

**(2006) 02 DEL CK 0123**  
**In the Delhi High Court**  
**Case No : OMP No. 415 of 2002**

Satish Narang and Co.

APPELLANT

Vs

Pasupati Fabrics Ltd.

RESPONDENT

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**Date of Decision :** 08-02-2006

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 34  
Companies Act, 1956 — Section 100, 101, 102, 103, 104

**Citation :** (2006) 2 CompLJ 452

**Hon'ble Judges :** Sanjay Kishan Kaul, J

**Bench :** Single Bench

**Advocate :** C.M. Oberoi and Surekha Raman, for the Appellant; Rajiv Sharma, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Sanjay Kishan Kaul, J.—The petitioner is engaged in the business of stock, shares and finance brokers and is stated to be a Member of Delhi Stock Exchange Association Ltd. The petitioner was approached in the second half of 1995 by the respondent to act as one of the under-writers/brokers in relation to public issue of the respondent. The agreement in this behalf was entered on 11.03.1996 for the petitioner to under-write two lakh shares of the respondent. The public issue opened in June, 1996 but was not fully subscribed. In terms of the agreement, a devolvment notice was sent to the petitioner on 01.07.1996, but the petitioner is stated to have failed to discharge its obligations in terms of the under- writing agreement. The respondent thus, made arrangements for certain companies to subscribe to the shares, who were stated to be holding the shares in trust for and on behalf of the under-writers including the petitioner.

2. In view of the disputes between the parties and on a petition being filed, this High Court appointed Justice P.K. Bahri (Retd.) as the Sole Arbitrator as per the Order dated 09.11.2000. The learned Arbitrator has made and published his Award dated 20.08.2002. The petitioner aggrieved by the same has filed the

objections u/s 34 of the Arbitration and Conciliation Act, 1996 (for short the said Act).

3. Learned counsel for the petitioner submitted that the Award is erroneous as it has taken note of certain documents which are disputed and has gone into issues not made out from the pleadings.

4. A bare perusal of the Award shows that the petitioner took the defense that the Managing Director of the respondent had approached the petitioner for under-writing a part of the proposed issues and the petitioner had sent a letter dated 15.11.1995 to the respondent mentioning that the Chairman and the Managing Director of the respondent would be personally responsible for the said arrangement. On 15.01.1996, the petitioner received a circular dated 08.01.1996 issued by the respondent / IDBI forwarding a revised draft prospectus and consequently further discussions took place where the petitioner wrote a letter dated 24.01.1996 to the respondent reiterating that the revised under-writer letter was being issued subject to the agreement that the respondent shall finance the petitioner directly or indirectly in terms agreed earlier. This letter is stated to have been confirmed by the communication dated 15.02.1996 of the respondent and, thus, the petitioner disowned the liabilities under the under-writing agreement. The under-writing agreement dated 11.03.1996 was, thus, stated to be subject to this special arrangement. This special arrangement was, however, denied by the respondent and the communications in this behalf were also denied. The respondent stated that one of its employee, Shri Tarun Sarin in collusion with the petitioner had apparently fabricated the letters being a friend of the Proprietor of the petitioner even though Shri Sarin was in no way connected with the public issue and had not corresponded with any of the under-writers numbering 129.

5. Evidence was led by both the parties and the learned Arbitrator rightly found that the short controversy was whether such a special arrangement was arrived at between the parties. The Arbitrator has found that the plea set up by the petitioner to be non-sustainable and afterthought in view of the documents placed on record. The learned Arbitrator also took note of the provisions of Section 77 of the Indian Companies Act, 1956 (for short, the Companies Act) barring a limited company from buying its own shares except in terms of Sections 100 to 104 of the Companies Act. Section 402 also bars the grant of any loan or guarantee or any financial assistance for purposes of or in connection with the purchase of subscription made or to be made by any person for any shares in the company. It was, thus, held that this so-called special arrangement absolving the petitioner of any liability in terms of the under-writers agreement was in violation of the statutory provisions and, thus, even if it was proved, the same would be no defense.

6. The learned Arbitrator on merits has found that the plea set up by the petitioner was not proved.

7. It has to be kept in mind that in order for the petitioner to succeed, the objections must fall within the parameters of Section 34 of the said Act as enunciated by the Apex Court in Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., . Learned counsel for the petitioner has not been able to point out as to under which particular parameter of Section 34 of the said Act would the objections raised by the petitioner fall. The question whether the documents establish any special arrangement is a pure question of fact and this Court cannot sit in appeal over the same. There is also no infirmity in the findings arrived at by the learned Arbitrator that there is a bar in law to such a back to back arrangement to an under-writers agreement as claimed for by the petitioner.

8. In view of the aforesaid position, I find no merit in the objections.

9. Dismissed leaving the parties to bear their own costs.