



2024:DHC:9736



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

Date of decision: 28th NOVEMBER, 2024

IN THE MATTER OF:

+ **O.M.P. (COMM) 508/2024**

NJ BIKES INDIA PRIVATE LIMITEDPetitioner

Through: Mr. G. Sivabalamurugan, Adv
& Mr. Selvaraj Mahendran, Adv

versus

SUZUKI MOTORCYCLE INDIA PRIVATE LIMITED

.....Respondent

Through: Mr. Prasouk Jain & Mr. Karan Sinha,
Advs.

+ **O.M.P. (COMM) 509/2024**

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CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

I.A. 46505/2024 (Exemption) in O.M.P. (COMM) 508/2024

I.A. 46506/2024 (Exemption) in O.M.P. (COMM) 509/2024

Allowed, subject to all just exceptions.



2024:DHC:9736

**O.M.P. (COMM) 508/2024****O.M.P. (COMM) 509/2024**

1. These Petitions have been filed by the Petitioner challenging the award dated 25.06.2024, passed by the learned Sole Arbitrator rejecting the claims of the Petitioner herein.

2. Shorn of unnecessary details, the facts of the case are that the Petitioner is a company incorporated under the Companies Act, 2013 and carry on the business of purchase and sale of two-wheelers, sale, service and spare parts and carry out repairs and maintenance of the vehicles. It is the case of the Petitioner that in the year 2014 the Petitioner approached the Respondent herein for being appointed as a dealer of the Respondent company at Erode. It is stated that the Respondent herein issued a letter of intent dated 18.09.2014 to the Petitioner herein whereby certain pre-conditions were mentioned. It is stated that the Petitioner fulfilled all the pre-conditions mentioned in the Letter of Intent dated 18.09.2014 and was subsequently appointed as a dealer of the Respondent company. It is stated that a dealership Agreement dated 06.10.2014 was executed between the Petitioner and the Respondent. The said Dealership Agreement was renewed from time to time. The last such agreement was entered into between the parties on 26.12.2019 which was extended till 18.04.2023. It is the case of the Petitioner that the Petitioner has invested a substantial amount of money on the Dealership and it has taken two properties on lease for opening showroom at a centrally located place. It is stated that the Petitioner made huge amount of investments as per the satisfaction of the Respondent. It is also stated that the Petitioner has also spent monies for maintaining sufficient inventory for 60-70 days. It is stated that there has been no



shortfall in the nature and manner of performance of the Petitioner and that the Petitioner has been working to the satisfaction of the Respondent.

3. The grievance of the Petitioner is that the Respondent *vide* letter dated 07.12.2021 terminated the dealership agreement with effect from 06.01.2022 without assigning any cause or reason. It is stated that on the date of termination, the Petitioner had a stock of 72 new vehicles worth Rs.61,20,000/-; spare parts worth Rs.55 lakhs and tools worth Rs.45 lakhs. It is stated that the Petitioner had employed 72 highly skilled persons and the Petitioner had to remove them all and pay them at least six months' salary. It is stated that the Petitioner had to remove the structure at Erode and sub-branches and it cost the Petitioner Rs.58,10,000/-. It is the case of the Petitioner that the letter dated 07.12.2021 is not legally valid and enforceable as it has not been issued adhering to the terms and conditions of the Agreement.

4. It is stated that the Petitioner approached the Court of competent jurisdiction by filing an application under Section 9 of the Arbitration Act which was rejected *vide* Order dated 06.01.2022. It is stated that the said Order was challenged by the Petitioner by filing FAO(COMM) 8/2022 before this Court and this Court *vide* Order dated 18.01.2022 disposed of the said Appeal by constituting an Arbitral Tribunal to adjudicate on the disputes of the parties.

5. Before the arbitral Tribunal the case of the Respondent herein was that the dealership agreement was terminated in accordance with the terms and conditions of the Agreement and the Respondent has no concern about the lease deed executed between the Petitioner and the land-lord.

6. On the basis of the pleadings, the following issues were framed by the



Arbitrator:

“1) Whether the termination of dealership agreement at Erode City is illegal, unauthorized and in violation of the terms and conditions of the agreement? OPC

2) Whether the claimant is entitled to Rs.2,20,09,400/- towards cost to establish the infrastructure of the showroom and service? OPC

3) Whether the claimant is entitled to Rs.13 lacs towards advance paid to the landlord? OPC

4) Whether the claimant is entitled to Rs.61,25,366.22/- towards expenses for tools, equipment, electricals and electronics, furniture etc.? OPC

5)Whether the claimant is entitled to Rs. 12,04,986/- towards rent to be paid for 6 months to the landlord? OPC

6) Whether the claimant is entitled to Rs. 1,16,20,000/- towards vehicle and spare parts lying with it? OPC

7) Whether the claimant is entitled to Rs.39,11,814/- towards miscellaneous expenses? OPC

8) Whether the claimant is entitled to Rs.33,04,000/- towards estimated cost for removing the infrastructure? OPC

9)Whether the claimant is entitled to Rs.26,29,274/- towards demo vehicles/delivery auto? OPC

10) Whether the claimant is entitled to Rs.2 crore towards goodwill? OPC



11) *Whether the claimant is entitled to damages due to termination of the dealership agreement arbitrarily to the tune of Rs.2 crore? OPC*

12) *Whether the claimant is entitled to a direction to the respondent to issue letter of appointment for the dealership at Erode City, Tamil Nadu and execute dealership agreement in its favour? OPC*

13) *Whether there is specific bar on compensation in the event of termination under Clause 55.6 of the Agreement, and if so, its effect? OPR*

14) *Relief'*

7. The most important issue which arose for consideration before the Arbitrator was as to whether the termination of the agreement in question was in accordance with the terms and conditions of the Agreement or not.

8. The learned Arbitrator examined various clauses of the Agreement and came to the conclusion that the Agreement was entered into between the parties without any pressure and the Petitioner herein was aware of the terms and conditions of the Agreement and it voluntarily signed the agreement. The learned Arbitrator held that as per Clause 51 of the Agreement, the Petitioner herein was given a notice 30 days prior to the termination. The learned Arbitrator held that the commercial contracts by their nature are determinable and can be terminated by the parties by following the procedure laid down in the clause and such termination cannot be challenged on the ground of it being *mala fide*. The learned Arbitrator held that the validity of the dealership Agreement had not been challenged by the Petitioner herein. The Arbitrator also held that the Arbitrator is the creature of the contract and cannot look into the validity of the termination clause.



The Arbitrator held that since no objection has been raised by the Petitioner/Claimant either at the time of the execution of the initial agreement on 06.04.2019 or at any time thereafter, it is not open for the Petitioner/Claimant to now turn around and challenge the validity of the termination clause. The learned Arbitrator, therefore, rejected the claim of the Petitioner herein vide Award dated 25.06.2024.

9. It is this Award which is under challenge in the present Petitions.

10. Material on record indicates that the impugned award was passed on 25.06.2024. Section 34(3) of the Arbitration Act provides that an application for setting aside an award cannot be made after three months from the date on which the party making the application had received the award. However, if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the three months it may entertain the application within a further period of thirty days, but not thereafter.

11. It is now well settled by a series of Judgments that after the lapse of a period of three months and thirty days an award cannot be challenged. The Apex Court in Simplex Infrastructure Ltd. v. Union of India, (2019) 2 SCC 455, has held as under:

“9. Section 34 provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award “in accordance with” sub-section (2) and sub-section (3). Sub-section (2) relates to the grounds for setting aside an award. An application filed beyond the period mentioned in sub-section (3) of Section 34, would not be an application “in accordance with” that sub-section. By virtue of Section 34(3), recourse to the court against an arbitral award cannot be beyond the period prescribed. Sub-section (3) of Section 34, read with the proviso, makes



it abundantly clear that the application for setting aside the award on one of the grounds mentioned in sub-section (2) will have to be made within a period of three months from the date on which the party making that application receives the arbitral award. The proviso allows this period to be further extended by another period of thirty days on sufficient cause being shown by the party for filing an application. The intent of the legislature is evinced by the use of the words “but not thereafter” in the proviso. These words make it abundantly clear that as far as the limitation for filing an application for setting aside an arbitral award is concerned, the statutory period prescribed is three months which is extendable by another period of up to thirty days (and no more) subject to the satisfaction of the court that sufficient reasons were provided for the delay.

10. Section 5 of the Limitation Act, 1963 provides thus:

“5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order 21 of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

11. Section 5 of the Limitation Act, 1963 deals with the extension of the prescribed period for any appeal or



application subject to the satisfaction of the court that the appellant or applicant had sufficient cause for not preferring the appeal or making the application within the prescribed period. Section 5 of the Limitation Act, 1963 has no application to an application challenging an arbitral award under Section 34 of the 1996 Act. This has been settled by this Court in its decision in *Union of India v. Popular Construction Company* [*Union of India v. Popular Construction Company*, (2001) 8 SCC 470] , wherein it held as follows : (SCC pp. 474-75, paras 12 &14)

“12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” wholly otiose. No principle of interpretation would justify such a result.

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendible by court under Section 5 of the Limitation Act.”

12. Section 14 of the Limitation Act, 1963 provides thus:

“14. Exclusion of time of proceeding bona fide in



court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order 23 of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;



(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

13. *Section 14 of the Limitation Act deals with the “exclusion of time of proceeding bona fide” in a court without jurisdiction, subject to satisfaction of certain conditions. The question whether Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the 1996 Act has been answered by this Court in Consolidated Engg. Enterprises v. Irrigation Deptt. [Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169] This Court observed thus : (SCC pp. 181-82, para 23)*

“23. At this stage it would be relevant to ascertain whether there is any express provision in the 1996 Act, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the 1996 Act, this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under Section 34 of the said Act. On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings under Section 34 are for the purpose of challenging the award whereas the proceeding referred to under Section 43 are the original proceedings which can be equated with a suit in a court. Hence, Section 43 incorporating the Limitation Act will apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the court. Sub-section



(4) of Section 43, *inter alia*, provides that where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute so submitted. If the period between the commencement of the arbitration proceedings till the award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the 1996 Act, more particularly where no provision is to be found in the 1996 Act, which excludes the applicability of Section 14 of the Limitation Act, to an application made under Section 34 of the Act. It is to be noticed that the powers under Section 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction under Section 34 of the Act, cannot be exercised *suo motu*. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long. Section 34 of the 1996 Act would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. From the scheme and language of Section 34 of the 1996 Act, the intention of the legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to



remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the 1996 Act for setting aside an arbitral award.”

14. *The position of law is well settled with respect to the applicability of Section 14 of the Limitation Act to an application filed under Section 34 of the 1996 Act. By applying the facts of the present case to the well-settled position of law, we need to assess whether the learned Single Judge of the High Court was justified in condoning the delay for filing an application under Section 34 of the 1996 Act.”*

12. Similarly, in Union of India v. Popular Construction Co., (2001) 8 SCC 470, the Apex Court has held as under:

“7. There is no dispute that the 1996 Act is a “special law” and that Section 34 provides for a period of limitation different from that prescribed under the Limitation Act. The question then is — is such exclusion expressed in Section 34 of the 1996 Act? The relevant extract of Section 34 reads:

*“34. Application for setting aside arbitral award.—(1)-(2)****

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the



Arbitral Tribunal:

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

8. Had the proviso to Section 34 merely provided for a period within which the court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because “mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5” [Mangu Ram v. Municipal Corpn. of Delhi, (1976) 1 SCC 392 at p. 397, para 7 : 1976 SCC (Cri) 10] .

9. That was precisely why in construing Section 116-A of the Representation of the People Act, 1951, the Constitution Bench in Vidyacharan Shukla v. Khubchand Baghel [AIR 1964 SC 1099] rejected the argument that Section 5 of the Limitation Act had been excluded: (AIR p. 1112, para 27)

“27. It was then said that Section 116-A of the Act provided an exhaustive and exclusive code of limitation for the purpose of appeals against orders of tribunals and reliance is placed on the proviso to sub-section (3) of that section, which reads:

‘Every appeal under this Chapter shall be preferred within a period of thirty days from the date of the order of the Tribunal under Section 98 or Section 99.



Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.'

The contention is that sub-section (3) of Section 116-A of the Act not only provides a period of limitation for such an appeal, but also the circumstances under which the delay can be excused, indicating thereby that the general provisions of the Limitation Act are excluded. There are two answers to this argument. Firstly, Section 29(2)(a) of the Limitation Act speaks of express exclusion but there is no express exclusion in sub-section (3) of Section 116-A of the Act; secondly, the proviso from which an implied exclusion is sought to be drawn does not lead to any such necessary implication."

10. *This decision recognises that it is not essential for the special or local law to, in terms, exclude the provisions of the Limitation Act. It is sufficient if on a consideration of the language of its provisions relating to limitation, the intention to exclude can be necessarily implied. As has been said in *Hukumdev Narain Yadav v. Lalit Narain Mishra* [(1974) 2 SCC 133] : (SCC p. 146, para 17)*

"If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act."

11. *Thus, where the legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after*



taking the aid of Sections 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded [Patel Naranbhai Marghabhai v. Dhulabhai Galbabbhai, (1992) 4 SCC 264] .

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” wholly otiose. No principle of interpretation would justify such a result.

13. Apart from the language, “express exclusion” may follow from the scheme and object of the special or local law:

“[E]ven in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.” [(1974) 2 SCC 133] (SCC p. 146, para 17)

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute



and unextendible by court under Section 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need “to minimise the supervisory role of courts in the arbitral process” [Para 4(v) of the Statement of Objects and Reasons of the Arbitration and Conciliation Act, 1996] . This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:

“5. Extent of judicial intervention.— Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”

15. The “Part” referred to in Section 5 is Part I of the 1996 Act which deals with domestic arbitrations. Section 34 is contained in Part I and is therefore subject to the sweep of the prohibition contained in Section 5 of the 1996 Act.

16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award “in accordance with” sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application “in accordance with” that sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that



“where the time for making an application to set aside the arbitral award under Section 34 has expired ... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court”.

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to “proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow” (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act.”

13. Applying the law laid down by the Apex Court in the abovementioned Judgments to the facts of the present case, the impugned award was passed on 16.05.2024 and its copy was received by the Petitioner on 25.06.2024. The period of 90 days, as provided under Section 34 (3) of the Arbitration Act, ended on 25.09.2024 and the further time of 30 days ended on 25.10.2024. Though the index of the Petition indicates that the present Petitions were filed on 17.10.2024, the log information showing the details of filing indicates that the Petitions were filed only on 04.11.2024 which is beyond the period prescribed under Section 34(3) of the Arbitration Act and, therefore, prima facie this Court is of the opinion that the present Petitions have been filed after the prescribed period under the Arbitration & Conciliation Act. However, since this issue was not argued by the



Respondent, this Court is proceeding further to examine the case on merits. Clause 55 of the Agreement entered into between the parties deals with the effect of termination or expiry of the term of the agreement and the same reads as under:

“55. EFFECT OF TERMINATION OR EXPIRY OF TERM

Upon termination of this Agreement for any reasons whatsoever or on expiry of the Term of this Agreement:

55.1. The Dealer shall immediately upon receiving the termination notice from SMIPL or on expiry of the Term of this Agreement, cease to use the Trade name, Mark and the Intellectual Property. Further, the Dealer shall on or before the date of termination or expiry of the Term remove all signs displayed by the Dealer which depict or incorporate the Trade name or the Mark or Intellectual Property in any form, style or combination including but not limited to all signs/ materials which the Dealer shall have obtained from, or that have been licensed for use by SMIPL. All such signs/ materials shall either be returned by the Dealer to SMIPL or at the request of SMIPL shall be made available for collection by SMIPL, in either case, at the cost of the Dealer, without the Dealer retaining any copies in any form whatsoever. The limited license provided by SMIPL in relation to the Trade name and Marks in favour of the Dealer under this Agreement shall be co-terminus with the termination of this Agreement.

55.2. Without prejudice to the foregoing, the Dealer shall on or before the Termination Date remove and/or efface all notices, materials and things of any kind whatsoever, which may imply or be deemed to imply that the Dealer is an authorised dealer of SMIPL or



any other kind of dealer of the Products and/or Genuine Parts or for providing Services.

55.3. SM IPL may supply the Customers of the Dealer with Products and/or Genuine Parts and Services from the date when notice of termination is given or on the expiry of the Term, either directly or in any other way that it deems fit (without prejudice to its rights pursuant to Clause 7).

55.4. The Dealer shall forthwith return to SM IPL all sales tools (whether bearing the Trade Name or Mark or not) and all other Confidential Information, licensed information including but not limited to Dealer Management System, Operating Procedures, literature and promotional material (without retaining any copies) and assets of SM IPL previously provided by SM IPL (in any forms including but not limited to CD's publications or others) to the Dealer in connection with this Agreement.

55.5. SM IPL may (but shall not be obliged to) offer and shall have the first option and right to re-purchase/buy back from the Dealer some or all (as SM IPL may at its sole discretion decide) of the Products and/or Genuine Parts in respect of which the legal title and beneficial interest have passed to the Dealer and which are unused and undamaged and of full merchantable quality. The price (exclusive of any applicable tax thereon including goods and service tax) to be paid by SM IPL for each such Product or Genuine Part shall be equal to the price applicable to such Products and/or Genuine Parts on the date on which it was delivered to the Dealer less:

55.5.1. The discounts and allowances that were made on such list price when such Products and/or Genuine Parts were delivered to the Dealer, and



55.5.2. An-amount equal to the cost of handling as specified by SMIPL

The cost of packaging and carriage of such Products and/or Genuine Parts to a location specified by SMIPL shall be the responsibility of the Dealer.

55.6. SMIPL shall not be liable to the Dealer for payment of any amount or compensation whatsoever for terminating this Agreement in accordance with the terms of this Agreement or for non-renewal of this Agreement. However, termination of this Agreement, in whatever manner, or the expiry of the Term of this Agreement shall not release the Dealer from any obligation or indebtedness incurred by the Dealer prior to termination.

55.7. The Dealer shall not accept new bookings/ orders of the Customer during the termination notice period. any. Delivery of the Products and/or Genuine Parts in respect of bookings that had already been accepted prior thereto shall, however, be completed. The notice period shall be used to wind up the arrangement between the Parties.

55.8. The parties shall reconcile their accounts and settle all receivables and payables within 30 (thirty) days of the date of the termination notice or expiry of the term of this Agreement. The Dealer shall also promptly return all assets of SMIPL held on trust by the Dealer within 30 (thirty) days of the date of the termination notice or expiry of the Term of this Agreement.

55.9. The Dealer shall promptly provide SMIPL with the list of Customers, prospective Customers and Customers waiting for delivery on orders booked prior



to termination or expiry of the Term of this Agreement.”

14. Learned Counsel for the Petitioner contends that the agreement itself is opposed to public policy. He states that the contract was drawn up by the Respondent and the Petitioner had no other option but to sign the contract. It is stated that after the Petitioner has invested a substantial amount of money, the Respondent cannot terminate the contract without assigning any reasons. He, therefore, states that the Order of termination cannot survive and the learned Arbitrator has ignored this aspect.

15. A perusal of the abovementioned clause shows that the Agreement automatically stands terminated on the expiry of the term of the Agreement. The Agreement does not postulate that any reason has to be assigned by the manufacturer as to why the Agreement is terminated. The argument that the contract was a standard format contract and that the Petitioner had no other option but to sign the contract cannot be accepted. It is well settled that in matters of commercial contracts a party having entered into the contract cannot challenge the terms of the contracts stating that the terms of the contract were not acceptable to it. No one forced the Petitioner to accept the dealership. As laid down by the Apex Court in a number of judgments, the argument of unequal bargaining power does not apply to commercial contracts entered into between two parties.

16. Viewed in this light, this Court does not deem it fit to interfere with the reasons given by the learned Arbitrator in rejecting the claim of the Petitioner herein.

17. It is well settled and has been laid down by the Apex Court times without number that there are limitations upon the scope of interference on



the award passed by the 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 re-praise the matter as if it was an appeal. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail and 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 (Refer: Punjab State Civil Supplies Corporation Limited and Another v. Sanman Rice Mills and Others, **2024 SCC OnLine SC 2632**).

18. The Petitioner has not made out any case as to why the award is in conflict with the public policy of India or that there is a contravention of the fundamental Policy of Indian law. In Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd., **(2024) 2 SCC 375**, the Apex Court has held as under:

“35. Sub-section (1) to Section 34 of the A&C Act requires that the recourse to a court against an arbitral award is to be made by a party filing an application for setting aside of an award in accordance with sub-sections (2) and (3) of Section 34. Sub-section (2) to Section 34 of the A&C Act stipulates seven grounds on which a court may set aside an arbitral award. Sub-section (2) consists of two clauses, (a) and (b). Clause (b) consists of two sub-clauses, namely, sub-clause (i) which states that when the subject-matter of the dispute is not capable of



settlement by arbitration under the law for the time being in force, and sub-clause (ii), which states that the court can set aside an arbitral award when the award is “in conflict with public policy of India”. We shall subsequently examine the decisions of this Court interpreting “in conflict with public policy of India” and the explanation.

37. Explanation to sub-clause (ii) to clause (b) to Section 34(2) of the A&C Act, as quoted above and before its substitution by Act 3 of 2016, had postulated and declared for avoidance of doubt that an award is “in conflict with the public policy of India”, if the making of the award is induced or affected by fraud or corruption, or was in violation of Sections 75 or 81 of the A&C Act. Both Sections 75 and 81 of the A&C Act fall under Part III of the A&C Act, which deal with conciliation proceedings. Section 75 of the A&C Act relates to confidentiality of the settlement proceedings and Section 81 deals with admissibility of evidence in conciliation proceedings. Suffice it is to note at this stage that while “fraud” and “corruption” are two specific grounds under “public policy”, these are not the sole and only grounds on which an award can be set aside on the ground of “public policy”.

45. Referring to the third principle in *Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12]*, it was explained that the decision would be irrational and perverse if (a) it is based on no evidence; (b) if the Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or (c) ignores vital evidence in arriving at its decision. The standards prescribed in *State of Haryana v. Gopi Nath & Sons [State of Haryana v. Gopi Nath & Sons, 1992 Supp (2) SCC 312]* (for short *Gopi Nath & Sons*) and



Kuldeep Singh v. Delhi Police [*Kuldeep Singh v. Delhi Police*, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] should be applied and relied upon, as good working tests of perversity. In *Gopi Nath & Sons* [*State of Haryana v. Gopi Nath & Sons*, 1992 Supp (2) SCC 312] it has been held that apart from the cases where a finding of fact is arrived at by ignoring or excluding relevant materials or taking into consideration irrelevant material, the finding is perverse and infirm in law when it outrageously defies logic as to suffer from vice of irrationality. *Kuldeep Singh* [*Kuldeep Singh v. Delhi Police*, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] clarifies that a finding is perverse when it is based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it. If there is some evidence which can be acted and can be relied upon, however compendious it may be, the conclusion should not be treated as perverse. This Court in *Associate Builders* [*Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] emphasised that the public policy test to an arbitral award does not give jurisdiction to the court to act as a court of appeal and consequently errors of fact cannot be corrected. Arbitral Tribunal is the ultimate master of quality and quantity of evidence. An award based on little evidence or no evidence, which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Every arbitrator need not necessarily be a person trained in law as a Judge. At times, decisions are taken acting on equity and such decisions can be just and fair should not be overturned under Section 34 of the A&C Act on the ground that the arbitrator's approach was arbitrary or capricious. Referring to the third ground of public policy, justice or morality, it is observed that these are two different concepts. An award is against justice when it shocks the conscience of the court, as in an example where the claimant has restricted his claim



but the Arbitral Tribunal has awarded a higher amount without any reasonable ground of justification. Morality would necessarily cover agreements that are illegal and also those which cannot be enforced given the prevailing mores of the day. Here again interference would be only if something shocks the court's conscience. Further, "patent illegality" refers to three sub-heads : (a) contravention of substantive law of India, which must be restricted and limited such that the illegality must go to the root of the matter and should not be of a trivial nature. Reference in this regard was made to clause (a) to Section 28(1) of the A&C Act, which states that the dispute submitted to arbitration under Part I shall be in accordance with the substantive law for the time being in force. The second sub-head would be when the arbitrator gives no reasons in the award in contravention with Section 31(3) of the A&C Act. The third sub-head deals with contravention of Section 28(3) of the A&C Act which states that the Arbitral Tribunal shall decide all cases in accordance with the terms of the contract and shall take into account the usage of the trade applicable to the transaction. This last sub-head should be understood with a caveat that the arbitrator has the right to construe and interpret the terms of the contract in a reasonable manner. Such interpretation should not be a ground to set aside the award, as the construction of the terms of the contract is finally for the arbitrator to decide. The award can be only set aside under this sub-head if the arbitrator construes the award in a way that no fair-minded or reasonable person would do."

19. This Court has carefully gone through the award. It cannot be said that the award is based on no evidence or that the Tribunal has ignored vital evidence in arriving at its decision. The Arbitrator has meticulously gone into the evidence. It is well settled that if there is some evidence which can



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be acted and relied upon howsoever compendious it may be, the conclusions cannot be termed as perverse and it must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. (Refer: Associate Builders v. DDA, (2015) 3 SCC 49).

20. In view of the above, this Court does not find any reason to interfere with the award.

21. The Petitions stand dismissed along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 28, 2024

Rahul