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

% **Date of decision: 11.02.2026**

\+ O.M.P. (COMM) 488/2023

NATIONAL RESEARCH DEVELOPMENT CORPORATION & ANR. .....Petitioners

Through: Mr. Joydeep Sarma, Mr. Kaushal Kapoor, Mr. Lalit Verma & Mr. A P Singh, Advs.

versus

MAK CONTROLS AND SYSTEMS PRIVATE LIMITED .....Respondent

Through: Mr. Satyam Thareja, Mr. Rakesh Karela & Mr. Shaurya Katoch, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

<u>AVNEESH JHINGAN, J. (ORAL)</u>

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') against the Award dated 07.08.2023.

2. The facts shorn of unnecessary details are that the petitioners/claimants on 06.03.2002 entered into a 'Programme Aimed at Technological Self Reliance' agreement (for short 'the agreement') with the respondent. The respondent was given financial assistance to develop a product 'Mak World Traker'. The agreement was for a period of twelve years. A royalty agreement of even date was also executed between the parties. The respondent at end of each financial year, for five years from start of commercial sale of product had to pay royalty of Rs.24 Lakhs per annum. The respondent completed the

project in the year 2007 but failed to commercialize it. The nil annual royalty returns were filed due to non-commencement of commercial production. Notice under Section 21 of the Act dated 24.06.2019 was issued by the petitioners. The notice was responded to on 02.07.2019 stating that there is no liability to pay royalty. The Arbitrator was appointed by this court under Section 11 of the Act.

3. The claim of the petitioners for royalty totaling to Rs.1,20,00,000/- was rejected in view of clause 4.1(f) of the agreement.

3.1 The claim for damages for not transferring the technology on failure to commence commercial production by the respondent was rejected on the ground of limitation. Hence, the present petition.

4. The clause 4.1(f) stipulated that the respondent at the end of each financial year shall pay a lump-sum royalty of Rs.24 Lakhs per annum, for five years from the start of commercial sale of the product. Learned counsel for the petitioner fairly submits that in view of the admitted facts that there was no commercial production of the product, the issue of royalty is not being agitated.

4.1 It is argued that the arbitrator erred in rejecting the claim for damages on the ground of limitation. The submission is that albeit, the project was completed in the year 2007 but the agreement was for twelve years i.e. up to 05.03.2014 and thereafter before issuing notice under Section 21 of the Act in the year 2019 the petitioner waited for royalty for five years. It is canvassed that in violation of clause 11(e) of the agreement, the respondent while replying to the notice for first time in year 2019 offered to transfer the technology.

5. *Per contra* the view taken by the arbitrator is a plausible one. Considering the obligation casted upon the respondent by clause 11(e) the claim for damages is time barred. The argument is that the scope of interference under Section 34 of the Act is limited.

6. Heard learned counsel for the parties at length and perused the relevant record with their able assistance. Apart from the contentions noted above no other issue was pressed.

7. Before proceeding further, it would be relevant to quote clause 4(i)(f), clause 8, clause 11 and clause 16 of the agreement:-

> " 4(i)(f) To pay to NRDC. who will receive the same on behalf of DSIR, annual lumpsum\royalty of Rs 24 lakhs per year for a total period of 5 years from the "Start of Commercial Sale' of the Product(s)" at the end of each financial year.
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> 8. COMPLETION OF PROJECT
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> The Project shall be deemed to have been successfully completed when MAK have designed, developed, produced, tried and tested "Product(s)" as per specifications given in Annexure I to this Agreement; to the satisfaction of DSIR and users.
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> 11. UTILIZATION OF TECHNOLOGY
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> a. MAK will enter into an agreement with NRDC within 120 days from the date of first sanction letter under the "Project" to enable NRDC to collect lumpsum. royalty payments as mentioned in clause 4.1 (f) above, and will pay to, NRDC lumpsum royalty' payments as per clauses 4.1(f) of this Agreement.
>
> b. MAK will have the right to utilize the technology developed or other IPRs generated

through the "Project" for production and commercial sale of product(s)'. For such commercial utilization of technology by MAK, MAK will pay to NRDC, who will receive on behalf of DSIR, lumpsum royalty payments as envisaged in clause 4.1(f) above.

c. After commercialisation of technology by MAK as stated in clause 11(b) above, MAK may do third party licensing, if MAK and DSIR perceive that such a need arises. This third party licensing and related terms and conditions would be finalised by MAK with the approval of DSIR. The revenue so generated by such third party licensing will be collected by MAK on behalf of MAK and DSIR and shall be shared between MAK and NRDC (on behalf of DSIR) in the ratio of their (MAK & DSIR) actual financial contributions towards the project as assessed at, the end of the project.

d. MAK may, if they do desire, utilise the services of NRDC for third party licensing as per mutually agreed terms and in consultation with DSIR. The revenue so collected by NRDC on behalf of DSIR and MAK by way of third party licensing shall be shared between MAK and NRDC (on behalf of DSIR) in ratio of their (MAK & DSIR) actual financial contributions towards the project as assessed at the end of the project.

e. MAK will assign the technology proposed to be developed under this project alongwith license to use the intellectual property owned by them and transfer the know-how document to NRDC within 60 days from the occurrence of any of the following:-

(i) If MAK refuses to exercise its right, within one year of completion of the "Project", its option to commercialise technology,

(ii) If MAK fails to cornmercialise technology within four years of completion of the project.

(iii) If MAK fails to execute agreement referred to in Clause 11 (a) above,

f. NRDC will have an exclusive right to license the technology developed through the "Project" to third parties in case of occurrence of either of the events referred in clause 11(e) above. MAK will provide to NRDC full details of any improvement(s) made on the "Product" and the process of manufacture and any additional information, which NRDC may require to license this technology to third parties, in the event of third party licensing under the circumstances given in clause 11 (e) above. In such cases, MAK will also provide training to third party licensees on request from NRDC on mutually agreed terms. Revenues earned by NRDC through third party licensing under this clause will be shared between MAK and NRDC (on behalf of DSIR) in the ratio of actual financial contributions by DSIR and MAK towards the project as assessed at the end of the project."

16. DURATION OF THE AGREEMENT

The duration of this Agreement will be for a period of 12 years from the date of its signing."

8. Clause 4 deals with the responsibilities of the parties. Under clause 4.1(f) the respondent at the end of each financial year was obligated to pay for five years from start of commercial sale of the

product, a lump-sum royalty of Rs.24 Lakhs per annum.

8.1 The completion of the project as per clause 8 is the successful completion of designing, developing, producing, trying and testing of the product as per the specifications in the annexures to the agreement and being to the satisfaction of the petitioners and users.

8.2 Under clause 11(e), the respondent within sixty days had to assign the developed technology to the petitioners along with license to use the intellectual property and know-how documents (hereinafter collectively referred to as 'the licensed technology'):- (i) in case of refusal by the respondent to commercialize the technology within one year of the completion of the project; or (ii) failure of the respondent to commercialize the technology within four years of the completion of the project; and lastly (iii) on failure of the respondent to execute the agreement as referred to in clause 11(a).

8.3 The duration of the agreement is for twelve years as stated in clause 16 of the agreement.

9. The undisputed facts are that the project was completed in the year 2007 and the liability of the respondent to pay the royalty was directly connected with the start of commercial sale, which never happened.

10. From the conjoint reading of the clauses it emerges that the respondent could not have indefinitely prolonged commercial sale of the product. Respondent on failure to commercialize the product within four years of the completion of the project had to transfer the licensed technology to the petitioners within sixty days thereafter.

11. The project was completed in 2007, the outer time limit with the

respondent for commercialization was up to 2011 and on failure of the respondent to transfer the licensed technology after sixty days thereafter the cause of action arose to the petitioners. The reliance on clause 16 by the learned counsel for the petitioner to contend that the agreement was for twelve years does not come to the rescue of the petitioner. Twelve years is the total period of the agreement and is not related to transfer of the licensed technology or payment of royalty. The contention of the learned counsel for the petitioner that cause of action arose after expiry of twelve years from 2002 and the period for which the royalty was to be paid i.e. five years, if taken to a logical end would render clause 11(e) to be otiose.

11.1. The duration of the agreement was for twelve years cannot be considered in isolation. For payment of royalty and transfer of the licensed technology the relevant point was the completion of the project i.e. in the year 2007. After completion of the project on failure to commercialize the project within four years, the licensed technology was to be transferred. The payment of royalty would have started from the start of commercial sale which never happened and hence, there was no occasion to wait for five years that to after 2014. In other words the project was completed in the year 2007 and was not commercialized till 2011, the transfer of the licensed technology was to take place within sixty days thereafter and it had no relation with the duration of the agreement.

12. The law is well settled that the interpretation of the clauses of the contract falls within the domain of the Arbitrator and unless the interpretation is perverse no interference is to be made under Section

34 on the ground that another view is possible. Reference in this regard be made to the following decisions:-

In **Punjab State Civil Supplies Corporation Limited & Anr. v. M/S Sanman Rice Mills & Ors. 2024 INSC 742** it was held as under:

> "13. In paragraph 11 of Bharat Coking Coal Ltd. v. L.K.Ahuja, 4 it has been observed as under:
>
> > "11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside.""

In **Prakash Atlanta (JV) v. National Highways Authority of India 2026 INSC 76** it was held as under:-

> "59. (vi) If an arbitral tribunal's view is found to be a possible and plausible one, it cannot be substituted merely because an alternate view is possible. Construction and interpretation of a contract and its terms is a matter for the arbitral tribunal to determine. Unless the same is found to be one that no fair-minded or reasonable person would arrive at, it cannot be interfered with. If there are two plausible interpretations of the terms of a contract, then no fault can be found if the arbitrator accepts one such interpretation as against the other. To be in conflict

with the public policy of India, the award must contravene the fundamental policy of Indian law, which makes it narrower in its application."

(Emphasis Supplied)

13. The arbitrator rightly held that the claim for damages is time barred as the cause of action arose in the year 2011 when clause 11(e) was violated. The respondent after having failed to commercialize the technology within four years of the completion of the project had to transfer the licensed technology within sixty days.

14. The award is not vitiated by patent illegality, perversity or is in conflict with public policy, the petition is dismissed.

AVNEESH JHINGAN, J

FEBRUARY 11, 2026
Ch

Reportable:- **Yes**