IN THE COURT OF SH. PULASTYA PRAMACHALA
DISTRICT JUDGE, (COMMERCIAL COURT)-01,
PATIALA HOUSE COURT, NEW DELHI

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PULASTYA PRAMACHALA

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(Pulastya Pramachala)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi

OMP (COMM) No.132/2024

In the matter of: -

TCI FREIGHT
(A division of Transport Corporation of India Limited)
Having its Corporate Office at:
69 Institutional Area,
Sector-32, Gurugram-122001,
Haryana (India)
Through Mr. Neeraj Dwivedi

...**Petitioner**

Versus

Indian Oil Corporation Limited
Having its registered office:
Indian Oil Bhavan, G-9 All Yavar Jung Marg,
Bandra (East) Mumbai, Maharashtra - 400051
Having its Corporate office at
1, Sri Aurobindo Marg, Yusuf Sarai, New Delhi – 110016
Email: kgwalani@indianoil.in, anandg@indianoil.in
RAJPALHS@indianoil.in, SHUKLAI2@indianoil.in,

...**Respondent**

Date of Institution	:	20.05.2024
Arguments heard on	:	08.05.2026
Decided on	**:**	**25.05.2026**
Decision	**:**	**Petition is dismissed.**

JUDGMENT

DESCRIPTION OF THE CASE

1. Petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"), assailing the arbitral award dated 16.03.2024 passed by Sole learned Arbitrator.

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CASE SET UP BY PETITIONER

2. Petitioner i.e. TCI Freight, is a division of Transport Corporation of India Limited and is logistics solutions provider and a pioneer in the sphere of Transportation. The respondent is a Government of India undertaking i.e. Oil and Gas Company.

3. Respondent had floated an E-Tender for transportation of Polymer by road from the refinery of the respondent situated at Panipat, Haryana to various destinations all across the country, as per the rates specified in the said tender. Petitioner was awarded tender by the respondent for two consecutive years and it had started transporting the polypropylene by road from the premise of the respondent situated at Panipat, Haryana to various clusters namely South – I (Andhra Pradesh), East – 3 (Kolkata), North – 5 (Madhya Pradesh) with utmost care and diligence.

4. Petitioner averred that due to the force-majeure factors, which were neither contemplated nor were in the control of the petitioner, there was an inadvertent delay in delivery of the polypropylene to clusters related to Andhra Pradesh and Madhya Pradesh. During June 2013, amidst the Telangana Movement in Andhra Pradesh, petitioner faced severe disruptions to transportation services due to frequent bandhs, strikes, and violence. The political unrest led to the detention of commercial vehicles entering the state, endangering both goods and drivers' safety. Consequently, petitioner couldn't fulfill contractual obligations, leading to delays and non-placement of vehicles, which were duly communicated to the respondent as force

majeure events. Petitioner averred that respondent unjustly imposed penalties for non-placement and late delivery, ignoring the uncontrollable circumstances faced by the petitioner.

5. Petitioner averred that in the light of uncontrollable factors such as adverse weather conditions and political unrest, the petitioner made numerous attempts, both orally and in writing, to apprise the respondent of the situation's gravity and requested a waiver of penalties. But respondent persisted in imposing deductions, unfairly burdening the petitioner with losses beyond their control. Petitioner's inability to operate under such hazardous conditions, compounded by the respondent's refusal to acknowledge force majeure events, underscores the unfairness and illegitimacy of the penalties imposed, ultimately leading to significant hardship and losses for petitioner. As per petition, petitioner faced deductions totaling to Rs.62,82,719 for period between July 2013 and March 2014, attributed to penalties such as non-placement, late delivery and late submission, disregarding Force-Majeure provisions outlined in clause 8 of the agreement. Numerous appeals were made by petitioner via letters and emails to waive these penalties, yet the respondent remained unresponsive, failing to acknowledge or rectify the deductions.

6. Petitioner averred that despite repeated attempts at reconciliation by it from 2013 to 2016, respondent, only offered a minimal reimbursement of Rs.2,55,000 in April 2015, a fraction of the total deductions. As a consequence of respondent's indifferent and arbitrary conduct, petitioner incurred significant financial

losses totaling to Rs.60,27,719/-. Thus, petitioner initiated arbitration proceedings by serving notice on September 28, 2018, within the stipulated three-year period from the respondent's refusal to pay on February 20, 2017, as per clause 5 of the General Terms and Conditions and due to inability of both parties to agree on the appointment of an arbitrator, the petitioner proceeded to file an Arbitration Petition (No. 599/2019), titled "TCI Freight vs. Indian Oil Corporation Limited," before Hon'ble High Court of Delhi under Section 11 of the Arbitration and Conciliation Act. Subsequently, with the consent of both parties, Hon'ble High Court of Delhi, vide its order dated October 10, 2019, referred the matter to the Delhi International Arbitration Centre (DIAC) for the resolution of disputes. Ld. Arbitrator on 16.03.2024 passed the impugned award whereby all the claims of the Petitioner were dismissed. Hence, the present Petition.

GROUNDS OF CHALLENGE

7. Aggrieved by the arbitral award dated 16.03.2024, petitioner has preferred the present objections under Section 34 of the Act, inter alia, on the following relevant grounds: -

i. Because the impugned award is contrary to the fundamental public policy of India, settled judicial precedents and thus, is bad in law, perverse and in violation of the public policy of India.;

ii. Because ld. Arbitrator has mechanically passed the impugned award without due application of judicial mind to the factual and legal position placed before him on behalf of the petitioner.

iii. Because the impugned award is against the agreed provisions of agreement entered into between the parties and applicable substantive and procedural law.

iv. Because ld. Arbitrator while dismissing the claim of the petitioner regarding the deduction made by the respondent for the Andhra Pradesh Cluster, failed to appreciate that respondent's sole witness in response to the question no. 43 during her cross examination, had clearly stated that "*As already stated the political unrest on record is from August 2013 to October 2013. For this period no amount could be deducted. "*

v. Because ld. Arbitrator had failed to appreciate that occurrence of the Telangana Movement was an undisputed fact and the only dispute which was required to be adjudicated pertained to the period of the said Telangana movement. While respondent had admitted that the duration of the said movement was from August, 2013 to October, 2013, however, apart from a mere denial for the remaining period i.e. from November 2013 to March, 2014, the respondent had not placed any document before the arbitral tribunal and the said position can be established from the answers given by the respondent's sole witness to the Question No. 26, 27, 28, 29, 40 and 41 asked during her cross examination. Relevant portion of the same is being reproduced herein as follows:

"Q.26 Can you tell the exact period of disturbance in Andhra Pradesh from the records of the Respondent Company?

Ans. As per record, the period was from August 2013 to October 2013.

Q. 27 I put it to you that the period of disturbance in Andhra Pradesh due to agitation was from August 2013 to March 2014. What do you have to say?

Ans. I cannot recall.

Q.28 Is it correct that the respondent company has not obtained any certificate from any police authorities wherein the actual period of disturbance was specified in the State of Andhra Pradesh?

Ans. I am not aware.

Q. 29 Is it correct that the Respondent has not placed on record any document that the other transporters had been effecting supplies within the State of Andhra Pradesh?

Ans. It is correct.

Q. 40 What is the mother document which clearly postulates the period of trouble from August 2013 to October 2013 placed on record by the Respondent showing political unrest in the State of Andhra Pradesh?

Ans. I am not sure.

Q.41 Have you placed on record any document which adumbrates that the political unrest in the State of Andhra Pradesh cease to exist after October 2013?

Ans. It is a matter of record."

vi. Because the ld. Arbitrator had failed to consider the categorical admission of the Respondent's sole witness regarding the occurrence of a force majeure event in the State of Andhra Pradesh for the period of August 2013 to October 2013 during her cross examination.

vii. Because in view of such categorical and specific admission, ld. Arbitrator could not have rejected the claims of the petitioner on the ground that the petitioner had failed to prove the force-majeure conditions.

viii. Because ld. Arbitrator while rejecting the claim of the petitioner on the ground that no notice of force majeure was given by the

petitioner within the period of 30 days of such alleged "force majeure", had failed to appreciate that the Clause 8 "Force Majeure" of the agreement did not specify any period within which the notice was required to be sent by the Petitioner.

ix. Because in the absence of any specific period having been defined in the agreements executed between the Parties, any finding to the contrary given in the impugned award deserves to be set aside as the same would amount to re-writing of the contents of the Agreement.

x. Because ld. Arbitrator had failed to appreciate the email dated 31.08.2013 (Annexure - F) sent by the petitioner, by virtue of which the petitioner had requested the respondent to not to impose any penalty upon the petitioner on account of disturbance in the region of Andhra Pradesh and surrounding areas.

xi. Because ld. Arbitrator had failed to appreciate the admission on the part of the Respondent's sole witness regarding the occurrence of a force majeure event along with the newspaper articles filed by the petitioner, were enough to establish the existence of the force majeure circumstances during the said period;

xii. Because ld. Arbitrator while deciding the issue of limitation in favour of the respondent failed to appreciate that the waiver notice dated 10.04.2015 was never served by the respondent upon the petitioner and it was on 24.11.2015 when the respondent for the first time, had denied the claims of the petitioner stating that there was no scope of waiver of penalty.

xiii. Because ld. Arbitrator failed to appreciate that the claims of the petitioner were denied by the respondent for the first time only on 24.11.2015 and as such, the cause of action to initiate the proceedings arose in favour of the petitioner on 24.11.2015 on account of such refusal by the respondent.

xiv. Because ld. Arbitrator had failed to appreciate that the petitioner had invoked the Arbitration clause vide its notice dated 28.09.2018 within the prescribed period of limitation i.e. 3 years from the date of last cause of action.

xv. Because ld. Arbitrator failed to consider the settled principle of law that the cause of action arises when the real dispute arises i.e. when one party asserts, and the other party denies any right and the limitation will commence as and when the cause of action arises i.e. when the right to sue accrue to one party.

xvi. Because ld. Arbitrator failed to appreciate that a bare perusal of the Clause 14. 1 of the Special Terms & Conditions forming part of the second agreement clearly points out that in case of non-placement of vehicles, respondent was obligated to make alternative arrangements for transportation at the cost of the defaulting transporter and is also entitled to a compensation for such delay till the Respondent was able to effect placing of order.

xvii. Because ld. Arbitrator erred in not considering that the respondent had also failed to place on record any document which even remotely justified its contention that the other transporters were placing vehicles and their respective deliveries

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were not getting delayed during the term of the said Agreement i.e. period between July 2013 to March 2014.

REPLY OF THE RESPONDENT

8. Respondent filed its reply opposing the petition and contended that petition is not maintainable being devoid of merits. Respondent averred that the impugned award does not suffer from any such infirmity as asserted by the petitioner. Respondent averred that grounds in the instant petition are mere imaginations and completely unfounded, baseless and without substantiation. Respondent averred that petitioner has failed to point out any evidence to prove that the imposition of penalty of Rs.60,27,719/- by the respondent was unjustified. Respondent averred that ld. Arbitrator has arrived at the correct decision and has issued a well-reasoned speaking award. Respondent averred that principles of natural justice was adhered during arbitral proceedings. Respondent also averred that dismissal of claim of petitioner, by ld. Arbitrator, is justified

ARGUMENTS ON BEHALF OF THE PETITIONER

9. Learned counsel for the petitioner argued that the claim was for recovery of deductions for period from August 2013 to March 2014. In the cross-examination of RW-1, there was admission of unrest in Telangana, but ld. Arbitral Tribunal did not even discuss to reject such evidence. Finding was given without going through the evidence. On the ground of limitation, ld. counsel argued that Ex. RD-2 was internal notice of respondent, which was never served on petitioner. RD-3 was (B-517) was 1st

communication for respondent, which needed to be considered to count limitation.

10. In its written submissions, ld. counsel for petitioner averred that ld. Arbitrator perversely ignored the categorical admission of respondent's witness. Ld. counsel averred that ld. Arbitrator misconstrued the force majeure clause as the Telangana Movement fell squarely within clause 8 of the contract. It is also argued that respondent's claim to penalty is unsustainable, as no evidence on business loss or alternative arrangements were proved. It is further mentioned that claim was within limitation and the award on limitation is perverse and that the award in respect of Madhya Pradesh is also perverse. It is further mentioned that the award has been passed without application of mind and is in violation of natural justice. It is further mentioned that ld. Arbitrator perversely ignored the categorical admission of respondent's sole witness. In support of his submissions, ld. counsel relied upon following case laws: -

i. **Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Private Ltd., (2024) 6 SCC 357;**

ii. **Ssangyong Engineering & Construction Co. Ltd. vs. National Highways Authority of India, 2019 SCC OnLine SC 677;**

iii. **Associate Builders vs. Delhi Development Authority, (2015) 3 SCC 49;**

iv. **PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Tust Tuticorin & Ors., (2023) 12 SCC 781;**

v. **Rashtriya Ispat Nigam Ltd. v. Prathyusha Resources and Infra Pvt. Ltd., (2016) 12 SCC 405;**

vi. **State of Goa v. Praveen Enterprises, (2012) 12 SCC 581**.

ARGUMENTS OF RESPONDENT

11. On the contrary, ld. counsel for respondent argued that deductions were made for all the places including Andhra Pradesh. Ld. counsel also argued that limitation was to be counted as per 1st deduction made. Ld. counsel argued that petitioner was aware of decision taken vide RD-2 and same is mentioned in their letter dated 18.05.015 (page 479) and notice of petition (pg. 497).

12. In his written submissions, ld. counsel for respondent averred that the award has rightly rejected the claim of TCI on the ground of failure to prove existence of force majeure. Ld. counsel also argued that the award has rightly rejected the claim of TCI on the ground of limitation.

13. In support of his submissions, ld. counsel relied upon following judgments: -

i. **Laxmi Raj Shetty v. State of T.N., (1988) 3 SCC 319**

ii. **Naval Kishor Sharma v.State of U.P., 2022 SCC OnLine All 677**

iii. **Alopi Parshad and Sons Ltd. v. Union of India, 1960 SCC OnLine SC 13;**

iv. **Associate Builders v. DDA, (2015) 3 SCC 49;**

v. **Parsa Kente Collieries Ltd.v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236;**

vi. **UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116;**

vii. **State of Tripura v. Arabinda Chakraborty, (2014) 6 SCC 460;**

viii. **Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd., (2020) 14 SCC 643**

ix. **B & T AG v. Union of India, (2024) 5 SCC 358.**

APPRECIATION OF ARGUMENTS, FACTS & LAW

14. The scope of enquiry under section 34 is restricted to consideration whether any one of the grounds mentioned in section 34 exists for setting-aside the award. The crux of the legal principles explained by superior courts in respect of ambit of Section 34, is that Arbitrator is a Judge of the choice of the parties and his decision, unless there is an error apparent on the face of the award which makes it unsustainable, it is not to be set aside by the court, even if the court of law could come to a different conclusion on the same facts. The court cannot reappraise the evidence and it is not open to the court to sit in appeal over the conclusion of the Arbitrator. It is not open to the court to set aside a finding of fact arrived at by the Arbitrator and only grounds on which the award can be set aside, are mentioned in the Arbitration Act. Where the Arbitrator assigns cogent grounds and sufficient reasons and no severe error of law or misconduct is cited, the award will not call for interference by the court in exercise of the power vested in it.

15. In **Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49**, court held that an award could be said to be against the public policy of India, inter alia, in the following circumstances:-

> *"1. When an award is, on its face, in patent violation of a statutory provision.*
>
> *2. When the arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.*
>
> *3. When an award is in violation of the principles of natural justice.*
>
> *4. When an award is unreasonable or perverse.*
>
> *5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.*
>
> *6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court."*

16. Hon'ble Supreme Court in case of ***Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India, 2019 SCC OnLine SC 677***, held that under Section 34 (2A) of the Act, a decision which is perverse while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. A finding based on the documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties and therefore, would also have to be characterized as perverse. It was held that a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision, would be perverse and liable

to be set aside on the ground of patent illegality.

17. In the case of **OPG Power Generation Private Limited v. ENEXIO Power Cooling Solutions India Private Limited and Anr., (2025) 2 SCC 417,** while dealing with scope to interfere on the basis of reasoning and interpretation of terms of contract, Hon'ble Supreme Court observed as under: -

> *"**80**. We find ourselves in agreement with the view taken in **Dyna Technologies**, as extracted above. Therefore, in our view, for the purposes of addressing an application to set aside an arbitral award on the ground of improper or inadequate reasons, or lack of reasons, awards can broadly be placed in three categories:*
>
> *(1) where no reasons are recorded, or the reasons recorded are unintelligible;*
>
> *(2) where reasons are improper, that is, they reveal a flaw in the decision-making process; and*
>
> *(3) where reasons appear inadequate.*
>
> ***81**. Awards falling in Category (1) are vulnerable as they would be in conflict with the provisions of Section 31(3) of the 1996 Act. Therefore, such awards are liable to be set aside under Section 34, unless:*
>
> *(a) the parties have agreed that no reasons are to be given, or*
>
> *(b) the award is an arbitral award on agreed terms under Section 30.*
>
> ***82**. Awards falling in Category (2) are amenable to a challenge on ground of impropriety or perversity, strictly in accordance with the grounds set out in Section 34 of the 1996 Act.*
>
> ***83**. Awards falling in Category (3) require to be dealt with care. In a challenge to such award, before taking a decision the Court must take into consideration the nature of the issues arising between the parties in the arbitral proceedings and the degree of reasoning required to address them. The Court must*

thereafter carefully peruse the award, and the documents referred to therein. If reasons are intelligible and adequate on a fair reading of the award and, in appropriate cases, implicit in the documents referred to therein, the award is not to be set aside for inadequacy of reasons. However, if gaps are such that they render the reasoning in support of the award unintelligible, or lacking, the Court exercising power under Section 34 may set aside the award.

Scope of interference with the interpretation/construction of a contract accorded in an arbitral award

84. *An Arbitral Tribunal must decide in accordance with the terms of the contract. In a case where an Arbitral Tribunal passes an award against the terms of the contract, the award would be patently illegal. However, an arbitral Tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not interfere. But where, on a full reading of the contract, the view of the Arbitral Tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference.*

Whether unexpressed term can be read into a contract as an implied condition

85. *Ordinarily, terms of the contract are to be understood in the way the parties wanted and intended them to be. In agreements of arbitration, where party autonomy is the grund norm, how the parties worked out the agreement, is one of the indicators to decipher the intention, apart from the plain or grammatical meaning of the expressions used.*

86. *However, reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by the parties thereto. An unexpressed term can be implied if, and only if, the court finds that the parties must have intended that term to form part of their contract. It is*

not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them. Rather, it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, forms part of the contract.

87. *But before an implied condition, not expressly found in the contract, is read into a contract, by invoking the business efficacy doctrine, it must satisfy the following five conditions:*

(a) it must be reasonable and equitable;

(b) it must be necessary to give business efficacy to the contract, that is, a term will not be implied if the contract is effective without it;

(c) it must be obvious that "it goes without saying";

(d) it must be capable of clear expression;

(e) it must not contradict any terms of the contract."

18. During the course of arbitration proceedings, ld. Arbitrator had framed following issues vide order dated 24.02.2021: -

i. Whether Claimant is entitled for award of Rs. 60,27,719/- as claimed in para 34 of the Statement of Claim? OPC

ii. Whether Claimant is entitled for award of Rs. 65,08,847/- towards interest as claimed in para 34 of Statement of Claim? OPC

iii. Whether Claimant is entitled for award of Rs. 10,00,000/- towards mental agony and harassment as claimed in para 34 of Statement of Claim? OPC

iv. Whether Claimant is entitled for interest as claimed in para 34 of Statement of Claim? OPC

v. Whether the claim filed by the Claimant is within time? OPC

vi. Relief:

19. While deciding issue no.1, ld. Arbitrator held as under: -

"(j) In order to prove that force-majeure conditions prevailed in Cluster Sl(AP), Claimant relied upon the prints and electronic media published during the said period. Claimant, however, failed to produce any direct evidence/witness to support its above stand. In paragraphs 16 & 17 of the Judgment of Naval Kishore Sharma Vs. State of UP 2022 SCC OnLine 677 (supra), it was held as under: -

> *"16. The admissibility of newspaper reports in evidence has been considered and decided many times. In the case of Samant N. Balkrishna Vs. George Fernandez (1969) 3 SCC 238, the Apex Court in paragraph 47 has held as under: -*
>
> > *"47. ... A News item without any further proof of what had actually happened through witnesses is of no value. It is at best a second hand secondary evidence. It is well-known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible . …"*

20. In the case of **Laxmi Raj Shetty v. State of T.N., (1998) 3 SCC 319**, Apex Court in paragraphs 25 and 26 has held as under: -

> *"25. ... We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section Bl of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein.*

26. It is now well settled that a statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in absence of the maker of the statement appearing in court and deposing to have perceived the fad reported. …

(k) In view of the above, in the absence of the evidence of the maker of the statements before this Tribunal, the newspaper reports relied upon by the Claimant to prove force majeure conditions in Cluster Sl(AP), cannot be looked into/considered, being hearsay.

******

(m) I have gone through the aforesaid correspondences made by the Claimant and observed (i) the communications written by the Claimant were basically for waiver of penalties and increase in freight rates in order to perform the obligations stipulated under the contract, (ii) the political unrest in Andhra Pradesh was not serious enough to stop the operations all together; that rather, the said communications were being used as means to re-negotiate the rates of services to protect its commercial interest and not because of force-majeure circumstances and (iii) no notice as envisaged under the aforesaid "force majeure" was ever given by the Claimant to the Respondent within the period of 30 days of such alleged "force majeure" as claimed by the Claimant.

In view of the aforesaid discussion, it is held that Claimant also miserably failed to prove that "force majeure" conditions prevailed in Cluster Sl(AP) during the relevant period i.e. between July 2013 and March 2014.

Therefore, Claimant is not entitled for award of Rs. 60,27,719/- as prayed.

The aforesaid issue is decided accordingly."

21. It is pertinent to look into the relevant contractual term as well, which is as under: -

"8.0 Force Majeure:

8.1 The terms and conditions hereof shall be subject to Force Majeure. Neither IOCL nor the Contractor shall be considered in default in the performance of their respective obligations hereunder, if such performance is prevented or delayed because of:

(a) Any war of hostilities;

(b) Any riot or civil commotion

(c) Any Earthquake flood, tempest, lightening or other natural physical disaster, impossibility of the use of any Railway, Port, Airport, shipping Services or other means of transport,

(d) Any strike or lockout (only those exceeding 10 continuous days in duration) affecting the performance of obligations of IOCL or the Contractor or the ultimate buyer of polymer…."

5.5 The Contractor shall be entitled to the benefit of this clause only if the Contractor gives notice of the occurrence of the circumstances amounting to force majeure to IOCL by fax/email, immediately followed by a confirmatory letter sent by Registered Post Acknowledgment due. In the event of the Contractor, pleading any grounds as constituting force majeure/ the opinion of the Management of IOCL on that behalf alone shall prevail and, if in the opinion of IOCL/ the grounds pleaded by the Contractor do not constitute force majeure/ then the Contractor shall not be entitled to plead the same and/or claim any relief under this clause. In case an event of force majeure continuous for more than 30 days/ IOCL and the Contractor shall consult each other to arrive at a mutually acceptable solution.

22. Reference to 30 days in the award, can be attributed to last lines of the aforesaid term. Therefore, the contention of petitioner that ld. Arbitrator went beyond the terms of contract, cannot be sustained. The initial lines of the term, make it amply clear that it

was onus of the petitioner to immediately communicate to the respondent about any condition of force-majeure through different modes. In that situation, petitioner was in fact supposed to not wait for lapse of even 30 days, because in case of continuation of such conditions for more than 30 days, both parties were expected to consult each other to reach a mutually acceptable solution. In the background of such condition, communication dt. 31.08.2013, cannot be treated as the communication in satisfaction of aforesaid term, because instead of giving details of factual position, such communication from petitioner was more in the nature of making a demand for declaring that period as no penalty period.

23. Force-majeure was to be not only explained rather petitioner had to give relevant factual information. Aforesaid email as relied upon petitioner did not serve that purpose. Before ld. Arbitrator, when petitioner had raised the ground of force-majeure, then it was again onus of the petitioner to establish it by way of cogent evidence, rather than citing newspaper clippings. Ld. Arbitrator cited the legal principle enunciated in case laws, to discard newspaper clippings, and I have no good reason to declare the same as perverse finding.

24. Petitioner has heavily referred to cross examination of witness, who had admitted that there was disturbance during August to October 2013 in Telangana area. However, this much of general admission could not have discharged the onus on the petitioner to establish the exact scenario with reference to particular dates and

with reference to material to show that no movement was possible during that period. A general opinion given by RW1 was certainly not sufficient, to seek refund of deductions which were made admittedly as per table shown in the award. The table showed major portion of deductions were made for the region of Madhya Pradesh. The questions and suggestions put to RW1 by petitioner shows as if it was expected from respondent to disprove the ground of force majeure. However, it was not be that way. As already observed herein-above, it was onus of petitioner to establish the relevant facts. Thus, even I find that petitioner neither informed respondent for invoking force majeure immediately with relevant facts, as required under the contract, nor this ground was established before ld. Arbitrator. It is also worth to repeat that except for general contentions regarding traffic jam and flood situation in Madhya Pradesh, petitioner did not come up with relevant factual scenario to establish that it was unable to arrange transport for a particular period, despite all efforts made by it. Answer given by RW1 in respect of Andhra Pradesh is apt to be quoted and considered. RW1 responded to the suggestion of petitioner that "Q49- I put it to you that the non-placement of vehicles in the state of Andhra Pradesh, were solely on account of political unrest and no amount was liable to be deducted for the period of August 2013 to October 2013. What do you have to say?". This suggestion was answered as "I cannot say for certain that non-placement of vehicles was solely on account of political unrest.". This answer shows the requirement, which was needed to be fulfilled before

claiming force majeure for not providing the vehicles. If petitioner had made attempt to take vehicles and was denied entry at any place; if petitioner had made effort to arrange the vehicles, but was denied the same by other vehicle owners? These are sample of the factual questions, which were required to be answered and established by petitioner, but petitioner did not do so. Therefore, one cannot be very sure that it was only for the reasons of political unrest that petitioner did not provide transport for Andhra Pradesh for the defaulted period. The range of defaulted period was long one, and none could be sure of given reason to be sole reason for such default.

25. It is also interesting to note that petitioner in its communications, focused on exemption from penalty and revision of freight charges, citing the same grounds. Such stand of petitioner shows that if freight charges would have been revised then it would have been in position to arrange the transport. This scenario also goes on to negate the ground of force majeure, for not performing contractual obligations. It remains limited to the extent of one possible reason. Moreover, deductions were made for three different segments and for period up to March, 2014. Apparently, petitioner did not even plead specifically that force majeure continued in all three segments and hence, it was not able to arrange transport for all regions. In such circumstances, for the reasons explained herein-above, I do not find any perversity in the findings and decision given by ld. Arbitrator.

26. Next question raised by petitioner relates to findings on

limitation aspect. While deciding issue no. (v) ld. Arbitrator held as under: -

> *"f. It is the admitted case of the parties that last deduction of the non-placement penalty, late delivery penalty and late submission acknowledgment was made in March 2014. Thus, the first cause of action arose in March 2014 on getting information of deduction of aforesaid penalties. Thereafter, the cause of action arose on the receipt of Waiver Notice [Ex.RD2], vide communication dated 10.04.2015. Thus, the statutory period of limitation of three years started running from the date of receipt of the communication dated 10.04.2015 [Ex.RD2]. Admittedly, the present arbitration was invoked vide a Notice dated 28.09.2018 [Ex.CWl/C] i.e. much after three years. The communications/representations written by Claimant seeking waiver of penalty cannot extend limitation in view of the afore-discussed Judgement State of Tripura & Ors. Vs. Arabinda Chakrabarty & Ors. reported in (2014) 6 sec 460.*
>
> *Hence, I have no hesitation to hold that the claims filed by the Claimant are barred by limitation.*
>
> *The aforesaid issue is decided accordingly."*

27. It is true that Ex. RD2 is in the nature of internal noting of respondent, and this noting in itself would not have been served upon the petitioner. Therefore, it cannot be said that petitioner would have received Ex.RD2 as such. However, it may be a case of wrong description of the fact, which needed to be conveyed. Aforesaid noting would not have been served upon the petitioner, but, the relevant fact is that was petitioner conveyed the decision taken vide Ex. RD2? The answer can be found from the communications sent by petitioner itself. In the letter dt. 18.05.2015, petitioner mentioned that *"Apart from this your*

accounts dept. also deducted following huge amount as non-placement and ld charges and continuously we have been chasing your concern dept in IOCL plant, Panipat. Finally they reversed only Rs. 255000 two days back against Rs. 6282719. So once again we humbly request the goodselves to reconsider our request and advice your concern department for looking above actual situation and do the needful."

28. The above-mentioned letter of petitioner shows it amply that petitioner was conveyed reversal of Rs. 255000/- only against the claim made by petitioner for refund of deductions. In that situation, petitioner had a clear-cut cause of action in the form of denial of their claim by respondent, at least by 16.05.2015 (two days prior to 18.05.2015). it is not necessary that there must be some particular formal manner of conveying the decision. For limitation, what matters is that petitioner had become aware of such denial and stand of respondent. In such circumstances, limitation had to be counted at least from 16.05.2015. Further letters and representations, certainly could not have extended the limitation. Ld. Arbitrator has rightly applied the relevant legal principle. Only mistake can be found in counting the limitation from 10.04.2015. However, the final finding will not change even on applying the new date of commencement of limitation. The notice of invocation of arbitration dt. 28.09.2018, was still beyond three years from 16.05.2015. Hence, even this finding cannot be termed as perverse.

DECISION

29. In view of forgoing discussions, observations and findings, I do not find any merit in the petition. Hence, petition is dismissed.

30. File be consigned to record room after due compliance.

PULASTYA PRAMACHALA

Digitally signed by PULASTYA PRAMACHALA
Date: 2026.05.25 17:17:39 +0530

Pronounced in the Open Court on this 25th Day of May, 2026

(PULASTYA PRAMACHALA)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi