IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 4712 of 2018

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2018
In R/FIRST APPEAL NO. 4712 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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Approved for Reporting	Yes	No

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JITENDRA KALUBAVA CHAVLA (CHAVDA)
Versus
LEGAL MANAGER KOTAK MAHINDRA BANK LIMITED & ANR.

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Appearance:
Mr. Parv Gupta with MR SP MAJMUDAR(3456) for the Appellant(s) No. 1
YAGNESHKUMAR S JOSHI(8074) for the Appellant(s) No. 1
MR PM DAVE(263) for the Defendant(s) No. 2
NOTICE SERVED BY DS for the Defendant(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

Date : 07/03/2025

ORAL JUDGMENT

1. The present appeal is filed at the instance of the original applicant – appellant under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “Act of 1996”) being aggrieved and dissatisfied with the impugned judgment and order dated 18.09.2018 passed by the learned 6th Additional District Judge, Vadodara in Civil Miscellaneous Application No.19 of 2018. By the said impugned judgment and order, the learned Judge has rejected the application

preferred under Section 34 of the Act of 1996 by holding that such application is not maintainable due to lack of jurisdiction. The learned Judge has further clarified that the Court has not entered into any merits and / or de-merits of the case and liberty is reserved to the respective parties to raise their respective contentions before the appropriate forum.

2. In order to appreciate the controversy involved in the present appeal, appropriate would be to consider the facts of the case.

2.1. The appellant herein is a borrower who had availed the loan facility from the respondent bank for the purchase of a Volvo Eicher CB-VE 11.10 Fully Built Truck bearing Registration No.GJ-15- XX-0156 for an amount of Rs.5,37,610/-. The parties have entered into a Vehicle Loan Agreement dated 29.12.2015 in this regard at Vadodara. Initially, the appellant had made regular payment of installment and ultimately did not repay the loan amount which led the respondent bank to issue notice under Section 21 of the Act of 1996 in terms of the loan agreement. As per the respondent bank, the Arbitration was to commence at Chennai to decide the dispute in terms of the loan agreement. On the other hand, the appellant did not deny about availing of and non payment of loan amount, however while responding to the notice, the appellant had pointed out that the vehicle was sold to a third party and they did not consented to the appointment of the Arbitrator. The

arbitration, however, proceeded in terms of the loan agreement entered upon between the parties at Chennai. The learned sole Arbitrator appointed by the Bank issued various communications which were duly served upon the appellant, however the appellant chose not to appear before the Arbitrator in the arbitration proceedings.

2.2. Eventually, the learned Arbitrator proceeded to pass an arbitral award on 25.10.2017 at Chennai. The aforesaid award was served upon the appellant vide communication dated 29.10.2017. The appellant, therefore, approached the Court of learned 6th Additional District Judge by preferring an application under Section 34 of the Act of 1996 challenging the arbitral award dated 25.10.2017. Initially, the notice was issued upon the respondent Bank in the aforesaid proceedings, whereby, the respondent Bank had moved an application questioning the jurisdiction of the learned Judge in entertaining such application preferred under Section 34 of the Act of 1996. The learned Judge upon considering the pleadings of the respective parties and the arbitral award in light of the provisions of Act of 1996 arrived at a conclusion that seat of the Arbitration is at Chennai and therefore, application under Section 34 of the Act of 1996 would not be maintainable in Vadodara for want of territorial jurisdiction. The learned Judge also clarified that the Court has not examined the merits and / or demerits of the case and parties are at liberty to raise contention available in law before the appropriate forum. Being aggrieved and dissatisfied with the aforesaid order passed refusing to entertain the application

under Section 34 of the Act of 1996, lead the appellant – original applicant to approach this Court by way of present appeal under Section 37 of the Act of 1996.

3. Mr. Parv Gupta, learned advocate has appeared with Mr. Yagnesh Joshi, learned advocate for the appellant and Mr. Aditya Dave, learned advocate has appeared on behalf of Mr. P.M. Dave learned advocate for the respondent Bank.

4. Learned advocate for the respondent Bank has raised a preliminary objection with regard to maintainability of the present appeal under Section 37 of the Act of 1996. Alternatively, without prejudice to the argument of maintainability of appeal, learned advocate have addressed this Court on merits of the case, more precisely, on the issue of "seat" of arbitration being in Chennai and therefore, Section 34 petition being rightly not entertained by the Court at Vadodara.

4.1. On the issue of maintainability of the present appeal, learned advocate have drawn my attention to Section 37 of the Arbitration Act of 1996. It is submitted that the appeal under Section 37 of the Act of 1996 is maintainable only from the orders mentioned in Section 37(1) and from no other provisions. The reference was made to Section 37(1)(c) which pertains to order "setting aside or refusing to set aside an arbitral award under section 34". According to learned advocate, the law is well settled in this regard inasmuch as

when a Court refused to entertain an application under Section 34 of the Act of 1996 without entering into merits of the matter solely on the ground of lack of territorial jurisdiction, such order does not amount to "refusing to set aside an order under Section 34". Hence, an order which merely rejects the application for presentation before the appropriate Court on the ground of lack of territorial jurisdiction of this Court, is not appealable under Section 37 of the Act of 1996. The reference was also made to Section 34 of the Act of 1996 much emphasis was made on the phrase "refusing to setting aside the award" as appearing in Section 37(1)(c) will have to be read in conjunction with the phrase "under Section 34". The reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***BGS SGS Soma JV vs. NHPC Limited*** reported in ***(2020) 4 SCC 234***. According to the learned advocate, the Hon'ble Supreme Court was seized of the matter with similar facts raising an issue of maintainability of appeal under Section 37 of the Act of 1996. While referring to the observation of the Hon'ble Supreme Court in para 13, 14, 17 and 20, learned advocate has pointed out that once the application under Section 37 is ordered to be returned to the appropriate Court, the order would not amount to an an order passed under Section 34 of the Act and therefore, the appeal filed in the said case was held to be not maintainable within the purview of Section 37 of the Act of 1996.

4.3. By referring to the decision of the Hon'ble Supreme Court in the case of ***Hindustan Copper Ltd vs. Nicco Copper***

Limited reported in ***(2009) 6 SCC 69***, learned advocate has pointed out that appellant therein had filed application under Section 34 of the Act of 1996 challenging the arbitral award passed by the sole arbitrator. The Court was not persuaded by the submissions made by the learned advocate for the appellant and held that the petition under Section 34 of the Act of 1996 was dismissed on the ground of "maintainability" and not on the ground of refusing to "setting aside the arbitration award".

4.4. Reliance was also placed on the decision of the Division Bench of this Court in the case of ***Union of India vs. Pushkarraj Construction Private Limited*** rendered in ***First Appeal No.4949 of 2022*** wherein in similar circumstances, the learned Principal District Judge had refused to entertain the application on the ground of territorial jurisdiction. In the appeal under Section 37 of the Act of 1996, the issue of maintainability of the appeal was raised. The Hon'ble Division Bench upheld the preliminary objection raised by the respondent company holding that First Appeal was not maintainable under Section 37 of the Act of 1996.

4.5. Learned advocate has further invited my attention to the order passed by the Hon'ble Supreme Court in Special Leave to Appeal preferred against the aforesaid decision of the Hon'ble Division Bench of this Court being ***SLP (Diary) No. 49899 of 2023***, the Hon'ble Supreme Court refused to entertain the appeal by upholding the order of the Division

Bench of this Court by observing that the order does not suffer from any error so as to justify the interference of the Hon'ble Supreme Court under Article 136 of the Constitution of India.

4.6. Lastly, learned advocate has placed reliance upon the decision of the Delhi High Court in the case of ***Raj Kumar Brothers vs. Life Essentials Personal Care Private Limited*** reported in ***2020 SCC Onlime Del 2549,*** wherein the judgment of the Hon'ble Supreme Court in the case of ***BGS SGS Soma JV*** (**supra**) was relied upon. The Court held that when there is no adjudication under Section 34 of the Act of 1996 and petition is simply returned on the ground that Court had no territorial jurisdiction, there is no application of grounds under Section 34 and therefore, the appeal against the said order does not fall within the ambit of Section 37 of the Arbitration Act and was held not maintainable. By referring to the aforesaid legal position, learned advocate has emphasized that this Court has no jurisdiction to entertain the appeal under Section 37 of the Act of 1996 as the impugned judgment does not fall in the category of "refusing to set aside award under Section 34". He has therefore prayed to dismiss the present appeal in limine. Having raised a preliminary objection, learned advocate has sought permission to alternatively address the Court on merits of the case.

5. Mr. Gupta, learned advocate for the appellant has vehemently objected to the aforesaid submissions made by the learned advocate for the respondent. Learned advocate has

drawn my attention to the impugned order and has submitted that ultimately the application under Section 34 of the Act of 1996 challenging the arbitral award has been dismissed and application has not been returned back to be presented before the appropriate forum. According to learned advocate, though in the operative part the learned Judge has clarified that the Court has not gone into the merits and / or demerits of the case and the parties are permitted to raise all contentions as may be available in law before the appropriate forum, the Court has adjudicated on merits of the application under Section 34 of the Act of 1996. While distinguishing judgment in the case of ***BGS SGS Soma JV*** (**supra**), learned advocate has pointed out that it is evident from reading of the para 32 of the aforesaid judgment that the plaint was merely returned under Order VII Rule 10 of the Code of Civil Procedure. According to the learned advocate, return of the plaint gives the party a remedy to approach the appropriate court which has the jurisdiction to entertain the case. There is no adjudication on the petition or application so filed. Thus, the application under Section 34 is still pending to be decided before the appropriate Court and has not attained the finality or disposed of. In such circumstances, the application is to be presented before the appropriate Court having jurisdiction. In such cases the appeal under Section 37 would not be maintainable unless and until there is final disposal of the application under Section 34 of the Act of 1996. The aforesaid distinguishing facts has already been noted by the Hon'ble Supreme Court later on in the case of ***Chintels India Limited vs. Bhayana Builders Private Limited*** reported

(2021) 4 SCC 602. The issue before this Court was whether the learned Judge order in refusing to condone the delay in filing application under Section 34 of the Act is appealable under Section 37(1)(c) of the Act of 1996. The learned Judge had dismissed the application under Section 34 of the Act of 1996 on the ground of limitation by refusing to condone the delay in preferring such application within prescribed time period on passing of the arbitral award. The said order was challenged before the Appellate Court under Section 37 of the Act of 1996. The Hon'ble Supreme Court held that the order refusing to condone the delay in filing application under Section 34 has effect of finally disposing of the original petition, such order can therefore, be treated as an award and hence it is appealable however, the Court under Section 34 of the Act did not adjudicate upon the ground enumerated under Section 34 of the Act of 1996. Ultimately, the Court under Section 37 of the Act of 1996 held that order of dismissal on the basis of limitation is not maintainable under Section 37 of the Act of 1996. The Hon'ble Supreme Court however held that the Court under Section 37 of the Act ought to have entertained the appeal against an order on an application under Section 34 as dismissing the petition under Section 34 of the Act amounts to disposing of the petition and hence it is appealable in nature. The attention of this Court was also invited to the judgment of the Hon'ble Division Bench of this Court in the case of ***Uttar Gujarat Vij Company Limited vs. Gupta Power Infrastructure Limited*** reported in ***2024 SCC Online 4280.*** It was a case where the appeal under Section 37 of the Act was filed against an order of Mehsana

Court under Section 34 of the Act. The application preferred under Section 34 of the Act was disposed of to be filed before the appropriate Court having jurisdiction. Against the aforesaid final order passed by the Mehsana Court under Section 34, a statutory appeal under Section 37 of the Act of 1996 was availed. It was argued that the application before the Mehsana Court had attained finality. The Hon'ble Division Bench while entertaining the appeal under Section 37 of the Act of 1996 and setting aside the order of Mehsana Court under Section 34 of the Act of 1996, after considering the judgment of the Hon'ble Supreme Court in the case of ***BGS SGS Soma JV*** (**supra**), by drawing distinction held that any order of refusal to set aside an arbitral award under Section 34 on any ground, will give rise to a remedy of appeal under Section 37, to the Court authorized by law to hear the appeals from the original decree of the Court. The reliance was placed on the decision of the Hon'ble Allahabad High Court in the case of ***U.P. Co-Operative Sugar Factories vs P.S. Misra And Anr.*** reported in ***2002 SCC Online ALL 1095: AIR 2003 ALL 123.*** The appeal was filed under Section 37 of the Act of 1996, examining the order passed by the Court below on an application under Section 34, whereby the court has erroneously rejected the application for lack of jurisdiction. The Court observed that Section 37 does not clarify anywhere that if an application under Section 34 is rejected on merits alone only then the appeal would lie. While distinguishing the case of ***BGS SGS Soma JV*** (**supra**), learned advocate has submitted that in fact, in the present case the order does not mention that the plaint is returned and it is to be filed before

the appropriate Court. Thus, according to learned advocate, application under Section 34 in the present case has been disposed of and has attained finality, whereas, in the ***BGS SGS Soma's*** case before the Hon'ble Supreme Court, the application under Section 34 was not decided or attained finality. It is in this background of facts, the Court had arrived at a conclusion that the appeal under Section 37 of the Act of 1996 was not maintainable. The attention of this Court was invited to the relevant observations in this regard. Having addressed the Court on the issue of maintainability of the present appeal, the learned advocate has drawn my attention to the merits of the case.

6. During the course of hearing, this Court has directed the learned advocate for the respondent bank to produce on record the copy of loan agreement, the copy of loan agreement was produced and was also served upon the learned advocate for the appellant. Learned advocate for the appellant has placed heavy reliance upon the relevant clause of the loan agreement which according to him precisely defines the place of arbitration proceedings i.e. *venue* of arbitration proceedings, and the Court to have exclusive jurisdiction i.e. *seat* for undertaking arbitration proceedings. While referring to the clause 11.16 of the loan agreement, learned advocate has submitted that it confers the venue of the arbitration i.e. the location where the arbitration can be held as convenient to the respondent. While referring clause 11.17 of the Arbitration Agreement, learned advocate submitted that it denotes "*seat*" of arbitrator and this would

confer jurisdiction in the Courts where agreement was executed. He has therefore submitted that once the jurisdiction in the nature of *seat* of arbitration has been decided by both the parties, and conferred to the courts of a particular state, the courts of that State shall have exclusive jurisdiction to decide all proceedings arising out of said arbitration. In the present case, admittedly, the agreement was executed in Vadodara and therefore, the courts in Vadodara had the jurisdiction to entertain the application under Section 34 of the Act of 1996.

7. *Per contra*, Mr. Aditya Dave, learned advocate for the respondent has also relied upon the aforesaid clause 11.16 and clause 11.17 to point out that clause 11.16 pertains to the Arbitration clause, whereas clause 11.17 is a secondary and residuary clause and can be resorted to only in the conditions where clause 11.16 would not be applicable. He has objected to the submission of the appellant that Chennai is not merely the *venue*, but the *seat* of the Arbitration. In this regard, learned advocate have placed reliance upon the various decisions of the Hon'ble Supreme Court. Referring to the case of ***BGS SGS Soma JV*** (**supra**), learned advocate has pointed out that in the aforesaid matter, the proceedings as per the arbitration agreement were to be conducted at New Delhi/Faridabad. The arbitration proceedings were, in fact, held at New Delhi where 71 sittings took place, and the award was rendered at New Delhi. The petition under section 34 of the Act came to be filed at Faridabad wherein the respondent thereto filed an application seeking the return of the petition

to the appropriate Court at New Delhi. The aforesaid order was the subject matter of challenge in appeal under Section 37 of the Act before the High Court of Punjab and Haryana which delivered the judgment under challenge and held that the Petition under section 34 of the Act was maintainable at Faridabad and Delhi was only a convenient venue where arbitral proceedings were held, not the *seat*. The High Court therefore, held that Faridabad Court would have jurisdiction on the basis of the cause of action having arisen in part in Faridabad. It was in context of the issue of jurisdiction of Courts and the choice of seat arose before the Supreme Court. In the background of the aforesaid facts, learned advocate has placed reliance upon the relevant observations of the Hon'ble Supreme Court as recorded in para 48, 49 and 82. By referring to the aforesaid observations, learned advocate has submitted that the very fact that arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. Therefore, the learned advocate has submitted that looking at the language of the present arbitration agreement where similar clauses have been incorporated, Chennai is in fact the seat of the present Arbitration. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of ***Indus Mobile Distribution P Ltd. v. Datawind Innovation, (2017) 7 SCC 678***, more particularly, has observed in para 19 and 20, whereby, the Hon'ble Supreme Court held that unlike the Code of Civil Procedure which applies to suits filed in Courts,

a reference to "*seat*" is a concept by which a neutral venue can be chosen by the parties. The moment "*seat*" is determined, the fact that the seat is at Mumbai would vest Mumbai Courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties. Reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of ***Hindustan Construction Company v. NHPC Limited and Anr*** reported in ***(2020) 4 SCC 310,*** more particularly, observation of the Hon'ble Supreme Court on the issue of jurisdiction over the arbitral process as recorded in para 4 to 6. Learned advocate has therefore, submitted that Chennai is the seat of the Arbitration and place where the Award has been passed, therefore, only the Courts of Chennai shall have exclusive jurisdiction over the Arbitral process.

8. I have heard the learned advocates for the respective parties extensively on the issue of maintainability of the appeal under Section 37 of the Act of 1996 as well as the application under Section 34 of the Act of 1996 before the Court challenging the arbitral award in light of the various authorities relied upon, two issues arise for consideration of this Court in the present appeal.

(1). Whether the order passed by the "Court" refusing to entertain the application under Section 34 of the Act of 1996 seeking setting aside of an arbitral award solely on the ground of territorial jurisdiction of the Court is appealable to this Court under Section 37 of the Act of 1996, in the facts of the

case?

(2). The second interesting question of law which arises for consideration in the present appeal is as to whether, when the *venue* of the arbitration is choose by one party out of multiple *venues* in terms of arbitration agreement for "arbitral proceedings", will it designate to be the "*seat*" for the arbitral proceedings as well, in the facts of the case ?

9. Before entering into the aforesaid issue, it would be appropriate to reproduce the relevant clause of Arbitration Agreement cum Loan Agreement which is produced for the first time before this Court in the present proceedings. Clause 11.16 and 11.17 of the Loan Agreement reads thus:

> "***11.16.*** *Unless the same falls within the jurisdiction of the Debts Recovery Tribunal established under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, any and all claims, disputes arising out or in connection with this Agreement or its performance shall be settled by arbitration by a single Arbitrator to be appointed by the bank. The arbitration shall be held, either in Delhi, Chennai, Kolkata, Ahmedabad, Indore, Bengaluru or Hyderabad at the sole and absolute discretion of the Bank.*
>
> ***11.17****. In the event that the claim or dispute does not fall within the jurisdiction of the Debts Recovery Tribunal established under the Recovery of Debts to banks and financial institutions act, 1993 for the purposes of arbitration mentioned in clause [11.11.2], subject to the provisions of any law for the time being in force in India, the Courts in the state where the Agreement is executed shall have exclusive jurisdiction in relation to this agreement, the arbitration and all matters arising in connection herewith and therewith."*

Issue No.1:

10. In order to appreciate the issue of maintainability of the present appeal by invoking jurisdiction conferred under Section 37 of the Act of 1996, it would be proper to look into the relevant provisions of the Act of 1996. Section 34 which falls under Chapter VII of part I of the Act of 1996 provides recourse against the arbitral award by preferring application for setting aside the arbitral award. Section 34 reads as under:

> "***Section 34: Application for setting aside arbitral award***.—*(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*
>
> *(2) An arbitral award may be set aside by the Court only if— 22 (a) the party making the application 1 [establishes on the basis of the record of the arbitral tribunal that]—*
> *(i) a party was under some incapacity, or*
> *(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*
> *(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
> *(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or*
> *(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the*

agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or
(b) the Court finds that—
(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,— (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
(ii) it is in contravention with the fundamental policy of Indian law; or
(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within

a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party."

10.1. Plain reading of Section 34 indicates that appropriate application is required to be made to a "Court" against the arbitral award seeking setting aside of such award, which is provided under sub-section (2) of Section 34. The term Court has been defined under Section 2(e) of the Act of 1996. Section 2(e) read thus:

*"**Section 2(e):** "Court" means— (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small*

Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;"

10.2. Conjoint reading of Section 34 with Section 2(e)(I) of the Act of 1996 provides that such application seeking setting aside of the arbitral award is to be made to the Principal Civil Court of original jurisdiction in a District, which includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration.

10.3 Looking at the controversy raised, it would also be relevant to look into section 20 of the Act of 1996, which reads as under :

"20. Place of arbitration.

(1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of

documents, goods or other property."

The plain reading of Section 20 of the Act of 1996 provides a 'place of arbitration' as may be agreed between the parties. Sub-section (2) of Section 20 makes provision that on failure of any agreement with regard to place of arbitration then the place of arbitration shall be determined by the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties. Sub-section (3) further provides that the arbitral tribunal notwithstanding sub-section (1) or sub-section (2), may meet at any place it considers appropriate for consultation.

The aforesaid provisions have been subject matter of interpretation by courts wherein the concept of seat of arbitration and venue of arbitration has been examined and defined in the facts of the case.

At this stage, equally significant would be to look at Section 42 of the Act of 1996, which defines "jurisdiction". Section 42, thus read as under:

> "***Section 42:*** *Jurisdiction.—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.*

> *42A. Confidentiality of information.— Notwithstanding anything contained by any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentially of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award.*
>
> *42B. Protection of action taken in good faith.—No suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder."*

10.3. Thus, the conjoint reading of Section 34 read with Section 2(e) and Section 42 of the Act of 1996 clearly goes to suggest that notwithstanding anything contained elsewhere in the first part of Act of 1996 or any other laws for the time being force where with respect to arbitration agreement any application under this part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent application arising out of that agreement and arbitral proceedings shall be made in that Court and in no other Court. The Bombay High Court in the case of ***United India Insurance Company Limited vs. Eastern Bulk Company Limited, 2019 SCC Online Bom 1404*** has held that the concept of seat of arbitration with the venue of arbitration cannot be mixed up. Learned arbitrator fixing the venue only for the purpose of conducting some of the arbitral proceedings could not be considered as seat of arbitration for the purpose of conferring jurisdiction on the Courts. There cannot be two or more seats of arbitration

whereas the venue of arbitration may be more than one and may be fixed by the parties as well as the learned arbitrator considering the convenience of the learned arbitrator and the parties. The venue decided by the learned arbitrator to suit his convenience or convenience of the parties for the purpose of hearing of the arbitration proceedings cannot confer the supervisory jurisdiction of such Court within whose territorial jurisdiction such arbitral tribunal were held at the venue decided under section 20(3) of the Act of 1996.

11. Applying the aforesaid legal provision in the facts of the present case and submissions made by the learned advocates for the respective parties, it would be relevant to look into the findings and reasons assigned by the learned Judge so as to ascertain as to whether the learned Judge has adjudicated on the application under Section 34 of the Act of 1996 or has simply disposed of the application on the ground of territorial jurisdiction without any adjudication on the controversy raised.

12. Learned Judge has taken into consideration the documents produced on record at mark 4/5 to 4/15 and has arrived at a finding that it is an undisputed fact that jurisdiction for the purpose of any dispute attracting the proceedings under Arbitration Act was decided to be Chennai only. The learned Judge has further noted that though neither of the parties has produced loan agreement but from appreciating pleadings and the impugned award itself it is clear that the *venue* of arbitration was decided to be Chennai.

Having noted so, learned Judge has arrived at a conclusion that the issue is covered by the decision of the Hon'ble Supreme Court in the case of ***Indus Mobile Distribution Pvt. Ltd*** **(supra)** and has therefore held that application under Section 34 of the Act of 1996 was not maintainable due to lack of jurisdiction before the Court at Vadodara, as the *seat* or *venue* of arbitration is Chennai. Resultantly, the Court has rejected the application under Section 34 of the Act of 1996 on the ground of lack of jurisdiction by further clarifying that the Court has not examined the merits of the case. Considering the aforesaid findings and reasons assigned by the learned Judge, this Court is of the view that while dealing with the issue of territorial jurisdiction, the Court has touched the merits of the case. Indisputably, the core contention on the basis of which the challenge was made by the appellant herein in the application under Section 34 of the Act while challenging the arbitration award was on the ground that the arbitrator at Chennai had no jurisdiction to pass an arbitral award. In the opinion of this Court, by adjudication of the core issue though the Court has refused to entertain the application on the ground of territorial jurisdiction, has also opined on the "refusal to set aside the arbitral award" on the ground that arbitral procedure was not in accordance with the agreement of the parties which is one of the eventualities provided under Section 34(2)(a)(v) of the Act of 1996 wherein the Court can set aside the arbitral award.

13. The judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the respondent in the case of ***BGS***

SGS Soma JV (**supra**) undoubtedly taking into consideration the provisions of Section 37 itself, sub-section (1) clearly spells out the orders set out in sub clause 5 (a)(b)(c) whereas appeal can lie and no other orders are held subject to appeal under Section 37. However, as rightly pointed out by learned advocate for the appellant the application was moved under Order VII Rule 10 of the Code, whereby, plaint was returned back to the party to approach the appropriate Court which has jurisdiction to entertain the case. Thus, there was no adjudication on the petition or application preferred under Section 34 of the Act and the matter was therefore, treated as pending at the stage of Section 34 to be presented before the appropriate Court having jurisdiction. Whereas, in the facts of the present case, indisputably the application under Section 34 has been rejected though the Court has observed that the parties are at liberty to apply before the Court having jurisdiction to entertain such application under Section 34 with further liberty to raise all the contentions as may be available in eye of law, has disposed of application under Section 34 of the Act of 1996 itself, more particularly, when the Court has prima facie appreciated the pleadings and the documents placed on record in light of arbitral award to arrive at a conclusion that the *seat* of arbitration proceedings as agreed between the parties was Chennai. On the contrary, looking at the terms incorporated in clause 11.16 and clause 11.17 of the Loan Agreement / Arbitration Agreement clearly goes to suggest that the Courts in the State where the agreement is executed were conferred with the exclusive jurisdiction to deal with the matters arising out of arbitration

which includes the challenge to the arbitral award as well. As regards the judgment relied upon by the learned advocate for the respondent in the case of ***Pushkarraj Construction Private Limited*** **(supra)** is concerned, in the opinion of this Court, the Hon'ble Division Bench while accepting the preliminary objection of maintainability of appeal under Section 37 of the Act of 1996 against order passed by the learned Judge while refusing to entertain the application under Section 34 of the Act of 1996 on the ground of territorial jurisdiction, had observed that counsel for the appellant union was unable to demonstrate that the order under challenge fall under the provision of Section 37 of the Act of 1996. It is in light of the aforesaid fact, the Division Bench had come to the conclusion that there was no order passed under Section 34 of the Act of 1996 refusing to set aside the arbitral award which ultimately came to be approved by the Hon'ble Supreme Court. Whereas, in the facts of the present case, for the reasons recorded earlier while examining the issue of territorial jurisdiction, the learned Judge has taken into consideration the pleadings and the documents produced on record in light of the arbitral award to arrive at a finding that parties to the arbitration agreement had agreed Chennai to be the *seat* of arbitration proceedings. Having noted so, learned Judge has further arrived at a conclusion that in such circumstances the challenge to the arbitral award under Section 34 of the Act would lie before the Court having supervisory jurisdiction for the seat and has, therefore, refused to entertain the application under Section 34 of the Act of 1996, which in the

opinion of this Court, amounts to refusing to set aside the arbitral award in terms of sub-section (2) of Section 34 of the Act of 1996. Hence, the provision clause (c) of sub-section (1) of Section 37 would be attracted in the facts of the case. I therefore, hold that present appeal is maintainable under Section 37 of the Act of 1996 before this Court. Preliminary objection raised by the respondent is hereby not entertained.

14. This brings me to the second issue which relates to the merits of the case. The bare reading of clause 11.16 and 11.17 of the loan agreement clearly stipulates that any and all claims and disputes arising out of or in connection with the agreement or its performance are to be settled by arbitration through the single arbitrator appointed by the bank. The close reading of clause 11.16 clearly suggests multiple venues for arbitration which can be either in Delhi, Chennai, Kolkata, Ahmedabad, Indore, Bengaluru or Hyderabad at the sole and absolute discretion of the Bank. However, clause 11.17 clearly provides that the “Court in the State where the arbitration agreement is executed shall have the exclusive jurisdiction over the subject matter of arbitration i.e. in relation to the agreement, arbitration and all matters in connection therewith. Thus, in the opinion of this Court contrary *indicia* has been expressed by the parties by a designated Court other than “place” of arbitral proceedings i.e. “*venue*”. The very expression of the contract “Court” appearing in clause 11.17 being conferred with “exclusive jurisdiction” in connection with the arbitration and all matters in connection therewith, indicates intention of the

parties to treat the Court in the State where the agreement is executed to have exclusive jurisdiction with the arbitration. In other words, the "*seat*" has been designated in the facts of the present case. In light of the aforesaid circumstances prevailing on record, the judgment of the Hon'ble Supreme Court in the case of ***Indus Mobile Distribution P Ltd* (supra)** as relied upon by the learned Judge as well as by the learned advocate for the respondent would not be applicable. The close reading of the facts of the aforesaid decision clearly indicates that the *seat* of arbitration was designated at Mumbai and Clause 19 of the Arbitration agreement clearly indicates that the jurisdiction was exclusively vested in the Mumbai Courts. It is in light of the aforesaid facts, the Hon'ble Supreme Court held that once *seat* of arbitration has been fixed, it would be in the nature of exclusive jurisdiction clause as to the courts which exercise supervisory powers over the arbitration. The moment the *seat* is designated it is akin to an exclusive jurisdiction clause which oust jurisdiction the rest of the Courts. In fact the aforesaid judgment supports the contention of the appellant, more particularly, in light of the clause 11.17 where expressive language of the aforesaid clause clearly indicates that the courts of the State where the agreement was executed are to be treated as a Courts having a exclusive jurisdiction over the arbitration proceedings. Applying the aforesaid principle, in the facts of the case, reading of clause 11.16 with clause 11.17 clearly suggest that the agreement being executed at Vadodara, the Court at Vadodara have to exclusive jurisdiction over the arbitration proceedings and also the Court which exercises the

supervisory powers over the arbitration proceedings, including this Court. The aforesaid principle has been broadly discussed by the three Judges Bench of the Hon'ble Supreme Court in the case of ***BGS SGS Soma JV*** (**supra**) while following the judgment rendered by five Judges Bench in the case of ***BALCO*** reported in ***(2012) 9 SCC 552,*** the Hon'ble Supreme Court after succinctly analyzing Sections 2(2), 2(1)(e) & (f), 2(5) and (7), 20 and 41 and part I and Part II of the Arbitration Act, 1996 held that the harmonious interpretation of the aforesaid provisions determines the jurisdictional or legal seat of arbitration as being the exclusive criteria for determining which Courts will have jurisdiction over the arbitration as oppose to the place where whole or part of the cause of action arise.

15. For the foregoing reasons, the impugned judgment and order dated 18.09.2018 passed by the learned 6th Additional District Judge, Vadodara in Civil Miscellaneous Application No.19 of 2018 is hereby quashed and set aside and the matter is remanded back to the concerned Court to adjudicate the case on merits. The respective parties are at liberty to produce on record the relevant documents. All rights and contentions available in law are permitted to be raised in the proceedings before the Court at Vadodara.

With these observations, present First Appeal stands allowed. In view of disposal of the First Appeal, connected Civil Application also stands disposed of.

16. After the pronouncement of the order, learned advocate

appearing on behalf of the respondent prays for stay of the order pronounced to approach in appeal in higher forum.

17. Mr. Gupta, learned advocate for the appellant objects to the aforesaid prayer. Learned advocate has pointed out that original application was not entertained by the learned Judge on the issue of territorial jurisdiction of the Court to entertain such application preferred under Section 34 of the Act of 1996. He has therefore urged not to accept the prayer of stay against the order pronounced.

18. Considering the fact that the original proceedings are directed to be restored to its original file and the learned Judge is directed to proceed with the hearing of the application on merits, the order pronounced today is stayed for a period of four weeks from today.

sd/-

(NISHA M. THAKORE,J)

RATHOD KAUSHIKSINH