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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Pronounced on: 24.12.2024*+ FAO(OS) (COMM) 15/2019 and CM APPL. 50549/2019

INTERNATIONAL BREWERIES PVT LTD Appellant

versus

KALPANA INTERNATIONAL BREWERIES LTD Respondent

Advocates who appeared in this case:

For the Appellant : Ms. Suruchi Mittal, Advocate

For the Respondent : Mr. S. N. Gupta Advocate

CORAM:**HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE TARA VITASTA GANJU****JUDGMENT****TARA VITASTA GANJU, J.:****TABLE OF CONTENTS**

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Preface

1. This Appeal has been filed by International Breweries Pvt. Ltd. under Section 37 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the “Arbitration Act”] impugning a judgment passed by the learned Single Judge of this Court dated 26.11.2018 in O.M.P. (COMM.) 72/2016 [hereinafter referred to as “Impugned Order”]. The Appellant is aggrieved by the Impugned Order which upheld the Arbitral Award dated 17.11.2015 [hereinafter referred to as “Arbitral Award”] by holding that the Sole Arbitrator has interpreted the Agreement in a manner which has been found to be just and proper and the Court under Section 34 of the Arbitration Act cannot sit as a Court of appeal to re-appreciate the evidence to arrive at its own conclusion.

Brief Facts

2. An agreement was executed between the Appellant and Shakuntalam Investment and Leasing Ltd. [hereinafter referred to as “SILL”] on 22.08.2003 for the sale of products of the Appellant in the territory of Delhi [hereinafter referred to as “22.08.2003 Agreement”].
 - 2.1 Clause 4 of the 22.08.2003 Agreement entailed that SILL was obligated to pay a total of Rs.60,00,000/- (Rupees Sixty Lacs) as an interest-free non-refundable fee for the grant of rights to sell the Appellant’s brands in the territory of Delhi for the period of 5 years up till 31.03.2009. In terms of Clause 5 of the 22.08.2003 Agreement, it was the responsibility of SILL to register the brand's labels with Excise Authority Delhi for the sale of products in Delhi. Clause 9



specified that upon failure to achieve the minimum sales targets, SILL was liable to pay Rs. 10 per case to the Appellant and if the Appellant fails to supply the minimum sales target as specified, then it will also be responsible for paying SILL Rs. 10 per case. Clause 18 contained the arbitration clause for the resolution of the disputes between parties i.e. Appellant and SILL.

3. Thereafter, an amendment agreement to the 22.08.2003 Agreement was executed between SILL and the Appellant on 07.06.2005 for the sale of products of the Appellant in the state of Rajasthan [hereinafter referred to as "Amendment Agreement"]. SILL nominated M/s Shakuntalam Credits & Holdings Ltd as the operating company to take on the rights and responsibilities under the said Agreement. M/s Shakuntalam Credits & Holdings Ltd became Kalpana International Breweries on 27.06.2006 which is the Respondent herein.
- 3.1 As per Clause 15 of the Amendment Agreement, the Respondent agreed to pay Rs. 85 lacs as a non-refundable franchise fee [hereinafter referred to as "Franchise Fee"] for a period of 5 (five) years in advance, which was to be adjusted equally over the aforesaid 5 years.
4. Disputes arose between the parties and the Respondent sought a refund of the Franchise Fee paid to the Appellant by legal notice dated 02.03.2010 and also registered a police complaint on 06.03.2010 against the Appellant. Thereafter, the Respondent filed an Arbitration Petition under Section 11 of the Arbitration Act in the High Court of Delhi. By an order dated 12.11.2010, this Court



appointed a Sole Arbitrator to adjudicate the disputes between the parties.

- 4.1 The order dated 12.11.2010 was challenged by the Appellant before the Supreme Court. The Supreme Court by its order dated 23.09.2011¹ cancelled the appointment of the Sole Arbitrator and referred the disputes between the parties to the Delhi High Court Arbitration Centre.
- 4.2 By letter dated 18.07.2012, the Chairperson of the Delhi High Court Arbitration Centre, appointed an Arbitrator [hereinafter referred to as the "Sole Arbitrator"] and commenced arbitration proceedings. However, during those proceedings, the Sole Arbitrator recused himself and thereafter the arbitration was continued by the Arbitral Tribunal comprising of another Sole Arbitrator who passed the Arbitral Award.
- 4.3 The Respondent filed its Statement of Claim seeking a sum of Rs. 1,25,19,586/- made up of the following:
- (i) Rs. 85,00,000/- as refund of Franchise Fee for the breach and non-performance of the Agreement.
 - (ii) Rs. 20,33,090/- due to the Respondent in terms of statement of account.
 - (iii) Rs. 20,00,000/- as against poor quality of product supplied to the Respondent.
 - (iv) Rs. 5,00,000/- towards salary paid to the staff employed by the

¹ SLP (Civil) 12032/2011 dated 23.09.2011 captioned as *International Breweries P. Ltd. v. Kalpana International Breweries Ltd.*



Respondent for carrying out the day-to-day work.

(v) Rs. 60,000/- towards rent paid for godown.

4.4 The Appellant (Respondent before the Sole Arbitrator) filed its counter-claim seeking the following:

(i) Rs. 1,72,97,000/- for breach of Clause 13 of the Amendment Agreement;

(ii) Rs. 2,03,00,000/- payable under Clause 21 of the Amendment Agreement;

(iv) Rs. 50,00,000/- as damage to goodwill;

(v) Rs. 10,00,000/- as damage to reputation and mental agony.

4.5 Based on the pleadings of the parties, the following issues were framed:

(i) Whether the Claimant is entitled to the reliefs claimed in the Statement of Claim? (OPC)

(ii) Whether the Statement of Claim is not signed and verified by the duly authorized person? (OPR)

(iii) Whether the Claimant has violated the terms and conditions of the agreement dated 12.08.2003 and 12.05.2005? (OPR)

(iv) Whether the Claimant failed to register the product of the Respondent as per the agreement resulting into loss to the Respondent? (OPR)

(v) Whether Franchise Fee of Rs 85,00,000 paid by the Claimant to the Respondent was not refundable as per Clause 4 of the agreement dated 22.08.2003 and Clause 15 of the agreement dated 07.06.2005? (OPR)

(vi) Whether the Statement of Claim is liable to be rejected on the



preliminary objection nos. 2 to 4 and 6 to 13, raised by the Respondent in the reply to the Statement of Claim? (OPR)

(vii) Whether the Respondent is entitled to counter-claim as detailed in paragraphs 2,3,4 & 5 of the Counter Claim? (OPR)

(viii) Whether the Counter claim has not been signed or verified by duly authorized person? (OPC)

(ix) Whether the Respondent committed breaches of contract? If so, to what effect? (OPC)

(x) Whether the Respondent supplied poor qualities of beer to the tune of Rs. 40,00,000/-? (OPC)

(xi) Interest & Cost?

4.6 The Sole Arbitrator awarded the Respondent (Claimant) refund of a Franchise Fee in the sum of Rs. 65,00,000/- (out of Rs. 85,00,000/- claimed). In addition, the Sole Arbitrator allowed the amount of Rs. 20,33,090/- which was admitted by the Appellant in its statement of accounts. The Respondent's claim of Rs. 20,00,000/- for supply of poor-quality product was rejected. Thus, the total awarded amount was Rs. 85,33,090/- payable by the Appellant to the Respondent. The Sole Arbitrator also directed *pendente lite* interest at the rate of 12% per annum in addition to the statutorily fixed interest at the rate of 18% per annum respectively on the amounts awarded, if the payment was not made by the Appellant within two months.

4.7 The counter-claim of the Appellant (Respondent before the Sole Arbitrator) was rejected in its entirety after a detailed examination. It was held that the cause of action *qua* the counter-claim arose in the



year 2006 while the claim was made in May 2012 for the first time as a counter-claim in the present proceedings. It was, thus, found that the counter-claim was barred by limitation. It was further found that the plea of the Respondent, that the supply of stock was stale, has not been established by the Respondent. The Sole Arbitrator also held that the Appellant had not laid any foundation or prove any loss and, hence, was not entitled to the amounts from the Respondent (Claimant). Interests and costs were also not awarded to either party by the Sole Arbitrator.

5. The Appellant challenged the Arbitral Award by filing a Petition under Section 34 of the Arbitration Act for setting aside the Arbitral Award and for allowing the counter-claim in the sum of Rs. 4,35,97,000/- of the Appellant. The amount due to the Respondent as on 12.02.2015 was stated to be Rs. 1,87,72,798/- .
- 5.1 The learned Single Judge after examining the Petition found it to be devoid of merits and dismissed the same with costs quantified at Rs. 25,000/-. It was held that the statement *qua* there being no Arbitration Agreement between the parties was rejected in view of the fact that the Amendment Agreement formed an integral part of the 22.08.2003 Agreement and the Arbitration Agreement between the parties subsisted since SILL was substituted by the Respondent. It was further held that the Arbitrator has duly considered Clause 15 of the Amendment Agreement and has correctly interpreted this Agreement. The learned Single Judge held that the Appellant was found to be in breach of the Amendment Agreement and since the Franchise Fee



could not be adjusted, the Respondent was entitled to a refund in view of the Sole Arbitrator.

- 5.2 On the rejection of the counter-claim, the learned Single Judge upheld the finding of the Sole Arbitrator that since the last supply was made on 28.11.2006, the counter-claim of the Appellant was barred by limitation.
- 5.3 A new plea was raised by the Appellant before the learned Single Judge that the claim of the Respondent was also barred by limitation since it was only raised on 02.03.2010. The learned Single Judge examined this plea and gave a finding that the email dated 14.12.2007 and 20.03.2009 sent by the Appellant to the Respondent would act as an acknowledgment of liability and that the period of limitation would be extended in terms of Section 18 of the Limitation Act, 1963 [hereinafter referred to as the "Limitation Act"].
- 5.4 The learned Single Judge relying on the Arbitral Award has held that both parties had asserted different amounts. Admitted liability of the Appellant and the statement of accounts relied upon by the Sole Arbitrator was the one "sent" by the Appellant, hence it was an admitted liability. However, it was held that this examination would involve an appreciation of evidence led by the parties and the Court under Section 34 of the Arbitration Act cannot sit as a court of appeal to re-appreciate the evidence to arrive at its own conclusion. The Sole Arbitrator being the final Judge of the evidence led by the parties before him, the opinion of the Sole Arbitrator has to be respected.



6. This led to the filing of the present Appeal. A Coordinate bench of this Court had on 22.01.2019 stayed the execution proceedings which have been initiated seeking enforcement of Arbitral Award in Ex. No. OMP(ENF) (COMM.) 53/2016 captioned ***Kalpana International Breweries Ltd. v. International Breweries Ltd.*** The order dated 22.01.2019 was made absolute during the pendency of the Appeal on 26.03.2019 by the Court.

Contentions of Appellant

7. The learned Counsel appearing on behalf of the Appellant while assailing the Impugned Order submits that there was no arbitration agreement between the Appellant and the Respondent and learned Single Judge has erroneously held that the Respondent has taken over all rights and responsibilities of one SILL under 22.08.2003 Agreement executed between the Petitioner [Appellant herein] & SILL. The Respondent was nominated only as an ‘*operating company*’ under the Amendment Agreement to take on the rights of SILL under the Amendment Agreement and the parties to the Agreement essentially remain Appellant and SILL.
- 7.1 It was further contended on behalf of the Appellant that learned Sole Arbitrator erred in observing that the counter-claim of the Appellant was time-barred. The reasoning applied to the claims of the Respondent would also apply to the counter-claim of the Appellant. The email dated 20.03.2009 which was relied upon by the Respondent was a notice given by the Appellant to the Respondent to register the brand for the relevant year and also to meet the minimum sales



requirement in compliance of the terms as agreed. If the said email is being considered for the purpose of limitation for the claims of Respondent, it will have to be looked into for the purpose of limitation of counter-claim of Appellant. Reliance was placed by the Supreme Court in *State of Gujarat v. Kothari & Associates*², to contend that the plea of limitation can be raised at any stage including at the Appellate stage.

7.2 Learned Counsel further contended that Clause 15 of the Amendment Agreement in unequivocal terms provides that the Franchise Fee as deposited by the Respondent to Appellant was non-refundable and only adjustable. However, the Sole Arbitrator exceeded his jurisdiction to direct refund of an agreed non-refundable fee as under the Amendment Agreement. Further, there was no finding qua the breach, if any committed by the Appellant, and in the absence of same, the claims of the Respondent cannot be accepted. Reliance in this regard was place on the Judgment of Supreme Court in *FCI v. Chandu Construction & Anr*³.

7.3 It was averred that in 2006, the Respondent failed to sell a minimum quantity as specified under Clause 13 of the Amendment Agreement, which establishes *malafide* on the part of Respondent to cause wrongful loss to the Appellant. This situation repeated in 2007 and continued till 2010 when the agreement lapsed.

7.4 It was contended that the Arbitral Award has wrongly found that the

² (2016) 14 SCC 761

³ (2007) 4 SCC 697



claim of Rs. 20,33,090/- was admitted by the Appellant. Relying on its Statement of Defence more specifically paragraph 7 of the Reply on merits, it was stated that this payment was denied.

7.5 Lastly it was contended that the *pendente lite* interest was not specifically claimed by the Respondent and thus could not be awarded by the Sole Arbitrator.

Contentions of Respondent

8. *Per contra*, learned Counsel appearing on behalf of the Respondent submitted that by the Amendment Agreement the Respondent took over all the rights and responsibilities of SILL under the 22.08.2003 Agreement that was executed between the Appellant and SILL. On 27.06.2006, M/s Shakuntalam Credits & Holdings Ltd changed its name to Kalpana International Breweries which is the Respondent herein.

8.1 Learned Counsel for the Respondent sought to rely upon order dated 12.11.2010⁴ passed by a Coordinate Bench of this Court in a Petition filed under Section 11 of the Arbitration Act seeking an appointment of an Arbitrator, to submit that in this order it is recorded that the Respondent (Appellant herein) does not dispute the existence of the Arbitration Agreement. Thus, raising a dispute regarding the existence of an Arbitral Agreement between the parties, by the Appellant at this stage is unfounded. It was contended that the Sole

⁴ Order dated 12.11.2010 passed in ARB. P. 110/2010 captioned as captioned as Kalpana International Breweries Ltd. vs. International Breweries Pvt. Ltd by Delhi High Court



Arbitrator has already dealt with this submission and that there can be no dispute that an Arbitration Agreement exists between the parties.

- 8.2 It was contended on behalf of the Respondent that although the term of the Amendment Agreement was for a period of five years the Appellant made supplies only between the period from 19.10.2005 to 28.11.2006. The Respondent further asserted that at the time of entering into the Amendment Agreement, the Franchise Fee paid in terms of Clause 15 of the Amendment Agreement was to be adjusted equally over the period of five years that is, the term of the Amendment Agreement. As the Appellant failed to make supplies beyond 28.11.2006, it was in breach of the Amendment Agreement, and the Respondent was entitled to a refund of the Franchise Fee.
- 8.3 It was further asserted that the Appellant owed a sum of Rs.20,33,090/- to the Respondent on the reconciliation of the Statement of Account between the parties and a further sum of Rs.20,00,000, which it had agreed to pay against the poor quality of product supplied to the Respondent till 28.11.2006. However, the Sole Arbitrator did not award the sum of Rs. 20,00,000/- but after examination of the evidence did find that the Respondent was entitled to Rs. 20,33,090/- and since the finding is based on the evidence, it cannot be interfered with.
- 8.4 On the aspect of limitation, learned Counsel for the Respondent placed reliance on e-mails dated 14.12.2007 and 20.03.2009 that were addressed by the Appellant to the Respondent calling upon the



Respondent to produce supporting documents for its claim. There was no denial of the claim of the Respondent by the Appellant as negotiations took place between the parties during the period 2006-2009 and hence it was contended that the claim of the Respondent was within the limitation period.

- 8.5 Lastly, it was contended that during the entire period of negotiation between the parties, no claims were raised by the Appellant against the Respondent and, hence, the counter-claim of the Appellant was correctly held as being barred by limitation.

Analysis & Findings

9. Clause 17 of the Amendment Agreement sets out that the Original Agreement of 22.08.2003 stood superseded and modified by the Amendment Agreement and also reads that the provisions of Amendment Agreement form an integral part of 22.08.2003 Agreement.

- 9.1 Section 7 (5) of the Arbitration Act provides that a reference in a Contract to a document containing an Arbitration Clause constitutes an Arbitration Agreement if the contract is in writing and there exists a reference to make the Arbitration Clause part of the contract. Sub-section (5) of Section 7 of the Arbitration Act is extracted below:

“7. Arbitration agreement

...

(5). The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”



9.2 As stated above, the Clause 17 of the Amendment Agreement specifically provides that all provisions of the 22.08.2003 Agreement form an integral part of the Amendment Agreement, and these provisions include Clause 18 of the 22.08.2003 Agreement, which is the Arbitration Clause. Thus, the Arbitration Clause as was present in the 22.08.2003 Agreement was incorporated by reference into the Amendment Agreement. Since, SIIL was substituted by the Respondent, an Arbitration Agreement subsisted between the parties.

9.3 In any event, there is an admission with respect to the arbitral agreement between the parties, made by the Appellant in the order dated 12.11.2010⁵ passed in the Petition filed under Section 11 of the Arbitration Act for appointment of the Sole Arbitrator (referred to in paragraph 8.1 above). The relevant extract of the order is below:

“

*The petitioner vide notice dated 02.03.2010 raised a claim of Rs.1,25,00,000/- and failing the compliance of the said notice invoked the arbitration agreement. **Vide reply dated 16.03.2010 the respondent sought to unilaterally appoint an arbitrator. From the aforesaid, it is evident that the respondent does not dispute the existence of the arbitration agreement as also the existence of disputes between the parties.** The agreement did not authorize the respondent to unilaterally appoint an arbitrator and consequently, the said appointment is patently illegal.*

xxxx

xxxx

xxxx

The invocation of the arbitration agreement is not disputed. *The existence of the disputes can also not be denied as the petitioner has raised a claim which has not been complied with by the respondent and the respondent is disputing the same.”*

[Emphasis is ours]

⁵ ARB.P. 110/2010 captioned as Kalpana International Breweries Ltd. vs. International Breweries Pvt. Ltd.



- 9.4 Thus, this submission of the Appellant *qua* the non-existence of an Arbitration Agreement between the parties is without any merit.
10. The power of a Court to set aside an Award under Section 34 of the Arbitration Act is provided for in the following terms:

“34. Application for setting aside arbitral award.—

(1)...

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]—...

(b) the Court finds that—

(i) ...

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

... ”

[Emphasis is ours]



10.1 This power can thus be exercised on several grounds including if the Award is in contravention with the fundamental policy of Indian law or the most basic notions of morality and justice. This will however not entail a review on merits of the dispute by the Court. In addition, an Award may be challenged on the grounds of patent illegality on the face of the Award, provided that such challenge is not on the ground of erroneous application of law or of the re-appreciation of the evidence. The Supreme Court in the *DMRC Ltd. v. Delhi Airport Metro Express P. (Ltd.)*⁶ has while discussing the powers of a Court under Section 34 of the Arbitration Act held the following:

“34. The contours of the power of the competent court to set aside an award under Section 34 has been explored in several decisions of this Court. In addition to the grounds on which an arbitral award can be assailed laid down in Section 34(2), there is another ground for challenge against domestic awards, such as the award in the present case. Under Section 34(2-A) of the Arbitration Act, a domestic award may be set aside if the Court finds that it is vitiated by “patent illegality” appearing on the face of the award.

35. In Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], a two-Judge Bench of this Court held that although the interpretation of a contract is exclusively within the domain of the arbitrator, construction of a contract in a manner that no fair-minded or reasonable person would take, is impermissible. A patent illegality arises where the arbitrator adopts a view which is not a possible view. A view can be regarded as not even a possible view where no reasonable body of persons could possibly have taken it. This Court held with reference to Sections 28(1)(a) and 28(3), that the arbitrator must take into account the terms of the contract and the usages of trade applicable to the transaction. The decision or award should not be perverse or irrational. An award is rendered perverse or irrational where the findings are:

⁶ (2024) 6 SCC 357



(i) based on no evidence;

(ii) based on irrelevant material; or

(iii) ignores vital evidence.

36. Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute, as when for instance the award contains no reasons at all, so as to be described as unreasoned.”

[Emphasis is ours]

10.2 In the *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*⁷ the Supreme Court has held that a finding based on no evidence or which ignores vital evidence would be perverse and liable to be set aside on the ground of patent illegality. The relevant extract reads as follows:

“41. What is important to note is **that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders** [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], while no longer being a ground for challenge under “public policy of India”, **would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.** Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.”

[Emphasis is ours]

10.3 Thus, if the decision of an Arbitrator is perverse or irrational or if the interpretation of a contract by an Arbitrator is such that the view of the Arbitrator is not a plausible view, it can be said to be patently illegal. Where the Arbitrator in an award ignores vital evidence or

⁷ (2019) 15 SCC 131



gives a finding based on no evidence, the same would also be considered as a patent illegality on the face of the Award. The findings in the Arbitral Award are being examined based on these principles.

Refund of Franchise Fee

11. The learned Sole Arbitrator awarded a sum of Rs. 65,00,000/- as refund of Franchise Fee and Rs. 20,33,090/- with respect to “admitted” amounts due as per the statement of account of the Appellant, in addition to interests and costs, based on an appreciation of evidence placed before him. These findings were upheld by the learned Single Judge.
12. In its Statement of Claim, the Respondent had contended that the Appellant supplied the products from 19.10.2005 to 28.11.2006, and thereafter, no product was supplied nor commission paid to the Respondent. The Respondent further contended that on account of spoiled product supplied by the Appellant, stock to the tune of Rs.40 lakhs could not be sold. It was thus averred that the Appellant did not supply the material/product for sale as per the Amendment Agreement, after 28.11.2006.
- 12.1 This aspect was denied by the Appellant, and it was stated by the Appellant in its Statement of Defence that the Appellant has always been ready and willing to supply product to the Respondent, however, the Respondent for many years failed to register the brand and place orders.



13. The Appellant has relied upon Clause 15 of the Amendment Agreement to submit that the Franchise Fee is non-refundable, yet the Arbitral Award directed its refund. Clause 15 of the Amendment Agreement reads as follows:

“15. FRANCHISE FEE: having due regard to the delay in commencement of business as per the original agreement dated the 22nd August, 2003 and keeping in view the additional cost incurred by IBPL for the arrangements to produce and sell the beer brands in Rajasthan, the Sales Promoter agrees to pay a non-refundable Franchise fee for a period of 5 (five) years in advance amounting to Rs.85,00,000, which would be adjusted equally over the aforesaid period of 5 years. The Sales Promoter agrees to pay the Franchise fee to IBPL in the following manner:

- (i) Rs.15,00,000 Already paid*
- (ii) Rs.50,00,000 To be paid by Bankers draft upon signing*
- (iii) Rs.20,00,000 To be paid by Bankers Draft eight (8) weeks after first shipment of the Brands to the Territory.*

Failure by Sales Promoter to pay all franchise fees on time shall be' sufficient good cause for IBPL to immediately cancel this agreement. In this event, no refund of any franchise fees already paid shall be due to Sales Promoter.”

[Emphasis is ours]

14. Both parties made allegations and counter-allegations against each other.

- 14.1 Issue (v) as framed by the Sole Arbitrator was whether the Franchise Fee would be non-refundable, and is set out below for reference:

“(5) Whether franchise fee of Rs 85,00,000 paid by the Claimant to the Respondent was not refundable as per Clause 4 of the agreement dated 22.08.2003 and Clause 15 of the agreement dated 07.06.2005? (OPR)”

15. Relying on Clause 15 of the Amendment Agreement, the Sole Arbitrator held that it is not in dispute that the amount of Rs.85 lacs was paid by the Respondent to the Appellant and that the Appellant



had yet not cancelled/terminated the Agreement. The Sole Arbitrator further held that the amount was to be adjusted over a period of 5 years and the business continued for a period of one year and three months only.

15.1 It was held further that the intention of the parties is clear from the stipulation that the non-refundable fee would be deposited for the period of 5 years and since the business was not carried out for the remaining period, it was directed that a payment of Rs.20 lacs should be deducted from the amount of Rs.85 lacs and the Respondent is entitled for return of Rs.65 lacs. This finding was upheld by the learned Single Judge.

15.2 The finding of the Sole Arbitrator in this regard is reproduced below:

“.....Admittedly, the amount had been paid in time and the Respondent had not cancelled the agreement. Therefore, the only question, is how the amount deposited is to be deal with. The clause itself made it clear that the amount to be deposited was to be adjusted yearly for the period of 5 years. The business continued for about one year and three months. Therefore, the Respondent had the right to adjust to Rs.20 lacs for the aforesaid period. As business did not continue for whatever reason, and not solely for reasons attributable to the Claimant as discussed below. It is also not a stipulation that even of no business is carried out there shall still be adjustment of franchise fees after that period the Claimant would be entitled to refund of Rs. 68 lacs for the balance 4 years. The consequence which the Respondent presses into service that since it was not Respondents’ fault the Claimant would not be entitled to any refund of the amount is not the stipulation in the clause which clearly stated that the only consequences of non-deposit in time was cancellation of the agreement. There is no indication in the agreement as to what would happen if the business for the agreed period was not carried out. But the intention of the parties is clear from the stipulation that the franchise fee which was non-refundable would be deposited for the currency period of 5 years. In



that view of the matter as indicated above, the Claimant is entitled to Rs. 68 lacs which the Respondent shall have to pay to the Claimant.

The true construction of a contract depends upon the words used and not upon what the parties choose to say afterwards. (See *Bank of Baroda vs. K. Mohandas* (2009) 5 SCC 313). In any event doctrine of fairness can certainly not be invoked to amend, alter or vary the express terms of the contract between the parties. (See *Excise Commissioner v. Issao Peter* (1994) 4 SCC 104)....”

[Emphasis is ours]

16. The Supreme Court in *Hindustan Construction Co. Ltd. v. NHAI*⁸ has recapitulated the prevailing view that Courts should not customarily interfere with arbitral awards which contain a plausible view. It was further held that awards which contain reasons and interpret contractual terms ought not to be interfered with lightly. The relevant extract read as follows:

“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 choose 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

⁸ (2024) 2 SCC 613



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...”

[Emphasis is ours]

17. The Sole Arbitrator interpreted the Clause agreed to between the parties and on an interpretation of the Clause held that the business only continued for one year and three months for reasons not solely attributable to the Respondent. The Sole Arbitrator further gave a finding that there was no indication or reference to a circumstance for a scenario in the Amendment Agreement where it ended pre-maturely. Thus, Clause 15 of the Amendment Agreement was interpreted by the Sole Arbitrator to hold that the Claimant was entitled to a proportionate refund of the amount deposited for the period that there was no business between the parties during the term of the Amendment Agreement. The finding of the Sole Arbitrator is based on the interpretation of the agreement between the parties, which we find does not merit any interference.

Refund of Admitted Amount

18. The other issue raised by the Appellant is that the claim in the sum of Rs. 20,33,090/- was not admitted as due by the Appellant despite which it has been awarded to the Respondent.

18.1 The Respondent in its Statement of Claim had set out that the amount in the sum of Rs. 20,33,090/- is due in the following manner:



“10. That due to spoiled bear [sic. beer] supply at Rajasthan to the claimant company, the stock to the tune of Rs.40 lacs could not be sold. The claimant company made lots of communication in writing as well as on telephone with respondent and lastly the respondent agreed to pay Rs.20 lacs against the poor quality of bear [sic. beer] supplied to the claimant company by the respondent. It will also be pertinent to mention that as per the statement of account of the respondent company a payment of Rs.20,33,090/- was due towards transaction amount to the claimant company. Thus, the respondent has to pay about Rs.1.25 Crores to the claimant company as follows:-

- (i) *The claimant company is seeking the refund of Rs.85 lacs paid to the respondent in pursuant to the agreement since the respondent has breached the contract and not supplied the material for sale as per the agreement.*
- (ii) **That as per the statement of account of respondent company a transaction amount of Rs. 20,33,090/- is due to the claimant company from the respondent.**
- (iii) *That the respondent company agreed to pay Rs.20 lacs against the poor quality of bear [sic. beer] supplied to the claimant company by the respondent, this amount was agreed to be paid against the accumulated stock to the tune of Rs.40 lacs which could not be sold in the market due to poor and spoiled bear [sic. beer] quality.*
- (iv) *That the claimant company spent lot of amount for setting up infrastructure for sale at Rajasthan of the bear [sic. beer] as per the terms of the agreement till 2010, that the claimant company is claiming the said amount towards the losses suffered due to the breach of the contract.*
- (v) *That the claimant company is claiming Rs.5 lacs towards salary paid to the staff employed for carrying out the day to day work of the claimant company. Since the employees were employed till 2010, but due to non supply of bear [sic. beer] the employees were sitting idle, therefore, the account was settled with them and they were paid Rs.5 lacs towards the same. Thus, the claimant is entitled to the said amount due to the losses suffered.*
- (vi) *That the claimant company is also claiming Rs.60 thousands which, the claimant company paid towards godown rent. The claimant company took a godown on rent @Rs.10,000/- per*



month till August 2010 that no supply of goods was made after November 2006 and was stopped without notice, but claimant company still retained the godown for another 6 months even though no business was carried out due to non supply of material. Thus, Rs.60,000/- for retaining the godown for another 6 months are claimed. Thus, the petitioner is claiming total Rs.1,25,19,586/- from the respondent towards claim No. I to VI and interest @18% p.a.”

[Emphasis is ours]

18.2 The Statement of Defence filed by the Appellant with respect to this issue is reproduced below:

*“7. That the contents of Para 10 are denied being false, the **Respondent has never agreed to pay anything to the Claimant,** nor the Respondent is liable to pay any amount to the Claimant. The claims as mentioned in the answering Para are false, vexatious, frivolous and concocted. In fact the Claimant clearly owes huge damages to Respondent and the Respondent is also filling a Counter Claim to get the said amount due and payable by the Claimant along, with the statement of defense. **Clause 13 of the agreement provides for breach of contract and failure to sell the minimum contracted quantities.** It is pertinent to mention here that the Respondent has very few records with them as most were stolen by the ex-director of the company, Mr. Rajeshwar Singh Bal, who is actively colluding in a criminal conspiracy with the Claimant. In fact, the Respondent is owed huge amounts of money from the Claimant under clause 13 for the failure of the Claimant to sell the beer as contractually committed in the Territory. **It is further submitted that the Claimant has mutually agreed upon a non-refundable fee as stipulated in clause 4 and clause 15 of the agreement.** Furthermore, the Respondent is owed penalties under clause 13 from the Claimant for breach of contract and non-performance. **It is strictly denied that the Respondent is liable for any payment to the Claimant.** It is further submitted that the Claimant is liable to pay the Respondent the amount due to them along with the damages and interest as claimed in the Counter Claim being filed-along with the Reply. Since the claim is not maintainable the question of payment of interest as claimed or at all does not arise. Last Para is prayer which liable to be rejected in view of the submissions made herein above.”*

[Emphasis is ours]



18.3 The Sole Arbitrator held that there is no specific denial of the claim by the Appellant and that the statement of accounts which have been proved by way of evidence by the Respondent, have not been disputed. It was thus held that the Respondent is entitled to such amount. The relevant extract of the Arbitral Award is below:

“As regards Claimant's claim of Rs.20,33,090/- is concerned the Claimant at Para 10 of the claim petition has averred on two aspects:

(a) Agreement of Respondent to pay Rs.20 lakhs in respect of poor quality of Beer supplied.

(b) As per statement of account of the Respondent a sum of Rs,20,33,090/- was due to the Claimant.

The Claimant has claimed Rs. 20,33,090/- stated to be admitted to be due by the Respondent. So far as, this claim is concerned the Claimant has referred para 14 of the evidence by way of affidavit of CW-1 Shri Amitabh Agarwal, it is stated that as per the statement of account a sum of Rs.20,33,090 was due towards transaction amount to the Claimant and Respondent was liable to pay same.

*In its Statement of Defence/Reply, the Respondent has dealt with aforesaid pleadings at Para 7 of the “Reply on Merits”. Such Reply is in addition to preliminary objection. In Para 7 the Respondent has categorically denied to have agreed to pay anything to the claimant. This obviously is in relations to the aforementioned aspect (a). **There is no specific denial except in general terms regarding the claim being false, vexatious and concocted. The correctness of the Statement of Accounts as per document at page 36 has not been disputed. Reference can also be made to Claimants’ letter dated 22.05.2007 (at page 40 of the documents).***

*Though not stated in the pleadings, in the written submissions the Respondent has sited [sic:stated] that the figure has not been certified by any Chartered Accountant and in other proceedings Mohan Meakins Ltd. has stated about liability of Claimant to Respondent. Both these stands do not find place in the pleadings in the Statement of Defence/Counter Claim filed by the Respondent. **Even during evidence stage no credible evidence has been led. It has also not been explained as to how a certificate by the Chartered Accountant would have changed the position.***



Above being the position the Claimant is entitled to this amount which is awarded.”

[Emphasis is ours]

18.4 The learned Single Judge held that this is a matter of appreciation of evidence and this Court cannot sit in an Appeal to re-appreciate evidence and arrive at its own conclusion and thus, found no ground to interfere with the Arbitral Award. We find no infirmity with this finding of the Sole Arbitrator either.

Limitation

19. The Appellant for the first time raised a contention before the learned Single Judge that the claim filed by the Respondent was barred by limitation. It was averred by the Appellant, that the last product supply was made on 28.11.2006 and the Arbitration Agreement between the parties was invoked by the Respondent only on 02.03.2010 by a legal notice sent to the Appellant.
20. The Respondent, on the other hand, has relied upon the communications exchanged between the parties to contend that the debt of the Appellant was duly acknowledged by them and the claims were filed within limitation. More specifically, the reliance has been placed on two e-mails dated 14.12.2007 and 20.03.2009.
21. It was contended by the Respondent during the proceedings before the learned Single Judge that the parties were in negotiation during the period between 2006 and 2009 and that the claim of the Respondent was never denied by the Appellant during this period. The learned Single Judge held that the question of limitation with respect to the



claim of the Respondent would be a mixed question of fact and law and that the emails dated 14.12.2007 and 20.03.2009 would act as an acknowledgment of liability by the Appellant leading to an extension of the period of limitation under Section 18 of the Limitation Act.

22. Under Section 43 of the Arbitration Act, the provisions of the Limitation Act have been made applicable to an arbitration as it would apply to the proceedings before the Court except where expressly excluded by the Arbitration Act. Sub-Section (1) of Section 43 of the Arbitration Act reads as follows:

“43. Limitations.—(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court.”

- 22.1 Sub-Section (2) of Section 43 of the Arbitration Act provides that an arbitration shall be deemed to have commenced from the date on which a request for that dispute to be referred to arbitration is received by the Respondent, in terms of Section 21 of the Arbitration Act. Sub-section (2) of Section 43 of the Arbitration Act is set out below:

“(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred to in section 21.”

23. Undisputably, a claim was raised by the Respondent by a notice dated 02.03.2010 addressed to the Appellant seeking invocation of the Arbitration Agreement. As stated above, this led to the Sole Arbitrator being appointed by the Court.
24. In order to examine the contention of the Appellant, it is necessary to examine Section 18 of the Limitation Act which reads:



“18. Effect of acknowledgment in writing. —

*(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, **an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.***

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.— For the purposes of this section —

*(a) **an acknowledgment may be sufficient though it** omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,*

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf, and...”

[Emphasis is ours]

25. In terms of this provision, where before the expiry of the prescribed period of limitation for filing a proceeding, an acknowledgment of liability has been made by the party against whom the claim exists, a fresh period of limitation shall commence from the time the acknowledgment was signed. The limitation for filing a suit is calculated as on the date of filing a suit. In the case of arbitration, the limitation for the claim is to be calculated on the date which the arbitration is deemed to have commenced.

26. The Supreme Court has in ***B and TAG vs. Ministry of Defence***⁹, while

⁹ (2024) 5 SCC 358



relying on its judgment in *J.C. Budhraj v. Chairman, Orissa Mining Corpn. Ltd & Anr.*¹⁰, drawn a distinction between the period of limitation for filing a claim petition and for filing a petition for appointment of an arbitrator and has stated that the two cannot be confused with each other. The limitation for a claim is to be calculated on the date which the arbitration has commenced. The following extract is relevant:

“41. On the aspect whether the decision on the issue of limitation should be decided at the stage of passing of an order referring the disputes to the arbitrator, this Court in J.C. Budhraj v. Orissa Mining Corpn. Ltd. [J.C. Budhraj v. Orissa Mining Corpn. Ltd., (2008) 2 SCC 444 : (2008) 1 SCC (Civ) 582] has drawn a fine distinction between the period of limitation for filing of a petition and as to the claims being barred by time. We quote the relevant observations made by this Court in J.C. Budhraj [J.C. Budhraj v. Orissa Mining Corpn. Ltd., (2008) 2 SCC 444 : (2008) 1 SCC (Civ) 582] in paras 25 and 26 respectively, as under : (SCC pp. 459-60)

“25. The learned counsel for the appellant submitted that the limitation would begin to run from the date on which a difference arose between the parties, and in this case the difference arose only when OMC refused to comply with the notice dated 4-6-1980 seeking reference to arbitration. We are afraid, the contention is without merit. The appellant is obviously confusing the limitation for a petition under Section 8(2) of the Arbitration Act, 1940 with the limitation for the claim itself. The limitation for a suit is calculated as on the date of filing of the suit. In the case of arbitration, limitation for the claim is to be calculated on the date on which the arbitration is deemed to have commenced.

26. Section 37(3) of the Act provides that for the purpose of the Limitation Act, an arbitration is deemed to have been commenced when one party to the arbitration agreement serves on the other party thereto, a notice requiring the appointment of an arbitrator. Such a notice having been served on 4-6-1980, it has to be seen whether the claims were in time as on that date. If the claims were barred on 4-6-1980, it follows that the claims had to be rejected by the arbitrator on the ground that the claims were barred by

¹⁰ (2008) 2 SCC 444



limitation. The said period has nothing to do with the period of limitation for filing a petition under Section 8(2) of the Act. Insofar as a petition under Section 8(2) is concerned, the cause of action would arise when the other party fails to comply with the notice invoking arbitration. **Therefore, the period of limitation for filing a petition under Section 8(2) seeking appointment of an arbitrator cannot be confused with the period of limitation for making a claim.** The decisions of this Court in *Inder Singh Rekhi v. DDA* [*Inder Singh Rekhi v. DDA*, (1988) 2 SCC 338], *Panchu Gopal Bose v. Port of Calcutta* [*Panchu Gopal Bose v. Port of Calcutta*, (1993) 4 SCC 338] and *Utkal Commercial Corpn. v. Central Coal Fields Ltd.* [*Utkal Commercial Corpn. v. Central Coal Fields Ltd.*, (1999) 2 SCC 571] also make this position clear.”

[Emphasis is ours]

27. The word “*acknowledgment*” under Section 18 of the Limitation Act has been explained in the case of ***Food Corporation of India v. Assam State Cooperative Marketing & Consumer Federation Ltd. And Others***¹¹. It has been held that an acknowledgment of a liability within the meaning of Section 18 of the Limitation Act need not be accompanied by a promise to pay either expressly or even by implication. The words used in an acknowledgment must indicate the existence of jural relationship between the parties of a debtor and a creditor. So long as the statement amounts to an admission acknowledging the existence of a liability, it shall have the effect of extending limitation. The relevant extract is below:

“14. According to Section 18 of the Limitation Act, an acknowledgement of liability made in writing in respect of any right claimed by the *opposite party and signed by the party against whom such right is claimed made before the expiration of the prescribed period for a suit in respect of such right has the effect of commencing a fresh period of limitation from the date on which the acknowledgement was so signed. It is well settled that to amount to an acknowledgement of liability within the meaning of*

¹¹ (2004) 12 SCC 360



Section 18 of the Limitation Act, it need not be accompanied by a promise to pay either expressly or even by implication.

*15. The statement providing foundation for a plea of acknowledgement must relate to a present subsisting liability, though the exact nature or the specific character of the said liability may not be indicated in words. The words used in the acknowledgement must indicate the existence of jural relationship between the parties such as that of debtor and creditor. The intention to attempt such jural relationship must be apparent. However, such intention can be inferred by implication from the nature of the admission and need not be expressed in words. **A clear statement containing acknowledgement of liability can imply the intention to admit jural relationship of debtor and creditor. Though oral evidence in lieu of or making a departure from the statement sought to be relied on as acknowledgement is excluded but surrounding circumstances can always be considered.** Courts generally lean in favour of a liberal construction of such statements though an acknowledgement shall not be inferred where there is no admission so as to fasten liability on the maker of the statement by an involved or far-fetched process of reasoning. (See *Shapoor Freedom Mazda v. Durga Prosad Chamaria* [AIR 1961 SC 1236] and *Lakshmirattan Cotton Mills Co. Ltd. v. Aluminium Corpn. of India Ltd.* [(1971) 1 SCC 67 : (1971) 2 SCR 623]) So long as the statement amounts to an admission, acknowledging the jural relationship and existence of liability, it is immaterial that the admission is accompanied by an assertion that nothing would be found due from the person making the admission or that on an account being taken something may be found due and payable to the person making the acknowledgement by the person to whom the statement is made.”*

[Emphasis is ours]

28. As stated above, since the issue of whether the claim of the Respondent is within time, was not raised before the Sole Arbitrator, no evidence or finding of the Sole Arbitrator exists in the Arbitral Award on the aspect as to whether the claim in the sum of Rs.1,25,19,586/- filed by the Respondent, is within time.
29. The learned Single Judge found that the two emails dated 14.12.2007



and 20.03.2009 would act as an extension of time *qua* limitation since admittedly the last supply (and the cause of action) arose on 28.11.2006.

30. In *Geo Miller And Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited*¹², the Supreme Court has held that in certain circumstances, when parties are negotiating towards an amicable settlement such period may be excluded for the purpose of computing period of limitation for reference to arbitration. However, the entire history must be specifically pleaded by the parties and placed on record and the breaking point of the negotiations must also be set out. The relevant extract is set out below:

“28. Having perused through the relevant precedents, we agree that on a certain set of facts and circumstances, the period during which the parties were bona fide negotiating towards an amicable settlement may be excluded for the purpose of computing the period of limitation for reference to arbitration under the 1996 Act. However, in such cases the entire negotiation history between the parties must be specifically pleaded and placed on the record. The Court upon careful consideration of such history must find out what was the “breaking point” at which any reasonable party would have abandoned efforts at arriving at a settlement and contemplated referral of the dispute for arbitration. This “breaking point” would then be treated as the date on which the cause of action arises, for the purpose of limitation. The threshold for determining when such a point arises will be lower in the case of commercial disputes, where the party's primary interest is in securing the payment due to them, than in family disputes where it may be said that the parties have a greater stake in settling the dispute amicably, and therefore delaying formal adjudication of the claim.”

[Emphasis is ours]

31. The Appellant has vociferously argued that the claims are beyond

¹² (2020) 14 SCC 643



limitation. However, the Appellant has not referred to the series of communications between the period from October 2006 and March 2009, exchanged between the parties and which form part of the Arbitral record.

32. Admittedly, since this issue was not raised before the Sole Arbitrator by the Appellant in its Statement of Defence, no evidence was led by either party in this regard. The issue of limitation, therefore, cannot be examined without evidence given the disputed contentions of the parties in the present case. The fact that this was not raised by the Appellant in its Statement of Defence, whether or not there was any other evidence to show that the claim was within limitation, could only have been examined by the Sole Arbitrator. There is no such finding in the Arbitral Award, since this aspect was concededly not adjudicated upon by the Sole Arbitrator.
33. There is another aspect as well. Limitation being a mixed question of fact and law, cannot be decided by this Court in these proceedings. Since the issue of limitation was not raised by the Appellant, the same would be deemed to have been waived and could not be permitted to have been raised for the first time either in the Petition under Section 34 of the Arbitration Act or Section 37 of the Arbitration Act.
34. It is the consistent view of this Court that the plea of limitation has to be raised at the first opportunity by the party resisting the claim. If there is no objection in the first instance, then the same would lead to a deemed waiver by such party. [See: *Municipal Corporation of*



*Delhi v. M/s Harcharan Dass Gupta*¹³].

- 35 In *Uttam Singh Duggal & Sons v. Union of India and Others*¹⁴, a Coordinate Bench of this Court held that an objection not raised before the arbitrator ought not to be entertained by way of an objection to the Award. It was held that:

“In the present case the objections appears not to have been raised before the Arbitrator and therefore ought not to have been entertained by way of objection to the Award. Speculative though it may be, there is good reason to assume that the Arbitrator had looked into every clause of the Agreement and had thereafter returned his findings.”

[Emphasis is ours]

36. This Court in a Petition under Section 37 the Arbitration Act cannot undertake an examination as to whether the plea that the Appellant lost its right to challenge the claim of the Respondent as being barred by limitation, or whether the Respondent could show that its claim was within time. Thus, it not necessary for us to advert any further on the same.

Counter Claim of Appellant

37. The Sole Arbitrator examined the counter-claim of the Appellant and held that the Appellant did not file a separate counter-claim but pleaded in its Statement of Defence that it is entitled to Rs.1,72,97,000/- under Clause 13 of the 22.08.2023 Agreement and Rs.2,03,00,000/- under the Amendment Agreement for breach by the Respondent. Additional claims were also made by the Appellant.

¹³ 2012 SCC OnLine Del 5195

¹⁴ 2002 SCC OnLine Del 317



- 37.1 The Sole Arbitrator gave a finding that the Appellant has not been able to establish a claim for damages, to be entitled to the amounts claimed in its counter-claim. It was also held that the counter-claim were barred by limitation and hence, rejected the same. The Sole Arbitrator reached the finding after an examination of the evidence in the matter.
- 37.2 The Appellant has not been able to show anything to the contrary before this Court.
- 37.3 The Arbitrator examines the quality and quantity of evidence placed before him when he delivers his Arbitral Award and a view, which is possible on the facts as set forth by the Arbitrator must be relied upon. In the case of *State of Jharkhand v. HSS Integrated Sdn.*¹⁵, the Supreme Court held that the Arbitral Tribunal is the master of the evidence, and a finding of fact arrived at by an arbitrator is on an appreciation of the evidence on record, is not to be scrutinised as if the Court was sitting in appeal.

Conclusion

38. It is settled law that this Court is not required to sit in Appeal and re-examine an Award. Unless where there exists an error, apparent which goes to the root of the matter, interference is not warranted. In view of the foregoing discussion, we find that no ground for interference is made out.

¹⁵ (2019) 9 SCC 798



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39. The Appeal and pending Application is accordingly dismissed.

TARA VITASTA GANJU, J

VIBHU BAKHRU, ACJ

DECEMBER 24, 2024: r/ha/jn

Signature Not Verified

Digitally Signed
By: HONEY ARORA
Signing Date: 03.01.2025
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