HIGH COURT OF DELHI

Bench: JUSTICE SURESH KUMAR KAIT and JUSTICE NEENA BANSAL KRISHNA

Date of Decision: 23 January 2024

FAO (COMM) 31/2021 & CM APPL. 5051/2021

ARJUN MALL RETAIL HOLDINGS PVT LTD & ORS. ..... Appellants

Versus

GUNOCEN INC. ..... Respondent

Legislation:

Section 11 of the Commercial Acts, 2015
Section 34 of the Arbitration and Conciliation Act, 1996
Order XLI Rule 5 of the Civil Procedure Code, 1908

Subject: Appeal against the order of the learned Commercial Court dismissing objections to an Arbitral Award involving a financial dispute between Arjun Mall Retail Holdings Pvt Ltd and Gunocean Inc.

Headnotes:

Arbitration and Conciliation Act, 1996 – Appeal under Section 37 – Challenging the dismissal of objections under Section 34 against the Arbitral Award dated 20.02.2019 – Award directed appellants to pay substantial sums with interest and costs – Dismissal of objections upheld by the High Court. [Para 1, 2, 37]

Commercial Court's Order – Compliance with Order XLI Rule 5 CPC – Appellants directed to deposit 50% of the principal amount and provide an undertaking for the remaining amount – Special Leave Petition against this order dismissed by the Supreme Court. [Para 3]

Facts of the Case – Financial transactions between appellants and respondent – MoU for commission and refund of principal amount – Allegations of defaults in payments by appellants leading to legal action and arbitration. [Para 4, 5]

Arbitration Proceedings – Objections to arbitrator's appointment by appellants – Arbitrator proceeded with the case, leading to the Award – Appellants contested the arbitrator's decision and the validity of the MoU. [Para 7-14, 28, 29, 35, 36]

Fraud Allegations – Appellants accused respondent of forgery and violating public policy – Respondent highlighted appellants' history of legal issues and defaulting tendencies – Commercial Court dismissed appellants' claims of forgery. [Para 11, 15-19]

Legal Principles – Analysis of arbitration clause under MoU – Limited scope of interference by courts under Section 34 of the Act – Importance of distinguishing between contract interpretation errors and patent illegality. [Para 26, 31-34]

Conclusion – Dismissal of Appeal – No illegality or perversity found in the Arbitral Award and Commercial Court's decision – Upholding of Arbitral Award dated 20.02.2019. [Para 37]

Referred Cases:

- IOCL Vs. M/s Shree Ganesh Petroleum 2022 SCC Online SC 121
- Airport Metro Express Vs. DMRC 2022 (1) SCC 131

Representing Advocates:

Mr. Saeed Qadri & Ms. Kareena Fareed for appellants
Mr. Navdeep Singh for respondent

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "*the Act*") read with Section 11 of the Commercial Acts, 2015 impugns the order dated 15.07.2020 passed by the learned Commercial Court, Delhi whereby the objections filed by the appellant under Section 34 of the Act against the Arbitral Award dated 20.02.2019, has been dismissed.

2. Vide impugned judgment/ Award, the appellants have been directed to pay a sum of Rs.75,00,000/- along with interest @ 24% per annum from 15.07.2018 till the date of filing of the statement of claim i.e. 20.12.2018. It further directs the appellants to pay an amount of Rs.1,50,000 per month w.e.f. 10.03.2015 along with interest @ 24% per annum from the date it became due and payable till the cancellation of Memorandum of Understanding i.e., 15.07. 2018. Besides, cost of Rs.2,00,000/- as well as *pendente-lite* and future interest @ 12% per annum has also been awarded. 3. Pursuant to dismissal of Objections filed by the appellant under Section 34 of the Act, the appellants vide Order dated 10.02.2021, under Order XLI Rule 5 of the Civil Procedure Code, 1908 (hereinafter referred to as "*CPC*"), were directed by this Court to deposit 50% of the principal amount with the Registrar General of this Court and for the remaining amount to furnish an unconditional undertaking to

deposit the sum subject to outcome of the present appeal. Against the aforesaid Order dated 10.02.2021, the appellants had preferred *Special Leave Petition (Civil) No.4357/2021*. However, the SLP was dismissed by the Hon'ble Supreme Court vide order dated 17.03.2021 observing that order dated 10.02.2021 called for no interference.

4. Succinctly noting the facts of the present appeal as have been narrated by the appellants, are that appellant No.1 -Company is incorporated under the Companies Act, 1956 and appellant nos.2 & 3 are its directors who are responsible for its day-to-day affairs. The appellant nos.2 & 3 have alleged that they sought financial assistance from S. Parminder Pal Singh Bedi, Director of respondent company- M/s Gunocean Inc to run a hotel, namely, Hotel Clarks Inn Arjun located at Scheme No.1, SCF, 28-29-30, Hargobind Nagar, Phagwara, District Kapurthala, Punjab, promoted by them. The respondent on various representations being made by appellant nos.2 & 3 agreed and paid Rs.75,00,000/- to respondent so that the project would be completed.

5. The Memorandum of Understanding was executed between the parties on 24.01.2015 according to which respondent was to receive 5% commission of the total gross sale with a minimum guarantee of Rs.1,50,000/- per month irrespective of the accruals. It was further agreed that principal amount invested by respondent-firm would be refunded at the time of termination of Memorandum of Understanding ("MoU") for any other reason as mentioned in body of the MoU. However, the respondent alleged that the appellants after receiving the amounts started defaulting payments to be made as per the MoU entered between them. The respondent alleged that appellants had started committing defaults in the payment of assured amount as per MOU dated 24.01.2015. The respondent alleged that even though they advanced a sum of Rs.46,83,319/- to appellant No.1 which was duly acknowledged by appellant Nos.2 & 3 prior to 24.01.2015, however, the appellants after receiving the amounts started defaulting in the payment to be made as per MOU. The respondent sent a legal notice dated 07.09.2017 to the appellants demanding a sum of Rs.2,63,34,422/- which included principal amount of Rs.1,21,83,319/-. The respondent alleged that appellant Nos.1 & 2 avoided to receive the said notice, however, it was received by respondent No.3 who also sent a reply and sought various documents.

6. Thereafter, respondent issued another Notice dated 11.11.2017 to the appellants stating that in case payments were not made, they shall invoke arbitration. The Notice dated 11.11.2017 also stated that it had appointed Sh.

Rakesh Kapoor (Retd.) District & Sessions Judge, Delhi as the sole Arbitrator to adjudicate the disputes. However, on the verbal assurance of the appellants to pay the amount within a short period, the matter was not pursued by the respondent. But since the appellant failed to adhere to the MoU, the respondent sent another legal notice dated 16.07.2018 seeking a total sum of Rs.3,48,22,948/-. Thereafter, another legal Notice dated 02.08.2018 was sent by the respondent informing the appellants that they are appointing the learned Arbitrator.

7. *The respondent filed a claim petition* before the learned sole Arbitrator and claimed the principal amount of Rs.1,21,83,319/- and further interest of Rs.2,26,39,629/- towards the interest claimed upto 16.07.2018 making a total claim to Rs.3,48,22,948/- with future interest @ 24% per annum.

8. The learned Arbitrator sent a notice to the appellants for appearance. Accordingly, the appellants vide Letter dated 27.10.2018 objected to the appointment of the sole Arbitrator by the respondent. The learned Arbitrator despite receipt of the aforesaid letter, challenging his appointment, passed the order dated 24.11.2018 which reads as under:-

"In the present case, the claimant had invoked the arbitration clause vide notice dated 02.08.2018 and had appointed the undersigned as a Sole Arbitrator in this case as per clause 13.7 of the MOU dated 24.01.2015. The undersigned had given a declaration as per schedule-6 of the Arbitration and Conciliation Act, 1996. Copies of the consent/declaration were also sent to the respondents. The undersigned had entered into the reference on 18.10.2018 and had sent letters to the parties to appear before him on 31.10.2018 for a preliminary hearing. On the said date, Shri Parminder Pal Singh Bedi and Ms. Daman Preet Kaur Bedi had appeared on behalf of the claimants. However, none had appeared on behalf of the respondents nor any intimation had been received from them. The matter was adjourned to 24.11.2018 at 5.00 PM for filing of the statement of claim.

In the meanwhile, during the first week of November, 2018, a letter was received from Shri Rakesh Bhanot and Ms. Kiran Bhanot, Respondent nos.2 & 3 stating that they had not consented to the appointment of the undersigned as the Sole Arbitrator in this case. A request was made by them that the undersigned may not act as the Sole Arbitrator to decide the disputes between the parties. I have considered the letter/request of respondent nos.2 & 3. Since I had already entered into the reference s indicated above, the arbitration proceedings commenced by me cannot be terminated at the stage as requested by the respondents.

Today the counsel for the claimant has sought four weeks time to file the statement of claim on behalf of the claimants. The statement of claim be filed within two weeks and a copy of this order and a copy of the statement of claim as and when filed be sent to the respondent who may file reply to the statement of claim on the next date of hearing."

9. Thereafter, without deciding challenge to his appointment, the learned Arbitrator passed order dated 20.12.2018 which reads as under:

"The claimant has filed a statement of claim today. It is stated that a copy of the statement of claim and a copy of the order dated 24.11.2018 was sent to the respondents only a day before. The matter is, therefore, adjourned to 21.01.2019 at 5.00 PM for filing of reply by the respondents to the statement of claim. It is made clear that if the respondents do not file a reply to the statement of claim and do not make any appearance on the next date of hearing, they will be proceeded with ex-parte. A copy of this order be sent to the respondents by post."

10. Pursuant to the aforesaid Order, the respondent filed an affidavit dated 05.02.2019 along with documents of one of its partners, namely, Ms.Damanpreet Kaur Bedi. The learned sole Arbitrator vide impugned Award dated 20.02.2019 *inter alia* held as under:

"I, therefore, pass an award in favour of the claimant and against the respondents and direct them to pay to the claimant a sum of Rs.75,00,000/- along with interest @ 24% per annum from the date of cancellation of the MOU i.e. 16.07.2018 till the filing of the statement of claim i.e. 20.12.2018. I further pass an award in favour of the claimant and against the respondents and direct them to pay a sum of Rs.1.5 lakh per month w.e.f. 10.03.2015 along with interest @ 24% per annum from the date it became due and payable till the cancellation of the MOU vide notice dated 16.07.2018. The respondents re further burdened with a cost of Rs.2 lakhs. The respondents shall also be liable to pay Pendent-lite and future interest to the claimants from the date of this award till payment at the rate of 12% per annum. Respondent No.1 and respondent nos.2 & 3 are made jointly and severally liable to pay the amount of the award."

11. The aforesaid Award was challenged by the appellants before the learned Commercial Judge on the ground that in order to obtain favourable orders, the respondent- M/s Gunocean Inc. had forged the MoU and thus, the Arbitral Award is violative of the public policy of India. The appellants before the learned Commercial Judge, pleaded that Parminder Pal Singh Bedi, who was the owner of the respondent-Company had executed a rent Agreement dated 02.05.2011 with the appellants in respect of the ground, first and second floor of the building known as Arjun Mall situated at Hargobind Nagar, Phagwara, District Kapurthala, Punjab. Thereafter, another Agreement dated 05.09.2011 was executed between the Arjun Mall Retail Holdings (P) Ltd. and M/s U.P. Hotels Clarks Ltd. for smooth functioning and operations of Hotel Arjun Mall Clarks Inn. On 05.03.2016, Parminder Pal Singh Bedi filed a suit for permanent injunction before the learned Additional Civil Judge, Phagwara seeking an interim relief application (*Case Registration No. CS/98/2016*)

stating that he is a tenant of appellant No.3. In the suit for Permanent Injunction, UCO Bank and Manager of UCO Bank were arrayed as defendant nos.2 & 3, who in their written statement stated that the plaintiff therein i.e. Parminder Pal Singh Bedi was not a tenant in the property.

12. In his *replication to the Written Statements filed by UCO Bank* by Manager UCO bank, Parminder Pal Singh Bedi averred that he is the tenant in the property on which hotel is situated. The application for interim relief filed by Parminder Pal Singh Bedi was dismissed by the learned Additional Civil Judge holding that he had failed to prove his possession in the building in dispute as tenant and therefore, he is not entitled to any interim relief against defendant Nos.2 & 3 i.e. UCO Bank and Manager of UCO Bank. The appellants herein denied existence of any Rent Agreement executed between the parties and demanded copy of the MoU relied upon by the respondent to enable it to file reply to the legal notice. However, the same was not furnished to it.

13. The appellants pleaded before the learned Commercial Judge that only upon receipt of the legal Notice dated 07.09.2017, whereby demand of Rs.2,63,34,422/- was raised by the respondent, that they came to know that a fraud has been played upon them. *According to the appellants, they had challenged appointment of Arbitrator under Section 12(3)(a) and 13(2) of the Act, however, the learned Arbitrator failed to decide the challenge and continued the proceeding based on vague assumption by stating that proceeding under arbitration had already commenced and could not be terminated.*

14. The appellants claimed before the learned Commercial Court that since the learned Arbitrator had failed to appreciate that the unregistered and under stamped MOU cannot be taken as a piece of evidence under the Evidence Act and Stamp Act, and has passed the Arbitral Award dated 20.02.2019, which is liable to be set aside. The appellants took the stance before the Commercial Judge that there was no MoU between the parties and therefore, there is no question of any arbitration in terms of thereof.

15. *In its reply, the respondent herein* stated before the learned Commercial Judge that the appellants are habitual defaulters and were in the habit of making false averments and it is only when they denied respondent of giving any payment, then the respondent came to know about the various cases of cheating and frauds committed by the appellants. The respondent alleged that the appellants and their son Arjun Bhanot, indulged in fabrication of documents and a number of cases were pending against them preferred

by various banks, individuals and Companies, a few of them the cases mentioned were as under:

a) *"Anil and Pawan Bedi – FIR No.99 dated 19.09.2014 u/s 06/420/467/468/471/472/473/120B IPC registered at P.S. Division No. 8 (Kailash Chowk) Ludhiana;*
b) *Gurpreet Singh Ghagg – FIR No.126 dated 22.10.2014 u/s 420 IPC at P.S. Phagwara.*
c) *Gurdas Agro FIR No.348 dated 06.10.2014 u/s 420/465/467/468/471/120-B IPC at P.S. Kotwali Bhatinda.*
d) *Petitioner No.3 was caught, arrested and detained at IGI Airport, New Delhi in May 2016, while trying to flee away to USA after committing so many frauds and cheating number of innocent people. Petitioner No.2 fled away from the incident and the same was published in newspaper also. Thereafter she was handed over to Ludhian police by Patiala House Courts Delhi on 25.05.2016 under the orders of Ms.Sonali Gupta, ACMM-01, while Bhatinda police and Phagwara police were also there to arrest her. Then she was sent to judicial custody at Ludhiana jail for around 3 months."*

16. The respondent brought to the notice of the learned Commercial Judge that appellant No.3/ Kiran Kumar Bhanot was arrested and detained at IGI Airport, New Delhi in May 2016 while trying to flee away to USA. Whereas, appellant No.2 fled away from the given place and the same was published in newspapers also. Thereafter, she was handed over to Ludhiana police from where she was sent to judicial custody for about three months by Patiala House Courts, Delhi. She was declared *Proclaimed Person* by Phagwara Court on 17.10.2017 (Case No.CHI/110/2016).

17. In the reply filed by the respondent, it was further stated that in another case filed by CBI, appellant No.2 Rakesh Kumar Bhanot was an accused in a FIR case registered against him in the year 2015. Appellant Nos.2 & 3 were directed to surrender before the concerned CJM immediately by the High Court on 07.11.2016 but they failed to do so. Appellant No.2 has only been granted conditional bail by the High Court of Punjab & Haryana on 17.05.2019 in third attempt after being rejected number of times in various lower courts and even by the High Court. 18. In addition, appellant Nos.2 & 3 had also cheated M/s Gurdas Agro Bhatinda for a sum of Rs.2,00,00,000/- and proceedings were pending against all them in Bhatinda Court, Phagwara Court and High Court. In another case, appellant No.2 had cheated Mr. Gurpreet Singh who had a FIR No.126/2014 got registered against him for the offence under Section 429 IPC and also appellant No.3 / Kiran Kumar Bhanot had cheated him by selling him a property worth Rs.45,00,000/- which was already mortgaged with Punjab & Sind Bank, Ramgaria Branch,

Phagwara. The respondent averred in its reply that the appellant nos.2 & 3 as well as their son Arjun Bhanot were directed to surrender before learned trial court, however, they had not done so.

19. The instances noted above show that the appellants owed various amounts to different persons and were involved in multiple legal proceedings. The respondent alleged that appellants were falsely asserting before the learned Commercial Courts that the MoU was a forged document as it is nowhere stated by the appellants that the seal appearing upon MoU is not a seal of the Company nor it has been contended that the MoU was not signed by them and that the signatures appearing on each page were not their signatures. Accordingly, the respondent sought dismissal of the petition filed by the appellants herein before the learned Commercial Judge stating that it was abuse of process of law.

20. *The respondent asserted before the learned Commercial Judge* that the Award passed by the learned Arbitral Tribunal, was based upon reasons and it does not suffer from any illegality. Further asserted that the MoU executed between the parties was properly stamped under the Stamp Act and it did not require any registration. The respondent asserted that on the one hand, the appellants were denying the execution of the Agreement and on the other, they were raising contrary pleas which were not tenable. The respondent also asserted that the Agreement arrived at between the appellants and the respondent was regarding the funds which were required by the appellants to support and run the hotel. In terms of the Agreement, the appellants were required to pay sale proceeds with assured amount, as was spelt out in the Agreement. No interest was sought or created in the property of the appellants, so there was no occasion for the MoU to be got registered. It was stated that the said MOU was signed on each page and the appellants have not contended that the signatures appearing on MOU were not theirs.

21. The respondent further stated that it had made payment of more than Rs.1,25,00,000/- to the appellants on various occasions, which negates the contentions of the appellants. The respondent denied that the Hotel was running smoothly and alleged that appellants had failed to pay any of the amounts which they had obtained from various people in order to run the business.

22. The respondent pleaded before the learned Commercial Judge that the Notices sent by the respondent were served upon the appellants, however, appellant Nos.2 & 3 never replied to them. The respondent pleaded that the learned Arbitrator taking note of various amounts which were paid by the

respondent to the appellants and on the basis of statement of accounts, passed the impugned Arbitral Award. Hence, dismissal of the appeal preferred by the appellants is sought by the respondent.

23. As far as the plea of appellants that the respondent was tenant at the ground, first and second floor of the building known as Arjun Mall, situated at Hargobind Nagar, Phagwara is concerned, the Written Statement filed by the UCO bank and statement of its employees negates it, based upon various inspection reports. Hence, the learned Civil Judge, Phagwara, dismissed suit for Injunction filed by S.Parminder Pal Singh observing that he could not prove his possession as tenant in the said building. Moreover, since this plea was never raised before the learned Arbitrator, the learned Commercial Court has rightly rejected to consider it and thus, appellants cannot be permitted to make such plea before this Court.

24. On the plea of appellants that they did not receive the amount of Rs.75 Lacs as has been mentioned in the MoU is concerned, the MoU is signed by both the parties on each page which takes note that Rs.75 Lacs has to be invested, however, the time as to when this payment is to be made is not mentioned.

25. It is worth noting that the appellants had received the amount of Rs.75 Lac through Mr. Arjun Bhanot, who is one of the Directors of the appellant Company. The learned Arbitrator, in the impugned judgment, has referred to the Statement of Accounts enclosed by the respondent which showed that appellants had failed to pay sum of Rs.1.5 lacs every month, which first became due in February, 2015 and in fact, appellants had failed to credit any amount to the respondent and therefore, respondent had cancelled the MoU vide Notice dated 16.07.2018. As per Statement of Claims, till the date of cancellation of the MoU, the appellants had incurred liability of payment of Rs.3,48,22,948/- towards the respondent. The learned Arbitral Tribunal has rightly referred to afore-noted Clause 3.4 of the MoU to hold that the respondent could not have charged compound/ penal interest on the due amount not it could have charged exorbitant amount of Rs.51,50,000/- on account of losses suffered by the parties. *Hence, the Tribunal held that the respondent was entitled to receive payment of Rs.75,00,000/- with interest @24% p.a. from the date of cancellation of MoU i.e. 16.07.2018. The learned Commercial Court also rightly held that the there is no patent illegality in the sum awarded in the impugned Arbitral Award, which would call for interference by the Court under Section 34 of the Act.*

26. Admittedly, the respondent invoked arbitration under Clause 13.7 of the MoU vide Notice dated 02.08.2018. Clause 13.7 reads as under:

"***LEGAL JURISDICTION & ARBITRATION***

(i) If any question of difference or claim or dispute arises between the parties hereto arising out of this agreement as to the rights, duties or obligations of the parties hereto or as to any matter arising out of or connected with the subject matter of this agreement, the same shall be referred to the arbitration. ***The reference shall be to the sole arbitrator appointed by the SECOND PARTY i.e.GUNOCEAN INC. and the decision of the arbitrator shall be final and binding*** *in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any other law relating to any statutory modification or reenactment thereof shall be binding on the parties."*

27. Clause 13.7 of the MoU provides for the appointment of a sole arbitrator by the respondent. The appellants repeatedly sought for a copy of the MoU to give detailed reply to the Notices issued by the respondent. However, the respondent instead of providing the copy of MoU, appointed the learned Sole Arbitrator who entered into reference on 18.10.2018. However, the respondent instead of providing the copy of MoU, appointed the learned Sole Arbitrator who entered into reference on 18.10.2018.

28. It emerges from Order dated 24.11.2018 of the learned Sole Arbitrator that the appellants had sent a Letter dated 27.10.2018 to the ld. Arbitrator objecting to his appointment as being without their consent.

However, the Arbitrator arrived at the conclusion stating as follows:

"*Since I have already entered into reference as indicated above, the arbitration proceedings commenced by me cannot be terminated at this stage as requested by the respondents."*

29. Vide Order dated 20.12.2018, the learned Arbitrator held that if the appellants failed to appear on the next date of hearing, they will be proceeded *ex-parte*. However, the appellants did not appear on the next date on 21.01.2019 and were proceeded ex-parte and the impugned Award was pronounced on 20.02.2019.

30. It is the case of the appellants that the respondent failed to move an application before the court for appointment of an arbitrator under Section 11(6) of the Act, 1996 when the former had objected to the appointment made by the latter party. The appellants in the present Appeal have therefore averred that the impugned Arbitral Award is liable to be set aside in terms of Section 13(5) of the Act, which provides that if a party challenging the appointment of an Arbitrator makes an application for setting aside of the Arbitral Award, the same can be allowed under Section 34 of the Act, 1996.

31. According to Section 11(2) of the Arbitration and Conciliation Act, 1996 the parties are free to agree on a procedure for appointing the arbitrator. In ***IOCL Vs. M/s Shree Ganesh Petroleum*** 2022 SCC Online SC

121, on the scope of interference by the Court, the Hon'ble Supreme Court has held as under:-

"43. An Arbitral Tribunal being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract.
44. However, a distinction has to be drawn between failure to act in terms of a contract and an erroneous interpretation of the terms of a contract. ***An Arbitral Tribunal is entitled to interpret the terms and conditions of a contract, while adjudicating a dispute.*** *An error in interpretation of a contract in a case where there is valid and lawful submission of arbitral disputes to an Arbitral Tribunal is an error within jurisdiction."*

32. It is observed that the respondent had sent several notices invoking the Arbitration clause, the first of which was a Notice dated 11.11.2017. Thereafter, vide legal notice dated 02.08.2018, the respondent had informed the appellants in respect of invocation of the arbitration clause and appointment of the learned Sole Arbitrator. Therefore, the Tribunal entered into reference on 02.08.2018. When the matter came up for hearing before the learned Arbitrator on 31.10.2018 as well as on 24.11.2018, none appeared on behalf of the appellants. Relevantly, there is a time gap of almost eight months from the date of issuance of first legal Notice of invocation of arbitration proceedings and its actual commencement. Yet, the appellants did not take any recourse to law for revocation of appointment of learned Arbitrator or in challenge of the arbitration clause.

33. We find that under Section 34 of the Act, 1996 scope of interference by the Court is limited to the extent that the Arbitral Award is not vitiated on basis of pleadings raised by the parties. The learned District Judge has rightly observed that if a party fails to raise a plea in arbitral proceedings, it cannot take a fresh ground to seek relief before the Appellate Authority and any such plea, deserves to be rejected.

34. The Hon'ble Supreme Court in ***Airport Metro Express Vs. DMRC*** 2022 (1) SCC 131 has observed that in several judgments scope of Section 34 of the Act has been interpreted to stress on the restrain upon the Court to examine the validity of the Arbitral Awards, after dissecting or reassessing the factual aspects of the cases. It has been observed as under:-

*"**29.** Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral*
Tribunal would not fall within the expression
"patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of

*law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the Arbitral Award**. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the Arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the Arbitrator commits an error of jurisdiction by wandering outside the contract** and dealing with matters not allotted to them. An Arbitral Award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the Arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality"."*

35. The aforesaid dictum in ***Airport Metro Express (Supra)*** makes it clear that under Section 34 of the Act, scope of interference by the courts is very limited and only if there is any patent illegality in the Arbitral Award, then only it is required to be touched upon. In the present case, even if it is accepted that the appellants had raised objection to the appointment of learned Arbitrator by sending a letter to him but the fact remains that the appointment was never challenged under the provisions of Section 11(6) of the Act, 1996 nor did the appellants participate in arbitral proceedings, despite having knowledge of the same. Instead of contesting the respondent's claim before the learned Arbitrator, the appellants remained mute spectator and only after losing the battle in arbitral proceedings, the appellants preferred appeal under Section 34 of the Act, challenging the appointment of Arbitrator as well as the Arbitral Award.

36. Therefore, the challenge against the appointment of the learned Sole Arbitrator is not tenable in the present case.

37. Finding no illegality or perversity in the impugned judgment dated 15.07.2020, the present Appeal is dismissed while upholding the Arbitral Award dated 20.02.2019.