



2023 : DHC : 8683-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.12.2023

+ **FAO(OS) (COMM) No.16/2019, CM Nos.41825/2022,
6562/2020 & 3244/2019**

INTERNATIONAL BREWERIES PVT. LTD. Appellant

Versus

MOHAN MEAKIN LTD. Respondent

AND

+ **FAO(OS) (COMM) No.17/2019, CM Nos.3421/2019,
6558/2020 & 41824/2022**

INTERNATIONAL BREWERIES PVT. LTD. Appellant

Versus

MOHAN MEAKIN LTD. Respondent

Advocates who appeared in this case:

For the Appellant : Ms. Suruchi Mittal, Mr. Abhishek Gautam
and Mr. Shubham Soni, Advs.

For the Respondent : Mr. Sandeep Sethi and Mr. Raman Kapur,
Sr. Adv. with Ms. Preeti Goel, Mr. Siddharth
Jain, Ms. Shalu and Ms. Priyanka, Advs.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT



VIBHU BAKHRU, J

1. The appellant (hereafter '**IBPL**') has filed the present intra-court appeals under Section 37(1) (c) of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**'). In FAO(OS)(COMM) 16/2019, IBPL impugns an order dated 13.02.2018 (hereafter '**the impugned order no.1**') passed by the learned Single Judge of this Court in O.M.P. (COMM) 115 of 2017, whereby the application filed by the respondent (hereafter '**MML**') under Section 34 of the A&C Act for setting aside the arbitral award dated 25.02.2017 (hereafter '**the impugned award**') was allowed. In FAO(OS)(COMM) 17/2019, IBPL impugns an order dated 13.02.2018 (hereafter '**the impugned order no.2**') passed by the learned Single Judge in O.M.P. 21 of 2012, whereby the interim award dated 22.12.2011 (hereafter '**the impugned interim award**') was set aside.

FACTUAL CONTEXT

2. IBPL is a subsidiary of India Breweries Inc. Canada, which is engaged in the distribution and production of beer under the name "Australian Lager" and "Australian Max". MML is an Indian Company incorporated under the provisions of the Companies Act, 1956, *inter alia*, engaged in the business of brewing, bottling and supplying of beer, whisky and other non-alcoholic foods and beverages.

3. The disputes between the parties arose in connection with a 'Contract Brewing Agreement' dated 14.06.2001 (hereafter '**the**



Agreement’) executed between MML and IBPL. The Agreement was executed pursuant to the Production Agreement dated 01.05.1997 entered into between MML and India Breweries Inc. Canada, IBPL’s parent holding company.

4. The principal disputes between the parties relate to the amount claimed by each of the parties as due from the other party, under the Agreement. MML claims an amount of ₹1,42,82,463.87/- as admittedly due from IBPL on account of the beer bottled and sold on behalf of IBPL.

5. On 31.07.2007, MML sent a demand-cum-notice invoking arbitration to IBPL. IBPL states that one Mr. Rajeshwar Bal (ex-director of IBPL) had, by a letter dated 04.08.2007, fraudulently and in collusion with MML admitted that the said amount was due and payable to MML. IBPL denies MML’s claim and contends that beer of the said value was not supplied by MML to IBPL in the months of May and June 2007 and that MML’s claim is premised on such non-existent supply.

6. Thereafter, arbitration proceedings commenced between the parties. On 23.04.2008, Shri N.K. Tyagi learned Sole Arbitrator, delivered an *ex parte* award for a sum of ₹1,42,82,463.87/- along with interest and costs in favour of MML.

7. IBPL filed a petition under Section 34 of the A&C Act [OMP No.337/2008] impugning the *ex parte* award dated 23.04.2008. It was IBPL’s case that the *ex parte* award was obtained by fraud played by



the erstwhile Directors of its company, Mr. Rajeshwar Singh Bal and Mrs. Deepinder Bal, in collusion with MML and the sole arbitrator. IBPL claims that its Directors were defrauding its shareholders and were removed from their position as Directors. In addition, criminal proceedings were initiated against them which, at the material time were pending. It is claimed that the said Directors had floated another concern with a similar sounding name as IBPL for diverting the funds due to IBPL. IBPL contended that the sequence of events leading to the arbitral award clearly established the fraud committed by its erstwhile Directors in collusion with MML. The amount claimed by MML was based on an audit of the accounts that was conducted within a few hours. The demand for the amount so ascertained was raised by MML on the same date. The same was acknowledged by the erstwhile Directors of IBPL, and MML had immediately instituted the arbitral proceedings. It was also alleged by IBPL that the arbitrator selected was a counsel and his son was on the panel of professionals engaged by MML.

8. In the aforesaid proceedings instituted by IBPL, OMP No.337/2008, the parties agreed for setting aside of the *ex parte* award dated 23.04.2008 and for re-adjudication of the disputes afresh. MML had agreed to the same without going into the allegations of fraud raised on behalf of IBPL. A statement was also made on behalf of MML that it would establish its claim before the newly constituted Tribunal without relying on the letters / cheques issued by the erstwhile Directors (Mr. Rajeshwar Singh Bal and Mrs. Deepinder Bal) and on the basis of



unimpeachable record such as gate pass, excise challans for supplies made by MML.

9. One of the issues flagged in the said proceedings was the dispute regarding the Agreement dated 01.05.2007. According to IBPL, the said agreement was also part of the fraud played by the erstwhile Directors. It was IBPL's case that the Agreement dated 14.06.2001 was extended on the same terms and conditions and communications to this effect were exchanged between the Managing Director of IBPL (Mr. Steven Judge) and MML. However, it was alleged that the erstwhile Directors of IBPL, in collusion with MML had fabricated the Agreement dated 01.05.2007, whereby the arrangement under the Agreement was extended albeit on increased ex-factory price of beer to be brewed.

10. In the meantime, in the proceedings connected with the arbitration, MML had secured orders restraining IBPL from operating its bank accounts. A Coordinate Bench of this Court passed an order dated 18.08.2008 in FAO(OS) No.341/2008 captioned ***Mohan Meakin Ltd. v. International Breweries P. Ltd. & Ors.*** directing IBPL to deposit the entire awarded amount of ₹1,42,82,463.87 with the Registry of this Court. The Court further directed that if the said amount was not deposited by IBPL, it would be restrained from removing the said amounts from its bank accounts maintained with the banks, which were arrayed as respondents no.2 to 5 in those proceedings. In the aforesaid backdrop, the learned Single Judge, while setting aside the *ex parte* award dated 23.04.2008 and relegating the parties for re-adjudication of



the disputes in arbitration, observed that interest of justice would be served by directing that an amount of ₹70,00,000/- be deposited with the Registrar General of this Court and be placed in a fixed deposit for a period of six months and that the order dated 18.08.2008 [passed by the division bench of this court in FAO(OS) No.341/2008] shall continue to operate so long as IBPL deposits the amount of ₹70,00,000/- in the name of the Registrar General of this Court. However, the Court granted liberty to IBPL to file an application under Section 17 of the A&C Act before the sole arbitrator and directed that the sum of ₹70,00,000/- would be retained or disbursed in accordance with the orders that may be passed by the sole arbitrator on the application to seek interim measure.

11. The Court disposed of IBPL's petition [OMP No.337/2008] in the aforesaid terms and by further clarifying that all rights of the parties including in relation to the existence and validity of the arbitration agreement shall remain open to be raised before the Arbitral Tribunal. In terms of the said order, proceedings commenced before the Arbitral Tribunal comprising of the sole arbitrator, as appointed by the learned Single Judge, in terms of its order dated 28.07.2010.

ARBITRAL PROCEEDINGS

MML's Case

12. Before the Arbitral Tribunal, MML filed its Statement of Claim claiming an amount of ₹1,38,68,733.68/- along with interest at the rate of 18% per annum. It was MML's case that the parties had entered into



the Agreement (Contract Brewing Agreement dated 14.06.2001) whereby, it was agreed that MML would brew and bottle beer of the brand chosen and selected by IBPL and supply the same to parties / licensees nominated by IBPL. It would receive the ex-factory price for the beer brewed and bottled by it as fixed in terms of the Agreement. However, IBPL would negotiate the price at which MML was to sell beer and raise invoices on the parties / licensees nominated by IBPL. MML asserted that the price would be exclusive of sales tax, excise duty, export pass fee, octroi, transit insurance, dharmada and any other statutory taxes, levies and other expenses. MML acknowledged that IBPL had also deposited an amount of ₹20,00,000/- as interest free security calculated on the basis of sale of two lacs cases per annum.

13. MML claimed that although the Agreement was for a term of five years and expired on 13.06.2006, the same was agreed to be extended on the same terms and conditions as agreed between the parties. It claimed that subsequently another Brewing Agreement dated 01.05.2007 was entered into between the parties. MML stated that IBPL continued to place orders during and after the expiry of the Agreement. It claimed that the Contract Brewing Agreement dated 01.05.2007 was in furtherance of an earlier agreement and save and except the terms and conditions that were modified (which included increase in the ex-factory price) the others remained the same.

14. It was MML's case that IBPL used to place orders stating the name of the parties / licensees nominated by IBPL to whom beer was to



be supplied in terms of the Agreement. The order / indent forwarded by IBPL was accompanied by indents of the nominated parties and specified the brand, quantity and size of the pack. It claimed that IBPL would enclose cheques for the payment of the State Excise Duty and in certain cases also handed over twenty-one days post dated cheques for the cost of goods. It claimed that after receipt of the orders, MML would forward the same to its dispatch section and after approval of the Officer Incharge of the State Excise supplied the stocks to the parties / licensees nominated by IBPL. These supplies were made through transporters nominated by IBPL. It claimed that the freight was paid by IBPL or the parties / licensees nominated by it. MML stated that the excise pass, dispatch challan and proforma invoice accompanied the consignment and the final computerized invoice was forwarded to IBPL and the party to whom beer was supplied. It claimed that necessary accounting entries were made in IBPL's account or in the account of the nominated party.

15. MML claimed that the aforesaid arrangement continued till 30.06.2007 and thereafter, IBPL abruptly stopped placing orders. It claimed that at the material time MML was left with packing material worth ₹32,23,747.81/- and stock of bottles worth ₹2,78,696/-. It stated that this stock could not be sold as no indents were received because of the *inter se* disputes between IBPL and its Directors / shareholders.

16. MML claimed that IBPL was liable to pay a sum of ₹3,02,37,601/- in respect of sales made to various parties / licensees for



and on behalf of IBPL. In addition, IBPL was also liable to pay the cost of packing material amounting to ₹32,23,747.81 and finished stock valued at ₹2,78,696/-.

17. MML claimed that against the amount of ₹3,02,37,601/-, IBPL was also entitled to receive a sum of ₹1,54,09,930/- being the differential amount on account of beer supplied in the state of Uttar Pradesh and ₹24,61,381/- on account of beer supplied in the state of Rajasthan. IBPL was also entitled to credit for the security deposit of ₹20,00,000/-. MML claimed that after adjusting the aforesaid amount, IBPL was liable to pay a sum of ₹1,38,68,733.68/-.

IBPL's Case

18. IBPL filed a Statement of Defence and also raised counterclaims. First, it claimed that the Agreement had expired. The Contract Brewing Agreement dated 01.05.2007, substantially raising the prices, was signed by Mr. Rajeshwar Singh Bal to benefit MML. IBPL claimed that he had no authority to execute any such Agreement and the same was rejected by the Managing Director of IBPL.

19. Second, IBPL contended that the claims were based on fabricated documents, which were unsubstantiated. IBPL claimed that the Agreement expired on 13.06.2006 and thereafter, it was continued by a Letter of Extension dated 18.07.2006 sent by the Managing Director of IBPL (Mr. Steven Judge).



20. On merits, IBPL claimed that all invoices raised by MML in respect of beer supplied by it were raised on nominated parties and in their names. According to IBPL, MML was responsible for collecting the invoiced amounts from the parties against whom the invoices were raised, and it was not liable for making payment for the beers bottled and supplied to various parties.

21. IBPL also submitted that the Statement of Claims clearly acknowledged that a sum of ₹1,98,71,311/- (₹1,54,09,930/- on account of differential payment in respect of beer supplied in the State of Uttar Pradesh; ₹24,61,381/- in respect of beer supplied in the state of Rajasthan; and ₹20,00,000/- deposited by IBPL as security deposit) was due and payable by MML to IBPL. In addition, IBPL claimed that it was entitled to compensation for the loss of business suffered due to illegal, fraudulent and criminal acts of MML which was quantified at ₹66,34,86,624/-. Further, IBPL also claimed a sum of ₹1,00,00,000/- towards loss of reputation and mental agony, and ₹30,00,000/- as legal costs.

THE IMPUGNED INTERIM AWARD

22. IBPL filed an application dated 15.03.2011 for *ad interim* relief under Section 17 of the A&C Act for the release of ₹70,00,000/- deposited by MML on account of admission made by it, stating that MML is to pay ₹1,98,71,311/- to IBPL.



23. The learned Arbitral Tribunal referred to paragraph 19 of the Statement of Claims of MML dated 16.11.2010, wherein it was mentioned that IBPL was entitled to the differential amount of ₹1,54,09,930/- on account of beer supplied in the state of Uttar Pradesh and ₹24,61,381/-, on account of beer supplied in the state of Rajasthan. In addition, IBPL was also entitled to ₹20,00,000 deposited as security with MML.

24. The Arbitral Tribunal held that although the parties have denied their respective claims / counterclaims, MML had acknowledged that a sum of ₹1,98,71,311/- was payable to IBPL. Thus, the amount of ₹70,00,000/- deposited by IBPL was required to be released to it.

25. The Arbitral Tribunal further reasoned that the said relief of disbursal could not be considered as an interim measure and accordingly passed an impugned interim award dated 22.12.2011 thereby finally directing release of the sum of ₹70,00,000/- deposited by IBPL.

IMPUGNED AWARD

26. The Arbitral Tribunal framed the following issues for consideration:

“1. Whether the Claimant (M/s. Mohan Meakin Ltd.) is entitled for a sum of Rs.1,38,68,733.68 from the Petitioner (M/s. International Breweries P. Ltd.) as per the prayer clause of Statement of Claim? OPC



2. Whether the Claimant (M/s. Mohan Meakin Ltd.) is entitled to interest, as claimed? If so, at what rate and for what period? OPC

3. Whether the claim of the Claimant (M/s. Mohan Meakin Ltd.) has been signed, verified and filed by duly authorized persons? OPC

4. Whether the counter claim of the Petitioner (M/s. International Breweries P. Ltd.) has been signed, verified and filed by a duly authorized person?

5. Whether the Counter Claimant / Petitioner (M/s. International Breweries P. Ltd.) is entitled for a sum of Rs.69,63,57,935/- from the Respondent / Claimant (M/s. Mohan Meakin Ltd.), as per the prayer clause of Statement of Claim? OPP

6. Whether the Counter Claimant / Petitioner (M/s. International Breweries P. Ltd.) is entitled to interest, as claimed? If so, at what rate and for what period? OPP”

27. Issues no.3 and 4 which relates to whether the Statement of Claim and counter claims were signed, verified and filed by a duly authorized persons, were held in favour of MML and IBPL respectively. The Arbitral Tribunal held that the claims and counter claims were signed by persons who were duly authorized to do so. The other issues were considered together.

28. Insofar as MML’s claim for a sum of ₹32,23,747.81/- on account of unutilized packing material and the claim against unsold stock of ₹2,78,696/- is concerned, the Arbitral Tribunal concluded that the said claims were time barred. The Arbitral Tribunal noted that no such claim



had been made in the earlier round of arbitral proceedings. MML's witness S.H S.C. Sahai (CW-1) had also admitted that the invoices in respect of the said claims were raised on 30.03.2010. At the material time, IBPL's petition under Section 34 of the A&C Act was pending before this Court. The Arbitral Tribunal also rejected the said claim on the ground that the invoice did not form part of the record and that no proof substantiating that packing material of the value as claimed under the name of IBPL had been furnished.

29. Insofar as MML's other claims are concerned, the Arbitral Tribunal considered that it was admitted case that goods used to be supplied to the nominated parties after receiving orders from those parties on their letterhead. It was also MML's case that invoices use to be raised directly in the name of the parties to whom beer was to be supplied. It was admitted that the differential amount between the ex-factory price and the price at which stock of beer was invoiced was required to be credited to IBPL's account. In the aforesaid facts, the Arbitral Tribunal held that it was not satisfied that IBPL was liable for the claims of supply of beer to third parties as only MML could have received payments from the licensed retailers. The Arbitral Tribunal held that IBPL did not play any role in the process except to secure orders from the licensed retailers and to take the difference in the invoice so valued and the ex-factory price of beer. In addition, the Arbitral Tribunal held that the fact that beer had been supplied had not been established. The Arbitral Tribunal also proceeded on the basis that MML's witness Mr. K.N. Kapoor (CW-2) could not establish the



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Statement of Accounts as it was not prepared by him; he had no idea about the transactions; and had made contrary statements.

30. The Arbitral Tribunal also drew an adverse inference as MML has not produced its bank statements for the relevant period despite being ordered to do so and despite the assurance that the same would be produced.

31. In view of above, the Arbitral Tribunal awarded the counterclaims in respect of the differential amount of ₹1,78,71,311/- (₹1,54,09,930/- on account of beer supplied in the state of Uttar Pradesh and ₹24,61,381/- on account of beer supplied in the state of Rajasthan) along with pre-reference *pendente lite* and future interest at the rate of 15% per annum. The Arbitral Tribunal also awarded refund of security deposit of ₹20,00,000/- along pre-reference *pendente lite* and future interest with effect from 31.07.2007.

32. The Arbitral Tribunal also allowed IBPL's claim for loss of reputation and mental agony but limited the awarded amount to ₹10,00,000/- instead of ₹1,00,00,000/- as claimed by IBPL. Additionally, the Arbitral Tribunal also awarded sum of ₹10,00,000/- as costs.

33. The claims made by MML were rejected.

IMPUGNED ORDER No. 1 [IN OMP(COMM) 115/2017]



34. The learned single Judge found merit in MML's contention that the Arbitral Tribunal had not considered the evidence led by the parties before it. The Court observed that there was no discussion in the impugned award regarding the evidence led by the parties, accordingly, the impugned award was liable to be set aside for the said reason. Next, the Court faulted the Arbitral Tribunal's finding that there was any admission on the part of MML that it was liable to pay any amount to IBPL. The Court noted that MML had claimed certain amounts as payable by IBPL and had also reflected the adjustments to be made from the said amounts. This was for the purposes of crystalizing its claim against IBPL. The amount awarded in favour of IBPL was on the erroneous assumption that MML had admitted the said liability and therefore, the Court held that the said award was liable to be set aside.

35. The Court also found that the Arbitrator had not considered the effect of Clauses 3.5 and 4.5 of the Agreement. Clause 3.5 expressly provided that IBPL would ensure payment of the ex-factory price to MML. Clause 4.5 of the Agreement, expressly recorded the Agreement that IBPL would pay the price of beer after twenty days of the date of production. The Court observed that the Sole Arbitrator was not alive to the terms and conditions of the contract between the parties.

36. Insofar as MML's claim in regard to the packing material and unsold stock is concerned, the learned Single Judge concurred with the Arbitral Tribunal that the same were not substantiated. The Court held



that a mere oral statement of the Sales Manager of MML, without any material to substantiate its contents would not establish the said claim.

37. In view of the above, the learned Single Judge set aside the impugned award.

IMPUGNED ORDER NO.2 (IN OMP NO.21/2012)

38. The learned Single Judge set aside the impugned interim award on, essentially, four reasons. First that Arbitral Tribunal had not considered MML's contention that if MML succeeded before the Arbitral Tribunal, it would not be able to recover the awarded amount as the Directors of IBPL were not Indian nationals but residents of Canada. Second, that the Sole Arbitrator had erred in relying on the purported admissions in directing disbursal of the amount. Third, that the Arbitral Tribunal could not have passed an interim award in an application for interim measures under Section 17 of the A&C Act. And lastly, that as the impugned award had been set aside by a separate order passed in OMP(COMM) No.115/2017, the impugned interim award could not be sustained.

REASONS AND CONCLUSION – FAO (OS)(COMM) 16/2019

39. At the outset, it is relevant to bear in mind that in terms of Sub-section (1) of Section 34 of the A&C Act, recourse against an arbitral award is confined to seeking that the same be set aside on the grounds as set-out in Sub-sections (2), (2A) and (3) of Section 34 of the A&C Act. An arbitral award may be set aside if it is in conflict with the public



policy of India or is vitiated by patent illegality appearing on the face of the award.

40. In the present case, MML had applied for setting aside the impugned award alleging that it was totally perverse and contrary to the provisions of Sections 101, 104 and 106 of the Indian Evidence Act, 1872 (hereafter '**the Evidence Act**'). It was MML's case that the Arbitral Tribunal had erred in proceeding on the basis that MML had not proved that it had not received the payments as it had not produced its bank accounts. MML contended that the said view was contrary to the provisions of Section 101 and 102 of the Evidence Act. MML further claimed that the Arbitral Tribunal had erred in ignoring that IBPL had admitted supply of goods to the parties nominated by it. It further claimed that the Arbitral Tribunal had overlooked the cheques issued by IBPL in discharge of the debts in respect of supply of goods.

41. As noted above, the learned Single Judge had faulted the impugned award, essentially, on two grounds. First, that the Arbitral Tribunal had disregarded the terms of the Agreement as well as the evidence led by the parties. And second, that it rested on an erroneous assumption that IBPL had admitted the liability.

42. Ms. Suruchi Mittal, learned counsel appearing for IBPL had submitted that IBPL had filed an application for supply of documents before the Arbitral Tribunal including relevant bank accounts of MML. However, the said documents were not provided. She submitted that MML's claim for consideration for supply of beer pertains to the period



May and June 2007. However, no invoices for the said period were filed by MML and there was no evidence of supplies for the said period. She contended that a large number of invoices were filed by MML, but the same did not relate to the period under dispute.

43. She had also referred to a letter dated 04.08.2007 written by an erstwhile Director of IBPL (Mr. Rajeshwar Bal), which was relied upon by MML for establishing its claim in the first round of arbitration. She pointed out that in the said letter, the said director had acknowledged that a sum of ₹1,42,82,463.87/- was payable in respect of beer supplied in the two months of May and June 2007.

44. Mr. Sethi, learned senior counsel appearing for MML supported the impugned orders. He contended that the Arbitral Tribunal did not consider and appreciate the affidavit of evidence filed by Sh. S.C. Sahai (CW-1). He contended that the said affidavit set out the modus of implementing the Agreement, which was not contested. He further contended that the learned Sole Arbitrator had completely overlooked the detailed cross-examination of RW-1 and had proceeded on the basis that RW-1's testimony was unrebutted. He also contended that the Arbitral Tribunal had erred in drawing an adverse inference on account of non-production of bank accounts. He contended that the bank statements of MML of the said periods were not available, therefore, were not produced. In any event the same would be of no relevance as the same would reflect payments received against supplies made to



more than 1100 (eleven hundred) parties/customers. He submitted that approximately ₹407 crores were received in the year 2007.

45. Undeniably, the impugned award is not an elaborate one. It neither refers to nor discusses the entire material placed by the parties. However, an arbitral award cannot be set aside on the ground that the entire evidence led by the parties has not been elaborately discussed.

46. An Arbitral Tribunal is not required to discuss elaborately all material evidence placed by the parties on record. Section 30(1) of the A&C Act requires the Arbitral Tribunal to give reasons for the award. In terms of Section 28(3) of the A&C Act, while deciding and making an award, the Arbitral Tribunal is required to take into consideration the terms of the contract.

47. It is, thus, necessary for the court to examine the rival contentions to ascertain whether the controversy raised by the parties has been addressed. Clearly, if the Arbitral Tribunal has done so, the impugned award cannot be subjected to a merits review.

48. In *Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation Limited: 2022 (1) SCC 131*, the Supreme Court held that an arbitral award may be set aside on the ground of patent illegality if the error on the face of the award strikes at the root of the matter. The court explained as under:

“29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law



committed by the Arbitral Tribunal would not fall within the expression “patent illegality”. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression “patent illegality”. What is prohibited is for Courts to reappraise evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression “patent illegality”.”

49. The learned Single Judge had observed that the Arbitral Tribunal was not alive to the terms of the Agreement and had not considered the evidence led before him. The said finding was rendered in the context of MML’s claim that in terms of the Agreement, IBPL was responsible for payment of ex-factory prices and other statutory levies. MML had also relied on the evidence of Mr. S.C. Sahai, Sales Manager (CW-1) and had pointed out that he produced the relevant statement of accounts, invoices, indents, dispatch challans, gate passes etc. of various dealers/distributors of the respondent. The learned Single Judge found



that the entire evidence had been ignored and brushed aside by the Arbitral Tribunal holding that MML had been unable to prove the sales.

50. Undisputedly, if the Arbitral Tribunal has disregarded vital evidence and has rendered the award contrary to the material on record, the impugned award would be liable to be set aside. All errors committed by the Arbitral Tribunal do not render the arbitral award impeachable under Section 34 of the A&C Act. But if the findings are not supported by reason, the arbitral award is liable to set aside.

51. It is thus also necessary to examine whether the impugned award was informed by reason.

52. It is clear from the impugned award that the Arbitral Tribunal had accepted IBPL's contention that a fraud had been perpetrated by its Indian Directors in collusion with MML. It was not disputed that the erstwhile Directors had incorporated a company by the name 'International Beverages Pvt. Ltd.'. Allegedly the address of the company was the same as that of IBPL. It was also alleged that there were wide withdrawals from the said accounts and resultantly, the Canadian Directors of IBPL had frozen the said accounts.

53. IBPL claimed that the first round of Arbitration was not disclosed to the Canadian Director and an *ex parte* award was passed based on few documents and a letter of acknowledgement. It is IBPL's case that fraud and collusion between the erstwhile Directors of IBPL and MML were clearly established by the sequence of events preceding the *ex*



parte award dated 23.04.2008. The Arbitral Tribunal accepted the above contention.

54. MML had relied upon the cheques of ₹41,00,000/- dated 03.09.2007, which were stated to have been issued by IBPL. IBPL had disputed the issuance of such cheques and this was a subject matter of dispute before the Arbitral Tribunal. The Arbitral Tribunal accepted the contention of IBPL and also found that the conduct of MML was not *bonafide*. The relevant extract of the impugned award is set out below:

“24. Another, fact to which my attention was brought was that three cheques of Rs.41 Lacs each on which Claimant MML heavily places reliance are dated 03.09.2007 and on the very day, Respondent IBPL had given notice of investigation and suspension to erstwhile directors and frozen its accounts, as such there was no reason for them to issue cheques of accounts blocked by themselves and they were not present at the relevant date in India to issue the same. Further, the Claimant itself through its own documents has admitted that vide a letter dated 15.09.2007, Sh. Karunesh P Verma of Respondent IBPL had exchanged cheques issued under the signatures of erstwhile directors with cheques under the Signatures of Mr. Steven Judge and Mr. Peter Harvey.

25. At this juncture, it is pertinent to refer to the pleadings of Claimant qua issuance of these cheques which are heavily relied upon as admission of liability on part of Respondent. The Claimant MML has pleaded that after initiation of arbitration proceedings Claimant approached Mr. Steven Judge, to show its *bonafide*, the petitioner IBPL should make some payment to claimant MML. Mr. Steven Judge accordingly gave cheques with the assurance that after settlement of account the claimant would be entitled to deposit the same and recover whatsoever amount was due and recoverable by the respondent IBPL to the claimant MML and subsequently the intention of respondent IBPL including



that of Mr. Steven Judge became dishonest and neither they appeared before the Ld. Arbitrator nor they came forward to settle dispute between the parties. Claimant-MML accordingly deposited one of the cheques with its bankers with the sole purpose of building pressure on the respondent IBPL to resolve the matter at the earliest.

26. It becomes difficult for me to accept that if the Respondent IBPL was removing erstwhile Directors and had on its own blocked its accounts, was also aware of any arbitration proceedings, as sought to be argued, it will issue cheques of blocked accounts under its own signatures, more so, to show *bonafide* as stated by claimant MML. The way in which cheques have been exchanged is also suspicious. The letter dated 15.09.2007, which is claimant MML's own document, shows that they were not issued by the Respondent, rather they were sent by the ex-directors of Respondent IBPL to be exchanged for cheques under the signature of the erstwhile Directors. The way things have progressed is nothing short of mystery and drama. The issuance of cheques during earlier arbitration proceedings, removal of Directors and employee which represent Respondent IBPL during arbitration proceedings, all these facts were within the knowledge of Claimant and none of these facts were brought to the knowledge of earlier arbitrator itself suggests lack of *bonafides* on part of Claimant MML."

55. As noted earlier, the principal dispute between the parties revolved around MML's claim for the supplies made in terms of the Agreement. The statement of claims filed by MML did not set out the break-up of the amount as claimed. However, the documents annexed included certain ledger accounts, which reflected that a sum of ₹1,38,68,733.68/- was an outstanding balance as on 30.09.2010. It is relevant to note that the said statement of account indicated a credit balance of ₹1,54,09,855.13/- as on 19.09.2007. There were several



entries made in the account thereafter and the balance as on 30.09.2010 reflected a debit of ₹1,38,68,733.67/-

56. The Arbitral Tribunal had taken note of the earlier proceedings including letter dated 04.08.2007 issued by IBPL's Director, Mr. Rajeshwar Bal, on which MML's earlier claim – which was allowed by the *ex parte* award dated 23.04.2008 – was founded. The Arbitral Tribunal set out the following extract from the said letter in the impugned award:

“In reply to Para 8 to 11 of your notice, it is admitted that you have during the month of May and June, 2007, supplied us beer worth Rs.1,42,82,463.87/- for which we had issued cheques. However, due to financial crunch we could not make payments against the cheques delivered by you. We, in fact, have brought to your notice the financial difficulties that our company is facing during the course of our meeting with your representative. We have never had any intention to evade our contractual payment outstanding to your account. However, in the present circumstances we will only be able to pay 50% of the total outstanding dues...”

57. Thus, MML was required to establish that it had supplied beer for the aforesaid amount of ₹1,42,82,463.87/- during the month of May and June 2007. However, neither the Statement of Claims nor the affidavit filed by the witnesses clearly sets out the value of the beer supplied during the said period (month of May and June 2007). MML had filed ledger accounts as well as sub-ledger accounts for the period



spanning almost ten years along with its Statement of Claims. MML had also annexed along with its statement indicating the amounts owed by various parties, which according to MML were nominated by IBPL. However, the pleadings did not set out the value of the beer supplied during the said period in question.

58. The Arbitral Tribunal had concluded in paragraph 34 of the impugned award that “*the supply of beer of claimed amount is not established by the Claimant for it to be claimed from Respondent IBPL*”. According to the learned counsel for IBPL, the Arbitral Tribunal’s finding is relatable to MML’s reliance on the letter dated 31.07.2007, which purportedly acknowledged supply of beer of the value of ₹1,42,82,463.87/-, in the earlier round. However, this is not articulated in the impugned award.

59. MML had contested the said finding as being perverse and in disregard of the evidence led by MML. The learned Single Judge had accepted MML’s contention that the learned Arbitral Tribunal had not considered the evidence of Mr. Sahai (CW-1) as the affidavit filed by him indicates that it was accompanied by invoices and challans to establish supply of beer.

60. The Arbitral Tribunal has not specifically referred to the challans or any of the documents produced by CW-1. Thus, undeniably, there is a gap in the impugned award. The Arbitral Tribunal has not mentioned as to why the supply of beer is not established. The learned Counsel for IBPL may be correct that the said finding has been rendered in the



context of the aforesaid letter dated 04.08.2007, but the impugned award does not specifically state so.

61. The Arbitral Tribunal had noted the letter dated 04.08.2007. As noted above, MML had not filed any challans, invoices or excise passes along with the Statement of Claims to establish the supply of beer for the aforementioned amount during the period May and June 2007. It had filed a ledger account in support of its claims. These accounts also do not establish supply of beer of the aforesaid mentioned amount in the month of May and June 2007. The documents filed by CW-1 along with its affidavit also do not establish supply of beer worth ₹1,42,82,463.87/- (being the claim made in the earlier round) or ₹3,02,37,601/- (net ₹1,38,68,733.67/-) as claimed by MML in the present round before the Arbitral Tribunal.

62. However, the Arbitral Tribunal has not connected its finding with the aforesaid reasoning as canvassed by IBPL.

63. The learned Single Judge had faulted the impugned award on the ground that there was absolutely no appreciation of evidence at all.

64. We are unable to concur with this view in entirety. As stated above, MML had relied upon the statement of accounts filed along with its Statement of Claims for sustaining its claim. However, the Arbitral Tribunal had disbelieved the said accounts, which is evident from paragraph 34 of the impugned award. The same reads as under:



“34. That when Claimant MML was receiving payments directly from the indented parties and only differential used to be credited to Respondent IBPL, Claimant has not been able to satisfy me as to how IBPL is liable for claims of supply of beer to third parties and when only Claimant MML could have received payments being a licensed manufacturer and licensed retailer could also make payments only to Claimant MML. The Respondent IBPL does not play any role in this process except that it has to only secure orders from these licensed retailers or indentors and take away the differential of the invoice value and cost of beer as agreed in the agreement. Moreover, the supply of beer of claimed amount is itself not established by the Claimant for it to be claimed from Respondent IBPL. The CW-2, Mr. K N Kapoor produced by the claimant to prove an alleged account statement states in his cross examination that neither he has certified the account statement nor prepared the accounts for the Respondent. He seems to have no idea about the dealings and transactions between the parties, and makes contrary statements thereto.”

65. CW-1 had also produced certain accounts and other documents marked as Exhibit CW-1/6. But the same was not alluded to. IBPL may be correct in its submission that these documents are not relevant. But the Arbitral Tribunal has not stated so. The impugned award does not provide any reason for rejection of these documents.

66. The learned Single Judge had also faulted the impugned award on the ground that the Arbitral Tribunal was not alive to the terms of the Agreement. The learned Single Judge had also referred to relevant terms of the Agreement. The relevant terms of the Agreement are set out below:

“2.7 MML shall sell the Beer under the BRANDS of IBPL to IBPL or to the indenters holding necessary permits/license (under the relevant excise laws and



regulations) to purchase/deal in BEER (hereinafter called INDENTORS) as IBPL may from time to time advise.

XXX

XXX

XXX

3.4 IBPL shall be responsible for sending duty paid import/bond permits to MML to enable MML to despatch BEER of the BRANDS of IBPL to IBPL or to the INDENTORS as the case may be IBPL shall ensure that all permits, excise documents submitted by IBPL or its representatives shall be genuine and not forged or mutilated IBPL shall keep indemnified MML against all costs and damages which MML is forced to incur as a result of such eventuality. IBPL shall be responsible to obtain the verification certificate and/or other evidence from the excise authorities with regard to the receipt of BEER at the destination and furnish the same to MML within time stipulated in Excise Rules. IBPL understands that failure on part of IBPL to furnish verified passes will make it liable for demands of Excise Duties or penalties which may be demanded from MML and IBPL undertakes to indemnify and reimburse MML all amounts paid by MML on this account.

3.5 IBPL shall be responsible to ensure payment of agreed ex-factory prices. Statutory levies, Sales Tax and any other liabilities including but not limited to taxes, duties, charges, levies and other normal charges etc. on the due date in regard to the BRANDS that may be sold by MML to IBPL or to the INDENTORS, as the case may be.

3.6 IBPL shall otherwise be free to resell or direct the sale to the INDENTORS the BEER of the BRANDS on such terms and conditions as IBPL may decide.

XXX

XXX

XXX



ARTICLE 4: PRICES

4.1 The Ex-brewery prices of BEER case of 12 bottles of 650 mls. each shall be as under:-

AUSTRALIAN LAGER RS. 150/- PER CASE

MAX BEER RS. 157/- PER CASE.

XXX

XXX

XXX

4.4 The parties agree that in respect of all sales of BEER of BRANDS either to IBPL OR to the INDENTORS recommended by IBPL it shall be a term and an essence of the agreement, that MML shall receive from IBPL the price mentioned in Clause 4.1 above along with sales Tax, Excise Duties, Export Pass Fees, Octroi Transport insurance and other statutory taxes and levies charged in the sales invoices, MML shall remit all statutory levies and indemnity IBPL against any liabilities arising therefrom.

4.5 IBPL agrees to pay after 20 days from the date of production by demand draft towards the price of beer as per article 4.1 and agrees to reimburse such taxes, duties and levies arising out of the sales of Beer Brands of IBPL three days from before the due for payment by MML.

4.6 The parties agree that the sales of beer of IBPL Brands shall be made according to the dispatch instructions issued by IBPL. The invoices shall be raised by MML at the prices communicated to them periodically.

4.7 MML shall give credit to IBPL for the difference between the invoice price and Ex-Brewery price agreed to in 4.1 above towards the royalty, marketing and technical service charges.

XXX

XXX

XXX



4.9 As mentioned above, excise duties, sales tax and levies leviable or chargeable or levied or charged by any government or local authority from time to time and in force other than those included in the basic price mentioned in clause 4.2 above shall be charged to IBPL or the indentors and IBPL or the indentors as the case may be, shall always pay all such tax or duty.

XXX

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5.1 IBPL shall deposit with MML forthwith an interest free security of Rs. 20 lacs calculated on the basis of sale of 200,00 (two lacs) cases per annum.

5.2 the amount of security deposit will be used to secure any demands made against the company on account of any statutory liabilities or outstandings in the market or cost of unpaid stocks of beer.

5.3 the balance amount lying in the security deposit shall be refunded within 30 days of the termination of the agreement, after adjustment of any amounts due to MML under the agreement.”

67. It was MML’s case that IBPL used to place orders stating the names of the parties, licensees to whom beer was supplied in terms of the Agreement. These orders were also accompanied by indents of the nominated parties. The same specified the brand, quantity and size of the packs to be supplied. Concededly, the supply of stocks was made directly to the parties and invoices were raised on the said parties. MML had also asserted that apart from accounting entries made in IBPL’s account, the same was also made in the account of the nominated parties.



68. It was also admitted that the parties to whom the beer was supplied would pay for the same directly to MML. It was also MML's case that it could not raise invoices on IBPL as it was not a licensee. CW-1 had also acknowledged that MML would collect consideration from the licensees. Admittedly, IBPL was entitled to the difference in the rates as agreed between the parties and the price invoiced to the licensees to whom the beer was supplied.

69. IBPL had asserted that MML was required to recover the amounts from the parties on whom the invoices have been raised. It is material to note that it was contended on behalf of IBPL that apart from the brands, 'Australian Max' and 'Australian Lager', MML had also regularly supplied other brands to the same parties as nominated by IBPL. This fact was also admitted by CW-1 in his testimony. In the aforesaid context, IBPL had filed an application seeking disclosure of various documents including bank accounts of MML. Initially, MML had agreed to produce the bank accounts but had subsequently stated that same was not available.

70. The Arbitral Tribunal had addressed the dispute in the backdrop of the aforementioned rival contentions. The Arbitral Tribunal had noted down the relevant clauses including Clause 4.5 of the Agreement, which recorded that IBPL had agreed to pay the price of the beer within a period of twenty days from the date of production but had accepted IBPL's contention that MML was required to recover the price from the party to whom beer was supplied and on whom the invoices were raised.



71. As noted above, no invoices were raised on IBPL. It was also admitted that the payments would be made by the parties on whom the invoices were raised. However, it was MML's case that IBPL was liable to ensure payment of the invoices. Thus, if the payment for the beer supplied to the nominated parties was not made, IBPL was liable to pay for the same in terms of Clause 3.5 of the Agreement.

72. This Clause was not referred to by the Arbitral Tribunal. It is apparent that the Arbitral Tribunal has rejected the claim after noting as to how the Agreement was being worked. The finding that IBPL does not play any role in the process, is not in conformity with the terms of the Agreement.

73. The learned counsel for IBPL may be right in her contention that the impugned award was rendered in the context of the method in which the Agreement was being worked. However, the Arbitral Tribunal has not alluded to the terms of the Agreement. The Arbitral Tribunal has also not returned any finding that the Agreement was given a go by and the parties had not adhered to it.

74. Undeniably, there is substance in MML's claim that in terms of Clause 3.5 of the Agreement, IBPL was responsible for ensuring payment for the beer supplied and, this contention has not been specifically addressed by the Arbitral Tribunal.



75. The Arbitral Tribunal had also drawn an adverse inference as MML had not produced its bank accounts despite initially agreeing to do so. It is contended on behalf of IBPL that this aspect is relatable to MML's claim that IBPL was required to ensure payment for the beer supplied. As noted above, it is contended on behalf of IBPL that MML had been supplying other goods to the same parties and therefore, it was essential to ascertain the amounts received by IBPL from the parties to whom the beer was consigned. However, the Arbitral Tribunal has not adverted to this contention as well.

76. Having stated the above, it is also relevant to note that if MML's contention that it had supplied beer to the parties as claimed, is rejected then, MML's claim that IBPL is liable to pay for the same as the nominated parties have failed to pay for the same would also fail. Thus, insofar as the finding that MML had not established supply of beer is concerned, as noted above, the reasons for arriving at the said conclusion are not articulated in the impugned award.

77. In view of the above, we are of the view that the gaps in the articulation of the reasoning are far too many for the court to fill or assume. The impugned award to the extent that it rejects MML's claim for supply of beer is, thus, liable to be set aside for want of reasons to support the conclusions.

78. Insofar as MML's claim for packing material and unsold stock is concerned, the Arbitral Tribunal had rightly rejected the same. The



learned Single Judge has not found any fault with the decision of the Arbitral Tribunal in this regard. MML has also accepted the said conclusion and has not challenged the impugned order no.1.

Counter Claim

79. Insofar as the award of counter claim is concerned, it is clear that the same is vitiated by patent illegality on the face of the impugned arbitral award. The Arbitral Tribunal had concluded that MML had failed to establish the supplies. MML's admission that it owed a sum of ₹1,78,71,311/- (₹1,54,09,930/- on account of differential payment in respect of beer supplied in the state of Uttar Pradesh and ₹24,61,381/- in respect of beer supplied in the state of Rajasthan) is premised on the basis that it had supplied beer to the nominated parties. Clearly, if the Arbitral Tribunal had doubted MML's claim that it had made supplies to nominated parties to the extent as claimed, it could not have proceeded on the basis that the differential amount as stated by MML was due and payable to IBPL. Concededly, IBPL had not led any evidence or placed any material to establish that MML owed any amount on account of difference in the price at which beer was supplied. In regard to the counter claim, award in favour of IBPL was required to be set aside and we concur with the learned Single Judge that the Arbitral Tribunal could not have proceeded on the basis that the said amount was admittedly payable by MML.



80. The award of ₹10,00,000/- on account of loss of reputation is not founded on any material and is unsustainable. In view of the above, the award of ₹10,00,000/- as costs is also liable to be set aside.

81. In view of the above, the appeal is rejected

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82. The principal question to be addressed is whether the order setting aside the interim impugned award is sustainable. As noted earlier, the learned Single Judge had set aside the impugned interim award on four grounds. First, that the Arbitral Tribunal had not considered MML's contention that it was required to be secured as IBPL was controlled by foreign directors. Second, that an interim award could not be passed in an application for interim measures under Section 17 of the A&C Act. Third, the Arbitral Tribunal had erred in relying on the purported admissions that an amount of ₹1,98,71,311/- was due and payable to IBPL. And fourth, that the impugned interim award was liable to be set aside as a consequence of setting aside of the impugned award.

83. In our view the impugned order passed by the learned Single Judge allowing OMP No.21/2012 is unsustainable. The learned Single Judge has faulted the Arbitral Tribunal for passing an interim award pursuant to an application under Section 17 of the A&C Act. However, that is the logical consequence of the order dated 28.07.2010 passed by this court in OMP No.337/2008. It is necessary to bear in mind the



context in which the said order was passed. MML had prevailed in its claim before the Arbitral Tribunal, thus, was entitled to enforce the arbitral award and recover the amount awarded. At the material time, IBPL's challenge to the said award was pending. In that context, the Division Bench of this Court in FAO(OS) No.341/2008 had directed IBPL to deposit the entire awarded amount of ₹1,42,82,463.87/- in Court failing which it was restrained from withdrawing the said amount from its bank accounts maintained with the concerned banks till the disposal of the objections. This was clearly to secure MML in respect of the *ex parte* award dated 23.04.2008.

84. The said award was set aside. The natural consequence of the order setting aside the *ex parte* award dated 23.04.2008 was that any order passed to secure the amount awarded or any interim order of protection would stand vacated. Further, any interim measures of protection ordered by the Arbitral Tribunal would, in any event, stand vacated. However, the learned Single Judge felt that it was necessary to protect the claim of MML during the arbitral proceedings that would continue before the Arbitral Tribunal constituted by the order dated 28.07.2010. Thus, the learned Single Judge had issued directions for IBPL to deposit a sum of ₹70,00,000/- with the Registrar General of this Court. The said amount was directed to be placed in a fixed deposit for a period of six months. The said direction was in the nature of an interim measure of protection. The life of the said order would thus be limited.



85. Powers to grant interim measures of protection are available to a Court under Section 9 of the A&C Act. In terms of Section 9(1) of the A&C Act, a party may before, or during the arbitral proceedings or at any time after making the Arbitral Tribunal but before it is enforced may apply to Court for securing the amount in dispute in arbitration. We have reservation whether such order could have been passed in proceedings under Section 34 of the A&C Act. However, it is not relevant to examine that aspect in these proceedings. Suffice it is to state that the order directing IBPL to deposit ₹70,00,000/- must be construed as an interim measure in the aid of the arbitral proceedings.

86. In terms of the order dated 28.07.2010 passed in OMP No.337/2008, the learned Single Judge had thus also granted liberty to the IBPL to move an application under Section 17 of the A&C Act for release of the said amount. It is also relevant to note that Section 17 of the A&C Act enables a party to apply to the Tribunal for interim measures during the arbitral proceedings, *inter alia*, for securing the amount in dispute in arbitration.

87. We are hard pressed to imagine as to how IBPL could in the given circumstances apply for interim measures of protection entailing release of the amount deposited by it. Clearly, IBPL's application for release of the amount would be a final relief and not as an interim measure. In the alternative, the directions for deposit of ₹70,00,000/- can be construed as an interim measure of protection granted by the court with the express stipulation that the Arbitral Tribunal could modify, vacate or



alter the same, under Section 17 of the A&C Act. In either event, the order releasing the amount deposited would be a final order and not an interim one.

88. Given that IBPL had sought release of the funds deposited by it, it would be difficult to term such relief as an interim measure. At best, it could be construed as vacation of the order for interim measure. In any view of the matter, the amount deposited by IBPL could not be retained after MML's claim was rejected. In the present case, the Arbitral Tribunal had delivered the impugned award in favour of IBPL's and had awarded an amount of ₹1,58,68,733.68/- (₹1,38,68,733.68/- plus ₹10,00,000/- and ₹10,00,000/-). Although, the said award has been set aside in an application under Section 34 of the A&C Act filed by MML, there is no award in favour of MML, which requires to be secured.

89. In the present circumstances, the impugned interim award directing release of the funds deposited by IBPL cannot be faulted merely on the ground that the order had not been passed under Section 17 of the A&C Act.

90. The learned Single Judge has also proceeded on the basis that the impugned interim award was liable to be set aside as the final award (impugned award) has been set aside. This reasoning also does not commend to this Court. The direction to withhold the amount deposited by IBPL in this Court is not a natural consequence of setting aside an arbitral award in its favour. The question whether IBPL could be called



upon to retain the security in this Court in aid of the claim made by MML is a matter that can be considered only in an appropriate application filed by MML either under Section 9 or under Section 17 of the A&C Act, as the case may be.

91. The learned Singe Judge had also faulted the Arbitral Tribunal for ignoring MML's contention that it would be unable to enforce the award in its favour if it prevailed in the arbitration proceedings. However, it is also material to note that MML in its reply to the application filed by IBPL had also pleaded that it was in the process of filing a separate application under Section 17 of the A&C Act. Thus, clearly the question whether MML was required to be secured in respect of its claims would be required to be considered in that application.

92. The question whether the averments made by MML in its Statement of Claims could be construed as an acknowledgment of the debt owed to IBPL is relevant for determining IBPL's counterclaims. As noted above, the impugned award for an amount of ₹1,38,68,733.68/- as admittedly due to IBPL, is *ex facie* erroneous and has been set aside. However, failure of IBPL to prevail in its counterclaims, cannot be a ground to withhold the amounts deposited by it in this Court. As noticed above, the only ground to withhold disbursal of the amount deposited by IBPL would be to secure MML's claim as an interim measure. This question can be considered only in an application filed by MML.



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93. We are of the view that since MML's has failed to secure the impugned award in its favour, the amount deposited by IBPL with the Registry of this Court is required to be released to it.

94. In the circumstances, we consider it apposite to dispose of the appeal to the impugned interim award by setting aside the impugned order no.2 with the clarification that findings in the impugned interim award shall not be considered as final and binding between the parties.

95. We direct the Registry of this Court to release the amount deposited by IBPL (or in its behalf), along with accrued interest, to IBPL

96. The appeals are disposed of in the aforesaid terms.

97. The parties to bear their own costs.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 05, 2023

'gsr'/RK