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E.P.Nos.68 & 69 of 2021

In the High Court of Judicature at Madras

Reserved on 11.11.2025	Delivered on: 25.11.2025
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Coram:

The Honourable Mr.Justice N.ANAND VENKATESH

Execution Petition Nos.68 & 69 of 2021

Olam International Ltd., rep.by
its Authorised Representative
Mr.Anil Shamrao Jadhav,
7 Straits View, Marina One East
Tower, #20-01,
Singapore-018 936

...Petitioner in
Both EPs

Vs

Manickavel Edible Oils Pvt.
Ltd., 123A, Katchery Road,
Virudhunagar-626001.
Tamil Nadu, India

...Respondent in
EP.No.68 of 2021

YENTOP Manickam Edible
Oils Pvt. Ltd., 123, Katchery
Road, Virudhunagar-626001.
Tamil Nadu, India

...Respondent in
EP.No.69 of 2021

EXECUTION PETITIONS under Sections 47 to 49 of the



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Arbitration and Conciliation Act, 1996 read with Order XXI Rule 46 of the Civil Procedure Code praying for granting recognition to the arbitral awards as enforceable and deeming them to be decrees of this Court and for attachment of moveable and immoveable properties under Order XXI Rules 43, 46 and 54 of the Civil Procedure Code, 1908 (CPC) as mentioned in the schedule hereunder and thereafter by issuing warrant of sale under Order XXI Rule 64 of the CPC.

Schedule of Property in E.P.No.68 of 2021

1. All movable and other assets of the respondent at the respondent's registered office at 123A, Katchery Road, Virudhunagar, Tamil Nadu, including the furniture, fixtures, office, equipment; and
2. All movable and other assets of the respondent at Chennai including their bank account at Indian Overseas Bank, Anna Salai Branch; and

Schedule of Property in E.P.No.69 of 2021

1. All movable and other assets of the respondent at the respondent's registered office at 123, Katchery Road, Virudhunagar, Tamil Nadu, including the furniture, fixtures, office, equipment; and
2. All movable and other assets of the respondent at Chennai



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including their bank account at Indian Overseas Bank, Anna Salai Branch.

For Petitioner in
Both EPs :

Mr.Amitava Majumdar for
Ms.Deepika Murali

For the respective
Respondent in
Both EPs :

Mr.Srinath Sridevan, SC for
Mr.Suhrith Parthasarathy

COMMON ORDER

The above execution petitions have been filed under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996 (for short, the Act) read with Order XXI Rule 46 of the Civil Procedure Code (CPC) for recognition and enforcement of two foreign arbitral awards both dated 04.2.2021 and for a declaration that the same should be deemed to be the decrees of this Court.

2. Heard both.

3. The facts leading to filing of these execution petitions are as follows:



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(i) In E.P.No.68 of 2021, the petitioner/award holder and the respondent/award debtor had a long standing business relationship for the sale of crude palm oil and refined, bleached and deodorised palm olein from Indonesia/Malaysia to India. Earlier, the parties had concluded around 89 transactions between 2017 and 2019. On 07.1.2020, the agent of the respondent-one Mr.Ramamoorthy Ramakrishna informed the petitioner that M/s.YENTOP would need 8,000 MT RBD Olein in the same laycan 10 to 20 every month. The Marketing Executive and the Director of the respondent were privy to the said communication and they also participated in the negotiations that ensued.

(ii) Thereafter, on 13.1.2020, the agent of the respondent sent a communication to the petitioner requiring them to confirm as to whether they would be able to provide 8,000 MT crude palm oil between 15.3.2020 and 25.3.2020. The petitioner confirmed the same. As a consequence, the petitioner and the respondent entered into a contract dated 13.1.2020 for the sale of 4,000 MT crude palm oil from Indonesia to India at USD 779 per MT.

(iii) On 16.1.2020, the agent of the respondent sent two



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confirmation notes to the petitioner confirming 2,000 MTs and 6,000 MTs separately. Accordingly, on 20.1.2020, the petitioner sent two frame contracts respectively for 2,000 MTs and 6,000 MTs of cargo to the respondent. These agreements also contained an arbitration clause. On 28.1.2020, it was agreed between the parties that the purchase price could be fixed at USD 779 per MT for the cargo. On 11.2.2020, the agent of the respondent wrote to the petitioner asking for the details of the vessel and the possible laycan for the shipment. The respondent also informed the petitioner that they would be covering the insurance themselves and asked for the frame contracts to be amended to reflect the same.

(iv) As per the contract, the letter of credit was to be issued by the respondent/buyer before the vessel's arrival at the load port. Therefore, the respondent was required to issue a letter of credit at the time of receipt of the vessel's nomination and in any event, by not later than three days before the estimated time of arrival of the vessel at the port of discharge.

(v) Accordingly, the petitioner nominated the vessel 'Yue You 902' to deliver the cargo to Tuticorin and the same was communicated



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to the agent of the respondent vide e-mail dated 21.2.2020. The petitioner requested the respondent to open a letter of credit covering 100% of the contract value immediately upon receipt of the vessel nomination. But, the respondent failed to open any letter of credit nor responded to the e-mail dated 21.2.2020.

(vi) On 27.2.2020, the agent of the respondent wrote to the petitioner asking for the quantity of cargo to be split equally between the two frame contracts. The respective respondent also asked for the name of the buyer for EO/S/00257/20 to be changed from M/s.Manickavel Edible Oils Private Limited (respondent in E.P.No.68 of 2021) to M/s.Yentop Manickam Edible Oils Private Limited (respondent in E.P.No.69 of 2021).

(vii) According to the petitioner, both the respondent in the respective execution petitions are related entities and therefore, the communication with one for the purpose of concluding the contract of sale would tantamount to communicating with the other. Accordingly, the respondent sent an amended confirmation note for 4,000 MTs of crude palm oil at USD 779 per MT.

(viii) On 02.3.2020, the petitioner sent the amended version of



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EO/S/00246/20 and EO/S/00247/20 reflecting the changes. The amended version of the frame contracts was based on the petitioner's terms and conditions and included the arbitration clause. Pursuant to the above arrangement, on 06.3.2020, the petitioner requested the respondent to provide the requisite letter of credit as the vessel was berthing on the following date. Despite the same, the respondent failed to open the letter of credit.

(ix) Since the respondent breached the terms of the sales contract by failing to provide the requisite letter of credit in terms of the payment provision, the petitioner would be entitled to initiate legal action against the respondent. Further, a notice of termination dated 24.3.2020 was issued to the respondent terminating the sales contracts. Further, an arbitration invocation notice was sent to the respondent through letter dated 11.6.2020 and the name of the arbitrator as nominated by the petitioner was informed to the respondent.

(x) However, the respondent neither nominated their arbitrator nor responded to the said arbitration invocation notice. Hence, on 05.8.2020, the Federation of Oils, Seeds and Fats Association (FOSFA)



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appointed an arbitrator on behalf of the respondent. On 09.9.2020, the FOSFA also appointed the third arbitrator, who was the Chairman of the Arbitral Tribunal. Even thereafter, the respondent did not choose to participate in the proceedings before the Arbitral Tribunal.

(xi) Ultimately, the Arbitral Tribunal, after affording sufficient opportunity, found that the respondent was not participating in the proceedings and delivered the final award dated 04.2.2021. It was under these circumstances, E.P.No.68 of 2021 has been filed seeking to enforce the foreign arbitral award dated 04.2.2021.

(xii) In so far as E.P.No.69 of 2021 is concerned, a similar agreement was entered between the parties. In this case, the contract was entered into for the supply of 4,000 MTs of crude palm oil at USD 755 per MT. The same negotiation took place between the parties. Here also, the respondent committed breach of the sales contract and did not open the letter of credit. This had resulted in the dispute being referred to the Arbitral Tribunal. Ultimately, the Arbitral Tribunal passed another final award dated 04.2.2021, which has been sought to be enforced and executed in this execution petition.



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4. It is seen from the records that originally, the above petitions were heard by **C.Saravanan,J** and by a common order dated **28.8.2024**, both the execution petitions were dismissed. Aggrieved by that, the petitioner filed **O.S.A.(CAD) Nos.10 and 11 of 2025**. When the above original side appeals came up for hearing before the First Bench of this Court, the following common judgment came to be rendered on **16.6.2025**:



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"After the appeals were heard for some time, keeping open the rights and contentions of the parties and without making any observation on the merits of the matter, by consent, we hereby quash and set aside the order and judgment pronounced on 28.8.2024 and remand the matter for de novo consideration by the learned Single Judge having the roster.

2. The learned Single Judge is requested to hear and dispose of the matter at the earliest convenience, preferably by 31.8.2025, since it is the second round of the same matter.

Appeals are disposed of accordingly."

5. Pursuant to the above common judgment, these petitions have once again reached the Single Judge for consideration afresh on merits.

6. The learned Senior Counsel appearing on behalf of the respective respondent made the following submissions:

(a) There were no concluded contracts between the parties and none of the alleged contracts was signed by both parties.

(b) The price, which was an essential term, remained



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inconclusive and unagreed right upto the end. This was, in fact, admitted by the petitioner through their whatsapp and text messages.

(c) Before the Arbitral Tribunal, the claims of the petitioner were premised on the price at USD 779 per MT and USD 755 per MT, which were inconsistent with the respective respondent's final price of USD 725.83 per MT.

(d) The alleged arbitration agreements never came into existence and therefore, the arbitration clause in the said agreements could not survive.

(e) All the earlier contracts were signed by both sides and it was always a practice for both parties to sign all the contracts and in the case in hand, the contracts were not even signed.

(f) In the present case, the negotiations between the parties were never entered into a binding contract and the alleged arbitration agreements never came into existence.

(g) The petitioner lulled the respective respondent into a false sense of security and thereby denied them an effective opportunity to present their case and this was in violation of Section 48(1)(b) of the Act. If the parties agreed to go for arbitration, the arbitration would be



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in Malaysia as per the Palm Oil Refiners Association of Malaysia (PORAM) Rules.

(h) In all the other cases, the arbitration would be in London as per the FOSFA Rules of Arbitration and Appeal.

(i) The PORAM and the FOSFA are exclusive arbitral mechanisms and they cannot be simultaneously invoked.

(j) In the case in hand, the petitioner had simultaneously invoked the jurisdiction of both the PORAM and the FOSFA.

(k) The respondent in E.P.No.68 of 2021 received a letter from the PORAM dated 01.10.2020 stating that the proceedings had been put on hold until 30.11.2020 based on the notice received from the civil court, in which, the respective respondent instituted suits. While so, the petitioner proceeded to file a claim petitions before the FOSFA, London.

(l) The respective respondent was under the impression that since the PORAM kept the proceedings on hold, nothing would be proceeded before the FOSFA.

(m) The entire proceedings were continued before the FOSFA by the petitioner during the peak covid-19 pandemic. The respective



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respondent was also under the impression that the proceedings were suspended before the PORAM whereas during the very same period, the petitioner invoked the jurisdiction of the FOSFA and the awards were passed without giving an opportunity to the respective respondent.

(n) The enforcement of the awards would be contrary to the Public Policy of India since the very foundation of the arbitral competence was in question in the absence of valid agreements between the parties as the agreements were not even signed by both the parties. Hence, the Arbitral Tribunal assumed the existence of arbitration agreements without clear proof of mutual intent and the foreign awards that have been passed were contrary to the Public Policy and unenforceable under Section 48(2)(b) of the Act.

(o) The FOSFA lacked jurisdiction since the jurisdiction of the PORAM had already been invoked and the proceedings were kept in abeyance. Hence, unless the proceedings before the PORAM come to an end or are terminated, the jurisdiction of the FOSFA cannot be either invoked or exercised.

(p) In order to substantiate his submissions, he relied upon the



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following decisions:

"(1) of the Hon'ble Apex Court in ***Rickmers Verwaltung GMBH Vs. Indian Oil Corporation Ltd. [reported in 1999 (1) SCC 1];***

(2) of a learned Single Judge of the Delhi High Court in ***Virgoz Oils & Fats Pte. Ltd. Vs. National Agricultural Co-Operative Marketing Federation of India Ltd. [reported in 2016 SCC OnLine Delhi 6203];***

(3) of a learned Single Judge of the Delhi High Court in ***AgriTrade International Pte. Ltd. Vs. National Agriculture Co-operative Marketing Federation of India Ltd. [reported in 2012 (128) DRJ 371];***

(d) of the same learned Single Judge of the Delhi High Court in ***Cinergy Corporation***



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***Pte.Ltd. Vs. National Agricultural
Cooperative Marketing Federation of
India Ltd. [reported in 2012 (194) DLT
65]; and***



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*(e) rendered by me in **Shabana & another Vs. N.Manoharan [Arb.O.P.(Com.Div.) No.339 of 2023 dated 17.9.2025].***

7. Per contra, the learned counsel appearing on behalf of the petitioner made the following submissions:

(a) The negotiation between the parties were undertaken vide whatsapp and e-mail communications through the authorised agent of the respective respondent and those negotiations ended in the binding contracts between the parties. Hence, the agreements are binding on the respective respondent.

(b) The Arbitral Tribunal also considered the issue of conclusion of contracts between the parties and rendered its findings at paragraphs 3.5 to 3.19. These findings were rendered after framing specific issues in this regard.

(c) In so far as the validity of the binding nature of the arbitration agreements is concerned, the Arbitral Tribunal dealt with it from paragraphs 5.4 to 5.10 and came to the conclusion that there were binding and valid arbitration agreements between the parties.



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The respective respondent had not challenged the foreign awards in the jurisdiction, in which, they were rendered and Section 72 of the English Arbitration Act, 1996 provides for challenging the awards even if the respective respondent had not participated in the arbitration proceedings. However, the respective respondent had chosen not to challenge the awards. This ground could not be raised for the first time in these execution petitions.

(d) The Arbitral Tribunal had issued notice to the respective respondent. But, the respective respondent had chosen not to participate in the proceedings. Only thereafter, the Arbitral Tribunal proceeded to decide the dispute in pursuance of the nomination of one of the Arbitrators on the side of the respective respondent.

(e) The Arbitral Tribunal, on considering the entire materials, came to the conclusion that there was breach of the contracts on the part of the respective respondent and accordingly, proceeded to award damages. However, the Arbitral Tribunal rejected the claim made by the petitioner for demurrage charges and instead, allowed yet another claim made by the petitioner towards additional freight.

(f) Whether the Arbitral Tribunal considered the material issues



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between the parties, this Court cannot sit on appeal under Section 48 of the Act and go into the merits of the dispute.

(g) There is a heavy burden on the respective respondent to make out a case under Section 48 of the Act on the ground of non-enforceability of the awards.

(h) In so far as the execution of the foreign awards is concerned, the petitioner complied with all the requirements under Section 47 of the Act and the respective respondent has not made out a case before this Court to the extent of satisfying this Court to refuse the enforceability of the foreign awards.

(i) In order to substantiate his submissions, he relied upon the following decisions:

(a) Of the Hon'ble Apex Court in ***Enercon (India) Ltd. Vs. Enercon Gmbh [reported in 2014 (5) SCC 1]***;

(b) of a learned Single Judge of the Delhi High Court in ***Belvedere Resources DMCC Vs. OCL Iron & Steel Ltd. [reported in 2025 SCC OnLine Del 4652]***;



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(c) of the Hon'ble Apex Court in ***M.R. Engineers & Contractors (P) Ltd. Vs. Som Datt Builders Ltd. [reported in 2009 (7) SCC 696]***; and

(d) of the Hon'ble Apex Court in ***Inox Wind Ltd. Vs. Thermocables Ltd. [reported in 2018 (2) SCC 519]***.

8. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the foreign awards passed by the Arbitral Tribunal.

9. The primordial issue that arises for consideration in the present case is as to whether there were concluded contracts between the parties and in the absence of the same, whether the enforcement of the awards would be contrary to the Public Policy of India under Section 48(2)(b) of the Act.



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10. In these execution petitions, the petitioner/award holder seeks to execute the foreign awards both dated 04.2.2021 passed by the Arbitral Tribunal constituted under the FOSFA Rules of Arbitration and Appeal.

11. This Court is, prima facie, convinced that the petitioner/award holder complied with the prerequisites under Section 47 of the Act by producing copies of the foreign awards initially and thereafter, brought on record the originals of the foreign awards by an affidavit dated 22.11.2023.

12. The petitioner mostly relied upon the whatsapp messages and the e-mails exchanged between the parties to establish the sale contracts and the reference made to Contract Form FOSFA 81 in the sale contracts. The petitioner also relied upon the findings of the Arbitral Tribunal in this regard from paragraphs 5.4 to 5.10.

13. The petitioner also filed an affidavit of one Mr.Geoffroy, an English Solicitor in order to substantiate that the impugned awards are



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foreign awards and that they have become final and binding on the parties.

14. Section 48 of the Act provides for the conditions, under which, the Court can refuse to enforce the foreign awards. It is not necessary for this Court to burden this common order with all the relevant judgments. It will suffice to briefly lay down the principles governing Section 48 of the Act.

15. A party, which seeks to defend itself from the enforcement of the foreign award, will have to establish that they were under some incapacity or the arbitration agreement was not valid under the law, to which, the parties have subjected it or failing any indication thereon, under the law of the country where the award was made. It can also be defended that the party against whom, the award was invoked, was not given proper notice of appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case. In other words, the principles of natural justice were violated by the Arbitral Tribunal.



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16. Yet another defence that is available is where the award deals with a dispute not contemplated by or not falling under the terms of the submission to arbitration or it contains decisions on matters beyond the scope of the submission to arbitration. One other ground that is available is where the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement between the parties or, failing such agreement, was not in accordance with the laws of the country where the arbitration took place. A party can also take a defence that the award has not yet become binding on the parties or it has been set aside by a competent authority of the country, in which, or under the law of which, the award has been made.

17. The enforcement of the arbitral award may also be refused if the Court finds that the subject matter of the difference/dispute is not capable of settlement by way of arbitration under the law of India. One more ground that is available is where the enforcement of the award will be contrary to the Public Policy of India or where the award was



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induced or affected by fraud or corruption or was in contravention with the fundamental policy of Indian Law or in conflict with the most basic notion or modality of justice. However, while testing as to whether there is contravention with the fundamental policy of the Indian law, the Court cannot undertake the process of reviewing on the merits of the dispute.



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18. This Court, while exercising powers under Sections 47 to 49 of the Act, is not exercising its power of appeal on merits against an award of the Arbitral Tribunal. But, this Court is only reviewing the same to see as to whether any of the grounds set out in Section 48 of the Act for refusing enforcement has been satisfied. The Court, while considering such defence taken by the party to bring their case within the four corners of Section 48 of the Act, must keep in mind the grounds of challenge enlisted under Section 48 of the Act as exhaustive and the Court cannot expand the grounds for refusal of enforcement. The Court cannot re-examine the award apart from satisfying itself on a superficial basis about the award. The Court cannot examine the merits of the case and once the Court finds on inquiry that the award is found to be enforceable by the Court, it should be enforced like a decree of that Court as per Section 49 of the Act.

19. The specific ground that was focussed by the respective respondent, around which, almost the entire arguments were placed, is that there existed no valid, legal and enforceable arbitration



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agreement as there was no contract and as a consequence, the Arbitral Tribunal was wrong in assuming its jurisdiction in the absence of an arbitration agreement.

20. It is an undisputed fact that the draft agreements that were placed before this Court have not been signed by either of the parties. This fact assumes significance since both the parties had long standing business relationship and they entered into at least 89 contracts prior to the present contract and each of those contracts had been signed by both the parties. This is the first occasion where the concluded contract between the parties is attempted to be established by means of whatsapp conversations/e-mail exchanges. In view of the same, this Court has to bestow its attention on those communications that took place between the parties to satisfy itself as to whether there was a concluded agreement between the parties.

21. For proper appreciation, the communications that were relied upon by the claimant along with their content are tabulated as hereunder:



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S.No.	Date	Content
1	07.1.2020	Whatsapp message from respondent's agent advising that '10 to 20 March, Yentop will need 8,000 MT RBD Olien every month in the same laycan of 10 to 20 of every month.
2	13.1.2020	Whatsapp message from the respondents' agent requesting confirmation on the 8,000 Mts of crude palm oil for the March shipment
3		Whatsapp message from petitioner confirmed that it will be able to carry 8,000 Mts in March
4		Respondent replied to the said whatsapp message by confirming the said shipment 'OK we confirm to take pure cpo 4.5% max ffa for yentop cnf Tuticorin in March 2020 but will prefer the 15 th to 20 th March laycan and start pricing in due course.
5	16.1.2020	Email from the respondent's agent circulating the two contracts. The two contracts were as follows: (i) Contract bearing sales contract No.EO/S/00257/20 for 2,000 Mts of cargo to Manickavel Edible Oils Pvt. Ltd., with P.Ramakrishnan HUF acting as brokers (ii) Contract bearing sales contract No.EO/S/00246/20 for 6,000 Mts of cargo to Manickavel Edible Oils Pvt.Ltd., with A Square Agencies acting as brokers Note: The space contract provides as follows: 'The above confirmation note records basis terms agreed between the buyer and seller'. The contractual obligation of both parties will be as per settlers contract to follow, which shall contain the full terms and conditions to be treated as final and binding on both the parties
6	20.1.2020	E-mail from the petitioner to the respondent circulating two frame contracts based on the petitioner's terms and conditions. Note 1: The contract as circulated by the petitioner provides for Contract Form FOSFA 81. Note 2: The learned Arbitral Tribunal considered the issue whether there was a valid and binding arbitration agreement providing for FOSFA Rules of Arbitration and Appeal and held that the parties have agreed to the same.
7	20.1.2020	E-mail from the respondent's agent reverted to the petitioner's e-mail dated 20 th January 2020 stating, 'origin has to be



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		Indonesian only not any origin'. Note 1: Except the above mentioned change, the respondent did not make any changes to the frame contracts as circulated by the respondent.
8	28.1.2020	Whatsapp conversation between the petitioner and the respondent relating to the price of the crude palm oil. After a short back and forth, the petitioner agreed to the price of USD 779/Mts [28/1/20, 13:21:19] Ramamoorthy Yentop: Ask Olam for firm cnf prices [28/1/20, 13:21:20] Ramamoorthy Yentop: As we intend to price for March cargo [28/1/20, 13:21:20] Ramamoorthy Yentop: When we want to price no offers [28/1/20, 13:21:21] Ramamoorthy Yentop: Please convey it to them [28/1/20, 13:21:36] Ramamoorthy Yentop: Above from Yentop [28/1/20, 13:23:00] Jasline Tan: Revert second half [28/1/20, 15:38:55] Jasline Tan: CNF March CPO 782.5 [28/1/20, 15:40:15] M.Rajvel Sankaralingam: My bid 775 for March 4000 tons CPO [28/1/20, 15:42:04] Jasline Tan: can offer 4k cpo cnf March 780 at the moment. Revert if can do better [28/1/20, 15:43:57] Mr.Rajavel Sankaralingam: Heard market is trading at 777.5 [28/1/20, 15:45:40] Jasline Tan: we cant compete at the moment still at 780, but will let u know when we can [28/1/20, 15:54:42] M.Rajvel Sankaralingam: Okay let me know the best you can do [28/1/20, 15:57:33] Ramamoorthy Yentop: ji 780 till my best [28/1/20, 15:57:33] Ramamoorthy Yentop: trying to trade and to offer 77.5 but still not ready yet [28/1/20, 15:57:49] M.Rajvel Sankaralingam: Okay [28/1/20, 16:06:50] Ramamoorthy Yentop: 4000 my at 779 we confirm jasline [28/1/20, 16:06:55] Jasline Tan: confirm thks [28/1/20, 16:07:11] Ramamoorthy Yentop: Tks [28/1/20, 16:08:18] Ramamoorthy Yentop: March cpo 4000 mt @ 779 cnf for yentop [28/1/20, 16:08:48] Ramamoorthy Yentop: confirmed [28/1/20, 16:19:28] M.Rajvel Sankaralingam: Okay thank you [28/1/20, 16:19:38] Jasline Tan: thk u
9	05.2.2025	Whatsapp conversation between the respondent and the petitioner regarding the price of the remaining 4000 Mts. For the remaining 4000 Mts, the parties agreed at USD 755/Mts. [5/2/20, 14:43:37] Ramamoorthy Yentop: Confirmed 4000 Mtx 755 [5/2/20, 14:43:43] Jasline Tan: cfm [5/2/20, 14:43:51] Ramamoorthy Yentop: This finishes pricing for March vessel [5/2/20, 18:11:53] M.Rajvel Sankaralingam: Cnf closing [5/2/20, 18:15:07] Jasline Tan: Oln
10	11.2.2020	Respondent's agent email to the petitioner asking for details of the vessel and possible laycan
11	21.2.2020	Petitioner's email to the respondent nominating the vessel 'Yue You 902' to deliver the cargo to Tuticorin
12	27.2.2020	Respondent's agent email to the petitioner to ask that the cargo quantity be split 4,000 MT/4,000 MT between the frame Contract EO/S/00257/20 and EO/S/00256/20. The split was as follows:



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		(i) Confirmation Note for 4,000 Mts of cargo to Yentop Manickam Edible Oils Pvt.Ltd., with P.Ramakrishnan HUF acting as brokers (ii) Confirmation Note for 4,000 Mts of cargo to Manickavel Edible Oils Pvt.Ltd., with A Square Agencies acting as brokers Note: The space contract as circulated by the respondent reiterates as follows: 'The above confirmation note records basis terms agreed between the buyer and seller'. The contractual obligation of both parties will be as per settlers contract to follow, which shall contain the full terms and conditions to be treated as final and binding on both the parties
13	02.3.2020	Amended version of i. EO/S/00246/20 for supply of 4000 Mts to Manickavel Edible Oils Pvt.Ltd., at USD 779.00 Mts ii. EO/S/00247/20 for supply of 4000 Mts to Manickavel Edible Oils Pvt.Ltd., at USD 755.00 Mts Circulated by the petitioner
14	05.3.2020	Respondent's internal email circulating the price rate at which the LC will be opened. The said circulation was provided to the petitioner and the petitioner was informed that certain deductions were made due to previous shipment. Note: As per the respondent's own calculation and email on 05th March 2020, the respondent had to open the LC at USD 725.83/Mts basis the total of two contracts and sums deductions for the previous shipment
15	06.3.2020	The petitioner responded to the said email dated 05.3.2020 requesting the respondent to provide a copy of the LC. The petitioner stressed that the LC needs to be sighted today, as it was the end of the week and they will not be able to furnish the invoice to the shipper. The petitioner further informed the respondent that the vessel Yue You 902 is at the load port



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16	06.3.2020	Respondent informed the petitioner that they 'will give today' the LC.
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22. The Arbitral Tribunal, while dealing with the issue as to whether there were concluded contracts between the parties, rendered the following finding:

The relevant contract in E.P.No.68 of 2021:

"We are satisfied by seller's explanation and evidence relating to the conclusion of the contract between sellers and buyers and the terms and conditions contained therein. While the initial agreement reached between the parties was entered into on 13 January 2020, the final terms and conditions were not finalised until on or about 29 February 2020. We therefore find that a contract was entered into between sellers and buyers under reference EO/S/00246/2020 and with the terms and conditions set out in this award at 1.0 and 2.0 above."

The relevant contract in E.P.No.69 of 2021:

"We are satisfied by seller's explanation and evidence relating to the conclusion of the contract between sellers and buyers and the terms and conditions contained therein. While the initial agreement reached between the parties was



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entered into on 13 January 2020, the final terms and conditions were not finalised until on or about 29 February 2020. We therefore find that a contract was entered into between sellers and buyers under reference EO/S/00247/2020 and with the terms and conditions set out in this award at paragraphs 1 and 2 above."

23. The specific ground that has also been taken on the side of the respondent is that even though there was exchange of communications between the parties, till the end, the parties never reached an agreement on the price component and it was in a flux at least till 14.3.2020.

24. One crucial document that has to be taken into consideration is the e-mail dated 29.2.2020, which contained an attachment dated 27.2.2020 sent by M/s.A Square Agencies, which set out the price for the shipment at USD 779.00 CNF Tuticorin. This document is relied upon by the petitioner and it forms part of the additional typed set of papers dated 15.2.2024 and presented in court on 28.2.2024.



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25. In the documents that have been filed along with the execution petitions, such a price was never suggested by the said M/s.A Square Agencies and at pages 331 and 328 of the respective typed sets of documents filed by the petitioner, the communication dated 27.2.2020 is available and the said M/s.A Square Agencies set out the price at USD 755 CNF Tuticorin. However, all these documents did not accompany the Bill of Lading that was filed before the Arbitral Tribunal. In view of the above, it will be more safer to carefully go through the communications exchanged between the parties to find out as to whether the price component was ultimately agreed between the parties.

26. The petitioner had shared two draft contracts dated 02.3.2020 to the agent Mr.Ramamoorthy. In the draft contract executed in respect of the said M/s.Manickavel Edible Oils Private Limited, the price has been mentioned at USD 779 per MT and in the draft contract executed in respect of the said M/s.Yentop Manickam Edible Oils Private Limited, the price has been mentioned at USD 755 per MT. As already stated supra, these two draft contracts have not



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been signed by either of the parties. The crucial e-mail that was sent by the agent – the said Mr.Ramamoorthy stated that the letter of credit would be opened only at USD 725.83 per MT and a request was made to the petitioner to confirm it. Curiously, a communication dated 06.3.2020 was sent by the petitioner to provide the transmitted copy of the letter of credit without confirming the price and without sharing the revised and finally signed contracts.

27. If really the petitioner had agreed to the revised price of USD 725.83 per MT, the easiest thing for the petitioner would have been to amend the draft contracts by reflecting the revised price at USD 725.83 per MT and admittedly, this was not done. Presumably, since this price was not agreed, the respective respondent did not execute the contracts nor furnished the letter of credit to the petitioner. In spite of it, the petitioner loaded the shipment and informed the agent of the respondent through communication dated 16.3.2020 that the shipment would reach Tuticorin by 17.3.2020 and again requested for the letter of credit.



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28. At this juncture, it will be very relevant to take note of the whatsapp and text messages that were sent by the representative of the petitioner to the representative of the respondent on 13.3.2020. These communications were exchanged after the earlier communications that were exchanged between the parties on 05.3.2020 and 06.3.2020. In these text messages, the representative of the petitioner informed or rather expressed regret for not having responded to the respective respondent regarding the price that was agreed at USD 725.83 per MT. In this communication, the long standing business relationship between the parties was also referred to.

29. The fact that the petitioner did not confirm the final rate suggested by the agent of the respective respondent – the said Mr.Ramamoorthy at USD 725.83 per MT is evident from the awards passed by the Arbitral Tribunal wherein while calculating the price difference for the purpose of awarding damages, the contract price has been taken to be USD 779 per MT and USD 542.50 per MT has been deducted on the basis of the price agreed with Adani Wilmar and the



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balance of USD 236.50 per MT has been calculated on the mean contract quantity and the damages have been arrived at.

30. If really the petitioner had accepted the contract rate at USD 725.83 per MT, that should have been the base price per MT while determining the damages. This fact, by itself, would establish that the petitioner, at no point of time, had agreed to the price at USD 725.83 per MT as was communicated by the agent – the said Mr.Ramamoorthy to one Ms.Belinda on 05.3.2020. On receipt of this email, the said Ms.Belinda, in her reply email communication dated 06.3.2020, without any commitment on the price, merely sought to provide the transmitted copy of the letter of credit without any delay.

31. This Court must also keep in mind the fact that this transaction had taken place just at the beginning of the pandemic period. This Court must also bear in mind the fact that this is not the only business transaction between the parties and that the same parties had entered into at least 89 contracts prior to the contracts involved and each time, those contracts were signed by both the



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parties. If really the two revised draft contracts had been prepared by the petitioner one mentioning USD 755 per MT and the other mentioning USD 779 per MT as the price, it is not known as to how the agent – the said Mr.Ramamoorthy informed the final price as USD 725.83 per MT.

32. What was required was to amend the price as USD 725.83 per MT and resend the draft contracts to be signed by both the parties. Since both the parties had always signed contracts on all the earlier occasions, the practice that was followed assumes a lot of significance. Either there should have been a communication specifically committing to the acceptance of the price at USD 725.83 per MT or there should have been a revised contract mentioning this price and it should have been signed by the parties. Curiously, none of the above is available in the present case and therefore, the price was in a flux and in the meantime, the cargo was shipped to Tuticorin even without the respective respondent opening the letter of credit.

33. There can be no dispute that the existence of an arbitration



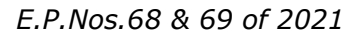
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agreement could be inferred from various documents duly approved by the parties. It is now too well settled that the Court need not look at the agreement from the conventional sense as a document with signatories. It is also possible that such agreement of consent can be manifested through actions of the parties by exchanging communications/documents. What is crucial is that the party should be able to record their agreement through a documentary record of evidence.

34. In the decision of the Hon'ble Apex Court in ***Cox & Kings Ltd. Vs. SAP India (P) Ltd. [reported in 2024 (4) SCC 1]***, after taking note of Section 7(4)(b), it was held that the Court can ask whether a record of agreement is found in the exchange of letters, telex, telegrams or other means of telecommunication and the Court can infer or derive the agreement between the parties from those relevant documents and communications.

35. In the case in hand, it is seen that the petitioner is only trying to establish that there was an agreement between the parties



36. Useful reference can be made to the judgment of the Hon'ble Court in ***Rickmers Verwaltung GMBH*** wherein the relevant provisions are extracted as hereunder:

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required to review what the parties wrote and how they acted and from that material to infer whether the intention as expressed in the correspondence was to bring into existence a mutually binding contract. The intention of the parties is to be gathered only from the expressions used in the correspondence and the meaning it conveys and in case it shows that there had been meeting of mind between the parties and they had actually reached an agreement upon all material terms, then and then alone can it be said that a binding contract was capable of being spelt out from the correspondence.

14. *From a careful perusal of the entire correspondence on the record, we are of the opinion that no concluded bargain had been reached between the parties as the terms of the standby letter of credit and performance guarantee were not accepted by the respective parties. In the absence of acceptance of the standby letter of credit and performance guarantee by the parties, no enforceable agreement could be said to have come into existence. The correspondence exchanged between the parties shows that there is nothing expressly agreed between the parties and no concluded enforceable and binding agreement*



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came into existence between them. Apart from the correspondence relied upon by the learned Single Judge of the High Court, the fax messages exchanged between the parties, referred to above, go to show that the parties were only negotiating and had not arrived at any agreement. There is a vast difference between negotiating a bargain and entering into a binding contract. After negotiation of bargain in the present case, the stage never reached when the negotiations were completed giving rise to a binding contract. The learned Single Judge of the High Court was, therefore, perfectly justified in holding that clause 53 of the charter party relating to arbitration had no existence in the eye of law because no concluded and binding contract ever came into existence between the parties. The finding recorded by the learned Single Judge is based on proper appreciation of evidence on the record and a correct application of the legal principles. We find no merit in this appeal. It fails and is dismissed with costs."

37. The above judgment authored by Dr.A.S.Anand, C.J., beautifully captures the vast difference between negotiating a bargain



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and entering into a binding contract. The Hon'ble Apex Court held that where the negotiations did not reach the stage of a binding contract, there was no valid agreement between the parties.

38. In the case in hand, the parties were negotiating a bargain and when ultimately the price was suggested on the side of the respective respondent as USD 725.83 per MT, it was never confirmed by the petitioner through any means and the same is evident even from the damages that were arrived at by the Arbitral Tribunal by taking the base price at USD 779 per MT. If the consideration has not been agreed between the parties, there was no concluded contract. This trite law does not require any substantiation by means of case laws.

39. A similar case was considered by the Delhi High Court in ***Agritrade International Pte. Ltd.***, wherein the relevant portions read thus :

"18. Since NAFED at the threshold raised the defence of absence of a concluded contract with Agritrade and consequently the absence of an arbitration agreement, the Arbitral Tribunal dealt



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with the said preliminary issue in its interim Award dated 12th March 2007. A perusal of the said interim Award reveals that the Arbitral Tribunal first began by asking how it was possible that "the Buyers" requested for a change of discharge port, as evidenced by Agritrade's telex to Global Commodities on 20th May 2004, if there was no contract? The said question was an erroneous one to pose given the fact that the said telex was not addressed to NAFED at all and therefore not to the "Buyers". The Arbitral Tribunal then looked at another contract dated 20th December 2003 between NAFED and Wilmar where an L/C was opened. Still, it failed to notice that in the instant case in fact no L/C was opened by NAFED. The reason why it found that a contract existed was due to the two vessel nominations - that is first MT Chem Adriatic and its substitution by Audreas III due to change in discharge port. What was missed to be noticed by the Arbitral Tribunal was the fact that there was not a single document produced by Agritrade to show that NAFED was a party to the above transactions. In fact no such document was produced by it even before this Court.

19. In Shakti Bhog Foods Limited Vs. Kola Shipping Limited, (2009) 2 SCC 134 the Supreme



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*Court interpreted Section 7 of the Act and held (SCC, p. 142) that "the existence of an arbitration agreement can be inferred from a document signed by the parties, or an exchange of letters, telex, telegrams or other means of telecommunication, which provide a record of the agreement". This was reiterated in Trimex International Fze Limited, Dubai v. Vedanta Aluminium Limited, **In-dia**, (2010) 3 SCC 1, where it was observed (SCC, p. 32): "It is clear that in the absence of signed agreement between the parties, it would be possible to infer from various documents duly approved and signed by the parties in the form of exchange of e-mails, letter, telex, telegrams and other means of telecommunication." In the absence of a written signed contract between the parties, the burden was on Agritrade to show that there was nevertheless a concluded contract on the basis of other documents on record."*



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40. A reference can be made to the judgment of the Division Bench of the Delhi High Court in ***Virgoz Oils & Fats Pte Ltd. Vs. National Agricultural Coop. Marketing Federation of India Ltd.*** [reported in 2018 SCC OnLine Del 12780] wherein the relevant portions are extracted as hereunder :

"12. The learned Single Judge held that an arbitration agreement must be in writing; it must unequivocally indicate the intention of the parties to resolve their disputes by arbitration; it must be "signed by the parties or must be contained in exchange of letters or telegrams". Notwithstanding that Part-I of the Act did not apply to Foreign Awards, Section 7 of the Act could be referred to for interpreting the expression 'agreement in writing'. Although the definition under Section 7(4) of the Act was wider than Article - II of the New York Convention, even by that yardstick in the present case, it was not possible for the Court to conclude that there was a valid arbitration agreement between the parties. After referring to the case law, the learned Single Judge upheld the objections of NAFED that with there being no concluded contract between the parties, a foreign award could not be enforced.



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13. *This Court has heard the submissions of Mr. Mehfooz Nazki, learned counsel appearing for the Appellant and Mr A.K. Thakur, learned counsel appearing for NAFED.*

14. *Mr Nazki placed emphasis on the decision in Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia Pte. Ltd., (2014) 14 Scale 92 to urge that in the present case, the correspondence between the parties clearly showed that there was a binding contract between them.*

15. *On a careful examination of the aforementioned decision, it is plain that it is distinguishable on facts. In paragraph 19 of the said decision the facts in that case are noted as under:*

'19. In the instance case, admittedly, the Respondent issued a sales contract for supply of goods incorporating in the said sales contract various terms including hundred per cent payment against letter of credit and also providing the governing terms as "Singapore Commodity Exchange". Though the Appellant issued purchase order dated 21.08.2008 on terms and conditions set out therein but the Appellant requested the Respondent to change the payment terms mentioned in the sales contract. The request for amendment was accepted by the Respondent.'



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16. *The situation here is very different. No purchase order as such has been issued and there is no letter or written confirmation of NAFED in any form acknowledging that there is any concluded contract between the parties.*

17. *Mr Nazki then referred to the decision in Smita Conductors Ltd. v. Euro Alloys Limited, (2001) 7 SCC 728. In paragraph 8 of the said judgment the contention of the Respondent in that case is that the existence of the contract can be established through exchange of correspondence and the conduct of the parties in spelling out the existence of an agreement, was not accepted by the Supreme Court. It was answered by pointing out that:*

'When the expression agreement in writing is sought to be explained and indicates that it may be in the nature of a contract then obviously the parties have got to sign the same or it may be in the nature of exchange of letters or telegrams, an agreement similarly signed by the parties or resulting as a consequence of exchange of letters or telegrams'.

41. A very similar case involving a sales contract, which resulted in a foreign award passed by the PORAM, came up before the Delhi



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High Court in ***Kalmart Systems (M) SDN BHD Vs. National Agricultural Co-operative Marketing Federation of India Ltd. [reported in MANU/DE/0630/2015]*** wherein a learned Single Judge considered the same issue as to whether the parties had agreed upon the final price and it was held as follows:

"10. A bare perusal of the provisions of Section 44 would show that it has the following ingredients:-

(i) it should be an award pertaining to differences between persons arising out of legal relationships which, may or may not be contractual but, which are considered commercial under the law in force in India;

(ii) the legal relationships should pertain to a period on or after 11.10.1960;

(iii) the award should be passed in pursuance of an agreement in writing to which the convention on recognition and enforcement of foreign arbitral award (hereinafter referred to New York Convention) as set out in the first Schedule to the Act applies; and

(iv) lastly, the award should be passed in one such territory which the Central Government based on the principles of reciprocity has declared



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to be a territory to which the New York Convention applies.

10.1. Before me, there is no argument raised that the award has not been passed in a territory to which New York Convention applies. What is put in issue, is that, there was no agreement in writing for referring the disputes qua the parties herein to arbitration, and hence, a foreign award within the meaning of Section 44 of the Act having not emerged, no enforcement could be sought by the petitioner by seeking recourse to the provisions of Sections 48 and 49 of the Act.

10.2. There is no doubt that if, one were to have regard to Para 2 of Article II of the New York Convention, an agreement in writing would include not only an arbitral clause in a contract or even an arbitration agreement signed by parties but also that which emerges out of exchange of letters and telegrams.

10.3. Sub-Section (4) of Section 7 of the Act also provides for such an eventuality. The question therefore, before me, essentially, veers down to the consideration of the letter dated 29.07.2008, which is cited as a document by the petitioner, to contend that a concluded contract emerged between the parties. As indicated above, what preceded the issuance of the letter was, the sales



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contract which, categorically sought return of the document as an affirmation of the respondent's agreement to the transaction in issue. Undoubtedly, the respondent did not oblige. It is also not in dispute that the respondent's interface with the petitioner was through the petitioner's broker i.e., ABC. The fact that the respondent had not opened a letter of credit in favour of the petitioner would, only go to show that the transaction or the proposal was, in a nascent stage which, required a positive affirmation on the part of the respondent before it could morph into a legal obligation. Addendum No.1 dated 11.08.2008, which got, ostensibly, generated pursuant to respondent's letter dated 29.07.2008, would only show that the petitioner's offer had not transmuted into a contract as, even the said addendum did not bear the respondent's signature.

10.4. Since the transaction did not fructify, the CPO was not shipped. The petitioner's claim before the arbitral tribunal was thus, a claim only for damages based on the difference between the contracted price, which was USD 1190 per MT as on 05.06.2008, and the market price on the purported date of default i.e., 30.12.2008 which, the petitioner crystallized at USD 520 per MT.

10.5. It is in this context that a settlement



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was proposed perhaps by adopting the principle of a "wash out settlement". Undoubtedly, the settlement did not go through. The fact that respondent had engaged in a settlement, in my view, did not, in any manner, dilute its stand that there was no arbitration agreement existing between the parties. I may only note that in somewhat similar situations, single judge of this court, in two separate judgments in the case of Agritrade International Pte Ltd. and Cinergy Corporation Pte. Ltd., has refused to entertain petitions against the respondent herein.

10.6. The two judgments cited by the petitioner, i.e., Smita Conductors Ltd. and Shakti Bhog Foods Ltd, are clearly distinguishable on facts. One cannot quibble with the fact that as per, Para 2, Article II of the New York Convention the agreement in writing would include exchange of letters and/or telegrams. The point for consideration, in this particular case is as to whether the respondent had conveyed its acceptance to the offer of the petitioner contained in the sales contract dated 05.06.2008. Having come to the conclusion that in the facts of this case, there was no acceptance of the offer made by the petitioner, in my opinion, no concluded contract came into existence and, therefore, by



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logical corollary, one could safely say that there was no binding arbitration agreement subsisting between the parties.”

42. All the above cases touch upon the very same issue as to whether there was a concluded contract between the parties and it was held that there was no binding contract between the parties and that therefore, the foreign award could not be enforced under Section 48(2)(b) of the Act.

43. The Arbitral Tribunal simply rendered a finding in paragraph 5.3 of the awards that it was satisfied with the petitioner's/seller's explanation and the evidence in relation to conclusion of the contracts between the parties. In the considered view of this Court, there is absolutely no discussion on this issue and such a finding has been rendered in a casual manner and as a result, it runs counter to the Public Policy.

44. A foreign award, which upholds the existence of an agreement based on surmises is, obviously, opposed to public policy



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and is not enforceable.

45. The jurisdictional pre-condition for reference to arbitration is the concluded contract between the parties and their intention to refer the dispute to arbitration. In the absence of such jurisdictional requirement, a foreign award passed by the Arbitral Tribunal would run contrary to the Public Policy of India.

46. In the light of the above findings rendered by this Court, it is not necessary for this Court to go into the other issue raised on the side of the respective respondent to the effect that they were intentionally kept in lull by means of the letter received from the PORAM dated 01.10.2020 informing that the arbitration proceedings were kept on hold till 30.11.2020 and that the Arbitral Tribunal was to be constituted whereas simultaneously the petitioner invoked the jurisdiction of the FOSFA and managed to get an ex parte order against the respective respondent.

47. The discussion on this issue becomes academic since this



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Court has already held that there were no concluded contracts between the parties and as a result, the jurisdictional pre-condition for reference to arbitration was missing and that therefore, the foreign awards become unenforceable under Section 48 of the Act.

48. In the result, the above execution petitions stand dismissed.

No costs.

25.11.2025

Index : Yes
Neutral Citation : Yes

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