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

% **Judgment reserved on : 30 October 2023**
Judgment pronounced on : 17 November 2023

\+ FAO 222/2020 & CM APPL. 30654/2020 – STAY

AMAN HOSPITALITY PVT. LTD ..... Appellant
Through: Mr. P. K. Agrawal, Ms. Rohini Das, Mr. Akshay, Mr. R. S. Yadav, Advs.

versus

M/S ORIENT LITES ..... Respondent
Through: Mr. Tushar Agarwal and Mr. Arun Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This appeal is filed by the appellant under Section 37(1)(c) of The Arbitration and Conciliation Act, 1996[1] assailing the impugned order dated 25.09.2020 passed by the learned Additional District Judge-07, South-East District, Saket Courts, New Delhi[2] in Arbitration Case No. 153/2018, whereby, the application under Section 34 of the A&C Act moved by the appellant challenging the arbitral award dated 15.12.2017 passed by the learned Sole Arbitrator was dismissed.

BRIEF FACTS:

2. Briefly stated, the claimant, i.e., the respondent before this Court, is stated to be a partnership concern and engaged in the

[1] A&C Act
[2] ADJ

business of lighting consultants, manufacturers and suppliers. Pursuant to an oral agreement between the parties, parties entered into a written agreement dated 25.02.2012. Subsequently, the appellant was supplied with various consignments of goods during the period from 2012 to 2016 by the claimant/respondent vide various invoices/bills from time to time and the parties maintained a running account and payments were made from time to time during the ordinary course of business. A dispute arose when the claimant/respondent found that the appellant was in arrears to the tune of Rs. 76,58,717/- as per the running account and since the appellant failed to pay the said amount to the claimant/respondent, despite repeated requests and demands, it became liable to pay interest @ 18% per annum, which was assessed to Rs. 44,80,315/- for the period w.e.f. 01.07.2013 to 30.06.2016 and ultimately a claim for total amount of Rs. 1,21,39,070/- was lodged including interest. Evidently, the dispute was covered by paragraph (10) of the terms and conditions mentioned in various supply orders collectively marked Ex.CW-1/4 in the arbitration proceedings and placed on the record by the appellant, providing as follows:

> "It is mentioned that in the event of any dispute or differences between the parties arising **howsoever from this context,** the same shall, **unless amicably settled**, be referred to the Arbitrator appointed by M/s. Aman Hospitality Pvt. Ltd. for final settlement. It is also agreed that the arbitration proceedings shall be held at New Delhi and shall be binding on both the parties. "
>
> **(bold emphasis supplied)**

3. When the disputes could not be resolved amicably, the claimant/respondent invoked the arbitration clause and filed an

application seeking appointment of an Arbitrator under Section 11(2) of the A&C Act before this Court. By virtue of order dated 23.06.2016, Mr. B.S. Chumbak, District Judge (Retired) was appointed as the Sole Arbitrator, who entered upon the reference and after lodging of the statement of claim and relevant documents by claimant/respondent and upon filing replies/written defence by the appellant as well relevant documents, learned Sole Arbitrator vide order dated 07.01.2017 framed the following issues:

> "I. Whether the claim of the claimant is barred by limitation? OPP
> II. Whether the Claimant is entitled to the recovery of Rs. 76,58,716/- as claimed as per the Statement of Account annexure-A-3 and the bills annexure-A-2? OPP
> III. Whether the Claimant is entitled to the interest as claimed. If so, at what rate and for what period?
> IV. Whether the Claimant supplied the total number/quality of the goods according to the specification as mentioned in the various purchase orders annexure A-1? Onus on both the parties.
> V. Whether the Claimant supplied the defective goods as mentioned in the written statement? OPR
> VI. Relief. "

4. During the course of arbitral proceedings, Mr. Sanjay Rohtagi, Authorized Representative for the claimant/respondent was examined besides Sh. Akhil Kumar as CW-2, who deposed in terms of his affidavit Ex.CW-2/A and both the witnesses were duly cross-examined. On behalf of the appellant, Mr. Amit Gahlot was examined as RW-1 and he was duly cross-examined by the learned counsel for the claimant/respondent.

IMPUGNED AWARD:

5. Suffice to state that learned Sole Arbitrator after passing a detailed order, answered issues No. 1, 2, 4 and 5 in favour of the

claimant/respondent. However, in so far as issue No.3 is concerned, learned Sole Arbitrator found that ends of justice would be met by awarding a simple interest on the amount Rs. 74,57,225/ @ 7.5% per annum w.e.f. the date on which it became due till date of its realization. The impugned Award was passed accordingly.

6. This Award was assailed by the appellant by filing an application under Section 34 of the A&C Act and the learned ADJ found that the Award passed by the learned Sole Arbitrator did not suffer from any defects or patent illegality. Hence, the Award could not be said to be against public policy. Accordingly, the application under Section 34 of the A&C Act was dismissed vide impugned judgment dated 25.09.2020.

GROUNDS FOR APPEAL:

7. In the instant appeal under Section 37(1)(c) of the A&C Act the impugned judgment passed by the learned ADJ is assailed *inter alia* on the grounds that the learned ADJ fell in grave error of law and erred on facts since the fact that legal notice dated 05.08.2015 served by the claimant/respondent as well as in the arbitration application under Section 11 of the A&C Act was overlooked, wherein, the claimant/respondent specifically invoked arbitration in respect of invoices/bills from 24.09.2012 to 31.01.2013 pursuant to agreement dated 25.02.2012, whereas, the learned Sole Arbitrator took into account the supplies/invoices/bills of the claimant/respondent even prior to the date of agreement dated 25.02.2012 viz., from 30.03.2011 till 28.03.2013. Therefore, learned Sole Arbitrator went beyond his jurisdiction to decide the dispute which was not covered by reference

to the arbitration; and the learned ADJ erroneously computed the amount in respect of all invoices from 30.03.2011 till 28.03.2013 totalling for Rs. 1,26,01,315/- and making adjustment of amount of Rs. 51,44,090/- paid; and wrongly holding that an amount of Rs. 74,57,225/- was outstanding from the appellant. An objection has further been raised that the learned ADJ wrongly interpreted the chart detailing certain bills and outstanding payments filed by the appellant along with written submissions, which were a mere reproduction of the invoices as per the Award dated 15.12.2017 which would rather suggest that the outstanding amount dues from the appellant was wrongly computed by the learned Sole Arbitrator.

LEGAL SUBMISIONS BY THE LEARNED COUNSELS FOR PARTIES:

8. Learned counsel for the appellant urged that his only ground of objection to the impugned Award dated 15.12.2017, as upheld by the learned ADJ vide the impugned judgment dated 25.09.2020, is confined to Section 34(2) (iv) of the A&C Act since the learned Sole Arbitrator went beyond the terms of reference and erroneously held that certain payments were due/outstanding with regard to supplies made by the claimant/respondent even prior to 15.02.2012, which were not covered by arbitration agreement as also the terms of reference to the arbitration.

9. Learned counsel for the appellant invited the attention of this Court to the demand notice dated 27.07.2015 wherein the claimant/respondent spelt out the details of the each of the bill numbers, bill date vis-a-vis amount due towards in a tabular form; and

it was urged that bare perusal thereof would go on to suggest that first supply was made on 24.09.2012 and the last supply was made on 31.03.2013. Thereby the claim was for an outstanding amount of Rs. 79,58,546/-. The attention of the Court was further invited to the fact that likewise notice of reference dated 05.08.2015 reiterated the said details of first supply having been effected on 24.09.2012 and last one on 31.03.2013. Reference was also invited to paragraph (7) of the notice dated 05.08.2015 citing the relevant clause (10) of the agreement dated 25.02.2012 for reference of dispute to the arbitration, and therefore, it was vehemently urged that the impugned award dated 15.12.2017 wrongly calculated the amount due/ outstanding with regard to any invoice/ bills starting from 30.03.2011 up to 24.09.2012 and that the 20 bills should go out of reckoning in the assessment of the final outstanding amount.

10. *Per contra*, learned counsel for the claimant/respondent urged that no issue was ever raised by the appellant to the fact that there was a running account between the parties and ultimately when the accounts were tallied, it was found that outstanding amount towards the invoices/bills evidencing supplies made started from 30.03.2011 and reference was invited to paragraph (19) upto paragraph (25) of the statement of defence filed by the appellant before the learned Sole Arbitrator and it was pointed out that no specific issue was even framed with regard to the plea now being raised in appeal that 20 bills/invoices should not have been reckoned for computation of the outstanding dues. It was vehemently urged that since amount was being paid on running account, claim was not barred by limitation and

it is specifically proven before the learned Sole Arbitrator that last payment was made by the appellant on 07.01.2013.

ANALYSIS AND DECISION:

11. Having bestowed my thoughtful consideration to the submissions made by the learned counsels for the parties and on perusal of the record, I find that the instant appeal is devoid of any merits for the reasons that we allude to hereinafter. It would be apposite to refer to the proposition of law enunciated by the Apex Court in some of the recent decisions on the scope of challenge and interference with an arbitral award under Section 34 as also the scope of appeal under Section 37 of the A&C Act. But before we advert to some recent pronouncements in law, it would be expedient to reproduce the two provisions, which read as under:

> "**34. Application for setting aside arbitral award**. –(1) Recourse to a Court against an arbitral award **may be made only** by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
> (2) An arbitral award **may be set aside** by the Court only if-
> (*a*) the party making the application establishes on the basis of the record of the arbitral tribunal that-
> (*i*) a party was under some incapacity; or
> (*ii*) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
> (*iii*) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
> **(*iv*) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:**
> **Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside;** or

(*v*) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(*b*) the Court finds that—

(*i*) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(*ii*) the arbitral award is in conflict with the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(*i*) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(*ii*) it is in contravention with the fundamental policy of Indian law; or

(*iii*) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

37. Appealable orders.—(1) (Notwithstanding anything contained in any other law for the time being in force, an appeal) shall lie

from the following orders (and from no others) to the court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

((*a*) refusing to refer the parties to arbitration under Section 8;

(*b*) granting or refusing to grant any measure under Section 9;

(*c*) setting aside or refusing to set aside an arbitral award under Section 34.)

(2) An appeal shall also lie to a court from an order of the arbitral tribunal—

(*a*) accepting the plea referred to in sub-section (2) or sub-section (3) of Section 16; or

(*b*) granting or refusing to grant an interim measure under Section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

12. Before referring to certain authoritative pronouncements on the scope and ambit of the aforesaid provisions, the following principles are well ordained in the subject jurisprudence. Firstly, the jurisdiction of the Court under Section 34 is neither in the nature of an appellate nor is it in nature of a revisional remedy. Secondly, an award can be set aside on limited grounds which have been spelt out vide sub-sections (2) and (3) of Section 34. Section 34 proceedings do not entail a challenge on the merits of the award, which is evident from a reading of sub-section (4) whereupon receipt of an application, the Court may adjourn the Section 34 proceedings and direct the Arbitral Tribunal to resume the arbitral proceedings or take such action as would eliminate the grounds for setting aside the arbitral award. Thirdly, it is also relevant to take judicial notice that Section 34 is modelled on the UNCITRAL Model Law on International Commercial Arbitration, 1985, under which no power to modify an

award is given to a court hearing a challenge to an award[3]. Fourthly, the arbitral award cannot be interfered with, merely because an alternate view on facts and interpretation of contract exists.

13. For our reference, attention can be invited to decision in the case of **MMTC Ltd. v. Vedanta Ltd.**[4], wherein the agreement between the parties envisaged that the goods manufactured by the respondent were to be stored, handled and to be also marketed by the appellant by it raising invoices in the name of the customers after taking 100% advance. It was further stipulated that the amount was then to be remitted to the respondent after deducting service charges/commission at an agreed rate. It appears that there were certain communications between the parties enabling the appellant to have the liberty to supply the goods to the customers against letter of credit i.e., without advance payment while maintaining that it was the total responsibility of the appellant to ensure the *bona fides* of the letter of credit furnished as also to ensure that the principal amount besides the interest were paid on the due date against the letter of credit. A dispute arose with regard to supplies made by the appellant to Hindustan Transmission Products Limited **["HTPL"]** since payment was not made and the respondent invoked the arbitration clause. The majority of the arbitral tribunal found in favour of the

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[3] Article 34. Application for setting aside as exclusive recourse against arbitral award.—
(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

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4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the Arbitral Tribunal's opinion will eliminate the grounds for setting aside."

[4] (2019) 4 SCC 163

respondent and on the award being challenged, the Single Judge as well as the Division Bench of the High Court of Bombay found in favour of the respondent. On further challenge to the Supreme Court,a plea was advanced as to the arbitrability of the dispute as also the plea that the courts should have come to a different conclusion based on evaluation of evidence on the record as regards the alteration affected by the parties envisaging a distinct type of customers. Additionally, another plea was taken that the supplies had not been made to HTPL independent of the contract between the parties. Outrightly rejecting the aforesaid pleas, the Supreme Court elucidated the contours of the power under Section 34 and 37 of the Act as under:-

> "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."

14. Another celebrated case in point is decision in **NHAI v. M. Hakeem**[5]. It was a case wherein the Division Bench of the Madras High Court had disposed of large number of appeals under Section 37 of the Act laying down as matter of law that arbitral awards made under the National Highways Act, 1956 read with Section 34 of the A&C Act should be so read as to permit modification of an arbitral award and thereby the Division Bench enhanced the amount of

[5] (2021) 9 SCC 1

compensation awarded by the Arbitrator. The Supreme Court delved into the issue as to whether power of the Court under Section 34 of the Act to set aside an award of an Arbitrator would include the power to modify such an award and frowning upon such course of action, it was categorically held as under:-

> "It can therefore be said that this question has now been settled finally by at least 3 decisions [*McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181], [*Kinnari Mullick* v. *Ghanshyam Das Damani*, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106] ' [*Dakshin Haryana Bijli Vitran Nigam Ltd.* v. *Navigant Technologies (P) Ltd.*, (2021) 7 SCC 657] of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, **revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the Uncitral Model Law** on International Commercial Arbitration, 1985 which, as has been pointed out in *Redfern and Hunter on International Arbitration*, makes it clear that, **given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand** the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996.
>
> {paragraph 42}
>
> Quite obviously if one were to include **the power to modify an award in Section 34, one would be crossing the Lakshman Rekha and doing what, according to the justice of a case, ought to be done.** In interpreting a statutory provision, a Judge must put himself in the shoes of Parliament and then ask whether Parliament intended this result. Parliament very clearly intended **that no power of modification of an award exists in Section 34 of the Arbitration Act, 1996.** It is only for Parliament to amend the aforesaid provision in the light of the experience of the courts in the working of the Arbitration Act, 1996, and bring it in line with other legislations the world over." {paragraph 48}
>
> **{Bold Emphasized}**

15. Avoiding a long academic discussion, attention can be drawn to the case of **Konkan Railway Corpn. Ltd. v. Chenab Bridge Project**[6]**,** wherein, the Supreme Court was dealing with a matter where the Division Bench of the High Court set aside an order passed under by the learned Single Judge dismissing the objections under section 34 of the A & C Act, which order on challenge under section 37 of the A & C Act was allowed thereby setting aside the award mainly on the ground that the Arbitrator's decision to give primacy to few clauses in the contract while discarding other clauses suffered from 'patent illegality' and on construction of few other clauses an altogether different view was reasonably capable of being arrived at. Disapproving the decision of the Division Bench of the High Court, it was held:

> "**25.** The principle of interpretation of contracts adopted by the Division Bench of the High Court that when *two constructions are possible, then courts must prefer the one which gives effect and voice to all clauses*, does not have absolute application. The said interpretation is subject to the jurisdiction which a court is called upon to exercise. While exercising jurisdiction under Section 37 of the Act, the Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the challenge to the arbitral award. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. Accordingly, the question of reinterpreting the contract on an alternative view does not arise. If this is the principle applicable to exercise of jurisdiction under Section 34 of the Act, a Division Bench exercising jurisdiction under Section 37 of the Act cannot reverse an award, much less the decision of a Single Judge, on the ground that they have not *given effect and voice to all clauses* of the contract. This is where the Division Bench of the High Court committed an error, in re-interpreting a contractual clause while exercising jurisdiction under Section 37 of the Act."

[6] (2023) 9 SCC 85

16. In view of the aforesaid proposition of law, reverting back to the instant appeal, at the cost of repetition, the main plank of the argument of the learned counsel for the appellant is that the learned Arbitrator took into consideration as many as twenty invoices/bills that were beyond the scope of the reference. The initial demand notice dated 27.07.2015 and subsequent notice dated 05.08.2015 indeed spell out that the respondent/claimant indicated supplies from 24.09.2012 and lastly on 31.03.2013 in such notices. However, there is much to the story than what meets the eye. At this juncture it would be relevant to extract operative portion of the order passed by the learned Sole Arbitrator with regard to findings on issues No. 2 and 3, which read as under:

> "42. In support of this issue, the claimant filed purchase orders dated 15.04.2011, 18.07.2011, 23.01.2012, 25.02.2012, 21.08.2012, 21.11.2012 and 20.03.2013. All are collectively exhibited as Exhibit CW-1/3 as Annexure I from page no. 11 to 26. It is further submitted that pursuant to Claimant these purchase orders, the goods were supplied to the respondent by the claimant through various invoices which are as follows:

Date	Invoice No.	Book No.	Amount (in Rs.)
30.03.2011	1630 to 1632	33	318266
30.04.2011	1666	34	52734
01.06.2011	1687	34	70313
01.06.2011	1688	34	38672
24.07.2011	1721	35	394088
16.12.2011	1870	38	392344
16.01.2012	1891	38	217969
23.02.2012	1917	39	392344
05.03.2012	1928	39	70313
15.03.2012	1936	39	392344
22.03.2012	1942	39	392344
14.07.2012	084	2	32869
07.08.2012	107	3	237038

29.08.2012	128	3	28991
31.03.2012	129	3	518837
04.07.2012	134	3	437471
11.09.2012	147	3	614622
24.09.2012	162	4	372377
26.09.2012	165	4	690836
29.09.2012	168	4	113142
09.10.2012	178	4	402570
11.10.2012	181	4	667177
19.10.2012	195	4	251606
23.10.2012	201	5	731273
25.10.2012	206	5	731273
29.10.2012	220	5	587755
30.10.2012	225	5	473175
01.11.2012	231	5	213333
03.11.2012	238	5	402570
19.11.2012	273	6	6075
21.11.2012	278	6	82963
23.11.2012	279	6	21333
26.11.2012	283	6	331223
30.11.2012	293	6	313403
18.12.2012	320	7	23704
21.12.2012	328	7	24413
09.01.2013	361	8	462917
14.01.2013	372	8	643518
30.01.2013	399	8	326368
31.01.2013	403	9	85546
05.02.2013	412	9	5625
13.02.2013	419	9	26117
28.03.2013	477	10	9464
		Total	12601315

43. As per records, an amount of Rs. 51,44,090/- is duly paid by the respondent to the claimant, vide Exhibit RW-113, which is required to be adjusted in the aforesaid amount of Rs. 1,26,01,315/- The details of the payment made by the respondent are as follows:

Date	Cheque No.	Drawn on	Amount
16.11.2011	176329	J&K Bank	394088
07.01.2012	181215	J&K Bank	392344
09.02.2012	186375	J&K Bank	610313
08.05.2012	021888	Allahabad Bank	70313
08.05.2012	021889	Allahabad Bank	1177032
05.01.2013	045120	Allahabad Bank	2500000
			5144090

> 44. After considering the aforesaid payment, the balance amount which is in dispute comes to Rs. 74,57,225/- (Rupees Seventy Four Lacs Fifty Seven Thousand Two Hundred & Twenty Five only).

17. The aforesaid findings were arrived at by the learned Sole Arbitrator after perusal of the bills submitted, which were collectively marked as Ex.CW-1/4 forming Annexure A-2 from page 27 to 71; and after elaborating on the case law as to scope and application of Section 34, 63 and 65 of the Indian Evidence Act, it was observed as under:

> "52. During the cross-examination of RW-1, he admitted that the purchase order were placed by the respondent company to the claimant duly signed by one Mr. R. Subramanium and when the purchase order bearing the signature and name of R. Subramanium, Vice-President (Project) were shown to him, he failed to identify his signatures over it but he admitted that the orders were placed. He also admitted that the respondent made the payment of Rs. 53,29,314/- in lieu of full and final settlement of the amount of goods supplied to the respondent by the claimant. No evidence contrary to the evidence/document produced by the claimant produced various orders as Annexure I from page nos. 11 to 26 bearing the signature of Mr. R. Subramanium on first two purchase orders and of authorised signatory on behalf of Aman Hospitality Pvt. Ltd. on the rest of the purchase orders.
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> 53. The various bills Exhibit CW-114 (filed as Annexure II from page nos. 27 to 71 are the photocopies of the carbon copies (the bunch of original bill books containing the carbon copy of the original bills) were produced before the Tribunal. These were seen by me as well as by the respondent and were returned. Every carbon copy of the bill bears the signature of the recipient and some of the bills also bear the gate entry pass number and stamp of the respondent company in token of the receipt of the goods. No evidence contrary to the bills bearing the receipt and gate entry pass number is brought on record by the respondent company. Thereby, it is established that the orders were placed by the respondent to the claimant and pursuant to the orders, the goods were supplied.
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> 54. Keeping in view the nature of transactions between both the parties, the original copy of the bills should have been in the possession of the respondent as the original bills were sent to him at the time of delivery of the goods. In such circumstances, I am of the considered view that the carbon copy of the original bill being a secondary evidence is admissible in evidence and the objection with

regard to the mode of proof taken by the respondent is not tenable in law and hence dismissed.

55. In view of the chain of documents, i.e. the various purchase orders, Exhibit CW -1/3, various invoices/bills collectively exhibited as Exhibit CW-1/4 and the statement of account maintained during the course of business which is exhibited as Exhibit CW-1/5 are the chain of the relevant facts and are admissible in evidence and also raised a rebuttable presumption as provided in Section 114 of the Evidence Act. In view of the provisions of the Evidence Act discussed above and the observation given by their Lordships in the aforesaid decided case, I am of the view that the claimant is succeeded in proving that he is entitled to claim the amount of Rs.76,58,716 against the goods supplied by him against the respondent.

The below paragraph can be avoided – a short commentary or summarization on the above passage

56. With regard to the interest, the reference may be made to a judgment of the Hon'ble Supreme Court in the case of ***Mc Dermott International Inc. vs. Burn Standard Co. Ltd.*** V (2006) SLT 345. In this case, the learned Arbitrator has granted interest @ 10% p.a. Hon'ble Supreme Court, however, reduced the said rate to the extent of 7.5%. Keeping in view the long lapse of time, in another case cited as ***M/s. Mukund Lal vs. Hindustan Petroleum Corp. Ltd. III*** (2006) SL T 572, the Hon'ble Supreme Court reduced the rate of interest from 11% to 7.5%.

57. Keeping in view the law laid down by the Apex Court coupled with the fact of long lapse of time, I am of the considered view that in the present case, it would meet the end of justice if the claimant is awarded simple interest on the aforesaid amount @ 7.5% p.a. This issue is partly decided in favour of the claimant and against the respondent."

18. A careful perusal of the aforesaid operative part of the impugned Award whereby the evidence was appreciated, and the issues were decided against the appellant, do not appear to be suffering from any vice of 'patent illegality' or 'determination beyond the scope of reference' to the Arbitrator. Admittedly, initial demand notice dated 27.07.2015 and latter notice dated 05.08.2015 were duly served upon the appellant, replies to which were never received. Although, both the aforesaid notices reflected existence of agreement

dated 25.02.2015 and referring to invoices/bills starting from 24.09.2012 and ending on 31.03.2013, the order dated 23.06.2016 of this Court whereby the matter was referred to arbitration referred the entire dispute to arbitration in terms of Clause (10) of the agreement dated 25.02.2012 referred hereinabove.

19. The plea by the learned counsel for the appellant that terms and conditions of the agreement dated 25.02.2012 cannot envisage any supplies prior thereto, does not cut much ice for the reasons that during arbitration it was the admitted case of the parties that verbal as well written modifications were made out to the original agreement dated 25.02.2012 on 25.08.2012, 02.11.2012 and 25.03.2013. By virtue of such modifications, the parties with mutual consent were at consensus *ad idem* that bills prior to 24.09.2012 would also be reckoned so as to settle the running accounts between the parties.

20. A bare perusal of clause (10) of the agreement, which incidentally was specifically written/printed in each of the invoices/bills(collectively marked Ex.CW-1/4) would show that it was only when any dispute could not be resolved amicably that the entire dispute or difference between the parties were stipulated to be referred to the learned Arbitrator. At the cost of repetition, reference to arbitration was not confined to supplies/bills effected during 24.09.2012 to 31.03.2013 but based on the statement of claim filed by the respondent/claimant as also the defence taken by the appellant.

21. A bare perusal of the reasoning given by the learned Arbitrator while passing the impugned award dated 15.12.2017 would show that Authorized Representative of the respondent/claimant examined as

RW-1 raised no challenge to the invoices/bills marked collectively Ex.CW-1/4 rather admitted signatures on the carbon copy of the invoices/bills in proof of receipt of the supplies forming page 11 to 26 in Anneuxre-1 and likewise no challenge worth its salt was espoused to the genuineness of the remaining bills from page 27 to 71 in Annexure A-2.

22. It is interesting to point out that it appears that pursuant to the aforesaid modifications that were drawn by mutual consent of the parties to the original stipulation in agreement dated 25.02.2012, the list towards supplies effected from 30.03.2011 and lasting till 28.03.2013 was infact filed by the appellant during the arbitration proceedings. During the course of recording of evidence, the accounts were tallied, and therefore, *by all means the appellant acquiesced* in the reckoning of such bills i.e., 20 invoices/bills viz., 17 prior to 24.09.2012 and 03 after31.03.2017.

23. Learned counsel for the respondent rightly pointed out that no specific issue was raised by the appellant before the learned Arbitrator that any determination with regard to the aforementioned 20 bills. Further, no objection was raised that it was beyond the scope of reference and the jurisdiction of the learned Arbitrator to embark upon an inquiry into such bills and determine the outstanding dues payable by the appellant.

24. In view of the foregoing discussion, this Court finds that the impugned order dated 25.09.2020 whereby the learned ADJ has dismissed the application under Section 34 of the A&C Act cannot be faulted on any legal and/or factual ground. The objection under

Section 34(2)(b)(iv) of the A&C Act is devoid of any merit since supplies of goods vide various invoices/bills were being drawn on running account between the two parties and evidently some payments were made from time to time and last payment of Rs.53,29,314/- was made on 07.01.2013. At the cost of repetition, a careful perusal of the computation done by the learned Arbitrator while deciding the issues No. 2 and 3 does not suggest that the issues have been dealt with by the learned Arbitrator in a manner that no fair minded or reasonable man would arrive at. The arbitration agreement envisaged resolution of all *inter se* disputes between the parties on account of supplies made and amount outstanding/due including any issue with regard to inferior quality or standard of the goods supplies but then as learned Arbitrator found, the appellant miserably failed to prove any such ground.

25. The sum result is that the present appeal merits dismissal. The appeal is dismissed thereby upholding the impugned award dated 15.12.2017 in its entirety.

26. The pending application also stands disposed of.

DHARMESH SHARMA, J.

NOVEMBER 17, 2023
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