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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 16th May, 2024**Pronounced on: 2nd July, 2024*+ **O.M.P. (COMM) 213/2023 and I.A. 11241/2023**

MUKESH UDESHI

..... Petitioner

Through: Mr. Hrishikesh Chitale, Adv.

versus

JINDAL STEEL POWER LTD

..... Respondent

Through: Mr. Gopal Jain Sr. Advocate with
Mrs. Gauri Rasgotra, Mr. B.

Arutsivan, Mr. Sharad Kumar Sunny,

Ms. Priyashree Sharma PH, Ms.

Shruti Joshi, Mr. Aniket Kumar

Singh, Mr. Gunav Gujral & Mr.

Keshav Mann Advs. for R-1. (M:

8571973515)

Mr. Ajay Gupta, Advocate for R-2.

(M: 9811370966)

CORAM:**JUSTICE PRATHIBA M. SINGH****JUDGMENT****PRATHIBA M. SINGH, J.**

1. This hearing has been done through hybrid mode.

Background Facts

2. The present petition, filed by the Petitioner-Mukesh Udeshi under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter*, '1996 Act'), challenges the impugned award dated 4th April, 2023 passed by the Id. Sole Arbitrator appointed by Respondent No. 2-NIXI.

3. Respondent No. 1-Jindal Steel & Power Ltd. had filed a complaint in



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terms of the .IN Domain Name Dispute Resolution Policy (*hereinafter, 'INDRP'*) and the INDRP Rules of Procedure, which has been adopted by NIXI. The dispute between the Respondent No. 1 and Respondent No. 3- Nspire Solutions concerns the domain name: *'jsplsteel.in'*. The said complaint was filed by Respondent No. 1 against the said domain name. The WHOIS details in respect of the said domain name is set out below:

The screenshot shows the Whois website interface for the domain **jsplsteel.in**. The page includes a search bar at the top with the text "Enter Domain or IP" and a "WHOIS" button. Below the search bar, the domain name "jsplsteel.in" is displayed with a refresh icon and the text "Updated 1 second ago".

The main content is divided into two sections: "Domain Information" and "Registrant Contact".

Domain Information:

- Domain: jsplsteel.in
- Registrar: Endurance Digital Domain Technology LLP
- Registered On: 2021-04-09
- Expires On: 2024-04-09
- Updated On: 2023-05-24
- Status: serverRenewProhibited, clientRenewProhibited, clientTransferProhibited, clientDeleteProhibited, serverDeleteProhibited, clientUpdateProhibited, serverTransferProhibited, serverUpdateProhibited, autoRenewPeriod
- Name Servers: ns2.bhin-pp-wb1.webhostbox.net, ns1.bhin-pp-wb1.webhostbox.net

Registrant Contact:

- Organization: Nspire Solutions
- State: Maharashtra
- Country: IN
- Email: Please contact the Registrar listed above

On the right side of the page, there is a section titled "Interested in similar domains?" with a list of domains and "Buy Now" buttons:

- j-spl-steel.com
- bsplsteel.com
- wsplsteel.com
- jsplaluminum.com
- jsplsteel.net
- jsplsteels.net

Below this list, there are two promotional banners:

- A red banner for ".space" domains, marked "Sale", with a price of \$1.88 (reduced from \$29.88) and a "BUY NOW" button. A note below says "*while stocks last".
- A grey banner for ".pro" domains, marked "On Sale!", with a price of \$3.28 (reduced from \$32.88) and a "BUY NOW" button.



4. Upon a complaint being received by NIXI, which administers INDRP in India, notice dated 8th February, 2023 was issued by NIXI to the Registrant i.e. Respondent No. 3-NSPIRE Solutions. A reply was also received from NSPIRE and the matter was heard by the Id. Sole Arbitrator. Though the reply was belated, the Id. Sole Arbitrator took into consideration the stand raised in the reply. Finally, vide the impugned award, the Id. Sole Arbitrator directed transfer of the domain name to the complainant i.e. the Respondent No.1. The operative portion of the award reads:

7. Discussion and Findings

The Arbitrator has reviewed the pleadings and annexures filed by Parties and has confined herself to issues directly relevant to the claims under the Policy.

The Policy requires that the Complainant must establish three elements viz. (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and (iii) the Registrant's domain name has been registered or is being used in bad faith. These are discussed hereunder:

(i) Identical or Confusingly Similar

In order for the Complainant to make out a case under this element of the Policy, it must show that (i) it has rights in a trademark at the time of the Complaint; and (ii) that the disputed domain name is identical or confusingly similar to that trademark.

The Complainant has been using the name Jindal Steel and Power Limited since the year 1998. Even since, it has been called JSPL and this reference is evident from the documents filed by it. The Complainant has considerable reputation and goodwill in JSPL The



domain name <jspl.com> was registered by the Complainant in November 1999. It also owns other domain names consisting of the JSPL designation. Most importantly, the Complainant owns trademark registrations for JSPL variants in India under nos. 2563581, 2563583, 2731001, 2723765, 2723770, 3320811, all of which predate the present Complaint.

The Arbitrator notes that the dominant part of the disputed domain name is JSPL i.e., the disputed domain name wholly incorporates the Complainant's JSPL name and mark and this is also the distinctive part of the same. The Respondent has simply taken the Complainant's JSPL mark and has combined it with steel, a term that indicates the business of the Complainant and this is not sufficient to escape a finding of confusing similarity under the first element. Steel does not serve to distinguish the disputed domain name from the Complainant's JSPL mark in any way. Rather, it is indicative of the Complainant's business or services and increases the element of confusion. It has been routinely held that the mere addition of a descriptive term or a non-significant element does not prevent a finding of confusing similarity. See *Starbucks Corporation v. Registration Private, Domains by Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. D2019-1991.

Accordingly, the Respondent's assertion that the disputed domain name is different from the Complainant's domain names and there can be no confusion cannot be upheld. It is a well settled legal position that for the purpose of comparing a trademark with a disputed domain name, the country code top-level domain (ccTLD) can be excluded. The Arbitrator thus finds that the first element is satisfied and that the disputed domain name is confusingly similar to the Complainant's registered trademark.



(ii) *Rights or Legitimate Interests*

As regards the second element, the Complainant must establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name. With respect to this requirement, a complainant is generally required to make a prima facie case that a respondent lacks rights or legitimate interests and once such prima facie case is made, the burden of proof shifts to the respondent to come forward with evidence demonstrating rights or legitimate interests in the disputed domain name. Clause 6 of the Policy contains a non-exhaustive list of the circumstances which, if found by the Panel to be proved, shall demonstrate the respondent's rights or legitimate interests to the disputed domain name.

With regard to this element, there are several contentions made by Complainant that the Respondent does not have rights or legitimate interests in the disputed domain name. The sum of these contentions is that there exists no relationship between Complainant and the Respondent that would give rise to any license, permission or authorization by which the Respondent could own or use the disputed domain; the Respondent is not commonly known by the disputed domain name and is trying to associate itself with the Complainant to gain undue benefits; the Respondent has not been granted any license or authorization by the Complainant to apply for registration of the disputed domain name; the Respondent has no due cause or realistic reason to register or use the disputed domain name and has only done so to create an impression of association/connection with the Complainant and to take advantage of its rights.

In the Reply filed, the Respondent states that it received



a contract to register the disputed domain name from its client Mukesh Udeshi. However, no document is filed to show that the Respondent offers domain registration services and that Mr. Udeshi is in fact its client. There is no connection otherwise between the two from which it can be perceived that the Respondent is authorized to register the disputed domain name. The only document filed by the Respondent is the registration certificate for trademark no. 1914139 in the name of Jamnadas Steel Private Limited. Even if this document and all contentions of the Respondent are taken at face value, no right gets vested in the Respondent in JSPL or JSPL STEEL to warrant registration of the disputed domain name in its own name. The individual on whose behalf the disputed domain name is purportedly registered, Mukesh Udeshi, has been served by email (info@jsplsteel.in) but he has not come forward with any information that supports the averments of the Respondent or refutes the contentions of the Complainant.

The Respondent asserts that nobody can claim monopoly rights over common names but has not filed any document or extract to show that JSPL is a common name. In the view of the Arbitrator, it is not. Accordingly, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

(iii) Registered or Used in Bad Faith

The final criterion of the Policy requires the Complainant to show that the domain name was registered or used in bad faith. Clause 7 sets out the circumstances without limitation which, if present, constitute evidence of registration or use of a domain name in bad faith:

(a) circumstances indicating that the Registrant has



registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(b) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

Based on the contentions of the Complainant describing its use of JSPL and registrations and associated business, the Arbitrator accepts that JSPL is associated with the Complainant. Its rights predate the registration of the disputed domain name by the Respondent, which cannot seek to justify the registration thereof basis the alleged rights of a third party i.e., Mukesh Udeshi or Jamnadas Steel Private Limited claiming that the said third party is a client. Rather, based on the contentions of the Respondent regarding Mukesh Udeshi or Jamnadas Steel Private Limited, the inference is that the disputed domain name was registered by it for the for the purpose of sale or transfer to a competitor of the Complainant. Thus, the Respondent's assertion that it is free to register any domain if it is available and there is no bad faith or mala fide in such registration cannot be upheld. It is



the view of the Arbitrator that the Respondent was clearly aware of the Complainant's JSPL name and mark at the time of registration of the disputed domain name and registered the same to sell to a third party. This supports a finding of bad faith. The Arbitrator also find no merit in the Respondent's allegation regarding the timing of the present Complaint. The Respondent does not shed any light on why the disputed domain name was registered in 2021, if the alleged business of its client dates to 2010.

The Arbitrator also accepts that any website corresponding to the disputed domain name will mislead members of trade and public and divert Internet traffic from the Complainant. Thus, there is no way in which the Respondent can use the disputed domain name without violating the Policy.-

Thus, the Arbitrator concludes that the disputed domain name was registered in bad faith within the meaning of the Policy. Accordingly, the Arbitrator finds that the Complainant has established all three elements as required by the Policy.

8. Decision

For all the foregoing reasons, the Complaint is allowed and it is hereby ordered in accordance with paragraph 10 of the Policy that the disputed domain name be transferred to the Complainant. There is no order as to costs.

This award has been passed within the statutory deadline of 60 days from the date of commencement of arbitration proceeding.

This award has been challenged under Section 34 of the 1996 Act.

Submissions of parties

5. The ground taken by the Petitioner, Mr. Mukesh Udeshi, is that he was the beneficial owner of the impugned domain name and that the award has been passed without hearing him, which is a breach of the principles of



natural justice. He submits that the Id. Sole Arbitrator was well aware from the pleadings filed by NSPIRE Solutions that the ultimate beneficial interest was with the Petitioner and, thus, the Petitioner ought to have been impleaded in the matter.

6. On behalf of the Respondent No.1, it is submitted by Id. Sr. Counsel that NSPIRE was the Registrant of the impugned domain name. Further, the reply filed by NSPIRE was filed in coordination with the Petitioner, as is evident from the email dated 22nd March, 2023, wherein it is stated as under:

*“Dear sir,
Greetings of the day.
Please find enclosed herewith an attachment.
As per discussion with jsplsteel.in domain owner Mr. Udeshi, we have mentioned that we are only a service provider. (for any customer who requires domain registration.)
Please just have a look at this reply-
thanking you ,
warm regards,”*

7. Thus, it is submitted that the Petitioner having being fully aware of the proceedings chose not to appear before the Id. Sole Arbitrator. In any event, the INDRP Rules of Procedure operate only between the Complainant, the Registrar and the Registrant. Hence, the Petitioner, who may be a beneficial owner, but whose name is not reflected in the WHOIS details, as extracted above, was rightly not impleaded in the matter.

8. Mr. Gopal Jain, Id. Senior Counsel appearing for Respondent No. 1 also submits that even under Section 34 read with Section 2(1)(h) of the 1996 Act, only a party to the impugned award could have challenged the award. Hence, the present petition under Section 34 of the 1996 Act is not



maintainable.

Analysis and Conclusions

9. Heard Id. Counsels for the parties and perused the record.

10. It is a matter of common knowledge that the globally operating, domain name registration system is governed by Internet Corporation for Assigned Names and Numbers (*hereinafter*, 'ICANN'), a voluntary organization that lays down policies for the internet. The governance involves various supporting organizations and advisory committees representing different stakeholder groups. ICANN is an international organization not subjected to any governmental control. It claims to play an important role in ensuring that the Internet remains globally unified, with policies that reflect the collective input from a wide range of global stakeholders.

11. Under ICANN, there are recognized Registries, and under these registries, various Registrars operate and enable the registration of domain names. The role of the Registry operating within the Internet ecosystem is to maintain a master database of all domain names registered in each top-level domain (*hereinafter*, 'TLD') and generate the 'zone file' that allows computers to route Internet traffic to and from TLDs anywhere in the world.

12. One of the most successful online dispute resolution mechanisms ('ODR') in the world is the Uniform Domain-Name Dispute-Resolution Policy (*hereinafter*, 'UDRP') by ICANN. The UDRP, which was introduced almost contemporaneously with the registration of domain names in 1999, has governed the domain name ecosystem for over 25 years. A person who intends to register a domain name can approach any of the Registrars and, upon paying a fee, obtain registration. At the time of registering a domain



name, the Registrant has to agree to be bound by the prevailing dispute resolution policy. The first and foremost policy introduced globally was the UDRP. Every Registrant who registers a Generic top-level domains (*hereinafter*, 'gTLDs') has to agree to be bound by the clauses of the UDRP. The UDRP lays down various conditions under which a domain name can be cancelled or transferred, enabling IP owners to exercise their rights over illegally registered domain names or domain names that consist of identical or deceptively similar names. The UDRP provides an online dispute resolution mechanism, which involves the following entities/persons -

- (i) The Registrar of the domain name;
- (ii) The Registrant of the domain name;
- (iii) The Complainant - i.e., person or the entity, who complains against a particular offending domain name;
- (iv) The Centre, which administers the UDRP.

13. When any complaint is filed by the Complainant with an accredited Centre such as WIPO or National Arbitration Forum ('NAF'), immediately a notice is issued to the concerned Registrar to block and suspend the infringing domain name – stopping any further transfer of the domain name i.e., a *status quo* order. The notice in the complaint is issued to the Registrant, who is given an opportunity to respond.

14. In the meantime, a panelist is appointed by the Centre, to decide the domain name dispute. The panel could be a single member panel or a three-member panel depending upon the choice of the Complainant. After pleadings are completed, a decision is rendered by the panel, which is notified by the said Centre. Timelines are prescribed for rendering the award under the UDRP. Normally, the panel would render its determination within



45 days of appointment. A decision notified by a Centre, which is duly accredited by the UDRP, would be binding on the Complainant, the Registrar as also the Registrant.

15. At the time of filing of the complaint itself, the Complainant has to choose the jurisdictional country/Court for any challenge emanating from a decision rendered by the UDRP panel. Apart from the above four players, any other person whose beneficial interest may be involved in domain name, would not be a relevant party in a UDRP complaint proceeding.

16. While UDRP proceedings apply to gTLDs, Country Code Top-Level Domains (*hereinafter*, 'ccTLDs') are usually governed by domestic dispute resolution policies. For example, in India, .in domain name registrations are managed by NIXI, the Registry duly recognized by ICANN. Any person wishing to register a .in extension domain can approach NIXI or any other Registrar recognized by NIXI and, upon payment of charges and obtain registration. Whenever a .in registration is obtained, the Registrant must agree to be bound by the INDRP Rules of Procedure, which is similar to the UDRP in policy and procedures. Under the INDRP, upon filing a complaint, a notice is issued to the Registrant, and after pleadings are completed, the panelist makes a decision in the matter.

17. On many occasions, certain companies and individuals may engage a professional entity for registering domain names and hosting websites. However, if such service providers list themselves as the Registrants of the domain names and the beneficial owner is not reflected as the Registrant, no notice is expected to be issued to such a third party, as they would be unknown persons/entities, under the INDRP. Since the Registrant of a domain name is bound by the INDRP, the Registrant is expected to



implement a decision issued under the INDRP. The Registrant also has the option of challenging the decision; however, any third party who may claim an interest in the domain name, without being bound by the INDRP, cannot allege that the award has been rendered in violation of the principles of natural justice, as the policy does not require third parties to be heard. The INDRP, just like the UDRP, binds the following three persons/entities:

- (i) Registrant
- (ii) Registrars
- (iii) Complainant, and none else.

Once a decision has been issued by a panel under the INDRP, if the complaint has succeeded, then the Complainant is entitled to seek enforcement of the award as well.

18. In the present case, the Petitioner - Mr. Mukesh Udeshi, who claims to have the beneficial interest in the domain name, was not reflected in the WHOIS as the Registrant of the said domain name. The entity Nspire Solutions -Respondent No. 3, was listed as the Registrant according to the WHOIS database. The Registrant was duly issued notice and claimed it was only a service provider for the Petitioner. Clearly, if the service provider had informed the Petitioner, the Petitioner ought to have sought impleadment in the INDRP proceeding, which he did not. NIXI or the panelist cannot be faulted for not issuing notice to the Petitioner, as the domain owner was Nspire Solutions, not the Petitioner. Thus, the Petitioner, not having been a party to the arbitral proceedings, would not have locus to file a petition under Section 34 of the 1996 Act. Section 34 of the 1996 Act 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—

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that]—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—



- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*
- (ii) the arbitral award is in conflict with the public policy of India.*

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or*
- (ii) it is in contravention with the fundamental policy of Indian law; or*
- (iii) it is in conflict with the most basic notions of morality or justice.*

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

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

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that



if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

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

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

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

19. In ***Mukesh Nanji Gala & Ors. v. M/s. Heritage Enterprises, Mumbai and Anr. [(2015) 5 Mah LJ 620]***, a Id. Single Judge of the Bombay High Court held that 1996 Act and its scheme make it clear that only parties to an arbitration agreement can exercise rights and invoke arbitration for dispute adjudication, not outsiders. Section 34 of the 1996 Act allows only parties to the arbitration agreement (as defined under Section 2(1)(h) of the 1996 Act) to challenge an arbitral award. Further, the Court opined that outsiders cannot challenge an award under Section 34 of the 1996 Act unless they are



wrongly impleaded and aggrieved by the award. The grounds for challenge under Section 34 of the 1996 Act, and other relevant provisions are not available to those who are not parties to the arbitration agreement or proceedings. The relevant portions of the said judgment are extracted below:

“12. Section 34 of the Arbitration and Conciliation Act, 1996 provides for an application for setting aside arbitral award. Section 34(2) provides for the grounds of challenge of an arbitral award on which such award may be set aside by the Court. The said provision also provides that an arbitral award may be set aside if the party making application furnishes any of the proof that is specifically set out in section 34(2)(a)(i) to (v). Under section 2(1)(h) party is defined as ‘party’ means a party to an arbitration agreement.

...

19. A perusal of the aforesaid provisions of the Act and the scheme makes it clear that only the parties to the arbitration agreement can exercise various rights and invoke the mechanism of adjudication of disputes by arbitration by referring their disputes to arbitration for adjudication and not by an outsider. The only exception carved out under the Act is under sections 40 and 41 i.e. in case of the death of a party to the arbitration agreement which can be enforceable by or against the legal representative of the deceased and in case of insolvency, if such insolvent was party to arbitration agreement and if official assignee or receiver adopts such contract.

...

20. In my view the arbitral tribunal is a private forum and gets jurisdiction to adjudicate upon the disputes between the parties to the arbitration agreement and not the persons who are not parties to the arbitration agreement. Proceedings under section 34 of the Act are not by way of an appeal. There is no other provision under the Act for challenge of an arbitral



award except what is provided under section 34 of the Act. In my view only a party to the arbitration agreement which is defined under section 2(1)(h) of the Act can challenge an arbitral award under section 34 of the Act and not by a person who is not a party to the arbitration agreement unless covered by sections 40 and 41 of the Act. However if a person is wrongly impleaded as party to the arbitration proceedings and is aggrieved by arbitral award, he can invoke section 34 of the Act.

...

26. In my view since the petitioners herein could not have been impleaded as parties to the arbitration proceedings before the learned arbitrator for want of arbitration agreement between the petitioners and the respondent No. 1, nor the petitioners were parties to the arbitration proceedings, petitioners have no locus to file petition under section 34 of the Act for setting aside such an arbitral award.

...

31. A perusal of section 30 read with section 33 of the Arbitration Act, 1940 makes it clear that an application to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined could be applied to the Court by any party to the arbitration agreement or any person claiming under him. A perusal of the said Act makes it clear that the expression 'party to an arbitration agreement' has not been defined under the said Arbitration Act, 1940. A perusal of the provisions of Arbitration and Conciliation Act, 1996 and in particular section 34(2) makes it clear that an application for setting aside an award can be made only by the party which is defined under section 2(1)(h) of the said Act or by the party to the arbitration proceedings.

...



32. A perusal of section 34 of the Act makes it clear that the said application has to be filed within the time prescribed under section 34 (3) of the said Act. The time to file such application commences from the date of such party receiving copy of the arbitral award from the learned arbitrator. Under section 31(5) of the Act the arbitral tribunal has to deliver a copy of the award to each party. It is thus clear that a party to the arbitration agreement who may be a party to the arbitration proceedings and/or all the parties to the arbitration proceedings only would be entitled to be furnished with a copy of the arbitral award by the learned arbitrator under section 31(5) of the Act and upon delivery of copy of award from the arbitrator which would commence the period of limitation for the purpose of filing an application under section 34 and can be filed within the time prescribed therein. If the arguments of the learned senior counsel appearing for the petitioners are accepted that the petitioners though were not parties to the arbitration agreement nor were parties to the arbitration proceedings can file an application for setting aside an award, there would be no limitation for filing an application for setting aside an arbitral award at the instance of such an outsider.

33. In my view the grounds of challenge which are available under section 34 of the Act and various other provisions which are applicable to the parties who are defined under section 2(1)(h) of the Arbitration and Conciliation Act, 1996 cannot be exercised by an outsider or by a person who is not a party to the arbitration agreement or the arbitration proceedings. In my view the petitioners who are members of the society which society was party to the arbitration agreement not having filed application for setting aside the impugned award cannot step into the shoes of the society and cannot be granted any leave



to challenge the arbitral award. In my view there is no provision under the Arbitration and Conciliation Act, 1996 for granting any such leave as prayed by the petitioners to file an application under section 34 for setting aside the arbitral award.

34. In my view the petition filed by the petitioners who are neither parties to the arbitration agreement nor parties to the arbitration proceedings can not maintain this petition.”

20. The above decision of the Bombay High Court has also been followed by this Court in *M/s. Tara Logitech Pvt. Ltd. v. Religare Finvest Ltd. (2014:DHC:7410)*. The relevant portions of the said decision are as follows:

“14. Even otherwise, it is the settled position in law that a non party to an arbitration and arbitration proceedings cannot prefer objections under Section 34 of the Arbitration Act. I had an occasion to deal with the said aspect in *Indus Ind Bank Ltd. Vs. Ram Laxman Hotels Ltd. 162 (2009) DLT 332*; on a conspectus of case law, it was held that a petition under Section 34 can be preferred only by a party to the arbitration proceedings and not by a third party. I find the High Court of Bombay also to have taken the same view in *Mukesh Nanji Gala Vs. Heritage Enterprises MANU/MH/2202/2014*. Even otherwise, there is no agreement for arbitration of the dispute between RFL and the petitioner qua the aforesaid property. Needless to state that merely because an arbitration award provides that the monetary claims allowed thereunder would be recovered by sale of some property, cannot entitle the claimant thereunder to enforce the right of such sale against a non party to arbitration and if such claimant enforces the award as a decree, such non party to the arbitration has to file objections in accordance with the procedure provided hereinabove.”



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21. In view of the above settled legal position, the present petition under Section 34 of the 1996 is not maintainable.

22. It is, however, made clear that the Court has not examined the merits of the impugned award which is under challenge. The Petitioner is free to avail of his remedies, if any, available, in accordance with law.

23. The present petition, with pending applications, if any, is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

JULY 2, 2024/dk/dn