$~

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

**Judgment reserved on: 10.08.2026**
**Judgment pronounced on:19.08.2026**

\# **CNR No. DLHC016046022015**

\+ O.M.P. (COMM) 27/2015

DHAMPUR SUGAR MILLS LTD .....Petitioner
Through: Mr. Prasenjit Keswani, Sr. Adv. with Mr. Upmanyu Tewari, Adv.

versus

INDIAN OIL CORPORATION LTD .....Respondent
Through: Dr. Alka Dahan, Mr. Shiv Nanda, Mr. Ankit Bharadwaj and Ms. Pankhudi Tripathi, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE OM PRAKASH SHUKLA**

**JUDGMENT**

% **19.08.2026**

1. The present petition has been filed by Dhampur Sugar Mills Ltd.[1], under Section 34 of the Arbitration and Conciliation Act, 1996[2], seeking setting aside of the Arbitral Award dated 21.08.2015[3] passed by the learned Sole Arbitrator Shri C.P. Mishra. By the impugned award the claims made by the Petitioner against Indian Oil Corporation Ltd.[4], have been rejected and the deductions made by the Respondent under Clause 3 of the agreements between the parties have been upheld.

---

[1] "Petitioner", hereinafter
[2] "the Act", hereinafter
[3] "impugned award", hereinafter
[4] "IOCL/Respondent", hereinafter

2. The present dispute arises out of agreements between the Petitioner and the Respondent for the supply of Indigenous Anhydrous Ethanol by the Petitioner, a manufacturer of ethanol, to the Respondent. The parties had entered into several supply agreements over the years. The dispute before this Court primarily concerns two issues, first, the delay on the part of the Respondent in furnishing statutory Form-C declarations in respect of interstate sales made by the Petitioner, and second, the recovery of damages by the Respondent under Clause 3 of the agreements on account of alleged short supply after the Petitioner stopped further dispatches of ethanol.

3. During the year of 2007, the parties entered into four agreements for supply of ethanol to different locations of the Respondent. The agreement for Delhi was executed on 24/29.01.2007, the agreements for Haryana and Rajasthan were executed on 08.06.2007, and the agreement for Punjab was executed on 12.07.2007. Thereafter, another agreement dated 11.10.2010 was entered into for supply of ethanol to locations in Uttarakhand. The deductions made by the Respondent under the earlier agreements were subsequently adjusted from amounts payable under this later arrangement, which also became part of the dispute.

4. Clause 3 of the agreements contained the "*Take or Pay/Supply or Pay*" provision. Under this clause, the Petitioner was required to supply and the Respondent was required to uplift the contracted quantity, subject to a permissible variation of 10%. The parties had agreed that the minimum performance level would be 90% of the quantity

mentioned in the supply order for the relevant financial year. The clause was reciprocal in nature. If the Petitioner failed to supply the minimum quantity, consequences could follow against it, and similarly, if the Respondent failed to uplift the required quantity, a claim could arise in favour of the Petitioner.

5. Clause 5 of the agreements also contained provisions relating to payment and reimbursement of sales tax. Since the Petitioner manufactured ethanol in Uttar Pradesh and supplied it to locations outside the State, the transactions constituted interstate sales. The Respondent was required to furnish Form-C declarations, which enabled the Petitioner to claim the benefit of concessional tax rates under the applicable law. The Petitioner contended that the Respondent failed to provide the required declarations within time, resulting in exposure to tax liability at a higher rate.

6. According to the Petitioner, the delay in furnishing Form-C declarations led to proceedings before the Uttar Pradesh tax authorities and provisional assessment under Section 25(1) of the U.P. VAT Act. The Petitioner claimed that it faced a possible tax liability at a higher rate of approximately 32.5% attributable solely to the Respondent's failure to furnish the statutory declarations. It therefore called upon the Respondent either to provide the pending Form-C declarations or furnish an indemnity undertaking covering the differential tax liability, interest and penalty. As the Respondent did not provide such indemnity, the Petitioner informed the Respondent that further supplies of ethanol would remain suspended.

7. The Respondent disputed the Petitioner's right to suspend supplies. Its case was that the obligation to supply ethanol was independent of the Form-C issue and that there was no contractual provision permitting the Petitioner to stop dispatches on that ground. The Respondent called upon the Petitioner through letters dated 11.10.2008 and 03.11.2008 to resume supplies. However, the Petitioner maintained that continuation of supplies without protection against the tax exposure would cause serious financial hardship.

8. The Petitioner relied upon subsequent correspondence, including letters dated 17.12.2008 and 21.12.2008, as well as discussions between the parties, to show that the Respondent was aware of the difficulties arising from the delayed Form-C declarations. The Respondent disputed the said correspondence and contended that the Petitioner had committed a breach by discontinuing supply. The Respondent accordingly invoked Clause 3 of the agreements and claimed damages for failure to maintain the minimum agreed supply quantity.

9. By letter dated 15.02.2010, the Respondent demanded an amount of Rs.31,60,500/- for the years 2008-09 and 2009-10 under the "Take or Pay" provision on account of short supply. The Respondent also made further deductions and adjustments in relation to the different agreements, which were subsequently challenged by the Petitioner.

10. Before the learned Sole Arbitrator, the Petitioner raised claims towards reimbursement of alleged differential trade tax liability,

interest, penalty and other consequential expenses incurred by it in relation to the proceedings initiated by the tax authorities. The Petitioner also challenged the deductions made by the Respondent towards alleged damages under Clause 3 of the agreements. The Respondent contested the claims raised by the Petitioner and justified the deductions made by it. According to the Respondent, the Petitioner had failed to perform its primary contractual obligation of supplying the agreed quantity of ethanol and such failure attracted the consequences expressly contemplated under Clause 3 of the agreements.

11. Petitioner contends that on 27.08.2008 they addressed letters to the concerned offices of the Respondent, calling upon the Respondent to furnish the required Form-C declarations, in the alternative, it demanded an undertaking or indemnity from the Respondent that any differential tax, interest or penalty arising because of delayed or non-furnishing of Form-C would be borne by the Respondent. The Petitioner further informed the Respondent that unless Form-C was furnished or the required protection was given, further dispatches of ethanol would be kept in abeyance. The Petitioner thereafter, unilaterally stopped further supplies.

12. The Respondent did not accept this action, its stand was that the contractual obligation to supply ethanol could not be suspended by the Petitioner on account of a dispute concerning Form-C. The Respondent maintained that there was no term in the agreements giving the Petitioner such a right, in the said regard, letters dated 11.10.2008 and 03.11.2008 were sent by the Respondent calling upon the Petitioner to

resume supplies. The Petitioner, however, continued to maintain that supplies could not reasonably be continued unless the Form-C issue was resolved or the Respondent protected it against the resulting tax exposure.

13. The Petitioner also relied upon subsequent correspondence, including letters dated 17.12.2008 and 21.12.2008 and upon minutes of discussions between the parties to show that the Respondent was aware of the tax problem and the financial difficulty being faced by the Petitioner. The letter dated 21.12.2008 became a matter of controversy before the learned Arbitrator. The learned Arbitrator recorded that the Respondent had denied the said correspondence and that no postal receipt or acknowledgment had been produced to prove it. The Petitioner has challenged this part of the reasoning also and submits that the pleadings of the Respondent did not contain the denial in the manner understood by the learned Arbitrator. The Respondent, on its part, took the position that the Petitioner had committed breach by discontinuing supply. Thus, the Respondent had invoked Clause 3 on the ground that the Petitioner had failed to maintain the minimum agreed supply. The award records, amongst other correspondence, a letter dated 15.02.2010 by which the Respondent demanded an amount of Rs.31,60,500/- for the years 2008-09 and 2009-10 under the "Supply or Pay" provision for failure to supply the minimum quantity. Other deductions and adjustments concerning the different agreements also formed part of the disputes subsequently raised by the Petitioner.

14. In the meantime, the tax proceedings continued. The Petitioner maintained that the provisional assessment and the consequent financial burden had resulted from the delay in furnishing Form-C. The Respondent disputed this and contended that the provisional assessment proceedings had also arisen on account of other matters concerning the tax returns and Input Tax Credit claimed by the Petitioner. During the arbitral proceedings, a final assessment order came to be passed by the competent tax authority on 28.06.2012. By that time the Form-C declarations had been furnished. The differential tax liability and penalty apprehended by the Petitioner on account of the delayed Form-C did not ultimately survive in the manner originally projected by the Petitioner.

15. The Petitioner nevertheless maintained that the final assessment order could not retrospectively remove the hardship which it had actually faced. According to it, money had been blocked and tax proceedings had to be contested at the relevant time. It was therefore argued that its decision to stop further exposure by suspending supply was commercially justified. The Respondent answered that submission by saying that commercial difficulty could not create a contractual right which the parties had not agreed upon. It also relied upon the statutory remedies which were available to the Petitioner before the tax authorities.

16. After the earlier contracts, the parties had entered into the Uttarakhand arrangement. The Letter of Intent in relation to the later arrangement is dated 27.09.2010 and the formal agreement is dated 11.10.2010. The Petitioner resumed supplies under the later

arrangement. The Respondent had adjusted from amounts becoming payable to the Petitioner certain sums which according to it were recoverable on account of short supply under the earlier contracts. The Respondent relied in this connection not only upon the terms of Clause 3 but also upon the Letter of Intent dated 27.09.2010 and an Affidavit-cum-Undertaking dated 13.09.2011 executed by the Petitioner. According to the Respondent these documents permitted outstanding dues, liabilities or penalties relating to earlier contracts to be recovered from subsequent payments. The Petitioner disputed the deductions. Its case was that a mere claim for damages was not a debt and the Respondent could not become a judge in its own cause, assess damages by itself and recover them from monies payable under another agreement.

17. The Petitioner before the Tribunal claimed that there was admitted delay in furnishing Form-C. It pleaded that the delay resulted in proceedings before the tax authorities and exposed it to a higher tax rate. It accordingly claimed that the stoppage of further supplies was justified and that it could not be made liable under Clause 3. The Petitioner also challenged the amounts already deducted by the Respondent and sought their return. It made claims in respect of differential tax, interest and penalty. It also claimed expenses stated to have been incurred in dealing with the tax proceedings and the connected litigation. The Petitioner further invoked the reciprocal part of Clause 3 against the Respondent in relation to the subsequent agreement. It claimed that the Respondent had itself failed to uplift the

required quantity and was therefore liable under the same "Take or Pay/Supply or Pay" provision.

18. The Respondent denied the claims. Its main case was that furnishing of Form-C and the obligation of the Petitioner to supply ethanol were separate matters. According to the Respondent, there was no clause permitting suspension of supply because Form-C had been furnished late. The Respondent also relied upon the provisional assessment orders themselves. It contended that those orders showed other defaults relating to the Petitioner, including its claim of Input Tax Credit and the manner in which its returns had been filed. It therefore denied that the provisional assessment was solely attributable to delay in Form-C.

19. The Respondent further pleaded that the Petitioner could have taken recourse to the statutory remedy of seeking further time for production of Form-C under the applicable statutory provisions. It relied particularly upon the proviso to Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957. As regards Clause 3, the Respondent maintained that it was not a penalty provision. According to the Respondent, it was an agreed liquidated damages provision and represented the commercial assessment of the parties as to the consequence of failure either to supply or to uplift at least 90% of the contracted quantity.

20. On 29.01.2014 the learned Arbitrator framed nine issues of which the below stated four issues are relevant for consideration in these proceedings.

21. Issue No.1 concerned whether there had been delay on the part of the Respondent in furnishing Form-C in respect of supplies made under the agreements for Delhi, Haryana, Rajasthan and Punjab.

22. Issue No.2 concerned whether the Petitioner had faced difficulty before the trade tax authorities because of such delay and whether, for that reason, it was justified in keeping further supplies in abeyance and, if so, whether the Respondent could invoke the "Take or Pay/Supply or Pay" provision.

23. Issue No.3 concerned whether the Petitioner had itself violated Clause 3 by keeping dispatches in abeyance.

24. Issue No.4 directly concerned the deductions made by the Respondent. The question framed was whether the Respondent could unilaterally deduct the amount described as penalty under the "Take or Pay/Supply or Pay" clause of the Delhi, Haryana, Rajasthan and Punjab agreements and whether the alleged penalty or damages were legally deductible.

25. The remaining issues concerned, amongst other matters, the monetary claims of the Petitioner, the tax-related claims and expenses,

the Petitioner's reciprocal claim under the later agreement and the final relief to which the parties were entitled.

26. The parties agreed before the learned Arbitrator that oral evidence was not required and that the disputes could be decided on the basis of their pleadings and the documents placed on record. The arbitral proceedings therefore remained principally documentary in nature.

27. The learned Arbitrator published the impugned award on 21.08.2015.

28. On Issue No.1 the learned Arbitrator accepted that there had been delay in furnishing Form-C by the Respondent. The award therefore did not proceed on the footing that IOCL was entirely free from delay in this respect.

29. The learned Arbitrator, however, separately examined the cause of the provisional tax proceedings. He recorded that the provisional assessment orders did not show that assessment under Section 25(1) of the U.P. VAT Act had been initiated only because of delayed Form-C.

30. The learned Arbitrator referred to matters relating to the Input Tax Credit claimed by the Petitioner and the filing of returns under an incorrect head. He therefore held that the tax proceedings could not in their entirety be attributed to the Respondent.

31. The learned Arbitrator further held that even if Form-C was not forthcoming in time, the Petitioner had available to it the remedy of seeking extension for production of the declaration under the proviso to Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957. According to the Arbitrator, the Petitioner did not take reasonable steps available in law to mitigate the situation.

32. On the contractual issue the learned Arbitrator found that there was no term in the agreements permitting the Petitioner to stop supplies merely because Form-C had been delayed. He therefore did not accept the Petitioner's case that an indemnity could unilaterally be made a condition precedent for further performance.

33. The learned Arbitrator consequently held that the Petitioner was not justified in keeping the supply of ethanol in abeyance and that it had committed breach of its essential supply obligation.

34. Issue No.4 was then considered. The actual reasoning in the award on this issue is material. The learned Arbitrator held that Clause 3 was not in the nature of a penalty. He treated the clause as one stipulating liquidated damages and described it as a reasonable estimate made by the parties for the loss caused due to failure to fulfil the commitment of supply or lifting of ethanol to the extent of 90% of the ordered quantity.

35. The learned Arbitrator reasoned that if the provision were merely penal in nature, the reference to the percentage of the ordered quantity

and the tolerance built into the clause would not have been necessary. He therefore treated the 90% minimum level and the permissible shortfall as part of a commercially agreed measure.

36. The learned Arbitrator then relied upon the judgment of the Supreme Court in ***ONGC Ltd. v. Saw Pipes Ltd.***[5]. He observed that where a contract contains an agreed provision for liquidated damages, the stipulated amount can be recovered upon proof of breach without requiring separate proof of the precise actual loss in every case.

37. The award contains an observation that an aggrieved party under such a clause would be entitled to the amount on proof of breach even if no actual loss or injury was separately shown. The Petitioner has placed considerable reliance on this expression in the present proceedings.

38. The learned Arbitrator thereafter found that the Petitioner had wilfully and deliberately, with knowledge of the agreed terms, kept the supply of ethanol in abeyance and thereby committed breach of an essential term. He consequently held that the Respondent could deduct the agreed damages.

39. The learned Arbitrator also considered the Petitioner's own claim under the reciprocal part of Clause 3. The Petitioner had claimed Rs.29,32,001/- on the allegation that the Respondent had failed to uplift 90% of the ordered quantity under the agreement dated 11.10.2010.

[5] **(2003) 5 SCC 705**

That claim was rejected. The learned Arbitrator recorded that the necessary documents had not been placed on record to establish a wilful default on the part of the Respondent. He also recorded that no evidence had been produced in support of the claim.

40. The learned Arbitrator further rejected the Petitioner's claim relating to an amount of Rs.1,36,76,301/- stated to have been withheld in respect of supplies, observing that the necessary supporting material was not available on record. He additionally observed that the Petitioner had failed to establish sufferance or injury in support of the damages claimed by it.

41. The claims for differential trade tax, interest, penalty and litigation or legal expenses were also rejected. The provisional assessment orders, the reasons mentioned therein, the absence of an application for extension and the final assessment order dated 28.06.2012 were considered in this connection.

42. The learned Arbitrator also accepted the Respondent's case in relation to recovery from the subsequent Uttarakhand payments. The Letter of Intent dated 27.09.2010 and the Affidavit-cum-Undertaking dated 13.09.2011 were relied upon for the contractual mechanism of recovery.

43. In this manner the claims raised by the Petitioner were rejected and the deduction or adjustment made by the Respondent was sustained, accordingly impugned award came to be passed on 21.08.2015.

44. Thus, being aggrieved, the Petitioner has preferred the present petition challenging the impugned award principally on the ground that it suffers from patent illegality, perversity and non-application of the law governing damages. An additional challenge has also been made on account of the delay in publication of the award and, at a later stage, on the basis of Clause 16(g) of the arbitration agreement.

45. Before this Court, the learned Senior Counsel for the Petitioner first submits that the learned Arbitrator committed an error in treating the Form-C controversy and the supply obligation as two independent matters.

46. It was submitted that Form-C had a direct bearing upon the consideration received by the Petitioner for the interstate sale. Without the declaration the Petitioner became exposed to tax at a much higher rate. Thus, according to the learned Senior Counsel for the Petitioner, the failure of the Respondent went to the commercial root of the transaction.

47. Learned Senior Counsel for Petitioner submits that the Petitioner did not stop supply without notice and in this regard repeated demands of compliance were made. The Respondent was requested either to furnish Form-C or to give an undertaking that it would bear the differential tax, interest and penalty. It was submitted that the Petitioner could not reasonably be expected to continue increasing its tax exposure indefinitely. It was further argued that the final assessment order dated

28.06.2012 cannot be used to judge the commercial position which existed in August 2008. According to the Petitioner, the fact that the threatened liability was subsequently removed cannot erase the tax proceedings, deposits and financial hardship faced in the meantime.

48. Learned Counsel then attacked the award under Section 74 of the Indian Contract Act, 1872. It was submitted that breach and entitlement to damages are different things. Even if the Petitioner is assumed to have committed breach by stopping supplies, the Respondent did not automatically become entitled to the amount mentioned in Clause 3. Reliance was placed upon ***Fateh Chand v. Balkishan Dass***[6], ***Bharat Sanchar Nigam Ltd. v. Motorola India Pvt. Ltd.***[7], ***Kailash Nath Associates v. Delhi Development Authority***[8] and other decisions to submit that Section 74 permits only reasonable compensation and not automatic enforcement of a stipulated sum.

49. It was argued that IOCL neither pleaded nor proved any replacement purchase at a higher price, loss of sale, loss of blending margin or any other quantified monetary loss. According to the Petitioner, there is also no finding that such loss was incapable of proof. The Petitioner particularly relies upon the language used by the learned Arbitrator that the Respondent could recover the agreed amount even if no actual loss or injury had been suffered. It was argued that this is contrary to the compensatory principle contained in Sections 73 and 74 of the Contract Act. Learned Senior Counsel further submitted that the

---

[6] **AIR 1963 SC 1405**
[7] **(2009) 2 SCC 337**
[8] **(2015) 4 SCC 136**

learned Arbitrator adopted two different standards. While IOCL's deduction was sustained without separate proof of loss, the Petitioner's own reciprocal claim was rejected, amongst other reasons, for failure to prove sufferance or injury. This is relied upon to allege perversity and unequal treatment.

50. The Petitioner also challenges the cross-contractual recovery. Reliance has been placed upon ***Iron & Hardware (India) Co. v. Shamlal & Bros.***[9] **and *Tower Vision India Pvt. Ltd. v. Procall Pvt. Ltd***[10]**.** to contend that an unadjudicated claim for damages is not an existing debt. According to the Petitioner, the Letter of Intent dated 27.09.2010 and the Affidavit-cum-Undertaking dated 13.09.2011 could at the highest provide a method of recovery of an amount which was otherwise legally due. They could not themselves convert a disputed claim for damages into a debt. It is also pointed out that the Respondent did not file a separate counterclaim in the arbitration for recovery of damages under the earlier agreements. According to the Petitioner, the Respondent merely defended a unilateral deduction already made by it. In the said regard, considerable reliance has also been placed upon the judgment of this Court in ***Hindustan Petroleum Corporation Ltd. v. Dhampur Sugar Mills Ltd.***[11], decided on 06.01.2022, and the judgment of the Division Bench dated 18.05.2022 in the appeal arising therefrom. It is submitted that those proceedings arose from a similar ethanol supply arrangement involving the same Petitioner and dealt both with Form-C and the requirement of loss under Section 74.

---

[9] **1954 SCC OnLine Bom 5**
[10] **2012 SCC OnLine Del 4396**
[11] **2022 SCC OnLine Del 42**

51. The Petitioner next raises the issue of delay. It is not disputed that arguments before the learned Arbitrator concluded on 13.03.2014 while the award was published on 21.08.2015. Thus, there was an interval of about seventeen months. Reliance is placed upon ***Harji Engineering Works Pvt. Ltd. v. Bharat Heavy Electricals Ltd.***[12]***, GL Litmus Events Pvt. Ltd. v. Delhi Development Authority***[13] and the later judgment of the Supreme Court in ***Lancor Holdings Limited v. Prem Kumar Menon***[14]. It is submitted that the long delay has to be read together with the errors appearing in the award. In this connection the Petitioner refers to references in the award to DSDPL and another dispute, to the observation that certain provisional assessment orders had not initially been filed, and to the manner in which the letters dated 17.12.2008 and 21.12.2008 were dealt with. It is contended that these are not mere typographical mistakes and that they show that the learned Arbitrator had lost continuity with the matter by the time the award was written.

52. Lastly, the Petitioner has relied upon Clause 16(g) of the arbitration agreement. The clause required the award to be made and published within two years of the Arbitrator entering upon the reference or within an extended period, not exceeding one further year, if the parties agreed in writing. It is submitted that Shri C.P. Mishra entered upon the reference on 19.08.2013 and the award was published on 21.08.2015. According to the Petitioner the award was therefore two

---

[12] **2008 SCC OnLine Del 1080**
[13] **2025 SCC OnLine Del 5772**
[14] **2025 SCC OnLine SC 2319**

days beyond the stipulated two-year period and no written extension has been produced.

53. *Per contra*, learned Counsel for the Respondent has opposed the petition. It is submitted that the Petitioner is in substance asking this Court to rehear the entire arbitration on facts and on interpretation of the contract. According to the Respondent, the learned Arbitrator was the chosen adjudicator of the parties. He considered the agreements, correspondence, tax orders and the rival claims. A possible view taken by him cannot be substituted by another view in proceedings under Section 34.

54. On Form-C, learned Counsel submits that there is admittedly no clause which allowed the Petitioner to suspend supply. The Petitioner could pursue its statutory remedies in relation to the tax declarations but could not impose an indemnity as a new condition of further contractual performance. The Respondent also relies upon the reasons contained in the provisional assessment orders and submits that those proceedings did not arise only because Form-C was delayed. It is further submitted that the Petitioner did not even seek extension before the tax authority under the statutory procedure. The final assessment order dated 28.06.2012 is also relied upon to show that the differential liability and penalty did not ultimately survive.

55. As regards Clause 3, learned Counsel submits that it is a reciprocal and negotiated commercial provision. It operated only when the failure went beyond the permissible 10% default. It therefore cannot

be equated with an arbitrary penalty for every minor breach. It is submitted that ethanol was being procured for a continuing petrol-blending programme. Failure to supply the agreed quantities had consequences for availability, planning and blending operations. Such consequences are not necessarily capable of being proved by a single replacement invoice. Reliance is placed upon ***ONGC Ltd.*** *(supra)* and the principle that a genuine pre-estimate of damages entered into by commercial parties can be acted upon where precise quantification of the loss is difficult. The Respondent distinguishes the ***HPCL*** *(supra)* proceedings relied upon by the Petitioner. It is submitted that the findings and pleadings in that case were different and that the present award has to be examined on its own contractual and evidentiary record.

56. On the absence of a counterclaim, learned Counsel fairly accepts that no separate counterclaim for the deducted amount was filed. It is however submitted that the Petitioner itself sought refund of the deduction, the Respondent defended its entitlement and Issue No.4 expressly required the learned Arbitrator to adjudicate whether the deduction was permissible. Thus, the liability was in fact adjudicated. The Respondent further relies upon the Letter of Intent dated 27.09.2010 and the undertaking dated 13.09.2011 as authority for recovery of dues arising from earlier contracts from later payments.

57. On delay, the Respondent submits that delay by itself does not invalidate an award and that the Petitioner has failed to show that the time taken actually affected the findings.

58. On Clause 16(g), it is submitted that this was not a ground taken in the original Section 34 petition within the period prescribed by Section 34(3). According to the Respondent a new and independent jurisdictional ground cannot be introduced for the first time through rejoinder or oral submissions after limitation.

59. I have heard the learned Counsel for both the parties at length and have gone through the impugned award, the pleadings, the relevant agreements, the correspondence relied upon by the parties, the tax documents and the written submissions placed on record.

60. Certain clarifications were also sought during hearing. Learned Senior Counsel for the Petitioner fairly accepted that there is no direct clause in the contracts expressly permitting stoppage of supply on account of delay in Form-C. Learned Senior Counsel also stated that no application seeking extension for furnishing Form-C had been made before the competent tax authority. These answers do not by themselves decide the petition but they are relevant while examining whether the view taken by the learned Arbitrator is an impossible view.

61. Before examining the individual objections, the limits of the present jurisdiction have to be kept in mind. A petition under Section 34 is not an appeal from the arbitral award. The Court does not rehear the dispute merely because another view of the evidence or the contract is possible. In ***Associate Builders v. Delhi Development Authority***[15], the Supreme Court explained that an Arbitrator is the primary judge of

---

[15] **(2015) 3 SCC 49**

the quality and quantity of evidence and that a possible view cannot be interfered with merely because the Court would have reached another conclusion.

62. The same discipline requires the Court to respect a plausible interpretation of a commercial contract. At the same time, judicial restraint does not require the Court to uphold an award which ignores a binding provision of substantive law, travels beyond the contract or reaches a conclusion which no reasonable tribunal could reach. The task of this Court is therefore not to decide whether the learned Arbitrator's view was the best view. The question is whether the objections raised by the Petitioner bring the award within a recognised ground for setting aside under Section 34.

63. Having said so, I shall first deal with the delay aspect. Arbitral Arguments were concluded on 13.03.2014 and the award was published on 21.08.2015. A period of about seventeen months between conclusion of arguments and publication of an award is undoubtedly substantial. Such delay is undesirable, particularly when arbitration is expected to provide an efficient form of dispute resolution. However, the recent decision of the Supreme Court in ***Lancor Holdings Limited v. Prem Kumar Menon*** *(supra)* makes it clear that delay by itself is not an automatic ground for setting aside an arbitral award. The Court has to examine whether the undue delay had an evident adverse effect upon the decision-making process or the findings returned in the award.

64. The Petitioner has therefore rightly invited the Court to examine not merely the number of months but also the mistakes which according to it resulted from the delay.

65. The references to DSDPL or another dispute in parts of the award are certainly undesirable. The observation concerning the stage at which the provisional assessment orders were produced could also have been expressed more accurately. The treatment of some correspondence is disputed by the Petitioner. These matters have been considered by me. I am nevertheless unable to conclude that they establish that the learned Arbitrator lost track of the present dispute.

66. The award identifies the agreements between Dhampur Sugar Mills Ltd. and IOCL. It considers the Delhi, Haryana, Rajasthan and Punjab agreements. It deals with the Form-C controversy, the provisional tax proceedings, the suspension of ethanol supply, Clause 3, the later Uttarakhand agreement and the rival monetary claims. More importantly, the provisional assessment orders which the Petitioner says were incorrectly described as having been filed later were in fact considered by the learned Arbitrator on merits. Findings were returned upon their contents. The error as to the stage of filing therefore does not establish that the documents themselves escaped consideration.

67. Likewise, the dispute concerning the letters dated 17.12.2008 and 21.12.2008 does not alter the central factual finding in favour of the Petitioner that there had in fact been delay on the part of the Respondent in furnishing Form-C. The substance of the Petitioner's grievance was

therefore not overlooked because of the disputed treatment of those letters. The arbitration was also decided on documents by agreement of the parties and on an overall reading, this Court is unable to find the adverse impact upon the substantive decision which would justify setting aside merely because the award came after considerable delay.

68. The delay deserves disapproval, but that is different from holding that the statutory conditions for setting aside have been established. The challenge on this ground therefore fails.

69. Objection under Clause 16(g) requires separate consideration as the clause contemplated publication of the award within two years after entering upon the reference or within such extended period, not exceeding one further year, as the parties might agree to in writing.

70. Shri C.P. Mishra was appointed by communication dated 19.08.2013 and the award is dated 21.08.2015. Learned counsel for the Respondent has not shown any written extension on the Court record. A contractual time limit governing arbitral authority is not an irrelevant matter. Decisions of the Supreme Court including ***NBCC Ltd. v. J.G. Engineering Pvt. Ltd.***[16] **and** ***Jayesh H. Pandya v. Subhtex India Ltd.***[17] recognise the importance of the temporal limits agreed upon by parties.

71. The difficulty in the present case, however, arises at an earlier stage. The ground founded upon Clause 16(g) was not taken as a distinct ground in the Section 34 petition filed within limitation. It was

[16] **(2010) 2 SCC 385**
[17] **(2020) 17 SCC 383: 2019 SCC OnLine SC 1101**

introduced later in rejoinder and in the course of arguments. This is not merely a further argument in support of an existing ground. A complaint that an award was delivered after an undesirable delay and a challenge that the Arbitrator had ceased to possess contractual authority to make the award are legally distinct objections. The latter requires examination of the date of entering upon the reference, construction of the contractual time provision and the existence or absence of an agreed extension. It is therefore a separate ground having an independent factual and legal foundation.

72. In ***State of Maharashtra v. Hindustan Construction Co. Ltd.***[18], the Supreme Court recognised that amendment of a Section 34 petition is not absolutely prohibited, but a wholly new ground having no foundation in the original petition does not obtain an unrestricted right of introduction after expiry of limitation. No amendment introducing this independent ground within the permissible statutory framework has been shown in the present case. This Court is therefore not persuaded that the award can now be set aside upon a ground first brought in through rejoinder and oral clarification after expiry of the period under Section 34(3). It is however, made clear, that this conclusion is not based upon the proposition that a delay of two days beyond a binding contractual mandate can never have legal consequence. That question does not require final determination here. The present conclusion rests upon the manner and stage at which this independent ground was sought to be introduced.

[18] **(2010) 4 SCC 518**

73. Having dealt the delay aspect, this Court now comes to the principal factual controversy concerning Form-C and the stopped supplies. There is no dispute at this stage that Form-C was not always furnished by the Respondent within time. The learned Arbitrator himself accepted that there had been delay. I also find substance in the Petitioner's submission that Form-C was not commercially meaningless. The absence of the declaration could result in assessment of the interstate transaction at a higher rate. A supplier facing a provisional assessment at about 32.5% would naturally be concerned about the resulting financial burden. The Petitioner therefore had a genuine commercial grievance. But the existence of a genuine grievance and the existence of a contractual right to suspend performance are two different matters.

74. The question before the learned Arbitrator was whether the delay in Form-C entitled the Petitioner, under these agreements, to stop further supplies and make an indemnity from IOCL a condition for resuming performance. The learned Arbitrator answered this question against the Petitioner. I have not been shown any express provision of the agreements which permitted suspension of supply on this ground. During hearing learned Counsel for the Petitioner also fairly stated that there was no such direct clause.

75. The Petitioner argues that such a right must nevertheless be inferred because the tax consequence affected the price and commercial consideration. That is one possible manner of looking at the transaction. But the learned Arbitrator did not accept that construction. The learned

Arbitrator also had before him the provisional assessment orders. He noticed that the tax proceedings referred to matters other than delayed Form-C, including the Input Tax Credit claimed by the Petitioner and the manner in which returns had been filed. Whether every observation made by the learned Arbitrator regarding the tax statute was technically necessary is not the question before this Court. What is material is that the Arbitrator did not accept the Petitioner's case that the entire provisional assessment was solely the consequence of IOCL's delay.

76. The learned Arbitrator further considered the statutory remedy of seeking extension of time for production of Form-C under Rule 12(7). During hearing before this Court, the Petitioner did not dispute that no such application for extension had been made. The final assessment order dated 28.06.2012 was also before the learned Arbitrator. Ultimately the apprehended differential tax and penalty on account of the delayed Form-C did not survive in the form in which they had initially been projected.

77. The Petitioner is correct that a later final assessment does not mean that it faced no difficulty at the earlier stage. A temporary cash flow burden or exposure may be very real at the time when provisional proceedings are pending. But the question in arbitration was not only whether the Petitioner faced difficulty. It was whether that difficulty authorised it under the contract to stop performance altogether. The learned Arbitrator found that it did not and this Court is unable to say that this construction of the agreements is one which no reasonable Arbitrator could adopt. There was no express suspension clause and an

additional indemnity was demanded by the Petitioner as a condition for further supply although statutory remedies were available. The tax proceedings had more than one aspect and the final differential demand did not ultimately survive. In these circumstances the finding that the Petitioner should have pursued its remedies without unilaterally stopping contractual supply is at least a plausible view of the agreement and the material before the tribunal. Section 34 does not permit this Court to replace that view merely because the Petitioner's decision can also be understood from a commercial point of view.

78. In the said regard, the Petitioner has placed considerable reliance upon ***Hindustan Petroleum Corporation Ltd.*** *(supra)*. The reliance cannot simply be brushed aside because the supplier in that case was the present Petitioner and the controversy also concerned ethanol supplies and Form-C. In the said judgment dated 06.01.2022, this Court examined the commercial effect of non-furnishing of Form-C and also considered whether damages claimed by the oil company satisfied the requirements of Section 74. The Division Bench thereafter considered the matter in the appeal decided on 18.05.2022 and affirmed the result. Those judgments lay down principles which have to be respected. They do not, however, mean that every arbitral award arising from every ethanol agreement involving this Petitioner must necessarily have the same result.

79. An award under Section 34 has to be examined with reference to the contractual findings and evidentiary record upon which that particular Tribunal acted. In the present case, the learned Arbitrator

squarely framed the question whether the Petitioner was entitled to keep supplies in abeyance. He accepted the delay in Form-C but gave separate reasons for holding that the delay did not create a contractual right of suspension. Those reasons include the absence of such a contractual term, the nature of the provisional assessment proceedings, the statutory course which was not availed and the final assessment order. The present award therefore cannot be set aside merely by importing a factual conclusion reached on another arbitral record.

80. Further, the ***HPCL*** *(supra)* judgments also have to be kept in view while examining Clause 3 and Section 74 and is being dealt herewith separately.

81. The most substantial legal challenge is to the finding under Issue No.4. The Petitioner is correct in submitting that every sum mentioned in a contract does not become automatically recoverable merely because breach has occurred. Section 74 of the Indian Contract Act allows reasonable compensation not exceeding the amount stipulated in the contract, which is therefore the upper limit and the provision remains compensatory in nature. It is imperative to mention here the judgment in ***Fateh Chand*** *(supra)* which established the compensatory character of Section 74. Furthermore, the judgment in ***ONGC Ltd. v. Saw Pipes Ltd.*** recognised that where commercial parties have made a genuine pre-estimate and the actual consequence of breach is difficult to quantify, exact proof of the monetary loss need not invariably be insisted upon. ***Kailash Nath Associates*** *(supra)*, reiterates that loss or legal injury cannot altogether disappear from the enquiry and that where

actual loss is capable of proof, Section 74 does not simply dispense with it. The judgment in ***Construction & Design Services v. Delhi Development Authority***[19], also recognises that in an appropriate case the nature of the transaction may permit reasonable compensation to be determined without exact proof of each component of loss. Thus, the propositions are not really inconsistent as being held by the Courts from time to time. The amount stated in a contract is not payable as a punishment for breach, at the same time, the law does not insist upon impossible evidence where loss naturally follows from the breach but its exact monetary measurement is difficult and the parties have made a genuine and reasonable pre-estimate.

82. The Petitioner has strongly relied upon one sentence in the present award. The learned Arbitrator stated, while referring to ***Saw Pipes*** *(supra)*, that the aggrieved party "*is entitled to the said amount on proof of breach, even if no actual loss or injury was suffered by it*". If this sentence is read entirely by itself, the expression is undoubtedly wider than the principle of reasonable compensation under Section 74. A mere breach cannot be converted into a source of profit where the evidence affirmatively shows that no loss or legal injury at all could have followed. An arbitral award, however, has to be read as a whole and a Section 34 Court should not isolate one expression from the findings which immediately precede and follow it if the reasoning as a whole conveys a legally sustainable view.

[19] **(2015) 14 SCC 263**

83. Immediately before the said expression, the learned Arbitrator expressly considered the nature of Clause 3 and held that it was not a penalty describing it as liquidated damages and, more importantly, "*as reasonable estimate by parties for loss being caused due to failure to fulfil commitments of supply and lifting of ethanol to the extent of 90% of the ordered quantity*". Thus, this is not a case where the Arbitrator merely noticed a figure in the contract and ordered it to be paid without considering its character. There is an express finding that the clause constituted a reasonable estimate of the loss attached by the parties to failure of minimum performance. The structure of Clause 3 also supports the possibility of such a view, being reciprocal and did not operate upon every insignificant shortfall. The parties permitted a deviation of 10% and the commercial consequence arose only when performance fell below the stipulated minimum of 90%. This feature is relevant, a provision which leaves a tolerance and fixes the consequence only beyond that tolerance can reasonably be understood by a commercial tribunal as an agreed allocation of the risk of material short supply or short uplift rather than a punishment imposed for the very first default.

84. The subject matter also cannot be ignored. The contracts were for continuing supply of ethanol for petrol blending at the Respondent's locations. The object was not a single isolated sale of a readily replaceable item under one invoice, the parties themselves considered minimum annual supply and uplift sufficiently important to provide a reciprocal contractual mechanism. A deliberate cessation of supply beyond the agreed tolerance was therefore capable of affecting the

Respondent's procurement and blending programme even though the exact monetary consequence might not be reflected in one replacement purchase document.

85. The learned Arbitrator found that the Petitioner had wilfully and deliberately kept supplies in abeyance. Having first found breach of an essential supply obligation, he treated the stipulated measure as the reasonable estimate already agreed by the parties. In my view, the sentence in the award referring to absence of *actual loss or injury* has to be understood in this setting as dispensing with separate proof of the exact quantified monetary loss after the Arbitrator had accepted the clause itself as a reasonable pre-estimate. It cannot fairly be read as a factual finding by the Tribunal that the Respondent suffered no legal consequence whatsoever and was nevertheless being given a windfall.

86. The distinction is important. If the learned Arbitrator had found that no loss or injury could possibly have resulted and had still granted the amount merely to punish breach, the position under Section 74 would have been different. That is not the finding which emerges when the award is read as a whole. In ***Kailash Nath*** *(supra)*, the surrounding facts were material because the evidence itself showed the position concerning the property and the absence of the claimed loss. The principle that compensation remains compensatory is binding, but its application necessarily depends upon the facts and nature of the particular transaction. Likewise, the ***HPCL*** judgments relied upon by the Petitioner cannot be read as laying down that no "Take or

Pay/Supply or Pay" clause in an ethanol contract can ever represent a reasonable pre-estimate.

87. In those proceedings the Court examined the particular pleadings and findings before it and found serious deficiencies in the claim for damages, including the foundation concerning loss and the manner in which the claim had been put forward. The Division Bench emphasised the need for breach, legal injury flowing from breach and the resulting basis for compensation. Those legal requirements apply here also. The difference is that the learned Arbitrator in the present case expressly treated Clause 3 itself as a reasonable estimate for the loss arising from failure to meet the 90% commitment and also separately found a deliberate breach of the essential supply obligation.

88. Whether this Court, acting as the original adjudicator, might have required more evidence from IOCL is not the test under Section 34. The question is whether the view taken by the learned Arbitrator is an impossible application of Section 74 or a view which the contract and the law could reasonably bear. The Petitioner has not shown that the contractual measure was extravagant, unconscionable or wholly unrelated to the commercial consequence which the parties sought to address. The clause applied equally to both sides, which the Petitioner itself invoked its reciprocal operation when making its own claim against IOCL. The fact that the Petitioner invoked the clause does not prevent it from raising a valid objection under Section 74. It does, however, show that the provision formed part of the commercial allocation accepted by both parties and was not a unilateral clause

imposed only upon the supplier. This Court, therefore, does not find that the learned Arbitrator's treatment of Clause 3 crosses the threshold for interference under Section 34. At the highest, the Petitioner has demonstrated that a different or stricter view of the evidence relating to loss was possible. That is insufficient to set aside an arbitral award.

89. The Petitioner has next argued that there is an internal inconsistency because IOCL's deduction was upheld without separate proof of actual loss whereas the Petitioner's claim under the reciprocal clause was rejected, amongst other grounds, for want of proof of sufferance or injury. I have considered this part of the award carefully. If the Petitioner's reciprocal claim had been rejected only on the proposition that actual quantified loss must invariably be proved, while IOCL had been expressly exempted from the same legal requirement, the argument would have required closer consideration. The award, however, gives additional and independent reasons for rejecting the Petitioner's claim. The learned Arbitrator recorded that necessary documents had not been placed on record to establish wilful default by the Respondent in uplifting the contracted quantity. He further recorded that no evidence had been produced to support the claim of Rs.29,32,001/-. The claim concerning Rs.1,36,76,301/- was also rejected for want of material establishing the alleged withholding in the manner asserted. Thus, the Petitioner's reciprocal claim failed at the factual foundation itself, including proof of the Respondent's default and the quantities or amounts on which the claim depended. It was not rejected only because exact monetary loss had not been proved.

90. The reasoning could no doubt have been expressed with greater symmetry, which is not enough to infer that two different laws were deliberately applied to the two parties nor does it establish bias. An allegation of bias cannot be founded merely on the fact that one party succeeded on an issue and the other party failed on another issue, there must be material showing lack of impartial adjudication and no such material has been established here.

91. The next submission is that IOCL could not determine its own damages and recover them by deduction. As a general proposition, the Petitioner is correct that a mere assertion of unliquidated damages is not the same as an admitted and presently payable debt. A commercial party cannot pass a binding decree in its own favour merely by describing its claim as damages; however, that is not where the matter ended in the present case, the Respondent made deductions which the Petitioner disputed and invoked arbitration. The Petitioner sought return of the deducted amount, the Respondent defended its entitlement. Thus, Issue No.4 was then specifically framed to decide whether the Respondent could deduct the amount under the "Take or Pay/Supply or Pay" clause and whether such deduction was legally permissible.

92. The very liability underlying the deduction therefore became a matter for adjudication before the chosen arbitral forum. The learned Arbitrator considered the breach, the character of Clause 3 and the Respondent's entitlement and gave a decision upon them. The claim did not remain an unadjudicated internal calculation of IOCL after the arbitral award. The absence of a separately titled counterclaim is not, in

these circumstances, decisive. The Petitioner itself put the refund and legality of the deduction directly in issue and the parties proceeded before the Arbitrator on an express issue concerning IOCL's entitlement. No case has been made out that the Petitioner lacked notice of the case it had to meet or that Issue No.4 travelled beyond the pleadings and reference. On the contrary, Issue No.4 was one of the principal questions argued before the learned Arbitrator.

93. The distinction recognised in ***Iron & Hardware*** **and** ***Tower Vision*** *(supra)* between a mere claim for damages and a crystallised liability does not require the Court to ignore the fact that the disputed liability was thereafter adjudicated by the arbitral tribunal. Section 74 does not require that a separate civil decree must first be obtained before a contractual deduction can be defended when the legality of that very deduction is placed for decision before the Arbitrator.

94. The Petitioner is also correct in submitting that a general recovery clause cannot by itself create an underlying liability which otherwise does not exist. The Letter of Intent dated 27.09.2010 and the Affidavit-cum-Undertaking dated 13.09.2011 therefore cannot be treated as an independent adjudication that the earlier damages were legally due. The learned Arbitrator's conclusion, however, need not be understood in that manner. He first determined the underlying question of breach and the entitlement under Clause 3, thereafter, the Letter of Intent and undertaking became relevant to the manner in which the liability could be adjusted against later payments. Once the underlying liability was upheld by the Arbitrator, his interpretation of those

documents as providing a contractual mechanism for recovery from subsequent payments was a possible construction of the documents. Section 34 does not permit this Court to substitute another contractual construction merely because the Petitioner says that a narrower construction should have been adopted.

95. What remains to be analysed is the Petitioner's tax claims, which also do not call for interference. The learned Arbitrator did not deny that there had been delay in Form-C but, nevertheless examined whether the claimed monetary liability was wholly and directly attributable to the Respondent. The provisional assessment orders contained matters relating to the Petitioner's own tax treatment in addition to the Form-C question and the Arbitrator also noticed that an application for extension was not made. These were relevant pieces of material before the Tribunal. More importantly, the final assessment order dated 28.06.2012 did not leave the Petitioner with the differential tax and penalty liability on account of delayed Form-C in the manner originally apprehended.

96. The Petitioner may have faced temporary hardship, that fact by itself does not establish a contractual entitlement to recover every amount or expense incurred during the tax proceedings from IOCL. The causal connection, the contractual basis and proof of the amount were matters for the learned Arbitrator. He considered the documentary record and rejected the claim. This Court cannot reopen those findings as an appellate authority merely because it might assess the causal connection differently.

97. Furthermore, the claim towards legal expenses was also rejected for want of the necessary proof and nexus. This again falls within appreciation of the evidence and does not disclose patent illegality.

98. I have also considered collectively the errors pointed out by the Petitioner. An arbitral award is expected to accurately state the names of the parties and the documents before it, references to another concern or another matter are not desirable. Equally, an observation about whether a document was filed at one stage or another should be factually correct. But Section 34 does not permit setting aside for every clerical, descriptive or factual inaccuracy. The error must have a bearing upon the decision or show that vital evidence was ignored or that the tribunal proceeded upon a basis having no connection with the record. That threshold is not met here.

99. The provisional assessment orders were considered, the delay in Form-C was accepted, stoppage of supply was considered, Clause 3 was reproduced and interpreted, the parties' respective monetary claims were examined, and the subsequent Uttarakhand arrangement and recovery documents were also dealt with. Thus, the main controversies were before the Arbitrator and were adjudicated. The inaccuracies relied upon by the Petitioner do not displace the substantive chain of reasoning which led to the award.

100. The fact that the original arbitral record was subsequently stated to be unavailable is certainly unfortunate. It cannot, however, result in

a presumption that every disputed observation in the award is incorrect or that the award must for that reason be set aside.

101. On a consideration of the entire matter, this Court is unable to accept that the Petitioner has established a ground for setting aside the award under Section 34 of the Act.

102. The Petitioner's grievance concerning delayed Form-C was genuine and the learned Arbitrator himself accepted that there had been delay. The Arbitrator nevertheless held that the agreements did not permit the Petitioner to suspend ethanol supplies on that ground. In the absence of an express suspension clause and having regard to the other circumstances noticed in the award, that conclusion is a possible interpretation of the contractual relationship. The Court cannot convert the Petitioner's commercial justification into a contractual right which the learned Arbitrator, upon interpretation of the agreements, found did not exist.

103. The final tax assessment order dated 28.06.2012 and the reasons contained in the provisional assessment proceedings also furnished material upon which the learned Arbitrator could reject the Petitioner's monetary claims towards differential tax, penalty and related expenses.

104. As regards Clause 3, the law under Section 74 does not permit automatic penal recovery merely upon proof of breach. However, the present award cannot fairly be read as enforcing an arbitrary penalty. The learned Arbitrator expressly held the reciprocal Clause 3 to be a

liquidated damages provision and a reasonable estimate made by the parties for the loss arising from failure to meet the minimum 90% supply or uplift commitment, contained a 10% tolerance and dealt with the commercial consequence of material non-performance.

105. The observation in the award concerning absence of actual loss, when read in the context of the entire reasoning, amounts to dispensing with separate proof of the exact quantified loss after accepting the contractual pre-estimate. It does not amount to a finding that no legal injury or commercial consequence whatsoever could arise and yet a penalty should be imposed. The view taken by the learned Arbitrator is therefore capable of being sustained within the principles explained in ***Saw Pipes*** *(supra)* and the later law governing reasonable compensation. The decisions in ***Fateh Chand, Kailash Nath*** **and the** ***HPCL*** *(supra)* proceedings do not justify treating the present Section 34 petition as an appeal and undertaking a fresh assessment of the damages evidence.

106. The challenge to the cross-contractual adjustment also fails as a disputed damages claim is not made a debt merely by unilateral assertion. But in the present case, the Petitioner challenged the deduction in arbitration and Issue No.4 specifically required adjudication of IOCL's entitlement, the liability was thereafter adjudicated by the learned Arbitrator. Once that liability was upheld, the Letter of Intent dated 27.09.2010 and the Affidavit-cum-Undertaking dated 13.09.2011 could reasonably be treated as providing the mechanism for recovery from subsequent payments.

107. The alleged inconsistency in treatment of the reciprocal claims also does not establish bias or perversity because the Petitioner's claim was independently found deficient in proof of the Respondent's default, the supporting quantities, documents and the amounts claimed.

108. The delay of about seventeen months in publication of the award was substantial and undesirable. The Petitioner has, however, not established that the delay had such an adverse effect upon the findings as would warrant setting aside the award. The separate challenge based upon Clause 16(g) was not raised as an independent ground in the Section 34 petition within the statutory period and cannot, in the facts of this case, be introduced through rejoinder and oral submissions as a new basis for setting aside the award.

109. The Court may have expressed some parts of the reasoning differently had it been deciding the disputes as the original adjudicator, however, that is not the jurisdiction which the Court exercises under Section 34. The learned Arbitrator was the adjudicator selected under the contractual mechanism and his conclusions on the material issues are supported by reasons and by material which was before him, thus the conclusions cannot be described as findings which no reasonable arbitral tribunal could reach.

110. No ground has therefore been made out to hold that the impugned award is contrary to the fundamental policy of Indian law or patently illegal in a manner going to the root of the matter, perverse, or otherwise

liable to be set aside within the limited jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996.

111. In view of the aforesaid, the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Arbitral Award dated 21.08.2015 passed by the learned Sole Arbitrator is hereby dismissed and the Impugned Arbitral Award dated 21.08.2015 shall remain undisturbed and is upheld in its entirety.

112. Pending application(s), if any, also stand disposed of.

**OM PRAKASH SHUKLA, J.**

**AUGUST 19, 2026**/*gunn/at*