



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

ARBITRATION APPEAL NO. 01 OF 2024

Sk. Salim Sk. Dadoo,
Aged about 47 years,
Proprietor of Salim Trading Company,
Kadabi Bazar, Near Balaji Mandir,
Amravati, Tq. and Dist. Amravati.

.... **APPELLANT**

// **VERSUS** //

- 1) **M/s Olam Agro India Ltd.,**
Through its Vice President
Amit Agrawal, having its registered
office on ground floor of DLF
Building No.8, Phase II Cyber City,
Gurgaon – 122002.
- 2) **Cotton Association of India,**
By its Secretary, Cotton Exchange
Building, 2nd Floor, Oppo. Cotton
Green Railway Station,
Cotton Green, Mumbai - 400033.
- 3) **S. M. Joshi, Sole Arbitrator,**
r/o. 15, Sahjeevan Gokhale Road
Cross Rd. No. 2, Dadar (West),
Mumbai – 400028.
- 4) **M/s Nagindas Kasturchand & Bros.,**
by its Partner Jignesh Shah,
Megata Market, Surendra Nagar
(Gujrat).

.... **RESPONDENTS**

WITH
ARBITRATION APPEAL NO. 02 OF 2024

Sk. Ayub Sk. Gulzar,
Aged about 51 years, proprietor of
Arshad Trading Company, Kadabi
Bazar, Near Balaji Mandir, Amravati,
Tq. & Dist. Amravati

...**APPELLANT**

//VERSUS//

1. M/s Olam Agro India Ltd.,
Through its Vice President Amit
Agrawal, having its registered office
on ground floor of DLF Building No.
8, Phase II Cyber City, Gurgaon
122002
2. Cotton Association of India,
By its Secretary, Cotton Exchange
Building, 2nd Floor, Oppo. Cotton
Green Railway Station, Cotton Green,
Mumbai-400033
3. S.M. Joshi, Sole Arbitrator,
r/o 15, Sahjeevan Gokhale Rd.m
Cross Rd No. 2, Dadar (West),
Mumbai-400028
4. M/s Nagindas Kasturchand &
Bros., by its Partner Jignesh Shah
Megata Market, Surendra Nagar
(Gujrat)

...RESPONDENTS

Mr. Yash Venkatraman, Advocate for the Appellant.
None for the Respondents.

CORAM : SMT. M.S. JAWALKAR, J.

DATE ON RESERVING THE JUDGMENT : 25.03.2025

DATE ON PRONOUNCING THE JUDGMENT : 21.04.2025

JUDGMENT :

1. Heard learned Counsel for the Appellant finally at the stage
of admission. Since long, there is no representation on behalf of
respondents.

2. The present Appeal is filed challenging the order dated 10.11.2023 passed by the learned District Judge-4, Amravati in R.C.A. No.159/2013 and RCA No. 158/2013 whereby the learned District Judge-4, Amravati dismissed the Appellant's application for setting aside the Arbitral Award dated 18.05.2012 passed by the learned Arbitrator in Arbitration Case No.89/2011-12 and Arbitration Case No. 88/2011-12.

3. The Arbitration Appeal No. 1/2024 is filed by Sk. Salim Sk. Dadoo and the Arbitration Appeal No. 2/2024 is filed by Sk. Ayub Sk. Gulzar. Appellant in Appeal No. 1/2024 is the proprietor of "Salim Trading Company" and appellant in Appeal No. 2/2024 is proprietor of "Arshad Trading Company". As in both the appeals similar point is involved, they are taken up together for decision, Arbitration Appeal No. 1/2024 is taken as lead Appeal.

4. Appellant is proprietors of "Salim Trading Company" which is involved in the sale and purchase of Cotton Bales since the year 2003. The Respondent No.1 – M/s. Olam Agro India Ltd., is a limited company, having its registered office at Gurgaon, Haryana, carrying on the business of manufacturing cloth suitable for "suits" under the brand name "VHM". Appellant had received an invitation to make an offer for sale of cotton bales from his broker Suresh Mehta.

Consequently, the Appellant sent his offer to sell 'cotton bales' to his broker Suresh Mehta. After sending his offer, the Appellant never received any confirmation nor any duly signed "usual contract" from Respondent No.1 or any of its brokers, implying that there was never a concluded contract between the parties in accordance with the custom/practice in the cotton trading industry. On the basis of the mere invitation to offer, the Respondent No.1 alleged that on or about 05.08.2010 the Appellant had entered into a concluded contract with Respondent No.1 to sell 300 bales of cotton.

5. The Respondent No.1 raised a claim with the Respondent No.2 Association seeking to initiate arbitration for claiming damages for the purported breach of the alleged "concluded contract". Accordingly, Arbitration Case No.89/2011-12 was unilaterally initiated and Respondent No.3 was appointed as the Sole Arbitrator. Without having due regard to whether the Appellant had sufficient notice of the arbitration proceedings, the learned Arbitrator proceeded ex-parte in the matter and passed the impugned arbitral award dated 18/05/2012. Pertinently, all the notices regarding the arbitration proceedings including the initiation of arbitration proceedings as well passing of the impugned arbitral award were never received by the Appellant as the said notices were being sent to the old address of the Appellant from where he had already moved (which fact could be borne out from the

record of the learned Arbitrator). Consignment was returned with remark that the “consign has moved to a new address”.

6. For the first time appellant discovered that an entire arbitration proceeding was conducted ex-parte against the Appellant and the impugned arbitral award dated 18.05.2012 was passed against him when it came to his knowledge that a summons for execution of the impugned award was issued against him in Reg. Dkst. No.440/2012. In pursuance of the application for certified copy of the record of Reg. Dkst. No.440/2012 filed by the Appellant’s Counsel, the Appellant on 01.10.2013 obtained a copy of the impugned arbitral award. After that, Appellant immediately filed an Application for setting aside the impugned ex-parte award under Section 34 of the Arbitration and Conciliation Act, 1996. The learned District Judge dismissed the application filed by the Appellant while overlooking that the impugned arbitral award was *inter alia* passed without jurisdiction and in contravention of the principles of natural justice. The aforesaid order is the subject matter of challenge in the present Arbitration Appeal.

7. Learned Counsel for the Appellant submitted that learned Trial Court failed to consider the specific ground of challenge raised by the Appellant in his Section 34 Application that there was no

“concluded contract” much less any Arbitration Agreement between the Appellant and Respondent No.1.

8. It is further contended that the purported “sales contract” dated 05.08.2010 nowhere contains any arbitration clause which complies with the requirements of Section 7 of the Act of 1996 which requires an explicitly written arbitration agreement/clause. Thus, without a valid arbitration agreement between the parties, neither did the Respondent No.2 have any authority to refer the “dispute” for arbitration nor did the unilaterally appointed learned Sole Arbitrator have any authority to proceed with the matter making the entire proceeding without jurisdiction and *void ab initio*. Hence impugned order needs interference by this Court and which also needs to be set aside.

9. Learned Counsel for appellant relied on following citations:

1. ***Jagdish Chander Vs. Ramesh Chander and others, (2007) 5 SCC 719***
2. ***Viren Umedilal Mehta Vs. Royal Food & Hospitality and others, 2020 SCC OnLine 10666***
3. ***Gill and Company Pvt. Ltd., Mumbai Vs. Patodia Ginning Factory, Malegaon, 2016 SCC OnLine Bom 2184***
4. ***Hindustan Zinc Limited (HZL) Vs. Ajmer Vidyut Vitran Nigam Limited, (2019) 17 SCC 82***

5. *Union of India Vs. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239*

6. *Benarsi Krishna Committee and others Vs. Karmyogi Shelters Private Limited, (2012) 9 SCC 496*

7. *Alpine Housing Development Corporation Pvt. Ltd. Vs. Ashok S. Dhariwal and others, 2023 SCC OnLine SC 55*

10. Heard learned Counsel for the appellant. In spite of service none for the respondent. In response to notice, Cotton Association of India informed to the petitioner after passing award Arbitrator has become *functus officio* and Cotton Association is not necessary party. As such they will not appear in the matter. The appellant had received an invitation to make an offer for sale of cotton bales from his broker Suresh Mehta. Consequently, the appellant sent his offer to sell cotton bales to his broker Suresh Mehta. The appellant never received any confirmation nor any duly signed "usual contract" from respondent No.1 or any of its brokers, implying that there was never a concluded contract between the parties. On the basis of mere invitation to offer, the respondent No.1 alleged that on or about 05.08.2010, the appellant had entered into a concluded contract. The respondent No.1 that is Olam Agro India Ltd, raised a claim with respondent No.2 that is Cotton Association of India seeking to initiate arbitration for claiming damages. Accordingly, Arbitration Case No.89/2011-12 was

unilaterally initiated and respondent No.3 Shri S.N. Joshi, was appointed as the Sole Arbitrator.

11. It appears that without having due notice, the Arbitrator proceeded ex-parte in the matter and passed the impugned arbitral award. The notice was sent to the old address of the appellant from where he had already moved, which can be seen from remark on consignment as also referred in Arbitration Award. On 27.09.2013, the appellant discovered for the first time that an entire arbitration proceeding was conducted ex-parte against the appellant and the impugned arbitral award dated 18.05.2012 was passed against him when he received a summons for execution of the impugned award was issued against him in Regular Darkhast No. 440/2012. Appellant challenged the said award after obtaining certified copy on 01.10.2013 under Section 34 of the Act of 1996.

12. It is contention of the appellant that there was no valid arbitration agreement between the appellant and respondent No.1. The impugned ex-parte arbitral award passed by the sole arbitrator without jurisdiction and *void ab initio*, which is also in violation of principles of natural justice and the public policy of India. The learned District Judge-4 erred in law by rejecting the appellant's application under Section 34 of the Act of 1996 raising the said ground.

13. The learned Counsel for appellant submitted that the practice/custom in their business regarding purchase of cotton bales, is such that placing order and its acceptance initiated firstly, when brokers invites offer by quoting selling price of cotton bales in every year in August/September from the seller after negotiation with purchaser and thereafter said offer is invited by broker from the seller in the format popularly known as “Sales confirmation” which is sent to seller after duly signing the same by broker giving the rates, quality, quantity of bales and its delivery period.

14. As per procedure after receiving the information from seller under due signature, said invitation offer is sent by broker to proposed purchaser company with the remark “Please send your usual Contract, kindly arrange to send us the duplicate copy of this confirmation duly signed with seal of company”. If said offer given by seller is acceptable to purchase then “usual contract” duly signed with the seal of company of purchaser is sent to seller through the broker of seller with an option to seller to confirm the same by duly signing the said contract and sent back to said “usual contract FORM” after due signature by the seller to broker and thereupon the contract stands concluded.

15. My attention is drawn to the documents Annexure-2 (page 53) dated 05.08.2010. This communication dated 05.08.2010, which is offer for sale confirmation. The said letter which was addressed to Olam Agro India Limited, respondent No.1, wherein it is specifically mentioned that "Please send your usual contract, kindly arrange to send us the duplicate copy of this confirmation duly signed with seal by your company." Thus, the offer letter cannot be termed as arbitration agreement. Perusal of the impugned arbitral award as well as the impugned order show that there is a reference to an alleged clause in the purported "sales contract" which states that, "*We are pleased to confirm having purchased from you the following as per usual terms and subject to the Rules and Regulation of the Cotton Association of India, Mumbai*" (emphasis added). On the basis of such clause, the Ld. Forums have given a finding of existence of a valid arbitration agreement. Even Arbitration Rules of Cotton Association of India, Rule 3(a) reads as under:

"Rule 3 (a) Any dispute relating to claim arising out of cotton transaction and/or any commercial matter relating to cotton between two or more parties in India or other than in India who have agreed for arbitration stated expressly in the contract or by a separate agreement, under the Rules of Arbitration of the Association shall be determined and settled in accordance with these Rules."

Thus, the written contract or a separate agreement is necessary to apply the rules of the arbitration of the Association.

16. It is vehemently argued that the duplicate copy of the contract was required to be send, however, it is not the document executed by him. It is disputed signed and stamped. Even if, purported sale contract to be presumed, however, there is no agreement as required. As such, there was no written agreement incorporating arbitration clause. Appellant never appeared to be entered into contract. Moreover, there is no compliance of Section 7 of the Arbitration and Conciliation Act. Section 7 provides that an "arbitration agreement" means an agreement by the parties submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. Section 7(2) provides that an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. Section 7 (3) provides that an arbitration agreement shall be in writing. Non-compliance of Section 7, makes clear that any communication without compliance of Section 7 amounts to invalid apparent.

17. Learned Counsel for appellant relied on ***Gill and Company Pvt. Ltd. (supra)***, wherein this Court in similar matter held that if the arbitration is contained in the same document, it will fall under Section 7(4) (a) of the Arbitration Act and not under Section 7(5) of the

Arbitration Act and it would be an arbitration agreement if it is signed by both the parties or is acted upon. Where arbitrator has rendered an award though there was no arbitration agreement between parties, arbitrator is held to have exceeded his jurisdiction and as such arbitral award is liable to be set aside.

18. Learned Counsel for appellant also relied on ***Jagdish Chander (supra)***, wherein the Hon'ble Apex Court laid down certain essential elements of an arbitration agreement. (i) The intention of the parties to enter into an arbitration agreement shall have to be gathered from the terms of the agreement. If the terms of the agreement clearly indicate an intention on the part of the parties to the agreement to refer their disputes to a private tribunal for adjudication and a willingness to be bound by the decision of such tribunal on such disputes, it is arbitration agreement. (ii) The words "arbitration" and "Arbitral Tribunal (or arbitrator)" are not used with reference to the process of settlement or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause being an arbitration agreement if it has the attributes or elements of an arbitration agreement. (iii) Where the clause provides that in the event of disputes arising between the parties, the disputes shall be referred to arbitration, it is an arbitration agreement. (iv) Mere use of the word

“arbitration” or “arbitrator” in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. Thus the agreement should be in writing. The parties should have agree to refer any dispute between them to the decision of the arbitrator. The Arbitrator or private tribunal is empowered to attach upon the same in imperfectly manner. The parties should have agree that the decision of the private tribunal or arbitrator in respect of dispute will be binding on them. The said ingredients of an Arbitration Agreement as held in ***Jagdish Chander (supra)*** followed and reiterated in ***Viren Umedial Mehta (supra)***.

19. Learned Counsel for appellant also relied on ***Hindustan Zinc Limited (ZHL) (supra)***, wherein the Hon’ble Apex Court relying on ***Kiran Singh V. Chaman Paswan (1955) 1 SCR 117*** held as under:

“6. ... It is a fundamental principle well-established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities.”

20. Learned Counsel for appellant relied on ***Union of India (supra)***, wherein the Hon'ble Apex Court held that the delivery of an award to be effective has to be received by the party to the arbitration agreement. Prescribed period of limitation would be calculated only from date of receipt thereof by each party. Same is the view taken in ***Benarsi Krishna Committee and ors. (supra)*** relied on by the petitioner.

21. Learned Counsel for appellant placed reliance on ***Alpine Housing Development Corporation Pvt. Ltd. (supra)***, wherein the Hon'ble Apex Court held that in the proceeding under Section 34 of the Arbitration Act, the issues are not required to be framed, otherwise if the issues are to be framed and oral evidence is taken in a summary proceedings, the said object will be defeated, an application for setting aside the arbitral award will not ordinarily require anything beyond the record that was before the arbitrator, however, if there are matters not containing such records and the relevant determination to the issues arising under Section 34(2) (a), they may be brought to the notice of the Court by way of affidavits filed by both the parties.

22. Thus, in view of the law position, admittedly there was no written contract signed by both the parties to submit the disputes to Arbitrator. Thus, the order passed by the learned Arbitrator is without

jurisdiction and nullity in the eyes of law. In absence of any written agreement incorporating clause of arbitration, the arbitrator is not empowered to pass the award. Even if there is any clause, it is in violation of mandatory rules and Section 7 of the Arbitration Act and Rules. The agreement itself is invalid not being signed by the petitioner. As such, arbitrator in absence of contract taken the matter for arbitration. It also appears that no opportunity to defend was granted to the defendant. From award itself it can be seen that claimants were directed to supply reply of application along with documents to the present appellant as those application and documents send by Arbitrator returned back. It would be appropriate for the learned District Judge to set aside the award. No opportunity to prove the acknowledgment are not signed by applicant herein granted to the applicant and decided on its own. Moreover, when award itself is nullity, no question of due service as held by District Court would arise. As such, impugned order passed by the learned District Judge as well as award of arbitrator are liable to be set aside. Accordingly, I proceed to pass the following order:

ORDER

- i) The Arbitration Appeal No.1/2024 and Arbitration Appeal No.2/2024 are allowed.
- ii) In Arbitration Appeal No.1/2024, the order dated 10.11.2023 passed by learned District Judge-4, Amravati, in RCA

No.159/2013 as well as Arbitrator Award dated 18.05.2012 passed by learned Sole Arbitrator in Arbitration Case No.89/2011-12 are hereby quashed and set aside.

iii) In Arbitration Appeal No.2/2024, the order dated 10.11.2023 passed by learned District Judge-4, Amravati in RCA No.158/2013 as well as Arbitrator Award dated 18.05.2012 passed by learned Sole Arbitrator in Arbitration Case No.88/2011-12 are hereby quashed and set aside.

23. Both the Arbitration Appeals are disposed of in above terms. No order as to the costs.

(SMT. M.S. JAWALKAR, J.)

R.S. Sahare