

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 3755 of 2012**

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J V BARUNI

Versus

INDIAN OIL CORPORATION LTD THRO' PRINCIPAL OFFICER & ANR.

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Appearance:

MR PRADEEP PATEL(642) for the Appellant(s) No. 1

MR. M R BHATT, SENIOR ADVOCATE M R BHATT & CO.(5953) WITH MR

MUNJAAL M BHATT(8283) ADVOCATE for the Defendant(s) No. 1

RULE SERVED for the Defendant(s) No. 2

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CORAM:HONOURABLE THE CHIEF JUSTICE MRS.**JUSTICE SUNITA AGARWAL**

and

HONOURABLE MR.JUSTICE D.N.RAY**Date : 10/12/2025****ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)**

1. Heard Mr. Pradeep Patel, learned advocate appearing for the appellant and Mr. M.R. Bhatt, learned senior advocate appearing for the defendant no.1 and perused the record.

2. This appeal under Section-37 of the Arbitration and Conciliation Act, 1996 has been filed challenging the arbitral award dated 18.03.2004, allowing the claim of the respondent namely *Indian Oil Corporation Limited [IOC]* for an amount of Rs.1,80,57,624/- with 12% interest from 08.11.2000 till the date of payment. The recovery against the respondent/

appellant herein has been ordered by the learned Arbitrator with the findings in the award as under:-

"Findings:-

(i) It is apparent from the joint reconciliation statement for the period 17/11/1997 to 13/06/2000 annexed as Annexure-E to the statement of claim that the same has been signed by officers of Claimant as well as Shri J.V Baharooni, proprietor of M/s. J.V Baharooni. Respondent has not denied that reconciliation was carried out jointly or he has signed the same. Therefore the claim of the Claimant for Rs.1,32,43,824/- is proved.

(ii) Claimant has annexed another reconciliation statement carried out by Account Officer of Claimant for the period July 1996 to June 2000, as Annexure-F. This statement also covers the data mentioned in the joint reconciliation Statement. As per this statement Respondent has not deposited Rs.53,58,628/- in the Claimant's account during the period July 1996 to 16/11/1997. The Claimant has filed the copies of Daily Stock Registrar, Daily Stock Transfer Receipt, Bulk Product Stock Ledger for the period July 1996 to November 1997, Daily Collection Report for the period 22/11/1996 to 15/11/1997 and Bank Statement for the period October 1996 to November 1997 alongwith written statement dated 23/07/2003. Respondent has not denied the correctness of these documents. Respondent has submitted in Para 2.5 of the written statement that certain deposits made by them in the year 1996-97 has not been considered by the Claimant. However Respondent has not submitted any supporting documents regarding the proof of deposit made by them. By way of written submission dated 06/12/2003 Respondent has submitted that they had deposited Rs.44,801/- on 14/08/1997, however the same has not been shown by the Respondent in the Joint Reconciliation Statement. Respondent has submitted the copy of DCR dated 14/08/1997, alongwith said written submission. I have perused the Joint Reconciliation Statement and found that submission of Respondent is correct. Therefore, claim of the Claimant is proved only for Rs.53,13,8271/-.

AWARD

In view of the foregoing facts and findings, I hereby hold that the Claimant is entitled to recover from Respondent Rs.1,80,57,624/- with 12% interest from 08/11/2000 till the date of payment. Arbitration proceedings are terminated herewith."

3. The dispute pertains to the non-deposits of dues of the claimant by the respondent - appellant herein. It is recorded by the learned Arbitrator that the appellant herein/ respondent had entered into an agreement with the claimant- IOC dated 26.03.1996, for maintenance and haulage in respect of Retail Outlet owned by the claimant at village Gadu, District Junagadh. The life of the agreement was three (03) years and hence, it had expired on 25.03.1999. It seems that on a further communication made by the respondent/ appellant, the claimant permitted the respondent to continue as contractor and new agreement dated 18.01.2000 was executed between the claimant and respondent/appellant, tenure of which was 01 year.

4. As per the terms and conditions of the agreement, the Retail Outlet was operated by the respondent. The main job of respondent - contractor was to sell MC/HSD through Retail Outlet which was supplied by the claimant on the stock

transfer basis against AC-5 challans. As per Clause 2(c) of 1996 agreement and as per Clause 16 of 2000 agreement, the respondent was duty bound to deposit the sales proceeds in the claimants bank account on daily basis.

5. The dispute arose about the dues of the claimant and the arbitral tribunal recorded that a joint reconciliation of the Sales Vs. Collection of the Retail Outlet for the period 17.11.1997 upto 30.06.2000 was carried out on 13th & 14th July 2000 wherein the respondent/ appellant had participated. The joint reconciliation statement which shows that an amount of Rs.1,32,43,824/- was less deposited in the bank account of the claimant, had been signed by the respondent/ appellant himself and two Officers of claimant, namely Deputy Manager (Sales) and the Account Officer. A subsequent reconciliation for the period from 01/10/1996 to 16/11/1997 was carried out by the Account Officer of the claimant and an amount of Rs.53,58,628/- was found to be less deposited by the respondent/ appellant in the claimant's bank account.

6. It is recorded by the learned Arbitrator, as noted in the findings extracted herein above, that the respondent had not

denied the reconciliation carried out jointly and that he had signed the joint reconciliation statement. The claim of the claimant for an amount of Rs.1,32,43,824/- is, thus, found to be proved.

7. We may note that even the initial order of admission of the present appeal dated 19.06.2014 records that possibly the appeal may not deserve consideration against the award insofar as it relates to Rs.1,32,43,824/- with interest at the rate of 12% per annum.

8. It is, however, argued by the learned counsel for the appellant/ respondent therein that the whole case of the claimant that the respondent had admitted outstanding amount of Rs.1,32,43,824/- vide letter 14.07.2000 was disbelieved by this Court in the proceeding under Section-138 of the Negotiable Instruments Act, 1881, in the appeal filed under Section 378 of the Code of Criminal Procedure, 1973, against the order of acquittal dated 12.09.2005 passed by the learned Judicial Magistrate First Class, Veraval in Criminal Case No.2131 of 2000. The judgment and order dated 04.08.2015 passed in the appeal filed by the IOC/claimant,

against the acquittal order, has been placed before us to strenuously argue that this Court has found with regard to the preparation of the reconciliation statement, from the deposition of Shri Sanjay Thokle, witness of IOC, it seems that the reconciliation statement was prepared in the year 2002. It is further noted by this Court that in absence of any evidence having been brought on record to establish the actual date of preparation of the reconciliation statement, it would be hazardous to assume that the said statement was prepared prior to the issuance of the cheques in question and that the disputed cheques had been issued in respect of the reconciliation statement.

9. The submission is that this Court has disbelieved the case of IOC of two cheques having been issued by the appellant herein in furtherance of the letter dated 14.07.2000, which was produced by the IOC before the learned Arbitrator to submit that the appellant/ respondent had admitted his liability. This Court has recorded in the judgment in appeal that from a perusal of the letter dated 14.07.2000, though it appears that the accused (appellant) has admitted the liability of Rs.1,32,43,821/- and had also given a schedule of payment

till realization of the said amount, but if at all any cheque had been issued for part payment of the said amount, the same would certainly have found mention in the said communication. It is also noted by this Court that the notice of dishonour had already been served upon the respondent/appellant herein prior to the issuance of the said letter.

10. Based on these findings, it was argued that once this Court has disbelieved the issuance of cheques infurtherance of the letter dated 14.07.2000 or *vice versa*, which were allegedly dishonoured by the bank concerned, the findings returned by the learned Arbitrator of any outstanding against the appellant cannot be sustained.

11. It is vehemently argued before us that the judgment and order dated 04.08.2015 passed in Criminal Appeal No.462 of 2006 in the matter of complaint under Section-138 of the Negotiable Instruments Act, 1881 would have bearing on the findings returned in the arbitral award.

12. This submission of the learned counsel for the appellant needs no deliberation and deserves to be rejected out-rightly for the simple reason that though the letter dated 14.07.2000

was produced before the learned Arbitrator as a document to show an admission of claim on the part of the respondent/appellant, but the same has not been relied upon nor even referred to in the findings returned by the learned Arbitrator, to reach at the conclusion of the claim of the claimant for Rs.1,32,43,824/- stood proved.

13. This is apparent from the extract of the findings noted herein before. The arbitral award is based on the joint reconciliation statement for the period from 17.11.1997 to 30.06.2000, which was duly signed by the respondent showing the outstanding of Rs.1,32,43,824/- and the signature of the respondent/appellant has not been denied. We, therefore, do not find any good ground to attach any error, even an error of law and fact to the findings returned by the learned Arbitrator.

14. In so far as the observations made in the judgment and order dated 04.08.2015 about the opinion drawn by the trial Court that the cheques in question [allegedly dishonoured] had not been issued towards the legally enforceable debt, suffice is to say that the said finding has no bearing on the

findings the arbitration award is concerned, which is based on the evidence placed before the learned Arbitrator.

15. It may also not be out of place to mention here that the appeal filed by the claimant has been dismissed accepting the contention of the respondent therein [appellant herein] to the effect that the Officer of the Company who lodged the complaint was not duly authorized to file the complaint and, as such, the complaint itself was not tenable.

16. As regards the remaining amount of Rs.53,58,628/- claimed by the claimant, pertinent is to note that the respondent had produced the daily collection report of a total amount of Rs.44,801/- and the same has been deducted from the claim amount of Rs.53,58,628/- to arrive at the balance amount of Rs.53,13,827/- for the claim period from July 1996 to June 2000. The outstanding dues for the period from July 1996 to June 2000 had been proved by the claimant by filing the copies of daily stock register, daily stock transfer receipts, bulk product stock ledger for the period from July 1996 to November 1997, daily collection report for the period from 22.11.1996 to 15.11.1997 as also the bank statement for the

period from October 1996 to November 1997 alongwith written statement dated 23.07.2003.

17. A categorical finding has been returned by the learned Arbitrator that the respondent had not denied the correctness of the above noted documents. It is also noted by the learned Arbitrator, while drawing conclusion of outstanding amount of Rs.53,13,827/- towards the respondent, that though the respondent had contended in paragraph- 2.5 of the written statement about certain deposits made by them in the year 1996-97, and the said deposits had not been considered by the claimant, but the respondent had not submitted any supporting document regarding the proof of the said deposits made by them.

18. It is, thus, evident that the learned Arbitrator had considered the deposits made by the respondent of Rs.44,801/- on 14.08.1997 which has been brought on record by way of written submission dated 06.12.2003, noticing that though the same has not been shown by the respondent in the joint reconciliation statement, but in view of the copy of daily collection report dated 14.08.1997 submitted by the

respondent alongwith his written submission, the said amount was required to be deducted or set off against the outstanding dues.

19. All these findings of fact returned by the learned Arbitrator are based on the evidence on record. It is not the case of the appellant that any material evidence produced by the appellant has been ignored by the learned Arbitrator or the findings have been returned based on some extraneous material. It is also not the case of the appellant that the findings of the learned Arbitrator about the outstanding dues are without any cogent evidence. None of the available grounds could be agitated so to attach any illegality much-less patent illegality in the arbitral award.

20. In view of the above discussion, we do not find it a fit case for interference. The appeal stands dismissed, being devoid of merits. No order as to costs.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

A. B. VAGHELA

Original copy of this order has been signed by the Hon'ble Judges.

Digitally signed by: ARUNA BHARATSINGH VAGHELA(HC01079), PRIVATE SECRETARY, at High Court of Gujarat on 16/12/2025 15:25:16