

(2011) 02 BOM CK 0076

In the Bombay High Court

Case No : Arbitration Petition No. 1383 of 2010 and Chamber Summons No. 1091 of 2010

Saraswat Cooperative Bank Ltd.

APPELLANT

Vs

Fariruddin Quereshi N. and Others

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 35, 36, 37, 7
Bombay Court Fees Act, 1959 — Article 1, 13, 3, 3A
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 3, Order 1 Rule 6, Order 2 Rule 3, Order 41 Rule 1, 100
Evidence Act, 1872 — Section 19
Multi-State Cooperative Societies Act, 2002 — Section 84, 94
Multi-State Cooperative Societies Rules, 2002 — Rule 30

Citation : (2013) 1 ARBLR 129 : (2012) 1 BomCR 902

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : F.E. D'vitre and Yashesh V. Pajwani, a./w., Y.R. Naik, for the Appellant; V.A. Thorat and Vaibhav Sugdare, M. G. Gawde for Respondent Nos. 2003, 2004 and 2006, Chetan Kapadia, Ishwar Nankani, I.J. Nankani, H.S. Khokawala, i./b., Nankani and Associates for Respondent Nos. 2005, for the Respondent

Judgement

Anoop V. Mohta, J.—The Petitioner Bank has challenged a common award dated 06/10/2009, passed by the Arbitrator, appointed u/s 84 of the MultiState Cooperative Societies Act, 2002 (for short, MSCS Act) by a petition u/s 34 of the Arbitration and Conciliation Act, 1996 (for short, the Arbitration Act). This common award resulted into the dismissal of all the claims against all 2006 Respondents.

2 In the Petition, the parties are: the Petitioner Bank is the Claimant in all the matters; Respondent Nos. 1 to 2000 are original respective Opponent No. 1; Respondent No. 2002 is a Cooperative Society of cobblers which was original Opponent No. 2; Respondent No. 2001 is the Arbitrator; Respondent No. 2003 is

a partnership firm of the Sadruddin Daya family; Respondent Nos. 2004 and 2006 are its partners. These Respondents were original Opponent Nos. 3 to 6 in all matters.

2A) Two preliminary issues have been raised by the contesting Respondents.

Whether a common/composite petition u/s 34 of the Arbitration Act, is maintainable against the common award after consolidation of claim petitions by consent and whereby all claim petitions have been dismissed in toto, and;

Whether the Original Claimant(Petitioner Bank) is liable to pay advalorem Court fees as per Scheduled I, Article 3A or a fixed Court fee, as per Schedule II, Article 1 (f) (iii) of the Bombay Court Fees Act, 1959 (for short, BCF Act) on application u/s 34 of the Arbitration Act to set aside the common award whereby 2000 claim petitions have been dismissed in toto and not awarded any monetary claim by the arbitrator.

The basic events are as under:

3. On 16/06/1970, Respondent No. 2002, the Society (Opponent No. 2) was registered under the Maharashtra Cooperative Societies Act (for short, MCS Act). It had more than 3000 cobbler members, manufacturing leather goods which were supplied to Respondent No.2003 (Opponent No. 3).

4. On 15/09/1985, the Multi State Cooperative Societies Act, 1984 (for short, MSCS Act, 1984) came into force. Now amended/substituted by MSCS Act w.e.f. 19/08/2002. This society was taken over by Respondent Nos. 2003, 2004 and 2006 (Opponent Nos. 3, 4 and 6) some time in the year 1987.

5. On 08/04/1988, the Society sought on and behalf of its 300 members a loan of Rs. 75 lakhs from the Petitioner Bank (disputant). Each members was given a loan of Rs. 25,000/-. Each members had given a writing to credit his loan amount in the account of the Society. For the said loans Respondent Nos. 2002 to 2004 (Opponent Nos. 2 to 4) were sureties. The said loan accounts were closed, having fully repaid the loans.

6. On 07/05/1990, 04/12/1990, 10/09/1991, 16/07/1993 and 24/06/1993, the Society (Respondent No. 2002) again approached the Petitioner Bank for and on behalf of 5 batches of 400 cobbler members for a separate loan of Rs. 100 lakhs i.e. 500 lakhs. The loan was sanctioned and duly disbursed to the cobblers of respective batches, through the Society. In respect of the said transactions also Respondent Nos. 2002, 2003 and 2004 were a sureties. A collective guarantees were also given by Respondent Nos. 2003 and 2004 separately.

7. In the year 1996, the Petitioner Bank filed 2000 disputes/claim Petitions in the Cooperative Court for recovery of the balance amount due from each of the Principal borrower (Opponent No. 1) on the basis of guarantees, etc. They had also sought interim orders of attachment before judgment and injunction which were granted.

8. The Respondent Nos. 2003 to 2006 (Opponent Nos. 3 to 6) challenged the jurisdiction of the Cooperative Court, which was upheld by the Cooperative Appellate Court. The Hon'ble High Court admitted the Petitions against this order and ultimately by order dated 09/05/2008 directed that the disputes be refiled before the Arbitrator, appointed u/s 84 of the MSCS Act.

9. On 14/03/2007, the Arbitrator applied for nominal membership of the Petitioner which was granted. The wife of Arbitrator applied for shareholder membership which was also granted, but resigned from membership on 11/09/2009.

10. In the month of July, 2008, present 2000 disputes filed before the Arbitrator. Those were numbered separately. The Arbitrator issues separate notices to the Respondents to adjudicate the unpaid loan amount with 18% interest from 01/10/1996.

11. On 03/09/2009, Respondent Nos. 2003 and 2004 as well as, Respondent No. 2006 filed the separate claim affidavits in lieu of oral evidence. The Arbitrator permitted the opposite parties to crossexamine the witness and the evidence was recorded. The parties had filed the written arguments also.

12. On 06/10/2009, the common Award was passed.

13. Following are the undisputed position on record:

(i) The Petitioner Bank has filed 2000 disputes on 06/11/1996 before the Cooperative Court, Mumbai, constituted under the Maharashtra Cooperative Societies Act, 1961 (for short, Cooperative Societies Act.)

(ii) Opponent No. 1 in each disputes was named individually, who was a member and a shareholder of the Society and of the Petitioner Bank. Where, Respondent No. 2002 to 2006 were the same. Opponent Nos. 3 to 6 were promoted by the Society.

(iii) Opponent Nos. 3, 4 and 6 were the guarantors for the loans disbursed to the Society for being paid in turn to Opponent No. 1, in each case. Admittedly, separate and individual documents have been signed, with regard to the individual loans of respective Opponent No. 1, of 2000 cobbler members. The terms and conditions were identical. The total loan of Rs. 5 crores were disbursed. (Rs. 25,000/x 2000 cobblers = Rs. 500,00,000) from the Petitioner Bank. Each cobbler, in the result, got the loan of Rs. 25,000/.

(iv) On 31/03/1996, the balance amount due from the 2000 cobblers was Rs. 3.27 crores. The interest was claimed at 18% p.a. on the said amount from 01/10/1996.

(v) By order dated 05/12/2000, the Maharashtra State Cooperative Appellate Court found that the Cooperative Court, Mumbai, had no jurisdiction to decide the disputes, and therefore, returned the Petitions to the Petitioner Bank for filing in the appropriate Court.

(vi) As all 2000 disputes were identical and as the common issues and the similar documents were involved, apart from common Opponent Nos. 2 to 6, the sureties and the guarantors and the Petitioner bank and as agreed, the common evidence was submitted. Therefore, all the matters were clubbed and heard together accordingly, that resulted into the common judgment/ award in question.

(vii) By order dated 06/05/2008, the Petitioner Bank withdrew Writ Petition No. 752 of 2001, whereby the challenge was made to the order passed by the Maharashtra State Cooperative Appellate Court. In view of the enactment of MSCS Act, the Petition was accordingly disposed of as withdrawn with liberty to adopt appropriate remedies. In the mean time, pending the Writ Petition, by a notification dated 23rd January, 2003, the Registrar under the MSCS Act, has appointed the Arbitrator for all the disputes concerning the Petitioner Bank .

(viii) The Petitioner, therefore, resubmitted all these Applications/Petitions before the Arbitrator. The Arbitrator has allotted separate case numbers to each Application as "Case No. ARB/SCB/401 to 2400/2008".

(ix) The contents of the Applications along with the Claims, originally raised in the year 1996, remained unchanged, when it was refiled before the Arbitrator.

(x) Before the Arbitrator, all the original borrowers were not traceable though served by substituted service.

(xi) The common written statement filed by Respondent No. 2003, 2004 and 2006 (original Opponent Nos. 3, 4 and 6). Respondent No. 2005 (Original Opponent No. 5) also filed the common written statement. The common affidavit of evidence was filed by the Petitioner Bank .The common affidavit was filed by Opponent Nos. 3,4, 5 and 6 separately.

(xii) Opponent Nos. 3 and 4 gave the separate guarantees as well as, five composite guarantees for Rs. 1 crore each. These are identical and common to all 2000 Disputes/Petitions.

By consent such consolidation and the common award is permissible:

14. All these 2000 disputes were consolidated and proceeded by the common evidence and arguments as the parties have agreed and consented for such consolidation and the arbitrator proceeded accordingly. There is no legal bar for such consolidation. The common award so passed by the Arbitrator though separate disputes/Petitions were filed/referred under the MSCS Act, is well within the framework of law. Prem Lala Nahata and Another Vs. Chandi Prasad Sikaria, Such consolidation and the common award by the Arbitrator under MSCS Act and/or under the Arbitration Act, is permissible.

15. The Arbitration Act provides that parties can determine their own rules of procedure while conducting the Arbitration proceedings. The Arbitral Tribunal may not be bound by the strict principles of the CPC (CPC) and Indian Evidence Act as contemplated in Section 19 of the Arbitration Act. In the present case,

admittedly the parties have agreed and consented and proceeded accordingly and the Arbitrator in view of consolidation of all these disputes has passed the common award and thereby dismissed/rejected all 2000 claims/petitions filed by the disputant bank. The procedure, therefore, so adopted by the parties in Arbitration Proceedings though it arise out of MSCS Act, still as noted above, the provisions of Arbitration Act apply in all respects.

16. Having once adopted this procedure and proceeded accordingly, and as there is no bar of any kind under any law, the common order so passed by the Arbitrator after consolidation of all these proceedings, in no way cause any hardship, injustice or prejudice to any parties. In my view, no fault can be found with this procedure so adopted by the parties, which even otherwise, permissible under the Arbitration Act.

17. Still the issue is whether it can be treated as a single award for the purpose of Section 34 of the Arbitration Act and/or for the purpose of the Court fees, under the BCF Act.

Object of consolidations of Arbitration Proceedings and the Common Award:

18 Admittedly, 2000 claim proceedings/Petitions, were filed by the Petitioner Bank but by consent, all the proceedings were consolidated and proceeded accordingly and that resulted into the common award.

That itself, is not sufficient to treat the impugned award as only one award as contended by the learned Senior counsel appearing for the Petitioner. In my view, though common award is passed, it is admittedly passed in 2000 Arbitration Proceedings. The award itself shows the details of the notified claims raised by the Petitioner Bank against all 2000 borrowers and common guarantors and the amount so awarded by the Arbitrator against the individual Respondents. Therefore, for the reasons recorded above, as common question of law and/or facts arose out of the similar transactions and/or connected series of transactions and the basic contents of all the Petitions and documents are quite common/similar and as the parties accordingly lead common evidence, that itself, in my view is not sufficient to say that all 2000 claims/petitions has no independent existence and/or to be regarded as one legal proceeding.

19 It is necessary to note the operative part of the award which is as under:

The present claim put up by the Saraswat CoOperative Bank Ltd., against Opponent No. 5 in each of the above mentioned cases stand dismissed with cost.

It is further declared that the Opponent No. 2 namely Jeevan Vikas Coop. Leather Industries Ltd., has not been joined properly as Opponent No. 2 in each of the present proceedings and hence said society is discharged from its guarantee obligations.

It is further ordered that The Saraswat Coop. Bank Ltd., is not entitle to recover any amount from the respective principal borrowers who are the Opponent Nos.

1 in each of the above 2000 dispute cases.

It is further ordered that Opponent Nos. 3 and 4 stands discharged from their guarantee obligations, and hence order of attachment of their properties below Exh. 1 stand vacated.

Consequently, the present action against Opponent Nos. 6 stands dismissed with costs.

The Bank to bear the Arbitration fees in all matters and shall also bear its administrative costs.

Annexure hereto be treated as part of this Award.

The Schedule/Annexure to the award shows the names of the opponent and Case No. ARB/SCB, Case No. of Cooperative Court. As per the statement the total claim amount as on 30th September, 1996 is Rs. 32840799.04/and as on 30th April, 2008 is Rs. 247459985.19/.

20. The submission of the learned Senior counsel appearing for the Petitioner revolving around Saraswatibai Vs. Durga Sahai and Others, is untenable. The facts and circumstances are totally distinct and distinguishable. In my view also an order of consolidation of proceedings to facilitate joint trial has limited effect of common parties; evidence; proceedings; documents; and arguments. The common award so passed by the Arbitrator, cannot be treated as one award by overlooking the admitted position that it disposed off 2000 independent/separate proceedings refiled by the Petitioner Bank before the Arbitrator. The same were registered and numbered separately. Therefore, to say that it is a one award/judgment for all the purposes, is unacceptable. Such submission if accepted, bound to frustrate the object of any consolidation of Suits/Petitions. This is a multiple awards in view of the undisputed position on record that the Arbitrator dismissed all the claims of the Petitioner bank by a common award in question.

An unexecutable Arbitral common award:

21. The other facet is that the common award whereby, the learned Arbitrator has dismissed all the disputant bank's 2000 Claim Applications, this itself means it is unexecutable award as contemplated under the Arbitration Act.

22. There is no dispute that in view of Sections 84 and 94 of MSCS Act and Rule 30 made thereunder, the Provisions of the Arbitration Act are applicable in all respect, including for the challenge to the award under the MSCS Act. 16 arbp1383.10.sxw ssm

23. Any award passed by the Arbitrator is enforceable subject to the finality, as provided under Sections 35, 36 and 37 of the Arbitration Act. It is also clear that, therefore, the common award is not a single award and cannot be stated to be as an enforceable Award/decreed as contemplated under the CPC (for short, the CPC), read with Section 36 of the Arbitration Act.

24. Under the Arbitration Act, Section 34 contemplates for setting aside the Arbitral Award and Appeal is also contemplated u/s 37 of the Arbitration Act against the setting aside or refusing to set aside the Arbitral Award.

25. The Court, therefore, while dealing with such Section 34 Application, is either set aside the Arbitral Award or refused to set aside the Arbitral Award. There is no provision whereby, the Court even based upon the admitted position on record and/or otherwise, can grant and/or award the claim for the first time u/s 34 of the Act. Any Application for modification of the award which is otherwise permissible but now reiterated by the Full Bench in R.S. Jiwani Vs. Ircon International Ltd., A Government of India, , the party in a given case may restrict the particular claim or claims. The Court, therefore, in view of above two circumstances will pass appropriate order and modify the award but in no case the Court can pass award as contemplated under the Act, either interim or final. Therefore, also, the award so passed by the Arbitrator dismissing all the claims of the disputant bank, in no way can be stated to be enforceable award or decree. In the present case there is no award for any prior or past adjustment of any amount.

26. The Apex Court in Prem Lata (Supra), in paragraph No. 18, has observed as under:

18. It cannot be disputed that the court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the court that some common question of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits.

27. In view of above clear dictum and in the present facts and circumstances as referred above, there is nothing wrong if such Petition u/s 34 of the Arbitration Act as filed by the Petitioner, apart from above observations, it is also in the interest of all the parties, and to avoid multiplication of proceedings such common petition so filed need to be accepted. There is no prejudice, as such will cause if such composite Petition is permitted/ filed and proceeded accordingly.

28. Normally, a separate petition ought to have been filed though there is a common award but specially in view of the fact that by such award, 2000 claims/ petitions of the disputant bank have been dismissed, that resulted into the dismissal of 2000 cases by common award. But considering the fact as recorded above, and as basic parties, cause of actions, documents, contents and pleadings are common, and as the parties have already adopted the procedure before the

Arbital Tribunal, I see there is no reason that the same should not be permitted before this Court and even u/s 34 of the Arbitration Act. There is no bar whatsoever under any provision under the Arbitration Act, MSCS Act and/or CPC to file such Petition. In view of above, therefore, I am not inclined to accept, that such consolidated Petition u/s 34 of the Act is not maintainable. However, it is definitely subject to the requisite Court fees treating the same as the dismissal of 2000 claim/petitions. The Petition, therefore, though maintainable but it is subject to the requisite Court fees under the BCF Act.

Advalorem or fixed Court fees

29. Now, the next issue is whether the Petitioner is bound to pay the Court Fees as per Schedule I, (Ad valorem Fees) Article 3A, as amended by 1st September, 2009.

30. A Division Bench (Anoop V. Mohta, J), referred an issue to the larger Bench, by dealing with the provisions of the BCF Act and the aspect of the Court Fees referring to the Arbitration Act, 1940, and the Arbitration and Conciliation Act, 1996, prior to the above amendment, in Arbitration Appeal No. 1 of 2009 and Civil Application No. 6279 of 2008, dated 18 th September, 2008, Shri Harjinder Singh S/o. Balwant Singh Osan v. Paramjeet Singh S/o Balwant Singh Osan, observed as under:

26. It is clear that the BCF Act is enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct proceedings. (Sri Ratnavaramaraja Vs. Smt. Vimla,). In State of Maharashtra Vs. Mishri Lal Tarachand Lodha and Others, , the Supreme Court has observed in paragraph 9 as under

...The Act is a taxing statute and its provisions therefore have to be construed strictly, in favour of the subject litigant .The other provisions are for the purpose of allowing the party feeling aggrieved against the decision of the High Court to take up his case to the next higher Court, the Privy Council and therefore the relevant provisions in that regard had to be given a liberal construction.

It is relevant to note the following observations also as made in Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, :

15. When dealing with a question of court fee, the perspective should be informed by the spirit of the magna carta and of equal access to justice which suggests that a heavy price tag on relief in Court should be regarded as unpalatable.

31. In view of conflict of opinion on the issue regarding payment of Court fees, the Full Bench of this Court in Harjinder Singh Balwant Singh Osan and Ors. v. Paramjeet singh Balwant Singh Osan and Ors. 2008(6) Bom.CIR. 565 has considered and observed as under:

2. For the reasons recorded by us in our order passed in Writ Petition No. 4064 of

2008 along with Arbitration No. 340 of 2007 and other connected matters, we hold that Article 3 of Schedule I of the Bombay Court Fees Act is not applicable to a petition filed u/s 34 or for a memorandum of appeal filed u/s 37 of the 1996 Act. When a memorandum of appeal is filed u/s 37 of the Bombay Court Fees Act challenging an order passed in a petition filed u/s 34 of the 1996 Act before this Court, payment of Court fees will be governed by Article 13 of Schedule II of the Bombay Court Fees Act. The issue referred, therefore, is accordingly answered. The matter, therefore, now be placed before the appropriate Division Bench for further orders.

32. However, w.e.f. 01/09/2009, by the Maharashtra Ordinance XII of 2009, an amendment has been incorporated by replacing the earlier Article 3 to 3A in schedule I. This new Article contemplates that on the plaint, application or petition, to set aside or modify any Arbitral Award under the Act; the advalorem fee or proper fee payable is one half of the advalorem fee on the amount or value of the award sought to be set aside or modified, according to the scale prescribed under Article 1 of Schedule I. Article 1 prescribed, plaint or memorandum of appeal (not otherwise provided for in this Act) or, of cross objection presented to any Civil or Revenue Court, based upon the amount or value of the subject matter in dispute as prescribed. The amount of Court fees payable depend on the amount or value of the award and not by any other method.

33. The judicial notice of following legal principles and citations can be taken note of by the Court though not cited by the parties.

(a) When the meaning is plain, the Court cannot enlarge scope of it. Express words need to be respected. The object and intention of the Act cannot prevail over express provisions. *Snehadeep Structures Private Limited Vs. Maharashtra Small Scale Industries Development Corporation Limited*,

(b) It is necessary to consider all the provisions of a concerned Act/Rules/Schedules. It cannot be read in isolation.

(c) If there is any doubt or ambiguity, the benefit should go in favour of a litigant.

(d) The concept of "Court fee" cannot be equated with the concept of "Tax". The Court fee cannot be intended to collect and/or generate to be a revenue except to collect the cost of administration of civil justice. (*The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.*, ., *Secretary to Government of Madras and another Vs. P.R. Sriramulu and another*,)

34. If there is lacuna in the Court Fees Act, the Court cannot interpret the existing provision to bring in the present case under the ambit of Court Fee Act. There is nothing pointed out that Suit Valuation Act and the Court Fee Act applies to the value of the arbitration also, which is not plaint, both for the purposes of jurisdiction and the Court fee. There is no practice of paying any court fee at the time of filing petitions, irrespective of the claim amount, before the Arbitrator

under the Act and/or even u/s 89 of CPC (CPC). The direction to refund of court fee on reference to Alternative Dispute Resolution (ADR) u/s 89 of CPC cannot be overlooked as it covers arbitration proceedings also. Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), The purpose and object of Arbitration Act also play an important role while interpreting the provisions in question.

35. Therefore, on a plain and simple reading of this provision, whosoever wants to file Application or Petition and/or appeal to set aside the award or modify the Arbitral Award, need to pay one half of the advalorem fees on the amount or value of the amount of award sought to be set aside or modified. This, in my view, contemplates that there is a monetary award passed against the party, which the aggrieved party wants to challenge by such application or petition or by appeal to set aside or modify the said award under the Arbitration Act, which is subject to ad valorem Court fees as prescribed in Article 3A of Schedule I and not otherwise.

36. In the present case, the situation is quite different. Here by the common order, the Arbitral Tribunal has dismissed all the claims of the disputant bank, therefore, there is no amount awarded by the award which needs to be set aside or modified by application u/s 34 of the Arbitration Act. The submission that the valuation or the amount so involved or referred in the claim Petition by the disputant bank, should be the basis for calculating the advalorem fees as per Article 3A, in my view is untenable.

37. Under the Arbitration Act, whosoever filed a claim Petition for whatsoever amount, against the Respondent/opponent need not pay any court fees for want of specific provisions under the BCF Act and/or under the Arbitration Act. Therefore, Article 3A which deals with Arbitration Act, cannot be invoked for charging the Court fees on the basis of such submission. The Court fees just cannot be charged unless it is specifically provided. There is no question of any interpretation and/or reading such clauses/articles, in favour of charging the court fees in such cases. In the present case, there is a total rejection of claims. The Petition u/s 34 as filed, to set aside or modify the award, no advalorem Court fees as contemplated under Article 3A, for want of any amount and/or valuation of the award, is payable. There is no clear charging provision. No Court fee is therefore, payable if there is challenge to the finding given in the award, unless it is subject to grant of monetary claim or adjustment of any amount.

38. Here another factor is that pursuance to the order passed by the Hon''ble High Court and as permitted the disputant bank refiled all the claim Petitions before the Arbitrator, who was appointed under the MSCS Act as contemplated u/s 84, and the matter proceeded accordingly. The statement is made by the learned Senior counsel appearing for the Petitioner that at the relevant time when they preferred the claim petitions before the Cooperative Court, they paid the requisite Court fees. Under MSCS Act also there is no provision to pay Court fees on such claim petitions. There is no such express provisions for Court fees in

such circumstances for the purpose of claim Petition under this MSCS Act is available even under the BCF Act. Therefore, if the Court fee is not payable by the claimant either under the Arbitration Act and/or MSCS Act at the time of filing of claim petition. Therefore, to say that they are liable to pay Court fees on the basis of valuation of the plaint or claim so raised, in my view, is also unacceptable.

39. It is relevant to note that Article 3A contemplates the Arbitration Act. There is no reference made to the MSCS Act for the purpose of Court fees. However, in view of the fact that Section 84 of the MSCS Act itself provides and therefore, Arbitration Act to be adopted and followed to set aside the Arbitral award and also the further proceedings, but still in view of above, in the present facts and circumstances of the case, and as Article 3A of the Schedule I cannot be extended to charge ad valorem fees. u/s 34 of the Arbitration Act, the Court cannot grant any decree and/or pass any award first time in the Court, as claimed. Therefore, also and for want of clear provisions under the BCF Act, no question of ad valorem Court fees to be paid by the Petitioner on the basis of amount so claimed in the claim Petitions. Therefore, in view of the present facts and circumstances of the case, I am of the view that the Petitioner is liable to pay Court fees under Schedule II Item 1 (f) (iii) i.e. Rs. 20/28 on the Applications. However, as noted above, though there is a common award, by which 2000 claim Petitions filed by the disputant bank have been dismissed, therefore, though such common consolidated Application u/s 34 of the Arbitration Act is maintainable, the Petitioner is liable to pay Court fees by treating the same as 2000 separate award and therefore, 2000 separate Applications u/s 34 of the Arbitration Act. The submission that they are liable to pay only Rs. 20/on such consolidated or common Application u/s 34, is unacceptable.

40. The submission is also raised by the learned senior counsel appearing for the Respondents by relying on *Snehadeep Structures Private Limited (Supra)* that Application u/s 34 of the Arbitration Act needs to be treated as Appeal as contemplated under the CPC and therefore, such consolidated Application is also not maintainable and even if it is maintainable being Appellate proceedings, it should be subject to the Court fees as contemplated under the BCF Act. The law with regard to the scope and purpose of Section 34 is well settled. The Petition u/s 34 of the Act, in no way can be equated by the Appeal as contemplated under the Code of Civil Procedure ". The purpose and scope of Section 34 has been elaborated by the Apex Court in many cases. It is made clear, in para 40 and 43, by the Supreme Court in *Snehadeep Structures Private Limited (Supra)* that the "appeal" as explained is for the purpose of Section 7 of Interest Act and not for the purpose of CPC and/or for the Arbitration Act. The judgment and the facts are distinct and distinguishable in every aspect.

41. In view of above peculiarity of the present case and considering the scope and purpose of Arbitration Act and MSCS Act, the submission so raised by the learned Senior counsel appearing on behalf of the Respondents, revolving around

the provisions of Order I Rule 3/6 and Order II Rule 3, Sections 2(a), 96 and 100 of the CPC are of no assistance to support their contention with regard to the preliminary issues so raised about maintainability of the consolidated Petition u/s 34 and even for the Court fees. Section 4 and 149, O41 R1 of CPC just cannot be overlooked. There is no question of challenge to 2000 decrees and/or any execution of such award/decrees as submitted. There is also no question of crystallization of any rights and liabilities of any parties under substantive law applicable to the borrowers or to the guarantors as contemplated under the Indian Contract Act, 1872. It is made clear that the present award no way deal with the merits of the matter.

42. The Petitioner bank has filed the common composite application u/s 34 of the Arbitration Act, within a limitation from the date of award. Therefore, now to direct the Petitioner to file separate 2000 petitions after lapse of limitation period on the date of order will further cause complications than solving it, therefore, this is also one of the reason that the Petition so filed at the relevant time, within the limitation needs to be maintained.

The office Report

43. Pursuant to the order passed by this Court dated 14th January, 2011, the office has reported as under:

Pursuant to the order dated 14th January, 2011 passed by Your Lordship in the aforesaid matter, Office was directed to endorse and report regarding Court fees liable to be paid by the Petitioner.

In this regard, I respectfully submit that when the aforesaid matters assigned for scrutiny Objection was raised by the officer for filling separate Petition by each Petitioner and payment of Court Fees as per amended provision. Instead of complying office objection the Advocate for the Petitioner has put a remark that "because of one common order by the Arbitrator and in view of Order I Rule VI of Code of CPC Petitioner is entitled to file one petition and maximum Court Fees of Rs. 1,50,000/is paid. Hence, no further fees is payable also it is not necessary to pay court fees on each arbitration dispute and satisfy the Honourable Court".

In the circumstances the aforesaid petition was numbered subject to the undertaking given by the Advocate for the Petitioner.

I further respectfully submit that in view of the directions of Your Lordship if each claim is to be treated separately and petition to be filed separately then the total Court Fees payable is Rs. 67,25,910/

And if one petition is filed then maximum payable court fees is Rs. 1,50,000/ which is paid by the Petitioner.

44. The office has treated each claim/petition separately but charge Court fees u/s 3A to the extent of Rs. 67,25,910/based upon the calculation made referring to the statement of claims of amount as on 30/04/2008, of 2000 cases. However,

as observed above, the Petitioner Bank is not liable to pay Court fees as per Article 3A of the BCF Act and are liable to pay Court fees as per schedule II Article 1 (f) (iii). There is no question of payment of Court fees as claimed/assessed by the office. The Petitioner has already paid maximum fees of Rs. 1,50,000/-. The excess amount of Court fee is liable to be refunded.

45. The Petitioner Bank has averred in paragraph No. 15 of the Complaint as under:

15. The Petitioners have filed one common petition in respect of the 2000 disputes which were referred for Arbitration. The first Respondent in each of the 2000 disputes has now been shown as Respondent Nos. 1 to 2000. The Respondent Nos. 2002 to 2006 are common in all the disputes. They were Opponent Nos. 2 to 6 in the original disputes. The Petitioners have paid Court fees on the basis of 2000 Arbitration disputes i.e. $2000 \times 20 = \text{Rs. } 40,000$ /on the present petition.

46. The Petitioner, therefore, throughout considered these 2000 separate Petitions and accordingly paid fixed Court fee as contemplated under Schedule II Article I (f)(iii) i.e. $2000 \times \text{Rs. } 20 = \text{Rs. } 40,000$ /. In view of above observations, this calculation/ averments so made is correct. The Petitioner Bank is liable to pay this much amount only. The excess Court fees even if collected/paid, need to be refunded in accordance with law. The office order therefore, accordingly modified to the above extent.

47. Resultantly, the issues are answered accordingly.

(a) The consolidated common Petition u/s 34 of the Arbitration Act, 1996 so filed against the common award in the present case is maintainable.

(b) The Petitioner Bank is liable to pay Court fees as per Schedule Schedule II, Article 1 (f)(iii) and not as per Article 3A of the BCF Act.

(c) The office order is accordingly modified, with further directions to refund the Court fees, if paid, in excess of the amount of Rs. 40000/(2000x20) as per Schedule II Article 1 (f) (iii).

(d) The parties to take necessary steps accordingly and the matter be placed for admission.