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enforced through Sec. 9 - It appeared arbitral award concerning partnership affairs under challenge under Sec. 34 - Tax liability issue formed part of subject matter of pending challenge - Court held such reimbursement claim being substantive and not interim in nature cannot be entertained under Sec. 9 post-award - Relief would amount to adjudicating rights pending under Sec. 34 - Liberty to pursue in appropriate proceedings - Petition Dismissed [*Rakesh Kumar Jindal and Anr vs. Anoop Kumar Jindal and Ors* (CALCUTTA HIGH COURT) 2026(1)CAC82]

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CURRENT ARBITRATION CASES

2026(1)CAC1

IN THE SUPREME COURT OF INDIA

[From DELHI HIGH COURT]

(Hon'ble Judge Sanjay Kumar; Alok Aradhe)

Civil Appeal No 14681 of 2025 **dated 10/12/2025**

Mohan Lal Fatehpuria

Versus

Bharat Textiles & Ors

ARBITRATOR SUBSTITUTION

Arbitration and Conciliation Act, 1996 Sec. 14, Sec. 15, Sec. 29A - Arbitrator Substitution - Appeals filed challenging Delhi High Court order refusing to substitute sole arbitrator and only extending his mandate under Sec.29A of Arbitration Act - Appellant contended arbitrator charged excessive fees contrary to Fourth Schedule and delayed proceedings hence substitution justified - Respondents argued High Court rightly refused as arbitrator neither de jure nor de facto ineligible - Supreme Court held power under Sec.29A(6) wider than under Sec.14 or Sec.15 and court may substitute arbitrator if delay or conduct frustrates object of speedy resolution - Found that though High Court extended time, reasoned approach shown and no proven bias or misconduct of arbitrator - Directed proceedings to conclude within fixed time - Appeals Dismissed

Law Point: Court may substitute arbitrator under Sec.29A(6) where delay attributable to arbitrator or fairness compromised - However substitution not automatic - Extension justified if object of speedy disposal achievable under judicial supervision

Acts Referred:

Arbitration and Conciliation Act, 1996 Sec. 14, Sec. 15, Sec. 29A

Counsel:

Pradeep Aggarwal, Lal Pratap Singh, Umesh Pratap Singh, Arjun Aggarwal, Sahil Gupta, Vishal Singh, Aman Kumar, S C Singhal, Padam Kant Saxena, Megha Gaur, Parmanand Gaur

JUDGEMENT

Alok Aradhe, J.- [1] Leave granted.

[2] These appeals are filed against an order dated 22.04.2025 by Delhi High Court by which it has declined substitution of a sole arbitrator but has extended his mandate under Section 29A(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'Act') for a further period of four months.

FACTS

[3] The appellants who are husband and wife, along with respondent nos. 2 to 4 executed a partnership deed dated 18.05.1992 which contained an arbitration clause. M/s. Bharat Textiles namely, respondent no.1, was registered on 05.01.2007 as a partnership firm. Upon disputes having arisen, the High Court by a common order dated 13.03.2020, passed in two arbitration petitions filed by the appellants, appointed Mr. Anjum Javed, Advocate as a sole arbitrator. The High Court directed that a sole arbitrator shall be entitled to fee as per the Fourth Schedule to the Act.

[4] The sole arbitrator entered the reference on 20.05.2020. He thereafter issued various directions on 03.06.2020, 21.10.2020, 09.01.2021 and on 15.06.2021 and directed the parties to deposit various amounts towards administrative expenses. The respondent nos.2 and 3 questioned the action of the sole arbitrator in demanding administrative expenses, in their applications filed under Sections 14 and 15 of the Act, seeking termination of the mandate of the sole arbitrator. The said applications were dismissed by a common order dated 28.01.2022, passed by the High Court, inter alia on the ground that all the expenses are required to be paid on actuals. It was further held, that, it would be open for respondent nos. 2 and 3 to approach the Arbitral Tribunal, to account for administrative expenses. It was also held that the sole arbitrator is neither de jure nor de facto ineligible to act as an arbitrator. The petitions were dismissed.

[5] The sole arbitrator issued directions on 09.07.2022, 06.01.2023 and on 14.08.2023 requiring the parties to deposit the administrative expenses. The appellants on 31.08.2003 sought time, in arbitral proceeding, to move an application before the High Court under Section 29A(4) of the Act. Thereupon, the sole arbitrator on 31.08.2023 adjourned the proceeding sine die.

[6] The appellants, filed petitions under Section 29A(6) of the Act seeking substitution of the sole arbitrator and extension of tenure, for the substitute arbitrator. The High Court, by an order dated 22.04.2025, inter alia held that the fee must be charged by the sole arbitrator strictly in accordance with Fourth Schedule and administrative expenses only on actuals with disclosure to the parties. The substitution of the sole arbitrator was declined and time was extended to conclude the arbitral proceeding within a period of four months. The petitions were partly allowed. In the aforesaid factual background, these appeals arise for our consideration.

SUBMISSIONS

[7] Learned counsel for the appellant submitted that the sole arbitrator acted in contravention of the initial order of appointment dated 13.03.2020 and charged the fee

and expenses in excess of Fourth Schedule. It is further submitted that the sole arbitrator also violated the directions issued in the order dated 28.01.2022 passed by the High Court. It is contended that the High Court ought to have appreciated that the power of substitution of an arbitrator is wider under Section 29A(6) of the Act and is not restricted to the grounds in Sections 14 and 15 of the Act.

[8] Per contra, learned counsel for the respondents submitted that no ground is made out for substitution of the sole arbitrator. It is further submitted that since the petitions filed by the respondents under Sections 14 and 15 of the Act have been rejected on 24.01.2022, therefore, a substitute arbitrator under Section 29A(6) of the Act, cannot be appointed. Alternatively, it is contended that, in case this Court directs substitution of an arbitrator, a former judge be appointed, as the sole arbitrator.

ANALYSIS

[9] We have considered the rival submissions made by both sides and have perused the record. The relevant statutory provision namely, Section 29A was inserted by Amendment Act No.3 of 2016 and was amended by Act No.33 of 2019. Section 29A was inserted in the Act, due to widespread criticism of delay in conducting the arbitration proceedings, as the delay is against the avowed object of the Act i.e., speedy resolution of the dispute. Section 29A aims to ensure time bound disposal of arbitration proceeding, which is in consonance with the object of the Act. Section 29A is extracted below for the facility of reference: -

> **"29A. Time limit for arbitral award.-**(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under subsection (4) of section 23.
>
> Explanation.-For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.
>
> Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months on the date of completion of pleadings under sub-section (4) of Section 23.
>
> (2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.
>
> (3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.
>
> (4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the

arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay.

Provided further that where ap application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in subsection (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in subsection (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

[10] Section 29A of the Act has been held to be remedial in nature and is made applicable to all pending arbitral proceedings as on 30.08.2019 [**TATA SONS PVT. LIMITED v. SIVA INDUSTRIES & HOLDINGS LTD. & ORS**, 2023 5 SCC 421]. Section 29A(1) mandates that an award has to be made within a period of twelve months from the date of completion of pleadings under Section 23(4) of the Act. 29A(3) enables the parties by consent to extend the period specified in sub-section (1) for making the award for a further period not exceeding six months. Section 29A(4) mandates that if the award is not made within the period mentioned in sub-section (1) or the extended period specified in sub-section (3), the mandate of the Arbitrator shall terminate, unless the court, has, either prior to or after the expiry of the period so

specified, extended the period. Section 29A(6) provides that while extending the period referred to in subsection (4), the court may substitute one or all of the Arbitrators and if one or all of the Arbitrators are substituted, the arbitral proceeding shall continue from the stage already reached.

[11] The undisputed facts which emerge from the record before us, are that, the sole Arbitrator entered the reference on 20.05.2020 and directed the parties to file the statements of claim and defence. The period of six months prescribed under Section 23(4) of the Act, for completion of pleadings expired on 19.11.2020. The period from 15.03.2020 till 28.02.2022 deserves to be excluded on account of pandemic caused by Covid-19 virus [**COGNIZANCE FOR EXTENSION OF LIMITATION IN RE**, 2022 3 SCC 117]. In view of mandate contained in Section 29A(1) of the Act, the sole Arbitrator was under an obligation to pass an award within a period of one year from 01.03.2022, i.e. on or before 28.02.2023. However, the sole Arbitrator failed to do so. The parties did not apply for extension of period to pass an award. The sole arbitrator, in view of mandate contained in Section 29A(4) became functus officio.

[12] We are conscious of the fact that a two Judge Bench of this Court [ROHAN BUILDERS (INDIA) PVT. LTD. v. BERGER PAINTS INDIA LTD,2024 SCCOnLineSC 2494] has interpreted the word 'terminate' in Section 29A(4), while dealing with an issue whether an application for extension of time for passing the arbitral award is maintainable even after the expiry of twelve months or extended six month period, as the case may be. It has been held that on expiry of the initial period of six month and extended period of six months, the Arbitral Tribunal becomes functus officio but not in absolute terms. It has further been held that the termination of arbitral mandate is conditional upon the filing of an application for extension and cannot be treated termination stricto sensu. It has also been held that the legislature by using the word 'terminate' intends to affirm the principle of party autonomy. However, the fact remains that on expiry of initial period or extended period, the arbitrator cannot proceed with the arbitration proceeding and his mandate terminates, subject to an order which may be passed by the Court in a proceeding under Section 29A(4) of the Act.

[13] An arbitrator or an Arbitral Tribunal is not always statutory. It is, ordinarily, a forum chosen by the parties for resolution of their disputes. An Arbitral Tribunal with the consent of the parties decides their disputes. In the instant case, as stated supra, the mandate of the sole Arbitrator had terminated on 28.02.2023. When mandate of arbitrator has expired, his continuation is impermissible. Section 29A(6) empowers and obligates the Court to substitute the Arbitrator. In so far as submission of the respondents, that, since the petition filed under Sections 14 and 15 of the Act was rejected on 24.01.2022 by the High Court is concerned, suffice it to say that the Act provides separate remedies in the circumstances mentioned in Sections 14, 15 and 29A of the Act. In any case, on 24.01.2022, the mandate of the sole arbitrator was not terminated. Therefore, the order dated 24.01.2022 does not have any impact on the decision of the petition under Section 29A of the Act filed by the appellants. The

substitution of a sole arbitrator is warranted, when his mandate ceases to exist, to effectuate the object of the Act, which mandates expeditious resolution of the dispute. In view of the statutory scheme and undisputed factual position, we are satisfied that the case warranted the exercise of jurisdiction under Section 29A(6) of the Act. The High Court erred in granting an extension when the mandate of the sole arbitrator had ceased to exist.

CONCLUSION

[14] For the aforementioned reasons, the impugned order dated 22.04.2025 is quashed and set aside. The mandate of sole arbitrator Mr. Anjum Javed stands terminated by operation of law. Mr. Justice Najmi Waziri, Former Judge of Delhi High Court is appointed as the substituted sole arbitrator. The arbitral proceeding shall resume from the stage already attained and be concluded within six months from the date of receipt of a copy of this order.

[15] In the result, appeals are allowed. There shall be no order as to costs

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2026(1)CAC6

IN THE SUPREME COURT OF INDIA

[From JHARKHAND HIGH COURT]

(Hon'ble Judge Pamidighantam Sri Narasimha; Atul S Chandurkar)

Civil Appeal No. 8261 of 2012, 8262 of 2012 **dated 05/12/2025**

State of Jharkhand

Versus

Indian Builders Jamshedpur

PROHIBITORY CLAUSE INTERPRETATION

Arbitration and Conciliation Act, 1996 Sec. 37 - Prohibitory Clause Interpretation - Appeals concerned arbitral award set aside under Section 34 for allowing prohibited claims despite contractual bar - High Court restored award relying on Bharat Drilling precedent - Court noted that Bharat Drilling lacked detailed reasoning and its application created confusion - Held that party autonomy under arbitration law upholds contractual exclusion of certain claims - Found necessity to clarify whether excepted or prohibited claim clauses restrict arbitral jurisdiction - Referred matter to larger bench for authoritative ruling to settle law on effect of such clauses - Observed that contractual freedom governs arbitrator's power unless expressly curtailed by statute - Matter referred to larger bench

Law Point: Scope of arbitrator's authority over contractually barred claims depends on express terms of agreement-Question requires reconsideration by larger bench for uniform interpretation

Acts Referred:

Arbitration and Conciliation Act, 1996 Sec. 37

Counsel:

Rajiv Shankar Dwivedi, Tulika Mukherjee, Beenu Sharma, Venkat Narayan, Manoj C Mishra

JUDGEMENT

[1] In view of our opinion that **Bharat Drilling & Foundation Treatment Pvt. Ltd. v. State of Jharkhand and Ors**, 2009 16 SCC 705. is not an authority for the proposition that an excepted clause or a prohibited claim in a contract applies only to the employer and not to the Arbitral Tribunal, for the reasons to follow, in order to obviate uncertainty and for clear declaration of law, we are referring Bharat Drilling (supra) to a larger bench for reconsideration and authoritative decision. The context in which we have referred the matter to a larger bench is as follows.

[2] State of Jharkhand is in appeal against the judgment of the High Court of Jharkhand allowing Section 37 [In Arbitration Appeal No. 17 of 2007 dated 11.05.2012.] appeal under Arbitration and Conciliation Act, 1996 [Hereinafter referred to as the 'Act'.]. The appeal was filed by the respondent-claimant against the judgment of the Civil Court [Sub-Judge-1, Jamshedpur in Misc. Arbitration Case No. 01/2004 dated 19.04.2007.] setting aside the arbitral award allowing the objections filed by State under Section 34. By its award dated 19.04.2007, the Arbitral Tribunal allowed certain claims but the Civil Court set aside the claims 3, 4 and 6 on the ground that they were specifically prohibited under the contract between the parties.

[3] Mr. Rajiv Shankar Dwivedi, learned counsel appearing for the State of Jharkhand has made a short submission that the High Court committed a serious error in allowing the appeal on the ground that the issue arising for consideration is covered by decision of this Court in Bharat Drilling (supra). Mr. Dwivedi has expressed a serious concern that the decision in Bharat Drilling (supra) is being applied, regularly and wrongly, to interpret prohibitory claim clauses in all Government contracts. He would therefore submit that even if the Court may not interfere in the facts of this case, there is a compelling necessity to clarify the position of law. On the other hand, Mr. Manoj C. Mishra, learned counsel appearing for the respondent, supported the decision of the High Court.

[4] In view of the concern expressed by Mr. Dwivedi, we agreed to examine the question of law and the principle in Bharat Drilling (supra). Before we proceed any further, it is necessary to examine the relevant clauses under the agreement, which are extracted hereinbelow for ready reference;

"4.20.0 CLAIMS:

4.20.2: No claim for idle labour, idle machinery, etc. on any account will be entertained...

4.20.4: No claim shall be entertained for business loss or any such loss."

[5] It is submitted that the Arbitral Tribunal committed a serious error in allowing claim no. 3 (relating to underutilised overheads) when that claim is barred under clause 4.20.2, claim no. 4 (relating to loss due to underutilised tools, plants and machinery) when such claim is clearly barred under contractual clause 4.20.2. Further, it is also contended that claim no. 6 (relating to loss of profit) could not have been granted in the teeth of clause 4.20.4, which specifically declares that "no claim shall be entertained for business loss or any such loss".

[6] This submission, however, found favour with the Civil Court accepting Section 34 objections of the State and setting aside the award on claim nos. 3, 4 and 6. When we peruse the judgment of the High Court under Section 37, we find that there is no discussion whatsoever as regards to claim nos. 3, 4 and 6, except for reference and reliance on the order of this Court in Bharat Drilling (supra). Placing reliance upon Bharat Drilling (supra), without any other discussion or analysis, the High Court proceeded to restore the award as regards claim nos.3, 4 and 6.

[7] As we examined the decision of this Court in Bharat Drilling (supra), we find that it was argued therein that, the contractual "bar against such claims is applied only to the department and not to the Arbitral Tribunal". Without examining the contention in detail, the Court proceeded further and referred to the decision of **Board of Trustees For The Port of Calcutta v. Engineers-De-Space-Age**, 1996 1 SCC 516. and set aside the order passed by the High Court and restored the award. Mr. Dwivedi therefore contends that Bharat Drilling (supra) does not lay down any law and that it is an order in the facts and circumstances of the case.

[8] It is quite evident from the order impugned before us that the High Court has not examined the contractual clauses extracted hereinabove and has proceeded to dispose of the appeal under the impression that the issue is conclusively covered by the decision of this Court in Bharat Drilling (supra). As has been already indicated, in Bharat Drilling (supra), the Court has not examined the contractual clauses that have fallen for our consideration herein. Contractual clauses that limit claims are founded on freedom to contract. They are agreements that crystalise informed choices of parties. Explaining the incorporation of party autonomy in the statutory scheme of the Act, this Court in **Central Organisation for Railway Electrification (CORE)**, 2024 INSC 857; 2024 SCC OnLine SC 3219. explained this position:

> "22. The basis of any arbitration is the freedom of the parties to agree to submit their disputes to an individual or to a panel of individuals whose judgment they are prepared to trust and obey. Party autonomy is fundamental to international commercial arbitration because it allows the parties to design the arbitration proceedings to suit their needs and commercial reality. Party autonomy has been described by this Court as the "brooding and guiding spirit" and "backbone" of arbitrations. The principle of minimum judicial

> interference supplements the autonomy of parties by prohibiting courts from interfering in arbitral proceedings unless mandated by the law. This principle respects the autonomy of the parties to mutually chart the course of the arbitral proceedings.
>
> 23.The Arbitration Act has given pre-eminence to party autonomy throughout the arbitral process. The Arbitration Act has used phrases such as "unless otherwise agreed by the parties", "failing any agreement", "the parties are free to agree", "failing such agreement", and "unless the agreement on the appointment procedure provides other means" to recognize the autonomy of parties to determine the arbitral proceedings. The use of the above phrases also indicates that an arbitrator is bound by the procedures agreed upon between the parties."
>
> (emphasis supplied)

[9] Applicability of excepted or prohibitory clauses would primarily depend upon the agreement between the parties, which alone is the guiding principle for the Arbitral Tribunal. In similar circumstances, interpreting the contractual clauses, this Court in **Pam Developments Private Limited v. State of West Bengal**, 2024 10 SCC 715. held as follows;

> "12. This submission is persuasive, but the contract clauses speak for themselves. In fact, the High Court did what the arbitrator should have done. Examine what the contract provides. This is not even a matter of interpretation. It is the duty of every Arbitral Tribunal and court alike and without exception, for contract is the foundation of the legal relationship. Having considered the above referred clauses in the contract the High Court came to the conclusion that awarding any amount towards idle, machinery, etc. is prohibited under the "Special Terms and Conditions" of the contract. The arbitrator did not even refer to the contractual provisions and the District Court dismissed the objections under Section 34 with a standard phrase as extracted hereinabove. The High Court exercising jurisdiction under Section 37 did its duty and we are of the opinion that the conclusions of the High Court are correct and cannot be interfered with."
>
> (emphasis supplied)

[10] Returning to Bharat Drilling (supra), we also notice that the Court referred to Port of Calcutta (supra) concerning payment of interest, which stands on a completely different footing. This is because, jurisdiction relating to grant of interest is sourced from Section 31(7) of the Act. Pam Developments (supra) articulates this principle in the following manner;

> "23. The power of the arbitrator to grant pre-reference interest, pendente lite interest, and post-award interest under Section 31(7) of the Act is fairly well-settled. The judicial determinations also highlight the difference in the

position of law under the Arbitration Act, 1940. The following propositions can be summarised from a survey of these cases:

23.1. Under the Arbitration Act, 1940, there was no specific provision that empowered an arbitrator to grant interest. However, through judicial pronouncements, this Court has affirmed the power of the arbitrator to grant pre-reference, pendente lite, and post-award interest on the rationale that a person who has been deprived of the use of money to which he is legitimately entitled has a right to be compensated for the same. **[8]** When the agreement does not prohibit the grant of interest and a party claims interest, it is presumed that interest is an implied term of the agreement, and therefore, the arbitrator has the power to decide the same. [**State of Orissa v. G.C. Roy**, 1992 1 SCC 508, paras 43 (iv) & 44.]

23.2. Under the 1940 Act, this Court has adopted a strict construction of contractual clauses that prohibit the grant of interest and has held that the arbitrator has the power to award interest unless there is an express, specific provision that excludes the jurisdiction of the arbitrator **[10]** from awarding interest for the dispute in question [**State of U.P. v. Harish Chandra**, 1999 1 SCC 63.].

23.3. Under the 1996 Act, the power of the arbitrator to grant interest is governed by the statutory provision in Section 31(7). This provision has two parts. Under clause (a), the arbitrator can award interest for the period between the date of cause of action to the date of the award, unless otherwise agreed by the parties. Clause (b) provides that unless the award directs otherwise, the sum directed to be paid by an arbitral award shall carry interest @ 2% higher than the current rate of interest, from the date of the award to the date of payment.

23.4. The wording of Section 31(7)(a) marks a departure from the Arbitration Act, 1940 in two ways: first, it does not make an explicit distinction between pre-reference and pendente lite interest as both of them are provided for under this sub-section; second, it sanctifies party autonomy and restricts the power to grant pre-reference and pendente lite interest the moment the agreement bars payment of interest, even if it is not a specific bar against the arbitrator.**[12]**

23.5. The power of the arbitrator to award pre-reference and pendente lite interest is not restricted when the agreement is silent on whether interest can be awarded [**Jaiprakash Associates Ltd. v. Tehri Hydro Development Corpn. (India) Ltd.**, 2019 17 SCC 786, para 13.2.] or does not contain a specific term that prohibits the same [**Oriental Structural Engineers (P) Ltd. v. State of Kerala**, 2021 6 SCC 150, paras 15-18: (2021) 3 SCC (Civ) 548.].

> 23.6. While pendente lite interest is a matter of procedural law, pre- reference interest is governed by substantive law. [**Central Bank of India v. Ravindra**, 2002 1 SCC 367, para 39 following **State of Orissa v. G.C. Roy**, 1992 1 SCC 508, para 43(v).] Therefore, the grant of pre-reference interest cannot be sourced solely in Section 31(7)(a) (which is a procedural law), but must be based on an agreement between the parties (express or implied), statutory provision (such as Section 3 of the Interest Act, 1978), or proof of mercantile usage [**Central Bank of India v. Ravindra**, 2002 1 SCC 367, para 39; **Central Coop. Bank Ltd. v. S. Kamalaveni Sundaram**, 2011 1 SCC 790, para 13: (2011) 1 SCC (Civ) 331.].
>
> (emphasis supplied)

[11] As issues relating to payment of interest arising under Section 31(7) of the Act stand on a different footing from that of contractual clauses excepting or prohibiting certain claims, we are of the opinion that the judgment in Bharat Drilling (supra), relying on the judgment of this Court in Port of Calcutta (supra), dealing with the principle of grant of interest pendente lite, is not appropriate. Further, we are also of the opinion that the approach adopted in Bharat Drilling (supra) is not in tune with the principles laid down by this Court in the recent decisions of **Cox and Kings Ltd. v. SAP India Private Ltd.**, 2024 4 SCC 1. CORE (supra) and In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 and Stamp Act, 189918.

[12] In view of the above discussion and in order to ensure clarity and consistency, we are of the opinion that the ratio of Bharat Drilling requires to be reconsidered. In this view of the matter, we direct the registry to place our judgment and order before the Hon'ble Chief Justice for appropriate orders for placing the matter before a larger bench of appropriate strength.

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8 State of Orissa v. G.C. Roy, 1992 1 SCC 508, para 43(i). Also see **State of Orissa v. N.C. Budharaj**, 2001 2 SCC 721; **Union of India v. Krafters Engg. & Leasing (P) Ltd.**, 2011 7 SCC 279: (2011) 3 SCC (Civ) 533

10 Port of Calcutta v. Engineers-De-Space-Age, 1996 1 SCC 516, paras 4 and 5; **Madnani Construction Corpn. (P) Ltd. v. Union of India**, 2010 1 SCC 549: (2010) 1 SCC (Civ) 168; **Tehri Hydro Development Corpn. Ltd. v. Jai Prakash Associates Ltd.**, 2012 12 SCC 10: (2013) 2 SCC (Civ) 122, paras 18-20; **Union of India v. Ambica Construction**, 2016 6 SCC 36: (2016) 3 SCC (Civ) 36 (First Ambica Construction Case); **Ambica Construction v. Union of India**, 2017 14 SCC 323: (2018) 1 SCC (Civ) 257 (Second Ambica Construction Case); **Raveechee & Co. v. Union of India**, 2018 7 SCC 664: (2018) 3 SCC (Civ) 711; **Reliance Cellulose Products Ltd. v. ONGC Ltd.**, 2018 9 SCC 266: (2018) 4 SCC (Civ) 351.

12 Sayeed Ahmed & Co. v. State of U.P., 2009 12 SCC 26, paras 14, 23, 24: (2009) 4 SCC (Civ) 629; **Union of India v. Saraswat Trading Agency**, 2009 16 SCC 504: (2011) 3 SCC (Civ) 499; **Sree Kamatchi Amman Constructions v. Railways**, 2010 8 SCC 767, para 19: (2010) 3 SCC (Civ) 575; **Union of India v. Bright Power Projects (India) (P) Ltd.**, 2015 9 SCC 695, para 13: (2015) 4 SCC (Civ) 702; **Reliance Cellulose Products Ltd. v. ONGC Ltd.**, 2018 9 SCC 266, para 24: (2018) 4 SCC (Civ) 351; **Jaiprakash Associates Ltd. v. Tehri Hydro Development Corpn. (India) Ltd.**, 2019 17 SCC 786, paras 13-15: (2020) 3 SCC (Civ) 605; **Delhi Airport Metro Express (P) Ltd. v. DMRC**, 2022 9 SCC 286, paras 16-20, 24: (2022) 4 SCC (Civ) 623

2026(1)CAC12

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

(Hon'ble Judge Sanjay Kumar; Alok Aradhe)

Civil Appeal No 1026 of 2019, 1027 of 2019, 1028 of 2019, 1029 of 2019

dated 20/11/2025

Bharat Kantilal Dalal (Dead) Through Lr

Versus

Chetan Surendra Dalal & Ors

EXECUTION PROCEEDINGS

Code of Civil Procedure Or. 21R. 23 Or. 21R. 22 - Arbitration and Conciliation Act Sec. 34 - Execution Proceedings - Appeal concerns challenge to orders staying execution proceedings connected with arbitral award rendered to resolve family asset issues - Facts indicate initiation of arbitration followed by award communication by concerned party signalling challenge intent absence of challenge under statute and commencement of execution abroad due to residence of judgment debtor - Proceedings travel across jurisdictions culminating in domestic execution where orders of single judge attract stay through intra-court appeals - Submissions address maintainability of such appeals in light of statutory bar and assertion that statute constitutes complete code - Issue revolves around whether letters patent appeal lies from order in execution arising out of arbitral award - Matter reveals conflict between statutory framework and intra-court appellate jurisdiction - Court examinesd implications of stay and propriety of appellate intervention - Appeals Allowed

Law Point: When statute governing arbitration forms complete code intra-court appeal against order relating to execution of arbitral award does not ordinarily lie and interference by appellate forum must conform strictly to statutory limitations.

Acts Referred:

Code of Civil Procedure, 1908 Or. 21R. 23, Or. 21R. 22

Arbitration and Conciliation Act, 1996 Sec. 34

Counsel:

Neeraj Kishan Kaul (Senior Advocate), Mahesh Agarwal, Malcom Singaporia, Rishi Agrawala, Himanshu Saraswat, Vidisha Swarup, Ira Mahajan, Varad Kolhe, Saumitr Kumar, Udit Sidhra, E C Agrawala, Chander Uday Singh (Senior Advocate), Harish M Jagtiani (Senior Advocate), Bhargava V Desai, Shivam Sharma, Abrar Ahmad, Yashpal Jain, Jahnavi Vora, Sumeer Sodhi, Harshit Joshi

JUDGEMENT

Alok Aradhe, J.- [1] These appeals call in question the correctness of orders dated 06.03.2018 passed by a Division Bench of the High Court of Bombay in Letters Patent Appeals, namely Appeal No(s). 320 and 372 of 2015. By the aforesaid orders, the High Court has stayed two orders passed by the learned Single Judge dated 18.12.2014 passed in chamber summons no.243 of 2014 and chamber summons (L) no.1297 of 2013 in Execution Application (L) No. 1036 of 2013. The relevant facts for deciding these appeals briefly stated are as under.

FACTS

[2] The appellant is the son of late Mr. Kantilal Dalal (hereinafter, referred to as 'father') and nephew of late Mr. Girdharilal Dalal (hereinafter, referred to as 'uncle'). The first respondent is the nephew of the appellant, and the son of second respondent. The other respondents are cousins of second respondent. A fracture in the joint family-steeped in business dealings, shared ventures and mutual expectations, led to discord about the accounting and distribution of family funds. To resolve the dispute with his father in relation to the family assets, the appellant sought the intervention of sole arbitrator, Shri Dilip J Thaker. The sole arbitrator passed an arbitral award on 12.07.2010 in favour of the appellant. The father addressed the communication dated 23.07.2010 to the arbitrator alleging unfair conduct of arbitral proceedings and signalling his intent to challenge the arbitral award. A caveat was filed by the appellant, but challenge to the arbitral award dated 12.07.2010 under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act) did not materialise.

THE ARBITRAL AWARD TRAVELS ACROSS JURISDICTIONS: -

[3] The appellant initiated the execution proceeding for execution of the arbitral award in Dubai, where the father resided. The Court in Dubai, declared the father as judgment debtor. However, the arbitral award remained unsatisfied. The appellant moved the High Court of Singapore which also recognized the arbitral award and held the father liable for US $12,951,078.03, a garnishee notice followed. The father responded to the notice by denying the knowledge of the execution proceeding and claiming residence in London. The uncle filed an affidavit asserting that his brother

i.e., the father was not the sole beneficiary of Auro Mira Services Private Limited i.e., the concerned company but both of them were the directors and shareholders of the company. It was averred that corporate separateness insulated him from the repercussions of the arbitral award.

[4] The father had executed a Will dated 16.09.1994 in favour of the uncle. The father expired on 08.03.2013. The appellant, therefore, required the uncle, who was a substantial beneficiary under the aforesaid Will executed by the father, to disclose the details of assets of the father. The uncle refused to divulge the details of the assets on the ground that the arbitral award dealt with the properties in which he had personal stakes, and he was not bound by the arbitral award dated 12.07.2010 passed in favour of the appellant, as he is not the party to the same. The uncle filed a Civil Suit, namely suit no. 470 of 2013 in the High Court of Bombay, seeking a declaration that the arbitral award dated 12.07.2010 is a nullity. The learned Single Judge by an order dated 08.07.2013 directed the appellant to file an affidavit in reply within a period of two weeks. The appellant thereupon filed an affidavit in reply in the said civil suit, which is pending.

EXECUTION PROCEEDING IN BOMBAY: -

[5] The appellant filed Execution Application (L) no.1036 of 2013 in the High Court seeking execution of arbitral award dated 12.07.2010. The appellant also filed a chamber summons no.243 of 2014, in the execution application seeking issuance of notice under Order 21 Rule 22 of the Code of Civil Procedure (for short "CPC") and various reliefs inter alia for disclosure of assets, issuance warrants of attachment, sale and arrest.

THE ORDERS: -

[6] The learned Single Judge by an order dated 18.12.2014, held that execution must proceed and a notice under Order 21 Rule 22 of the CPC should issue. The learned Single Judge further directed the respondents not to create any third-party rights in respect of share, entitlement of the father in the property situate in London. It was also directed that in case the respondents create any third-party rights in respect of the properties which belong to the father, the same shall be subject to further orders of the Court.

[7] The uncle filed a chamber summons (L) No. 1297 of 2013 raising various objections, to the execution of the arbitral award and assailed the same on the ground that it is a nullity.

[8] The learned Single Judge, by another order passed on 18.12.2014, on an application of uncle i.e. chamber summons (L) no.1297 of 2013, inter alia, held that, the arbitral award which has attained finality can neither be set aside under the Act nor can the same be declared as nullity. It was further held that the chamber summons taken out by the uncle is premature. It was also held that execution shall proceed in accordance with law, and the chamber summons was accordingly disposed of.

[9] The respondents assailed the validity of the orders dated 18.12.2014 passed in chamber summons (L) no.1297 of 2013 and chamber summons no. 243 of 2014, in Letters Patent Appeals, namely Appeal No.320 and 372 of 2015, before the Division Bench of the High Court. The Division Bench by orders dated 06.03.2018, admitted the appeals subject to maintainability of the same, and thereafter, by separate orders passed on the same day admitted the appeal and stayed the orders dated 18.12.2014 passed by the learned Single Judge in chamber summons (L) no.1297 of 2013 and chamber summons no.243 of 2014. In these Civil Appeals, validity of orders dated 06.03.2018 passed by Division Bench of the High Court in Appeal No(s). 320 and 372 of 2015, have been challenged.

SUBMISSIONS: -

[10] Learned Senior Counsel for the Appellant, while inviting the attention of this Court to Sections 5, 36, 37 and 50 of the Act, submitted that, against the orders dated 18.12.2014 passed by the learned Single Judge in the Chamber Summons, no Letters Patent Appeals lie, as the Act is a complete code in itself. In support of the aforesaid submissions, reliance has been placed on decisions of this Court in **Paramjeet Singh Patheja v. ICDS Ltd.**, 2006 13 SCC 322 **Fuerst Day Lawson Ltd. v. Jindal Exports Ltd**, 2011 8 SCC 333 **Union of India v. Simplex Infrastructures Ltd.**, 2017 14 SCC 225 **Kandla Export Corporation and Anr. v. OCI Corporation and Anr.**, 2018 14 SCC 715 **Sundaram Finance Ltd. v. Abdul Samad and Anr.**, 2018 3 SCC 622 **Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd. and Ors.**, 2022 1 SCC 209 **Noy Vallesina Engineering Spa v. Jindal Drugs Limited & Others**, 2021 1 SCC 382 **PASL Wind Solutions Private Limited v. GE Power Conversion India Private Limited**, 2021 7 SCC 1 and **Electrosteel Steel Limited v. Ispat Carrier Private Limited**, 2025 7 SCC 773 and decisions of the Bombay High Court in Jet Airways (India) Ltd. v. Subrata Roy Sahara,2011 SCCOnLineBom 1379 and Sushila Singhania v. Bharat Hari Singhania,2017 SCCOnLineBom 360.

[11] It is further submitted that the Division Bench of the High Court grossly erred in not assigning any reasons while admitting the appeals and for staying the operation of the orders dated 18.12.2014 passed by the learned Single Judge. It is also pointed out that notice under Order 21 Rule 22 (1) of the CPC is yet to be issued to the respondents. It is urged that the chamber summons filed by the respondents in the execution proceedings, seeking a declaration that the arbitral award dated 12.07.2010 is a nullity is misconceived, and the chamber summons filed by respondents was premature. It is also pointed out that the respondents have already filed the Civil Suit seeking a declaration that the arbitral award dated 12.07.2010 is a nullity. It is, therefore, prayed that the impugned orders dated 06.03.2018 be quashed and set aside and the learned Single Judge be directed to proceed with execution expeditiously.

[12] On the other hand, learned Senior Counsel for the Respondents contended that the respondents are strangers to the arbitration proceeding and the arbitral award dated 12.07.2010, and they do not have locus to challenge the same under the Act, as

the Act envisages the challenge to the arbitral award in the manner indicated, therein by a party. It is, therefore, contended that the Letters Patent Appeals filed by the respondents are maintainable. It is also pointed out that, while deciding the chamber summons, the learned Single Judge has held that the arbitral award (i) is not without jurisdiction, (ii) not accentuated by fraud, (iii) not barred by limitation and (iv) is not against the public policy. It is further contended that the learned Single Judge ought to have appreciated that the arbitral award deals with properties of which the respondents are either the owners or have substantial interest. It is, therefore, urged that appeals are liable to be dismissed.

ANALYSIS: -

[13] We have considered the rival submissions and have perused the record. Before proceeding further, it is apposite to take note of the relevant statutory provision, namely Order 21 Rule 22, which is extracted below for the facility of reference.

"22. Notice to show cause against execution in certain cases.-

(1) Where an application for execution is made-

(a) more than [two years] after the date of the decree, or

(b) against the legal representative of a party to the decree [or where an application is made for execution of a decree filed under the provisions of section 44A], [or]

(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent, the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than [two years] having elapsed between the date of the decree and the application for execution if the application is made within [two years] from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

[14] Thus Order 21 Rule 22 mandates that where execution is sought (a) more than two years after the decree or (b) against the legal representative of judgment debtor or (c) against the assignee or receiver in insolvency, where party to the decree has been adjudged to be an insolvent, the executing court shall issue notice to the person against whom execution is sought, requiring him to show cause, why the decree should not be executed.

[15] The use of word 'shall' in Order 21 Rule 22 (1) admits of no ambiguity and the executing court is under an obligation to issue notice to the person against whom a decree is sought to be executed in the circumstances enumerated therein. The mandate of Order 21 Rule 22 (1) stands on two independent and mutually reinforcing foundations (i) the statutory compulsion-the use of word 'shall' in the provision leaves no discretion to the executing court in the circumstances enumerated therein, (ii) it incorporates the principles of natural justice as the legal representative of the deceased cannot be proceeded unless he is given an opportunity to contest the execution. Thus, the requirement of notice under Order 21 Rule 22 (1) to the persons enumerated therein is not a mere procedural courtesy but is the very foundation of the jurisdiction when the execution is sought against the estate of the deceased judgment debtor. The foundation of this requirement was laid down by the Privy Council in **Raghunath Das v. Sundardas Khetri**, 1914 AIR(PC) 129 wherein it was held that notice under Section 248 of the Old Code, (equivalent to Order 21 Rule 22) is a condition precedent to jurisdiction of the Court to proceed with execution against the legal representative of a deceased judgment debtor.

[16] Now, we may advert to Order 21 Rule 23 of the CPC which reads as under:

23. Procedure after issue of notice. -

(1) Where the person to whom notice is issued under [rule 22] does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

[17] The aforesaid rule prescribes the procedure after issue of notice. Order 21 Rule 23 (1) provides that where a person to whom notice is issued under Rule 22 does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed. Order 21 Rule 23 (2) provides that where any person offers any objection to the execution of the decree the court shall consider such objection and shall make such order as it thinks fit.

APPLICATION OF AFORESAID PROVISIONS TO THE PRESENT CASE: -

[18] In the backdrop of relevant statutory provisions, we may advert to the facts of the cases in hand. Admittedly, the father of the appellant had executed a Will on 16.09.1994 in favour of his brother. From perusal of the cause title of the execution proceeding, it is axiomatic that the uncle was arrayed in execution proceedings as legal representative/executor of the Will dated 16.09.1994 of the father and not in his individual capacity. The respondents, therefore, cannot be treated as third party to the arbitral award.

[19] The Act is a self-contained code and is founded upon principles of party autonomy, expedition and finality. The legislative design of the Act restricts judicial interference. The orders of the learned Single Judge dated 18.12.2014, were passed in

course of execution of arbitral award and are, therefore, traceable to the Act and not to CPC. The execution of the arbitral award is sought against the respondents in their capacity as executors of the aforesaid Will. The respondents step into the shoes of judgment debtor of the limited purpose of the execution. The Letters Patent Appeals filed by respondents were therefore not maintainable. The Division Bench of the High Court erred in admitting the appeals subject to maintainability of the same and in admitting the appeals without assigning any reasons.

[20] A careful scrutiny of the order dated 18.12.2014 passed in chamber summons no.243 of 2014, reveals that the learned Single Judge has held that the issue with regard to attachment of properties shall be dealt with at an appropriate time, upon an application made in accordance with law. It has further been held that a notice under Order 21 Rule 22 (1) of the CPC to proceed in execution of the arbitral award is granted.

[21] Thus, it is axiomatic that the notice under Order 21 Rule 22 (1) of the CPC is yet to be issued to the respondents. Once a notice is issued to the respondents, it is open for them to raise an objection to the execution of the arbitral award under Order 21 Rule 23(2) of the CPC. However, we find that the learned Single Judge while deciding the chamber summons (L) No.1297 of 2013, has made observations/findings though not determinative, have the potential to prejudice the respondents in their objections under Order 21 Rule 23 (2) of the CPC, which they are statutorily entitled to raise on receipt of notice. The respondents, therefore, must be placed in the position, the law intended them to occupy i.e. the legal representatives are entitled to be heard before their estate is saddled with execution.

CONCLUSION: -

[22] In view of foregoing discussion, impugned orders dated 06.03.2018 passed by the Division Bench of the High Court of Bombay in Letters Patent Appeals, namely Appeals No.320 and 372 of 2015 are quashed and set aside. The aforesaid Letters Patent Appeals are dismissed as not maintainable. In order to restore the execution proceeding to the track mandated by the CPC, as well as in the facts and circumstances of the case, we deem it appropriate to issue following directions: -

(i) The learned Single Judge in Execution Application (L) No. 1036 of 2013, shall issue notice to respondents under Order 21 Rule 22 (1) of the CPC.

(ii) On receipt of such notice, it would be open for the respondents to prefer objections to the execution proceedings under Order 21 Rule 23 (2) of the CPC.

(iii) The objections which may be preferred by the respondents shall be dealt with, on its own merit, by the learned Single Judge without being influenced by any of the observations/findings contained in the orders dated 18.12.2014 passed in chamber summons no(s). 243 of 2014 and 1297 of 2013 in Execution Application (L) No.1036 of 2013.

[23] The appeals are accordingly disposed of on above terms

2026(1)CAC19

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

(Hon'ble Judge J B Pardiwala; K V Viswanathan)

Civil Appeal No 14260 of 2025, 14261 of 2025, 14262 of 2025 **dated 18/11/2025**

Popular Caterers

Versus

Ameet Mehta & Ors

ARBITRAL AWARD STAY

Code of Civil Procedure, 1908 Or. 41R. 5, Or. 41R. 3 - Arbitration and Conciliation Act, 1996 Sec. 36, Sec. 34 - Arbitral Award Stay - Appeal arose from order granting unconditional stay of arbitral award - Appellant engaged in catering business entered into memorandum with another firm for providing vegetarian food - Partial deposit paid and disputes arose after state authorities restricted hotel operations - Arbitration initiated and award passed directing respondents to pay principal with interest - High Court granted unconditional stay on execution of award during pendency of Section 34 petitions - Appellate court held unconditional stay could be granted only in exceptional cases involving fraud or corruption - Found High Court erred by granting unconditional stay without such findings - Directed respondents to deposit principal amount and clarified hearing of Section 34 petitions on merits - Ordered High Court to dispose of petitions within fixed period - Stay to continue subject to deposit - Pending applications disposed of - Appeals Allowed

Law Point: Unconditional stay of arbitral award under Section 36(3) of Arbitration Act can be granted only in exceptional circumstances such as fraud or corruption - Courts must ordinarily impose conditions like deposit or security while staying execution of monetary awards

Acts Referred:

Code of Civil Procedure, 1908 Or. 41R. 5, Or. 41R. 3

Arbitration and Conciliation Act, 1996 Sec. 36, Sec. 34

Counsel:

Chander Uday Singh (Senior Advocate), Gaurav Srivastav, Pramit Saxena, Priyanka Gharge, Shailesh Madiyal (Senior Advocate), Vidhi Pankaj Thaker, Prastut Mahesh Dalvi, Abhishek Singh, Jijo Oomen Eappan, Yash Chaturvedi, Dhananjay Kumar, Shashank Shekhar, A M Singhvi (Senior Advocate), D S Naidu (Senior Advocate), Shrey Fatterpekar, Sumit Chander, Nirav Jitesh Marjadi, Srushti Bakul Mehta, Rebha Jagdish Dogra, Kushal Babulal Harnesha, Pooja Zagde, Mithu Jain, Mohit

Khubhchandani, Bansuri Swaraj (Senior Advocate), Nina Nariman, Sneha Sanjay Botwe, Karl Tamboly, Siddharth S Chapalgaonkar, Akash Tripathi, Saurabh Guha

JUDGEMENT

[1] Leave granted.

[2] These appeals arise from the common judgment and order passed by the High Court of Judicature at Bombay dated 22.01.2025 in Interim Application (L) No. 8589 of 2023 filed in Commercial Arbitration (L) Petition No. 7842 of 2023 with Interim Application (L) No.8941 of 2023 in Commercial Arbitration (L) Petition No.7800 of 2023 with Interim Application (L) No.7149 of 2024 in Commercial Arbitration (L) Petition No.8421 of 2023, respectively, by which the Interim Applications filed by the Award Debtors i.e. the respondents before us came to be allowed, and an unconditional stay of execution of the Arbitral Award dated 28.11.2022 as corrected by the corrigendum dated 19.12.2022 came to be granted till the final disposal of the Arbitration Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act, 1996").

[3] It appears from the materials on record that the appellant herein is a partnership firm engaged in the business of catering. The respondent no.6-Maple Leaf Enterprises is a Limited Liability Partnership (LLP). The parties entered into an agreement dated 25.05.2017.

[4] The promoters Mr.Drunal Shailesh Mody, Mr. Yogesh Mansukhlal Popat, Mr. Bhargav Nagindas Patel, Mr. Surendra Narayan Poojary and Mr. Ameet Mehta, respectively in their capacity as the promoters of Maple Leaf Enterprises (LLP) entered into a memorandum of understanding with M/s. Popular Caterers, i.e., the appellant herein before us.

[5] The Memorandum of Understanding arrived at between the parties in writing is dated 25.05.2017.

[6] It appears prima facie that Maple Leaf Enterprises (LLP) was desirous of availing the services of the appellant firm for the purpose of providing pure vegetarian food (catering service) for the events that may be held at the Tulip Star Hotel, located at Juhu Tara Road, Juhu, Mumbai.

[7] In accordance with the terms of the Memorandum of Understanding, the appellant was to pay Rs.8,00,00,000/- (Rs. Eight crore only) towards adjustable interest free security deposit.

[8] It is not in dispute that the appellant paid Rs.4,00,00,000/-(Rs. Four Crore only) towards security deposit and the same was received by the respondent No.6-herein, i.e., Maple Leaf Enterprises.

[9] Before, the balance amount of Rs.4 crore could be paid, disputes cropped up between the parties as early as 08-06-2017 i.e., barely within 12 days from the signing of the MoU.

[10] At this stage, it is relevant to note that disputes cropped up because the State authorities prohibited the Tulip Star Hotel from organising any event at their place. In other words, a notice was served to the Hotel Tulip Star by the Mumbai Suburban Collector directing the hotel management to stop renting out their plot for functions.

[11] In such circumstances, referred to above, the appellant herein was left with no option but to invoke arbitration.

[12] An Arbitrator came to be appointed by the High Court vide order dated 11.11.2019 passed in Arbitration Petition No. 1150 of 2018 and Arbitration Application No. 349 of 2019 respectively.

[13] The Arbitrator ultimately passed an award dated 28.11.2022. The operative part of it reads thus:-

"(A) The Respondent Nos.1 to 5 are jointly and severally directed to pay to the Claimant the principal sum of Rs.4,00,00,000/- along with interest thereon at 9.00% p.a. from 21.06.2017 till date of the award.

(B) The Respondent Nos.1 to 5 are jointly and severally directed to pay further interest at 9.00% p.a. on the principal sum of Rs. 4,00,00,000/- from date of the award till payment and/or realization.

(C) The Counter Claim of the Respondent No.6 stands rejected.

(D) The Respondents are directed to jointly and severally pay to the Claimant a sum of Rs. 19,18,675/- towards costs of arbitration."

[14] On 19.12.2022 few errors in the award came to be rectified and a corrigendum was accordingly issued.

[15] The respondents herein, having suffered an arbitral award of Rs.4 crore with interest @9% per annum from the date of MoU, went before the High Court by way of petitions under Section 34 of the Act, 1996.

[16] The Section 34 petitions came to be admitted.

[17] In the said Section 34 petitions, interim applications came to be filed by the respondents herein praying for stay of the execution of the award. The High Court by way of impugned order allowed the interim applications and granted unconditional stay of the execution of the arbitral award.

[18] Being dissatisfied with the impugned order, the appellant is here before us with the present appeals.

[19] We heard Mr. C.U., Singh, the learned senior counsel 6 appearing for the appellant and Mr. Shailesh Madiyal, the learned senior counsel appearing for the respondent nos. 2 and 4 respectively, Ms. Bansuri Swaraj, the learned senior counsel appearing for the respondent no.3 and Ms. Nina Nariman, the learned counsel appearing for the respondent no.5, respectively.

[20] Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is

whether the High Court committed any error in passing the impugned order granting unconditional stay of the execution of the arbitral award.

[21] Although the High Court has taken pains to look into the matter threadbare and has at many stages talked about the arbitral award being perverse, yet we are of the view that all the aspects looked into by the High Court ought to have been considered at the time of final hearing of the Section 34 petitions.

[22] This very Bench in the recent past had the occasion to consider a matter wherein the appellate court had thought fit to grant unconditional stay of a money-decree. 7 The matter we are talking about is titled **Lifestyle Equities C.V. and Another v. Amazon Technologies Inc.**, 2025 INSC 1190.

[23] In the said, case, the High Court on its original side allowed the suit and passed a money decree. The judgment debtor challenged the judgment and decree in appeal. The appellate court of the High Court, by a reasoned order thought fit to grant an unconditional stay of the money-decree.

[24] The decree-holder being dissatisfied with the order passed by the appellate court of the High Court challenged the same before this Court. In the said matter, we got a chance to discuss various principles of law governing grant of benefit of stay of the money decree without imposing any conditions like, deposit of the decretal amount or asking the judgment-debtor to furnish tangible security etc.

[25] In the said matter incidentally, we also had the occasion to consider Section 36(3) of the Act, 1996. Although in the said case, we were not concerned with Section 36(3) of the Act, 1996 and what was necessary to be looked into was the provision of Order XLI Rule (3) and (5) of the CPC yet the discussion therein assumes importance even in so far as the case on hand is concerned. We quote the relevant observations:

"96. Section 36 reads thus:

"36. Enforcement.-(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions

for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]

Provided further that where the Court is satisfied that a Prima facie case is made out that,-

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award, was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Explanation.-For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016)"

(Emphasis supplied)

97. Section 36 of the Arbitration Act was substituted vide the Arbitration and Conciliation (Amendment) Act 2015 (for short, "the Amendment Act, 2015"). Prior to the 2015 Amendment, the mere filing of an application challenging arbitral award under Section 34 of the Arbitration Act was understood in many quarters as a stay of the award in terms of the unamended Section 36 of the Arbitration Act.

98. This "automatic stay" became a subject matter of legal debate as being a great obstacle to the ease of enforcement of arbitral awards. In such circumstances, and with a view to address this lacuna, the Amendment Act, 2015, was introduced in the Arbitration Act. Under the Amendment Act, 2015, the existing provision in Section 36 was wholly substituted. Sub-section (2) of the amended provision provided that the filing of an application to set aside the arbitral award did not by itself render the award unenforceable unless an order was passed by "granting a stay on the operation of the award pursuant to a separate application filed to that effect".

Therefore, Section 36(2) of the Arbitration Act contemplated a separate application seeking stay.

99. In **Hindustan Construction Company & Anr. v. Union of India & Ors.**, 2020 17 SCC 324, this Court held that there would be no automatic stay on the enforcement of an arbitral award under Section 36 of the Arbitration Act due to the mere fact that an application to set aside the award under Section 34 had been field before a court. In the said case, the constitutional validity of Section 87 of the Arbitration Act as inserted by Section 13 of the Arbitration and Conciliation (Amendment) Act, 2019 (for short, "the Amendment Act, 2019") was challenged along with repeal of Section 26 of the Amendment Act, 2015 by Section 15 of the Amendment Act, 2019. This Court in the final analysis held as under:

(i) The language of Section 36 of the Arbitration Act does not warrant an automatic stay on the enforcement of an arbitral award due to the mere filing of a Section 34 petition.

ii. The legislature, by inserting Section 87 and deleting Section 26 through the Amendment Act, 2019, had subverted the purpose of the Arbitration Act, 1996 and the Amendment Act, 2015, and was contrary to public interest because it sought to revive the pre-2015 Amendment automatic stay regime that was a major cause of delay to the disposal of arbitral proceedings, and thus, the Court declared Section 13 and 15 of the Amendment Act, 2019 as manifestly arbitrary and unconstitutional as being violative of Article 14 of the Constitution.

iii. The ratio in the **BCCI v. Kochi Cricket Pvt. Ltd.**, 2018 6 SCC 287, was the position of law, prevailing at that time and would be used to interpret the applicability of the Amendment Act, 2015, to the arbitral proceedings and proceedings in relation to them.

100. Section 36(3) of the Arbitration Act provides that upon such an application being filed, the court may grant a stay "subject to such conditions as it may deem fit" for reasons to be recorded in writing. In terms of Section 36(3) of the Arbitration Act, the Court is conferred with the discretionary power to grant a stay of an arbitral award. Such discretionary power flows from the usage of the words "may" for grant of stay and the employment of the phrase "such conditions as it may deem fit" for the conditions that may be imposed if a stay was granted. Therefore, in terms of Section 36(3), the court retains its discretionary power to grant a stay of an arbitral award.

101. Further, the first Proviso to Section 36(3) provides that if the arbitral award was for payment of money, the court shall have "due regard" to the provisions for grant of stay of money decree under the CPC.

102. The aforesaid was, the legal position for a period of six years from 2016 to 2021. In 2021, Section 36 of the Arbitration Act was once again amended with retrospective effect from 23.10.2015, vide the Arbitration and Conciliation Amendment Act, 2021 (for short, "the 2021 Amendment"). The 2021 Amendment, inter alia, introduced a second Proviso to Section 36(3) which provided that if a prima facie case is made out that either the arbitration agreement/contract which is the basis of the award, or the making of the award was induced or effect by fraud or corruption, the Court "shall" stay the award "unconditionally" pending the disposal of the challenge.

103. As is clear from a plain reading of the second Proviso referred to above, it was provided that if, inter alia, the making of the award was induced or effected by fraud or corruption then the court was mandated to stay the award and such a stay was to be unconditional.

104. Mr. Gaurav Pachnanda, the learned Senior Counsel would argue that the courts cannot grant the benefit of unconditional stay of an award in cases other than

those covered by the second Proviso to Section 36(3) of the Arbitration Act. In the same manner, according to the learned Senior Counsel, when it comes to staying a money decree unconditionally, the judgment-debtor needs to make out more than a prima facie case of fraud or corruption, or something analogous to the same, and it is just not sufficient to point out our serious infirmities in the judgment granting money decree.

105. In the aforesaid context, we must look into the decision of this Court in the Sepco Electric (supra). In the said decision, this Court was dealing with an appeal against a judgment of the Delhi High Court where the learned Single Judge had granted a stay of the arbitral award subject to deposit of 100% of the award amount. This order was passed in an application filed under Section 9 of the Arbitration Act which was heard together with an application under Section 36(3) of the Act in a connected petition. This decision was affirmed in appeal by this Court which held that there were no grounds made out for interfering with the judgment below.

106. This Court, while considering the contention of the appellant therein observed that a court may grant an unconditional stay if it is appropriate to do so. While so observing, this Court stated that unconditional stays were covered by the second Proviso to Section 36(3). The relevant portions of the judgement are extracted below:

"The power under subsection (3) of Section 36 to grant stay of an award is coupled with the duty to impose conditions which could include the condition of securing the award by deposit in Court, of the amount of the Award. It may be true as argued by Mr. Vishwanathan that the Court may not impose condition for stay, if it deems appropriate not to do so. The power of Court to grant unconditional stay of an Award is not unfettered. The power of unconditional stay is subject to the condition in the second proviso that is:

The Court is satisfied that a prima facie case (sic) is made out that

(i) the arbitration agreement or contract which is the basis of the award; or

(ii) the making of the award, was induced or effected by fraud or corruption"

(Emphasis supplied)

107. While this Court acknowledged that an unconditional stay could be granted in appropriate cases, it quickly followed up saying that the power to grant an unconditional stay is governed by the second Proviso to Section 36(3). This may indicate that the Court acknowledged the grant of an unconditional stay to the existence of the grounds mentioned in the second Proviso. This would indicate that the benefit of unconditional stay could be granted only in cases of fraud or corruption.

108. Notwithstanding the above, this Court in order to fortify its conclusion in the case, subsequently also noted that the appellant therein was not able to show any cogent and glaring error that went to the root of the award. This observation was repeated later where the Court stated that no cogent ground had been made out even,

prima facie, for interference with the impugned award. The relevant observations are extracted below:

"26. It is settled law that grounds for interference with an award is restricted. Even before this court, the Appellant has not been able to advert to any cogent and glaring error which goes to the root of the award. The contention of the award being opposed to the public policy of India, is devoid of any particulars whatsoever...

xxx xxx xxx

35. It is not in dispute that there is an award of Rs. 142 Crores in favour of the Respondent. No cogent ground has been made out even prima facie, for interference with the impugned award.

xxx xxx xxx

37. We find no ground at all to interfere. The Appeals are dismissed. ...."

109. After arriving at such a finding, this Court proceeded to dismiss the appeal. Therefore, the observations referred to above formed part of this Court's reasoning in arriving at its decision.

110. The aforesaid observations of this Court would suggest that the Court thought it fit to consider the merits of the award at a prima facie level in order to decide whether the conditional stay of the award was justified or not. In the facts of the present case, the Court felt that it was justified.

111. In light of the abovementioned observations, it is possible to legitimately argue that if the second Proviso to Section 36(3) was the sole source for granting an unconditional stay, there would have been no occasion for the Court to examine whether any prima facie cogent ground that went to the root of the award is forthcoming or not. Therefore, by relying upon this Court's observations, it could be plausibly argued that in exceptional cases an unconditional stay can be granted even in cases not arising under the second proviso to Section 36(3). Such unconditional stay would instead be relatable to the main part of Section 36(3).

112. The above reading of Sepco Electric (supra) would also be in tune with the discretionary power of the court under the main part of Section 36(3) both with respect to the power to grant stay and the power to impose conditions if a stay is granted. After all, it is not inconceivable to contend that a power to impose conditions would also include the power not to impose conditions.

113. Be that as it may, Sepco Electric (supra) does not clearly answer the question whether an unconditional stay can be granted in cases not covered by the second Proviso to Section 36(3). This confusion remains because while the Court states an unconditional stay can be granted in cases covered by the second Proviso, it does not categorically exclude the possibility of an unconditional stay in cases not covered by the second proviso.

114. This Court in Pam Developments (supra) had occasion to consider the nature of applicability of provisions of the CPC vis -vis the proceedings under the Arbitration

Act, and specifically, the interpretation of the phrase "due regard" appearing in the first Proviso. The respondent therein had preferred an application seeking an unconditional stay of the arbitral award on the strength of Order XXVII Rule 8A, CPC which inter alia exempted Government from furnishing a security while seeking stay of a decree. Aggrieved by the application being allowed by the Calcutta High Court, the appellant-award holder approached this Court.

115. This Court allowed the appeal and directed deposit of the award amount as a condition for continuing the stay. The Court reasoned that the exemption from furnishing security under Order XXVII Rule 8A that would otherwise be applicable to the ordinary civil proceedings could not be strictly applied to the arbitration proceedings. Therefore, the respondent- government could not have relied upon that provision to avoid furnishing security for staying the award. The Court further held that even if the exemption from furnishing security was made applicable to the arbitration proceedings, such exemption would not extend to making deposit of the award amounts. This was based on the Court's interpretation of the difference between Order XXVII Rule 8A which was introduced in 1937 and exempted furnishing of 'security' and sub-rule (5) of Rule 5 of Order XLI that was introduced in 1976 and which differentiated between 'security' and 'deposit'. The Court also referred to the implications of a provision introduced during the colonial period and its continuance in the present constitutional setup.

116. This Court in Pam Developments (supra) held that the phrase "due regard" would only mean that the provisions of CPC are to be taken into consideration and not that they are mandatory. The relevant observations are extracted below:

"20. In our view, in the present context, the phrase used is "having regard to" the provisions of CPC and not "in accordance with" the provisions of CPC. In the latter case, it would have been mandatory, but in the form as mentioned in Rule 36(3) of the Arbitration Act, it would only be directory or as a guiding factor. Mere reference to CPC in the said Section 36 cannot be construed in such manner that it takes away the power conferred in the main statute (i.e. the Arbitration Act) itself. It is to be taken as a general guideline, which will not make the main provision of the Arbitration Act inapplicable. The provisions of CPC are to be followed as guidance, whereas the provisions of the Arbitration Act are essentially to be first applied. Since, the Arbitration Act is a self-contained Act, the provisions of CPC will apply only insofar as the same are not inconsistent with the spirit and provisions of the Arbitration Act."

(Emphasis supplied)

117. On the strength of the above reasoning, this Court held that the exemption from furnishing security could not be applied to the arbitration proceedings. The Court clarified that while courts must have due regard to the CPC, they are not rigidly bound by its provisions. The CPC serves as a guiding framework rather than a strict mandate because the Arbitration Act being a self-contained Act is to be first applied by the court.

118. Although not explicitly stated by the Court as a reason for its decision, yet this Court did note the consequence of accepting the contention that Order XXVII Rule 8A was applicable. The result would be that wherever the government was the judgmentdebtor in the arbitration proceedings, it would be entitled to an unconditional stay on the mere filing of an application under Section 36(2).

119. While Pam Developments (supra) relied on the phrase "due regard" appearing in the first Proviso to decline the rigid application of an exemption from furnishing security provided under the CPC it could also be argued that insisting on a conditional stay in all cases of a money award would be a rigid application of Order XLI Rule 5. This is because Rule 5 mandates the furnishing of security or deposit as a condition for granting stay. Relying on Pam Developments (supra), it could possibly be argued that "due regard" to the provisions of CPC, especially Order XLI Rule 5, would not mean a mandatory grant of conditional stay in all cases. This is because the provisions of the Act, especially Section 36, would have to be first applied wherein a discretionary power is vested in the court.

120. If the first Proviso has to be interpreted as done in Pam Developments (supra) and merits of the award have to be considered on a prima facie level as done in Sepco Electric (supra), it is difficult to rule out the existence of an unconditional stay in cases outside the second Proviso. A closer analysis of the decision in Sepco Electric (supra) and this Court's interpretation of the first proviso in Pam Developments (supra) suggests that unconditional stays can be granted even in cases outside the second Proviso.

121. At this stage, we must look into one decision of the Bombay High Court in the case of ITD Cementation India Ltd. v. Urmi Trenchless Technology Pvt. Ltd.,2020 SCCOnLineBom 10611, wherein the High Court after referring to and relying upon Pam Developers (supra) observed as under:

"11. The provision of Section 36(3) are clear, that one must have regard to the provisions of the Code of Civil Procedure 1908 ("CPC") and specifically the provisions of Order 41 Rule 5 while addressing the question of stay. The words 'have due regard' have received judicial interpretation. Certainly there is no blanket prohibition barring a Court from unconditionally staying either a money award or a money decree. The three-fold requirement of Order 41 Rule 5(3) will have to be kept in mind. But, as the Supreme Court held in **Pam Developers Private Limited v. State of West Bengal**, 2019 8 SCC 112 the provisions of Order 41 Rule 5 are for guidance. They do not indicate that a Section 36 Court lacks all discretion to grant an unconditional stay. That said, it is equally well settled that a strong and exceptional case must be made for unconditional stay of a money decree or a money award. The three matters to consider under Order 41 Rule 5(3) are (a) whether the Applicant will be put to a substantial loss if stay is refused; (b) whether there is a delay in making the application and (c) whether the Applicant has furnish sufficient security to satisfy any ultimate decree. There is a delay, though slight. I do not see how the question of

substantial loss arises. The fact that it has suffered an Award is neither here or there. The third requirement is that the party applying for stay must show sufficient security. There is no such attempt made."

(Emphasis supplied)

122. In such circumstances referred to above, we find it difficult to subscribe to the submission of Mr. Gaurav Pachnanda, that even for the purpose of grant of benefit of unconditional stay of money decree under Order XLI Rule 5 of the CPC, the judgmentdebtor has to make out more than a prima facie case of fraud or corruption and not solely on the basis of an extreme or egregious view on the merits of the adjudication.

123. We once again clarify that the analogy of Section 36 of the Arbitration Act sought to be applied is inappropriate. The decision of this Court in Pam Developments (supra) should also be understood and confined only to matters relating to arbitration, more particularly, Section 36 of the Arbitration Act.

124. We are of the view that if fraud or corruption or something analogous to the same is only to be seen for the purpose of granting benefit of unconditional stay of execution of money decree then in such circumstances, the decree holder may argue that although there may not be a valid service of summons to the defendant/judgment-debtor yet, the same by itself would not be sufficient to grant the benefit of unconditional stay of execution of money decree. This would lead to nothing but serious miscarriage of justice."

[26] In the present case, it is not even the case of the judgment-debtor, i.e., respondents before us that the making of the award was induced or effected by fraud or corruption. Even if we have to apply the general principles of CPC in the present case, the High Court should have considered the matter asking a question whether the respondents herein (award-debtors) could be said to have made out an "exceptional case" for the purpose of granting benefit of unconditional stay of the execution of the award which is in the form of a moneydecree. In Lifestyle Equities (supra), we said in so many words that for the purpose of granting of benefit of unconditional stay of the execution of money-decree, it has to be established more than prima facie that:

(i) The decree is egregiously perverse,

(ii) is riddled with patent illegalities,

(iii)is facially untenable; and/or

(iv) such other exceptional causes similar in nature.

[27] We are of the considered view that the case in hand does not fall in any of the aforesaid categories so as to seek the benefit of unconditional stay of the arbitral award which is in the form of a money-decree.

[28] Except the aforesaid, we do not propose to observe anything further on merits, as the same may cause prejudice to either side.

[29] We have reached the conclusion that the impugned order of the High Court deserves to be set aside.

[30] In view of the aforesaid, these appeals succeed and the common impugned order is, accordingly, set aside.

[31] We direct the respondents to deposit the principal amount of Rs.4,00,00,000/- (Rs.Four crore only) with the Prothonotary and Senior Master, Original side, Bombay High Court within a period of eight weeks from today.

[32] We clarify that the Section 34 applications preferred by the respondents shall be heard on its own merits without being influenced in any manner by the fact that we have thought fit to disturb the impugned judgment and order passed by the High Court.

[33] Once the principal amount of Rs.4,00,00,000/- (Rs.Four crore only) is deposited within the stipulated period of time, the Registry of the High Court shall invest the same by way of a Fixed Deposit in an interest bearing account with any Nationalised Bank with auto renewal facility initially for a period of six months.

[34] Having regard to the nature of the dispute between the parties and in the peculiar facts and circumstances of this case, we request the High Court to take up the Section 34 applications for final hearing and see to it that those are disposed of within a period of six months from today.

[35] It is needless to clarify that the stay as regards execution of the Arbitral Award shall continue, subject to the deposit of the principal amount of Rs.4,00,00,000/- (Rs.Four crore only).

[36] Pending application(s), if any, shall stand disposed of

2026(1)CAC30

DELHI HIGH COURT

(Hon'ble Judge Anil Kshetarpal; Harish Vaidyanathan Shankar)

F A O (O S) (First Appeal From Order (O S)); C M Appl (Civil Miscellaneous Application) No 317 of 2017; 45899 of 2017 **dated 03/12/2025**

M/s Kapoor Tent & Caterers

Versus

Delhi Tourism & Transportation Development Corporation Ltd

ARBITRATION AWARD CHALLENGE

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 16, Sec. 37, Sec. 17, Sec. 8 - Arbitration Award Challenge - Appeal filed against dismissal of petition under Section 34 challenging arbitral award concerning licence agreement for operation of facilities at tourist complex - Appellant sought extension of licence and disputed counter claim for damages - Arbitrator found no contractual obligation for extension and allowed

damages for unauthorized occupation - Single Judge upheld award finding no jurisdictional error or violation of public policy - Division Bench held appellant participated in arbitration without objection and failed to establish illegality or excess of jurisdiction - Findings of arbitrator on damages and contract terms based on evidence - Limited scope of interference under Section 34 not attracted - Award sustained - Appeal Dismissed

Law Point: Judicial interference with arbitral award confined to limited grounds under Section 34 of Arbitration and Conciliation Act - Findings of arbitrator on merits or interpretation of contract not open to reappraisal unless patently illegal or contrary to public policy

Acts Referred:

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 16, Sec. 37, Sec. 17, Sec. 8

Counsel:

Santosh Kumar (Senior Advocate), Ankur Katyal, Harshil Gupta, Taarush Bajaj, Sandeep Prakash Aggrawal (Senior Advocate), Sujata Kashyap, Tanya Chanda, Ishika Rawat

JUDGEMENT

Anil Kshetarpal, J.- [1] Through the present Appeal, the Appellant [Petitioner before the learned Single Judge] assails the correctness of Judgment dated 22.02.2017 passed by the learned Single Judge in O.M.P. No. 430/2015, whereby the petition under Section 34 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'AC Act'] filed by the Appellant, challenging the Arbitral Award dated 20.04.2015 came to be dismissed.

[2] The issue that arises for consideration in the present Appeal is whether the learned Single Judge was justified in declining to interfere with the Arbitral Award dated 20.04.2015, and in holding that none of the grounds urged by the Appellant fell within the limited scope of interference permissible under Section 34 of the AC Act, thereby warranting no judicial intervention.

FACTUAL MATRIX

[3] The brief facts, leading to filing of the present Appeal, are as follows. The Appellant, M/s Kapoor Tent & Caterers was the licensee engaged in operating specified facilities within the Azad Hind Gram Tourist Complex situated on NH-10, Rohtak Road, Delhi. The Respondent, Delhi Tourism & Transportation Development Corporation Ltd. [D.T.T.D.C], is a public sector undertaking of the Government of NCT of Delhi and was the licensor in respect of the said premises.

[4] The Appellant entered into a License Agreement dated 01.10.2004 with the Respondent for running a restaurant, three kiosks, a conference-cum-banquet hall for organising conferences and parties, and an open green area for temporary wedding pandals at Azad Hind Gram Tourist Complex, NH-10, Rohtak Road, Delhi. The

License was granted for a period of ten years (5+5), with the Appellant being responsible for maintaining horticulture and upkeep of the premises.

[5] The land in question had earlier been allotted on lease to the Respondent by the competent authority: a communication dated 27.12.1996 records allotment/lease of the Gaon Sabha land of Village Tikri Kalan to D.T.T.D.C. on a long-term basis, with conditions restricting use and permitting the lessor to cancel the lease in specified circumstances. The Appellant later contended in these proceedings that the License Agreement dated 01.10.2004 was in conflict with the terms of the said lease deed and was therefore void or unenforceable; the Respondent, however, maintained that the License Agreement was validly executed and binding inter se the parties.

[6] On 28.05.2009, prior to the expiry of the License Agreement on 14.09.2009, the Appellant requested the Respondent to extend the License for a further period of five years. By a letter dated 07.10.2009, the Respondent extended the License only for three months beyond 14.09.2009. The Appellant, however, continued to deposit the License fee till 2011, relying on verbal assurances from the Respondent that the License would be extended. Thereafter, by a letter dated 27.04.2010, the Respondent purported to terminate the License.

[7] The Appellant filed a suit seeking a Mandatory Injunction. During the proceedings, the Respondent invoked Clause 53 of the License Agreement, which provided for arbitration, and filed an application under Section 8 of the AC Act. By an order dated 13.04.2011, the civil court referred the disputes to arbitration.

[8] In the arbitral proceedings, the Appellant filed a claim seeking direction to the Respondent to extend the License for a further five years. The Respondent filed a counter-claim seeking damages for alleged unauthorized occupation, including loss of revenue and penalties imposed by the Municipal Corporation of Delhi ("MCD"). On 26.08.2011, the MCD sealed the premises on the ground that the property could not be lawfully used for running a banquet hall or other commercial activities.

[9] During the pendency of arbitration proceedings, the Respondent filed an application under Section 17 of the AC Act seeking possession of the premises. By an interim order dated 03.02.2014, the learned Arbitrator allowed the said application in favour of the Respondent. The Appellant thereafter filed an application on 07.03.2014 seeking recall of the interim order, which came to be dismissed; however, it was directed that upon de-sealing of the premises, the Respondent would ensure that the process takes place in the presence of the Appellant so as to enable the retrieval of its goods.

[10] The learned Arbitrator framed the issues for adjudication in respect of the claim and counter-claim, which read as follows:

"1. Whether the claimant, in terms of the lease agreement dated 01.10.2004 executed between the claimant and the respondent regarding lease of the premises located at Azad Hind Gram Tourist Complex, Rohtak Road, Delhi for a period of 5

years with effect from 15-09-2004 and which period expired on 14.09.2009, is entitled to further extension of lease of the said premises for a period of 5 years?

2. If yes, from which date and on what terms and conditions?

3. Relief?

Counter Claim:

1. Whether the respondent is entitled to damages @ Rs.3 lacs per month w.e.f. 14.12.2009, the amount of revenue the premises would fetch at the current market value and damages @ Rs. 20,000/- for the loss of revenue?

2. Whether the respondent is entitled to cost/penalty imposed by MCD for desealing the premises?

3. Whether the respondent is entitled to the interest on the above amounts and if yes, for which period and at what rate?

4. Relief?"

[11] By the Arbitral Award dated 20.04.2015, the Arbitrator held that there was no obligation on the Respondent to grant a five-year extension of the License. Consequently, the claim of the Appellant for extension of the License was rejected. Regarding the counter-claim, the Arbitrator held that the Respondent had not produced independent evidence on market rental rates. Therefore, the Arbitrator applied the rates mentioned in the License Agreement dated 01.10.2004 and directed the Appellant to pay damages as under:

i. Rs. 1,56,250/- plus service tax per month from 15.12.2009 to 14.09.2010;

ii. Rs. 2,25,000/- plus service tax per month from 15.09.2010 to 03.02.2014;

iii. Rs. 3,10,000/- plus service tax per month from 04.02.2014 till the date of handing over possession to the Respondent;

iv. Interest at 9% per annum on amounts not paid within two months of the Award.

[12] Aggrieved by the Arbitral Award dated 20.04.2015, the Appellant approached the learned Single Judge by filing O.M.P. No. 430/2015 under Section 34 of the AC Act, seeking to set aside the Award. The Appellant contended that the Arbitral Award was liable to be interfered with on several grounds, including that the learned Arbitrator acted in excess of jurisdiction, failed to appreciate the distinction between arbitrable and non-arbitrable matters, ignored the express bar under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [hereinafter referred to as 'PP Act'], and wrongly awarded license fees and damages for periods when the premises were sealed by the MCD. It was further contended that the License Agreement dated 01.10.2004 was void and unenforceable as being inconsistent with an earlier lease executed in favour of the Respondent, and that the Arbitral Award was contrary to the public policy of India.

[13] The learned Single Judge, after consideration, held that the Appellant had not raised any specific objection to the jurisdiction of the Arbitrator under Section 16 of the AC Act during the arbitral proceedings. The vague statement made in the reply to the counter- claim regarding the applicability of the PP Act was not sufficient to challenge jurisdiction. It was further observed that the Appellant had actively participated in the arbitral proceedings and, therefore, could not later contend that the Arbitral Tribunal lacked jurisdiction to entertain the counter-claim.

[14] On the merits, the learned Single Judge noted that the claim for extension of the License was rejected by the Arbitrator on the basis that the Respondent was not obliged to grant a five-year extension and that the extended license period had already expired by efflux of time. Regarding the counter-claim, it was held that the Arbitral Tribunal had rightly applied the rates specified in the License Agreement to calculate damages in the absence of independent evidence on market rental rates. The learned Single Judge concluded that the Arbitral Award was neither in violation of the AC Act nor opposed to public policy and that the Appellant had failed to make out any ground under Section 34 to justify interference with the Award. Consequently, O.M.P. No. 430/2015 was dismissed with no order as to costs.

[15] Contentions OF THE APPELLANT

15.1. Learned senior counsel for the Appellant submitted that the learned Arbitrator exceeded his jurisdiction in entertaining and allowing the counter-claims of the Respondent, which, according to the Appellant, pertained to matters falling within the exclusive domain of the PP Act. It was urged that disputes relating to possession, eviction and recovery of occupation charges from public premises are non-arbitrable, and therefore, the Arbitral Tribunal lacked competence to adjudicate such issues.

15.2. It was contended that the License Agreement entered into between the parties was itself contrary to and in conflict with the Lease Deed dated 27.12.1996 executed by the Gaon Sabha authorities in favour of the Respondent, and therefore, the License Agreement was void, unenforceable and obtained by misrepresentation. On this premise, it was argued that the Arbitral Award, being founded on an illegal and vitiated contract, is liable to be set aside.

15.3. It was further argued that the learned Arbitrator had no authority in law to determine or award compensation or damages, as such determination falls outside the scope of the arbitration clause. It was contended that the Arbitrator could not assume powers that were never conferred under the contract, and therefore the Award travelled beyond the reference and is liable to be annulled.

15.4. Learned senior counsel additionally submitted that the quantification of amounts under the Award is erroneous, insofar as it includes the period during which the premises stood sealed by the Municipal Corporation of Delhi. It was urged that the sealing occurred due to alleged misuse, and that the Appellant could neither utilise the

premises nor conduct business during such period; consequently, no liability to pay licence fee or damages could arise for that duration.

15.5. It was further urged that the Appellant was entitled to an extension of the License, based upon assurances allegedly given by the Respondent, and that the continued payments made by the Appellant were in reliance upon such representations. It was submitted that the Arbitrator failed to consider this aspect and rejected the claim in an arbitrary manner.

15.6. It was also submitted that the Appellant has already paid a sum of Rs. 1.4 crores under the License Agreement, and in any event, the possession of the premises has been handed over to the Respondent, including during proceedings arising out of contempt. Therefore, it was argued that no further financial liability could survive against the Appellant, and the Award directing further payment is inequitable and unsustainable.

15.7. Learned senior counsel for the Appellant also relied on several judicial authorities to contend that the counter-claims were non- arbitrable or that the Arbitrator exceeded jurisdiction. The cases cited include:

i. **Indian Trade Promotion Organization v. International Amusement Ltd.**, 2007 142 DLT 342 for the proposition that disputes under the Public Premises Act may fall outside arbitrable domain.

ii. **M/s Fortune Grand Management Pvt Ltd v. Delhi Tourism & Transport Dev. Corp.**, 2016 4 ARBLR 325 regarding conduct of Estate Officer under the PP Act and limits on arbitration jurisdiction.

iii. S.S. Con-Build Pvt. Ltd. v. DDA,2023 SCCOnlineDel 2633 on arbitrability of disputes under special statutes

iv. **Kanodia Infratech Ltd. v. Dalmia Cement (Bharat) Ltd.**, 2021 284 DLT 722 concerning jurisdiction of arbitrator to try disputes arising under special statutes or agreements.

v. **M/s C J International Hotels Ltd. v. NDMC [I.A. No. 2957/90 in Suit 1193/90]**, on the scope of Section 20 of the Arbitration Act in determining matters within reference.

vi. Gayatri Balasamy v. M/s ISG Novasoft Technologies Ltd., on powers of the Court to modify an award under the Arbitration Act and limitation of judicial interference.

The Appellant submitted that, on the basis of these authorities, the counter-claims for arrears of license fees, damages, and occupation charges under the License Agreement were non-arbitrable, or in the alternative, the Arbitrator exceeded jurisdiction, awarded amounts beyond the reference, and thereby violated the public policy of India.

15.8. Lastly, it was argued that the learned Single Judge erred in dismissing the petition under Section 34 of the AC Act, without appreciating that the Award suffers

from patent illegality, jurisdictional errors, and violation of public policy, particularly where the dispute pertains to public premises and is alleged to be nonarbitrable.

[16] Contentions OF THE RESPONDENT

16.1 Per contra, learned senior counsel for the Respondent submitted that the present Appeal is a meritless attempt to reopen issues that stand conclusively determined by the learned Arbitrator, who acted strictly within the contours of the License Agreement, the pleadings, and the evidentiary record. It was contended that the Award is a reasoned determination based on contractual obligations voluntarily undertaken by the Appellant, and therefore, the scope of challenge is extremely narrow, particularly in an Appeal under Section 37 of the AC Act, where the Court cannot reassess evidence, reinterpret contractual terms, or substitute its own view merely because another view is possible.

16.2 It was submitted that the Appellant has attempted to create a false narrative of lack of jurisdiction, whereas the Appellant not only invoked arbitration but actively participated in the proceedings, filed claims and documents, led evidence, cross-examined witnesses, and never raised a jurisdictional objection under Section 16 of the AC Act. It was argued that having submitted to jurisdiction and contested the matter on merits, the Appellant is estopped from challenging the Arbitrator's competence after an unfavourable Award. Reliance was placed on the principle that jurisdictional objections must be raised at the earliest and cannot be introduced belatedly as an afterthought.

16.3 The Respondent further submitted that the contention that the dispute falls within the exclusive domain of the PP Act is wholly misconceived. It was argued that the present proceedings did not concern eviction, removal, or recovery of possession under the PP Act, and the Respondent never invoked statutory machinery under the PP Act. Rather, the disputes adjudicated pertained to arrears of licence fee, unpaid contractual dues, damages and occupation charges for continued use, and consequences of overholding after expiry of licence. Such issues, it was submitted, are purely contractual and squarely arbitrable. The Appellant cannot artificially re-characterise the dispute to escape monetary liability.

16.4 It was also contended that the counter-claims adjudicated by the Arbitrator were within the scope of the arbitration clause and arose directly from breaches by the Appellant, including unauthorised commercial exploitation, non-payment of agreed charges, and continued occupation despite expiry of the licence period. The attempt to portray the counter-claims as ultra vires or barred by statute was described as an untenable and legally unsustainable device to deny dues payable under the Agreement.

16.5 The Respondent submitted that the plea relating to sealing of the premises by MCD is factually incorrect and legally irrelevant. It was argued that the sealing arose from unauthorised activities attributable to the Appellant; that the Appellant continued to benefit commercially; that sealing did not extinguish contractual payment

obligations, and that the Arbitrator, after assessing evidence, rejected the sealing-based defence. It was emphasised that the Appellant seeks a re-appreciation of factual findings, which is impermissible under Section 34 of the AC Act and a fortiori under Section 37 of the AC Act.

16.6 It was contended that no contractual or equitable right of extension ever arose, that the licence expired by efflux of time, and that any continuation of possession thereafter was illegal. It was argued that the Appellant continued to operate, earn revenue, and utilise the premises even after expiry, and therefore liability for damages and mesne profits necessarily followed. The Arbitrator's findings on this aspect, being based on documents and conduct, cannot be interfered with.

16.7 It was further submitted that the Appellant has already admitted payments made and possession handed over, which reinforces that the dispute relates to quantification of dues and not to rights in land or eviction proceedings. It was argued that the Appellant cannot rely on partial performance to negate remaining liabilities.

16.8 Learned senior counsel for the Respondent further submitted that reliance placed by the Appellant on non-arbitrability under the PP Act is misconceived. It was contended that the Supreme Court in Central Warehousing Corporation v. Sidhartha Tiles & Sanitary Pvt. Ltd.,2024 SCCOnLineSC 2983 has held that contractual disputes, including issues of renewal and enhanced demands arising during the subsistence of a contract, are distinct from proceedings under the PP Act, which only governs eviction of unauthorized occupants. Consequently, the dispute in the present case, relating to license fee, overholding, and damages, is squarely arbitrable.

ANALYSIS & FINDINGS

[17] This Court has considered the submissions advanced by learned senior counsel for the parties, perused the record, and examined the scope of interference available to this Court in an Appeal under Section 37 of the AC Act. It is well settled that the jurisdiction under Section 37 is even more restricted than that under Section 34, and unless the Appellant demonstrates that the learned Single Judge committed an error in refusing to set aside the Award on grounds of perversity, patent illegality, or conflict with the fundamental policy of Indian law, no interference is warranted.

[18] The primary contention of the Appellant that the counter-claims were non-arbitrable on account of the PP Act is devoid of merit. This Court notes that in **Central Warehousing Corporation** (supra), the Supreme Court considered whether the Public Premises Act overrides the Arbitration and Conciliation Act, 1996. At paragraph 13, it was observed that disputes arising out of the terms of a contract, including issues of renewal and enhanced demands during the subsistence of the contract, are distinct from the eviction proceedings under the PP Act. The Court held that the Public Premises Act neither bars nor overlaps with the scope of arbitration. The said paragraph 13 reads as under

"13. Re: Whether the Public Premises Act, 1971 overrides the Arbitration and Conciliation Act, 1996: This submission has to fail. The reasons are simple and straight forward. The dispute that is raised in the Section 11 application relate to promises and reciprocal promises arising out of the agreement dated 26.09.2012. The right of renewal as well as the legality and propriety of the enhanced demand arose during the subsistence of the agreement. It will be on the interpretation, construction and the obligations arising out of the agreement that the respondent's claim rests. On the other hand, The Public Premises Act authorises the ejectment of a tenant in unauthorised occupation of public premises and for consequential directions. The original lease as it were, validly subsisted till 11.09.2015 and the dispute between the parties related to the period commencing from 12.09.2012 to 11.09.2015, when the lease expired. The Public Premises Act would not even cast a shadow on this period. In so far as the dispute relating to this right of renewal is concerned, it depends on the terms of the agreement. The Public Premises Act neither bars nor overlaps with the scope and ambit of proceedings that were initiated under the Arbitration and Conciliation Act."

Applying the same principle, the disputes before the Arbitral Tribunal pertained to arrears of licence fees, overholding, damages, and quantification of occupation charges under the License Agreement. No proceedings under the PP Act were invoked by the Respondent, and the issues adjudicated were contractual in nature. Consequently, the plea of non-arbitrability is unsustainable.

[19] This Court has also examined the judicial precedents relied upon by the Appellant in support of the plea of non-arbitrability and alleged lack of jurisdiction of the Arbitral Tribunal. The said decisions, in the considered view of this Court, do not advance the case of the Appellant. A careful reading of the relevant paragraphs relied upon reveals that these authorities either (i) pertain to circumstances where statutory proceedings under the PP Act had in fact been initiated; (ii) concern determination of jurisdiction in materially different contractual settings; or (iii) address the scope of interference by the Court in situations where the Award was shown to be perverse or contrary to the record. None of these decisions lay down any proposition that monetary claims for licence fee, occupation charges, damages for overholding, or quantification of dues arising from continued use of premises after expiry of a licence, fall outside the scope of arbitration. On the contrary, the consistent judicial position, reaffirmed by the Supreme Court in **Central Warehousing Corporation** (supra), is that such disputes remain purely contractual and are capable of being adjudicated by an Arbitrator. Accordingly, the reliance placed by the Appellant on the aforesaid authorities is misplaced and does not create any ground to interfere with the Award or to fault the conclusion reached by the learned Single Judge.

[20] The Appellant's contention that the License Agreement dated 01.10.2004 is void or unenforceable due to alleged conflict with the earlier lease deed executed on 27.12.1996 is wholly unsustainable. The learned Single Judge correctly observed that

the Appellant actively participated in the arbitration proceedings and never raised this objection as a specific jurisdictional challenge under Section 16 of the AC Act. Moreover, the Appellant was not a party to the earlier lease deed and cannot rely on a document to which it was a stranger to invalidate a contract it freely executed and performed. The record shows that the Appellant operated the premises, paid licence fees, sought an extension, and invoked arbitration under the License Agreement. A mere assertion of inconsistency, without proof of actual illegality or violation of public policy, is insufficient to impeach the Award. The Arbitral Tribunal, after examining the relevant documents and evidence, found the License Agreement valid and binding, and there is no basis to disturb this finding. Therefore, the contention that the License Agreement is void on account of conflict with an earlier deed is legally untenable and cannot constitute a ground to interfere with the Award under Section 34, let alone Section 37 of the AC Act. In addition, admittedly the Appellant has successfully carried out his business during the entire period of the lease and 03 months thereafter.

[21] The contention that the Arbitrator exceeded the scope of the reference by awarding damages for the period during which the MCD sealed the premises is also without merit. The learned Single Judge rightly noted that the sealing arose on account of alleged unauthorised activities of the Appellant, and that the Appellant never surrendered possession and continued to remain in occupation even during the period of sealing. The determination of quantum of damages for the entire period of overholding falls squarely within the jurisdiction conferred under the arbitration clause. The counter-claims arose directly from the Appellant's continued occupation of the premises after expiry of the licence period and non-payment of agreed dues. Evidence was led on the issue, arguments were addressed by both sides, and the Arbitral Tribunal quantified the liability on the basis of the agreed rates. A plea of "excess of jurisdiction" cannot succeed when the claims fall within the scope of the arbitration clause and were adjudicated on merits. Mere dissatisfaction with the computation cannot constitute a ground for interference under Section 34 or Section 37 of the AC Act.

[22] The contention that the Appellant was entitled to an extension of the License based on alleged verbal assurances from the Respondent is also unsustainable. The record demonstrates that the Appellant requested extension by formal communication on 28.05.2009, and the Respondent granted only a three-month extension. The Arbitral Tribunal examined the conduct of the parties, the License Agreement, and communications exchanged, and held that no contractual or equitable obligation arose in favour of the Appellant for a further five-year extension. Verbal assurances, uncorroborated by any written commitment, cannot override the express terms of a validly executed agreement. The Appellant's reliance on such alleged assurances, therefore, does not provide a ground to interfere with the Award.

[23] The Appellant's claim that prior payments aggregating to Rs. 1.4 crores and surrender of possession during the pendency of proceedings extinguished any further

liability is also without merit. The Arbitral Tribunal assessed the payments made and possession handed over, and determined the damages and mesne profits due to overholding and continued occupation beyond the licence period. Such quantification is a matter of contractually agreed rates and factual calculation, which falls within the competence of the Arbitral Tribunal. Past payments do not absolve the Appellant of liability for amounts accruing subsequently or for periods not covered by prior settlements.

[24] The Appellant's contention that the Arbitral Award violates public policy or suffers from patent illegality is also rejected. The Award is a reasoned decision based on the contractual obligations, evidence led, and issues framed between the parties. There is no indication that the Arbitrator acted in a manner contrary to law, or disregarded fundamental principles of justice. The challenges raised by the Appellant essentially seek re-appreciation of evidence and reassessment of contractual interpretation, which is impermissible in proceedings under Section 34 or Section 37 of the AC Act.

[25] Having regard to the totality of circumstances, this Court finds no error in the judgment of the learned Single Judge in dismissing O.M.P. No. 430/2015. The Arbitral Award dated 20.04.2015 is based on proper construction of the License Agreement, correct assessment of evidence, and falls within the scope of the reference. All contentions of the Appellant, including alleged non-arbitrability, conflict with the earlier lease deed, excess of jurisdiction, claim for extension based on assurances, impact of MCD sealing, prior payments, or violation of public policy, are without merit. Consequently, no interference under Section 37 of the AC Act is warranted.

CONCLUSION

[26] In view of the aforegoing discussion and findings, the present Appeal, being devoid of merit, is dismissed.

[27] The judgment dated 22.02.2017 passed by the learned Single Judge in O.M.P. No. 430/2015 is hereby upheld. The Arbitral Award dated 20.04.2015 passed by the learned Arbitrator in the arbitration proceedings between the parties is confirmed and shall continue to have full force and effect.

[28] The pending application also stands dismissed

2026(1)CAC40

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge Dr Neela Gokhale)

Arbitration Petition No 1634 of 2014 **dated 02/12/2025**

Mpd Associates Pvt Ltd

Versus

Angel Broking Ltd; Arbitral Tribunal of Bombay Stock; Suresh Thakur Desai; Pradeep Nagori; Pankaj Patel

CHALLENGE TO ARBITRAL AWARD

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 16 - Challenge to Arbitral Award - Company engaged in charitable activities challenged arbitral award granting broker's claim for dues from trading transactions - Petitioner alleged denial of fair hearing, improper constitution of Tribunal and ignoring of counterclaim - Respondent contended that objections to constitution not raised before Tribunal and hence barred under Section 16 - Court found Petitioner participated in proceedings and failed to object during arbitration - Held that plea of lack of jurisdiction cannot be raised first time under Section 34 - Found award reasoned and free from patent illegality - Observed that procedural irregularities alleged lacked substantiation - Petition dismissed

Law Point: Objection to jurisdiction or constitution of arbitral tribunal must be raised before tribunal under Section 16; failure bars later challenge under Section 34 unless patent illegality established.

Acts Referred:

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 16

Counsel:

Jash J Dalia, Kabir Harpalani, Shyam Kapadia, Durgesh Khanapurkar, Kanishk Varma, Desai, Diwanji

JUDGEMENT

Dr. Neela Gokhale, J.- [1] The Petitioner has assailed the arbitral award dated 27th March 2008 passed by a panel of three arbitrators, by way of the present Arbitration Petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 ('the Act').

[2] The facts of the case, in brief, are as under:-

2.1 A reference was made to the Arbitral Tribunal under the Rules, Bye - laws and Regulations of the Bombay Stock Exchange Limited ('BSE').

2.2 The Petitioner herein is a company incorporated under the Companies Act, 1956, stated to be engaged in social and charitable activities in the areas of public and rural healthcare. The Respondent is a corporate member-broker of BSE since 1997, registered with the Security Exchange Board of India ('SEBI'). The Petitioner had opened a trading account with the Respondent and was allotted Client Code Number6299.

2.3 It is the case of the Petitioner that one, Mr. Gurpreet Sarin, representing himself to be the manager of Angel Group of Companies, lured the Petitioner into doing business with the Delhi office of the Angel Group of Companies. It was represented to the Petitioner that the Petitioner would be dealing with various group of companies of the Angel Group including M/s. Angel Broking Limited - a Member of

the BSE and Angel Capital and Debt Market Limited - a Member of the National Stock Exchange Limited ('NSEL').

2.4 The Petitioner opened a trading account with the Respondent No.1 and with Angel Capital and Debt Market Limited. It is the Petitioner's case that after 13th January 2006, it made several transactions through the Respondent No.1, however, on 26th April 2006, a review of its account revealed certain amounts due and payable by the Petitioner to it and hence, forwarded the account statement to the Petitioner requesting it to make the payment. The Petitioner made only a part payment.

2.5 Another review on 30th September 2006 revealed that the Petitioner was liable to pay the Respondent No.1 an amount of Rs.30,28,565.61. A demand letter dated 10th October 2006 was issued by the Respondent No.1 to the Petitioner, calling upon it to make the payment within 7 days. However, despite signifying its willingness to discuss the matter, no payment was made by the Petitioner. Hence, the Respondent No.1 claimed an amount of Rs.30,28,565.61 by making a reference to arbitration on 20th October 2006.

2.6 The Petitioner failed to file a written statement but filed a letter raising disputes. The reference was thus, closed for passing of award. However, on a request of the Petitioner to re-open the case to file its written statement, the Tribunal permitted the request subject to cost of Rs.25,000/- payable to the Respondent No.1.

2.7 Undated written statement was filed to the Statement of Claim of the Respondent No.1. The Petitioner also made a counterclaim of Rs.46,06,547.25 against the Respondent No.1 in the written statement. A rejoinder, also undated, was filed by the Respondent No.1 to the counterclaim. The Arbitral Tribunal passed its award on 27th March 2008, which is the subject matter of the present Petition.

[3] Mr. Jash Dalia, learned counsel, appeared for the Petitioner and Mr. Shyam Kapadia, learned counsel, appeared for the Respondent No.1.

[4] Submissions of Mr. Dalia, on behalf of the Petitioner:

(i) The arbitral proceedings at Mumbai under the BSE Rules was without prior notice on consultation with the Petitioner. The Tribunal was initially constituted ex-parte without joint nomination of the Arbitrators.

(ii) Principles of natural justice were violated as there was no timely notice of the proceedings; the Petitioner was deprived of an opportunity to nominate an arbitrator; adequate opportunity was not given to present documents, evidence and examine witnesses and information regarding the dates and documents filed by the Respondent No.1 as well as an opportunity to lead evidence were denied to the Petitioner.

(iii) The procedural unfairness fatally undermines the validity of the award.

(iv) There was suppression and misrepresentation of material facts before the arbitrators relating to transactions booked by the Petitioner through the Respondent No.1's associate company namely, Angel Capital and Debt Market Limited on NSEL.

(v) The Tribunal erred in treating the common dealings with the Respondent No.1 and its associate company as unrelated and stand-alone claims. The Tribunal ought to have pierced the corporate veil of the Respondent No.1 to ascertain the true nature of the transactions with it and its associate companies.

(vi) The Tribunal exceeded its jurisdiction by granting the monetary claim, without any proof, to the Respondent No.1. The Petitioner's counterclaim was ignored. Hence, Mr. Dalia prayed for setting aside of the award.

[5] Submissions of Mr. Kapadia, on behalf of the Respondent No.1:

(i) The Petition is not maintainable as Regulation No.15.23

(III) of the BSE Regulations, dealing with appeals against arbitral awards, provides for a period of limitation of 15 days to file an appeal memo with the Arbitration Secretary, which the Petitioner has failed to do. The Petitioner has never objected to the award being subject to appeal as per the rules and regulations of the BSE and hence, the appeal ought to have been preferred under Regulation 15.23 (III) of the BSE.

(ii) Since the principal ground of objection to the award is to the constitution of the Arbitral Tribunal, the Petitioner ought to have filed an application under Section 16 of the Act challenging the constitution of the Tribunal. Having failed to do so, the Petitioner cannot take advantage of its own wrong and challenge the award on that ground under Section 34 of the Act. Admittedly, the Petitioner had never objected to the constitution of the Tribunal during the arbitral proceedings.

(iii) Interference of the Courts in arbitral proceedings is limited to any patent illegality in the award. There is no patent illegality in the present award and none of the grounds available under Section 34 of the Act exist to justify entertaining the present Petition.

(iv) On facts, Mr. Kapadia pointed to the entire correspondence between the parties as well as of the Petitioner with the Arbitral Tribunal, which clearly demonstrates every opportunity of hearing given to the Petitioner.

(v) Mr. Kapadia also submits that the arbitral award is based on the merits of the matter and there is no infirmity in the same, justifying any interference by this Court.

(vi) Mr. Kapadia placed reliance on two decisions of the Supreme Court in the matter of Gayatri Project Ltd. v. Madhya Pradesh Road Development Corporation Ltd.,2025 SCCOnLineSC 1136 and A.C.Choksy Share Broker Private Limited v. Jatin Pratap Desai & Anr.,2025 SCCOnLineSC 281. He thus, prayed the Petition be rejected.

[6] From the submissions made by the parties and the findings of the Tribunal, there are two issues that arise for consideration in the present Petition.

(i) Whether a plea of lack of jurisdiction be raised for the first time under Section 34 of the Act, if no such objection was taken before the Arbitral Tribunal?

(ii) Whether the award suffers from patent illegality and/or incorrect interpretation to warrant interference under Section 34 of the Act?

[7] I have heard the learned counsel for the respective parties and perused the record with their assistance.

ANALYSIS:

[8] At the outset, the objection to the award on the ground of its constitution is taken only during the arguments of the present Petition. A plain reading of the Petition reveals no such ground. Be that as it may, I have perused the documents annexed to the Petition, which are also considered and dealt with by the Tribunal.

[9] The existence of the reference to arbitration agreement is not disputed by the parties. Under the Rules, Regulations and Bye - laws of the BSE, the appointment of arbitrators is to be made under Bye - law 249. The Respondent No.1 filed its Statement of Claim on 20th October 2006. By letter dated 11th December 2006, the Respondent No.1 was informed by the Secretary of BSE that the Petitioner has failed to nominate and appoint an arbitrator in terms of Rules, Regulations and Bye - laws of the BSE and sought permission to proceed in the matter by appointing an arbitrator. A letter dated 22nd December 2006 was addressed by the Arbitration Assistant to both the parties, conveying that since the Petitioner had failed to appoint his arbitrator, the authority concerned of the BSE had appointed an Arbitral Tribunal to adjudicate the claims of the Respondent No.1. By letter dated 5th February 2007, the Respondent No.1 addressed the Petitioner signifying its willingness to restore the relationship between the parties and failing any response from the Petitioner, would be constrained to proceed with the arbitration hearing on the next date as fixed by the arbitrator. This letter is admittedly received by the Petitioner, confirming that the Petitioner is aware of the proceedings before the Tribunal.

[10] By order dated 22nd January 2007, the Tribunal directed the Respondent No.1 to directly serve the Petitioner, documents pertaining to and supporting its claim. The Petitioner was also informed that if they failed to remain present before the Tribunal and failed to file their statement in defence, the matter will proceed ex-parte. By letter dated 10th February 2007, the Petitioner communicated to the Arbitration Secretary, BSE that reference to arbitration smacked of unfairness and indicated a nexus between the Respondent No.1 and the concerned department of the BSE. Thus, instead of filing its reply to the Statement of Claim of the Respondent No.1 before the Tribunal, the Petitioner chose to address its dismay to the Arbitration Secretary of the BSE. The letter also ends with an intent to settle the matter amicably and implored the Secretary to withdraw the arbitral proceedings.

[11] Once again, instead of replying to the claim before the Tribunal, the Director of the Petitioner, by its letter dated 15th March 2007 wrote to the Manager, BSE making various complaints against the Respondent No.1. This letter was followed by a

similar letter dated 29th March 2007, once again urging the Manager, BSE to take steps to sort out the matter.

[12] Another letter dated 14th April 2007 followed, addressed to the Officer-in-Charge of the Arbitration Department, BSE, berating him for not trying to settle the so-called dispute and demanding reply to its very many queries raised in the said letter. Finally, the Petitioner by its letter dated 1st May 2007 addressed to the Advocate of the Respondent No.1, sought details of transactions for the purpose of verification. The Advocate, by his reply dated 7th May 2007, pointed out that on two separate occasions, his client, i.e., the Respondent No.1 had forwarded all statements and details to the Petitioner with copies to the arbitrators. The Advocate also pointed out that this fact was informed to the Petitioner even during the course of hearing before the Tribunal on 23rd April 2007.

[13] Finally, the Petitioner filed a written statement before the Tribunal with a counterclaim of Rs.46,06,547.25. It is pertinent to note that nowhere in the claim has the Petitioner raised any challenge to the constitution of the Tribunal nor is there any statement made regarding the deprivation of an opportunity of fair hearing before the Tribunal. The Respondent No.1 filed its rejoinder and after hearing the parties, the award was passed. Even after passing of the award, the Petitioner, by its letter dated 19th July 2007 addressed to the Officer-in-Charge of the Arbitration Department of the BSE, complained against the Respondent No.1 and sought setting aside of the proceedings and referring the matter to Civil Court. There are several other complaints made against the Respondent No.1 to other Authorities. What is absent here is any application or objection in respect of constitution of the Arbitral Tribunal or any assertion or averment that the Petitioner was not afforded any opportunity of fair hearing before the Tribunal. It is for the very first time that this argument is made before this Court, in this Petition under Section 34 of the Act.

[14] In **Union of India v. Pam Development (P) Ltd.**, 2014 11 SCC 366 the Supreme Court held that where a party does not raise a plea of jurisdiction before the Arbitral Tribunal, then such plea is deemed to have been waived in view of the provisions contained in Section 4 of the Act read with Section 16 of the Act, and in consequence, cannot be raised for the first time in the proceedings under Section 34 of the Act. The relevant observations read as under:

> "16. As noticed above, the appellant not only filed the statement of defence but also raised a counterclaim against the respondent. Since the appellant has not raised the objection with regard to the competence/jurisdiction of the Arbitral Tribunal before the learned arbitrator, the same is deemed to have been waived in view of the provisions contained in Section 4 read with Section 16 of the Arbitration Act, 1996.
>
> 17. Section 16 of the Arbitration Act, 1996 provides that the Arbitral Tribunal may rule on its own jurisdiction, Section 16 clearly recognises the principle of

> kompetenzkompetenz. Section 16(2) mandates that a plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. Section 4 provides that a party who knows that 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 shall be deemed to have waived his right to so object.
>
> 8. In our opinion, the High Court has correctly come to the conclusion that the appellant having failed to raise the plea of jurisdiction before the Arbitral Tribunal cannot be permitted to raise for the first time in the Court. [...]
>
> (Emphasis supplied)"

[15] In **Gas Authority of India Ltd. v. Keti Constructions (I) Ltd.**, 2007 5 SCC 38 the Apex Court held that where a party does not raise a plea of lack of jurisdiction before the Arbitral Tribunal, he must make out a strong case why he did not do so if he chooses to move a petition for setting aside the award under Section 34 of the Act. The relevant observations read as under:

> "25. Where a party has received notice and he does not raise a plea of lack of jurisdiction before the Arbitral Tribunal, he must make out strong case why he did not do so if he chooses to move a petition for setting aside the award under Section 34(2)(a)(v) of the Act on the ground that the composition of the Arbitral Tribunal was not accordance with the agreement of the parties. If plea of jurisdiction not taken before the arbitrator as provided in Section 16 of the Act such a plea cannot be permitted to be raised in proceedings und Section 34 of the Act for setting aside the award, unless good reason are shown.
>
> (Emphasis supplied)"

[16] The Supreme Court in its decision in **Gayatri Projects (Supra at Ft.Nt.1)** as relied upon by Mr. Kapadia, has upheld the decisions in **Pam (Supra at Ft.Nt.3) and GAIL (Supra Ft.Nt.4)** in the aforesaid cases. The facts in this case, as detailed herein above, clearly reveal that the Petitioner, despite writing innumerable letters to the authorities of the BSE, did not even once object to the jurisdiction of the Arbitral Tribunal. In fact, the record shows that the Petitioner fully participated in the arbitral proceedings by filing its written statement and raising its counterclaim. Even the averments and pleadings in the written statement are dehors any objection to the constitution or jurisdiction of the Tribunal. Considering the facts and the settled law, this Court cannot entertain any challenge to the constitution or jurisdiction of the Tribunal in the Petition under Section 34 of the Act. Hence, the first issue is answered accordingly.

[17] An argument was advanced by Mr. Dalia, that the Tribunal erroneously found that the Petitioner had not questioned nor disputed the ledger account produced by the

Respondent No.1 but had only disputed that the common ledger account of the Respondent No.1 and its group associates namely, Angel Capital and Debt Market Ltd., must be looked into to arrive at the net position. Further, the Tribunal erroneously rejected its counterclaim. Mr. Dalia thus, raises an apprehension of bias and partiality on the part of the Tribunal as sufficient to invalidate the award. His further objection included not receiving timely notice of the proceedings or any opportunity to present its evidence.

[18] I have perused the written statement filed by the Petitioner carefully. Paragraph 3 clearly avers that the Petitioner opened separate trading accounts; one with the Respondent No.1, to conduct its trades on the BSE and the other with Angel Capital and Debt Market Ltd., to conduct trade on the NSE. Further, in Paragraph 12, the Petitioner urges the Tribunal to believe that the intention of the Angel Group of Companies was always to cheat it and hence, requested the Tribunal to view the statement of both the companies collectively and thereby pierce the corporate veil of the Respondent No.1. Thus, the said contention was raised before the Arbitral Tribunal by the Petitioner, which demonstrates that it had exercised its right of hearing before the Tribunal by placing before it, its case and contentions. The Tribunal in Paragraphs 8 to 11 of its findings has dealt with the Petitioner's submissions and has found that the contract note was issued by the respective members of the BSE or NSEL concerned. The Tribunal found that the counterclaim could not be entertained simply on the basis that it pertained to transactions on the NSEL, which dispute was outside the scope and ambit of the BSE. In fact, the Tribunal gave liberty to raise the said dispute regarding its counterclaim before the appropriate forum. I am told that till date, no such reference is made, nor any action is taken by the Petitioner before the forum of competent jurisdiction. The further contention of the Petitioner regarding absence of timely notice, etc. is not factual as the award records submissions made on its behalf. There is also no material placed on record of these proceedings relating to any letter or application made to the Tribunal by the Petitioner alleging lack of timely notice or deprivation of any opportunity to file documents or lead evidence. In fact, these objections do not find place even in the averments of the present Petition.

[19] Considering the aforesaid discussion, I do not find any patent illegality nor procedural infirmity in the award impugned herein. The second issue is thus, answered accordingly.

[20] In view of the aforesaid discussion, the following circumstances emerge from the facts on record. Firstly, the Petitioner never objected to the invocation of arbitration under the Act during the arbitral proceedings. Secondly, the Petitioner never raised any objection to the Arbitral Tribunal's lack of jurisdiction, during the proceedings, either in its written statement nor by way of any application under Section 16 of the Act. It is settled law that once, the award is passed, and no objection as to the jurisdiction is taken at the relevant stage, the award cannot be set aside only on the ground of lack of jurisdiction. Further, the Arbitral Tribunal has dealt with all

the contentions raised by the Petitioner in its counterclaim, which negates the Petitioner's argument pertaining to patent illegality and procedural infirmity in the award. The Petition is thus, dismissed.

[21] After the judgment was pronounced, Mr. Harshad Modekar, learned counsel appearing for the Petitioner, seeks stay of 4 weeks on the execution of the award.

[22] The award assailed herein, is dated 27th March 2008 and as many as 17 years have elapsed since passing of the award. In these circumstances, I am not inclined to stay the award. Prayer for stay of the execution of the impugned award is rejected

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2026(1)CAC48

DELHI HIGH COURT

(Hon'ble Judge V Kameswar Rao; Vinod Kumar)

F A O (Comm) (First Appeal From Order (Commercial)); C M Appl (Civil Miscellaneous Application) No 155 of 2024; 51616 of 2024 **dated 02/12/2025**

Woodland (Aero Club) Pvt Ltd

Versus

M/s Ambience Commercial Developers Pvt Ltd

WRONG PARTY IMPLEADMENT

Code of Civil Procedure, 1908 Or. 6R. 17 - Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 37, Sec. 9, Sec. 11 - Partnership Act, 1932 Sec. 69 - Wrong Party Impleadment - Appeal filed under Sec. 37 of Arbitration and Conciliation Act challenging order upholding arbitral award - Lease agreement executed for commercial space - Security deposit claimed not refunded - Arbitration invoked due to non-payment - Claim filed against wrong entity due to typographical error - Arbitrator Dismissed amendment plea and rejected claim holding proceedings without jurisdiction - District Judge upheld award under Sec. 34 rejecting plea of patent illegality - Appellate contention that impleadment error was typographical not accepted - Held that impleadment defect not curable after conclusion of proceedings - Findings of arbitrator and commercial court justified - No perversity or illegality found - Award sustained - Petition held devoid of merit - Appeal Dismissed

Law Point: Wrong impleadment of party in arbitration cannot be corrected after conclusion of proceedings - Award based on such defect not liable to be set aside if arbitrator and commercial court have acted within jurisdiction and findings are not perverse or illegal.

Acts Referred:

Code of Civil Procedure, 1908 Or. 6R. 17

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 37, Sec. 9, Sec. 11

Partnership Act, 1932 Sec. 69

Counsel:

Abhijit Mittal, Anukalp Jain, Shaivya Singh, P K Agrawal, Akshay Chitkara, Sanjoli Gupta, Darpan Jain

JUDGEMENT

Vinod Kumar, J.- [1] The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act') impugning a judgment dated 31.05.2024 (hereinafter 'the impugned judgment') passed by learned District Judge (Commercial)-03, South, Saket Courts, New Delhi (hereinafter 'learned District Judge') in the matter titled "Aero Club Vs. M/s. Ambience Commercial Developers Pvt. Ltd. OMP (Comm) No. 32 of 2019". The said petition was filed by the appellant under Section 34 of the Act challenging an Arbitral Award dated 30.8.2019 (hereinafter 'the impugned award'). Learned District Judge Commercial Court upheld the impugned award passed by the Sole Arbitrator.

DISPUTE

[2] Briefly stated the facts are that the appellant entered into a lease agreement on 17.03.2011 with Ambience Development & Infrastructure Pvt. Ltd. (hereinafter 'ADIPL') for Retail Space No. F-106, First Floor, Ambience Mall, Gurgaon, measuring 290.13 sq.mtr. The tenure of the lease was nine years, with a lock-in period of two years, as per the Agreement between the parties.

[3] As per clause 11 of the Lease Agreement, the appellant deposited a sum of Rs.22,84,922/- with ADIPL towards security for maintenance, electricity, water and other charges.

[4] Subsequently, the appellant issued a Termination Letter dated 06.11.2015 proposing to vacate the premises with effect from 28.02.2016 and requested reconciliation of accounts from ADIPL. On 24.02.2016, the appellant informed ADIPL that an amount of Rs.18,73,812/- and Rs.5,62,144/- was recoverable by it after deducting Rs.1,51,034/- towards late payment charges. On 05.03.2016 the appellant handed over the possession of the leased premises to ADIPL. The handover was duly acknowledged and the "store-takeover form" issued by ADIPL confirmed that the premises were surrendered.

[5] The appellant claimed that ADIPL did not refund the security amount and as such legal notice was issued by the appellant on 17.08.2016 and was served upon the ADIPL. Vide reply dated 06.09.2016 ADIPL declined the demand alleging that the premises had suffered damage and that amount was liable to be adjusted towards restoration.

INVOCATION OF ARBITRATION

[6] Through a letter dated 15.09.2016, the appellant invoked the arbitration under clause 28 of the agreement, which is reproduced as under:

"28. Any dispute or difference between the parties hereto concerning the construction, interpretation or application arising out of this Agreement shall be referred to the sole arbitrator' to be appointed by Ambience. Any decision of the arbitrator shall be final and binding on the parties."

In this letter the petitioner requested the ADIPL to appoint any retired District Judge or Senior Advocate of Delhi as arbitrator. The letter is reproduced as under:

"To, DATED: 15.09.2018

Ambience Developers & Infrastructure Pvt Ltd,
L-4, Green Park Ext.,
New Delhi -110016

Sub: Notice on behalf of the undersigned Mr. P.K. Sharma Authorised representative on behalf of M/s Aero Club seeking appointment of an arbitrator as. per the arbitration clause in the agreement dated "17-3-2011 for adjudicating the dispute qua Security deposit amount of Rs 22,84,922/- along with interest@ 12% P.A recoverable from you.

Sir,

1) I may refer to the agreement dated 17-3-2011, after execution of which the premises bearing no. F-106 on 1st floor and measuring 290.13 sq. mtr (3123.02 sq. ft) of super area in the Ambience Mall, Ambience Island, ND-8, Gurgaon, was taken on lease/ licence on the well set out terms and conditions.

2) Over the, years we had felt the brunt of unviable business and on account of the constricting financial situation, and therefore it was decided to put an end to the ongoing lease/ licence, at tandem with the agreed terms and conditions and Eventually the agreement was terminated on 6-11-2015 and an advance notice of 3 months was duly served on you. The termination of the lease/ licence was accordingly predisposed to expire on 29-2-2016. We prior to its expiry on 29th Feb 2016 had again called upon your good self for reconciliation of the entire account so that a recoverable figure could be arrived, at. I had even specified the total amount which was recoverable from you after the deduction of the late payment charges as conveyed and demanded by you.

3) On 5-3-2016 the vacated premises was handed over to your good self in good condition and the takeover and keys were received by your representative one Mr. Joseph. Thereafter on 5-3-2016 a store take over format was prepared at your quarter, wherein a dean and valid clearance was given to us along with the acknowledgement of the total payment due towards us.

4) After passing of more than 2 yrs the admitted payment of Rs 22,84,922/- as security deposit remains unrecoverable from you, despite rhetoric assurances from your side. The subsisting dispute does not find any resolution from your side, so the undersigned invokes the arbitration clause of the agreement dated

17.03.2011 which provide for appointment of Arbitrator. However you are called upon to appoint any retired District Judge or Senior Advocate of Delhi.

This is an imperative requirement on your part to ensure that an independent Person, having no vested interest in your company directly or indirectly, is deputed as an Arbitrator so that the rule of law can be enforced. This is an obligation on you as mandated by the Amendment in 2015 in the provisions of the Arbitration and conciliation Act 1996.

We wait for your response within 15 days, failing which the undersigned would take recourse under section 11 of The Arbitration and conciliation Act, 1996.

For Aero Club
Sh P.K. Sharma
Sr. General Manager"

[7] Adipl appointed Shri Brajesh Kumar (Retd. Additional District Judge) as the sole Arbitrator. On 15.10.2018, learned Arbitrator entered reference and directed parties to file their respective pleadings. Pursuant thereto, the appellant filed its Statement of Claim on 14.11.2018. As per the case of appellant, owing to a typographical error, the claimant i.e. the appellant mentioned the name "M/s Ambience Commercial Developers Pvt. Ltd." (in short 'ACDPL') as respondent instead of ADIPL, although all pleadings, documents and reliefs pertained exclusively to ADIPL. After completion of pleading, following issues were framed:

(i)Whether the claimant is registered partnership firm, if so, whether its senior General Manager is empowered to sign and verify the pleadings on behalf of the firm?

(ii) Whether the claimant is entitled to recover security deposit of Rs.22,84,922/- alongwith 15 % interest as alleged?

(iii) Whether in terms of the defense which has been raised by the respondent in its defense statement, the contention of set off adequately resist the claim of the claimant?

(iv) Relief.

[8] Parties led their respective evidence and the sole arbitrator also heard the arguments. After the final arguments, pending the pronouncement of the award, the appellant moved an application under Order VI Rule 17 Code of Civil Procedure, 1908 (hereinafter 'CPC') seeking amendment of memo of parties. The appellant submitted that the proceedings were not instituted against the necessary and proper party and that the Agreement dated 17.03.2011 had been executed with ADIPL and not with ACDPL. The learned Arbitrator dismissed the said application and the amendments sought by the appellant were not allowed.

IMPUGNED AWARD

[9] The sole arbitrator decided the first issue holding that even if the partnership was not registered, the bar under Section 69 of the Partnership Act, 1932 is not

applicable to the arbitration proceedings. While observing that the bar under Section 69 applies only to proceedings before a "court" and is inapplicable to arbitral proceedings or applications under Sections 9 and 11 of the Arbitration and Conciliation Act, the Arbitrator nevertheless held that the claimant had failed to prove a valid authorization in favour of Senior Manager to sign and verify pleadings on behalf of claimant. Consequently, the issue no.1 was decided against the claimant.

[10] On the second issue, it was held that the case was filed against the wrong party and therefore the case itself was without jurisdiction and accordingly claimant was held not entitled to recover aforesaid amount from respondent. On the third issue, Ld. Arbitrator found that since possession was surrendered only on 05.03.2016 and rent under Clause 3 was payable on a monthly basis, the respondent was entitled to rent for the entire month of March 2016. However, the claims for repair charges and loss of rent for April and May 2016 were rejected noting that no documentary evidence had been produced to substantiate the alleged damage or loss and that no such liability arose under the terms of the Agreement.

[11] Vide impugned judgment, the arbitral award was passed by the learned Sole Arbitrator dismissing the claims raised by the appellant. Aggrieved, appellant preferred petition under Section 34 of the Act before learned District Judge.

IMPUGNED JUDGMENT

[12] Disposing of petition under Section 34 of the Act, learned District Judge held that the appellant had impleaded a wrong party i.e. ACPDL before the sole Arbitrator despite the Agreement having been executed with ADIPL. The court's findings included the fact that the respondent had pointed out in para 4 of Statement of Defence that petitioner had entered into an agreement with ADIPL, yet the appellant took no steps to cure the defect until after arguments were concluded. The Court held that no relief could be granted against an improperly impleaded party and that rejection of the appellant's claim by the Arbitrator was justified. Allegations of misconduct and objections based on Section 34(2)(b)(ii) were rejected. The Court held that the award was not perverse and it does not suffer from any patent illegality and is not in violation of morality or justice. Accordingly, the Section 34 petition was dismissed.

CONTENTIONS OF APPELLANT

[13] The appellant challenged the aforesaid award and judgment before this court under Section 37 of the Act. Learned counsel appearing for the appellant contended that learned Sole Arbitrator erred in holding that the claim was filed against an improper party. It was submitted by him that the Agreement dated 17.03.2011 was executed with ADIPL, the termination and arbitration notices were addressed to ADIPL and the Arbitrator was also appointed by ADIPL. Hence, the impleadment of ACDPL, which is a sister company of ADIPL, was only a typographical error. He stated the respondent participated throughout as ADIPL. The appellant alleged that rejection of the claim on jurisdictional grounds by the arbitrator after reserving the

matter for award as well as dismissal of the application under Order VI Rule 17 CPC were erroneous and violative of natural justice. It was further urged that having held the proceedings to be without jurisdiction, the Arbitrator could not have awarded rent charges etc. to the respondent.

CONTENTION OF RESPONDENT

[14] The respondent submitted that the agreement containing arbitration clause was executed between the appellant and ADIPL and not with the respondent herein i.e. ACDPL. It is asserted that learned Sole Arbitrator rightly disallowed the appellant's claim as the proceedings had been instituted against a wrong party and therefore learned District Judge correctly dismissed the Section 34 petition on this ground. The respondent argued that the appellant cannot now seek to implead ADIPL at the appellate stage, as ADIPL was neither a party before the Sole Arbitrator nor before the District Judge. It was submitted that the respondent and ADIPL are distinct legal entities with separate juristic personalities and the Sole Arbitrator lacked jurisdiction to adjudicate any dispute between the appellant and the respondent. The respondent further submitted that the appellant's plea of typographical error in impleading the wrong party is misconceived. Attention was drawn to specific averments in the Statement of Defence and in the witness affidavit wherein it was categorically stated that the Agreement was with ADIPL. Despite this, the appellant continued proceedings against an entity with whom it had no arbitration agreement. It was lastly contended that no valid ground under Section 34 of the Act had been disclosed and that the impugned judgment dated 31.05.2024 suffers from no infirmity.

ANALYSIS

[15] From the perusal of the arbitral record, following facts emerge:

(1)Clause 11 of the lease agreement records that parties to the lease agreement are Woodland (Aero Club) Pvt. Ltd. i.e. the appellant and AIDPL.

(2)The appellant, instead of raising the dispute with AIDPL, filed the claim petition against the respondent i.e. ACDPL. Therefore, the Arbitrator wrongly acquired jurisdiction to proceed with arbitration proceedings and to pass an award dismissing the claim of the appellant. In fact, he was not eligible to proceed with the arbitration as ACDPL (i.e. the respondent herein) was not the party to the arbitration agreement.

(3)It is necessary to mention here that when ACDPL filed a statement of defence before the Arbitrator, it specifically mentioned that the correct party is AIDPL. Still the Arbitrator did not take note of it.

(4)Another fact, which is noticed by us, is that in the present case AIDPL appointed the Arbitrator unilaterally in terms of Clause 28 of the lease agreement.

(5)Such appointment of Arbitrator is not valid in terms of Section 12 (5) read with the Seventh Schedule of the Act, scope of which has been expanded by various judgments of the Supreme Court in **TRF Limited v. Energo Engineering Projects**

Limited, 2017 8 SCC 377; Perkins Eastman Architects DPC v. HSCC (India) Ltd.,2019 SCCOnLineSC 1517; Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Co.,2024 SCCOnLineSC 3219 (in short '**CORE**'), even to the Arbitrators who have been appointed unilaterally by one party. Relying upon the said judgments, the Division Bench of this High Court in M/s. Mahavir Prasad Gupta and Sons v. Govt. of NCT of Delhi,2025 SCCOnLineDel 4241 held as under:

84. In view of the above discussion, the legal position on the unilateral appointment of the Sole and Presiding Arbitrator is summarized as under:

a) Mandatory Requirement: Any arbitration agreement providing unilateral appointment of the sole or presiding arbitrator is invalid. A unilateral appointment by any party in the arbitrations seated in India is strictly prohibited and considered as null and void since its very inception. Resultantly, any proceedings conducted before such unilaterally appointed Arbitral Tribunal are also nullity and cannot result into an enforceable award being against Public Policy of India and can be set aside under Section 34 of the Act and/or refused to be enforced under Section 36 of the Act.

b) Deemed Waiver: The proviso to Section 12(5) of the Act requires an express agreement in writing. The conduct of the parties, no matter how acquiescent or conducive, is inconsequential and cannot constitute a valid waiver under the proviso to Section 12(5) of the Act. The ineligibility of a unilaterally appointed arbitrator can be waived only by an express agreement in writing between the parties after the dispute has arisen between them. Section 12(5) of the Act is an exception to Section 4 of the Act as there is no deemed waiver under Section 4 of the Act for unilateral appointment by conduct of participation in the proceedings. The proviso to Section 12(5) of the Act requires an 'express agreement in writing' and deemed waiver under Section 4 of the Act will not be applicable to the proviso to Section 12(5) of the Act.

c) Award by an Ineligible Arbitrator is a Nullity: An award passed by a unilaterally appointed arbitrator is a nullity as the ineligibility goes to the root of the jurisdiction. Hence, the award can be set aside under Section 34(2)(b) of the Act by the Court on its own if it 'finds that' an award is passed by unilaterally appointed arbitrator without even raising such objection by either party.

d) Stage of Challenge: An objection to the lack of inherent jurisdiction of an arbitrator can be taken at any stage during or after the arbitration proceedings including by a party who has appointed the sole or presiding arbitrator unilaterally as the act of appointment is not an express waiver of the ineligibility under proviso to Section 12(5) of the Act. Such objection can be taken even at stage of challenge to the award under Section 34 of the Act or during the enforcement proceedings under Section 36 of the Act.

[16] Same principles were applied by the Division Bench of this court in **Central Warehousing Corporation vs. M/s. Deen Dayal**, FAO (COMM) 107/2024 decided

on 12.11.2025 to hold that an arbitrator is ineligible de jure on account of his unilateral appointment. In **M/s. Mahavir Prasad Gupta** (Supra), the Division Bench has held that the de jure ineligibility of an Arbitrator goes to the root of the arbitration agreement and therefore, even if any party does not raise this objection, the court **on its own** can set aside the award holding such arbitrator to be ineligible. In **Central Warehousing Corporation** (Supra), the Division Bench of this High Court has also taken the same view. In the present case also the award of arbitrator is invalid because of de jure ineligibility of the arbitrator as he was unilaterally appointed by ADIPL.

[17] In view of above discussion, the Arbitrator suffered from two ineligibilities. First, he could not have proceeded with the arbitral proceedings as one of the parties was not signatory to the arbitration agreement. Second, he was appointed unilaterally by ADIPL.

[18] Therefore, learned District Judge has erred in upholding the award. Consequently, the impugned judgment dated 31.05.2024 of learned District Judge and impugned award dated 30.08.2019 are held invalid because of the reason the Arbitrator was de jure ineligible to proceed with the arbitral proceedings. Accordingly, the impugned arbitral award, entire arbitral proceedings as well as impugned judgment of learned District Judge are hereby set aside. Appeal is allowed.

[19] Pending application stands disposed of

2026(1)CAC55

IN THE HIGH COURT AT CALCUTTA

(Hon'ble Judge Gaurang Kanth)

A P (Arbitration Petition) No 211 of 2023 **dated 28/11/2025**

Jahar De Bakshi and Ors

Versus

Cygnus Investment and Finance Pvt Ltd (Navalco Commodities Pvt Ltd)

EX PARTE ARBITRAL AWARD

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 21, Sec. 25, Sec. 18 - Ex Parte Arbitral Award - Petitioners challenged ex parte arbitral award passed without their participation - Petitioners alleged that Power of Attorney relied upon in arbitration was revoked years prior and respondents fraudulently concealed such fact - Petitioners claimed no valid service of notice and denial of opportunity to defend - Respondents contended that petitioners had knowledge of arbitration and willful non-participation - Court examined records and found that Power of Attorney used to bind petitioners stood revoked before alleged transaction and suppression thereof vitiated proceedings - Held arbitral award obtained by fraud and without proper notice - Award set aside under Section 34 - Petition Allowed

Law Point: Fraudulent concealment of material facts and failure to serve proper notice violate principles of natural justice under Section 18 of Arbitration Act, rendering ex parte arbitral award liable to be set aside.

Acts Referred:
Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 21, Sec. 25, Sec. 18

Counsel:
Pratip Mukherjee, Kalam, Ankita Dey, Purnankar Biswas, Jayati Chowdhury, Rashmi Singhee, Sucheta Mitra, Mandobi Chowdhury, Priya Malakar, Dwaipayan Basu Mullick, A Barman Roy, Shubhankar Chakraborty, Saptarshi Bhattacharjee, Harshita Nath

JUDGEMENT

Gaurang Kanth, J.- [1] The present Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 assailing the Award dated 09.02.2023 passed by the learned Sole Arbitrator, Mr. Nirmal Kumar Biswas, Former District Judge. The Award has been passed ex parte qua the Petitioners as they did not participate in the arbitral proceedings.

[2] The facts, as borne out from the pleadings and documents placed on record, are that the landed property situated at 682, M.B. Road, P.S. Nimta, Ward No. 24, North Dum Dum Municipality, North 24 Parganas, Kolkata-700051, was originally purchased by Sm. Lila De Bakshi along with her brother, Sh. Bimalangshu De Bakshi, vide a registered Deed of Conveyance. Upon the demise of Sh. Bimalangshu De Bakshi on 20.11.1991, intestate, the present Petitioners succeeded to his share as legal heirs.

[3] The Petitioners, together with Smt. Lila De Bakshi, entered into a Development Agreement dated 07.07.2002 with M/s Finix Construction (Respondent No. 4 herein) for development of the aforesaid property by construction of multistoried buildings within 48 months of execution of the Agreement. On the same day, an unregistered Power of Attorney was executed by the Petitioners and Smt. Lila De Bakshi in favour of Respondent No. 4 authorising them to carry out the acts necessary for development in accordance with the terms of the Development Agreement. The Power of Attorney contained covenants restraining the attorneyholders from acting contrary to the terms of the Development Agreement or in any manner prejudicial to the interests of the owners.

[4] The Development Agreement, upon expiry of its term by efflux of time, was no longer operative. The Petitioners, therefore, revoked and cancelled the said Power of Attorney with effect from 21.06.2007 and also issued a public notice in newspapers inviting attention of all concerned. According to the Petitioners, after such revocation, they had no connection with the partnership firm M/s Finix Construction or any of its partners.

[5] On 19.11.2014, the Petitioners received a notice issued under Section 21 of the Arbitration and Conciliation Act, 1996 from Mr. Ajit Keshari, Advocate, on behalf of Respondent No. 1. In the said notice, it was alleged that Respondent No. 1, carrying on business under the name and style of Ganesh Construction, had availed a loan of Rs. 61,00,000/- under a Finance-cum-Mortgage Agreement dated 05.09.2009; that the said facility had been guaranteed by (i) Respondent No. 3 as first guarantor-cummortgagor, (ii) Respondent No. 4-8 as second guarantor-cum-mortgagor, and (iii) Ms. Lila De Bakshi and the Petitioners through their alleged constituted attorney Shri Nilesh Roy as third guarantor-cum-mortgagors; and that due to default in repayment, the Agreement stood cancelled. The notice invoked the arbitration clause naming Mr. Nirmal Kumar Biswas as the Sole Arbitrator and stated that a sum of Rs. 3,10,78,885/- was outstanding.

[6] The Petitioners responded on 08.12.2014, denying all liability. They reiterated that the only transaction entered into by them was the Development Agreement of 2002; that two Powers of Attorney were issued solely for development purposes; that both had been revoked on 21.06.2007 with due publication; and that Respondent No. 4 had no authority thereafter to bind them in any capacity, much less as guarantors or mortgagors under the 2009 Finance-cum-Mortgage Agreement.

[7] A further communication dated 16.01.2015 (incorrectly stated therein as 2014) was issued by the Advocate for Respondent No. 1 asserting that the Petitioners' property had been mortgaged and that the outstanding dues stood at Rs. 3,10,78,885/-, failing which appropriate recovery steps would be taken.

[8] The Petitioners, who state that they are senior citizens suffering from agerelated ailments, believed that no cause of action existed against them in view of the prior revocation of the Power of Attorney and the absence of any privity with the Finance-cum-Mortgage transaction. They did not participate in the proceedings before the learned Arbitrator.

[9] The Petitioners were subsequently served with the impugned ex-parte Award dated 09.02.2023 on 15.02.2023, whereupon they approached this Court under Section 34 of the Act.

Submission on behalf of the Petitioner

[10] Learned counsel appearing for the Petitioners submits that the impugned Award is liable to be set aside on multiple grounds, the foremost being that the Respondents suppressed material facts before the learned Arbitrator and proceeded on the basis of documents which were fundamentally fraudulent and unenforceable against the Petitioners.

[11] It is submitted that the Petitioners had no privity whatsoever with the alleged Finance-cum-Mortgage Agreement dated 05.09.2009, under which Respondent No. 1 claims to have advanced a sum of Rs. 61,00,000/-. The Petitioners never executed the said agreement, nor authorised any person to execute it on their behalf. It is urged that

the Respondents deliberately suppressed from the learned Arbitrator the material fact that the Power of Attorney relied upon to show the Petitioners as guarantor-mortgagors stood revoked on 21.06.2007, i.e., more than two years prior to the execution of the 2009 agreement.

[12] Learned counsel submits that the Respondents were fully aware of the revocation and cancellation of the Power of Attorney, as the Petitioners had issued public notice through newspaper publication notifying all concerned. Despite such knowledge, the Respondents sought to portray before the learned Arbitrator as if the Petitioners continued to be bound by the said Power of Attorney, thereby perpetrating a fraud upon the arbitral tribunal. The concealment of the revocation of the Power of Attorney is alleged to be a deliberate suppression of material facts, vitiating the arbitral proceedings.

[13] It is further submitted that the very invocation of arbitration is invalid, as the notice under Section 21 of the Act was never duly served on the Petitioners in the manner contemplated under the Act. Although a letter dated 19.11.2014 invoking arbitration was shown to have been issued, the Petitioners submit that no proper or valid service was effected, nor were any subsequent notices, including notices of hearings, ever served upon them. The Petitioners were thus denied reasonable opportunity of participation, attracting the ground under Section 34(2)(a)(iii).

[14] Learned counsel further submits that immediately upon receipt of the letter dated 19.11.2014, the Petitioners issued a detailed reply dated 08.12.2014 (wrongly described in some documents as 2024), emphatically pointing out the fraud practised by the Respondents, including (i) the expiry of the Development Agreement of 2002 by efflux of time, (ii) the revocation of the Power of Attorney of 2002, and (iii) the unauthorised acts of Respondent No. 4 and its partner Shri Nilesh Roy, who had no authority to mortgage the property or bind the Petitioners in any financial transaction. It is submitted that the Respondents withheld this reply from the learned Arbitrator, thereby misrepresenting as if the Petitioners had chosen to remain silent.

[15] It is argued that the arbitral proceedings were conducted entirely behind the back of the Petitioners and in complete disregard of principles of natural justice. The Petitioners state that they had no reason to expect that any proceedings were continuing, as their categorical objections and assertion of fraud had already been placed before the Respondents in writing. It is only upon suddenly receiving the impugned ex parte Award on 15.02.2023 that the Petitioners became aware that proceedings had been carried out without their knowledge.

[16] On these grounds, it is submitted that the impugned Award stands vitiated as being (i) obtained by suppression and fraud, (ii) passed in violation of the mandatory requirements of Section 18 of the Act relating to equal opportunity, (iii) based on a fundamentally nonexistent arbitration agreement vis- -vis the Petitioners, and (iv) in complete violation of natural justice. Consequently, the Award is liable to be set aside.

Submission on behalf of the Respondents

[17] Per contra, learned counsel for the Respondents supports the impugned Award and submits that no case for interference is made out within the limited scope of Section 34 of the Arbitration and Conciliation Act, 1996. It is contended that the learned Arbitrator has passed a well-reasoned Award based on the materials duly placed before him, and the Petitioners having chosen to remain absent despite service of notices cannot now be permitted to assail the Award on grounds arising from their own default.

[18] It is submitted that the notice invoking arbitration dated 19.11.2014 was duly issued to the Petitioners at their correct and known address. The Petitioners themselves issued a reply dated 08.12.2014 to the said notice. Further, by letter dated 16.01.2015, it was clarified that the Petitioners' property stood mortgaged with Respondent No. 1 towards the outstanding dues. Thus, the Petitioners were fully aware of the arbitration proceedings but deliberately chose not to appear before the Arbitral Tribunal. The arbitral record also demonstrates that service was duly effected in accordance with law. Therefore, the plea of non-service is asserted to be an afterthought and devoid of any merit. The Petitioners, having wilfully abstained from the proceedings, cannot now rely on their self-induced absence to invalidate the Award. To substantiate this submission, reliance is placed on **Quippo Construction Equipment Ltd. v. Janardan Nirman Pvt. Ltd**, 2020 18 SCC 277.

[19] It is further submitted that the Petitioners' allegations of fraud and suppression are wholly misconceived. Whether the authority granted to Respondent No. 1 was lawfully exercised or exceeded is a pure question of fact, requiring evidence. The Petitioners, having chosen not to participate in the arbitral proceedings, cannot now raise such issues before this Court when they failed to contest them before the learned Arbitrator. The plea of fraud is characterised as an attempt to reopen factual findings already adjudicated by the Arbitral Tribunal.

[20] Learned counsel for the Respondents, relying on **Electrosteel Castings Ltd. v. UV Asset Reconstruction Co. Ltd**, 2022 2 SCC 573, submits that allegations of fraud must be specifically pleaded with full particulars, failing which such a plea cannot be considered. In the present case, the Petitioners have not pleaded any specific particulars of the alleged fraud, thereby justifying the non-consideration of such a plea by the learned Arbitrator.

[21] It is further submitted that the Petitioners were in receipt of the notices dated 19.11.2014 and 16.01.2015 and were aware of the mortgage since 2014. Having failed to challenge the same within the prescribed period, their plea is now barred by limitation under Section 59 of the Limitation Act, 1963, as also in view of the law laid down in **Saranpal Kaur Anand v. Praduman Singh Chandok**, 2022 8 SCC 401.

[22] Learned counsel submits that even assuming the Petitioners' case to be correct in its entirety, the Petitioners claim to have revoked the power of attorney dated

01.03.2005 on 20.06.2007, which was also published in a newspaper. However, the Finance-cum-Mortgage Deed was executed by Respondent No. 2 in exercise of powers granted under the powers of attorney dated 12.03.2005 and 15.03.2005, in addition to the power of attorney dated 01.03.2005. It is not the Petitioners' case that the powers of attorney dated 12.03.2005 and 15.03.2005 were ever revoked.

[23] It is contended that the learned Arbitrator considered all relevant documents, including the Finance-cum-Mortgage Agreement dated 05.09.2009, the statement of accounts, and various mortgage documents, and upon due appreciation of evidence adduced by the Claimant, concluded that the Petitioners were liable as guarantors-cum-mortgagors. These findings, being based on evidence, fall squarely within the domain of the Arbitrator. It is urged that where two views are possible and the Arbitrator has adopted one plausible view, this Court cannot substitute its own opinion under Section 34.

[24] It is further submitted that the Petitioners have failed to demonstrate any perversity, patent illegality, or violation of public policy. The Award, being a reasoned and well-considered adjudication, cannot be set aside merely because the Petitioners seek to re-agitate factual issues. It is reiterated that Section 34 does not permit re-appreciation of evidence or an appellate review. **Reliance is placed on MMTC Ltd. v. Vedanta Ltd**, 2019 4 SCC 163.

[25] Learned counsel for the Respondents, therefore, prays that the impugned Award, having been passed after due notice, on the basis of evidence, and within the framework of law, be upheld, and the Petition under Section 34 be dismissed.

Legal Analysis

[26] This Court has heard the submissions advanced by the learned counsel for the parties and examined the records of the arbitral proceedings as well as the documents placed on file.

[27] The Petitioners herein were arrayed as Respondent Nos. 9 to 13 before the Arbitral Tribunal. Respondent No. 8 before the Tribunal (Ms. Lila De Bakashi) expired during the pendency of the proceedings. The Award, therefore, stands against the present Petitioners and Respondent Nos. 2 to 8 herein.

[28] The Claimant before the Arbitral Tribunal (Respondent No. 1 herein) had advanced a sum of Rs. 61,00,000/- to Respondent No. 2 herein. Respondent No. 3 herein stood as the first guarantor; Respondent Nos. 4 to 8 herein constituted the second set of guarantors; and the Petitioners (Respondent Nos. 9 to 13 before the Tribunal) formed the third set of guarantors. The Finance-cum-Mortgage Deed dated 05.09.2009 records that the Petitioners, being the owners of the land and entitled to 40% of the proposed construction, along with Respondent No. 2, who was entitled to the remaining 60%, created a mortgage over the scheduled property in favour of the Claimant as security for the said loan. Upon the borrower's default in repayment, the Claimant invoked the arbitration clause contained in the said deed. As the arbitration

clause named Shri Nirmal Kumar Biswas, former District Judge, as the Sole Arbitrator, he accordingly entered upon reference.

[29] Except for the Petitioners and Respondent No. 3, all other respondents appeared before the Tribunal. The learned Arbitrator recorded his satisfaction that service had been duly effected upon the Petitioners; however, they chose not to participate and were consequently proceeded ex parte.

[30] Upon examining the documents, the Arbitrator found that Respondent No. 2 executed the Finance-cum-Mortgage Deed not only in his individual capacity but also on behalf of the second and third guarantors on the strength of the respective powers of attorney. Regarding the Petitioners, it was noted that Respondent No. 2 had executed the Finance-cum-Mortgage Deed on behalf of the Petitioners pursuant to powers of attorney dated 01.03.2005, 12.03.2005 and 15.03.2005. Clause 16 of these powers of attorney expressly empowered him to mortgage or create a charge over the property for securing loans. The Arbitrator, therefore, held that a valid mortgage existed and further held the liability of the guarantors to be joint and co-extensive with that of the borrower in terms of Clause V of the Agreement.

[31] In view of the detailed discussion therein, the Sole Arbitrator held that Claimant is entitled to get the reliefs and vide award dated 09.02.2023 awarded a sum of Rs. 2,56,60,000/- (principal with agreed interest up to 30.06.2014), pendente lite and future interest at 15% per annum, and arbitration costs of Rs. 2,00,000/- in favour of the Claimant.

[32] The primary contention of the Petitioners is that they revoked the power of attorney dated 01.03.2005 vide letter dated 20.06.2007 and a corresponding newspaper publication, and therefore Respondent No. 2 had no authority to execute the Finance-cum-Mortgage Deed on 05.09.2009. They further rely on their reply dated 08.12.2014 addressed to the Claimant's advocate reiterating such revocation.

[33] This Court has considered these submissions. The Claimant's communication dated 19.11.2014 intimating invocation of arbitration was admittedly received by the Petitioners, who responded on 08.12.2014 raising the issue of revocation of the power of attorneys. The Claimant's advocate thereafter, by letter dated 16.01.2015, categorically stated that a mortgage already stood created and that proceedings would continue in accordance with law. These communications were placed before the Tribunal. On perusal of the aforesaid communications, the Arbitral Tribunal, in its Minutes dated 21.01.2015, observed that the Petitioners could not advance their pleadings or objections through personal correspondence addressed to the Claimant or its counsel. Accordingly, the Tribunal directed that the Petitioners be formally notified to appear before it and raise any objections they sought to rely upon. However, the notices sent to their address were returned marked "Delivery attempted Addressee absent Intimation served." The Arbitrator then directed service through special messenger. The affidavit of service filed by one Samir Bera recorded that envelopes were returned with the endorsements "Refused," "Left," and "Unclaimed." The

Tribunal, being satisfied that service was duly effected, treated such service as good service.

[34] In view of the Petitioners' admitted knowledge of invocation of arbitration since November 2014, coupled with the Arbitrator's detailed satisfaction on service, this Court holds that service upon the Petitioners was duly completed. Despite such knowledge, the Petitioners consciously chose not to participate in the arbitral proceedings.

[35] Once the Arbitrator records satisfaction regarding service, and such finding is founded on material placed on record, the same cannot be lightly interfered with in a Section 34 proceeding. The mandate of the Tribunal under Section 25(b) is clear, where a party, despite due notice, fails to appear or present its case, the Arbitral Tribunal is empowered to proceed ex parte. The Petitioners, though aware of the arbitral proceedings, neither appeared before the Tribunal nor sought an opportunity to contest the claim. They did not file a written statement, did not challenge the mortgage, and did not seek any adjudication of their alleged revocation of the power of attorney. The objections that they now raise whether relating to want of authority, alleged fraud, or invalidity of the mortgage are all issues of fact which ought to have been urged before the Arbitral Tribunal.

[36] A party who consciously avoids participating in the arbitral process cannot be permitted to raise factual disputes for the first time under Section 34. The jurisdiction under Section 34 is supervisory and not appellate in nature, and the Court cannot substitute its view for that of the Tribunal or undertake a re-appreciation of evidence. The Petitioners, by their own conduct, deprived the Tribunal of the opportunity to adjudicate their objections based on evidence. They cannot now rely on their own abstention to assail findings that the Tribunal was forced to render ex parte.

[37] It is a settled principle of arbitration jurisprudence that a party who has had the opportunity but fails to participate in the proceedings is deemed to have waived its right to contend that the Tribunal ought to have considered issues which were never placed before it. Allowing such objections at the Section 34 stage would not only defeat the principle of minimal judicial interference but would also encourage parties to remain absent at will and disturb the finality of arbitral awards.

[38] In the present case, therefore, this Court is of the considered view that the Petitioners, having deliberately chosen not to appear before the Arbitral Tribunal despite due service and clear knowledge of the proceedings, cannot now invoke Section 34 to raise contentions that are fundamentally factual in nature and which they ought to have raised before the Tribunal. Their objections are barred by the principles of waiver, acquiescence, and constructive res judicata, and the scope of interference under Section 34 does not extend to permitting a party to make up for its own deliberate default.

[39] This Court also observes that the Petitioners have not initiated any civil or criminal proceedings against Respondent No. 2 in respect of the alleged fraud. The absence of any parallel action substantially weakens the credibility of their allegations. It is well settled that bald and unsubstantiated assertions of fraud, without any contemporaneous steps or supporting material, cannot be permitted to defeat or overshadow a well-reasoned and cogent arbitral award. Mere invocation of the term "fraud" is insufficient to displace findings duly arrived at by the Arbitral Tribunal after appreciation of evidence. In the present case, the Petitioners have failed to make out any ground warranting interference.

Conclusion

[40] In light of the above findings, this Court is satisfied that the Petitioners were duly served and had clear knowledge of the arbitral proceedings, yet deliberately chose not to participate. Having wilfully abstained from presenting their defence before the Tribunal, they cannot now invoke the limited jurisdiction under Section 34 to raise objections which are factual in nature and which they ought to have raised before the Arbitrator. The scope of interference under Section 34 is narrow and does not permit reappreciation of evidence, rehearing on merits, reassessment of factual disputes, or substitution of the Court's view in place of the Arbitrator's conclusions.

[41] This Court further finds that the Award is reasoned, founded on the material placed before the Tribunal, and does not suffer from perversity, patent illegality, or any violation of the fundamental policy of Indian law. The Petitioners' attempt to challenge the Award on grounds never urged before the Arbitrator is impermissible within the narrow contours of Section 34. In the absence of any ground warranting interference, this Court sees no reason to disturb the impugned Award dated 09.02.2023.

[42] Accordingly, the present Petition stands dismissed.

[43] The Department is hereby directed to release the original documents to the petitioner upon receipt of duly submitted photocopies

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2026(1)CAC63

DELHI HIGH COURT

(Hon'ble Judge Chandrasekharan Sudha)

F A O (First Appeal From Order); C M Appl (Civil Miscellaneous Application) No 389 of 2018; 33291 of 2018 **dated 28/11/2025**

Rameshwar Dayal

Versus

Krishan Singh Panwar (Deceased)

PARTNERSHIP PROPERTY

Code of Civil Procedure, 1908 Or. 7R. 11 - Evidence Act, 1872 Sec. 103, Sec. 102, Sec. 101 - Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 37 - Partnership Property - Appeal under arbitration law against dismissal of challenge to award - Parties earlier engaged in property development business through partnership and purchased property jointly - Dispute arose after dissolution deed allegedly interpolated - Arbitrator Dismissed claim citing lack of proof - Court observed respondent never denied existence or execution of dissolution deed but only alleged later insertion - Held burden of proving interpolation rested on respondent under evidentiary law - Absence of proof or expert evidence rendered allegation untenable - Arbitrator and lower court erred in concluding non-existence of partnership or deed - Award set aside and matter remitted for reconsideration - Appeal Allowed

Law Point: When execution of document admitted and only interpolation alleged, burden of proof lies on party asserting alteration; failure to adduce expert evidence makes allegation legally unsustainable under sections 101-103 of Evidence Act.

Acts Referred:

Code of Civil Procedure, 1908 Or. 7R. 11

Evidence Act, 1872 Sec. 103, Sec. 102, Sec. 101

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 37

Counsel:

L K Singh, S C Singhal

JUDGEMENT

Chandrasekharan Sudha, J.- [1] The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (the Act) is directed against the judgment dated 11.04.2018 passed by the ADJ-04, South-West District, Dwarka Courts, New Delhi in CS No. 15209/2016 dismissing the application under Section 34 of the Act. Parties in this appeal will be referred to as described in the claim petition.

[2] The allegations in the claim petition are as follows:- The claimant and the respondent started business of sale/ purchase of properties around the year 1997. They were doing the said business in partnership and were distributing the profits equally between them. In the year 2000, the claimant and the respondent started the business of construction of buildings. The terms and conditions of the partnership were reduced into writing as per partnership deed dated 29.03.2000. The said partnership business was being carried on under the name and style M/s Asha Builders. The parties also opened a current account bearing no.5029 in the name of the Firm with the Bank of Maharashtra, Janak Puri, New Delhi. All the monies received by the Firm were deposited in the said account and was thereafter shared equally between the partners. Thereafter, the parties purchased a three storied building situated at Plot No. 33,

Khasra No. 17/24, Gali No. 3, Mohan Block, West Sagarpur, New Delhi-46. The building consisted of basement, ground floor and first floor owned by one Kalawati Devi Pandey, who sold the basement and ground floor to one D.C. Verma. The first floor was sold to one Anil Jain. As the owners of different floors were different, the property was purchased by the claimant and the respondent by way of two different deeds.

2.1. It was mutually agreed and decided that the sale deed in respect of the basement and ground floor would be executed in favour of the claimant and the sale deed in respect of the first floor in favour of the respondent. The aforesaid arrangement was made for the sake of convenience. However, it was mutually agreed and accepted by the parties that they would jointly own and possess the property in dispute with equal undivided ownership rights and shares in the property. It was also agreed and accepted that whatever monetary benefits in the form of any earning was derived from the property or in the form of sale proceeds by selling the property would be distributed equally among the parties. It was after the purchase of the property, the aforesaid partnership business commenced. After the purchase of the property, they mutually consented to use the property for the purpose of the business of the Firm.

2.2. The partnership thereafter was dissolved by a deed of dissolution dated 05.05.2001. At the time of dissolution of the Firm, it had only two assets, namely, the current account with the Bank of Maharashtra and t he aforesaid immovable property. The deed of dissolution was executed and signed by both the parties on their own volition and without any force, coercion, fraud or undue influence. The assets of the Firm, namely, the bank account and the immovable property have been mentioned in the deed of dissolution, which has been duly signed by the parties in the presence of witnesses. At the time of dissolution of the partnership Firm, the parties had agreed that they would sell the property in dispute and distribute the sale proceeds equally.

2.3. In the second week of May 2001, i.e., soon after the dissolution of the partnership, the claimant was in dire need of money and so he approached the respondent for his consent to sell the property so that the sale proceeds could be divided equally between the parties. However, the respondent avoided the claimant and did not accede to the request. Thereafter, the claimant came to know from common friends and acquaintances that the respondent had been representing himself to be the sole and absolute owner of the entire property and that the claimant had no right, title or interest in any portion of the property. Therefore, the claimant in order to protect and safeguard his interest in the property, published a notice in the daily newspaper Rashtriya Sahara in its issue dated 22.05.2001. He also sent a notice dated 18.05.2001 calling upon the respondent to partition the property equally by metes and bounds or in the alternative to give his consent for the sale of the property so that the sale proceeds could be divided equally between the partners. The respondent received the notice. However, he sent a reply dated 30.05.2001, raising untenable contentions.

Hence, the claim seeking an award for partition of the property by metes and bounds into two equal shares as well as for award of damages.

[3] The respondent entered appearance and filed written statement contending that the claim petition was liable to be rejected under Order VII Rule 11 CPC as the claimant had no right, title or interest in the disputed property. He claimed that the property was exclusively owned and possessed by him, from the very beginning. It was also contended that the deed of dissolution dated 05.05.2001 was a fabricated one. A perusal of Clauses 2 and 6 would make it clear that the same are not in alignment with the remaining portion of the document. Clauses 2 and 6 were added to the deed of dissolution after the parties had affixed their signatures in the same. Therefore, the respondent contended that the claim petitioner was not entitled to the reliefs prayed for.

[4] Before the arbitrator, oral and documentary evidence was adduced. On a consideration of the oral and documentary evidence and after hearing both sides, the learned Arbitrator dismissed the claim. Aggrieved, the claimant has come up in appeal.

[5] It was submitted by the learned counsel for the appellant/ claimant that neither the arbitrator nor the trial court considered the directions given by this Court in its order dated 20.01.2006 in OMP No. 266/2001 in its right perspective. Without considering the said direction, the conclusion arrived at is erroneous and hence, the same needs to be reversed.

[6] Per contra, it was submitted by the learned counsel for the respondent that it was the burden on the part of the claimant to prove his case, which has not been done and, therefore, the claim was rightly dismissed. There is no infirmity in the impugned order calling for interference by this Court.

[7] Heard both sides.

[8] Admittedly, in the earlier proceedings between the parties, this Court held thus:-

2. I have examined the award. It appears that there is a great deal of dispute with regard to the genuineness of the Dissolution Deed which has been produced before the petitioner. According to the counsel of the respondent, clause 2(ii) and 6 of the Dissolution Deed have been interpolated after the Dissolution Deed was signed and executed by the parties. According to learned counsel for the petitioner, the documents have been signed by the parties being conscious of the said clauses 2(ii) and 6 of the Dissolution Deed.

3. To ascertain the rival contention of the parties, I had directed the learned counsel to produce the original of the Dissolution Deed. The same has been produced before me in court today and I find that it cannot be easily and conclusively determined as to whether the dissolution deed has been interpolated or not. And, therefore, a thorough investigation is required where both the parties want to lead expert evidence in this regard. Unfortunately the learned Arbitrator has not considered

the matter with thoroughness that was necessary. Therefore, it would be appropriate that the award that has been passed by the ld. Arbitrator is set aside and the matter is referred for arbitration afresh to an independent arbitrator agreed upon by the learned counsel for the parties.

(Emphasis supplied)

[9] Pursuant to the aforesaid direction, the matter again came up before a fresh arbitrator, who found that there are no documents to support the claim made by the claimant and hence, dismissed the claim. The said award of the arbitrator has been confirmed by the trial court. Both the arbitrator as well as the trial court proceeded under the assumption that the partnership deed as well as the deed of dissolution are disputed and as no documents have produced in respect of the disputed immovable property, the claimant could not claim any right in the property and thus, proceeded to dismiss the claim.

[10] A reading of the written statement of the respondent makes it quite apparent that there is no denial of the partnership deed or the execution of the deed of dissolution. What is contended or disputed is that after the execution of the deed of dissolution, clauses 2(ii) and 6 were interpolated. There is never a case in the written statement that there was no partnership deed or that the dissolution deed had not been executed. Therefore, apparently the arbitrator and the trial court went wrong in concluding that the claimant failed to establish the execution of partnership deed or the dissolution deed, which apparently were never in dispute.

[11] Now coming to the question whether the dissolution deed was interpolated, after the same was executed and after the respective parties had affixed their signatures in the same. The relevant portion of the deed of dissolution reads thus:-

.....

Now this deed of dissolution witnesseth as under:-

1. That the partnership between the party of the Ist part and party of the 2nd part shall stand dissolved w.e.f. to day i.e. 5th May, 2001.

2. That at present the partnership has following assets:-

(i) Current A/c No. 5029 in Bank of Maharastra, Janak Puri, in the name of M/s Asha Builders.

(ii) Plot of land measuring 100 Sq. Yds, Plot No. 33, Khasra No.17/24, built up three Storey building at Mohan Block, Gali No.3, West Sagarpur, New Delhi in the name of K.S. Panwar & R. Dayal.

3. That the parties have mutually agreed to close the aforesaid bank account itself and to share equally the amount lying therein.

4. That there are no liabilities of the partnership firm as on date.

5. That both the parties shall have no claim against each other after the dissolution of the firm and all the claims of the parties shall stand settled.

6. That both the present parties have agreed that the aforesaid plot and building No.33, belonging to partnership shall be sold at a convenient time and the sale procedure shall be shared 50% by the parties.

[12] As noticed earlier, this Court, by order dated 20.01.2006, had set aside the earlier award of the arbitrator and the matter was referred afresh so as to enable both sides to adduce evidence in respect of their respective contentions regarding the deed of dissolution. The respondent has no case that the deed of dissolution had not been executed, but only that the deed had been interpolated. Therefore, there was no necessity for the claimant to prove the execution of the dissolution deed. The burden lay on the respondent to prove that subsequent to the execution of the deed, the same had been interpolated.

[13] The arbitrator found that neither party adduced any evidence though several opportunities were granted. Thus, in the absence of any expert evidence, it could not be decided as to whether there was any interpolation or not.

[14] Here it would be apposite to refer to the relevant provisions in the Indian Evidence Act, 1872 (the Evidence Act). Section 101 says that any person who desires the court to give judgment as to any legal right or liability dependent on the existence of facts of which he asserts, must prove that those facts exist. Section 102 says that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. As per Section 103, the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

[15] In the case at hand, it is the respondent who asserts that interpolations were made in the deed of dissolution after its execution. Therefore, the burden was clearly on the respondent to establish the same. However, no steps are seen taken in the said direction by the respondent. Apart from the mere contention in the written statement, nothing has been brought on record to prove that there has been interpolations in the deed. Merely because the clauses in question are not in alignment with the remaining paragraphs, cannot be a ground to believe that there has been interpolations after the execution of the deed.

[16] When the learned counsel for the respondent was asked as to the person on whom the burden lay for proving the contention of interpolation, submitted that the interpolations are visible to the naked eye and, therefore, no further proof was required. The contention that is seen taken in the written statement is that Clauses 2(ii) and 6 were subsequently typed into the document where gaps had been left. Now, the question whether there was any gap(s) left in the document and whether the gaps were filled by the subsequent interpolations were matter(s) that required to be proved by the respondent. However, no effort(s) is seen to have been made by the respondent in the said direction.

[17] It is true that in the legal notice issued by the claimant to the respondent, there is no specific reference to the clauses in the deed of dissolution, but only a

demand for partition. This was pointed as a suspicious ground as the notice was issued after the execution of the deed of dissolution. This alone is also not a ground to disbelieve the deed of dissolution. The execution of the deed of dissolution is referred to in the notice. It is stated that the respondent is not cooperating with the request for partition and hence, the notice. A perusal of the deed of dissolution shows that there are two witnesses to the said deed. The said witnesses are not seen examined. No evidence has been led in as to the person who typed/prepared the deed. The said person could have been examined to prove the case of interpolation. But no such attempt is seen made by the respondent. The respondent has no case that the two witnesses were not available to be examined or that their whereabouts could not be traced out. That being the position, it can only be held that the contention regarding interpolation has not been proved.

[18] It is no doubt true that for creating any right in an immovable property, the value of which is more than Rs. 100/-, execution of a registered document is necessary. The claimant does not have a case that any registered document was executed. He rests his claim on the dissolution deed the execution of which is not denied. The only contention of interpolation raised by the respondent has not been established. That being the position, the deed of dissolution stands proved as per which the parties agreed to treat the property as partnership property and, therefore, the contentions to the contrary cannot be countenanced.

[19] In addition to the relief of partition, damages are also claimed. However, there is no evidence to prove damages. Therefore, the claim can only be partly allowed relating to the relief of partition of the property.

[20] In the result, the impugned judgment and award is set aside. The claim is partly allowed and the prayer for partition of the immovable property referred to in the deed of dissolution by metes and bounds in two equal shares and to demarcate and identify the equal shares at the site and to handover one share each to the claimant and the respondent respectfully for their exclusive ownership, peaceful possession and enjoyment is allowed.

[21] The appeal is partly allowed as aforesaid. Application(s), if any pending, shall stand closed

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2026(1)CAC69

IN THE HIGH COURT OF KERALA AT ERNAKULAM

(Hon'ble Judge Nitin Jamdar; Syam Kumar V M)

Arb A (Arbitration Appeal) No 24 of 2016 **dated 28/11/2025**

Shiju R S/o Ramakrishnan, Shravanam

Versus

Sunil Kumar V S/o Viswanathan Nair

PARTNERSHIP DISSOLUTION AWARD

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 9, Sec. 37, Sec. 5 - Partnership Act, 1932 Sec. 14 - Partnership Dissolution Award - Appeal against arbitral award dissolving coaching institute partnership and valuing goodwill at fixed amount - Appellant challenged undervaluation contending engineers wrongly valued goodwill instead of financial expert - Asserted manipulated accounts and lack of fair procedure - Court held goodwill is intangible asset and cannot be equated with immovable property - However, found valuation based on accepted reports and no perversity under limited scope of interference under Sec. 37 - Upheld arbitral award - Appeal Dismissed

Law Point: Court cannot reappraise evidence or substitute its own valuation in arbitration appeal under Sec. 37 unless patent illegality or jurisdictional error is shown

Acts Referred:

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 9, Sec. 37, Sec. 5

Partnership Act, 1932 Sec. 14

Counsel:

R O Muhamed Shemeem, Naseeha Beegum P S, Elvin Peter P J (Senior Advocate), Adarsh Babu C S, K Jayakumar (Senior Advocate), Shinod G P, Anju C V

JUDGEMENT

Nitin Jamdar, C.J.- [1] The Appellant, R. Shiju, and the Respondent, V. Sunil Kumar, were carrying on a partnership business providing entrance coaching facilities for advanced studies such as Medical, Engineering, MBA, and MCA courses under the name and style of 'Zephyr', pursuant to a partnership deed executed in the year 1997. Disputes arose between them, leading to the invocation of the arbitration clause contained in the partnership deed. An arbitral award was passed, which was subsequently challenged through an arbitration petition. Upon rejection of that petition, R. Shiju has now filed this appeal.

[2] Mr. V. Sunil Kumar, the Respondent/Claimant, submitted a claim statement on 16 July 2013 before the Arbitrator, asserting that, due to the success of the partnership firm's operations, the Appellant, Mr. R. Shiju, established a similar proprietary venture in the name and style of 'Aspirant' and publicised the new venture. He claimed that although the partnership was at will and could have been dissolved by issuing a notice of dissolution, the Respondent/Claimant, considering the future of the thousands of students enrolled in the institution, resorted to arbitration to effect the dissolution of the partnership. The Respondent sought dissolution of the partnership, settlement of accounts, and division of the firm's assets in equal shares.

[3] The Appellant R. Shiju, filed a defence statement that commencement of the new venture 'Aspirant', did not violate any stipulation contained in the partnership

deed. He contended that it was the Claimant who sought to dominate the management of the partnership and had denied the Appellant access to its records. The Respondent had also sought dissolution of the partnership and distribution of the assets.

[4] The Arbitrator appointed two Commissioners, Mr. George Sacariah and Mr. Kylas, for the valuation of the properties, and also appointed Mr. Jobi as the Auditor of the firm to prepare and produce the accounts. No oral evidence was adduced by either side. The Arbitrator concluded the arbitration proceedings by directing the dissolution of the partnership, including its assets and goodwill. Accordingly, the award was rendered on 19 April 2014.

[5] The Appellant filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (Act of 1996), before the Court of the Additional District Judge, Thiruvananthapuram, in O.P. No. 341 of 2014. The learned District Judge, by judgment dated 23 March 2016, dismissed the Original Petition. Thereafter, the Appellant filed the present appeal under Section 37 of the Act of 1996 on 29 April 2016. In this appeal, the Appellant filed Application No. 3184 of 2017, placing the income tax proceedings on record and seeking a direction for the Respondent to pay or deposit in court a sum of Rs.25,96,359/-. In response, the Respondent filed a counter-affidavit, to which the Appellant subsequently filed a reply.

[6] We have heard Mr. Elvin Peter P.J., learned Senior Advocate instructed by Mr. R.D. Muhamed Shameem assisted by Mr. Adarsh Babu C.S., learned counsel for the Appellant, and Mr.K. Jayakumar, learned Senior Advocate instructed by Mr. Shinod G.P. assisted by Ms. Anju C.V., learned counsel for the Respondent.

[7] The Arbitrator has directed the dissolution of the partnership firm and the distribution of all movable and immovable assets, including the goodwill. The learned Senior Advocate appearing for the Appellant submitted that the appeal is restricted to that part of the award which pertains to the determination and allocation of goodwill between the parties, quantified at Rs.75 lakhs.

[8] The submission of the Appellant, in furtherance of their grievance, is as follows: The goodwill was valued at Rs.75 lakhs by the Commissioners appointed by the Arbitrator, which was an undervaluation, and the Arbitrator erred in accepting this valuation. The two Commissioners, Mr. George Sacariah and Mr. Kylas, were engineers appointed only for the purpose of valuing the immovable assets, as is evident from the order appointing them as Commissioners; yet, in their report, the valuation of goodwill was included within the valuation of the immovable properties. Even the arbitral award has treated the goodwill as part of the immovable assets when it is settled law that goodwill is an intangible asset and cannot be considered an immovable asset. From the accounts placed on record by the Auditor, it can be demonstrated that the goodwill cannot be valued at Rs.75 lakhs but at least Rs.3 crores, and the Appellant was ready to buy out the goodwill at Rs.3 crores an offer which was wrongly rejected by the Arbitrator solely on the ground that the Appellant did not file an affidavit. There is an elaborate methodology that needs to be adopted while

calculating goodwill, which has been enumerated in the decision of the Division Bench of the Allahabad High Court in Smt. Vindoor Bai v. Controller of Estate Duty, Kanpur. The Commissioners, being engineers, were not qualified to carry out the valuation of goodwill. Such a valuation ought to have been conducted in accordance with the valuation standards issued by the Institute of Chartered Accountants of India. Reliance by the Arbitrator on the valuation submitted by these two Commissioners is a patent illegality. The second head of challenge was that the Respondent/Claimant failed to properly maintain the partnership firm's accounts and that the Appellant was kept out of the firm's management and business. These accounts were manipulated, and therefore, the goodwill could not have been accurately determined on the basis of such manipulated accounts, showing profits by application in this appeal. The income tax assessment orders arising from raids on the premises of both the Appellant and the Respondent fortify the stand of the Appellant regarding the fraudulent accounting practices allegedly carried out by the Respondent. Section 34(2)(a) of the Act of 1996 was amended on 30 August 2019 to replace the phrase "furnishes proof that" with "establishes on the basis of the record of the arbitral tribunal that." The amendment is prospective, and the present arbitral proceedings were before that date. The Respondent/Claimant committed fraud by failing to report correct particulars to the income tax authorities. The Appellant is not raising a new ground through this application but is merely placing on record material that supports a ground already raised during the arbitration proceedings and under Section 34 of the Act of 1996. Thus, a case for setting aside the award under Section 34 of the Act of 1996 was made out, and the District Court erred in failing to exercise its powers. The Appellant has relied upon the following decisions in support of his submissions. Alpine Housing Development Corporation Pvt. Ltd (M/s) v. Ashok S. Dhariwal,2023 SCCOnLineSC 55 , **Emkay Glohal Financial Services Ltd. (M/s) v. Girdhar Sondhi**, 2018 9 SCC 49, Namtech Consultants Private Limited and Ors. v. GE Thermometrics India Private Limited and Ors., Judgment dated 13 November 2007 in Co. Appeal No. 3 of 2006 of the High Court of Karnataka, Venture Global Engineering v. Saytam Computer Services Ltd. and Ors., Judgment dated 11 August 2010 in Civil Appeal No. ..of 2010 in SLP(C)No.9238 of 2010 of the Hon'ble Supreme Court , **State of Chhattisgarh and Another v. M/s. Sal Udyog Private Limited**, 2022 2 SCC 275, Smt. Vindoor Bai v. Controller of Estate Duty, Kanpur,1980 SCCOnlineAll 964, **Gayatri Balasamy v. ISG Novasoft Technologies Limited**, 2025 7 SCC 1.

[9] The Respondent/Claimant, in short, contended as follows: No case has been made out under Section 34 of the Act of 1996 to set aside the present award. The defence statement filed by the Appellant itself belies the stand taken by the Appellant in this appeal. The claim for dissolution was filed on the ground that the Appellant had started parallel coaching classes. The Appellant and the Respondent had agreed to look after the academics and accounts in alternate years. The Appellant was also involved in and responsible for maintaining the accounts. The goodwill of the firm forms part of

its assets, as evident from the notices issued by the parties and also the statutory provisions. The Appellant did not object to the appointment of the two Commissioners to value the assets, and one of the issues framed by the Arbitrator was the division of the assets, including goodwill. Furthermore, the Appellant did not object to the inclusion of the reports of the two Commissioners, Exts. P1 and P2, on record. Ext. P2(a) filed by the Auditor is not a valuation report but merely general accounts, from which the Appellant is attempting to contend that the profit amounts to Rs.3 crores. The Arbitrator has relied on the reports of the two Commissioners, and there is no perversity or patent illegality in accepting their reports. Apart from the Appellant filing an application in respect of the income tax proceedings belatedly in the appeal, the challenge based on the income tax returns has no merit, as the statutory appeals filed by the Respondent are still pending, and these documents have not attained finality. An arbitral award, which is required to have finality, cannot be set aside on the basis of incomplete proceedings that are under challenge. No case has been made out for exercising the powers under Section 34 of the Act of 1996, and therefore, there was no error committed by the learned District Judge.

[10] We have considered the rival contentions.

[11] Though the Appellant has sought to advance several grounds, the scope of interference with an arbitral award must be kept in mind while considering the present challenge. Section 5 of the Act of 1996 makes it clear that no judicial authority shall intervene in the arbitral proceedings and the award except where so provided under the Act of 1996. Intervention in the arbitral award is permissible only in the proceedings taken out under Sections 34 and 37 of the Act of 1996. Section 34(2) of the Act of 1996 lists the grounds on which the award may be set aside, and only if the parameters therein are satisfied. Section 37 of the Act of 1996, which provides for an appeal, is equally limited in its scope. In an appeal under Section 37, the appellate court is required only to examine whether the court exercising jurisdiction under Section 34 has acted within its limits of the powers prescribed therein, or whether it has exceeded or failed to exercise such powers. An appeal under Section 37 of the Act of 1996 is not to be equated with a first appeal under the Code of Civil Procedure, and its power is more akin to that of superintendence.

[12] The first challenge of the Appellant is to the Arbitrator's valuation of the goodwill. According to the Appellant, the orders of the Arbitrator appointing the Commissioners, who submitted Exts. A1 and A2 reports, did not refer to the valuation of the goodwill, and the Commissioners were directed only to determine the value of the immovable property listed in Schedule A of the claim petition, and that Schedule A did not include the goodwill. There is no merit in this submission. In the defence statement filed by the Appellant, reference is made to the notice issued by the Advocate on 4 May 2013, seeking the dissolution of the firm and the settlement of accounts, including the goodwill of the firm. This notice formed the foundation of the arbitral proceedings. Further, in the arbitral award, the learned Arbitrator framed issues

for consideration, and one of the issues was to determine the assets of the partnership firm and its net worth after deducting the outstanding liabilities. Goodwill is part of the property of the firm that had to be valued and distributed along with other assets, and the Appellant does not contend that goodwill should have been excluded from the distribution of assets. Section 14 of the Indian Partnership Act, 1932, states that, subject to the contract between the partners, the goodwill of the business is included in the property of the business. As observed by the learned Arbitrator, no contract to the contrary was placed on record, and therefore, the goodwill formed part of the property to be determined and divided. That being the factual and legal position, there was no error, much less any patent illegality, committed by the Arbitrator in including the goodwill as part of the property to be distributed. The contention of the Appellant that the Arbitrator categorized the goodwill as immovable property and, as goodwill is not an immovable asset, has no consequence. All properties owned by the firm, whether movable or immovable, were listed. Therefore, the mere use of the word 'immovable' in the heading of the list does not create any ground of challenge. Such a submission cannot be considered under Section 34 of the Act of 1996.

[13] The Appellant questioned the competence of the two Commissioners, Mr. George Sacariah and Mr. Kylas, who valued the goodwill. According to the Appellant, these Commissioners are engineers and, as per the guidelines of the Institute of Chartered Accountants of India, a valuer must be properly qualified, and the valuers must follow a specified method as held by the Division Bench of the Allahabad High Court in the case of Smt. Vindoor Bai, which specifies various modes of valuation. Firstly, the Commissioners, Mr. George Sacariah and Mr. Kylas, were not laypersons. The learned counsel for the Respondent pointed out that, as evident from the record, Mr. Kylas is not only a Superintending Engineer but also holds the qualifications FIE (Fellow of the Institution of Engineers), FIV (Fellow of the Institution of Valuers), FICA (Fellow of the Institute of Chartered Accountants), and is a Chartered Engineer as well as a registered valuer. The decision of the Allahabad High Court in Smt. Vindoor Bai arose from an order of the Assistant Controller of Estate Duty, in which the issue concerned the assessment of goodwill in proceedings for the levy of State duty. In the case at hand, in the valuation report, the Commissioners elaborated on the method adopted, namely the profit pace method, and arrived at a specific conclusion using this method, which was placed before the Arbitrator. Therefore, it cannot be said that the valuation of the goodwill placed before the Arbitrator was a completely ad hoc or random exercise. Considering that the Arbitrator was called upon to make an equitable distribution of the assets and had appointed valuers who were not laypersons, it cannot be said that the Arbitrator committed any patent illegality.

[14] The two Commissioners were appointed as valuers by consent. When the reports Exts. X1 and X2 of the Commissioners were submitted, they were duly admitted, taken on record, and marked accordingly. No oral evidence was adduced by either party. According to the Respondent, the Appellant is therefore precluded from

contesting the Commissioners' reports. In response, the Appellant submitted that objections to the Commissioners' reports had been duly raised, and consequently, it cannot be contended that the Appellant is precluded from questioning the reports. We have seen the objection filed by the Appellant to the Commissioners' reports. The objection is limited to the calculation made by the Commissioners as incorrect, and the correctness of the amount of Rs.75 lakhs, relying on the accounts submitted by the Auditor, Mr. Jobi.

[15] According to the Appellant, the sum of Rs.75 lakhs determined as goodwill is incorrect, and the accounts prepared by the Auditor, Mr. Jobi, would show that the amount would be Rs.3 crores. However, this figure of Rs.3 crores put forth by the Appellant is not supported by any formal valuation report, nor has the Auditor determined or certified this amount. It is based solely on the Appellant's own calculations based on the accounts. The Appellant is not an expert, and it is the Appellant's own contention that the valuation of goodwill is an expert's domain. Although the Appellant raised objections to the assessment of goodwill by the Commissioners, no effective steps were taken to cross-examine the Commissioners. Thus, when the Arbitrator had to choose between the Appellant's own calculations and the report of the Commissioners appointed by consent to value the goodwill, the Arbitrator chose to rely on the valuation report of the Commissioners. As regards the offer of the Appellant to buy the goodwill at Rs.3 crores, the Arbitrator asked for the offer on affidavit, which the Appellant did not file. If the Arbitrator concluded that the offer could not be accepted without an affidavit, it was permissible for the Arbitrator to adopt that approach. No error can be attributed to this approach, much less any ground under Section 34 of the Act of 1996. The Arbitrator was well within his jurisdiction in choosing to proceed on the basis of the Commissioners' report.

[16] The next limb of the Appellant's challenge is that the award is vitiated by fraud by the Respondent on the ground that the goodwill was determined by the Commissioners based on profits that were allegedly manipulated, and this fact has been demonstrated by the Appellant through the income tax proceedings against both parties. The learned Senior Advocate for the Appellant has made elaborate submissions regarding the amendment to Section 34(2)(a) of the Act of 1996, contending that since the case is prior to the 2019 amendment, which is prospective, the Appellant is entitled to furnish proof based on the grounds under Section 34 of the Act of 1996. The learned counsel for the Respondent submitted that apart from the legal position, the conduct of the Appellant has to be considered. The Respondent/Claimant contended that the Appellant was aware of the income tax proceedings and cannot now claim ignorance of the income tax raids and related proceedings. In response, the Appellant contends that he was not aware of the accounts and had, therefore, earlier filed a petition under Section 9 of the Act of 1996, seeking a direction to furnish the accounts.

[17] The arbitral award was rendered on 19 April 2014. Thereafter, on 16 June 2014, the Appellant instituted an application under Section 34 of the Act, 1996. Income tax raids were conducted on 17 September 2014, and the statements of both the Appellant and the Respondent were recorded by the authorities on 18 September 2014. A search was also carried out at the Appellant's institution on the same day. The Section 34 petition remained pending when the raids occurred in September 2014 and came to be dismissed nearly two years later, on 23 March 2016. At no point during this period did the Appellant seek to amend the application. The present appeal was filed on 29 April 2016, and, only one year and four months thereafter, on 22 August 2017, the Appellant moved an application to bring the income tax assessment on record. No satisfactory explanation has been offered for the failure to produce these documents while the Section 34 petition was pending.

[18] The case of the Appellant, as set out in the defence statement before the Arbitrator, needs to be scrutinized. In the defence statement, the Appellant expressly admitted that the commencement of another coaching class by him was the source of discord between the partners. It is also recorded that the partners had agreed to alternate, on a yearly basis, the management of the accounts and the academic administration, and that they would accordingly exchange their roles on 31 May each year. The partnership deed reflects this very arrangement and stipulates that both partners were to remain actively engaged in the affairs of the firm. No oral evidence was led by either party. The defence statement, read together with the partnership deed, thus indicates that the Appellant had a significant and active role in the functioning of the partnership.

[19] Before the income tax authorities, the Appellant's statement was recorded, and when queried about the unequal sharing of profits, he reiterated that the partners alternated, year by year, in managing the accounts and academic administration. The authorities further recorded that the unaccounted income generated was divided between the partners in proportion to their respective investments. Notably, the Appellant had initially sought to rely upon the accounts prepared by the Auditor, Mr. Jobi, for the purpose of computing the goodwill. However, at a later stage, the Appellant sought to discredit the same auditor, alleging that the accounts were fraudulent. In these circumstances, the learned counsel for the Respondent is justified in submitting that the Appellant, as the litigation progressed, has shifted from the original stand taken in the defence statement.

[20] The proceedings of the income tax authorities, which the Appellant now seeks to rely upon in this appeal, were not placed either before the learned Arbitrator or before the District Court in the petition under Section 34 of the Act. The question that arises, therefore, is whether such income tax assessments, introduced for the first time in appeal, can form the basis to set aside an arbitral award that was otherwise validly rendered. The learned Senior Advocate for the Appellant, while referring to Section 34(3) of the Act, which prescribes the limitation period, contended that the

legislative policy underlying the provision is to ensure finality to arbitral awards and that proceedings cannot be permitted to remain in a state of perpetual uncertainty owing to the production of additional materials that may surface with the passage of time. Even assuming that in exceptional circumstances such material could be entertained, the Appellant has offered no cogent or convincing explanation as to how he claims to have been unaware of the income tax proceedings. Secondly, it is an admitted position that the Respondent has filed a statutory appeal against the income tax assessment orders, and these appeals continue to remain pending. The assessment orders, therefore, have not attained finality and, in fact, contain observations adverse to the Appellant. Such material, not yet final and contested and placed on record for the first time in an appeal under Section 37, cannot be relied upon to set aside an arbitral award which, as we have already found, was validly passed.

[21] Thus, the position that emerges is that the learned Arbitrator, who was called upon to effect the distribution of assets upon the dissolution of the partnership, appointed Commissioners to carry out the valuation. The Commissioners duly submitted their report. The Respondent's contention that the goodwill ought to be reduced on account of the disputes between the partners was rejected by the Arbitrator. After adjusting the assets in a manner he considered fair and equitable, the Arbitrator proceeded to pass the award. We find no ground whatsoever under Section 34 of the Arbitration and Conciliation Act, 1996, to warrant interference with or to set aside the award. The award has been rendered within the jurisdiction of the Arbitrator and in accordance with the material placed before him, and no infirmity capable of attracting Section 34 has been demonstrated.

[22] The learned District Judge considered the challenge to the award. The primary argument before the learned District Judge was that the partition carried out by the Arbitrator was not equal. The learned District Judge rightly rejected this contention, holding that under Section 34 of the Arbitration and Conciliation Act, 1996, appellate power cannot be exercised. The learned District Judge has addressed all the contentions raised by the Appellant. It cannot be said that the District Court, in exercise of its powers under Section 34 of the Arbitration and Conciliation Act, 1996, either committed any perversity or failed to exercise the powers vested in it to set aside the award.

[23] Accordingly, we hold that no case was made out by the Appellant to set aside the arbitral award dated 19 April 2014 under Section 34 of the Arbitration and Conciliation Act, 1996, nor has any case been made out to warrant interference in the appeal under Section 37 of the Act of 1996.

[24] The appeal is dismissed.

APPENDIX OF ARB.A NO. 24 OF 2016	
RESPONDENT ANNEXURES	
Annexure R1(a)	**A true copy of the appeal preferred against Annexure A2 assessment order for the period 2009-10**

Annexure R1(b)	**A true copy of the appeal preferred against Annexure A3 assessment order for the period 2010-11**
Annexure R1(c)	**A true copy of the appeal preferred against Annexure A4 assessment order for the period 2011-12**
Annexure R1(d)	**A true copy of the appeal preferred against Annexure A5 assessment order for the period 2012-13**
Annexure R1(e)	**A true copy of the appeal preferred against Annexure A6 assessment order for the period 2013-14**
Annexure R1(f)	**A true copy of the appeal preferred against Annexure A7 assessment order for the period 2014-15**
PETITIONER ANNEXURES	
Annexure A9	**A true copy of IA No. 924 of 2014 in OP(Arb) 205/ 2014, dated 31.03.2014, filed before the learned District Court, Thiruvananthapuram, for appointment of Advocate Commission for inspection of the account book and other connected matters is produced**
Annexure A10	**A true copy of the statement given by me before the income tax officers on 18/09/2014**
Annexure A11	**A legible typed copy of Annexure A10 is produced**
Annexure A12	**A true copy of the Appeal given by the petitioner before the joint commissioner of income tax, and order dated 03.10.2016**
Annexure A8	**A true copy of OP(Arb)205/ 2014, dated 31.03.2014**

2026(1)CAC78

THE HIGH COURT OF JUDICATURE AT MADRAS

(Hon'ble Judge N Sathish Kumar; M Jothiraman)

Contempt Appeal; C M P (Civil Miscellaneous Petition) No 1 of 2025, 2 of 2025; 26875 of 2025, 2725 of 2025, 2727 of 2025, 2889 of 2025, 2891 of 2025

dated 27/11/2025

Sharada Mylandla; Nagaraj V Mylandla

Versus

P1 Opportunities Fund-I Having Its Address At Doddakannelli, Next to Wipro Corporate Office; Nagaraj V Mylandla; Archit V Mulandla; Sharada Mylandla

CONTEMPT FOR VIOLATION OF INJUNCTION

Arbitration and Conciliation Act, 1996 Sec. 47, Sec. 48, Sec. 49 - Contempt of Courts Act, 1971 Sec. 12 - Contempt for Violation of Injunction - Arbitration award enforcement proceedings initiated under Sections 47 to 49 of Arbitration Act - Interim injunction restrained appellants from alienating assets - Despite order, appellants executed transfer of property through settlement deed - Contempt proceedings initiated - Contempt Court held violation deliberate and imposed simple imprisonment - On appeal, appellants contended transfer was inadvertent and reversed before contempt hearing - Also claimed omissions in disclosure were unintentional - Court found explanation unsatisfactory and confirmed wilful disobedience - Held conduct undermined dignity of judicial orders - Punishment justified to uphold authority of law - Appeals Dismissed

Law Point: Violation of judicial injunction even if later reversed constitutes wilful disobedience under Section 12 of Contempt of Courts Act; bona fide mistake must be proved by clear evidence.

Acts Referred:

Arbitration and Conciliation Act, 1996 Sec. 49, Sec. 48, Sec. 47

Contempt of Courts Act, 1971 Sec. 12

Counsel:

Anirudh Krishnan, M S Krishnan (Senior Counsel), P Rajkumar Jhabakh, Vijay Narayan (Senior Counsel), P Giridharan, Shalaka Patil, Shilpa Sensar

JUDGEMENT

M.Jothiraman, J.- [1] Conta.No.1 of 2025 has been filed by one Sharadha Mylandla and Cont.A.No.2 of 2025 has been filed by one Nagaraj V. Mylandla, both appeals as against the impugned order dated 31.01.2025 passed in A.No.5208 of 2024 in Arb.O.P.(Com.Div.No.)285 of 2024.

[2] The appellant / Sharadha Mylandla is the 3 rd respondent and Nagaraj V.Mylandla is the 2 nd respondent in Arbitration Original Petition (Com.Div.No.) 285 of 2024. The first respondent PI Opportunities Fund-I represented by its authorised signatory Mr.Vardaan Ahluwalia has filed the said Arb.O.P.(Com.Div.No.) 285 of 2024 on the file of this Court as against these appellants and two others under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996 [in short "Act"] seeking various reliefs. The aforesaid arbitration O.P. has been filed seeking for enforcement of the foreign final award dated 05.07.2024 made by the Arbitral Tribunal in SIAC Arbitration No.098/2022 in accordance with SIAC Rules. A.Nos.3748 to 3750 and 3752, 3754 of 2024 and O.A.Nos.501 to 503 of 2024 has been filed in the said Arb.O.P. seeking various interim reliefs.

[3] Upon hearing either side, a learned Single Judge, vide order dated 25.07.2024 has passed the following order:

(i) .....

(ii) Interim injunction restraining the respondents 2 to 3 from, in any manner dealing with, and/or encumbering and/or disposing off, dissipating, and/or creating third party rights and/or alienating any of the movable or immovable properties or assets belonging to respondent Nos.2 to 3 including the properties disclosed in the SASHA. As far as immovable properties are concerned, this interim order is subject to the exclusions as provided under Section 60 of the Civil Procedure Code.

(iii) .....

[4] The 1 st respondent / PI Opportunities Fund-I- the petitioner in arbitration proceedings has filed A.No.5208 of 2024 in Arb.O.P.No.(Comm.Div.No.) 285 of 2024 to hold the respondents guilty of having committed Civil Contempt of this Court by wilfully disobeying the order dated 25.07.2024 in O.A.No.501 of 2024 in O.P.No.285 of 2024 and to punish the respondents with simple imprisonment for a term of 6 months or such period as this Court may deem fit and proper. Upon hearing either side, the Contempt Court, vide order dated 31.01.2025 held that the respondents 1 and 2 therein / appellants herein have committed contempt of Court by their acts of wilful disobedience of not only the orders of this Court dated 25.07.2024 and also subsequent orders dated 22.10.2024 and 29.10.2024 and therefore, exercising power under Section 12 of the Contempt of Courts Act, 1971, the respondents 1 and 2 therein are liable to be punished. Keeping in mind, the facts and circumstances of the case and also the age of the respondents 1 and 2, and at the same time to upheld the dignity and majesty of the Court, the 1 st respondent therein is punished with simple imprisonment for a term of one month and the 2 nd respondent is punished with simple imprisonment for a term of 10 days. Aggrieved over the above punishment imposed by the Contempt Court, the present appellants /respondents 1 and 2 therein have preferred the above contempt appeals.

[5] Mr.M.S.Krishnan, learned Senior Counsel and Mr.Anirudh Krishnan, learned counsel appearing for the appellants would submit that the Contempt Court failed to consider that the transfer of 82.5 cents of land situated at No.4, Nellikuppam Village, Thiruporur Taluk, Chengalpattu District was neither intentional nor in deliberate violation of this Court's order. The appellant executed the transfer through Settlement Deed No.16051/2024 as part of a broader family estate planning exercise, without any intent to circumvent the interim order of this Court. Upon realising the implications of the transfer and well before the contempt applications was brought before the Contempt Court, the appellant took immediate action to reverse the transaction. The re-transfer of the property was effectuated through Settlement Deed 20888/2024, executed on 28.09.2024, demonstrating the Appellant's bonafide intent to comply with the Court's order. In the disclosure affidavit and accompanying typed set of documents, the appellants produced a duly registered Gift Deed dated 21.12.2023 (bearing Doc.No.16550 of 2023), which clearly demonstrates that the flat is owned by

her daughter, who currently resides in the United States of America and not by the appellant, Sharadha Mylandla. The appellant voluntarily undertook to disclose a complete list of her assets on 22.10.2024 and was granted one week time to submit the details, including both immovable and movable assets. Given the varied nature of movable assets, certain inadvertent errors occurred in the initial disclosure. However, these were not intentional omissions, and the appellant promptly rectified them by filing supplementary affidavits on 11.11.2024 and 22.11.2024. These corrections were made on the appellant's own initiative, not due to my identification by PIOF. The Contempt Court failed to note that noncompliance was neither wilful nor wanton and were by no means intended to come in the way of proper administration of justice.

[6] Per contra, Mr.Vijay Narayan, learned Senior Counsel appearing for the respondents would submit that despite the order dated 25.07.2024, the appellants were in breach of this Court's order by way of gifting to their son / 3 rd respondent therein transferring the property admeasuring 0.45 acres of agricultural land in Thiruporur, Chengalpattu District. Further, even in December 2023, a settlement deed was executed by the mother / Sharadha Mylandla in favour of her son and the said transfer is also fraudulent and voidable at the instance of the applicant. The learned Senior Counsel would further submit that the Contempt Court also passed subsequent orders pursuant to the interim injunction granted on 25.07.2024, especially the order dated 22.10.2024, in and by which the Contempt Court directed the respondents 1 and 2 therein to disclose all their assets including the properties which were alienated / transferred from the date of award i.e., 05.07.2024, including particulars of movable and immovable properties along with details of the bank accounts on or before 29.10.2024. Subsequently, by order dated 29.10.2024, this Court recorded the affidavits of disclosure of assets by respondents 1 and 2 and also directed them to file supplementary affidavits. Subsequently, on 11.11.2024, this Court noticing that the 1 st respondent / one of the appellant has stated that details of the assets have been disclosed to the best of their ability and that details of any movable properties that have been inadvertently missed and later comes to attention would be disclosed by way of supplementary affidavit.

[7] It is seen from the records that the contempt petition emanating from the alleged violation of the interim order dated 25.07.2024 passed in favour of PI Opportunities Fund -I restraining the appellants from dealing with their movable and immovable properties. According to the appellants, the transactions in question were neither wilful nor disobeyance of any Court Order and part of property estate were inadvertently executed. It is the specific case of the appellants that upon realization of the implications of the order of this Court i.e., well before contempt proceedings were served on them.

[8] In view of the above circumstances, this Court is of the view that the appellants have taken immediate steps to reverse the transactions upon realising the Court's order well before the contempt proceedings were served on them. The above

act of the appellants would show that they made a genuine attempt on their part to protect themselves of contempt. In such circumstances, imposing the punishment to the appellants by awarding punishment with simple imprisonment for a term of one month to the first appellant and punishing the second appellant with simple imprisonment for a term of 10 days in respect of the appellants is unwarranted and as such the same is liable to be set aside.

[9] Considering the facts and circumstances of the case and in order to meet the ends of justice, this Court modifies the punishment imposed on the appellants to the effect that each of the appellants shall pay Rs.2,000/- as fine to the respondents, within a period of two weeks from the date of receipt of a copy of this order.

[10] These Contempt Appeals are partly allowed and the impugned order dated 31.01.2025 made in A.No.5208 of 2024 in Arb.O.P. (Comm.Div.) No.285 of 2024 is modified to the above extent. Consequently, connected civil miscellaneous petitions are also closed

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2026(1)CAC82

IN THE HIGH COURT AT CALCUTTA

(Hon'ble Judge Gaurang Kanth)

A P (Arbitration Petition) No 117 of 2022 **dated 26/11/2025**

Rakesh Kumar Jindal and Anr

Versus

Anoop Kumar Jindal and Ors

TAX REIMBURSEMENT

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 9, Sec. 36 - Tax Reimbursement - Petitioners sought post-award interim direction under Sec. 9 Arbitration Act for reimbursement of amount paid by them towards Kolkata Municipal Corporation tax on behalf of partnership firm - Petitioners claimed payment was made to protect interest of firm and all partners derived benefit - Respondents opposed on ground that claim related to post-award event beyond scope of award and cannot be enforced through Sec. 9 - It appeared arbitral award concerning partnership affairs under challenge under Sec. 34 - Tax liability issue formed part of subject matter of pending challenge - Court held such reimbursement claim being substantive and not interim in nature cannot be entertained under Sec. 9 post-award - Relief would amount to adjudicating rights pending under Sec. 34 - Liberty to pursue in appropriate proceedings - Petition Dismissed

Law Point: Relief under Sec. 9 Arbitration and Conciliation Act cannot be granted to enforce post-award or independent monetary claim not forming part

of arbitral award - Such issues must be adjudicated in pending Sec. 34 proceedings.

Acts Referred:

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 9, Sec. 36

Counsel:

Shreyaan Bhattacharyya, Sudip Deb (Senior Advocate), Laxmi Dalmiya, Ipsita Ghosh

JUDGEMENT

Gaurang Kanth, J.- [1] The Petitioners have filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996, seeking a post-award interim order directing Respondent Nos. 1 to 3 to pay a sum of Rs. 5,50,108/- each to the Petitioners towards reimbursement of Kolkata Municipal Corporation (KMC) tax paid by them on behalf of the partnership firm, M/s. Chander Niwas.

[2] The relevant facts leading to the present petition are as follows:

[3] The parties to the present petition are partners of a partnership firm namely M/s. Chander Niwas, which owns and manages a multistoried building situated at Premises No. 10B, Shakespeare Sarani, Kolkata 700071. The sole source of income of the firm is derived from the exploitation of the said property, which is partly occupied by tenants and partly by the partners themselves. The said premises are presently under the custody of a Receiver appointed by this Hon'ble Court.

[4] Subsequently, disputes and differences arose between the partners concerning the affairs of the firm and the management of the said immovable property. The disputes were referred to arbitration, and the Arbitral Tribunal published its Award on 23.12.2019. Petitions under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the said Award, were filed by both parties and are presently pending consideration before this Court.

[5] The said premises had a substantial outstanding Kolkata Municipal Corporation tax liability amounting to Rs. 1,89,63,358/-. The Kolkata Municipal Corporation announced a Waiver Scheme for a limited period, under which payment of the principal outstanding within a stipulated time would entitle the assessee to waiver of interest and penalty. Under this Scheme, the total payable amount was reduced to Rs. 44,42,123/-.

[6] The Petitioners requested the Receiver as well as the other partners to contribute their respective shares toward the said payment so that the firm could avail of the benefit of the Waiver Scheme. However, neither the Receiver nor the other partners took any steps in this regard. Consequently, the Petitioners filed A.P. No. 80 of 2021 seeking directions upon the Receiver to make the payment from the funds lying with him.

[7] Since the Waiver Scheme was expiring on 28.02.2021, and in order to safeguard the firm's interest, the Petitioners paid the entire amount of Rs. 44,42,123/-

from their own resources to the Kolkata Municipal Corporation. Additionally, the Petitioners paid a further sum of Rs. 3,08,720/- to the Corporation, following which a No Due Certificate up to 31.03.2021 was issued by the KMC.

[8] By an order dated 05.03.2021, this Court disposed of A.P. No. 80 of 2021, directing the Receiver to disburse Rs. 20,00,000/- from the funds lying in his custody to the Petitioners as part satisfaction of their claim towards the Corporation tax liability. The Respondents were also directed to pay their respective balance shares of the said liability.

[9] Aggrieved by the said order, Respondent No. 1 preferred an appeal being A.P.O.T. No. 71 of 2021. The Hon'ble Division Bench, by order dated 16.04.2021, upheld the direction upon the Receiver to pay Rs. 20,00,000/- to the Petitioners as ad hoc payment towards the Corporation tax liability. The Division Bench further directed the Receiver to scrutinize the bills and receipts relating to the tax payments and to apportion the liability of each partner according to their respective shares. The Receiver was also directed to prepare a report and a statement of accounts reflecting the apportionment of liability and taking into account the reimbursement of Rs. 20,00,000/- already made to the Petitioners. The Division Bench, however, stayed the portion of the Single Judge's order directing the Respondents to pay their balance shares of the tax liability.

[10] Pursuant to the aforesaid order, the Receiver paid Rs. 20,00,000/- to the Petitioners and filed a report dated 20.12.2021 indicating the shares of each partner. This Court thereafter directed him to submit a more comprehensive report. Accordingly, the Receiver filed a comprehensive report dated 06.01.2022, indicating that each partner was required to pay Rs. 4,88,424/- to make up the shortfall.

[11] The Petitioners then filed G.A. No. 3 of 2021 in A.P.O.T. No. 71 of 2021, seeking directions upon the Respondents to reimburse them for the amounts paid toward the municipal tax. They also filed G.A. No. 5 of 2022, taking exception to the Receiver's report.

[12] During the hearing, it was brought to the notice of the Court that the appeals arising out of the arbitral award dated 23.12.2019 were pending before this Court, and the subject matter of those appeals included issues relating to the municipal tax liability of the partnership firm and the apportionment thereof among the partners.

[13] The Hon'ble Division Bench, therefore, observed that the issues raised in G.A. No. 3 of 2021 and G.A. No. 5 of 2022 could be more appropriately adjudicated in the proceedings where the award itself was under challenge. Accordingly, the Division Bench disposed of both applications, granting liberty to the Petitioners to urge the same grounds before the Court dealing with the Section 34 proceedings.

[14] Pursuant to the said liberty, the Petitioners have filed the present postaward petition under Section 9 of the Arbitration and Conciliation Act, 1996, seeking directions upon Respondent Nos. 1 to 3 to pay Rs. 5,50,108/- each towards

reimbursement of the KMC tax paid by the Petitioners on behalf of the partnership firm.

[15] It is pertinent to note that by order dated 02.07.2024, the predecessor bench of this Court dismissed the present petition, holding that the relief sought could not be granted at that stage, while granting liberty to the parties to pursue their respective claims in accordance with the final outcome of the pending Section 34 proceedings, without being prejudiced by any prior observations.

[16] The Petitioners preferred an appeal being A.P.O.T. No. 268 of 2024, and by order dated 05.11.2024, the Hon'ble Division Bench set aside the order dated 02.07.2024 and restored the present petition for consideration on merits.

Submissions on behalf of the Petitioner

[17] Learned Counsel appearing for the Petitioners submits that the Petitioners had paid the entire Kolkata Municipal Corporation tax from their own funds in order to protect the interest of the partnership firm. It is contended that by virtue of such payment, the partnership firm as a whole has reaped substantial benefit. The Respondents, who are equal partners of the firm, are now seeking to deny reimbursement to the Petitioners for amounts paid on their behalf. It is submitted that the partners cannot evade or avoid the statutory liabilities of the firm merely because the Petitioners, in good faith, discharged the same to prevent coercive action and to secure the benefit of the waiver scheme.

[18] Learned Counsel further submits that the total outstanding tax liability of the firm was Rs. 1,89,63,358/-. Under the Kolkata Municipal Corporation Waiver Scheme, the Corporation waived the interest and penalty component, reducing the total payable amount to Rs. 44,42,123/-. The Petitioners made the said payment solely for the benefit of the partnership firm, and all partners, including the Respondents, derived equal benefit from the said action of the Petitioners.

[19] It is submitted that the Petitioners have, in total, paid Rs. 47,50,843/- (comprising Rs. 44,42,123/- under the Waiver Scheme and Rs. 3,08,720/- thereafter) to the Kolkata Municipal Corporation, pursuant to which a No Due Certificate was issued as on 31.03.2021.

[20] All partners hold equal shares of 20% each in the said partnership firm. Consequently, each partner is liable to bear an equal portion of the tax liability. Pursuant to the direction of this Court, the Receiver has already disbursed Rs. 20,00,000/- to the Petitioners towards part reimbursement. The remaining Rs. 27,50,843/- is to be shared equally among the five partners, which works out to Rs. 5,50,108/- per partner.

[21] Since the Petitioners have already borne and paid the said amount to the Kolkata Municipal Corporation on behalf of all partners, it is contended that each of the Respondents is liable to reimburse Rs. 5,50,108/- to the Petitioners towards their respective shares of the firm's tax liability.

Submissions on behalf of the Respondents

[22] Learned Counsel appearing for the Respondents opposes the present petition and submits that the claim for reimbursement of the Corporation Tax sought to be enforced through this post-award Section 9 petition is not maintainable in law. It is contended that the said Corporation Tax liability arose subsequent to the publication of the arbitral award dated 23.12.2019, and hence forms a post-award event which does not fall within the scope or contemplation of the award itself.

[23] Learned Counsel further submits that the liability to pay Corporation Tax for the subsequent period cannot be treated as part of the subject matter of arbitration, nor can it be read into the award by implication. The Petitioners cannot, under the guise of a Section 9 application, seek to recover amounts which were never adjudicated upon or awarded by the learned Arbitral Tribunal. Such a claim, it is argued, amounts to enforcement of a fresh or independent liability, which is beyond the jurisdiction of this Court in a Section 9 proceeding.

[24] It is also contended that apportionment of liability among partners involves a factual determination of the accounts and mutual rights between the partners of the firm, which can be properly examined only in appropriate proceedings arising out of or pursuant to the arbitral award. The jurisdiction of this Court under Section 9 of the Arbitration and Conciliation Act, 1996, being limited to grant of interim measures, does not extend to adjudicating or apportioning liabilities or directing payment of specific amounts between partners.

[25] Learned Counsel therefore submits that the relief sought by the Petitioners, if granted, would amount to deciding substantive rights of the parties pending consideration of the arbitral award under Section 34, which is impermissible. The Respondents accordingly pray that the present petition be dismissed, as no interim measure under Section 9 can be granted to enforce a post-award or independent claim not forming part of the arbitral award.

Legal Analysis

[26] This Court has carefully considered the rival submissions advanced on behalf of the Petitioners and the Respondents and perused the materials on record.

[27] It is an admitted position that the present application has been filed postaward under Section 9 of the Arbitration and Conciliation Act, 1996, wherein the Petitioners seek directions upon the Respondents to reimburse a sum of Rs. 5,50,108/- each, being their alleged share of the Kolkata Municipal Corporation Tax paid by the Petitioners on behalf of the partnership firm, M/s. Chander Niwas. The arbitral award dated 23.12.2019, which adjudicated disputes concerning the assets, income, and liabilities of the said firm, is presently under challenge before this Court in petitions under Section 34 of the said Act, which remain pending adjudication.

[28] The primary issue that arises for consideration is whether, in the facts of the present case, such a post-award claim for reimbursement can be entertained within the ambit of Section 9 of the Arbitration and Conciliation Act, 1996.

[29] The scope of the Court's power under Section 9 is well-defined and limited. The provision enables the Court to grant interim measures of protection before, during, or after the arbitral proceedings, but before enforcement of the award under Section 36. Such power is ancillary in nature, intended to preserve the subject matter of arbitration or to secure the fruits of the award. The jurisdiction under Section 9 does not extend to the adjudication of fresh disputes, alteration of substantive rights, or granting of final reliefs that effectively amount to execution of the award.

[30] In the present case, the Petitioners' claim for reimbursement of Corporation Tax pertains to a liability that arose after the arbitral award was rendered. The Petitioners contend that they were compelled to pay the said tax to avail of the benefit of the KMC Waiver Scheme and to protect the firm's property. The Respondents, on the other hand, dispute their liability, asserting that such payment constitutes a post-award liability and cannot form the subject matter of a Section 9 petition. According to the Respondents, the claim neither arises out of nor forms part of the arbitral award dated 23.12.2019 and, therefore, cannot be treated as a measure in aid of enforcement of the award. The relief sought is, in essence, a new monetary claim requiring adjudication of factual and accounting issues between the partners, which clearly falls outside the limited scope of Section 9 proceedings.

[31] In this context, reference may be made to the order dated 28.01.2022 passed in A.P.O. No. 79 of 2021, arising out of the same partnership dispute. In that proceeding, the Hon'ble Division Bench observed that any issue concerning the liability or reimbursement among partners would have to be examined in the context of the arbitral award and its challenge under Section 34, since those proceedings encompass the overall accounts and obligations of the partnership firm. The Division Bench made it clear that the Court, while exercising jurisdiction under Section 9 or in appeal, ought not to undertake independent apportionment or adjudication of such liabilities pending final determination of the award.

[32] The above observation of the Hon'ble Division Bench reaffirms the wellsettled principle that the jurisdiction conferred upon this Court under Section 9 is of a limited and ancillary nature. The object of Section 9 is to preserve the subject matter of the arbitration, secure the fruits of the award, and prevent frustration of the arbitral process. It is not intended to empower the Court to determine fresh substantive rights or liabilities, or to execute or enforce the award itself. Though the Court may exercise Section 9 powers even after the making of the award, such relief must be strictly in aid of the award and not independent or substantive in nature.

[33] Applying the above principles to the present case, this Court finds that the liability sought to be enforced is not an interim measure "in aid of" the award but a fresh claim requiring factual determination of the partners' respective rights and

obligations. The power to apportion such liability does not fall within the ambit of Section 9 proceedings. Furthermore, in view of the clear pronouncement of the Hon'ble Division Bench in A.P.O. No. 79 of 2021, such issues must be raised and decided in the Section 34 proceedings pending before this Court. Entertaining this claim under Section 9 would amount to circumventing the pending adjudication and pre-judging the merits of matters already covered by the arbitral award and its challenge.

[34] Accordingly, this Court is of the considered view that the relief sought by the Petitioners cannot be granted within the limited scope of Section 9 of the Arbitration and Conciliation Act, 1996. The Petitioners' grievance, if any, may be urged before the Court dealing with the Section 34 petitions, in terms of the liberty already granted by the Hon'ble Division Bench.

[35] In view of the foregoing discussion, and having regard to the clear pronouncement of the Hon'ble Division Bench in A.P.O. No. 79 of 2021, this Court finds no ground to entertain the present petition. The prayer for reimbursement of Corporation Tax, being a post-award liability, falls outside the ambit of Section 9, which is confined to interim and protective measures and does not extend to the adjudication of substantive monetary claims.

[36] Accordingly, the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 stands dismissed, with liberty to the parties to raise their respective claims, contentions, and defences in the pending Section 34 proceedings or in such other proceedings as may be legally maintainable

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2026(1)CAC88

IN THE HIGH COURT OF ALLAHABAD

[From LUCKNOW BENCH]

(Hon'ble Judge Jaspreet Singh)

Appeal Under Section 37 Of Arbitration And Conciliation Act 1996 No 42 of 2025 **dated 25/11/2025**

National Highways Authority of India, Through Its Project Director

Versus

Om Prakash Singh and 2 Others

ARBITRATION REMAND

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 37, Sec. 3G - Arbitration Remand - Appeal filed against order setting aside arbitral award under Section 34 and remitting matter for fresh decision - Appellant contended that trial court exceeded jurisdiction by reappraising evidence - Respondent argued remand was justified due to disparity in compensation for similar landowners - Court observed that Section 34 allows

interference only on limited grounds and no re-evaluation of evidence permitted - However, finding that remand was for reconsideration based on existing material and not reappraisal - Held that order does not violate scope of Section 34 - Appeal Dismissed

Law Point: Court under Section 34 of Arbitration Act cannot reappraise evidence but may remit award if procedural irregularity or disparity is found, provided such remand remains within limits of statutory power.

Acts Referred:

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 37, Sec. 3G

Counsel:

Abhishek Pathak, Prasiddha Narayan Singh

JUDGEMENT

Jaspreet Singh, J.- [1] Heard Sri Abhishek Pathak, learned counsel for the appellant and Sri Prasidh Narayan Singh, learned counsel along with Sri J.N. Singh, learned counsel for the respondent no. 1 on caveat.

[2] The instant appeal has been preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996") assailing the judgment and order dated 08.08.2025 passed by the Additional District Judge-I, Ambedkar Nagar in Arbitration Case No. 4 of 2022 whereby the petition preferred under Section 34 of the Act of 1996 filed by the respondent no. 1 has been allowed and the matter has been remitted for consideration afresh.

[3] The submission of learned counsel for the appellant is that the Court while exercising powers under Section 34 of the Act of 1996 has overstepped its jurisdiction, inasmuch as, it has entered into the merits of the dispute and it has re-appraised the evidence which is not within the domain of the Court exercising powers under Section 34 of the Act of 1996.

[4] It is further urged that where a view has been taken by an Arbitrator after considering the material available on record, unless it is shown to be perverse, such view has to be accepted and the courts under Section 34 of the Act of 1996 are not empowered to take a different view, thus, the Court while entering into the factual aspect, has re-appraised the evidence which is not permissible, accordingly, the order impugned dated 08.08.2025 is bad in the eyes of law.

[5] It has further been submitted by the learned counsel for the appellant that the court further over-stepped its jurisdiction by ignoring the principles enunciated in Section 34 (4) of the Act of 1996.

[6] In case if certain technical errors were discovered by the court in exercise of powers under Section 34 of the Act, it was always open for the court to have taken recourse to the provisions of Section 34(4) enabling the Arbitral Tribunal to iron out the creases and to eliminate the ground upon which the petition under Section 34 of the

Act was preferred. Having ignored this aspect, the order passed by the Court stands vitiated.

[7] The learned counsel for the appellant has relied upon a decision of the Apex Court in the case of **Kinnari Mullick and Another v. Ghansyam Das Damani**, 2018 11 SCC 328 and another decision of a coordinate Bench of this Court in Hema Agarwal and 2 others v. National Highway Authority of India and another,2025 AHC 148001.

[8] It is thus urged that for the aforesaid reasons, the order impugned cannot be sustained and as such deserves to be set aside.

[9] Sri Prasidh Narain Singh, learned counsel appearing for the private respondent has urged that the court while considering the respective submissions has merely considered the impact of certain awards which were passed in respect of a contiguous land-holder and thereafter it has come to the conclusion that the award cannot be sustained as two equal persons cannot be treated differently.

[10] The entire reasoning of the Court is on the aforesaid premise and it is not a case where the court has undertaken an independent or re-appraisal of evidence, hence, the submission made by learned counsel for the appellant does not flow from the record.

[11] It has further been urged that the reliance placed by the learned counsel for the appellant in the case of **Kinnari Mullick (supra)** will not have any impact for the reasons, ingredients mentioned therein are not met.

[12] It is thus urged that once the award passed by the Statutory Authority under the National Highway Authority of India Act has been set aside and the matter has been remitted for decision, considering the observations made, it cannot be said that the court has overstepped its jurisdiction, hence, the appeal deserves to fail.

[13] The Court has heard the learned counsel for the parties and also perused the material on record.

[14] Apparently, the scope of proceedings under Section 34 of the Act of 1996 is limited, the award can only be set aside on the ground mentioned in Section 34 or if it fails to pass the patent illegality test as enunciated by the judicial pronouncements of the Apex Court as well as various High Courts.

[15] In the aforesaid backdrop, if the controversy is seen in the present case, also noticing the averments of the respective parties which have been incorporated in the judgment under challenge, it would reveal that the contention relates to how the land acquired under the NHAI Act is to be valued for the purposes of determining the compensation.

[16] It is not disputed that on the date of the notification made under Section 3-G, the land in question was recorded in the revenue records as agricultural.

[17] It is also not disputed that arbitral proceedings or an award is per se inter-se the parties and it does not partake the nature of a judgment in rem rather it is a

judgment in personam between the contracting parties who had agreed to get their disputes resolved through the forum of Arbitration.

[18] In the instant case, since the proceedings emanate from the NHAI Act, accordingly, there is a statutory scheme. This Court in case of **(i)** Chandra Kishori v. Union of India,2023 SCC Online All 3950; **Nitin Maheshwari v. Union of India: MANU/UP4080/2023 (iii) Harish Tripathi v. National Highway Authority of India; MANU/UP/4213/2023** had the occasion to consider the scheme of the NHAI Act and the proceedings before the statutory Arbitrator.

[19] The core question that is involved in such proceedings is determination of the compensation based on the market value. As already noticed above in the **Chandra Kishori (Supra), Nitin Maheshwari (supra)** and **Harish Tripathi (supra)**, this Court had noticed that how the valuation/market value is to be determined and applying the aforesaid principles, it would indicate that merely taking note of awards which have been passed in case of contiguous or near-by tenure-holders ipso-facto may not give rise to any inference that the court has re-appraised or enter into the arena reserved for the Arbitral Tribunal.

[20] Even in the instant case, it would indicate that the court on its own and noticing the material placed before it which was also part of the record before the arbitral proceedings found that there is some disparity regarding the grant of compensation and for the aforesaid purpose without making any comment, it has set aside the order, requiring the statutory Arbitrator to take a re-look.

[21] The aforesaid issue regarding remand as well as the severance of the award was the subject matter of profound consideration by the Apex Court in the constitution Bench decision of **Gayatri Balasamy v. ISG Novasoft Technologies Ltd.**, 2025 7 SCC 1, however, the principles laid therein are not attracted in the case at hand.

[22] Taking note of the relevant provisions of the Act of 1996 as well as the judgments of the Apex Court in (i) **UHL Power Co. Ltd. v. State of H.P.**, 2022 4 SCC 116 and (ii) **AC Chokshi Share Broker (P) Ltd. v. Jatin Pratap Desai**, 2025 5 SCC 321 which has been followed by a Division Bench of this Court in UCM Coal Co. Ltd. v. Adani Enterprises Ltd,2025 AHCLKO 58732-DB, it would reveal that in so far as the first submission advanced by the learned counsel for the appellant relating to entering into the domain of the re-appraising the evidence is concerned, is not made out.

[23] The judgement relied upon by the learned counsel for the appellant in **Kinnari Mullick (Supra)** if seen, would indicate the scope of Section 34(4) of the Act of 1996 and the relevant portion of the said report reads as under:-

> "12. In this backdrop, the question which arises is: whether the highlighted portion in the operative part of the impugned judgment of the Division Bench can be sustained in law? For that, we may advert to Section 34(4) of the Act which is the repository of power invested in the Court. The same reads thus:

"Section 34(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."

13. On a bare reading of this provision, it is amply clear that the Court can defer the hearing of the application filed under Section 34 for setting aside the award on a written request made by a party to the arbitration proceedings to facilitate the Arbitral Tribunal by resuming 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. The power under this provision is that the arbitral award has not been quintessence for exercising set aside. Further, the challenge to the said award has been set up aside Further, under Section 34 about the deficiencies in the arbitral award which may be curable by allowing the Arbitral Tribunal to take such measures which can eliminate the grounds for setting aside the arbitral award. No power has been invested by the Parliament in the Court to remand the matter to the Arbitral Tribunal except to adjourn the proceedings for the limited purpose mentioned in sub-section 4 of Section 34. This legal position has been expounded In the case of McDermott International Inc. (supra). In paragraph 8 of the said decision, the Court observed thus:

"8.....parliament has not conferred any power of remand to the Court to remit the matter to the arbitral tribunal except to adjourn the proceedings as provided under sub-section (4) of Section 34 of the Act. The object of sub-section (4) of Section 34 of the Act is to give an opportunity to the arbitral tribunal to resume the arbitral proceedings or to enable it to take such other action which will eliminate the grounds for setting aside the arbitral award."

(emphasis supplied)

14. In any case, the limited discretion available to the Court under Section 34(4) can be exercised only upon a written application made in that behalf by a party to the arbitration proceedings. It is crystal clear that the Court cannot exercise this limited power of deferring the proceedings before it suo moto. Moreover, before formally setting aside the award, if the party to the arbitration proceedings fails to request the. Court to defer the proceedings pending before it, then it is not open to the party to move an application under Section 34(4) of the Act. For, consequent to disposal of the main proceedings under Section 34. of the Act by the Court, it would become functus officio. In other words, the limited remedy available under Section 34(4) is required to

be invoked by the party to the arbitral proceedings before the award is set aside by the Court."

[24] Having taken note of the aforesaid, it would reveal that the basic criteria or ingredients for invoking Section 34 (4) of the Act of 1996 is not applicable nor made out.

[25] The learned counsel for the appellant could not dispute the fact that no application was give to the court seized with the matter under Section 34(4) to exercise its power under Section 34(4) of the Act of 1996.

[26] It also could not be demonstrated successfully as to the ground upon which the initial petition under Section 34 (1) of the Act of 1996 was filed, what was those technicalities which could have been ironed out while considering or invoking the powers under Section 34 (4) of the Act of 1996.

[27] In absence of such material which has not been indicated nor it could be canvassed that the same existed, the reliance upon the provisions of Section 34(4) of the Act of 1996 and upon the judgment of the Apex Court in **Kinnari Mullick (supra)** does not come to the aid of the appellant.

[28] In so far as the decision of the coordinate Bench in **Hema Agarwal (supra)** is concerned, the same also has no applicability in the instant case rather it has merely relied upon the decision of the Apex Court in **Kinnari Mullick (supra)** and as noticed above where it could not be shown as to how the provisions of Section 34 (4) would apply, hence, the judgment of this Court in **Hema Agarwal (supra)** is not of any help to the appellants.

[29] In the aforesaid circumstances, this Court finds that the submissions advanced by the learned counsel for the appellant have no merit and the appeal is accordingly **dismissed,** leaving it open for the appellant to take recourse as may be available in law while participating in the arbitral proceedings which is the necessary corollary and outcome after passing of the impugned order dated 08.08.2025. Costs are made easy

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2026(1)CAC93

HIGH COURT FOR THE STATE OF TELANGANA

(Hon'ble Judge P Sam Koshy)

Civil Revision Petition No 3701 of 2025 **dated 21/11/2025**

M/s ESI Corporation

Versus

M/s Quality Care India Limited (Care Hospitals)

ARBITRATION EXTENSION

Code of Civil Procedure, 1908 Sec. 151 - Arbitration and Conciliation Act, 1996 Sec. 11, Sec. 2, Sec. 29A, Sec. 23 - Arbitration Extension - Revision filed challenging Trial Court order extending arbitration period under Sec.29A(4) - Petitioner argued only High Court had jurisdiction since Arbitrator appointed by High Court - Court analyzed Sec.2(1)(e), Sec.11(6), and Sec.29A - Held principal Civil Court competent to extend time even where Arbitrator appointed by High Court - Observed legislative intent distinguishes jurisdiction under Sec.11 and Sec.29A - Found no jurisdictional error or illegality - Revision Dismissed

Law Point: Power to extend arbitral mandate under Sec.29A lies with jurisdictional District Court irrespective of initial appointment of Arbitrator by High Court

Acts Referred:

Code of Civil Procedure, 1908 Sec. 151

Arbitration and Conciliation Act, 1996 Sec. 11, Sec. 2, Sec. 29A, Sec. 23

Counsel:

G Pavan Kumar, S Ravi (Senior Counsel)

JUDGEMENT

P. Sam Koshy, J.- [1] The present Civil Revision Petition is filed by the petitioner under Article 227 of the Constitution of India and Section 29A(4) of the Arbitration and Conciliation Act, 1996 aggrieved by the Judgment and Decree dated 24.03.2025 in Arbitration O.P.No.172 of 2023 passed by the XXIV Additional Chief Judge, City Civil Court, at Hyderabad (for short, 'the impugned order').

[2] Heard Mr. G. Pavan Kumar, learned counsel for the petitioner; and Mr. S. Ravi, learned Senior Counsel representing M/s.R.S. Associates, learned counsel for the respondents.

[3] Vide the impugned order, the Trial Court allowed the above A.O.P. by granting extension of period of (08) months from the date of order for completion of arbitral proceedings by the learned Arbitrator subject to payment of costs of Rs.5,000/- payable to the District Legal Services Authority.

[4] The above A.O.P. was filed by respondent No.1 under Section 29A(4) of the Arbitration and Conciliation Act, 1996 read with Section 151 of Civil Procedure Code, 1908 praying the Trial Court to pass an order directing respondent No.2-Arbitral Tribunal to extend the period of arbitration proceedings in Arbitration Case No.1 of 2019 for a further period of one year from the date of order by duly setting aside the impugned proceedings dated 16.01.2021 whereby the arbitration proceedings stood terminated between the petitioner and the respondent from 31.12.2020.

[5] The operative portion of the impugned order is reproduced as under, viz.,

"21. The arbitral proceedings were terminated at the stage of cross-examination of respondent's witnesses which goes to show that most of the proceedings were completed. If the proceedings not permitted to continue further the interest of petitioner would be put to jeopardy.

22. In view of the above discussion and reasons mentioned, it is a fit case to grant extension of period of (08) months from the date of this order for completion of arbitral proceedings by the same Hon'ble Arbitrator. The petitioner shall pay costs of Rs.5,000/- to DLSA. Accordingly, this point is answered.

In the result, petition is allowed extending of time of (08) months from the date of this order for completion of arbitral proceedings subject to payment of costs of Rs.5,000/- to DLSA."

[6] The brief facts of the case is that respondent No.1 herein had preferred two arbitration applications, viz., Arbitration Application Nos.112 and 126 of 2017 under Section 11(6) of the above Act before the High Court for the State of Telangana, at Hyderabad. Vide common order dated 20.06.2019 in Arbitration Application Nos.112 and 126 of 2017, a learned Single Judge of this Court had passed orders by appointing Sri Justice K.C. Bhanu, Retired Judge, High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, residing at Villa No.43, Aditya Royal Palms, Gated Community, Road Opp. To 7 Tombs Gate, Shaikpet, Hyderabad, as the sole Arbitrator for resolution of dispute between the applicant company (respondent No.1 herein) and the respondent corporation (petitioner herein) arising out of Agreements dated 03.05.2013 and 19.06.2014 in accordance with the provisions and mandate of Act of 1996.

[7] Thereafter, the period of arbitration proceedings stood expired w.e.f. 31.12.2020. However, on account of COVID Pandemic, the Hon'ble Supreme Court passed orders in Writ Petition No.3 of 2020, dated 08.03.2021, holding that: "the period from 15.03.2020 till 14.03.2021 shall stand excluded in computing the periods prescribed under Section 23(4) and 29A of the Arbitration and Conciliation Act, 1996, ". Subsequent thereto, respondent No.1 had also filed Writ Petition No.9061 of 2021 which was however withdrawn on 19.04.2021, and thereafter, the above arbitration applications were filed under Section 29A of the Act seeking for extension of time in the light of exclusion of the COVID period from 15.03.2020 till 14.03.2021 for computing the periods prescribed under Section 23(4) and 29A of the Arbitration and Conciliation Act, 1996.

[8] The solitary contention raised by the learned counsel for the petitioner was that the above arbitration application, viz., A.O.P.No.172 of 2023, could not have been filed before the Trial Court as the learned Trial Court did not have jurisdiction to decide the above arbitration petition. According to him, the appointment of an Arbitrator having been done by this High Court vide common order dated 20.06.2019

in Arbitration Application Nos.112 and 126 of 2017 in terms of Section 11(6A) of the amended Act of 1996, the Trial Court ought not to have granted extension; and for this reason, the impugned order passed by the Trial Court deserves to be set aside.

[9] In support of his contentions, learned counsel for the petitioner relied on the following decisions of various High Courts, viz., (a) **Ovington Finance Pvt. Ltd. vs. Bindiya Nagar [O.M.P. (MISC.) (COMM.) 695 OF 2024, dated 13.11.2024, of the High Court of Delhi, at New Delhi]**, (b) **Best Eastern Business House Pvt. Ltd. vs. Mina Pradhan [AP-COM - 296 of 2025, dated 13.09.2025, of the High Court at Calcutta, Commercial Division, Original Side]**, and (c) **Sheela Chowgule vs. Vijay V. Chowgule and others [Writ Petition No.88 of 2024, dated 07.08.2024, (Division Bench), Of the High Court of Bombay at Goa.]**.

[10] Per contra, learned Senior Counsel, appearing on behalf of respondents, contended that there is no illegality or any error of jurisdictional issue in the course of passing of the impugned order by the Trial Court in an petition under Section 29A(4) of Act of 1996. According to him, the Trial Court derives power to decide an application for extension of time in view of Section 2(1)(e) of the Act which defines the term 'Court' as under, viz.,

"(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes."

[11] In view of above, learned Senior Counsel appearing on behalf of the respondents contended that the principal Civil Court of original jurisdiction in a District retains the exclusive power to extend or terminate the mandate of the Arbitrator; and therefore, prayed that the instant Civil Revision Petition may be dismissed.

[12] Having heard the contentions put forth on either side and on a perusal of the record, the only ground of challenge assailing the impugned order whereby the Trial Court had granted extension of time in an arbitration proceedings was on the "jurisdiction" part. Therefore, the question of law to be considered is:: whether in an arbitration petition seeking for extension of time under Section 29A(4) of Act of 1996, would it be the High Court for the State of Telangana (which had allowed the Arbitration Application Nos.112 and 126 of 2017 under Section 11(6) of the Act) to decide such questions forming the subject-matter of the arbitration; or would it be the concerned jurisdictional Civil Court in the District which has the power to decide matters relating to grant of extension of time under Section 29A(4) of Act of 1996 ?

[13] For proper understating of the above question of law, it would be necessary at the first instance to read proviso to Section 11(6), which for ready references is being reproduced as under, viz.,

"(6) Where, under an appointment procedure agreed upon by the parties,-

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment."

[14] Next, we proceed to also consider the proviso to Section 29A of the Act which again for ready reference is reproduced hereunder, viz.,

[**29A.** Time limit for arbitral award.- 3 [(1)The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.]

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in subsection (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period: Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay.

[Provided further that where an application under subsection (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application: Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.]

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party."

[15] A plain reading of the above two provisions would make it clear that when it comes to appointment of an Arbitrator at the first instance, Section 11(6) prescribes that only the High Court has the inherent jurisdiction and power to decide the same; whereas, when we read Sub-Section (4) of Section 29A of the Act, it is the principal Civil Court which has been referred to and not the Court which had appointed the Arbitrator. Thus, the framers of the law had clearly drawn the distinction while exercising powers under Section 11(6) of the Act vis- -vis Section 29A of Act of 1996.

[16] Keeping in view the aforesaid provision of law, it would be relevant at this juncture to refer to definition of the word "Court" as is defined under Section 2(1)(e), which again for ready reference is being reproduced hereunder, viz.,

> "(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes."

[17] In the teeth of aforesaid definition, if we read Section 29A of the Act keeping in mind the definition of "Court" as defined in Section 2(1)(e) of the Act, this Court has no hesitation in reaching to the conclusion that when it comes to proceedings under Section 29A, it would be the jurisdictional District Court which would have the power for exercising the same and which is distinct to Section 11(6) of the Act.

Whereas, it is only the High Court or the notified Judge of the High Court who has the power to decide the same.

[18] As regards the decisions relied upon by the learned counsel for the petitioner (referred supra), this Court is of the considered opinion that those decisions were rendered by the respective High Courts where the High Court simultaneously had original side jurisdiction unlike the High Court for the State of Telangana; therefore, the decisions relied upon by the learned Counsel for the petitioner (referred supra) are in itself distinguishable on its own facts.

[19] So far as facts in the instant case and the provisions of Section 29A of the Act are concerned, what needs to be understood is that if the law makers were of the view that the extension or termination of the mandate was to be done by the same Court which had allowed a petition under Section 11(6) of the Act at the time of appointment of an Arbitrator, then the provision of law would have been to simply confer power to grant extension or power to terminate the mandate with the same court which had appointed the arbitrator rather than specifically mentioning the power being with the principal Civil Court of original jurisdiction in a District.

[20] For all the aforesaid reasons, this Court finds it difficult to accept the arguments advanced by the learned counsel for the petitioner when it questions the power of a Civil Court in deciding the petition under Section 29A(4) of the Act. Another reason which this Court is not inclined to interfere with the impugned order is that the issue of jurisdiction was not the focal point of contention while deciding the above A.O.P.No.172 of 2023 by the Trial Court. The points for consideration by the Trial Court before passing the impugned order were that: (a) could a petition which was filed for extension of time for completion of arbitral proceedings which were terminated on 31.12.2020 be entertained at the first instance; and (b) after a considerable period of time had got lapsed from the period the mandate got terminated, such a petition can be entertained or not. Both these points have been answered by the Trial Court by giving elaborate reasons and also taking note of the recent decision of the Hon'ble Apex Court in the case of **M/s.Ajay Protech Pvt. Ltd. vs. General Manager & another**, 2024 INSC 889 wherein the Hon'ble Apex Court had held that extension of time can be entertained and granted even after expiry of statutory extendable period.

[21] For all the aforesaid reasons, this Court does not find any strong case made out by the learned counsel for the petitioner calling for interference to the impugned order passed by the Trial Court. The Civil Revision Petition being devoid of merit deserves to be and is accordingly dismissed. No costs.

[22] As a sequel, miscellaneous applications pending if any, shall stand closed

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2026(1)CAC100

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge Somasekhar Sundaresan)

Arbitration Petition (L); Interim Application (L) No 1127 of 2018; 15527 of 2024 **dated 19/11/2025**

Hi Style India Pvt Limited

Versus

Rakesh Corporation

DELAY IN ARBITRATION CHALLENGE

Constitution of India Art. 142 - Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 16, Sec. 33 - Delay in Arbitration Challenge - Petition under Section 34 filed beyond limitation to challenge arbitral award directing payment of amount for goods supplied - Petitioner contended absence of arbitration agreement and claimed fraud by ex-employee - Respondent argued petition hopelessly time-barred and award valid - Court observed Section 34 imposes strict limitation, no power to condone delay beyond statutory period - Supreme Court's extraordinary power under Article 142 cannot extend to Section 34 court - Arbitration clause in invoice sufficient in law if written, even if unsigned, and petitioner participated through adjournments - Challenge barred by limitation - Petition Dismissed

Law Point: Section 34 court has no inherent power to condone delay beyond prescribed statutory period and cannot invoke equitable jurisdiction akin to Article 142; limitation under Section 34(3) is absolute.

Acts Referred:

Constitution of India Art. 142

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 16, Sec. 33

Counsel:

Avinash Wadhwani, Dhruva Gandhi

JUDGEMENT

Somasekhar Sundaresan, J.- [1] Context and Factual Background:

1. This is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("**the Act**") impugning an Arbitral Award dated May 9, 2018 ("**Impugned Award**") passed by the Learned Sole Arbitrator appointed by the Mumbai Textile Merchants' Mahajan ("**Mahajan**").

[2] The Impugned Award essentially directs the Petitioner, Hi Style India Pvt. Limited ("**Hi Style**") to pay to the Respondent, Rakesh Corporation ("**Rakesh**") a sum of Rs.15,80,895/-. The awarded amount comprises payment of Rs.~11.94/- Lakhs

against the bill dated May 28, 2016 along with interest thereon in the sum of Rs.~3.76/- Lakhs until the date of the Impugned Award, and a further sum of Rs.10,500/- being the cost of arbitration.

[3] It is seen from the record that the Learned Arbitral Tribunal had given Hi Style multiple opportunities to present its say at hearings - those fixed on July 6, 2017, August 31, 2017, October 26, 2017, December 2, 2017 and February 27, 2018. Hi Style entered appearance on August 31, 2017 and thereafter did not attend any of the hearings. It is also seen from the record that between October 24, 2017 and March 1, 2018, in respect of the hearings scheduled, Hi Style, through e-mails sent by one Ram PS, styled as "Head Merchandiser" of Hi Style sought adjournment requesting for a new date, among others stating that Hi Style would appear in person with the "relevant documents and papers" and "provide necessary information and statements" in connection with the arbitral proceedings. One such letter dated October 24, 2017 is sent by one Sharon Kiron on behalf of Hi Style. The Impugned Award is therefore an ex parte award that had to be passed without the participation of Hi Style in the hearings, seeking of course, adjourments at every scheduled hearing.

Facet of Limitation:

[4] At the threshold, Mr. Dhruva Gandhi, Learned Advocate on behalf of Rakesh would submit that this Court is devoid of jurisdiction to deal with the challenge inasmuch as the challenge to the Arbitral Award has been filed way beyond the period of limitation statutorily provided for in the Act even after including the period in which this Court has been granted powers to condone the delay.

[5] The Impugned Award is dated May 9, 2018 and is said to have been received from the Mahajan by way of covering letter dated May 15, 2018, which was eventually received on May 23, 2018. Accepting this date as the admitted date of receipt, the three-month period referred to in Section 34(3) of the Act would have expired on August 23, 2018. The further period of 30 days within which this Court would have jurisdiction to condone the delay beyond the aforesaid period of three months, expired on September 23, 2018. Admittedly, the challenge under Section 34 of the Act had been mounted on October 5, 2018.

[6] Therefore, Mr. Gandhi would contend that while there is not even a whisper of seeking any condonation of delay on the part of Hi Style, even if it had done so, the delay is of such an order that it is beyond the scope of condonation envisaged in the law.

[7] To counter this contention, Mr. Avinash Wadhwani, Learned Advocate on behalf of Hi Style would contend that the Impugned Award is a complete nullity inasmuch as it is based on a non-existent arbitration agreement. The arbitration clause is merely set out in an invoice that is not signed by both parties, he would contend. Moreover, he would submit that Hi Style is not a member of the Mahajan and the arbitration has been powered on without Hi Style's consent and imposed upon it. Mr.

Wadhwani would contend that limitation would hardly matter when the Court is faced with situation of a nullity in law being forced on someone, and this Court can intervene to quash and set aside the Impugned Award. Towards this end, Mr. Wadhwani would point to various contents of the record to indicate that non-interference with the Impugned Award would lead to an abject situation of totally unwarranted and untenable injustice being meted out to Hi Style.

[8] It is the case of Hi Style that it was taken by surprise when it received an e-mail on behalf of Rakesh on August 21, 2016, on the general "**contact us**" e-mail id of Hi Style following up on payment. On that day one Mr. Ram PS replied to the e-mail asking Rakesh to provide details of the invoice and copies of the invoice to examine internally what payment was made pursued by Rakesh. According to Hi Style, the documents forwarded by Rakesh contained Invoice No. 22841 dated May 28, 2016 along with Lorry Receipt No. 674344 dated May 30, 2016 and a letter dated September 23, 2016 from the transport company to Rakesh confirming delivery of the material purportedly delivered by the transporter to Hi Style on behalf of Rakesh. The invoice contains various terms and conditions. Clause 9 of the said terms and conditions provides that the sale covered by the invoice is subject to the resolution by arbitration under the rules of the Mahajan.

[9] Mr. Wadhwani would contend that Hi Style had never received the invoice or the Lorry Receipt from the Respondent and that Rakesh may have been cheated by one Mr. Shivakumar who was a former employee of Hi Style who had no authority to represent Hi Style to place any orders. Mr. Wadhwani would rely upon certain letters written to the Tamil Nadu police in this regard and would contend that it is entirely upto Rakesh to pursue any claims against Mr. Shivakumar directly, leaving Hi Style out of it. It is Mr. Wadhwani's contention that Hi Style has been arm twisted into an arbitration proceedings without there having been any agreement to arbitrate and without even a proper invocation of arbitration. He would also point to replies sent by Advocates of Hi Style to Advocates of Rakesh to indicate that Rakesh has been cheated and defrauded by a former employee Mr. Shivakumar who had left Hi Style in January 2016 and did not have authority to represent Hi Style and place any orders and make any commitments to counter parties in the market. It is Mr. Wadhwani's contention that one M/s. Praveen Agency which is indicated as the agent on whose behalf the order had been placed, is also unknown to Hi Style.

[10] Mr. Gandhi on behalf of Rakesh would point to the material on record and indicate that the invoice raised by Rakesh on Hi Style through the agent M/s. Praveen Agency would inexorably point to various bales of fabric that had been despatched by Rakesh to Hi Style with its specific address being indicated in the invoice and demonstrating that this had indeed been sent and delivered to Hi Style. He would indicate that the goods described in the invoice are contemporaneously indicated in the goods consignment note and freight charges of Rs.10,937/- are shown as being payable for the very goods covered by the invoice. The value of the goods indicated in the

goods consignment note is in conformity with the value ascribed to the goods in the invoice.

[11] Mr. Gandhi would also point to a specific receipt of a consignment sent by Air dated June 1, 2016 which would indicate receipt by one Mr. Ram who has signed the Proof of Delivery ("POD") indicating that there is indeed a confirmation of receipt by the consignee in good order and condition. Mr. Gandhi would indicate that at this distance in time, it is apparent that the image sought to be created on behalf of Hi Style that it was unaware of the transaction, is untenable when Hi Style had multiple opportunities to point all this out to the Learned Arbitral Tribunal and indeed sought adjournments to do precisely that.

[12] Mr. Gandhi would also point out that should Hi Style have been defrauded by its former employee Mr. Shivakumar as claimed by Hi Style, it is for Hi Style to pursue such action as deemed fit against the said Mr. Shivakumar but it cannot assume that it would be excused from its contracted obligations owed to counterparties. Mr. Gandhi would also point out that he would explain the contents on merits only to assuage the Court's conscience to dispel the impression created that there was no transaction whatsoever and that Rakesh was being forced into an arbitration that it never agreed to conduct. That apart, Mr. Gandhi would point to a letter dated October 24, 2017 sent by one Mr. Sharon Kiron requesting for an adjournment in the arbitration indicating that Hi Style would desirous of appearing in person with the relevant documents and papers and to explain its stand. So also another e-mail dated February 24, 2018 seeking of postponement of the hearing was sent by one Mr. Ram, the Head Merchandiser on the premise that the representative of Hi Style was hospitalized due to high blood pressure and would be unable to attend the hearing. A third adjournment request dated March 2018 is pointed to, seeking a specific date and a confirmation so that Hi Style is able to attend the hearing along with requisite documents. This e-mail is marked to multiple officials of Hi Style and in fact requests the Mahajan to confirm the final hearing date so that travel plans can be made and proceedings could be attended to. According to Mr. Gandhi, the stance now being adopted is an afterthought and a clever device in circumventing the execution of the Arbitral Award validly obtained by Rakesh against Hi Style.

Analysis and Findings:

[13] Having heard the parties and having examined the record with their assistance, it is apparent that the Petition has been filed well beyond a period within which Section 34 Court had powers to condone the delay in mounting a challenge to the Arbitral Award. This position is in fact admitted by Hi Style, but it is contended that this matters little to this Court's power to quash the Impugned Award.

Purported Absence of Arbitration Agreement:

[14] Mr. Wadhwani relied upon the judgement of the Learned Division Bench of this Court in Mikesh Corporation, Mikesh Corporation vs. Picotee Exports and

Ors.,MANU/MH/2025/2009 indicating that a mere arbitration clause in an invoice would not lead to existence of an Arbitration Agreement. In the facts of that case, the parties participated in the Arbitration Agreement and raised their objection and the decision in the award was considered in time on merits by Section 34 Court and the Learned Division Bench upheld that view.

[15] The law on the need for an arbitration agreement to be in writing and not necessarily signed by both parties is clear right since the Arbitration Act, 1940 and was reiterated under the Act by the Supreme Court in Caravel Shipping [**Caravel Shipping Services (P) Ltd. v. Premier Sea Foods Exim (P) Ltd**, 2019 11 SCC 461]. In 2019, the Supreme Court endorsed the position of law holding the field even under the Arbitration Act, 1940 in Jugal Kishore [Jugal Kishore Rameshwardas v. Goolbai Hormusji,1955 2 SCC 187] way back in 1955, dealing with a bill of lading that is not signed by both parties, in the following words:-

8. In addition, **we may indicate that the law in this behalf**, in Jugal Kishore Rameshwardas v. Goolbai Hormusji, **is that an arbitration agreement needs to be in writing though it need not be signed. The fact that the arbitration agreement shall be in writing is continued in the 1996 Act in Section 7(3) thereof. Section 7(4) only further adds that an arbitration agreement would be found in the circumstances mentioned in the three sub-clauses that make up Section 7(4). This does not mean that in all cases an arbitration agreement needs to be signed. The only pre-requisite is that it be in writing, as has been pointed out in Section 7(3).**

[16] More recently, in Glencore [Glencore International AG vs. Shree Ganesh Metals and Another,2025 SCCOnLineSC 1815], dealing with an issue of whether an arbitration agreement was in existence in relation to a letter of credit, the Supreme Court held as follows:-

> **2.** Is there a binding arbitration agreement between the appellant and respondent No. 1?
>
> **19.** .....There is no denying the legal proposition that an arbitration agreement can be inferred even from an exchange of letters, including communication through electronic means, which provide a record of the agreement. The mere fact that Contract No. 061-16-12115-S was not signed by respondent No. 1 would not obviate from this principle when the conduct of the parties in furtherance of the said contract, clearly manifested respondent No. 1's acceptance of the terms and conditions contained therein, which would include the arbitration agreement in clause 32.2 thereof.
>
> **[Emphasis Supplied]**

[17] The contention now being made at this belated stage that the arbitration agreement printed on the invoice could never apply is a contention that could have been made before the Learned Arbitral Tribunal. Evidently, this was not done, despite

taking multiple adjournments. Indeed, this appears to be an afterthought to place yet another hurdle in the path of execution of the Impugned Award.

[18] The reliance placed by Mr. Wadhwani on the decision by a Learned Division Bench of this Court in the case of Divya Shivalik [**Divya Shivalik vs. Shantilal Jamnadas**, 1999 2 BCR 734] is of no avail. In that case, the parties had an actual contract without an arbitration clause. Existence of an arbitration agreement was sought to be asserted solely in reliance upon invoices raised pursuant to the contract that had no arbitration clause. That is not the case in the matter at hand, where the invoice on its own contains an arbitration clause and that is the only agreement between the parties.

Inherent Power of Courts:

[19] In support of Hi Style's contention that the Court has inherent powers to ignore the period of limitation and declare the Arbitral Award to be a nullity, Mr. Wadhwani relies on the judgment of the Supreme Court in **R.K. Pandey** [State of Uttar Pradesh and Another vs. R.K. Pandey and Another, 2025 SCC OnLine SC 52] to indicate that in the peculiar facts and circumstances of the case, an Arbitral Award that was evidently a product of fraud and passed in the absence of an arbitration agreement was interfered with and set aside by the Supreme Court, although the Allahabad High Court had dismissed the challenge under Section 34 on the ground of having been barred by limitation and filed beyond the condonable period. The Supreme Court, on facts, held that the Arbitration Agreement in that case was completely non-existent but the Arbitral Tribunal had purported to conduct the proceedings in respect of an employment agreement between one Mr. Pandey and G.S.V.M. Medical College, Kanpur. All the awards had been passed ex parte. It was seen that there had been no case whatsoever of the employees and G.S.V.M. Medical College having entered into any agreement containing the arbitration clause.

[20] Having examined the judgment closely, it is evident that Section 34 Court indeed did not deal with the matter, in view of the challenge having been filed way beyond the limitation period but the Supreme Court has narrated the factual matrix in detail on the premise that they were indeed peculiar and that intervention of the Supreme Court was necessary to prevent the enforcement of the Arbitral Award, which was null and void ab initio for the reasons set out in the said judgement.

[21] To my mind, this is a power that was inherently available to the Supreme Court under Article 142 of the Constitution of India. Even if the Supreme Court did not explicitly invoke Article 142 of the Constitution of India for making the intervention, the Supreme Court had the fullest power to take notice of the extraordinary situation that emerged in the facts of that case. This Court's jurisdiction is statutorily defined in Section 34 of the Act. That provision contains a limitation of a period beyond which condonation would not be permissible. The Supreme Court has nowhere stated that the Section 34 Court had the same powers and ought to have exercised its powers. There is no declaration of law to that effect.

[22] The Supreme Court noted that said Mr. Pandey had himself filed Writ Petitions in the Allahabad High Court and had them withdrawn without any decision on the merits. Thereafter, the Arbitrator appointed by Mr. Pandey unilaterally conducted the arbitration proceedings and awarded amounts to Mr. Pandey against the G.S.V.M. Medical College and the State of Uttar Pradesh. The Supreme Court noted that the claims made before the purported arbitrator were themselves hopelessly barred by limitation. The Supreme Court also noticed the decision of the Constitutional Bench dealing with the unilateral appointment of arbitrators and taking the totality of circumstances into account, notwithstanding the expiry of time under Section 34 of the Act, took note of the fact that even at the enforcement stage the intervention could be made on the ground of absence of subject matter jurisdiction and the ground of fraud.

[23] Therefore, I have no doubt in my mind that the powers that were exercised by the Supreme Court in R.K. Pandey were powers available inherently to the Supreme Court under Article 142 of the Constitution of India. The Supreme Court has taken care to ensure that no position of general application was declared for Section 34 Courts in the country to follow, to make interventions despite being barred by limitation. Instead, the Supreme Court thought it necessary to interfere with the Arbitral Awards in that case, which were found to be a product of fraud and a product of non-existent Arbitration Agreement. This stands in sharp contrast with the facts of the case at hand, which are discussed later below.

[24] Mr. Wadhwani would also rely on **Sushil Kumar Mehta, Sushil Kumar Mehta vs. Gobind Ram Bohra (Dead) Through His LRS.**, 1990 1 SCC 193 quoting Paragraph No.12 thereof, to submit that it is a well-established principle that a decree passed by a Court without jurisdiction is a nullity and the plea can be set up whenever and wherever the decree is sought to be enforced or relied upon, and even at the stage of execution or in collateral proceedings. This again does not lead to this Court being clothed with a power to ignore the statutory period of limitation stipulated in the Act and to ignore other declarations of the law by the Supreme Court, interpreting Section 34(3) to hold that Section 34 Court does not have the power to condone a delay.

[25] Likewise, the reliance on the judgement of a Learned Single Judge of the Delhi High Court in Mr. Mohammad Eshrar Ahmed [Mr. Mohammad Eshrar Ahmed vs. M/s. Tyshaz Buildmart India Private Limited, O.M.P. (T) (Comm.) 105/2023, I.A. 22122/2023] in which Learned Single Judge of Delhi High Court considered a Petition filed under Section 14(1)(a) of the Act seeking termination of the arbitration conducted by an Arbitrator without jurisdiction on the premise that the arbitration clause in the invoice would not constitute an arbitration agreement. This judgement too essentially turns on the issue of unilateral appointment of an arbitrator and noted that should the issuer of the invoice have sought to rely on the arbitration clause contained in the invoice, when the counter party refused to participate in the arbitration, the issuer of the invoice ought to have approached the Section 11 Court to appoint an arbitrator in view of the non-cooperation by a counterparty to the arbitration agreement. This is a

ratio about unilateral appointment of arbitrator and stands on a footing completely different from the matter at hand.

Section 34(3) of the Act:

[26] In my opinion, each of these judgments is distinguishable as aforesaid inasmuch as they do not declare in absolute terms, a law of general proposition under Section 34 of the Act, and that too in a situation where the approach to the Court was after the condonable period provided under the limitation provisions in Section 34 of the Act.

[27] It is now clear from numerous decisions of the Supreme Court not only in interpreting Section 34 of the Act but also in interpreting identically drafted provisions in other legislation, that the Section 34 Court has no power to condone the delay beyond the 30-day period after the three-month period. Section 34(3) is extracted below:-

> (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.**
>
> **[Emphasis Supplied]**

[28] Even a plain reading of the foregoing would indicate that the period within which the challenge is to be mounted is three months and the Court's power to condone delay beyond that period is restricted to a further period of 30 days. After such additional 30-day period, there is no power at all to condone the delay.

[29] To cite just one judgement, in Haryana Federation [**Haryana State Coop. L&C Federation Ltd. v. Unique Coop. L&C Coop. Society Ltd**, 2018 14 SCC 248], the Supreme Court summarised this position in the following words:

> 10. A perusal of Section 34(3) leaves no room for any doubt that an arbitral award has to be assailed within a period of 3 months, whereafter, condonation of delay is permissible only for a further period of 30 days. Delay beyond 3 months and 30 days is not condoned. This position has repeatedly been reiterated by this Court and was dealt with in extensive detail by the Additional District Judge, Panchkula, in the order dated 17-5-2014, by which the objections filed by the appellant were dismissed by concluding that "... on the basis of the well-settled propositions of law, which have been discussed and laid down as referred above, this Court has arrived at a definite

conclusion that the application in question is not maintainable and delay cannot be condoned for filing the objections under Section 34...".

[Emphasis Supplied]

[30] Therefore, this is not a case where the contentions made on behalf of Hi Style can be considered, when the approach to the Section 34 Court has clearly been beyond the permissible period. Alleged Non-Receipt of Arbitral Award:

[31] To deal with this situation, Mr. Wadhwani would contend that the Impugned Award was never really received by Hi Style since the original award signed in the original by the Learned Arbitral Tribunal has not been served on Hi Style till date. He would submit that merely a copy has been sent by the office of the Mahajan and this does not constitute delivery of the arbitral award under Section 31(5) of the Act.

[32] Towards this end, the judgement of a Learned Division bench of the Delhi High Court rendered in Kristal Vision Private Limited [Kristal Vision Projects Private Limited vs. Union of India, FAO(OS) (COMM) 206/2024, CM APPL. 52678/2024] approving the ruling of a Learned Single Judge of that Court summarises the law clearly, and I am in respectful agreement with it. The following extracts are noteworthy:-

34. In Continental Telepower Industries Ltd. v. Union of India,2009 SCCOnLineDel 1859, the learned Single Judge of this Court has held that there is no requirement in Section 31(5) of the Act to deliver an ink signed copy of the award. **Section 34 of the Act does not require the filing of any ink signed copy of the award along with petition, though the award would definitely be required by the Court to appreciate the contentions with respect thereto. It was further held that the photocopy of the signed award along with cover letter bearing signature in original of the arbitrator was sufficient authentication of the photocopy of the award enclosed.** It was observed that **Section 31(5) of the Act uses the expression "signed copy". Copy is generally understood as something different from the original. Legislature did not use the expression "signed award". Thus, the Arbitrator is not required to deliver to the parties award signed by the members of the Arbitral Tribunal, as mentioned in Section 31(1) of the Act, but merely a "copy" thereof. The purpose of qualifying the word "copy" with "signed" is that there must be some authentication of the "copy". If it were to be held that the "copy" must be "ink signed" by the arbitrators, then it will not be a "copy" but be the award signed by the arbitrators. That is the only possible meaning of the words "signed" and "copy" used in conjunction.**

[Emphasis Supplied]

[33] A Learned Single Judge of this Court dealing with a bunch of Writ Petitions raising the same issue about delivery of the Arbitral Award examined the declaration

of the law by Learned Division Bench of the Calcutta High Court in **National Agricultural Co-operative Marketing Federation of India Ltd., National Agricultural Co-operative Marketing Federation of India Ltd. vs. M/s. R. Piyarelall Import and Export Ltd.**, 2016 AIR(Cal) 160 with approval in the following terms:

8.1. In National Agricultural Cooperative Marketing Federation of Indian Ltd. (supra) the learned Division Bench of the Calcutta High Court while considering the language of Section 31(5) of the A & C Act, held as under:-

> "25. There can be no doubt that the arbitral award would necessarily have to be signed by all the arbitrators or at least by the majority of the members of the arbitral tribunal. However, in our view, it was not the intention of legislature that all the copies of the award, dispatched to the respective parties would have to be separately signed by the Learned arbitrators. A certified photocopy of the original award along with the signatures of the members of the Arbitral Tribunal would suffice.
>
> 26. Had it been the legislative intent that all copies of the award required to be furnished to the respective parties to a multi party arbitration, should actually be signed by members of the arbitral tribunal themselves and/or in other words, each of the copies should contain the original signatures of the arbitrators, Parliament would, perhaps, not have used the expression 'signed copy of the award' but used the expression 'a copy of the award, duly signed by the arbitrators', in Section 31(5) of the 1996 Act.
>
> [Emphasis Supplied]

[34] Citing the same with approval, the Learned Single Judge inter alia ruled as follows:

The delivery of the signed copy of the award, is therefore information, brought to the notice and knowledge of each party, as to the contents of the award, so as to make the 'party', aware that the limitation to raise a challenge, has started to run, which knowledge/information is equally available to the 'party', when it receives the certified copy of the award signed by the Arbitrator. The purpose of the provision, of imparting knowledge to the 'party', as to the contents of the award, is achieved whether a signed copy is delivered or the certified copy of the signed award is obtained by the 'party'. **In either case knowledge/information as to the contents of the award stands attributed to the 'party', and the time as provided in Section 33(1) and 34(3) of the A & C Act, begins to run therefrom.**

[Emphasis Supplied]

[35] I am in respectful agreement with the position articulated by the Learned Single Judge of our Court and the Learned Division Bench of the Delhi High Court and the Calcutta High Court. Admittedly, the Arbitral Award was received by way of

the communication dated May 15, 2018 on May 23, 2018. Hi Style had knowledge of the Arbitral Award having been passed, with the time limit under Section 34(3) of the Act beginning to run from that date. Despite having notice of the award having been passed, Hi Style did not pursue the recourse available to it under Section 34 of the Act.

Section 16 Application not Filed:

[36] Another facet of the matter cannot be ignored. It was entirely open to Hi Style to file an application under Section 16 of the Act before the Arbitral Tribunal raising all the contentions now being raised about signatures of both parties not being contained on the arbitration agreement. This was not done. On the contrary, both Sharon Kiran and PS Ram have sought adjournments from the Learned Arbitral Tribunal, promising to appear on the next date, and did not at all attend to the arbitration. That apart, it is Sharon Kiran who is seen to have complained about Mr. Shivakumar to the Tamil Nadu Police and it is Ram PS who appears to have signed on the proof of delivery note with his mobile number as seen from his e-mail signature footer being handwritten on the proof of delivery acknowledgement. The credibility of the absence of delivery stands undermined. It is not for this Court to comment on merits in a challenge that is hopelessly barred by limitation. This observation is only being made to point to how the extreme contention about knowing nothing at all about the transactions contracted with Rakesh stands undermined on the face of the record. Of course, it was open to Hi Style to subject this to the trial in the arbitration but it chose not to, simply taking time every single hearing. Even if Hi Style had been of the view that there was no Arbitration Agreement in existence, this squarely fell within the ambit of Section 16 of the Act for pursuit before the Arbitral Tribunal. On at least three occasions Hi Style has positively written to the Mahajan asking for adjournments or for fixation of arbitration on specific date so that it could participate in the proceedings and yet it has not participated.

Delay in Restoration of this Petition:

[37] Even before this Court, the Section 34 Petition that was belatedly filed was allowed to be dismissed without removing office objections. It is seen from the record that even after filing of the Petition under Section 34 of Act, the challenge was not seriously pursued on behalf of Hi Style. Indeed, there is no application seeking condonation of delay. The Section 34 Petition as filed, came to be rejected on July 4, 2019 for non-removal of office objections and owing to non-appearance by advocates for Hi Style before the Prothonotary and Senior Master. On dismissal, Hi Style did not seek restoration in time and filed it with a delay of 2 years and 20 days for which condonation was sought.

[38] The Restoration Application was filed when execution proceedings got underway before the jurisdictional Court in Tamil Nadu, A Learned Single Judge of this Court by an order dated March 12, 2024 restored the Section 34 Petition, with cost of Rs.30,000/- being payable to the charity named in that order. The said donation was made by Hi Style, and the Section 34 Petition got restored.

[39] When one looks at the totality of the circumstances, the proposition that this Court should perceive an ex facie absence of jurisdiction much less a defect of jurisdiction and has powers to interfere despite the period stipulated under Section 34 having gone by, does not bend itself for acceptance by this Court. The conduct of Hi Style is evidently lackadaisical. It is settled law that the law does not protect the indolent.

[40] Both before the Learned Arbitral Tribunal as well as before this Court, the matter has been conducted with scant regard for statutory timelines. Even during the time the arbitration was underway, Hi Style simply sought adjournments from time to time before the Arbitral Tribunal and did not even bother to file a Section 16 Application to take up the contentions now being taken.

[41] While I am of the view that this Court indeed does not have the power to condone the delay beyond the period of 30 days after expiry of first three months, such conduct of Hi Style in its pursuit of these proceedings cannot be ignored.

[42] Therefore, this Petition is dismissed as not being capable of being entertained, filed as it has been well beyond the period within which it should have been filed. Interim Applications, if any shall also stand disposed of accordingly.

[43] All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website

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2026(1)CAC111

HIMACHAL PRADESH HIGH COURT

(Hon'ble Judge Ranjan Sharma)

Arbitration Case No 330 of 2025 **dated 19/11/2025**

Rajender Dev

Versus

Land Acquisition Officer, Nhai and Others

EXTENSION OF ARBITRATOR'S MANDATE

Arbitration and Conciliation Act, 1996 Sec. 29A - Extension of Arbitrator's Mandate - Petition filed under Section 29A of Arbitration and Conciliation Act for extension of time to conclude arbitral proceedings - Proceedings initiated in 2019 kept in abeyance by Arbitrator - Respondents failed to file reply despite opportunity - Court observed that similar matters had been allowed earlier - Held that mandate of Arbitrator can be extended by Court under Section 29A(4) and (5) on sufficient cause being shown - Extension granted to conclude arbitral proceedings within reasonable period - Petition Allowed

Law Point: Court under Section 29A has power to extend time for making arbitral award on sufficient cause being shown to ensure completion of proceedings efficiently

Acts Referred:

Arbitration and Conciliation Act, 1996 Sec. 29A

Counsel:

Ajay Chauhan, Shreya Chauhan, Navlesh Verma

JUDGEMENT

Ranjan Sharma, J.- [1] Petitioner, Rajender Dev has come up before this Court in instant petition filed under Section 29-A of the Arbitration and Conciliation Act, 1996, seeking following relief(s):-

> "It is, therefore, respectfully prayed that in view of the facts stated above the petition may kindly be allowed, and the time limit for completing the Arbitration proceedings in Arbitration Reference case No.406/2019 titled as Rajender Dev versus Collector Land Acquisition, NHAI and another pending before the Ld. Divisional Commissioner (Arbitrator), Mandi, Distt. Mandi, H.P. may kindly be extended by some reasonable time, or any other orders or directions which this Hon'ble Court may deem fit be passed in the interest of justice."

[2] Pursuant to the issuance of notice on 13.10.2025 and the subsequent orders dated 10.11.2025, the Respondents No. 1 and 2-NHAI has not filed the reply till day and, therefore, right to file the reply is closed. Learned State Counsel states that no reply is to be filed by Respondent No.3, as Respondents No. 1 & 2 are the contesting respondents.

[3] On query by this Court, Learned Counsel for the petitioner submits that identical matters have been allowed by granting extension to Learned Arbitrator-cum-Divisional Commissioner, Mandi, (HP)

[4] In above backdrop, this Court, proceeds to dispose of the instant petition, without the reply having been filed, at this stage itself, which shall only expedite the conclusion of arbitral proceedings, in which parties herein have participated since the year 2019, till the passing of the Impugned Order on 17.05.2023 [Annexure P-1].

[5] Grievance of the petitioner is that pursuant to passing of the Award by CALA concerned, the parties offered themselves for arbitral proceedings, before Learned Arbitrator-cum-Divisional Commissioner, Mandi, who commenced the arbitral proceedings vide Case No.406/2019. It is averred that though arbitral proceedings continued since 2019 but Learned Arbitrator passed an order on 17.05.2023 [Annexure P-1] for keeping the arbitral proceedings in abeyance. It is in this background, the present petition has been filed, with the prayer to direct Learned Arbitrator to conclude the arbitral proceedings within a stipulated period by extending the time for

concluding the arbitral proceedings under Section 29 A (4) & 5 of Arbitration and Conciliation Act, by quashing the order dated 17.05.2023 [Annexure P-1].

[6] Heard, Mr. Ajay Chauhan, Advocate for the petitioner, Ms. Shreya Chauhan, Advocate for the respondents-National Highway Authority of India and Mr. Navlesh Verma, Learned Additional Advocate General for respondent No.3.

[7] Ms. Shreya Chauhan, Learned Counsel for the respondents, does not dispute the factual matrix that the arbitral proceedings commenced in the year 2019 and since then, the parties have participated in these proceedings. It is not in dispute that in other identical cases relating to the same subject-land though the arbitral proceedings were kept in abeyance and the mandate of the Arbitrator was terminated but consequent upon the intervention of this Court, the time was enlarged/extended for concluding the arbitral proceedings. Pursuant to the orders passed in similar cases arbitral process are underway and/or in some case the same have been concluded.

[8] While dealing with a similar fact-situation, the Hon'ble Supreme Court in **TATA Sons Pvt. Ltd. (Formerly TATA Sons Ltd.) vs. Siva Industries and Holdings Ltd. and others**, 2023 1 Scale 793, held that the mandate of an Arbitrator is liable to be extended by the Court, under Section 29A(4) and 29A(5) of the Act, in the following terms:-

> "24 The provisions of Section 29A, as originally introduced into the statute, mandated that all awards shall be made within a period of twelve months from the date on which the arbitral tribunal enters upon the reference. The explanation clarified when the arbitral tribunal would be deemed to have entered upon the reference, namely, the date on which the arbitrator has received written notice of the appointment. The mandatory nature of the provisions of Section 29A(1) and their application to all arbitrations conducted under the Act, domestic or international commercial, was evident from the use of the word "shall". **In terms of Section 29A(4), in case the arbitral award was not rendered within the twelve or eighteen month period as the case may be, the mandate of the arbitrator(s) would stand terminated, unless on an application made by any of the parties, the court extended time on sufficient cause being shown.**
>
> xxxx. xxx... xxx..
>
> 26. Sub-section (3) of Section 29A empowers parties, by consent, to extend the period specified in subsection (1) for making the award by a further period not exceeding six months. Thereafter, if the award is not made within the period which is specified in sub-section (1) or the extended period specified in sub-section (3), the mandate of the arbitrator shall terminate unless the court has extended the period either prior to or after the expiry of the period so specified. In other words, the **timeline of twelve months for making the award (in matters other than international commercial**

arbitration), is qualified by the consensual entrustment to the parties under sub-section (3) to extend the period by six months after which the court is empowered in terms of subsection (4) to extend the period for making the award. The submission of the second respondent is that the provisions of sub-section (3) and subsection (4) must also apply to an international commercial arbitration. This would merit close scrutiny. The legislature has not expressly excluded the applicability of sub-sections (3) and (4) of Section 29A to an international commercial arbitration. **But, at the same time, it must be noticed that the rationale underlying sub-section (3) is to ensure that despite the stipulation of twelve months for the making of an arbitral award in the domestic context, parties may by consent agree to an extension of time by a further period of six months. Such an extension of six months is envisaged in the case of a domestic arbitration since there is a mandate that the award shall be made within a period of twelve months. A further extension has, however, been entrusted to the court in terms of sub-section (4) of Section29A.** However, insofar as an international commercial arbitration is concerned, the statutory regime is clear by the substantive part of sub-section 1 of Section 29A in terms of which the timeline of twelve months for making an arbitral award is not applicable to it. In an international commercial arbitration, the legislature has only indicated that the award should be made as expeditiously as possible and that an endeavour may be made to dispose of the matter within a period of twelve months from the completion of pleadings."

(emphasis supplied)

[9] While dealing with a similar situation, the Hon'ble Supreme Court, in **Civil Appeal No. 10620 of 2024 [Arising out of Special Leave Petition (Civil) No.23320 of 2023]** titled as **Rohan Builders (India) Private Limited versus Berger Paints India Limited,** decided on 12.09.2024, has reiterated that mandate of an Arbitrator is liable to be extended in view of sufficient cause to the satisfaction of the Court, in the following terms:-

"15. Rohan Builders (India) Pvt. Ltd. (supra) highlights that an interpretation allowing an extension application post the expiry period would encourage rogue litigants and render the timeline for making the award inconsequential. **However, it is apposite to note that under Section 29A(5), the power of the court to extend the time is to be exercised only in cases where there is sufficient cause for such extension. Such extension is not granted mechanically on filing of the application.** The judicial discretion of the court in terms of the enactment acts as a deterrent against any party abusing the process of law or espousing a frivolous or vexatious application. Further, the court can impose terms and conditions while granting an extension. Delay, even on the part of the arbitral tribunal, is not

countenanced.28 The first proviso to Section 29A(4) permits a fee reduction of up to five percent for each month of delay attributable to the arbitral tribunal.

16. Lastly, Section 29A(6) does not support the narrow interpretation of the expression "terminate". It states that the court - while deciding an extension application under Section 29A(4) - may substitute one or all the arbitrators. Section 29A(7) states that if a new arbitrator(s) is appointed, the reconstituted arbitral tribunal shall be deemed to be in continuation of the previously appointed arbitral tribunal. This obliterates the need to file a fresh application under Section 11 of the A & C Act for the appointment of an arbitrator. In the event of substitution of arbitrator(s), the arbitral proceedings will commence from the stage already reached. Evidence or material already on record is deemed to be received by the newly constituted tribunal. The aforesaid deeming provisions underscore the legislative intent to effectuate efficiency and expediency in the arbitral process. This intent is also demonstrated in Sections 29A(8) and 29A(9). The court in terms of Section 29A(8) has the power to impose actual or exemplary costs upon the parties. Lastly, Section 29A(9) stipulates that an application for extension under subsection (5) must be disposed of expeditiously, with the endeavour of doing so within sixty days from the date of filing.

17. As per the second proviso to Section 29A(4), the mandate of the arbitral tribunal continues where an application under sub-section (5) is pending. **However, an application for extension of period of the arbitral tribunal is to be decided by the court in terms of sub-section (5), and subsections (6) to (8) may be invoked. The power to extend time period for making of the award vests with the court, and not with the arbitral tribunal. Therefore, the arbitral tribunal may not pronounce the award till an application under Section 29A(5) of the A & C Act is sub-judice before the court.** In a given case, where an award is pronounced during the pendency of an application for extension of period of the arbitral tribunal, the court must still decide the application under sub-section (5), and may even, where an award has been pronounced, invoke, when required and justified, sub-sections (6) to (8), or the first and third proviso to Section 29A(4) of the A & C Act.

18. **While interpreting a statute, we must strive to give meaningful life to an enactment or rule and avoid cadaveric consequences that result in unworkable or impracticable scenarios. An interpretation which produces an unreasonable result is not to be imputed to a statute if there is some other equally possible construction which is acceptable, practical and pragmatic."**

[10] Even a perusal of the Statute prescribes that arbitral proceedings are to be completed within 12 months and the same were extendable by 6 months with consent of parties. Though, the arbitral proceedings were to be completed within 18 months, but they continued from 2019 till the passing impugned order on 17.05.2023 [Annexure P-1], whereby, the mandate of the Learned Arbitrator stood terminated and the arbitral proceedings were kept in abeyance. Material on record suggests that, even after expiry of 18 months period, the arbitral proceedings were delayed primarily at the instance of respondent; and due to procedural delays and due to administrative delays, for which parties cannot be made to suffer. The parties have neither objected to the continuance of arbitral proceedings beyond permissible period nor placed any material to show that any of the parties had prayed or was granted extension in arbitral proceedings by this Court, earlier.

[11] Respondents-Nhai cannot be permitted to take the plea of delay and laches when, indisputably similar extension was given to other similarly placed landowners. Once the parties to arbitral proceedings, including the Respondents-NHAI had participated in the arbitral proceedings beyond the permissible period, therefore, the mandate of the Statute, [i.e. Arbitration and Conciliation Act] was to be given a meaningful life, so as to make it workable and practicable. Further, once the non-conclusion of the arbitral proceedings was not attributable to the petitioner; therefore, the Respondents-NHAI cannot be permitted to raise the plea of delay and laches, so as to defeat the object and intent of the Enactment but efforts should be to make it practical and pragmatic, so as to enable the parties to settle their disputes by alternative resolution, in an effective, efficient and expedient manner by arbitration. In these circumstances, sufficient cause for enlargement of time for concluding the arbitral proceedings is made out, in facts of instant case.

[12] Parties are also ad idem that the matter is squarely covered by the judgment of this Court in **Arbitration Case No.22 of 2025, titled as Ghanshyam Mahajan versus Land Acquisition Officer-cum-Competent Authority & Ors.,** decided on 07.03.2025. Likewise, Learned Counsel(s) place reliance on the judgment **Arbitration Case No.811 of 2024, titled Hari Ram Versus Collector Land Acquisition National Highways Authority of India & Others,** decided on 20.06.2025 and Judgment in **Arbitration Case No.126 of 2025 titled Hari Singh Saini & Anr. Versus Land Acquisition Officer & Another,** decided on 27.06.2025, whereby, the mandate of Learned Arbitrator was extended by this Court, with directions to conclude the arbitral proceedings within six months from the date of receipt of copy of the judgement.

[13] Taking into account the entirety of the facts and circumstances and the object and intent of arbitral proceedings, this Court disposes of the instant petition, in the following terms:-

(i) Order dated 17.05.2023 Annexure P-1, in Petition No.406 of 2019 passed by Learned Arbitrator-cum-Divisional Commissioner, Mandi, In Re:

Rajender Dev Versus Collector, Land Acquisition Officer, National Highway Authority of India & another is quashed and set aside;

(ii) Arbitrator-cum- Divisional Commissioner, Mandi, is mandated to complete the arbitral proceedings and to pass the Award, in accordance with law within six months from the date of receipt of copy of this judgment; and

(iii) Costs made easy for respective parties.

In aforesaid terms, the instant petition is allowed and all pending miscellaneous application(s), if any, shall also, stand disposed of, accordingly

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2026(1)CAC117

IN THE HIGH COURT OF KARNATAKA

(Hon'ble Judge Anu Sivaraman; Vijaykumar A Patil)

Commercial Appeal No 395 of 2024 **dated 10/11/2025**

Union of India

Versus

M/s Inderjit Mehta Construction Pvt Ltd

LIMITATION FOR CHALLENGE

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 31 - Commercial Courts Act, 2015 Sec. 13 - Limitation For Challenge - Appeal preferred against rejection of application under Arbitration Act on ground of limitation - Appellant contended copy of award received later hence application within prescribed period - Respondent asserted signed copy of award received earlier and limitation expired - Record showed email communication of signed award by arbitrator to both parties and acknowledgment of receipt - Provision under Arbitration Act mandates delivery of signed copy to parties - Period of limitation reckoned from receipt of such copy - Finding recorded that application filed beyond statutory period and no sufficient cause shown for delay - Commercial authority rightly dismissed Section 34 petition - No error in computation of limitation - Appeal Dismissed

Law Point: Limitation to challenge arbitral award under Section 34 of Arbitration Act begins from date of receipt of signed copy of award-Delivery by email or hard copy constitutes valid communication-Court has no power to condone delay beyond statutory period of three months plus thirty days.

Acts Referred:

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 31

Commercial Courts Act, 2015 Sec. 13

Counsel:

H Shanthibhushan, Princy Ponnan

JUDGEMENT

Anu Sivaraman, J.- [1] This appeal is filed under Section 13(1-A) of the Commercial Courts Act, 2015, preferred against an order dated 18.07.2024 passed in Com.AP No.13/2024 by LXXXV Additional City Civil and Sessions Judge (CCH-86) ('Commercial Court') in an application filed under Section 34 of the Arbitration and Conciliation Act, 1996 ('Arbitration Act' for short).

[2] We have heard Shri. H. Shanthibhushan, learned Deputy Solicitor General of India (DSGI) appearing for the appellant as well as Smt. Princy Ponnan, learned counsel appearing for the respondent.

[3] The learned DSGI submits that the application filed by the appellant under Section 34 of the Arbitration Act before the Commercial Court has been rejected on the ground that it was filed beyond the time provided under Section 34(3) of the Arbitration Act. It is contended that since the certified copy of the award had been issued to the appellant only on 04.01.2024, the application under Section 34 Arbitration Act preferred on 23.01.2024 was well within time. It is contended that what was communicated to the appellant through email on 13.09.2023 was only a copy of the award and that the hard copy which was received by the appellant on 20.09.2023 was also not a duly authenticated certified copy. It is therefore contended that the finding of the Commercial Court that the Section 34 application filed on 23.01.2024 is out of time, is clearly erroneous.

[4] The learned DSGI would place reliance on the following judgments:-

• **M/s. Motilal Agarwala v. State of West Bengal and Another**, by Order dated **28.08.2025** passed in **Civil Appeal No.4480 of 2016;**

• **State of Maharashtra and Others v. ARK Builders Private Limited**, 2011 4 SCC 616;

• **Dakshin Haryana Bijli Vitran Nigam Limited v. Navigant Technologies Private Limited**, 2021 7 SCC 657; and

• Kristal Vision Projects Private Limited v. Union of India,2025 SCC OnLine Del 3738.

[5] The learned counsel appearing for the respondent, on the other hand, contends that, admittedly, on a signed copy of the award was sent by email by the Arbitrator to the appellant on 13.09.2023 along with a covering letter. The covering note reads as follows:-

"Dear All,

Please find the Award (37 pages, as attachment) made and signed by me today i.e., 13.09.2023.

Regards.

(SUDHIR KUMAR)

Sole Arbitrator"

[6] Further, in the application preferred by the appellant before the Commercial Court itself clearly stated that the signed copy of the award had been received by the appellant on 20.09.2023. It is submitted that even if that date is taken as the date of receipt of signed copy of the award, the period of three months would expire on 19.12.2023 and the further 30 days would expire on 19.01.2024. It is submitted that since the application was admittedly made only on 23.01.2024, it was out of time and the Commercial Court was perfectly justified in having rejected the application. It is further contended that what is contemplated under the provisions of the Arbitration Act is the communication of a signed copy of the award and that the signing of the award by the sole arbitrator itself would be the authentication required.

[7] The learned counsel appearing for the respondent would place reliance on the following judgments:-

• **Ministry of Youth Affairs and Sports, Dept. of Sports, Govt. of India v. ERNST and Young Pvt. Ltd. (Now known as ERNST and Young LLP) and Another, by Order** dated **23.08.2023** passed in O.M.P. (COMM) 377/2018;

• Delhi Urban Shelter Improvement Board v. Lakhvinder Singh,2017 SCC OnLine Del 9810, and

• Continental Telepower Industries Ltd. v. Union of India and Others,reported in 2009 SCC OnLine Del 1859.

[8] We have considered the contentions advanced. Section 31 of the Arbitration Act reads as follows:-

> **"31. Form and contents of arbitral award.-**(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.
>
> (2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.
>
> (3) The arbitral award shall state the reasons upon which it is based, unless,-
>
> (a) the parties have agreed that no reasons are to be given, or
>
> (b) the award is an arbitral award on agreed terms under Section 30.
>
> (4) The arbitral award shall state its date and the place of arbitration as determined in accordance with Section 20 and the award shall be deemed to have been made at that place.
>
> (5) After the arbitral award is made, a signed copy shall be delivered to each party.
>
> x x x x x"

[9] Section 34(3) of the Arbitration Act specifically provides as follows:-

> "(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."

[10] Now, we shall proceed to consider the decisions relied on by the appellant/Union. In **State of Maharashtra's** case (supra), the Apex Court held that the period of limitation for filing an application to set aside the award has to be reckoned from the date of copy of the award is delivered to/received by the party. It was further held that the copy which is to be delivered in terms of Section 31(5) of the Arbitration Act is a duly signed copy of the award.

[11] In **Dakshin Haryana Bijli Vitran Nigam Limited's** case (supra), the Apex Court held that the signing of the award by the Arbitrator is not an empty formality but is a mandatory requirement of an arbitral award and that limitation starts to run only from the date of receipt of a signed copy of the award by the objector. Paragraph No.26 of the judgment reads as follows:-

> **"26.** Section 31(1) is couched in mandatory terms, and provides that an arbitral award shall be made in writing and signed by all the members of the Arbitral Tribunal. If the Arbitral Tribunal comprises of more than one arbitrator, the award is made when the arbitrators acting together finally express their decision in writing, and is authenticated by their signatures. An award takes legal effect only after it is signed by the arbitrators which give it authentication. There can be no finality of the award, except after it is signed, since signing of the award gives legal effect and validity to it. The making and delivery of the award are different stages of an arbitration proceeding. An award is made when it is authenticated by the person who makes it. The statute makes it obligatory for each of the members of the Tribunal to sign the award, to make it a valid award. The usage of the term "shall" makes it a mandatory requirement. t is not merely a ministerial act, or an empty formality which can be dispensed with."

[12] A Division Bench of the Delhi High Court in **Kristal Vision Projects Private Limited's** case (supra), has held that the time starts to run for the purpose of Section 34(3) of the Arbitration Act only when the duly signed copy is received by the "party" and service to anyone else is not sufficient. Paragraph No.44 of the judgment reads as follows:-

"44. In view of the above, the law on the mode and manner of 'delivery' of the 'signed copy' of the award under Section 31(5) of the Act is summarized as under:

a) **Mandatory Requirement:** Section 31(5) of the Act requires a signed copy to be delivered to the party and the same has to be strictly complied with as the period of limitation to file application under Section 34 of the Act shall commence only upon delivery of the signed copy of the award to the parties.

b) **Signed Copy:** The term 'signed copy' means either copy of the award bearing original signature or a duly authenticated/certified copy of the signed copy of the award by the Arbitral Tribunal or the Arbitral Institution administering the arbitration.

c) **Delivery of the Award:** It is the obligation of the Arbitral Tribunal to ensure delivery of the signed copy to the parties. In case the Arbitral Tribunal has pronounced the award at a virtual hearing and directed the parties to collect the award, it is the responsibility of the Arbitral Tribunal to dispatch the signed copy of the award, if any party fails to collect the same.

d) **Delivery to the Parties:** The Arbitral Tribunal has to ensure that the signed copy of the award is delivered to the parties. A delivery of the signed copy of the award to the counsel of the parties will constitute a valid delivery in cases where the parties have duly authorized the counsel to collect or provided the address of the counsel for service of communication to parties.

e) **Electronic Delivery:** A signed copy of the award can be delivered electronically in accordance with Section 31(5) of the Act provided that the signed copy of the award attached to the electronic communication is duly authenticated by the Arbitral Tribunal or Arbitral Institution.

f) **Delivery by Arbitral Institution:** Delivery of the signed copy of the award by Arbitral Institution on behalf of the Tribunal to the parties and/or their authorized counsel shall be a valid service under Section 31(5) of the Act in Institutional Arbitrations."

[13] In **M/s. Motilal Agarwala's** case (supra), the Apex Court has also taken the view that the time starts running when the signed copy of the award is received by the "party".

[14] The Apex Court in the case of **Union of India v. Tecco Tirchy Engineers and Contractors**, 2005 4 SCC 239, Dakshin Haryana Bijli Vitran **Nigam Limited's** case (supra), **State of Arunachal Pradesh v. Damini Construction Co.**, 2007 10 SCC 742, has clearly held that the period of limitation for filing an application under Section 34 of the Arbitration Act would commence once a signed copy of the award is delivered to the party as required under Section 31(5) of the Arbitration Act.

[15] Relying on the above precedents, a learned Single Judge of the Delhi High Court by judgment dated 04.05.2017, held that the delivery of a signed copy of the award/order under Section 33 of the Arbitration Act by the arbitrator with his covering

letter amounts to a proper delivery as required under Section 31(5) of the Arbitration Act.

[16] Further, it is also been held that what is contemplated is the receipt of a signed copy of the award by the parties and that time would start to run on such typed copy being received.

[17] In the instant case, we notice from the application preferred before the Commercial Court itself that the appellant had averred as follows:-

> "5. x x x x x On completion of written and oral submissions, Arbitrator has awarded a huge sum of Rs.5.5 crores (approx) with Pre award interest @10% per annum on awarded amount from the date of invocation of Arbitration by the Respondent i.e. wef 23 Sep 2019 till the date of award i.e. on 13 Sep 2023 and future interest if not paid within 90 days on receipt of this Award i.e. on or before 20 Dec 2023 as hard copy of the award was received on 20 Sep 2023 in Appellant department."

[18] The argument of the learned DSGI is to the effect that the delivery of the signed copy which is admitted by the appellant would be inconsequential since a certified copy of the award was received from the arbitrator after repeated requests only on 04.01.2024.

[19] Having considered the contentions advanced and a clear language of Sections 31(5) as well as 34(3) of the Arbitration Act and the judgments which are relied on by the learned counsel for the respondent, we are of the opinion that in view of the clear admission made by the appellant that a signed copy of the award had been received on 20.09.2023, the findings of the Commercial Court cannot be found fault with. Further, a memo has been placed on record by the respondent indicating that even the email dated 13.09.2023 contained a covering note from the Arbitrator, which clearly authenticated the copy of the award which had been sent by that email. Though the learned DSGI submits that the email was not sent to the proper person, it appears from the email ID to which the communication was sent by the arbitrator and that it was sent to the very same entity which has preferred this appeal.

[20] In the light of the admissions made in the application itself that the signed copy of the award was received on 20.09.2023, we find that there is no error in the order passed by the Commercial Court. The appeal accordingly fails and the same is **dismissed.**

All pending interlocutory applications shall stand dismissed

2026(1)CAC123

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge Somasekhar Sundaresan)

Commercial Arbitration Petition; Notice Of Motion No. 1380 of 2019; 2464 of 2019 **dated 03/11/2025**

National Co-operative Consumers Federation of India Limited

Versus

Mirah Dekor Pvt Ltd

TAX DEDUCTION ADJUSTMENT

Income Tax Act, 1961 Sec. 153, Sec. 194C, Sec. 11 - Limitation Act, 1963 Art. 137 - Arbitration and Conciliation Act, 1996 Sec. 34 - Tax Deduction Adjustment - Petition under Sec.34 of Arbitration Act challenged award directing payment of amount representing TDS deductions made by department - Federation withheld payment asserting completion of tax assessment pending - Arbitral Tribunal found liability admitted and claim not barred by limitation due to continuous acknowledgment - Held that TDS credited to Federation's account under law amounts to receipt of payment on behalf of supplier - Federation bound to remit corresponding amount to supplier after deducting its margin - Tribunal rightly directed payment to Income Tax Authority for credit of supplier - No error apparent in reasoning - Petition Dismissed

Law Point: Amount deducted at source and credited to recipient's account constitutes receipt for that party under law; liability to remit equivalent amount to contracting party cannot be avoided on plea of pending tax assessment

Acts Referred:

Income Tax Act, 1961 Sec. 153, Sec. 194C, Sec. 11

Limitation Act, 1963 Art. 137

Arbitration and Conciliation Act, 1996 Sec. 34

Counsel:

Bhavik Manek, Pranav Chavan, Mahesh Menon & Co, Sharan Jagtiani, Mutahhar Khan, Vishal Mehta, Prachy Mody

JUDGEMENT

Somasekhar Sundaresan, J.- [1] Context and Factual Background:

1. This is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (**"the Act"**), mounting a challenge to an arbitral award dated May 31, 2019 (**"Impugned Award"**) awarding the Respondent, Mirah Dekor Private Limited (**"Mirah"**) a sum of Rs. ~1.36 crores along with interest at the rate of 12% per annum on a sum of Rs. ~57.58 lakh from April 1, 2010 until realisation; and on a sum of Rs.

~78.58 lakh from April 1, 2011 until realisation. A further sum of Rs. 50,000 along with interest at 12% per annum, from the date of the award has been awarded.

[2] The Petitioner, National Co-operative Consumers' Federation of India Ltd. (**"Federation"**) has been directed to pay the amounts so awarded directly to the Income-Tax Authorities forthwith, subject to appeals filed by Mirah, with proof of payment being shown within 15 days of payment. This direction was in view of an order of the Joint Commissioner of Income-Tax attaching any payments due to Mirah of up to Rs. 17 crores.

[3] Mirah supplies various consumer items including food stuff to government and non-government clients. The Federation is an apex body of consumer co-operatives. Mirah has been empanelled by the Federation as a supplier of groceries. The Federation has been delivering groceries to ashrams, schools and hostels of the Tribal Development Department, Nashik (**"TDD"**). The arrangement was that Mirah would directly deliver the groceries to TDD under instructions from the Federation while TDD would pay the Federation, which would deduct its margin and pay over the receipts to Mirah.

[4] Mirah'S bid was selected pursuant to a tender for 2009-10 and the parties executed an agreement dated June 19, 2009, which was supplemented on June 23, 2009. Another agreement dated November 19, 2010 also covered the same subject of supply - these are collectively referred to, for convenience as **"the Agreement"**. The three constituent agreements cover the supplies made by Mirah to TDD on behalf of the Federation, during the years 2009-10, 2010-11 and 2011-12.

[5] Mirah would raise invoices from time to time, and the Federation would pay the same after deducting its fixed margin of 1.5%. In addition, for the two financial years 2009-10 and 2010-11, tax was deducted at source (**"TDS"**) in the aggregate sum of Rs. ~1.37 crores. The reason for such deduction provided by the Federation was that TDD had effected TDS at 2% on Mirah's bills under Section 194-C of the Income-Tax Act, 1961 (**"IT Act"**). Whether TDD's deduction of TDS amounts was even necessary under law is disputed, but the facts are that such deductions were made and paid over to the Revenue to the Federation's credit. Multiple letters were issued by Mirah to the Federation in May 2011 asking to be paid amounts corresponding to the TDS deductions.

[6] The Federation confirmed to Mirah by a letter dated June 2, 2011 that it would pay an amount of Rs. ~1.36 crores once its tax assessments were completed. There is a gap of Rs. ~1 .31 lakh between the amounts claimed by Mirah and the amounts admitted by the Federation.

[7] Mirah wrote multiple letters in June 2011 and July 2011 following up, which again met with the reply that TDD had deducted the amounts involved and had issued certificates of deduction in Form 16-A under the IT Act. Federation stated that once its tax assessment was completed, the amounts would be paid. Mirah took the stance that

if the Federation availed of the TDS effected by TDD, those payments were made by TDD to the Federation's account, and therefore the Federation was in receipt of the sums. The Federation indicated that its head office was being pursued to complete tax assessments quickly. Mirah followed up with the Federation's head office too. The head office indicated that the amounts were indeed taken credit for and were shown as such in the provisional Form 26AS of the Federation under the IT Act (the form relating to the tax returns of the recipient of amounts after TDS). Once assessment was completed, the "provisional" status would turn to "final" after which the credit being available to the Federation for such amount, would become absolutely certain.

[8] This stand-off continued and eventually led to arbitration. Mirah's stance in the arbitration was that under Section 153 of the IT Act, tax assessments were to be completed within a period of two years. Mirah also contended from the material on record that the tax assessment status for the Federation indicated that a refund was due. Mirah would contend that deductions by TDD attributable only to disputed quality or quantity of the supplies would not be payable by the Federation onwards to Mirah. Since TDS amounts accrued to the benefit of the Federation - despite deduction by TDD, they were paid to the Income-Tax Authorities to the credit of the Federation - these amounts could constitute payments made by TDD to the Federation.

[9] On a separate note, the Office of the Joint Commissioner of Income-Tax had issued a notice to the Federation on February 19, 2018, directing the Federation to directly pay the Income-Tax Authorities, any amount owed and payable by the Federation to Mirah, which led to Mirah seeking the relief of directing the Federation to make payment of the amount claimed directly to the Income-Tax Authorities, to the credit of Mirah.

[10] The Federation would contend that the claim was barred by limitation since the amounts owed for the years 2009-10 and 2010-11 had been due on April 1, 2010 and April 1, 2011 respectively. In the same breath, the Federation took the stance that only the amounts actually received by the Federation would be payable to Mirah, and unless the Federation was paid, the right to claim did not even arise. It was contended that the amounts showing in the Form 26AS as TDS amounts paid by TDD covered all vendors across the board and not just Mirah. That apart, it was contended that TDD would be a necessary party since all deliveries had been made directly to TDD on behalf of the Federation.

Impugned Award

[11] The Learned Arbitral Tribunal ruled that the claim was not barred by limitation. Mirah had invoked arbitration by notice dated October 20, 2014. Pursuant to this letter, the Managing Director of the Federation was appointed by Mirah as the arbitrator in line with the Agreement. However, the Managing Director did not initiate proceedings at all. Eventually, the Learned Arbitral Tribunal was constituted by this Court under Section 11 of the Act in disposal of a Section 11 Application by two parallel orders dated February 2, 2018.

[12] The Learned Arbitral Tribunal found that by letters dated July 25, 2011, January 18, 2012 and February 8, 2012 and its internal letter dated November 27, 2014, the Federation admitted its liability to the extent of Rs. ~1.36 crores. The Learned Arbitral Tribunal also ruled that the Federation claimed on the one hand that the claim was premature since no amount would be payable unless tax assessments were completed, and that they were yet to be completed. Yet, in the same breath the Federation could not contend that the claim was barred by limitation. This position, coupled with the continual acknowledgment of liability, indicating that the cause of action of fighting against denial of payment had not arisen, was held to be mutually destructive, and the Learned Arbitral Tribunal was satisfied that the claim was not barred by limitation.

[13] The Learned Arbitral Tribunal interpreted Clause 6 of the Agreement, which provided for the Federation deducting a sum of 1.5% towards the Federation's margin from the total amount received by the Federation. The Agreement also provided that "any other deductions made" by TDD would be deducted from Mirah's bills. The Agreement provided for a detailed framework of quality check and control and was persuaded to not include TDS amounts within the scope of deductions made by TDD in making payments to the Federation. The Learned Arbitral Tribunal held that it was imperative for the Federation to complete it tax assessments and if they were not completed, that could mean that Mirah would never be paid its rightful dues.

[14] The Learned Arbitral Tribunal concluded that TDD was not a necessary party at all to the proceedings since the issue involved was of interpreting the Agreement and the implications for treatment of TDS.

[15] The Learned Arbitral Tribunal was persuaded to hold that the sum of Rs. ~57.58 lakhs due on April 1, 2010 and the sum of Rs. ~78.58 lakhs, aggregating to Rs. ~1.36 crore was payable. This amount corresponds to the amount admitted as being payable in the correspondence from the Federation, indeed also claiming that the payment would be made after tax assessments were completed.

[16] Disallowing a claim for interest at 18% per annum compounded, the Learned Arbitral Tribunal granted simple interest at 12% per annum. Costs claimed at Rs. 1 lakh, without any evidence to show the payment, were disallowed. Expenses incurred in the sum of Rs. 50,000 was allowed.

[17] Taking note of the notice from the Joint Commissioner of Income-Tax asking for payments of up to Rs. 17 crores, if released by the Federation to Mirah, must be paid directly to the Income-Tax Authorities, the Learned Arbitral Tribunal directed that the amounts awarded be paid by the Federation to the Income-Tax Authorities to Mirah's credit.

Analysis and Findings:

[18] I have heard Mr. Bhavin Manik, Learned Advocate for the Federation and Mr. Sharan Jagtiani, Learned Senior Advocate for Mirah at length and with the benefit

of their verbal arguments and written submissions permitted to be filed after the hearing was concluded, examined the material on record. I have also examined the Impugned Award and the approach of the Learned Arbitral Tribunal.

TDS as a Concept:

[19] Notwithstanding the enthusiasm with which a multitude of points were presented by each side before the Learned Arbitral Tribunal and before this Court, the fact of the matter is that the issues that came up for adjudication fall in a rather narrow compass.

[20] It is trite law that when tax is deducted by a deductor, who is liable to make payment to a deductee, the amount deducted by the deductor is required to be deposited with the Revenue. The deduction is actually tax owed by the deductee, which is appropriated on behalf of the Revenue by the deductor, and paid over to the Revenue. The payment of tax in this process, is a payment of tax owed by the deductee to the Revenue. The deductor is only an instrumentality of the State to deduct and pay over the tax amount owed by the deductee to the Revenue. The deductee would then get benefit of such tax paid. As such the TDS amount paid over to the Revenue is the amount paid over for and on behalf of the deductee.

[21] Therefore, the entitlement to credit for the money so deposited belongs to the deductee. In other words, it is simply a cash flow arrangement mandated by the statute. The payments are, for all purposes, payments made by the deductor to the deductee, but instead of paying the deductee who would then pay it to the Revenue towards tax, the amount is paid by the deductor to the Revenue but to the credit of the deductee. The documents that evidence such credits are the tax deduction certificate issued by the deductor (Form 16A) and the certificate of entitlements of the deductee (Form 26 AS).

[22] When seen in the light of this first principle of tax law, all amounts admittedly deducted by TDD and paid to the Revenue, are amounts for which the Federation had credit. The title to benefits flowing from such amounts is evidenced by the Form 16A and the Form 26AS. The Federation would have to pay a correspondingly lesser amount in its total tax bill. Whether the tax assessment results in payment of tax or refund of excess tax paid is totally irrelevant.

Deductions by TDD and their effect:

[23] Therefore, the sole point for consideration is really what the Agreement provided for in respect of reductions in payment to Mirah by the Federation. Towards this end, Clause 6 of the Agreement is noteworthy. This provision stipulated that the Federation would pay over to Mirah, "an amount after deducting 1.5% discount (margin of NCCF) from the total amount **received"** from TDD. Any other deductions made by TDD were to be deducted from the bills of Mirah.

[24] Plainly put, should there be any deduction made by TDD, under the Agreement, the Federation would be insulated from it - such deductions could

obviously be attributed by TDD to quality or quantity disputes or any other dispute over any portion of Mirah's bills. On facts, admittedly there has been no cause for any such deduction. This solely leaves for consideration, the treatment to be accorded to the TDS amounts. Clause 6 provides for an obligation on the Federation to pay the amount received from TDD, after deducting 1.5%, which is the Federation's margin.

[25] The Federation is protected from any other deduction effected by TDD - that risk was to be borne solely by Mirah. The risk and reward for the Federation was assured - a margin of 1.5% while the risk and reward for Mirah was to supply the groceries and earn the proceeds, subject only to the deduction of 1.5% margin of the Federation.

[26] Against this backdrop, and the first principles of tax law which would unequivocally point to the amount of TDS deducted by TDD accruing to the benefit of the Federation, it is evident to me that the TDS amount is an integral part of the amount received by the Federation. It is trite law that the total amount (including the TDS) is the income of the Federation and therefore, it is amount received by the Federation. Therefore, the Learned Arbitral Tribunal's view that other deductions referred to in Clause 6 would entail deductions on the ground of quality and quantity for which there had been a framework provided for in the Agreement is a credible and accurate reading of the Agreement.

[27] The Learned Arbitral Tribunal has examined witnesses, parsed the record, appreciated the evidence led by the parties, and returned findings in the matter. The Learned Arbitral Tribunal has also noticed that the amounts of TDS effected by TDD in respect of amounts paid to the Federation were in the aggregate across all vendors. Therefore, the Learned Arbitral Tribunal has only awarded the admitted and acknowledged amount of Rs.~1.36 crores. These findings are completely plausible and not at all perverse and therefore are safe from any interference by the Section 34 Court.

[28] It is now trite law that if the Section 34 Court finds that the arbitral award returns a plausible and just outcome and if even implied reasons are discernible from the analysis by the Learned Arbitral Tribunal, the arbitral award should not be interfered with. This standard is well met by the Impugned Award, on the facet of TDS amount being an amount received by the Federation. Therefore Mirah being entitled to get the amount received by the Federation, subject to a discount of 1.5% towards the Federation's margin, is a correct finding. Therefore, no cause for interference is made out.

Limitation:

[29] First, limitation being a mixed question of fact and law, it is noteworthy that the Learned Arbitral Tribunal has returned a finding that the claim was not barred by limitation. Second, Mirah has been chasing the Federation right since 2011. The Federation has not denied the obligation to pay the amount, but has even admitted that

the amount is payable - the only hitch posed by the Federation was that the amount would be payable upon completion of tax assessments. The non-payment after follow up led to issuance of an invocation notice on October 20, 2014, appointing the managing director of the Federation as the arbitrator. The Federation simply did not act upon the request, insisting as it did, that the time to pay had not arisen.

[30] On April 12, 2017, the second invocation was effected, followed by an application under Section 11 of the Act. There is nothing on record to indicate that the Federation took the stand that the filing of the Section 11 Application was barred by limitation. The Learned Arbitral Tribunal was appointed by consent. That Article 137 of the Limitation Act, 1963 would apply to applications filed under Section 11 of the Act is the law that is now well declared by Courts. The Section 11 Application was allowed on February 2, 2018 across both the references for the entire period of the supply. Therefore, the invocation was made within time, and the Section 11 was not opposed as not being made within time, and indeed there are admissions of liability by the Federation in the interregnum. Therefore, the view of the Learned Arbitral Tribunal on the facet of limitation is not perverse and being a plausible view, there is no case made out for taking a different view.

Standard of Review:

[31] In Dyna Technologies, [**Dyna Technologies Private Limited v. Crompton Greaves Limited**, 2019 20 SCC 1]. the Supreme Court held thus:

> "24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. **We need to be cognizant of the fact that arbitral awards should not be interfered with** in a casual and cavalier manner, **unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award.** Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. **The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.**
>
> 25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. **The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied**

unless such award portrays per- versity unpardonable under Section 34 of the Arbitration Act ." [Emphasis Supplied]

[32] Applying the aforesaid standard, which is but one of the multiple iterations of the principle laid down by the Supreme Court, namely, that even an alternate interpretation may sustain the arbitral award, in my opinion, no case is made out for interference with the Impugned Award, which is consistent with the first principles of tax law on treatment of TDS amounts.

[33] Therefore, the Petition is **dismissed**. The 'Notice of Motion' too is accordingly disposed of.

[34] Considering that a Learned Single Judge had protected the Petitioner from execution of the Impugned Award way back on June 25, 2021, the protection against execution is extended by a further period of four weeks from the upload of this judgement on this Court's website.

[35] All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website

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