IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.209 OF 2008

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Carol Info Services Limited ...Petitioner

v/s.

State of Maharashtra ...Respondent

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Mr.F.Devitre, Sr.Advocate with Mr.F.Dubhash i/b Harish Joshi & Co. for the Petitioner.

Mr.A.A.Kumbhakoni with Mr.V.M.Acharya and Ms.Geeta Shastri AGP for Respondent.

Mr.M.S.Karnik for Intervenor/High Court.

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CORAM: D.K.DESHMUKH, J.

DATED: 16th June, 2011

ORAL JUDGMENT:

1. This is a petition filed under Section 34 of the Arbitration & Conciliation

Act, 1996 challenging the award made by the learned Arbitrator (Justice Shri V.P.Tipnis, Retd.) dated 23-2-2008.

2. The facts which are relevant and material are, the Petitioner is a company incorporated under the provisions of the Companies Act and the Respondent is the State of Maharashtra. The Respondent/State of Maharashtra owns a hospital known as “New Gokuldas Tejpal Hospital” at Mumbai. The Respondent also owns the land near the said Hospital situated at L.T.Marg, Mumbai. In the year 1975, the State Government entered into a contract for construction of a building on this land and a building called “Hospital Building” was constructed on the land. The Government, it appears, decided to establish a Super Speciality Hospital in that building. On or about, 29th May, 1999 the Respondent

floated a tender for commissioning of the said New Gokuldas Tejpal Hospital as a State of Art Super Speciality Hospital by way of formation of joint venture company in collaboration with a private sector partner. In response to the tender, the claimant/Petitioner submitted its offer, which was accepted on 18-5-2000. A written agreement between the Petitioner and the Respondent was entered into on 10-5-2001. The agreement provided that the value of the project would be Rs.64.85 crores. The Claimant/Petitioner was to have 51% share capital amounting to Rs.33,07 crores and the Respondent was to have 49% share capital amounting to Rs.31.78 crores. The joint venture company was to have nine Directors, five of whom where to be nominated by the Claimant and the remaining four were to be nominated by the Respondent. The Chairman of

the joint venture company was to be nominated by the claimant. As per the agreement, the Respondent was to be the owner of the hospital, building and the land under it. However, it was to be given on lease to the joint venture company. The lease was to be for a period of 30 years. The Respondent was to receive annual rent of Rs.1 crore from the joint venture company with an increase of 8% after every five years for the building and the land.

3. On 8-8-2001, the Memorandum and Articles of Association of the joint venture company were formulated. The claimant and the Respondent agreed to subscribe 25500 and 24500 shares respectively. On 20th August, 2001, a Certificate of incorporation of the joint venture company was issued. The Board of Directors of the joint venture company was

constituted and the meeting of the Board of Directors to place on 8-9-2001. The Government/Respondent also executed a lease agreement in favour of the joint venture company on 14-3-2002. It appears that, thereafter, problems started cropping up. As a result of which by a letter dated 12-9-2003 the Respondent purported to terminate the contract. Thereafter, steps were taken to get the arbitrator appointed as per the arbitration clause in the agreement between the parties. Hon'ble Shri V.P.Tipnis (Retd.) was appointed as a sole arbitrator and the disputes between the parties were referred to him for adjudication.

4. The Petitioner filed statement of claim. On behalf of the Respondent a written statement and an additional written statement was filed. On the basis of the pleadings,

the learned Arbitrator by consent of parties framed following issues:

I S S U E S

(1)Whether there is no concluded, valid or subsisting Shareholders' Agreement dated 10th May, 2001 between the parties or the same has not become operational and/or effective as alleged in paragraphs 1, 3 and 5 to 7 of the Written Statement?

(2)If the answer to issue No.1 is in the affirmative, whether there is no valid or subsisting arbitration agreement or the same has not come into operation as alleged in paragraphs 2 and 3 of the Written Statement?

(3)Whether the arbitral tribunal has no jurisdiction to try, entertain or decide any claim arising out of the transaction

in issue?

(4)Whether the conditions precedent as set out in clauses 2.0 of the Shareholders' Agreement dated 10th May 2001 were not fulfilled and/or accomplished to the satisfaction of the parties on or before the effective date as set out in clause 28.2 thereof, as alleged in paragraphs 5 to 7 of the Written Statement?

(5)Whether the Claimant has failed to make subscription and contribution to the share capital of the Joint Venture Company within 30 days of the effective date, thereby committing breach thereof as alleged in paragraphs 8 and 29 of the Written Statement?

(6)Whether the obligation of the claimant and the respondent to contribute to the equity capital was simultaneous and reciprocal and that one party could not

have contributed without the other contributing, as alleged in paragraph 9 of the Statement of Claim?

(7)Whether the Agreement was acted upon as alleged in paragraph 8 of the Statement of Claim?

(8)Whether the proposal has become unviable or unworkable as contemplated under Clause 29.4 of the said Agreement as alleged in paragraph 9 of the Written Statement?

(9)Whether the Agreement has to be treated as non-est or is not valid, subsisting and binding upon both the parties as alleged in paragraph 9 of the Written Statement?

(10)Whether the agreement stood formally terminated as alleged in paragraph 28 of the Written Statement and whether the alleged termination is valid?

(11)Whether the claimant is entitled to a decree for specific performance as alleged in paragraph 24 of the Statement of Claim?

(12)Whether the claimant is entitled to a sum of Rs.1550.63 lakhs and a further sum of Rs.141.28 lakhs per month as and by way of damanges for delay as alleged in paragraph 25 of the Statement of Claim?

(13)Whether in the alternative to the above, the claimant is entitled to (i) a sum of Rs.15073 lakhs as and by way of damages; and (ii) a sum of Rs.32,87,853 towards reimbursement of expenditure, as alleged in paragraph 26 of the Statement of Claim?

(14)Whether the Claimant is entitled to interest on the monetary claims above and if so, for what period and at what rate?

(15)What order as to costs.

5. The parties filed various documents. On behalf of the Claimant only one witness was examined by name Mr.Anil Vasudeo Kamath On behalf of the Respondent one witness was examined by name Mr.G.S.Gill. The learned Arbitrator, thereafter, heard the parties and made his award on 23-2-2008. The learned Arbitrator recorded the findings against the Petitioner on Issues Nos.5 & 6 and Issues Nos.11 & 15. The learned Arbitrator held that the Petitioner failed to make subscription and contribution to the share capital of the Joint Venture Company. The learned Arbitrator has rejected the Petitioner’s claim for the grant of specific performance of the agreement by holding that the Petitioner has committed breach of its obligation under Clause 6.2 of the agreement to contribute to the share capital of the

Joint Venture Company. He also held that the Petitioner has not been able to prove that it was ready and willing to fulfill its part of the agreement. The learned Arbitrator also held that the contract runs into minute details and involves performance of obligation which could not be supervised by the court. The learned Arbitrator based on these findings also dismissed the claim of the Petitioner for damages. The learned Arbitrator, however, has held that the Petitioner is entitled to reimbursement of the amount spent by it and therefore has passed a monetary decree in favour of the Petitioner and has directed the Respondent to pay to the claimant/Petitioner an amount of Rs.15,33,041/- with interest at the rate of 18% p.a. from 12-9-2003 till the date of realisation. The Petitioner has filed this petition challenging the award of the learned

Arbitrator. The Respondent has accepted the award.

6. I have heard the learned Counsel for both sides in detail. On behalf of the Petitioner, it is submitted that the Arbitrator's findings on Issues Nos.5 & 6 and Issues Nos.11 are perverse and unreasonable and contrary to the record and to the statutory provisions, particularly Section 16(c) of the Specific Relief Act. It was submitted that in view of the findings recorded by the learned Arbitrator on other issues, specially the finding on Issue No.10, whereby the learned Arbitrator held that the termination of the agreement by the Respondent was invalid, the learned Arbitrator could not have declined to pass a decree of specific performance in favour of the Petitioner. It was submitted that the

learned Arbitrator failed to see that the Respondent itself did not regard the non-payment of the equity subscription by the Petitioner within 30 days of the effective date as a breach of their obligation. It was submitted that the learned Arbitrator also did not appreciate that even if it is assumed that the Petitioner had committed breach of the term in the agreement by not making payment of its contribution to the share capital, that breach was waived by the Respondent. It was submitted that the Arbitrator's findings that the obligation to pay the subscription to the share capital was neither reciprocal nor simultaneous is perverse. It was submitted that the learned Arbitrator could not have recorded a finding that the Petitioner has failed to make its subscription to the share capital, when admittedly the Petitioner had sent photo copy

of a cheque to the Respondent and the Respondent had expressed its willingness to make the contribution if the State Government also makes its contribution. It was submitted that the learned Arbitrator could not have held that the Petitioner was not ready and willing to perform its part of the agreement. It was submitted that the discretion has been exercised by the learned Arbitrator unreasonably. It was claimed that the learned Arbitrator could not have recorded a finding that the Petitioner had failed to prove that at the relevant time it had adequate amount to pay its contribution towards the share capital. It was claimed that it was not the case of the Respondent that the Petitioner did not have adequate money to honour its obligation. It is claimed that the Arbitrator should have seen that the Petitioner had led evidence to show that it had adequate funds.

It was submitted that the Arbitrator's refusal to grant a decree of specific performance to the Petitioner on the ground that the nature of the contract is such that it runs into minute details and would require continuous supervision of the court is perverse and arbitrary. It was also claimed that the Arbitrator's finding that the Petitioner failed in its alleged obligation to furnish adequate and complete details regarding refurbishment costs is based on a non -existent clause in the shareholder's agreement, which appears to have been implied by the Arbitrator. It was submitted that the Arbitrator was also not justified in holding that as the Petitioner is not entitled to a decree of specific performance, it is also not entitled to damages. It was submitted that the Arbitrator's conclusion that the Petitioner had not led the best evidence and

had not proved its claim for damages is unjustified.

7. The learned Counsel appearing for the Respondent, on the other hand, submitted that the grant of decree of specific performance is in the discretion of the court. The learned Arbitrator for good and valid reason has declined to pass a decree of specific performance in favour of the Petitioner. The learned Arbitrator has given good reason why he is exercising his discretion and not granting relief of specific performance. It was submitted that considering extremely limited jurisdiction of this court to interfere with the award made by the learned Arbitrator, this court should not interfere with the award. The learned Counsel supported the findings recorded by the learned Arbitrator.

8. The award which is impugned in this petition is a detailed award. The learned Arbitrator has given reasons in detail for each of the finding recorded by him. The Award runs into about 250 pages. The learned Arbitrator in his award has recorded certain findings in favour of the Petitioner and against the Respondent/State Government and has recorded certain findings against the Petitioner and in favour of the Respondent/State Government. Findings which are principally impugned in this petition are the findings recorded by the learned Arbitrator for not granting a decree of specific performance in favour of the Petitioner. The nature of the agreement of which specific performance was sought was that the Petitioner and the Respondent were to form a Joint Venture Company for running a

Super Speciality Hospital. In implementation of that agreement the Joint Venture Company was already formed. The lease deed of the building and the land was already executed in favour of the Joint Venture Company. The Petitioner wanted a decree of specific performance of the agreement which in effect would mean a direction to the Respondent to participate in the joint venture for running a super speciality hospital. The learned Arbitrator, after taking into consideration the entire material on record held that it would not be a proper exercise of discretion to pass such a decree. Sub-section 1 of Section 20 of the Specific Relief Act reads as under:

> 20(1) Discretion as to decreeing specific performance.- 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 direction of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

9. Thus, the jurisdiction to pass a decree of specific performance is discretionary. But it must be understood that the discretion of the court is not to be arbitrarily exercised, the exercise of discretion is guided by judicial principles. The Supreme Court in its judgment in the case of Mademsetty Satyanarayana v/s. G. Yelloji Rao and ors, AIR 1965 Supreme Court 1405 has considered the provisions of Section 22 of the Specific Relief Act 1877, which are paramateria to the provisions of Section 20 of the Specific Relief Act, 1963. In my opinion, what is said by the Supreme Court in paragraph 6 of its judgment is relevant. It reads as under:

6. At the outset we shall construe the relevant sections of the Specific Relief Act and the Limitation Act unhampered by judicial decisions.

Specific Relief Act: Section 22. 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 following are cases in which the Court may properly exercise a discretion not to decree specific performance :-

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no, fraud or misrepresentation on the plaintiff's part.

Illustrations

II. 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.

Illustrations

The following is a case in which the

Court may properly exercise a discretion to decree specific performance :-

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustrations

The First Schedule to the Limitation Act

Description of suit	Period of Limitation	Time from which period begins to run
Art. 113. For Specific performance of contract	3 years	The date fixed for performance, or, if no such date is fixed, when the Plaintiff has notice that performance is refused.

Under s. 22 of the Specific Relief Act, relief of specific performance is discretionary but not arbitrary: discretion must be exercised in accordance with sound and reasonable judicial principles. The cams providing for a guide to courts to exercise discretion one way or other are only illustrative; they are not intended to be exhaustive. As Art. 113 of the Limitation Act prescribes a period of 3

> years from the date fixed thereunder for specific performance of a contract, it follows that mere delay without more extending up to the said period cannot possibly be a reason for a court to, exercise its discretion against giving a relief of specific performance. Nor can the scope of the discretion, after excluding the cases mentioned in S. 22 of the Specific Relief Act, be confined to waiver, abandonment or estoppel. If one of these three circumstances is established, no question of discretion arises, for either there will be no subsisting right or there will be a bar against its assertion. So, there must be some discretionary field unoccupied by the three cases, otherwise the substantive section becomes otiose. It is really difficult to define that field. Diverse situations may arise which may induce a court not to exercise the discretion in favour of the plaintiff. It may better be left undefined except to state what the section says, namely, discretion of the court is not arbitrary, but sound and reasonable guided by judicial principles and capable of correction by a court of appeal. (emphasis supplied)

10. The Supreme Court has thus held that there can be various situations and circumstances in which the court has to exercise its discretion in either granting a

decree of specific performance or refusing to grant such a decree. The Supreme Court has held that no straight jacket formula can be laid down in this regard. The Supreme Court has, therefore, observed “Diverse situations may arise which may induce a court not to exercise the discretion in favour of the plaintiff. It may better be left undefined except to state what the section says, namely, discretion of the court is not arbitrary, but sound and reasonable guided by judicial principles.” In my opinion, therefore, the award made by the learned Arbitrator has to be approached and appreciated from this point of view. The learned Arbitrator while considering Issues Nos. 5 & 6 has construed the provisions of Clause 6.2 and 6.3 of the Shareholders’ agreement. Clause 6.2 and Clause 6.3 of the Shareholders’ agreement read as under:

> “6.2 Wockhardt agrees that within 30 days from the Effective Date (as defined in sub-clause 28.2) it will subscribe and pay for at par, equity shares corresponding to the amount of Indian Rs.33,07,35,000/- (Rupees Thirty Three Crores Seven Lakhs Thirty Five Thousand only)
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> 6.3 GOM agrees that within 30 days from the Effective Date (as defined in sub-clause 28.2) it will subscribe and pay for at par, equity shares corresponding to the amount of Indian Rupees 31,77,65,000/- (Rupees Thirty One Crores Seventy Seven Lakhs Sixty Five Thousand only.”

11. The learned Arbitrator in paragraph 26 of the award has referred to the submissions made on behalf of the Petitioner that under aforesaid two clauses both the parties were to simultaneously bring their contribution to the equity share capital of the Joint Venture Company. The learned Arbitrator considered that submission and has observed “ It is not possible to accept this submission of Mr.Parikh, because the word

“simultaneously” is conspicuously absent from the final written agreement, viz, the Shareholders’ Agreement dated 10.5.2001. The offer of the claimant was made on 14-6-1999. It was accepted by the Respondent on 18-5-2000 and after negotiations over a considerable period the agreement was executed by the parties on 10-5-2001. Mr.Kamath, the witness for the claimant in paragraph 25 of his cross-examination has clearly stated that after submission of the tender by the claimant, there were negotiations held between the claimant and the respondent and, thereafter, the Shareholders’ Agreement was finalised. These circumstances, in fact suggested as submitted by Mr.Kumbhakoni, that the word “simultaneously” was consciously omitted from the final agreement.”

. It is, thus, clear that the finding of the learned Arbitrator on interpretation of Clauses 6.2 and 6.3 of the Shareholders' Agreement is based on appreciation of evidence on record, oral and documentary. The learned Arbitrator has based his finding that the obligation to contribute to the share capital was not reciprocal on an admission made by the witness examined on behalf of the Petitioner. The learned Arbitrator has observed "In fact Mr.Kamath in his cross-examination in paragraph 38 has clearly stated that it is correct to say that the obligation of the claimant and the Respondent to contribute to the equity share capital of the Joint Venture Company was independent of each other." The learned Arbitrator, therefore, recorded a finding that the Petitioner committed breach of its obligation to contribute to the share capital within 30

days of Effective date. In my opinion, therefore, it cannot be said that this finding recorded by the learned Arbitrator on Issues Nos. 5 & 6 can be faulted for any reason. What is pertinent to be noted is that to this date no amount has been contributed by the Petitioner towards the share capital of the Joint Venture Company. In any case the interpretation of above clause by the learned Arbitrator cannot be said to be impossible. Interpretation of terms of the contract is within the jurisdiction of arbitrator. Therefore, when an arbitrator interpretes the terms in the contract and the court hearing petition under Section 34 finds that the interpretation put on the terms by the arbitrator is a possible interpretation, the findings of the arbitrator cannot be disturbed by the court.

12. The learned Arbitrator has relied on this findings on Issues Nos.5 & 6 to deny a decree of specific performance in favour of the Petitioner. The learned Arbitrator has held that the agreement which was the subject matter of the dispute was an agreement of incorporating a Joint Venture Company and contribution of share capital by a particular date. The learned Arbitrator has held that non-contribution to the share capital by a particular date would make the Joint Venture Company devoid of any substance. The Petitioner by not contributing to the share capital of the Joint Venture Company by a particular date has committed breach of its obligation under the agreement and this dis-entitles it to claim a decree of specific performance. The learned Arbitrator has also recorded a finding that the Petitioner has not been able to prove that it had capacity

at the relevant time to bring in the money it was supposed to bring in under the agreement. In order to establish that it had capacity to bring in the required amount on behalf of the Petitioner reliance was placed on two letters, which are marked as Exh.X-1 and X-2 only for identification on the record of the Arbitrator. Those documents were never marked as Exhibit, because the Petitioner did not make any attempt to prove those documents. The learned Arbitrator, never the less, has considered those documents and has held that "I must observed that the claimant has been very casual in regard to adducing a cogent and adequate evidence to show that in fact monies were available with the claimant or that it had or has capacity for payment of its share capital and in fact has failed to show that the monies were so available. The learned Arbitrator, therefore, recorded a

clear finding that the material available on record does not show that the Petitioner at the relevant time had capacity to bring in the required amount of money. It was contended on behalf of the Petitioner that it was not the case of the Respondent that the Petitioner does not have capacity to bring in the money. In my opinion, in a case where the Petitioner is seeking a decree of specific performance, the burden is on the Petitioner independently of whatever the defence put up by the other side may be to establish that the Petitioner had capacity to bring in the money. Because, the facts relating to its capacity to bring in the money are within the special knowledge of the Petitioner and therefore the burden to establish those facts lies exclusively on the Petitioner, who is seeking the decree of specific performande. When the unperformed part of the agreement is

money to be brought in by the party who is seeking a decree of specific performance, the burden to prove that it had the capacity to bring in the money is always on the person seeking a decree, irrespective of the stand taken by the Respondent except, of course, in a case where the Respondent admits that the claimant had that financial capacity. But even in a case where the other side does not make any comment in that regard, in order to be able to successfully claim the decree, the claimant will have to assert and prove that it had financial capacity to bring in the money. The award shows that the learned Arbitrator has considered the oral and documentary evidence on record in detail to record the finding that the Petitioner has not been able to prove that at the relevant time it had financial capacity to bring in the money.

13. The learned Arbitrator has also recorded a finding that the Petitioner was also not willing to perform its part of the contract. In my opinion, following observations from the award are relevant:

“It is very clear that when Government of Maharashtra dragged its feet to contribute towards the share, the claimant dithered and did not contribute anything. In fact, Mr.Kamath, the sole witness for the claimant stated in paragraph 34 of his cross-examination that it is correct to say that the claimant unilaterally was not ready and willing to pay for and/or to deposit the amount required to be subscribed as equity share capital for the Joint Venture Company.”

14. It is, thus, clear that even according to the sole witness examined on

behalf of the Petitioner because the Respondent was dithering in performing its part of the contract, the Petitioner was not willing to perform its part of the contract. The learned Arbitrator, therefore, has observed that on seeing that the Government is dithering, the Petitioner could have performed its part of the contract and then taken steps to force the Government to perform the Government's part of the contract. In my opinion, there is no room to say that the finding recorded by the learned Arbitrator on the aspect of readiness and willingness is not based on material available on record. It is true that the learned Arbitrator has given one more reason for refusing to pass a decree of specific performance in favour of the Petitioner i.e. it involves performance of continus duty, which the court cannot supervise. But the

learned Arbitrator has held that the main reason why he is not granting a decree of specific performance is failure of the Petitioner to prove its readiness and willingness to perform its part of the contract. As I find that no fault can be found with the finding recorded by the learned Arbitrator that the Petitioner has committed breach of its obligation under Clause 6.2 of the agreement and that it has failed to established that it was ready and willing to perform its part of the agreement, it is not necessary for me to examine in detail this aspect of the matter.

15. As I find that the learned Arbitrator was justified in recording a finding that the claimant/Petitioner has committed a breach of Clause 6.2 of the agreement and it is not entitled to a decree of specific performance,

in my opinion, no fault can be found with the finding of the learned Arbitrator that the Petitioner is also not entitled to decree for damages against the Respondent. I have quoted the provisions of sub-section 1 of Section 20 of the Specific Relief Act above. Which shows that if the discretion of the court in granting or refusing to grant a decree of specific performance is wrongly exercised, it is capable of being corrected by the court of appeal. Independent of my finding recorded above that it cannot be said that the learned Arbitrator has exercised is discretion wrongly, in my opinion, considering the limited jurisdiction that is conferred by Section 34 of the Arbitration Act on Court in setting aside the award, the award of the learned Arbitrator cannot be interfered with. The Supreme Court in its judgment in the case of Mcdermott International Inc. v/s. Burn

Standard Co.Ltd. And ors, (2006) 11 SCC 181, especially in paragraph 52 in relation to the power of the court under Section 34 has observed thus:

> “52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The Court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court’s jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.”

16. After going through the record I find that the award made by the learned Arbitrator is most balance award which takes into consideration every piece of evidence on record, considers every submission in detail

and gives elaborate reasons for each of the finding and therefore, in my opinion, in the limited jurisdiction of this court under Section 34, the award is incapable of being interfered with. Considering the nature of jurisdiction conferred on a court by the Specific Relief Act in granting or refusing to grant a decree of specific performance, considering that that discretion in the present case has been exercised by an arbitrator, who was appointed by consent of parties, considering that the learned Arbitrator has given reasons in detail in support of every finding that he has recorded in the award, considering that in hearing and deciding a petition filed under Section 34 of the Arbitration Act this court does not sit as a court of appeal, in my opinion, the only situation in which this court could have intervened with the exercise of discretion by

the learned Arbitrator in refusing to grant a decree of specific performance in favour of the Petitioner is the court finds that the award of the learned Arbitrator in that regard shocks concious of the court. In so far as the present case is concerned, it is not even the case of the Petitioner that any finding recorded by the learned Arbitrator which is impugned is of such a nature. In the result therefore, the petition fails and is dismissed. No order as to costs.

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