IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION (L) NO. 14180 OF 2021

Zawar Sales Corporation Proprietorship concern, having address at Zawar Polyclinic, Civil Lines, Mehkar, District Buldhana, Maharashtra, through its authorised Signatory Shri Bhagwandas Zawar	]]]]]]	... Petitioner
V/s.		
Reliance Petro Marketing Limited A company registered under the provisions of Companies Act, 2013 having its office at, Reliance Corporation Park, Block 5, 'C'-Wing, 2nd floor, 5, TTC Industrial Area, Thane Belapur Road, Ghansoli, Navi-Mumbai 400701	]]]]]]]	... Respondent

---

Mr. Abhijeet Desai, a/w Mr. Arvind Wachunsdar, Mr. Mohin Rehpade, Mr. Deepesh Ramrakhyani/by Desai Legal LLP for the Petitioner.

Ms. Snehalata Paranjpe a/w Mr. Rubin Vakil, Mr. Gaurav Thakur and Ms. Aditi Kambli i/by A.S. Dayal and Associates for the Respondent.

CORAM : KAMAL KHATA, J.
RESERVED ON : 6th April, 2026.
PRONOUNCED ON : 30th June, 2026.

JUDGMENT :

1. The present Petition, filed under Section 34 of the Arbitration and Conciliation Act, 1996, ("the Arb. Act"), challenges the Arbitral Award dated 25th March 2021 ("Impugned Award"), passed by the learned Sole Arbitrator, Shri R. M. Savant (Retd.

Judge, Bombay High Court) ("the Arbitrator"), rejecting the Petitioners' claim for damages for breach of contract by the Respondent. The Impugned Award, however, allowed a sum of ₹ 5,62,500/- in respect of Claim No. 1 pertaining to the 1st August 2012 Distribution Agreement but rejected all other claims of approximately ₹ 40 Crores.

Background:

2. The dispute arises out of the Distribution Agreements ("DAs") executed between the Petitioner and the Respondent for the supply and distribution of LPG cylinders. The parties executed three DAs, dated 1st August 2002 (2002 DA), 1st August 2007 (2007 DA) and 1st August 2012 (2012 DA), under which the Petitioners are described as 'Distributors' and the Respondents as 'Suppliers'. The Petitioners' claim is founded on the loss allegedly caused by the extravagant and arbitrary increase in the price of the LPG cylinders/refills supplied, and by the sudden stoppage of supply by the Respondents.

3. By their Advocate's notice dated 28th July 2016 the Petitioners raised claims and sought appointment of Arbitrator. The Respondents replied to the same and called upon the Petitioners to supply information required to migrate from Tally to SAP accounting system. On 31st March 2017 the 2012 DA expired by efflux of time.

4. On 11th February 2019 the Petitioners filed an Application for appointment of Arbitrator under section 11 of the Arb. Act. On 13th August 2019 the Arbitrator was appointed. After the Statement of Claim was filed, on 19th October 2019 the Respondent filed a section 16 Application disputing the jurisdiction of the Arbitrator to entertain claims under the 2002 DA or 2007 DA. An order dated 28th November 2019 came to be passed by the Arbitrator holding that the subsequent two agreements were in continuation of the 2002 Agreement and dismissed the Respondents' Application. This order has attained finality.

5. On 6th July 2020 the Hon'ble Court substituted the Arbitrator and directed the newly appointed Arbitrator to continue the proceedings from the stage already reached.

Petitioner's Submissions:

6. Dr. Tulzapurkar, learned Senior Counsel appearing for the Petitioners submits that the impugned Award dated 25th March 2021 is challenged on the grounds of patent illegality and perversity, particularly assailing the rejection of the Petitioner's claims for damages arising from the Respondent's breach of its contractual obligations.

7. He further submits that the Arbitrator erred by limiting the scope of the proceedings to the 2012 Agreement only. The

Petitioners' principal grievance is that the Arbitrator ought to have granted damages arising from all three Distribution Agreements ("DAs"), namely those dated 1st August 2002, 1st August 2007 and 1st August 2012, and ought not to have limited it to the 2012 Agreement alone. He contended that once the erstwhile Arbitrator had held, in the Application filed by the Respondent under Section 16 of the Arb. Act, that the 2007 DA and 2012 DA were in continuation of the 2002 DA, the cause of action became a recurring one as contemplated under Section 22 of the Limitation Act. Consequently, the final Award rejecting the Petitioners' claims on the ground of limitation is rendered bad and liable to be set aside under Section 34(2)(b)(ii) read with Section 34(2A) of the Arbitration Act. Moreover, the Arbitrator's decision that the Petitioners' claims under the 2002 DA and 2007 DA are barred by limitation is itself erroneous, since that question had already been decided in the Application under Section 16 of the Arbitration Act. The Arbitrator was therefore estopped from reopening it under the principle of "internal res judicata".

8. In support of his contentions, he relied upon the decisions in the following cases:

For Res Judicata

i. Satyadhyan Ghosal vs Smt. Deorajin Debi[1]

ii. Y B Patil v Y L Patil[2]

[1] AIR 1960 SC 941 (paras 7 & 8)
[2] (1976) 4 SCC 66 (para 4)

iii. Arjun Singh v Mohindra Kumar[3]

For continuous cause of action

iv. V. Alagar Thevar v The Madurai Municipality[4]

v. Gaya Prasad Singh v Jagadish Chandra Deo Dhalal Deb[5]

vi. Food Corporation of India v Ratanlal N Gwalani[6].

9. He submits that the reliance placed on the decision in *State of Gujarat v Kothari and Associates*[7] by the Arbitrator is untenable as the facts of the present case are entirely different from it.

10. He submits that the extravagant price hikes — from ₹ 25-35 in 2002 to ₹ 400 in 2008 — were arbitrary and unsupported by any pricing policy, as mandated under Clauses 6 and 7 of the DA. The burden lay upon the Respondent to prove that the price hikes were in accordance with the pricing policy, and not upon the Petitioner, as held in the Award. The material on record shows that the pricing policy was suppressed. Since the Arbitrator ignored the evidence of Respondent No. 1, the finding rendered thereon is contrary to the record and deserves to be set aside.

11. He further contends that the Arbitrator selectively relied upon portions of the cross-examination while disregarding the

[3] AIR 1964 SC 993 (paras 10, 11 and 13)
[4] AIR 1975 Mad 77
[5] AIR 1940 Pat 561
[6] 2004 (1) M.P.L.J. 552
[7] (2016) 14 SCC 761

material admissions made by the Respondent's witness (RW-1), and failed to appreciate the inherent contradictions in the Respondent's case. It is submitted that such selective appreciation of evidence, and the omission to consider relevant admissions, has resulted in findings that are perverse, arbitrary, and unsustainable in law. The Petitioner also assails the reliance placed by the Arbitrator upon Exhibit R-19, contending that the said document was never proved in accordance with law. He submits that the mere marking of a document does not amount to proof of its contents. The Arbitrator nonetheless relied upon the said document to sustain the Respondent's defence, thereby vitiating the Award.

12. He further submits that the impugned Award dated 25th March 2021, is contrary to the express terms of the contract, ignores settled principles relating to burden of proof, relies upon unproved documents, and overlooks binding findings already rendered. According to the Petitioner, these errors constitute "patent illegality" warranting interference under Section 34 of the Act.

13. Reliance is placed on following Judgements: *Ssangyong Engg. & Construction Co. Ltd. vs. NHAI*[8]*, the Supreme Court while relying on Associate Builders v DDA*[9] held that judicial interference with an arbitral award on the ground of patent illegality is

[8] 2019 15 SCC 131
[9] 2015 3 SCC 49

permissible only where the error is so fundamental that it goes to the root of the matter. The Court further clarified that "patent illegality" must appear on the face of the award and does not include a mere erroneous application of the law or a re-appreciation of evidence.

14. He submits that, although the Arbitrator found a breach in respect of the non-supply of cylinders from January 2016, the damages awarded were insufficient. He argues that, once a breach is proven, the Court or the Arbitrator must resort to "honest guesswork" to award reasonable compensation, even where the exact loss is difficult to quantify.

15. Reliance is placed on *Sineximco Pte Ltd. v M.M.T.C Limited*[10] wherein the Hon'ble Supreme Court, relying on its decision *in Dwarka Das v. State of M.P.*[11], held that some degree of estimation is always involved in assessing damages, and once there is material on record having a reasonable nexus with the claim, damages cannot be denied merely because precise computation is not possible. The Court further notes that even evidence relating to a nearby place or a comparable transaction can be relied upon for determining damages, as recognized earlier in *M/s. A.T. Brij Paul Singh v. State of Gujarat*[12] *and Mohd. Salamatullah v. Govt. of A.P.*[13] Honest guesswork in

[10] 2009 SCC OnLine Del 1394
[11] 1999 3 SCC 500
[12] 1984 4 SCC 59
[13] 1977 3 SCC 590

quantification is therefore legally permissible. The Court held that the Arbitrators erred in rejecting this principle on the ground that those judgments were rendered under Section 73 and not Section 74 of the Contract Act, since once damages under Section 74 also require proof of actual loss, their determination must necessarily follow the principles under Section 73.

16. The Hon'ble Supreme Court in *EMCO Ltd. v Malvika Steel Ltd & Ors.*[14] held that a party guilty of breach of contract cannot avoid liability merely on the ground that the exact quantum of damages suffered by the aggrieved party is incapable of precise mathematical computation. Difficulty in assessment or absence of exact evidence regarding the extent of loss does not absolve the defaulting party from its obligation to compensate for the breach committed. In such cases, the Court is not confined to awarding merely nominal damages. Rather, once breach and consequent loss are established, the injured party is entitled to the benefit of every reasonable presumption in relation to the damage suffered. Where precise quantification is not possible due to insufficiency of material on record, the Court is empowered to make a fair and reasonable assessment based on surrounding circumstances, comparable evidence, and honest estimation. The law permits reasonable guesswork in the determination of damages, provided such

[14] 2012 SCC OnLine Del 5763

assessment bears a rational nexus to the evidence available. The underlying object is restitutive in nature, namely, to place the aggrieved party, so far as monetary compensation can achieve, in the same position in which it would have been had the contract been duly performed and the breach not occurred.

Respondent's Submissions:

17. *Per Contra,* Ms. Paranjpe, learned counsel appearing on behalf of the Respondent, vehemently opposes the Petition, supports the Impugned Award and seeks dismissal of the Petition.

18. She submits that the scope of Section 34 of the Act is very limited, and that the present Petition is wholly devoid of merit and deserves to be dismissed, as the challenge mounted by the Petitioner is nothing but an impermissible attempt to seek a re-appreciation of the facts, evidence and findings conclusively determined by the Arbitrator in a detailed and reasoned Award dated 25th March 2021. She further submits that this Court cannot sit in appeal over the findings of the Arbitrator or re-appreciate the evidence. If the view taken by the Arbitrator is a plausible one, based on the interpretation of the contract and the evidence on record, the Award must be upheld.

19. Reliance is placed on *UHL Power Co. Ltd. vs. State of*

Himachal Pradesh[15] wherein the Hon'ble Supreme Court held that where the view adopted by the learned Arbitrator is a plausible one founded upon the terms of the contract and the evidence on record, the arbitral award merits affirmation. The Court, in exercise of jurisdiction under Section 34 of the Arb. Act, cannot supplant such interpretation merely because an alternative view is possible. In the present case, the interpretation accorded by the learned Arbitrator to the contract is a plausible one based on the material available on record and, therefore, does not warrant interference.

20. The Supreme Court further placing reliance on *Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.*[16] has further clarified that the jurisdiction under Section 34 is supervisory in nature and not appellate. Consequently, this Court is precluded from re-appreciating evidence or substituting its own interpretation of the contractual terms merely on the ground that another view is possible. Interference is justified only where the award is vitiated by patent illegality, by perversity going to the root of the matter, or is in conflict with the public policy of India. Where the Arbitrator's view is a plausible one arising from the record, judicial deference is warranted. Similar principles have been reiterated in *Konkan Railway Corporation Ltd. v. Chenab Bridge Project Undertaking*[17]

[15] 2022 4 SCC 116
[16] 2019 20 SCC 1
[17] 2023 9 SCC 85

where it was held that the Court under Section 34 cannot act as a court of appeal over arbitral findings. The said position has also been reinforced by the Hon'ble Bombay High Court in *National Insurance Co. Ltd. v. Reliance Industries Ltd.*[18] holding that the learned Arbitrator is the sole judge of the quality and quantity of evidence, and an arbitral award cannot be set aside merely because another view is possible or because the Court might have arrived at a different conclusion on merits.

21. She further strongly objects to several new pleas introduced by the Petitioner, including the contention that Clauses 6 and 7 are opposed to public policy. These pleas were neither raised before the learned Arbitrator nor formed part of the Statement of Claim or the written submissions before the Arbitral Tribunal, and therefore cannot be permitted to be agitated for the first time in proceedings under Section 34 of the Act. She further submits that it is settled law that a party cannot be permitted to travel beyond its pleadings. Reliance is placed on *Ram Sarup Gupta (Dead) by LRs. v. Bishun Narain Inter College & Ors.*[19], wherein the Hon'ble Supreme Court emphasised that a party cannot be allowed to travel beyond its pleadings.

22. She submits that the Order dated 28th November 2019,

[18] 2023 SCC Online Bom 1088
[19] (1987) 2 SCC 555

passed under Section 16 of the Act, does not operate as internal res judicata. The said Order was a preliminary decision on jurisdiction and did not constitute a final adjudication on the merits of the limitation plea for each individual claim.

23. She further submits that the Petitioner's contention that the issue of limitation stood finally decided in its favour by the Section 16 order dated 28th November 2019 is wholly misconceived. The Respondent's application under Section 16 of the Act challenged the jurisdiction of the Tribunal on the ground that there were three separate DA's dated 2002, 2007 and 2012, each of which had expired by efflux of time, and that claims under the expired 2002 agreement could not be entertained when the invocation notice pertained to the 2012 agreement. No issue of limitation was raised or argued under Section 16 of the Act, nor was any evidence led on limitation at that stage. Immediately after disposal of the Section 16 application, the learned Arbitrator framed Issue No. 3, namely, "Whether the claim is within limitation?", to which no objection was raised by the Petitioner, and both parties thereafter led evidence and made detailed submissions on limitation. This itself demonstrates that limitation was never concluded by the Section 16 Order dated 28th November 2019.

24. She further submits that the Petitioner's claims

pertaining to alleged price escalations for the period from 2004 to April 2012 are ex facie barred by limitation. The cause of action accrued with each individual invoice/supply, whereas the arbitration was invoked only on 20th April 2015. The determination on limitation constitutes an "interim award", or in any event a final adjudication on that issue, and is therefore amenable to challenge only on the limited grounds available under Section 34 of the Act. Reliance was placed on *Indian Framers Fertilizer Cooperative Limited v Bhadra Products*[20] in support of the above contention.

25. She further submits that the limitation is a mixed question of law and fact and is distinct from jurisdiction under Section 16. She placed reliance on *Nusli Neville Wadia v. Ivory Properties & Ors.*[21] in support of her contention. She further placed reliance on *Urban Infrastructure Real Estate Fund v. Neelkanth Realty Pvt. Ltd. & Ors.*[22], to submit that limitation ordinarily does not fall within the scope of a Section 16 jurisdictional challenge and requires adjudication on facts and evidence.

26. She further submits that the Arbitrator has correctly held that claims prior to 28 July 2013 were barred by limitation. The invocation notice was admittedly issued on 28th July 2016 and therefore only claims within three years preceding the invocation

[20] 2018 2 SCC 534
[21] 2020 6 SCC 557
[22] 2025 SCC OnLine SC 2380

could survive. The Arbitrator correctly found that there was a long hiatus between the Petitioner's grievance raised by letter dated 15th May 2008 and the Advocate's notice dated 28th July 2016; that despite such grievance the Petitioner continued to accept supplies without protest; that yet another distributorship agreement was executed thereafter; and that the earlier agreements expired by efflux of time without reservation of rights. The Arbitrator, therefore, rightly rejected the theory of a continuing cause of action and held that the claims under the 2002 and 2007 agreements were *ex facie* barred.

27. She placed reliance on *State of Gujarat v. Kothari & Associates (supra) and B and T AG v. Ministry of Defence*[23], particularly paragraphs 37, 40, 41, 43 and 71 to 76, to submit that stale claims cannot be revived by alleging a continuing cause of action in the absence of a continuing wrong, and that, in cases of successive breaches, limitation runs separately from each individual breach, a fresh or extended contract not serving to revive stale claims. She relied upon Article 55 of the Limitation Act, 1963, and upon the decision in *Mahavir Spinning Mills Ltd. v. HB Leasing and Finances Co. Ltd.*[24], to submit that each breach gave rise to a separate cause of action and that Section 22 of the Limitation Act has no

[23] (2024) 5 SCC 358
[24] 2012 SCC OnLine Del 5658 (paragraphs 62 and 67)

application as limitation runs from the date of each breach.

28. Ms Paranjape further argues that the challenge on pricing policy and alleged breach of Clauses 6 and 7 of the DA's are equally unsustainable. There were three separate agreements dated 1st August 2002, 1st August 2007 and 1st August 2012, each of which expressly conferred upon the Respondent the right to fix and revise prices of LPG cylinders. Each agreement also stipulated that the distributor could not sell above the MRP fixed by the Respondent. The Petitioner was fully aware from inception that the Respondent was a parallel marketer and not a PSU distributor and that private parallel marketers operated outside the subsidy regime applicable to PSU oil companies. The distinction between the two was specifically admitted by the Petitioner both in pleadings and in cross-examination.

29. She further submits that the Petitioner's own witness admitted in cross-examination that the agreements permitted the Respondent to increase prices and further admitted that there was no contractual condition requiring the Respondent to take the distributor into confidence before effecting price increase. At page 390 of the evidence, the witness specifically admitted that no such clause existed. The Arbitrator also recorded the demeanor of the witness noting that he was avoiding direct answers, and the answer

eventually recorded completely demolished the Petitioner's own case.

30. Ms. Paranjape submits that no grievance regarding violation of Clause 6 was ever pleaded in the Statement of Claim and the same was sought to be introduced only at the stage of written arguments. Such an attempt is impermissible. She submits that the finding of facts based on appreciation of oral and documentary evidence cannot be reopened under section 34 of the Act.

31. Ms. Paranjpe contends that the Petitioner's challenge is untenable because the learned Arbitrator considered the claims on the assumption that the entire claim was within limitation and that there was breach of the agreements and still held that the Petitioner had failed to prove any loss or damages. The learned Arbitrator rightly rejected all monetary claims except a limited amount towards loss of earnings arising from the non-supply of cylinders from 31 December 2015 until the expiry of the third DA, the Petitioner having failed to produce basic evidence such as CA-certified books of accounts, income tax returns, or customer lists to prove a loss of business or customer base. According to her, the learned Arbitrator was left with no alternative but to rely upon the data furnished by the Respondent at Exhibit R-20. The said material constituted the only reliable evidence available on record for assessing the claim of alleged business loss. It was on that basis that the learned Arbitrator

quantified and awarded the amount towards “loss of earnings”. Accordingly, the Arbitrator ensured that the Award was founded strictly on proved material and not on conjecture or unsupported assertions.

32. She submits that in the present case, the challenge mounted by the Petitioner requires this Court to reassess factual findings and contractual interpretation already considered by the learned Arbitrator, which is impermissible within the limited jurisdiction under Section 34. She places reliance on *Ssangyong Engg. & Construction Co. Ltd. vs. NHAI (supra)* in support of her contention. She finally submits that the Award is reasoned, evidence-based and in conformity with settled principles of arbitral law and that no ground under Section 34 of the Act, whether patent illegality, perversity, conflict with public policy or violation of the fundamental policy of Indian law, is made out. According to her, the present Petition is merely an attempt to re-argue the merits and must fail.

Reasons and Conclusions:

33. I have carefully considered the submissions advanced by Dr. Tulzapurkar learned Senior Counsel appearing for the Petitioner and Ms. Paranjpe learned Counsel appearing for the Respondent and have perused the record including the Impugned Award dated 25th March 2021 passed by the learned Arbitrator.

Internal Res Judicata And Limitation

34. The Petitioner's primary contention – that the Arbitrator's finding on limitation is barred by "internal res judicata" – is wholly baseless. The Order on the Section 16 Application dated 28th November 2019 merely affirmed the Tribunal's jurisdiction over disputes arising from all three DAs, opining that they were in "continuation".

35. In *Nusli Neville Wadia v. Ivory Properties (supra),* the Supreme Court held as under:

> *"20. Jurisdiction is the power to decide and not merely the power to decide correctly. Jurisdiction is the authority of law to act officially. It is an authority of law to act officially in a particular matter in hand. It is the power to take cognizance and decide the cases. It is the power to decide rightly or wrongly. It is the power to hear and determine. Same is the foundation of judicial proceedings. It does not depend upon the correctness of the decision made. It is the power to decide justiciable controversy and includes questions of law as well as facts on merits.* ***Jurisdiction is the right to hear and determine.*** *It does not depend upon whether a decision is right or wrong.* ***Jurisdiction means power to entertain a suit, consider merits, and render binding decisions, and "merits" means the various elements which enter into or qualify plaintiff's right to the relief sought.*** *If the law confers a power to render a judgment or decree, then the court has jurisdiction. The court must have control over the subject-matter, which comes within classification limits of law under which the court is established and functions.*
>
> *21.* ***The word "jurisdiction" is derived from Latin words "juris" and "dico", meaning "I speak by the law" and does***

> ***not relate to rights of parties as between each other but to the power of the court.*** *Jurisdiction relates to a class of cases to which a particular case belongs.* ***Jurisdiction is the authority by which a judicial officer takes cognizance and decides the cases. It only presupposes the existence of a duly constituted court having control over subject-matter which comes within classification limits of the law under which court has been established.*** *It should have control over the parties' litigant, control over the parties' territory, it may also relate to pecuniary as well as the nature of the class of cases.* ***Jurisdiction is generally understood as the authority to decide, render a judgment, inquire into the facts, to apply the law, and to pronounce a judgment.*** *When there is the want of general power to act, the court has no jurisdiction.* ***When the court has the power to inquire into the facts, apply the law, render binding judgment, and enforce it, the court has jurisdiction.*** *Judgment within a jurisdiction has to be immune from collateral attack on the ground of nullity. It has co-relation with the constitutional and statutory power of tribunal or court to hear and determine.* ***It means the power or capacity fundamentally to entertain, hear, and determine."***
>
> **(Emphasis added)**

36. Thus, the Arbitrator did entertain the Petitioners' claim on all three DAs, as contemplated by the order under Section 16. In continuation of that finding, the learned Arbitrator framed a specific issue, namely:

> "1. Does the Claimant prove that the Respondent has violated the terms and conditions of the Agreements dated 1st August 2002, 1st August 2007 and 1st August 2012?"

37. In *Urban Infrastructure Real Estate Fund v Neelkanth Realty Pvt. Ltd. (supra)* the Supreme Court, in paragraph 134, held

that the issue of limitation, being one of both fact and law, could not have been finally decided on a demurrer, as that would risk stale claims being entertained. That a ruling confined to the question of jurisdiction does not, in any event, amount to an adjudication on the merits is also borne out by *SBP & Co. v. Patel Engineering Ltd.*[25] and *National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd.*[26], which distinguish a preliminary decision on jurisdiction from a final determination on the merits.

38. As a matter of record, the Petitioners not only did not object to this issue, but both parties even led extensive evidence on it. Keeping in mind the settled law that 'limitation' is a mixed question of law and fact, the learned Arbitrator, in his Award, in fact considered all three DAs, considered all the contentions of both parties together with the evidence, and arrived at the conclusion that each arbitrary price hike gave rise to a separate cause of action, and that claims for breaches occurring more than three years prior to the invocation of arbitration on 28th July 2016 were time-barred. The learned Arbitrator correctly observed that the claims under the 2002 DA and 2007 DA were ex facie barred, as there was a long hiatus between the Petitioners' grievance, first raised by letter dated 15th May 2008 and the Advocate's notice dated 28th July 2016; that,

[25] (2005) 8 SCC 618
[26] (2009) 1 SCC 267

despite such grievance, the Petitioner continued to accept supplies without protest; and that the 2012 DA was executed after the earlier DAs had expired by efflux of time, without any reservation of rights.

39. The Supreme Court in *State of Gujarat v Kothari & Associates* (supra) has held that in cases of successive breaches, limitation runs separately from each individual breach and a fresh or extended contract does not revive stale claims. Similarly, in *Mahavir Spinning Mills Ltd. v HB Leasing and Finances Ltd.* (supra) the Supreme Court held that where each breach gives rise to a separate cause of action, limitation runs from the date of each breach and Section 22 of the Limitation Act has no application. The test for determining what constitutes a 'continuing wrong' attracting Section 22 of the Limitation Act was authoritatively explained in *Balkrishna Savalram Pujari Waghmare & Ors. v. Shree Dnyaneshwar Maharaj Sansthan & Ors.*[27], while the principles governing the point from which limitation runs for invoking arbitration have been set out in *Geo Miller & Co. (P) Ltd. v. Chairman Rajasthan Vidyut Utpadan Nigam Ltd.*[28] Applying these tests, the Petitioner's grievance discloses not a single continuing wrong but a series of distinct and completed breaches, each attracting its own period of limitation.

40. In *Rushibhai Jagdishbhai Pathak v. Municipal Corpn.,*

[27] AIR 1959 SC 798
[28] (2020) 14 SCC 643

Bhavnagar[29], referring to *Tarsem Singh* [*Union of India* v. *Tarsem Singh*[30], where reference was also made to Section 22 of the Limitation Act, 1963, and the following passage from *Balakrishna Savalram Pujari Waghmare* v. *Shree Dhyaneshwar Maharaj Sansthan (supra)*, which had explained the concept of continuing wrong in the context of Section 23 of the Limitation Act, 1908, corresponding to Section 22 of the Limitation Act, 1963, observing that :

> *"31. ... It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury.* ***If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue.*** *If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."*

41. This principle was reiterated by recently this Court in *Pramod Vasantrao Deshmukh v. State of Maharashtra,*[31]

42. In view of the reasons set out above the decisions relied upon in paragraph 6 hereinabove by the learned Senior Counsel for the Petitioner with regard to the principles of res judicata and limitation will be of no assistance.

---

[29] (2022) 18 SCC 144 : 2022 SCC OnLine SC 641 at page 152
[30] (2008) 8 SCC 648 : (2008) 2 SCC (L&S) 765
[31] 2025 SCC OnLine Bom 3473

Patent Illegality

43. Mr. Tulzapurkar's reliance upon the decision in *Ssangyong Engg. & Construction Co. Ltd* (supra) to contend that the Court must set aside the award since the Arbitrator had selectively relied upon portions of cross-examination and disregarded material admissions made by the Respondent's witness; failed to appreciate inherent contradictions; failed to consider document not proved in accordance with law; or ignored principles of burden of proof as they constitute "patent illegality" warranting interference under section 34 of the Arb. Act., is wholly misconceived. In my view, in the garb of "patent illegality" what the Petitioners expect from the Court is to reappreciate evidence – which is clearly impermissible as set out in paragraph 38 of the very same judgment. This limited scope of interference under Section 34 has since been reaffirmed by the Supreme Court in *Delhi Airport Metro Express (P) Ltd. v. DMRC*[32], *MMTC Ltd. v. Vedanta Ltd.*[33], *Haryana Tourism Ltd. v. Kandhari Beverages Ltd.*[34] and *PSA Sical Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin & Ors.*[35], each reiterating that an arbitral award is not to be disturbed merely because another view of the evidence or of the contract is possible.

[32] (2022) 1 SCC 131
[33] (2019) 4 SCC 163
[34] (2022) 3 SCC 237
[35] 2023 15 SCC 781

Breach of Contract concerning Pricing Policy:

44. The dispute concerning the interpretation of Clauses 6 and 7 of the DAs is a matter of contractual interpretation, which falls squarely within the domain of the Arbitrator. The finding in the Award – that the Petitioner, by its conduct in accepting the prices for over a decade and renewing the agreement twice without protest, had waived its right to challenge the pricing mechanism – is not only a finding of fact based on an appreciation of the evidence, but is also a plausible interpretation of the contractual terms. This Court is precluded from substituting its own view for that of the Arbitrator.

Perversity and Quantification of Damages:

45. In my view, the Petitioners have utterly failed to prove the damages of ₹ 40 Crores. The learned Arbitrator has categorically held that the Petitioner failed to produce cogent evidence to substantiate its claims of loss of goodwill, business loss, or infrastructure expenditure. The absence of financial records, accounts, or other primary evidence has been specifically noted. The Award did, however, grant an amount towards loss of earnings for the period of non-supply, based on the material produced by the Respondents.

46. The principle of "honest guesswork" relied upon by the Petitioner is not a license to award damages in an evidentiary

vacuum. It can be invoked only when the fact of loss is established and only its precise quantification is difficult. Here, the very foundation of the loss claimed was unsubstantiated. While it is true that exact quantification is not always necessary, the existence of loss must first be established on some reliable material. In such circumstances, the refusal to award speculative damages cannot be characterized as illegal or perverse. This is consistent with the settled position that compensation, even when assessed on a reasonable estimate, must rest on proof of the fact of loss, as held in *Kanchan Udyog Ltd. v. United Spirits Ltd.*[36], *Maula Bux v. Union of India*[37] and *Kailash Nath Associates v. DDA & Anr.*[38], all of which hold that damages cannot be awarded in the absence of evidence establishing that loss was in fact suffered.

47. The contours of this Court's jurisdiction under Section 34 of the Act are well-defined. The Court is not to act as a court of appeal, nor to review the Award on its merits. The Court is not permitted to reappreciate evidence on the ground of patent illegality. Interference is warranted only if the award is vitiated by patent illegality appearing on the face of the award, or is in conflict with the public policy of India. An erroneous application of law, or a misappreciation of evidence, does not by itself constitute patent

[36] (2017) 8 SCC 237
[37] (1969) 2 SCC 554
[38] (2015) 4 SCC 136

illegality. The view taken by the Arbitrator must be a plausible one, and if it is so, the Court shall not interfere. The decision in *Ssangyong Engg. & Construction Co. Ltd vs NHAI* (supra) supports the above conclusion.

48. The challenge in the present Petition is, in essence, nothing more than a plea for the re-appreciation of evidence and the substitution of the Arbitrator's view by that of this Court, which is impermissible under Section 34.

49. Applying these settled principles to the facts of the present case, this Court finds no merit in the challenge raised by the Petitioner.

50. The Award is a reasoned Award. The findings are based on evidence, and the conclusions drawn are plausible. No ground of patent illegality, perversity, or conflict with public policy has been made out.

51. Accordingly, this Court is of the considered view that the Impugned Award dated 25th March 2021 is a well-reasoned decision based on a plausible interpretation of the contract and a thorough appreciation of the evidence on record. The Petitioner has failed to establish any ground that would warrant interference under Section 34 of the Arb. Act. The award is not vitiated by patent illegality, nor is it in conflict with the fundamental policy of Indian law. The Petition is

an attempt to invite this Court to re-assess the merits of the dispute, which is impermissible.

52. Consequently, the Petition lacks merit and deserves to be dismissed.

53. In view of the aforesaid discussion, the following Order is passed:

::ORDER::

1. The Petition is dismissed accordingly.

2. There shall be no order as to costs.

(KAMAL KHATA, J.)

Judgements Relied:

1. *Satyadhan Ghosal v Smt. Deorajin Debi AIR 1960 SC 941.*
2. *Y.B. Patil v. Y.L. Patil (1976) 4 SCC 66.*
3. *Arjun Singh v. Mohindra Kumar AIR 1964 SC 993.*
4. *V. Alagar Thevar v The Madurai Municipality AIR 1975 Mad 77.*
5. *Gaya Prasad Singh v Jagadish Chandra Deo Dhalal Deb AIR 1940 Pat 561.*
6. *Food Corporation of India v Ratanlal N Gwalani 2004 (1) M.P.L.J. 552.*
7. *State of Gujarat v Kothari and Associates (2016) 14 SCC 761.*
8. *Ssangyong Engg. & Construction Co. Ltd. vs. NHAI 2019 15 SCC 131.*
9. *Associate Builders v DDA 2015 3 SCC 49.*
10. *Sineximco Pte Ltd. v M.M.T.C Limited 2009 SCC OnLine Del 1394.*
11. *Dwarka Das v State of M.P. 1999 3 SCC 500.*
12. *M/s A.T. Brij Paul Singh v State of Gujarat 1984 4 SCC 59.*
13. *Mohd. Salamatullah v. Govt. of A.P. 1977 3 SCC 590.*
14. *EMCO Ltd. v Malvika Steel Ltd. & Ors. 2012 SCC OnLine Del 5763.*
15. *UHL Power Co. Ltd. vs. State of Himachal Pradesh 2022 4 SCC 116.*
16. *Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1.*

17. *Konkan Railway Corporation Ltd. v Chenab Bridge Project 2023 9 SCC 85.*
18. *National Insurance Co. Ltd. V Reliance Industries Ltd. 2023 SCC OnLine Bom 1088.*
19. *Ram Sarup Gupta (Dead) by LRs. v. Bishun Narain Inter College (1987) 2 SCC 555.*
20. *Indian Framers Fertilizer Cooperative Limited v Bhadra Products 2018 2 SCC 534.*
21. *Nusli Neville Wadia v. Ivory Properties, (2020) 6 SCC 557.*
22. *Urban Infrastructure Real Estate Fund v. Neelkanth Realty Pvt. Ltd. 2025 SCC OnLine 2380.*
23. *B and T AG v. Ministry of Defence (2024) 5 SCC 358.*
24. *Mahavir Spinning Mills Ltd. v. HB Leasing and Finances Co. Ltd. 2012 SCC OnLine Del 5658 (paragraphs 62 and 67).*
25. *SBP & Co. v. Patel Engineering Ltd. (2005) 8 SCC 618.*
26. *National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd. (2009) 1 SCC 267.*
27. *Balkrishna Savalram Pujari Waghmare & Ors. v. Shree Dnyaneshwar Maharaj Sansthan & Ors. AIR 1959 SC 798.*
28. *Geo Miller & Co. (P) Ltd. v. Chairman Rajasthan Vidyut Utpadan Nigam Ltd. (2020) 14 SCC 643.*
29. *Rushibhai Jagdishbhai Pathak v. Municipal Corpn., Bhavnagar (2022) 18 SCC 144 : 2022 SCC OnLine SC 641 at page 152.*
30. *Tarsem Singh [Union of India v. Tarsem Singh (2008) 8 SCC 648 : (2008) 2 SCC (L&S) 765.*
31. *Pramod Vasantrao Deshmukh v. State of Maharashtra 2025 SCC OnLine Bom 3473.*
32. *Delhi Airport Metro Express (P) Ltd. v. DMRC (2022) 1 SCC 131.*
33. *MMTC Ltd. v. Vedanta Ltd. (2019) 4 SCC 163.*
34. *Haryana Tourism Ltd. v. Kandhari Beverages Ltd. (2022) 3 SCC 237.*
35. *PSA Sical Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust 2023 15 SCC 781.*
36. *Kanchan Udyog Ltd. v. United Spirits Ltd. (2017) 8 SCC 237.*
37. *Maula Bux v. Union of India (1969) 2 SCC 554.*
38. *Kailash Nath Associates v. DDA (2015) 4 SCC 136.*