



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 691 OF 2025

Nayara Energy Ltd.	]	
Formerly known as Essar Oil Limited	]	
having registered office at 5 th Floor, Jet	]	
Airways Godrej BKC, Plot No. C-68, G Block,	]	
Bandra Kurla Complex, Bandra East, Mumbai –	]	
400051.	]	
And also having office at	]	
202 Shyam Anukampa, Ashok Marg, C Scheme,	]	
Opposite HDFC Bank Ltd., Jaipur – 302001.	]	<u>...Petitioner</u>

Versus

M/s. Mahendra Sales Services,	]	
Situated at Khasra No. 26/2, Village Karnawas,	]	
Tehsil Siwana, District Barmer, Through its	]	
Proprietor Smt. Nanita Jain	]	
W/o. Shri Pradeep Jain	]	
Resident of village and Post Bhaishwara, Tehsil	]	
Ahore, District Jalore.	]	<u>...Respondent</u>

Mr. Rohan Kelkar, Ms. Aayushi Doshi and Ms. Surbhi Ahuja i/b Indialaw LLP for Petitioner.

Mr. Prithviraj Choudhari, Ms. Kausar Jahan Sayed and Mr. Aansh Desai i/b Pythagoras Legal for Respondent.

Coram : Sharmila U. Deshmukh, J.

Reserved on : 10th April, 2026.

Pronounced on : 6th May, 2026.

Judgment :

1. By this Petition filed under Section 34 of Arbitration and Conciliation Act, 1996 [for short, "***the Arbitration Act***"], the challenge is to the Award dated 18th January, 2023 passed by the learned sole Arbitrator in Arbitration Case No. 1 of 2015.

2. Briefly stated the facts of the case are that the Respondent, which was initially the sole proprietorship firm of one Mahendra Bagrecha, was appointed as a franchisee of the Petitioner on 30th May, 2005 to operate a retail motor fuel filling service station, which was a Dealership Agreement. The appointment letter of 30th May, 2005 sets out broadly the terms of the franchise appointment and states that the final and complete set of terms are set out in the draft Franchise Agreement and draft Lease Deed attached to letter of appointment. On 21st October, 2005, Lease Deed was executed between the said Mahendra Bagrecha and the Petitioner in respect of the land owned by Mahendra Bagrecha at Rajasthan. The Lease Deed sets out that the Petitioner desires to set up the retail outlet/storage depot/retail station on the demised premises which the Lessor has permitted on the terms and conditions set out therein. On 10th April, 2006, the Petitioner and Mr. Bagrecha executed the Franchise Agreement on the terms and conditions set out therein. The essential terms of the franchise agreement were that Mr. Bagrecha will bear all costs of

constructions/setting-up operation of retail outlet as per the company's standards and specifications, to promote sales of the Petitioner's products to the satisfaction of the company, to achieve the sales target as may be set up by company from time to time, and , within period of 12 months of the commissioning of the retail outlet, the Respondent shall achieve monthly sales of HSD : 100 KL/per month. The agreement gave right to the Petitioner to terminate the agreement upon breach of the terms and conditions of the agreement.

3. On 1st May, 2009, one M.s Nanita Jain submitted an expression of interest to the Petitioner to replace Mr. Bagrecha as franchisee. On 21st July, 2009, the Petitioner wrote to the District Supply Officer, Barmer describing Ms. Jain as the proprietor of Respondent i.e. M/s Mahendra Sales Service and that the Petitioner has appointed the Respondent as a franchisee for the subject retail outlet and requested to issue the DSO license to the Respondent. On 28th July, 2009, the Petitioner delivered a consignment of products to the Respondent.

4. On 29th December, 2010, by communication addressed to Mr. Mahendra Bagrecha as well as Ms. Jain, the Petitioner terminated the Franchise Agreement dated 10th April, 2006 for contravention of clause 14(b) of the Franchise Agreement for failing to meet the minimum sale quantity as per the sales target provided. It was stated that by letter dated 19th December, 2008, they were called upon to improve the

operation of the retail outlet and to achieve the minimum sales target as per the contractual obligation latest by 23rd December, 2008 which has not been done. It was further stated that Ms. Nanita Jain purportedly new proprietor of firm was called upon by letter dated 4th February, 2010 to execute Lease Deed and Franchise Agreement who simply evaded the execution of the same and no steps have been taken to initiate the sale from retail outlet.

5. On 16th June, 2012, legal notice was sent by Ms. Jain contending that Mahendra Bagrecha did not start the retail outlet and therefore, the Respondent was called upon to start the retail outlet and she was assured that she will not be required to obtain the land as there was already land lease was for period of 20 years. It was further stated that on 8th May, 2009, Mahendra Kumar Bagrecha executed Declaration-cum-indemnity agreeing for induction of new proprietor of the said firm/retail outlet and submitted a letter dated 8th May, 2009 to the Petitioner for approval to reconstitute the proprietorship firm. Mahendra Kumar Bagrecha agreed to surrender his leasehold rights and Deed of Cancellation of Lease was executed on 10th July, 2009 between Mahendra Kumar Bagrecha and Petitioner and subsequent thereto, the land was purchased by Ms. Jain by registered Sale Deed on 23rd July, 2009. The license to carry out the business was issued on 24th July, 2009. Despite several attempts, the Franchise Agreement and

Lease Deed in respect of retail outlet was not executed in favor of Respondent and the Petitioner stopped the supply of petroleum product at the retail outlet. It was stated that before terminating the Franchise Agreement, no notice or opportunity of hearing was given to the Respondent.

6. The letter was responded by the Petitioner on 14th July, 2012 denying privity of contract with Ms. Jain. It was contended that the sole proprietorship firm of Mr. Bagrecha was appointed as franchise and no formalities were completed by Ms. Jain to replace Mr. Bagrecha. Ms. Jain evaded execution of the requisite documents and the franchise agreement was terminated for serious breach of terms and conditions.

7. An application came to be filed under Section 11 of the Arbitration Act seeking appointment of Arbitrator and the sole Arbitrator came to be appointed. The Respondent filed the statement of claim seeking various monetary claims towards purchase of land, expenses borne towards purchase of machinery of petrol pump and other equipments, loss of earning, lease rent etc aggregating to Rs. 45,14,816/-.

8. The Petitioner filed the statement of defense contending that Ms. Jain was requested to be considered in place of Mahendra Bagrecha on the same terms and conditions applicable to the then

existing retail outlet and the understanding between Ms. Nanita Jain and Mr. Bagrecha was to operate the retail outlet as per the existing terms and conditions i.e. as is and where is basis. There were oral assurances by Ms. Jain acting on behalf of Mahendra Bagrecha that she would execute all required documents as per the earlier Franchise Agreement. There was no franchise agreement between the Petitioner and Ms. Jain and the business of retail outlet was carried out by Mahendra Bagrecha for the firm. The retail outlet was un-operational for many years despite repeated follow-ups and the minimum sales target was not achieved which was communicated vide various letters. The monetary claims were denied as being untenable. Counter claim was filed claiming compensation.

9. On 17th August, 2016, the Arbitral Tribunal permitted the Respondent to amend the statement of claim by adding specific prayer to set aside the termination letter which was duly amended. The issues which were framed and Award passed is reproduced hereinbelow :

	Issues	Award
1.	Whether there exists a valid and subsisting agreement between the parties?	The Issue is found proved in favour of the Claimant, and it has been held that there exists an agreement between M/s Mahendra Sale Service represented by Smt. Nanita Jain and ESSAR Oil Limited, subsequent to 8 th May, 2009.
2.	Whether in view of the preliminary objection raised by Respondent Company, in para no.	Issue No.2 stands decided in consonance and in pursuant to the finding already rendered by the Ld.

	2 of its Reply, the claimant is entitled to reliefs prayed for?	former Arbitrator in terms of the Order dated 5th September, 2015.
3.	Whether by conduct of the Respondent, the claimant was induced to invest the disputed amount for purchase of land (Rs. 7,85,251/-), machinery & equipment (Rs. 4.00 lacs) and cost of diesel?	The Issue No.3 stands partly allowed. In terms of the Order passed by the learned former Arbitrator dated 5 th September, 2015, the claim of Rs. 7,85,251/- is hereby rejected. However, the claimant is entitled to payment of Rs. 4 towards the loss of investment and depreciation to the machinery and equipment on account of closure of the petrol pump since 2009 along with interest @ 6% per annum w.e.f. 28th July, 2009 i.e., the date of last supply of the petroleum products by the respondent corporation to the claimant, till the date of actual payment by the respondent corporation.
4.	Whether the claimants have failed to comply with the terms & conditions and complete requisite formalities for appointment of franchisee/dealership?	The issue No.4 stands decided in favour of the claimant by virtue of the decision in Issue No. 1.
5. Whether in view of the findings recorded in relation to above issues No. (1) to (4) and otherwise, the claimant is entitled to:-		
5(a)	A sum of Rs. 7,85,251/- alongwith interest @ 12% p.a. towards the consideration and registration charges for purchase of subject land.	The adjudication has already been made in this regard by the learned former Arbitrator on 5 th September, 2015, and thus, the claim of Rs. 7,85,251/- along with interest @ 12% per annum stands rejected.
5(b)	A sum of Rs. 4,00,000/- along with interest @ 12% p.a. towards the cost of machinery, equipment of the Retail Outlet.	The claimant is entitled for a sum of Rs. 4 lacs along with interest @ 6% per annum towards the cost of machinery, equipment of the Retail Outlet w.e.f. 28 th July, 2009 till the date of actual payment by the respondent corporation.
5(c)	(c) Rs. 28,81,000/- and other amount towards opportunity cost/loss of earnings.	Stands decided in favour of the respondent, and against the claimant, and thus, claim of Rs.

		28,81,000/- for loss of earnings is hereby rejected.
5(d)	(d) Rs. 4,48,565/- being Lease Rent/Rent @ 50% of the cost of land as in para 19(D) of the Claim Petition."	Stands decided in favour of the respondent, and against the claimant, and thus, the claim of Rs. 4,48,565/- for the claim of lease rent is hereby rejected.
	Validity of termination order dated 29.12.2010, and the restoration of the petrol pump.	The termination order dated 29.12.2010 is hereby ordered to be set aside and the dealership in favour of M/s Mahendra Sale Service is hereby ordered to be restored treating Smt. Nanita Jain as its Proprietor.

10. Learned counsel appearing for Petitioner would submit that there was no privity of contract between the Petitioner and the Respondent as there was no Franchise Agreement entered into between the parties. He submits that the finding of the learned Arbitrator that the Respondent was entitled to compensation for loss of investment due to non-functioning of petrol pump from 28th July, 2009 and for the machinery is contrary to the terms of the Franchise Agreement which provides for the franchisee to bear the costs for operationalization of retail outlet. He submits that the finding on compensation is based on no evidence and is therefore, open to challenge under Section 34(2)(b)(ii) and Section 34 (2A) of Arbitration Act. He submits that the finding that the termination letter was illegal is based on the distinction drawn between state authority and private

corporation by applying the principles of natural justice. He submits that the termination letter is set aside for reason of failure of principles of natural justice which is contrary to substantive Indian law as the notion of fairness and natural justice cannot be read into a commercial contract. He submits that the terms of the contract did not provide for issuance of prior show-cause notice for termination. He would further submit that the learned Arbitrator has held that the consequence of shortfall in sales target is by reason of default on part of the Petitioner to supply petroleum products, which is not based on any pleading or evidence and is contrary to obligation imposed on the franchisee to place order in writing and to ensure that the retail outlet does not run dry at any time except for the reason strictly attributable to the Petitioner.

11. He submits that the contract being determinable, there could be no restoration of Petitioner's dealership agreement. He submits that in case of breach of contract, the remedy is damages, whereas in the present case, the Learned Arbitrator has granted damages as well as restored dealership agreement which could not have been done. In support, he relies upon the following decisions :

(i) Associate Builders vs. Delhi Development Authority¹

(ii) Assistant Excise Commissioner vs. ISSAC Peter²

¹ (2015) 3 SCC 49.

² (1994) 4 SCC 104.

(iii) Purvankara Projects Ltd. vs. Hotel Venus International and Others³

(iv) Indian Oil Corporation Ltd. Amritsar Gas Service⁴

Canara Bank vs. Ajithkumar G.K.⁵

12. *Per contra*, learned counsel appearing for Respondent submits that the Award does not suffer from any perversity and is not patently illegal or against the public policy of India. He submits that the Petitioner has failed to expressly state under which ground of Section 34(2) of the Arbitration Act the present Petition is preferred. He would submit that during the oral arguments, learned counsel for Petitioner has fairly conceded as to the supply of product by the Petitioner to the Respondent and hence, existence of privity of contract requires no further consideration and there is valid existence of the contract. He submits that insofar as the termination of the contract is concerned, the Learned Arbitrator has held that termination is illegal as there is breach of principles of natural justice as Petitioner has not given notice to the Respondent prior to the termination of the agreement. He points out to clause 19 of the Franchise Agreement provides that the Agreement is terminable forthwith however, it is not terminable at will or without cause. He submits that even accepting that there was no

3 (2007) 10 SCC 33.

4 (1991) 1 SCC 533.

5 2025 SCC OnLine SC 290.

requirement to give prior notice to the Respondent does not mean that the Agreement could have been terminated though no grounds exist. He points out the letter of termination which cites various reasons pertaining to the period when the present proprietor of the Respondent had not stepped in the firm. He submits that clause 2.6 read with clause 14(c)(i) of the Franchise Agreement constitutes proper mechanism and remedy for failure to meet sales target in the form of reducing return of investment and does not envisage the termination of Franchise Agreement. He submits that the Award not being severable even if the finding as to the restoration of the dealership is held to be illegal, the impugned Award cannot be partly set aside. He submits that the view taken by the Learned Arbitrator is a plausible view and there is no perversity demonstrated.

13. He submits that the Award of Rs. 4,00,000/- plus interest was for the reason that the Respondent had invested in the retail outlet and therefore, the Learned Arbitrator has correctly held that the termination of dealership resulted in loss of claim and therefore, Respondent would be entitled to the compensation for the same. In support, he relies upon the following decisions :

(i) Mr. Mahendra Sales Service vs. Essar Oil Limited⁶

(ii) Dyna Technologies Pvt. Ltd. vs. Crompton

6 Order dated 16.10.2014 in SB Civil Misc. Arbitration Application No. 16/2013.

Greaves Limited'***(iii) Gayatri Balasamy vs. ISG Novasoft Technologies Ltd.⁸***

14. Rival contentions now fall for determination.

15. Insofar as the privity of contract between the Petitioner and Respondent is concerned, the record indicates that subsequent to the submission of expression of interest by Ms. Jain on 1st May, 2009, the Deed of Cancellation of Lease was executed between the Petitioner and Mr. Bagrecha on 10th July, 2009, a communication was addressed on 21st July, 2009 by the Petitioner to the District Supply Officer referring to Ms. Jain as proprietor of M/s Mahendra Sales Service and franchisee of the Petitioner and there is an admitted delivery of consignment of product to the Respondent on 28th July, 2009. The material on record establishes the privity of contract between the Petitioner and the Respondent.

16. The learned Arbitrator framed the necessary issue as regards the existence of the contract and noted that the expression of interest submitted by Ms. Nanita Jain requested for replacing the franchisee to run the petrol pump business in future and a request was also made for admitting new partner the Nanita Jain in new franchise firm of Mahendra Sales Service on 8th May, 2009 and Declaration-cum-

7 (2019) 20 SCC 1.

8 (2025) 7 SCC 1.

Indemnity was also submitted on the same date.

17. Perusal of Declaration-cum-Indemnity by Mr. Bagrecha shows that for personal reasons, Mahendra Kumar Bagrecha being a proprietor of the firm is willing to resign out of his own free will and without any force or coercion and that Ms. Nanita Jain is willing to be inducted as new proprietor in the firm. The learned Arbitrator has rightly considered the conduct of the parties to hold that the contract existed between the Petitioner and the Respondent. The filing of declaration-cum-undertaking is in consonance with the Franchise Agreement which was entered into between the Petitioner and Mahendra Bagrecha which required an approval in case of change of constitution under clause 14(q) of the Franchise Agreement. As learned Arbitrator has rightly considered the terms of the contract, the material produced on record and the conduct of the parties by which the Respondent was permitted to step into the shoes of the erstwhile franchisee, the issue has been rightly decided by learned Arbitrator.

18. By the impugned Award, the Learned Arbitrator has awarded Rs 4,00,000/ towards loss of investment and depreciation to the machinery and equipment on account of closure of the petrol pump since 2009 along with interest. The termination of the franchise agreement was held to be illegal and was quashed and set aside and as a consequence the dealership was restored.

19. Dealing first with the aspect of termination, the termination letter dated 29th December, 2010 cites contravention of Clause 14(b) of the franchise agreement which imposed an obligation on the franchisee to promote the sale of the company's product and achieve sales target as set out by the company from time to time. As per the franchise agreement, it was specifically agreed that the monthly sales of MS/HSD viz MS : Nil, HSD : 100 KL/per month will be achieved within period of twelve months of commissioning of retail outlet. The termination letter makes specific reference to the various communications addressed by the Petitioner to the franchisee on 29th December, 2008, 7th February, 2009 , 28th October, 2009 setting out that there was no sale of the product from the retail outlet and except negligible sale of HSD in the month of July, 2009, there was nil sale of the Company's products.

20. Though it is sought to be contended that the present Respondent was not the franchisee at the time when the letters of 29th December, 2008 and 7th February, 2009 were issued to Mr. Mahendra Bagrecha, it is not disputed that there was no fresh contract entered into between Petitioner and Ms. Jain and that the Ms. Jain had stepped in the shoes of Mr. Mahendra Bagrecha. Resultantly, Ms. Jain will be governed by the same terms and conditions of the franchise agreement dated 10th April, 2006 and will be liable for the breach of

contractual obligations even for the period prior to her induction as proprietor of M/s. Mahendra Sales Service. The Learned Arbitrator has observed in paragraph 80 that initially the investment was made by Mr. Bagrecha, however, Ms. Jain had purchased the entire assets with its liabilities and she is entitled to get the same treatment, which was to be meted out to Mr. Bagrecha, had it been a case of termination of dealership of M/s Mahendra Sales Service (Proprietor Mr. Mahendra Bagrecha). It cannot be accepted that Ms. Jain can distance herself from the defaults committed by the firm while at the same time claim benefits under the agreement as would be claimed by Mr. Bagrecha. For all purposes, Ms. Jain stepped into the shoes of Mr. Bagrecha and would be liable for the past defaults. No submission was canvassed before this Court and no material has been demonstrated before this Court which would establish that the minimum sales target was achieved by the Respondent.

21. The impugned Award records the submission on behalf of the Respondent that the Respondent was supplied products only on 28th July, 2009 and later despite repeated requests, the petroleum products were not supplied. The submission was that termination is not the consequence for shortfall in the sales target and only consequences is reduction in return on investment. The finding of the learned Arbitrator in paragraph 106 is as under:

“106. Having heard the submissions advanced by both the counsels representing the parties, and after going through the entire record and the judgements relied upon with regard to the plea of termination of the dealership, I am of the view that the distinction between the state authorities and the private corporations cannot be drawn while applying the principles of natural justice. The termination order entails evil and civil consequences, and the non-service of notice to the aggrieved person before termination of his franchise agreement also affects the well- established principle that no person should be condemned unheard. It was the duty of the respondent to ensure that that claimant was given a hearing or at least a notice of the proceedings before terminating his agreement so that she could have stated in her reply that the consequence of not achieving sale targets is not a ground for termination as per the franchise agreement and the lease deed. The contention and the judgements relied by the respondent are not applicable in the present facts and circumstances of the case, and thus, the Tribunal holds that the termination order dated 29.12.2010 is illegal, and deserves to be quashed and set aside on the ground that the same is violative of principles of natural justice.”

22. The learned Arbitrator has not interpreted the terms of the contract to render a finding that termination is not the consequence of the shortfall in the sales target and reduction in return of investment is the agreement between the parties for shortfall in sales. If the learned Arbitrator would have interpreted the terms of the contract, then the finding would constitute an error in jurisdiction incapable of being corrected under Section 34 unless there is error apparent. Instead of dealing with the submissions and rendering a specific reasoned finding as to the consequence of shortfall in sales target, the Learned Arbitrator has applied the principles of natural justice to quash and set

aside the termination order on the ground that no opportunity of hearing was given to the Respondent. The terms of the franchise agreement did not provide for issuance of notice prior to termination. Clause 19 of the franchise agreement provides for termination of the Agreement forthwith for breach of the obligations contained in the Agreement. There is no finding of the Learned Arbitrator that there is no breach of the contractual obligations by the Respondent or that Clause 19 is inapplicable.

23. The learned Arbitrator has applied the principles of *audi-alteram partem* and has quashed and set aside the termination on the ground that no hearing was given. The said finding is based on the notions of fairness and equity and under section 28(3) of the Arbitration Act, the Arbitral Tribunal is required to take into consideration the terms of the contract and under Section 28(2), the Arbitral Tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized the Arbitrator to do so. As the notion of fairness and equity cannot be read into contract *dehors* the terms of the commercial contract, the findings of the Learned Arbitrator for quashing and setting aside the termination is contrary to the substantive law and hence, stands vitiated.

24. While adjudicating the aspect of restoration of dealership, the Learned Arbitrator held that after July, 2009 despite several requests

of the Respondent, the Petitioner chose not to supply the petroleum products and thus the Respondent cannot be faulted for that. It further held that the consequence of shortfall in sale targets is not termination of the dealership and termination was illegal and the order was passed without following principles of natural justice. It held that the only consequence which remains is to restore the dealership in favor of the Respondent. There is no document placed on record by the Respondent to establish compliance with Clause 14(f), which requires the franchisee to place orders in writing for purchase of motor spirit and HSD from the company. No evidence has been led to show that despite placing orders, there was non supply of the product by the Petitioner to substantiate that the termination is illegal.

25. Even accepting for sake of arguments, that the termination was illegal and liable to be set aside, the only consequence for breach of contract would be damages. The contract was by nature determinable and Section 14(1)(c) of the Specific Relief Act, 1963 prohibits specific performance of a contract which is in its nature determinable. The Learned Arbitrator could not have restored the dealership and the only remedy was damages. In case of ***Indian Oil Corporation Ltd vs. Amritsar Gas Service*** (supra), the distributorship agreement came to be terminated. The Learned Arbitrator held that the termination was not valid and as a consequence granted relief of compensation till

breach is remedied by the restoration of distributorship. The Hon'ble Apex Court held that the contract being determinable even on finding of illegality of termination, the relief of restoration could not have been granted. The Hon'ble Apex Court applying the terms of the contract granted compensation of period of notice, which was 30 days in that case. This Court is informed that the correctness of the decision is pending before the larger bench. However, the decision will continue to bind this Court till it is overruled. In present case, even if the termination was held to be illegal, no relief of restoration of distributorship could have been granted.

26. The learned Arbitrator has granted compensation for loss of investment and for the machinery which is in dilapidated condition and has held in paragraph 82 as under:

"82. In such circumstances, I am of the view that Smt. Nanita Jain is entitled for compensation for the loss of investment caused to her with regard to non functioning of the petrol pump from 28th July, 2009 i.e. for last more than 13 years and for the entire machinery which is in the dilapidated condition now. Since there are no pleadings by the respondent corporation that how the claimant's claim of Rs 4 lacs is not sustainable as they have not given any details of the cost of the machinery, therefore, the claim made by the claimant needs to be accepted in its entirety. Therefore, I hold that the claimant is entitled for compensation to the tune of Rs 4 lacs along with interest @ 6% per annum from the date of last supply of petroleum products i.e. 28th July, 2009 till the actual payment by the respondent."

27. The award of compensation is based on the solitary reasoning of absence of pleadings by the Petitioner to dispute the claim for loss of

investment. The burden was upon the Respondent to prove loss of compensation. The statement of claim of the Respondent is bereft of any pleadings as regards the valuation of machinery and the other equipment and the basis for claims of Rs 4,00,000/-. There is no evidence led by the Respondent to prove the investment by the Respondent, the deterioration of the machinery etc. Despite absence of pleading and evidence, the Learned Arbitrator has awarded compensation for loss of investment by placing burden upon the Petitioner to dispute the claim. Even while awarding compensation for loss of investment, there is no discussion and no reasoning.

28. The finding of Learned Arbitrator is also contrary to the franchise agreement which imposes an obligation on the franchisee under clause 1(f) to bear all costs of constructions/setting up and operationalizing the retail outlet. The award of compensation of Rs. 4,00,000/- is based on no pleading and no evidence and suffers from patent illegality and is also violative of Section 34(2-A) of the Arbitration and Conciliation Act, 1996. It also needs to be noted that learned Arbitrator could not have directed restoration of Franchise Agreement and simultaneously granted damages holding the termination to be illegal.

29. The learned counsel for Respondent has relied upon the decision of the Hon'ble Apex Court in the case of ***Dyna Technologies Private Limited vs. Crompton Greaves Limited*** (supra) which sets out the

contours of Section 34 of the Arbitration Act. There is no quarrel with the proposition set out in the said decision. Applying the principles which were laid down in ***Dyna Technologies Private Limited vs. Crompton Greaves Limited (supra)*** to the facts of the case, the Award in the present case suffers from patent illegality and is in violation of substantive law which can be interfered under Section 34 of the Arbitration Act.

30. The decision in the case of ***Gayatri Balasamy vs. ISG Novasoft Technologies Limited*** (supra) was cited in support of decision that there cannot be any partial modification of the Award which is not severable. Apart from the fact that in the present case, the Arbitral Tribunal has granted claims which are independent of each other, the impugned Award in its entirety is unsustainable and therefore, there is no question of severance of bad part of the order from the good part.

31. In light of the above, the Petition succeeds. The impugned Award dated 18th January, 2023 is hereby quashed and set aside.

32. In view of above, nothing survives for consideration in pending Applications, if any, and the same stand disposed of.

[Sharmila U. Deshmukh, J.]