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

% Date of decision: 22.04.2026

\+ O.M.P. (COMM) 36/2023 & I.A. 1770/2023

HAZEL MERCANTILE LTD .....Petitioner

Through: Mr. Bishwajit Dubey, Mr. Akshit Awasthi & Mr. Vivek Sharma, Advs.

versus

INDIAN OIL CORPORATION LTD .....Respondent

Through: Ms. Vineeta Meharia, Senior Adv. with Mr. Amit Meharia, Ms. Tannishtha Singh & Mr. Sambhav, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

AVNEESH JHINGAN, J. (ORAL)

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for setting aside of the arbitral award dated 01.10.2022.

2. The brief facts are that the respondent/Indian Oil Corporation Ltd. (hereinafter referred to as 'IOCL') *vide* tender dated 15.01.2018 invited bids for supply of 26,000 MT of Acetic Acid (for brevity 'the acid'). The petitioner was the successful bidder and a purchase order (for short 'PO') dated 25.05.2018 was issued for supply of 13,000 MT at the rate of Rs. 50,500/- per MT. The supply was to be made over a period of one year from the date of first supply or till completion of the total ordered quantity, whichever was earlier. The PO stipulated delivery to be on a staggered basis as per the schedule to be issued by

IOCL and the required quantity of the material was to be supplied within four to seven days of the intimation. The petitioner made the first supply on 04.06.2018 and the contract was to expire on 03.06.2019. Till 02.02.2019, the petitioner supplied 6504.42 MT of acid in compliance with the schedules issued by IOCL. The plant of IOCL was shut down in February, 2019 due to technical reasons and resumed operations on 28.07.2019. IOCL on 03.04.2019 extended the tenure of the contract up to 31.08.2019. The petitioner was intimated on 17.06.2019 that the plant was under shut down and acid storage was full.

2.1 By email dated 05.08.2019 the petitioner sought extension of the PO by six months or till completion of the supply of balance quantity whichever was earlier. IOCL *vide* letter dated 05.08.2019 asked the petitioner to maintain the supply against the PO at the rate of 70 MT of acid per day for a further period of one week. On 20.08.2019 the petitioner was informed that no further supply of acid was envisaged. The terms and conditions agreed between the parties provided for dispute resolution through arbitration and the proceedings were invoked by the petitioner.

2.2 The petitioner raised the following claims:

(i) declaration that IOCL breached the contract. Damages of Rs.8,58,27,060/- for breach of contract were sought. Damages were quantified by taking the difference between the contract price and the actual price at which the balance quantity of acid was sold;

(ii) a sum of Rs. 3,71,91,726/- was claimed on account of expenses incurred for storing 5201.64 MT of acid; and

(iii) a sum of Rs. 4,87,119/- towards compensation for expenses incurred for furnishing of performance bank guarantee (for short 'PBG') and keeping it alive till it was returned.

2.3 The first issue was decided in favour of the petitioner and IOCL was held to be in breach of the contract. With regard to the claim for damages for non-supply of the balance quantity of acid the arbitrator awarded a sum of Rs. 25,000/- as nominal damages along with interest at the rate of 9% per annum from the date of the award till realisation. The claims for storage charges and expenses incurred towards furnishing the PBG were rejected. Litigation costs of Rs.12,00,000/- were awarded. Hence, the present petition.

3. Learned counsel for the petitioner contends that the impugned award is perverse and suffers from patent illegality. It is argued that relevant evidence including the deposition of CW-1 wherein it was stated that the petitioner was ready and willing to supply the balance quantity and that sufficient stock was available with the petitioner from time to time was ignored. Submission is that no reasons have been recorded by the arbitrator for awarding damages of Rs. 25,000/- which is grossly inadequate.

3.1 Reliance is placed upon the decision of Supreme Court in ***Associate Builders v. Delhi Development Authority***, (2015) 3 SCC 49 to contend that non-consideration of relevant evidence vitiates the award of patent illegality. The decisions of the Supreme Court in ***Oil and Natural Gas Corporation Ltd. v. Western Geco International Ltd.,*** (2014) 9 SCC 263 and ***Patel Engineering Ltd. v. North Eastern Electric Power Corporation Ltd.,*** (2020) 7 SCC 167 are relied upon

to submit that a perverse or irrational conclusion is a ground for setting aside the award. The decision in ***H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal & Ors. v. M/s Gopi Nath & Sons,*** 1992 (Supp) 2 SCC 312 is relied upon to argue that judicial review is to ensure fair treatment to the individual and that the authority authorised by law reaches a conclusion correct in the eye of law.

4. *Per contra*, the scope of interference under Section 34 is limited. The view taken by the arbitrator is plausible and calls for no interference. The submission is that there cannot be re-appreciation of the evidence. It is emphasised that as per the terms of the PO there was no condition that the entire quantity of acid was to be supplied in one go, thereby necessitating the petitioner to continuously maintain stock.

5. Heard learned counsel for the parties at length. Perused the relevant record with their able assistance. *Albeit*, written submissions have been filed by the parties but no other issue than those noted above was pressed.

6. There is no challenge to the finding recorded by the arbitrator that IOCL had breached the contract. The issue that survives is with regard to the quantum of damages awarded.

7. In the present case the damages were claimed under Section 73 of the Indian Contract Act, 1872 (for short 'Contract Act'). The undisputed facts are that the petitioner had a PO for supply of 13,000 MT on a staggered basis over a period of one year. The petitioner supplied 6,504.42 MT of acid till 02.02.2019 and the supply order was

closed on 20.08.2019 and the time period of the PO was not extended. The petitioner claimed that the balance quantity of acid i.e., 5,201.64 MT was sold at a rate lower than the rate agreed between the parties and sought damages.

8. The arbitrator rejected the claim considering that for various customers there was no segregation of stock imported by the petitioner. Admittedly there was a common stock of acid. There was no means to identify the specific stock meant for supply to IOCL. It was observed that in the eventuality of IOCL issuing schedules for the balance quantity, the petitioner was not having sufficient stock on several dates during the operative period of the contract. In other words, the petitioner had not procured in advance the entire quantity of acid to be supplied to IOCL. The deposition of CW-1 was relied upon wherein it was admitted that for the period from 01.02.2019 to 31.03.2019 the names of various customers to whom supplies were made found mention in the stock register. It was further admitted that the opening stock maintained by the petitioner was meant for supply to various customers. On this basis, it was concluded that there was a common pool of acid stock and that no stock was maintained exclusively for IOCL. Moreover, there was no clause in PO requiring the petitioner to maintain stock for supply to IOCL. The contract provided a period of four to seven days for execution of the schedule thereby giving sufficient time to the petitioner to arrange the required quantity.

9. Taking into account that IOCL had breached the contract, failure of the petitioner to prove actual loss or damages and as there

was no genuine pre-estimate of loss agreed between the parties, nominal damages of Rs. 25,000/- were awarded along with interest at the rate of 9% per annum.

10. For claiming damages under Section 73 of the Contract Act actual loss has to be proved and in cases where it cannot be established nominal damages may be awarded. Reliance is on the decision of Supreme Court in ***Unibros v. All India Radio***, 2023 SCC OnLine SC 1366 and the relevant paragraph is as under:

> "19. The law, as it should stand thus, is that for claims related to loss of profit, profitability or opportunities to succeed, one would be required to establish the following conditions : first, there was a delay in the completion of the contract; second, such delay is not attributable to the claimant; third, the claimant's status as an established contractor, handling substantial projects; and fourth, credible evidence to substantiate the claim of loss of profitability. On perusal of the records, we are satisfied that the fourth condition, namely, the evidence to substantiate the claim of loss of profitability remains unfulfilled in the present case."
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> (emphasis supplied)

11. Another aspect is that the damages claimed by the petitioner were based on the price difference between the rate agreed with IOCL and the price at which the acid was actually sold. The price difference by itself does not prove the loss suffered. Every trading transaction has two sides of the same coin namely purchase and sale. While the petitioner disclosed the sale price and the contract price with IOCL but the purchase price was withheld. In the absence of the purchase price the claim for damages cannot be sustained on the basis of price difference. The variation in market prices is a relevant factor in

determining profit or loss of a trader. The quantification of the nominal damages is a discretion exercised by the arbitrator in the facts and circumstances of the case calling for no interference under Section 34 of the Act.

12. The arbitrator after recording a finding that no exclusive stock pool was maintained by the petitioner for supplies to IOCL, rejected the claim for storage expenses which needs no interference. The claim for expenses incurred for furnishing and keeping alive PBG was not pressed.

13. Before concluding, in all fairness the authorities relied upon by learned counsel for the petitioner be dealt with. There is no quarrel with the proposition that ignoring relevant evidence tantamounts to perversity which is a ground available under Section 34 of the Act for interference with the award. The decisions in ***Associate Builders*** (supra), ***Oil and Natural Gas Corporation Ltd.*** (supra) and ***Patel Engineering Ltd.*** (supra) were cited in this regard. These authorities have no application in the facts of the present case.

13.1 The reliance on the decision in ***H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal & Ors***. (supra) is of no avail. The matter before the Supreme Court arose from a provision under the Haryana General Sales Tax Act, 1973 with regard to pre-deposit for hearing of an appeal in a fiscal statute. Another aspect is that the scope of judicial review under Section 34 is not as wide as that under Articles 226/227 of the Constitution of India.

14. The scope of interference under Section 34 is well defined. The view taken by the arbitrator is plausible and calls for no interference.

There can be no re-appreciation of evidence. The conclusion arrived at that the petitioner failed to establish maintenance of an exclusive stock of acid for supply to IOCL and actual loss or damage suffered on account of purchase of the acid at a rate higher than the rate at which it was actually sold, cannot be tinkered with and the Court does not sit in appeal over the arbitral award. The view of the arbitrator suffers from no factual or legal error much less perversity.

15. The petition is dismissed.

16. Since the matter has been decided on merits, the pending application stands disposed of.

AVNEESH JHINGAN, J

APRIL 22, 2026/ *'JK'*

Reportable:- **Yes**