



\$~J-2

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

Pronounced on: 12.12.2023

+ **O.M.P. (COMM) 214/2016** (Old O.M.P.(COMM) 750/2014)

M/S JUBLIANT FOODWORKS LTD. Petitioner

Through: Mr. Thakur Sumit, Adv.

versus

INDIAN OIL CORPORATION LTD. Respondent

Through: Ms. Prachi Vashisht and Mr.
Ghanshyam Jha, Advs.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

O.M.P. (COMM) 214/2016

1. The present petition assails the arbitration award dated 14.03.2014, rendered in the background of disputes between the parties under a Memorandum of Understanding dated 19.12.2000 read with a Collaboration Agreement dated 31.12.2001.
2. By virtue of the Memorandum of Understanding dated 19.12.2000, the respondent agreed to grant licence to the petitioner to set up 'Domino's Pizza Stores' at the retail outlet sites of the respondent on mutually agreed terms and conditions.
3. In pursuance to the said Memorandum of Understanding, a Collaboration Agreement dated 31.12.2001 was entered into between the parties to set up a Dominos Pizza at the retail outlet of the respondent at Kalkaji, Opposite Nehru Place, New Delhi- 110019 on a space admeasuring



893.29 sq. Ft on the first floor.

4. It is the case of the petitioner that at the time when the Collaboration Agreement was entered into, the retail outlet of the respondent was being run on a Company Owned Company Operated (COCO) retail outlet since there were disputes pending between the respondent and its dealer, one Mr. Rajesh Sachdeva. However, it is stated that after January, 2007, when Mr. Rajesh Sachdeva again took over as dealer, he started creating problems for the petitioner and its customers. It is alleged that the employees of the petitioner as well as its customers were not allowed to park their vehicles; further, the water supply of the petitioner is alleged to have been disconnected as a pressure tactic to demand unreasonable charges. Exorbitant electricity charges etc. are also stated to have been demanded from the petitioner.

5. A monthly licence fee was payable by the petitioner to the respondent in terms of the provisions of the Collaboration Agreement dated 31.12.2001 between the parties. However, in view of the alleged hindrances that the petitioner was facing in running its pizza outlet, the petitioner addressed a letter dated 01.02.2009 to the respondent stating as under:-

“
REGISTERED POST/A.D.
1st February, 2009
Executive Director (Sales)
Indian Oil Corporation Limited,
Marketing Headquarters,
Indian Oil Bhawan,
G-9, Ali Yavar Jung Marg,
Bandra (East)
Mumbai- 4000051

Sub: Collaboration Agreement dated 31st December 2001 and amendments thereto for the premises situated at IOCL, Kalkaji, Opp. Nehru Place, New Delhi (Said Premises).



Ref: Letter dated 18.10.2007 & 05.02.2008 sent by Domino's Pizza India Limited to Indian Oil Corporation Limited.

Dear Sir,

This is with reference to various verbal requests and above written requests to IOCL regarding the problems faced by Domino's in running of Domino's Pizza store at the said premises. However to our utter disappointment and shock, IOCL has failed to pay any heed to our reminders and IOCL has shown a total lack of interest and willingness in resolving the issues/problems faced by Domino's in running of Domino's Pizza Store at the Said Premises.

Domino's has been facing several problems in running of Domino's Pizza Store since the operations at the said premises have moved out of the control of your Company. Despite the difficulties faced, Domino's has made timely and regular payments of fees pursuant to the Agreement and till date there is no outstanding dues payable by Domino's. The gist of the problems faced by Domino's is as follows:

- i) The water bills raised on Domino's have almost doubled since the above said event.*
- ii) The electricity bills have also increased significantly since the said premises have moved out of your control.*
- iii) Domino's has been facing parking problem for parking its delivery vehicles.*
- iv) Domino's is unable to renew the licenses as IOCL has failed to provide Sanctioned plan fire explosive report and other documents demanded by licensing authority before renewal of licenses which are with IOCL. Domino's has also received closure notice from the police authorities due to non availability of the above mentioned documents and the copy of the Closure notice is attached herewith.*

On the top of all above, the recessionary conditions prevailing in the market has further led to fall in sales of Domino's Pizza Store at the said premises. All the above factors taken together have made it financially infeasible and impractical to continue with the operations of Domino's Pizza Store at the Said Premises. Therefore, under aforesaid circumstances we request IOCL as under:

- a) To reduce the fees payable to IOCL for the above disputed premises to Rs.25,000/- per month and in addition thereto no amount on basis of percentage of sales would be payable by Domino's. However, once your dispute regarding above said premises is settled and you resolve the problems faced by Domino's as already indicted above, we would revert back to the fees as per the agreement. Therefore, this letter would be treated as an amendment to the Collaboration Agreement dated 31st December 2001 in respect of fees payable as per clause 4.1(a) of the Agreement.*



b) However, in case the above mentioned option is not acceptable to IOCL kindly let us know in writing. In such a case please treat this letter as notice of termination of the Collaboration Agreement as per Clause 12.2 thereof. Further, until we hear from you we would assume that you have opted for the first option.

We further request you to confirm your final decision on the above mentioned options so that the further actions in this regard could be taken accordingly. We hope that you would understand our difficulty and situation and revert at the earliest.

*Thanking you in anticipation of the same.
Regards,
For Domino's Pizza India Limited.*

*RAVI S. GUPTA
Senior V.P- Finance & Company Secretary*

*Copy forwarded for information to:-
Mr. A.K. Ganjoo/Mr. Sanjay Mahapatra
Indian Oil Corporation Limited
World Tower Center
Babar Road, New Delhi- 110001."*

6. The petitioner is stated to have been operating the concerned outlet till October, 2010.
7. Disputes arose between the parties on account of the non-payment by the petitioner of the arrears of licence fee. Accordingly, the respondent invoked the arbitration clause in the Collaboration Agreement and the matter was referred to arbitration by a Sole Arbitrator i.e. Sh. Anil Kumar Nagpal, the DGM of the respondent company.
8. In the statement of claims, filed on behalf of the respondent/claimant, it was, *inter-alia*, averred as under:-

"8. That in terms of the Collaboration Agreement entered into between the parties, the Respondent was required to pay annual lump sum fee and other



charges as stipulated in Clause 4 of the said Collaboration Agreement, within the stipulated time period as provided therein. Some important clauses of the Collaboration Agreement are reproduced herein below for ease of reference:

“Clause 4. SHARING OF FEES AND OTHER PAYMENTS

4.1 In consideration of the performance of its duties by the Company, Dominos shall pay to the Company:

a) An annual lump sum fee which shall be Rs. 5,82,955/- (the "Lumpsum Fee") for the first year of the Collaboration to be paid pro-rata on a monthly basis subject to deduction of taxes as applicable. IOC, has represented to Domino's that no TDS be deducted from the above payments since Public Sector Undertakings are exempted from such deductions. The Parties agree that the Lumpsum Fee shall be subject to an annual increase of 5% after the end of the first year of the Collaboration;

b) Such amount that would given the Company a return on investment of 13% per annum, during the term of this Agreement, on the expenditure incurred by the Company towards the construction of the Civil Works (the "Return on Investment"). The expenditure incurred by the Company towards the construction of the Civil Works will be determined by the parties on actual basis within 30 (thirty) days of the date of execution of this Agreement. The Return on Investment shall be payable in equal monthly installments before the 15th day of each month, net of statutory taxes, if any;

c) Royalty at the rate of 2% of the Net Sales (Gross Sales-Statutory Deductions) of the Dominos Pizza Store at the Premises (the "Royalty"). The Parties agree that the Royalty shall be based on the statement of account as prepared by Dominos and duly audited by the Auditor, Dominos shall be liable to pay the Royalty within 15 days from the end of every quarter, net of statutory taxes, if any.

“Clause 15. GOVERNING LAW/AND ARBITRATION

15.1) The terms of this Agreement shall be subject to-and governed by the Laws of India.

15.2) In the event any of any claim, controversy, dispute or difference between Parties hereto, arising out of or in connection with or in relation to this Agreement, either Party will be entitled refer the same to arbitration in accordance with the Arbitration and Conciliation Act, 1996 as amended from time to time, and the rules made thereunder. The reference shall be to the sole arbitration of the Director (Marketing) of the Company, or any other officer of the Company who may be nominated for this purpose by the Director (Marketing). The Parties acknowledge that the arbitrator so nominated is an employee of the Company and may be shareholder of



the Company. In the event of the arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, the Director (Marketing) as aforesaid at the time of such transfer or vacation of office or inability to act, may designate another officer of the Company to act as arbitrator in accordance with the terms of the Agreement. Such person shall be entitled to proceed with the reference from the point at which his predecessor left it. The Parties agree that no person other than the Director (Marketing) or a person nominated by such Director (Marketing) of the Company as aforesaid shall act as arbitrator hereunder. The award of the arbitrator so appointed shall be final, conclusive and binding on the Parties subject to the provisions of the Arbitrator and Conciliation Act, 1996, or any statutory modification of or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this Section 15.

15.3) The Party against who the arbitration proceedings have been initiated, shall be entitled to prefer a cross-claim, counter-claim or set off before the arbitrator in respect of any matter in issue arising out of or in relation to the Agreement without seeking a formal reference of arbitration to the Director (Marketing) for such counter-claim, cross-claim or set off and the arbitrator shall be entitled to consider and deal with the same as if the matters arising there from have been referred to him originally and deemed to form part of the reference made by the Director (Marketing).

15.4) The Parties hereby agree that the courts in the city of Mumbai alone shall have Jurisdiction to entertain any application or other proceedings in respect of anything arising under this Agreement and any award or awards made by the arbitrator, hereunder and the same shall be filed in the concerned Courts of Mumbai only.”

9. That after making necessary construction and arrangements, the Respondent commenced its operations from the Kaikaji RO site of the Claimant from 31.12.2001. In terms of the MOU and Collaboration Agreement, the Respondent started making payments of License Fee and Royalty Fee to the Claimant. In terms of the Collaboration Agreement, the Respondent was under obligation to pay License fees equivalent to fair market value with 5% increase on first five years and thereafter upon revaluation.

10. That from February 2009 onwards, the Respondent stopped making the said payments to the Claimant. Accordingly, in terms of its letter dated 19.11.2009, the Claimant called upon the Respondent to remedy the said



breach of the condition for 'timely payments' and in terms of Clause 32 of the MOU, gave 12 weeks to the Respondent resolve the issue of nonpayment of the license fee,. ROI and Royalty, as applicable, failing which the Claimant would have no option but to initiate termination of the Agreement. Clause 32 of the MOU is reproduced herein below for ease of reference.

11. That after a lot of follow ups including verbal discussions and personal meetings, the representatives of the Respondent in a meeting held on 30.4.2010 with the Claimant, agreed to make a partial payment @ Rs.25,000/- per month w.e.f. February, 2009, as a part of settling the issues amicably.

12. That subsequently, the Respondent made part payments @Rs.25,000/- per month w.e.f. February, 2009 till May 2010 and continued to pay the same until October, 2010 and closed its operations at the Kalkaji Site RO of the Claimant on 9.10.2010 and vacant space was handed over to the Claimant.

13. That upon closure of the operations of the Domino's Store, the Claimant repeatedly requested the Respondent to reconcile the accounts and make the balance payment to the Claimant. In this regard, various emails were exchanged between the parties and various meetings were held, and the Claimant called upon the Respondent to make the outstanding payment of Rs. 22,62,867/-, however, the Respondent failed to make any payments to the Claimant.

14. That the Respondent vide its letter dated 1.3.2011 stated that it was willing to make a payment of only Rs.9,66,750/- as against the total outstanding amount of Rs.22.62,867/-. However, upon recalculating the amounts due, it came to the notice of the Claimant that the total outstanding of Rs.22.62,867/- did not take into account the amounts of Rs.25,000/- paid per month from February 2009 to May, 2010 and on considering the same, the total outstanding amount came to Rs.17,55,608/-. After adding the "Service Tax w.e.f. 1.6.2007 and the outstanding payments for the months of January to April 2008, a sum of Rs. 22,93,863/- came about to be due and payable by the Respondent to the Claimant."

9. In the above context of the averments, the following reliefs were sought before the Ld. Arbitrator:-

“(a) pass an award In the sum of Rs. 22,93,863/- (Rupees Twenty Two Lakhs Ninety Three Thousand Eight Hundred and Sixty three only) in favor of the Claimant and against the Respondent;

(b) pass an award in the sum of Rs. 20,37,078/- towards interest @18% per annum from the date(s) on which the amount of Rs. 22,93,863/- became due



*and payable by the Respondent to the Claimant;
(c) pass an award for grant of pendente lite and future interest @ 24% per annum on the awarded amounts.
(d) pass any such other order(s) as this Hon'ble Arbitral Tribunal deems fit in the facts and circumstances of the case."*

10. In the statement of defence, filed on behalf of the petitioner, the non-payment of the concerned amounts was sought to be attributed by the petitioner to the obstruction/s being faced by the petitioner in running the outlet.

11. In the above background, the arbitral award dated 14.03.2014 was rendered. The following issues were framed by the Ld. Sole Arbitrator:-

- "A) Whether the Claimant is entitled to a sum of Rs.22,93,863/- as prayed for?*
- B) Whether the Claimant is entitled to a sum of Rs.20,37,078/- towards interest@ 18% per annum on the above mentioned amount of Rs.22,93,863/- from the date(s), the same became due and payable, if the Claimant is found entitled to the above mentioned amount?*
- C) Whether the Claimant is entitled to pendent lite and future interest, if so, at what rate?*
- D) Whether the Respondent were entitled to amend/alter the payment terms of the original agreement by their letter dated 01/02/2009 to Claimant?*
- E) Whether any action of Mr. Sachdeva as claimed by the Respondent resulted in any loss to the Respondent?*
- F) If so, whether in terms of the Agreement between the parties, IOCL can be held liable for any purported and/or alleged action of Mr. Sachdeva.*
- G) Whether the Respondent is entitled to Rs.50 lacs towards loss of profit as claimed in the Counter Claim?*
- H) Whether the Respondent is entitled to the amounts claimed towards excess charges allegedly paid on account of water charges, electricity charges and parking charges?*
- I) Whether the Respondent is entitled to interest, if so, for which period and at what rate?"*

12. The said issues were answered in the impugned award as under:-

- "A) Whether the Claimant is entitled to a sum of Rs. 22,93,863/- as prayed for ?*



Claimant is entitled to a sum of Rs. 22,93,863 as prayed for, considering upon following facts:

1. The case of Claimant is that Respondent has unilaterally reduced the monthly license fees of the store and the Claimant is claiming in its claim, the difference of monthly license fees for the period Feb. 2009 to Oct 2010. Claimant has heavily relied upon clause no. 16.6 of the Collaboration Agreement Dtd. 31.12.2001 (based upon broad MOU Dtd. 19.12.2000 duly signed by both the parties) to say that in terms of the above clause, Respondent could not unilaterally amend the terms of the contract. As per this Clause "No variation in the Agreement shall be binding on any party unless and to the extent that such variation is mutually agreed and recorded in a written document executed by all parties". During cross examination of Mr. Ravi S. Gupta, Respondent witness on 08.10.13, while replying to Question No. 4 & 5, it was replied that amendment of the Agreement needs to be mutually agreed in writing and Claimant has not signed any documents by which it had agreed to vary or amend the terms of Agreement Dtd. 31.12.2001.

2. As per Clause No. 12.2 of Collaboration Agreement, this same can be terminated as follows:

- By written consent of the parties,*
- By either party at any time by giving a notice of a 3 months to either party,*
- By either party (Non defaulting party) giving a notice of 3 months from the cure period, if the other party (Defaulting party) is in breach of its obligations under this Agreement, which breach is not cured within 12 weeks of notice of such breach by Non defaulting party to the Defaulting Party.*

3. As per Clause no. 12.4 (b) of Collaboration Agreement Dtd. 31.12.2001 – No termination of this Agreement or any agreement hereto shall release any party from any liability to any other party which at the time of such termination has already occurred nor affect in any way the survival of any right or obligation of any party which is expressly stated elsewhere into this Agreement or in any Agreement related hereto to survive the expiration or Termination hereof.

4. As per Clause No. 30 of MOU Dtd. 19.12.2000, any additions, deletions, amendments, alterations of any of the terms and conditions of this MOU as may be required by business exigencies and/or any change made by the regulatory authority and/or statutory changes shall be in writing.

5. As per Clause No. 32 of MOU Dtd. 19.12.2000, in the event breach is not reasonably cured by the other party within the cure period, the affected party shall have the option to terminate or otherwise withdraw from MOU on the failure of breach of the terms and conditions of the MOU by giving 3 months notice to other party.



6. In my view, this Letter Dtd. 01.02.2009 of the Respondent to Claimant at best can be construed only Proposal of Reduction of License Fees (in which certain problems of Water Bills, Electricity bills, Parking problems, renewal of Licenses and prevailing recessionary trends in the market has been highlighted) as no documents have been submitted by Respondent to exhibit that variation in payment terms have been accepted by the Claimant. Therefore, terms of the said letter Dtd. 01.02.2009 are not binding on Claimant and cannot be said to be a variation in the Agreement in terms of Clause no. 16.6 of the Collaboration Agreement.

7. Besides, Respondent is not having any powers either in Collaboration Agreement Dtd. 31.12.2001 or MOU Dtd. 19.12.2000 of Unilateral Reduction in Payment/Variation in Payment Terms merely by giving intimation to Claimant through Letter Dtd. 01.02.09 that since no reply to its letter by Claimant, it will be assumed that Claimant has accepted Proposal of the Respondent.

8. During the proceeds. Respondent has not established that difficulties (resulting into Counter claim of Electricity charges, Water charges, Parking charges & Loss of Profit) to Respondent has been created by action/willful conduct of Claimant (IOCL).

9. Case Laws submitted by Counsel of Respondent are of those cases in which validity of the agreement has already expired and there is no clause of written consent of both the parties for affecting variation in payment terms. In the subject case. Validity period of Collaboration Agreement was still valid and contained clause of written consent of both the parties for effecting any change. Counsel of the Claimant has submitted case laws which support the contention that variation in payment terms cannot be made by unilateral action by one party and mere silence of one party cannot be used by another party for affecting variation in payment terms (If there is clause in the Agreement for written consent of both the parties).

10. Claimant has submitted Letter Dtd. 14.03.2011 and Letter Dated 19.11.2009 (unsigned) and exchange of Mails with Respondent during Jan 11 & Feb. 11, clearly indicating that Variation in Payment Terms of Collaboration Agreement by Respondent and Proposal of Reduced Fees by Respondent was not agreed upon by Claimant. This reduced Fees Amount has been considered as Part Payment only by the Claimant (IOCL).

11. In Letter Dtd. 14.03.11, it was also advised by Respondent that as per Clause No. 5 of this supplementary MOU Dtd. 08.03.2007 (Jointly signed by IOCL and the Respondent) is not applicable in respect of Domino's Pizza store already commissioned against old MOU Dtd. 19.12.2000. The particular, Domino Pizza Outlet at Kalka Ji RO against Old MOU Dtd.



19.12.2000 and Collaboration Agreement Dtd. 31.12.2001.

12. Only Available option for Respondent as per collaboration agreement or MOU was to give notice for curing the defects (if any) in 12 weeks and if no action was taken by IOCL, then to terminate the agreement by giving 3 Months notice.

13. Admittedly, the Respondent never terminated the Agreement and in fact let it complete its full term till October 2010. Therefore, the Respondent cannot claim any defence for any alleged problems created by the Dealer.

From the above, it is clear that the Claimant has proved that it is entitled to the claim amount of Rs. 22,93,863/-. Besides, the Respondent was not able to establish – Firstly powers of unilateral reduction of the License Fees and Secondly, Alleged harassment by the Dealer for which Claimant was to be blamed.

The submission of the Respondent that the Claimant has accepted the terms of the letter Dtd. 01.02.2009 as it had accepted the payments made thereafter has also not been proved by the Respondent. The claimant has specifically in para 10 of the Affidavit filed by its witness, Shri Narpal Singh, pleaded that the Respondent had stopped making payments from Feb. 2009 and it was only after the claimant called upon the Respondent vide letter Dtd 19.11.2009 and the subsequent meeting held on 30.04.2010, that the Respondent started making part payment @ Rs.25000/- per month w.e.f. Feb. 2009 as part of settling the issue amicably. This contention of the Claimant's witness has neither been controverted by the Respondent nor has Respondent brought anything on record to suggest anything to the contrary. This further goes to show that the Claimant had never accepted the Respondent's offer made through its letter Dtd. 01.02.2009. In these facts, judgments relied upon by Respondent would not be applicable to the facts of the present case. Accordingly I decided issue no. (A) in favour of the Claimant.

B) Whether the Claimant is entitled to a sum of Rs. 20,37,078/- towards interest @ 18% per annum on the above mentioned amount of Rs. 22,93,863/- from the date (s), the same became due and payable, if the Claimant is found entitled to the above mentioned amount?

Yes, the claimant is entitled for interest on outstanding amount still pending to be settled by the Respondent , I allow 12% interest on this outstanding amount of Rs. 22,93,863/- to be paid by Respondent to the Claimant.

C) Whether the Claimant is entitled to pendent lite and future interest, if so, at what rate?

Yes, the claimant is entitled to pendent lite and future interest @ 12% P.A.



D) Whether the Respondent were entitled to amend/alter the payment terms of the original agreement by their letter dated 01/02/2009 to Claimant?

I have already decided Issue no. (A) in favour of Claimant, where I have observed that as per collaboration agreement or MOU Respondent was having no right to alter the payment terms by their letter dated 01/02/2009 unilaterally. This letter Dtd. 01.02.2009 can be construed only a proposal from the Respondent. Therefore I hold that Respondent was not entitled to alter/amend payment terms of the Original Agreement by their letter Dtd. 01.02.2009.

E) Whether any action of Mr. Sachdeva as claimed by the Respondent resulted in any loss to the Respondent?

- 1. Although Respondent has submitted counter claim for the loss due to action of Mr. Sachdeva, RO Dealer but Counsel of the respondent during evidence has not established that Mr. Sachdeva was working as an agent of Indian Oil or his actions were based upon instructions from Claimant, hence the problems stated in its letter dated 01/02/2009 cannot be construed from IOCL (who is the party to the collaboration agreement and MOU).*
- 2. Remedy which was available to the Respondent as per Collaboration Agreement/MOU - Termination of Agreement was to terminate the Agreement by giving 12 weeks cure notice, which was admittedly not exercised despite stated problems being faced by Respondent since Jan. 2007 (Fact of Problems as mentioned in various Letter Dtd. 19.01.07, 18.10.07, 05.02.08 and its reply Dtd. 18.03.13 of Respondent against Statement of Claim of Claimant). Accordingly, I decide this issue in favour of the Claimant.*

F) If so, whether in terms of Agreement between the parties, IOCL can be held liable for any purported and/or alleged action of Mr. Sachdeva

Since I have decided issue no. (E) in favour of the Claimant, I am deciding this issue also in favour of the Claimant, since Respondent has not established that:

- 1. Mr. Sachdeva has worked as an agent of Claimant.*
- 2. Purported and/or alleged action was done by Mr. Sachdeva on instructions of Claimant (IOCL).*
- 3. There is no clause in the MOU or Collaboration Agreement in this regard supporting the contention of the Respondent.*

G) Whether the Respondent is entitled to Rs. 50 lacs towards loss of profit as claimed in the Counter Claim?

Respondent is not entitled to this claim submitted as Counter Claim, as:

- 1. Sales Data of Pizza Store at Satyam Place, Nehru Place (after closure of Pizza Store at Kalka IOC RO) submitted by Respondent is not of identical location to the subject store location at IOCL RO.*
- 2. Besides sales figure of this Pizza Store indicated In the statement of Respondent (pertains to Nov. 2010-2011 & 2011-2012) is not of the similar*



period of the Pizza store at Indian Oil Retail Outlet (2007-08 to Sept. 2010).

3. Respondent has not submitted any evidence to show the alleged loss of profit.

4. Moreover, the Respondent's witness was put a specific question (Q. No. 23) by the Counsel for the Claimant that if the Respondent was having problems since 2007 on account of alleged acts of Shri Sachdeva, why did the Respondent not terminate the Agreement to which the Witness had replied that he is unable to answer the question. This only goes to show that even though the Respondent had an option (in terms of the Agreement) to terminate the Agreement, it had not terminated the Agreement but completed the full term of the Agreement. Therefore the Respondent cannot now try to claim any alleged loss that it claims that it had suffered due to the acts of the Sachdeva.

5. There is no clause in Collaboration Agreement Dtd. 31.12.2001 or MOU Dtd. 19.12.200 for this type of claim.

Hence, the counter claim of Respondent of Loss of Profit is disallowed.

H) Whether the Respondent is entitled to the amounts claimed towards excess charges allegedly paid on account of water charges, electricity charges and parking charges?

1. Respondent has not substantiated that these charges were collected by Mr. Sachdeva, RO Dealer as an Agent of the claimant (IOCL), hence this stated payment to Mr. Sachdeva cannot be linked to Payment made to IOCL (Claimant) for making refund.

2. Claim of Respondent for Reimbursement of parking charges on account of not providing proper parking space by Mr. Sachdeva, RO Dealer is not tenable as there is no clause in collaboration agreement or MOU for such reimbursement by the Claimant, hence the same is disallowed.

3. Photostat copies of Electricity bills of Main Meter of Multiplying factor 40 at the subject RO for the period March 2010 to Oct 2010 has been submitted by Respondent vide Application Dtd.03.02.14 in support of its counter claim but dispute of Electricity charges is between Mr. Sachdeva, RO Dealer and the Respondent and in absence of establishing the fact that these charges have been collected by Mr. Sachdeva on behalf of Claimant or on the directions of the Claimant, counter claim of the Respondent against Claimant (IOCL) in this regard is disallowed.

4. During Cross Examination of Sh. Ravi S Gupta on 06.11.2013 by Claimant also, no categorical assent was given by Respondent witness that claimant will be responsible or liable for RO Dealer's Act.

5. As per Clause no. 13.2 (b) of Collaboration Agreement Dtd. 31.12.2001 (The company shall indemnify Dominos against any and all losses or injuries suffered by Dominos or any person claiming through Dominos due to any damage caused to the premises and/or any equipment or property belonging to Dominos if such damage has been caused due to any negligence of misconduct by the Company Dominos or any of the employees working at the



R.O.) is not applicable in the subject case as there is no damage to the premises and/or any equipment or property belonging to Dominos by IOCL in the dispute involved between both the parties. Claim of Respondent does not fall under this Clause.

I) Whether the Respondent is entitled to interest, if so, for which period and at what rate?

Basic counter claim of the Respondent has been disallowed hence question of entitlement of interest on this counter claim is not applicable.

Besides Claim amount including interest, Respondent is also liable to make payment of Legal Charges (Stamp Duty & Advocate Fees incurred by Claimant) of the Arbitration case, to the Claimant.”

13. In the above background, the petitioner has sought to assail the aforesaid arbitral award. It is contended by learned counsel for the petitioner as under:-

(i) That there were doubts as to the independence and impartiality of the arbitrator. As such, the award deserves to be set aside on this ground alone.

(ii) That the petitioner's offer [as recorded in its letter dated 01.02.2009] was accepted by the respondent, and as such, the financial claims made by the respondent on account of deficiency in payment are untenable. It is contended that the arbitrator committed a patent illegality by holding that the letter dated 01.02.2009 of the petitioner can and best be construed only as a proposal of reduction of licence fee.

14. *Per contra*, learned counsel for the respondent has submitted that the award is well reasoned, based on the material and evidence on the record, in particular, taking into account the contractual stipulation contained in the agreement between the parties as regards payment of the licence fee. Attention has been drawn to a letter dated 19.11.2009 sent by the respondent



to the petitioner wherein it was stated by respondent as under:-

*“Sr. Vice-President (Finance)
Dominos Pizza India Limited
Plot No.1-A, Sector-16A,
Institutional Area,
NOIDA 201 301*

*Sub: NOTICE ON NON-RECEIPT OF LICENSE FEE & ROYALTY FOR
THE DOMINOS RESTAURANT AT OUR RETAIL OUTLET*

Dear Sir,

You are running one Dominos Restaurant at our United Engineering Retail Outlet at Nehru Place. As per the agreement executed between us you are liable to pay License fee equivalent to fair rental value with 5% increase on first five years and thereafter upon revaluation. Besides this you are also liable to pay return on investment @ 13% on an annual basis payable in advance on every 15th of the month. In case ROI cannot be calculated then, Rs.500 per sq. ft. flat, is liable to be paid. Also a royalty of 2% on net sales is to be paid by you on quarterly basis computed at the end of every quarter and paid before the 15th of the fourth month.

We have not received licence fee and royalty from your end since Feb'09 despite many efforts made by our officers.

In the light of the above, we have no option left but to put you on notice under clause 32 of MOU agreement for remedy of the breach of the condition for 'timely payments'. As per the said clause you are hereby given twelve weeks to resolve the issue of non-payment of the license fee, ROI and the royalty as applicable, failing which we shall have no option but to initiate termination of the agreement.

Thanking you,

*Sincerely Yours,
For Indian Oil Corporation Limited*

CHIEF DIVISIONAL RETAIL SALES MANAGER”

Analysis and Conclusion

15. Having heard respective counsel for the parties, I find no infirmity whatsoever in the impugned arbitral award warranting any interference in



exercise of the jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996.

16. The arbitral award takes into account the relevant contractual provisions, the correspondence exchanged between the parties and the attendant facts and circumstances to uphold the entitlement of respondent in claiming the differential amount of monthly licence fees over and above Rs.25,000/- paid by the petitioner w.e.f. February, 2009. It has been rightly held in the impugned award that the letter dated 01.02.2009 addressed by the petitioner did not result in any variation of the agreement between the parties, the provisions of which continued to operate till such time the petitioner vacated the premises in question. It has been rightly held that the agreement between the parties did not confer any powers on the petitioner to unilaterally reduce the amount payable to the respondent. It has also been found, as a matter of fact, that the respondent was not responsible for the alleged difficulties faced by the petitioner in running its outlet. In this regard, it has been noted that the petitioner never terminated the agreement and completed its full term till October, 2010, before vacating the premises in question.

17. As such, the arbitrator was fully justified in reaching the conclusion that the respondent was entitled to the amount of Rs.22,93,863/-. The details regarding the said amount have been set out by the respondent in CW1/7 filed along with the affidavit of evidence of the concerned witness of the respondent.

18. The impugned order renders a factual finding that the petitioner herein was not able to substantiate its alleged claims towards excessive charges having been paid on account of water, electricity and parking.



19. The *pendent lite* and future interest awarded by the Ld. Arbitrator to the respondent was also well within the jurisdiction of the Ld. Arbitrator.

20. The scope of the interference in exercise of Section 34 of Arbitration and Conciliation Act, 1996 has been the subject matter of numerous judicial pronouncements. Reference in this regard is apposite to the recent pronouncement of the Supreme Court in ***Hindustan Construction Co. Ltd. v. National Highways Authority of India***, 2023 SCC OnLine SC 1063, wherein it has been held as under:-

“26. The prevailing view about the standard of scrutiny-not judicial review, of an award, by persons of the disputants’ choice being that of their decisions to stand-and not interfered with, [save a small area where it is established that such a view is premised on patent illegality or their interpretation of the facts or terms, perverse, as to qualify for interference, courts have to necessarily chose the path of least interference, except when absolutely necessary]. By training, inclination and experience, judges tend to adopt a corrective lens; usually, commended for appellate review. However, that lens is unavailable when exercising jurisdiction under Section 34 of the Act. Courts cannot, through process of primary contract interpretation, thus, create pathways to the kind of review which is forbidden under Section 34. So viewed, the Division Bench’s approach, of appellate review, twice removed, so to say [under Section 37], and conclusions drawn by it, resulted in displacing the majority view of the tribunal, and in many cases, the unanimous view, of other tribunals, and substitution of another view. As long as the view adopted by the majority was plausible-and this court finds no reason to hold otherwise (because concededly the work was completed and the finished embankment was made of composite, compacted matter, comprising both soil and fly ash), such a substitution was impermissible.

27. For a long time, it is the settled jurisprudence of the courts in the country that awards which contain reasons, especially when they interpret contractual terms, ought not to be interfered with, lightly. The proposition was placed in State of UP v. Allied Constructions:

“[.] It was within his jurisdiction to interpret Clause 47 of the Agreement having regard to the fact-situation obtaining therein. It is submitted that an award made by an arbitrator may be wrong either on law or on fact and error of law on the face of it could not nullify an award. The award is a speaking one. The arbitrator has



assigned sufficient and cogent reasons in support thereof. Interpretation of a contract, it is trite, is a matter for arbitrator to determine (see Sudarsan Trading Co. v. The Government of Kerala, (1989) 2 SCC 38 : AIR 1989 SC 890). Section 30 of the Arbitration Act, 1940 providing for setting aside an award is restrictive in its operation. Unless one or the other condition contained in Section 30 is satisfied, an award cannot be set aside. The arbitrator is a Judge chosen by the parties and his decision is final. The Court is precluded from reappraising the evidence. Even in a case where the award contains reasons, the interference therewith would still be not available within the jurisdiction of the Court unless, of course, the reasons are totally perverse or the judgment is based on a wrong proposition of law”

28. This enunciation has been endorsed in several cases (Ref McDermott International Inc. v. Burn Standard Co. Ltd.). In MSK Projects (I) (JV) Ltd v. State of Rajasthan it was held that an error in interpretation of a contract by an arbitrator is “an error within his jurisdiction”. The position was spelt out even more clearly in Associate Builders (supra), where the court said that:

“[...] if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do.””

21. In **Konkan Railway Corpn. Ltd. v. Chenab Bridge Project**, (2023) 9 SCC 85, it has been held as under:-

“19. Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction. It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal. In Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., this Court held : (Dyna Technologies case, SCC p. 12, paras 24-25)

“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.

22. In **Reliance Infrastructure Ltd. v. State of Goa**, 2023 SCC OnLine SC 604, it has been held as under:-

“48. In MMTC Limited (supra), this Court took note of various decisions including that in the case of Associate Builders (supra) and expounded on the limited scope of interference under Section 34 and further narrower scope of appeal under Section 37 of the Act of 1996, particularly when dealing with the concurrent findings (of the Arbitrator and then of the Court). This Court, inter alia, held as under:—

“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. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See *Associate Builders v. DDA* [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]. Also see *ONGC Ltd. v. Saw Pipes Ltd.* [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705]; *Hindustan Zinc Ltd. v. Friends Coal Carbonisation* [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445]; and *McDermott International Inc. v. Burn Standard Co. Ltd.* [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

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. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”



xxx

xxx

xxx

51. In *Delhi Airport Metro Express* (supra), this Court again surveyed the case-law and explained the contours of the Courts' power to review the arbitral awards. Therein, this Court not only re-affirmed the principles aforesaid but also highlighted an area of serious concern while pointing out "a disturbing tendency" of the Courts in setting aside arbitral awards after dissecting and re-assessing factual aspects. This Court also underscored the pertinent features and scope of the expression "patent illegality" while reiterating that the Courts do not sit in appeal over the arbitral award. The relevant and significant passages of this judgment could be usefully extracted as under:—

"26. A cumulative reading of the UNCITRAL Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited to the grounds in Section 34. While deciding applications filed under Section 34 of the Act, Courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or reappraisal of matters of fact as well as law. (See *Uttarakhand PurvSainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd.* [Uttarakhand PurvSainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570], *Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.* [Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75] and *RashtriyaIspat Nigam Ltd. v. Dewan Chand Ram Saran* [RashtriyaIspat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306].)

28. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside



by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.

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 reappreciate 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”.

30. Section 34(2)(b) refers to the other grounds on which a court can set aside an arbitral award. If a dispute which is not capable of settlement by arbitration is the subject-matter of the award or if the award is in conflict with public policy of India, the award is liable to be set aside. Explanation (1), amended by the 2015 Amendment Act, clarified the expression “public policy of India” and its connotations for the purposes of reviewing arbitral awards. It has been made clear that an award would be in conflict with public policy of India only when it is induced or affected by fraud or corruption or is in violation of Section 75 or Section 81 of the 1996 Act, if it is in contravention with the fundamental policy of Indian law or if it is in conflict with the most basic notions of morality or justice.

42. The Division Bench referred to various factors leading to the termination notice, to conclude that the award shocks the conscience of the court. The discussion in SCC OnLine Del para 103 of the impugned judgment [DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] amounts to appreciation or reappreciation of the facts which is not permissible under Section 34 of the 1996 Act. The Division Bench further held



[DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] that the fact of AMEL being operated without any adverse event for a period of more than four years since the date of issuance of the CMRS certificate, was not given due importance by the Arbitral Tribunal. As the arbitrator is the sole Judge of the quality as well as the quantity of the evidence, the task of being a Judge on the evidence before the Tribunal does not fall upon the Court in exercise of its jurisdiction under Section 34. [State of Rajasthan v. Puri Construction Co. Ltd., (1994) 6 SCC 485] On the basis of the issues submitted by the parties, the Arbitral Tribunal framed issues for consideration and answered the said issues. Subsequent events need not be taken into account.”

23. Further, during the period when the impugned award was issued, there was no impediment for an employee of the respondent company in acting as an arbitrator. In this regard, reference may be made to the following judgments.

24. The Supreme Court in **Indian Oil Corpn. Ltd. v. Raja Transport (P) Ltd.**, (2009) 8 SCC 520, has held as under:-

“34. The fact that the named arbitrator is an employee of one of the parties is not ipso facto a ground to raise a presumption of bias or partiality or lack of independence on his part. There can however be a justifiable apprehension about the independence or impartiality of an employee arbitrator, if such person was the controlling or dealing authority in regard to the subject contract or if he is a direct subordinate (as contrasted from an officer of an inferior rank in some other Department) to the officer whose decision is the subject-matter of the dispute.

35. Where however the named arbitrator though a senior officer of the Government/statutory body/government company, had nothing to do with the execution of the subject contract, there can be no justification for anyone doubting his independence or impartiality, in the absence of any specific evidence. Therefore, senior officer(s) (usually Heads of Department or equivalent) of a Government/statutory corporation/public sector undertaking, not associated with the contract, are considered to be independent and impartial and are not barred from functioning as arbitrators merely because their employer is a party to the contract.

36. The position may be different where the person named as the



arbitrator is an employee of a company or body or individual other than the State and its instrumentalities. For example, if the Director of a private company (which is a party to the arbitration agreement), is named as the arbitrator, there may be a valid and reasonable apprehension of bias in view of his position and interest, and he may be unsuitable to act as an arbitrator in an arbitration involving his company. If any circumstance exists to create a reasonable apprehension about the impartiality or independence of the agreed or named arbitrator, then the court has the discretion not to appoint such a person.

37. Subject to the said clarifications, we hold that a person being an employee of one of the parties (which is the State or its instrumentality) cannot per se be a bar to his acting as an arbitrator. Accordingly, the answer to the first question is that the learned Chief Justice was not justified in his assumption of bias.”

25. In **Aravali Power Co. (P) Ltd. v. Era Infra Engg. Ltd.**, (2017) 15 SCC 32, it has been held as under:-

*“19. Section 12(1) as it then stood before the Amendment Act came into force, obliged the person approached in connection with possible appointment as an arbitrator, to disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality. In the present case, the arbitrator undoubtedly is an employee of the appellant but so long as there is no justifiable apprehension about his independence or impartiality, the appointment could not be rendered invalid and unenforceable. As held in *Indian Oil Corpn. Ltd.* mere fact that the arbitrator is an employee is not ipso facto a ground to raise any presumption of bias or partiality. It is not the case that there had not been any fair and correct disclosure. All that the respondent alleged in its petition seeking termination of the mandate of the arbitrator was, “...he has himself in his official capacity in the respondent Company dealt with contracts of nature similar to the contract works in question...”. The respondent, while relying on the provisions of the Amendment Act had also submitted, “...allegedly appointed individual is the Chief Executive Officer of the respondent herein, who on account of such position also has the controlling influence over the respondent Company”. At the same time, the High Court observed in para 13 of the judgment under appeal that the arbitrator was not the Engineer In-charge or the day-to-day in-charge of the work and as a matter of fact, the Engineer In-charge was AGM (CCD-Township) who had a team of other Engineers working under him and that AGM (CCD-Township) reported to AGM (ME — CCD) who in turn reported to CEO (Apcpl) i.e. the arbitrator. The facts on record and the hierarchy as mentioned do not*



show that the arbitrator in the present matter was either the dealing authority in regard to the contract or was directly subordinate to the officer(s) whose decision is the subject-matter of dispute. In fact, the decision, which could be subject-matter of dispute, was that of his subordinates. He may have dealt with contracts of nature similar to the contract works in question but that by itself does not render the appointment invalid. Since there is nothing on record which could raise justifiable doubts about the independence or impartiality of the named arbitrator, in the light of the observations of this Court in Indian Oil Corpn. Ltd. the appointment of the arbitrator could not in any way be termed to be illegal or unenforceable.”

26. In **Rajasthan Small Industries Corpn. Ltd. v. Ganesh Containers Movers Syndicate**, (2019) 3 SCC 282, it has been held as under:-

“Whether by virtue of Section 12 as amended by the Amendment Act, the Managing Director has become ineligible to act?”

23. After the amendment to the Arbitration and Conciliation Act, 1996 in 2015, Section 12(5) prohibits the employee of one of the parties from being an arbitrator. In the present case, the agreement between the parties was entered into on 28-1-2000 and the arbitration proceedings commenced way back in 2009 and thus, the respondent cannot invoke Section 12(5) of the Arbitration and Conciliation (Amendment) Act, 2015. As per Section 26 of the Amendment Act, the provisions of the Amendment Act, 2015 shall not apply to the arbitral proceedings commenced in accordance with the provisions of Section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree.

24. In **BCCI v. Kochi Cricket (P) Ltd.**, this Court held that the provisions of the Amendment Act, 2015 (with effect from 23-10-2015) cannot have retrospective operation in the arbitral proceedings already commenced unless the parties otherwise agree. In the present case, there is nothing to suggest that the parties have agreed that the provisions of the new Act shall apply in relation to the arbitral proceedings.

27. A Division Bench of this Court in **Kamal Kumar v. MCD**, 2023 SCC OnLine Del 6515, has held as under:-

“29. Similarly, the contention on behalf of the appellant that the unilateral appointment of the learned Arbitrator was void ab initio in view of the 2015 Amendment in the Arbitration Act, is liable to be rejected. In the present case the appointment of the learned Arbitrator was made in the year 2011. After completion of pleadings and hearing the parties, the



matter was reserved for pronouncement of the Award. The Arbitral Award was subsequently pronounced on 15th January, 2017. There is nothing on record to show that the appellant had raised any objections as regards the competence of the learned Arbitrator after the 2015 Amendment of the Arbitration Act came into effect. Therefore, the plea raised on behalf of appellant in this regard is without any merit and is hereby rejected.”

28. A Division Bench of Kerala High Court in ***Asha Rajan v. Indian Oil Corporation Ltd.***, 2019 SCC OnLine Ker 13640, has held as under:-

“12. The amended provisions of the Act have come into force on 23rd October, 2015. The arbitration proceedings in the case had come to an end long before that date. Therefore, the statutory provisions that would govern the present controversy are those which were in force before the amendment of the Act. The provisions of the Act hereinafter mentioned would be as they stood before the amendment.

xxx

xxx

xxx

14. When the appellant entered into the distributorship agreement with the Corporation, she very well knew the terms of the contract including the arbitration clause. She was aware of the fact that the person who would be appointed as arbitrator would be an officer of the Corporation. She entered into the agreement fully knowing the role, authority and status of the person to be appointed as arbitrator in case of a dispute. She submitted to the jurisdiction of the arbitrator. She participated in the proceedings before the arbitrator without any demur or objection. She did not challenge the appointment of the arbitrator as provided under Section 13(2) of the Act by sending a written statement showing the reasons for the challenge to the arbitrator. In such circumstances, the appellant cannot contend that the arbitrator appointed was not an independent person

xxx

xxx

xxx

18. Bias means a predisposition to decide for or against one party, without proper regard to the true merits of the dispute. The authority empowered to decide a dispute must be one without bias towards one side or the other in the dispute. There can hardly be any doubt about this fundamental principle of natural justice. But, when bias of an adjudicator is alleged, it cannot be a fanciful apprehension. Mere suspicion of bias without any materials or substance is not a ground to set aside an award. Doubts on the impartiality of arbitrator shall be reasonable and justifiable.

19. Apart from the fact that the arbitrator was an officer employed by the Corporation, there is no basis for the allegation that the arbitrator acted with bias. Merely for the reason that the arbitrator was an officer of the Corporation, bias on his part could not be presumed or inferred. The



appellant could not substantiate that the award is vitiated on account of bias on the part of the arbitrator.”

29. In the above circumstances, having examined the impugned award on the touchstone of the legal position laid down in the aforesaid judgements, I find no infirmity therein, much less any infirmity of the kind warranting interference under Section 34 of the A & C Act.

30. Consequently, no merit is found in the present petition and the same is accordingly, dismissed.

SACHIN DATTA, J

DECEMBER 12, 2023

cl, hg