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

Date of Decision: 20th December, 2023

+ **O.M.P. (COMM) 266/2021**

TECHNO AIRCON INDUSTRIES PVT. LIMITED Petitioner

Through: Ms. Malvika Trivedi, Senior Advocate with Ms. Ananya Bhattacharya and Mr. Shailendra Salarioie, Advocates.

versus

ABB LIMITED Respondent

Through: Mr. Nikhilesh Krishnan and Mr. Sunit Kumar Mandal, Advocates.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. This petition challenges the arbitral award dated 28th February, 2019 [“*impugned Award*”] passed by a Sole Arbitrator appointed by this Court under Section 11 of the Act to adjudicate disputes emerging from a purchase order dated 11th September, 2008. This purchase order was based on an agreement between the parties, according to which the Petitioner (Respondent in arbitration) was to manufacture goods using raw materials supplied by the Respondent (Claimant in arbitration), and then deliver these



finished products to the Respondent's vendors. The impugned Award allows the claim of the Respondent for the value of unutilized stock of raw material. However, the Petitioner asserts that the impugned Award was passed without jurisdiction and the conclusions drawn by the Arbitrator lack evidentiary support. On these grounds, the Petitioner seeks to have the impugned Award set aside under Section 34 of the Arbitration and Conciliation Act, 1996 [*"the Act"*].

THE FACTUAL BACKDROP

2. The case set out by ABB before the Arbitral Tribunal is as follows:

2.1. ABB Limited/ Respondent [*"ABB"*], is engaged *inter alia* in the business of manufacturing and selling various power products. These include transformers, switchgears, circuit breakers, cables and associated equipment. Petitioner/ Techno Aircon Industries Private Limited [*"Techno"*] is in the business of fabrication of duct profiles, and undertakes other related works.

2.2. Parties entered into an agreement stipulating that Techno would fabricate duct profiles for ABB's customers using GSS sheets in coil form provided by ABB. These sheets were procured by ABB at a cost of INR 49,500/- per metric tonne (MT), along with taxes and other charges. The arrangement was clear: the raw materials supplied by ABB were exclusively for the fabrication of duct profiles as specified in the orders, and Techno was responsible for returning the unutilised excess materials. Based on this agreement, ABB issued multiple purchase orders over time, including purchase order dated 11th September, 2008, which contained an arbitration



clause.

2.3. Despite the explicit terms of the agreement, Techno's performance fell short. They only partially completed the supplies by October 2009, and subsequently delayed further deliveries beyond the agreed schedule. Moreover, as per the contractual terms, Techno was required to provide material reconciliation statements along with their bills. These statements were crucial for verifying the quantity of raw materials supplied by ABB to Techno against the quantity used by Techno in making the finished goods. However, Techno consistently neglected to provide these reconciliation statements. This failure prompted ABB to send their representatives to Techno's plant for a physical verification of the stock of raw material. This inspection uncovered a significant discrepancy between the actual stock at Techno's facility and the amounts stipulated in the purchase orders, signalling a breach of the terms agreed upon by the parties.

2.4. In response to these concerns, the parties engaged in several meetings, in the course of which Techno acknowledged both, the discrepancy in the raw material stock and their unauthorized use of excess materials for other purposes. This admission was first documented in the Minutes of Meeting [**"MoM"**] dated 10th October, 2009. Despite this acknowledgment, for certain compelling reasons, ABB continued to place orders with Techno for supplying ducts to Tata Motors Lucknow. On 23rd October, 2009, Techno further confirmed in writing that they had used the materials for their own purposes and reported a discrepancy of 148.6 MT. This revelation prompted another meeting where the MoM dated 20th January, 2010, recorded Techno's acceptance of liability to return an excess quantity of 179.278 MT



[i.e., 179,278 kg] of GSS Sheets to ABB. Techno committed to immediately returning 139 MT and agreed to reconcile and return the remaining 40 MT thereafter. The same MoM also detailed a dispatch schedule for Tata Motors Lucknow and stated that the excess materials would be available for ABB to collect from Techno's site, commencing 27th January, 2010.

2.5. Despite these undertakings and detailed records, Techno failed to fulfil their commitments. They neither supplied the required materials to Tata Motors Lucknow nor initiated the promised reconciliation or facilitated the collection of excess stock. ABB, seeking resolution, sent multiple emails as well as a demand notice dated 16th August, 2010, but these attempts were unfruitful. The issues persisted without resolution, perpetuating the ongoing dispute between the parties.

2.6. In light of these unresolved issues, ABB escalated the matter by issuing a legal notice on 27th October, 2011, invoking the arbitration clause specified in the purchase order dated 11th September, 2008. Despite receiving this notice, Techno failed to respond, prompting ABB to take further legal action. Consequently, ABB filed a petition (ARB.P. 502/2012) with this Court, wherein, on 8th February, 2013, the Court constituted an arbitral tribunal to adjudicate the disputes that had arisen between the parties.

THE ARBITRAL PROCEEDINGS

3. During the arbitral proceedings, ABB put forth claims related to the unutilized/ surplus GSS Sheets, which, they alleged were in Techno's possession, as acknowledged in the MoM dated 20th January, 2010. The



claim for 179.278 MT of GSS sheets was determined at INR 92,29,231.44/-, calculated by applying the rate of INR 49,500/- per MT and adding taxes and duties at 1.98% for the said quantity. In addition to the principal amount, ABB sought interest at the rate of 18% per annum from 27th January, 2010, to 3rd August, 2013, bringing the total claimed amount to INR 1,50,68,679.95/-. ABB further sought pendent lite and future interest at 18% per annum until full payment is made. The claims also extended to compensation for alleged losses of goodwill and business reputation, and legal expenses.

4. Techno contested these claims on multiple grounds. They argued that (i) the Arbitrator lacked territorial jurisdiction to adjudicate ABB's claims; (ii) the claims were barred by limitation; (iii) the claims were not instituted by a duly authorized person; and (iv) ABB had no cause of action under the purchase order. On the merits of the case, Techno asserted that all of the 51 MT of GSS Sheets — supplied by ABB under 8 invoices relating to the purchase order dated 11th September, 2008 — had been fully utilized in manufacturing finished goods supplied to ABB's vendors. Consequently, Techno contended that there was no basis for any claim related to the stock value as per the MoM dated 20th January, 2010.

5. The Sole Arbitrator meticulously reviewed the facts and contentions of both sides and delivered a reasoned Award. Addressing the claims related to the withheld stock of excess raw material, ABB was awarded INR 92,29,230/-, along with an interest of 9% per annum from 1st November, 2011, until full payment is made. Regarding Claim No. II concerning loss of reputation and goodwill, the Arbitrator found no sufficient basis for such



claims and thus rejected them. As for Claim No. III, which pertained to the costs of legal expenses, the Arbitrator granted ABB a lump sum of INR 3,75,000/-. The operative portion of the impugned Award is as follows:

“20. Net result of my above finding is that the claimant is held entitled to recover from the respondent Rs.92,29,230/- on account of its withheld raw material with interest @ 9% with effect from 01.11.2011 till payment and cost Rs3,75,000/-.Award is accordingly made in favour of the claimant and against the respondent on this 28th day of February 2019 at New Delhi.”

CONTENTIONS OF PETITIONER/ ‘TECHNO’

6. The submissions advanced by Ms. Malvika Trivedi, Senior Counsel representing Techno, to assail the impugned Award are summarised as follows:

6.1. The Arbitral Tribunal lacked territorial jurisdiction to adjudicate the disputes. The purchase order dated 11th September, 2008 – the foundational basis of ABB’s case – contains an explicit jurisdictional clause (Clause 4) which provides exclusive jurisdiction relating to dispute adjudication to the courts of Bangalore. Despite this stipulation, this Court exercised its jurisdiction under Section 11 of the Act to constitute the Arbitral Tribunal, thereby deviating from the jurisdictional clause agreed upon by the parties and compromising the legitimacy of the appointment. Techno raised this jurisdictional objection under Section 16 of the Act before the Arbitral Tribunal, but the application was decided against them through order dated 20th November, 2013. An appeal under Section 37 of the Act against this decision was also dismissed by this Court on 24th January, 2014. However,



the appellate court observed that grievances arising out of Section 16(2) and Section 16(3) dismissals could be raised at the stage of challenging the final award under Section 34 of the Act. The issue of jurisdiction was also raised during final arguments before the Arbitrator, which was once again wrongly rejected. Nonetheless, Techno is entitled to assail the impugned Award on this ground in the present proceedings. Therefore, since Clause 4 of the purchase order is a fundamental term governing the contract between the parties which has been overlooked by this Court in appointing the Sole Arbitrator, the very foundation of the Arbitrator's authority is flawed. Thus, the impugned Award is devoid of jurisdiction, and on this basis alone, the impugned Award should be set aside. In support of this contention, reliance is placed upon the rulings in *Airports Authority of India v. Hindustan Steel Works Construction Ltd.*¹ and *Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee*.²

6.2. The initiation of the claim before the arbitrator was procedurally flawed and thus without jurisdiction. ABB relied upon Power of Attorney dated 7th January, 2013, submitted along with Statement of Claim, wherein Mr. B. Gururaj (Company Secretary of ABB) purportedly authorized Mr. Vivek Kier to file the claim on ABB's behalf. This document references Power of Attorney dated 17th February, 2012, granted to Mr. B. Gururaj, however, this foundational document was never presented to the Arbitrator. When Techno raised an objection to this procedural lapse, it was rejected by the Arbitrator solely on the ground that no such objection was mentioned in

¹ 2009 SCC OnLine Del 3250

² 2022 SCC OnLine SC 568



the Statement of Defence. Arbitrator's failure to properly address their objection undermines the legitimacy of the entire arbitral process. As a result, this oversight regarding the lack of valid authorization significantly compromises the impugned Award, and renders it liable to be set aside.

6.3. Purchase order dated 11th September, 2008, explicitly covered the supply of only 51 MT of GSS Sheets under eight invoices. The entire quantity of raw material was fully utilised for manufacturing the finished goods, and supplies were duly made to the vendors of ABB. Thus, Techno's obligations under the said purchase order had been completed, which renders ABB's claim fundamentally misconceived.

6.4. ABB's reliance on MoM dated 20th January, 2010, as the sole piece of evidence is misplaced. This document was not corroborated or supported by any other evidence to substantiate the claims made by ABB. Further, ABB failed to produce any additional invoices or documents from other purchase orders to validate the existence of surplus materials with Techno. Thus, the Arbitrator's conclusions premised on this document are untenable, and the findings rendered in the impugned Award, in light of judgements of Supreme Court, are liable to be set aside under Section 34 of the Act.

6.5. Arbitration agreement between the parties is contained only in purchase order dated 11th September, 2008, against which admittedly only 51 MT of raw material was supplied. Therefore, any dispute referred for arbitration should arise solely from this purchase order and claims raised must be limited to the specified 51 MT quantity, which Techno asserts was fully utilized for manufacturing the finished goods. Thus, the claim for 179.278 MT, based on the MoM, falls outside the scope of the arbitration



agreement, and such a claim should not have been adjudicated by the Arbitral Tribunal.

7. Consequently, the impugned Award, bereft of jurisdictional basis and compelling evidence, stands on shaky grounds and, therefore, should be set aside by this Court under Section 34 of the Act.

CONTENTIONS OF RESPONDENT/ 'ABB'

8. Mr. Nikhilesh Krishnan, counsel for ABB, staunchly defends the impugned Award. He submits that under Section 34 of the Act, this Court does not sit as an appellate body over the decision of the Arbitrator. Consequently, this Court should refrain from re-appreciating the evidence already considered by the Arbitral Tribunal. Further, he argues that the Sole Arbitrator was appointed by this Court under Section 11 of the Act, and Techno did not object at that relevant time. Thus, the objection of territorial jurisdiction cannot be raised at this juncture.

9. Addressing the substantive aspects of the case, Mr. Krishnan points out that Techno effectively failed to present any substantial defence during the arbitral proceedings. According to him, Techno merely provided vague denials without contesting the specific admissions recorded in the MoMs dated 29th October, 2009, and 20th January, 2010. On this basis, he asserts that the impugned Award does not suffer from any infirmity, and therefore must be upheld by this Court.

ANALYSIS AND FINDINGS

10. The Court has considered the aforementioned contentions. Firstly, we shall



address the objection concerning territorial jurisdiction. To properly evaluate this objection, it is essential to understand the manner in which the Arbitral Tribunal was constituted. This was carried out by this Court on 8th February 2013, under Section 11 of the Arbitration and Conciliation Act, 1996. The relevant portion of the order is extracted hereunder:

“The petitioner has filed the abovementioned petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator. This petition was listed before the Court on 20th December, 2012. Notice was issued to the respondent for today's date. Mr. Mohan Shandilya, Advocate appears on behalf of the respondent. He does not dispute the arbitration clause contained in the Purchase Order dated 11th September, 2008.

Considering the overall facts and circumstances, as agreed, Smt. Kawal Inder Kaur, Retd. Additional District Judge (Mobile No.9810125754) is appointed as a sole Arbitrator to adjudicate all the disputes and differences between the parties as mentioned in this petition, including their claims and counter-claims, arising out of the certain Purchase Order. The Arbitrator shall conduct the proceedings under the provisions of the Arbitration and Conciliation Act, 1996 and shall give prior notice before commencing the proceedings. Total fee of the learned Arbitrator shall be payable to the tune of ₹1.5 lac which shall be borne by both the parties in equal proportion. The petition is accordingly disposed of.

Copies of this order be given dasti to the learned counsels for the parties. A copy of the order be also communicated to the learned sole Arbitrator.”

11. The order clearly indicates that both parties admitted the existence of the arbitration agreement contained in the purchase order dated 11th September, 2008. Therefore, Techno's jurisdictional objections do not pertain to the existence or validity of the arbitration agreement itself. Instead, their challenge is specifically directed at the appointment of the Arbitral Tribunal on territorial grounds. Notably, Techno did not contest this Court's order of appointment, instead invoking Section 16 of the Act in the



course of the arbitration process. The Court concurs with the Arbitrator's assessment that, since the Tribunal's constitution was by an order of this Court, any challenge to same on territorial jurisdiction ought to have been promptly addressed by directly contesting the appointment order itself, and not by raising the issue later under Section 16 of the Act. By failing to challenge the jurisdiction of this Court to entertain the Section 11 petition at the outset, Techno has forfeited the opportunity to question the territorial jurisdiction.

12. Furthermore, Techno's failure to contest the Court's jurisdiction at the appropriate juncture would also invoke the doctrine of waiver. By choosing to raise the issue only during the arbitral proceedings, and misconstruing it as a jurisdictional challenge under Section 16, Techno demonstrates a fundamental misunderstanding of the provision. This approach not only weakens their position but also suggests an acquiescence to the Court's jurisdiction, which, under the doctrine of waiver, significantly undermines their late-stage jurisdictional challenge. The caselaw cited by the Petitioner in support of their jurisdictional objection is entirely inapplicable in the present context. The factual disparities between the referenced cases and the current situation are significant, rendering them inapplicable. Thus, Techno's challenge on territorial grounds is not maintainable at this point in the present proceedings.

13. We now move to the objection raised by Techno concerning the alleged lack of proper authorisation in filing the claim. As noted in the impugned Award, there is a Power of Attorney on record, whereby Mr. B. Gururaj, Company Secretary of ABB, has authorised Mr. Vivek Kier to



institute a claim. However, Techno's objection is directed towards the authority of Mr. Gururaj to sub-delegate the power to institute, arguing that since the Power of Attorney in favour of Mr. Gururaj was not presented to the Arbitral Tribunal, the claim was not properly instituted. In the opinion of this Court, this objection is hyper-technical and misconceived, particularly within the context of arbitration proceedings. Arbitration, by its nature, is intended to be a more flexible mechanism of dispute resolution, and therefore is not strictly bound by the procedural rigors of the CPC³. The questioning of the internal authorisation processes of a corporate entity, especially when there is no clear evidence of impropriety or harm, places an undue emphasis on procedural technicalities and diverts from the substantive issues at hand. It would be inappropriate for this Court to invalidate the entire arbitral proceedings and all the substantive legal actions taken thus far, solely on the ground of a procedural irregularity. This understanding is supported by the judgement of the Supreme Court in ***Union Bank of India v. Naresh Kumar***⁴, which noted as follows:

"9. ... Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

10. ... A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in

³ Code of Civil Procedure, 1908

⁴ (1996) 6 SCC 660



signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.”

14. Furthermore, ABB has been consistently represented throughout the arbitration proceedings as well as before this Court. This continuous appearance by ABB through their authorized representative substantiates their deliberate and knowing participation in the proceedings, and in keeping with the above extracted holding of the Supreme Court, this effectively ratifies the fact that the person who filed the claim was duly authorized to do so. It is also pertinent to note that the arbitral proceedings in this case were effectively initiated when this Court allowed ABB's application under Section 11 of the Act. Techno did not raise any objections at that crucial juncture. The subsequent filing of claims by ABB was in furtherance of the Court's initiation of proceedings. Thus, the authorized representative merely signed on behalf of ABB in compliance with procedural requirements, while the actual institution of proceedings was done prior in time through this Court's order. This distinction highlights that Techno's objection lacks substantive grounds, further reinforcing the validity of the arbitral proceedings initiated through the order of the Court. Thus, even if Techno's hyper-technical objection regarding the scope of Order XXIX Rule 1 of the CPC is entertained, it lacks merit, as the same serves no purpose other than to complicate and protract the proceedings, contrary to the objectives of arbitration.

15. As regards the claims being beyond the scope of reference, it is



crucial to recognize the breadth of claims referred to arbitration when this Court appointed an arbitrator under Section 11 of the Act. The Court's order categorically stated that all claims and disputes presented in the Section 11 petition were referred to arbitration, which specifically included the claim for the entire quantity of 179.278 MT of raw material, a fact to which Techno raised no objections at the time of the Arbitrator's appointment. Furthermore, upon examination of Techno's Statement of Defence, which the Arbitrator duly considered, there appears to be no substantial contest to the Arbitrator's authority to adjudicate the full range of claims presented. While Techno did make a jurisdictional objection in Paragraph No. 21 of their Statement of Defence, it lacks the substance to challenge the clearly defined scope of arbitration as laid out in the Court's order dated 8th February, 2013. Therefore, Techno's contention that claims related to the quantity of raw material exceeding the 51 MT supplied under the purchase order dated 11th September, 2008, are non-arbitrable, is unfounded.

16. Now, let us examine the MoM dated 23rd October, 2009, which is the fulcrum of the dispute. The same records as follows:

"Minutes of meeting held on 23rd Oct'09 at M/s Techno, Greater Noida regarding Physical stock verification of GI sheets supplied by M/s ABB to M/s Techno thro Various projects and dispatch of balance ducting and accessories to M.s Tata motors, Lucknow

M/s Techno Aircon

Mr. Faran ali – Managing director

M/s ABB

Mr. Karthikeyan – Supplychain manager

Mr. Debasis modak – Project manager

1. M/s Techno confirmed the stock of individual GI Sheets as on date 22.10.09 by the following Physical verification statement.

Sl. No.	Gauge	Book stock confirmed by M/s	Physical stock	Stock discrepancy confirmed by M/s
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		Techno	confirmed by M/s Techno	Techno
1	18G	46743.74	25068.89	21674.85
2	20G	143977.18	42668.45	101308.73
3	22G	5312.00	5312.00	0.00
4	24G	18933.70	5900.00	13033.70
5	26G	20878.77	9677.00	11201.77
		235845.39	88626.34	147219.05

*Qty in Kg

2. M/s Techno confirmed the stock discrepancy of 147219.05 Kg and requested M/s ABB to accept the following proposal.
 - a. Total stock discrepancy 147.2 Ton
 - b. Alternate make: M/s Jindal 60.0 Ton- Phy.stock avl.
Can be lifted alongwith 88.6 Ton of Tata make.
 - c. Material required for Tata motors 52.0 Ton
 - d. Remaining qty 35.2 Ton
3. M/s Techno confirmed that (88.6+60.0= 148.6) 148.6 ton of material is physically available at M/s Techno aircon factory located at Greater Noida and the same can be lifted by M/s ABB or their authorized representative by anypoint of time with one day prior intimation.
4. M/s ABB confirmed that the same material will be lifted from M/s Techno after getting the supporting documents.
5. xx ... xx ... xx
6. xx ... xx ... xx
7. xx ... xx ... xx
8. xx ... xx ... xx
9. M/s Techno showed only 71,529Kg (approx. based on no of coils available) against confirmed physical stock of 88626.34Kg. M/s ABB Expressed and clarified once again regarding the discrepancy of stock against physical stock statement.

Sl. No.	Gauge	Physical stock confirmed by M/s Techno	Physical stock showed by M/s Techno to M/s ABB	
1	18G	25068.89	$= (3*5 + 1.529) = 16,529$	16.529
2	20G	42668.45	$= (10*5) = 50.000$	50.000
3	22G	5312	$= (1*5) = 5$	5.000
4	24G	5900		0
5	26G	9677		0
		88626.34		71.529



10. *M/s ABB expressed that, failing to fulfill the commitment date given by M/s Techno will leads to take serious action in course of time.”*

[sic.]

17. Further, the subsequent MoM dated 20th January, 2010, also records the agreement between parties as regards the stock of raw material which is to the following effect:

“Minutes of Meeting held between M/S ABB and M/s Techno Aircon, Greater Noida on dispatch of balance Ducting and Sheets for Tata Motors and other projects, held on 20.01.10 at the M/s Techno’s Factory

Present:

M/s Techno Aircon
Mr. Faran Ali (M D)

M/s ABB
Mr. Somnath Gupta
Mr. Srinivasan KS
Mr. Debasis Modak

1. *For Tata Motors, following are the total Requirement and dispatch Programme*

<i>Duct Type/ Thickness</i>	<i>Balance Requirement in Sq. m</i>	<i>Qty To be dispatched on 20th & 21st Jan '10</i>	<i>Qty To be dispatched on 25th & 27th Jan '10</i>	<i>Remarks</i>
<i>L Profile- all gauges as per drg</i>	2400	1000	1400	<i>All Drgs and mfg.clearances are available with M/S Techno</i>
<i>L Profile – all gauges for one balance system</i>	1000	0	0	<i>Mfg. clearance will be given before 31.01.10 and ducts to be dispatched by 10.02.10</i>
<i>24 G -Sheets of 2500 x 1220 size</i>	2550	1250	1300	<i>M/s Techno to cut the sheets to size of 2500 x 1220</i>
<i>24 G -Sheets of 2500 x 1220 size</i>	1550	500	1050	<i>-Do-</i>

2. *For Balance Sheets of all the projects, following are the schedule of dispatch.*



Wt in Kgs.

Project	18G	20G	22G	24G	26G	Total	Remarks
Tata Motors & Jubilant	34083	129151	0	5396	20690	189320	Stock position as on 31.12.09
Less to be consumed in Tata Motors	0	1500	15200+9600 (Sheets)	2900+11000 (Sheets)	0	40200	The requirement of 22/24G shall be replaced by 20G by weight
Balance	34083	127651	-24800	-8504	20690	149120	
Festival Cuty	6083	5416	0	0	0	11499	Current stock. This materials can be lifted from M/S Techno immediately
Wockhardt	6485	6862	5312	0	0	18659	-Do-

TOTAL 179,278 Kg

M/s Techno will return 139 MT immediately and balance 40 MT shall be returned after reconciliation of payment with M/S ABB. Materials can be lifted from M/s Techno from 27th Jan 2010.

3. M/s Techno has pointed out that C-form against materials supplied to Festival City has not been issued by M/S ABB. M/S will revert back on this issue within 10 days time.

4. It has been observed that there is some mistake in the invoices submitted by M/s Techno, they will correct the bill and resubmit the same within 25th Jan' 10. They will also submit the reconciliation statement of the payable invoices and MS ABB will arrange to release payment within 10th of Feb'10."

[Emphasis Supplied]

18. The aforementioned MoMs first and foremost reveal an explicit and undeniable admission by Techno of possessing unutilized raw material initially supplied by ABB. Techno not only acknowledged this fact but also committed to returning the excess materials, as well as outlined the schedule



for dispatching supplies to projects like Tata Motors Lucknow. Moreover, these MoMs shed light on the enduring business relationship between the parties, indicating that the purchase order dated 11th September, 2008, was merely one component of their broader and ongoing commercial dealings. Thus, Techno's engagement and acknowledgment in these meetings, coupled with the absence of substantial challenge to the arbitrator's jurisdiction over these matters, reinforces the view that the ambit of the arbitration agreement extended beyond just one single transaction, and the disputes arising from these broader dealings are indeed arbitrable.

19. Further, as discussed earlier, the Arbitrator's mandate, as per the Court's order of appointment, was to adjudicate 'all disputes and differences', implying a comprehensive scope of inquiry covering all aspects of the parties' commercial relationship, as detailed and acknowledged in the MoMs. As such, any claims related to the excess raw material and the obligations arising from these MoMs fall within the scope of the arbitral proceedings, as they are intrinsically linked to the parties' overall business dealings. In light of these documents, it is clear that the disputes referred to arbitration extended beyond the 51 MT supplied under the specific purchase order, and included the claims concerning 179.278 MT of raw material, as discussed in these MoMs.

20. Lastly, we must note that there is no cogent refutation to the admissions made in the aforementioned MoMs, which leads to the conclusion that Techno did indeed have the quantity of 179.278 MT of raw material stocked with them, which they had agreed to return. There is also no dispute regarding the rate applied to determine the value of the raw material.



Therefore, in the opinion of the Court, the view taken by the Arbitrator is entirely reasonable and cannot certainly be held to be unconscionable, arbitrary or perverse. No ground is made out for this Court to exercise its jurisdiction under any of the grounds specified under Section 34 of the Act to set aside the impugned Award.

21. Dismissed.

SANJEEV NARULA, J

DECEMBER 20, 2023

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(Corrected and released on 29th December, 2023)