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IN THE HIGH COURT OF DELHI AT NEW DELHIDate of decision: 11th FEBRUARY, 2025IN THE MATTER OF:

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ARB. A. (COMM.) 8/2025**PERFECT DIESEL SALES AND SERVICE & ANR.....Appellants**

Through: Mr. Sandeep Kumar, Adv.

versus

POWER HF INDIA PRIVATE LIMITEDRespondentThrough: Ms. Gunjan Sinha Jain, Mr. Manu
Bajaj and Ms. Muskaan Gopal, Advs.**CORAM:****HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT (ORAL)****I.As. 3561-62/2025 (Exemption)**

Allowed, subject to all just exceptions.

ARB. A. (COMM.) 8/2025, I.A. 3560/2025

1. The present appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 has been filed by the Appellants challenging the Order dated 24.12.2024, passed by the learned Sole Arbitrator in the Application filed by the Appellant No.1 herein under Section 17 (1) (ii) (A), (B), & (C) read with Section 26 of the Arbitration and Conciliation Act, 1996, praying for the following reliefs:

“a) To pass and order with effect to appoint an fit & expert person for local investigation in respect of material valued in counter claim no (iii) &(iv)

b) To pass an order with effect to go to the business address of respondent/counter claimant and inspect the



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material & its existence

c) To pass an order to make inventories of the material found at the time of local investigation .

d) To pass an order to prepare valuation sheet of inventories materials

e) To pass an order with effect to make arrangement of sale of the inventories of the materials

f) To file report before sole arbitrators on such terms and conditions as to this sole Arbitrator/Tribunal deem fit & Proper

g) Add interim order in terms of prayer

h) Cost of or and incidental to be paid by both the parties

i) Further order/directions as the tribunal deem fit.”

2. The learned Sole Arbitrator by the impugned Order has also refused to frame additional issues sought to be framed by the Appellant herein.

3. The facts, in brief, leading to the present appeal are that the Appellant No.1 is a sole proprietorship firm managed by Appellant No.2 herein and the Respondent is a company engaged in the business of manufacture as well as supply of Diesel Generator (“DG”) Sets, Spare Parts & its accessories and services in regard to the goods/products supplied by it. It is stated that the Appellant No.1 and the Respondent herein entered into two Agreements, namely, Sale Agreement and Service Agreement dated 15.01.2019 by which the Appellant No.1 herein was appointed as the Dealer of the Respondent for storing, selling and delivering the products of the Respondent company to



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local and designated customers of the Respondent. It is stated that both the Agreements were terminated by the Respondent with immediate effect on 30.12.2019. It is stated that after termination of the Agreements, The Respondent filed an Arbitration Petition under Section 11 of the Arbitration and Conciliation Act, 1996 before this Hon'ble Court for appointment of an Arbitrator and this Court *vide* Order dated 20.12.2023 appointed a Sole Arbitrator to adjudicate on the disputes between the parties. It is stated that the Appellants herein filed an application under Section 17 (1)(ii)(A)(B) & (C) of the Arbitration Act seeking interim relief by stating that on the termination of the Agreements the material stored in the warehouse of the Appellants was transferred to another dealers, namely Global Enterprise and Services and SS Enterprise, on the instructions of the Respondent and the Respondent claims a sum of Rs.21,42,576/- from the Appellants herein on account of unused materials value dumped in the go-down of the Appellant and, therefore, an expert person be appointed to find out the value of the unused material. It is stated that the said material is actually depreciating in value by each passing day and it is necessary for appointment of an expert for valuing the said materials.

4. In the reply filed by the Respondent it was stated that the relief sought by the Appellant herein does not come within the ambit of Section 17 of the Arbitration Act.

5. Learned Arbitrator *vide* the impugned Order held that the valuation/depreciation or wear & tear of the goods/materials/spare parts if any, lying at the godown/business house of the Appellant herein is a matter of record which can be proved by leading evidence through licensed approved chartered engineer/valuation engineer who are expert in assessing,



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evaluating the depreciation values of the goods & materials and it is not necessary to appoint a commissioner for this purpose. The learned Arbitrator held that the parties can prove the facts by leading the evidence regarding the financial statements of the banks reflecting financial activities, balance sheets, income statements, cash flow accuracy of outstanding amount etc., which will depict the balance stock statements etc. The learned Arbitrator also held that the Agreements in question were terminated on 30.12.2019 and the Application under Section 17 (1)(ii)(A)(B) & (C) of the Arbitration Act seeking interim relief has been filed by the Appellant herein virtually after four years. The learned Arbitrator, therefore, dismissed the application of the Appellant herein. The learned Arbitrator has also refused to frame additional issues by holding that the issues which have already been framed would cover the case of the Appellant herein.

6. It is this Order which is under challenge in the present Appeal.

7. Learned Counsel appearing for the Appellant contends that the Agreement has been terminated illegally and in view of the counter claim raised by the Respondent herein, an expert ought to have been appointed to ascertain the true value of the material. It is also contended that additional issues ought to have been framed by the learned Arbitrator in view of the counter-claim raised by the Respondent herein.

8. Heard the Counsels and perused the material on record.

9. This Court is of the opinion that the Order passed by the learned Arbitrator refusing to frame issues will not come within the ambit of either Section 16 or 17 of the Arbitration Act and, therefore, the present Order is not an appealable Order. It is always open for the Appellant to raise these issues after the award is passed. Refusing to frame issues is at best a



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procedural Order against which an appeal is not maintainable under Section 37 of the Arbitration Act.

10. On the issue as to whether an expert ought to have been appointed to ascertain the true value of the material or not, this Court is of the opinion that the Order of the Tribunal does not require any interference. The Agreement was terminated on 30.12.2019 and the Appellant herein filed the application on 29.08.2024 which is after more than four years of the termination. The Arbitrator was, therefore, justified in coming to the conclusion that the application made after four years is not maintainable. In any event, as stated by the learned Arbitrator, it is always open for the Appellant to lead evidence by examining an independent expert to substantiate its contentions and it cannot be said that the Order refusing to appoint an expert is either vitiated by patent illegality or is against public policy.

11. The jurisdiction of a Court under Section 37 of the Arbitration & Conciliation Act has been said to be even narrower than the jurisdiction under Section 34 of the Arbitration & Conciliation Act.

12. A co-ordinate Bench of this Court in World Window Infrastructure (P) Ltd. v. Central Warehousing Corpn., 2021 SCC OnLine Del 5099, has observed as under:-

“66. The scope of interference, in appeal, against orders passed by arbitrators on applications under Section 17 of the 1996 Act is limited. This Court has already opined in Dinesh Gupta v. Anand Gupta [Dinesh Gupta v. Anand Gupta 2020 SCC OnLine Del 2099], Augmont Gold (P) Ltd. v. One97 Communication Ltd. [Augmont Gold (P) Ltd. v. One97 Communication Ltd. (2021) 4 HCC (Del) 642] and Sanjay Arora v. Rajan Chadha [Sanjay Arora v. Rajan



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Chadha(2021) 3 HCC (Del) 654] that the restraints which apply on the court while examining a challenge to a final award under Section 34 equally apply to a challenge to an interlocutory order under Section 37(ii)(b). In either case, the court has to be alive to the fact that, by its very nature, the 1996 Act frowns upon interference, by courts, with the arbitral process or decisions taken by the arbitrator. This restraint, if anything, operates more strictly at an interlocutory stage than at the final stage, as interference with interlocutory orders could interfere with the arbitral process while it is ongoing, which may frustrate, or impede, the arbitral proceedings.

67. Views expressed by arbitrators while deciding applications under Section 17 are interlocutory views. They are not final expressions of opinion on the merits of the case between the parties. They are always subject to modification or review at the stage of final award. They do not, therefore, in most cases, irreparably prejudice either party to the arbitration. Section 17 like Section 9 is intended to be a protective measure, to preserve the sanctity of the arbitral process. The pre-eminent consideration, which should weigh with the arbitrator while examining a Section 17 application, is the necessity to preserve the arbitral process and ensure that the parties before it are placed on an equitable scale. The interlocutory nature of the order passed under Section 17, therefore, must necessarily inform the court seized with an appeal against such a decision, under Section 37. Additionally, the considerations which apply to Section 34 would also apply to Section 37(ii)(b). ”

13. This Court is in complete agreement with the said observation. As observed by the Co-ordinate Bench, the scope of interference in appeal, against orders passed by arbitrators on applications under Section 17 of the 1996 Act is limited and the restraints which apply on the court while examining a challenge to a final award under Section 34, equally apply to a



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challenge to an interlocutory order under Section 37(ii)(b).

14. In view of the above, this Court is not inclined to interfere with the Order dated 24.12.2024, passed by the learned Sole Arbitrator.

15. Accordingly, the Appeal is dismissed, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 11, 2025

Rahul