SHAGUFTA QUTBUDDIN PATHAN
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO.477 OF 2024

WIB Hospitality Pvt. Ltd.
A company registered under Indian
Companies Act, 1956
Office at 405B, Pinnacle Business Tower,
Shooting Range Road, Suraj Kund, Faridabad,
Haryana-121009.
Through Director of company
Mr. Durgesh Kumar Gupta
S/o Late Sh. Rajendra Kumar Gupta
E-mail-legitsolution@gmail.com.
delhiacc@franchiseindia.com
Ph.no. +91-93125 51687

...Petitioner/
Org. Respondent

Versus

1. Mr. Manoj Kumar Kalayandas Daswani
   Residing at: B/703, Royal Paradise,
   Opp. Mayflower, Near Raj Mandir Plaza,
   Vesu, Surat city, Surat, Gujarat-395007
   E-mail-manojdaswani68@gmail.com

2. Mr. Jitendra Kalyaandas Daswani
   Residing At B/803, Royal Paradise,
   Opp. May Flower, Near Raj Mandir Plaza,
   Vesu, Surat City, Surat, Gujarat- 395007
   E-Mail-jeetkalyan@Gmail.Com

3. Mr. Bhavisha Manoj Kumar Daswani
   Residing at B/703, Royal Paradise,
   Opp. Mayflower, Near Raj Mandir Plaza,
   Vesu, Surat city, Surat, Gujarat- 395007

4. Mr. Vrinda Jitendra Daswani
   Residing at B/703, Royal Paradise,
   Opp. Mayflower, Near Raj Mandir Plaza,
   Vesu, Suratcity, Surat, Gujarat-395007

...Respondents/
Org. Claimants

Mr. Ramesh Mishra for the Petitioner

Mr. Manoj Khatri a/w Ms. Kavya Banerjee for the Respondents

CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : JULY 22, 2026

PRONOUNCED ON : AUGUST 27, 2026

JUDGMENT :

1. By the present Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, **"the Arbitration Act"**), the challenge is to the impugned Award dated 23rd January 2024 passed by the learned Sole Arbitrator awarding a sum of Rs.70,50,000/- along with interest @ 12% per annum from the date of filing of the Statement of Claim till the date of payment or realization.

2. For the sake of clarity, the parties are referred to as per their status in the arbitration proceedings.

3. The arbitration proceedings were invoked under the arbitration clause contained in the Franchise Agreement dated 21st October, 2019 for settlement of disputes arising out the franchise agreement. The Respondent under the brand name "Cafe Ritazza" appointed the Claimants as franchisee of the Respondent through Franchisee Invested and Master Franchisee Operated **(`FICO')** model, under which the Claimants were responsible for the investment for the purpose of

the business. The term of the franchise agreement was from 21st October 2019 to 21st October 2024, and under the FICO model, the Claimant invested an amount of Rs.82,50,000/- which included payments in favour of the Respondent as Master Franchisee, which was duly acknowledged in the Franchise Agreement executed between the parties. The total amount of Rs 82,50,000/- invested by the Claimants was to be recovered under the Minimum Guarantee clause as per Clause III (3) of the Franchise Agreement in phased manner with 20% to be recovered at the end of first year, 30% at the end of second year and 50% at the end of third year. Under the franchise agreement, it was further agreed that the Respondent was to run the business and share the profits with the Claimant from the net sales through the franchisee business of the outlet at a certain percentage. The Respondent renovated the Cafe and inaugurated it on 2nd March, 2020.

4. Due to the COVID-19 pandemic, the entire country was under lock-down which continued till June 2020, and the Respondent failed to restart the Cafe after the lock-down. The Respondent also failed to make the payment as agreed under the Franchise Agreement and alleging breach, the arbitration was invoked for recovery of the amount which was invested by the Claimants.

5. The Statement of Defense admitted the execution of franchise

agreement dated 21st October 2019, and payment of Rs.82,50,000/- as investment in lieu of agreed revenue and payment of periodic revenue as minimum guarantee. It was claimed that the Respondent had invested about Rs.50,00,000/- in the infrastructure and substantial part of the Claimant's investment had been utilized in the outlet. Due to COVID-19 lock-down, the operation of outlet had to be stopped, which was covered under the Force Majeure clause. After partial lifting of the lock-down, there was a discussion between the parties to convert the present FICO model to Franchise Owned and Franchise Operated **(`FOFO')** model, in the month of September 2020. As per the preliminary negotiation, the settlement amount of Rs.5,00,000/- was fixed for takeover of the franchisee outlet to be run by the Claimants under the FOFO model, which amount came to be revised to Rs 7,00,000/- and thereafter to Rs 12,00,000/-. Letter of Undertaking **(`LOU')** dated 27th September 2020 was executed by the Claimants agreeing to take over the franchisee outlet as per the terms and conditions stipulated in the said LOU on payment of Rs.12,00,000/-, which was duly paid. The Claimants did not execute the Novation Agreement despite receiving the said amount. It was contended that in view of the settlement between the parties, the Franchise Agreement dated 21st October 2019 stands cancelled, regardless of the non-signing of the Novation Agreement by the Claimant. It was claimed

that the franchisee outlet was taken over and was being operated by the Claimant till date, and thus all revenue are accounted for in their exclusive account since the takeover.

6. The Learned Arbitrator framed the following points of difference:

> "1. Whether the Claimants prove that they are entitled for an award for a claim under the Franchise Agreement of Rs 82,50,000.00?
>
> 2. Whether the Respondent proves that Claimants have agreed to execute the Novation agreement?
>
> 3. Whether the Respondent proves that the Letter of Understanding signed by the parties extended beyond the period of Three (3) Months as mentioned in Clause (G) of the said letter?
>
> 4. Whether the Respondent proves that the Claimants are estopped in law from claiming any reliefs from it?
>
> 5. Whether the Claimants are entitled to claim any interest on their claim?
>
> 6. What Award?"

7. The Learned Arbitrator answered Issue No 2, 3 and 4 against the Respondent. The Issue No 1 was partly answered in the affirmative and the Learned Arbitrator held that the Claimants were entitled for an award for a claim of Rs 82,50,000/- less the sum of Rs 12,00,000/- paid by the Respondent to Claimants. The Issue No 5 on interest was answered in favour of Claimants granting interest @ 12% p.a. from date of filing of claim till payment or realisation.

8. The parties have submitted written arguments instead of oral submissions. The contention of the Petitioner is that the impugned

Award is patently illegal as the franchise outlet was operated under the changed FOFO model under the LOU beyond the period stipulated in the LOU. It is contended that regardless of non execution of novation agreement, the same was acted upon by the parties and the patent illegality arises from ignorance of the enforcement of the subsequent agreement.

9. It is contended that the Claimants have received the amount agreed in the LOU and have enjoyed the well furnished franchise outlet on FOFO basis, which events were totally ignored by the Arbitrator. The conduct of the parties would indicate that they acted upon the novation agreement, and by reason thereof, the Franchise Agreement stood novated, and the relief could not have been granted.

10. It is contended that the Arbitral Tribunal failed to consider the suppression of execution of the LOU dated 27th September 2020, the emails dated 3rd October 2020 regarding receipts for the conversion of the franchise from FICO to FOFO, the operation of the fully furnished franchisee outlet by the Claimants, and the advertisement for promotion of the fully furnished outlet under the subsequent agreement, i.e., the novation agreement. It is contended that the learned Arbitrator has ignored the admissions in cross examination of Claimants that the LOU was executed with intention to executed

novation agreement, that the Claimants had operated the cafe after expiry of LOU under the novation agreement and that sum of Rs.12,00,000/- was received by the Claimants.

11. It is contended that the learned Arbitrator has erroneously considered the payment of Rs 12,00,000/- as payment towards rent for the full year from January, 2020 to December, 2020 and failed to consider the status of functioning of Cafe after expiry of LOU. It is contended that the learned Arbitrator has travelled beyond the scope of arbitration by presuming that the deposition of Claimants that the novation agreement was to be executed after receipt of full payment refers to the payment pertaining to franchise agreement and not payment pertaining to the LOU. In support, the following decisions are tendered:

(i) Pure Helium India Pvt. Ltd. v. Oil and Natural Gas Commission[1]

(ii) Govind Rubber Ltd. v. Louids Dreyfus Commodities Asia P. Ltd.[2]

(iii) Alka Bose v. Parmatma Devi & Ors.[3]

(iv) Prestige Lights Ltd. v. State Bank of India[4]

1 Civil Appeal No.6478/2001 Decided on 09.10.2003 (SC)
2 Civil Appeal No.11438/2014 Decided on 16.12.2014 (SC)
3 Civil Appeal No. 6197 of 2000 Decided on 17.12.2008 (SC)
4 (2007) 8 SCC 449

12. *Per contra,* the contention of Claimants is that Section 62 of the Indian Contract Act provides that novation requires mutual consent and a concluded new contract. It is contended that in the present case, the LOU was limited to three months and specifically provided that it was for the purpose of continuing business operations temporarily and considering to change the franchise model under which the business was functioning. There was no new contract was executed or signed, nor was there any fresh consideration or mutual consent to extinguish the original Franchise Agreement, and the sum of Rs.12,00,000/- was paid for rent, salaries, and operational expenses, and it was agreed that the full and final payment would be as per the main agreement. The LOU itself uses the expression that the parties "may consider" entering into an alternate agreement, which disproves any binding intent.

13. The learned Arbitrator, after examining the oral and documentary evidence, has concluded that the Petitioners' plea of novation was unsupported by evidence and the conduct of the parties demonstrated continued reliance on the original Franchise Agreement and the LOU was merely temporary and could not extinguish pre-existing rights and liabilities. It is contended that the LOU was neither a novation nor an alternate contract, which has been rightly considered by the learned Arbitrator, and as the findings are evidence-based and

plausible, there is no patent illegality warranting interference under Section 34 of the Arbitration Act. In support, the following decisions are tendered:

i. Prakash Atlanta (JV) v. National Highways Authority of India[5]

14. I have considered the submissions canvassed by the learned counsel appearing for the parties. I have gone through the findings recorded by the Arbitral Tribunal in the impugned Award and have also perused the documents filed along with the Petition.

15. The dispute between the parties arose out the franchise agreement dated 22nd October, 2019. Under the agreement, the Claimant was appointed as Franchisee though FICO model, which was franchisee invested and master franchisee operated. As the term itself suggests, the investment was to be made by the franchisee and the operation of the Cafe was by the master franchisee. Clause III of the agreement provides that the Claimants has paid to the Respondent a sum of Rs 82,50,000/. Clause III(2) provides that the revenue sharing of net sales shall be 12% for the first year to 3rd year and10% for the 4th and 5th year. Clause III(3) provides for minimum guarantee and that the Respondent shall pay minimum guarantee as per the below schedule:

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Term	Minimum Guarantee
At the end of 1st Year	20% of the Investment Amount (i.e. Rs 16,50,000/-)
At the end of 2nd Year	30% of the Investment Amount (i.e. Rs 24,75,000/-)
At the end of 3rd Year	50% of the Investment Amount (i.e. Rs 41,25,000/-)

16. Clause IV dealing with obligation of Claimant provided for ensuring free from encumbrance investment and not to interfere with the operational and administrational activities. Clause V dealing with the Respondent's obligations provided as under:

> "V. COMPANY'S OBLIGATIONS:
>
> 1. The Master Franchisee shall be liable to set up and start the commencement of the business from the commencement date.
>
> 2. The Master Franchisee shall undertake to conclude the operational activities, including the associated cost for the purpose of business.
>
> 3. The Master Franchisee shall employ the manpower required for functioning of the franchise business at the outlet.
>
> 4. The Master Franchisee shall be liable for the monthly rental charges and also for any outstanding payments related to the premises to be used for the outlet.
>
> 5. The Master Franchisee shall make requisite payments after 30 days of signing present agreement to the franchisee as agreed in the agreement.
>
> 6. The Master Franchisee shall appoint vendors for the interior design of the outlet and shall bear all the cost attached to it.
>
> 7. The Master Franchisee shall be liable to purchase the equipment or investment done from the investment amount.
>
> 8. The Master Franchisee shall be liable to provide a summarised gross sales report by 15th of every month and a detailed sales report to the franchisee on or before 5th of each subsequent month. Further, the master franchisee shall be liable to pay any recurring dues to the franchisee."

17. Clause VI dealing with the term and termination provides that upon early termination, the payment of minimum guarantee will be

secured to the franchisee for remaining period of the term.

18. The terms of the Franchise agreement guaranteed the return of the entire invested amount of Rs 82,50,000/- in a phased manner alongwith a share in the net sales, which guarantee extended even post termination. As per the agreement, the obligation of Claimants was of investment and the operational costs including the manpower employed and monthly rental charges and any outstanding payments related to the premises to be used for the outlet and the operation of the Cafe was the obligation of the Respondent.

19. The Letter of Understanding dated 27th September, 2020 makes a reference to the Franchise Agreement and the invested amount. Clause B provides for payment of Rs 12,00,000/ by the Respondent to the Claimants in a phased manner from 14th September, 2020 till 31st December, 2020. Clause C records the undertaking of Respondent of the responsibility of support of staff, training and all other responsibilities except salaries to staff, which is to be paid by the Claimants till month of 31st December, 2020. It further records the agreement that upon non fulfillment of payment terms as mentioned in the main agreement dated 21st October, 2019, all rights in the movable and immovables of the Cafe will vest in the Claimants, who shall be at liberty to run the business without sharing profits with the

Respondent and Respondent shall have no profits from income generated by the Claimants w.e.f 1st November, 2020 until dues as per main agreement are paid.

20. Clause D provides that the obligation of payment of rent for the period from 1st October, 2020 to 31st December, 2020, is upon the Claimants, with the other obligations being the responsibility of the Respondent. Clause E provides that Respondent shall have no role in profits as salaries and rent for period of 3 months i.e. October, November and December, 2020 shall be paid by Claimants. Clause F provides that upon receiving payment under Clause B of the LOU, the Claimants may consider signing an alternate agreement which shall release the Respondent from the obligations of rent to property owner, salaries to staff and shall be against the income of Cafe to be in full for the Claimants.

21. Clause G provides that once the above stated amounts have been paid to the Claimants, the Respondent shall not be liable for rents towards the property for the full year of 2020. Signing of alternate agreement can be considered against receipt of Rs 5,00,000/ in month of September, 2020. In the event of dishonour of the post dated cheques, all monies to stand forfeited and even the responsibility of rent for the year 2020 shall be the responsibility of Respondent.

22. Based on the execution of LOU, the defence of Respondent is that once the payment of Rs 12,00,000/ has been admitted to have been received, there was novation of the agreement, resulting in discharge of the obligations of return of investment under the franchise agreement. A specific Issue No 2 was framed by the Learned Arbitrator as regards novation of the contract, which has been answered in the negative.

23. The findings of the Learned Arbitrator are in effect findings of fact on the aspect of novation of contract, which cannot be re-appreciated in Section 34 jurisdiction. As the contention is that relevant evidence has been ignored, this Court has minutely perused the record and the findings of the Learned Arbitrator. The Learned Arbitrator has considered the case of the Respondent of novation of contract in the light of Section 62 of the Contract Act and has interpreted Clauses (B) and (F) of the LOU, which use the expressions "may" and "can be", to hold that an option was given to the Claimants to execute a novation contract with the Respondent and there was no compulsion or obligation upon the Claimants to execute the same.

24. In the cross examination, Question No 28 was put to the Claimant's witness as to whether the LOU was executed between the parties with the intention to execute a novation agreement at a later

stage, which was answered as under:

> "Ans. Yes. After receiving the full amount from the Respondent."

25. The Learned Arbitrator assessed the evidence in the background of Clause C of the LOU to arrive at a finding that the reference to "full amount" in the answer to Question 28 would not mean Rs 12,00,000/ but Rs 82,50,000/. The finding of the Learned Arbitrator finds support in clauses of the LOU, which repeats and reiterates about the dues payable under the main agreement.

26. The Learned Arbitrator has considered the emails dated 3rd October, 2020 stating that total dues would be Rs 12,00,000/ as one time settlement and novation agreement would be signed on receiving post dated cheques of Rs 5,00,000/ and the non response by the Claimants to hold that the same cannot be construed to mean that Claimant had agreed to execute novation agreement by their conduct.

27. The argument of learned counsel for Respondent of patent illegality is premised on ignorance of evidence of payment of Rs 12,00,000/ and operation of the franchise after expiry of LOU under the novation agreement. I have perused the impugned Award and find that the evidence as regards payment of Rs 12,00,000/ was noted by the Learned Arbitrator and construed as payment towards rents by the Respondent towards the property for the full year of 2020 as per

Clause (G) of the LOU.

28. The Learned Arbitrator has dealt with the case of the Respondent of novation by conduct in paragraph 66 and in paragraph 68 of the Award has noted Clause (C) of LOU which gives liberty to the Claimants to run the business and earn income and profits without sharing the same with the Respondent from 1st November, 2020 until the dues under the main agreement has been paid. The finding of the Learned Arbitrator can be supported from plain reading of Clause (C) of LOU, which vests in the Claimants, the rights in movable and immovable furniture and fixtures and grants liberty to the Claimants to operate the Cafe. Considering the admitted position of non payment of dues under the franchise agreement, Clause (C) of LOU was triggered and the operation of the Cage was not under the novation agreement but by reason of Clause (C) of the LOU. The ultimate conclusion of the Learned Arbitrator finds support by the reasoning based on the terms of the LOU.

29. By an interpretative process, the learned Arbitrator came to the finding that there was no obligation on the Claimants to enter into a new or alternate agreement and the rights and obligations of the parties under the Franchise Agreement were not obliterated, modified, or substituted by the parties. It supported the interpretation of the

clauses of the LOU by applying the test of business efficacy by holding that, as the Claimants had invested a sum of Rs.82,50,000/-, it would not make business sense for the Claimants to have novated the original contract upon the Respondent paying a sum of Rs.12,00,000/- and surrendering operational control of the Cafe to the Respondent.

30. The Learned Arbitrator held in paragraph 72 as under:

> "72. A clauses of the LOU are as bright as day. The clauses are unequivocal, unambiguous and clear. There is no scope of any implied interpretation. From a reading of the Clauses, one cannot infer that the Claimants had in any way agreed to enter into a new agreement. There is no consensus *ad idem* on this aspect between the parties. Even if one were to apply the test of "business efficacy", the Claimants had invested Rs. 82,50,000/- (This is subject to the finding on Issue No.1) with an assured return by way of a Minimum Guarantee of return of the invested amount set out in Clause III (3) of the Franchise Agreement. It would not make any business sense for the Claimants to have ever agreed to enter into a Novation Agreement on Respondent paying Rs. 12,00,000/- (which is not even a quarter of the amount invested) and surrendering operational control of the outlet/cafe to them. The Claimants came in as investor and this is what was intended by the parties while executing their agreements. Therefore, on a reading of the LOU itself, this Tribunal holds against the Respondent on this issue."

31. The findings of the Learned Arbitrator is supported by the assessment of cross-examination of the Claimants' witness, who has deposed that LOU was executed with the intention to execute the novation agreement after receiving the full amount from the Respondent. The Arbitral Tribunal held that an intention to execute a novation agreement does not mean that the parties had agreed to execute a novation agreement, and the intention was contingent upon the Claimants receiving the full amount from the Respondent. It read

the evidence along with Clause (C) of the LOU, which makes a reference to the payment of dues under the main agreement. The Arbitral Tribunal also considered the emails dated 3rd October 2020, in which it was stated that the total dues to be paid by the Respondent to the Claimants would be Rs.12,00,000/- as a one-time settlement, and that the novation agreement would be signed on receiving post-dated cheques of Rs.5,00,000/-. The Arbitral Tribunal has assessed the evidence to hold that the fact that the Claimants have not signed the novation agreement despite being requested to do so again on 15th February 2021 by the Respondent, would clearly show that the Claimants have exercised their discretion under the LOU and have not agreed to sign the novation agreement. The Arbitral Tribunal, on the interpretation of the terms of LOU and on assessment of evidence, has held that the Respondents have failed to prove that the Claimants have agreed to execute any novation agreement.

32. At cost of repetition, if Clause C of the LOU is considered, in the event of non fulfillment of payment terms by the Respondent under the franchise agreement, it is the Claimants who are entitled to all the rights in the movable and immovable furniture and fixtures of the Cafe with the liberty to run the business and earn profits without sharing the same with the Respondent. The aspect of payment of Rs

12,00,000/ was considered by the Learned Arbitrator by interpreting Clause G which provides that once the above stated amounts have been paid in full, the Respondent shall not be responsible for payment of rents for the full year of 2020 to hold that once Rs 12,00,000/ have been paid, the Respondent shall not be liable for payment of rent. Under the franchise agreement, the obligation of payment of rent was upon the Respondent and LOU relieving the Respondent from payment of rent upon receiving the above stated amounts is relatable to Rs 12 lacs paid under the LOU. The evidence on record was rightly appreciated by the Learned Arbitrator and there is no perversity demonstrated or ignorance of vital evidence to give rise to patent illegality.

33. The Learned Arbitrator has interpreted the terms of the contract, which interpretation is a plausible interpretation and appeals to this Court. In the case of ***UHL Power Company Limited vs. State of Himachal Pradesh***[6], the Hon'ble Apex Court has held in paragraph 18, 19 and 22 as under :

> **"18.** It has also been held time and again by this Court that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the learned arbitrator proceeds to accept one interpretation as against the other. In *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.* [*Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1*], the limitations on the Court while exercising powers under Section 34 of the

6 (2022) 4 SCC 116

Arbitration Act has been highlighted thus : (SCC p. 12, para 24)

> "24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated."

19. In *Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.* [*Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552*] , adverting to the previous decisions of this Court in *McDermott International Inc. v. Burn Standard Co. Ltd.* [*McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181*] and *Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran* [*Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306*], wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside on this ground, it has been held thus : (*Parsa Kente Collieries case* [*Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552] , SCC pp. 244-45, para 9*)

> "9.1. … It is further observed and held that construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It is further observed by this Court in the aforesaid decision in para 33 that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the

ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.

9.2. Similar is the view taken by this Court in *NHAI v. ITD Cementation India Ltd.* [*NHAI v. ITD Cementation India Ltd., (2015) 14 SCC 21 : (2016) 2 SCC (Civ) 716*], SCC para 25 and *SAIL v. Gupta Brother Steel Tubes Ltd. [SAIL v. Gupta Brother Steel Tubes Ltd., (2009) 10 SCC 63 : (2009) 4 SCC (Civ) 16*] , SCC para 29."

22. In the instant case, we are of the view that the interpretation of the relevant clauses of the implementation agreement, as arrived at by the learned sole arbitrator, are both, possible and plausible. Merely because another view could have been taken, can hardly be a ground for the learned Single Judge to have interfered with the arbitral award. In the given facts and circumstances of the case, the appellate court has rightly held that the learned Single Judge exceeded his jurisdiction in interfering with the award by questioning the interpretation given to the relevant clauses of the implementation agreement, as the reasons given are backed by logic."

34. The scope of interference under Section 34 of the Arbitration Act is well-settled. In ***Associate Builders vs. Delhi Development Authority***[7], the Hon'ble Apex Court has held in paragraph 42.3, 44 and 45 as under :

"42.3. (c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:

"28.Rules applicable to substance of dispute.—(1)-(2)***
(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."
This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of

7 (2015) 3 SCC 49

the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do.

In *MSK Projects (I) (JV) Ltd. v. State of Rajasthan* [(2011) 10 SCC 573 : (2012) 3 SCC (Civ) 818] , the Court held : (SCC pp. 581-82, para 17)

"17. If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error. Extrinsic evidence is admissible in such cases because the dispute is not something which arises under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is that the nature of the dispute is something which has to be determined outside and independent of what appears in the award. Such a jurisdictional error needs to be proved by evidence extrinsic to the award. (See *Gobardhan Das v. Lachhmi Ram [(1954) 1 SCC 566 : AIR 1954 SC 689], Thawardas Pherumal v. Union of India [AIR 1955 SC 468], Union of India v. Kishorilal Gupta & Bros. [AIR 1959 SC 1362], Alopi Parshad & Sons Ltd. v. Union of India [AIR 1960 SC 588] , Jivarajbhai Ujamshi Sheth v. Chintamanrao Balaji [AIR 1965 SC 214] and Renusagar Power Co. Ltd. v. General Electric Co. [(1984) 4 SCC 679 : AIR 1985 SC 1156])*"

In *Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran* [(2012) 5 SCC 306] , the Court held : (SCC pp. 320-21, paras 43-45)

"43. In any case, assuming that Clause 9.3 was capable of two interpretations, the view taken by the arbitrator was clearly a possible if not a plausible one. It is not possible to say that the arbitrator had travelled outside his jurisdiction, or that the view taken by him was against the terms of contract. That being the position, the High Court had no reason to interfere with the award and substitute its view in place of the interpretation accepted by the arbitrator.

44. The legal position in this behalf has been summarised in para 18

of the judgment of this Court in SAIL v. Gupta Brother Steel Tubes Ltd. [(2009) 10 SCC 63 : (2009) 4 SCC (Civ) 16] and which has been referred to above. Similar view has been taken later in Sumitomo Heavy Industries Ltd. v. ONGC Ltd. [(2010) 11 SCC 296 : (2010) 4 SCC (Civ) 459] to which one of us (Gokhale, J.) was a party. The observations in para 43 thereof are instructive in this behalf.

45. This para 43 reads as follows : (Sumitomo case [(2010) 11 SCC 296 : (2010) 4 SCC (Civ) 459] , SCC p. 313)

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

35. On the issue of the entitlement of the Claimant to a sum of Rs.82,50,000/-, the Arbitral Tribunal considered the clauses of the agreement and the Minimum Guarantee clause in Clause III (3). It held that the Claimants are entitled to be awarded the principal sum of Rs.82,50,000/-, less Rs.12,00,000/- already paid, which aggregates to Rs.70,50,000/-, along with interest.

36. It is well-settled that the interpretation of the terms of the

contract is within the domain of the Arbitral Tribunal, and the Arbitral Tribunal is the master of the evidence. If the interpretation placed by the Arbitrator is a plausible or possible interpretation, no interference is warranted under Section 34 of the Arbitration Act. In order to support the ground of patent illegality, though it is sought to be contended that evidence has been ignored, the submission, in effect, is that the payment of Rs 12,00,000/- and the operation of the Cafe after the expiry of term of LOU ought to have been assessed as determinative of the fact of implied acceptance of novation agreement. The said submission seeks re-appreciation of evidence by this Court and to substitute the view of this Court, which is impermissible in Section 34 jurisdiction. The Learned Arbitrator has assessed the evidence on record and has arrived at findings supported by the evidence and hence no ground of patent illegality is made out.

37. In so far as the contention of suppression of facts is concerned, no issue of suppression was framed and there are no arguments on suppression canvassed before the Learned Arbitrator. The entire material was placed on record before the Learned Arbitrator and evidence led. The Claimants sought repayment of dues under the franchise agreement and the defence of Respondent was of execution of LOU. Thus all facts were placed on record and assessed and impugned Award was passed.

38. Dealing with the citations relied upon by learned Counsel for Petitioner herein, there is no quarrel with the propositions laid down in the said decisions but its applicability in the present case is not demonstrated.

39. The entire case of the Respondent is based on the novation of the agreement in order to avoid the liability of making the payments due under the original franchise agreement. The Learned Arbitrator has interpreted the terms of franchise agreement and the LOU and assessed the evidence adduced to hold that there was no novation of contract by conduct, that the payment of Rs 12,00,000/- was towards rent, the liability to pay the dues under the main agreement was not diluted by the LOU, which was for fixed period of three months and the continued operation was by virtue of clauses under the LOU. The findings of fact do not demonstrate patent illegality and as no grounds under Section 34 of Arbitration Act are made out, no scope for interference exists.

40. Resultantly Petition fails and stands dismissed.

[SHARMILA U. DESHMUKH, J.]