



2025:DHC:4925



\$~85 & 86

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 27th May, 2025*

+ O.M.P. (COMM) 470/2024 & I.As. 44410/2024, 44412/2024

REFOP INDIA CompanyPetitioner

Through: Mr. Shashank Garg, Senior Advocate
with Mr. Niraj Singh, Mr. Deepak Jaiswal and Ms.
Nistha Jain, Advocates.

versus

IN VOGUE APPARELRespondent

Through: Mr. Atul Nigam, Ms. Tanvi Nigam
and Ms. Lubhanshi Tanwar, Advocates.

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+ O.M.P. (COMM) 479/2024 & I.A. 44721/2024

IN VOGUE APPARELPetitioner

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versus

REFOP INDIA CompanyRespondent

Through: Mr. Shashank Garg, Senior Advocate
with Mr. Niraj Singh, Mr. Deepak Jaiswal and Ms.
Nistha Jain, Advocates.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)****O.M.P. (COMM) 470/2024**

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 ('1996 Act') for setting aside the arbitral award dated 16.11.2023 passed by the learned Sole Arbitrator.



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2. As per the case set up by the Petitioner in the present petition, Petitioner is a Company engaged in business of designing, sourcing, marketing, distributing and selling high quality sports apparel, including leisure wear, fitness equipment, footwear, cricket kits and other accessories. Respondent is a partnership firm with currently three partners constituting the firm.

3. On 24.05.2007, Petitioner entered into a Lease Agreement with the owner of property bearing No.49, Basement and Ground Floor, Ambedkar Road, Ghaziabad, Uttar Pradesh, as part of enlarging its commercial interest for marketing the apparels through franchise. On 03.07.2008, Respondent and the Petitioner executed a Franchise Agreement ('FA'), in terms of which Respondent was appointed as Retail Operator and was also authorized to use the system devised by the Petitioner in operation of the retail outlet opened on the leased premises. As per the FA, Respondent was at liberty to purchase the products either from the Petitioner directly or from the distributor of the area, appointed by the Petitioner.

4. Petitioner avers that as per the business practice, Respondent was purchasing goods directly from the distributor namely M/s Munish Enterprises at the Retail Outlet. Petitioner was not liable to take back the unsold stock from the Respondent after selling, if the stock was purchased from the distributor. However, by virtue of Clause 10.1(e) of FA, if the stock was purchased directly from the Petitioner, Retail Operator was to be given a period of three months to liquidate the unsold stock and in the event, the stock was not fully liquidated, the remaining unsold stock was to be purchased by the Petitioner, at mutually agreeable price, after taking into account the quality of the stock. Clause 9(c) of FA enabled the Petitioner to



terminate the Agreement, if for any reason any notice, action or proceeding was served or instituted to obtain vacant possession of the retail outlet or if for any reason, the retail outlet became unfit for operation as a retail outlet.

5. It is averred that the FA was terminated between the Petitioner and the Respondent after the landlord of the premises on which the retail outlet was located, served a notice terminating the Lease Agreement. After the FA was terminated, M/s Munish Enterprises asked the Respondent to return the unsold stock but the Respondent refused, on the pretext that it was in the process of opening a new store at a new location, which is reflected from email dated 22.06.2013.

6. It is stated that since Respondent did not pay the outstanding dues to M/s Munish Enterprises, Petitioner and M/s Munish Enterprises entered into a Settlement Agreement on 19.06.2014, in terms of which Petitioner paid Rs.4,82,89,007/- to M/s Munish Enterprises, towards full and final settlement of all claims of the distributor against the Petitioner, which included a sum of Rs.72,49,006/- payable by the Respondent to M/s Munish Enterprises.

7. Disputes and differences having arisen between the Petitioner and the Respondent, the latter invoked the arbitration clause in the FA on 15.10.2013 and unilaterally appointed a Sole Arbitrator, who passed the award dated 27.05.2018. This award was challenged by the Petitioner before this Court in O.M.P. (COMM) 357/2018, wherein vide order dated 17.05.2019, Court set aside the award and with the consent of the parties, referred the matter to Delhi International Arbitration Centre ('DIAC') for appointment of an independent Arbitrator. The Sole Arbitrator so appointed



by DIAC passed the arbitral award, which is the subject matter of challenge in this petition.

8. Respondent filed its Statement of Claim before the learned Arbitrator, raising multiple claims relating to recovery of outstanding dues, warehouse expenses, loss of opportunity, interest and cost, totalling to Rs.1,51,29,703/-. Petitioner filed its Statement of Defence along with Counter Claim of Rs.72,49,066/-, which amount Petitioner had paid to M/s Munish Enterprises on account of failure of the Respondent to discharge its liability. On 04.01.2020, Respondent filed rejoinder to the Statement of Defence and Petitioner filed rejoinder to reply to the Counter Claim and both parties filed their respective affidavits of admission/denial of documents.

9. On 25.02.2020, Respondent filed evidence by way of affidavit and an application under Section 17 of 1996 Act seeking appointment of a Local Commissioner to verify the value of unsold stocks, to which reply was filed by the Petitioner and vide order dated 29.07.2022, the Arbitrator dismissed the application. This order was challenged in ARB. A.(COMM.) 68/2022 before this Court under Section 37 of 1996 Act and the appeal was dismissed on 13.10.2022 with an observation that the stock to be inventorised was available with the Respondent since 2012 and no application was made at the earlier stage before the Arbitrator and moreover, no purpose will be served by appointing a Local Commissioner after 10 years to verify the stocks. Subsequently, witnesses of the respective parties were cross-examined and after hearing final arguments, the impugned award was pronounced on 16.11.2023.

10. Mr. Shashank Garg, learned Senior Counsel appearing on behalf of the Petitioner argues that the impugned award suffers from patent illegality



inasmuch the Arbitrator has decided contrary to and outside the terms of the FA dated 03.07.2008. It is submitted that Clause 10.1(e) of FA provided in no uncertain terms that after termination of the Agreement, Petitioner would take back the unsold stock only if the same was purchased by the Respondent directly from the Petitioner. The unsold stock in question, in respect of which the Arbitrator has allowed the claim of Rs. 60,00,000/- was bought by the Respondent from the distributor i.e., M/s Munish Enterprises and not from the Petitioner. Clause 5.1(c) permitted the Respondent as a retailer to purchase stocks either from Petitioner or its distributor and not from a third party. Clause 10.1(e) provided that post termination, retailer shall be given three months to liquidate the unsold stock bought from the Petitioner and in the event, the stock was not fully liquidated, remaining stock will be purchased by the Petitioner. Since Respondent did not purchase the stock from the Petitioner, it was not obliged to purchase back the unsold stock. This fact was unequivocally admitted by Respondent's witness CW1 in cross-examination stating that "*All the goods received by the Claimant used to come from Munish Enterprises, Mohan Nagar, Ghaziabad*". Despite this admission, the Arbitrator has directed the Petitioner to pay Rs. 60,00,000/- towards value of the unsold stock. In fact, after termination of the FA, M/s Munish Enterprises had asked the Respondent to return the unsold stock but the Respondent refused on the pretext that it was going to open a new store at a new location and this is evident from e-mail dated 22.06.2013, which was before the Arbitrator.

11. The Arbitrator has thus failed to decide in accordance with the terms of the FA and has placed his own construction on the terms of the Contract, which is contrary to the plain language of the clauses and the understanding



between the parties. The Supreme Court in *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49, held that award which is in contravention of the terms of the contract, will fall foul of Section 28 of 1996 Act and consequently will be against the public policy. In *Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI)*, (2019) 15 SCC 131, the Supreme Court held that a party to an Agreement cannot be made liable to perform something outside the contract as also that an Arbitrator cannot create or re-write a new contract for the parties as this would be a breach of fundamental principle of justice.

12. The award is self-contradictory inasmuch as on one hand the Arbitrator has found the Petitioner to be at fault by assuring the Respondent that a new location would be found for running the retail store or in the alternative, settlement would be reached, but on the other hand, disallows the claim of the Respondent on account of warehouse charge expenses, loss of opportunity and cost of arbitration on a finding that Respondent was asked to return the unsold stock, but it refused. Arbitrator observed that Respondent had not denied the contents of e-mail dated 22.06.2013, by which the distributor had asked the Respondent to return this unsold stock as the Ambedkar Road store was closed and thus, it was obvious that Respondent itself had some attachment in continuing the store and was thus not inclined to part with the business, despite an alternate offer and thus its claim for loss of opportunity has to be rejected. Arbitrator also observed that the matter could have been settled long back, had the Respondent been vigilant and taken the right decision in its own interest especially when it had an inkling that Petitioner was showing no interest in the running of the



franchise outlet. Since Respondent did not choose to opt for settlement of disputes at the very first opportunity and waited for new space allotment, which was never in sight, it could not be held entitled to interest or costs of arbitration. In light of these findings, even otherwise there was no justification in allowing the claim of value of unsold stock against the Petitioner.

13. The impugned award cannot be sustained as there is no evidence to sustain the value of unsold stock. Respondent claimed Rs. 85,06,969/- as value of unsold stock, in support of which, it produced a stock register, Ex.CW1/24 containing details of the stock and its value. Arbitrator observed that Respondent did not deny that unsold stock was lying with it, which it had been asked to shift to another place. It was further observed that the exact quantity could be verified from the store stock register placed on record by the Respondent. Petitioner challenged the credibility of the entries in the register since there were cuttings, over-writings and blank spaces. There were also differences in the entries in the copies of the register when seen and compared with the original register. Arbitrator observed that seemingly there was a cloud on the entries in the register, though it may not take away the veracity of reliability of the entries. Having found that there were doubts on the entries, the Arbitrator should have rejected the claim for unsold stock, however, contrary to any known procedure and evidence, he randomly awarded a sum of Rs. 60,00,000/-. This was based on two self-serving e-mails sent by the Respondent dated 14.06.2013, Ex.CW1/55 and e-mail dated 23.09.2013, Ex.CW1/11, with two different figures and Arbitrator chose one. The methodology adopted by the Arbitrator is unknown to any method or procedure of calculating loss suffered by a party



due to breach by the other party. Arbitrator took into consideration three different figures given by the Respondent i.e., Rs. 84,88,904/-, Rs. 70,00,000/- and Rs. 60,00,000/-. Holding that all the three figures had one source i.e., the stock register, the Arbitrator discarded the first value on the ground that there was a cloud on the entries of the stock register and thereafter, entered into the exercise of examining as to which of the two remaining figures would be the correct quantum of loss to be awarded in favour of the Respondent. In this exercise, the Arbitrator posed to himself two questions: (a) whether to reject all the three documents, one being the register and the other being two e-mails and fix the value at zero; or (b) whether to accept the lowest figure of Rs. 60,00,000/- as being the most logical and just answer. The Arbitrator without any basis and evidence on record opted for Rs. 60,00,000/- as the just compensation for loss and awarded the same in favour of the Respondent. The basis of this amount was only an e-mail sent by the Respondent claiming this amount towards the loss suffered, overlooking that the contents of the e-mail were denied by the Petitioner.

14. The impugned award to this extent is *ex facie* patently illegal with no evidence whatsoever to support the loss claimed. In *Associate Builders (supra)*, the Supreme Court has held that where a finding in an award is based on 'no evidence' or where an Arbitral Tribunal takes into account something thoroughly unreliable on which no reasonable person would act, the award would be perverse. It is also argued that the award is without any reasoning and unintelligible and thus vulnerable to being set-aside. Reliance is placed on *Dyna Technologies Private Limited v. Crompton Greaves Limited, (2019) 20 SCC 1*.



15. Learned counsel for the Respondent, on the other hand, submits that under an FA dated 03.07.2008, Petitioner appointed the Respondent as the retailer of its products. The retail outlet was taken on lease by the Petitioner under a Lease Agreement dated 24.05.2007 and the lease was for nine years extendable for two terms of three years each. While Respondent had no role in the Lease Agreement, it was implied that period of FA would correspond with the period of running the retail store. From the commencement of operations, Respondent was having issues in functioning of the accounting software, unsolicited products being sent to the Respondent etc. The problems compounded when a notice was received from the landlord of the premises in which the retail store was running, for vacating the premises by 31.03.2012. Immediately, Respondent wrote to the Petitioner informing of the unsold stock and other pending issues. On 31.03.2012, the store was vacated on an assurance from the Petitioner that the unsold stock will be sold after a new location is identified for a retail store, else the said stock will be taken back if parties arrive at a settlement and this is evident from the e-mail dated 07.04.2012, Ex. CW1/8. Respondent followed up this e-mail by an e-mail dated 16.04.2012, Ex.CW1/12A, reminding the Petitioner to either make a settlement or approve the new store, since the existing premises was vacated. Therefore, the FA was never terminated as per the terms of the said Agreement, as rightly held by the Arbitrator, since the Petitioner allthrough assured the Respondent that a new retail store will be opened where the unsold stock will be shifted and sold. No infirmity can be found in the finding of the Arbitrator that Petitioner was guilty of breach of the FA by failing to offer an alternate outlet or a proposal for settlement. As a direct consequence of this breach, the Arbitrator rightly awarded



Rs.60,00,000/- in favour of the Respondent.

16. It is further argued that Petitioner places a wrong interpretation on Clauses 5.1(c) and 10.1(e) of the FA. Interpretation of the Petitioner, rightly discarded by the Petitioner, is that Respondent could purchase the stock only from the Petitioner and no other authorized distributor and therefore, once the stock in question was not purchased from the Petitioner, no liability could be fastened on the Petitioner under Clause 10.1(e). Arbitrator has rightly interpreted Clause 5.1(c) to mean and connote that it was open to the Respondent to purchase the stock from the Petitioner or its authorised distributors and read in this light, Clause 10.1(e) can only be interpreted to mean that Petitioner was bound to purchase back the unsold stock or offer a settlement mutually agreeable to both the parties, even if the products were purchased from the distributor.

17. The main plank of the objection by the Petitioner is that the impugned award is based on 'no evidence' and that the Arbitrator has gone wrong in interpreting the contractual clauses, however, none of these grounds can be taken by the Petitioner to assail an Arbitral Award within the narrow scope of Section 34 of 1996 Act, as held by the Supreme Court in *Associate Builders (supra)*. Reliance is also placed on the judgment of the Supreme Court in *Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation Limited, (2022) 1 SCC 131*, wherein the Supreme Court held that restraint must be shown by Courts while examining the validity of arbitral awards. 'Patent illegality', is a recognized ground under Section 34, however, the legality should be one which goes to the root of the matter and every error of law committed by the Arbitral Tribunal cannot fall within this expression.



18. Insofar as the award of Rs. 60,00,000/- towards value of unsold stock lying with the Respondent is concerned, it is argued that the Arbitrator has correctly accepted the minimum amount claimed in the various e-mails, exchanged between the parties, which were never disputed by the Petitioner. This figure is taken from one of the e-mails sent by the Respondent to the Petitioner as the correspondence between the parties progressed. The valuation given to the unsold stock was as per the logic software provided by the Petitioner, through which Petitioner was monitoring the sales, inventory, returns etc. There can be no infirmity in an award since the Arbitrator has simply chosen to award the lowest value of the claimed amounts, in the alternative.

19. It is urged that the over-writings in the stock register are overemphasised by the Petitioner. The over-writings are not in the actual quantities of stock or its valuation, which were correct as per the invoices. The stock register was a valid evidence, as observed by the Arbitrator and the minor variations in some notings/cuttings as also the over-writings were only because the Arbitrator in the first round of the arbitral proceedings had asked the parties to make some notings at some places. As a matter of fact, it was never disputed by the Petitioner that some stocks were lying in the custody of the Respondent, which were shifted from the store at Ambedkar Road and this has been found to be the correct factual position even by the Arbitrator. The Arbitrator has taken the figure of Rs.60,00,000/- from e-mail dated 23.09.2013, Ex.CW1/11 sent by the Respondent to the Petitioner, the receipt of which was never denied by the Petitioner. It is argued that there is no patent illegality in the impugned award and the petition deserves to be dismissed.



20. Heard learned Senior Counsel for the Petitioner and counsel for the Respondent.

21. Indisputably, Petitioner and Respondent entered into an FA dated 03.07.2008, whereby Respondent was appointed as a Retail Operator for the products of the Petitioner. The retail outlet was operating on a leased premises under a Lease Deed dated 24.05.2007, between the Petitioner and a third party. The lease was for nine years, extendable for two terms of three years each.

22. However, pursuant to a notice received from the landlord to vacate the premises, Respondent vacated the retail store by 31.03.2012. Respondent claims that at that stage, there was unsold stock of Petitioner's products and the same had to be shifted to the residential premises of one of the partners of the Respondent on the asking of the Petitioner and for this, Respondent claimed Rs. 85,06,969/- before the Arbitrator, which was allowed to the extent of Rs. 60,00,000/- and this part of the award is challenged by the Petitioner in the present petition. A challenge is also laid to the rejection of the counter claim of the Petitioner claiming the amount paid to M/s Munish Enterprises, which was to be paid by the Respondent.

23. Before proceeding further to examine the rival contentions of the parties, it would be pertinent to extract the relevant part of the award as follows:-

"ISSUE NO. 2

Whether the claimant is entitled to recover the claim amount as detailed in para 18 of the Statement of Claim?

The claimant has asked for a total sum of Rs. 1,04,89,703/- after deducting an amount of Rs. 55,54,189 due under certain heads of accounts detailed in Ex. CW1/18. (Annexure C-9). Here the claimant seems to be admitting that some dues of the distributor were payable by it (claimant). How has the claimant arrived at these figures – remained completely unexplained?



*If need be there, I will speak about this aspect also at a suitable point. The claimant, asking for the value of the unsold stock has given it as Rs. 85,06,969/- while defective material returned to the respondent is valued at Rs. 14,90,413/-. Respondent's ld. Advocate Mr. De submitted that the respondent denies these figures on ground that it has no knowledge about it (for want of knowledge). Claimant's ld. Advocate Sh. Atul Nigam argued that the claimant has produced a stock register **Ex. CW1/24** which contains the details of the stock and its value. I may state here that there is no evidence to indicate anything about value of the defective goods or there having been returned to the respondent or even the distributor except a mention about it in **Ex. CW1/18 (Annexure C-9)** and it's being given to the distributor. Respondent's ld. Advocate argued that entries made in the stock register carry cuttings / over writings and seem to have been interpolated and further that the stock register, for these reasons carry no sanctity and cannot be relied upon. ld. Advocate Sh. De argued that under no circumstances, the claimant will get no benefit under Clause 10 (1) (e) of the franchise agreement because a retail operator was to be given a period of three months to liquidate the unsold stock purchased from RIC, and, in the event when stocks cannot be fully liquidated within aforesaid three months' period, the remaining stock shall be purchased back by RIC at mutually agreed price taking into account the quality of the stock. It was emphasized by ld. Advocate Sh. De that the claimant was to purchase stocks from RIC and not any authorized distributor because the word 'or' after RIC in clause 5.1 (c) would mean RIC only, and, would not include any authorized distributor as 'or' does not stand for 'AND' rather its RIC only. He further argued that goods if not purchased from RIC will not be the liability of the respondent for being returned or replaced. Ld. Advocate Mr. De pointed to Clause 5(s) of the franchise agreement arguing that it completely bars a retail operator to return goods under any circumstances in case not purchased from RIC.*

*Claimant's ld. Advocate Mr. Nigam asserted that the respondent is trying to very wrongly interpret these clauses to his favour by giving meanings to these technical terms so as to tilt the situation and inference for the benefit of the respondent. Ld. Advocate Mr. Nigam, relying on cases – (2022) 4 SCC 582 submitted that when words are to be construed, resulting into alternative interpretations, then, the interpretation which is against the person using or drafting the words or expressions which have given rise to the difficulty in construction, applies. Referring to another case (2015) 16 SCC 207 ld. Advocate Sh. Nigam submitted that finding in this case was similar to the one referred to above. I would only say that meaning given to this clause by Respondent's Ld. Cl. is unacceptable. **In the case in hand clause 5.1 (c) - 'RIC', 'or' its authorized distributors would mean RIC or/and (any one them or both) its authorised distributors.***

I may say that in this entire process of the start of the business deal – till an abrupt end of the franchise business – the respondent nowhere came in



picture for supply of goods to the claimant as it was, admittedly, always the distributor M/s. Munish Enterprises which supplied goods to the claimant. I wonder why, then, the franchise agreement was kept silent as to the role of the distributor and its relation with RIC since all goods/articles of RIC were supplied to the retailer by a distributor.

I further see that the franchise agreement was not terminated as per terms of the agreement, rather, it seems to have been forced upon the claimant by almost suddenly telling it to vacate the premises by a given date and to keep the stock in its custody till its transferred to a new place, or, it would be taken back in case settlement happens. The retail store was vacated sometime on 01.04.2012 with no prior clarification to the claimant as to what would be the next follow up. An email dated 07.04.2012 Ex. CW1/8 from the respondent's official reads –

“Please pick all stock and interior from the Ambedkar Road Store and keep it in your custody” – we will transfer stock to a new location or take back the stock in case the settlement happens.

This email was followed by next email dated 16.04.2012 Ex. CW1/12A from the claimant intimating and reminding the respondent that 'as per their communication' it has vacated the existing place of Ambedkar Road requesting to either make settlement or approve the store for new location. This email reads- 'As per your communication I have vacate/d the existing place of Ambedkar Road. Now you are requested to either make settlement or approve the store for a new location. It be stated here that almost all important emails filed on behalf of claimant between the parties have been admitted as received ,but, contents denied, This, to my mind is just an evasive attitude and should purely mean as having been unwillingly admitted.

Not mentioning all the mails- I feel and see that the franchise agreement was broken by the respondent and the claimant was not given any accommodation of either an alternate outlet or a settlement under the garb of self drawn inferences of the related clauses for which the claimant deserves to be compensated. Looking to this aspect, we need keeping in mind the fact that the claimant, though quite lately, desired to get the unsold stocks inspected through a local commissioner by moving an application for stock inspection. This application was not allowed by me not because it was opposed by the respondent rather because it wouldn't have served any useful purpose specially when the respondent, though alleged, that the entries in the stock register were over written or had cuttings or were incomplete at some points, had not disputed the existence of the brand stocks.

When I find from the records/evidence and submissions by the Ld. Advocates is that the franchise agreement does not seem to have been terminated as was required under specified terms in the franchise agreement itself. The term of this agreement was to be initially 4 years. A



question arises as to when this period of four years was to reach. If we just examine the clause under the head 'TERM' in agreement Ex CW1/4 - it reads- 'Term means the term of this agreement starting on the date of signing and ending Four (4) years thereafter unless extended or earlier terminated as provided by this agreement unless renewed or extended in writing – this agreement shall terminate automatically upon expiry of the said term.

The top para on page 9 of Ex CW1/4 explains it a little further. We can reproduce that para also which speaks-"whereas the agreement between the aforesaid parties was arrived at on earlier date 2nd July,2007 and is being brought into writing through the present deed of agreement dated 3rd July, 2008 and this shall be binding in terms of the present agreement for the entire period beginning from the earlier date 2nd,July,2007 till the expiry of the present agreement." So this term was to expire four years after 2nd July,2007 and also after 3rd July 2008 but then who would decide which date would be the desired date as per ExCW1/4-remains an unanswered point. Going strictly as per the written terms-the 4 years term must have ended on 1st or 2nd July,2011, and admittedly, no termination notice was given by the respondent before end of this date. Even if this period is to be calculated from 3rd, July, 2008 no written notice was given to the claimant and thus, the franchise agreement remained unrevoked till this day too. The claimant was informed and desired through email Ex CW1/8 dated 07.04.2012 sent by an official of the respondent asking the claimant to pick all stock and keep it in it's custody and that respondent would transfer stock to a new location or take it back in case settlement happens. It's all and so, Where is any termination? There did happen no termination as envisaged in the franchise agreement. Email Ex CW1/8 may be repeated-'Please pick all stock and interior from the Ambedkar Road Store and keep it in your custody. We will transfer stock to a new location or take back the stock in case the settlement happens.' The claimant was impliedly assured to stay carefree as a new location would be found and alternately, stock would be taken back if a settlement happens. No solution indicated in case - neither a new location was allotted nor any settlement was reached. By all means, the claimant was left to be treated as per the desired handling of the respondent. Respondent, to my well thought reasoning, cannot be allowed to escape it's responsibility and has to be fixed somewhere having consideration to all happenings around the relevant time- the store was got vacated and practically-the franchise activities were stopped keeping the claimant hopeful that it's business was still alive and it was actually not left on the road unattended. One of the facts and circumstances which equally needs to be kept in mind is as to why the complainant did not return the goods/stocks to the distributor when, though quite late, it (complainant) was asked to return the goods to it (M/s. Munish enterprises)

Now under the above circumstances through which the claimant passed



through- we may try to visualize whether the claimant is entitled to recover the claim amount as asked in para 18 of the statement of claim where in the total amount claimed is Rs. 1,04, 89,703/- which includes MG, stock lying with the claimant and incentive etc. It is nowhere denied by the respondent that there was lying unsold stock with the claimant which it (claimant) was asked to shift to some other place (see email ExCW1/8) in his custody. How much was the exact quantity of this stock could be seen and verified from records of the store/stock register which was placed on record by the claimant. – The respondent challenged the credibility of the entries recorded in the stock register since some cuttings, over writings and some blank spaces appear therein. Respondent's Ld. Cl. also pointed out differences in some entries in the copies of the stock register when seen and compared with the plain register (see Ex CW1/24). Claimant's Ld. Cl. Explaining this variation submitted that some notings/ cuttings or over writings appear because the previous Ld. Arbitrator had asked to make some notings at some places. It may or may not be so but this seemingly creates something cloudy though it definitely would not take away the veracity and reliability of the entry records of this stock register so as to entirely overlook it because one important fact remains fully unchallenged about some stocks lying in the custody of the claimant which were shifted from the Ambedkar Road store on the asking of an official of the respondent. Now to ascertain the value of the stock lying in the claimant's custody- we have one source from the stock register EX.CW1/24 showing the stock value as Rs.84,88,904/- (DEMANDED VALUE IS Rs.85,06,969/-), 2nd from the claimant's mail dated 14.06.2013 (lower portion of EXCW1/55) value shown is Rs.70 lakhs approx. and, 3rd from claimant's email dated 23.09.2013 Ex CWI/11, (last entry page 71) showing stock value as Rs. 6000000/- EXCW1/18?? wherein I get three figures about the value of the stocks lying in the custody of the claimant. All three figures are from the claimant's own case, mails/documents, and, all three figures differ. If we look to these figures under the shadow of the stock register carrying some cuttings and over writings under allegations of it's being fabricated, complainant's other two documents showing different values – THEN, which value ought to be fixed is a technically serious question – For this I will give two answers –

- 1) reject all three documents and fix the value as zero and
- 2) accept the lowest value self assigned by the claimant. The logical and most just answer, in my view, ought to be the 2nd figure and so I take the stock value as Rs. 60 lakhs.

Apart from the demanded amount of Rs.1,04,89,703/-, claimant seems to have asked for Rs.54,05,570/- being total amount due towards balance MG. Margin amount is not to be given in a routine process. In para 7(i) of statement of claim dealing with gross margin, we see this amount has to be 30% of MRP on all it's products. Para 7(ii) says "The retail operator shall be entitled to a trade discount of Rs.2,41,562/- in a situation



where the margin offered as per point 7(i) above is inadequate to cover the running expenses of the store at the end of the financial year". I may state here that I have not found any account details which might have some way shown the requisite figures explaining the requisite requirements. Merely putting forth of a self sent email asking for the amount without any sufficient and bonafide grounds – can't justify this demand and it needs rejection. By now the recoverable as asked in para number 18 of SOC stands at RS. 60 lakhs only against the claimed amount of Rs. 1,04,89,703/-. Taking the claims No.2,3,4&5 in the next part of para 18 of the SOC, I see that the space used for storing the shifted stock is the home of Mr. Rakesh Raman Tyagi (see-email Ex.CW1/12b dated 30.04.2013 from him to Respondent's officials) one of the partners of the claimant. There was no understanding that the so used space would call for some rent also. It's very important to state here that the claimant was not only asked to shift the stock at some other place but was also told that some settlement could be reached in which case the stocks could be taken back. It is also an undisputed fact that claimant was asked to return the stocks by the distributor also (email EX CW1/55 dated 22.06.2013) but he did not. It would be very important to mention here that the claimant kept sending emails to the respondent through it's officials till end of June, 2012 and almost every time he asked for another location or settlement. Intent of the claimant was still apparent that it/he was still hopeful that a new space may be allocated and so it/he was not pressing hard for return of the stocks and settlement of dues. Here it be also mentioned that the claimant at no time pointed that stocks were/or had been subsequently shifted to some rented space. Therefore, the claim for any amount of rent or towards warehouse expenses should also fail.

Claim 3 in para 18 of SOC Claimant's Ld. Cl. Sh. Nigam also contended for another demand by the claimant for loss of opportunity amounting to Rs.20 Lakhs which was opposed by respondent's Ld. Cl. Submitting that the claimant cannot be granted any such relief because it/he was never stopped by the respondent for carrying on it's job whatever it thought best. It was also asserted that claimant had been told to shift the goods to a new location OR stock would be taken back if some settlement happens. It's further submitted that claimant kept on asking for alternate space or settlement and thus, matter was dragged by the claimant itself and there arises no ground for granting it any claim for loss of opportunity. The claimant was told by the distributor through email Ex CW1/55, dated 22.06.2013 that when their store at Ambedkar Road was closed, it/he was asked by them to return the stocks to them(us) but you didn't- saying that you are(were) going to open the store at new location and (will) would shift the stock there only, and now, after one and a half year, you are asking to take back the stocks in whatever condition it is. Whatever is stated in this email, has not been denied. It's obvious that the claimant itself had some attachment in the running of such like store, and, therefore, it/he was not inclined to part with this business, or else, both offers



remained open for it for the initial period after the closure of the Anlbedkar Road store. Claimant's demand for any loss of opportunity has to be declined.

Claim number 4 & 5 in the box of para 18 of SOC

The claimant's next demand for interest or even costs of arbitration must also fail because the matter could have been settled long back- had the claimant stayed slight vigilant and had taken the right decision having regard to it's own interests specially when it already had an inkling that respondent was showing some distrust in the running of this franchise outlet. Claimant's not choosing to opt for settlement of mutual disputes at the very first opportunity instead of waiting for a new space allotment, which never was in sight, led it to enter this litigation and also to be denied it's claims at numbers 2,3,4 and 5 of para number 18 of SOC. Claims 2,3,4&5 asked for in the box of para18 SOC stand rejected."

24. There can be no quarrel with the legal proposition that jurisdiction of this Court under Section 34 of 1996 Act is narrow and circumscribed. Arbitral Award can be set aside under Section 34 of the 1996 Act, only on the grounds set out under Section 34(2) or 34(2A). It is not open to the Court to re-appreciate the evidence led before the Arbitrator or to re-adjudicate the disputes. It is equally settled that the Court will not act as an Appellate Court and if the view of the Arbitrator is a plausible and possible view, Court will not substitute its own view. In this context, I may allude to passages from the judgment of the Supreme Court in ***Dyna Technologies (supra)***.

"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.



25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.”

25. In ***Ssangyong Engineering (supra)***, the Supreme Court observed that patent illegality as referred to in Section 34(2A) of 1996 Act refers to an illegality, which goes to the root of the matter, but is not mere erroneous application of law. The Supreme Court re-affirmed and reiterated that re-appreciation of evidence, which is the domain of an Appellate Court, cannot be done under Section 34 and even the construction of the terms of the contract falls within the Arbitrator’s domain, unless the contract is so construed that no fair minded or reasonable person would and the Arbitrator’s view is not even a possible view to take. [***Ref.: PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and Others, (2021) SCC OnLine Supreme Court 508 and Reliance Infrastructure Ltd. v. State of Goa, (2023) SCC OnLine SC 604***]. It is also settled that every error of law committed by the Arbitral Tribunal will not fall within the expression ‘patent illegality’.

26. It is in this limited window that I would now examine the objections raised by the Petitioner against the impugned arbitral award dated 16.11.2023. Petitioner contends that under Clause 5.1(c) of the FA which deals with obligations of the Retail Operator, Respondent had the option to purchase products from the Petitioner or its authorized distributors and no other party. Clause 10.1(e) further provided that Retail Operator shall be given three months to liquidate the unsold stock purchased from the Petitioner and in the event the stock could not fully liquidated within the



three months period, remaining unsold stock was to be purchased by the Petitioner at mutually agreeable price. Clauses 5.1(c) and 10.1(e) are extracted hereinunder, for ready reference:-

“Clause 5.1(c)

5. OBLIGATIONS OF RETAIL OPERATOR

5.1 Retail Operator hereby agrees:

a)

b)

c) to purchase stocks of Products from RIC or its authorised distributors and not from any other party.”

“Clause 10.1(e)

10. Rights and Duties upon Expiration or Termination of Agreement

10.1 In the event of the expiration or termination of this Agreement for any reason:

a)

b)

c)

d)

e) Retail operator shall be given a period of 3 months to liquidate the unsold stock purchased from RIC. In the event, that stock cannot be fully liquidated within aforesaid three (3) months period, the remaining unsold stock shall be purchased back by RIC at mutually agreeable price by taking into account the quality of stock.”

27. It is clear from a plain reading of the two clauses conjointly that the Retail Operator had the option to purchase the products either from the Petitioner or its authorized distributors. In my view, both the clauses are clear and unambiguous and must be given their plain meaning. When read plainly, Clause 5.1(c) only means that the Retail Operator was not bound to purchase the products from the Petitioner and had an option to buy from the authorised distributor, which in fact it did. This is evident from cross-examination of CW1 on 28.07.2022, wherein he stated that all goods



received by the Respondent came from M/s Munish Enterprises. The Arbitrator interprets the two clauses to mean that the Petitioner was obliged to take back the unsold stock even if the same was not directly bought from the Petitioner. This, in my view, is an incorrect reading and construction of Clause 10.1(e) of FA. The upshot of the interpretation is that Respondent was held entitled to receive the value of the unsold stock from the Petitioner, which was wholly incorrect.

28. It is no doubt true that the Arbitrator is a final arbiter of the contractual terms and the Courts should ordinarily refrain from interfering. However, it is equally settled that an Arbitrator cannot conjure an interpretation to an agreement and/or the clauses of the contractual bargain between the parties which is contrary to the understanding and the bargain between the contracting parties. The interpretation placed by the Arbitrator in the present case, in my view, runs contrary to the plain language of Clause 10.1(e). It is repeatedly held in judicial pronouncements that where an Arbitrator travels on a path where the construction of the contract is such that no reasonable or fair-minded person would accept, the award becomes prone to interference. [***Ref.: Associate Builders (supra)*** and ***Delhi Airport Metro Express (supra)***]. The interpretation of the Arbitrator that Petitioner was bound to take back the unsold stock despite the fact that the goods were not purchased by the Respondent directly from the Petitioner, is an erroneous interpretation placed by the Arbitrator and cannot be sustained.

29. It is evident that the erroneous interpretation placed by the Arbitrator on Clause 10.1(e) of the FA led to the second error whereby the Arbitrator allowed the claim of the Respondent towards value of the unsold stock. Once it was not the liability of the Petitioner to take back the unsold stock, it



could not be saddled with a liability of paying the value. Therefore, the award to the extent the Arbitrator has allowed the payment of Rs.60,00,000/- in favour of the Respondent, is *ex facie* vitiated by patent illegality.

30. *Albeit* in view of this finding, this Court need not enter into the methodology of how the Arbitrator has arrived at a figure of Rs.60,00,000/-, however, since extensive arguments were canvassed by respective parties, I may deal with the same. Mr. Garg, learned Senior counsel is right in his submission that the Arbitrator has followed a strange method for arriving at a figure of Rs.60,00,000/- as a just and fair amount due to the Respondent towards the value of unsold stock. At the cost of repetition, I may note that Respondent had in fact claimed Rs. 85,06,969/- based on the quantities of stock and their valuation mentioned in the store stock register. Additionally, two figures of Rs.70,00,000/- and Rs.60,00,000/- emerged from the two e-mails sent by the Respondent to the Petitioner.

31. Petitioner challenged the credibility of the entries in the stock register since there were cuttings, over-writings and blank spaces therein. Significantly, the Arbitrator himself rendered a finding that this created a cloud over the entries, *albeit* it may not take away the veracity and reliability of the stock register to completely overlook that some stock, which was unsold, was lying in the custody of the Respondent, after shifting from the retail store at Ambedkar Road. Having returned this finding of the entries being shrouded under a cloud, the Arbitrator observed that one source for calculating the value comes from the stock register showing the stock value as Rs. 84,88,904/-, while the second is from Respondent's e-mail dated 14.06.2013, Ex.CW1/55 showing the value as Rs. 70,00,000/- approximately



and third source is Respondent's e-mail dated 23.09.2013, Ex. CW1/11 showing the value as Rs. 60,00,000/-. It was further observed that all the three figures are from Respondent's own case in e-mails or documents and all the three figures differ. The Arbitrator reiterated that if the figures are seen under the shadow of the stock register with cuttings and over-writings in light of the allegations of the entries being fabricated, two other documents remain, which have different values. The Arbitrator thereafter posed to himself two questions: (a) whether to reject all three documents and fix the value as zero; or (b) whether to accept the lowest value self-assigned by the Respondent. The Arbitrator answered the questions by holding that the logical and most just answer ought to be the second figure i.e., stock value as Rs. 60,00,000/-.

32. Having looked at the methodology adopted by the Arbitrator in arriving at the stock value, there can hardly be a debate that the value has been arrived without any basis or evidence on record, indicating that value of the unsold stock was Rs. 60,00,000/-. The basis is apparently a process of elimination by first discounting the figure of Rs. 85,06,969/- on the ground that the stock register was under a cloud and for this claim, the only evidence put forth by the Respondent were the entries in the stock register. Between the second and the third figure, the Arbitrator arbitrarily and with no evidence on record takes the lowest of the two figures to be the correct value. This is a procedure unknown to law for calculating value of unsold stock. Moreover, even as per the Arbitrator, the basis of this figure was a self-serving e-mail dated 23.09.2013 sent by the Respondent to the Petitioner. It is not understood how a communication claiming an amount can become the basis of calculation of the stock value in the absence of



details of the quantity of the stock and its verification as also purchase value of the goods, more so, in light of the fact that Petitioner had denied the contents of the e-mail during admission/denial of documents and the document was not proved by the Respondent.

33. In fact, as rightly flagged by the Petitioner, the Arbitrator himself at another place in respect of claim of the Respondent for margin money, while disallowing the same, observed that merely putting forth a self-sent e-mail asking for the amount without any sufficient and *bona fide* grounds, cannot justify the demand and needs rejection. While rejecting the claim of margin money based on a self-serving e-mail of the Respondent, learned Arbitrator chose to follow this very path for allowing the claim for value of unsold stock. This is clearly a patent illegality in the award. The claim has been allowed without any evidence on record and ignoring the contractual clauses entered into between the parties and cannot be sustained.

34. Insofar as the objection of the Petitioner with respect to the rejection of the counter claim by the Arbitrator is concerned, Mr. Shashank Garg, learned Senior Counsel, on instructions, does not press the challenge as admittedly, the counter claim was time barred.

35. This petition is accordingly allowed and the impugned Arbitral Award is set aside to the extent the Arbitrator has awarded Rs.60,00,000/- in favour of the Respondent towards value of the unsold stock. Consequently, the award of interest is also set aside.

O.M.P. (COMM) 479/2024

36. By this petition under Section 34 of 1996 Act, Respondent prays that the award be severed and set aside in respect of Claim Nos. 2 to 5 made by the Respondent, which are as follows:-



SI No.	Particulars	Amount Claimed (Rs.)	Amount Awarded (Rs.)
2.	Claim No. 2: Towards warehouse expense	26,40,000	Nil
3.	Claim No. 3: Towards loss of opportunity	20,00,000/-	Nil
4.	Claim No. 4: Towards interest	18% on the outstanding sums	Nil
5.	Claim No. 5: Cost of Arbitration Proceedings	As per actual	Nil

37. It is argued by learned counsel for the Respondent that the Petitioner did not terminate the FA as envisaged in Clause 9 thereof by a written notice and was in breach and this has been held in favour of the Respondent by the Arbitrator. Claim Nos. 2 to 5 were a direct consequence of the breach of the contract by the Petitioner. Therefore, having held that Petitioner was guilty of breach, Arbitrator erred in not awarding the said claims. The patent illegality in the award becomes pronounced for the reason that the Arbitrator awarded Rs. 60,00,000/- in favour of the Respondent towards value of unsold stock lying with the Respondent, which was to be taken back by the Petitioner. Once the Arbitrator rendered a finding that the unsold stock was in the custody of the Respondent, it ought to have accepted the nominal expense incurred in storing the stock, more so, when e-mails of the Petitioner indicated that Respondent was asked to remove the stock to a new place. The fact that Respondent incurred the expense of nominal rent of Rs. 30,000/- on storing the unsold stock, was evident from several e-mails exchanged between the parties. It is strange that Arbitrator was to believe that stock could be stored free of cost.

38. It is further argued that the Arbitrator erred in not considering loss of opportunity. Terms of the contract clearly provided for maintaining a



substantial stock of inventory, for which funds had to remain invested. Respondent's investment was lying locked in the unsold inventory from the time of moving the stock from the retail outlet in March, 2012 with no returns. Arbitrator further erred to appreciate that there was a minimum of 30% on MRP of the product, whereas Respondent had sought only 20% profit on the invested stock. Margin of 30% on MRP is an accepted condition in any business, ordinarily. Rejection of the claim for interest was also illegal and a perverse finding. Section 31(7) of 1996 Act provides for a reasonable interest by the Arbitrator. On one hand, the Arbitrator has not awarded the entire claimed amount for value of unsold stock, on the other hand, the interest claimed is rejected without any reason.

39. Learned counsel for the Respondent also questions the rejection of the claim for costs of the proceedings. Non-grant of costs on the ground that Respondent did not choose to opt for settlement of mutual dispute at the very first opportunity, overlooks the fact that Respondent was compelled to initiate arbitral proceedings as all other avenues were blocked by the Petitioner and Respondent was forced into prolonged arbitral proceedings, entitling it to costs.

40. Having heard the arguments with respect to rejection of Claim Nos. 2 to 5, I am of the view, that there is no patent illegality in this part of the impugned award. Arbitrator has returned a finding that space used for storing the shifted stock was the home of Mr. Rakesh Raman Tyagi, one of the partners of the Respondent, which was evident from Ex.CW1/12b. There was no understanding or material to show that the space used would call for rent. It was further observed that Respondent was asked to return the stock by the distributor M/s Munish Enterprises, but it did not do so. This was



proved through Ex.CW1/55. At no point, Respondent brought out in its correspondence that the stocks were lying at a premises which was under rent, while several communications were exchanged by the Respondent asking for new location and/or settlement. In the absence of any correspondence or document reflecting that Respondent was incurring rent for storage of the unsold stock, no fault can be found with the Arbitrator in rejecting the claim towards warehouse expense.

41. As far as claim for loss of opportunity is concerned, the same is opposed by the Petitioner on the ground that the Petitioner never stopped the Respondent from engaging in any other business. On the other hand, the distributor was repeatedly requesting the Respondent to return the stock, which also the Respondent failed to do. The Arbitrator has come to a finding that the Respondent itself was unwilling to move on and leave its attachment with the retail store of the Petitioner. There is no material on record, to which the Respondent is able to point out even today, which evidences the loss of opportunity by losing on any potential proposals, assignments etc., so as to enable the Arbitrator to come to a finding of loss of opportunity. The claim for interest and costs were also rightly declined by the Arbitrator, by holding that the matter could have been settled long back, had the Respondent stayed vigilant and taken the right decisions, when it had an inkling soon enough in a day that the Petitioner was in the process of handing over the leased premises on a notice given by the landlord. At the first opportunity, Respondent ought to have opted for settlement of disputes. These findings in my view are possible and plausible findings of the Arbitrator, warranting no interference by this Court, exercising jurisdiction under Section 34 of 1996 Act.



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42. In light of the aforesaid discussion, O.M.P. (COMM) 470/2024 is partially allowed while O.M.P. (COMM) 479/2024 is dismissed and accordingly, both petitions stand disposed of along with pending applications.

JYOTI SINGH, J

MAY 27, 2025
S.Sharma