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

% ***Judgment pronounced on: 26.11.2025***

\+ **O.M.P. (COMM) 166/2017**

BAKSHI SPEEDWAYS .....Petitioner

Through: Mr. Ravi Sikri, Sr. Advocate along with Mr. Deepank Yadav, Ms. Kanak Grover and Mr. Nishant Goyal, Advocates.

versus

HINDUSTAN PETROLEUM CORPORATION LTD. ..Respondents

Through: Mr. Avneesh Garg, Mr. P. Sinha, Ms. Srika Selvam and Mr. Harsh Pal, Advocates.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been preferred by the petitioner, assailing an Arbitral Award dated 30.03.2013.

2. The Arbitral proceedings arose in the context of a termination letter dated 08.09.2006 issued by the respondent, whereby the dealership agreement dated 23.08.1995 executed between the parties was terminated. The termination letter dated 08.09.2006 reads as under:-

"HINDUSTAN PETROLEUM CORPORATION LIMITED
BY REGISTERED A.D./U.P.C/ BY COURIER/ BY HAND
Ref: RM:MKTG *Dated: 08.09.2006*
Smt. Aruna Bakshi
Sole Proprieteress
M/s Bakshi Speedway
HPCL Retail Outlet (Petrol Pump)
Sector51

G.B. Nagar, UP

Termination of Petrol/ Diesel Dealer Agreement Dated 23.8.1995

Madam,

1. We refer to the Petrol/ diesel dealer Agreement dated 23.08.1995 (hereinafter called Dealership Agreement) entered into by and between out Corporation and you the above named as Sole Proprietoress of M/s Bakshi Speedways, whereunder the Corporation appointed you as its Dealer for Sale of Petroleum products named in the agreement, as per and in accordance with the terms and conditions of the aforesaid dealership agreement.

2. On an inspection carried out at the subject Retail Outlet by your executives O.C. officers, Shri A.K. Chug and Shri Naveen Gakhar, Executive Sales Officer, Noida Sales Area on 3.7.2006 following amongst other irregularities were observed by the Inspecting Officer and immediately an inspection report was prepared recording the said irregularities which was jointly singed by them and yourselves.

(A) Short Deliveries

a. The original said inspection on 3.7.2006 It was found that one MS Nozzle of the MPD DU was delivering short by 80 ml for 5 ltrs.,

b. MS Nozzle L&T Make DU was delivering short by 60 ml per 5ltrs.

c. POWER Nozzle on the MPD DU was delivering short by 80 ml per 5 ltrs and

d. HS Nozzle of Avery DU delivering short by 40 mid for 5 ltrs.

(B) Tampering of Dispensing Unit

Further, on a close Inspection of the DU by the Inspecting Officer it was also found that the L&T Make and Avery Make DU had been tampered by providing additional hole on metering unit in which metallic needle was found to be inserted. These holes and needles were unauthorisedly developed and/ or inserted by you for tampering with the unit so as to effect short delivery as mentioned above since the whole niddles are not the original designs/ parts of the said Dispensing Unit. These needles were seized and confiscated by our Inspecting officers which event was recorded on the inspection record dated 3.7.2006 jointly singed by the Inspecting Team and yourself.

3. Hence the above action of yours are in violation to clause No. 16, 18, 22, 31, 42, 55(j) and 55(k) of the Dealership Agreement.

4. Accordingly, a show cause notice DRO /RET/AKG July 28,2006 was served on you to show cause why the dealership agreement dated 23.8.1995 entered into between HPCL and you, as Sole Proprieteress of M/s Bakshi Speedways should not be terminated for the grounds stated in

the said notice. In the reply to the said show cause notice we received your reply dated 14.8.2006.

5. We have carefully and thoroughly examined your said reply dated 14.8.2006 but found the same to be totally unsatisfactory since the finding observed ruing the inspection were that the units have been tampered with and in two DUs Metalic needles were found to be fitted in the calibration hole. The units of MS (L&T make) and HSD (Avery Make) were delivering 60 ml and 40 ml short respectively when the needle was in inserted position. On removal of the needle the Units were delivering the correct quantity. The needle was taken out and taken into custody. This fact was observed by you and clearly mentioned on page No. 3 of Inspection Report. The Inspection Report has been duly signed by you.

On 10.7.2006, HPCL had called the Engineer from L&T as well as Avery at the outlet and they inspected the unit and have confirmed that the units have been tampered with by drilling an additional hole on the shaft.

As regard your contention that there is a negative variation in stocks the customer has been benefited by receiving more product and it is you who has suffered due to product loss, please be clarified that the fact of short deliveries as mentioned above and recorded in the inspection record was observed in your presence and you had yourself singed the said Inspection report jointly with the Inspection officers recording these events. Hence, there is no merit in your arguments.

6. Based on the above facts, and that since the above said breaches and violation committed by you are of serious nature, violating clause No. 16, 18, 22, 31, 42, 55(j) & 55(k) of the Dealership agreement dated 23.8.1995 we hereby invoke our right to terminate the dealership agreement dated 23.08.1995 as per clause No. 22, 31, 55(j) & 55(k) of the Dealership Agreement and we hereby terminate the aforesaid Dealership Agreement forthwith.

7. However, the termination of the Dealership agreement is without prejudice to the right of the Corporation against you in respect of any matter antecedent to this termination.

8. Consequent upon the termination of the dealership agreement, the licence and the permission to use the premises and outlet stands terminated as provided for under clause No. 4 of the Dealership Agreement. As such and in line with clause No. 57 of the Dealership Agreement we resume operations from this retail outlet forthwith concurrent to the termination of the said Dealership Agreement. Please do not enter upon the retail outlet premises without our written permission and without the presence of our authorized representative. Simultaneously, you are advised to remove any article or goods belonging to you and staff employee by you and settle the accounts with the corporation forthwith.

9. Our authorized representative Shri Naveen Gakhar Executive Sales Officer, NOIDA Sales Area, will visit the site of the subject Retail

Outlet for completing all further formalities consequent upon the termination of the aforesaid dealership agreement and taken into custody of our equipment installed at the site.

10. Should you have any dispute or difference arising out of or in relation to the dealership agreement, you are free to invoke Clause No. 66 of the Dealership Agreement for its adjudication through the process of arbitration as already agreed between us. The arbitrator is already named in the aforesaid clause of the dealership agreement. Please note if you bring any action in any court, the same shall not be maintainable as being barred under the Arbitration & Conciliation Act, 1996 and it shall be vehemently contested at your costs.

11. Your attention is also drawn to clause No. 4, 56, 57 and 58 of the aforesaid Dealership agreement and you are required to comply therewith.

Thanking you,

Very Truly Yours
Sd/ Rajnish Mehta
Chief Regional Manager &
Duly constituted attorney

3. It can be seen that the decision to terminate the dealership agreement dated 23.08.1995 between the parties was on account of allegations regarding short deliveries and tampering of dispensing unit. The termination letter also records that a show cause notice dated 28.07.2006 was served on the petitioner to which a reply dated 14.08.2006 was sent by the petitioner. Paragraph 6 of the termination letter records that the termination of the dealership agreement was being resorted to in terms of Clause nos. 16, 18, 22, 31, 42, 55(j) & 55(k) of the Dealership Agreement.

4. Clause 55(k) of the Dealership Agreement is in the following terms:

"55. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONTAINED, THE CORPORATION SHALL BE AT LIBERTY TO TERMINATE THIS AGREEMENT FORTHWITH UPON OR AT ANY TIME AFTER THE HAPPENING OF ANY OF THE FOLLOWING NAMELY :-

…….

…….

(K) IF THE DEALER SHALL EITHER HIMSELF OR BY HIS SERVANTS OR AGENTS COMMIT OR SUFFER TO BE COMMITTED ANY ACT WHICH, IN THE OPINION OF THE CHIEF/ SENIOR REGIONAL MANAGER OF THE CORPORATION FOR THE TIME BEING IN WHOSE DECISION SHALL BE FINAL, IS PREJUDCIAL TO THE INTEREST OR GOOD NAME OF THE CORPORATION OR ITS PRODUCTS THE CHIEF/ SENIOR REGIONAL MANAGER SHALL NOT BE BOUND TO GIVE REASON FOR SUCH DECISION".

5. Pursuant to termination of the dealership agreement extensive litigation ensued between the parties. The petitioner challenged the termination by filing Writ Petition (Civil) No. 14426 of 2006 before this Court. By order dated 13.09.2006, the Court issued notice and stayed the operation of the termination letter. It is submitted that the respondent, aggrieved by this interim protection, preferred LPA No. 1913 of 2006. The Division Bench, on 19.09.2006, permitted the respondents to approach the Single Judge with an application seeking modification/recall of the order dated 13.09.2006. Pursuant to this liberty, the respondents filed an application under Section 151 CPC for recall of the stay order dated 13.09.2006.

6. In the meantime, the petitioner filed Contempt Case No. 1257 of 2006 alleging non-compliance of the stay order. By judgment dated 05.04.2008, the Court dismissed both writ petition and the contempt petition, holding that the controversy involved seriously disputed questions of fact, unsuitable for adjudication in writ proceedings, and that the parties ought to pursue appropriate civil or arbitral remedies. The petitioner's LPA No. 248 of 2008 challenging this judgment was also dismissed by the Division Bench on 20.05.2008.

7. Thereafter, the petitioner invoked Section 9 of the Arbitration and

Conciliation Act, 1996. *Vide* order dated 22.05.2008, the court granted interim relief. The respondent challenged this order in FAO No. 186 of 2008. The FAO was disposed of vide order dated 29.07.2008. The same is reproduced as under –

> It has been agreed by both the counsels that so far as the impugned order dated May 22, 2008 is concerned, it may be set aside but on the condition that the Respondent shall move an application before the learned Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996 seeking a similar relief as was sought before the learned Additional District Judge, who passed the impugned order and the Arbitrator shall deal with any such application on its own merits in the light of the submissions that might be made before him by counsels for both the sides.
>
> In view of the above, it is clarified that the order passed by this Court on May 22, 2008 will not come in the way of the Arbitrator in passing an order on the application of the Respondent under Section 17 of the Arbitration and Conciliation Act, 1996 as and when such an application is filed before him. The Arbitrator shall also decide the question of possession. Till then, the parties shall maintain status-quo.
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> With these directions, the appeal is disposed of.
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> Dasti.

8. In the aftermath thereof, the present arbitral proceedings commenced in terms of the arbitration agreement incorporated in the Dealership Agreement dated 23.08.1995.

9. In the statement of claims filed on behalf of the petitioner, *inter-alia*, the following claims were raised:-

i. Loss of income of Rs. 18,14,454/-

ii. Sum of Rs. 25,00,000/- towards loss of goodwill.

iii. Idling charges amounting to Rs. 3,60,000/-

iv. Interest.

v. Costs of Rs. 5,00,000/-

10. Furthermore, in the statement of claims filed on behalf of the petitioner, it was prayed as under –

> *"a) claims may be allowed, after quashing / setting aside the termination letter dated 8.9.2006."*

11. The respondent also filed a counter claim of Rs. 1,62,00,000/- towards loss of revenue on account of no sales for 2 years, Rs. 21,00,000/- towards loss on account of Idling of the fixed assets, Rs. 5,28,000/- towards lease rental paid to Noida authorities for 2 years, Rs. 1,00,00,000/- towards loss of goodwill due to closure of the outlets and Rs. 10,00,000/- towards cost of litigation from September, 2006. Apart from the aforesaid, the respondent also claimed 18% interest per annum from 08.09.2006 till the date of the award and thereafter at the rate of 18% on the amount of the award until payment by the claimant and/or realization of the awarded amount along with interest thereon.

AWARD

12. Elaborate evidence was led before the Arbitral Tribunal on behalf of both the parties. On behalf of the petitioner/claimant, Ms. Aruna Bakshi, Mr. Kamaljeet Singh Kalsi and Mr. M.M. Gulati appeared as witnesses and tendered their evidence. On an application made on behalf of the petitioner/claimant U/s. 27 of the A&C Act, Sh. K.D. Khan, Service Engineer of M/s. Avery India Ltd., was also examined as PW-4.

13. On behalf of the respondent/counter-claimant Sh. Vineet Pohani

appeared as respondent's witness No.1 and tendered his evidence.

14. Thereafter, an application was filed on behalf of the petitioner/claimant for summoning Sh. Naveen Gakhar, then Executive Sale Officer, for examination. The application was allowed, and Sh. Naveen Gakhar was thereafter, examined.

15. The learned Arbitrator noted that the petitioner/claimant relied on various irregularities in the inspection report to contend that, owing to these infirmities, the report could not have formed the basis for issuing the termination letter dated 08.09.2006. The irregularities relied upon by the petitioner/claimant are as under -

i. The inspection dated 03.07.2006 was conducted in a casual manner; and while calculating stock variations, the readings of the opening and closing stocks were incorrectly taken;

ii. the inspection report shows that on 03.07.2006, 3000 ltrs. of product was tested to verify short/ excess delivery, which has been admitted by two witnesses of HPCL, Sh. Naveen Gakhar and Sh. Vineet Pohani, on 28.07.2012 and 15.11.2011 respectively;

iii. for verifying short/ excess delivery, non-standard conical measures having lot of dents were used;

iv. a wrong date was mentioned on the inspection report, which was later corrected;

v. the first page of the inspection report was changed by correcting the figures, by Sh. Naveen Gakhar and therefore, the inspections are incorrect, tampered with, faulty and no reliance could placed on them by the respondent-company for terminating the dealership.

16. The learned Arbitrator also took note of the following submissions of

the petitioner/claimant:-

i. For verifying short delivery, standard conical measures were not used;

ii. Since the claimant's RO was re-calibrated on 30.06.2006, i.e. three (3) days prior to the inspection date 03.07.2006 and since during the re-calibration, rate of delivery was okay and W& M seal was intact, it is nearly impossible that the rate of delivery would be affected within two days despite the Weights & Measures seals being intact; the short deliveries were made out by HPCL with malafide intentions;

iii. With regard to tampering of dispensing units, apart from other facts, the claimant's RO cannot be terminated as the relevant provision of marketing Discipline Guidelines, 2005 provides that the additional/ unauthorized fittings fitted in the dispensing unit with the intention of manipulating the delivery, would entail penal action as provided in Appendix-I and since in this case, no such mechanism/ fitting gear was found fitted in the dispensing unit and no such intention of the claimant was proved, the RO could not be terminated on this ground;

17. The following submissions of the petitioner/claimant were also recorded : -

i. The dealership was terminated on irrelevant and non-existent cause; the judgment passed by the Supreme Court in Harbans Lal Sahania & Anr. Vs IOCL, reported as (2003) 2 SCC 107 and the judgement of Privy Council in Nazir Ahmed vs King Emperor, AIR 1936 PC 253 were relied upon;

ii. Once W&M seals are found intact, the dealer cannot be held responsible for any error or defect as to measurement;

iii. The sanctity of the letter dated 17.07.2006 of Avery India Ltd. is

disputed as Sh. K.D. Khan of Avery India Ltd., in his cross-examination deposed that opposed to what the report says, he was not personally present on 10.07.2006 at the claimant's RO and no report was prepared by him;

iv. The petitioner/claimant relied on the judgements in Hindustan Petroleum Corporation Ltd. vs Super Highway Services Ltd., reported (2010) 3 SCC 321; Bharat Filling Station & Anr. vs Indian Oil Corporation Ltd., reported as 104 (2003) DLT 601; Ramana Dayaram Shetty vs Intemational Airport Authority of India & Ors, reported as (1979) 3 SCC 489; and Khanda vs Govt. of Malaya, reported as (1962) AC 322;

v. The judgment of the Supreme Court in Indian Oil Corporation Ltd. vs Amritsar Gas Services & Ors., reported as (1991) 1 SCC 533 has no application;

vi. The case of the claimant though relates to contractual matter, is covered by the principles under the Public Law;

vii. The High Court of Calcutta in the case of Kundan Singh vs Hindustan Petroleum Corporation Ltd., reported as (2011) 5 CHN 729, held that the award of the arbitrator that he has no power to restore the distributorship is illegal, arbitrary and oppose to public policy and thereafter, directed restoration of dealership; the said judgement of the learned Single Judge was upheld by the Division Bench;

18. After considering the pleadings, evidence and respective submissions of the parties, the learned Arbitrator held as under:-

> *"23. From the aforesaid, it is absolutely clear that Smt. Aruna Bakshi was not present during the inspection on 03.07.2006 even though the inspecting team started its inspection at 7.30 - 7.45 a.m., about which she*

was informed by her staff and despite her house being only 15 - 20 minutes away by car from the RO. No explanation as to why she did not take any effort to reach the RO when the inspecting team was busy inspecting the said RO, has been given by Smt. Bakshi. The inspection was carried out in the presence of her staff, who reported the entire thing to her. She signed the inspection report after reading it. Even though the inspection report apart from mentioning about the short delivery and stock variation and other irregularities clearly mentions, "Metallic Needle fitted in calibration holes which on taking out gives correct delivery and short delivery when inserted Metallic Needle taken out and kept in custody", Smt. Bakshi did neither protested about the said remarks nor questioned and verified the correctness of the said remarks from her staff while signing the inspection report. Therefore, it is clear that all complaints with regard to inspection reports are being made by Smt. Aruna Bakshi only as an afterthought and to save the retail outlet. From the aforesaid evidence, one more thing is very clear that even the annual calibration done on 30.06.2006, which is very heavily relied upon by the claimant's advocate to rebut the illegalities said to be committed by it with regard to short delivery and tampering with the dispensing units, was also not done in front of Smt. Aruna Bakshi, as she stated that during the said calibration, she came and she went away. Therefore, no benefit of said calibration can be given to her. The claimant, though clearly. stated that the inspection was done in presence of her staff, did not produce anyone of them to support her case that the inspection was not done in accordance with the provided procedure. In view of the aforesaid, all the arguments with regard to irregularity of the inspection cannot sustained and therefore, are rejected.

24. The argument of the advocate for the claimant that the verification of short/ excess delivery was done by non-standard conical measures having lots of dents fails in view of the statement of the claimant's first witness - Smt. Aruna Bakshi that neither she nor any of her staff members checked the measuring canes brought by the inspecting team on 03.07.2006, whereas, Sh. Naveen Gakhar, the officer present during the inspection dt. 03.07.2006, in his cross-examination with regard to the measuring canes being of non-standard stated that 5 Itrs. calibrated measure was used to check the delivery, therefore, it cannot be accepted at this stage that the verification of excess/short delivery was done by a non-standard measuring cane.

25. The allegations of the advocate for the claimant that the inspection and termination has been done malafidely also deserves to be rejected in view of clear statement of Smt. Aruna Bakshi that she had no basis to allege that Sh. Naveen Gakhar was hand in glove with the mafia.

26. From the records of the case and from the statements of the witnesses, it is clear that the metering unit had an additional hole which was not part of the original component and which in the event of the seal being broken or the sealing not being done properly can be used to manipulate the meter assembly and thereby affect the delivery of the product. During the course of his examination, Sh. Naveen Gakhar has stated that he found the needle lying on the ground and he picked it up and inserted in the metering unit and took the photographs. At this stage, one thing is very relevant that what Sh. Naveen Gakhar has stated, was never stated even by the claimant, therefore, the evidence of Sh. Naveen Gakhar is credible. The letter dt. 29.06.2006 annexed as Annexure R-11 by the respondent, written by one Vijay Vir mentioning the illegality and irregularity being committed at the claimant's RO and describing the method of inspection has been disputed by the claimant. A lot has been said about the said letter and its author. But what is surprising is that the said letter is received in the office of HPL, thereafter an inspection is carried out and the irregularities mentioned in the said letter are found to be correct. In these circumstances, whatever be the intention of the writer of the said letter, the illegalities and irregularities committed by the claimant cannot be overlooked and ignored. The language of the letter shows that it has been written by a person who is well aware with the functioning of the retail outlet. Since no enquiry in this regard has been done by HPCL nor the claimant has brought out any record to show as to how the writer of the said letter had such vital information, I cannot express any opinion in this regard.

27. If the major irregularities mentioned in the inspection report are found to be correct, then certain clerical errors cannot be relied upon to discredit the inspection report.

28. The statement of Sh. K.D. Khan, the service engineer from Avery India Ltd. also deserves to be discussed as the claimant has relied upon his statement to argue to discredit the report dt. 17.07.2006 issued by Avery India. Sh. K.D. Khan during his examination stated that he did not visit the claimant's RO as has been mentioned in the report dt. 17.07.2006 but admitted that he had inspected the metering assembly in question on the direction of Sh. Rakesh Yadav, Area Manager, in his office and that there was an additional hole on the shaft. The evidence of the witness read in totality rather credits the inspection report dt. 17.07.2006 and supports the observations made therein.

29. Prior to issuance of the termination letter, the claimant was issued a show cause notice dt. 28.07.2006, which was replied to by the claimant on 14.08.2006, wherein the claimant has rather questioned the authority of HPCL and its officials in carrying out the inspection and checking the

deliveries. The said reply was considered by the company and thereafter by a speaking order, HPCL by its letter dt. 08.09.2006 terminated the dealership of the claimant for violation of Clause Nos. 16, 18, 22, 31, 42, 55(j) and 55(k) of the dealership agreement.……..

30. In view of the aforesaid, I hold that the inspection report dated 03.07.2006 and the termination letter dated 08.09.2006 are just and legal and do not suffer from illegality. Therefore, the claim of the claimant in this regard is rejected. The rest of the claims of the claimant, which could only follow in the event of its claim regarding legality of the inspection report and the termination letter sustaining, are also rejected. In view of this finding, the judgements referred to by the counsels for the claimant and the respondent/ counter claimant do not do not apply in the facts of this case.

31. In view of the aforesaid, the question with regard to the power of this Tribunal to grant restoration of dealership does not arise and therefore, is not being discussed."

SUBMISSIONS OF RESPECTIVE COUNSEL

19. Learned senior counsel for the petitioner has vehemently contended that the impugned Arbitral Award suffers from patent illegality as it is wholly contrary to the evidence on record. He submits that there were falsities and material errors in the Inspection Report dated 03.07.2006, which formed the primary basis for taking action against the petitioner. He has copiously referred to the entire arbitral record to emphasise that all allegations against the petitioner, *inter alia*, with regard to stock variation, short deliveries, and tampering of the dispensing unit, are completely misconceived.

20. As regards the allegations of stock variation, it has been emphasised that in the inspection report dated 03.07.2006, the opening stock of Motor Spirit and High Speed Diesel was incorrectly noted therein. Instead of taking the closing stock of the previous inspection dated 06.03.2006 as the opening stock of the inspection dated 03.07.2006, HPCL had taken the Opening

Stock of the Previous Inspection i.e. 06.03.2006 as the Opening Stock of the Inspection dated 03.07.2006.

21. It is further submitted that the officers of the respondent acknowledged the errors referred above and made corrections to the Inspection Report dated 03.07.2006 on 10.07.2006. In view of these corrections, the revised calculations reflected a negative stock variation, thereby implying excess loss (possibly due to leakage, evaporation etc.) and/ or excess deliveries to the customers.

22. It is further submitted that HPCL, despite having raised the issue of stock variation in its Show Cause Notice Dated 28.07.2006, itself abandoned the same in its Termination Letter dated 08.09.2006.

23. As regards the allegation of "Short Deliveries", it is submitted that the Inspection Report dated 03.07.2006 had falsely recorded that four dispensing units were delivering short quantities by 60 ml, 80 ml, 80 ml and 40 ml respectively.

24. It is further emphasised that, admittedly, during the inspection dated 03.07.2006, the Weights and Measures seals on all the dispensing units were found to be intact, and the same is duly recorded in the inspection report.

25. It is submitted that the dispensing units had been checked and re-calibrated by the Weights and Measures Department in the presence of HPCL to ensure correct deliveries on 30.06.2006. Therefore, it was impossible to fathom that in a matter of 2-3 days, the dispensing units would start delivering incorrect quantities. It is also the case of the petitioner that the testing was conducted with a non-standard, dented 5 Litre measuring flask, and HPCL continued testing over and over again till 3000 litres of fuel was dispensed, only to make out a false case against the petitioner.

26. It is emphasised that the respondent did not produce any evidence to show that it had used a Standard Measuring Flask approved by the Weights and Measures Department. In the present case, 3000 litres of fuel was dispensed for testing, thereby signifying a clear abnormality and malice.

27. As regards, allegation of tampering of the dispensing unit it is submitted that the Inspection Report dated 03.07.2006 contains a patently false observation that "*Metallic Needle was found fitted in Calibration Hole, which on taking out gives correct delivery and short delivery when inserted. Metallic needle. Metallic Needle taken out and kept in custody*".

28. It is further submitted that the reliance placed by the respondent on reports dated 17.07.2006 issued by Larsen & Toubro Ltd. and Avery India Ltd. in support of its allegations of tampering of the dispensing unit was misconceived inasmuch as no evidence was produced by the respondent to suggest that Metering Assembly inspected by Larsen & Turbo Ltd. and Avery India Ltd. were in fact the ones, which had been removed from the petitioner's retail outlet. It is submitted that even Larsen and Toubro in its report dated 17.07.2006 had also observed that meter assembly with additional hole could only be manipulated if Weights and Measures Seal is tampered or if sealing had not been done properly. Admittedly, in the present case, neither the Weights and Measures Seal were tampered nor was the sealing not done properly.

29. As regards, the report dated 17.07.2006 issued by Avery India Ltd. it is submitted that the same is false and fabricated as it falsely records that Mr. K.D. Khan had visited the Retail Outlet for inspection. It is emphasised that during the arbitration proceedings, Mr. K.D. Khan had himself admitted that he had never visited the Retail Outlet. He had also stated that he was

unaware as to whether due to an additional hole, any tampering was possible or not.

30. It is further submitted that during the arbitral proceedings, the petitioner insisted upon the examination of Mr. Naveen Gakhar (official of the respondent) who prepared the inspection report dated 03.07.2006. It is emphasised that during his cross-examination Mr. Naveen Gakhar admitted that during the inspection he did not see the needle inserted into the metering unit and that he himself picked up the needle and inserted it into the metering unit, and had found no variation by the effect of the needle. He even admitted that he had taken the pictures after inserting the needle in the metering unit.

31. Thus, it is submitted that the observations contained in the Inspection Report dated 03.07.2006 qua the issue of tampering of the dispensing unit were wholly false, and the falsity thereof had been admitted and established during the arbitration proceedings. It is further submitted that the termination action was taken against the petitioner by relying upon clauses in the dealership agreement which were not even applicable/ abstracted in the facts and circumstances of the case.

32. Learned senior counsel for the petitioner has also relied upon the following judgments:-

i. Ssangyong Engineering and Construction Co. Ltd. vs. NHAI [(2019) 15 SCC 131]

ii. Bhanumati Jaisukhbhai Bhuta vs. Ivory Properties and Hotels Pvt. Ltd. [2020 SCC OnLine Bom 157]

iii. Patel Engineering v. NEEPCO [SCC OnLine SC 466]

iv. Satluj Jal Vidyut Nigam Ltd. vs. Jaiprakash Hyundai Consortium and

Ors. [2023 SCC OnLine Del 4039]

v. Bharat Filling Station vs. Indian Oil Corporation [2012 SCC OnLine Del 3451]

vi. Randhawa Filling Station vs. Chairman and M.D. BPCL [2016 SCC OnLine P&H 1488]

vii. Laltu Filling Station vs. Union of India [2016 SCC OnLine Cal 626]

viii. Bharat Petroleum Corporation Ltd. vs. Pal Fillings Station [2015 SCC OnLine P&H 7906]

ix. Indian Oil Corporation Ltd. vs. Bhagwan Bala Sai Enterprises [2013 SCC OnLine Mad 1445]

33. Learned counsel for the respondent has controverted the aforesaid submissions as regards stock variation. It is submitted that the consolidated inspection readings chart, based on the figures in the inspection reports dated 06.02.2006, 06.03.2006 and 03.06.2006 (corrected 03.07.2006), shows a negative stock variation of 2049L in Tank-1, 1132L in Tank-2 and 1685L in Tank-3. The said figures are admitted by the claimant inasmuch as the only error in the inspection report was the mention of the opening stock of the last report as the opening stock of the report dated 03.07.2006 and on rectifying the said clerical mistake, the figures arrived at were based on the admitted stock balance found during the inspection.

34. Further, it is submitted that the factum of stock variation is well admitted by the claimant/ petitioner herself, albeit with an explanation that since the said variations were negative, it shows excess delivery though, at no point of time, any such alleged discrepancy was reported to the respondent. In fact, such conduct of the claimant further corroborates the factum of her manipulating the deliveries.

35. As regards short deliveries, it is submitted that during the inspection, following short deliveries were found as mentioned in the acknowledged inspection report dated 03.07.2006:-

a) MS nozzle on L&T dispensing unit was giving short deliveries by 60 ml per 5 litres.
b) MS nozzle on MPD dispensing unit was giving short deliveries by 80 ml per 5 litres.
c) Power nozzle on MPD dispensing unit was giving short deliveries by 80 ml per 5 litres.
d) HSD nozzle on Avery dispensing unit was giving short deliveries by 40 ml per 5 litres.

36. It is submitted that the said short deliveries directly contravene the applicable guidelines as also Clause 31 of the Dealership Agreement, which stipulates that the dealer shall not sell the products at rates higher than prescribed.

37. As regards, tampering of dispensing units, it is submitted that the presence of additional holes in the DUs is duly proved, *inter alia*, on the basis of the reports of the L&T and Avery India Ltd.

38. It is emphasised that in the deposition of the claimant's witness, Mr. K.D. Khan (Engineer of M/s Avery India Ltd.), it was admitted that the concerned report issued by Avery India Ltd under the signatures of Mr. Rajesh Yadav (Area manager). It was further stated that an Assembly Metering Unit belonging to M/s Bakshi Speedways (the petitioner herein) had come to the office of the Avery India Ltd. It is emphasised that the impugned award renders elaborate factual findings which cannot be interfered with in these proceedings under Section 34 of the Arbitration and

Conciliation Act. It is further submitted that in terms of settled legal position no case for interference with the Arbitral Award has been made out.

REASONING AND CONCLUSION

39. At the outset, it is noticed that the petitioner has sought to re-agitate the very same factual aspects that were strenuously canvassed during the arbitral proceedings.

40. It is contended that the Inspection Report dated 03.07.2006 (as also the subsequent Inspection Report dated 10.07.2006) suffers from perversity and contains gross errors apparent on the face of the record.

41. Reliance is placed on the evidence adduced before the Arbitral Tribunal to contend that the allegations of tampering with the dispensing unit were totally misconceived.

42. Learned senior counsel for the petitioner has sought to emphasize the following aspects:

i. There was an apparent error in the Inspection Report dated 03.07.2006, inasmuch as the same wrongly takes the opening stock of the previous inspection dated 06.03.2006 as the opening stock for the purpose of the inspection done on 03.07.2006. This is clearly anomalous as the closing stock of the previous inspection (conducted on 06.03.2006) ought to have been taken as the opening stock for the purpose of inspection held on 03.07.2006.

ii. Because of the aforesaid anomaly, initially a positive stock variation was sought to be alleged. However, after the aforesaid error was rectified the revised calculations reflected a negative stock variation, thereby implying excess loss (possibly due to leakage, evaporation

etc.) and/ or excess deliveries to the customers. It was emphasised that this is clearly incongruous inasmuch as there is no rationale for the dealers to make excess deliveries to any customer.

iii. It was emphasised that the concerned witnesses on behalf of the respondent affirmed during the course of evidence before the Arbitral Tribunal that the Weights and Measures seals on the dispensing units were intact. It was also emphasised that the dispensing units have been checked and re-calibrated by the Weights and Measures Department on 30.06.2006. Therefore it was wholly untenable and without any material basis to hold that within a matter of 2-3 days of such re-calibration, the dispensing units would start delivering incorrect quantities.

iv. Although, the inspection report notes that a metallic unit was found "fitted in the calibration hole, which on taking out gives correct delivery and short delivery when inserted", the evidence of Mr. Naveen Gakhar revealed that the needle was not in fact found to be inserted but instead found "lying on the ground next to the dispensing unit".

v. It is emphasised that Mr. Naveen Gakhar also admitted that he did not see the needle inserted into the metering unit, and that he had himself picked and inserted it into the metering unit. Thus, it is wholly untenable to allege that the petitioner had himself tempered the dispensing unit specially since the observations in the Inspection Report dated 03.07.2006 were belied by the evidence of Mr. Naveen Gakhar and also considering that the Weights and Measures seals were found to be intact. In this regard, it is emphasised that even

Larsen and Toubro in its report, observed that the metering assembly with additional hole could only be manipulated if the Weights and Measures seal had been tampered with.

42.1 A careful perusal of the arbitral record reveals that these very aspects were also extensively urged before the learned Sole Arbitrator, who ultimately gave at a categorical finding (in paragraph 30 of the Award) that the Inspection Report dated 03.07.2006 and the Termination Letter dated 08.09.2006 do not suffer from any illegality. It is noticed that the conclusion drawn in the impugned award was on account of the following circumstances:-

a) That the Inspection Report dated 03.07.2006 was signed by the proprietor of the petitioner after reading it and without any protest. The said inspection report clearly mentions that "Metallic Needle fitted in calibration holes which on taking out gives correct delivery and short delivery when inserted Metallic Needle taken out and kept in custody".

b) That there was no material to hold that the verification of short/ excess delivery was done by non standard conical measures (paragraph 24 of the Award).

c) That the metering unit of the dispensing units did have an additional hole which was not part of the original component and which could be used to manipulate the delivery of the product. (paragraph 26 of the award)

d) The award relies upon the inspection report of Avery India Ltd. and also deals with the alleged discrepancies therein. (paragraph 28 of the award).

43. It is thus evident that the conclusion drawn by the Arbitral Tribunal turns on appreciation of the evidence. Given the scope and nature of these proceedings, it would not be apposite for this Court to embark upon an exercise of re-appreciating the evidence and arriving at a difference conclusion.

44. The law is well settled that the appreciation of evidence is the exclusive domain of the Arbitral Tribunal. The Arbitrator is the sole judge of the quality and quantity of evidence. In proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 this Court would not embark upon the exercise of re-appreciating the evidence so as to arrive at a different conclusion. The legal position in this regard has been reiterated time and again by the Supreme Court. Recently, in ***OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited & Anr.***, 2024 SCC OnLine SC 2600, the Supreme Court has observed as under –

> *"60. Sub-section (2-A) of Section 34 of the 1996 Act, which was inserted by 2015 Amendment, provides that an arbitral award not arising out of international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is visited by patent illegality appearing on the face of the award. The proviso to subsection (2-A) states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence. In Saw Pipes (supra), while dealing with the phrase "public policy of India" as used in Section 34, this court took the view that the concept of public policy connotes some matter which concerns public good and public interest. If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that illegality must go to the root of the matter and if the illegality is of trivial nature, it cannot be held that award is against public policy.*
>
> *61. In Associate Builders (supra), this Court held that an award would be patently illegal, if it is contrary to:*
> *(a) substantive provisions of law of India;*
> *(b) provisions of the 1996 Act; and*

(c) terms of the contract.
The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(a) of the 1996 Act. Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.

62. In Ssangyong (supra) this Court specifically dealt with the 2015 Amendment which inserted sub-section (2-A) in Section 34 of the 1996 Act. It was held that "patent illegality appearing on the face of the award" refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also clarified that what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to „public policy" or „public interest", cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality. Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award.

63. Perversity as a ground for setting aside an arbitral award was recognized in Western Geco (supra). Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.

64. In Associate Builders (supra) certain tests were laid down to determine whether a decision of an arbitral tribunal could be considered perverse. In this context, it was observed that where : (i) a finding is based on no evidence; or (ii) an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse. However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.

65. In Ssangyong (supra), which dealt with the legal position post 2015 amendment in Section 34 of the 1996 Act, it was observed that 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. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse

and thus patently illegal. It was also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence in as much as such decision is not based on evidence led by the parties, and therefore, would also have to be characterized as perverse.

66. The tests laid down in Associate Builders (supra) to determine perversity were followed in Ssyanyong (supra) and later approved by a three-Judge Bench of this Court in Patel Engineering Limited v. North Eastern Electric Power Corporation Limited.

67. In a recent three-Judge Bench decision of this Court in Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd. 2024 INSC 292, the ground of patent illegality/perversity was delineated in the following terms:

> *"40. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; Or, that the view of the arbitrator is not even a possible view. 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 under the head of patent illegality. An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice."*

68. The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. <u>It is only when an arbitral award could be categorized as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an ward as is clear from the provisions of subsection (2- A) of Section 34 of the 1996 Act</u>."

45. A Coordinate Bench of this Court in ***In-Time Garments Pvt Ltd V. HSPS Textile Pvt Limited***, 2024:DHC:8757, has observed as follows:-

"10. ……Under Section 34 of the Arbitration Act the Court cannot re-

appreciate evidence and substitute its own conclusion to the one arrived at by the Arbitrator even though a different conclusion can be arrived at on re-appreciating evidence. As has been rightly held by the Courts that while exercising jurisdiction under Section 34 of the Arbitration Act, the Courts do not sit at a Court of appeal and the onus to show that the time was the essence of the contract is on the Petitioner herein and the Petitioner cannot make a grievance that the Respondent did not examine Ms. Shilipi Mathur…."

46. This Court has also noticed that in the present case, the respective monetary claims of the petitioner/claimant and also the respondent were found to be unsubstantiated and, therefore, both the claims and the counter-claims were rejected. A perusal of the evidence does indeed reveal that there is hardly any material put forth by the parties in support of their claims. Hence, no fault can be found with the rejection of both the claims and the counter-claims by the learned Arbitrator. It is also noticed that Clause 55(k) of the Dealership Agreement between the parties is couched in extremely wide terms. The same is once again reproduced hereunder:-

"55. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONTAINED, THE CORPORATION SHALL BE AT LIBERTY TO TERMINATE THIS AGREEMENT FORTHWITH UPON OR AT ANY TIME AFTER THE HAPPENING OF ANY OF THE FOLLOWING NAMELY :-

……..

……..

(K) IF THE DEALER SHALL EITHER HIMSELF OR BY HIS SERVANTS OR AGENTS COMMIT OR SUFFER TO BE COMMITTED ANY ACT WHICH, IN THE OPINION OF THE CHIEF/ SENIOR REGIONAL MANAGER OF THE CORPORATION FOR THE TIME BEING IN WHOSE DECISION SHALL BE FINAL, IS PREJUDCIAL TO THE INTEREST OR GOOD NAME OF THE CORPORATION OR ITS PRODUCTS THE CHIEF/ SENIOR REGIONAL MANAGER SHALL NOT BE BOUND TO GIVE REASON FOR SUCH DECISION".

47. Given the scope and breath of the respondent's power to terminate the dealership, it would be wholly inappropriate for this Court, to render any finding/s which would, in effect, interdict with the termination of dealership.

48. It is also noticed that the Supreme Court in the landmark judgment ***Indian Oil Corpn. Ltd. v. Amritsar Gas Service***, (1991) 1 SCC 533, has categorically held that the restoration of distributorship is contrary to the mandate provided under Section 14(1) of the Specific Relief Act. The relevant portion of the judgment is reproduced as under -

> *"12. The arbitrator recorded finding on Issue No. 1 that termination of distributorship by the appellant-Corporation was not validly made under clause 27. Thereafter, he proceeded to record the finding on Issue No. 2 relating to grant of relief and held that the plaintiff-respondent 1 was entitled to compensation flowing from the breach of contract till the breach was remedied by restoration of distributorship. Restoration of distributorship was granted in view of the peculiar facts of the case on the basis of which it was treated to be an exceptional case for the reasons given. The reasons given state that the Distributorship Agreement was for an indefinite period till terminated in accordance with the terms of the agreement and, therefore, the plaintiff-respondent 1 was entitled to continuance of the distributorship till it was terminated in accordance with the agreed terms. The award further says as under:*
>
> > *"This award will, however, not fetter the right of the defendant Corporation to terminate the distributorship of the plaintiff in accordance with the terms of the agreement dated April 1, 1976, if and when an occasion arises."*
>
> *This finding read along with the reasons given in the award clearly accepts that the distributorship could be terminated in accordance with the terms of the agreement dated April 1, 1976, which contains the aforesaid clauses 27 and 28. Having said so in the award itself, it is obvious that the arbitrator held the distributorship to be revokable in accordance with clauses 27 and 28 of the agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced,*

one of which is 'a contract which is in its nature determinable'. In the present case, it is not necessary to refer to the other clauses of sub-section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases'. The grant of this relief in the award cannot, therefore, be sustained."

49. A Co-ordinate Bench of this Court in ***Shivansh Auto Zone Pvt. Ltd v. Honda Cars India Ltd***.,2016 SCC OnLine Del 2428 while relying upon the judgment of the Supreme Court in ***Indian Oil Corpn. Ltd. v. Amritsar Gas Service*** (supra) has observed as under –

"21. It is admitted position that after the expiry of period of dealership agreement on 31st March, 2016, no formal agreement has been executed between the parties for renewal. It is not denied by the petitioner that before the expiry, in February, 2016 itself the dealership agreement was terminated, thus, in view of the circumstances available on record, the Court cannot compel the respondent that they must execute the dealership agreement which was non-exclusive and the circumstances of the same were known to the petitioner. The earlier agreement now is not enforceable in law under the scheme of Section 14(1)(a) of the Specific Relief Act, 1963. Besides the above, no injunction can be granted in view of Section 41(e) of the said Act which states that an injunction cannot be granted to prevent the breach of agreement, the performance of which cannot be enforced.

(i) In the case of IOC v. Amritsar Gas Service, (1991) 1 SCC 533, the Supreme Court has held that a dealership agreement containing a clause entitling either party to terminate the agreement with thirty (30) days' notice was determinable in nature, and therefore, in terms of Section 14(1) of the Specific Relief Act, 1963 (hereinafter referred to as "Specific Relief Act") a relief of restoration of dealership cannot be sustained. Section 14(1)(c) of the Specific Relief Act states that a contract which is in its nature determinable cannot be specifically enforced. It was further held that even if the termination of the agreement was illegal, the only relief which could be granted was the award of compensation for the period of notice.

(ii) A similar view was espoused by the Supreme Court in E. Venkatakrishna v. Indian Oil Corporation, (2000) 7 SCC 764 wherein it was held that all the arbitrator could do, if he found the termination of the distributorship to be unlawful was to award damages, as any civil Court would have done in a suit. The appellant therein was appointed as a dealer of the first respondent to distribute liquefied petroleum gas and the dealership agreement therein contained a termination clause that the distributorship could be terminated if the dealer did any act which was prejudicial to the interests of the respondent.

22. Therefore, the reliefs now sought after termination cannot be granted being contrary to the provisions of the Special Relief Act. Even if the termination of the agreement was found to be unlawful, the only relief which could have been available is damages/compensation which would have to be considered as per its merits if any steps are taken by the petitioner. In the present case, the situation is worse than other cases as the contract between the parties has already been lapsed as per efflux of time. It was the non-exclusive contract. The respondent in view of the reasons given in the reply is not ready to renew the same. The relief sought in the present petition cannot be granted while dealing with the application under Section 9 of the Act."

50. For all the above reasons, no merit is found in the present petition. The same is, consequently, dismissed. There shall, however, be no order as to costs.

SACHIN DATTA, J

NOVEMBER 26, 2025
uk, sv