



2025:DHC:11122-DB



\$

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment Reserved on: 20.11.2025

Judgment pronounced on: 11.12.2025

Judgment uploaded on: As per digital signature~

+

FAO (COMM) 219/2023

M/s. Swastika Industries
Through its Sole Proprietor
Shri Ram Kishore Gadia

..... Appellant

Versus

M/s. National Research Development Corporation

..... Respondent

Advocates who appeared in this case

For the Appellant : Mr. Rana S. Biswas, Mr. Yash Tripathi
and Mr. Kartik, Advocates

For the Respondent : Mr. Joydeep Sarma and Mr. Lalit
Verma, Advocates

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

VINOD KUMAR, J.

1. This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (*'the Act'*, hereinafter) with the following prayers:



“a) Set aside the impugned order dated 20.07.2018, passed in Arbt No. 20243 of 2018 passed by the Learned ADJ Saket Courts Delhi.

b) Set aside the award dated 26.10.2013 passed by the Arbitral Tribunal consisting of Shri S. P.Mukherji IAS (Retd.) at his Chittaranjan Park, Kalkaji residence; and

c) pass such other and further order or orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case and in the interest of justice..”

2. For sake of convenience, the appellant would be referred to as ‘Swastika’ or ‘counter claimant’ and the respondent would also be referred to as ‘NRDC’ or ‘claimant’.

3. Vide impugned award dated 26.10.2013, the arbitrator partly allowed the claim of NRDC and rejected the counter claim of Swastika. Aggrieved by this award, Swastika filed objections under Section 34 of the Act before learned Additional District Judge-07, South East District, Saket, who dismissed the same vide impugned judgment dated 20.07.2018.

DISPUTE

4. The Research and Development Centre (R&D) of the Indian Oil Corporation (IOC) developed an improved version of gas burners of two models T-22 and T-35 and assigned the technology to respondent/NRDC. On 18.03.2004, the appellant-Swastika approached respondent seeking the application form and the terms and conditions for obtaining a license to manufacture LPG burners using IOC’s technology. The respondent-NRDC responded via letter dated 22.03.2004 supplying broad details of the process and clearly stating that it



was understood that the appellant was satisfied with the workability of the process in all respects. Pursuant thereto, the parties executed a License Agreement ('Agreement' hereinafter) dated 26.05.2004 for a period of ten years under which the NRDC licensed the said technology to Swastika. As per the Agreement, the appellant-Swastika was required to first develop a prototype burner in conformity with IOC's specifications and secure certification from IOC before commencing production. Clause 7B(i) of the Agreement is as follows:

"The licensee shall develop a prototype of the ARTICLE according to the technical information provided by IOC within a reasonable time and submit the prototype to IOC for approval and shall incorporate such changes therein as are required by IOC until the satisfactory prototype of the ARTICLE has been developed. On successful development of the prototype, IOC shall accord approval in writing. No manufacture of the Article (other than manufacture of the Prototype) shall be undertaken, unless the Prototype of the Article has been approved and certified by IOC."

As per the Agreement, Swastika was to pay a total license premium of Rs.8,00,000/- consisting of Rs.3,00,000/- on or before execution of Agreement and two instalments of Rs.2,50,000/- each payable within six and eleven months respectively from the date of execution. Thereby, the appellant paid the initial instalment of Rs.3,24,000/- (i.e. 3,00,000 plus 8% service tax) but the remaining two instalments were tendered through two post-dated cheques of Rs.2,70,000/- (i.e. 2,50,000 plus 8% service tax) each. However, as per the IOC's inspection reports, manufacturing defects were discovered on the sample



burners produced by the appellant-Swastika and he was asked to submit improved samples for further evaluation.

5. Dispute arose when the first cheque no. 630451 dated 27.10.2004 bounced on ground of insufficiency of fund and the second cheque no. 630452 dated 27.03.2005 bounced on ground of stop payment instruction. On both the cheques being dishonoured, the respondent-NRDC issued legal notices demanding payment within fifteen days, but no payment was made by the appellant.

NRDC FILES A CIVIL SUIT AGAINST APPELLANT

6. Aggrieved by this non-payment, NRDC instituted a civil suit CS 822/2008 under Order XXXVII of the Civil Procedure Code, 1908 on 07.02.2007 for recovery of Rs.8,62,350/- arising from the dishonoured cheques. Swastika moved an application under Section 8 of the Act before learned Additional District Judge with a prayer to refer the parties to arbitration as per the executed License Agreement. The parties were then directed to resort to Arbitration as per the License Agreement.

APPOINTMENT OF ARBITRATOR BY RESPONDENT

7. Clause 12 of the Agreement, which is in regard to the appointment of Arbitrator, reads as under:

“A (I) If any dispute or difference arises between the parties hereto as to the construction, interpretation, effect and implication of any provision of this License including the rights or liabilities or any claim or demand of any party against other or in regard to any other matter under these presents but excluding any matters, decisions or determination of which is expressly provided for in this license such disputes or differences shall, be referred to



the Sole Arbitration of the' Secretary of the Administrative Ministry of the Licensor company or that of his nominee."

Accordingly, the Administrative Ministry of the respondent-NRDC referred the dispute to the Sole Arbitrator.

8. Both parties proceeded to file their respective claims and counter claims during the course of the arbitral proceedings.

STATEMENT OF CLAIM

9. NRDC, in its claim, averred as follows:

- I. Swastika acknowledging the claimant's assigning rights, sought technical know-how for manufacturing LPG commercial burners T-22 & T-35 (letter dated 18.03.2004). The claimant offered a licence on 22.03.2004 for a premium of Rs.8,64,000/- (Rs.8,00,000 plus 8% service tax) plus 3% royalty for ten years. Swastika applied for the licence, and later requested to pay Rs.3,24,000/- upfront and the balance Rs.5,40,000 in two instalments by post-dated cheques.
- II. A licence agreement was executed on 26.05.2004. Swastika paid Rs.3,24,000 premium (including 8% service tax) and issued two post-dated cheques each for Rs.2,70,000 (including 8% service tax). The claimant-NRDC transferred complete technical know-how through IOC's R&D Centre. Swastika was then required to submit burner samples to the R&D Centre for testing but the samples failed. Therefore, vis-a-vis inspection reports



dated 20.09.2004 and 28.09.2004 by R&D Centre, Swastika was directed to resubmit improved samples.

- III. Swastika then raised excuses to delay the payment of the remaining premium. Both cheques for Rs.2,70,000/- each were dishonoured—the first cheque for “funds insufficient”, then the second cheque for “stop payment”. Despite notices, Swastika failed to pay the amount. Thereafter, the claimant filed a summary suit under Order XXXVII CPC. However, the learned District Judge in terms of Section 8 of the Arbitration and Conciliation Act directed parties to resort to arbitration as per Clause 12 of the Agreement. Hence, claimant-NRDC claimed as under:
- i) Rs.5,40,000/- (including 8% service tax) plus penal interest @ 30% as per Clause 5 of the License Agreement
 - ii) Royalty as per License Agreement
 - iii) Cost of litigation

STATEMENT OF DEFENCE CUM COUNTER-CLAIM

10. Swastika, in its reply cum counter-claim, averred as follows:

- I. The claim is barred by limitation and is liable to be rejected for non joinder of parties. It was submitted that the post dated cheques were issued by J.P. Gadia on behalf of Swastika but he was not made a party to the present proceedings. Further, the claimant claimed to be the owner intellectual property of IOC's burner, who is also not a



party to the present proceedings. Claim was neither raised as per the Act nor did it notify the disputes and differences between the parties. Also the deferred payment was only due in the event of fulfilment of contingencies as per the Agreement.

- II. IOC published an article in the year 2000 stating its specially developed commercial burners saved 22% LPG compared to conventional models and that commercialization would be transferred through NRDC. Based on these representations, counter claimant-Swastika became interested and NRDC offered a non-exclusive license for burners T-22 and T-35 on premium of Rs.5,00,000/- lakhs each plus 8% service tax, 3% royalty for a ten year period. Eager to commercialised the product, NRDC offered a package by lump sum payment of Rs.8,00,000/- in total as premium plus 8% service tax.
- III. Both parties acted on the understanding that the burners saved gas forming the basis for the counter claimant's agreement to exploit the know-how. The agreement dated 26.05.2004 was signed, and accordingly, Rs.3 lakhs was paid upfront, and the balance amount of Rs.5 lakhs via post dated cheques no. 630451 and 630452 for Rs.2,70,000 each. This deferred payment was conditional upon the prototype proving 20% saving based on NRDC supplied designs.



- IV. In accordance with the Agreement and understanding of the parties, the premium was due only after NRDC fully satisfied Swastika that the prototype saved 20% gas. Swastika received detailed engineering designs but sought express provision of gas-saving potential in the Agreement. NRDC instead gave IOC's project report showing 15–16% savings in comparison to commercial burners. Relying on such representations, Swastika invested heavily to develop prototypes and submitted them to IOC's R&D Centre. Both claimant and IOC's issued certificates claiming 20% and 15% potential savings respectively than any other conventional burner available in India. However, IOC's inspection report dated 28.09.2004 showed no saving, contradicting earlier representations made by both claimant-NRDC and IOC, resulting in wrongful loss to counter claimant-Swastika.
- V. Swastika immediately wrote on 07.10.2004 stating the specialized burners did not save gas and commercialization would become unviable. Swastika also made repeated visits but received no cooperation and was being directed to IOC. Since liability to pay did not arise until NRDC proved 20% saving, Swastika requested NRDC not to present cheques. NRDC nevertheless presented cheque no.630451. IOC then gave an illogical clarification that the conventional T-22 was not the specialised T-22 as developed by IOC and comparison must be made with the conventional T-35 model available in the market.



VI. Swastika sought clarifications, since, the Agreement was *void ab initio* obtained by fraud, and requested a refund of Rs.3,24,000/- alongside return of cheques via letter dated 03.11.2004. NRDC nevertheless presented cheque no. 630451 which was dishonoured for “Funds Insufficient”. Swastika had invested about Rs.13,24,000/- and thus, no debt or liability existed on its part and instead, Swastika suffered wrongful loss due to claimant’s misrepresentation. Thereafter, Swastika also filed a criminal complaint and FIR for cheating in Kolkata. Hence, counter claimant (Swastika) claimed as under:

- i) Rs.13,24,000/- along with interest at 24% p.a.
- ii) Cost of litigation

ISSUES

11. The learned arbitrator after considering the submissions of the parties framed the following issues:

S. No.	ISSUES
1	Is the Claim petition in these arbitration proceedings time barred and /or bad due to non-joinder of parties or absence of notice of claim?
2	Is the Counter claim of the respondent time barred?
3	Can the License Agreement entered into on 26.5.2004 by the Claimant and the Respondent be said to have been induced by the Claimant by dominance, fraud, misrepresentation, false assurance of performance and profitability etc., perpetrated over the Respondent? If so, to what effect?
4	Has the Respondent as the Licensee developed, rectified, and produced the prototypes duly approved and certified by the I.O.C. under clause 7B(i) of the License Agreement? If so, do the test results of the approved prototypes fall short



	of the performance limits of the licensed know how given in schedule II of the License Agreement?
5	If the rectified prototypes are not made available by the Respondent under the License Agreement for testing, can the License Agreement be still faulted on ground of alleged inferior performance in comparison with conventional and commercial burners?
6	Is the payment of premium under clause 5(i) of the License Agreement contingent upon satisfaction of some-condition other than the time schedule? If so, to what effect?
7	To what relief is the Claimant entitled?
8	To what relief is the Respondent entitled?

FINDINGS OF ARBITRATOR

12. Parties led their respective evidence and thereafter the Arbitrator heard both the parties. With respect to issue no.1, the counter claimant-Swastika contended that the claim was barred by limitation, defective for non-service of arbitration notice on him, and further vitiated by non-joinder of necessary parties i.e. IOC and counter claimant's son, namely, Jyoti Prakash Gadia. The Arbitrator rejected these objections. He held that no separate notice or prior consultation was required because Swastika itself invoked Clause 12 while resisting the civil suit. He further found the proceedings to be within limitation after excluding the bona fide period spent in civil suit (filed on 07.02.2007 and disposed on 02.09.2009). The non-joinder objection was also repelled as J.P. Gadia and IOC were not signatories to the Agreement but as per findings, J.P. Gadia was officially a representative-cum-employee of Swastika and IOC having assigned the technology wholly to NRDC have no legal or formal obligation towards



NRDC. Thus issue no. 1 was decided against the appellant-counter claimant i.e. Swastika.

13. On issue no.2, the counter claimant - Swastika maintained that its counter-claim arose well within the prescribed period i.e. three years. The Claimant-NRDC argued that, counterclaim cannot be considered as no reference to arbitration on counterclaim was obtained by the counter claimant - Swastika. Relying on the principle that limitation for a counter-claim is to be calculated with reference to the date on which the claimant asserts his claim, and applying Supreme Court's ratio in ***State of Goa v. Praveen Enterprises (Civil Appeal No. 4987/2011)***, the Arbitrator held that the counter-claim could be entertained so long as it fell within the scope of the arbitration clause. He therefore concluded that the counter-claim was not barred by limitation and that the arbitrator had full jurisdiction to decide counter-claim.

14. On issue no. 3, the counter claimant-Swastika contended that the Agreement was induced by fraud, misrepresentation and false assurances of superior performance, making project unviable and causing him to be trapped into signing the Agreement. The claimant-NRDC opposed this submitting that counter claimant-Swastika voluntarily sought license and was provided full technical know-how alongside disclosures. The Arbitrator accepted the claimant's position noting that IOC had demonstrated the working prototype and provided detailed corrective instructions, yet the counter claimant i.e. Swastika



neither rectified the defects nor sought technical assistance.

15. The Arbitrator dealt issues no. 4 & 5 together. The counter claimant- Swastika asserted that the prototypes proved defective and commercially unfit and therefore sought compensation. The claimant-NRDC denied this relying on IOC test reports and the demonstration record. The Arbitrator perused the letters dated 20.09.2004 and 28.09.2004 sent by IOC to the counter claimant, which recorded leakage and physical defects and even on re-submission registered thermal inefficiency against the contractual figures and was thus advised to rectify the defects and submit improved samples. Furthermore, the counter claimant-Swastika neither rectified nor re-submitted prototypes for IOC's approval. He deputed his son (a non-technical representative) to the IOC's demonstration and did not seek IOC's technical assistance and failed to honour its obligations. The Arbitrator held that the responsibility to fabricate, rectify and re-present prototypes was squarely upon the counter claimant-Swastika but his evidence was vague and unsupported by technical proof, thereby failing to establish any inherent defect in the technology. Thus the Arbitrator decided issue no.4 and 5 against Swastika and in favour of NRDC

16. On issue no.6, the counter claimant-Swastika submitted that the deferred payment was conditional upon satisfaction of certain contingencies as provided in the Agreement. The claimant-NRDC opposed this averment and argued that such submission is baseless as nothing of this sought neither existed in



the Agreement nor it was an unwritten understanding between the parties. The learned counsel for the counter claimant argued that Swastika was entitled to refund of premium amount less 25% as per Application form submitted by Swastika. But to the finding of Arbitrator, this condition was possible only before the transfer of technology and in this case, the transfer already took place at the time of demonstration on 02.06.2004. This issue was therefore decided against Swastika and in favour of NRDC.

17. The arbitrator, in light of the findings on issues 1 to 6, held that the claimant-NRDC is fully entitled to recover the arrears of the two unpaid instalments of the premium along with contractual interest and that counter claimant failed to pay the last two instalments of ₹2.5 lakhs along with service charge and interest @18% p.a. chargeable from 27.11.2004 for the first unpaid instalment and from 27.04.2005 for the second unpaid instalment. The Arbitrator refrained from applying the higher contractual rates of 24% and 30% considering NRDC's promotional mandate. He also held that no royalty was due, since counter claimant-Swastika had not commenced commercial production and never produced a certified prototype.

18. With regard to the counterclaim, the arbitrator held that it had no merit as the alleged losses has arisen solely from his own breach and inaction under the Agreement while never rectifying the defective prototypes after the IOC's detailed directions. Also, the counter claimant never sought technical assistance from IOC or NRDC at any stage. Further, the amounts spent in producing



defective and non-compliant prototypes cannot be shifted onto the claimant-NRDC as the Agreement places fabrication responsibility entirely on the Licensee i.e. counter claimant/Swastika as the facts depicted complete disinterest from counter claimant in making burners after IOC's evaluation with no intent to produce it then.

ARBITRAL AWARD

19. In nutshell, the learned Arbitrator partly allowed claim of the NRDC and rejected counter claim of the counter claimant-Swastika as under:

CLAIMS	CLAIMS DENIED	CLAIMS ALLOWED
Claim By Respondent/ NRDC i) 5,40,000/- (including 8% service tax) plus penal interest @ 30% as per Clause 5. ii) Royalty as per Agreement iii) Cost of litigation	Royalty as per Agreement	Rs.5,40,000 along with Interest @18% p.a. till realisation is awarded from: i) 27.11.2004 for the first unpaid installment, and ii) 27.04.2005 for the second unpaid installment.
Counter-Claim By Appellant/ Swastika i) 13,24,000/- (paid part payment of premium plus expenses incurred in R&D) ii) Cost of litigation	Entire claim denied	No claim allowed.

The Arbitrator directed that costs be borne equally by the parties.



APPELLANT-SWASTIKA CHALLENGES ARBITRAL AWARD UNDER SECTION 34 OF THE ACT

20. The appellant/Swastika filed a petition under Section 34 of the Act challenging the arbitral award before the learned Additional District Judge primarily on the grounds of limitation, absence of a statutory notice of arbitration under Section 21 of the Act, misapplication of Section 14 of the Limitation Act, fraud and misrepresentation by the respondent-NRDC and misappreciation of evidence by the arbitrator.

FINDINGS OF LEARNED ADDITIONAL DISTRICT JUDGE

21. The learned Additional District Judge after hearing both the parties held that firstly, the arbitrator had correctly extended the benefit of Sections 14(1) and (2) of the Limitation Act 1963 to the claim petition of NRDC and that the arbitrator rightly excluded the period (from 07.02.2007 to 02.09.2009) while computing limitation.

22. In support of this opinion, the Court relied on *State of Goa v. Western Builders, (2006) 6 SCC 239* and rejected the petitioner's contention that Section 14 of the Limitation Act is inapplicable to arbitration. It was also observed that the civil suit for recovery was itself filed within limitation and that the appellant-Swastika never raised any plea of limitation either before the learned Civil Court or at the stage of filing the Section 8 application.



23. Learned Additional District Judge dealt with the submission that no notice under Section 21 had been served on the petitioner. It is noted that although respondent-NRDC had initially opposed the arbitral reference, the Civil Court while deciding the Section 8 application, had nonetheless referred the parties to arbitration. It was held that the petitioner had proceeded on a completely misconceived understanding of the requirement of Section 21. It was clarified that notice under Section 21 is intended for a party unaware of the commencement of arbitration. In the present case, Swastika was fully aware of the matter being referred to arbitration as it had itself issued letters requesting appointment of an arbitrator, and had also moved application under Section 8 of Limitation Act praying for appointment of Arbitrator. Therefore, the objection was held to be untenable.

24. Lastly, learned Additional District Judge held that none of the grounds urged by the petitioner fell within the limited scope of interference under Section 34 and that the submissions of the appellant effectively sought re-appreciation of facts, which is impermissible in accordance with law.

25. Learned Additional District Judge after discussing all pleas of the parties held that the arbitrator has passed a well-reasoned order and does not suffer from perversity and therefore, dismissed the petition under section 34 of the Act.

GROUND OF APPEAL UNDER SECTION 37 OF THE ACT

26. The appellant aggrieved by the impugned judgment passed



by the learned Additional District Judge, preferred the present appeal before this Court on the following grounds:

- I. The arbitrator failed to decide the core issue i.e. whether the gas burners actually saved gas upon time, which is a misrepresentation by the respondent-NRDC.
- II. Both arbitrator and the respondent did not follow the procedure established under Section 21 of the Act. The section deals with notice to be issued to the other party informing about arbitration. It is submitted that the notice to appellant was not served properly and was informed about the arbitration only via Arbitrator's notice to appellant. Section 8(3) of the Act was misinterpreted as the Court only referred to Arbitration and not to the Arbitrator.
- III. Claim by the respondent/NRDC was barred by limitation. It was contended by learned counsel for the appellant that Section 14 of the Limitation Act was wrongly applied by the arbitrator as it is applicable only to applications filed in civil suits and not arbitration proceedings.
- IV. Learned counsel for appellant submits that Arbitrator did not make disclosures as per the procedure prescribed under Section 12 of the Act and it came to the knowledge of the appellant later in the proceedings of the arbitration that he was often appointed by the respondent in various arbitration proceedings.



- V. There is no contractual provision in the License Agreement for interest on premiums.
- VI. There was no adjudication/ consideration by the arbitrator of the counterclaim filed by the appellant.
- VII. The learned judge did not fully understand the scope of Section 34 and erred in holding that the objections filed by the appellant fall outside the ambit of Section 34.
- VIII. Perverse findings, wrong reliance, and ignorance of facts by both the arbitrator and learned judge.

ANALYSIS

27. Learned Counsel for the appellant-Swastika has drawn our attention to a certificate dated 16.09.2004 (Annexure-A10) issued by the respondent-NRDC, in which it is stated that the commercial burner developed by IOC are the only burners as of now which conforms to IS:14012 (1999) and it saves about 20% LPF gas than any conventional LPG gas burner available in India. Further, this burner saves time by at least 30% than any other comparable burner available in India. Further life of burner developed by Indian Oil is much more than any other burner and is very sturdy than any burner available in India. Our attention is further drawn to another certificate dated 21.09.2004 issued by IOC, R&D Centre (Annexure-A11) in which it is simply stated that the burners developed by IOC are energy efficient LPG burners (T-22 and T-35), which have potential to save 15% of LPG. Thus it is argued that the two certificates are at variance whereas IOC certificate dated 21.09.2004 only refers to saving of



15% LPG, the NRDC certificate dated 16.09.2004 mentions saving of 20% of LPG gas. Further, in certificate dated 16.09.2004 issued by NRDC, there is a claim of saving of at least 30% of time, whereas the certificate dated 21.09.2004 issued by IOC is silent about the saving of time. Hence, it is argued that the appellant was misled by the respondent.

28. It is submitted that believing of these representations, the appellant made investment in developing prototype but on testing the sample prototypes as also the burner prototypes handed over by IOC to the petitioner, it was found that there was no saving of gas and time as represented by the respondent. In that situation the appellant discussed the issue with IOC who tried to explain that the comparison of specialized T-22 burners should be made with market T-35 burners and specialised T-35 burners should be compared with market T-40 burners. It is argued that this justification is unreasonable and contrary to the representations as reflected in the certificate issued by NRDC. The case of the appellant is that in view of such illogical explanation, the appellant scrutinized the report of IOC and found that there was no mention of saving of gas as represented by NRDC. This anomaly was brought to the notice of NRDC through letter dated 07.10.2004 (Annexure-A14) informing them that on comparison of IOC developed T-22 burners with market T-22 burner, the IOC developed burners consumed more gas. Same was the case of comparison of IOC developed T-35 burners with market T-35 burners. The appellant followed up the issue by another letter



dated 30.10.2004 as well as letter dated 03.11.0224 (Annexure – A15 and Annexure –A16).

29. It is submitted that when there was no willingness of respondent-NRDC to resolve the problem, the appellant-Swastika sent a legal notice dated 20.11.2004 (Annexure-A17) through his Advocate requesting the respondent (NRDC) not to present the cheques for encashment until the commercial viability of declaration in respect of the transfer technology was established and proved. It is submitted by learned Counsel for the appellant that instead of replying any of the letters, the respondent-NRDC presented the cheques for encashment which were dishonoured. Further, the appellant filed a criminal complaint (Annexure-A18) in the court of Chief Judicial Magistrate, Kolkata on 14.01.2005, who directed the police to register FIR and investigate the case and the investigation is still pending. It is argued that all this evidence has not been considered by the Sole Arbitrator and therefore, the impugned award is unsustainable. It is further argued that learned Additional District Judge hearing objections under Section 34 of the Act also did not take into consideration any of these facts and the impugned judgment passed by learned Additional District Judge is silent on this point and that she simply observed that this would amount to re-appreciation of evidence which is not allowed under Section 34 of the Act.

30. It is true that learned Judge has not fully elaborated the issue of misrepresentation or fraud as raised by the appellant in the counter claim and closed the issue by holding that it would



amount to re-examination of the facts. However, perusal of the award would show that the Arbitrator has fully discussed these aspects very minutely and in great detail by discussing the entire evidence. I would like to reproduce the relevant paragraphs from the award as under:

“8. Issue 3. Can the Licence Agreement entered into on 26.5.2004 by the Claimant and the Respondent be said to have been induced by the Claimant by dominance, fraud, misrepresentation false assurance of performance and profitability etc., perpetrated over the Respondent? If so, to what effect?

The grievance of the Respondent is that contrary to what he was given to understand, the burners T22 and T35 developed with the licensed technology are inferior to the burners already available in the market and accordingly the commercial viability of manufacturing and trading on them has completely vanished. He has alleged that he was trapped to ink the Licence Agreement by fraud through deliberate misrepresentation that the performance of the burners developed with the licensed technology evolved by the IOC was superior to that of the conventional burners in the market in matters of saving of gas and time and in thermal efficiency.

9. Both the NRDC and the IOC with its Research Center are admittedly Government of India undertakings and the question of any fraud, by misrepresentation for personal monetary gain by trapping the Respondent to sign the Licence Agreement is a far cry. It has not been alleged that the staff of these organisations are entitled to any commission or brokerage if a Licence Agreement is signed. Nor do they have any position of authority or power to punish or reward the Respondent. So the question of any element of 'dominance' playing any part whatsoever in roping in the Respondent to sign the Agreement does not arise either. There was no canvassing by the Claimant. On the other hand it is the Respondent who admittedly after an enquiry went to the office of the Claimant, had some discussion and later, on 18.3.2004 sent a letter of interest to have a licence for T22 and T35 burners as developed by the IOC's Research Center at Faridabad. No question about performance ratings etc., of these burners was asked. The Claimant was simply



"requested to please let us know the terms and conditions for licensing of the product. If there is any form to be filled Please send the necessary form so that we initiate the action." In reply the NRDC (Claimant) wrote back the letter dated 22.3.2004(ex. CW1/3) enclosing the application form. The letter inter alia, very meaningfully carried the following warning:

The products are being offered to you on the basis of laboratory investigations and it is understood that you are satisfied with the workability of the process in all respects. We and the Research Institute will, however render such assistance as we can to help you to expeditiously implement the project. (emphasis added)

If, as admitted by the learned counsel for the Respondent, no assurance in writing about the saving of gas to the extent of 15% or above was given from the side of the Claimant before the Agreement was signed, there was all the more reason for the Respondent to have insisted on including a clause in the Agreement about the saving of gas if he was really serious about the saving of gas to the extent of 15% or 20% or whatever. This was not done. The learned counsel for the Respondent argued that it was not done because the Respondent was satisfied by the clause "specialized design" developed by the IOC occurring in the second opening paragraph of the Agreement. This argument is not convincing because the word "design" may not be related to saving of gas at all, and even if related, it does not quantify saving of gas to any extent much less 15% or above as demanded by the Respondent. The Claimant had with the letter of offer dated 22.3.2004 (ex.CW1/3) enclosed detailed comparative test reports on the conventional and the IOC developed T22 and 135 types of burners indicating thermal efficiency, gas burning rates, actual gas consumed, time taken and saving. The Respondent could have asked for more information or clarification if he was not satisfied with these details. He did nothing of the sort and went ahead to sign the Agreement. He did not find it convenient to be present with his technical staff at the demonstration of the performance of the prototype developed by the IOC as per the Licence Agreement, on 2.6.2004 at IOC Research Center at Faridabad when the date was fixed at the convenience of the Respondent. He sent his son who is a chartered Accountant and non technical to observe and certify the Demonstration and take over the technical



documents and drawings etc., and sign the Demonstration Certificate. The Respondent first termed the Certificate as fake but during his cross examination, was good enough to accept the signature of his son on the certificate as genuine. The application form enclosed with the letter of offer dated 22.3.2004 (ex-CW-1/3), clearly stated that 'no refund of premium is possible after the technology is demonstrated or process package is sent to the licensee'. In the above context, the Respondent has no reason to allege even an iota of inducement, dominance, fraud or misrepresentation on the part of the Claimant. The Respondent admits that the Project Report on the nuts and bolts of the burner technology was seen by him before entering into the Licence Agreement. There was nothing to prevent the Respondent from asking for a copy of the Report if he did not have it already. The Claimant states that it was given to the Respondent before the Agreement. In his letter of 18.3.2004, he cites 'IOC(R&D Center Faridabad in words identical with those on the Project Report as the developer of the improved technology of T22 and T35 burners. This shows that he had well digested the details of the Report. In any case someone who is going to invest lakhs of rupees on a commercial venture of a new technology must be keen to go through all details of the same with a toothcomb and consult experts of his choice and enjoying his confidence and not get into a so called trap of an Agreement with childlike innocence and gullibility if not rash adventurism. Even then the NRDC's aforesaid letter forewarned and alerted him, betokening a conduct far removed from any doubt of fraud or misrepresentation. The learned counsel for the Respondent conceded that no assurance was given in writing by anybody in the NRDC/IOC before the Agreement was signed, that the IOC burners will save 15% to 30% of gas compared to conventional burners

10. The Respondent has argued that the fact that the application for Licence (Annex V to Counter to the Statement of Claim) and the handwritten letter (Annexure VI to the same Counter) are both of the same date and written in the office of the Claimant shows that the Respondent was being rushed into the Licence Agreement by the Claimant. A perusal of the letter at Annexure VI above, will show that it seeks some relaxation of the condition of payment of the premium etc. from the Licensor/Claimant. It is but natural that such a letter should accompany the Licence application and be written



after discussion at Licensor's office. This is the minimum that is expected of the Claimant as a public body and as a promoter of an innovative technology in order to help and guide an entrepreneur interested to commercialise that technology but has some difficulty in paying the premium in one lumpsum etc.

11. As far as misrepresentation goes, there is nothing to show that the Licence Agreement has given any inflated figure of performance rating which could not be realized. In the Schedule of the Agreement some percentages (47% +/-1% and 40% +/-1%) of performance ratings of thermal efficiency have been given at a particular level of rate of burning of gas viz. 15:14612.19999 and are not unreasonably higher than those of commercial burners which are 45% for T22 and 38% for T35 burners (vide page 19 of the Annexure to the Counter). The Respondent signed the Agreement with these performance ratings in Schedule II thereof. The Respondent has no answer to why the performance criterion of saving of gas over saving 15% or 20% or 30% or whatever percentage conventional burners was not insisted upon by him to be formally mentioned in the Licence Agreement. He thought that being specially developed burners the saving of gas to that extent is implied. Hon'ble Supreme Court in Rajasthan State Industrial Development and Investment Corporation and Another vs. Diamond and Gem Development Corporation (CDJ 2013 SC120, decided on 12.2.2013) observed that "a Party cannot claim anything more than what is covered by the terms of contract for the reason that a contract is a transaction between two parties and has been entered into with open eyes and understanding the nature of contract. The contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meanings unless there is some ambiguity therein. The contract has to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, howsoever is reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without giving any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely." Further, in the Demonstration Certificate (ex.CW1/9) signed by the son of the Respondent, as his representative; on 2.6.2004 a week



after the signing of the Agreement, apart from the receipt of documents it was certified that "Licensee is fully satisfied with the working of the product and the know how given to them as detailed in know-how document". Though the Respondent is now dismissing the Certificate as fake, he never said so while challenging the Licence Agreement or the know-how in any of his letters dated 7.10.2004, 30.10.2004, 30.10.2004 and 3.11.2004, legal notices of 30.11.2004 and 30.3.2007. The allegation of fake certificate was made for the first time in the counter to the Statement of Claim. The allegation is a desperately escapist afterthought and has to be summarily rejected. The Demonstration was supervised by Sri S.P. Dubey now retired Dy. G.M. of the R&D center of the IOC. He appeared as CW-2 and stated on oath that the Demonstration certificate was signed by the G.M., of the IOC and Sri J.P. Gadia the representative and son of the Respondent, that the date was fixed as 2.6.2004 at the request of Sri J.P. Gadia. The Demonstration took the whole day. He also testified that the complete Project Report with narrative and all Annexures was given to Sri Gadia as transfer technical know-how. The demonstration showed that the IOC developed burners 135 and T22 produced the same heat utilisation and production with lesser rate of LPG consumption than the commercial burners with higher rate of gas consumption. The Respondent during cross -examination on 9.3.2013 admitted that his son had signed the Demonstration Certificate ex. CW-1/9. The certificate has to be accepted as genuine.

12. Further the performance of the prototype fabricated by the Respondent could not be tested fully as they, in both the testings were found to be leaking in gas and were not in accordance with the physical specifications given by the IOC. The Respondent did not rectify the defects pointed out by the JOC in detail but started challenging the performance of the prototype as tested in his own premises without the presence of IOC technicians which is totally against the provisions of clause 7B(i) of the Agreement.

Accordingly; Issue No. 3 is decided by total rejection and in the negative."

31. As the determination of misrepresentation and fraud is based upon the evidence led by the parties before the Arbitrator, the court hearing objections under Section 34 and the Court



hearing appeal under Section 37 cannot re-appreciate the evidence and overturn conclusions of the Arbitrator. In ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd. (2022) 1 SCC 131***, the Supreme Court of India while explaining the scope and ambit of patent illegality held that courts are prohibited to re-appreciate evidence to conclude that award suffers from patent illegality as the court do not sit in appeal against the arbitral award. It was further held that permissible ground for interference with a domestic award on the ground of patent illegality is when an Arbitrator takes a view, which is not even possible one. Therefore, learned Additional District Judge has rightly refused to enter into the analysis of evidence that discussion on this issue as it would amount to re-appreciation of the evidence. We find no infirmity in this opinion of learned District Judge.

32. Learned Counsel for the appellant further argued that Section 21 of the Act is mandatory provision and the same has not been complied with. As per Section 21 of the Act, a notice is required to be sent to the Opposite Party when it has no knowledge that the other party is going to raise its claim before the Arbitrator. This issue was considered by learned Additional District Judge in the impugned order. I would like to reproduce the relevant portion of the impugned order passed by learned Additional District Judge as under:

“As far as clause 12 is concerned, Ministry referred the dispute to the Ld Arbitrator and petitioner herein duly filed its reply before Ld Arbitrator along with his counter claim. Therefore, saying that no notice of



arbitration/reference to arbitration was sent to the petitioner herein is completely misconceived and it cannot be said that provision of Section 21 of the Act have not been complied with. Since the dispute was referred to arbitration only at the pursuance of petitioner herein. Therefore, now this plea cannot be raised that notice of reference of arbitration was not sent to it. The notice u/s 21 is required to be sent to opposite party when it has no knowledge that the other party is going to raise its claim before Arbitrator but here it was the petitioner who urged before the court of the Ld ADJ that the dispute can be decided by Arbitrator only in view of clause 12 of the license agreement. The copy of plaint/substance of dispute was already know to the petitioner. Ld Arbitrator has very well dealt with the contention of the petitioner and, therefore, same calls for no interference as there is no perversity in the findings of the Ld Arbitrator. The contention of counsel for petitioner is turned down."

33. Nothing has been shown by learned Counsel for the appellant as to what is the error in the aforesaid findings. The view of learned Additional District Judge is reasoned and we find not substance in the submission of Counsel for the appellant.

34. Learned Counsel for the appellant has argued that Section 14 of the Limitation Act, 1963 has been misapplied by the Arbitrator in the present case to render a finding that the claim is not barred by limitation. It is argued that provisions of the Limitation Act 1963 are applicable to the civil suits and not to the proceedings under Arbitration and Conciliation Act 1996. Before considering this submission, we would like to mention a few dates necessary for answering this issue :

Licence Agreement executed	26.5.2004
Last date for payment of second instalment of premium	26.11.2004
Last date for payment of third instalment of premium	26.5.2025
Date of filing the civil suit	7.2.2007
Date of disposal of civil suit	2.9.2009
Date of serving Notice of Sole Arbitration	17.2.2010



35. Learned Arbitrator was of the opinion that after deducting the period of time spent in civil suit (2 years 6 months 25 days) out of the period (5 years 2 months 21 days) that expired between oldest cause of action i.e. 26.11.2004 and the first notice of arbitration 17.02.2010, the relevant period is less than three years and therefore, the arbitration proceedings are well within the period of limitation. The argument of the appellant is that Section 14 of the Limitation Act has been wrongly applied by the Arbitrator because the Limitation Act is not applicable to the arbitration under the Arbitration and Conciliation Act 1996. We disagree with this submission. As per Section 43 (1) of the Act, the provisions of Limitation Act 1963 shall apply to arbitrations as it applies to the proceedings in court. In ***State of Goa v. Western Builders*, (2006) 6 Supreme Court Cases 239** cited by learned Additional District Judge in the impugned judgment it was held by the Supreme Court of India as under:

"Therefore, in the present context also it is very clear to us that there are no two opinions in the matter that the Arbitration and Conciliation Act, 1996 does not expressly exclude the applicability of Section 14 of the Limitation Act. The prohibitory provision has to be construed strictly. It is true that the Arbitration and Conciliation Act, 1996 intended to expedite commercial issues expeditiously. It is also clear in the Statement of Objects and reasons that in order to recognize economic reforms the settlement of both domestic and international commercial disputes should be disposed of quickly so that country's economic progress be expedited. The Statement of Objects and Reasons also nowhere indicates that Section 14 of the Limitation Act shall be excluded. But on the contrary, intendment of the legislature is apparent in the present case as Section 43 of the Arbitration and Conciliation Act, 1996 applied the Limitation Act, 1963 as a whole. It is



only by virtue of sub-section (2) of Section 29 of the Limitation Act that its operation is excluded to that extent of the area which is covered under the Arbitration and Conciliation Act, 1996. Our attention was also invited to the various decisions of this court interpreting sub-section (2) of Section 29 of the Limitation Act with reference to other Acts like the Representation of the People Act or the provisions of the Criminal Procedure Code where separate period of limitation has been prescribed. We need not overburden the judgment with reference to those cases because it is very clear to us by virtue of sub section (2) of Section 29 of the Limitation Act that the provisions of the Limitation Act shall stand excluded in the Act of 1996 to the extent of area which is covered by the Act of 1996. In the present case under Section 34 by virtue of sub-section (3) only the application for filing and setting aside the award a period has been prescribed as 3 months and delay can be condoned to the extent of 30 days. To this extent the applicability of Section 5 of the Limitation Act will stand excluded but there is no provision in the Act of 1996 which excludes operation of Section 14 of the Limitation Act. If two Acts can be read harmoniously without doing violation to the words used therein, then there is no prohibition in doing so."

36. Thus it is clear that Section 14 of the Limitation Act has been rightly applied by learned Additional District Judge for considering the question of limitation and we find no infirmity in the opinion of the learned Additional District Judge as well as the Arbitrator on this issue.

37. Learned counsel for appellant has argued that the arbitrator did not make disclosures as per Section 12 of the Act and therefore, he was ineligible to proceed with arbitration. We disagree with this submission. Section 12 was introduced in the Act vide Act 3 of 2016 and was made applicable w.e.f. 23.10.2015. The arbitration in the present case had started in the



year 2010 i.e. much before introduction of Section 12 in the Act. So the award cannot be set aside on this ground.

38. It is further argued that there is no provision in the agreement to award interest. We disagree with the submissions that agreement does not contain any interest clause. Relevant portion of para 5 of the agreement is reproduced as under:

“PAYMENT OBLIGATIONS

In consideration of the Licence hereby granted the Licensee shall pay to the Licensor:

i).

ii).

iii). Interest @ 18% per annum for the first six months and for the subsequent six months shall be 24% and if default persists then shall be 30% on all overdue amounts (including any interest in arrear) from the due dates of payments till realisation/recovery of such amounts by the Licensor. Provided that interest on interest in arrear shall not be charged until the expiry of the period of 30 days from the dates of payment becoming due.

39. On the issue of interest, the Arbitrator has taken a very reasonable view in awarding only 18% interest per annum and we find no infirmities in the same.

CONCLUSION

40. In view of above discussion, we find no infirmity in the impugned judgment and the impugned award. Accordingly the appeal is dismissed.

VINOD KUMAR, J

V. KAMESWAR RAO, J

December 11, 2025

V/B