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

% ***Reserved on : 12.12.2019***
Pronounced on :27.05.2020

\+ **O.M.P. 1255/2014**

SHON RANDHAWA ..... Petitioner
Through: Mr. Gopal Jain, Sr. Advocate with Mr. Manik Dogra and Mr. Dhruv Pande, Advocates

versus

RAMESH VANGAL & ORS ..... Respondents
Through: Mr. Jayant Mehta, Mr. Anand Varma, Mr. Shwetank Singh, Mr. Dhairya Madan and Ms. Drishti Harpalani, Advocates

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

J U D G M E N T

1. Present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking setting aside of the Award of the Arbitral Tribunal dated 09.10.2014.

Factual narration as culled out from the Award.

2. In 2006, Respondent No. 3 (hereinafter referred to as the 'Company') was allotted a piece of land No. 445, Phase-V, Udyog Vihar, Gurgaon, Haryana. Subsequently, the Lease was cancelled by HSIIDC

and aggrieved therefrom, Company filed a Writ Petition before the High Court of Punjab and Haryana.

3. Respondent Nos. 1 and 2 (collectively referred to as 'Vendors') approached the Petitioner and Respondent No. 4 (collectively referred to as 'Purchasers') seeking investment in the Company and in return purchasing 50% equity shares of the Company and after negotiations, a Term Sheet dated 21.08.2006, was drawn up.

4. Vendors and Purchasers entered into a Share Purchase Agreement (hereinafter referred to as 'SPA') dated 26.09.2006 whereby Purchasers agreed to purchase 30,000 equity shares of the Company for an aggregate consideration of Rs. 10 crores and the Agreement records that the 30,000 shares would constitute 50% of the entire issued, subscribed and voting, equity share capital of the Company, as well as the rights and obligations of the parties. On the same day, an Associate Company of the Petitioner, Classic Fincap Pvt. Ltd. advanced loan of Rs. 3 crores to Respondent No. 2 in accordance with the Secured Loan Facility Letter dated 26.09.2006 (hereinafter referred to as 'Facility Letter'). Facility Letter provided that Loan was to be available after Respondent No. 1 executed a Guarantee and Respondent No. 2 was required to pledge 30,000 shares of the Company, along with Share Certificates and blank executed Share Transfer Forms to the lender. Respondent No. 1 also executed a Guarantee, in the event of default by Respondent No. 2.

5. On 27.03.2007, Facility Agreement was novated in favour of Global Emerging Markets India, another Associate Company of the Petitioner, in which the family members are Directors.

6. Thereafter it appears that there were some settlement talks between Respondent Nos. 1 to 3 and the HSIIDC for restoration of the plot and Respondent No. 1 wrote to the Purchasers for payment of Rs. 6.5 crores, as part consideration towards purchase of Company's shares. Correspondence was also exchanged between the parties with respect to each other's obligations under the SPA. On 04.02.2008, Writ Petition pending before High Court of Punjab and Haryana, wherein a challenge was laid to Lease cancellation, was withdrawn.

7. On 28.02.2008, Respondent No. 1 wrote to the husband of the Petitioner that he was in a financial crisis and their entitlement may be cancelled, if they did not pay Rs. 5 crores. After some discussions, it was decided that the Project may be sold to a Third Party for Rs. 30 crores and the Vendors and Purchasers would be entitled to Rs. 8 crores and Rs. 9 crores respectively. On 01.10.2008, Respondent No. 1 informed the Petitioner that Sale to the third party was concluded, and, therefore, payments should be released by the Purchasers. Negotiations were exchanged between the parties with regard to the change of the share percentage, and simultaneously, the Company pursued its request with HSIIDC for increase in Floor Area Ratio upto 2.5. Without informing the Purchasers, the Company executed an Agreement with HSIIDC and the Vendors encouraged the Purchasers to take the refund of Rs. 3 crores, given as advance payment, along with interest.

8. On 20.04.2010, HSIIDC executed a Conveyance Deed in favour of the Company. On 04.08.2010, husband of a Petitioner sought the status of the land, whereupon Respondent No. 2 asked him to send a proposal for liquidation of the Loan. Meetings to resolve the issues having failed,

Petitioner filed an Application under Section 9 of the Act before this Court and on 06.10.2010, an interim injunction was granted against the Respondents.

9. On 27.10.2010, Petitioner sent a notice to Respondent Nos. 1 to 3 invoking Arbitration and on 24.11.2010, Respondent No. 2 sent a legal notice for pre-payment of Loan under the Facility Letter, which was not accepted by the Petitioner. In February, 2011, Petitioner filed a petition under Section 11 of the Act before the Supreme Court for appointment of the Arbitral Tribunal. On 23.07.2011, Respondent No. 2 sent a notice seeking to terminate the SPA and to repay the loan with interest. On 03.11.2011, Supreme Court allowed the petition and the Arbitral Tribunal was constituted.

10. The Petitioner filed its claims before the Tribunal which are as under:-

> *"Claim No. 1: Transfer of 30,000 Shares*
> *Claim No. 2: Cancellation of 931,140 Equity Shares of Respondent No. 3 Company*
> *Claim No. 3: Actual Costs and Losses Suffered by the Claimant*
> *Claim No. 4: Interest*
> *Claim No. 5: Cost of the Arbitral Proceedings to be quantified at the appropriate time."*

11. Respondent Nos. 1 to 3 filed the Statement of Defence raising certain preliminary objections and on 07.08.2012, the Tribunal framed the following issues:-

> *"1. Whether the share purchase agreement is duly executed, concluded, valid and enforceable? OPC*

2. Whether the share purchase agreement, the loan facility letter, the guarantee, the share pledge and the novation agreement, constitute a part of the same transaction? OPC
3. Whether the loan amount of Rs.3.00 crores was to be set off against the payment of sale consideration in terms of Clause 4 of the loan facility dated 26.09.2006? OPC
4. Whether the Claimant was at all times ready and willing to perform and did perform her part of the share purchase agreement? OPC
5. Whether the Respondent Nos. 1 to 3 committed breach of article 4 of the share purchase agreement? OPC
6. Whether the conditions precedent set in article 6.1 of the share purchase agreement were satisfied only on or after 24.04.2010? OPC
7. Whether the Claimant and Respondent No.4 had the right to extend the nine months period for satisfaction of the conditions precedent? OPC
8. Whether the Claimant is entitled to specific performance of the share purchase agreement? OPC
9. Whether the claim is barred by law of limitation or principles of delay and laches? OPR
10.Whether the contingency stipulated in the share purchase agreement has not occurred for the Respondent Nos.1 to 3 to transfer the share of Respondent No.3? OPR
11.Whether the share purchase agreement has been terminated by the Claimant? OPR
12.Whether the Arbitral Tribunal has no jurisdiction to entertain and adjudicate the claim of the Claimant if the share purchase agreement containing arbitration clause is held to be not duly executed and concluded? OPR
13. Cost of arbitration?
14. Relief?"

12. The Tribunal did not grant the relief of Specific Performance of the Share Purchase Agreement in favour of the Petitioner, but directed refund of Rs. 3 crores. Respondent Nos. 1 to 3 had earlier agreed to return the

money with 18% interest, but as a measure of damages and compensation, the Tribunal directed refund with interest @ 24% p.a. from the date of receipt of money by Respondent Nos. 1 to 3, till actual payment. A sum of Rs. 1 crore was awarded in favour of the Petitioner along with interest @ 9% from the date of Statement of Claim on account of loss suffered due to breach by the Respondent Nos.1 to 3. The Tribunal also awarded Rs. 25 lacs towards costs of proceedings. Operative part of the Award reads as under:-

> *"Relief:*
>
> *314. Even though specific performance is not liable to be granted, yet, admittedly money amounting to Rs. 3 Crores has to be returned by Respondents No. 1-3 to Claimant and Respondent No. 4. The Respondent has already agreed to return the money with 18% interest.*
>
> *315. However, in view of the breaches of the agreement by the said Respondent, the Tribunal feels that some additional amount by way of damages and compensation should be awarded to the Claimant.*
>
> *316. The Claimant, in its statement of claim has claimed an amount of Rs. 1 Crores towards costs and loss. It is seen that in its statement of claim (page 18, paragraph 12.1), the Claimant had said that the amounts towards loss of opportunity and profits can only be assessed closer to the conclusion of the proceedings before the Tribunal.*
>
> *317. Thereafter, at no point was any evidence led by the Claimant to spell out the said amount. Further, no amendment was ever made by the Claimant to claim more than Rs. 1 Crores.*

318. In fact, for the first time the Claimant stated in its additional submissions that in the event the Tribunal arrives at a conclusion that the Claimant may be compensated by damages rather than specific performance, the Claimant has reserved such right to pray damages in para 12.1 of the Statement of Claim. At this belated stage, the Claimant cannot be allowed to reopen the case and lead evidence in respect of damages suffered.

319. However, it is evident that due to the breaches by Respondents No. 1-3, the Claimant has suffered losses and is therefore entitled to some amount of compensation. Even Respondents No. 1-3 have themselves claimed that during all this time, the value of the company has increased manifold.

320. However, since the amount claimed is only Rs. 1 Crores, therefore the Tribunal is inclined to grant only Rs. 1 Crores to the Claimant towards costs and loss alongwith interest at 9% from the date of filing of the statement of claim.

321. With regard to the amount paid by the Claimant, the Tribunal feels that the ends of justice would be served by directing Respondents No. 1-3 to return to the Claimant and Respondent No.4 the sum of Rs. 3 Crores and by way of damages, the said amount be liable to be returned with interest @ 24% per annum from the original date of receipt of money by Respondents No. 1-3 till the date of actual payment. It is ordered accordingly.

322. A further amount of Rs. 25 Lakhs is also directed to be paid by Respondents No. 1-3 to Claimant and Respondent No.4 towards the cost of the present arbitral proceedings."

Case of the Petitioner before the Arbitrator

Claim No. 1:- Transfer of 30,000 shares under the SPA.

13. Purchasers agreed to purchase 30,000 equity shares of the Company for Rs. 10 crores and therefore, Respondent Nos. 1 and 2 are liable to transfer the said shares in terms of Article 7.2 of the SPA.

Claim No. 2:- Cancellation of 931,140 equity shares of the Company.

14. The Agreement placed a restriction on the Vendors to alter the shareholding of the Company and Vendors had undertaken that no shares would be issued to any person until the Closing. Purchasers were kept in dark about the alteration in the shareholding pattern and came to know only when reply was filed to the Section 9 Petition. The action is contrary to Articles 2 & 5 of the Agreement and therefore, any issuance of shares in excess of 60,000 be declared as void.

Claim No. 3:- Actual costs and losses suffered independent of the loss of opportunity.

15. Purchasers suffered losses due to breach of the Agreement on account of altering the shareholding of the Company, creating indebtedness in the Company and causing severe mental agony and are thus entitled to Rs. 1 crore.

Claim No. 4:- Interest.

16. Purchasers claimed interest @ 24% p.a. from the date of invocation of Arbitration till the date of payment.

Claim No. 5:- Cost of Arbitral Proceedings.

17. Purchasers were forced to resort to Arbitration, on account of breach by Respondent Nos. 1 to 3 and are thus entitled to costs of the Proceedings.

18. Respondent Nos. 1 to 3 filed their Statement of Defence and took various preliminary objections which are as under:-

a. *"Petitioner has not established how the Purchasers were entitled in law to acquire shares of an Indian Company.*
b. *There is no concluded contract between the parties for transfer of shares and rights.*
c. *The SPA and Secured Loan Agreement are independent of each other and no consideration has been made under the SPA towards purchase of shares by the Purchasers.*
d. *The claims are bad for non-joinder of the associates of the Petitioner who are necessary parties.*
e. *The SPA was a contingent contract and the contingency had not occurred.*
f. *Repudiation of the SPA by the Purchasers.*
g. *SPA stands terminated/abandoned by the Purchasers.*
h. *Claims are barred by limitation.*
i. *Specific Performance be an equitable remedy cannot be granted in the facts of the present case.*
j. *Rights of the Purchasers are cumulative and not separate under the SPA."*

Issue Nos. 2 & 3

19. Contention of the Petitioner was that at the time of execution of the SPA, Company had no marketable assets, except for a contingent claim on the plot and was a mere Allottee, with no value. On the request of Respondent Nos. 1 to 3, who needed resources for re-allotment of the Lease, Purchasers agreed to invest the money and in turn were to be given 30,000 equity shares of the Company, worth Rs. 10 crores. Petitioner through an Associate Company arranged a Loan Facility of Rs. 3 crores. The Conditions precedent under Article 6 of the SPA, prior to purchase of shares were (a) settlement of the Writ Petition pending in the Court and (b) Company having clear and marketable Title in the plot. In terms of the

Facility Letter, a sum of Rs. 3 crores was to be set off against the Purchase Price at the Closing and was therefore, a part payment of the Purchase Price. Respondent Nos. 1 to 3 contended that Loan was an independent transaction, nothing to do with the SPA.

20. The Tribunal concluded that the Loan advanced pursuant to the Facility Letter and the SPA, was part of the same transaction. Clause 4.1 of the Facility Letter provided that the Borrower was to repay the Facility in full, either on the date when the SPA was terminated or when the purchasers make the payment referred to in Article 7.3(i) of the SPA, whichever is earlier. Clause 4.2 prohibited the prepayment of the Facility. Tribunal also observed that if the facility was repaid from the proceeds of the payment of the purchase price, as per Clause 4.5, the Borrower was to directly transfer the Facility amount to the lender. The husband of the petitioner negotiated both the SPA as well as the Facility Letter. Respondent No. 2 had through his own e-mail dated 18.12.2007 had stated that the Loan of Rs. 3 crores would be adjusted with interest in the Purchase Price. In view of this, the Tribunal decided issue Nos. 2 & 3 in favour of the Petitioner i.e. the SPA, the Loan Facility, the Guarantee and the Share Pledge were a part of the same transaction and that the Loan amount of Rs. 3 crores was to be set off against the payment of Sale consideration.

Issue Nos. 1 & 12

21. Respondent Nos. 1 to 3 contended that despite several reminders, Petitioner did not execute and sign the SPA with the Vendors and therefore, there was no concluded Contract between the parties. Petitioner

contended that if there was no concluded Contract and the SPA was not signed, then on what basis the demand of Rs. 6.5 crores was raised by the Vendors towards the next installment. It was also contended that the e-mails relied upon by Respondent Nos.1 to 3 as reminders were forged and fabricated documents.

22. Tribunal agreed with Petitioner that there was a concluded Contract and the e-mail dated 21.05.2007 was a tampered document. Relying upon the evidence of Respondent No. 2's witness, in cross examination, the Tribunal rendered a finding that not only was there a concluded Contract but the parties had acted upon and derived the benefits of the SPA and thus the Vendors could not challenge its validity.

Issue Nos. 7 & 9

23. Respondent Nos. 1 to 3 had contended that the claims were barred under Section 54 of the Limitation Act. Under Article 6.1 two pre-conditions were required to be fulfilled, within 9 months from the effective date, which according to them was 26.09.2006 and the 9 months expired on 26.06.2007. Under Article 7.1, all conditions precedent were to be satisfied and the Closing was to occur on or before completion of 9 months, from the date of execution of the SPA or a date mutually agreed, but no other date had been mutually agreed between the parties. It was further contended that Petitioner in her Statement of Claim had stated that a verbal request for extension was made by the Vendors and it was agreed to, by the Purchasers, which is contrary to the terms of the SPA. Thus, the right to sue for performance is highly belated. It was contended that SPA was for sale of shares and, therefore, the presumption that time was not of

essence for Specific Performance of an Agreement to purchase immovable property, is not available to the Purchasers. Thus, time being of essence and time of performance being fixed, and neither waived nor extended, the period of limitation clearly expired on 26.09.2010.

24. Petitioner had argued that the first communication from the Vendors was after 11 months from the date of execution of the SPA and Respondent Nos.1 to 3 have admitted that they were constantly in touch with the Purchasers. Thus, parties by their conduct had mutually waived the 9 months period. In any case, the 9 months period was for the benefit of the Purchasers and not the Vendors. Article 7.5 gave an absolute right to the Purchasers to seek Specific Performance of the obligation of the Vendors.

25. These issues were also decided in favour of the Petitioner.

Issue No. 10

26. Tribunal, after hearing the parties, held that the argument of Respondent Nos. 1 to 3 that the Contract stood frustrated was wrong. The Doctrine of Frustration applies where the entire performance of the Contract becomes substantially impossible, without any fault on either side or the Contract dissolves. Tribunal rendered a finding that the Contract in the present case was not Frustrated and thus decided issue No. 10 in favour of the Petitioner.

Issue No. 11

27. Respondent Nos. 1 to 3 had averred in the reply that the SPA stood terminated by the Petitioner herself and the parties were in the process of executing a new arrangement. Mails were exchanged indicating the intent

of the parties to abandon the SPA. Petitioner had claimed that Article 7.5 of the SPA provided a mechanism for termination. If either party committed material breach of the obligation under the SPA, non-defaulting party shall give a notice of termination and if the breach was not remedied within 30 days, the non-defaulting party had a right to terminate. The discussions held in 2010 were initiated by the Vendors in bad faith creating an impression that the conditions precedent were incapable of being fulfilled. The Tribunal was of the view that the stand of the Petitioner was correct and there was no termination of the SPA.

Issue Nos. 4 & 6

28. Respondent Nos. 1 to 3 contended that the Purchasers were not ready and willing to perform their obligations under the SPA and were all through demanding their money back with interest. Petitioner contended that condition precedent could only be satisfied after execution of the Conveyance Deed but the Purchasers were never informed that the Deed had been executed on 20.04.2010. The Tribunal decided the two issues in favour of the Petitioner and concluded that Vendors had not complied with the two pre-conditions and that the Purchasers were ready and willing to perform their part of the Bargain. Relevant part is as under:-

> *"233. In the considered opinion of the Tribunal, the Claimant has rightly pointed out that the first demand by the Vendors in December, 2007 was unjustified as at that time, there was no compliance with the conditions precedent. Such compliance was only made for the first time in April, 2010. In fact, it is evident that the factum of such compliance was also not informed to the Purchasers.*

234. In this regard, the Claimant has rightly pointed out that Article 7, which provides for the mechanism for purchase of shares by the purchasers on the Closing date provides that "after the Vendors have provided documentary evidence for the satisfaction of the conditions precedent, in the form and substance satisfactory to the purchasers", the purchasers within 30 days were required to pay the purchase price of Rs. 6,50,00,000/-

235. Further reliance is placed on Clause 4.5 of the Facility Letter providing for a set off of Rs. 3 Crores against the Purchase Price such that the net amount payable by the Purchasers at the Closing would be only 3.5 Crores. Thereafter, upon 12 months of the expiry of; the date of payment of the purchase price, the purchasers were required to pay the deferred consideration, i.e. the sum of Rs. 3.5 Crores.

236. In fact, it was the Vendors who had to provide documentary proof for the satisfaction of the two conditions precedents, i.e. (i) settlement of the writ petition and (ii) company having a clear and marketable title.

237. The Tribunal thus finds under the above circumstances that it is impossible to hold that the Claimant and Respondent No. 4 were not ready and willing to perform their part of the bargain.

238. Therefore, both Issues No. 4 and 6 are answered in favour of the Claimant."

Issue No. 5

29. This issue as to whether there was a breach committed by Respondent Nos. 1 to 3 of Article 4 of the SPA, was decided in favour of the Petitioner.

Issue No. 8

30. Issue No. 8 was with respect to the entitlement of the Petitioner to seek Specific Performance of the SPA and is the main controversy before this Court today. Respondent Nos. 1 to 3 argued that, on one hand the Purchasers seek to become 50% share holders of the Company, with Respondent Nos. 1 & 2 being the remaining shareholders, while on the other hand they are leveling allegations of malafide, fraud and forgery against them. In such circumstances, the result of Specific Performance will be a hostile Partnership, between a set of two glorified partners. It was further contended that Article 1.4 of the SPA provides that at Closing the parties will enter into a 50:50 SHA, for Management and Operations of the Company. SHA shall be mutually negotiated and agreed upon within 45 days from the SPA execution and in the absence of this, Purchasers would have a right to terminate the SPA. The SHA is an integral part of the Closing of the transactions and Closing cannot occur without signing the SHA. However, Purchasers have not terminated the SPA but sought part performance, by only asking for transfer of shares, without enforcing the obligation to execute the SHA. It was contended that in view of Section 12 (1) of the Specific Relief Act, 1963 (hereinafter referred to as 'SRA'), Specific Performance of part of a Contract cannot be granted and the case of the Petitioner does not fall under any of the exceptions in Sub-Sections (2), (3) and (4) of Section 12 of the SRA. There was a complete lack of readiness and willingness to perform the SPA and this disentitles the Purchasers from any relief under Section 16 of the SRA. It was also argued that the transaction was to be completed in

June, 2007 and the matter has been decided 7 years later, when the value of the property has changed substantially. Even the character of the property has changed, as a building has been constructed with huge investments and efforts by Respondent Nos. 1 to 3. It would be wholly inequitable at this stage, to direct transfer of 50% shares of the Company, when there has been no contribution from the Purchasers all this while. It was also argued that the SPA was void being opposed to FEMA and could not be enforced as Petitioner is a resident of United Kingdom, while Respondent No. 4 is resident of Singapore. Reliance was placed on the judgment in ***Renusagar Power Plant Co. Ltd. v. General Electric Company, 1994 Supp (1) SCC 644*** in this regard.

31. Purchasers contended that they have always been ready and willing to purchase the shares in terms of the SPA and there is breach on the part of Respondent Nos. 1 to 3. In a dispute relating to Specific Performance, if a Purchaser is required to pay the sale consideration under the terms of the Contract, only after satisfaction of certain pre-conditions, then, no demand of money can be made before the reciprocal obligations are met by the Vendor. Admittedly, Purchaser's obligation arose only after 20.04.2010 but the Purchasers were never informed of the satisfaction of the condition on the said date. Opposing the argument of Respondent Nos. 1 to 3 with respect to Section 12 of the SRA, Purchasers contended that SPA clearly provided that parties shall mutually agree on the form of the SHA, within 30 days, from execution of SPA, which expired on 25.10.2006. It is not even the case of the Vendors that they approached the Purchasers with the draft or the form of SHA. Under Article 1.4, the execution of SHA was for the sole benefit of the Purchasers and in the

event that the form was not agreed upon, only then they could terminate the SPA. SHA stands on a different footing from the SPA and is an independent Contract dealing with relations of parties *inter-se* as shareholders. Thus, Section 12 of the SRA is not attracted in the present case. It was denied that the transactions under the SPA were barred under FEMA. Reliance was placed on certain Circulars to show that the transactions were in 'Approval Route' category.

32. After hearing elaborate arguments on this issue, the Tribunal was of the opinion that it was not a fit case for grant of Specific Performance. Relevant paras of Award are as under:-

> *"307. The grant of specific relief is a discretionary remedy as seen from Section 20 of the Specific Relief Act. If the Parties are brought together, it will at best result in a glorified partnership. However, if the relations between the Parties are already so strained with allegations of fraud being made against each other, it is difficult to understand how the company will function or be managed and in all likelihood, the affairs of the Company will result in a deadlock. Any such order of specific relief would amount to making entities forcibly enter into this glorified partnership, merely because there are provisions in the Companies Act and the Articles of Association, it may not solve the problem entirely and may only lead to further problems and litigations.*
>
> *308. The contention of the Claimant that the Articles of Association are statutory shareholders agreement and no separate SHA is required is not convincing and the case is thus covered by Section 12(1) of the Specific Relief Act. Consequently, Section 12(4) of the Specific Relief Act is not attracted.*

309. SHA is not an independent contract. When there is an arrangement in the ratio of 50:50, it will require some arrangement under the SHA. Therefore, the argument that this arrangement is only for the benefit of the Claimant is liable to be rejected. It is also not acceptable that the provisions of AOA are sufficient to take care of any disagreements. If that were the case, then where was the need of signing a separate SHA. The obvious intention of the Parties behind requiring execution of the SHA was the smooth running of the affairs of the company.

310. Further, apart from Section 12, in the absence of SHA, to grant specific performance under such circumstances is entirely discretionary, even if assuming that SHA is an independent provision.

311. In so far as violation of FEMA is concerned, clearly the Master Circular has to be complied with in the present case. Since compliances have not been made regarding payments in one go and valuation of shares, therefore automatic route is not available under the Master Circular of the RBI and there is an evident non-compliance with the conditions of the same. There is clear violation of Master Circular inasmuch as the valuation of the shares was never done in the present case. Further, the payment has been done in phases and not under one transaction. Therefore, the protection of automatic route is also not available to the Claimant.

312. Although it is true that permission for compliances with the Master Circular can be granted by RBI even later. But in the present circumstances, the Tribunal is of the considered opinion that it would lead to a situation of uncertainty with respect to operations and management of the Company. This is a further reason for not granting specific performance.

313. Therefore, this issue will have to be answered in favour of the Respondents No.1-3."

33. Assailing part of the Award where the Tribunal has declined to grant the relief of Specific Performance, learned Senior Counsel for the Petitioner submits that having decided most of the issues in favour of the Petitioner, the Tribunal has committed a patent illegality in declining the grant of relief of Specific Performance of the SPA. The Tribunal correctly concluded that Respondent Nos. 1 to 3 committed a breach of the SPA and has also rightly rendered a finding that the Petitioner has always been ready and willing to fulfil her obligations under the SPA, especially to purchase 30,000 equity shares of the Company. Validity of the SPA has also been decided in favour of the Petitioner and in fact a finding of tampering of documents, by Respondent Nos. 1 to 3 has been categorically given. This conclusion of the Tribunal, in the background of the other findings, falls in the category of 'shocking the conscience of the Court' and deserves to be set aside.

34. It is next contended that in view of the finding of the Tribunal that the SPA was never terminated and is live and valid, even today, the SPA is a valid Agreement between the parties and thus there was no occasion for the Tribunal to have declined to enforce the same.

35. The Tribunal committed grave error in law in ignoring the basic postulates of the law on Specific Relief, that grant of Specific Performance is a rule and refusal an exception. Specific Performance can only be denied when equitable considerations point to its refusal and circumstances show that damages would be an adequate relief. The exceptions do not arise in the present case. It is argued that the Tribunal

has not only read down the provisions of Section 20 of the SRA, but has also erred in declining relief by simply stating that it is a discretionary remedy. No doubt granting specific relief is a discretionary remedy, but the discretion has to be exercised on settled judicial principles and not arbitrarily or against the Articles of the Agreement and the material on record.

36. Attention of the Court is drawn to Clause 7.5 of the SPA to argue that the parties were *ad-idem* that in case of any disputes, either one would have a right to seek Specific Performance of the Contract. Clause 7.5 reads as under:-

> *"7.5 If the Vendors and/or the Company fail to transfer or refuses to transfer or execute all requisite documents for transfer of the Shares in favour of the Purchasers or fail to comply with their other obligations under Article 6 or this Article 7, then Purchasers shall have the right (but not the obligation) to terminate this Agreement with immediate effect. Notwithstanding anything to the contrary in this Agreement, the Vendors and the Company acknowledge that compensation shall not be an adequate remedy for breach of their undertakings set for in Article 6 or this Article 7 and that the Purchasers shall have the right to seek specific performance of these obligations and to determine fresh time lines for the same."*

37. It is argued that the Arbitrator was influenced by the fact that the relationships between the parties are hostile, without appreciating that under the Company law, this position could prevail in every Company where one shareholder does not have exclusive control. Moreover, this reference was not in the nature of a family dispute, but was a commercial transaction, with commercial interests in mind.

38. It is next contended by learned Senior Counsel that the present case was not a case of mere sale of shares, but was a case where the value of the shares enhanced with money given by the Purchasers. In fact, Respondent Nos. 1 to 3 created a Corpus with Rs. 3 crores, advanced by the Petitioner at a time when the Allotment was cancelled. Hence, having reaped the fruits, Respondent Nos. 1 to 3 cannot at this stage, deny the legitimate share to the Petitioner. The Purchasers were always de facto part owners of the Company and were only required to pay balance consideration, to acquire 50% Partnership.

39. Learned Senior Counsel relies on the judgment of the Supreme Court in the case of ***M.S. Madhusoodhanan & Another v. Kerala Kaumudi (P) Ltd. & others, (2004) 9 SCC 204,*** more particularly, paras 140, 141 and 142 which read as under:-

> *"140. That decision must be understood and read after enunciating certain basic principles relating to the transfer of shares and in the background of earlier decisions on the subject. It is settled law that shares are movable properties and are transferable. As far as private companies like Kerala Kaumudi are concerned, the Articles of Association restrict the shareholder's right to transfer shares and prohibit any invitations to the public to subscribe for any shares in, or debentures of, the Company. This is how a "private company" is now defined in Section 3(1)(iii) of the Companies Act, 1956 and how it was defined in Section 2(13) of the 1913 Act.*
>
> *141. Subject to this restriction, a holder of shares in a private company may agree to sell his shares to a person of his choice. Such agreements are specifically enforceable under Section 10 of the Specific Relief Act, 1963, which corresponds to Section 12 of the Specific Relief Act, 1877.*

The section provides that specific performance of such contracts may be enforced when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done, or when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief. In the case of a contract to transfer movable property, normally specific performance is not granted except in circumstances specified in the explanation to Section 10. One of the exceptions is where the property is "of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market". It has been held by a long line of authority that shares in a private limited company would come within the phrase "not easily obtainable in the market" (see Jainarain Ram Lundia v. Surajmull Sagarmull [AIR 1949 FC 211 : 1949 FCR 379] , AIR at p. 218). The Privy Council in Bank of India Ltd. v. Jamsetji A.H. Chinoy [AIR 1950 PC 90 : 77 IA 76] (AIR p. 96, para 21) said:

> *"It is also the opinion of the Board that, having regard to the nature of the Company and the limited market for its shares, damages would not be an adequate remedy."*

The specific performance of a contract for transfers of shares in a private limited company could be granted.

142. In 1965, this Court while dealing with proceedings arising out of Sections 397, 398, 402 and 403 of the Companies Act, 1956 in the case of Shanti Prasad Jain v. Kalinga Tubes Ltd. [AIR 1965 SC 1535 : (1965) 35 Comp Cas 351] had occasion to consider the effect of an agreement relating to the issue of new shares in a company between two shareholders and an outsider. It may be noted at the outset that there is a distinction between the issue of new shares by a company and the transfer of shares already issued by a shareholder. In the first case, it is the company which issues and allots the new shares. In the second, the transaction is a private

arrangement and the company comes into the picture only for the purposes of recognition of the transferee as the new shareholder. Therefore, while it is imperative that the company should be a party to any agreement relating to the allotment of new shares, before such an agreement can be enforced, it is not necessary for the company to be a party in any agreement relating to the transfers of issued shares for such agreement to be specifically enforced between the parties to the transfer."

40. *Per contra*, Mr. Jayant Mehta arguing for Respondent Nos. 1 to 3 submits that the Tribunal after perusing the facts of the case, appreciating the evidence and applying the settled principles of law, has not granted the relief of Specific Performance, as in its considered view relationship between the parties were highly strained and directing Specific Performance would be enforcing a glorified Partnership. The Tribunal found that mandatory preconditions of SHA under Clauses 1.4 and 7.4 of the SPA were not met, in as much as SHA had neither been negotiated nor agreed upon, much less executed. The Tribunal rendered a finding that the claim of the Petitioner did not fall under any of the exceptions contemplated under Sections 12(2), (3) and (4) of the SRA. An added reason was a finding that the RBI Master Circular issued under FEMA for valuation and transfer of shares had not been complied with by the Petitioner. It is argued that it is impermissible for this Court under Section 34 of the Act to interfere with these findings of fact, arrived at, after considering the documents, evidence and the law on the subject.

41. It is next argued that the Petitioner is wrongly interpreting Clause 7.5 of the SPA. The said Clause only gives the Petitioner a right to terminate the SPA with immediate effect and a right to seek Specific

Performance, but cannot be interpreted to mean and convey that it binds the Arbitrator and the Arbitrator cannot exercise its discretion to reject the relief. It is settled law that where the Arbitrator interprets contractual stipulations and appreciates evidence, the same must pass muster and is not subject to Review or Appeal under Section 34 of the Act. Reliance is placed on the judgments in ***Navodaya Mass Entertainment v. J.M. Combines, (2015) 5 SCC 698, Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49, State of Jharkhand & Others v. HSS Integrated SDN & Another, (2019) 9 SCC 798*** and ***Ssangyong Engineering & Construction Co. Ltd v. National Highways Authority of India (NHAI), 2019 SCC OnLine SC 677.***

42. It is next argued that the Tribunal has come to a definite finding that parties had not executed the SHA for management and functioning of the Company. It is settled law that while considering a claim for Specific Performance, the Court or the Arbitrator cannot direct parties to enter into a Partnership Agreement and cannot write a contract for them. This has been so held by the Calcutta High Court in ***Pravudayal Agarwala v. Ramkumar Agarwala, 1954 SCC OnLine Cal 66.***

43. It is lastly argued that the discretion exercised by a Trial Court while considering a claim of Specific Performance after appreciation of entire evidence and materials on record, cannot be supplanted by an Appellate Court, unless the discretion exercised is against all judicial principles. Reliance is placed on the judgment of the Supreme Court in ***K. Nanjappa v. R.A. Hameed and Anr., (2016) 1 SCC 762*** and ***Jayakantham and Ors. v. Abaykumar, (2017) 5 SCC 178.***

44. I have heard the learned counsels for the parties.

45. The only controversy that needs to be examined in the present case is whether the Tribunal has committed a patent illegality as contended by the Petitioner, in declining the relief of specific performance of the SPA to the Petitioner. Before determining this controversy, it is necessary to look into the fundamental principles of law relating to specific performance of contracts. Section 20(1) of the SRA by its plain reading indicates that the jurisdiction to grant relief of Specific Performance is discretionary. Undoubtedly, the discretion cannot be exercised arbitrarily but has to be guided by settled judicial principles as held by the Supreme Court in ***Jayakantham (supra)***. Relevant para of the judgment is as under:

> *"**7.** While evaluating whether specific performance ought to have been decreed in the present case, it would be necessary to bear in mind the fundamental principles of law. The court is not bound to grant the relief of specific performance merely because it is lawful to do so. Section 20(1) of the Specific Relief Act, 1963 indicates that the jurisdiction to decree specific performance is discretionary. Yet, the discretion of the court is not arbitrary but is "sound and reasonable", to be "guided by judicial principles". The exercise of discretion is capable of being corrected by a court of appeal in the hierarchy of appellate courts. Sub-section (2) of Section 20 contains a stipulation of those cases where the court may exercise its discretion not to grant specific performance. Sub-section (2) of Section 20 is in the following terms:*
>
> > *"**20. (2)** The following are cases in which the court may properly exercise discretion not to decree specific performance—*
> >
> > *(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under*

which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff;

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.""

46. In the case of ***Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's Son, 1987 Supp SCC 340,*** the Supreme Court held :

"14. Section 20 of the Specific Relief Act, 1963 preserves judicial discretion of courts as to decreeing specific performance. The court should meticulously consider all facts and circumstances of the case. The court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff."

47. The said issue again came up for consideration before the Supreme Court in ***Sardar Singh v. Krishna Devi, (1994) 4 SCC 18*** and the Court held :

"14. ... Section 20(1) of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary, and the court is not bound

to grant such relief, merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. The grant of relief of specific performance is discretionary. The circumstances specified in Section 20 are only illustrative and not exhaustive. The court would take into consideration the circumstances in each case, the conduct of the parties and the respective interest under the contract."

48. In ***Nirmala Anand* v. *Advent Corpn. (P) Ltd.*, (2002) 8 SCC 146**, Supreme Court held that it was not always necessary to grant specific performance only because it is legal to do so. The Court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of Specific Performance. A phenomenal increase of the price during pendency of litigation could be one of the considerations in considering the relief, is what the Supreme Court held. Relevant para is as under:

"6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into

consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen."

49. Considering all these judgments, the Court in ***Jayakantham (supra)*** set aside the decree for specific performance granted in the suit on the ground that the material placed on record indicated that the terms of the contract, the conduct of the parties at the time of entering into the Agreement and circumstances under which the contract was entered into gave the plaintiff an unfair advantage over the defendants and these circumstances made it inequitable to enforce specific performance.

50. It is thus clear that remedy for specific performance is not only a discretionary but an equitable remedy and Section 20 specifically provides the parameters for exercise of the discretion by the Court. King's Bench in ***Rooke's case (1598) 5 Co Rep 99b : 77 ER 209*** observed as under:

"Discretion is a science, not to act arbitrarily according to men's will and private affection: so the discretion which is exercised here, is to be governed by rules of law and equity, which are not to oppose, but each, in its turn, to be subservient to the other. This discretion, in some cases follows the law

implicitly, in others, allays the rigour of it, but in no case does it contradict or overturn the grounds or principles thereof, as has been sometimes ignorantly imputed to this Court. That is a discretionary power, which neither this nor any other Court, not even the highest, acting in a judicial capacity is by the Constitution entrusted with."

51. In the case of ***Pravudayal (supra)***, the Calcutta High Court while dealing with an alternate prayer for directing the Defendant to execute a Deed of Partnership, in accordance with Deed of Agreement and to perform all other acts and deeds necessary in accordance with the said Deed, held as under:

"26. .... Under cl. (d) of Section 21 of the Specific Relief Act a contract which is in its nature revocable cannot specifically be enforced. In view of the terms of the agreement the partnership even if entered into would be a partnership at will and even if such a contract were to be specifically enforced it could be terminated immediately thereafter. Moreover, as observed by Lindley on Partnerships (11th Edn., p. 582) on principles also such a contract should not be specifically enforced.

> *"If two persons have agreed to enter into a partnership, and one of them refuses to abide by the agreement, the remedy for the other is an action for damages, and not, excepting in the cases to be presently noticed, for specific performance. To compel an unwilling person to become a partner with another would not be conducive to the welfare of the latter, not more than to compel a man to marry a woman he did not like would be for the benefit of the lady.*
>
> *Moreover, to decree specific performance of an agreement for partnership at will would be nugatory, inasmuch as it might be dissolved the*

> *moment after the decree was made; and to decree specific performance of an agreement for a partnership for a term of years would involve the Court in the superintendence of the partnership throughout the whole continuance of the term. As a Rule, therefore courts will not decree specific performance of an agreement for a partnership".*
>
> *We are consequently, required to consider the amount of damages which the plaintiff is entitled to. There had been a breach, of contract for which the defendant is liable. That is the finding of the trial Court which we affirm for reasons already indicated above."*

52. Tested on the anvil of the fundamental principles governing the law of specific relief and more particularly, the judgment of the Calcutta High Court, if one examines the impugned Award, no infirmity can be found by the refusal of the learned Arbitrator to direct enforcement of the SPA, by directing specific performance. Relevant portion of the Award has already been extracted in the earlier part of the judgment. The Tribunal was of the opinion that if the parties are brought together it will result in a glorified partnership. The relations between the parties are so strained, with allegations of fraud, against each other that the Company will not be in a position to function properly and the affairs of the Company will result in a deadlock. This view was taken by the Tribunal after a detailed analysis of the various documents put forth by the parties, the evidence, the various clauses of the SPA, including the element of distrust and bad faith against each other. Passage of 7 years during the pending litigation, from the date of the SPA, was also a factor which weighed in the mind of the learned Arbitrator. In view of the settled law

on the scope of judicial review under Section 34 of the Act, the said findings of the Tribunal deserve no interference.

53. In the case of ***Associate Builders (supra)***, the Supreme Court held as under:

> ***"****33****.*** *It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the 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. Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:"General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong". It is very important to bear this in mind when awards of lay arbitrators are challenged.] . Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. [(2012) 1 SCC 594 : (2012) 1 SCC (Civ) 342] , this Court held: (SCC pp. 601-02, para 21)*
>
> > *"21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in*

Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."

54. In ***Ssangyong (supra)***, the Supreme Court held as under:

"34. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paragraphs 18 and 27 of Associate Builders (supra), i.e., the fundamental policy of Indian law would be relegated to the "Renusagar" understanding of this expression. This would necessarily mean that the Western Geco (supra) expansion has been done away with. In short, Western Geco (supra), as explained in paragraphs 28 and 29 of Associate Builders (supra), would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which

cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in paragraph 30 of Associate Builders (supra).

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

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

37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to

mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

38. Secondly, it is also made clear that re-appreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

39. To elucidate, paragraph 42.1 of Associate Builders (supra), namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Paragraph 42.2 of Associate Builders (supra), however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paragraphs 42.3 to 45 in Associate Builders (supra), namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2A).

41. What is important to note is that a decision which is perverse, as understood in paragraphs 31 and 32 of

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

* * *

76. However, when it comes to the public policy of India, argument based upon "most basic notions of justice", it is clear that this ground can be attracted only in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice. It can be seen that the formula that was applied by the agreement continued to be applied till February 2013 — in short, it is not correct to say that the formula under the agreement could not be applied in view of the Ministry's change in the base indices from 1993-1994 to 2004-2005. Further, in order to apply a linking factor, a Circular, unilaterally issued by one party, cannot possibly bind the other party to the agreement without that other party's consent. Indeed, the Circular itself expressly stipulates that it cannot apply unless the contractors furnish an undertaking/affidavit that the price adjustment under the Circular is acceptable to them. We have seen how the appellant gave such undertaking only conditionally and without prejudice to its argument that the Circular does not

and cannot apply. This being the case, it is clear that the majority award has created a new contract for the parties by applying the said unilateral Circular and by substituting a workable formula under the agreement by another formula dehors the agreement. This being the case, a fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered into with the other party. Clearly, such a course of conduct would be contrary to fundamental principles of justice as followed in this country, and shocks the conscience of this Court. However, we repeat that this ground is available only in very exceptional circumstances, such as the fact situation in the present case. Under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the Court. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the 1996 Act, as has been noted earlier in this judgment."

55. Learned Senior Counsel has laid emphasis on Clause 7.5 of the SPA to contend that the parties had agreed that the Petitioner would have a right to seek specific performance and damages will not be an adequate remedy. There is no doubt that under the said Clause, which has been extracted above, the Petitioner indeed had a right to seek specific performance and she accordingly exercised that right and raised a Claim for specific performance of the terms of the SPA. However, this Clause cannot be interpreted to mean that once the right is exercised by the Petitioner, the Arbitrator would be bound to grant the relief. The Tribunal has, looking at the material on record, come to a conclusion that

it was not a fit case for grant of relief and exercised the discretion against the Petitioner. Therefore, this contention of the Petitioner only merits rejection. This Court finds merit in the contention of Respondent Nos. 1 to 3 that once the discretion has been exercised by the Tribunal or a Trial Court while considering a Claim of specific performance, after appreciation of entire evidence and materials on record, the Appellate Court cannot supplant the view, unless the discretion is arbitrarily exercised or is against the settled judicial principles. This law is no longer *res integra* and the Supreme Court in the case of ***K. Nanjappa (supra)*** and ***Jayakantham (supra)*** has clearly held so.

56. In view of the above, I find no merit in the petition and the same is accordingly dismissed.

JYOTI SINGH, J.

MAY 27th, 2020
yo/rd