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

Judgment reserved on:17.10.2025
Judgment pronounced on: 22.01.2026

\+ **O.M.P. (COMM) 595/2020, I.A. 12441/2020, I.A. 12442/2020, I.A. 12443/2020, I.A. 1083/2024**

PALI HILLS BREWERIES PRIVATE LIMITED .....Petitioner

Through: Mr. Kirtiman Singh, Sr. Adv with Mr. Varun Rajawat, Adv., Mr Arjun Chopra, Adv. and Mr. Maulik Khurana, Adv.

versus

CARLSBERG INDIA PRIVATE LIMITED ....Respondent

Through: Mr. Dr. Maurya Vijay Chandra Adv. and Mr. Manu Prabhakar, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("***1996 Act***") seeking to set aside the Arbitral Award dated 15.09.2020 passed in the matter of "*Carlsberg India Pvt. Ltd. v. Pali Hills Breweries Pvt. Ltd.*" wherein out of the 7 claims preferred by the respondent before the Arbitral Tribunal ("***Tribunal***")

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claim Nos. 1 being liquidated damages and 7 being interest were allowed, claim Nos. 2 and 3 were rejected and claim Nos. 4, 5 and 6 were not pressed. The Tribunal further rejected all 5 counter claims of the petitioner.

2. The challenge in the present petition is to the extent of award of claim No. 1 and rejection of counter claim Nos. 1, 3 and 4.

FACTUAL BACKGROUND

3. The respondent (claimant before the Tribunal) is a manufacturer of beer and the petitioner (respondent before the Tribunal) owns a brewery in the State of Jharkhand. The parties entered into a Contract Brewing and Packaging Agreement ("***Agreement***") dated 11.12.2015 ("***effective date***").

4. As per clause No. 14.1 of the Agreement, the petitioner was to provide a Bank Guarantee ("***BG***") of Rs. 3,00,00,000/- within 15 days of the effective date as a security for CIPL equipment i.e. the 3G labeler and pull off crowner.

5. The respondent on 01.02.2016 asked the petitioner for submission of BG in terms of Clause No. 14.1 of the Contract. The petitioner thereafter *vide* emails dated 02.02.2016 and 16.02.2016 sought extension of time to submit the BG.

6. The petitioner's banker delayed in approving the petitioner's proposal for the BG. Therefore, in order to minimise the delay, petitioner proposed the issuance of post-dated cheques as a security for CIPL equipment. The respondent *vide* email dated 17.06.2016 accepted the said proposal and amended the BG requirement. The petitioner in pursuance thereof, issued post-dated cheques to the tune of Rs. 24

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crores as agreed between the parties inter se.

7. The respondent, who was to provide the CIPL equipment, did not provide the same even after submission of the post dated cheques. Thereafter, the respondent invited the petitioner for training of the CIPL equipment, more specifically the 3G Labeler at Parag Brewery, Kolkata. The petitioner after inspecting the Labeler at Parag Brewery, *vide* email dated 05.10.2016, requested the respondent not to send the said Labeler as the same was not in a good condition.

8. The respondent supplied the said CIPL equipment, i.e. the pull off crowner and the 3G Labeler on 10.10.2016 and 16.10.2016 respectively.

9. The petitioner commenced the brewing process. However, as per the petitioner the 3G Labeler provided by the respondent was defective and no bottling of the product could take place with the said Labeler. The same was pointed out by the petitioner in email dated 05.11.2016 and thereafter on 15.12.2016 the petitioner requested the respondent for replacement of switch mode power supply of the 3G Labeler which was allegedly in a burnt condition. The petitioner repeatedly requested the respondent to replace the 3G Labeler.

10. As per the petitioner, the petitioner was ready to start the contract manufacturing on 25.10.2016 but due to delay in providing the 3G Labeler, the start date was deferred to January, 2017. Thereafter, as well, the petitioner on multiple occasion informed the respondent about the jamming/ breakdown of the 3G Labeler. The petitioner also informed the respondent about the decline in production and labour issues emerging from the said breakdown.

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11. In August, 2017, the liquor industry in the State of Jharkhand was taken over by the State Government and the number of retail shops reduced from 1470 to approximately 300.

12. Owing to the said policy changes and the deterioration of petitioner's financial condition, the petitioner, *vide* email dated 22.08.2017, requested the respondent for deletion of clause No. 8, being the exclusivity clause, of the Agreement, wherein the petitioner could only exclusively brew and package finished products for the respondent.

13. The dispute arose when in response to the aforesaid communication the respondent denied all the allegations and refused to recognise the policy changes. Thereafter, the petitioner again on two other occasions informed the respondent about the breakdown of 3G Labeler. When the petitioner did not hear from the respondent with regard to his request of deletion of clause No. 8, the petitioner terminated the Agreement as per clause No. 3.2. Pursuant to this the petitioner requested the respondent to remove its material from petitioner's premises. The respondent raised various monetary claims and invoked Arbitration *vide* legal notice under Section 21 of the 1996 Act.

14. The Arbitral Tribunal passed the impugned Award dated 15.09.2020 and awarded claim Nos. 1 and 7 of the respondent and rejected all the counter claims of the petitioner. The findings of the Tribunal read as under:

> *"**Claim No. 1***
>
> *75. The Claimant is entitled to an Award of Rs.25 Lakhs in accordance with Clause 4.3 of the Agreement. This is the amount considered to be reasonable by both the parties and*

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the Tribunal has found that although there was a novation and modification of the Agreement in June 2016, the Claimant agreed to the modification without waiving any rights under the Agreement. Before 17 June 2016 there is no evidence that the Claimant accepted any performance from the Respondent although after 24 April, the originally stipulated time period - 135 days for achieving the Start Date had expired.

….

Counter Claim No.1:

111. The details in relation to Counter Claim No.1 have been set out at paragraph 33 above. This Counter Claim No.1 is for electricity charges incurred by the Respondent to "preserve" the Products. The period during which the Respondent, as claimed, incurred these charges is October - December 2016. The Tribunal has already found that the Respondent was largely responsible for delays in achievement of the Start Date. The Respondent is, therefore, not entitled to any damages for the pre-Start Date period. On this basis, Counter Claim No.1 is rejected.

Counter Claim No. 3:

112. Counter Claim No.3 is for an amount of Rs.60,000/- towards rent for space occupied by "CIPL Equipment" between October 2017 and April 2018. There appears to be no dispute between the parties that CIPL Equipment had been removed by April 2018. In fact, the minutes of meetings

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held on 18 May 2019 and 19 May 2018 signed by representatives of both sides also confirms this fact. According to the Respondent, the 3G Labeller should have been removed in October 2017. The Respondent relies on Clause 20.1.3 which provides as follows:

> *"20.1.3 Return all CIPL Equipment installed at the Site within 5 (five) Business Days of termination of this Agreement subject to Contract Brewer obtaining all applicable approvals under Applicable Laws. In the event Contract Brewer fails to return CIPL Equipment, CIPL will have the right to encash the bank Guarantee furnished by the Contract Brewer. Further the Contract Brewer will also be liable to pay, a delay penalty of INR 50,000 (Indian Rupees Fifty Thousand only) per day for the period of such delay. It is agreed between the Parties that immediately after obtaining approvals under Applicable Laws, if any, or termination of the Agreement, as the case may be the Contract Brewer will give unfettered access to CIPL and its nominated representatives to the Site for dismantling, packaging and transportation of CIPL Equipment. The Parties agree that CIPL shall be responsible for dismantling, packaging and transportation of CIPL Equipment out of Site within 15 (fifteen) Business Days of getting access to the Site. Any delay by CIPL to dismantle and remove CIPL Equipment inspite of Contract Brewer fulfilling its*

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obligation to give unfettered access to the Site, the penalty payable by the Contract Brewer in terms of this Clause shall stand nullified. Further, it is agreed between the Parties that in the event that CIPL is unable to dismantle and remove CIPL Equipment within 15 (fifteen) Business Day time period set out above, then CIPL shall pay the Contract Brewer a penalty of INR 10,000/- per month for each month of delay. CIPL shall not unreasonably delay dismantling, packaging and transportation of CIPL Equipment."

113. Clause 20.1.3 makes it clear that access to the site is to be provided by Respondent for "dismantling, packaging and transportation of CIPL Equipment out of Site" within 15 days from "getting access to the site". The Respondent has not produced any evidence as to when access to site was provided by the Respondent. As such, this claim is inconsistent with Clause 20.1.3 of the Agreement and, therefore, rejected.

114. In any case, the notice of termination of 9 October 2017 itself mentions that according to the Respondent, the termination was under Clause 3.2 of the Agreement. It is not the Respondent's case that before 9 October 2017 any notice of termination was served. In terms of Clause 3.2, six months notice is required to be provided. Taking that into account, the 6 month period after 9 October 2017 came to an end only in early April 2018. As such also, Clause 20.1.3, which had to

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be read harmoniously with Clause 3.2 of the Agreement, cannot assist the Respondent. Counter Claim No.3 is, therefore, rejected.

Counter Claim No.4:

115. Counter Claim No.4 is also a claim for rent / charges. However, this is not for CIPL equipment but for broken glass. The case advanced by the Respondent in support of this counter claim is summarized at paragraph H at page 41 of Respondent's Written Submissions. The basis on which this counter claim has been made is not indicated. Moreover, there is no evidence as to what loss at all the Respondent has suffered on account of broken glass. It is also unclear to the Tribunal as to how the Respondent is suggesting that the "broken glass .....belong to the Claimant". As such, the Tribunal is not persuaded to make any award in favour of the Respondent towards this counter claim also. Counter Claim No.4 is, therefore, also rejected."

SUBMISSIONS ON BEHALF OF THE PETITIONER

15. Mr. Kirtiman Singh, learned senior counsel for the petitioner, opposes the present Award. The petitioner challenges the Award to the extent of the award of claim No. 1 and the rejection of counter claim No. 1, 3 and 4.

Submissions with respect to Claims of the respondent

Erroneous and contradictory findings of the Tribunal in relation to evidence related to delay and reasonable compensation provided under Clause No. 4.3 of the Agreement appear to treat the said

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compensation as 'pre-estimate' only on the basis of word 'fair'

16. He submits that the Tribunal has rendered erroneous and contradictory findings as regards the party responsible for the delay. Even though the Tribunal correctly came to a finding that the time has ceased to be the essence of the Agreement, *de hors* the amendment or novation of the Contract, claim No. 1 was erroneously allowed by the Tribunal on the ground that the respondent had reserved its rights *vide* communication dated 17.06.2016. Reliance is placed on *Welspun Specialty Solutions Ltd. v. ONGC Ltd.*[1]

17. He further submits that the parties knowingly digressed from the stipulated timelines under the Agreement. This is evident from the fact that even after the expiry of the original timelines, no further dates were specified by the parties inter se. It is significant to mention that the respondent itself failed to seek the furnishing of the BG from the petitioner within fifteen days of the effective date, i.e., on or before 26.12.2015. Such conduct, *ex facie*, demonstrates forbearance on the part of the respondent and clearly indicates that strict adherence to the timelines stipulated in the Agreement were neither insisted upon nor treated as mandatory. Therefore, respondent reserving its right has no consequence.

18. The learned counsel for the petitioner further submits that no debit note was ever issued by the respondent qua the alleged claims, as per the requirements under clause No. 13.5 of the Agreement. The respondent also did not issue any notice of breach or raise any contemporaneous correspondence alleging delay in the start date. It is, therefore, evident

[1](2022) 2 SCC 382.

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that claim No. 1 is a mere afterthought, raised only after disputes had arisen between the parties.

19. Without prejudice, it is submitted that pursuant to the amendment/novation of the Agreement dated 17.06.2016, the respondent itself failed to discharge its contractual obligations for a period of approximately four months, and only thereafter supplied a defective and faulty 3G Labeler. Consequently, any delay post 17.06.2016 is *ipso facto* attributable to the respondent alone. In fact, not only the delay in delivery of CIPL equipment but also it being defective was admitted by the respondent in email dated 05.12.2016. Accordingly, no liability on account of delay can be fastened upon the petitioner.

20. It is also submitted that the Tribunal has expressly recorded a finding that the petitioner was ready to commence Contract Manufacturing by the end of September 2016, *ipso facto*, the delay thereafter is attributable to the respondent. Except, the Tribunal has failed to consider that on the petitioner's specific plea that the start date for commencement of production ought to have been 25.10.2016, and that it was shifted to 03.01.2017 solely on account of the respondent supplying a defective 3G Labeler. The Tribunal has mechanically accepted the respondent's assertion that the start date was 03.01.2017, without dealing with the petitioner's aforesaid contention. Consequently, the finding recorded by the Tribunal is not only contradictory to its own earlier findings, but is also perverse.

21. He further submits that the Tribunal relied on the word 'fair' used in clause No. 4.3 of the Agreement to award claim No. 1 to the tune of

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Rs.25 lakhs. The respondent never pleaded before the Tribunal that the losses suffered by it were because of the delay in start date. Moreover, the proof of loss cannot be dispensed with just because a clause in the contract stipulates that liquidated damages are fair or reasonable pre-estimate of purported losses. Reliance is placed on *Kailash Nath Associated v. DDA*[2] and the position was reaffirmed in *Indian Oil Corpn. Ltd. v. Fiberfill Engineer*[3] and *Constucciones Y Auxiliar De Ferrocarriles v. Delhi Airport Metro Express (P) Ltd.*[4]

22. He points out that Section 74 of the Contract Act, 1872 ("***ICA***") a party claiming breach and seeking compensation is entitled to succeed only upon proving actual loss or damage. Placing reliance on *Kailash Nath Associates (supra)* where it is held that the proof of loss is a *sine qua non* for liquidated damages where it is possible to prove actual damage or loss and where damage or loss is impossible to prove then the liquidated amount stipulated in the contract can be awarded if it is a genuine pre-estimate of damage or loss. He submits that liquidated damages contemplated by clause No. 4.3 of the Agreement do not amount to genuine pre-estimate as they are in the nature of loss of profits for which proving losses are a *sine qua non*. The Tribunal gave a categorical finding that the respondent has not suffered any loss.

<u>Submissions with respect to Counter Claims</u>

23. At the outset, the petitioner submits that the respondent's contention that the counter claims were not pressed is wholly erroneous and misconceived. The petitioner has, both in the pleadings and during the

[2](2015) 4 SCC 136.
[3]2024 SCC OnLine Del 8133
[4]2025 SCC OnLine Del 1974.

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course of arbitral proceedings, specifically advanced submissions in support of the counter claims and has consistently pressed the same in terms of the averments made and the reliefs sought. Any assertion that the petitioner had no intention to press the counter claim is, therefore, devoid of merit and liable to be rejected. Accordingly, the petitioner submits the following assailing and challenging the rejection of the counterclaims by the Tribunal.

No finding with respect to petitioner's plea for start date being 25.10.2016 and rejection of counter claim No. 1

24. The learned counsel for the petitioner submits that it was specifically averred before the Tribunal that the start date should have been 25.10.2016 instead of 03.01.2017 as averred by the respondent as the petitioner has commenced the operations along with daily tank report to the respondent. This is evident from the email dated 25.10.2016. It was the CIPL Equipment, which was provided by the respondent itself, was the faulty since the inception which thereby led to some delay. Consequently, the respondent delayed the start date to be 03.01.2017.

25. The petitioner claimed electricity charges incurred in preserving the products from October to December, 2016 to the tune of Rs. 09,05,157/- and the same was rejected by the Tribunal only on the ground that the petitioner was largely responsible for the delays, without even returning a finding on the petitioner's specific plea on the start date. The same is perverse and the Award is liable to be set aside.

Misinterpretation of clause No. 20.1.3 and findings contrary to the evidence with respect to counter claim No. 3

26. The learned senior counsel for the petitioner, challenging the Award on

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the rejection of counter claim No. 3, submits that as per clause No. 20.1.3 the Agreement provides that the respondent would be responsible for dismantling, packaging and transportation for CIPL equipment after the expiration or termination of Agreement. In case of default of the same the respondent would be liable to pay Rs. 10,000 per month for each month delay. It is admitted by CW1 Jushil Kharbanda, in the cross examination, that the respondent had not removed the CIPL equipment from the premises of the petitioner and the same was removed atleast until April of 2018. Despite this, the Tribunal has erroneously found that there is no dispute between the parties as the CIPL equipment had been removed in April of 2018. The Tribunal has ignored the evidence on record in rendering the said finding. Moreover, the claim No. 3 was valued at Rs. 10,000 per month and not on 60,000/- as recorded by the Tribunal.

27. It is also submitted that the Tribunal erred in finding that no evidence has been placed on record to show as to when the access to the site was provided to the respondent. The Tribunal ignored the evidence on record and more specifically communications dated 01.11.2017 and 24.04.2018 wherein the petitioner asked the respondent to collect the CIPL equipment from the site.

Erroneous rejection of counter claim No. 4

28. The learned counsel for the petitioner submits that Rs. 40,000/- per month were claimed as the respondent has not removed the broken glass lying in the petitioner's brewery. The Tribunal has misdirected itself and rejected counterclaim No. 4 on the ground that it is unclear as to how the broken glass belonged to the respondent.

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Limitation

29. The petitioner submits that the respondent, in its written submissions, has for the first time contended that the present petition is barred by limitation on the ground that it was allegedly not served upon the respondent within the period prescribed by the statute. It is respectfully submitted that the objection as to limitation has been raised at an extremely delayed stage, in the written submissions filed at the stage of conclusion of final arguments. The respondent admittedly failed to raise any such objection for a considerable period of nearly five years since the filing of the present petition. Having acquiesced in the proceedings and participated therein without demur, the respondent is now estopped from raising the plea of limitation at this advanced stage, and the said objection is liable to be rejected on this ground alone.

30. It is further submitted that the objection of limitation raised by the respondent is without merit. The impugned Award was passed on 15.09.2020. The present petition was filed on 11.12.2020, defects were pointed out on 14.12.2020, and the petition was re-filed on 17.12.2020. The Hon'ble Supreme Court, in *Cognizance for Extension of Limitation, In re,*[5] excluded the COVID-19 period for computation of limitation and held that where limitation would have expired between 15.03.2020 and 28.02.2022, a fresh period of ninety days would be available from 01.03.2022. Accordingly, in the present case, the limitation stood extended till 01.06.2022. The petition was listed on 22.12.2020.

<u>SUBMISSIONS ON BEHALF OF THE RESPONDENT</u>

[5](2022) 3 SCC 117.

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31. Dr. Maurya Vijay Chandra, learned counsel for the respondent, supports the Award and states that there is no perversity, patent illegality or violation of public policy that calls for interference of this Court.

32. At the outset, the learned counsel, submits that the present petition is barred by limitation, as the same was not served upon the respondent within the statutory period of three months. No application seeking condonation of delay has been filed. Consequently, the filing of the petition is liable to be construed as non-est in the eyes of law. It is further submitted that since the challenge to the counterclaims was not pressed before the Court, no reply is being tendered to submissions with respect to counter claims prior to the oral arguments.

33. He further submits that the only surviving issue for consideration is whether liquidated damages could have been granted. He places reliance on ***Kailash Nath (supra)*** and more specifically on paragraph No. 43.

34. He points out that the Tribunal, even though does not, mention the above judgment, but it is evident from the reasoning of the Tribunal that there is a reflection of the relevant part of the ratio as quoted above.

35. He submits that the Tribunal recorded a finding that the Start Date was achieved beyond the stipulated period and that such delay was attributable to the financial distress of the petitioner. The Tribunal further held that the petitioner was ready for Contract Manufacturing only by the end of September 2016. The Tribunal also found that the parties had agreed that, in the event of delay for any reason whatsoever, liquidated damages would be payable by the petitioner, such amount

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being a genuine pre-estimate of damages. It was further noted that the respondent had expressly reserved its right to claim such damages *vide* communication dated 17.06.2016, despite its efforts to salvage the project amid the petitioner's financial distress.

36. It is submitted that mere attempts to salvage and implement the project cannot amount to a waiver of the contractual stipulation on liquidated damages, particularly where the right to claim such damages has been expressly reserved.

37. He further submits that such findings of fact, contractual interpretation, and application of law cannot be lightly interfered with by this Hon'ble Court in exercise of jurisdiction under Section 34 of the 1996 Act. The findings returned by the Tribunal are cogent, commercially appropriate, and definitely plausible, and do not offend the public policy of India. An Arbitral Award cannot be subjected to a piecemeal or hyper-technical scrutiny under Section 34 of the 1996 Act. The alleged contradiction relied upon by the petitioner arises from picking up observation out of context and does not warrant interference with the Award. To set out the scope of Section 34 of the 1996 Act, amongst others, reliance is placed on *Associate Builders v. DDA* [6], *SsangyongEngg. & Construction Co. Ltd. v. NHAI*[7], *Delhi Airport Metro Express (P) Ltd. v. DMRC*[8].

38. He also submits that the Court does not sit in appeal over an Arbitral Award. An interpretation of law or fact, being a possible and plausible view, cannot be interfered with under Section 34 of the 1996 Act. The

[6](2015) 3 SCC 49.
[7](2019) 15 SCC 131.
[8](2022) 1 SCC 131.

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findings of fact borne out of pleadings and returned by the Arbitrator are required to be accepted, the Arbitrator being the ultimate judge of the quantity and quality of evidence relied upon in making the Award.

39. Thus, it is submitted by the learned counsel for the respondent that the Tribunal, after duly considering the evidence on record, the contractual provisions and their interpretation has rightly awarded a sum of Rs. 25 lakhs in favour of the respondent, along with interest at the rate of 8% per annum on the awarded amount from the date of the award till realization.

ANALYSIS AND FINDINGS

40. I have heard the learned counsel for the parties and perused the material on record.

41. Before delving into the objections raised by the parties in the present case, it is relevant to mention the scope of interference under Section 34 of the 1996 Act. Section 34 of the 1996 Act provides for limited grounds for interference. The Court cannot act as an appellate authority or re-appreciate the evidence or interfere with the plausible findings of the Arbitrator. The Court may only interfere with the findings of the Arbitrator only on grounds expressly provided under the said Section i.e. unless the impugned Award is shown to suffer from patent illegality, perversity, or contravention of the fundamental policy of law, no interference is warranted.

42. In ***Consolidated Construction Consortium Ltd. v. Software Technology Parks of India***[9], the Hon'ble Supreme Court has observed as under:

[9](2025) 7 SCC 757.

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"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."

43. With the scope of Section 34 of the 1996 Act in mind, I shall now deal with the rival contentions.

44. At the outset, the learned counsel for the respondent raises an objection

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as to limitation wherein he contends that the present petition is barred by limitation as the same was not sent to the respondents within the statutory period of 3 months. The petitioner contended that the petition is well within the limitation as the Award was passed on 15.09.2020. The present petition was filed on 11.12.2020, defects were pointed out on 14.12.2020, and the petition was re-filed on 17.12.2020.

45. In ***Cognizance for Extension of Limitation (supra),*** the Hon'ble Supreme Court has held as under:

> *"5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:*
>
> *5.1. The order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] is restored and in continuation of the subsequent orders dated 8-3-2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 : (2021) 3 SCC (Civ) 40 : (2021) 2 SCC (Cri) 615 : (2021) 2 SCC (L&S) 50] , 27-4-2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 : 2021 SCC OnLine SC 373] and 23-9-2021 [Cognizance for Extension of Limitation, In re, 2021 SCC OnLine SC 947] , it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*

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5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.

5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply."

46. The perusal of the above shows that the period from 15.3.2020 to 28.2.2022 is required to be excluded for the purpose of calculating limitation. The judgment also mandates that irrespective of the limitation period available, limitation of 90 days from 01.03.2022 shall be available. Since, the Award is dated 15.09.2020 and the petition is filed on 11.12.2020, the petition is well within the period of limitation.

47. On merits, the Tribunal, while deciding whether time is the essence of the Agreement, observed that owing to the modification in the requirements of the Agreement, the time did not continue to remain the essence of the contract. The said finding of the Tribunal reads as under:

"64. When the Agreement was executed, all timelines were clearly identified. Time was clearly of the essence. However, the question is: did time continue to remain of the essence of the Agreement? The answer, in short, is in the negative.

65. Neither party avoided the contract after the expiry of 135 days from the Effective Date. Neither the Claimant nor the

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Respondent proceeded, after 24 April 2016 on the basis that time was of the essence of the Agreement.

66. It is well settled that when time is of the essence in a contract and a party, instead of avoiding the contract, after the time agreed expires, accepts belated performance of an obligation (originally intended to be performed in a time-bound manner), it would render ineffective the express provision relating to time being of the essence of contract. The law laid down by the Supreme Court on Section 55 of the Contract Act can be summarized as follows: Time, when specified, is ordinarily the essence of contract. However, intention to make time of the essence must be expressed unmistakably and whether time is of the essence is to be gathered from the terms of the contract. After extension of time, it cannot be said, albeit, ordinarily, that time remains the essence of the contract.

67. In any case, conduct of parties and surrounding circumstances should be examined to determine whether time is of the essence of the contract."

48. Further, on the issue of the award of liquidated damages by the Tribunal, the petitioner contended that the Tribunal has given a categorical finding that there is no loss suffered by the respondent yet the pre-estimate damages were awarded, whereas the contention of the respondent is that the damages were to be awarded in the terms of the clause No. 4.3 of the Agreement which provided that for any reason whatsoever if the start date is delayed, the petitioner shall pay to the

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respondent an amount of Rs. 25 lakhs. Clause No. 4.3 of the Agreement reads as under:

> *"Unless otherwise waived by CIPL in writing, in the event the Contract Brewer is unable to achieve such Start Date for any reason whatsoever, then the Contract Brewer shall pay CIPL an amount of INR 2,500,000 (Indian Rupees two million five hundred thousand only). Contract Brewer acknowledges that this Clause is fair since delay in achieving Start Date shall adversely impact CIPL's expected sales in Territory and CIPL would have also lost the opportunity to achieve these expected sales through alternative tie-up arrangements."*
>
> *(emphasis supplied)*

49. The finding of the Tribunal on the said issue reads as under:

> *"70. As to the Claimant's entitlement to reasonable compensation, Clause 4.3 of the Agreement is a complete answer. However, before discussing the issue of Claimant's entitlement, some preliminary points must be noted.*
>
> *71. First, Clause 4.3 applies upto Start Date. As such, Claim No.2 which is premised on Clause 4.3 applying only for a "reasonable time" of 14 days deserves rejection on this short point. The Tribunal is bound to apply the terms of the Agreement. No evidence, whether oral or documentary, can be looked into in order to find out what the Agreement means or, in other words, to interpret the Agreement.*
>
> *72. Second, reasonable compensation provided for in Clause*

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4.3 appears to be a pre-estimate which the parties agreed to and is capped at Rs.25 Lakhs (Rupees Two Million Five Hundred Thousand Only). This is because the Claimant, as is plain from the language used, took into account the losses that would be caused in relation to achieving the "expected sales".

73. Third, the attempt of the Respondent to rely on the answers of CW-4and to contend that the figure of Rs. 25 Lakhs is in effect a penalty does not assist the Respondent. The Tribunal needs to only consider the terms of the Agreement. The language used in Clause 4.3, makes it abundantly clear that the Respondent acknowledges that the amount of Rs.25 Lakhs is "fair". No oral evidence whether it is led by the Claimant or the Respondent can be used to interpret a contractual provision which is otherwise completely clear, as already mentioned above."

50. It is a settled principle of law that whether time is of the essence of the Contract has to be inferred after examining the contract as a whole and the surrounding circumstances.

51. There is no challenge to the finding that the time was not the essence of the contract.

52. It is also observed that even though, the Agreement was amended and time no longer remained the essence of the Agreement, the respondent retained the right to claim the damages. The same is evident from the email dated 17.06.2016, which reads as under:

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Shashank Joshi

From:	Anurag Dutta
Sent:	17 June 2016 15:26
To:	Pali Hills
Cc:	Roopali Singh; Pawan Jagetia
Subject:	RE: Request to consider PDC's in place of BG

Dear Sachin
Please give us the cheques as specified below by 21st/ 22nd June.
The cheques should be dated 22nd June 2016 onwards, and as specified below.

Regards
Anurag

From: Pawan Jagetia
Sent: 17 June 2016 15:13
To: Pali Hills
Cc: Anurag Dutta ; Roopali Singh
Subject: RE: Request to consider PDC's in place of BG

To
Mr. Sachin Kumar
Director
Pali Hills Breweries Pvt. Ltd.

Dear Sir
This is with reference to the Contract Manufacturing Agreement dated 11th December 2015 (CMA) entered between Carlsberg India Private Limited (CIPL) and Pali Hills Breweries Pvt. Ltd. (Contract Brewer). Capitalized terms used but not defined in this letter shall have the meaning ascribed to such terms in the CMA.

As per clause 14.1 of CMA, Contract Brewer was under an obligation to provide CIPL, Bank Guarantee (BG) of INR 30,000,000 (Indian Rupees Thirty Million) within 15 days of Effective Date ie 11th December 2015. However, Contract Brewer has been unable to fulfil this commitment till date.

CIPL has received a request dated 17th June 2016, from the Contract Brewer that the only way the Contract Brewer would be in a position to commence Contract Brewing under the CMA is if CIPL could look at relaxing the condition of providing BG. CIPL has considered the request of Contract Brewer in good faith and to support Contract Brewer to commence Contract Manufacturing at Brewery and not to frustrate the purpose of the CMA, CIPL has considered to agree to revised BG requirement as under:

- Contract Brewer shall provide CIPL 48 cheques for INR 30,000,000 (six cheques of INR 5,000,000 each). These cheques will be dated at gaps of 3 months and will cover a 24 month (2 year) period i.e. 6 cheques amounting to INR 30,000,000 shall be dated 22nd June 2016, and valid upto 21st September 2016; next 6 cheques amounting to same amount shall be dated 22nd September 2016 and valid upto 21st December 2016, and so on upto 6 cheques dated 22nd March 2018 valid upto 21st June 2018
- CIPL shall have the right to encash these cheques amounting to INR 30,000,000 as per the same CMA terms which specify CIPL's right to encash the BG i.e. Clause 14.7 and Clause 20.1.3
- Contract Brewer shall provide CIPL a Bank Guarantee as per terms of CMA and in the format specified in Schedule 11 in CMA on or before 1st June 2018. On doing so, CIPL shall return all the valid cheques specified above to the Contract Brewer. In the event Contract Brewer fails to provide the BG by 1st June 2018, CIPL shall have the right to encash the cheques for INR 30,000,000

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This email shall not operate as a waiver by CIPL of any of the Condition(s) or obligations of the Contract Brewer in terms of the CMA or any of CIPL's rights under the CMA and CIPL reserves its rights under the CMA to the fullest extent including but not limited to termination of the CMA, claim of damages, costs and expenses for the clear breach of the Contract Brewer of its material obligations under the CMA as well as collection of liquidated damages.

Both Parties shall make best possible endeavour to execute a supplemental agreement to CMA to give effect to the above understating reached between the Parties.

Yours Faithfully
Pawan Jagetia

From: Pali Hills [mailto:palihillsranchi@gmail.com]
Sent: 17 June 2016 14:20
To: Pawan Jagetia
Cc: Anurag Dutta
Subject: Request to consider PDC's in place of BG

Dear Pawan ji,

Further to our meeting on 24th of May and the discussions we had in your Gurgaon office, i would like to inform you that we have made considerable progress in terms of payments to banks and equipment suppliers.

we have managed to clear the crucial amounts of our suppliers Brewforce ,Lab equipment and site dues. Anurag had been kept posted of the same. Brewforce has also deployed their team which will be reaching ranchi this weekend.

However our bank loan has not been cleared till date and the Bank Guarantee is a part of the proposal which is still being evaluated by the banks.

Under these circumstances i request you to kindly consider our proposal of submitting Post dated Cheques instead of the bank Guarantee as mentioned in the agreement as a security for CIPL equipment. this will help us to get the equipment at site and commence production at the earliest.

we shall furnish the BG at a later stage after the clearance of bank loan. We can come down to Gurgaon with the cheques anytime after coming tuesday for submission of the same.

Regards

Sachin

53. The provisions for damages under the Agreement can be bifurcated into two parts. One being before start date and the other being after start date. The penalty for delay before the start date, would be compensated

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by the petitioner, as per the clause No. 4.3 and after the start date the damages will be calculated as per the 6th schedule of the Agreement. The Agreement clearly sets out a different framework governing levy of damages into two distinct phases, namely, (i) the period prior to the Start Date, and (ii) the period subsequent to the Start Date. In so far as the period prior to the Start Date is concerned, any delay in the contract is governed under Clause No. 4.3, which provides for genuine pre-estimates payable by the petitioner for delay in start date. Conversely, once the start date is achieved, the computation and levy of damages are governed exclusively by the mechanism prescribed under Schedule 6 of the Agreement. The said is evident from the finding of the tribunal:

> *"79. The first basis on which the Claimant has made this claim is that Clause 4.3 only covers reasonable compensation for reasonable time (of around 2 weeks) after 24 April 2016. According to the Claimant, the inordinate delay of 254 days was never contemplated by the parties. As such, the Claimant's case is that it is entitled to liquidated damages of Rs.25 Lakhs in accordance with Clause 4.3 and also entitled to general damages characterized as claims for loss of production and / or loss of profits in accordance with the mechanism provided in Schedule 6 to the Agreement.*
>
> *80.The Tribunal finds that Schedule 6 applies after Start Date is achieved and not before. Thus, Claim No.2 which is made in respect of delays before achievement of Start Date cannot be advanced on the basis of Schedule 6.*

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….

83. Claim No.2, to the extent that the Tribunal can understand from a mere reading of pages 302 and 303 of the documents filed with the SOC, is on the basis of "minimum commitment". That, in turn, appears to be based on Schedule 6 to the Agreement. As indicated above, Schedule 6 only applies post achievement of Start Date. As to the period following the Start Date, the Tribunal finds that the Claim No.2 cannot be entertained for two reasons: (a) that the Claimant's own pleaded case is confined to the losses upto the Start Date; and (b) in any case for the period following the achievement of Start Date, according to the Claimants, the minimum monthly commitment was not met."

54. In the present case the start date was originally contemplated as 24.04.2016. The Tribunal has held that the delay in start date upto 22.06.2016 is attributable to the petitioner and thereafter it is attributable to both the parties. The said finding of the tribunal reads as under:

"63. On analyzing the factual evidence, referred to above, the Tribunal finds that the Start Date was delayed for reasons attributable to both the Claimant and the Respondent. Whilst, the Respondent was responsible for the delays upto 22 June 2016, the Claimant and Respondent were both responsible for delays between 16 October 2016 and 16 December 2016 and in fact, it is for reasons attributable to both parties that the Start Date was not achieved immediately after 22 June

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2016. Despite this being the position, in so far as the claims are concerned, in the Tribunal's view, nothing, save and except as indicated below, turns on the delay in achievement of the Start Date."

55. The wordings of clause No. 4.3 i.e."*Contract Brewer acknowledges that this Clause is fair since delay in achieving Start Date shall adversely impact CIPL's expected sales*" makes it evident that the petitioner itself agreed that Rs. 25 lakhs are a genuine pre-estimate of losses that will occur if there is delay in start date. Moreover, the respondent reserved the right to claim any such damages.

56. It is pertinent to mention that while deciding claim No.2 of the respondent, where the respondent claimed Rs. 11,53,62,390 on account of failure of the respondent to produce the required cases per month and inordinate delay of 240 days in achieving the start date, the Tribunal has dealt with the said claim on both the footing, i.e. period of delay in achieving the start date and period of delay following the start date. Based on the evidence led by CW4, Mr. Mahajan, the Tribunal observed the following:

"90. It is well settled that an award for damages can only be made if there is evidence that the party claiming damages had suffered actual loss. The Claimant has relied on the evidence of Mr. Gaurav Mahajan CW4. Mr. Mahajan, in his affidavit, has stated as follows:

"4. I say that during the period where PHB was unable to start production and later were under-producing during the period January 2017 to September 2017, and

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non-production from October 2018 onwards. CIPL could not import any substantial quantity of the SKUs from plants in other states as their production capacity was tied up for the respective markets in anticipation of timely production by PHB. Augmentation of production capacity in beer industry in short period of time is very difficult. Once it became clearer that PHB is not able to meet its contractual obligations towards CIPL, it started exploring the possibility of sourcing the products from nearby breweries. Despite CIPL's best efforts it could manage to import only limited volume of the products from the nearby states. Further CIPL this effort of supplying from outside the state of Jharkhand resulted in higher cost of transportation and duties and reduced profits per case."

91. Mr. Mahajan's own evidence was that the Claimant could only manage to import "limited volume" of the Product. No evidence was provided as to what limited volume was and no supporting documents were produced before the Tribunal. As such, irrespective of all the points mentioned above, the Tribunal does not find any evidence of the Claimant having suffered any actual loss. The Claimant is, thus, not entitled to any Award for Claim No.2 for this reason also."

(emphasis supplied)

57. Upon perusal of the above statement, it can be observed from the said finding of the Tribunal that irrespective of the statement of Mr.

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Mahajan the Tribunal could not find any evidence of actual loss irrespective of anything stated by him. However, as is evident from the above discussion the fact of the respondent having suffered no actual loss is post the start date. Thus, the said findings of claim No. 1 and claim No. 2 are on different footings, thus, cannot be relied upon to conclude that there was no loss suffered by the respondent.

58. In this regard, Section 74 of the ICA which pertains to the genuine pre-estimate damages, is relevant and reads as under:

> *"Section 74: Compensation for breach of contract where penalty stipulated for*
>
> *When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.*
>
> *Explanation.- A stipulation for increased interest from the date of default may be a stipulation by way of penalty.*
>
> *Exception.- When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of*

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the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.- A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested."

59. The law regarding Section 74 of ICA was crystallised in the case of ***Kailash Nath (supra).*** The relevant paragraphs read as under:

"43. On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:

43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.

43.2. Reasonable compensation will be fixed on well-known

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principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.

43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.

43.4. The section applies whether a person is a plaintiff or a defendant in a suit.

43.5. The sum spoken of may already be paid or be payable in future.

43.6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.

43.7. Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application."

60. It is an established law that for the applicability of Section 74 of the ICA, loss or damage is a *sine qua non* but the loss need not be proved and in the cases where a genuine pre-estimate is stipulated in the Agreement the Court may award reasonable amount not exceeding the

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penalty so stipulated.

61. Upon a careful perusal of clause No. 4.3 of the Agreement, it is evident that the contract itself recognizes that any delay in the achieving the Start Date would result in loss to the respondent. The parties have expressly agreed that, in the event the petitioner fails to achieve the start date for any reason whatsoever, the petitioner would be liable to pay a fixed sum of Rs. 25 lakhs as genuine pre-estimated and agreed damages. The said stipulation clearly reflected by the use of word "*fair*". The parties' intention to quantify the consequence of such delay in advance, binds the petitioner accordingly.

62. Thus, the Tribunal is right in holding that since there were delays on part of the petitioner in achieving the start date till 22.06.2016 and thereafter, delay being attributable both the petitioner and the respondent, the petitioner is liable to pay the sum of Rs. 25 lakhs.

63. The Tribunal is a creature of contract and is bound by the circumscribing limits of the terms of the Contract. It is upon the Tribunal to interpret the terms of the contract. The Tribunal, in the present case, has interpreted the amount of Rs. 25 lakhs as reasonable compensation. The said finding is a plausible finding. This Court, is restricted by Section 34 of the 1996 Act to interfere with the plausible findings of the Arbitrator, even if another conclusion is possible or better.

64. At this juncture it would be relevant to distinguish the judgment of Hon'ble Supreme Court in ***Kailash Nath (supra)*** relied on by the petitioner. The judgement clearly states that the loss is an essential requirement to award damages in Section 74 of the ICA. The party

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complaining the breach of the contract must suffer from actual loss apart from the mere breach of contract or legal injury. In the present case, clause No. 4.3 clearly states that delay in achieving the start date by the petitioner would cause loss to the respondent as due to the delay the respondent's expected sales in the said territory would be impacted. Hence, the parties clearly agree that any delay in start date would cause loss to the respondent, they further agreed that an amount of Rs. 25,00,000/- is a genuine pre-estimate of loss that will be suffered by the respondent on account of such delay. Thus, it cannot be said that there was no loss suffered by the respondent.

65. The judgement in ***Construcciones Y Auxiliar De Ferrocarriles (supra)*** relied by the petitioner is also distinguishable as in that case the respondent had failed to aver and prove loss. In the present case the parties in the contract have already agreed that delay in achieving start date itself causes loss to the respondent. The reason for the loss is also encapsulated in the said clause which is that the respondent would lose its expected sales and would not be able to achieve the expected sales *via* alternative tie up arrangements.

66. Hence, I am unable to agree with the arguments advanced by the learned senior counsel for the petitioner against the findings with respect to claim No. 1. Consequently, the Award to the extent of claim No. 1 is upheld.

67. With respect to the counter claim No. 1, i.e. rejection of electricity charges, the Tribunal came to a finding that the delays in achieving the start date were majorly attributable to the petitioner until 22.06.2016 and thereafter to both the petitioner and the respondent. Thus, it would

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be apposite to conclude that if the petitioner is responsible for a part of the delay, the respondent should not be held liable to pay the electricity charges for preserving the products. Therefore, the finding that the petitioner is not entitled to charge electricity charges from October to December 2016 is a plausible finding. The findings of the Tribunal have already been reproduced in paragraph No. 14 and are not being again reproduced again for brevity.

68. With respect to counter claim No. 3, as per clause No. 20.1.3, the petitioner was to provide unfettered access to the respondent to dismantle the machinery. Clause 20.1.3 reads as under:

> *"20.1.3 return all CIPL Equipment installed at the Site within 5 (Five) Business Days of termination of this Agreement subject to Contract Brewer obtaining all applicable approvals under Applicable Laws. In the event Contract Brewer fails to return CIPL Equipment, CIPL will have the right to encash the bank Guarantee furnished by the Contract Brewer. Further the Contract Brewer will also be liable to pay, a delay penalty of IN 50,000 (Indian Rupees Fifty Thousand only) per day for the period of such delay. It is agreed between the Parties that immediately after obtaining approvals under Applicable Laws, if any, or termination of the Agreement, as the case maybe. the Contract Brewer will give unfettered access to CIPL and its nominated representatives to the Site for dismantling, packaging and transportation of CIPL Equipment, <u>The Parties agree that CIPL shall be responsible for dismantling,</u>*

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packaging and transportation of CIPL Equipment out of Site within 15 (fifteen) Business Days of getting access to the Site. Any delay by CIPL to dismantle and remove CIPL Equipment inspite of Contract Brewer fulfilling its obligation to give unfettered access to the Site, the penalty payable by the Contract Brewer in terms of this Clause shall stand nullified. Further. it is agreed between the Parties that in the event that CIPL is unable to dismantle and remove CIPL Equipment within 15(fifteen) Business Day time period set out above, then CIPL shall pay the Contract Brewer a penalty of INR 10,000/- per month for each month of delay. CIPL shall not unreasonably delay dismantling, packaging and transportation of CIPL Equipment"

(emphasis supplied)

69. The Arbitral Tribunal, with respect to the counter claim No. 3 has stated as under:

"112. Counter Claim No.3 is for an amount of Rs.60,000/- towards rent for space occupied by "CIPL Equipment" between October 2017 and April 2018. There appears to be no dispute between the parties that CIPL Equipment had been removed by April 2018. In fact, the minutes of meetings held on 18 May 2019 and 19 May 2018 signed by representatives of both sides also confirms this fact.

113. Clause 20.1.3 makes it clear that access to the site is to be provided by Respondent for "dismantling, packaging and transportation of CIPL Equipment out of Site" within 15 days

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from "getting access to the site". The Respondent has not produced any evidence as to when access to site was provided by the Respondent. As such, this claim is inconsistent with Clause 20.1.3 of the Agreement and, therefore, rejected.

114. In any case, the notice of termination of 9 October 2017 itself mentions that according to the Respondent, the termination was under Clause 3.2 of the Agreement. It is not the Respondent's case that before 9 October 2017 any notice of termination was served. In terms of Clause 3.2, six months notice is required to be provided. Taking that into account, the 6 month period after 9 October 2017 came to an end only in early April 2018. As such also, Clause 20.1.3, which had to be read harmoniously with Clause 3.2 of the Agreement, cannot assist the Respondent. Counter Claim No.3 is, therefore, rejected."

70. The Tribunal has come to a finding that the respondent has not produced any evidence as to when the site was provided by the respondent. The said finding is contrary to material on record namely the communications dated 01.11.2017 and 24.04.2018 of the petitioner which reproduced as under:

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VIPUL PODDAR
Advocate
Jharkhand High Court
Ranchi

Date: 01.11.2017.

To,

1. Carlsberg India Pvt. Ltd., 4th Floor, Rectangle No.1, Commercial Complex, D-4, Saket New Delhi – 110017.
2. Carlsberg India Pvt. Ltd., 3rd Floor, Tower-A, Paras Twin Towers, Sector -54 , Gurgaon, Haryana – 122002.
3. Mr. Nilesh Patel, Managing Director, Carlsberg India Pvt. Ltd., 3rd Floor, Tower-A, Paras Twin Towers, Sector -54 , Gurgaon, Haryana – 122002.
4. Mr. Pawan Jagetia, Deputy Managing Director, Carlsberg India Pvt. Ltd., 3rd Floor, Tower-A, Paras Twin Towers, Sector -54 , Gurgaon, Haryana – 122002.
5. Assistant General Manager, Bank of India, Ranchi Mid Corporate Branch, Sahjanand Chowk, Harmu, Ranchi -12.

My Client: Pali Hills Breweries Pvt. Ltd., G.Flr, 199/A, Mandaliya Nagar, Behind Suruchi Appt., Beside Panchwati Garden, Bariatu Road, Bariatu, Ranchi -9, represented by Mr. Sachin Kumar son of Harihar Prasad Sahu resident of Flat no.4, Golf Green Apartment, Bistupur, P.O. & P.S. Bistupur, Jamshedpur, Jharkhand.

Subject – In Reference to all the previous communications via notice and meeting dated 16.10.2017 at Ranchi.

Sir,

Under instructions of my client and as authorised by it I have the honour to give you this notice and state as under:

1. My client is a company incorporated under the provisions of the Companies Act, 1956 engaged in brewing and packaging of alcoholic beverages and related activities.
2. My client entered into a contract brewing and packaging agreement with you on 11.12.2015 for brewing and packaging of alcoholic beverages as per the terms and conditions agreed by both of you.

For PALI HILLS BREWERIES PVT. LTD.
Sachin Kumar
Director

VIPUL PODDAR
Advocate
Jharkhand High Court
Ranchi

3. That as per all the previous communications and your reply to the same, my client and you tried to mutually solve the problems by holding discussion, by way of meeting held in Ranchi on 16.10.2017, which was in vain. And, thereafter my client by invoking its power under clause 3.2 of the agreement has terminated the agreement, by giving 6 months notice.
4. That, it is stated that the production has been stopped by you from 15th July, 2017 and till date there is no production, thus it is hampering my client interest for the remaining period of the agreement i.e. till 09.04.2018.
5. That after considering the above situation it is advisable to remove all your equipments and vacate my client's brewery within the period of 30 days of receipt of this notice.
6. That it is further informed to you that there are several perishable raw materials in nature kept in my client's brewery since long, so it is advisable to you to remove the same within the short span of time to avoid any further monetary loss / damages to you as well as to my client. My client will not be responsible to compensate for any monetary loss / damages caused due to your action / inaction.
7. That it is stated that considering all the situations my client is forced to cancel / stop all the PDC / BG which is kept with you, and further it is informed to you that the same stands cancelled / stopped from the date you receive this notice / mail.

I therefore on behalf of my client call upon you to remove all your equipments kept at my client's brewery within 30 days of receipt of this legal notice.

Thanking You

Yours Faithfully,

1/11/17

VIPUL PODDAR
Advocate

For PALI HILLS BREWERIES PVT.LTD.

Sachin Kumar
Director

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Gmail

Pali Hills <palihillsranchi@gmail.com>

Reminder1 lifting of materials and JVAT 506 form

1 message

Pali Hills <palihillsranchi@gmail.com> Tue, Apr 24, 2018 at 9:24 PM
To: Pawan Jagetia <pawan.jagetia@carlsberg.asia>, Anurag Dutta <Anurag.Dutta@carlsberg.asia>, Alok Ranjan <alok.ranjan@carlsberg.asia>, Maurya <maurya.chandra@adyopant.com>, Ranjan Kumar <Ranjan.Kumar@carlsberg.asia>, M Prabhakar <manu.prabhakar@adyopantlegal.com>

Sir, your 4 equipments / materials are lying in my factory
1. Labeller
2. Pull up crowner
3. Bottles
4. Scrap broken glass
Please revert back with a specific date when you will lift your materials / equipments.

I am again reminding you to provide me JVAT506 form for sales tax purpose as soon as possible.

Kindly revert back as both of us are bound by clause 20 of the agreement.

71. A perusal of two communications clearly show the petitioner duly provided access to the site but it was the respondent who failed to remove the CIPL equipment.

72. It was only on 18.05.2018, the respondent held a meeting with the petitioner wherein the respondent stated that the equipment can't be removed until it is reinstalled and run online. The minutes of the said meeting are reproduced as under:

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Minutes of Meeting Between Pali Hills & Carlsberg Date :-18-05-2018

Present :-

Carlsberg India Pvt Ltd.

Jushil Kharbanda

Alok Ranjan

John Shannel

Krishan Kumar

Sachin 18/5/18.

Pali Hills Breweries Pvt.Ltd

Sachin Kumar

CIPL Team visited today morning for the verification of assets as per contractual agreement with Pali Hills. Following are the Observations for Day-1:-

Packaging:-

1. CIPL has provided 2 machines to Pali hills on start of operations a) Zhongde Labeller b) Ring pull crowning complete system for Tuborg crown applications.
2. As on date both the machines have been removed from the line & kept in packaging hall under tarpolene cover.
3. The present condition of Zhongde labeller is in bad shape & observed following:-
   a) Oil leakages beneath the machine.
   b) Supporting Legs of machine missing & kept in separate box during machine de-installing from line.
   c) Most of the bottle handling parts have been worn out due to poor maintenance.
   d) There was no lubricant evident in both the label aggregate stations.
   e) The bottle pads rotation found ± 5-7mm which is much above tolerance limit of ±2mm.
   f) The changeparts & spares kept in box like scrap in very bad shape & all are in dismantled condition, very difficult to assess as these are without any identification.
   g) Gripper cylinder rollers & Sponge in damaged condition
   h) Panel & Blower condition cannot be assessed as machine is Offline
4. Following are the observations on Ringpull crowner system:-
   a) Complete ringpull system kept in unorganised way without any proper packaging & identification.

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b) The crimping heads found in bad shape due to lack of maintenance & lubrication, these cannot be used in future & have to procure new crimping heads.

c) Most of the component of rinpull lying in scattered form.

5. Since both the machines are offline & stored in poor condition, the operation-ability cannot be confirmed until both the systems are re-installed & run Online.

Brewing & QA: -

1) All the documents viz. Brew & filtration charts collected in Hard copy.
2) Soft copies of QA reports, Recipe, fermentation charts & all other documents collected & saved.
3) The copy of above reports in Pali hill computers deleted.

Day -1 Activity Closed, CIPL Team (John, Krishan & Alok) will continue further verifications & validations and submit the findings.

Objection for points no. 1) Packaging
2) Zhongde labeller
3) Ring pull crowner
4) spare parts.

We are not fully satisfied with the objections raised regarding zhongde labeller and Ring pull crowner. Therefore we need a proper inspection again done.

Sachin
18/5/18

73. The machine was not reinstalled and run online to check the operational ability and was not removed from the premises of the petitioner atleast until 16.03.2019. The same is evident from the cross examination dated 06.03.2019 of Mr. Jushil Kharbanda, Manager- Engineering and Projects Manufacturing Operations, Carlsberg India Private Limited. He, upon asking if the CIPL equipment has been removed, gave an answer in the negative. The same is reproduced as under:

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Ans. I do not know.

Q34 Has the Claimant removed CIPL equipments from the premises of the Respondent?

Ans. No.

Q35 What is the reason that CIPL equipments have still not been removed from the Respondent's site?

Ans. I do not know.

Q36 I put it to you that your affidavit is false and the case set up by the Claimant is baseless.

Ans. I do not agree.

Cross-examination of CW-1 concluded.

RO & AC

Hon'ble Mr. Justice Mukul Mudgal (Retd.)
Presiding Arbitrator

(emphasis supplied)

74. The said cross examination was totally ignored by the Tribunal while considering the counter claim No. 3. The reasoning of the Tribunal for the rejection of Award is, as reproduced, namely:

i. That the petitioner has not produced any evidence as to when access to the site to remove the CIPL equipment was provided.

ii. That the 6 months period, after notice of 09.10.2017 came to an end in April 2018 and there is no dispute between the parties that

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the equipment was removed by April, 2018.

75. Both the reasons are incorrect and contrary to record. It is evident that the petitioner gave access to site for removal of equipment on 01.11.2017 and subsequently on 24.04.2018. Despite the notice of 09.10.2017, the equipment was not removed at least till 06.03.2019.

76. Hence, the burden of rental obligation, for the acts of the respondent, cannot be put upon the petitioner. No prudent person can arrive at the said findings in view of the documents available on record.

77. For the said reasons this finding of the Arbitrator is to be interfered with and is liable to be set aside. This court is of the view that the findings with respect to counter claim No. 3 are contrary to the evidence on record and thus is set aside to that limited extend. Reliance is placed on ***PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust***[10]**,** wherein the Hon'ble Supreme Court held that an Award contrary to the vital evidence is liable to be set aside as the said decision would be perverse and patently illegal.

78. While interpreting Section 34 of the 1996 Act, the Hon'ble Supreme Court in ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.***[11]**,** held that the court though does not sit as a court of appeal under Section 34 of the 1996 Act but if the findings of the Court are severable, the court has the power to sever and modify a portion of Award. The relevant paragraphs read as under:

> *"43. Equally, Section 34 limits recourse to courts to an application for setting aside the award. However, Section 34*

[10](2023) 15 SCC 781. Ref paragraph Nos. 41 and 42.
[11](2025) 7 SCC 1.

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does not restrict the range of reliefs that the Court can grant, while remaining within the contours of the statute. A different relief can be fashioned as long as it does not violate the guardrails of the power provided under Section 34. In other words. the power cannot contradict the essence or language of Section 34. The Court would not exercise appellate power, as envisaged by Order 41 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code").

44. We are of the opinion that modification represents a more limited, nuanced power in comparison to the annulment of an award, as the latter entails a more severe consequence of the award being voided in toto.

Read in this manner, the limited and restricted power of severing an award implies a power of the Court to vary or modify the award. It will be wrong to argue that silence in the 1996 Act, as projected, should be read as a complete prohibition.

45. We are thus of the opinion that the Section 34 Court can apply the doctrine of severability and modify a portion of the award while retaining the rest. This is subject to parts of the award being separable, legally and practically, as stipulated in Part II of our Analysis."

79. Hence, counter claim No. 3 can be interfered while retaining the rest of the findings of the Tribunal as the findings are severable.

80. The petitioner in Statement of Defence has substantiated the counter claim No. 4, which reads as under:

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"Counter Claim no.4- The claimant has refused to remove the broken glass from the Respondent brewery and thus the Excise Department, Ramgarh has also send a notice to the respondent to remove such broken glass. This is capturing a large portion of the premise of the respondent and thus a claim of Rs 40,000/- per month for each month delay is charges herewith."

81. I am of the view that the finding returned by the Tribunal does not call for interference. The Tribunal has held that the petitioner failed to establish that the broken glass in question either belonged to the respondent or that the respondent was under any contractual or legal obligation to clear the same. This conclusion is a plausible one, as the petitioner, both in the pleadings and during the course of arguments, did not place on record any material to demonstrate that the broken glass was belonging to the respondent or that the respondent was responsible for its removal. Further, the petitioner has also failed to adduce any evidence to show that any loss was actually suffered on account of the alleged broken glass. In the absence of proof, the rejection of counter claim No. 4 by the Tribunal cannot be said to be perverse. The findings pertaining to counter claim No. 4 have already been extracted in paragraph No.14 and are not being reproduced again for the sake of brevity.

CONCLUSION

82. In view of the aforesaid discussion, this court does not find merit in the challenge to the Award except for the rejection of counter claim No. 3. Thus, the Award is set aside only to the extent of counter claim No.3.

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83. The petition is disposed of with pending applications, if any.

JASMEET SINGH, J

JANUARY 22, 2026/(MU)

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