IN THE COURT OF SH. PULASTYA PRAMACHALA
DISTRICT JUDGE, (COMMERCIAL COURT)-01,
PATIALA HOUSE COURT, NEW DELHI

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PULASTYA PRAMACHALA
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OMP (COMM) No. 145/2024

<u>In the matter of</u>: -

A. Reform Systems
Through its Proprietor
Sh. Sandeep Kr. Bhanot
Shop No. – 75, Gujral Market,
Sector 9, R.K. Puram,
New Delhi – 110022
Ph: -9560125756
Email: reformsystems@yahoo.co.in …**Petitioner**

VERSUS

Fortis Hospitals Limited
Through its Directors,
B-22, Rasoolpur Nawada,
D Block, Sector 62, Noida,
Gautam Buddha Nagar, Uttar Pradesh – 201301
& having its registered address at
Escorts Heart Institute and Research Centre,
Okhala Road, New Delhi – 110025
Email: reachus@fortishealthcare.com ...**Respondent**

Date of Institution	:	03.06.2024
Arguments heard on	:	19.05.2026
Decided on	**:**	**09.06.2026**
Decision	**:**	**Petition is dismissed.**

JUDGMENT

DESCRIPTION OF THE CASE

1. Petitioner has filed present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"), assailing the arbitral award dated 26.02.2024 passed by ld. Sole Arbitrator.

BRIEF FACTS OF THE CASE

2. Briefly stated, petitioner is a proprietorship firm, registered as an MSME, dealing with providing of goods and services in the nature of printers, desktop computers, printer ribbons, cartridges, etc. to various business houses, and providing services in terms of maintenance, etc. pertaining to the afore-said goods and has been associated with respondent since 2007. Petitioner entered into contract with the respondent on 14.01.2021, for supply of printers and cartridges and their services for three years (01.02.2021 to 31.01.2024), with the expectation that the terms thereof would be adhered to by the respondent. It was agreed between the parties inter alia that respondent would buy minimum 130-140 cartridges from the petitioner per month and petitioner would only be liable for routine service/maintenance of printer/s viz. issues relating to software, paper jam, etc. It was also agreed that physical damage to any printer caused by any employee at the premises of respondent would be solely at respondent's costs and consequences and the petitioner would not bear any liability for the same. Final price of Rs. 805/- per cartridge was arrived at between the parties. Contract was signed by 6 senior members/representatives of the respondent, thereafter, respondent forwarded first PO on 29.01.2021 for supply of 20 printers and 40 cartridges. Thereafter, from time to time, orders were placed by the respondent and corresponding invoices were raised by the petitioner.

3. Petitioner pleaded that till September 2021, respondent was

raising POs and respondent made payments albeit with delays of about 2-3 months. But from October 2021 onwards, respondent stopped making payments. On 20.02.2022, petitioner wrote an email to respondent seeking release of payment from October, 2021 to February, 2022. Petitioner averred that on the request of respondent, terms of contract was updated, but vide email dated 04.07.2022, respondent responded that updated quotation were on higher side. On 11.07.2022, respondent informed the petitioner that they would not be able to continue doing the business. Thereafter petitioner visited the office of respondent to collect its printers, but after various visits and emails, respondent failed to return USB cables and empty cartridges. On 24.08.2022, petitioner issued legal notice and thereafter on 03.12.2022, filed a complaint under Section 18 of the MSMED Act and thereafter vide letter dated 25.07.2023 case was forwarded to Delhi Arbitration Centre. Thereafter, impugned award was passed on 26.02.2024, while allowing claim E and F of the petitioner and rejecting the claim A to D and G.

GROUNDS OF CHALLENGE

4. Aggrieved by the arbitral award dated 26.02.2024, petitioner (respondent in the arbitral proceedings) has preferred the present objections under Section 34 of the Act, inter-alia, on the following relevant grounds: -

i. Because the impugned award is in contravention of the fundamental policy of Indian law and is in conflict with the basic notions of morality and justice;

ii. Because the impugned award suffers from patent illegality – the findings of ld. Sole Arbitrator qua status of contract is passed ignoring the vital evidence and admissions of respondent.

iii. Because it is settled principle of law that illegality goes to the root of the matter, if any award suffers from patent illegality on the face of the award; the same is liable to be set aside under Section 34(2A) of the A& C Act. It is also well settled that if the arbitrator fails to take into consideration vital evidence being part of record, it renders the award as patently illegal. Finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. (Ref. **Associate Builders v. DDA, (2015) 3 SCC 49; PSA Sical Terminals (P) Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin, 2021 SCC OnLine 508; Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI), (2019) 15 SCC 131: Jaiprakash Hyundai Consortium v. Satluj Jal Vidyut Nigam Ltd. & Anr., 2024 SCC OnLine Del 1237)**.

iv. Because if Arbitrator fails to take into consideration the relevant fact and/ or material evidence before passing an award, the same amounts to error apparent on the face of the award and amounts to legal misconduct on the part of the arbitrator. (Ref: **Sathyanarayana Bros. Pvt. Ltd. v. TN Water Sully and Sewage Board (2004) 5 SCC 154**).

v. Because ld. Sole Arbitrator has egregiously overlooked the facts of the case, averments made, email communications filed by the petitioner, reply of the respondent and other material evidence placed on record and has incorrectly arrived at aforesaid arbitrary finding qua status of the contract.

vi. Because ld. Sole Arbitrator failed to take into consideration that even the respondent has admitted at various instances before filing of the SOC and even in SOD admitted that there existed a valid and binding contract between the parties.

vii. Because ld. Sole Arbitrator erred in not considering the factual position that in response to the communication from the petitioner seeking the duration of the revised contract, the respondent vide email dated 16.06.2022 exhibited as Ex. CW1/10 (Colly) in arbitral records, had informed the petitioner that he can consider that the revised commercials shall stay in place for the "duration based on your rest of the contract time ", thereby admitting and acknowledging that the contract existed between the parties and it was valid and enforceable and was for a period of 3 years ending on 31.01.2024.

viii. Because ld. Sole Arbitrator failed to take into consideration the admission of various documents by respondent in the affidavit of admission and denial. Because ld. Sole Arbitrator erred in not appreciating that the Respondent has failed to disprove the existence of Contract and in fact, the contradictory stands taken by the Respondent with a view to backtrack from the Contract only further fortify that it was vide the Contract that the mutual understanding between the parties was arrived at. In fact, the conduct of Respondent's representatives demonstrates that the Contract was the document basis which the understanding was arrived at between the parties to conduct the business in terms thereof for a period of three years. The only corollary to this is that the Contract legally valid and subsisting was binding upon the Respondent.

ix. Because ld. Sole Arbitrator erred by not giving findings on the contradictory stands taken by Respondent in its SOD and on the piecemeal reliance of Respondent plea. It is established position of law that a party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, and/or the binding effect of such contract, or conveyance, or order upon himself. Reliance is placed on **Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd., (2013) 5 SCC 470**.

x. Because ld. Sole Arbitrator has failed to take into account and/or give any findings on the admitted position that Respondent acted in pursuance of the understanding arrived at between the parties vide the Contract, which is evident from the following admitted position: -

a) Respondent placed purchase orders (hereinafter referred to as "POs ") at the rate of Rs. 805 per piece as agreed and mentioned in the Contract.

b) Respondent forwarded the first PO on 29.01.2021 for supply of 20 printers and 40 cartridges at the rate of Rs.

805 per piece (as agreed and mentioned in the Contract) after the Contract was signed by 6 of its representatives.

c) Respondent in para 7 of its SOD, relied on the term of the Contract that, “Fortis will for cartridge only, vendor will provide printer, foe (free of cost) and will provide service also, all maintenance will be done by the vendor”.

d) Respondent in para 8 of para-wise reply of its SOD, relied on the terms of Contract for maintenance of equipment and stated that the Petitioner would be liable for repair and maintenance of the said equipment unless and until there was a physical damage to the equipment on account of negligence or mismanagement by the Respondent.

xi. Because ld. Sole Arbitrator failed to take into account that it was also a matter of record that the Respondent availed services of the Petitioner from January 2021 to July 2022 evincing that the Respondent had been acting upon the Contract. The Petitioner had been performing the Contract diligently without any default or deficiency in service at his end. Petitioner in all the POs agreed to the payment terms as 15 days, which was also mentioned in the Contract. Respondent at Para 7 of para-wise reply of its SOD agreed that the “the rates quoted by the Claimant were fixed for a period of three years .”

xii. Because Respondent had not only accorded express acceptance to the Contract but had also done overt acts in furtherance of the Contract (as mentioned hereinabove), implying acceptance by conduct as well. However, the Ld. Sole Arbitrator miserably failed to take into consideration and/or give any findings on the same.

xiii. Because ld. Sole Arbitrator failed to appreciate that Respondent cannot be permitted to place piecemeal reliance upon the terms of the Contract as and when it suits its interest. Therefore, the Impugned Award, suffers from patent illegality and is liable to be set aside on this ground alone.

xiv. Because Award is against the public policy of India as Ld. Sole Arbitrator has ignored the settled principle of interpretation of documents that a written contract should be interpreted as a whole and mutually explanatory. Ld. Sole Arbitrator has also ignored the settled principle of India Contract Act, 1872 ("Contract Act') that Quotation/Contract/Work Order/Arrangement/Understanding if accepted by parties, will be binding on the parties and to be treated impugned as a Contract. Reliance is placed on: **South East Asia Marine Engineering and Constructions Ltd. v. Oil India Ltd., (2020) 5 SCC 164** and **GMR Kamalanga Energy Ltd. v. SEPCO Electric Power Construction Corporation 2023 SCC Online Ori 5882**.

xv. Because ld. Sole Arbitrator failed to take into consideration that the terms of Quotation/Contract/Work Order/ Arrangement/Understanding if accepted by parties, will be binding on the parties. Reliance is placed on: **Trinafancy W. Momin v. State of Meghalaya & Ors., Meghalaya High Court, W.P.(C) 187/2014**.

xvi. Because ld. Sole Arbitrator has also failed to take into consideration that when a Quotation/ Contract/Work Order/ Arrangement/ Understanding is offered with condition enumerated thereunder and when accepted by parties, it is to be treated as a contract. Reliance is placed on: **Fair Air Engineers Pvt. Ltd. & Anr. v. N.K. Modi, (1996) 6 SCC 385**.

xvii. Because if Arbitrator exceeds in its scope of jurisdiction and ignores the settled principle of interpretation and contract law, the same would shock the conscience of Court and would be a ground for contravention by Court. The ground of contravention of the fundamental policy of Indian Law entails that any arbitral award which flies in the face of what is fundamental to Indian Law or any principal arising thereof, would be a valid ground for a setting aside the arbitral award. It has been categorically laid down that disregarding orders passed by the superior courts in India would also be a contravention of the fundamental policy of Indian Law.

xviii. Because ld. Sole Arbitrator completely overlooked and ignored the terms and conditions as laid down in Contract and mutually agreed by and binding on both the parties. As per the Contract Act, there is no threshold or requirement for a document to have a seal of either party and signatures of the parties. As per the Section 10 of the Contract Act, "All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void."

xix. Because ld. Sole Arbitrator has conducted illegality and perversity by mistaking the ingredients and requirement of an arbitration agreement as required in terms of the judgment in **Re:**

Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1 899 bearing Curative Petition (C) No. 44 of 2023 into a contract, per se. The perversity exits because the MSMED Act does not necessitate existence of 'arbitration agreement' (as envisaged under the A & C Act and related judgments listing essential ingredients of an arbitration agreement) in terms of entities/ enterprises covered under the MSMED Act.

xx. Because ld. Sole Arbitrator failed to take into consideration that the Contract has laid down following terms and conditions as mutually agreed and binding on both the parties:

i. payment to be made within 15 days.

ii. tenure of Contract was fixed for three years, i.e., from 01.02.2021 to 31.01.2024.

iii. price of Cartridge to be Rs. 805 per cartridge. Further Ld. Sole Arbitrator has failed to take into consideration that the Contract has been signed by the representatives of Respondent. Ld. Sole Arbitrator has arbitrarily failed to interpret the Contract in a holistic manner to arrive at findings, in contravention of principles of Contract Law.

xxi. Because respondent on one hand denied the Contract in his reply and on the other hand made the piecemeal reliance on the terms of the Contract and further admitted the Contract by conduct. It is settled principle of law that when a document is relied by both the parties, court can rely on documents. It is further settled principle of law that a party cannot rely on document and then challenge its admissibility. Reliance in placed on: **Oriental Insurance Company Ltd. v. Premlata Shukla & Ors., (2007) 13**

SCC 476 and **Sushil Kumar v. Rakesh Kumar, (2003) 8 SCC 674**. In other words, an offer once made and acted upon by both the sides, the terms agreed upon, whether in oral or in writing, become a binding contract between the parties.

xxii. Because ld. Sole Arbitrator further failed to take into consideration a settled legal position that the elements of a valid contract are proposal, acceptance, and consensus ad idem between the parties. In the present case, respondent had not only accorded express acceptance to the Contract but had also done overt acts in furtherance of the Contract, implying acceptance by conduct as well. Material placed on record before ld. Sole Arbitrator sufficiently established the same. Reliance is placed on: **Bhagwati Prasad Pawan Kumar v. Union of India, (2006) 5 SCC 311.**

xxiii. Because ld. Sole Arbitrator has completely overlooked the observations of Hon'ble Supreme Court (relied by petitioner in its written submissions) in **Haji Mohammed Ishaq WD. S.K. Mohammed & Ors. v. Mohamad Iqbal & Mohamad AU & Co. (1978) 2 SCC 493** that:

> *"9. As already stated the simple case of the plaintiff is that it had supplied 630 bags of tobacco to the defendants; received only part of its price and the balance of about Rs. 90,000 remained due. It is true that no express contract, as understood in law, was pleaded in the plaint. But what was clearly pleaded was supply of goods by the plaintiff on its own account: acceptance of them by the defendants as such: part payment to the plaintiff and the balance remaining due to. it. The case pleaded, therefore, was, as it is called in law, an implied contract brought about by the conduct of the parties, namely, the Roods of defendants."*

xxiv. Because ld. Sole Arbitrator ought to have appreciated that a bare perusal of the Contract, communication (through emails and otherwise) between the parties evince that the intention of the parties was to honor and fulfill the primary understanding arrived at vide the Contract, which was agreed to be for a period of 3 years. There was consensus ad idem and the fact that regularly orders were placed by the Respondent on a regular basis and goods/services being received in furtherance of the Contract/ understanding, there was acceptance by conduct, which, as a matter of fact was subsequently admitted and acknowledged by the Respondent. Thus, a contract between the parties existed.

xxv. Because ld. Sole Arbitrator has out-rightly ignored and overlooked the averments made and material placed on record and has incorrectly held that *"without tangible or a documented contract on record, the claimant's assertions cannot be substantiated or entertained as they are based on hypothetical assumptions."*

REPLY OF THE RESPONDENT

5. Respondent filed its reply opposing the petition and contended that petition is false, frivolous and vexatious and consist of incorrect facts. Respondent vehemently denies the petitioner's claims, asserting that the impugned arbitral award is not liable to be set aside as there is no patent illegality and it is not in contravention of public policy of India. Respondent averred that there are no perversity and irrationality in the award passed by ld. Arbitrator. Respondent denies the existence of a binding 3-year

contract with the petitioner (from 01.02.2021 to 31.01.2024), stating that the arrangement was based on monthly purchase orders for services and not a fixed-term contract. Respondent averred that the "QCPAF" document (Quotation Comparison and Purchase Approval Form) relied upon by the petitioner was an internal document for quotation comparison and approvals, never offered to or accepted by the petitioner as a contract. Allegations of non-payment are denied by the respondent stating that invoices from February 2021 to June 2022 were cleared, and petitioner removed their printers on 23.07.2022 and 28.07.2022, effectively accepting termination of services. Respondent contests the claims regarding lock-in periods or minimum demand, stating no such condition was agreed upon. Respondent averred that petitioner's claim is not maintainable under the MSMED Act because payment was made within agreed terms, or if no terms were agreed, within the statutory 45-day period from goods acceptance/service delivery. Respondent refutes claims regarding unreturned equipment (USB cables, empty cartridges), stating that the petitioner was requested multiple times to collect them, and some items remain uncollected due to the Petitioner's convenience. Respondent averred that petition is time-barred as it was filed after the period of limitation (beyond 3 months from the award date). Respondent averred that petitioner has failed to make out any valid ground under Section 34 for setting aside the arbitral award, hence the application is liable to be dismissed with exemplary costs.

ARGUMENTS OF PETITIONER

6. In written submissions of the petitioner, it is mentioned that same be read as part and parcel of petition and as rejoinder. Some submissions have been also mentioned in respect of conduct of respondent and to refer back to the orders passed on different dates of hearing, to allege that respondent had been delaying the matter and was casual towards timelines granted by the court. However, all these submissions are not relevant for the purpose of deciding this petition on merits therefore, I have to skip that part of submissions. It is further mentioned that this court should have adjourned the matter to hear arguments of the petitioner on merits. I find such submission made towards final arguments on merits of the case, being totally irrelevant and the arguments related to such part have to be ignored for the purpose of passing this judgment. In subsequent part of the written submissions, petitioner has reproduced the factual aspect and description of different claims made in the arbitration proceedings.

7. It is mentioned that respondent arbitrarily denied that there was no executed agreement between the parties and it has been argued that the documents need not to be drafted in a particular format or in a conventional manner to be called an agreement, as far there is presence of essential ingredients of a contract. It is argued that ld. Sole Arbitrator failed to take into consideration that respondent never denied existence of the Contract and a term of 3 years – until/ before filing its Statement of Defence and is evident from the emails/communications dated 22.02.2022,

23.02.2022, 24.02.2022, 25.05.2022, 16.06.2022 and 11.07.2022. Ld. counsel argued that respondent admitted the existence of Contract in its Statement of Defence and that the calculation of Rs.15,214/- was made by applying interest at 18.45%, being three times the RBI bank rate, on payments that were delayed for the period from October 2021 to May 2022. Petitioner asserted that it was a registered MSME and had shared its UDYAM certificate with the respondent during the course of dealings. It was submitted that under the MSMED framework, delayed payments attract statutory interest and therefore, the Respondent was liable to pay the said amount. Arbitral Tribunal arbitrarily rejected Claim 'A' solely relying on the ground that delay cannot be ascertained and that the parties were operating on the basis of mutual understanding. Ld. counsel argued that reliance placed by ld. Arbitral Tribunal was solely on the existence of a written documentation, which had to be in a specific format and since the document/arrangement/agreement was not in the specified format, the rights of petitioner stand forfeited. Ld. Arbitral Tribunal failed to appreciate the fact that the arrangement/agreement/contract need not be written in any particular format and the contract/arrangement/agreement can be ascertained by the conduct of the parties and also that an MSME cannot command a power over a large corporation and insist on any specific format of agreement. Ld. Arbitral Tribunal completely disregarded the fact that the petitioner was an MSME and therefore, the rigours of Section 15 & 16 of the MSMED Act squarely covered the interest of the petitioner. Petitioner averred that when the printers were collected, 25 USB cables and certain cartridges were not returned. It was specifically stated that after receiving respondent's email dated 05.08.2022, petitioner visited the premises on 06.08.2022. However, only power cables were handed over and the USB cables were not returned. Petitioner therefore, quantified the loss at Rs. 30,000/- based on Rs. 1,200/- per cable. Ld. Sole Arbitrator completely overlooked and failed to give any findings on following documents/evidence filed by petitioner qua the fact that respondent deliberately did not return 100 empty cartridges and 25 original USB cables: -

i. Non-returnable gate passes dated 23.07.2022, 29.07.2022, 06.08.2022, 06.04.2022 given to the Petitioner from the Respondent showing return of printers and USB cables as also showing six printers damaged and given for repairing as Exb. CW1/15 (Colly) in Arbitral records.

ii. Copies of emails dated 18.03.2022, 21.03.2022, 27.04.2022, 24.06.2022 and 19.07.2022 sent by Petitioner to the Respondent as Exb. CW1/16 (Colly) in Arbitral records.

iii. Copy of email dated 04.08.2022 sent by the Petitioner to the Respondent as Exb. RW1/17 (Colly) in Arbitral records.

8. Petitioner averred that Arbitral Tribunal held that monetary compensation for the USB cables and cartridges could not be granted in the absence of a specific agreement providing for such payment. The Tribunal did not reject the substance of the claim. It directed the respondent to hand over the 25 original USB cables within one month from the date notified by the petitioner for collection. In case of failure, respondent was directed to pay a consolidated penalty of Rs. 80,000/- along with interest at 18% per annum. Ld. Arbitral Tribunal failed to provide any basis for

reaching the penalty amount of Rs. 80,000/-. Ld. Arbitral Tribunal has completely ignored the fact that brand new equipment was installed in the premises of respondent and what petitioner got in return had to cause severe prejudice to the business of the petitioner. Further, the original cables are not readily available in the market and in order for proper functioning of printers – original cables are must. Petitioner's case was that the understanding between the parties was for a fixed tenure of three years and therefore, respondent could not have ended the arrangement midway in an abrupt manner. It was based on continuity for the agreed period, so that the petitioner could recover the investment and earn reasonable profit over time. Petitioner pleaded that he had made substantial upfront investment to perform the arrangement. Petitioner further pleaded that respondent, being a hospital with heavy usage, had agreed a minimum of about 130-140 cartridges would be consumed per month on the printers installed by the Petitioner. On this basis, the petitioner calculated his running costs and profit. Petitioner pleaded that time duration for which services were being availed was the commercial foundation of the arrangement/agreement/contract and once respondent stopped the engagement before the agreed term, petitioner suffered direct loss for the balance period.

9. Ld. Arbitral Tribunal rejected Claim 'D' and held that petitioner did not establish a formal three-year agreement. It treated the contract/arrangement/agreement relied upon by petitioner as a

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comparison sheet or quotation and not as a mutually executed contract. Ld. Arbitral Tribunal completely failed to take note of the fact that the Petitioner's case was never that this was a series of independent purchases. Petitioner's case was that this was a time-bound commercial arrangement/agreement/contract, where petitioner invested first and recovered cost and profit over the agreed term. Ld. Arbitral Tribunal has failed to appreciate the conduct of the parties and has also disregarded the fact that the intention of the parties and meeting of minds is what forms the essence of any agreement/contract/arrangement. Ld. Arbitral Tribunal completely disregarded that both parties have initially arrived at the conclusion that the services of petitioner shall be availed by respondent for 3 years and it is on this basis that petitioner has acted forward. Petitioner averred that agreement/contract/arrangement/document clearly mentions the amount, time period and quantity for which the petitioner shall remain employed with respondent.

10. Petitioner averred that a devious tactic was adopted by respondent to escape the liability under the existing agreement/contract/arrangement dated 14.01.2021. The services of the petitioner were employed during the times of COVID, wherein the supply was extremely low and respondent was in dire need, while in the present times the scenarios had changed therefore, respondent thought it best to rescind his part of the contract and cause severe prejudice to the interest of the petitioner. Respondent was bound as per the

arrangement/contract/agreement and in light of the conduct and performance by both parties. Respondent was estopped to exit the contract/agreement/arrangement before the expiry period of 3 years from the date of acceptance. Irrespective of this known fact respondent has gone forward with the termination of the contract/arrangement/agreement vide email communication dated 24.05.2022, which was very vague and just mentioned that respondent shall be opting services from some other vendor. Petitioner replied to this communication vide mail dated 25.05.2022 wherein he clearly pointed out that the mail sent is very vague and further that respondent is bound to perform his part for 3 years, being an MSME petitioner had hugely invested for the performance/arrangement/agreement and arbitrary termination will cause him immense loss.

11. Petitioner argued that ld. Arbitral Tribunal has completely ignored the mails communications wherein respondent has tried to renegotiate the existing price. It is pertinent to note that in these E-mails respondent has never disputed the existence of a contract/agreement/arrangement rather has affirmed the same by stating that in case the price can be matched by petitioner then the remaining duration of the contract/arrangement/agreement can be adjusted accordingly. Vide mail dated 14.06.2022, it was communicated by respondent that petitioner is required to revise the rates in order to continue to the contract/agreement/arrangement. Petitioner on the same day replied to the Email communication vide mail, wherein he stated

that respondent my share some pointers basis which the reconsideration has to be done, it was categorically mentioned in the email that the respondent has to ensure the applicability of the current arrangement/agreement/contract and the fact that huge investments have already been made by petitioner. It is pertinent to note that respondent in reply to the above-mentioned mail of petitioner has clearly stated that the time duration of the existing contract/arrangement/agreement can only be confirmed after petitioner shares the revised proposal. This squarely confirms the acknowledgment on part of respondent for the existing contract/agreement/arrangement and as per which respondent is bound and obliged to follow.

12. Petitioner pointed out to respondent vide mail dated 16.06.2022 that a revised proposal can only be sent by him after confirmation of time duration that whether it is the same as per the existing contract/agreement/arrangement or it shall be extended. Respondent has replied to the mail of petitioner through a mail on the same date which clearly mentions that the time duration will be considered on the basis of the existing/contract/agreement/arrangement. Therefore now respondent cannot come forwards and raise dispute to the same.

13. Petitioner averred that in order to resolve the dispute shared a revised proposal vide email dated 16.06.2022 wherein he offered a discount of 10% and revised rate now stood at Rs 725 per cartridge (earlier Rs. 805/-) which was inclusive of all the services provided by petitioner. A follow up mail was also sent

to respondent dated 23.06.2022 but no response was received to the petitioner. However later it was revealed that respondent has employed some other vendor who is providing cartridges to respondent and the printers/equipment installed by petitioner were still being used. It is pertinent to note that a contract/arrangement/agreement cannot merely be frustrated on the grounds of changed circumstances and change in prices. Ld. Arbitral Tribunal completely failed to take note of the fact that petitioner has rescinded the offer made by Arc Engineering Equipment Pvt. Ltd. who had made a proposal dated 25.02.2022 to the petitioner for availing of their services for a duration of 3 years. Petitioner responded to the communication through letter dated 03.03.2022, wherein it was told to Arc Engineering that since presently petitioner is engaged in a contract for 3 years with respondent and due to disrupted supply chains post COVID, it is not feasible for them to get into a contract. Thereby rescinding the proposal by Arc Engineering was due to the sole reason that petitioner was involved in a time bound contract with the respondent and the same has caused severe prejudice to the interests of the petitioner. There is no separate discussion on whether the termination dated 11.07.2022 was justified or not. There is also no clear reasoning on the petitioner's case of arbitrariness, absence of notice and the impact of termination on petitioner's investment and business planning. In effect, impugned Award avoids deciding Claim 'G'. Ld. Arbitral Tribunal may reject a claim, but it must do so with reasons. Impugned Award proceeds to accept and reject other monetary claims, yet it does not address this declaratory relief in any meaningful manner. This shows non-application of mind on a material claim and makes the Impugned Award vulnerable because it is not a reasoned decision on the essence of the dispute.

14. Award only records that both parties shall bear their own costs and their respective arbitration fee. It does not explain why costs were denied to petitioner. It also does not consider that petitioner succeeded at least partly, as Claims 'E' and 'F' were allowed and directions were passed in relation to return of materials. Petition was within limitation as the certified copy of the Impugned Award was sent by ld. Arbitral Tribunal by the registered post, which was received on 01.03.2024. Failure to properly deal with Claims 'G' and 'H' is a serious defect. It shows that impugned Award is not fully reasoned on material claims and that key reliefs raised by petitioner were either not adjudicated at all or were disposed of without reasons. Therefore, the non-consideration by ld. Arbitral Tribunal on the core issues substantiates petitioner's challenge that the Impugned Award suffers from patent illegality and non-application of mind.

15. In support of his submission, ld. counsel has relied upon following judgments: -

i. **Rajender Sharma v. Tanmay Developers Pvt. Ltd., 2019 SCC OnLine P&H 6010**

1. The present revision is filed for setting aside the order dated 31.10.2018 vide which an application seeking permission to file

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rejoinder moved on behalf of the petitioner (respondent herein) was allowed as well as the order dated 02.04.2019 and 16.05.2019 passed by the Additional District Judge-cum-Presiding Judge, Special Commercial Court at Gurugram, vide which the parties were directed to furnish proper affidavit in support of the pleadings.

2. An Award dated 12.12.2017 came to be passed for an amount of Rs. 35.13 crores, to be paid by the respondent. The respondent filed objections to the Award by way of an application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the 1996 Act') on the ground that the Award has been passed in excess and constitutes improper exercise of jurisdiction on the part of the learned sole Arbitrator. The claimant-petitioner filed their reply dated 04.07.2018 to the above application praying for dismissal of the said application. The claimant-petitioner also filed their cross-objections under Order 41 Rule 22 of the Code of Civil Procedure (for short, 'CPC'). An application for dismissal of the cross-objections was also filed. The respondent, accordingly, moved an application for granting permission to file rejoinder to the reply filed by the petitioner. Learned Additional District Judge-cum-Presiding Judge, Special Commercial Court, Gurugram allowed the application for filing the rejoinder and vide order dated 02.04.2019 and again on 16.05.2019 directed the parties to furnish proper affidavits in support of the pleadings.

21. However, the argument of learned counsel for the petitioner

that the application for filing rejoinder was allowed without giving an opportunity to him to file reply is devoid of merit, inasmuch as, the learned counsel for the petitioner has not been able to point out any provision or rule that a reply is required to be filed to the application filed by the respondent under Section 34 of the 1996 Act. In spite of the same, a reply has been filed by him. Adopting the same analogy, the petitioner can have no objection to the filing of the rejoinder to the said reply and, therefore, it was not necessary to issue notice for an application praying for placing on record/filing of the rejoinder.

ii. **Emkay Global Financial Services Ltd. v. Girdhar Sondhi,(2018) 9 SCC 49**

> *"Leave granted. The present appeal arises out of a dispute between the appellant, who is a registered broker with the National Stock Exchange, and the respondent, its client, regarding certain transactions in securities and shares. The respondent had initiated an arbitration proceeding against the appellant, claiming an amount of Rs 7,36,620, which was rejected by the sole Arbitrator vide an arbitration award dated 8-12-2009.*
>
> *It will thus be seen that speedy resolution of arbitral disputes has been the reason for enacting the 1996 Act, and continues to be the reason for adding amendments to the said Act to strengthen the aforesaid object. Quite obviously, if issues are to be framed and oral evidence taken in a summary proceeding under Section 34, this object will be defeated. It is also on the cards that if Bill No. 100 of 2018 is passed, then evidence at the stage of a Section 34 application will be dispensed with altogether. Given the current state of the law, we are of the view that the two early Delhi High Court judgments [Sandeep Kumar v. Ashok Hans, 2004 SCC OnLine Del 106: (2004) 3 Arb LR 306] , [Sial Bioenergie v. SBEC Systems, 2004 SCC*

OnLine Del 863:AIR 2005 Del 95], cited by us hereinabove, correctly reflect the position in law as to furnishing proof under Section 34(2)(a). So does the Calcutta High Court judgment [WEB Techniques & Net Solutions (P) Ltd. v. Gati Ltd., 2012 SCC OnLine Cal 4271] . We may hasten to add that if the procedure followed by the Punjab and Haryana High Court judgment [Punjab SIDC Ltd. v. Sunil K. Kansal, 2012 SCC OnLine P&H 19641] is to be adhered to, the time-limit of one year would only be observed in most cases in the breach. We therefore overrule the said decision. We are constrained to observe that Fiza Developers [Fiza Developers & Inter-Trade (P) Ltd. v. AMCI (India) (P) Ltd., (2009) 17 SCC 796 : (2011) 2 SCC (Civ) 637] was a step in the right direction as its ultimate ratio is that issues need not be struck at the stage of hearing a Section 34 application, which is a summary procedure. However, this judgment must now be read in the light of the amendment made in Sections 34(5) and 34(6). So read, we clarify the legal position by stating that an application for setting aside an arbitral award will not ordinarily require anything beyond the record that was before the Arbitrator. However, if there are matters not contained in such record, and are relevant to the determination of issues arising under Section 34(2)(a), they may be brought to the notice of the Court by way of affidavits filed by both parties. Cross-examination of persons swearing to the affidavits should not be allowed unless absolutely necessary, as the truth will emerge on a reading of the affidavits filed by both parties. We, therefore, set aside the judgment [Girdhar Sondhi v. Emkay Global Financial Services Ltd., 2017 SCC OnLine Del 12758] of the Delhi High Court and reinstate that of the learned Additional District Judge dated 22-9-2016. The appeal is accordingly allowed with no order as to costs.”

iii. **U.P. Coop. Federation Ltd. v. Sunder Bros., 1966 SCC OnLine SC 228**

1.This appeal is brought, by special leave, from the judgment of the Punjab High Court dated February 22, 1962 in Civil Revision No.

331-D of 1958 whereby the High Court upheld and confirmed the judgment of the appellate court and set aside the judgment of the trial court staying proceedings in the suit.

8. It is well-established that where the discretion vested in the Court under Section 34 of the Indian Arbitration Act has been exercised by the lower court the appellate court should be slow to interfere with the exercise of that discretion. In dealing with the matter raised before it at the appellate stage the appellate court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial Judge; but if it appears to the appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate court to interfere with the trial court's exercise of discretion. This principle is well-established; but, as has been observed by Viscount Simon, L.C., in Charles Osenton & Co. v. Johnston [1942 AC 130 at p138]:

> *"The law as to the reversal by a Court of appeal of an order made by a Judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case."*

9. For these reasons we hold that the appellant has made out no case for our interference with the order of the High Court refusing stay of the proceedings in the suit under Section 34 of the Indian Arbitration

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Act. The appeal accordingly fails and is dismissed with costs.

iv. **Veena Gupta v. Bajaj Allianz Life Insurance Co. Ltd., CM (M) 1555 of 2019, decided on 30.10.2019 2019 SCC OnLine 10819**

1. Allowed, subject to all just exceptions. The application is disposed of.

2. The Petitioner challenges the order dated 17th September, 2019 by which, according to ld. counsel for the Petitioner, costs of Rs. 4,000/- has been imposed upon the Petitioner/Plaintiff (hereinafter the 'Plaintiff') without any basis or ground. She submits that on the said date, there was no default by the Plaintiff, who had in fact, entered appearance in the morning and the process server's statement was also recorded. She further submits that the matter was put up at 2:30 PM for passing of appropriate orders and the impugned order was passed. However, the counsel for the Plaintiff appeared at 2:45 PM and then, he was appraised of the order. Thus, there was no reason assigned for imposing the costs.

6. Further, it is noticed that in the District Courts, junior counsels, who appear from the chambers of the counsels who file vakalatnamas, are reflected as "Proxy Counsel". From this, it is not clear as to whether the junior counsels, who appear, are ready to assist the Court or not. The term "Proxy Counsel" ought to be used only when the counsels, who appear, are not able to assist the Court in the matter or are merely seeking an adjournment. Junior counsels, who work in the filing counsel‟s chamber, and are aware of the facts and assist the court, ought not to be described as proxy counsels. In the practice of law, courts have a duty to encourage junior counsels who may not have filed vakalatnamas and ought to hear them if they are ready to assist the court. They cannot be simply treated as proxy counsels, as

such a treatment, is not only discouraging to such junior advocates but also creates delays in the dispensation of justice. When junior counsels appearing before the court are prepared and are ready to assist, they ought to be heard and effective orders can be passed. Filing counsel or the counsel in whose favour the client has given the vakalatnama ought to encourage junior advocates and counsels to make submissions and argue matters. Of course, there is a word of caution. There are some orders such as withdrawal of a suit, recordal of settlement in a suit, etc., which essentially require the filing counsel to be present. Except in such situations, court proceedings can continue with the appearance of junior counsels so long as they have the necessary express/implied permission to make submissions from their seniors. When junior counsels working in the chambers of filing counsels appear and assist the court, instead of describing them as `proxy counsels‟ alternative terminology such as "_____, Advocate appearing for Ld. Counsel for the Plaintiff/Defendant" can be adopted. Only in case a junior or other counsel who is completely unrelated and/or unprepared in the case, the terminology of "proxy counsel" can to be used. This would also enable junior counsels to ensure that they are not merely taking pass overs and adjournments but also get prepared in the matters and are ready to make submissions."

v. **Antonio Jose Da Silva v. Horizon Realtors, 2014 SCC OnLine Bom 1430**

1. Heard Mr. Rohit Bras De Sa, learned Counsel appearing on behalf of the Appellants and Mr. J. Mulgaonkar, learned Counsel appearing on behalf of the Respondent.

2. Admit on the following substantial question of law:—

"Whether the judgment passed by the learned Lower Appellate Court

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stands vitiated for not giving an opportunity to the parties including the Appellants from advancing oral arguments in support of their respective contentions".

7. I have considered the submissions made by the learned Counsel appearing on behalf of the respective parties and I have also gone through the record. The record reveals that when on 19-3-2013, the appeal was fixed for clarification, the case was adjourned and posted to 30-4-2013. Even subsequently, when the matter was fixed on 20-6-2013, the record does not suggest that an opportunity was given to the Appellants to advance oral arguments. Considering that the learned Counsel for the parties had advanced oral arguments before the then Presiding Judge, I find in the interest of justice that the learned Presiding Judge ought to have given an opportunity to the parties to advance oral arguments or at least for clarification if any, with regard to the contentions raised by the parties in the written arguments. It is now well settled that the first appeal is a valuable right of the parties as it is the last Court of fact findings and law involved in the Appeal to be decided. In this connection, this Court in the judgment reported in 2013 (4) Mh. L.J. 53 in the case of Celina Almeida v. Minister of Urban Development, Goa, relying upon the judgments of the Apex Court has observed at para 8 thus:

"8. I have carefully considered the submissions of the learned counsel and I have also gone through the records. It is now well settled by the judgments of the **Apex Court reported in (2011) 2 SCC 258**, in the case of **Automotive Tyre Manufacturers Association v. Designated Authority and (2009) 14 SCC 690** in the case of Prakash Ratan Sinha v. State of Bihar, that in cases in which the consequences of the disposal of the dispute by the authority constituted in the Act would result in the civil consequences, a party is entitled for an adequate hearing. The Apex Court has even given observation that the written submission is not a substitute to oral submissions as in the course of the oral submissions a party has an opportunity to seek for clarification or clear any doubt in the disposal of the dispute…………………………..”

Taking note of the observations referred to hereinabove, that written submissions cannot be a substitute to oral arguments, I find that the learned Lower Appellate Court was not justified to pass the impugned judgment as the parties were not given an adequate hearing to advance their respective contentions.

8. In view of the above, I find that the impugned judgment passed by the learned Judge is not sustainable and deserves to be quashed and set aside. The learned Lower Appellate Court as such will decide the appeal preferred by the Respondent afresh after giving an opportunity to both the parties to advance the oral arguments and written arguments, if any. The substantial question of law is answered accordingly.

vi. **Nanak Builders and Investors (P) Ltd. v. Vinod Kumar Alag, 1990 SCC OnLine Del 312**

1. The plaintiff has filed the present suit for specific performance of a contract dated 16th October 1985 regarding sale of plot No. E-554, Greater Kailash Part II, New Delhi, measuring 275 Sq. Yards by the defendant in favour of the plaintiff and for delivery of possession thereof.

2. The case of the plaintiff is that on 16th October, 1985, the defendant agreed to sell plot of land measuring 275 Sq. Yds. bearing

No. E-554 (Part), Greater Kailash Part-II, New Delhi to the plaintiff for a total consideration of rupees eleven lacs. A receipt for the sum of rupees one lac which was paid in cash by the plaintiff to the defendant was executed on the same date. The said receipt itself contains the terms and conditions of the agreement between the parties. The case of the plaintiff is that the said document, though titled as a receipt, is in fact a contract which is signed by both the parties and the plaintiff seeks specific performance of the same. The plaintiff has further stated in the plaint that it had been repeatedly requesting the defendant to accept the further sum of Rs. 3,40,000 in terms of the Agreement dated 16th October, 1985 and deliver possession of the plot but the defendant had been avoiding the same on one pretext or the other. The plaintiff states that ultimately on 16th November, 1985 it got a draft for Rs.3,40,000/- prepared in favour of the defendant and a telegraphic information regarding this was sent to the defendant, requesting him to accept the said payment and to complete the formalities regarding the agreement. In spite of this, the defendant was not willing to accept the said payment. In response to the said telegram, the defendant telegraphically informed the plaintiff that there was no agreement dated 16th October, 1985 and the defendant was not willing to accept the payment offered by the plaintiff. The defendant also made a reference to a notice dated 10th November, 1985 in the said telegram which was issued by counsel for defendant to the plaintiff repudiating the agreement dated 16th October, 1985. It is the case of the plaintiff that the contents of the notice show that the defendant was resiling from the agreement. According to the plaintiff the stand taken by the defendant in the said notice was totally false and illegal and the defendant could not resile from the said agreement and his obligation to perform his part of the contract. In para 12 of the plaint, the plaintiff has averred its readiness and willingness to perform its part of the contract and that the plaintiff has always been ready to pay the amount in terms of the agreement. On the basis of these assertions, the plaintiff has come to this Court seeking specific performance of the contract dated 16th October, 1985.

9. Now coming to the "receipt", Ex. P-1, as already noticed above, the essential/substantial terms have been agreed upon and reduced into writing therein. It does not contain any mention that a formal Agreement Sale will be executed. Therefore, it is not possible to hold that the same does not amount to a contract. Looking at it from a different angle one may ask as to when the stage for payment of earnest money or token money arises? The answer is that the occasion for payment of earnest money arises only in pursuance on an agreement, i.e., when the essential terms and conditions are finalised. The fact that the vendee parts with a substantial amount in favour of the vendor show that the parties have reached a consensus on the various terms of the arrangement between them meaning thereby that a contract has been arrived at. It is also worth noting that the defendant never brought out or averred that a formal contract had to be executed between the parties after the receipt dated 16th October, 1985. In view of this conduct of the defendant, the defendant is also estoppel from alleging that there is not contract between the parties and the document Ex. P-1 is a mere receipt not amounting to a contract.

10. Mere heading or title of a document cannot deprive the Document of its real nature. Law is well settled in such matters that it is the substance which has to be seen and not the form. It may be sufficient to refer to **Md. Akbar Khan v. Attar Singh, AIR 1936 Privy Council**

page 171 (1) and C.I.T. Punjab v. Panipat W. & G. Mills, (1976) 2 SCC 5 : AIR 1976 SC page 640 (2) in this behalf. As already noticed above, the document Ex. P-1 though titled as a 'receipt' contain all the essential ingredients of a 'contract' and therefore, I have no hesitation in holding that this is a contract and the plaintiff can seek specific performance thereof. The counsel for defendant has also submitted that Ex. P-1 does not bear the plaintiff's stamp, though it is conceded that Shri Nanak Ram, who has signed the plaint and the power of attorney in the present suit, has signed this document on behalf of the plaintiff. The mere absence of the rubber stamp of the plaintiff company does not render the document as a mere receipt. I have noticed this argument of the counsel for the defendant, though I need not have done so in view of absence of any plea in the written statement in this behalf. The further argument of the counsel for defendant that there is no acceptance of the offer of the defendant/vendor by the plaintiff is also factually incorrect because Ex.P-1 has been signed on behalf of the plaintiff with the following endorsement:—

'I confirm the above."

11. In view of the above discussion, I hold that Ex. P-1 is a contract on the basis whereof the plaintiff can seek specific performance as per the provisions of Chapter II of the Specific Relief Act.

vii. **Punit Beriwala v. State (NCT of Delhi), 2025 SCC OnLine SC 983**

1. The present appeal has been filed challenging the judgment dated 17th October 2022 passed by the learned Single Judge, Delhi High Court in Crl. M.C. 4189/2022 ("impugned judgment"), whereby the petition under Section 482 of Criminal Procedure Code ("Cr.P.C.")

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filed by the Respondent Nos. 2 and 3 herein, was allowed and the First Information Report ("FIR") No. 94/2022 registered at Police Station Economic Offences Wing, Mandir Marg, New Delhi ("subject FIR" or "FIR") for offences punishable under Section 467/468/471/420/120B of the Penal Code, 1860 ("IPC"), was quashed against Vikramjit Singh and Maheep Singh (Respondent Nos. 2 and 3).

2. The issue which arises for consideration in the present appeal is whether the learned Single Judge, Delhi High Court, was justified in quashing the subject FIR against Vikramjit Singh and Maheep Singh (Respondent Nos. 2 and 3) and whether a cognizable offence against them is prima facie made out from a reading of the subject complaint?

27. The common foundation underlying the submissions of learned senior counsel for Vikramjit Singh and Maheep Singh (Respondent Nos.2 and 3) and the impugned order that the Agreement to Sell in question is not a written but an oral Agreement, is contrary to facts and untenable in law. The Delhi High Court, whose judgments shall bind the parties including the police/investigating agency, has repeatedly treated receipts, like the receipt dated 12th April 2004, as a Contract/Agreement to Sell whose specific performance can be sought. In **M/s. Nanak Builders and Investors Pvt. Ltd. vs. Sh. Vinod Kumar Alag, ILR (1991) I Delhi 303**, Justice Arun Kumar, a learned Single Judge of the Delhi High Court (as his Lordship then was) has held, "Mere heading or title of a document cannot deprive the document of its real nature. Law is well settled in such matters that it is the substance which has to be seen and not the form the document though titled as a 'receipt' contains all the essential ingredients of a 'contract' and therefore, this is a contract and the plaintiff can seek

specific performance thereof."

viii. **CIT Punjab, Haryana, J&K, H.P and Union Territory of Chandigarh v. M/s Panipat Woollen & General Mills CO. Ltd., Chandigarh, (1976) 2 SCC 5**

1. These are appeals by the Revenue by special leave against the order of the High Court of Punjab & Haryana dated January 20, 1970 answering the questions referred to the High Court by the tribunal in favour of the assessees-respondents and against the Revenue. The appeal arises in the following circumstances.

2. M/s Panipat Woollen & General Mills Co. Ltd. — hereafter referred to as "the assessee Company" had two departments — (1) for spinning of yarn from raw and waste wool and (2) for spinning of yarn from imported wool tops. The second department which carried on the operations of spinning of yarn from imported wool tops was started sometime in the year 1952. Weaving operations were, however, carried on in both these departments. One of the departments was known as M/s Panipat Woollen Mills, Kharar while the other one was known as M/s Navin Woollen Mills. It is said that the assessee Company was running at a constant loss as a result of which in 1952 the assessee Company decided to instal a plant for manufacture of worsted yarn from imported wool tops by raising a loan of Rs 7 lakhs from the Industrial Finance Corporation. The plant went into production in September 1952. The assessee Company appointed M/s Murlidhar Chiranjilal as the sole selling agents for the worsted yarn on payment of 2 per cent commission. Subsequently on December 15, 1953 the assessee Company entered into an agreement with M/s Saligram Premnath under which the latter were appointed as the sole selling agents on certain specified conditions, the important of which

being that the agents were to finance the assessee Company to the extent of Rs. 2,50,000 and the assessee Company agreed to pay 6 per cent interest on the advances to be made by the agents and further agreed to pay 2 per cent commission on the net proceeds of sales of goods in India. Before expiry of this agreement, another agreement was entered into by the assessee Company with the agents on October 20, 1955 under which the agents were to get 6 per cent interest on all the advances made by them, 1¼ per cent commission on net sales and 50 per cent commission on net sales of the worsted plant. What is more was that the agents agreed to a deduction of 50 per cent of the loss incurred by the assessee Company from their remuneration...

7 …The above sub-clause clearly provides for a separate commission account to be maintained by the agents and the commission to be paid every six months. Consequently the agents agreed to pay a sum of Rs.25,000/- for six months every half year within ten days. We might further mention here that the provision in the agreement regarding sharing of the loss is absolutely peculiar to this particular agreement and there is not a single authority, which has, in spite of such a provision, held that the transaction does not amount to a joint venture or a division of profits. The provision regarding the consent of the agents to the sales and the programme of manufacture is also pertinent in order to determine whether the transaction amount ted to a joint venture in the garb of a contract of agency. It is well settled that the Court in order to construe an agreement has to look to the substance or the essence of it rather than to its form. A party cannot escape the consequences of law merely by describing an agreement in a particular form though in essence and in substance it may be a different transaction. In these circumstances, therefore, if we construe the agreement as a sort of a joint venture or a transaction like a

partnership which has been given the form and appearance of a contract of agency, the law must have its course.

ix. **NBCC (India) Ltd. v. State of W.B., (2025) 3 SCC 440**

2. The MSME before us has a simple prayer. It seeks to refer the dispute that it has with the buyer regarding payment of its dues to the Facilitation Council for arbitration under Section 18 of the Act, which provides that "any party to a dispute may, with regard to any amount due under Section 17, make a reference to the Micro and Small Enterprises Facilitation Council". The appellant opposes this prayer by contending that "any party" can only be a "supplier" and that supplier should have been registered under Section 8 of the Act even before execution of the contract, if not, the reference is impermissible. The High Court did not answer this question. Instead, it permitted the parties to raise such objections before the Arbitral Tribunal. The buyer is in appeal before us, raising the same question as a jurisdictional issue.

3. We have examined the text, context, and purpose of the Act to arrive at the decision that Section 18 is not restrictive and is a remedy for the resolution of disputes, and as such, it is kept open-ended to enable "any party" to refer the dispute to seek redressal. For the reasons to follow, we rejected the submission that "any party to a dispute" is confined to a "supplier" who has filed a memorandum under Section 8 of the Act. We have also explained that the issue(s) that have arisen in the decisions of this Court in **Silpi Industries v. Kerala SRTC [Silpi Industries v. Kerala SRTC, (2021) 18 SCC 790] (hereinafter referred to in short as "Silpi Industries") and Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd. [Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd., (2023) 6 SCC**

401 : (2023) 3 SCC (Civ) 7] (hereinafter referred to in short as "Mahakali Foods") were very different from the issue that has arisen for our consideration. However, for clarity and legal certainty, we have directed the appeal be placed before the Hon'ble the Chief Justice of India for referring the matter to a Bench of three Judges for an authoritative pronouncement.

13. The question of law for our consideration is whether an MSME cannot make a reference to the Facilitation Council for dispute resolution under Section 18 of the Act if it is not registered under Section 8 of the Act before the execution of the contract with the buyer.

25. The question that we are called upon to answer is whether the reference to the Facilitation Council under Section 18 of the Act is impermissible if the Enterprise is not registered by filing a memorandum under Section 8 of the Act before the contract is executed. This issue was not formulated, discussed and decided in any other judgment of this Court, including the two substantive judgments under the Act i.e. Silpi Industries [**Silpi Industries** (supra) or **Mahakali Foods** (supra). In these two judgments, it is worth mentioning, such an issue was neither formulated, nor discussed. We will explain this in detail while discussing the facts and the ratios of these judgments.

30. Mention of Section 17 in Section 18 is only to provide context for a reference of dispute. The contextual relevance of locating Section 17 in Section 18 is only to provide the purpose of reference, not to confine the remedy to a registered Enterprise. This is to clarify that the reference shall be to adjudicate the dispute arising out of a liability of the buyer which is declared under Sections 15 and 16.

40. Having considered the definition of the expression "supplier", and

also having considered the classification of enterprises into micro, small and medium with respect to each of which there is a separate legal regime to be suggested by the Advisory Committee and notified by the Central and State Governments, and in view of the discretion specifically vested with the micro and small enterprises for filing a memorandum under Section 8 of the Act, the submission that the Facilitation Council cannot entertain a reference under Section 18 if the enterprise is not registered under Section 8 must be rejected.

45. It is evident from the above that the substantial question for consideration that arose for consideration in **Mahakali Foods** (supra) was whether the MSME Act overrides the Arbitration and Conciliation Act, 1996, and such other incidental questions. There was no issue whatsoever, as has arisen in our case, that is, about the right or rather a disability to seek a reference under Section 18, if the enterprise has not filed a memorandum. Answering the issues that have arisen for consideration, the Court returned the findings in paras 52.1 to 52.5 which are as follows: (SCC p. 433)

> *"52. The upshot of the above is that:*
>
> *52.1. Chapter V of the MSMED Act, 2006 would override the provisions of the Arbitration Act, 1996.*
>
> *52.2. No party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small Enterprises Facilitation Council, though an independent arbitration agreement exists between the parties.*
>
> *52.3. The Facilitation Council, which had initiated the conciliation proceedings under Section 18(2) of the MSMED Act, 2006 would be entitled to act as an Arbitrator despite the bar contained in Section 80 of the Arbitration Act.*
>
> *52.4. The proceedings before the Facilitation*

Council/institute/centre acting as an Arbitrator/Arbitral Tribunal under Section 18(3) of the MSMED Act, 2006 would be governed by the Arbitration Act, 1996.

52.5. The Facilitation Council/institute/centre acting as an Arbitral Tribunal by virtue of Section 18(3) of the MSMED Act, 2006 would be competent to rule on its own jurisdiction as also the other issues in view of Section 16 of the Arbitration Act, 1996."

48. In view of the above submission, the Court proceeded to rely on Silpi Industries [**Silpi Industries** (supra), and allowed the prayer. The relevant portion is as under : (**Mahakali Foods** (supra), SCC pp. 432-33, paras 50-51)

"50. At this juncture, very pertinent observations made by this Court in Silpi Industries case [Silpi Industries v. Kerala SRTC, (2021) 18 SCC 790, pp. 811-12, paras 42-44:"42. … In our view, to seek the benefit of provisions under the MSMED Act, the seller should have registered under the provisions of the Act, as on the date of entering into the contract. In any event, for the supplies pursuant to the contract made before the registration of the unit under the provisions of the MSMED Act, no benefit can be sought by such entity, as contemplated under the MSMED Act. While interpreting the provisions of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, this Court, in the judgment in Shanti Conductors (P) Ltd. v. Assam SEB, (2019) 19 SCC 529 : (2020) 4 SCC (Civ) 409 has held that date of supply of goods/services can be taken as the relevant date, as opposed to date on which contract for supply was entered, for applicability of the aforesaid Act. Even applying the said ratio also, the appellant is not entitled to seek the benefit of the Act. … By taking recourse to filing memorandum under sub-section (1) of Section 8 of the Act, subsequent to entering into contract and supply of goods and services, one cannot assume the legal status of being classified under the MSMED Act, 2006, as an enterprise, to claim the benefit retrospectively from the date on

which the appellant entered into contract with the respondent. The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of the MSMED Act, 2006, by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a party not intended by legislation."] on this issue are required to be reproduced ….

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51. Following the abovestated ratio, it is held that a party who was not the "supplier" as per Section 2(n) of the MSMED Act, 2006 on the date of entering into the contract, could not seek any benefit as a supplier under the MSMED Act, 2006. A party cannot become a micro or small enterprise or a supplier to claim the benefit under the MSMED Act, 2006 by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods or rendering services. If any registration is obtained subsequently, the same would have the effect prospectively and would apply for the supply of goods and rendering services subsequent to the registration. The same cannot operate retrospectively. However, such issue being jurisdictional issue, if raised could also be decided by the Facilitation Council/Institute/Centre acting as an Arbitral Tribunal under the MSMED Act, 2006."

49. It is evident from the above that even in **Mahakali Foods** (supra), the issue which has arisen for our consideration never arose. There was neither an issue, discussion, nor analysis on the applicability of Section 18 for enterprises that have not filed a memorandum. The decision in **Mahakali Foods** (supra) is certainly an authority on the issues that were formulated in para 11 of the said judgment, which have already been extracted hereinabove. Even the concluding

paragraph in **Mahakali Foods** (supra) clearly establishes the fact that the Court was only considering the issue of whether the MSMED Act, being a special legislation, overrides the Arbitration and Conciliation Act, 1996 or not. The relevant portion of the judgment is as under : (**Mahakali Foods** (supra), SCC pp. 439-40, para 77)

> *"77. The issues raised and the submissions made by the learned counsel appearing for the appellant with regard to the overriding effect of the MSMED Act, 2006 over the Arbitration Act, 1996, jurisdiction of Facilitation Council, the parties autonomy to enter into an agreement qua the statutory provisions, the issue of casus omissus, etc. have been discussed and decided hereinabove which need not be reiterated or repeated. Accordingly, it is held that the reference made to the Facilitation Council would be maintainable in spite of an independent arbitration agreement existing between the parties to whom the MSMED Act, 2006 is applicable, and such Council would be entitled to proceed under sub-section (2) of Section 18 of the MSMED Act, 2006 as also to act as an Arbitrator or to refer the disputes to the institution or centre as contemplated under Section 18(3) of the MSMED Act, 2006. As held earlier, such Facilitation Council/Institute/Centre acting as an Arbitral Tribunal would have the jurisdiction to rule over on its own jurisdiction as per Section 16 of the Arbitration Act, 1996. In that view of the matter, the present appeal also deserves to be dismissed and is, accordingly, dismissed."*

Conclusion and reference to larger Bench

56. On the interpretation of the provisions of the Act we have arrived at a clear opinion and have expressed the same. Though it is possible for us to follow the precedents referred to in paras 53 and 54 to arrive at the conclusion that the judgments in Silpi Industries (supra) and Mahakali Foods (supra) coupled with the subsequent orders in Vaishno Enterprises [**Vaishno Enterprises v. Hamilton Medical AG,**

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(2024) 12 SCC 214 : 2022 SCC OnLine SC 355] and **Nitesh Estates [Nitesh Estates Ltd. v. Outsourcing Xperts, (2024) 12 SCC 221 : 2022 SCC OnLine SC 1198**] cannot be considered to be binding precedents on the issue that has arisen for our consideration, taking into account the compelling need to ensure clarity and certainty about the applicable precedents on the subject, we deem it appropriate to refer this appeal to a three-Judge Bench.

57. The Registry is directed to place the appeal paper books along with our detailed judgment before the Hon'ble the Chief Justice of India for constitution of an appropriate Bench.

x. **Khardah Company Ltd vs Raymon & Co. (India) Private, Ltd AIR 1962 SC 1810**

1. These are appeals against the judgment of the High Court of Calcutta, setting aside an award of the Arbitrators, which directed the respondents to pay to the appellants Rs 41,250 as compensation for breach of contract, on the ground that the said contract was in contravention of a notification of the Central Government dated October 29, 1953, and was in consequence illegal and void. The facts are that the appellants own a jute mill at Calcutta and carry on the business of manufacture and sale of jute. On September 7, 1955 they entered into a contract with the respondents who are doing business as dealers in jute, for the purchase of 750 bales of jute cuttings (raw) of Pakistan at Rs 80 per bale of 400 lbs to be delivered in October, November and December at the rate of 250 bales every month. Clause 14 of the agreement provides that all disputes arising out of or concerning the contract should be referred to the arbitration of the Bengal Chamber of Commerce. The respondents failed to deliver the goods as agreed whereupon the appellants applied to the Bengal

Chamber of Commerce for arbitration in accordance with clause 14 of the agreement. The respondents appeared before the Arbitrators, and contested the claim on the merits. The Arbitrators made an award in favour of the appellants for Rs 41,250 with interest, and that was filed under Section 14(2) of the Indian Arbitration Act in the High Court of Calcutta in its original side and notice was issued to the respondents. Thereupon the respondents filed an application in the High Court, presumably under Section 33 of the Arbitration Act, wherein they prayed for a declaration that the contract dated September 7, 1955 was illegal, as it was in contravention of the notification of the Central Government dated October 29, 1953 and that in consequence proceedings taken thereunder before the Chamber of Commerce and the award in which they resulted were all void. The learned Judge on the original side before whom the application came up for hearing dismissed it, and passed a decree in terms of the award. Against both the judgment and order, the respondents preferred appeals to a Division Bench of the High Court, Appeals Nos. 154 and 173 of 1957. They were heard by Chakravartti, C.J., and Lahiri, J., who held that the contract dated September 7, 1955 was illegal as it fell within the prohibition of the notification aforesaid and accordingly allowed the appeal and set aside the award. The appellants then applied for a certificate under Article 133(1) of the Constitution and the same was granted. This is how the appeals come before us.

18. But it is argued for the respondents that unless there is in the contract itself a specific clause prohibiting transfer, the plea that it is not transferable is not open to the appellants and that evidence aliunde is not admissible to establish it and the decisions in **Boddu Seetharamaswami v. Bhagwathi Oil Company [(1951) 1 MLJ 147], Illuru Hanumanthiah v. Umnabad Thimmaiah [AIR 1954 Mad 87]** and

Hussain Kasam Dada v. Vijayanagaram Comm. Asson. [AIR (1954) Mad 528, 531] are relied on in support of this position. We agree that when a contract has been reduced to writing we must look only to that writing for ascertaining the terms of the agreement between the parties but it does not follow from this that it is only what is set out expressly and in so many words in the document that can constitute a term of the contract between the parties. If on a reading of the document as a whole, it can fairly be deduced from the words actually used therein that the parties had agreed on a particular term, there is nothing in law which prevents them from setting up that term. The terms of a contract can be express or implied from what has been expressed. It is in the ultimate analysis a question of construction of the contract. And again it is well established that in construing a contract it would be legitimate to take into account surrounding circumstances. Therefore on the question whether there was an agreement between the parties that the contract was to be non-transferable, the absence of a specific clause forbidding transfer is not conclusive. What has to be seen is whether it could be held on a reasonable interpretation of the contract, aided by such considerations as can legitimately be taken into account that the agreement of the parties was that it was not to be transferred. When once a conclusion is reached that such was the understanding of the parties, there is nothing in law which prevents effect from being given to it. That was the view taken in Virjee Daya & Co. v. Ramakrishna Rice & Oil Mills [AIR 1956 Mad 110], and that in our opinion is correct.

xi. **Pure Helium India (P) Ltd. v. Oil & Natural Gas Commission (2003) 8 SCC 593**

1. Whether jurisdiction of an Arbitrator to interpret a contract can be

the subject-matter of an objection under Section 30 of the Arbitration Act, 1940 (hereinafter referred to as "the Act" for the sake of brevity) is in question in this appeal which arises out of the judgment and order dated 24-2-2000 of the High Court of Judicature at Bombay in Appeal No. 612 of 1996 arising out of the judgment and order of a learned Single Judge dated 13-10-1995 dismissing the said objection of the respondent.

2. The parties hereto entered into a contract for supply of helium diving gas pursuant to a notice inviting global tender dated 2-5-1989. In terms of the said notice inviting tender, the respondent herein was to take supply of helium gas, which is one of the rare gases being not chemically produced and is mainly extracted from the natural gas wells in mineral form. The said gas is ordinarily imported from USA, Algeria, Poland and Russia. In terms of the said notice inviting tender, three different categories of rates were to be quoted by the tenderers, both foreign and Indian. Whereas the foreign tenderers were to quote their prices in foreign currency, the Indian bidders could indicate the nature of payment i.e. if a part thereof was recoverable having foreign exchange component. Pursuant to or in furtherance of the said notice inviting tenders, the tenderers submitted their technical bids. The bidding was to be in two stages; in terms whereof the technical bids were to be opened first whereafter only final bids were to be considered. The appellant's bid was found to be the lowest in that the appellant had bid a price of Rs 150 per cubic metre out of which US $5 was to be the foreign exchange component. The said bid of the appellant having been found to be the lowest, the parties entered into a negotiation; pursuant to or in furtherance whereof, the appellant lowered its offer to Rs 149 per cubic metre, out of which US $ 4.60 was to be the foreign exchange component.

25. The learned Arbitrators, as noticed hereinbefore, in making the award took into consideration the documentary as well as circumstantial evidence including rival pleadings of the parties. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract.

27. Construction of the contract agreement, therefore, was within the jurisdiction of the learned Arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot, thus, be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties as also the circumstantial evidence

xii. **PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2023) 15 SCC 781**

1. The appellant has approached this Court being aggrieved by the judgment and order dated 1-11-2017, passed by the Division Bench of the Madras High Court in V.O. Chidambaranar Port Trust v. PSA SICAL Terminals Ltd. [V.O. Chidambaranar Port Trust v. PSA SICAL Terminals Ltd., 2017 SCC OnLine Mad 37706], thereby allowing the appeal of Respondent 1 herein under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Arbitration Act") vide which the High Court set aside the award dated 14-2-2014, passed by the Arbitral Tribunal and the order passed by the District Judge dated 25-2-2016, rejecting the application filed by Respondent 1 herein under Section 34 of the Arbitration Act.

2. The facts necessary for adjudication of the present appeals are as under : Respondent 1 Board of Trustees of V.O. Chidambranar Port Trust, Tuticorin (hereinafter referred to as "TPT") issued a global

tender on 9-4-1997, inviting bids for development of the Seventh Berth at V.O. Chidambranar Port, Tuticorin as a container terminal and for operating and maintaining the same for 30 years on a build, operate and transfer (hereinafter referred to as “BOT”) basis. In response to the tender, the appellant PSA SICAL Terminals Pvt. Ltd. (hereinafter referred to as “SICAL”) submitted its bid on 24-10-1997. The financial offer was submitted by SICAL on 19-12-1997. Since SICAL's offer was the highest, the same was accepted and a letter of intent (hereinafter referred to as “LoI”) was issued to it on 29-1-1998 and the same was followed by a licence agreement dated 15-7-1998.

58. For answering the aforesaid questions, we will have to consider the documents placed on record. Apart from that, we will also have to take into consideration the conduct of the parties and their intention as could be gathered from the said material.

59. In this respect, it will be relevant to refer to paragraph 16 in the case of MMTC Limited (supra), which reads thus:

“16. It is equally important to observe at this juncture that while interpreting the terms of a contract, the conduct of parties and correspondences exchanged would also be relevant factors and it is within the Arbitrator's jurisdiction to consider the same. [See McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181]; Pure Helium India (P) Ltd. v. ONGC [Pure Helium India (P) Ltd. v. ONGC, (2003) 8 SCC 593] and D.D. Sharma v. Union of India [D.D. Sharma v. Union of India, (2004) 5 SCC 325].”

xiii. **Energy Watchdog v. CERC (2017) 14 SCC 80.**

1. The present appeals arise from a judgment of the Appellate Tribunal for Electricity dated 7-4-2016 [Uttar Haryana Bijli Vitran

Nigam Ltd. v. CERC, 2016 SCC OnLine Aptel 94]. The facts necessary to appreciate the issues which arise in the present case, which will cover all the cases before us, will be taken only from Civil Appeal No. 5348 of 2016, namely, Prayas (Energy) Group v. CERC.

34. "Force majeure" is governed by the Contract Act, 1872. Insofar as it is relatable to an express or implied clause in a contract, such as the PPAs before us, it is governed by Chapter III dealing with the contingent contracts, and more particularly, Section 32 thereof. Insofar as a force majeure event occurs dehors the contract, it is dealt with by a rule of positive law under Section 56 of the Contract Act....

37. In Alopi Parshad & Sons Ltd. v. Union of India [Alopi Parshad & Sons Ltd. v. Union of India, (1960) 2 SCR 793 : AIR 1960 SC 588], this Court, after setting out Section 56 of the Contract Act, held that the Act does not enable a party to a contract to ignore the express covenants thereof and to claim payment of consideration, for performance of the contract at rates different from the stipulated rates, on a vague plea of equity. Parties to an executable contract are often faced, in the course of carrying it out, with a turn of events which they did not at all anticipate, for example, a wholly abnormal rise or fall in prices which is an unexpected obstacle to execution. This does not in itself get rid of the bargain they have made. It is only when a consideration of the terms of the contract, in the light of the circumstances existing when it was made, showed that they never agreed to be bound in a fundamentally different situation which had unexpectedly emerged, that the contract ceases to bind. It was further held that the performance of a contract is never discharged merely because it may become onerous to one of the parties.

38. Similarly, in Naihati Jute Mills Ltd. v. Khyaliram Jagannath

[Naihati Jute Mills Ltd. v. Khyaliram Jagannath, (1968) 1 SCR 821: AIR 1968 SC 522], this Court went into the English law on frustration in some detail, and then cited the celebrated judgment of Satyabrata Ghose v. Mugneeram Bangur & Co. [Satyabrata Ghose v. Mugneeram Bangur & Co., 1954 SCR 310: (1953) 2 SCC 437: AIR 1954 SC 44] Ultimately, this Court concluded that a contract is not frustrated merely because the circumstances in which it was made are altered. The courts have no general power to absolve a party from the performance of its part of the contract merely because its performance has become onerous on account of an unforeseen turn of events.

xiv. **Alopi Parshad & Sons Ltd. v. Union of India, 1960 SCC OnLine SC 13**

1. On May 3, 1937, M/s Alopi Parshad and Sons Ltd., who will hereinafter be referred to as the Agents, were, under an agreement in writing, appointed by the Governor-General for India in Council, as from October 1, 1937, agents for purchasing ghee, required for the use of the Army personnel. The Government of India, by clause 12 of the agreement, undertook to pay to the Agents the actual expenses incurred for purchasing ghee, cost of empty tins, expenses incurred on clearance of Government tins from the railway, export land-customs duty levied on ghee purchased and exported from markets situated in Indian States, octroi duty, terminal tax or other local rates on ghee, and certain other charges incurred by the Agents. The Government also agreed to pay to the Agents at rates specified in the agreement: "(1) the financing and overhead (mandi) charges incurred in the buying markets.

(2) the cost of establishments and contingencies provided by the Agents on the Government's account for carrying out the purchase and

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supply of ghee, and

(3) the buying remuneration.” In consideration of the Government paying to the Agents a sum of rupee one and anna one only per one hundred pounds nett weight of finally accepted ghee, as combined financing and overhead (mandi) charges, the Agents by clause 13 undertook to provide the working capital and also to bear the costs, charges and expenses, including financing and overhead charges incurred by them in buying ghee in the market.

21. Section 56 of the Indian Contract Act provides that:

> *“A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.”*
>
> *Performance of the contract had not become impossible or unlawful; the contract was in fact, performed by the Agents, and they have received remuneration expressly stipulated to be paid therein. The Indian Contract Act does not enable a party to a contract to ignore the express covenants thereof, and to claim payment of consideration for performance of the contract at rates different from the stipulated rates, on some vague plea of equity. “The parties to an executory contract are often faced, in the course of carrying it out, with a turn of events which they did not at all anticipate — a wholly abnormal rise or fall in prices, a sudden depreciation of currency, an unexpected obstacle to execution, or the like. Yet, this does not in itself affect the bargain they have made. If, on the other hand, a consideration of the terms of the contract, in the light of the circumstances existing when it was made, shows that they never agreed to be bound in a fundamentally different situation which has now unexpectedly emerged, the contract ceases to bind at that point — not because the court in its discretion thinks it just and reasonable to qualify the terms of the contract, but because on its true construction it does not apply in that*

situation. When it is said that in such circumstances the court reaches a conclusion which is 'just and reasonable' (Lord Wright in Constantine case [(1942) AC 154, 186] or one 'which justice demands' (Lord Sumner in Hirji Mulji v. Cheong Yue Steamship Co. Ltd.) [(1926) AC 497, 510] , this result is arrived at by putting a just construction upon the contract in accordance with an 'implication …from the presumed common intention of the parties'" — speech of Lord Simon in British Movietonews Ltd. v. London and District Cinemas Ltd. [LR 1952 AC 166 at pp. 185 & 186]"

24. Relying upon Section 222 of the Indian Contract Act, by which duty to indemnify the agent against the consequences of all lawful acts done in exercise of the authority conferred, is imposed upon the employer, the Arbitrators could not award compensation to the agents in excess of the expressly stipulated consideration. The claim made by the Agents was not for indemnity for consequences of acts lawfully done by them on behalf of the Government of India; it was a claim for charges incurred by them in excess of those stipulated. Such a claim was not a claim for indemnity, but a claim for enhancement of the rate of the agreed consideration. Assuming that the Agents relied upon assurances alleged to be given by the Director in charge of Purchases, in the absence of an express covenant modifying the contract which governed the relations of the Agents with the Government of India, vague assurances could not modify the contract. Ghee having been supplied by the Agents under the terms of the contract, the right of the Agents was to receive remuneration under the terms of that contract. It is difficult to appreciate the argument advanced by Mr Chatterjee that the Agents were entitled to claim remuneration at rates substantially different from the terms stipulated, on the basis of quantum meruit. Compensation quantum meruit is awarded for work done or services rendered, when the price thereof is not fixed by a contract. For work

done or services rendered pursuant to the terms of a contract, compensation quantum meruit cannot be awarded where the contract provides for the consideration payable in that behalf. Quantum meruit is but reasonable compensation awarded on implication of a contract to remunerate, and an express stipulation governing the relations between the parties under a contract, cannot be displaced by assuming that the stipulation is not reasonable. It is, therefore, unnecessary to consider the argument advanced by Mr. Chatterjee that a claim for compensation on the basis of quantum meruit, is one which arises out of the agreement within the meaning of clause 20. Granting that a claim for compensation on the basis of quantum meruit, may be adjudicated upon by the Arbitrators in a reference made under clause 20 of the agreement, in the circumstances of the case before us, compensation on that basis could not be claimed.

xv. **Zarina Siddiqui v. A. Ramalingam (2015) 1 SCC 705**

1. Leave granted. This appeal by special leave is directed against the judgment and order dated 1-3-2012 [A. Ramalingam v. H. Siddiqui, RFA No. 265 of 1999, decided on 1-3-2012 (KAR)] passed by the High Court of Karnataka whereby Regular First Appeal No. 265 of 1999 filed by the respondent-defendant was allowed and the judgment and decree passed by the trial court in the suit of the appellant-plaintiff was set aside.

2. The facts giving rise to the present appeal are that the respondent-first defendant is the absolute owner of one-third undivided share in the property bearing No. 43, Mission Road, Bangalore (hereinafter referred to as "the suit scheduled property") and his elder brother, the second defendant is his power-of-attorney holder. It is the case of the plaintiff that on 25-6-1979, the second respondent-defendant as

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registered power-of-attorney holder entered into an agreement to sell one-third share in the suit property to the appellant-plaintiff for consideration of Rs 40,000 and received advance of Rs 5000. As per the aforesaid registered agreement, the balance consideration was to be paid on or before 30-12-1980 and the parties to the agreement had to take necessary steps for obtaining permission from the competent authority under the Urban Land (Ceiling and Regulation) Act.

36. As held by this Court time and again, efflux of time and escalation of price of the property by itself cannot be a valid ground to deny the relief of specific performance. But the Court in its discretion may impose reasonable conditions including payment of additional amount to the vendor. It is equally well settled that the plaintiff is not to be denied specific performance only on account of phenomenal increase of price during the pendency of litigation.

ARGUMENTS OF RESPONDENT

16. Ld. counsel for respondent orally argued to submit that as per law applicable to S.34 of the Act, this court cannot re-appreciate the evidence and cannot give another finding. Therefore, there is no merit in the petition. Written submission was not filed on behalf of respondent.

APPRECIATION OF ARGUMENTS, LAW & FACTS

17. The crux of the legal principles explained by superior courts in respect of ambit of Section 34, is that Arbitrator is a Judge of the choice of the parties and his decision, unless there is an error apparent on the face of the award which makes it unsustainable, is not to be set aside by the court, even if the court of law could come to a different conclusion on the same facts. The court

cannot reappraise the evidence and it is not open to the court to sit in appeal over the conclusion of the Arbitrator. It is not open to the court to set aside a finding of fact arrived at by the Arbitrator and only grounds on which the award can be set aside, are mentioned in the Arbitration Act. Where the Arbitrator assigns cogent grounds and sufficient reasons and no error of law or misconduct is cited, the award will not call for interference by the court in exercise of the power vested in it.

18. In **Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49**, court held that an award could be said to be against the public policy of India, inter alia, in the following circumstances:-

> *"1. When an award is, on its face, in patent violation of a statutory provision.*
>
> *2. When the Arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.*
>
> *3. When an award is in violation of the principles of natural justice.*
>
> *4. When an award is unreasonable or perverse.*
>
> *5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.*
>
> *6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court."*

19. Hon'ble Supreme Court in case of ***Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India, 2019 SCC OnLine SC 677***, held that under Section 34 (2A) of the Act, a decision which is perverse while no longer being a ground for challenge under "public policy of India", would

certainly amount to a patent illegality appearing on the face of the award. A finding based on the documents taken behind the back of the parties by the Arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties and therefore, would also have to be characterized as perverse. It was held that a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision, would be perverse and liable to be set aside on the ground of patent illegality.

20. In the case of **OPG Power Generation Private Limited v. ENEXIO Power Cooling Solutions India Private Limited and Anr., (2025) 2 SCC 417,** while dealing with scope to interfere on the basis of reasoning and interpretation of terms of contract, Hon'ble Supreme Court observed as under: -

> *"**80**. We find ourselves in agreement with the view taken in **Dyna Technologes**, as extracted above. Therefore, in our view, for the purposes of addressing an application to set aside an arbitral award on the ground of improper or inadequate reasons, or lack of reasons, awards can broadly be placed in three categories:*
>
> *(1) where no reasons are recorded, or the reasons recorded are unintelligible;*
>
> *(2) where reasons are improper, that is, they reveal a flaw in the decision-making process; and*
>
> *(3) where reasons appear inadequate.*
>
> ***81**. Awards falling in Category (1) are vulnerable as they would be in conflict with the provisions of Section 31(3) of the 1996 Act. Therefore, such awards are liable to be set aside under Section 34, unless:*

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under Section 30.

***82**. Awards falling in Category (2) are amenable to a challenge on ground of impropriety or perversity, strictly in accordance with the grounds set out in Section 34 of the 1996 Act.*

***83**. Awards falling in Category (3) require to be dealt with care. In a challenge to such award, before taking a decision the Court must take into consideration the nature of the issues arising between the parties in the arbitral proceedings and the degree of reasoning required to address them. The Court must thereafter carefully peruse the award, and the documents referred to therein. If reasons are intelligible and adequate on a fair reading of the award and, in appropriate cases, implicit in the documents referred to therein, the award is not to be set aside for inadequacy of reasons. However, if gaps are such that they render the reasoning in support of the award unintelligible, or lacking, the Court exercising power under Section 34 may set aside the award.*

Scope of interference with the interpretation/construction of a contract accorded in an arbitral award

***84.** An Arbitral Tribunal must decide in accordance with the terms of the contract. In a case where an Arbitral Tribunal passes an award against the terms of the contract, the award would be patently illegal. However, an arbitral Tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not intefere. But where, on a full reading of the contract, the view of the Arbitral Tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference.*

Whether unexpressed term can be read into a contract as an implied condition

85. *Ordinarily, terms of the contract are to be understood in the way the parties wanted and intended them to be. In agreements of arbitration, where party autonomy is the grund norm, how the parties worked out the agreement, is one of the indicators to decipher the intention, apart from the plain or grammatical meaning of the expressions used.*

86. *However, reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by the parties thereto. An unexpressed term can be implied if, and only if, the court finds that the parties must have intended that term to form part of their contract. It is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them. Rather, it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, forms part of the contract.*

87. *But before an implied condition, not expressly found in the contract, is read into a contract, by invoking the business efficacy doctrine, it must satisfy the following five conditions:*

(a) it must be reasonable and equitable;

(b) it must be necessary to give business efficacy to the contract, that is, a term will not be implied if the contract is effective without it;

(c) it must be obvious that "it goes without saying";

(d) it must be capable of clear expression;

(e) it must not contradict any terms of the contract."

21. In the present case, the petitioner objects to the arbitral award dated 26.02.2024 mainly on the grounds of patent illegality, perversity/unreasonableness, and violation of public policy/natural justice, alleging that ld. Sole Arbitrator wrongly held that there was no

binding contract and alleging that ld. Arbitrator ignored admissions and vital evidence, to wrongly reject key monetary claims (including MSMED interest and the balance-contract-period claim), and failed to decide the costs claim (Claim H).

22. It would be relevant to quote from the relevant part of the Award, wherein ld. Arbitrator has returned his findings with his reasons.

Findings of ld. Arbitrator:

> *"The claimant contends that there was a negotiation with the respondent for the supply of printers for a fixed term of three years. To prove these negotiations the claimant has produced Exhibit CW 1/2. The case of the claimant is entirely based on the existence of a contract dated 14.01.2021 (Exb. CW 1/2) between the claimant and respondent and its subsequent breach by the respondent. However, there appears to be no formal contract executed between the parties that includes any assurance or lock-in period as a commitment from the respondent for a minimum specified duration.*
>
> *The Ex. CW 1/2, presented by the claimant as a contract, appears merely to be a quotation comparison sheet. Such sheets are typically internal documents used by companies to compare various rates for services they wish to procure and do not constitute legally binding contracts. Additionally, Exhibit CW 1/2 lacks formal validation elements such as the seal of either party and signatures from both parties involved in the dispute. Moreover, the document fails to outline any rights or obligations typically associated with a contractual agreement. The Exb. CW 1/2 merely lists prices quoted by three distinct entities.*
>
> *Consequently, Exhibit CW 1/2 cannot be regarded as a contract under legal standards. This tribunal holds the considered opinion that a breach of contract cannot occur if there is no contract in existence. Consequently, without tangible evidence or a documented contract on record, the claimant's assertions cannot be substantiated or entertained as they are based on*

hypothetical assumptions. The claimant has significantly failed to demonstrate to this tribunal the existence of any contractual agreement or lock-in period of 3 years for respondent to be obligated for payment for entire duration. Consequently, the claimants claim of Rs. 20,93,000/- towards balance period of 20 months at the end of respondent is rejected."

23. I have looked into the document alleged to be a contract by the petitioner. Apparently this document is not in the nature of any agreement signed by both the parties. This is an internal document of the respondent procured by the petitioner. There cannot be any second thought to say that this document, in the form of comparative chart of the offers made by different vendors, as prepared by the respondent, was not the agreement signed with the petitioner. On perusal of affidavit filed by CW-1 before ld. Arbitrator, I further find that apart from afore-said document petitioner did not refer to any other document to allege that same was the agreement between the parties. Therefore, this is the only document, on the basis of which major part of claims of the petitioner was based. Petitioner has made too lengthy arguments and plea in respect of law of contract. I need not repeat and reiterate the same here again. An agreement can be oral or in writing. However, mere oral assertion of one of the parties, cannot be treated as an agreement between the parties. The Email communications referred and relied upon by the petitioner, merely show the contentions being raised by petitioner. There is no reciprocal communication from respondent to accept the contentions the petitioner in unequivocal terms, thereby showing the element of meeting of

mind and consensus. Therefore, over exaggerated reference to the Emails cannot become an evidence of agreement between the parties.

24. The instance of agreement can be inferred from the purchase order placed by respondent, which was acted upon by the petitioner. The relevant part of the terms and conditions mentioned in the purchase order, were as under: -

"OTHER TERMS & CONDITIONS:-

1. Please No increase in quoted price will be allowed by the Hospital once the purchase order is accepted or contract is entered into.

2. Suppliers in their own interest should get their samples approved by the Hospital before executing bulk supplies. The Hospital will not be responsible for any loss caused to the supplier due to rejection of bulk supply, in case the bulk supply does not meet the quality of the original sample. Samples may be submitted through Post or Railway Parcel, freight-prepaid basis or hand delivery at the cost of the supplier. If the Hospital finds that the materials supplied are not according to the approved sample or to the specification required by the hospital or not according to order/contract details or received in damaged broken condition or otherwise not satisfactory owing to any reason of which the Hospital is the sole judge. Hospital reserves the right to refuse or accept such material (being declared as defective) as stated above or cancel the order/contract and / or to forfeit deposit if any and/or procure the required material from other sources at the cost of the defaulting supplier including losses incurred or damage suffered by the Hospital by way of higher prices or penalty for not fulfilling its contract with its customers.

3. Rejected articles has to be uplifted by the supplier within 15 days of intimation by Hospital to the supplier and till such time will remain with the Hospital at the Supplier's risk and responsibility, failing which, they may at the discretion of the

Hospital be scrapped or be consigned to the Supplier's address at the Supplier's entire risk and cost. In such cases packing and freights charges and other incidental expenses will be recovered from the Supplier.

4. Supplier must arrange to supply the ordered materials according to the delivery schedule specified by the Hospital, after the acceptance of the Purchase Order. If the Suppliers are not as per this schedule and it on that account the Hospital is forced to buy the materials from elsewhere and loss or damage that the Hospital may sustain thereby will be recovered from the Supplier for non-delivery or late delivery. Save as stated hereinbefore, any decrease in price by the Supplier shall be again discussed and mutually agreed between Hospital & Supplier, and till such time, Hospital shall have right to keep the Purchase Order on hold even if accepted by the Supplier.

5. Supplier's bills will not be passed for payment until the ordered goods have been received, accounted for and accepted in full.

6. In all cases of dispute or difference the decision of the Hospital shall be final and binding on the Supplier.

7. Supplier's quotations, bills must clearly state sales tax and any other local taxes or levies wherever applicable along with necessary declaration. In case the supplier fails to mention it on their bills, any subsequent claim raised by the Supplier will not be accepted by the Hospital. Suppliers must submit relevant tax forms such as Form No.31 and Form No.31A Wherever applicable. Non-compliance of above will cause delay in passing suppliers bill for payment for which the Hospital shall not be liable in any manner whatsoever.

8. The Hospital reserves to itself the right to cancel or modify or amend the order/contract wholly or in part any time before its execution by the Supplier without assigning any reason whatsoever.

9. Suppliers must ensure that Challan in duplicate giving full details of each consignment together with Railway receipt or Way bill or Air Consignment Note is received by the Hospital *sufficiently in advance of the arrival of the consignment in case such documents are not received in time expenses such as demurrage charges or any incidental expenses incurred by the Hospital will be debited to the Supplier's account.*

10. All Challans should clearly give full name and address of the Hospital Purchase Order No. and date against which supplies are made. Suppliers must mention on their packing cases their own name, Hospital's purchase order contract 29 and Challan No. date to facilitate identification."

25. Since petitioner had supplied the goods in response to purchase order, therefore afore-said terms and conditions are deemed to be accepted by the petitioner, leading it to be in the nature of an agreement. The afore-said purchase order or even the above-mentioned quotation chart had been completely silent in respect of any locking period, meaning thereby any such term to say that the supply had to be continued for minimum period of three years. Both these documents were also silent in respect of any requirement of giving advance notice, in order to stop the supply. In these circumstances, I find that all the claims made by petitioner to say that this arrangement had to continue for minimum period of three years or to say that respondent had agreed to purchase at least 130 cartridges per month etc., are based on mere oral assertion and self nurtured notions of the petitioner. As already observed hereinabove, there is no evidence to show a consensus in respect of afore-said kind of claim of the petitioner. Therefore, I find that ld. Arbitrator was perfectly right in making his above-mentioned quoted observations and negating the contention of petitioner about breach of contract.

26. Ld. Arbitrator also dealt with other claims of the petitioner regarding cost of USB cables etc. as well as interest on alleged delayed payments. The relevant part of his observations are as under: -

> *"Both parties had operated based on mutual understanding, with the claimant supplying services on credit. However, the claimant's failure to formalize this arrangement by entering into a definitive contract with stipulated terms and conditions before the supply of services has placed the claimant at a disadvantage. This tribunal lacks the authority to amend or rewrite the arrangement or contract between the parties and cannot rule in favor of any party based on non-written terms of the contract. While the claimant's assertions might seem reasonable from a business efficacy standpoint, the respondent cannot be held liable for the entire duration without any written commitment from their side.*
>
> *Moreover, the tribunal cannot regard the claimant's current claim as one of delayed payment. This determination arises from the fact that, throughout the proceedings, the claimant has not provided sufficient evidence or documents to prove instances of delayed payments by the respondent or to ascertain when exactly the invoices were delivered or acknowledged by the respondent for payment.*
>
> *Moreover, the claimant's request for compensation amounting to Rs. 30,000 for 25 original USB cables and Rs. 50,000 for 100 number of empty printer cartridges cannot be granted as monetary compensation due to the absence of a direct agreement between the parties regarding these items. The claimant has not successfully demonstrated any actual entrustment of the cables and cartridges to the respondent, nor has it been shown that the respondent was responsible for their safekeeping.*
>
> *Furthermore, the claimant has failed to provide plausible reasons or evidence in their pleadings to prove that the respondent ever refused to return any materials purportedly in its possession, or that it was the respondent's duty to return them. The email communication dated August 5, 2022, submitted by the respondent*

as Annexure G, clearly indicates that the respondent had instructed the claimant to collect the USB/Power cables on August 6, 2022. However, the claimant has not explained why they did not retrieve these cables from the respondent as instructed.

In light of these considerations, this tribunal directs that the claimant is entitled to collect the 25 original USB cables and 100 empty printer cartridges from the respondent, provided they give at least one week's advance notice detailing the proposed schedule for collection. The respondent is ordered to ensure the peaceful handover of these items to the claimant. The entire process of handover and receipt of the items should be video graphed, and the recording should be preserved. Should the respondent fail to hand over these items within one month from the proposed collection date as notified by the claimant, a penalty of Rs.80,000 will be imposed on the respondent, payable to the claimant within the subsequent 30 days. This amount compensates for the cost of the items and should be accompanied by delayed payment interest at the rate of 18% per annum."

27. The above mentioned observations and findings of ld. Arbitrator are once again based on due appreciation of evidence as placed on the record. It is no more res integra that this court u/s. 34 of the Act is not supposed to re-appreciate the evidence in order to substitute the findings given by ld. Arbitrator. The exercise of this court has to be limited to check if findings of ld. Arbitrator are based on no evidence or same are based in total ignorance of some vital piece of evidence. As far as interest on delayed payment, is concerned, even if I looked into the invoices raised by the petitioner, I do not find any term/condition mentioned therein to provide for the time period to make payment against such invoices. Moreover, whether was a delay in the payment with reference to the date of goods being received in satisfactory

condition by respondent, was a factual portion, which could be determined on the basis of relevant evidence. The belated communications through Email to demand for outstanding amount, was not treated as sufficient evidence in respect of all the afore-said facts involved in this issued. In my opinion u/s. 34 of the Act, this court cannot interfere with even such part of the findings given by ld. Arbitrator. Same is the situation in respect of the allegations made by petitioner qua USB cables etc. Such factual findings are not to be interfered into present proceedings.

28. Thus, I find that though petitioner has come up with a lengthy description of objections and arguments, but his objections and arguments are more in the nature of reiterating the contentions regarding existence of a contract in the nature of locking period of three years and promise of procurement of services/goods for a certain quantity of goods/cartridges, but same were rightly rejected by ld. Arbitrator on the basis of evidence placed before him.

29. Petitioner has alleged that ld. Arbitrator did not say anything in respect of Emails or gate passes or in respect of basis to award sum of Rs.80,000/-. However, it is not necessary to refer and reproduce the contents of each piece of evidence. In any case, at the cost of repetition, it is again reiterated that such objections are purely against the appreciation of the evidence in a particular manner by ld. Arbitrator. I have also perused the contents of the affidavit and Emails/other documents viz comparative chart/purchase order/invoice etc. It is not necessary to say

something in respect of each and every piece of evidence, unless it is so required in the context of the findings. If something is missing in the evidence, then it is suffice to say that evidence is silent in respect of such fact. Therefore, I do not find any ground for interference, on the basis of afore-said kind of objections.

30. Besides afore-said factors, it is worth to mention here that as per plea taken by petitioner in paragraph-84 of the petition, signed copy of Award was received by petitioner on 01.03.2024. As per limitation provided in Section 34 of the Act, the objections could have been filed latest by 01.06.2024. However, the original petition in this case was filed on 03.06.2024. Though, there was delay of only two days, however, petitioner did not opt to seek condonation of such delay, rather, in afore-said paragraph petitioner pleaded that petition was within limitation. Such plea of the petitioner was incorrect and this petition was time barred as well.

DECISION

31. In view of my foregoing discussions, observations and findings, I find that petitioner has failed to make out a case for interference with the Award u/s. 34 of the Act. Hence, petition is dismissed.

File be consigned to record room after due compliance.

PULASTYA PRAMACHALA

Digitally signed by PULASTYA PRAMACHALA
Date: 2026.06.09 18:28:43 +0530

Pronounced in the Open Court on this 09th Day of June, 2026

(PULASTYA PRAMACHALA)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi