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

% ***Judgment reserved on: 24.07.2025***

Judgment pronounced on: 04.08.2025

\+ **FAO (COMM) 192/2025, CM APPL. 44314/2025 (for stay), CM APPL. 44315/2025 (for delay) & CM APPL. 44316/2025 (for exemption)**

PEC LTD. .....Appellant

Through: Mr. Sumit Jidani, Advocate.

versus

M/S BADRI SINGH VINIMAY PVT. LTD. AND ANR. .....Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

CM APPL. 44315/2025 (for delay)

1. By way of the present application filed under Section 5 of the Limitation Act, 1963, the Applicant/Appellant seeks condonation of delay of **81 days** in filing the present appeal.

2. For the sufficient reasons stated in the application, the delay is condoned.

3. Accordingly, the present application stands disposed of.

CM APPL. 44316/2025 (for exemption)

1. Allowed, subject to all just exceptions.

2. The application shall stand disposed of.

FAO (COMM) 192/2025 & CM APPL. 44314/2025 (for stay)

1. The present Appeal under Section 37 of the **Arbitration and Conciliation Act, 1996**[1]and Section 13 of the Commercial Courts Act, 2015 raises a challenge to the impugned Judgment dated 01.02.2025 passed by learned District Judge (Commercial Court-01), Patiala House Courts, New Delhi in ARBTN 3047/2018 titled as ***PEC Limited v. M/s Badri Singh Vinimay Pvt. Ltd. & Anr***, wherein the **Arbitral Award dated 02.04.2018**[2] has been upheld by the learned District Judge.

PLEADINGS

2. Shorn of unnecessary details, the crux of the present Appeal relates to **Tender bearing No.PEC/PUL/DOM/TDR/XCVII/11**[3], which was floated by the Appellant on 27.08.2011 herein for the purpose of lifting of various kinds of crops and lentils, including 100 Metric Tons[4] of Canadian-origin Red Lentils, on the specific terms of *"as is where is basis"*. It is the stated case of the Appellant that the said tender provided for lifting of the lentils on *"as is where is basis"* for the original quantity of 100 M.T., which was subsequently raised to 300 M.T. *vide* Approval Letter dated 09.09.2011.

3. Respondent No. 1 emerged as the highest bidder at a rate of Rs.25,500/- per M.T. As per the Tender terms, the material was to be lifted from the Appellant's godown at Kolkata on an *"as is where is basis"* within a stipulated period of 30 days. However, in their acceptance letter dated 09.08.2011, Respondent No. 1 clarified that

[1]A&C Act
[2]The Award
[3]The tender
[4]M.T.

only *"sound and good condition"* cargo would be accepted.

4. Pursuant thereto, Respondent No. 1 deposited a sum of Rs.36,45,844/– with the Appellant, inclusive of Rs.2,50,000/– as **Earnest Money Deposit**[5], sufficient for purchasing 110 M.T. of cargo.

5. Disputes arose after Respondent No. 1 lifted approximately 83.94 M.T. of the lentils and alleged that the consignment was mixed and partially damaged. A formal complaint with respect to the quality was lodged on 02.12.2011 by the Respondent No. 1, notifying the Appellant of their inability to take delivery of the damaged cargo and seeking a refund of the excess amount paid. The Appellant rejected the request, citing the *"as is where is"* clause in the Tender.

6. Following failed negotiations, a joint **Third-Party Survey** for the inspection of the cargo, in the presence of both parties, was conducted on 13.02.2012. As per the survey report dated 23.03.2012, approximately 70% of the total stock was found to be in *"damaged condition"*. Thereafter, Respondent No. 1 proceeded to lift only that portion of the cargo which was found to be in *"sound condition"* and eventually took delivery of 111.28 M.T., which is not disputed by either party.

7. Respondent No. 1 thereafter raised a claim of Rs. 7,58,854/-, which was rejected by the Appellant, who forfeited the EMD and withheld the excess amount.

8. The matter was referred to arbitration under the terms of the Contract. *Vide* Arbitral Award dated 02.04.2018, the learned Sole Arbitrator allowed the claim of the Respondent in part, directing the Appellant to refund Rs. 5,67,864/- along with 10% interest per annum

[5]EMD

from 25.03.2012 till 15.07.2014.

9. Being aggrieved with the Arbitral Award, the Appellant filed an application under Section 34 of the A&C Act before the learned District Judge. *Vide* the Impugned Judgement, the learned District Judge upheld the Arbitral Award, stating that the conclusion drawn by the learned Sole Arbitrator is well-reasoned as per the terms and conditions of the agreement after taking due consideration of the facts, evidence and material on record.

10. At the outset, it needs to be noted that the learned counsel for the Appellant has restricted his arguments only to the question as to whether the lentils were to be accepted by the Respondents on *"as is where is basis"* or not, and the other grounds which have been raised in the Appeal, namely, that of limitation as well as that of there being no proper authorisation for the purpose of filing of the Plaint, were neither argued nor pressed.

11. We also consider it appropriate to record that there was no denial of the aspect of the fact of the parties having substantially agreed to limit the liability to only those of the goods that were of *"sound condition"*.

12. The discussion in the Judgment, therefore, is restricted only to the question of as to whether the goods were to be accepted by the Respondents on *"as is where is basis"* or not. A corollary to the said aspect would also be as to whether the Appeal as filed insisting on the imposition of the *"as is where is basis"* clause, would at all be sustainable, in view of the fact that it was subsequently agreed as between the parties, based on a joint inspection carried out, that the Respondents herein would only be liable to lift the Red Lentils that were of *"sound condition"*.

13. It is in this view of the matter that we would have to consider the entire issue raised herein. The learned Sole Arbitrator has also considered the entire issue from this perspective and held as follows:

> *" C. Contractual terms of sale of Cargo on "as is where is" basis vis-à-vis actual Quality Standard of materials in the cargo (ISSUE No. iii & iv)*
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> *It is the case of Respondent that the cargo was sold thru' an open tender with contractual terms of delivery on "as is where is" basis. Hence the actual quality of material in cargo is out of question and beyond the scope of Arbitration. However the Claimant argued that the 'Red Lentils' being an item of edible nature for human consumption is legitimately expected to meet certain minimum standards of Quality level which has be fit for use as well as be merchandisable for further trading.*
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> *The moot question arising in this case is whether any responsible PSU Company operating under Govt. of India can put out for sale thru' an open public tender such huge quantities (300 MT in this case) of 'damaged' commodity of edible nature like 'Lentils' which is essentially a human consumption item and forms a critical component of staple diet for people at large?*
>
> *It is well established and certified thru' a Third Party Survey Report issued by the Surveyor nominated by the Seller himself, that over 70% of the Red Lentil stock at the point of sale was found to be damaged / water-damaged, thus making it unfit for human consumption. The consumption of such poor quality of Lentils reaching people's kitchen either thru' PDS channels or thru' urban / semi-urban 'Kiryana Stores' which has not only lost its nutritional value, but also poses a grave threat to the general public health and well-being.*
>
> *It is argued by the Respondent party that full care is duly taken by them on procuring only Quality Items sourced from well known international suppliers and thru' a well established procurement system in place, in line with global norms of Quality Checks at Source ports before Shipment followed by monitoring of quality by checks and balances at each stage along their Domestic Supply Chain, as per internal certified Company Procedures. A review of the Contract Specification agreed between Respondent (Buyer) and the overseas Supplier (AUST GRAIN EXPORTS PTY LTD) of Import Contract Reference PEC /PUL /2009 /LXXIII / AUSTGRAIN entered on 13.05.2009), copy filed by Respondent on 13.02.2017, reveals*

following product procurement spec.

QUOTE
ITEM: Fit for Human Consumption of New Crop (2008-09) Red Lentils no.2
Specifications as per Annexure I (GENERAL)
RED LENTILS SHALL BE FROM NEW CROP (2008-09) AND SHALL BE SOUND, SWEET, CLEAN, WHOLESOME, FREE FROM MOULDS / FUNGUS, LIVE INSECTS OBNOXIOUS SMELL, ARTIFICIAL COLOR, ADMIXTURE OF UNWHOLESOME SUBSTANCE AND SHOULD BE OF REASONABLE SIZE, SHAPE AND COLOUR CHARACTERISTICS.

MYCOTOXIN INCLUDING AFLATOXIN NOT TO EXCEED 0.03 MILLIGRAMS PER KILOGRAM. RADIOACTIVE CONTAMINATION, IF ANY, WITHIN PERMISSIBLE LIMITS.
UNQOUTE

However to support their argument that quality of product lot received under above shipment actually met the Contract Specifications, the Respondent in-spite of repeated pleas by Claimant's side, failed to produce any copy of "Load Port Certificate" issued by the Inspection Authority at the time of shipment of Lentil Stocks. It is sought to be explained by the Respondent that all original shipping documents including Invoices, Inspection certificates, copies of contract etc are submitted to the Bankers for retiring of documents but it is unbelievable or inconceivable for a PSU Company not to retain any photocopy of Inspection / Quality Certifications of their imports for future reference during domestic sales of imported cargos / consignments particularly against the backdrop of scenario where dispute was brewing over the quality of supplies around same period. It is not clear as to why did they chose not to produce the Load Port Certificate of import consignment before this Tribunal to establish Quality of actual supplies at the time of shipment. The withholding of such crucial document having a direct bearing on the core issue of Quality of Supplies leads to an irresistible conclusion that the same, if produced, wouldn't have supported the case of Respondent as to the soundness of the Cargo. An adverse inference thus is raised.

As deposed by the Witnesses produced by Respondent (RW-1) the import contract with their suppliers (in Canada) was signed on 07.05.2009 and the actual shipment of cargo was effected during period between May 2009 and September

2009. While the subject tender for Sale of Red Lentils (received under above consignment) in Domestic market was floated on 27.08.2011, the contract for sale (with the Complainant party) was signed on 09.09.2011. the actual deliveries continued until 24.03.2012 in different lots after which the Complainant refused to accept further cargo as-offered over a dispute in quality of supplies. It was also deposed by the same (RW-1) witness that the left- over cargo (after refusal by Claimants) was disposed- off to a third party M / s Harika international thru' a limited tender sale at a discounted price @ Rs. 3501/- per MT as against contracted price @ Rs. 25500/- per MT between parties under dispute. The fact that the left-over stocks were forced to be disposed-off at 14% of Contract price i.e. at a discount of 86%, goes on to prove beyond doubt that the quality of cargo was certainly suspect and deficient to the extent of being unfit for human consumption, otherwise there seems to be no reason as to why the Claimant even after making an advance payment for 110 MT of cargo shall lift only 83.94 MT which they found as acceptable and fit for further trade in the market.

The Tribunal concludes that even if the Quality of Imported Lentils met its import contract specifications at the time of shipment, there are strong reasons to infer of cargo having been damaged / water- damaged / infested, as it was procured out of Year 2008-09 Crop of Canadian Origin but sold and delivered in domestic market up to 24.03.2012 (corresponding to year 2011-12) to the Claimant party and disposed-off even later up to 01.06.2012 (corresponding to Year 2012-13) to a third party M / s Harika International, considering the perishable nature of edible items combined with the level of Storage, Warehousing & Preservation practices followed by Stockists to combat humid weather of Kolkata.

The Respondent argued that in this particular case the sale was made thru' an open tender on 'as- is -where is' basis and they were neither concerned with the end use of the articles nor were aware of any subsequent supply chain arrangement or Contract of Claimant with their sub-contractors for supply as per any grade or specification. In fact as informed by Respondent all domestic sale of Lentils or any other agriculture items is made thru' open or limited tenders on 'as-is-where is' basis.

On examining the tender terms & conditions it is nowhere mentioned that the stocks under sale thru' tender were in fact 'available for pre-inspection' by bidders before putting in their price bids. No such schedule / timeline or arrangements

for making stocks available for pre-inspection is any part of tender terms & conditions for bidding. Even the tender does not indicate the condition of cargo or any caution to the prospective bidders that the Cargo is mixed-up of various grades or being unsuitable for human consumption.

It is argued by the Claimant that since the different lots of bags of Lentils were stocked in such a manner that it was virtually impossible to assess the exact quality or grade of it was virtually impossible to assess the exact quality or grade of item on each side therefore in their Acceptance Letter dated 09.09.2011 addressed to Respondent they mentioned that 'Only Good Quality (Fresh stocks) shall be acceptable'. While it is anybody's guess as to what is the 'Good' quality of Lentils but it is assumed that both Supplier and Bidder being in same trade know as to what is NORMAL or ACCEPTABLE quality of Lentils which is not only fit for human consumption but also merchandisable for further trade in the market. In view of above the Claimant after lifting of 83.95 MT of Lentils (out of 110MT already paid for) refused to accept further supplies which were deficient in quality, making it unfit for human consumption and which they could not trade further in the market. Initially the Claimant flagged the problem of unacceptable quality of stock by on 08.10.2011 through informal discussions and interactions with Respondent at various levels and later he formalized his complaint by issuing a letter dated 02.12.2011 communicating their concern on quality of Cargo as-offered and non-acceptance of available stocks. Therefore it is established that the Complaint was made within 4 weeks of Contractual period ending 08.10.2011 as also agreed by the Respondent. Even if the formal written complaint is delayed in a bid to resolve the issue thru' mutual negotiations, it does not render their issue of deficient quality of stocks as frivolous or non maintainable or beyond the contractual terms.

In the factual matrix of Case at hand, the decisions in Case No. 1, 2, 3, 4, 5 of Delhi High Court (as per list filed by Respondent) viz (S.No.1)1999 (49) DRJ, CA No. 446/97 in CP 50/84 of Karamchand Appliances Pvt ltd v/s Bharat Carpets & Others decided on 06.05.1999, (S.No. 2) 2014 Law Suit (Del) 3751 of Manpreet Singh & Co. v /s North Delhi Municipal Corporation decided on 12.09.2014 (S.No. 3) 165 (2009) DLT 76 of NDMC v / s Manju Maini OMP No. 631 of 2007 decided on 06.10.2009 (S.No. 4) 189 (2012) DLT 476 of S.K. Pandey v / s MCD & Others OMP 310 of 2010 decided on 13.01.2012 (S.No. 5) 109 (2004) DLT 97 of Toyo Engineering Corpn v/s CIMMCO Birla Ltd OMP 392/2002 dated 11.12.2003, have no

relevance in as much as the facts are distinguishable. Unlike the present case involving perishable commodity admittedly meant for human consumption, the above cases wherein the contractual terms spoke of "as is where is basis" related to immovable properties and assets which were open for pre-inspection.

In view of the foregoing, this Tribunal rules that Respondent cannot force the Complainant to accept the 'damaged' Cargo which makes Respondent liable to refund to excess amount lying with them out of the advance payment made by claimant for the un-lifted Cargo. As would be seen from the discussions in context of ISSUE No. v & vi which follow under next para, the condition of "As is Where is" stood diluted, and would pale in to irrelevance, by subsequent conduct of both parties agreeing to resolve the disputes on the basis of Third Party Survey.

D. Third Party Survey of stocks and its impact on the consequent delay in lifting of cargo by the Complainant: (ISSUE No. v & vi)

The Respondent having been faced with the prospect of pile of unsold stocks tried to persuade the Complainant by offering the acceptable quality by sorting out good lots out of available stock. In this connection the Respondent mooted the idea of fresh Inspection of stocks in presence of both parties thru' a Third Party Surveyor to be deputed at their own cost in order to salvage the situation. Both parties have agreed to the proposal of joint inspection. Although the actual date of inspection of stocks by Third Party Surveyor remained a matter of debate as both parties have filed Surveyor's report on different dates in their respective pleadings, but interestingly the contents and figures in both the reports are similar in nature and content. During cross- examination of witnesses on both sides it was not established and agreed by both parties that the actual Survey / Inspection took place on 13.02.2012 in presence of representatives of both parties and the report dated 23.02.2012 issued by the Third Party Survey revealed following results:

STOCK AVAILABLE	*SOUND CONDITION*	*DAMAGED*	*REASONS*
3178 Bags	*960 Bags*	*2218 Bags*	*Damaged / Water Damaged*

The mutual agreement by both parties for undertaking Joint Inspection under Third Party Surveyor implies (a) that the results of Joint Survey shall be binding w/o any further questions on Condition of stock on either side and Only Cargo found of 'Sound Condition' during said Survey shall be lifted by the Claimant, and (b) that the delay in lifting of goods by claimant due to above arrangement shall be condoned by the Respondent thus giving go-bye to the terms of 'delivery within 30 days" as well as the sale condition of "as-is-where is basis'.

The decisions of Supreme Court reported in Case No. 6, 7, 8 (as per list filed by Respondent) (S.no:6) 2010 / 10 SCC /677 of Ritesh Tewari &Anr v / s State of U.P & others (S.No.7) AIR 1987/SC 2179 of Vinod Kumar Arora v / s Smt. Surjit Kaur C.A No. 1635 of 1985, decided on 17.07.1987, (S.No.8) AIR 2001/ SC / 1684 of Atul Castings Ltd. v/s Bawa Gurvachan Singh C.A No. 2900 of 2001 decided on 20.04.2001, as relied upon by the Respondent are in-applicable here. The Claim is based upon the dispute legitimately raised and properly set-out to which there was no reasonable or fair response. The facts on which the Claim is founded pertain to the period anterior to the lodgment of the Claim.

In view of above, this Tribunal rules that

I. The Claimant cannot go back on their commitment to lift 382 bags which they refused to lift in-spite of agreement for lifting of 960 bags identified as 'Sound Condition' Bags during Joint Survey. The Respondent in this case needs to be compensated for the loss of profit due to un-lifted 382 bags of 'Sound Condition'.

II. The time taken for the Joint Survey and lifting of 578 Bags in 'Sound Condition' which were lifted by Claimant beyond 08.10.2011 shall be considered as part of extended contract originally signed / contracted on 09.09.2011 and no penalty or liquidated damages can be invoked or claimed by Respondent on this account.

E. Claims: (ISSUE No. vii, viii, ix)

III. The Claimant has filed a claim of Rs. 7,58,854/- as principal sum and excess amount including EMD lying with the Respondent for the goods not delivered. Since the Claimant couldn't lift the cargo due to a major quality issue the said amount is due to be refunded by Respondent but after deducting the loss of profit suffered by them on account of 382 Bags un-lifted post acceptance by Claimant as above. The loss of profit may be fixed @Rs.

10,000/- per MT on 19.10 MT (382x50 Kg per bag) totaling a net loss of Rs.1,91,000/-. Thus the net amount which becomes payable by Respondent under above claim of the Claimant works out to Rs. 5,67,854/-.

IV. The Claimant has also filed a claim of Rs. 18,00,000/ - against Loss of profit due to non-delivery of goods. The Contract does not provide for any such Consequential damages claim. This is only an assumed loss without any basis and is of the nature of Consequential damages, it cannot be granted. Moreover in the face of finding above goods as of un -acceptable quality within initial 4 weeks itself, the Claimant had all the opportunity to resort to procurement of commodity from alternative sources. Therefore no such relief is granted to the Claimant.

V. The Claimant has further claimed Rs. 12,16,749/- as interest charges @ 24% per annum on the Principal Amount as above till the date of 15.07.2014 on which they lodged their Claim to ICA for arbitration. Though the Claimant needs to be given some relief due to above Principal Amount lying with Respondent since 24.03.2012 when the last consignment was delivered / lifted by them, but the rate of interest claimed by them is not founded on any contractual terms, it is very high and unreasonable.

VI. Since the dispute has arisen out of a commercial transaction, bearing in mind the RBI rates, this Tribunal is inclined to grant a simple interest @ 10% per annum to the Claimant against Respondent for the period 25.03.2012 to 15.07.2014 on aforesaid Principal Amount of Rs. 5,67,854/- and also for the future till realization.

F. ***The Award:*** *(ISSUE No. x)*

In the light of above Tribunal Awards the Claim as under to the Claimant against the Respondent:

VII. Refund by the Respondent to the Claimant, of net amount of Rs.5,67,864/- towards the excess amount lying with Respondent after deducting Rs. 1,91,000/- towards the loss of profit suffered by them out of Claimant's claim of Rs.7,58,854/ - as above.

VIII. An interest amount of Rs. 1,30,995/- on above Refund amount of Rs. 5.67.864/- @ 10% simple interest per annum for the period from 25.03.2012 up to 15.07.2014 i.e. the date of lodging Claim with ICA (total 2 years 112 days).

IX. The Claimant shall be paid the Refund amount plus Interest charges as above within 90 days of date of Award.

X. The Respondent is also held liable to pay to the Claimant pendente lite Simple Interest @ 10% per annum on the above Principal Amount of Rs. 5,67,864/- (apart from Interest Charges of Rs. 1,30,995/- as above) computed up to the date of Award and of the future till realization.

XI. Both parties are liable to bear their respective share of Arbitration cost and expenses, including additional charges, if any, to be recovered by ICA on account of prolonged proceedings in the Case, in accordance with ICA Rules of Arbitration and Conciliation, amended from time to time.

XII. The claimant will be entitled to enforce the Award only after satisfying the claim of ICA towards its dues. After issuing several reminders during proceedings, the Respondent was directed vide Order Sheet dated 09. 01. 2018 to clear their dues towards ICA on or before 16.01.2018. Since the Respondent has failed to abide by the set direction, the Claimant is hereby called upon to pay the same for and on behalf of the Respondent, as a precondition to its right to enforce the Award, with liberty to recover the said amount along with the Amount payable under the Award from the Respondent in execution proceedings in accordance with Law."

(Emphasis supplied)

14. The said Award came to be challenged by the Appellant herein by way of an application dated 09.07.2018 under Section 34 of the A&C Act, seeking to set aside the Award dated 02.04.2018 passed by the learned Sole Arbitrator. The learned District Judge, after having heard the parties and considering the Award as well as the pleadings and the documents, held as follows:

"18. I have examined the Award dated 02.04.2018 in question, arbitration proceedings and also given due consideration to the facts and pleadings ofthe case, written submissions along with citations filed by the parties as well submissions put forth by the respective Ld. Counsels for the partiesand the relevant legal position.

19. The cause of dispute between the parties before the Ld. Sole Arbitrator was that as per the agreement between the parties, respondent no. l had tolift certain cargo material consisting of Red Lentils of Canadian origin from the godown of the petitioner located at 3, Hyde Road, Kolkata however, as

alleged by respondent no.1, the quality of goods was not in conformity with the terms of contract and thereby respondent no.1 was unable to lift the entire quantity of goods as per the agreement, which resulted in a dispute between the parties. The petitioner has rejected the claim of respondent no.1 on the grounds that the goods were contracted tobe lifted on 'As is where is basis' and forfeited the earnest money deposit(EMD) deposited byrespondent no.1 against performance of contract.

20. It is apparent from the record that the major dispute between the parties is on the quality of the cargo offered, the applicability of the tender clause of sale of goods on 'As is where is basis' Vs respondent no.1 Conditional Acceptance of Contract on the basis of 'Only Sound and Good (fresh cargo) Condition' to be accepted.

21. In the present case, respondent no.1 has refused to accept the cargo in 'as offered' condition and claimed for refund of excess amount outstanding against quantity non-supplied/non-lifted, whereas the petitioner has rejected the said claim and not only forfeited the EMD amount of Rs. 2,50,500/- deposited by respondent no.1 as per Clause 12 of the agreement qua liquidated damages and Clause 13 of the agreement qua cancellation of contract which are reproduced as under: -

"Clause 12 – Liquidated Damages:-

In case the successful bidder fails to lift the stock within the stipulated period of 30 days consecutive days, godown rent for a minimum period of one month @ Rs. 140 PMT per month, 12% pa interest and any other charges will be charged from the successful bidder. After one month, PEC will be free to rescind the contract and dispose off the cargo at the risk and cost of bidder without assigning any written/verbal notice to the successful bidder for making payment and/ or lifting the cargo. In addition, Bid Bond will be forfeited'.

Clause 13- Cancellation Contract:-

'if the Buyer fails to lift the goods within specified delivery period for reasons other than Force Majeure, the Seller shall be entitled at his option to cancel the contract and recover the damages besides forfeiture of Bid Bond. The Seller shall not be liable to any risk and costs, whatsoever, consequent upon such cancellation of contract'.

22. In this case, following issues were framed by the Ld. Sole Arbitrator:-

(i) Whether the Claims were preferred within the limitation period?

(ii) Whether the claim was preferred on behalf of the

claimant's company with proper authorization?
(iii) Did the Joint Survey of the Cargo by both parties along with Third party Surveyor amount to giving a go-bye to the contracted delivery terms of 'as is where is basis'? What is the effect of consequent delay in lifting of goods on the terms related to forfeiture of EMD?
(iv) Whether the Claimant is entitled to seek any relief over the contracted terms of 'as is where is' basis?
(v) Was the Claimant not under an obligation to lift 960 bags of Red Lentils on the basis of Surveyor's Report?
(vi) Did the Respondent fail in putting-up the Contracted goods in a deliverable state or in delivering sound quality goods thereby committing breach of terms of contract?
(vii) Whether the Claimant is entitled to claim of Rs. 7,58,854/- along with interest thereof for the sum paid in excess of the value of goods lifted?
(viii)Whether the Claimant is entitled to claim of Rs. 18,00,000/- along with interest thereof for any loss in profit due to non-delivery of goods?
(ix)Whether the Claimant is entitled to claim interest @ 24% or any other rate on the aforesaid sums?
(x) Relief?

23. Issue no. (i) Whether the Claim was preferred within the limitation period?

24.In the present case, respondent no.1 has filed the statement of claim before ICA on 24.02.2015 and a dispute over the quality of goods arose on 08.10.2011. The record shows that the parties were in constant dialogue to resolve the dispute through mutual negotiations and as mutually agreed by the parties, joint survey of cargo was conducted on 13.02.2012 and as observed by the Ld. Sole Arbitrator, the real break up between the parties came up as late as 24.03.2012 when respondent no.1 refused to take delivery of remaining 382 bags out of 960 bags admittedly of acceptable quality as identified during joint survey of stocks. Ld. Sole Arbitrator also observed, while confirming from the records of ICA that respondent no.1 vide notice dated 24.07.2014 under Section 21 of the Indian Arbitration and Conciliation Act, 1996 to the Council had already invoked Arbitration as per the contract terms notwithstanding the actual statement of claim filed with the Council on 24.02.2015 and thereby observed that the cause of action to raise the dispute for the arbitration proceedings thus, arose in the wake of impasse created after the joint survey and disinclination of respondent no.1 to take delivery of suspect cargo on 24.03.2012.

25. ***The Hon'ble Supreme Court of India in a case titled as Geo Miller and Co. Pvt. Ltd. Vs. Chairman. Rajasthan Vidyut Utpadan Nigam Ltd. [(2020) 14 SCC 643]*** *has held in Paras 28 and 29 as under: -*

> *"28. Having perused through the relevant precedents, we agree that on a certain set of facts and circumstances, the period during which the parties were bona fide negotiating towards an amicable settlement may be excluded for the purpose of computing the period of limitation for reference to arbitration under the 1996 Act. However, in such cases the entire negotiation history between the parties must be specifically pleaded and placed on the record. The Court upon careful consideration of such history must find out what was the "breaking point" at which any reasonable party would have abandoned efforts at arriving at a settlement and contemplated referral of the dispute for arbitration. This "breaking point" would then be treated as the date on which the cause of action arises, for the purpose of limitation. The threshold for determining when such a point arises will be lower in the case of commercial disputes, where the party's primary interest is in securing the payment due to them, than in family disputes where it may be said that the parties have a greater stake in settling the dispute amicably, and therefore delaying formal adjudication of the claim.*
>
> *29. Moreover, in a commercial dispute, while mere failure to pay may not give rise to a cause of action, once the applicant has asserted their claim and the respondent fails to respond to such claim, such failure will be treated as a denial of the applicant's claim giving rise to a dispute, and therefore the cause of action for reference to arbitration. It does not lie to the applicant to plead that it waited for an unreasonably long period to refer the dispute to arbitration merely on account of the respondent's failure to settle their claim and because they were writing representations and reminders to the respondent in the meanwhile."*

26. In the present case, statement of claim was filed by respondent no.1 before ICA on 24.02.2015 whereas the dispute over the quality of goods arose on 08.10.2011. Thereafter, as is apparent from the record, the parties were in constant dialogue to resolve the dispute through mutual negotiation and a joint survey of cargo was conducted on 13.02.2012, as mutually agreed by the parties. As per the record, during joint survey of stocks, out of 960 bags, 382 bags were found and identified to be acceptable quality but on 24.03.2012,

respondent no.1 refused to take delivery of 382 bags. Moreover, though respondent no.1 has filed the statement of claim before ICA on 24.02.2015 however, as per record of ICA, respondent no.1 had already invoked arbitration vide notice dated 24.07.2014 under Section 21 of the Indian Arbitration and Conciliation Act, 1996 to the Council. In the present case, the entire history of the negotiation between the parties has been specifically pleaded and placed on record and the Ld. Sole Arbitrator has considered such history while observing that the joint survey of cargo, as mutually agreed by the parties, was conducted on 13.02.2012 and found that the real breaking point as 24.03.2012 when respondent no.1 refused to take the delivery of admittedly acceptable quality of 382 bags out of 960 bags as found and identified during joint survey of stocks and this 'breaking point' was treated as the date on which the cause of action arises for the purpose of limitation and this has led the Ld. Sole Arbitrator to the irresistible conclusion that the statement of claim was within three years from 24.03.2012 and the court also does not find in infirmity in the same and thus, no interference is called for.

27. Issue (ii) Whether the claim was preferred on behalf of the claimant's company with proper authorization?

28. Claim petition before the Ld. Sole Arbitrator was filed by Sh. Sunil Kumar Singh, representative of respondent no. l and the Ld. Sole Arbitrator has observed that Sh. Sunil Kumar Singh, being one of the Directors of respondent no. l company, directly looking after day to day operations during execution of contract in question, was having due authority and mandate from their Board/Management to deal with the case and the text of the affidavit filed by respondent no. 1 leaves no ambiguity that Sh. Sunil Kumar Singh at the time of filing claim petition did in fact enjoy the confidence of his management and was duly authorized to deal with the subject arbitration case and during pendency of the case, a fresh resolution was made on 10.05.2016 which further corroborated by re-affirmation of his nomination by respondent no.1 company's board. While deciding this issue, Ld. Sole Arbitrator has observed that the case of respondent no.1 cannot be thrown out of window due to any deficiencies in the extract of Board Resolution submitted earlier as resolution dated 10.05.2016 not only reiterates the resolution of 19.02.2011 conferring the authorization and clarifying the act of omission of Serial number of Resolution, but also has the effect of ratifying all acts done in its terms and found the claim petition maintainable. While deciding this issue, Ld. Sole Arbitrator has given reasoned finding and the court does not

find any infirmity in this regard. Moreover, in view of the provisions of Order 29 Rule 1 of CPC any Principal Officer of the corporation who is able to depose the facts of the case, is competent to sign and verify the pleadings on behalf of the corporation. In ***case RFA 174/2007 titled as Kingston Computers I P. Ltd , versus State Bank of Travancore decided on 12.08 .2008. the Hon'ble Delhi High Court in para 26*** *observed that: -*

> *"26. Suffice would it be to state that in law, the Secretary, Director or a Principal Officer of a company would be treated as duly authorized to institute suit on behalf of a company. This flows out from a bare reading of Order 29 Rule 1 of the Code of Civil Procedure as further explained in the decision in United Bank of India's case."*

29. Issues (iii) Did the Joint Survey of the Cargo by both parties along with Third party Surveyor amount to giving a go-bye to the contracted delivery terms of 'as is where is basis'? What is the effect of consequent delay in lifting of goods on the terms related to forfeiture of EMD? And (iv) Whether the Claimant is entitled to seek any relief over the contracted terms of 'as is where is' basis?

30. Before the Ld. Sole Arbitrator, the moot question has arisen as to whether any responsible PSU Company operating under Government of India can put out for sale through an open public tender search huge quantities (300 MT in this case) of 'damaged' Commodity of edible nature like 'lentils' which is essentially a human consumption item and forms a critical component of staple diet for people at large. While deciding this question, Ld. Sole Arbitrator has observed that over 70% of the Red Lentil stock at the point of sale was found to be damaged/water damaged, as has been established and certified through a Third Party Survey Report issued by the Surveyor nominated by the Seller himself thus, making it unfit for human consumption thereby consumption of such poor quality of Lentils leading people's kitchen, either through PDS channels or through urban/ semi urban 'Kiryana stores' which has not only lost its nutritional value, but also poses a grave threat to the general public health and well-being. The 'Red Lentils' being an item of edible nature for human consumption is legitimately expected to meet certain minimum standards of quality level, which has to be fit for the use as well as be merchandisable for further trading and Ld. Sole Arbitrator has observed that during arbitral proceedings, the petitioner has failed to produce the 'Load Port Certificate' issued by the Inspection Authority at the time of shipment of Lentil Stock before the Tribunal to establish quality of actual supplies at

the time of shipment and withholding of such critical document, having a direct bearing on the core issue of quality of supplies, leads to an irresistible conclusion to the Ld. Sole Arbitrator that if the same was produced, the same would not have supported the case of the petitioner as to the soundness of the cargo, and an adverse inference was thus, raised by the. Ld. Sole Arbitrator in this regard. Ld. Sole Arbitrator has discussed the evidence of RW- 1 who deposed that the import contract with their suppliers (in Canada) was signed on 07.05.2009 and the actual shipment of cargo was effected during period between May 2009 and September 2009, while the subject tender for sale of Red Lentils (received under the consignment) in domestic market was floated on 27.08.2011, the contract for sale with respondent no. 1 was signed on 0.09.2011 and the actual deliveries continued until 24.03.2012 in different lots after which respondent no. 1 refused to accept further cargo as-offered over a dispute in quality of supplies. Ld. Sole Arbitrator has concluded that even if the quality of imported Lentils met its import contract specifications at the time of shipment, there are strong reasons to infer of cargo having been damaged/ water- damaged/ infested, as it was produced out of year 2008-2009 Crop of Canadian Origin but sold and delivered in domestic market up to 24.03.2012 (corresponding to year 2011-12) to respondent no.1 and disposed off even later up to 01.06.2012 (corresponding to year 2012-13) to a third party M/s Harika International, considering the perishable nature of edible items combined with the level of Storage, Warehousing & Preservation practices followed by Stockists to combat humid weather of Kolkata.

31.The petitioner has raised the issue before the Ld. Sole Arbitrator that all domestic sale of Lentils or any other agriculture items is made through open or limited tenders on 'as is where is basis' and the Ld. Sole Arbitrator while examining the tender terms and conditions, has observed that it is nowhere mentioned that the stocks under sale through tender were in fact 'available for pre-inspection' by bidders before putting in their price bids and no such schedule/timelines or arrangements for making stocks available for pre-inspection is any part of tender terms and conditions for bidding and even the tender does not indicate that the condition of cargo or any caution to the prospective bidders that the cargo is mixed-up of various grades or being unsuitable for human consumption. There is acceptance letter dated 09.09.2011 address to the petitioner where it has been mentioned that 'Only Good Quality (Fresh Stocks) shall be acceptable however, Ld. Sole Arbitrator has observed that

since both the supplier and the bidder being in same trade and assumed that they know as to what is Normal or Acceptable quality of Lentils which is not only fit for human consumption but also merchandisable for further trade in the market. The Ld. Sole Arbitrator has observed that the petitioner cannot force respondent no. 1 to accept the 'damaged' cargo which makes the petitioner liable to refund the excess amount lying with them out of the advance payment made by respondent no. 1 for the un-lifted cargo and the condition of 'as is where is basis' stood diluted and would pale into irrelevance. Ld. Sole Arbitrator has given his reasoned findings only after correctly interpretating the contract and considering the pleadings, documents while deciding the issues. The court also finds that the challenge in the present petition is on substantive questions of facts which is not permissible under law. Further, the scope and purview is limited and it does not permit the court to replace the finding given by the Ld. Sole Arbitrator, by its own by re-appreciating the evidence produced before the Ld. Sole Arbitrator. Further the Ld. Arbitrator, while deciding these issues, has discussed the scope of the contract, terms and conditions of the agreement and the documents and only thereafter arrived at the conclusion which in no way, can be said to be patently illegal, irrational, arbitrary etc. It is also evident in this case that the Ld. Sole Arbitrator, while passing the impugned award, in interpreting the contract, had applied his mind, discussed the issues in details and given a reasonable, meaningful, appropriate and effective interpretation of the contract after detailed discussion, which cannot be interfered with. The court also finds that the Award is not only within the confines terms of reference but also based on the terms and conditions of the contract. The Ld. Sole Arbitrator has duly explained the reasons for arriving at his decisions and the petitioner herein has failed to brings its case before this court within the four corners of Section 34 (2) of the Arbitration and Conciliation Act, 1996.

32. Was the Claimant not under an obligation to lift 960 bags of Red Lentils on the basis of Surveyor's Report? and (vi) Did the Respondent fail in putting- up the contractual goods in a deliverable state or in delivering sound quality goods thereby committing breach of terms of contract?

33.The impact of Third Party Survey of cargo stocks on the consequent delay in lifting the cargo by respondent no.1 has been discussed by the Ld. Sole Arbitrator and observed that the petitioner mooted the idea of fresh inspection of stocks in presence of both the parties through a Third Party Surveyor to be deputed at their own costs in order to salvage the situation

for which both the parties agreed to the proposal of joint inspection and filed surveyor's report of different dates but the contents and figures in both the reports were similar in nature and while going through the cross examination of witnesses from both sides, it was observed by the Ld. Sole Arbitrator that it has been established that actual survey/inspection took place on 13.02.2012 in the presence of representatives of both parties and the report dated 23.02.2012 of the Third Party Survey revealed that out of 3178 bags, 960 bags were sound condition and 2218 bags were damaged for the reasons of damaged /water damaged and as put the mutual agreement by both the parties for undertaking Joint Inspection under Third party Surveyor implies (a) that the results of Joint Survey shall be binding without any further questions on condition of stock on either side and only cargo found of 'sound condition' during said Survey shall be lifted by respondent no. 1 , and (b) that the delay in lifting the goods by respondent no 1 due to above arrangement shall be condoned by respondent no.1 thus giving go-bye to the terms of 'delivery within 30 days' as well as sale condition of 'as is where is basis'. Ld. Sole Arbitrator observed that the claim is based upon the dispute legitimately raised and properly set out to which there was no reasonable or fair response and the facts on which the claim is founded pertain to the period anterior to the lodgment of the claim and while deciding these issues, the Ld. Sole Arbitrator observed that respondent no.1 cannot go back on their commitment to lift 382 bags which they refused to lift in spite of agreement for lifting of 960 bags identified as 'Sound Condition' bags during Joint Survey and the petitioner in this case needs to be compensated for the loss and profit due to unlifted 382 bags of 'Sound Condition' and further the time taken for the Joint Survey and lifting of 578 bags in 'Sound Condition' which were lifted by respondent no. 1 beyond 08.10.2011 shall be considered as part of extended contract originally signed/contracted on 09.09.2011 and no penalty or liquidated damages can be invoked or claimed by the petitioner in this account. In the present case, there is nothing on record to show that the impugned award, on the face of it, is against the public policy or the Ld. Sole Arbitrator has acted arbitrarily or lacked in judicial approach or the award is against the fundamental policy of India. All the relevant provisions of the contract were considered by the Ld. Sole Arbitrator. The court is of the view that the interpretation of the contract, as provided by the Ld. Sole Arbitrator, was reasonable and cannot be said to be perverse that no reasonable person could have reached the same conclusion. It is well settled law that the construction of the terms of a contract is primarily lie with Ld. Arbitrator to decide unless

the Ld. Arbitrator construes the contract in a manner that no fair minded or a reasonable person would; in short that the Ld. Arbitrator's view is not even a possible view to take. Further the petitioner has failed to explain how the approach adopted by the Ld. Sole Arbitrator falls within the disqualifications of Section 34 (2) (a) (iv) of the Arbitration and Conciliation Act, 1996 as there is no averment to substantiate the same and moreover, the same is no longer survives after the amendment 2015 and thus, there is no occasion for this court to interfere with the findings of Ld. Sole Arbitrator on these issues.

34.Issues (vii) Whether the Claimant is entitled to a claim of Rs. 7,58,854/- along with interest thereof for the sum paid in excess of the value of goods lifted? (viii) Whether the Claimant is entitled to claim of Rs. 18,00,000/ - along with interest thereof for any loss in profit due to non-delivery of goods? And (ix) Whether the Claimant is entitled to claim interest @ 24% or any other rate on the aforesaid sums?

35.In the present case, respondent no.1 has filed the claim before the Ld. Sole Arbitrator for Rs. 7,58,854/- as Principal sum and excess amount including EMD lying with the petitioner for the goods not delivered and while deciding the same, Ld. Sole Arbitrator has observed that since respondent no.1 could not lift the cargo due to a major quality issue, the said amount is due to be refunded by the petitioner but after deducting the loss of profit suffered by them on account of 382 bags unlifted post acceptance by respondent no.1 as above and fixed the loss of profit @ Rs. 10,000/- per MT on 19.10 MT (382x50 Kg per bag) totalling a net loss of Rs. 1,91,000/- and thus, the net amount which becomes payable by the petitioner under above claim of respondent no.1 worked out by the Ld. Sole Arbitrator to Rs. 5,67,854/-. Before the Ld. Sole Arbitrator, respondent no.1 has also filed a claim of Rs.18,00,000/- against the loss of profit due to non- delivery of goods however, the Ld. Sole Arbitrator has observed that the contract does not provide for any such consequential damages and the same was without any base which cannot be granted and no such relief was granted to respondent no1 as in the face of finding the above goods as of un-acceptable quality within initial four weeks itself, respondent no. 1 had all the opportunity to resort to procurement of commodity from alternative sources. While deciding the issues, the Ld. Sole Arbitrator has discussed the issues in details and given a reasonable, meaningful, appropriate and effective interpretation of the contract after detailed discussion, which is evident in this case and thus, the same cannot be interfered

with. Ld. Sole Arbitrator, while deciding the same, has interpreted the contract and applied his mind and the Award is based on the terms and conditions of the contract and no interfere is called for.

36. Ld. Sole Arbitrator while granting interest has observed that sincethe dispute has arisen out of a commercial transaction, bearing in mind the RBI rates, the Ld. Sole Arbitrator granted a simple interest @ 10% per annum to respondent no. 1 against the petitioner for a period from 25.03.2012 to 15.07.2014 on Principal amount of Rs.5,67,854/- and also for the future till realization.

37. As per Section 31 (7) of the Arbitration and Conciliation Act,1996, the Ld. Sole Arbitrator is competent to award interest and further in terms of Section 3 of the Interest Act, 1978, the Ld. Sole Arbitrator is competent to award interest at the rates prevailing in the banking transaction. In a case titled as ***MSK Projects (I) (JV) Ltd. Vs. State of Rajasthan & Anr,2011 (8) JT 37 (SC),*** *it has been held that the Arbitrator is competent to award interest for the period commencing with the date of award or the date of decree or date of realization, whichever is earlier. While the amount of interest is a matter of substantive law, the grant of interest for the part award period is a matter of procedure. Further the* ***Hon'ble High Court of Delhi in a case between the same parties titled as M/s Wapcos Limited Vs M/s C & C Energy Private Limited, FAO (COMM) 53/2021 dated 20.10.2022*** *has held that "Insofar as the award of interest is concerned, it is now well settled that the Arbitral Tribunal has wide discretion in awarding interest (See:* ***Punjab State Civil Supplies Corporation Limited (PUNSUP) and Anr. Vs Ganpati Rice Mills, SLP (C) 36655 of 2016, decided on 20.10.2021".*** *In the said case, the Hon'ble High Court of Delhi has observed that "In the present case, Wapcos had also claimed interest at the rate of 18% per annum and therefore, it is not open for Wapcos now to contend that the said rate is exorbitant and onerous and the Hon'ble High Court also finds no fault with the learned Commercial Court in declining to interfere with the impugned award". In the present case, the Ld. Sole Arbitrator has exercised the discretion by giving reasons that the transaction between the parties being of commercial nature, the simple interest @ 10% per annum seems to be reasonable in this case and therefore, the reasoning given by the Ld. Sole Arbitrator while awarding the interest, cannot be said to be unreasonable or perverse. In view of the same, the court does not find any illegality or arbitrariness in the*

impugned award with respect to the interest so awarded by the Ld. Sole Arbitrator.

38.Perusal of the award reflects that Ld. Sole Arbitrator has taken into consideration the dispute arose between the parties and the grounds raised by the petitioner to challenge the award, are factual in nature which have been already considered and adjudicated in the impugned award. It is outside the scope of Section 34 of the Act to re-appreciate the entire evidence and come to conclusion because such an approach would defeat the purpose of arbitration proceedings. It has been consistently held that when a court is applying the public policy test to an arbitration award, it does not act as a court of appeal and consequently, errors of facts cannot be corrected. A possible view by the Ld. Sole Arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quality and quantity of evidence to be relied upon when he/she delivers his/her arbitral award. Thus, an award based on little evidence or no evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once, it is found that the arbitrator's approach is not arbitrary or capricious, then it is the last word on facts.

39. A bare perusal of the arbitral award shows that Ld. Sole Arbitrator has examined all the relevant aspects of the contract, the correspondences made by the parties, the terms of the contract and the conduct of the parties. Ld. Sole Arbitrator has remained inside the parameters of the contract and construed the provisions of the contract. Ld. Sole Arbitrator while deciding the issues, has operated within the four corners of the contract and has not travelled beyond it. Ld. Sole Arbitrator has not decided the issues contrary to the terms of the contract, so it cannot be said that Ld. Sole Arbitrator misconducted himself or the interpretation given by him is not reasonable. The petitioner has failed to establish that Ld. Sole Arbitrator has travelled beyond the terms of the contract.

40. Having examined the various contentions of the petitioner on the touchstone of the parameters of interference as explicitly laid down by the Hon'ble Supreme Court of India in several judgments referred to above, I am of the view that the impugned Award does not call for any interference. This Court cannot re-appreciate evidence or interpret the Clauses of the Agreement which the petitioner is calling upon the Court to do. The contentions of the petitioner are thus, rejected having no merits. I am of the view that the arbitration award being a

reasonedone and does not suffer from any infirmity or error apparent on the face of the record. It is not for this Court to sit in appraisal of the evidence led before the Ld. Sole Arbitrator and this Court will not open itself to the task of being a judge on the evidence placed before the Ld. Sole Arbitrator which was subject matter of dispute. In the present case, the Ld. Sole Arbitrator has deliberated on the issues under reference which were within his competency. There are no allegations against the Ld. Sole Arbitrator of misconduct nor of having misconducted the proceedings which have either been specifically alleged by the petitioner or established. The Ld. Sole Arbitrator has duly explained the reasons for arriving at his decisions. There is nothing to indicate that the award violates Section 28 (3) of the Act or that, it is in conflict with the basic notions of justice and the fair play and fundamental policy of Indian law or in contravention of the terms of the agreement or that it lacks reasoning as pleaded in the petition.

41. Taking into consideration the various dates and events on record, I am of the considered opinion that the conclusion drawn by the Ld. Sole Arbitrator is based on sound reasons and the Ld. Sole Arbitrator has passed the award after considering the facts, evidence and material on record. In the impugned award, the Ld. Sole Arbitrator has given logical reasoning in reaching the just conclusion of the case. The award is well reasoned as per the terms and conditions of the agreement. There is nothing on record to show that impugned award is against the terms of the agreement and against the public policy. Also, there is no patent illegality in the award. The award is a well reasoned award, based on evidence and mathematical calculations and not only a possible but a plausible view.

42. In view of the above discussions, the present objections petitionunder Section 34 of the Arbitration and Conciliation Act, 1996is dismissed. No order as to cost."

(Emphasis supplied)

ANALYSIS

15. It would be apposite to set out herein the scrutiny permissible by this Court in exercise of its powers under Section 37 of the A&C Act. It is no more *res integra* that the appellate power of the Court under Section 37 of the A&C Act is limited and must be cautiously exercised so as to not transcend beyond the limitations prescribed

under Section 34 of the A&C Act. The Apex Court in the judgement of ***MMTC Ltd. vs Vedanta Ltd.***[6]**,** while dealing with the scope of an appeal under Section 37 of the Act, observed as follows:

> *"14. As far as interference with an order made Under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference Under Section 37 cannot travel beyond the restrictions laid down Under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court Under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court Under Section 34 and by the court in an appeal Under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."*
>
> ***(Emphasis supplied)***

16. A three-judge Bench of the Hon'ble Supreme Court in ***UHL Power Co. Limited v. State of Himachal Pradesh***[7] held the following:

> *"15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings Under Section 34 of the Arbitration Act, by virtually acting as a court of appeal.*
> *16. As it is, the jurisdiction conferred on courts Under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal Under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed."*
>
> ***(Emphasis supplied)***

17. Similar observations have been made by the Hon'ble Supreme Court in ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***[8], which reads as follows:

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[6] (2019) 4 SCC 163
[7] (2022) 4 SCC 116
[8] 2024 SCC OnLine SC 2632

> ***"20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act.*** *Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court."*
>
> ***(Emphasis supplied)***

18. It is with the above caveat that we would need to examine the judgment impugned herein.

19. At the very outset, it would be necessary to set out certain parts of the pleadings. The Appellant herein in ground F states as follows:

> *"F. Because the both impugned order passed by Ld. District Judge and Award passed by the learned Arbitrator are contrary to law and facts and more importantly are contrary to each other. It is most humbly submitted that. Appellant PEC Ltd. considering the perishable nature of cargo/lentil bags and as per subsequent understanding, had given a concession to the Respondent and agreed for a joint survey to permanently settle the dispute of quality, despite of delay of five months in lifting of the said cargo and original terms and conditions of 'As is where is basis'. Respondent bothered to lift only 578 bags of red lentils out of 960 bags which were found to be in sound condition in joint inspection and had left the balance 382 bags which were also admittedly in sound condition."*

(Emphasis supplied)

20. The relevant portion of the Reply to the Plaint as filed by the Appellant is also extracted as follows:

> *" Hence, the Claimant was to lift only the sound cargo i.e. 960 bags. As mentioned earlier, claimant was completely silent about the joint survey to be carried out in the presence of the claimant. Later on, the surveyors had presented its Report on 23/02/2012 which clearly shows that 960 Bags of cargo were found to be sound and the remaining 2218 Bags were found to be in damaged condition. It is to be noted here that there is big difference between damaged cargo, and water damaged cargo; As per the Respondent's letter dated 10/02/2012, the Claimant was required to lift the entire cargo other than water damaged cargo, however, the Respondent asked to lift only those 960 bags of sound cargo leaving the entire damaged cargo. It is once again pertinent to mention that the claimant was supposed to leave only the water damage cargo and not 'simply' damaged cargo. Even then the respondent allowed them to leave all the damaged cargo in spite of checking the nature and level of damage.*
>
> *True, Copy of Letter dated 10/02/2012 issued by PEC Ltd. to the Claimant and the Surveyor Report dated 23/02/2012 are annexed herewith Vide* ***Annexure R1 and Annexure A2.***
>
> *14. That the contents of Para 14 of the Claim Petition are false and incorrect, hence denied. The Respondent denies and disputes each and every averment except which are matters of record. The Claimant has suppressed the material facts with regard to the condition and the quantity of lentils bags. The claimant has used the word, "relying on the said survey report" which is factually wrong as the survey was conducted in the presence of the claimant which was never disputed by them. The Respondent, considering the perishable nature of cargo / lentil bags, had again given a concession to the Claimant and agreed for joint survey to permanently settle the dispute of quality in spite of delay of five months in lifting of the said cargo and original terms and condition of 'As is where is basis'. Claimant bothered to lift only 578 bags of red lentils out of 960 bags which were found to be sound in joint inspection and had left the balance 382 bags which were also admittedly in sound condition."*
>
> ***(Emphasis supplied)***

21. A reading of the afore-extracted portions would clearly indicate

that the Appellant herein, in fact, had given up its claim of the Respondents having to conform to the *"as is where is basis"* in respect of the subject goods. The insistence of the learned counsel for the Appellant, in this regard, seems to be completely at odds with the express contention taken in the reply as filed before the learned Arbitrator, as well as the Appeal filed**.**

22. Given the fact that it is the stated and admitted position by the Appellant that the earlier *"as is where is basis"* clause now stands substituted and is only limited to as to whether the Respondents carried out their obligation of lifting that conformed to the stipulation of "*sound condition*", this Court is of the opinion that there is really no requirement to get into any other aspects as raised or dealt with by either the learned Sole Arbitrator or by the learned District Judge.

23. It is, therefore, apparent that this Court only needs to look at the entire dispute from the narrow conspectus of as to whether the Respondents herein have adhered to the Agreement, as now agreed upon between the parties, which is for the supply of cargo in "*sound condition*", i.e., 960 bags.

24. The learned Sole Arbitrator examined that the delay in lifting the cargo by the Respondent No. 1 was due to the mutual agreement for a Third Party Joint Survey, which was proposed by the Appellant, wherein the Parties agreed that only "sound condition cargo" would be lifted by the Respondent No.1 and delay would be condoned, over-riding the original delivery clause of 30 days on an *"as is where is basis"*.

25. Despite the Agreement, the Respondent No. 1 failed to lift 382 bags of sound cargo, for which the Appellant suffered loss. The learned Sole Arbitrator therefore re-calculated the profit and loss as

accrued by the parties and directed the Appellant to re-fund Rs.5,67,864/- along with 10% interest per annum from 25.03.2012 till 15.07.2014 as opposed to the initial claim of the Respondent No. 1. The reasoning of learned Sole Arbitrator does not contain any perversity, or patent illegality, nor is it against the terms of the Contract. The learned District Judge has rightly upheld the Arbitral Award dated 02.04.2018.

26. This Court is of the opinion that there is no requirement for any interference with the findings of either the learned Sole Arbitrator or that of the learned District Judge.

27. The present Appeal, along with pending application(s), if any, stands rejected.

ANIL KSHETARPAL
(JUDGE)

HARISHVAIDYANATHANSHANKAR
(JUDGE)

AUGUST 04, 2025/rk/er/kr