC 131* and *P.R. Shah*

Shares & Stock Brokers (P) Ltd. v. BHH Securities (P) Ltd., (2012) 1 SCC 594].

14. It is next contended that the failure of the Arbitral Tribunal to give the petitioners the benefit of the consideration received by the respondent from the KKR Contract (i.e. Indian Premier League Playing Contract) dated August 21, 2008 between Knight Riders Sports Private Limited and the respondent is arbitrary. It is alleged that the petitioners were entitled to the benefit of the KKR contract and the counter claim has been unjustifiably refused for this amount. As a personality, the respondent received Rs.13.11 crores and the respondent owed 20% of the same to the petitioners, on the basis that there was a valid termination of the PRA in November 2007 since the said contract had been admittedly performed and acted upon by the claimant in April, 2008, i.e. 6 months within the termination of the PRA. Moreover, the Tribunal has travelled beyond the scope of the PRA in finding that promotional activities undertaken by KKR were endorsements by the team members and not individually as a personality. The Tribunal was bound to give effect to the plain terms of the PRA and erred in ignoring the definition provided in the PRA of the "commercial rights" under Clause 1.1(g) and "promotional services" under Clause 1.1(qq) of the PRA. The Arbitral Tribunal being a creature of contract between the parties, could not alter the terms of the contract nor determine any issue contrary to the terms of the said contract. The respondent advertised and promoted various brands at the request of KKR and in effect, commercially exploited himself for gain. The Tribunal also ought to have considered clause 2.4 (a) and (b) of the PRA which was

violated by the respondent in case of the KKR contract. Assuming that the termination of the PRA was invalid, the petitioners under such circumstances were also entitled to such share *vis-a-vis* the KKR contract. In interpreting the PRA, the Arbitral Tribunal also failed to consider the decision of the Hon'ble Supreme Court that IPL be treated to be a commercial venture. *[Board of Control for Cricket of India vs. Cricket Association of Bihar and Ors. (2016) 8 SCC 535].*

15. On this aspect, the Arbitral Tribunal held as follows:

> *"19. So far as the claim by the Respondents and against the Claimant in respect of Knight Riders Sports Ltd (KKR Contract) is concerned, it is the Respondents contention that this amount of Rs.2,62,20,000/- is payable to the Respondents out of the amount agreed to be paid by the Claimant under the KKR Contract for having participated on behalf of KKR in the tournament popularly known as 'IPL'. This claim of the Respondents appears to be wholly unsustainable. The PRA applies exclusively to the exploitation of the Claimants commercial rights. Those Contracts that the Claimant entered into for playing the game of cricket are beyond the purview of the PRA. The amount paid by KKR to the Claimant is wholly independent of the exploitation of the Claimant's Personality to which the PRA attachés. Probably realizing this position, the Respondents submitted that the Claimant had participated in promotional activities as a result of the KKR Contract. In fact, the KKR Contract provided that respect of any person or product or service. Promotional activities undertaken by the KKR were always endorsements by team members and by the Claimant as a part of the KKR team and not an individual promotion by any team member or the Claimant. The evidence in this connection is contained in the cross examination of the Claimant from Qs. and Ans. 149 to 161 and 174 to 176. The gist of this testimony is that the promotional activities that the Claimant undertook under his agreement with KKR were promotional activities of the KKR team and no individual endorsements were made by any of the persons playing for the KKR."*

16. The finding that the contract entered into by KKR with the respondent was for playing cricket and independent of the exploitation of the commercial rights of the respondent is based on a construction of the

contract and the evidence adduced by the parties before the Arbitral Tribunal. The Arbitral Tribunal held that the promotional activities which the respondent had undertaken in terms of KKR contract were promotional activities of an on behalf of KKR and were not individual endorsements of any of the players playing for KKR. Thus, no part of the consideration received under the KKR contract was subject to "revenue share" with the petitioners under the PRA.

17. As a general principle, if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found if the Arbitral Tribunal proceeds to accept one interpretation as against the other. The reasoning of the Arbitral Tribunal in this regard is within the permissible bounds of arbitral discretion under section 34 of the Act. In the facts and circumstances, the interpretation of the relevant clauses of the PRA *vis-a-vis* the KKR contract by the Arbitral Tribunal are both possible and plausible. Merely because another view could have been taken on the self same facts does not warrant interference with the award. The Arbitral Tribunal has elaborately dealt with this aspect after taking into consideration the relevant clauses and evidence. A Court should not interfere with the decision of the Arbitral Tribunal merely because an alternative view is possible unless the Arbitral Tribunal's view is found to be perverse or tainted with arbitrariness. No portion of the award is shown to have contravened the principles of justice, morality, or the fundamental policy of Indian law. The impugned award cannot be described as one which shocks the judicial conscience. To this extent, the decisions cited by the petitioners are distinguishable. There is also no

question of disregarding the decisions of the Hon'ble Supreme Court in *A.C. Muthiah v. Board of Control for Cricket in India (2011) 6 SCC 617* and *Board of Control for Cricket in India v. Cricket Association of Bihar (2015) 3 SCC 251*. These decisions were inapplicable and inapposite.

18. It is next contended by the petitioners that the failure of the Arbitral Tribunal to give due credence to the purported audit reports of M/s. Patkar & Pendese which were disclosed on behalf of the petitioners before the Arbitral Tribunal was erroneous and in contravention with the fundamental policy of Indian law. It is contended that the Tribunal erred in holding that the petitioners ought to have led evidence of the auditor to prove the figure of Rs 83,89,000/- as claimed. It is alleged that the respondent never challenged the auditor's certificate or yearly statements nor has the respondent adduced any evidence on the auditor's certification and yearly accounts. It is alleged that in terms of the clause 6.3 of the PRA, the auditor's accounts were prepared and forwarded to the respondent. These were never challenged. Thus, the computation of accounts submitted by the petitioners ought to have been deemed to be correct.

19. In this regard, the Arbitral Tribunal has held as follows:

> *"(c) However, the Respondent has claimed that the amount of reduction should not be Rs.83,89,000/- but should be an amount of Rs.3,00,52,772/-. According to the Respondents, this amount would appear from the Auditor's Certificates issued by M/s.Patkar & Pendse. According to the Claimant, the auditors Certificates were never alluded to and/or relied upon at the stage of pleadings. The Claimant was, therefore, not called upon to or required to deal with the same in his pleadings. According to the Claimant, no evidence was at all led in respect of Auditor's Certificates and no one from the office of M/s.Patkar & Pendse was examined for the correctness of*

> *the said Auditor's Certificates. The Respondents have, on the other hand, contended that the Claimant never raised any dispute in regard to the Auditor's Certificates and is therefore deemed to have accepted the correctness thereof. The Respondents also alleged that the Auditor's Certificates constitute excepted matters and are beyond the jurisdiction of the Arbitral Tribunal. We do not agree. If the Auditor's Certificates talked of a different figure and not Rs.83,89,000/-then it was up to the Respondents to lead evidence of M/s.Patkar & Pendse to vouch correctness of the figures stated by them in the Certificates. The Claimant would then have been able to cross examine and the Arbitral Tribunal would have been in a position to ascertain the quantum of deduction. This, the Respondents did not do. In our opinion, it is not permissible for the Respondent to rely upon specious arguments to bestow finality upon the Auditor's Certificates. There is nothing sacrosanct about the Certificates. There is nothing sacrosanct about the ascertainment of the amounts due from one person to another person. This is what the Arbitral Tribunal was called upon to do. This the Arbitral Tribunal can do only on the basis of evidence before it. We, therefore, hoid that the amount of deduction claimed in the calculation by the Claimant should be Rs.3,23,89,000/-"*

20. This is a pure question of assessment or weightage of evidence which is within the exclusive domain of the Arbitral Tribunal. The Tribunal found that no evidence was at all adduced in respect of the auditor's certificate nor did the maker of the documents depose. There was no evidence furnished as to the veracity or correctness of the certificates. On the other hand, the respondent solely relied on the admissions contained in the letter dated September 10, 2007 issued by the petitioner no.1 and this was given due credence to by the Arbitral Tribunal. Mere filing of a certificate by an auditor or a chartered accountant without examining the author or giving an opportunity of cross examination does not constitute proof of the contents thereof. It is well settled that the Arbitral Tribunal being the ultimate master of the quantity and quality of evidence, the Court must respect the view of the Arbitral Tribunal. (*Nazim H. Kazi vs*

Kokan Mercentile Co-operative Bank Ltd, 2013 SccOnline Bom 209, Biwater Penstocks Ltd vs Municipal Corporation of Greater Bombay & Ors, 2011 (1) Arb. LR 278(Bom), Madholal Sindhu vs Asian Assurance Co Ltd, AIR 1954 Bom 305 and *Subhash Maruti Avasare vs State of Maharashtra, (2006)10 SCC 631).*

21. There can be no re-appreciation of the findings by the Arbitral Tribunal nor does the Court substitute its own view or re-interpret the entire documentary evidence. There is limited scope of the Court both in respect of the quality and the quantity of evidence. In *Sumitomo Heavy Industries Ltd. v. ONGC Ltd., (2010) 11 SCC 296,* it has been held as follows*:*

> *'43. … The umpire has considered the fact situation and placed a construction on the clauses of the agreement which according to him was the correct one. One may at the highest say that one would have preferred another construction of Clause 17.3 but that cannot make the award in any way perverse. Nor can one substitute one's own view in such a situation, in place of the one taken by the umpire, which would amount to sitting in appeal. As held by this Court in Kwality Mfg. Corpn. v. Central Warehousing Corpn. [(2009) 5 SCC 142 : (2009) 2 SCC (Civ) 406] the Court while considering challenge to arbitral award does not sit in appeal over the findings and decision of the arbitrator, which is what the High Court has practically done in this matter. The umpire is legitimately entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the agreement. If he does so, the decision of the umpire has to be accepted as final and binding.'"*

22. There is also no merit in the objection that the Arbitral Tribunal refused to hold that the petitioners could not be jointly liable in view of the assignment despite the rights and liabilities of the petitioner no. 2 being assigned in favour of the petitioner no. 1. The PRA had been executed between the petitioner no 2 and the respondent. During the subsistence of the PRA, a deed of assignment dated 21 April 2007 was executed between

petitioner no. 2 and petitioner no. 1, whereby all rights and obligations of the petitioner no 2 under the PRA had been assigned to petitioner no1. As such, it was alleged that the assignment between the petitioner nos. 1 and 2 absolved the petitioner no. 2 from any liability under the PRA.

23. The application under section 34 of the Act has been filed by both petitioners. There are neither any pleadings nor grounds to conclude that the rights and liabilities of the petitioner no. 2 had ceased to exist. Significantly, the issue of assignment has been ignored and disregarded by the petitioners themselves before the Arbitral Tribunal. There was no argument advanced before the Arbitral Tribunal that the petitioner no.2 is not liable to respondent by virtue of the assignment. This is also not a ground urged in the pleadings and is wholly outside the scope of this proceeding. As such, the petitioners are estopped from raising this issue. In such circumstances, there is no merit in the objection.

24. In conclusion, it is to be remembered that arbitration is a consensual remedy where parties agree to resolve their disputes without recourse to civil litigation. With globalization, the purpose of the 1996 Act was to make arbitration law in India more responsive to contemporary requirements by facilitating quick and fair arbitration and minimizing the supervisory role of the Courts in arbitration process. The Act in many ways is *pro-party* autonomy and *pro-enforcement*. Within the parameters enumerated under the Act, a Court must confine itself to the specific grounds for challenging an award as enumerated under the Act and prevent them from assuming the role of "*a Trojan Horse* allowing *merits review*". Even post amendment, the legislative intent is to salvage party

autonomy, the independence of the arbitral process and from preventing the abyss of widening judicial review when hearing an application under section 34 of the Act. (*Arbitration in India, Kluwer 2021, Chapter 10* at page 221).

25. In view of the above, there is no merit in this application. There are no grounds which justify any interference with the impugned award. AP-COM 167 of 2024 is dismissed, without any order as to costs.

(RAVI KRISHAN KAPUR, J.)