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

% **Judgment reserved on: 20 January 2026**
Judgment pronounced on: 2/2/26

\+ O.M.P. (COMM) 149/2023 & I.A. 7531/2023

M/S JAY FE CYLINDERS LTD. .....Petitioner

Through: Mr. V.K. Garg, Senior Adv. with Mr. Kaushal Gautam, Mr. Rishi Jindal, Mr. Mrinal Sharma, Ms. Snehpreet Kaur, Ms. Hemant Dalal & Mr. K.S. Rekhi, Advs.

versus

MANISH JAIN .....Respondent

Through: Mr. Sanjeev Mahajan, Adv.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

1. This petition under Section 34 of the Arbitration & Conciliation Act, 1996 (for short 'the Act') is filed aggrieved of the arbitral award dated 14.12.2022.

2. The petitioner is a Company incorporated under the Companies Act, 1956 and engaged in the business of manufacturing Compressed Natural Gas (CNG), Liquefied Petroleum Gas (LPG) and Gas Cylinders. The petitioner approached a foreign collaborator RT Chemical Technologies and Composite Materials, a Joint Stock Company for manufacturing Polymer Composite Gas Balloons/Cylinders for storage and transportation of CNG & LPG. On 02.09.2016 Memorandum on Joint Participation in Investment Project

(for short 'MOJP') was executed between the petitioner and the foreign collaborator. The MOJP was valid for two years and could be terminated earlier with mutual consent. A Memorandum of Understanding (for brevity 'MOU') dated 03.08.2017 was entered between the respondent and the petitioner. The respondent was to be instrumental in execution of the Joint Venture Agreement (JVA) between the petitioner and the foreign collaborator; to arrange funds; to provide consultancy for establishment of the plant in India pursuant to the JVA and to assist in the successful implementation of the project as well as in ensuring regulatory compliances. The remuneration of the respondent was on commission basis as mutually agreed between the parties under clause 3 of the MOU.

3. The first instalment of sixty lakhs plus taxes towards commission was paid against Invoice no. 1 dated 06.09.2017. The JVA was not signed and on 08.06.2018 the MOJP was terminated by the petitioner. The arbitration proceedings were initiated at the instance of the petitioner for seeking refund of first instalment along with interest. The respondent filed a counter claim for release of second and third instalments. The arbitrator framed following issues:-

> (i) Whether the respondent is guilty of violating the express terms and conditions of the MoU dated 03.08.2017 (SOC)? OPC
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> (ii) Whether the respondent is liable to refund the 1st instalment of commission paid to him on 03.08.2017 along-with the interest from the date of default till the date of realization? If so, at what rate (SOC)? OPC.
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> (iii) Whether the payment of Rs. 60 lakhs along with

GST was made by the claimant to the respondent as advance or towards DSS Fee? OPR.

(iv) Whether the respondent is entitled to pro rata commission amount of progress of project? OPR.

(v) Whether the respondent is entitled to 2nd and 3rd instalment of commission under MoU dated 03.08.2017? OPR.

(vi) Whether the claimant can seek refund of GST after having taken the benefit of the input credit in pursuance thereto? OPR.

(vii) Whether the respondent is entitled to interest on the counter claim? If so at what rate and for what period? OPR.

(viii) Whether the claimant is liable to pay Arbitration cost & other legal expenses to the respondent?

(ix) Relief.

4. The issue nos. 1 & 2 were considered together and the claim of the petitioner for refund of sixty lakhs plus GST was rejected holding that the payment of first instalment was an advance of commission payable to the respondent. Issue nos. 4 & 5 pertaining to the counter claims of the respondent were allowed. It was concluded that the respondent had provided services including negotiating price of plant and machinery for the project and there was no failure on part of the respondent in rendering services as agreed under the MOU. The issue with regard to refund of GST was decided against the petitioner. The respondent was held entitled to interest at the rate of nine per cent per annum and litigation cost of two lakhs was awarded.

5. Learned senior counsel for the petitioner relying on clauses

3.1(e) and 3.1(g) contends that the payment of the first instalment made upon signing of the MOU was an advance refundable upon termination of the MOJP or in the eventuality of non-signing of the JVA. It is submitted that while deciding issue no. 3 in favour of the respondent the arbitrator held that the amount paid was an advance towards commission yet rejected the claim of the petitioner for refund and thereby recorded contradictory findings.

5.1 Vis-a-viz the allowance of counter claim of the respondent, contention is that the award is contrary to the express terms of the MOU and no reasons for allowing the counter claim have been recorded. The submission is that the counter claims were allowed in the absence of evidence establishing entitlement of the respondent to receive commission and the basis for quantification thereof.

6. *Per contra* the award is defended and it is argued that the scope of interference under Section 34 of the Act is limited, there cannot be re-appreciation of evidence and in case of two possible views the award is not to be interfered with. Reliance is on the decisions of the Supreme Court in **"South East Asia Marine Engineering and Constructions Limited v. Oil India Limited"** (2020) 5 SCC 164 and **"Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd."**(2019) 20 SCC 1.

6.1 The Supreme Court in **"State of Rajasthan v. Ferro Concrete Construction (P) Ltd."** (2009) 12 SCC 1 is relied upon to fortify the argument that the quantum of evidence is within the exclusive domain of the arbitrator and cannot be gone into under Section 34 of the Act.

The contention is that as per clauses 3.1(c), 3.1(e) & 3.1(g) of the MOU the respondent was entitled to commission for the services rendered and there was no occasion to refund the commission received. It is argued that the pleadings before the arbitrator vis-a-viz the services provided by the respondent remained uncontroverted. The cross examination of CW-1 Mr. Sushil Kumar Pareek is relied upon wherein the witness stated that it was not for the petitioner to judge the failure of the respondent to render services and the witness had no knowledge regarding the signing of the JVA.

6.2 It is submitted that the JVA was finalised but the petitioner without any justifiable reason refused to sign it. Moreover, unilateral termination of the MOJP by the petitioner was in violation of clause 5.2 thereof.

7. Heard learned counsel for the parties at length. No submission other than those noted above was pressed.

8. Before proceeding further it would be relevant to quote the clause 1 of the MOU dealing with the scope of the agreement and clause 3 relating to payment of commission.

> "1. **SCOPE OF AGREEMENT**
>
> 1.1 The Company hereby appoints the Consultant to be its Exclusive Consultant/Advisor for providing advice/ Consultancy relating to the joint venture required to be executed with the collaborator and arrangement of Private Equity from the Fund saving the interest of the party of the first part. The appointment of the second party shall be subject to providing the consultancy on all the issue put forth to him and safeguard the interest of the part of first part in every manner whatsoever.

1.2 The Second Party to work and offer Service to the First Party to finalize mutually beneficial terms of the commercial and business arrangement for the aforesaid project for successful implementation of project and start commercial production of product which includes but not limited to initiate, facilitate and ensure meetings between parties, getting the mutually required secretarial services such as recording of the discussion, getting the arrangement's vetted, identifying and introducing competent professionals to the First Party and Collaborator (if such requirement is felt necessary), to be available physically and on phone / e-mail / fax to offer advisory and consultancy services if and when the party of the First Part need or demand such services. The Second party will provide all documents / records / draft minutes exchanged with Collaborators from time to time in English language.

3. **COMMISSIONS/PAYMENTS**

3.1 The Company agrees to pay Commission to the Consultant for performing his duties subject to the following conditions:

a. The First party has agreed to pay in phases the commission as mutually agreed based on the project cost to be determined upon signing of JV between Company and Collaborator.

b. That the work assigned to the Consultant has been completed in every manner and payment of consultancy shall be paid strictly in terms of the schedule of payment as agreed between the parties. It is made clear by the party of first part that no interim payment in the middle of work shall be paid to the consultant.

b. The First Party has agreed to treat the Second Part as an 'Advisor /Consultant' throughout the project from inception till successful implementation of project and start commercial production of Product; and to provide

every signed document / record / draft minutes exchanged between the Company, Collaborator and Fund and decision making meetings between/among them if and when The Second Part's presence and participation is solicited by the First Party. Also the party of Second Part shall share investment proposals/ share calling communication, capital structure of the JVC and likes with the Company from time to time till commencement of production of product by the JVC.

c. That party of first part shall not be liable to pay any commission or any payment if the consultant failed to complete any of the duties assigned to the consultant. It has been agreed by the consultant that all payments received by the consultant shall be refunded to the party of the first part, in case consultant failed to meet any of the duties assigned to the consultant to meet the requirement of the Joint Venture and to set up the manufacturing of product.

d. The First Party shall pay the mutual agreed Commission to the Second Party and Second Party will raise Invoices for the same as per the following payment schedule:

S.No.	Particulars
1.	1st instalment of INR 60 Lacs (INR Sixty Lacs) after signing of this Memorandum of Understanding.
2.	2nd instalment of 10% of commission after signing of Joint Venture Agreement with collaborators.
3.	3rd instalment of 20% of commission after commissioning of plant and machinery.

4.	Balance upon commencement of Commercial Production.

e. Any payment received by the consultant prior to receiving the first capital instalment shall be treated as Deposit and the same shall be payable by the party of second part in the event of not concluding the joint venture agreement with the foreign collaborator. If there is delay or any non-performance by the first party, the pro-rata commission amount based on the progress of project will be payable to the second party.

f. The total commission due would be remitted by the Company to the account of Consultant or any of its Nominee intimated in writing on letterhead. The total commission due would be remitted by the Company to the account of Consultant in the Indian currency.

g. In case of termination of this agreement and/or not successful commencement of commercial production pursuant to joint venture agreement with the foreign collaborator, the party of the second part shall not be entitled for any commission and the party of the second part shall be bound to return all payments received on any account to the party of the first part. If first party fails to comply by all the duties as per the JV agreement, first party will be liable to pay pro-rata commission based on progress of the project due to second party."

9. The undisputed facts are that the first instalment of commission was paid. No JVA was signed between the petitioner and the foreign collaborator, consequently neither any plant was set up in India nor the commercial production started.

10. The MOU obligated the respondent to play an instrumental role in execution of the JVA with the foreign collaborator and to make arrangements for private equity. The respondent offered services to

finalise mutually beneficial terms and business arrangements for the project; to assist in successful implementation of the project and commencement of commercial production. The commission of the respondent was to be paid in phases and was based on the project cost to be determined upon signing of the JVA between the petitioner and the foreign collaborator.

11. Clause 3.1(c), 3.1(e) and 3.1(g) are relevant with regard to the commission payable and the manner in which the payment made was to be treated.

11.1 Clause 3.1(c) provided that the petitioner was not liable to pay commission in the event of failure of the consultant to complete the duties assigned. The commission received by the respondent was to be refunded upon failure to meet the duties assigned including meeting the requirements of the JVA and setting up of the manufacturing facility.

11.2 As per clause 3.1(e) the payment made to the consultant prior to receipt of the first capital instalment was to be treated as a deposit and was to be returned to the petitioner in the eventuality of non-conclusion of the JVA with the foreign collaborator. In case of delay or non-performance on part of the petitioner, the respondent was entitled to pro-rata commission based upon the progress of the project.

11.3 Clause 3.1(g) comes into operation upon termination of the agreement or unsuccessful commencement of commercial production pursuant to the JVA. In these eventualities the respondent was not entitled to the commission and had to return the payments received. On failure of the petitioner to comply with the obligations under the

JVA, pro-rata commission based upon progress of the project was payable to the respondent.

12. Clauses 3.1(c), 3.1(e), 3.1(g) covered three different eventualities. Firstly failure of the respondent to complete the duties assigned or failing to meet the requirements of the JVA and to set up manufacturing facilities. Secondly in case no JVA was concluded between the petitioner and the foreign collaborator and lastly on termination of the agreement or unsuccessful commencement of commercial production pursuant to the JVA. While deciding issue nos. 1 & 2 the arbitrator considered clause 3.1(c) of the MOU but failed to take into consideration clauses 3.1(e) and 3.1(g). Sub-Clause (e) specifically dealt with a situation where the JVA was not concluded between the petitioner and the foreign collaborator. In such a scenario the payment received by the respondent was to be treated as an advance and was to be refunded to the petitioner. At the cost of repetition no JVA was concluded between the petitioner and the foreign collaborator.

13. Under sub-clause (g) upon unsuccessful commencement of commercial production pursuant to the JVA the respondent was not entitled to commission and was bound to return all payments received. It is an admitted fact that neither the JVA was concluded nor there was successful commencement of commercial production.

14. The arbitrator while deciding issue nos. 1 & 2 against the petitioner ignored the relevant clauses of the MOU and was swayed by unilateral termination of the MOJP by the petitioner which was not the subject matter of dispute in arbitration. The respondent was not a party

to the MOJP and cannot raise grievance with regard to its termination more so, when the foreign collaborator accepted the termination and had not challenged it. The arbitrator sat in appeal over the business prudence of the petitioner in not signing the JVA whereas non-conclusion of the JVA was an issue to be considered.

15. It was not considered as to whether under MOU the respondent was entitled to retain the payment received rather the arbitrator proceeded on the basis that service charges should be paid to the respondent for the duties performed. Further that the commission could not be denied on account of the failure of the petitioner to sign the JVA. The arbitrator decided the matter contrary to the express terms and conditions of the MOU.

16. The essence of the MOU was the conclusion of JVA between the parties irrespective of which party was instrumental in non-signing of the JVA. The condition was of 'conclusion' of the JVA which never happened in this case. The award passed ignoring the clauses of the MOU and contrary to its terms is vitiated by patent illegality.

17. Issue no. 3 as to whether the payment of first instalment of commission along with GST could be treated as an advance was decided taking into consideration part of clause 3.1(e) and ignoring clauses 3.1(c) and clause 3.1(g). Clause 3.1(e) was partially considered to the extent that the payment received by the respondent was to be treated as a deposit whereas the latter part providing that the amount so received was refundable in the eventuality of non-conclusion of the JVA was ignored.

18. No reasons are recorded for deciding issue no. 3 against the

petitioner. The conclusion on issue no. 3 is reproduced:

> "38. Considering all facts and circumstances, this Tribunal is of the view that the payment of Rs. 60 lacs + GST made by the Claimant is as advance on account of fee/commission to be paid to the Respondent. This issue thus is decided in favour of the Respondent and against the Claimant."

19. The counter claims filed by the respondent under issue nos. 4 & 5 were decided by recording:

> "43. This Tribunal, upon perusal of the record and consideration of arguments put forth by both the sides finds weight in the submissions made by the Respondent. If the journey is not complete and some portion of it is left then the efforts and expenses made till actual completion cannot be ignored.
> 44. These issues are thus decided in favour of the Respondent and against the Claimant."

20. The conclusion is bald of reasons. The claim for pro-rata commission could have been made under clauses 3.1(e) and 3.1(g). Neither evidence was adduced by the respondent in support of the counter claim to establish delay or failure on the part of the petitioner as stipulated clause 3.1(e) nor the arbitrator recorded reasons as to under which clause the counter claim is allowed. For claiming pro-rata commission under sub-clause (g) there should have been failure of the petitioner to comply with duties under the JVA whereas in the case in hand no JVA was executed between the parties.

21. From reading of clauses 3.1(a) and 3.1 (d) it emerges that the second and third instalments were payable on a percentage based on the project cost determined under the JVA. There was no basis for

quantifying the instalments in the absence of an agreed project cost due to failure of the parties to enter into the JVA. The claim of the respondent for payment of second & third instalments was allowed against the clauses of MOU.

22. The issues of refund of GST and entitlement to interest are consequent upon the decisions of issue nos. 1 to 4 and need not be gone into.

23. The law is well-settled that an arbitral tribunal is obligated under Section 31(3) of the Act to pass a speaking award. Reference in this regard be made to decision of Supreme Court in **Dyna Technologies Private Limited v. Crompton Greaves Limited** (2019) 20 SCC 1:

> "34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.
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> 35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of

> reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards."

24. In case of an award suffering from patent illegality, perversity or being in conflict with the Public Policy of India the power under Section 34 of the Act is to be exercised. The non-consideration of the clauses of the MOU or rewriting of the contractual terms vitiates the award on the ground of perversity. Reference in this regard be made to following decisions of the Supreme Court:

24.1 In **Delhi Metro Rail Corporation Ltd. V. Delhi Airport Metro Express Pvt. Ltd.** 2024 INSC 292 held as under:

> "38. In Associate Builders vs. Delhi Development Authority[22], a two-judge Bench of this Court held that although the interpretation of a contract is exclusively within the domain of the arbitrator, construction of a contract in a manner that no fair-minded or reasonable person would take, is impermissible. A patent illegality arises where the arbitrator adopts a view which is not a

possible view. A view can be regarded as not even a possible view where no reasonable body of persons could possibly have taken it. This Court held with reference to Sections 28(1)(a) and 28(3), that the arbitrator must take into account the terms of the contract and the usages of trade applicable to the transaction. The decision or award should not be perverse or irrational. An award is rendered perverse or irrational where the findings are (i) based on no evidence; (ii) based on irrelevant material; or (iii) ignores vital evidence. Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute, as when for instance the award contains no reasons at all, so as to be described as unreasoned. A fundamental breach of the principles of natural justice will result in a patent illegality, where for instance the arbitrator has let in evidence behind the back of a party. In the above decision, this Court observed:

> "31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:
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> (i) a finding is based on no evidence, or
>
> (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
>
> (iii) **ignores vital evidence in arriving at its decision,**
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> such decision would necessarily be perverse.
>
> …
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> 42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example **if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act,**

such award will be liable to be set aside."

> 40. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view.[24] A 'finding' based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of 'patent illegality'. An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating a fundamental principle of natural justice."

25.2 In **Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum, (2022) 4 SCC 463** held as under:

> "43. An Arbitral Tribunal being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract."

25.3 In **State of Chhattisgarh v. SAL Udyog (P) Ltd., (2022) 2 SCC 275** held as under:

> "26. ……. We are, therefore, of the view that failure on the part of the learned sole arbitrator to decide in accordance with the terms of the contract governing the parties, would certainly attract the "patent illegality ground", as the said oversight amounts to gross contravention of Section 28(3) of the 1996 Act, that enjoins the Arbitral Tribunal to take into account the terms of the contract while making an award. The said "patent illegality" is not only apparent on the face of

> the award, it goes to the very root of the matter and deserves interference…….”

25.4 **In Bharat Coking Coal Ltd. v. Annapurna Construction**, **(2003) 8 SCC 154** held as under:

> “22. There lies a clear distinction between an error within the jurisdiction and error in excess of jurisdiction. Thus, the role of the arbitrator is to arbitrate within the terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled beyond the contract, he would be acting without jurisdiction, whereas if he has remained inside the parameters of the contract, his award cannot be questioned on the ground that it contains an error apparent on the face of the record.”
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> (emphasis supplied)

25. For the reasons mentioned above, the impugned arbitral award is set aside. Pending application is also disposed of.

AVNEESH JHINGAN, J.

FEBRUARY 02, 2026
'JK'

Reportable:- Yes