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

Date of decision: 23rd APRIL, 2026

IN THE MATTER OF:

\+ **O.M.P. (COMM) 336/2022 & I.A. 12732/2022, I.A. 12733/2022, I.A. 12736/2022, I.A. 20742/2022**

OSA VENDITA PVT. LTD. .....Petitioner

Through: Mr. Abhay Chitravanshi with Mr. Raghav Awasthi, Advocates.

versus

BAUSCH AND LOMB INDIA PVT. LTD. .....Respondent

Through: Ms. Mukti Chaudhry, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the '***Act***'*) has been filed by the Petitioner for setting aside the Impugned Award dated 27.09.2021 passed by the Sole Arbitrator whereby the Arbitrator has dismissed the claim of the Petitioner for loss of profit along with interest thereon as well as the cost of litigation.

2. The Petitioner, OSA Vendita Pvt. Ltd. carries on the business as a C & F agent (Clearing and Forwarding agent) and works as a distributor under the name and style of OSA Vendita Pvt. Ltd. The Petitioner Company was initiated as a partnership in the name of Om Sai Agencies, but was later incorporated into a Company in the year 2004.

3. The Respondent, Bausch & Lomb Eyecare (India) Pvt. Ltd. is engaged in the business of manufacture and sale of eye care products including but not limited to lenses. It carries on such business from its office at Royd Street, Kolkata. The Respondent also has its registered office at 303, DLF South Court, A-1, Saket, New Delhi – 110017.

4. Shorn of unnecessary details, the facts leading to the filing of the present Petition are as follows:

i. In 2003, the Respondent approached the Petitioner to act as the distributor of its eye care products in Kolkata. After reaching a mutual understanding, the Petitioner started to lift the stocks from the Respondent at invoice value and sold it to the Retailers at a profit of 8%. It is stated that it was mutually decided between the parties that the Petitioner would not require a sales team and that the work of sales and promotion would be done by the Respondent itself.

ii. On 24.09.2003, the Respondent entered into a distributorship agreement with the Petitioner which appointed it as a non-exclusive distributor to supply and distribute the products of the Respondent to the customers within the territory of Kolkata (*hereinafter referred to as* '**Agreement**'). The Agreement stipulated that the Petitioner would earn 4-8% profit on the sale of the goods procured from the Respondent.

iii. It is stated that during the period from March 2003 to 24.09.2003, that is, before the Petitioner had entered into the Agreement, the Respondent called upon the Petitioner to increase its investment to Rs. 30 lakhs, being the price of 45 day's stock, on the basis of

projected sales of Rs. 20 lakhs per month. It is further stated that the Petitioner made such an investment on the clear representation made by the Respondent that it would ensure sales of Rs. 20 lakhs per month in the event the Petitioner invests the said amount.

iv. The Respondent *vide* letter dated 20.10.2003 requested the Petitioner to increase its investment by a further Rs. 10 lakhs to enable the Respondent to meet its plans and targets.

v. The Respondent sent a letter dated 15.12.2003 to the Petitioner recording its satisfaction with the work of the Petitioner. The said letter further conveyed that the Respondent was planning to increase the market size of the Petitioner and for that, the Petitioner was asked to increase the investment in the Respondent's stock to Rs. 60 lakhs.

vi. The Petitioner in order to meet the above-mentioned demands of the Respondent for the increase in the investment, requested the Allahabad Bank for an enhancement of its cash credit limit for providing the Petitioner with enhanced working capital for the distributorship business of the Petitioner. It is stated that these demands were met by the Bank and the cash credit limit was increased to Rs. 70 lakhs.

vii. It is stated that the Respondent kept demanding increased investments from the Petitioner, however, the stock that was being procured in lieu of these investments was not liquidated which resulted in financial distress to the Petitioner Company.

viii. It is stated that the Petitioner had to further increase the cash credit limit from Rs. 70 lacs to Rs. 1.10 Crores in order to repay the loan amount.

ix. It is stated that the Respondent further asked the Petitioner to increase its contribution in the business to the tune of Rs. 4.5 Crores. However, since a lot of inventory was still unsold, the Petitioner did not accede to these demands. It is stated that communications were exchanged between the parties wherein the Petitioner demanded that its earlier outstanding amount be cleared as the inventory was piling up and payments were not coming forth.

x. It is stated that the Respondent partially cleared these dues, however, on 04.08.2006, the Respondent conveyed to the Petitioner that all dues till 31.03.2006 have been cleared. It is stated that the Petitioner wrote to the Respondent seeking payment of its outstanding dues but no payments were made to the Petitioner.

xi. On 17.09.2007, the Petitioner invoked the arbitration clause and issued a notice to the Respondent. It is stated that after 3 rounds of litigation it was finally decided that the seat of arbitration should be Delhi. The first hearing before the Arbitrator took place on 17.12.2018.

xii. On 27.09.2021, the Sole Arbitrator passed the Impugned Award whereby he rejected the claims of the Petitioner. The said Impugned Award is being assailed by the Petitioner by way of filing the present Petition under Section 34 of the Act.

5. The case of the Petitioner before the Tribunal was that the Petitioner acted as a non-exclusive distributing agent for the Respondent in Kolkata. It is stated that the Petitioner had contractual assurance from the Respondent guaranteeing provision of sales by identification of buyers while also obligating corresponding increase in the investment on the part of the Petitioner. However, the Respondent failed to fulfil this commitment in breach of the Contract, rendering the investments made by the Petitioner unprofitable and in a loss.

6. It is the case of the Petitioner that the evidence of CW-3 was the most crucial and material evidence for corroborating Ex. CW-1/K, which gives details of the investments made by the Petitioner in the Respondent's products making the bedrock of the Petitioner's case in arbitration proceedings. But the Tribunal did not permit CW-3 from giving evidence as the attempt to include CW-3 was belated.

7. Learned Counsel for the Petitioner states that the denial of permission to present CW-3 as a witness along with accompanying documents ought to have been allowed, as the Tribunal had found that there were various deficiencies in Ex. CW-1/K. Further, in paragraph 45 of the award the Tribunal remarked on the failure on the part of the Petitioner to produce their accountant and ledger books to support the entries in Ex. CW-1/K. The Learned Counsel states that the Tribunal in the award also drew an adverse inference against the Petitioner for non-production of ledgers/book of accounts, without considering that it was the Tribunal itself that had not permitted CW-3 to adduce evidence along with relevant documents which was to corroborate the entries in Ex. CW-1/K.

8. It is the case of the Petitioner that the procedure adopted by the Tribunal is contrary to the principle of Party Autonomy and is violative of Article 14 of the Constitution of India.

9. The Learned Counsel for the Petitioner submits that the Tribunal in an ad-hoc arbitration could not have adopted the procedure given in Civil Procedure Code and the Indian Evidence Act without passing a declarative order notifying the parties about the applicable procedure.

10. The Learned Counsel for the Petitioner states that the absence of any declaration or order being made by the Arbitrator apprising the parties of the applicable procedure is violative to the principles of natural justice.

11. He further states that the Arbitrator's unpredictable conduct, lacking prior disclosure of the procedural rules to be employed, undermines Party Autonomy which is contrary to the intent of the Arbitration Act.

12. In substance, the learned Counsel for the Petitioner has raised the aforesaid objections under Section 34(2)(b)(ii) of the Act, challenging the Impugned Award on the ground that it is in conflict with the public policy of India, particularly the fundamental policy of Indian law. Additionally, the Petitioner has invoked Section 34(2)(a)(iii) of the Act, alleging violation of party autonomy on account of the Arbitrator's failure to inform the parties of the procedure to be followed in the arbitral proceedings.

13. The Learned Counsel for the Petitioner has placed reliance on Glencore International AG vs. Dalmia Cement (Bharat), **2017 SCC OnLine Del 8932**; PSA Sical vs. Board of Trustees, **2021 SCC OnLine SC 508**; Oil & Natural Gas Commission Ltd. vs. New India Civil Erectors Pvt. Ltd., **1996 SCC OnLine Bom 338.**

14. *Per contra*, learned Counsel for the Respondent submits that the Arbitrator has rightly held that no assurance was ever given by the Respondent regarding assured sale of products in the event the Petitioner increased its investment in the Respondent's stock. It is contended that, in the absence of any such assurance, the failure of sale of inventory cannot, by any stretch, be construed as a contractual breach on the part of the Respondent. Consequently, no claim on account of business loss arising from such unsold inventory, infrastructural investments, etc, is maintainable.

15. He further submits that the issues relating to any assurance, contractual breach, or modification of the Agreement have not been challenged in the present Petition. Accordingly, the findings in the Award on these aspects have become final, insofar as they hold that there was no contractual breach or alleged assurance.

16. The Counsel for the Respondent states that the first hearing of the arbitral proceedings was held on 17.12.2018 and the Arbitrator fixed the schedule for conducting the proceedings, which the parties had agreed at Paragraph 9 of the said Order.

17. It is the case of the Respondent that the Statement of Claim was filed by the Petitioner on 15.01.2019 along with a chart being Annexure C-23 giving calculation of alleged losses on account of return on investments without supporting documents. On 11.02.2019, the parties were further given time to file additional documents. The said Annexure C-23 was denied by the Respondent in its admission-denial, stating that the same was a manufactured chart.

18. The Counsel for the Respondent states that the onus to prove these alleged losses was on the Petitioner. Adequate time was given to the parties

to file their list of witnesses and time was further given on 24.04.2019 to the Petitioner to file affidavit of the witnesses before 30.06.2019. It is stated that the Petitioner failed to adduce affidavit in evidence and the matter was further posed on 30.07.2019. The Petitioner on 30.07.2019 again stated that they were not able to locate an expert witness for project finance and inventory investment.

19. The Arbitrator *vide* Order dated 30.07.2019 observed that this was held to be an inadequate explanation and there was no reason for the Petitioner to delay filing evidence in his own case wherein the Petitioner was very well aware of the nature of evidence when the Statement of Claim was filed.

20. It is stated by the Respondent that the evidence of the Petitioner was concluded on 17.08.2019. The Respondent then filed their affidavit of evidence on 09.09.2019. The Petitioner then filed an application on 17.09.2019 after conclusion of their evidence and after filing of Respondent's Affidavit in evidence stating the grounds for production of documents at a belated stage.

21. The Arbitrator *vide* Order dated 05.11.2019 rejected the application filed by the Petitioner while recording that full opportunity was granted to the Petitioner to file their documents and to lead evidence. It also stated that no cogent reason has been provided by the Petitioner qua the said application.

22. It is submitted by the Respondent that it is the Petitioner who had delayed the filing of the documents for reasons attributable to them and thus they cannot take it as a ground to challenge the Impugned Award. The Application to adduce documents at a later stage filed by the Petitioner was

only dismissed by the Arbitrator after due consideration *vide* a detailed Order dated 05.11.2019.

23. He further states that the view taken by the Arbitrator is a plausible view and no inference on the specified grounds is warranted.

24. The Counsel for the Respondent places his reliance on ONGC Petro Additions Ltd. vs. Tecnimont S.P.A. & Anr., **2019 SCC OnLine Del 8976,** Polyflor Limited vs. Sh. A.N. Goenka & Ors., **2016 SCC OnLine Del 2333**, Mukesh Gulati vs. Suraj Prakash Chauhan &Ors., **2015 SCC OnLine Del 13403** to substantiate his contentions.

25. Heard the Counsels for the parties and perused the material on record.

26. The Petitioner has taken two primary grounds; first, that no prejudice would have been caused to the Respondent by permitting CW-3 to adduce evidence and to prove the documents, as they were in support of an existing pleading and not building a new case. Second, the procedure adopted by the Arbitrator without apprising the parties through a declarative order was contrary to party autonomy and violative of Article 14 of the Indian Constitution. The Petitioner, by way of these objections, has cumulatively challenged the Impugned Award being in contravention of public policy and fundamental policy of Indian law.

27. The first contention of the Petitioner pertains to the rejection of the application seeking to adduce additional evidence, namely the testimony of proposed CW-3 along with supporting documents. A perusal of the record reveals that the Arbitral Tribunal had, at multiple stages, granted sufficient opportunity to the Petitioner to file its evidence, including affidavits and supporting documents. Despite such opportunities, the Petitioner failed to produce the said evidence within the stipulated timelines. The application

for bringing additional evidence was admittedly filed after the closure of the Petitioner's evidence and subsequent to the Respondent filing its affidavit in evidence when the case was listed for cross examination of Respondent's witness.

28. The Arbitral Tribunal, by a reasoned order dated 05.11.2019, rejected the said application on the ground of inordinate delay and absence of any cogent justification for such delay. The Arbitrator noted that these documents were throughout in possession of the Petitioner and therefore the only reason being complex nature of the matter to produce the document at such belated stage was inadequate.

29. This Court finds that the said view taken by the Arbitrator is a plausible and reasonable view based on the procedural history of the case. It is well settled that an arbitral tribunal is empowered to regulate its own procedure, and such procedural orders, unless shown to be in contravention to public policy or resulting in grave injustice, do not warrant interference under Section 34 of the Act.

30. The contention of the Petitioner that the additional evidence would not have caused any prejudice to the Respondent is equally devoid of merit and deserves to be rejected outright. The Tribunal, upon a considered evaluation of the material on record, has specifically noted the absence of crucial corroborative evidence, including books of accounts and the testimony of relevant witnesses. The inferences so drawn fall squarely within the exclusive domain of appreciation of evidence by the Tribunal and cannot, by any stretch, be recast as a violation of the principles of natural justice so as to invite interference by this Court.

31. It is also impermissible for the Petitioner to arrogate to itself the determination of what does or does not constitute prejudice to the opposing party. Such an assessment lies solely within the province of the learned Arbitrator. The Petitioner's attempt to dictate this aspect is wholly misplaced and reflects a clear overreach, which cannot be permitted.

32. The second limb of the Petitioner's argument relates to the alleged violation of party autonomy and Article 14 of the Constitution on account of the procedure adopted by the Arbitral Tribunal. This contention is also devoid of merit. Section 19 of the Act clearly provides that an arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872, and is free to determine its own procedure. Section 19 of the Act is reproduced as under:

> *"**19. Determination of rules of procedure.—***
>
> ***(**1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).*
>
> *(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.*
>
> *(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.*
>
> *(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence."*

33. Moreover, the contention of the Petitioner that ad-hoc arbitration stands on a different footing from institutional arbitration is wholly misconceived and devoid of merit. Such an argument is plainly unsustainable in law. All arbitral proceedings falling within the ambit of the Act are equally governed by its provisions, irrespective of whether they are conducted on an ad-hoc basis or under the aegis of an institutional framework.

34. The statutory position is unequivocal. Section 2(1)(a) of the Act expressly defines 'arbitration' to include any arbitration, whether or not administered by a permanent arbitral institution. In light of this clear mandate, the Petitioner's attempt to draw an artificial distinction is nothing but a futile exercise, betraying a fundamental misunderstanding of the statutory scheme. Such a plea, therefore, deserves to be outrightly rejected. Section 2(1)(a) of the Act is reproduced as under:

> *"**2.(1)(a)** "arbitration" means any arbitration whether or not administered by permanent arbitral institution;"*

35. In the present case, the record clearly reflects that the procedural framework, including strict timelines for the filing of pleadings and evidence, was settled at the very inception of the proceedings with the unequivocal consent of both parties. It is wholly untenable for the Petitioner to now assail the procedure merely because the Tribunal adopted principles broadly akin to those embodied in the CPC or the Evidence Act; such adoption, by no stretch, renders the proceedings arbitrary or violative of Article 14.

36. A Co-ordinate Bench of this Court in Polyflor Limited vs. Sh. A.N. Goenka&Ors., **2016 SCC OnLine Del 2333,** has held as under:

> *"**3**. The learned Joint Registrar in his order takes note of the fact that the original suit was filed in the year 2004; the documents sought to be produced were neither filed alongwith the plaint, nor at the stage of admission/denial of documents, nor even at the stage of framing of issues on 02.12.2013; PW-1 is under cross examination and had been substantially cross examined when the application was moved on 27.01.2016. The learned Joint Registrar has observed that vague and non convincing reasons have been given by the plaintiff for not filing the documents earlier, and unjustifiable reason has been given as to why, when the documents were in the domain and control of the plaintiff, the same were not filed at the appropriate stage, or even at the stage of framing of issues.*
>
> *xxx*
>
> ***18**. The progress of the suit cannot be interdicted on account of the blatantly casual approach of the plaintiff. The plaintiff has not given any justifiable and acceptable explanation for not filing the said documents at the earlier stage of the proceedings. If the submissions of the plaintiff were to be accepted, it would mean that in every case, a party should be permitted to lead in evidence documents not earlier filed and relied upon at any stage of the proceedings.*
>
> *xxx*
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> ***24**. In Gold Rock World Trade Ltd. (supra), a similar application under Order VII Rule 14 had been moved before the Court for production of additional documents and for filing an additional affidavit. The*

stage in the said suit was more or less the same, namely that the plaintiff had led its evidence in the affirmative and closed the same. The application had been filed prior to the defendants' witnesses filing their affidavits by way of evidence towards examination-in-chief. The learned Single Judge rejected the application of the plaintiff. While doing so, the learned Single Judge observed:

> *"3. ... ... A plain reading of Order 7 Rule 14(3) makes it clear that a document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. The learned counsel for the plaintiff submits that leave of the Court ought to be granted to the plaintiff for producing the additional documents referred to in the application under Order 7 Rule 14 and as also for calling the witness for producing the documents mentioned in the other application. The learned counsel for the plaintiff referred to the decision of the Supreme Court in the case of Salem Advocate Bar Association, Tamil Nadu v. Union of India : (2005) 6 SCC 344. With reference to paragraph 13 thereof, the learned counsel submitted that the Court may permit leading of such evidence even at a later stage subject to any terms that may be imposed upon by the Court which may be just and proper.*
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> *4. I have heard counsel for the parties. The Supreme Court decision in Salem Advocate Bar Association (supra) was in the context of additional evidence. By*

virtue of the 1976 amendment, Rule 17-A had been introduced in Order 18. The said Rule 17-A granted discretion to the Court to permit production of evidence not previously known or which could not be produced despite due diligence. Rule 17-A of Order 18 was deleted by the Code of Civil Procedure (Amendment) Act, 1999 which took effect on 1.7.2002. While considering the effect of this deletion the Supreme Court observed : -

"13. In Salem Advocate Bar Assn. (I) v. Union of India, (2003) 1 SCC 49, it has been clarified that on deletion of Order 18 Rule 17-A which provided for leading of additional evidence, the law existing before the introduction of the amendment i.e. 1-7-2002, would stand restored. The Rule was deleted by Amendment Act of 2002. Even before insertion of Order 18 Rule 17-A, the court had inbuilt power to permit parties to produce evidence not known to them earlier or which could not be produced in spite of due diligence. Order 18 Rule 17-A did not create any new right but only clarified the position. Therefore, deletion of Order 18 Rule 17-A does not disentitle production of evidence at a later stage. On a party satisfying the court that after exercise of due diligence that evidence was not within his knowledge or could not be produced at the time the party was leading evidence, the court may permit leading of such evidence at a later stage on such terms as may appear to be just."

Thus, the Supreme Court held that the insertion of Rule 17-A was only clarificatory of the in-built power of the Court to permit parties to produce evidence not known to them earlier or which could

not be produced in spite of due diligence. The learned counsel for the plaintiff sought to invoke this in-built power of the court even in respect of Order 7 Rule 14(3) which relates to production of documents at a belated stage. There would be no difficulty in holding that the in-built power referred to in the said Supreme Court decision could also be invoked when the question of granting leave arises in the context of Rule 14(3) of Order 7. Consequently, before leave of the Court can be granted for receiving documents in evidence at a belated stage, the party seeking to produce the documents must satisfy the Court that the said documents were earlier not within the party's knowledge or could not be produced at the appropriate time in spite of due diligence. It has been submitted by the learned counsel for the defendant that the documents pertain to a settlement between the plaintiff and a foreign party (COGETEX). The settlement was arrived at, as per the statement recorded in the crossexamination of PW1, on 7.10.1996. However, there is not a whisper of this statement even in the replication which was filed on 11.9.1997. In fact, the affidavit by way of evidence was filed by the plaintiff in the year 2003 and even in that affidavit, there is no reference to the documents which are now sought to be introduced. In my view, these circumstances clearly show that the conditions necessary before leave of the Court can be granted have not been satisfied. It cannot be said that the plaintiff was not aware of the documents earlier, or that the same could not be produced in spite of due diligence on the part of the plaintiff. All the material now sought to be introduced, was well within the knowledge of the plaintiff at least in the year 2003. As the plaintiff was not diligent enough at that point of time, this

Court is left with no alternative but to reject its request."

(emphasis supplied)

> ***25**. In my view, the aforesaid judgment squarely applies to the facts of the present case. It cannot be said by the plaintiffs that they were not aware of the existence of their own audited annual reports from 1997 onwards till 2013. Since the said annual reports are of the plaintiffs themselves, and even according to the plaintiffs, the plaintiffs are obliged to maintain the records for a period of seven years under the law applicable to the plaintiff company, it cannot be said that in spite of due diligence, the plaintiffs could not have produced the said documents at the time of filing of the suit in respect of the period 1997 to 2004, and for the period thereafter till the time of framing of issues in 2013. Not only these documents, or even copies, therefore, were not filed earlier, they were not even referred to or relied upon either in the pleadings, or in any other document filed by the plaintiff."*

37. Further, another Co-ordinate Bench of this Court in M/s Fortuna Skill Management Pvt. Ltd. vs. M/s Jaina Marketing and Associates, **2024 SCC OnLine Del 1972,** has held has under:

> *"**20.** As noted above, much turns upon the decision of the Tribunal dated 10.10.2022, dismissing the petitioner's application to place evidence on record. For reasons which follow, I am of the view that there is no perversity or unreasonableness in the view taken by the Tribunal, so as to warrant interference under Section 34 of the Act.*

21. *Factually, it is undisputed that the application was made only on 03.09.2022, more than three years after the petitioner had filed its statement of defence, counter claim and documents. In the interregnum, affidavits of evidence had been filed by the witnesses and their oral evidence had also concluded. Learned counsel for the respondent [claimant before the Tribunal] had completed his final arguments and the matter was at the stage of arguments of learned counsel for the petitioner herein. There was no suggestion in the application that the documents sought to be placed were not within the knowledge and possession of the petitioner at any stage. In the application, in fact, the petitioner only contended that it had placed a limited number of challans, due to the volume of evidence [approximately 30,000 pages]. The petitioner's contentions in the application were as follows:*

> *"7. That the Respondent, during the course of arguments on 09.08.2022, demonstrated that the Claimant had recorded lesser value (and in some cases higher value) of the spare parts returned as compared to the original value of the delivery challan. For this purpose, Respondent referred to the five delivery challans which were already on record of this Hon'ble Tribunal as a part of the SOD, besides producing a copy of one more delivery challan, which was not on record. On realizing that the sixth delivery challan was not on the record, the Hon'ble Tribunal directed the Claimant to respond to the issue raised by the Respondent in respect of the five delivery challans which were already on record. At that stage it was brought to the notice of the Hon'ble Tribunal by the Respondent that as the delivery challan numbers were appearing in the documents filed by both the sides, the existence of the delivery challans, as appearing in the comparative statement filed by the Respondent,*

could never be a subject matter of dispute. Therefore, nothing prevents this Hon'ble Tribunal from examining the issue highlighted by the Respondent in its comparative statement, in its entirety.

8. ***That during the course of arguments, it was also enquired by the Hon'ble Tribunal as to whether physical copies of the delivery challans appearing in CRM data were available and the number of such delivery challans. In this respect it was explained by the Respondent that since there were very large number of delivery challans running in more than 30,000 pages, the Respondent had only filed 5 sample delivery challans along with its SOD in order to avoid the burdening of the record of this Hon'ble Tribunal and that the comparative analysis filed by the Respondent was enough to establish Respondent's contention****.***

9. ***That, however, considering the query which fell from the Hon'ble Tribunal during the hearing on 09.08.2022, and in order to avoid non-consideration of Respondent's submissions due to non-availability of the copies of the remaining delivery challans, Respondent is filing the present application seeking permission of this Hon'ble Tribunal to file on record some more delivery challans*** *which will establish that the Claimant has acted in the most unlawful manner and as per its own whims and fancies. It may not be out of place to submit that M/s Jaina Marketing & Associates being the Claimant in the present arbitration, the burden of proof was on them, and it was them who ought to have filed the delivery challans rather than relying on unilaterally prepared consignment delivery notes and the alleged ledgers. However, they avoided to do so for the obvious reasons.*

xxxx xxxx xxxx

11. That, the abovementioned delivery challans are relevant, besides being admissible being bilateral and indisputable documents prepared contemporaneously by the parties to record return of the spare parts. Claimant cannot have any objection to production of the delivery challans in as much as Claimant's own documents, refer to these very delivery challans and seek to rely upon them. Hence, no prejudice to would be caused to anybody and the said delivery challans will only throw more light on facts already on record."

22. *It is clear from above that the application was made at the stage of arguments, only in order to meet queries raised by the Tribunal with regard to insufficiency of evidence led by the petitioner.*

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24. Keeping these factors in mind, the Tribunal cannot be faulted for disallowing an application which, as it noted, would have taken the case back to the stage of trial and examination of witnesses. Mr. Singh's reliance upon the judgment of the Supreme Court in K.K. Velusamy does not persuade me to the contrary conclusion. In that case, the Supreme Court was concerned with a civil suit. The Trial Court had dismissed applications filed by the defendant at the stage of arguments for reopening of the evidence, for further cross-examination of the plaintiff and one other witness. The High Court had dismissed a revision petition against this order, but the Supreme Court reversed, holding that the Court has the power under Section 151 of the Civil Procedure Code, 1908, to permit additional evidence to be led if it would clarify the evidence on record, or assist the Court in rendering justice. However, the Court emphasised that such power was to be exercised sparingly, and in cases where the evidence sought to be produced has come into existence later, or could not have been filed earlier

> *or the non-production was for valid and sufficient reasons. The application must otherwise be disallowed. It has been expressly stated that an application made to cover up the negligence and lacunae, or in a situation where the party had an opportunity to produce the evidence earlier, should be rejected with heavy costs. These observations support the finding of the Tribunal, that the application in the present case deserves to be dismissed." (emphasis in original)*

38. The importance of efficiency and expediency in the conduct of arbitral proceedings has been emphasised time and again by the Apex Court. The Apex Court in Union of India vs. U.P. State Bridge Corpn. Ltd., **(2015) 2 SCC 52,** has observed that the Act is based on four foundational pillars and the first pillar is a fair, speedy, and inexpensive trial by the arbitral tribunal. The relevant portion of the said judgment has been reproduced hereunder:

> *"**16**. First and paramount principle of the first pillar is "fair, speedy and inexpensive trial by an Arbitral Tribunal". Unnecessary delay or expense would frustrate the very purpose of arbitration. Interestingly, the second principle which is recognised in the Act is the party autonomy in the choice of procedure. This means that if a particular procedure is prescribed in the arbitration agreement which the parties have agreed to, that has to be generally resorted to. It is because of this reason, as a normal practice, the court will insist the parties to adhere to the procedure to which they have agreed upon. This would apply even while making the appointment of substitute arbitrator and the general rule is that such an appointment of a substitute arbitrator should also be done in accordance with the provisions of the original agreement applicable to the appointment of the arbitrator at the initial stage. [See Yashwith Constructions (P) Ltd. v.*

> *Simplex Concrete Piles India Ltd. [(2006) 6 SCC 204]] However, this principle of party autonomy in the choice of procedure has been deviated from in those cases where one of the parties have committed default by not acting in accordance with the procedure prescribed. Many such instances where this course of action is taken and the Court appoint the arbitrator when the persona designata has failed to act, are taken note of in paras 6 and 7 of Tripple Engg. Works [North Eastern Railway v. Tripple Engg. Works, (2014) 9 SCC 288 : (2014) 5 SCC (Civ) 30] . We are conscious of the fact that these were the cases where appointment of the independent arbitrator made by the Court in exercise of powers under Section 11 of account of "default procedure". We are, in the present case, concerned with the constitution of substitute Arbitral Tribunal where earlier Arbitral Tribunal has failed to perform. However, the above principle of default procedure is extended by this Court in such cases as well as is clear from the judgment in Singh Builders Syndicate [Union of India v. Singh Builders Syndicate, (2009) 4 SCC 523 : (2009) 2 SCC (Civ) 246] ."*

39. The conduct of the Petitioner in delaying the filing of material documents, which are essential for the adjudication of the dispute, and within the knowledge and possession of the Petitioner, is nothing but a blatant disregard of the agreed procedural discipline. Such dilatory tactics, dictated by convenience and whim, cannot be countenanced, particularly when they run in direct contravention of the timelines consciously agreed upon. Permitting such conduct would strike at the very foundation of arbitration, which is premised on expeditious and efficient resolution of disputes, and cannot be allowed to be undermined in this manner.

40. The Petitioner has failed to demonstrate any element of surprise, prejudice, or unequal treatment meted out to it during the proceedings. On the contrary, the material on record reflects that adequate and repeated opportunities were afforded to the Petitioner. Even otherwise, the Petitioner could have taken an objection against the procedure adopted by the Arbitrator during the arbitration proceedings. The material on record does not provide any hint towards such objection being taken by the Petitioner during the currency of the arbitration proceedings.

41. The contention of the Petitioner that the Respondent committed a contractual breach by failing to cover the Petitioner for its alleged business losses is misconceived.

42. Clause 10.3 of the Agreement clearly provides that once the products are sold to the Petitioner, the Respondent is under no obligation to take them back, even in cases of expiry or defect. When this clause is read in conjunction with Clause 2.5, which embodies the arm's length nature of the arrangement, it unequivocally reinforces the Tribunal's finding that the Respondent cannot be held liable for any business losses incurred by the Petitioner. Clause 10.3 of the Agreement is reproduced hereunder:

> *"**10.3** No products will be taken back by BLEIPL even though they are expired or defective."*

43. In this backdrop, the Petitioner's attempt to fasten liability upon the Respondent for indemnification of its business losses is not stipulated in the Agreement. The Respondent cannot be held liable for losses incurred by the Petitioner in the conduct of its own business operations.

44. The case of the Petitioner that the Agreement executed between the parties stipulated that Respondent was primarily responsible for the sale and marketing of its product. It is the case of the Petitioner that it had the limited role of investing in the products of the Respondent, maintaining adequate stock as stipulated in the Agreement, and then be remunerated by way of trade discount/profits ranging from 4-8% on the sale of these goods. The case of the Petitioner being that in pursuance of the aforesaid arrangement between the parties, when the Respondent kept demanding increased investment from the Petitioner, it was upon the Respondent that these products bought by the Petitioner were sold as per assurances provided by the Respondent from time to time.

45. It is further pertinent to note that the findings of the Arbitral Tribunal, namely, the absence of any contractual assurance or breach on the part of the Respondent have not been substantively assailed before this Court. Once the Tribunal has returned a finding that there was no contractual breach, the claim for loss of profits necessarily fails. The Tribunal in paragraph 42 and 43 of the Impugned Award has clearly perused all the letters exchanged between the parties and has returned the finding that there were no such assurances made by the Respondent to the Petitioner. Such findings, being findings of fact based on appreciation of evidence, are not amenable to interference under Section 34 unless shown to be patently illegal or perverse, which is not the case here.

46. The Apex Court has time and again emphasised on the limited scope of interference by Courts in arbitration. The Apex Court in Ramesh Kumar

Jain vs. Bharat Aluminium Company Limited, **2025 SCC OnLine SC 2857,** has held has under:

> *"**28.** The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In ONGC Limited. v. Saw Pipes Limited (2003) 5 SCC 705, this court held that an award can be set aside under Section 34 on the following grounds:"(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal."*

47. The Apex Court in Consolidated Construction Consortium Limited vs. Software Technology Parks of India, **(2025) 7 SCC 757,** has reiterated the limited scope of interference under Section 34 of the Act. The relevant portion has been reproduced hereunder:

> *"**46**. Scope of Section 34 of the 1996 Act is now well crystallised by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral*

award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2-A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the Arbitral Tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the Arbitral Tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has per force to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement."

48. This Court is of the view that the conclusion reached by the Arbitral Tribunal constitutes a reasonable and plausible interpretation based on the material available on record. The Tribunal, while rendering the Impugned Award, has passed a well-reasoned order, clearly setting out the grounds for disregarding the document submitted by the Petitioner, which was merely a self-prepared chart unsupported by invoices, books of accounts, ledgers, or other credible evidence. The Petitioner also failed to substantiate the said chart through the testimony of a Chartered Accountant at the appropriate stage.

49. Further, by its Order dated 05.11.2019, the Tribunal declined the Petitioner's attempt to introduce supporting documents and the testimony of a Chartered Accountant at a belated stage. Such rejection cannot be faulted, as the Arbitrator duly applied his mind while determining the admissibility of the additional material.

50. The submissions alleging violation of Article 14 and party autonomy are without merit, as in the absence of an agreed procedure between the parties, the Arbitrator is empowered to determine the procedure for conducting the arbitral proceedings, as was done in the present case. These objections do not constitute valid grounds under Sections 34(2)(a)(iii) or 34(2)(b)(ii) of the Act, as sought to be urged by the Petitioner.

51. Accordingly, this Court holds that the Impugned Award is consistent with the Public Policy of Indian Law, including the fundamental policy thereof. In view of the aforesaid, this Court does not find any ground to interfere with the Impugned Award dated 27.09.2021 passed by the learned Sole Arbitrator.

52. Accordingly, the present Petition is dismissed. There shall be no order as to costs.

SUBRAMONIUM PRASAD, J

APRIL 23, 2026
hsk/MT