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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : 04.08.2025

+ **O.M.P. (COMM) 462/2022 & I.A. 18868/2022**

ASAHI INDIA GLASS PVT LTDPetitioner

Through: Mr. Neeraj Yadav, Adv.

versus

ADVANTAGE INDIA LOGISTICS PVT LTDRespondent

Through: Mr Arjun Singh Bawa, Mr Puneet
Dhawan, Mr Sahil Gupta, Mr
Siddhartha, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under section 34 of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") challenging the Arbitral Award dated 23.06.2022 passed by the learned Arbitrator in Arbitration Case bearing No. DIAC/2879/01-21 titled as "*M/s Advantage India Logistics Pvt. Ltd. vs. M/s Asahi India Glass Pvt. Ltd.*".
2. For the sake of brevity, the petitioner before this Court was the respondent in the arbitration proceedings and the respondent herein was the claimant therein.
3. The facts are that the petitioner is an integrated glass and window



solution company in India, manufacturing international quality automotive safety glass, float glass and other glass products. The respondent is engaged in the business of delivering wide range of transport and customer-specific logistic services.

4. The petitioner engaged respondent for transporting the float glass, mirror and reflective glass manufactured by the petitioner from its plants/ warehouses to its different plants/ warehouses as well as to its customers' plants/ warehouses or any other designated locations. For this purpose, the parties entered two (2) Agreements for Transportation of Goods ("***the Agreements***"), one dated 11.04.2017 (Roorkee, Uttarakhand) and other dated 25.04.2017 (Taloja, Maharashtra). The tenure of the Agreements was 3 years commencing from 11.04.2017 to 31.03.2020 and 25.04.2017 to 24.04.2020, respectively. The Agreements contains the arbitration clause being Clause No. 12, which is extracted below:-

"12. Governing Law & Dispute Resolution

(a) This agreement shall be governed and construed in accordance with Laws of India including without limitation, the relevant central / state acts and the rule, regulations and notification issued and amended there under from time to time or enacted / promulgated.

*(b) The courts and tribunals at **Delhi** shall have exclusive jurisdiction over the subject matter of this agreement.*

(e) In case of any dispute or difference arising out of or from this agreement, the same shall be referred to



arbitration to Mr. Sanjay Ganjoo, C.O.O (float) of the company, whose decision in this regard shall be final and binding on both the parties.”

5. In terms of the Agreements, various Work Orders were issued by the petitioner in favor of the respondent for carrying out the transportation of goods.
6. Since there were disputes between the parties, the respondent invoked arbitration. Thereafter, this Court *vide* Order dated 25.01.2021 passed in ARB. P. 283/2020 appointed the Sole Arbitrator and observed that the arbitration proceedings to be held under the aegis of Delhi International Arbitration Centre (DIAC).
7. Consequently, the learned Sole Arbitrator entered reference, and on the basis of pleading of the parties framed the following issues *vide* order dated 25.08.2021, which is extracted below: -

“On the basis of the pleadings of the parties and the documents on record, following issues are framed:

- 1. Whether the claimant is entitled to Rs.28,90,156/- from the respondent for the services rendered and not paid? OPC*
- 2. Whether the respondent illegally and unlawfully terminated the agreements of transportation of goods dated 11.04.2017 and 25.04.2017? If so, its impact. OPC*
- 3. Whether the claimant is entitled to Rs.2,60,61,183/- being losses suffered due to termination of the agreements? OPC*
- 4. Whether the Statement of Claim has not been filed, instituted and verified properly? If so, its effect. OPR*
- 5. Whether the Statement of Claim has not been filed by duly*



authorized person? If so, its effect. OPR

6. Relief.”

8. By way of the impugned Award, the learned Sole Arbitrator partially allowed the claims of the respondent and granted the following reliefs in favor of the respondent and against the petitioner: -

“In light of findings arrived at above, following Award is made:

- 1. The Claimant shall be entitled to Rs. 7,96,491/- under Issue No. 1.*
 - 2. The Claimant shall be entitled to Rs. 14,32,785/- under Issue No. 3.*
 - 3. The Claimant shall be entitled to proportionate costs of arbitration.*
 - 4. The Claimant shall be entitled to interest @8% on Rs.7,96,491/-from the date of filing of the claim petition till the pronouncement of the Award.*
 - 5. The entire award amount shall be paid to the claimant within 30 days, falling which it shall entail interest @8% per annum from the date of Award till its realization.”*
9. Mr. Yadav, learned counsel for the petitioner, challenges the impugned Award primarily the findings given on issue Nos. 2 and 3. As regards issue No. 2, the learned Sole Arbitrator held that the termination of the Agreements by the petitioner was not illegal or unlawful, but the respondent was entitled for damages suffered by it due to non-service of the mandatory written notice of 30 days.
10. Learned counsel for the petitioner further states that the learned Sole



Arbitrator exceeded his jurisdiction by granting relief for matters outside the scope of reference, specifically awarding amounts based on invoices relating to the Agreement of Roorkee plant when the arbitration concerned only the Taloja plant Agreement.

11. It is further submitted that the impugned Award travels beyond the pleadings and relies on documents that were neither produced nor proved during the proceedings, including a late filed “Profit Margin Summary” showing a 12.02 % margin which formed the basis of the Award under issue No. 3.
12. He draws my attention to prayer No. (b) of the Statement of Claim (“**SOC**”) filed by the respondent, which reads as under:-

“b. Pass an award in favour of the Claimant and against the Respondent, granting the Claimant a sum INR 2,60,61,183/- [Indian Rupees Two Crores Sixty One Thousand One Hundred Eighty Three Only] as compensation towards the huge losses suffered by the Claimant owing to the substantial investments made in machinery, vehicles and related equipment and expenditure incurred on manpower (drivers and workmen) to effectively execute the Agreements No.1 & No.2 and the Work Contract which were illegally and unlawfully terminated by the Respondent; and”

13. The pleadings in support of the said prayer No. (b) are found in paragraph Nos. 5.48 to 5.53 of the SOC, which read as under:-

“5.48. The Claimant has suffered huge losses owing to the illegal and unlawful termination of the Agreements No.1 & No.2 and the Work Contract. The estimated loss that has



*been suffered by the Claimant owing to the substantial investments made in machinery, vehicles and related equipment and expenditure incurred on manpower (drivers and workmen) to effectively execute the Agreements No.1 & No.2 and the Work Contract; is equivalent to **INR 2,60,61,183/-** [Indian Rupees Two Crores Sixty Lakhs Sixty One Thousand One Hundred Eighty Three Only). Hence therefore, the Respondent is liable to pay the aforesaid sum of **INR 2,89,51,339/-** [Indian Rupees Two Crores Eight Nine Lakhs Fifty One Thousand Three Hundred and Thirty Nine] [**INR 2,60,61,183 + 28,90,156**].*

5.49. The Petitioner made substantial investments in machinery, vehicles man power, equipment in order to fulfil its obligations under the Agreement 1, Agreement 2 and the Work Contract. The Petitioner scaled up the transportation services as large share of existing resources and additional resources were deployed to fulfil the obligations under the Agreement 1, Agreement 2 and the Work Contract. The tables mentioned below indicate the value of the monthly invoices that were raised to the Respondent company under the Agreement 1, Agreement 2 and the work Contract.



2025:DHC:6968



ASAHI INDIA GLASS LIMITED – BILLING SUMMARY 2017-2018				
Month	T-7 Maharashtra	T-16 Maharashtra	Roorkee	TOTAL [INR]
April 2017	87,071.40		25,42,930.00	26,30,001.00
May 2017	4,31,668.00	54,541.00	9,32,142.00	14,18,351.00
June 2017	8,93,779.00		50,93,065.50	59,86,844.50
July 2017	18,84,141.00	30,120.00	15,48,316.00	34,62,577.00
August 2017	13,23,796.00		42,32,665.00	55,56,461.00
September 2017	21,64,921.00		37,44,232.00	59,09,153.00
October 2017	10,52,564.00	15,080.00	63,49,243.00	74,16,887.00
November 2017	30,07,172.00		52,39,021.00	82,46,193.00
December 2017	84,69,518.00		94,30,015.57	1,78,99,533.57
January 2018	1,18,54,672.00		63,71,012.00	1,82,25,684.00
February 2018	1,80,03,752.00		42,78,030.00	2,22,81,782.00
March 2018	2,44,19,682.00	1,298.00	1,02,22,051.00	3,46,43,031.00
Grand Total	7,35,92,736.00	1,01,039.00	5,99,82,723.07	13,36,76,498.07



ASAHI INDIA GLASS LIMITED – BILLING SUMMARY 2018-2019				
Month	T-7 MAHARASHTRA	T-16 MAHARASHTRA	ROORKEE	TOTAL
April 2018	1,67,89,284.00		20,93,818.00	1,88,83,102.00
May 2018	1,93,02,749.00		58,23,781.00	2,51,26,530.00
June 2018	2,24,11,574.00		70,67,648.00	2,94,79,222.00
July 2018	1,87,25,812.00		48,73,894.00	2,35,99,706.00
August 2018	1,44,01,323.00		28,39,666.00	1,72,40,989.00
September 2018	1,61,96,072.00		59,30,007.00	2,21,26,079.00
October 2018	33,17,987.00		4,10,402.00	37,28,389.00
November 2018	78,35,601.00			78,35,601.00
December 2018	1,53,200.00			1,53,200.00
January 2019	10,000.00			10,000.00
February 2019				
March 2019				
Grand Total	11,91,43,602.00		2,90,39,216.00	14,81,82,818.00

5.50. The above tables indicate that the Petitioner raised invoices amounting to INR 13,36,76,498.07 /- [Indian Rupees Thirteen Crores Thirty Six Lakhs Seventy Six Thousand Four Hundred and Ninety Eight] in the financial year 2017-2018 and invoices amounting to INR 14,81,82,818.00/- [Indian Rupees Fourteen Crores Eighty One Lakhs Eighty Two Thousand Eight Hundred and Eighteen] in the financial year 2018-2019.



5.51. The Petitioner raised invoices amounting to **INR 28,18,59,316.10/-** [Indian Rupees Twenty Eight Crores Eighteen Lakhs Fifty Nine Thousand Three Hundred and Sixteen and Ten Paise] during the subsistence of Agreement 1, Agreement 2 and the Work Contract. Thus the Petitioner raised average monthly invoices of **INR 1,17,44,138.17/-** [Indian Rupees One Crore Seventeen Lakhs Forty Four Thousand One Hundred and Thirty Eight and Seventeen Paise] to the Respondent under Agreement 1, Agreement 2 and Work Contract.

5.52. The Agreement 1 and Agreement 2 were illegally and unlawfully terminated by way of email dated 12.09.2018. The Agreement 1 were to be valid from 11.04.2017 to 31.03.2020 and Agreement 2 were to be valid from 25.04.2017 to 24.04.2020.

5.53. The illegal and unlawful termination on 12.09.2018 denied the Petitioner an approximate revenue of **INR 14,09,29,658/-** [Indian Rupees Fourteen Crores Nine Lakhs Twenty Nine Thousand Six Hundred and Fifty Eight] under Agreement 1 and Agreement 2 for the period 1.04.2019 to 31.03.2020.”

14. Learned counsel for the petitioner relying on the above paragraphs submits that the respondent led no evidence to establish that any loss of profit was suffered, yet the learned Sole Arbitrator awarded the same without there being any supporting evidence or pleadings. He further argues that, since the Agreements were validly terminated,



there arises no question of awarding losses for the 30-days period during which prior notice was not served.

15. He further states that the only material indicating alleged loss of profit was a table forwarded to the learned Sole Arbitrator *via* email dated 24.03.2022, after the respondent's evidence had concluded. Since this was submitted subsequently, the petitioner had no opportunity to rebut it, and therefore it ought not to have been considered. In support of this submission, he relies on the judgment of ***Bachhaj Nahar vs. Nilima Mandal & Ors., (2008) 17 SCC 491.***
16. *Per contra*, Mr. Bawa, learned counsel for the respondent states that once the learned Sole Arbitrator found that for the termination of the Agreements the contractual 30-days prior notice was not given, the Award of loss of profit naturally followed. He further states that a comprehensive reading of the SOC shows that the respondent's case throughout was that the Agreements were wrongfully terminated, thereby entitling it to loss of profit. The respondent emphasises that averments regarding investments made, and manpower employed are clear indicators of such loss, and that the claimed loss of revenue was in fact duly admitted by the petitioner.
17. I have heard learned counsels for the parties.
18. The principles with regard to limited scope of interference by a Court under section 34 of 1996 Act against the Arbitral Award have been reiterated time and again by the Hon'ble Supreme Court and this Court. Reliance is placed on ***Consolidated Construction Consortium Limited vs. Software Technology Parks of India, 2025 INSC 574,*** wherein the Hon'ble Supreme Court observed as under: -



“23. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral Award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2A) of Section 34. It is the only remedy for setting aside an arbitral Award. An arbitral Award is not liable to be interfered with only on the ground that the Award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral Arbitrator. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral Arbitrator is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The Award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.”

- 19.** It is a well settled law that the Court in a petition under Section 34 of the 1996 Act cannot sit in appeal and is not required to reappreciate or



re-evaluate the evidence.¹ The Arbitral Tribunal is the sole judge of the quality and quantity of the evidence. In the absence of any ground under Section 34 of the 1996 Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.²

20. The operative portions of the impugned Award dated 23.06.2022 passed by the learned Sole Arbitrator read as under:-

“40. In the instant case, no categorical evidence has been produced by the claimant if there was breach of Agreement by the respondent by engaging services of Mis Inland Logistics. No credible evidence has been produced by the claimant, as to, to what extent the respondent had engaged the services of Mis Inland Logistics and how it had affected the claimant's business. As per claimant's own case, in the financial year 2018-19, the invoices raised by him were to the tune of Rs.14,81,82,138.17/-, which exceeded the invoices issued in the financial year 2017-18 which were amounting to Rs.13,36,76,498.07/-. The claimant had no authority under the contract to direct the respondent to change its policy and to agree to the suggestions given by it regarding availing the services of Mis Inland Logistics and to provide truck load of 25 tons instead of 19.5 tons. The claimant acted in a hurry and did not try to resolve the issues amicably after having meaningful consultations with the respondent. Since the respondent was unable to accede

¹ *Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd.*, (2024) 2 SCC 375.

² *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*, (2019) 20 SCC 1.



to the request of the claimant by emails dated 21.08.2018 and 05.09.2018, seemingly, it decided to discontinue the contract with effect from 13.09.2018. The email dated 30.09.2019 by the respondent respondent foreclosed all the chances of amicable settlement and the relations between the parties came to an end.

41.Considering all these facts and circumstances, the Tribunal is of the view that termination of the Agreements by the respondent by email dated 12.09.2018 can't be considered as illegal or unlawful.

42.The Tribunal, however, is of the view that under the Agreement, it was obligatory on the part of the respondent to give 30 days prior written notice to the claimant before ending the Agreements. Admittedly, it was not done and the respondent opted to terminate. the Agreements vide email dated 12.09.2018 with effect from 13.09.2018 itself. This lapse to avoid 30 days notice, however, does not make the termination illegal and unlawful, the contract being determinable in nature. In case of breach of terms and conditions of the Agreements, the claimant could ask for damages suffered by it due to non service of the mandatory written notice of 30 days.

43.The claimant has sought damages amounting to Rs.2,60,61,183/- due to the termination of the Agreements prior to its expiry. The claimant has estimated losses on account of substantial investments in purchasing inventory,



materials and equipment; and expenditure on manpower like drivers and workmen to effectively execute the Work Order. The claimant had also opened several offices in Maharashtra and employed several officials, labour and additional staff. It had purchased many trucks along with insurance policies to cater to the respondent only. The claimant had to incur additional expenses to maintain the offices and to pay installments of the trucks purchased only for the business with the respondent. Controverting the arguments, respondent's counsel disputed any liability of the respondent to any such damages. It is urged that investment, if any, was made by the claimant for its own business to procure work from the respondent. The claimant was dealing with several other vendors and the business being carried out by the claimant was not exclusively for the respondent.

44. On scrutinizing the evidence and documents, the Tribunal is of the view that the claimant has failed to establish if due to the termination of contract by email dated 12.09.2018, it had suffered actual loss to the tune of Rs.2,60,61,183/-. In the Statement of Claim, the claimant did not specify as to how the amount of Rs.2,60,61,183/- was calculated by it to ascertain the damages suffered. Nothing was disclosed as to how much amount was incurred in investment in machinery, equipment or other material. It was also not specified as to how many employees were



engaged to effectively carry out the Work Order; when they were employed and what where their emoluments. It was not disclosed as to how the figure of Rs.2,60,61,183/- was arrived at by the claimant and what was its basis. No detail of the trucks purchased exclusively for the respondent's Work Order was furnished. There was no mention if there was any mitigation of losses by the claimant. It did not furnish any detail of the trucks sold soon after the termination of the contract.”

21. A perusal of above paragraphs clearly shows that although the Agreements were determinable and could be terminated by either party, the learned Sole Arbitrator concluded that the petitioner was in violation of the terms of the Agreements, which mandated a 30-day prior notice before termination.
22. It is an admitted fact that the Agreements were terminated on 12.09.2018 with effect from 13.09.2018 by the petitioner, without serving the stipulated 30-day notice period, as per clause No. 10(b) of the Agreements. For the sake of perusal, the said clause is extracted below:-

“10. Term & termination

(a) This agreement shall remain effective from the effective date until termination as provided under this clause.

(b)The company may terminate this agreement any time during the term of this agreement or during the renewal term after giving a prior written notice of 30 days to the transporter.”



23. Further, the learned Sole Arbitrator calculated the profit margin @ 12.02 % and came to a finding that the average monthly billing of the respondent was approximately Rs. 1.17 crores. On this basis, the learned Sole Arbitrator awarded the average profit (12.02%) of this average monthly billing for lack of the 30-day's notice period.
24. Based on the above, the learned Sole Arbitrator computed the monthly loss of profit and awarded a sum of Rs. 14,32,785/- to the respondent, which reads as under: -

“53. The claimant has produced documents to show that in the financial year 2017-18, the invoices raised for the business were Rs.13,36,76,498.07/- and it were Rs.14,81,82,818/- in the financial year 2018-19. It is not disputed by the respondent. The average monthly invoices raised by the claimant comes to Rs.1,17,14,138.17/-. The claimant has filed the Profit Margin Summary. As per the detailed summary prepared by the claimant, the average profit comes to 12.02%. The respondent has not produced any document to deny that the calculation given by the claimant regarding average profit to be 12.02% is incorrect. The respondent has not furnished its own calculations or given the margin of profit. In the absence of any rebuttal, the Tribunal considers average profit at the rate of 12.02% to be reasonable. During the notice period of one month the claimant was entitled to claim damages for loss of profit which he expected to earn by undertaking the Work Order. The Tribunal is of the view that claimant can



be compensated by awarding 12.02% of the monthly average turnover to the tune of Rs.1,17,14,138.17/-.

54. The claimant thus will be entitled to Rs.14,32,785/- as compensation/damages.”

25. In my view, the said amount awarded to the respondent for loss of profit is based on material evidence produced and proved before the learned Sole Arbitrator and is both reasonable and plausible. The learned Sole Arbitrator has based the loss of profit only for a period of 30 days based on the average monthly invoices of the respondent. The said invoices were not denied by the petitioner. Hence, the grant of profit of 12.02 % on the average monthly invoices for a period of 30 days is well reasoned.

26. In addition, the Hon’ble Supreme Court in ***A.T. Brij Paul Singh v. State of Gujarat, (1984) 4 SCC 59*** observed that every contract has an inherent profit margin which varies around 15%. The relevant paragraph of the said judgment is extracted below:

“11. Now if it is well-established that the respondent was guilty of breach of contract in as much as the rescission of contract by the respondent is held to be unjustified, and the plaintiff contractor had executed a part of the works contract, the contractor would be entitled to damages by way of loss of profit. Adopting the measure accepted by the High Court in the facts and circumstances of the case between the same parties and for the same type of work at 15 per cent of the value of the remaining parts of the work contract, the damages for loss of profit can be measured.”



27. Further, learned counsel for the petitioner placed reliance on ***Bachhaj Nahar (supra)*** which is distinguishable from the present case. In ***Bachhaj Nahar (supra)***, there was no pleading at all for the relief ultimately granted by the Court whereas in the present case, the relief of loss of profit is specifically pleaded before the learned Sole Arbitrator, only the quantification evidence, i.e. “Profit Margin Summary” table showing a 12.02% margin, was submitted after the closure of evidence. Additionally, the judgment in ***A.T. Brij Paul Singh (supra)*** contemplates a 15% margin of profit.
28. In view of the foregoing, the impugned Award passed by the learned Sole Arbitrator is neither contrary to the terms of the Agreements, nor irrational, perverse, opposed to public policy, or vitiated by patent illegality and hence, no interference is warranted. For the said reasons, there is no merit in the present petition and the same is dismissed.
29. The amount lying deposited with the Registrar General, Delhi High Court, be released to the respondent after a period of 6 weeks from the date of uploading of this judgment.
30. The petition is disposed of along with pending applications, if any.

JASMEET SINGH, J

AUGUST 4, 2025/sp

(Corrected and released on 13.08.2025)