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

Judgment reserved on: 18.07.2022

Judgment pronounced on: 21.03.2023

+ **FAO (OS) (COMM) 126/2021 and CM APPLs. 33734/2021 & 39310/2021**

PRAGYA ELECTRONICS PVT. LTD. & ORS. Appellant

Through: Mr Kirti Uppal, Sr. Adv. with Mr
Rohit Goel, Adv.

versus

COSMO FERRITES LTD. Respondent

Through: Mr Bharat Chugh, Mr Abhishek Ghai
and Mr Shreyash Sharma, Adv.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Court Hearing/ Hybrid Hearing (as per request)]

JUDGMENT

TARA VITASTA GANJU, J.:

FAO (OS) (COMM) 126/2021 and CM APPL. 33734/2021 [Application filed on behalf of the Appellant seeking interim relief] & CM APPL. 39310 / 2021 [Application filed on behalf of Appellant seeking clarification/modification of order dated 28.09.2021]

1. The present Appeal under Section 13 of the Commercial Courts Act, 2015 read with Section 37 of the Arbitration and Conciliation Act, 1996 [hereinafter called “the Arbitration Act”] has been filed by the Appellant impugning the Judgment dated 23.06.2021 passed by the

learned Single Judge in OMP (COMM.) No. 71/2019 [hereinafter called “Impugned Judgment”], whereby the learned Single Judge has upheld the Arbitral Award dated 13.04.2016 [hereinafter called “Arbitral Award”], and dismissed the Petition filed by Appellant [hereinafter called “PRAGYA”] under Section 34 of the Arbitration Act.

2. The Respondent [hereinafter called “CFL”] had filed a claim in the sum of Rs.2,65,54,292/- along with interest against the PRAGYA for failure to make payment under a Distributorship Agreement between the parties. The Arbitral Tribunal passed the Arbitral Award directing PRAGYA to pay a sum of Rs.38,77,423/- along with future interest at the rate of 12.25% per annum from 13.05.2016 till the date of payment (in case of failure by PRAGYA to pay the awarded amount to CFL within one month).
3. By the Impugned Judgment, the learned Single Judge upheld the Arbitral Award and dismissed the Petition under Section 34 of the Arbitration Act filed by PRAGYA.
4. CFL had also filed a separate Petition under Section 34 of the Arbitration Act challenging the Arbitral Award by way of OMP (COMM.) No.350/2016. The challenge in that Petition was limited to the extent of award of pre-reference and *pendente lite* interest on the amounts awarded in favour of CFL. The learned Single Judge of this Court, in OMP (COMM.) No.350/2016 has on 25.05.2017 allowed the Petition filed by CFL and the Arbitral Award was set aside to the extent of rejection of CFL’s claim for pre-reference and *pendente lite* interest. CFL was granted interest at the rate of 12.25% per annum

from the date of invoices till the date of the Arbitral Award by the Judgment dated 25.05.2017. This Court was informed on 28.09.2021 that neither party has challenged this Judgment.

5. Briefly, disputes arose between CFL and PRAGYA in relation to non-compliance of a non-exclusive Distributorship Agreement dated 01.04.2005 entered into between CFL and PRAGYA for supply of Manganese Zinc Soft Ferrites to PRAGYA [hereinafter called “the Agreement”]. Under the Agreement, PRAGYA placed purchase orders on CFL for the supply of Manganese Zinc Soft Ferrites. The parties had also entered into Annual Agreements for the years 2007, 2008 and 2009.

- 5.1 It is CFL’s case that it supplied goods to PRAGYA against various purchase orders over the period from 25.04.2009 to 10.06.2009, and raised invoices in terms of the Agreement. CFL claimed that PRAGYA failed and neglected to make payment in a sum aggregating to Rs.54,14,934/- against the goods supplied.

- 5.2 PRAGYA issued 9 cheques totalling to Rs.33,19,514/- as follows:

S. No.	Cheque No.	Date	Amount (in Rs.)
1.	273502	30.06.2009	1,54,353/-
2.	273505	30.06.2009	2,36,530/-
3.	273503	30.06.2009	4,65,347/-
4.	273504	30.06.2009	3,70,641/-
5.	273510	07.07.2009	4,63,646/-
6.	273511	07.07.2009	4,49,777/-
7.	273512	07.07.2009	5,03,207/-
8.	273513	07.07.2009	2,78,064/-
9.	273509	07.07.2009	3,97,949/-
TOTAL			33,19,514/-

- 5.3 The aforesaid cheques were, however, dishonoured upon presentation.

While PRAGYA claimed that the cheques were issued as security for any payment due, CFL claimed that the cheques were issued by PRAGYA in discharge of its outstanding dues.

- 5.4 In addition thereto, CFL also claimed an amount of Rs.1,27,24,521/- on account of withheld “C” forms or for non-issuance of "C" forms towards its liability to the Sales Tax Department.
- 5.5 By letter dated 28.08.2009, CFL terminated the Agreement and requested PRAGYA to clear its outstanding dues and issue the “C” forms. Since CFL failed to make the payment of its outstanding dues or handover the “C” forms requested, the disputes between the parties were referred to the arbitration of an Arbitral Tribunal comprising of a Sole Arbitrator, Retired Justice V.P. Bhatnagar.
- 5.6 CFL filed a claim before the Arbitral Tribunal being:
- (i) Claim in respect of payments due against supplies made under Agreement to the sum of Rs.54,14,934/- along with interest at the rate of 12.25% per annum; and
 - (ii) Delivery of “C” forms failing which sum of Rs.1,27,24,521/- or such increased amounts as the Sales Tax Authorities may levy thereon. The interest of the sales tax liability claim was claimed at the rate of 18% per annum.
- 5.7 PRAGYA appeared before the Arbitral Tribunal and contested the Arbitral proceedings. It was submitted by PRAGYA that the goods as supplied by CFL were not in accordance with the Agreement and that it received several complaints regarding breakage of the Manganese Zinc Soft Ferrites components as supplied by CFL. It further submitted that the cheques issued by PRAGYA were issued as a

security and not in discharge of their outstanding liabilities and these were wrongly deposited by CFL.

5.8 Detailed hearings were conducted by the Arbitral Tribunal. The Arbitral Tribunal framed 23 issues in the matter and reached the conclusion that PRAGYA had placed purchase orders for the goods in question and that CFL had supplied those goods and raised invoices against the supply. A special reference was made by the Arbitral Tribunal to an email dated 10.07.2009 sent by CFL to PRAGYA which stated that a total sum of Rs.54,14,934/- was outstanding against supply of goods till 30.06.2009. This email was placed on record by PRAGYA and the contents of this email had not been denied in contemporaneous correspondence by PRAGYA.

5.9 The Arbitral Tribunal considered the evidence and material on record to conclude that a sum of Rs.54,14,934/- was due and recoverable by CFL against PRAGYA. The Arbitral Tribunal also held that PRAGYA was entitled to the following credit:

- | | | |
|-------|--|-----------------------|
| (i) | <i>Credit for commission payable for certain sales made to a third party entity called M/s COILS in the month of June, 2009 (after deducting TDS);</i> | <i>Rs.1,14,279/-</i> |
| (ii) | <i>Turnover Discount on Sales from April, 2009 to June, 2009; and</i> | <i>Rs.12,05,434/-</i> |
| (iii) | <i>Credit on account of commission on sales up to 28.08.2009.</i> | <i>Rs.4,02,798/-</i> |

Total [(i)+(ii)+(iii)] Rs. 17,22,511/-

5.10 After giving credit to PRAGYA in the sum of Rs. 17,22,511/-, the Arbitral Tribunal awarded the sum of Rs.36,92,423/- to CFL [Rs.54,14,934 – Rs. 17,22,511] along with future interest at the rate of

12.25% per annum.

- 5.11 As discussed in paragraph 4 (supra), the claim of award of pre-reference and *pendente lite* was initially rejected by the Arbitral Tribunal but awarded to CFL by the learned Single Judge in OMP (COMM.) No.350/2016 by its Judgment dated 25.05.2017.
- 5.12 During the course of arbitral proceedings, PRAGYA handed over the “C” forms as requested to CFL. Thus, there was no further dispute with respect to the “C” forms/other statutory forms, that remained for adjudication.
- 5.13 Against the Arbitral Award, PRAGYA filed a Petition under Section 34 of the Arbitration Act, which was dismissed by the learned Single Judge by the Impugned Judgment, which has led to the filing of the present Appeal.
6. During the proceedings before this Court, PRAGYA filed CM APPL. No. 39310/2021, wherein it stated that the amount due to CFL as on October, 2021 was calculated as follows:

<i>“i) Awarded amount by the Ld. Sole Arbitrator</i>	<i>Rs.36,92,423/-</i>
<i>ii) Interest @ 12.25% p.a. from July, 2009 upto February, 2019 on Rs.36,92,423/-</i>	<i>Rs.43,72,444/-</i>
<i>iii) Interest @ 12.25% p.a. from March, 2019 upto October, 2021 on Rs.16,92,423/-</i>	<i>Rs.5,52,858/-</i>
<i>iv) Ld. Sole Arbitrator Fee</i>	<i>Rs. 1,85,000/-</i>
<i>v) Interest @ 12.25% p.a. from Apr, 2016 upto October, 2021 on Rs.1,85,000/-</i>	<i>Rs.1,24,643/-</i>
<i>Total</i>	<i>Rs.89,27,368/-”</i>

- 6.1 CFL filed a reply to this Application, submitting that the aforesaid calculations were incorrect and that an amount of Rs.1,15,03,798/- was due to CFL as on October, 2021:

“Amount payable by the Appellants till 28.09.2021, i.e., the first date of hearing of the instant appeal in terms of the arbitral award dated 13.04.2016 and the judgment of this Hon’ble Court dated 25.05.2017

<i>I. In terms of award dated April 13, 2016, the Respondent is entitled to following:</i>	
• Principal Amount	Rs. 36,92,423/-
• Towards Arbitration Fee plus actual expenses	Rs. 1,85,000/-
• Interest @12.25% p.a. on Rs. 36,92,423.00 from 13.05.2016 to 28.09.2021	Rs. 24,35,103/-
• Interest @12.25% p.a. on Rs. 1,85,000.00 from above stated dates to 28.09.2021	Rs. 1,22,004/-
Sub-Total (I)	Rs. 64,34,530/-
<i>II. In terms of judgment dated 25.05.2017, the Respondent is entitled to following:</i>	
• Interest amount on Rs. 36,92,423.00 from the date of invoices till the date of award dated 13.04.2016	Rs. 30,54,721/-
• Interest @12.25% p.a. on Rs. 30,54,721.00 from 13.05.2016 to 28.09.2021	Rs. 20,14,547/-
Sub-Total (II)	Rs. 50,69,268/-
Grand Total (I + II)	Rs. 1,15,03,798/-”

- 6.2 Prior to filing of the present proceedings, PRAGYA had deposited an amount of Rs.20 Lakhs with the District Court [hereinafter called “Executing Court”] on 07.03.2019. Thereafter, in partial compliance with Order dated 28.09.2021 passed by a Coordinate Bench of this Court, a further sum of Rs.67 Lakhs was deposited by PRAGYA with the Registrar General of this Court. We are informed that subsequently, this amount was remitted to the Executing Court by the

Registry of this Court.

7. Both parties filed their written submissions in support of their case and also addressed arguments in the matter.
8. It was submitted by Mr Kirti Uppal, learned Senior Counsel for PRAGYA that the Arbitral Award passed by the Arbitral Tribunal is not tenable in the eyes of law. It was argued that the Arbitral Award has been typed on three different types of sheets by the Arbitral Tribunal and each page of the Arbitral Award does not bear the signature of the Arbitral Tribunal. It was further argued that the Arbitral Tribunal decided Issues numbers 1, 2 and 14 without discussing the reasons for the same, thereby, showing that the Arbitral Tribunal had a pre-determined mind.
 - 8.1 Learned Senior Counsel for PRAGYA has raised various additional grounds in the Appeal. It was submitted that the learned Single Judge and the Arbitral Tribunal failed to consider that evidence was led by a witness who was neither the Director/Secretary nor the Principal of CFL and hence, was not competent to depose on behalf of CFL. It was submitted that Agreement was terminated by an officer of CFL who was not authorized to terminate such Agreement.
 - 8.2 It was further submitted that PRAGYA had filed a counter-claim claiming a sum of Rs.2.5 crores *inter-alia* for non-payment of commission, quality defects, loss sustained to breakage and loss due to illegal termination of Agreement, which was dismissed by the Arbitral Tribunal by wrongly relying upon the Annual Agreement for the year 2009.
 - 8.3 Several additional objections were also raised against the Arbitral

Award *inter-alia* stating that the evidence and documents were not considered by the Arbitral Tribunal and that certain clauses of the Agreement had been wrongly interpreted by the Arbitral Tribunal. It was argued that the claim as filed by CFL was barred by limitation and that the Arbitral Tribunal and the learned Single Judge did not consider this aspect either. Various other issues were raised by PRAGYA in respect of the deposition by witnesses during the Arbitral proceedings as well.

9. On the other hand, learned counsel for CFL, Mr Bharat Chugh, argued that the Courts, now, have a limited scope of judicial intervention into the findings of Arbitral Tribunal on facts, merits, quality and quantity of evidence and the scope for interference is even less in an Appeal under Section 37 of the Arbitration Act. Reliance was placed on the decision of the Supreme Court in *Associate Builders v. DDA*¹. It was further submitted that the learned Single Judge went into some detail on the factual challenges raised by PRAGYA and no fault with the findings of the Arbitral Award was found by the learned Single Judge.
- 9.1 Learned Counsel for CFL further argued that where there are concurrent findings in any award which have not been disturbed by the Court in the objections preferred under Section 34 of the Arbitration Act, the Appellate Court must be extremely cautious in disturbing such findings. Reliance was placed on *MMTC v. Vedanta*² and *UBV Infrastructure Ltd. v. National Highways Authority of*

1 [2015] 5 SCC 739

2 2019 SCC Online SC 220

*India*³ by the learned counsel for CFL.

- 9.2 On merits, it was pointed out by learned Counsel for CFL, that PRAGYA's contentions were rejected by the Arbitral Tribunal and the learned Single Judge considered these objections and rejected the contentions as well. Additionally, each and every objection and ground of challenge which have been raised in the present Appeal were raised by PRAGYA in its Petition under Section 34 of the Arbitration Act and that these said objections have been adjudicated upon by the learned Single Judge.
- 9.3 More specifically, it was submitted by CFL that the objections raised by PRAGYA in the present Appeal, are a reproduction of the grounds raised by PRAGYA in its Petition under Section 34 of the Arbitration Act all of which stood rejected by the learned Single Judge.
- 9.4 In addition, learned counsel for CFL further submitted that unless there exists an error apparent on the face of the record, the Arbitral Tribunal's interpretation and findings cannot be interfered with. Reliance was placed on *Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.*⁴.
10. We have perused the record as produced before us and the contentions of both the parties. Before we proceed further, we must remind ourselves of the scope and ambit of this Court's interference in proceedings under Section 37 of Arbitration Act.
11. The scope and ambit of a challenge under Sections 34 and 37 of the

³ 2020 SCC OnLine Del 60

⁴ 2019 SCC Online SC 1656

Arbitration Act is no longer *res integra*. In a recent decision rendered by the Supreme Court in the matter of *PSA SICAL Terminals Pvt. Ltd. v Board of Trustees of V.O. Chidambranar Port Trust Tuticorin*⁵, the Supreme Court has reiterated its view, in *MMTC Limited* case (supra), and held as follows:

“41. It will be relevant to refer to the following observations of this court in the case of *MMTC Limited* (supra):

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e., if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the fundamental policy of Indian Law would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and *Wednesbury* [*Associated Provincial Picture Houses v. Wednesbury Corpn.*, [1948] 1 K.B.223(CA)] reasonableness. Furthermore, patent illegality itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2) (b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter.

⁵ 2021 SCC OnLine SC 508

An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts.

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision...

[Emphasis is ours]

11.1 Recently the Supreme Court, in *UHL Power Co. Ltd. v. State of H.P.*⁶, has further clarified the principles for the exercise of jurisdiction under Sections 34 and 37 of the Arbitration Act as follows:

“16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163:(2019) 2 SCC (Civ) 293], the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained

17. A similar view, as stated above, has been taken by this Court in K. Sugumar v. Hindustan Petroleum Corpn. Ltd. [K. Sugumar v. Hindustan Petroleum Corpn. Ltd., (2020) 12 SCC 539], wherein it has been observed as follows : (SCC p. 540, para 2)

“2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The

⁶ (2022) 4 SCC 116

reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator.....

[Emphasis is ours]

12. The record of the Arbitral Tribunal shows that the following 23 issues were framed by the Arbitral Tribunal during the proceedings:

- 1) *Whether the claimant supplied soft ferrites components worth Rs.54.14,934/- to the respondents and the said amount has become payable?*
- 2) *Whether the respondents issued 9 cheques totalling Rs.33,19,514/- in favour of the claimant in discharge of their part liability?*
- 3) *Whether the respondents withheld "C" forms in respect of invoices raised by the claimant in the financial years 2007-08, 2008-09 and 2009-10 thereby creating sales tax liabilities of Rs. 1,27,24,521/-?*
- 4) *Whether the claimant has withheld Form E-1 to the respondents? If so, its effect?*
- 5) *Whether the respondents have taken proper legal course regarding issuance of "C" forms? If so, its nature and effect?*
- 6) *Whether the respondents are liable to pay sales tax, penalty and interest on account of non-supply of "C" forms? If so how much?*
- 7) *Whether the claimant is entitled to recover interest at the rate of 12.25% on the sum of Rs. 54,14,934/-? If so, for what period and how much?*
- 8) *Whether the entire claim or any part thereof is within limitation?*
- 9) *Whether the claim petition is not maintainable?*
- 10) *Whether the claim petition has been filed, signed and verified by duly authorized persons? If not, its effect?*
- 11) *Whether the petition does not disclose any cause of action against the respondents and merits rejection under Order VII, Rule 11, CPC with costs?*
- 12) *Whether the arbitrator has no jurisdiction to try the present*

reference and the proceedings are against the principle of natural justice and void ab initio?

- 13) *Whether the claim petition is liable to be dismissed with costs on account of objections raised by the respondents in para 8 of the preliminary objections taken in the Reply to the claim petition?*
- 14) *Whether the nine cheques were issued for security purpose in good faith, as alleged? If so, its effect?*
- 15) *Whether the distributorship agreement has been validly terminated?*
- 16) *What is the effect of the Hon'ble Delhi High Court Order dated 24.02.2011 on the present arbitration proceedings?*
- 17) *Whether the respondents are entitled to recover Rs.2,50,00,000/- or any other amount from the claimant on account of the reasons given in para 14 of the counter-claim including cross territory sales ?*
- 18) *Whether the respondents have not complied with the conditions of the annual agreement dated 13.04.2009 and, therefore, are not entitled to the recover any amount set up in their counter-claim?*
- 19) *Whether the respondents are entitled to the claim interest on Rs. 2,50,00,000/-. If so, how much?*
- 20) *Whether the respondents are entitled to reliefs (b) and (c) stated in their counter-claim?*
- 21) *Whether the counter-claim does not disclose any cause of action and is not maintainable?*
- 22) *Whether the counter- claim or any part thereof is within limitation?*
- 23) *Whether the pleas set up by the respondents are false, vexatious and frivolous to their knowledge and the claimant is entitled to recover special costs? If so, how much?*
- 24) *Relief"*

12.1 The Arbitral Tribunal adjudicated upon each of these issues and gave an award in the sum of Rs. 38,77,423/- in favour of CFL after dealing with each issue in detail and appreciating the evidence produced by CFL and PRAGYA, during the course of Arbitral proceedings.

13. A review of both the Arbitral Award and the Impugned Judgment shows that the issues as set forth in paragraph 12 have been adjudicated upon. These are briefly discussed below:

13.1 The issue of supply of goods by CFL in the sum of Rs.54,14,934/- and the nine cheques [details as set forth in paragraph 5.2 (supra)] which are referred to as issue numbers 1, 2 and 14 have been clubbed together and decided by the Arbitral Tribunal. Paragraph 26 to 29 of the Arbitral Award discusses the findings of the Arbitrator on these issues. The learned Single Judge relied on these findings and the evidence before the Arbitral Tribunal to hold that the amounts awarded to CFL were correctly awarded by the Arbitral Tribunal. So far as it concerned the issue of nine cheques, it was held by the Learned Single Judge while noting the decision of the Arbitral Tribunal in paragraphs 26 to 29 as follows:

“47. From the above, it is seen that the learned Arbitrator had relied upon Ex.C-5 to C-10, which are purchase orders, the receipt of which has been admitted by RW-1 Sharad Gupta, in his answers to question Nos. 28 & 85. He also relied on invoices exhibited as C-11 to C-29 which have been confirmed by Sharad Gupta in answer to question no. 40. The witness in reply to question Nos. 48 and 86 stated that materials against the invoices have been received. The learned Arbitrator has also relied on receipt of the transport courier Ex.C-70 to C-79 and ledger account of the petitioner maintained by the respondent for the financial year 2009-2010 (Ex.C-110 and C-111). The learned Arbitrator has held that the petitioner has not produced its own documents in regard to the purchases. He also referred to a letter dated July 10, 2009 of the respondent, as filed by the petitioner wherein it is stated that outstanding amount against the supplies till June 30, 2009 from the respondent to the petitioner was for Rs. 54,14,934/-. It is his finding that no reply was sent by the petitioner to the respondent to the said letter.”

48. On the stand of the petitioner that cheques were issued towards security, learned Arbitrator had relied on the e-mail dated September 26, 2009 from RW-1 Sharad Gupta wherein he requested for 15-18 days more to make the payment without challenging the accuracy of the amount. On the difference in the amount claimed by the respondent, learned Arbitrator held that

there is no confusion in the evidence adduced by the respondent as referred to above.”

[Emphasis is ours]

- 13.2 We find no reason to disagree with these findings.
- 13.3 So far as it concerns, issue numbers 3, 4, 5 and 6, as set forth in paragraph 5.12 (supra), the issue was resolved prior to the Arbitral Award and did not require any adjudication.
- 13.3 The Arbitral Award decided issue number 7 by awarding only future interest to CFL. However, upon Appeal by CFL, the learned Single Judge by its judgment dated 25.05.2017 in OMP (COMM.) No. 350 of 2016, awarded CFL pre-reference and *pendente lite* interest at the rate of 12.25% per annum. The issue of Award of pre-reference and *pendente lite* interest has attained finality. So far as concerns future interest, the issue was not pressed before this Court.
- 13.4 On the issue of the claims being beyond limitation, raised as issue number 8, the Arbitral Tribunal had held that since there was a running account and a business relationship between the parties, the claims of CFL were within limitation. It further held that the goods in issue were sold even in June, 2009 and hence, the statement of claim filed in August, 2010 was well within limitation. For ready reference, paragraph 34 of the Arbitral Award is reproduced below:

"34. The material consisting of soft ferrites was sold to the respondents during the month of June 2009. The Statement of Claim was filed on 29.08.2010. Obviously, the notice for referring the dispute to the arbitration was given much earlier. The parties were having a running account by the very nature of their mutual business relationship. Therefore, there appears no ground whatsoever to raise an objection of the claim being time barred by limitation. Holding that it is within limitation, the issue No. 8 is decided in favour of the claimant. "

This finding of the Arbitral Tribunal has been affirmed by the learned Single Judge and we agree as well.

- 13.5 Issue number 10 concerning the competence of the authorized representative, has been dealt by the Arbitral Tribunal in paragraph 36 to 38 of the Arbitral Award. The learned Single Judge in paragraph 36 & 37 of the Impugned Judgment found no infirmity with the same by taking into account the Power of Attorney dated 06.11.2007 executed on the authorized representative by the Executive Director of CFL. Therefore, even this objection does not hold water.
- 13.6 Issue number 11, as to whether the Claim Petition did not disclose any cause of action, was decided against PRAGYA by the Arbitral Tribunal [reference is made to paragraph 39 of the Arbitral Award]. The same was correctly sustained by the learned Single Judge in the Impugned Judgment as being without merit.
- 13.7 Issue numbers 12, 13 and 16 were also clubbed together by the Arbitral Tribunal and disposed of. The learned Single Judge of this Court in a Petition under Section 11 of the Arbitration Act [Arbitration Petition No. 201/2010] by an Order dated 24.02.2011 appointed an Arbitral Tribunal with the consent of CFL and PRAGYA to adjudicate the disputes amongst them. Reference in this regard is made in paragraph 40 of the Arbitral Award which held that this issue does not survive and hence, was not pressed by the parties and disposed of accordingly.
- 13.8 The Arbitral Tribunal has discussed issue number 15 relating to the Distributorship Agreement and its termination, in great detail after

referring to and relying upon the evidence placed before it by PRAGYA and CFL. The Arbitral Tribunal held that the Distributorship Agreement stood validly terminated on 28.08.2009. This finding of the Arbitral Tribunal has been affirmed by the learned Single Judge in paragraph 60 and 61 of the Impugned Judgment. We find no infirmity with the same.

- 13.9 Issue numbers 17 to 22 relate to PRAGYA's contention that its counter claim in the sum of Rs.2.5 crores has not been considered by the Arbitral Tribunal and the counter claims maintainability. The Arbitral Award and the learned Single Judge while relying on the evidence led by the parties found that the counter claim was *inter-alia* based on the handwritten annual agreement dated 13.04.2009. The Arbitral Tribunal found that PRAGYA failed to lead evidence with respect to its counter claim and hence, it was held that it was not entitled to any amounts. The learned Single Judge reproduced the findings of the Arbitral Tribunal being in agreement with his conclusions. We find no reason to disagree with the conclusions as reached by the Arbitral Tribunal and the Learned Single Judge.
14. Certain additional objections were raised by PRAGYA in its Petition under Section 34 of the Arbitration Act filed before the learned Single Judge which are dealt with below.
- 14.1 The contention of PRAGYA that the Arbitral Award was typed on three different sheets with different fonts and furthermore, every page of the Arbitral Award was not signed by the Arbitral Tribunal is totally misconceived. There is no such requirement of an Arbitral Award being signed on every page by an Arbitrator nor is there any

mention of typing on sheets and fonts etc. in the Arbitration Act.

14.1.1 Section 31 of the Arbitration Act that sets out the ‘Form’ and ‘Content’ of an Arbitral Award, reads as follows:

“31. Form and contents of the 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) *.....*
- (4) *.....*
- (5) *After the arbitral award is made, a signed copy shall be delivered to each party.....”*

14.1.2 The learned Single Judge, in Paragraph 34 and 35 of the Impugned Judgment has in this regard, additionally held:

“34. Having heard the learned counsel for the parties and perused the record, at the outset, I intend to deal with the submission of Mr. Rohit Goel that the award passed by the learned Arbitrator is liable to be set aside as it is in violation of Chapter XI of the CPC which deals with Judgments / Decrees; it does not bear signatures on each and every page and the award is typed in three different fonts on three different types of sheets.

35. In this regard, I may state that reference as made to OMP (COMM) 71/2019 Page 14 of 39 Chapter XI is an error. It appears reference was intended to Part I of the CPC wherein Section 33 refers to a Judgment and a Decree. Mr. Goel has not qualified his submission as to how the Award is in violation of that provision. In so far as his contention that the learned Arbitrator has not signed each and every page of the Award, he has not pointed out any provision which contemplates so. Even the plea of Mr. Goel that the award is typed in three different fonts shall not make the award invalid. Again he has not submitted any rule / law in support of his submission. This plea of Mr. Goel is rejected.”

14.2 The objections raised by PRAGYA in the present proceedings, that the authenticated statement of accounts were not produced and the

statement of account being admitted despite PRAGYA's objection, is misconceived. The Arbitral Tribunal has relied upon the statement of accounts and the invoices as produced by CFL. These invoices were never contested by PRAGYA. The same has also been appreciated in the Impugned Judgment exhaustively.

15. The learned Counsel for CFL has vehemently argued that the objections and grounds were previously raised before the learned Single Judge and adjudicated upon. We find ourselves in agreement with the learned Counsel for CFL. The objections and grounds raised by PRAGYA before this Court are mostly a reproduction of the grounds/objections raised before the Arbitral Tribunal and the learned Single Judge. Thus, adjudication thereupon has already taken place by two forums.
16. In exercise of powers under Section 37 of the Arbitration Act, the scope of interference of the Courts is narrow. The law is no longer *res integra*. Where the Arbitrator has assessed the evidence and material placed before him while considering the objections to the Award, the Court does not sit as a Court of Appeal or re-appreciate and re-assess the evidence. Unless there is a patent illegality or perversity, interference by the Court is not warranted. Merely because another view is possible, the Court will not interdict the Award. The Courts should only interfere if such Award "*portrays perversity unpardonable*" under Section 34 of the Arbitration Act. Reference is made to the Supreme Court's decision in the *Dyna Technologies* case (supra) where it has been held as follows:

"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 perversity unpardonable under Section 34 of the Arbitration Act.

[Emphasis is ours]

17. In view of the foregoing discussion, and being of the opinion that the view taken by the Arbitral Tribunal as upheld by the learned Single Judge, is certainly a possible view based on facts in relation to the merits of the disputes, we find no ground to interfere in the Arbitral Award and/or the Impugned Judgment as no infirmity or illegality exists in the Impugned Judgment that would merit our interference under Section 37 of the Arbitration Act.
18. The Appeal is accordingly dismissed. The pending Applications are also dismissed. Parties are left to bear their own costs.

19. The Registry is directed to send a copy of this Judgment to the Executing Court where the Execution Petition is pending.

TARA VITASTA GANJU, J

RAJIV SHAKDHER, J

MARCH 21, 2023/ha/r/SA

