IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.214 OF 2025

Airport Authority Of India ....Petitioner

Versus

Lite Bite Foods Private Limited ....Respondent

Mr. S.D. Kothari, *for Petitioner (VC).*

Mr. Rohan Shah, a/w. Anirudh Krishna Gandhi, Megha Khandelwal & Rounak Doshi i/b. Saraf & Partners, *for Respondent (VC).*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : DECEMBER 9, 2025

ORAL JUDGEMENT:

1. Having examined the record with the assistance of the parties, and taking the Affidavit-in-Reply dated December 8, 2025 on record, it is apparent that the Concession Agreement dated July 9, 2018, which contains the Arbitration Agreement, had already led to arbitration proceedings earlier, which culminated in an Arbitral Award dated July 15, 2022.

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2. In those proceedings, it is the Respondent who was the Claimant, while the Petitioner, who was the Respondent in those arbitral proceedings, had filed a counter-claim in the proceedings.

3. The Respondent indicates that in these proceedings, the Respondent had indeed raised computation of interest amounts that would be payable by the Petitioner. However, while filing the counter-claim in the earlier proceedings, the Petitioner for reasons best known to it, did not raise a claim on interest as part of its counter-claim. This Petition, it is contended, is an attempt to re-open a matter adjudicated long ago and is a second bite at the cherry to re-agitate issues that are incidental to the matters that have already been conclusively and comprehensively adjudicated.

4. The Petitioner contends that the Petitioner has received a fresh computation of interest only in 2024, and the interest computation had not been available to it when the earlier arbitration was conducted.

5. Since the disputes had already been subjected to arbitration and culminated in the Arbitral Award, the disputes and differences, including differences over interest payment prior to commencement of arbitration, are issues that are, in my opinion, covered by *constructive res judicata*. The contention that this ground is being raised only for claiming interest that was computed only after the arbitration concluded, does not lend itself to acceptance since the interest relates

to the period already covered by the earlier arbitration. The disputes between the parties have already been adjudicated and all incidental issues that were raised, or with reasonable diligence ought to have been raised, are covered by the adjudication already effected.

6. The Supreme Court has recently explained the *Henderson Principle* in the case of ***Celir LLP***[1], which I believe ought to be applied in the instant case. The following extracts are noteworthy:

> *135. The 'Henderson Principle' is a foundational doctrine in common law that addresses the issue of multiplicity in litigation. It embodies the broader concept of procedural fairness, abuse of process and judicial efficiency by mandating that all claims and issues that could and ought to have been raised in a a previous litigation should not be relitigated in subsequent proceedings. The extended form of res-judicata more popularly known as 'Constructive Res Judicata' contained in Section 11, Explanation VII of the CPC originates from this principle.*
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> *139. Even in a common law action it was said by Blackburn, J.: "I incline to think that the doctrine of res judicata applies to all matters which existed at the time of giving of the judgment, and which the party had an opportunity of bringing before the Court." [See: **Newington v. Levy** reported in **(1870) 6 CP 180 (J)**].*
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> *140. The fundamental policy of the law is that there must be finality to litigation. Multiplicity of litigation benefits not the litigants whose rights have been determined, but those who seek to delay the enforcement of those rights and prevent them from reaching the rightful beneficiaries of the adjudication. The Henderson Principle, in the same manner as the principles underlying res judicata, is intended to ensure that grounds of attack or defence in*

1 Celir LLP vs. Mr. Sumati Prasad Bafna & Anr. – 2024 INSC 978

litigation must be taken in one of the same proceeding. A party which avoids doing so does it at its own peril. In deciding as to whether a matter might have been urged in the earlier proceedings, the court must ask itself as to whether it could have been urged. In deciding whether the matter ought to have been urged in the earlier proceedings, the court will have due regard to the ambit of the earlier proceedings and the nexus which the matter bears to the nature of the controversy. In holding that a matter ought to have been taken as a ground of attack or defence in the earlier proceedings, the court is indicating that the matter is of such a nature and character and bears such a connection with the controversy in the earlier case that the failure to raise it in that proceeding would debar the party from agitating it in the future. The doctrine itself is based on public policy flowing from the age-old legal maxim interest reipublicae ut sit finis litium which means that in the interest of the State there should be an end to litigation and no party ought to be vexed twice in a litigation for one and the same cause.

144. *From the above exposition of law, it is clear that the 'Henderson Principle' is a core component of the broader doctrine of abuse of process, aimed at enthusing in the parties a sense of sanctity towards judicial adjudications and determinations. It ensures that litigants are not subjected to repetitive and vexatious legal challenges. At its core, the principle stipulates that all claims and issues that could and should have been raised in an earlier proceeding are barred from being raised in subsequent litigation, except in exceptional circumstances. This rule not only supports the finality of judgments but also underscores the ideals of judicial propriety and fairness.*

145. *There are, four situations wherein second proceedings between the same parties doctrine res judicata as a corollary of the principle of abuse of process may be invoked: (i) cause of action estoppel, where the entirety of a decided cause of action is sought to be relitigated; (ii) issue estoppel or, "decided issue estoppel," where an issue is sought to be relitigated which has*

> *been raised and decided as a fundamental step in arriving at the earlier judicial decision; (iii) extended or constructive res judicata i.e., "unraised issue estoppel," where an issue is sought to be litigated which could, and should, have been raised in a previous action but was not raised; (iv) a further extension of the aforesaid to points not raised in relation to an issue in the earlier decision, as opposed to issues not raised in relation to the decision itself.*
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> *146. As part of the broader rule against abuse of process, the Henderson principle is rooted in the idea of preventing the judicial process from being exploited in any manner that tends to undermine its integrity. This idea of preventing abuse of judicial process is not confined to specific procedure rules, but rather aligned to a broader purport of giving quietus to litigation and finality to judicial decisions. The essence of this rule is that litigation must be conducted in good faith, and parties should not engage in procedural tactics that fragment disputes, prolong litigation, or undermine the outcomes of such litigation. It is not a rigid rule but rather a flexible principle to prevent oppressive, unfair, or detrimental litigation. We are conscious of the fact, that ordinarily this principle has been applied to instances where a particular plea or ground was not raised at any stage of the proceedings, but were later sought to be raised. However, it must be borne in mind that construing this rule in a hyper-technical manner or through any strait-jacket formula will amount to taking a reductive view of this broad and comprehensive principle.*
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> *[Emphasis Supplied]*

7. Applying this principle to the existence of the arbitration agreement, in my opinion, it is difficult to hold that the arbitration agreement subsists in relation to the subject matter for which this Petition under Section 11 of the Act has been filed. While one could potentially argue that whether *constructive res judicata* applies is an

issue that could be left to the Arbitral Tribunal to decide under Section 16 of the Act, in the evident factual matrix of the case, to my mind, when the issue was squarely meant to be covered in the earlier round of arbitral proceedings, the substratum of the existence of the arbitration agreement, insofar as it relates to the issue sought to be agitated afresh now, is evidently absent. Therefore, in my opinion, no arbitration agreement exists in form or in substance for a reference to arbitration to be made in relation to the disputes for which reference is now sought to be made. Taking any other approach would be hyper-technical, reductive and erosive of the integrity of the arbitral process, as warned by the Supreme Court in the judgement extracted from above.

8. In these circumstances, the arbitration already having been conducted and even culminating in an arbitral award, since the facet of interest claims are incidental to the issues covered by the arbitration, it would not be possible to return a finding that an arbitration agreement subsists in respect of these issues. Taking any other view would lead to chaotic circumstances, and the very integrity of arbitration as a means of dispute resolution would be undermined by the potential abuse of routinely sending such claims to arbitration.

9. In these circumstances, this Petition is hereby ***finally disposed of*** without constituting an Arbitral Tribunal for the reason that the

agreement does not subsist in relation to the subject matter for which this Petition has been filed.

10. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]