Ac Chokshi Share Broker Private Limited vs Jatin Pratap Desai on 10 February, 2025

Author: Pamidighantam Sri Narasimha

Bench: Pamidighantam Sri Narasimha

2025 INSC 174 REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
ARISING OUT OF SLP (C) No. 18393 OF 2021

AC CHOKSHI SHARE BROKER
PRIVATE LIMITED ...APPELLANT(S)

VERSUS

JATIN PRATAP DESAI & ANR. …RESPONDENT(S)

JUDGMENT

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Leave granted.

2. The issue arising in the present appeal is whether respondent no. 1, who is the husband of respondent no. 2, could have been made a party to the arbitration that was invoked by the appellant, who is a registered stock broker, and held to be jointly and severally liable for the debit balance that had accrued in the wife's (respondent no. 2's) account with the appellant. The arbitral tribunal found that both respondents were jointly and severally liable for repaying the debit balance in respondent no. 2's account, and the respondents' applications under Section 34 of the Arbitration and Conciliation Act, 1996 1 to set aside the arbitral award were dismissed by the learned single judge of the High Court. However, the division bench of the High Court allowed the Section 37 appeal preferred by respondent no. 1 by order dated 29.04.2021 and set aside the arbitral award only against him, which is impugned before us in the present appeal. For the reasons detailed below, we have allowed the appeal and set aside the impugned order based on the following conclusions: First, by interpreting Bye-law 248(a) of the Bombay Stock Exchange 2 Bye- laws, 1957 that provides for arbitration between members and non-members of the BSE, and considering the nature of respondent no. 1's involvement qua transactions conducted in respondent no. 2's account, we have

held that an oral contract undertaking joint and several liability falls within the scope of the arbitration clause and the arbitral tribunal could exercise jurisdiction over respondent no. 1. Second, considering the settled jurisprudence on the scope of judicial intervention under Section Hereinafter "the Act".

Hereinafter "BSE".

34 and Section 37 of the Act, we have held that the arbitral tribunal arrived at a reasonable conclusion, based on evidence, as to the joint and several nature of the respondents' liability. The arbitral award does not suffer from perversity and patent illegality as has been held by the High Court in the Section 37 appeal, and therefore, we have upheld the arbitral award in its entirety.

3. Facts: The relevant facts are as follows. The appellant is a stock broker and a registered member of the BSE. In 1999, the respondent nos. 1 and 2, who are husband and wife respectively, approached the appellant for opening trading accounts and to this end, they executed individual Client Registration Applications on 01.08.1999. As per the appellant, respondent no. 1 represented that the accounts would be jointly operated by both of them and they would be jointly and severally liable for any losses. 3.1 At the end of the settlement period on 31.01.2001, there was an undisputed credit balance of Rs. 7,40,020/- in the account of respondent no. 1, that was payable by the appellant. On 16.02.2001, respondent no. 1 further paid a sum of Rs. 2 lakhs to the appellant, that increased his credit balance to Rs. 9,40,020/-. On the other hand, there was a debit balance of Rs. 7,77,058/- in respondent no. 2's account on 20.01.2001, which further increased to Rs. 11,40,413/- by 17.02.2001. The appellant's case is that on oral instruction of respondent no. 1, it transferred the credit balance of Rs. 9,40,020/- from the husband's account to the wife's account on 05.03.2001 to offset the losses. 3.2 However, due to a stock market crash in 2001, the debit balance in respondent no. 2's account bludgeoned to Rs. 1,18,48,069/- as on 12.04.2001, which is the recoverable amount in arbitration.

3.3 The appellant initiated arbitration under BSE Bye-law 248(a) and impleaded both the respondents, seeking an amount of Rs. 1,27,36,670/- with 18% interest from both of them to recover the losses in respondent no. 2's account. The respondents filed separate written statements. In respondent no. 1's written statement-cum-counter-claim, he alleged that the appellant's arbitration claim is not maintainable for misjoinder of parties and causes of action as each client is a separate legal entity. Further alleging that the appellant transferred the credit balance from his account to his wife's account without express authority or written consent as is required by SEBI guidelines, he claimed Rs. 10,66,922/- with 18% interest from the appellant to recover the amount so adjusted. Respondent no. 2, in her separate written statement alleged that the appellant undertook unauthorised transactions from her account and also took the position that respondent no. 1 is not jointly and severally liable.

4. Findings of the arbitral tribunal: The arbitral tribunal allowed the appellant's claim and held both respondents to be jointly and severally liable to pay Rs. 1,18,48,069/- along with interest @ 9% p.a. from 01.05.2001 till the date of payment. It also dismissed the counter-claim preferred by respondent no. 1. The reasons by the arbitral tribunal, briefly stated, are:

4.1 The transactions undertaken by the appellant on behalf of respondent no. 2 in her account were authorised and were as per her instructions. This finding has not been contested before us. 4.2 Respondent no. 1 is jointly and severally liable for the debit balance in respondent no. 2's account. For this, the arbitral tribunal held that share transactions in a family are "normally and historically" undertaken by one person, albeit each individual has a separate client code, contract notes, and bank accounts as these are necessary documentation under tax laws.

4.3 Further, there was an oral agreement between respondent no. 1 and the appellant. It held that respondent no. 1 was mostly visiting the appellant's office, and respondent no. 2 had given instructions sometimes when respondent no. 1 was out of town or under his instructions. The arbitral tribunal further relied on the affidavit of Ms. Deepika Chokshi, who is a director of the appellant company, and the affidavit of Mr. Parag Jhaveri, who is a close associate of respondent no. 1 and whose father introduced the respondents to the appellant.

4.4 The arbitral tribunal also reasoned that despite having a credit balance of Rs. 7 lakhs in his account, respondent no. 1 paid the appellant a further sum of Rs. 2 lakhs but never demanded the same except at the time of filing the counter-claim. 4.5 Looking to the financial dealings of the respondents with the appellant, it held that both respondents have accounts in all the banks from which cheques were issued, although each of them may have a separate account. On 15.09.1999, respondent no. 1 issued a cheque of Rs. 1,20,000/- from Syndicate Bank towards the debit balance in his account. On 06.10.1999, a cheque of the next serial number was issued from the same bank account number to be paid into the account of respondent no. 2. Similarly, on 28.09.1999, a single cheque of Rs. 10,86,188/- was issued from Syndicate Bank with an instruction to the appellant to credit Rs.

2,21,440/- to respondent no. 2's account and the balance to respondent no. 1's account.

4.6 Relying on the above material, the arbitral tribunal held the respondents to be jointly and severally liable and dismissed respondent no. 1's counter-claim as being a counter-blast and being unsustainable as his credit balance was rightly adjusted to the account of respondent no. 2. It also noted that while SEBI Guidelines require written instructions to transfer money from one constituent's account to another's, taking a practical view and considering past experience and joint and several liability, as well as the marital relationship of the respondents, it held that the adjustment of balances between the accounts was in order.

5. Section 34 petition: Both respondent nos. 1 and 2 filed separate applications under Section 34 to set aside the arbitral award, which were dismissed by the High Court single judge's order dated 23.08.2005. The Court held that there is an implied term in the written contract and an oral agreement to the effect that both husband and wife will be jointly and severally liable for the debit balance in the wife's account. Although the arbitration clause in the agreement between the appellant and respondent no. 2 was invoked, since such an arbitration clause also exists with

respondent no. 1, the Court held that there is no jurisdictional error in the award. Further, that the finding of an oral understanding among the parties was based on appreciation of the evidence on record by the arbitral tribunal whose members are appointed by a trade body. Hence, the learned single judge of the High Court did not interfere with the award.

6. Impugned order allowing the Section 37 appeal: Respondent no. 1 moved a Section 37 appeal against the single judge's order, which was allowed by the impugned order that set aside the arbitral award only qua respondent no. 1's liability. It is necessary to appreciate the reasoning of the High Court exercising appellate jurisdiction under Section 37 in setting aside the arbitral award and reversing the findings of the single judge. After formulating several issues, the High Court proceeded on two broad reasons:

> 6.1 First, that the arbitral tribunal lacked jurisdiction against respondent no. 1 and he could not have been made a party to the arbitration. The High Court held that there are separate causes of action against husband and wife – the cause of action against respondent no. 2 (wife) was regarding the debit balance in her account in respect of transactions on the floor of the BSE.

However, the cause of action against respondent no. 1 (husband) was based on the alleged oral understanding with the appellant regarding his liability to pay the dues in case of default by respondent no. 2, which the High Court held is a private and separate transaction that is not subject to Bye-law 248(a) as it is not conducted on the floor of the stock exchange. Further, since there is no tripartite agreement between all three parties, nor did the appellant invoke the arbitration agreement with respondent no. 1, it could not have clubbed separate causes of action in a common arbitration. Since respondent no. 1 does not fall under Bye-law 248(a) in his capacity as a guarantor or third party, the entire arbitration against him is without jurisdiction. Even if this jurisdictional objection had not been raised before the arbitral tribunal in accordance with Section 16 of the Act, the Court held that the arbitral tribunal inherently lacked jurisdiction to adjudicate on a private transaction between the appellant and respondent no. 1. Further, since the arbitration clause is statutory in nature, such jurisdiction cannot be conferred by consent of the parties, and hence, not raising the objection under Section 16 does not amount to a waiver under Section 4 of the Act.

6.2 Second, the findings of the arbitral tribunal are perverse and patently illegal. With regard to joint and several liability of the respondents, it held that the findings of the arbitral tribunal are perverse as the respondents are two separate legal entities, having separate and distinct accounts, separate client codes, separate contracts notes and bills, and separate bank accounts. The appellant only led oral evidence to prove joint and several liability, however such oral evidence cannot be contrary to the documents between the parties. The arbitral tribunal ignored BSE Bye-laws, Rules and Regulations and SEBI guidelines by relying on past experience and the respondents' marital relationship to hold them jointly and severally liable. Further, with regard to the transfer of the credit balance from respondent no. 1's account to offset the debit balance in respondent no. 2's account, it held that there was no express or oral understanding that permitted the same. Despite noting the need for express authorisation of the client for such adjustment, the arbitral tribunal held it to be valid. This is in violation of Bye-law 247A and the SEBI guidelines, making such finding

patently illegal and perverse.

6.3 While setting aside respondent no. 1's liability under the arbitral award, the High Court however held that his counterclaim before the same arbitral tribunal was without jurisdiction as he was not correctly impleaded. Rather, respondent no. 1 should have invoked the arbitration clause against the appellant in a separate proceeding to recover the amount.

7. Submissions: We have heard Mr. Dhruv Mehta, learned senior counsel for the appellant, and Mr. Mayilsamy K, learned counsel for the respondents. The submissions made by Mr. Mehta are to the effect that:

> 7.1 As per Section 7(4)(c) of the Act, an arbitration agreement is deemed to exist when an averment raised to this effect is not disputed or denied. Here, respondent no. 1 did not dispute the existence of an arbitration agreement in his written statement, and even filed a counter-claim and participated in the arbitral proceedings. Further, a plea of lack of jurisdiction was neither raised before the arbitral tribunal nor in the Section 34 petition; it was only raised at the stage of the Section 37 appeal. He submitted that the same is impermissible and relied on several judgments of this Court.3 Such a jurisdictional plea is governed by Section 16(2) of the Act and must be raised at the time of submission of statement of defence. 4 7.2 Further, the respondents constitute a 'single entity' for the purpose of trading, which is demonstrated from the transactions executed by them. In any event, relying on ONGC v. Discovery Enterprise Pvt Ltd5 and P.R. Shah Share & Stock Brokers Pvt Ltd v.

B.H.H. Securities Pvt Ltd 6, he submitted that a non-signatory can be impleaded as party to the arbitration if there is a composite transaction. The liability to clear the debit balance in respondent no. 2's account, being joint and several, would enable the appellant to invoke a common arbitration against both spouses as this is a composite transaction.

7.3 Bye-law 248(a) is widely worded and covers matters that are incidental to transactions conducted on the floor of the stock exchange, including any oral guarantee by respondent no. 1 to pay State of West Bengal v. Sarkar and Sarkar, (2018) 12 SCC 736; MTNL v. Canara Bank, (2020) 12 SCC 767; Union of India v. Pam Development (P) Ltd, (2014) 11 SCC 366. Relied on GAIL v. Keti Construction Ltd, (2007) 5 SCC 38. (2022) 8 SCC 42.

(2012) 1 SCC 594.

the dues owed by respondent no. 2 to the appellant. This oral guarantee is incidental to the transactions executed on the floor of the stock exchange on behalf of respondent no. 2, and gives rise to a single cause of action against both respondents that is covered by the arbitration clause.

7.4 The High Court erred in reappreciating evidence in the Section 37 appeal to hold that there is no joint and several liability. Further, it failed to appreciate that the scope in the Section 37 appeal is

narrower than under Section 34, and the pleas taken at the appellate stage cannot exceed the grounds in the Section 34 petition. Hence, the jurisdictional issue could not have been agitated for the first time in the Section 37 appeal.

8. Mr. Mayilsamy K, learned counsel for the respondents, has submitted that:

> 8.1 The jurisdictional issue was validly raised before the High Court. In fact, such plea was also raised in the written statement before the arbitral tribunal where respondent no. 1 claimed that there was misjoinder of parties and that both respondents are separate legal entities. In any case, since the arbitral tribunal lacked 'inherent jurisdiction', the same can be raised at any stage and the time-limit under Section 16(2) does not apply. 7 8.2 That both respondents are separate and individual entities, as evidenced by their separate client agreements and independent client codes. Further, Bye-law 247A of the BSE Bye-laws read with SEBI Guidelines dated 18.11.1993 prohibits a stock broker from making payments from one client's account to the other. In this light, a common arbitration could not have been invoked against both respondents. In fact, the appellant only invoked and filed a reference against respondent no. 2.
>
> 8.3 The Member-Client Agreement, as approved by SEBI, does not provide for an indemnity/guarantee clause, and each client is solely liable to the stock broker for their dues. Hence, the arbitral tribunal could not have assumed the respondents to be a single entity and could not have held them to be jointly and severally liable based on their marital status.
>
> 8.4 Bye-law 248(a), that provides for arbitration, does not cover the dispute against respondent no. 1 as it only covers matters incidental to transactions conducted on the floor of the exchange. Relied on Chief General Manager (IPC), M.P. Power Trading Co. Ltd. v. Narmada Equipments (P) Ltd, (2021) 14 SCC 548.

However, the cause of action against respondent no. 1 pertains to satisfaction of a debt owed by respondent no. 2, which is a private transaction that was not entered into on the floor of the exchange, and hence stands excluded from the arbitration clause.

9. Issues: From the reasoning and findings of the arbitral tribunal, as well as the manner in which the impugned order has proceeded to set aside the arbitral award against respondent no. 1, we find that there are two issues for us to consider in the present appeal:

> (i) The first is a jurisdictional issue that pertains to the maintainability of arbitration against respondent no. 1 under Bye-law 248(a) for payment of the debit balance in respondent no. 2's account on the basis of his joint and several liability?
>
> (ii) The second issue pertains to whether the High Court correctly exercised jurisdiction under Section 37 while setting aside the arbitral award against

respondent no. 1 on the grounds of perversity and patent illegality by finding that there is no joint and several liability?

10. Jurisdiction of the arbitral tribunal: The arbitration reference by the appellant has been made under Bye-law 248(a) of the BSE Bye-laws, 1957, which has been reproduced for ready reference:

> "Arbitration other than between members Reference to Arbitration
>
> 248. (a) All claims (whether admitted or not) difference and disputes between a member and a non-member or non-members (the terms 'non-member' and 'nonmembers' shall include a remisier, authorised clerk, a sub-broker who is registered with SEBI as affiliated with that member or employee or any other person with whom the member shares brokerage) arising out of or in relation to dealings, transactions and contracts made subject to the Rules, Bye-laws and Regulations of the Exchange or with reference to anything incidental thereto or in pursuance thereof or relating to their construction, fulfillment or validity or in relation to the rights, obligations and liabilities of remisiers, authorised clerks, sub-brokers, constituents, employees or any other persons with whom the member shares brokerage in relation to such dealings, transactions and contracts shall be referred to and decided by arbitration as provided in the Rules, Bye-laws and Regulations of the Exchange." (emphasis supplied)

11. Based on the decisions of this Court in Bombay Stock Exchange v. Jaya I. Shah 8 and P.R. Shah, Shares and Stock Brokers (supra)9, an arbitration reference under Bye-law 248(a) is statutory in nature, as opposed to being based on an arbitration agreement between the parties in terms of Section 7 of the Act. The scope and interpretation of Bye-law 248(a) falls for our consideration to determine the first issue.

(2004) 1 SCC 160, para 36.

P.R. Shah, Shares and Stock Brokers Private Limited v. B.H.H. Securities Private Limited (supra), para 13.

12. Bye-law 248(a) specifically deals with disputes, claims, and differences between "members", i.e. stock brokers and "non- member(s)", i.e. client(s). It is undisputed that both respondents are non-members or clients, but they entered into individual and separate client registration agreements, leading to separate client codes and accounts in each of their names. However, the appellant has invoked arbitration against both of them for the debit balance in respondent no. 2's account based on an oral contract among the parties that both husband and wife will be jointly and severally liable for the transactions in each of their accounts.

13. While the existence of such an oral contract is a finding of fact that must be based on evidence, at this stage, the simple question is, presuming such an oral contract exists, whether the arbitral tribunal can exercise jurisdiction over respondent no. 1 on its basis. Through such an oral

understanding, the respondents consented to treat their independent client agreements with the appellant as joint and composite. They have effectively entered into the transactions undertaken in each of their trading accounts together, i.e., the performance of the transactions in respondent no. 2's trading account is not only on her behalf but also on behalf of respondent no. 1. Therefore, respondent no. 1 is effectively a party to the client agreement between the appellant and respondent no. 2.

14. In this light, the High Court's reasoning in the impugned order that arbitration was only invoked against respondent no. 2 as only her client code and client agreement were referenced by the appellant is a hyper-technical approach as the claim had been filed against both respondents. While interpreting contracts, courts must acknowledge the practicalities of how parties execute and participate in transactions and how they understand and perform mutual obligations under the contract. 10 To facilitate ease of contract and to prevent respondent no. 1 from mischievously wriggling out of his liability for the transactions, it is necessary to take into account the reality of the situation. The appellant conducted the transactions in each their accounts based on an oral agreement among all the parties that the respondents will jointly operate and manage both accounts and undertake liability for the same. Therefore, in these facts, even respondent no. 1 is a See Cox and Kings v. SAP India Pvt Ltd, (2024) 4 SCC 1, paras 97, 132, 133 (Chandrachud, J). "non-member" or client under Bye-law 248(a) with respect to the account in respondent no. 2's name.

15. In ONGC v. Discovery Enterprise, this Court comprehensively laid down the factors to determine when a non-signatory can be made party to an arbitration,11 which has been subsequently affirmed by a Constitution Bench in Cox and Kings (supra)12. They are: (a) the mutual intention of the parties, as is evidenced by their conduct and participation in the formation and performance of the underlying contract; (b) the relationship between the signatory and non-signatory; (c) commonality of subject-matter; and (d) composite nature of transaction. 13 This test has been evolved in the context of determining when a non-signatory can be made party to an arbitration agreement. In the present matter, although arbitration is not based on consent of the parties but is under the statutory Bye-laws of BSE, application of this test only strengthens our conclusion. The oral contract of joint and several liability reflects the mutual intention of the parties that the respondents will enter into and perform trading transactions together, even if ONGC Ltd v. Discovery Enterprises Pvt Ltd (supra), para 40. Cox and Kings v. SAP India Pvt Ltd (supra), paras 132-133, 170.8 (Chandrachud, J) and para 223.5, 229 (Narasimha, J).

ibid, paras 132, 229.

they are conducted only from one of their accounts, leading to a composite transaction. The marital relationship of the respondents and them approaching the appellant together as well as opening accounts at the same time, through the same referee as is seen from their client registration forms, further strengthens this conclusion.

16. At this juncture, it would also be relevant to note this Court's decision in P.R. Shah v. B.H.H. Securities (supra), that arose in somewhat similar facts. There, the first respondent referred a dispute against the appellant and the second respondent for arbitration under the BSE Bye-laws.

The appellant, which was also a stock broker, was a sister company of the second respondent. The first respondent executed certain trades in the account of the second respondent, but claimed that even the appellant was jointly and severally liable to pay the amounts due. It invoked arbitration against both of them and the arbitral tribunal therein held both of them to be liable. This Court held that while arbitration between a broker and client is under Bye-law 248(a) and arbitration between two brokers is governed by Bye-law 282 of the BSE 14, a common Bye-law 282 of the BSE Bye-laws, 1957 reads:

> reference to arbitration is maintainable as it is in regard to the same claim and there is an arbitration agreement between the first respondent and the second respondent, as well as between the first respondent and the appellant.15 Here as well, the broker who was the first respondent entered into transactions with the second respondent on an understanding that the appellant will also be liable.16

17. While the primary issue in P.R. Shah (supra) was a composite reference to arbitration despite the existence of different arbitration mechanisms under Bye-laws 248(a) and 282, it is clear that this Court also upheld the invocation of arbitration under BSE Bye-laws against a person other than the client from whose account the transactions were undertaken by relying on an understanding of joint and several liability.

“282. All claims, complaints, differences and disputes between members arising out of or in relation to any bargains, dealings, transactions or contracts made subject to the Rules, Bye-laws and Regulations of the Exchange or with reference to anything incidental thereto (including claims, complaints, differences and disputes relating to errors or alleged errors in inputting any data or command in the Exchange's computerised trading system or in execution of any trades on or by such trading system) or anything to be done in pursuance thereof and any question or dispute whether such bargains, dealings, transactions or contracts have been entered into or not shall be subject to arbitration and referred to the Arbitration Committee as provided in these Bye-laws and Regulations.” P.R. Shah, Shares and Stock Brokers (supra), para 19. ibid, para 18.

18. The High Court in the impugned order differentiated the decision in P.R. Shah (supra) on the ground that the first respondent therein invoked arbitration against both parties, but this was not the case here. However, as held hereinabove, this conclusion is incorrect and the appellant in this case did in fact invoke arbitration against both respondents.

19. The other reason offered by the High Court to differentiate P.R. Shah (supra) and to also hold that the cause of action against respondent no. 1 does not fall within the scope of Bye-law 248(a) is that his oral contract with the appellant is a separate and “private” transaction that was not conducted on the floor of the stock exchange. We are of the opinion that this conclusion is incorrect. In another decision of the Bombay High Court in Syntrex Corporation v. Rajkumar Keshardev 17, it was held that disputes in respect of transactions that were not conducted on the floor of the BSE, using its trading system, would not be covered by Bye-law 248(a). However, there is no contention by the respondents that the transactions in respondent no. 2’s account were not conducted on the floor of the stock exchange. In this light, and considering 2007 SCC OnLine Bom 620, paras 2 and 5.

the broad wording of the Bye-law 248(a) to refer disputes arising out of, in relation to, incidental to or in pursuance of transactions, contracts, and dealings to arbitration, 18 the oral contract between the appellant and respondents cannot be termed as a "private" transaction. The liability to pay the appellant directly arises out of transactions conducted on the floor of the exchange and the oral contract is squarely on who bears this liability. Therefore, it falls within the ambit of Bye-law 248(a).

20. The High Court in the impugned order relied on this rationale of a "private" transaction to hold that the arbitral tribunal lacked inherent jurisdiction to decide the claim against respondent no. 1, and such a jurisdictional plea could be raised at any stage even if it was not raised before the arbitral tribunal. From the above reasons, it is clear that there is no inherent lack of jurisdiction. 19 Consequently, any issue regarding the scope of Bye-law 248(a) ought to have been raised in accordance with Section 16 of the See Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1, wherein para 151 held "...The third approach is to avoid either broad or restrictive interpretation and instead the intention of the parties as to scope of the clause is understood by considering the strict language and circumstance of the case in hand. Terms like 'all', 'any', 'in respect of ', 'arising out of ' etc. can expand the scope and ambit of the arbitration clause. Connected and incidental matters, unless the arbitration clause suggests to the contrary, would normally be covered." See Hindustan Zinc Limited v. Ajmer Vidyut Vitran Nigam Limited, (2019) 17 SCC 82, paras 17-19; M.P. Power Trading Co. Ltd. v. Narmada Equipments Pvt. Ltd. (supra), para 14. In these decisions, this Court has held that a plea of inherent lack of jurisdiction, i.e., when there is a lack of subject-matter jurisdiction, renders a decree nullity and cannot be cured by the consent of the parties. Therefore, this plea can be raised at any stage even if it was not raised before the arbitral tribunal.

Act20, i.e. during the arbitration, not later than the submission of statement of defence. 21 Neither respondent has, in their statements of defence or Section 34 petitions, raised an objection to the arbitral tribunal's jurisdiction in clear terms beyond stating that there is a misjoinder of parties as they are not jointly and severally liable. A clear jurisdictional issue was only raised at the Section 37 appeal stage, as has also been noted by the High Court in the impugned order.

21. This Court has held, in several judgments, that when the jurisdictional issue has not been raised in accordance with Section 16, it is deemed that the objecting party has waived his right, in Section 16 of the Act reads:

> "16. Competence of arbitral tribunal to rule on its jurisdiction.—(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—
>
> (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
>
> (b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

> (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator. (3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.
>
> (4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified. (5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.
>
> (6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34." McDermott International Inc v. Burn Standard Co. Ltd, (2006) 11 SCC 181, para 51; Gas Authority of India Ltd v. Keti Construction (I) Ltd (supra), paras 24 and 25; M/s Vidyawati Construction Company v. Union of India, 2025 INSC 101, paras 13-15.

terms of Section 4 of the Act 22 to raise the same at a later stage.23 Such objection cannot be raised for the first time when the party is challenging the award under Section 34. 24 Here, respondent no. 1 not only filed his statement of defence and participated in the arbitral proceedings but also filed a counter-claim, thereby submitting to the arbitral tribunal's jurisdiction. 25 Hence, any jurisdictional objection must be rejected on this ground as well.

22. Whether the arbitral award ought to have been set aside: The limited supervisory role of courts while reviewing an arbitral award is stipulated in Section 34 of the Act, beyond whose grounds courts cannot intervene and cannot correct errors in the arbitral award. 26 The appellate jurisdiction under Section 37 is also limited, as it is constrained by the grounds specified in Section 34 and the court cannot undertake an independent assessment of the merits of the Section 4 of the Act reads:

> "4. Waiver of right to object.—A party who knows that—
>
> (a) any provision of this Part from which the parties may derogate, or
>
> (b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object." Union of India v. Pam Development (P) Ltd (supra), para 17.

ibid, para 18; Gas Authority of India Ltd (supra), para 25; MSP Infrastructure Limited v. Madhya Pradesh Road Development Corporation Limited, (2015) 13 SCC 713, paras 13-16; MP Rural Road

Development Authority v. L.G. Chaudhary Engineers and Contractors, (2018) 10 SCC 826, para 19, as clarified in Sweta Construction v. Chhattisgarh State Power Generation Company Ltd., (2024) 4 SCC 722, paras 13-17. See Govind Rubber Ltd v. Louis Dreyfus Commodities Asia Pvt Ltd, (2015) 13 SCC 477, para 21; State of West Bengal v. Sarkar and Sarkar (supra), para 11.

McDermott International Inc (supra), para 52.

award by reappreciating evidence or interfering with a reasonable interpretation of contractual terms by the arbitral tribunal. 27 The court under Section 37 must only determine whether the Section 34 court has exercised its jurisdiction properly and rightly, without exceeding its scope.28

23. Since the Section 34 petition in this case was filed prior to the 2015 Amendment to the Act, the pre-amendment statutory position must be considered, 29 the relevant portion of which reads as follows:

> "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— ***
>
> (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.

MMTC Ltd v. Vedanta Ltd, (2019) 4 SCC 163, para 14; Konkan Railway Corporation Ltd v. Chenab Bridge Project Undertaking, (2023) 9 SCC 85, para 25.

MMTC Ltd (supra), 14; Bombay Slum Redevelopment Corporation Pvt Ltd v. Samir Narain Bhojwani, (2024) 7 SCC 218, para 26.

Batliboi Environmental Engineers Ltd v. Hindustan Petroleum Corporation Ltd, (2024) 2 SCC 375, para 31. Explanation.—Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81." (emphasis supplied)

24. The term "public policy" in Section 34(2)(b)(ii) has been interpreted by this Court as meaning (a) the fundamental policy of Indian law, or (b) the interest of India, or (c) justice or morality.30 In ONGC v. Saw Pipes,31 this Court further held that an arbitral award can be set aside as being contrary to public policy if it is patently illegal. The illegality must go to the root of the matter and

must be so unfair and unreasonable that it shocks the court's conscience; it cannot be of a trivial nature. 32 Such patent illegality includes a situation where the award is in contravention with substantive law.33 24.1 Further, an award can be set aside as being opposed to the "fundamental policy of India" if it is perverse, 34 i.e., the finding is not based on evidence, or the arbitral tribunal takes something Renusagar Power Co Ltd v. General Electric Co, 1994 Supp (1) SCC 644, para 66. ONGC v. Saw Pipes Ltd, (2003) 5 SCC 705.

ibid, para 31; McDermott International Inc (supra), para 59. ONGC v. Saw Pipes (supra), para 54; Associate Builders v. DDA, (2015) 3 SCC 49, para 42.1. ONGC v. Western Geco Internation Ltd, (2014) 9 SCC 263, para 39. irrelevant into account, or ignores vital evidence. 35 However, an award is not perverse if the finding of fact is a possible view that is based on some reliable evidence. 36

25. The High Court, while exercising jurisdiction under Section 37, has set aside the arbitral award against respondent no. 1 on the grounds of patent illegality and perversity in the following manner: first, that the arbitral award is contrary to Bye-law 247A of the BSE Bye-laws, 1957 and the SEBI Guidelines that mandate express authorisation of the client for adjustment of accounts, and second, that the finding of joint and several liability is based on the respondents' marital relationship and past experience, contrary to their distinct legal entities and separate accounts, thereby making it perverse.

26. We will first deal with the issue of perversity of the finding of joint and several liability. We have already stated the material relied on by the arbitral tribunal and its reasons to arrive at such finding. Broadly, the arbitral tribunal considered the oral evidence of Ms. Deepika Chokshi and Mr. Parag Vinod Jhaveri, both of Associate Builders (supra), para 31.

Kuldeep Singh v. Commr of Police, (1999) 2 SCC 10, para 10, as cited in Associate Builders (supra), paras 32,

33. whom have stated in their affidavits that the respondents agreed to be jointly and severally liable and that their account balances would be netted off. These witnesses were also cross-examined but the respondents could not bring out anything to the contrary. The arbitral tribunal also considered the fact that respondent no. 1 would visit the appellant's office and manage both accounts, as well as the manner of financial dealings vis-à-vis both accounts. Based on this material on the conduct of the parties as well as the oral representations made by the respondents to the appellant, the arbitral tribunal arrived at the finding that there was an oral contract of joint and several liability. This is a pure finding of fact, arrived at by the arbitral tribunal, on the basis of oral and documentary evidence adduced by the parties.

27. Applying the test for perversity under Section 34 as explained above, it is clear that the High Court, while exercising jurisdiction under Section 37, adopted an incorrect approach. The arbitral tribunal's findings are definitely based on evidence, as has been rightly held by the Section 34 court. The High Court, at the stage of the Section 37 appeal, took an alternative view on this finding of fact by reappreciating evidence. The arbitral tribunal's conclusion was based on oral and documentary evidence regarding the conduct of the parties, which leads to a reasonable and possible view that

there is joint and several liability. Hence, the High Court, while exercising jurisdiction under Section 37, has incorrectly held the award to be perverse. 37

28. Coming to the issue of patent illegality, the High Court held that despite noting the need for a client's express authorisation for adjustment of accounts, the arbitral tribunal approved an illegal transfer of the credit balance from respondent no. 1's account to that of respondent no. 2. On going through the arbitral award, the finding of the arbitral tribunal is based on "past experience" – meaning the conduct of respondent no. 1 all along acting on behalf of respondent no. 2, joint and several liability, and the respondents' marital relationship.

29. Bye-law 247A was inserted by way of an amendment to incorporate the SEBI Guidelines on Regulation of Transactions Between Clients and Brokers dated 18.11.1993. It reads:

> See P.R. Shah, Shares & Stock Brokers (supra), para 21; Dyna Technologies Pvt Ltd v. Crompton Greaves Ltd, (2019) 20 SCC 1, paras 24-25; Anglo American Metallurgical Coal Pty Limited v. MMTC Limited, (2021) 3 SCC 308, para 48; UHL Power Company Ltd. v. State of Himachal Pradesh, (2022) 4 SCC 116, para 22.

"247A. Notwithstanding anything to the contrary contained in these Bye-laws, the following shall regulate the transactions between Clients and Brokers:

> "(1) It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account. The above principles and the circumstances under which transfer from client's account to Member broker's account would be allowed are enumerated below.

A)	Member Broker to keep Accounts	Every member broker shall keep such books of accounts, as will be necessary, to show and distinguish in connection with his business as a member-	
		(i)	Moneys received from or on account of and moneys paid to or on account of each of his clients and,
		(ii)	the moneys received and the moneys paid on Member's own account.
B)	Obligation to pay money into-"client account"	Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at	

			bank to be kept in the name of the member in the title of which the word “clients” shall appear (hereinafter referred to as “clients account”. Member broker may keep one consolidated clients accounts for all the clients or accounts in the name of each client, as he thinks fit: Provided that when a Member broker receives a cheque or draft representing in part money belonging to the client and in part money due to the Member, he shall pay the whole of such cheque or draft into the clients account and effect subsequent transfer as laid down in para D(ii).
C)	What moneys to be paid into “clients account”	i)	No money shall be paid into clients account other than- money held or received on account of clients;
		ii)	such money belonging to the member as may be necessary for the purpose of opening or maintaining the account;
		iii)	money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below:
		iv)	a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the member.
D)	What moneys to be		No money shall be drawn from clients account other than-

withdrawn from "clients account"	i)	money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client;
	ii)	such money belonging to the Member as may have been paid into the client account under para 1C(ii) or 1(C)(iv) given
	iii)	money which may by mistake or accident have been paid into such account in contravention of para C above.
E) Right to lien, set-off etc., not affected.		Nothing in this para 1 shall deprive a Member broker of any recourse of right, whether by way of lien, set-off, counter-claim charge or otherwise against moneys standing to the credit of clients account.

It shall also be compulsory for all Member brokers/Sub-brokers to receive or to make all payments from or to the clients strictly by way of account payee crossed cheques or demand drafts or direct credit into the bank account through EFT or any other modes as so permitted by the Reserve Bank of India. Member brokers shall accept cheques drawn only by clients and issue cheques only in favour of the clients. However, in exceptional circumstances Member broker may receive payment in cash, to the extent that there is no violation of the Income Tax requirement for the time being in force."

30. Bye-law 247A provides that a broker shall not withdraw money from a client's account other than money required for payment on behalf of the client, for payment of debt due to the broker from the client, or money in respect of which there is a liability of the client to the broker. Once the arbitral tribunal arrived at a finding that respondent no. 1 is jointly and severally liable for the debit balance in respondent no. 2's account, which we have upheld above, Bye-law 247A in fact permits the withdrawal of the credit balance from respondent no. 1's account. Therefore, the adjustment of accounts on 05.03.2001 is legal and valid. Although the arbitral tribunal has held that written authorisation for such adjustment is required, we find nothing in Bye-law 247A or in the SEBI Guidelines, on which this Bye-law is based, that mandates the same.

31. Bye-law 227(a) also supports the adjustment of accounts, although it has not been considered in detail at the earlier stages. It provides for the broker's lien, which remains unaffected as per clause (E) of Bye-law 247A, and reads:

> "Whenever and so often as a constituent is indebted to a member all securities and other assets from time to time lodged with the members by such constituent or held by the member for and on behalf of such constituent and any cash lying to the credit of such constituent with the member shall be subject to the lien of such member for any general balance of account or margin or other monies that may be due at any time by such constituent singly or jointly with another or others to such member in respect of any business done subject to the Rules, Bye-laws and Regulations of the Exchange and shall be deemed a general security for payment to such member of all such monies (including interest, commission, brokerage and other expenses) as may be due by such constituent in such manner." (emphasis supplied) As per Bye-law 227(a), the appellant had lien over the cash balance lying in the account of respondent no. 1 on account of his joint liability with respondent no. 2. Therefore, from this perspective as well, the adjustment of accounts was in accordance with the BSE Bye-laws and was not against the legal provisions governing the issue. Therefore, the arbitral award does not suffer from patent illegality that warrants interference with its findings.

32. In view of the above reasons, we answer the two issues that we set out in the beginning in the following manner:

> i. Under Bye-law 248(a), the arbitral tribunal could have exercised jurisdiction over respondent no. 1 on the basis of an oral contract that he would be jointly and severally liable for the transactions undertaken in respondent no. 2's account. Such oral contract would not amount to a "private" transaction that falls outside the scope of arbitration.
>
> ii. The High Court did not correctly exercise jurisdiction under Section 37 as it reappreciated evidence and examined the merits of the award. Upon examination of the findings of the arbitral tribunal, it is clear that the award is not liable to be set aside on the grounds of perversity or patent illegality.

33. We therefore set aside the impugned order of the High Court in Appeal No. 126/2006 in Arbitration Petition 309/2004 dated 29.04.2021 and allow the present appeal. As a consequence, the arbitral award dated 26.02.2004 is upheld in its entirety and respondent no. 1 is jointly and severally liable, along with respondent no. 2, to pay the appellant the arbitral sum of Rs. 1,18,48,069/- along with 9% interest p.a. from 01.05.2001 till date of repayment as has been directed by the arbitral tribunal.

34. Pending applications, if any, stand disposed of.

35. No order as to costs.

.....J. [PAMIDIGHANTAM SRI NARASIMHA] .....J. [SANDEEP MEHTA] NEW DELHI;

FEBRUARY 10, 2025