* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 26.05.2015
Date of Decision: 01.07.2015

\+ **OMP No.217 of 2013**

HARMINDER SINGH SURI ..... Petitioner
Through: Mr. Gurpreet Singh Sethi, Advocate.

versus

AMRIK SINGH SURI ..... Respondent
Through: Mr. A.K. Chhabra, Advocate.

\+ **OMP No.219 of 2013**

AMRIK SINGH SURI ..... Petitioner
Through: Mr. A.K. Chhabra, Advocate.

versus

HARMINDER SINGH SURI ..... Respondent
Through: Mr. Gurpreet Singh Sethi, Advocate.

CORAM: JUSTICE S. MURALIDHAR

Introduction

1. The subject matter of challenge in these petitions under Section 34 of the Arbitration & Conciliation Act, 1996 ('Act'), is an Award dated 25th November, 2012, passed by the sole Arbitrator in the disputes between the parties.

2. The challenge in OMP No.217/2013 is by Mr. Harminder Singh Suri (hereafter 'HS'), who is aggrieved by the Award to the extent it has allowed the claim petition of his brother Mr. Amrik Singh Suri (hereafter 'AS') and directed that HS pay AS his dues in the dissolved partnership within two months from the date of the Award failing which the outstanding dues shall carry simple interest @ 12 % from the date of the Award. AS has filed the companion O.M.P. No. 219 of 2013 to the extent that the impugned Award has denied him *pendente lite* interest on the awarded sum.

Background facts

3. As already noted HS and AS are brothers. They constituted a partnership firm in the name of M/s. Suri Transmission Gear Company ('the firm') by a partnership deed dated 1st April, 1981, which contained an arbitration clause. While HS operated from New Delhi, AS operated from Mumbai. In his statement of the claim filed before the learned Arbitrator in April 2004, AS stated that the firm was carrying on the business of sale and purchase of spare parts, crank shaft, machinery such as forging die blocks at the following addresses: 335, Gurunanak Auto Market, Kashmiri Gate, Delhi; C-279, Mayapuri, Phase-II, New Delhi; B-2/60, Janakpuri and B-2/1, Janakpuri, New Delhi. It was stated that the premises at 335, Gurunanak Auto Market was a rented in the name of AS. The Mayapuri premises was purchased by the firm in March 1998 for a sum of Rs.7.50 lakh. It was claimed that the Deed of Partnership was still in operation and the partnership had not been dissolved. An

account of the firm was opened with the State Bank of India, Janakpuri, Delhi and Union Bank of India at Kashmiri Gate, Delhi. It has been agreed that the partnership would be at Will and proper books of accounts would be maintained and kept in the business premises with the right of any party to have access thereto and inspect the accounts. The profits and losses of the firm were to be shared in equal proportions.

4. AS alleged that HS had betrayed his trust and had become dishonest since 2002. AS alleged that HS refused to allow AS to enter the Mayapuri premises, the Kashmiri Gate premises and other premises; refused to show the books of accounts, bank accounts, stock registers, purchase registers and also refused to give the details of the sales and purchases. AS alleged that HS opened a bank account with the State Bank of India, Janakpuri in the name of Suri Enterprises as Proprietor and started diverting the business as well as funds of the firm to the proprietorship concern. AS alleged that when HS refused to permit inspection of the books of accounts or share the profits of the firm, AS was left with no option except to inform HS that he was not interested in continuing as a partner. As requested that the firm be dissolved. When even this request was not acceded to, AS served a legal notice dated 6th September, 2003 and thereafter filed a petition under Section 11 of the Act in the High Court. In the said petition, by an order dated 13th February, 2004, a former Judge of the Court was appointed as the Arbitrator.

5. Meanwhile AS also filed a petition under Section 9 of the Act praying that HS should be restrained from selling, alienating and/or parting with any assets and material, stocks lying at the aforementioned premises; that a Receiver be appointed to run the business and AS should be permitted to inspect the books of accounts. An interim order was passed restraining HS from selling, alienating, parting with or creating any third party interest in respect of the immovable properties of the partnership firm. After the arbitration proceedings commenced, an application was filed by AS under Section 17 of the Act in which *inter alia* the same reliefs were sought before the learned Arbitrator.

Proceedings before the Arbitrator

6. A perusal of the various orders passed by the learned Arbitrator from time to time show that initially there was a contest on where the dispute was at all arbitrable since according to HS there was a subsequent partnership deed between the parties, which contained no arbitration clause. Later this plea was given up by HS. At one stage AS was permitted inspection of the account books of the firm by taking along a Chartered Accountant. AS then contended that at the time of inspection of books of the firm it was found that no stocks were shown. In reply it was pointed out by HS that the firm was mainly dealing in steel. The raw material of steel was purchased in tonnes from steel companies. In order to avoid double cost of transport, the purchased steel was straightaway placed before the cutters and from there the steel, as per the requirement of the size and

width, was given to the purchasers. HS submitted that even AS knew that the stock of steel remained with the cutters and from there only the same was sent to the purchasers. However, AS disputed the above statement and submitted that despite asking for inspection of the stocks, no inspection was offered by HS.

7. The learned Arbitrator in the proceedings of 7th May 2004 asked HS to provide the names and addresses of the cutters. HS then gave the following names of the two cutters:

i. M/s. Radhey Shyam Bansal & Sons.

ii. M/s. Malik Engineering Works.

HS further stated that the exact addresses of the cutters would be given later. He was directed to do so with a copy to the counsel for AS within five days. As an interim measure HS was directed to give the statement of the steel as well as the machinery purchased by him/the firm during the past two years.

8. At the hearing on 28th May 2004, it was noted by the learned Arbitrator that HS had filed the photocopies of the purchase invoices and the invoices of sales during the last two years. HS had also filed documents stated to be the balance sheet of the firm from the year 1987-1988 till the year 2002-2003.

9. At the hearing on 1st June 2004, a submission was made on behalf of AS that when the firm had been dissolved by notice HS had no right to deal with the business of the firm and that he should be injuncted

from doing so. On the other hand, HS contended that he never received any notice of dissolution of the partnership firm. In response, it was pointed out by the counsel for AS that he would furnish proof of service of the notice of dissolution within two days. The learned Arbitrator passed an order that HS shall not make any cash withdrawal from the account of the firm and that the cars of the firm would not be transferred till further orders.

10. Certain directions were given on 26th August, 2006 regarding taking measurements of the Mayapuri property. On 15th November 2006, the said property, with the consent of the parties, was sealed. It was recorded by the learned Arbitrator in the proceedings of 27th November 2006 that on the previous date, i.e. 15th November, 2006, counsel for both the parties had submitted that the partnership stands dissolved and an accounting should be made by an Accounts Commissioner ('AC') so that the claims of AS and HS could be settled. They requested the Arbitrator to appoint a Chartered Accountant of his choice as AC. It was also accepted that HS is the 'accounting party' and that AS and he had 50% share each in the assets and liabilities of the partnership. The learned Arbitrator appointed Mr. A. Sikdhar, Chartered Accountant as the AC to audit the accounts of the partnership business and to apportion the share of each party on the basis of the audit undertaken. The parties were directed to produce before the AC such evidence by way of clarification of accounts, which would then be examined by him before giving his report.

11. AS filed his objections to the AC's Report as was noted in Arbitrator's the proceedings dated 11th August 2007. At the hearing of 29th September, 2007 it was pointed out by the counsel for AS that the market value of stocks had not been stated in the AC's Report. However, the learned Arbitrator rejected the AS's plea that a supplementary report be called from the AC. Parties were given liberty to adduce evidence before the Arbitrator for that purpose. The learned Arbitrator on the same date also required the two cutters, M/s. Malik Engineering Works and M/s. Radhey Shyam Bansal & Sons to provide information. Certain facts were also asked to be ascertained from Mr. Narinder Chadha of M/s. Laxmi Metal Works. The copies of the bank accounts of the proprietorship firm M/s. Suri Enterprises as well as the statement of the personal account of HS were asked to be filed.

12. Directions were issued regarding disposal of the Mayapuri property on 5th March, 2009 and there was *inter se* bidding that took place on 27th June, 2009. The bid of HS of Rs.36.00 lakhs was accepted and confirmed. The parties were directed to settle amongst themselves the transfer of the property from AS to HS. Certain directions were issued by the learned Arbitrator on 26th February 2011in respect of the Capital Gains Tax (CGT) in connection with the sale of the Mayapuri property. It was directed that "....whosoever pays the Capital Gains Tax, will be entitled to receive that sum on proportionate liability from the other side with 12% interest from the date of payment till the date of liability is fixed and discharged."

13. It must be noted at this stage that the statement of claim of AS, apart from the claim for share in the property (which did not survive as a result of his share being purchased by HS) included the following claims:

i.	Capital Account	Rs.3.00 lakh
ii.	Removal of stocks, cash, etc. by HS	Rs.40.00 lakh
iii.	Transferring the business of the partnership firm to the proprietorship firm and thus causing loss to AS	Rs.20.00 lakh
iv.	Goodwill of the partnership firm	Rs.10.00 lakh
v.	Other stocks, material, business which have been transferred and sold	Rs.20.00 lakh
vi.	Diversion/withdrawal of funds in form of cash/cheques by HS either in the account of proprietorship or personal accounts	Rs.60.00 lakh
vii.	4 cars purchased by the firm used by HS	Rs.6.00 lakh
viii.	LIC withdrawal	Rs.5.00 lakh
ix.	Sale of disputed stock purportedly shown by HS through fraudulent bills	Rs.91.20 lakh
x.	Arrears of rent towards unauthorisedly using the premises at Kashmiri Gate for the last two years @ Rs.20,000/- per month	Rs.4.80 lakh

The Report of the AC

14. The AC submitted his Report to the learned Arbitrator on 18th June, 2007. The AC stated that he had audited the balance sheet of the partnership firm as of 31st March 2000 to 31st March 2006 as also the Profit & Loss accounts for the same years. In preparing the report the AC considered the objections and explanations given by both parties. While the partnership deed envisaged that each partner would be entitled to a monthly salary of Rs.2,000/- and/or such other rates as may be decided between the parties from time to time and that they would make drawings as per mutual consent, AS had not made any withdrawal while HS had been paid remuneration. HS offered a clarification that since AS did not stay in Delhi and was a sleeping partner, no remuneration had been paid on mutual consent. The year-wise breakup of the remuneration paid to HS from 1999 to 2003 totalling to Rs.4.44 lakhs was noted.

15. Para B of the AC's Report spoke of 'Stock of the Firm'. It was noted that although the stock of Rs.10,72,473.88 was shown to be with the firm as per its balance sheet, it was explained that major part of the stock was presently lying with two cutters, namely M/s. Malik Engineering Works and M/s. Radhey Shyam Bansal & Sons to whom the firm owed Rs.3,98,500/- as cutting charges. The Report noted that although various inward – outward challan copies, weighing bridge slips and Form 38 had been produced "no confirmation from the said parties had been submitted to us. The said parties had also not confirmed/replied on our letter to them." It was noted that while there

were no sale and purchase transactions in the year 2004-05, the entire cutting expenses of Rs.3,98,500/- had been booked. This explanation was not accepted by the AC. Therefore, the said amount was directed to be debited to the capital account of HS.

16. The next part of the AC's Report was concerned with the construction of the Mayapuri property. The valuation report filed by AS was not accepted by the AC. In any event since this property was no longer the subject matter of the arbitration proceedings, it was not relevant for the purposes of the Award.

17. The AC commented on the variation of sales figures between the books of accounts and Sales Tax Returns. The AC had raised objections regarding treatment of Central Sales made to various parties outside Delhi as local sales and filing Sales Tax Returns with wrong particulars. The explanation offered by HS was that no financial loss had been caused both to the firm as well as the government departments.

18. The AC then dealt with the debiting of the account of M/s. Suri Auto Traders with a sum of Rs.25.50 lakh withdrawn from the account of the Firm by HS. Although this was not as per standard accounting practice, due to non-availability of records as well as confirmation and detail received from Suri Auto Traders, the AC concluded that the said action was with the consent of all partners as well as of Suri Auto Traders.

19. The AC then examined the financial position of the firm. The entire value of the closing stock as on 31^{st} March 2004 was debited to the capital account of HS, apart from 50 per cent of the cutting expenses. The debit balance after adding back the interest an capital disallowed on capital and proportionate reduction of loss for HS worked out to Rs.4,26,586.04. As far as the capital account of AS was concerned the total debit balance worked out to Rs.35,742.99. The total liabilities, i.e. amounts owed to other firms worked out to Rs.21,09,694.32 and the assets (including the shop at Mayapuri, which was valued at Rs.15.50 lakh), worked out to Rs.16,47,365.29. It was determined that there was an excess of liabilities over the assets to the tune of Rs.4,62,329.03.

The Award

20. In the impugned Award, the learned Arbitrator considered the objections to the AC's Report. It was noted that the firm was merely dealing in steel and the raw material of the steel and that in order to avoid double cost of transport, the purchased steel was straightway placed before the cutters and then, as per the requirement of the purchasers, was supplied to them after cutting. The learned Arbitrator noted that when the two cutters, i.e., M/s. Malik Engineering Works and M/s. Radhey Shyam Bansal & Sons, were asked about the stock position in relation to the firm, both of them stated that there was 'nil' balance in the books and there was no stock lying with them.

21. The learned Arbitrator then proceeded to deal with the other issues. He settled the date of dissolution of the firm as 15th April, 2004, the date on which HS had received a copy of the claim petition. Second, it was settled that the opposite party was the accounting party. Third, that the share of each party was 50 per cent.

22. The main bone of contention between the parties was regarding the steel stocks. The learned Arbitrator noted that HS had been concealing the stock position. He had failed to maintain the stock register. HS also gave evasive answers. It was noted "He only came out with his version when in the written submissions given by the Claimant he was confronted with a figure of 835 MT as unaccounted being arrived at on the basis of sale/purchase invoices. The basis of calculation has been supplied by charts annexed to the written submissions." The learned Arbitrator noted that according to AS, on the basis of the firm's sale/purchase invoices, there was a stock of 835 MT of die steel in possession of the opposite party, which remained unexplained.

23. The learned Arbitrator then noted that this was contested by HS in his written submission, but that he "admits that the unexplained stock position during the period 1998 to 2004 was 369 MT. Therefore, it is to be decided whether the unexplained stock of die steel was only 369 MT or 835 MT." The learned Arbitrator accepted the explanation of AS that the calculation of 30 MT as 'lot' shown in invoice at page 46 of the written submissions given by HS was absurd. Further HS had bungled the records and could not be believed. However, the Award

could be made only on the basis of documents produced by AS and not on the basis of “any firm view”. The learned Arbitrator observed that “for that concealment, if any, the Claimant himself is a contributory factor. Why he did not keep a proper vigil. It is not that he is not versed with the business of the Firm under accounting.” It was further noted that “the Claimant was doing similar business in Faridabad for which he regularly visited Delhi.” The Arbitrator concluded “therefore, I hold that only 635 MT steel is unaccounted for.” This was because according to the learned Arbitrator AS had that from sale/purchase invoices only 635 MT steel could be calculated. The Arbitrator rejected the plea of AS that there was “a further bungling of 200 MT steel in the accounts.”

24. The next issue considered by the learned Arbitrator was the price of steel stock. He rejected the market prices prevailing in 2007, i.e. Rs.120/- per kg, since the cut-off year was 2004. However, the learned Arbitrator was not able to find any reliable basis for fixing the market value as of that date. He observed that HS had in his written submissions admitted that the scrap die steel was sold at varied rates of Rs.40/-, Rs.45/- and Rs.60/- depending upon its value as assessed by the purchasers. He further noted that the entire purchased steel was not sold as there was always a salvage of 35% to 40% and the salvage was generally sold at Rs.10/- per kg. The learned Arbitrator rejected the submission regarding salvage because this plea was taken only after AS showed that certain amount of scrap die steel purchased by the firm remained unaccounted in the firm's records. Nevertheless the

learned Arbitrator observed "however, from the nature of the business the plea of salvage and cutting charges cannot be ignored while fixing average price at which the unaccounted scrap die steel could have been sold by the opposite party." Since there was no specific evidence as to what was the market price at which the scrap die steel was being sold in the retail market by bulk purchasers as on the date of dissolution, the learned Arbitrator had to depend on "various factors placed before me by the parties". Considering those factors, he fixed Rs.50/- per kg as the price of the unaccounted scrap die steel on the date of dissolution of the firm.

25. The impugned Award then proceeded to deal with certain other aspects including CGT, which was dealt with in the order dated 26th February, 2011. The Arbitrator rejected the claim of Goodwill or Car Price or withdrawal of money without authority. The operative portion namely the 'Final Award' reads as under:

> "The claim petition for final award is allowed subject to the observations made hereinafter. Accounting between the parties shall be as per the report of the Chartered Accountant reproduced in the body of this award subject to the observations made by me in the body of this award. Since the opposite party is the accounting party he shall pay to the Claimant his dues in the dissolved partnership, the subject matter of this arbitration case, in terms of this final award within a period of two months from the date of this award failing which the outstanding dues shall carry simple interest at the rate of 12% from the date of this award."

Submissions of counsel

26. Mr. Gurpreet Singh Sethi, the learned counsel appearing for HS, first submitted that the award itself was uncertain, vague and incomplete, particularly since the learned Arbitrator had failed to award any ascertained sum. He submitted that the Arbitrator had failed to decide how the liability of the firm would be paid and by whom and how it could be adjusted from the assets of the firm particularly since the Mayapuri property had already been sold prior to the date of the Award. Even the Award with respect to CGT was vague and uncertain.

27. Secondly, it was submitted by Mr. Sethi that the learned Arbitrator had travelled beyond the scope of reference and therefore, the Award was liable to be set aside under Section 34 (2)(a)(iv) of the Act. He pointed out that the Arbitrator could not have entertained any claims with respect to the affairs of the firm earlier than three years prior to the date of its dissolution i.e. 1st April, 2004. The AC had also examined the accounts of the firm only from the year 2001-2002 onwards. However, in trying to fix the market price of the steel stock, the learned Arbitrator took into account the invoices even earlier than 1st April, 2001.

28. Thirdly, it was submitted that the learned Arbitrator proceeded on surmises and conjectures as far as the quantity of the unaccounted stock as well as its market price as on the date of dissolution were concerned. Mr. Sethi pointed out that even according to AS in his application dated 25th March, 2010, as on the date when the dispute

between the parties commenced approximately 600 MT of stock had been purchased and only 150 MT had been sold. Therefore, it was not understood as to on what basis the Arbitrator assessed the unaccounted stock as 635 MT.

29. Fourthly, Mr. Sethi stated there was no admission whatsoever by HS that the unaccounted stock was 369 MT. He pointed out that the calculation of AS was based only on three invoices dated 11th April, 4th June and 20th December 1999, which did not mention the weight but only the purchase value. To determine the weight of the consignments covered by these three purchase invoices, AS had divided the purchase value by Rs.8.35 to arrive at the weight of 348 MT. Even this was an arbitrary figure because it did not account for 35-40% wastage while fixing the quantity of unaccounted stock. More importantly, when the Arbitrator himself guessed the price of unaccounted stock at Rs.50/- per kg, then the resultant weight, if the total value were to be divided by Rs.50/-, would be much less. He submitted that if indeed the price of material purchased under the invoices was Rs.8.35 per kg then the market retail price of the same steel could hardly be fixed at Rs.50 per kg.

30. Mr. Sethi pointed out that AS had not, anywhere in the petition, stated that the weight of the unaccounted stock could be determined by subtracting the weight of the sale invoices from the purchase invoices. He submitted that HS could not be blamed for not maintaining the stock register since it had been maintained with the

consent of both partners. There was no denial by AS that wastage was involved in the process of salvaging the old and used steel die blocks. It was overlooked by the learned Arbitrator that the firm was not dealing in sale and purchase of virgin steel die blocks but used ones.

31. In reply, Mr. Ashok Chhabra, the learned counsel appearing for AS, submitted that the Award could not be assailed on the ground of vagueness because the entire report of the AC had been set out therein. He submitted that although the liabilities of the firm exceeded its assets, no claim whatsoever had been raised by any of the creditors against the firm and therefore, the question of settling of liabilities did not arise at this point of time, i.e. eleven years after the dissolution of the firm.

32. Secondly, Mr. Chhabra submitted that it had been clearly enunciated in the Award on the basis of the submissions of the parties that the unaccounted steel stock was 635 MT. The learned Arbitrator also explained the basis for fixing the market price of steel stock at Rs.50/- per kg. According to Mr. Chhabra, the amount to be paid could be worked out very simply by multiplying the unaccounted steel in weight i.e. 635 MT by 50. Thus, the total amount worked out to Rs.3,17,50,000/-. 50 per cent of the said amount which was the share of AS worked out to Rs.1,61,19,100/-. This had to be paid with interest @ 12 % from the date of the Award till the date of payment.

33. Thirdly, relying on the decisions in ***S.P Periaswami Konar v. S. Mikole Udayar 1975 (1) MLJ 70; Ram Sukh Mal v. Har Sahia Mal AIR 1938 Lahore 758*** and ***Dayal Chand v. Ram Chand AIR 1927 Lahore 249***, Mr. Chhabra submitted that the learned Arbitrator was justified in looking at the accounts of the firm from 1998 onwards. He submitted that the stock value had been worked out on the basis of the market value as on the date of dissolution in terms of Section 48 of the Indian Partnership Act, 1932 read with Order 20 Rule 15 CPC. In support of this proposition he relied upon the decisions in ***V.C. Venkata Subbaiah Chetty & Sons v. Commissioner of Income Tax*** (***1988) 171 ITR 590 (AP); GR Ramachari & Co. v. Commissioner of Income Tax, Madras Vol.(1961) 41 ITR 142; M.K Rajagopal Chettiar v. Razak Sahib alias Abdur Razack AIR 1950 Madras 759; Popular Automobiles v. Commissioner of Income Tax (1991) 187 ITR 86 (Ker)*** and ***Madhu Rani Mehra v. Commissioner of Income Tax 179 (2011) DLT 783(DB)***.

34. Mr. Chhabra pressed AS's OMP No.219/2013 which sought *pendente lite* interest on the above amount from the date of the claim till the date of the Award. According to him, the impugned Award was not against public policy. He submitted that the Court could not substitute its views for that of the Arbitrator. Therefore, the Award brooked no interference.

Discussion of the issues

35. The Court proposes to first take up the challenge to the impugned Award on the ground of vagueness. It is seen that the impugned Award actually does not indicate in the operative portion what the amount payable by one party to the other is. Since in the operative portion it is said that the "Claim Petition for final award is allowed subject to the observations made hereinafter", the learned Arbitrator was perhaps allowing some of the claims of AS. However, when the Award is examined carefully and read along with the observations of the learned Arbitrator that the accounting between the parties "shall be as per the report of the Chartered Accountant reproduced in the body of this Award subject to the observations made by me in the body of this Award", difficulties arise.

36. What the report of the AC reveals is that the liabilities of the firm exceed its assets. In other words there is no profit to be shared between the partners. Therefore, in terms of the report of the AC it had to be decided how the excess liabilities of the firm, i.e. Rs. 4,62,329.03 were required to be met. The said figure was arrived at after accounting for the Mayapuri property as an asset valued at Rs.15.50 lakh. What the learned Arbitrator has overlooked is that during the pendency of the arbitration, and subsequent to the report of the AC, the Mayapuri property was put up for sale with HS buying out AS's share. If, therefore, the said property this is taken out from the assets, the liability of the firm would further increase. The mere fact that no creditor may have made a claim against the firm would not make a difference to the fact that there is no clarity on whether there

are any profits of the firm since no fresh balance sheet appears to have been drawn up after the above significant change in the assets position.

37. The second difficulty is that the learned Arbitrator does not categorically say that for the unaccounted stock HS has to pay AS a certain sum. Consequently the criticism of the Award that it is bad for vagueness and uncertainty is well founded. Ultimately the Award has to answer the central disputes involved, i.e., does HS owe AS any amount as a result of the dissolution of the firm and in accordance with the accounts of the firm.

38. The central part of the Award is undoubtedly the determination of the steel stock and its value. Here there are numerous problems in the approach adopted by the learned Arbitrator. He appears to have attributed to HS an admission that "the unexplained stock position during the period 1998 to 2004 was 369 MT". This, the learned Arbitrator states was an admission made in the written submissions of HS.

39. The Court has carefully perused the written submissions of HS before the learned Arbitrator. In the first place, in the said written submissions HS clearly raised an objection against the Arbitrator looking into the accounts of the firm earlier than three years prior to the date of institution of the arbitration proceedings. He states as under:

> "The second submission of the respondent is that as per the law of limitation this Hon'ble Arbitral Tribunal can decide and grant the claim of the Claimant for the past three years from the date of institution of the arbitration proceedings. In the present case the arbitration proceedings were initiated by the Claimant Mr. Amrik Singh Suri Claimant in the month of March, 2004. Therefore, the claim of the Claimant for the period beyond three years cannot be considered."

40. In the immediate following paragraph, HS states:

> "Now assuming that the claim of the Claimant can be considered from the period from 1999 to 2004 and further assuming that the value of the stock of the firm can be or should be assessed by its weight, the Claimant has not correctly calculated the weight of the stock as mentioned in the written submissions. As per the books of accounts maintained by the firm the total weight of the scrap die blocks purchased from the period from 1999 to 2004 was 369 MT and the weight of the said material sold during the said period was 343.5 MT. In terms of money the purchase value of the old, used die blocks so purchased during the said period was Rs.1.65 Cr. and the sale value of the same was Rs.2.14 Cr and thus earning a profit of Rs.49 lacs. The details of purchase and sales made during the said period have been shown in a table which is filed herewith as Annexure E."

41. In Annexure 'E' what was stated was that the total purchase of steel was 369.135 MT and the total sales was 343.559 MT. The closing stock of each year in value is also separately indicated. What the learned Arbitrator appears to have done is to selectively take one part of one sentence in the above paragraph which states that the total

weight of the scrap die blocks purchased for the entire period from 1999 to 2004 was 369 MT. Clearly 369 MT could not be taken to be the closing stock on the date of the dissolution of the firm. It was only the weight of the material purchased. Clearly, the weight of the material sold during the same period could not have been ignored. The profit earned from the sale of the material was Rs.49 lakh and those details were set out in Annexure 'E', which was not even discussed by the learned Arbitrator. The Court fails to appreciate how the learned Arbitrator could construe the above paragraph to be an admission by HS that the unexplained stock position for the entire period from 1998 to 2004 was 369 MT.

42. The Court has also perused the so-called calculations produced by Mr. AS with his written submissions. In an application filed by him in March, 2010, he states in para 4 as under:

> "4.....On the perusal of the purchase register and the sale bills it is clear that as on the date of the dispute between the parties, approximately, 600 MT has been purchased and shown in the purchase document. The sales invoices mention sale by weight also and on perusal of the sale invoices it has been ascertained that only 150 MT of the material has been sold by the respondent....."

43. Certainly in the above application AS does not estimate the unaccounted stock as 635 MT. In his written submissions filed before the learned Arbitrator by way of rejoinder, far from mentioning any figure of 635 MT, AS states as under:

> "7. ....The Claimant does not agree with the contention that the total weight of the scrap die blocks purchased was 369 MT. The respondent has tried to prove this contention not from the sale and purchase bills but from the figures purportedly shown and reflected in the balance sheets. It is submitted that the weight of the material and sale/purchase value can only be ascertained from the purchase as well as sale invoices and various other documents. In fact, the contention that only 369 MT was purchased is falsified from the fact that the record indicates the total purchase of 1125 MT for the entire five years which was not disputed by the respondent during the arbitration proceedings nor the present plea is supported by any of the documentary evidence and the facts and figures are concocted and beyond the pleadings."

44. Therefore, according to AS the total purchase should be taken as 1125 MT. He then referred to three invoices – first No.263 dated 11th October 1998 which showed that 217 MT was purchased at Rs.8.35 per kg for a total amount of Rs.18,85,209. No weight is mentioned in this invoice. AS has used the figure of Rs.8.35 mentioned therein to derive the total weight. It is then stated that if the basis of the said invoice dated 11th October 1998 is taken, the weight of the material would be more than 350 MT. The only other two invoices which have been referred to do not bear out the submission of AS. In fact, as pointed out by the learned counsel for HS, those mention only the purchase value. Further, as HS rightly points out, the material was supposed to have been transported from Mumbai to Delhi in three lorries/trucks. The weight of 348 MT would require transportation by

several lorries/trucks since the weight per lorry cannot exceed 10-12 MT.

45. In any event it is not known how the figure of 635 MT has been arrived at by AS on the basis of the three invoices. If the total weight of the consignment covered by the three invoices is taken, it works out to 348 MT. The entire basis of calculation of the unaccounted stock at 635 MT by the learned Arbitrator appears to be wrong. This exercise could have been best left, if at all, to the AC. However, as already noted, the report of the AC finds no reliable basis to determine what the stock at the hands of the firm was, and chose to debit the entire value to the capital account of HS.

46. There is no satisfactory explanation anywhere in the Award as to why the learned Arbitrator decided to examine the accounts of the firm for a period earlier than three years prior to the date of dissolution of the firm, i.e. earlier than 1st April, 2001. In an order made by the learned Arbitrator on 19th July, 2010, he allowed the prayer of AS that he wanted to satisfy himself about the price of the goods by seeing the accounts of the year "1998 as well". Clearly, the price of the stock of die steel with the firm as on the date of dissolution could not be determined with reference to the sales and purchases made in 1998 or 1999. As pointed out by Mr. Chhabra himself, with reference to the decisions cited, the price had to be determined on the basis of the market price on the date of dissolution. Therefore, invoices of 1999 were hardly a reliable yardstick for determining the price of such steel

as on 1st April 2004. This was, therefore, a fatal error committed by the learned Arbitrator.

47. The learned Arbitrator appears to have overlooked the legal position regarding limitation. AS was not making any claim for any period earlier than three years prior to the date of filing of the claim. Consequently, no claim with reference to any stock which may have been with the firm earlier than 1st April, 2001 was admissible. The learned Arbitrator travelled beyond the terms of reference and the Award is susceptible to invalidation under Section 34 (2)(a)(iv) of the Act.

48. In fixing the market price of the unaccounted steel at Rs.50/- per MT, the learned Arbitrator appears to have indulged in surmises and conjectures. The impugned Award does not explain the basis for arriving at the said figure. The learned Arbitrator simply states that he has arrived at the said figure "considering all the attenuating factors before me." Apart from giving a conclusion which is not supported by any of the documents on record, the learned Arbitrator did not feel obliged to explain the reasons for such a conclusion. Consequently, this Court is unable to sustain the impugned Award insofar as it has decided two crucial issues that arose for consideration, viz., the weight of the unaccounted stock and the market price of such unaccounted stock.

49. Further the Court finds that the impugned Award has not clearly indicated what amount, if any, HS has to pay AS. The report of the AC, which is extracted in *toto* in the impugned Award also does not give any indication of the value of unaccounted stock. The Court finds that the Award is bad for vagueness and is indeed incapable of being understood or implemented.

50. It is no answer to say that at the stage of execution of the Award HS would in any event be entitled to raise objections. An Award which is bad for vagueness is contrary to the fundamental public policy of Indian law and cannot be allowed to stand.

51. For all the aforementioned reasons, the Court holds that the impugned Award suffers from patent illegality and is unsustainable in law in terms of Section 34 of the Act. The impugned Award is hereby set aside. In that view of the matter, the question of grant of *pendente lite* interest does not arise.

52. OMP No.217 of 2013 filed by HS is allowed. OMP No.219 of 2013 filed by AS is dismissed. AS shall pay to HS costs of Rs.10,000/- within four weeks.

JULY 1, 2015 **S. MURALIDHAR, J.**
b'nesh