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

Reserved on:27.04.2023
Date of decision: 04.07.2023

\+ **O.M.P. (COMM) 161/2023 & IA 8019/2023**
ARG OUTLIER MEDIA PRIVATE LIMITED

..... Petitioner

Through: Mr.Sandeep Sethi, Sr. Adv. & Ms.Malvika Trivedi, Sr. Adv. with Mr.Bani Dikshit, Mr.Uddhav Khanna, Ms.Diya Dutta, Ms.Sujal Gupta, Mr.Shailendra Slaria, Ms.Shreya Sethi, Mr.Vikram Singh Dalal & Ms.Tanvi Tewari, Advs.

versus

HT MEDIA LIMITED

..... Respondent

Through: Mr.Ashok Kumar Singh, Sr. Adv. with Mr.Sonal Kr. Singh, Mr.Shivang Singh, Mr.Obhirup Ghosh, Ms.Meghna Butolia, Mr.Gagan Kr. Sharma, Mr.Kunal Nema & Ms.Saloni Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act'), challenging the Arbitral Award dated 17.02.2023 (hereinafter referred to as the 'Impugned Award') passed by the learned Sole Arbitrator adjudicating the disputes that had arisen

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between the parties in relation to the 'Agreement of Barter' dated 19.04.2017 (hereinafter referred to as the 'Agreement') executed between the parties.

2. The learned Sole Arbitrator by way of the Impugned Award has directed the petitioner to pay to the respondent a sum of Rs.5 crores along with *pendente lite* interest at the rate of 5% per annum from 08.03.2019 till the passing of the Award and at the rate of 10% per annum from the date of the Award. The learned Arbitrator has also directed the petitioner to pay as costs, 50% of the Arbitral fee paid by the respondent, that is, Rs.5 lacs to the respondent.

SUMMARY OF CHALLENGE

3. The petitioner challenges the Impugned Award on the following three grounds:-

(a) That the Agreement containing the Arbitration Clause, being improperly stamped, should have been impounded by the learned Arbitrator and, until it was properly stamped and penalty was paid thereon, as determined by the Collector of Stamps, should not have been acted upon;

(b) In terms of the Agreement, the petitioner is merely to compensate/indemnify the respondent for the amount of excess 'Inventory' utilized by the petitioner. The petitioner has, therefore, wrongly been saddled with the amount of Rs.5 crores relying upon the Articles 2.4 and 6.1 of the Agreement;

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(c) The respondent had not produced any evidence of loss suffered by the respondent and, therefore, the award of the amount by the learned Arbitrator in favour of the respondent is contrary to Section 74 of the Indian Contract Act, 1872, and the principles enunciated by the judgment of the Supreme Court in ***M/s Kailash Nath Associates v. Delhi Development Authority & Anr.***, (2015) 4 SCC 136.

SUBMISSIONS OF THE LEARNED SENIOR COUNSELS FOR THE PETITIONER

4. On the issue of the Agreement not being properly stamped, the learned senior counsels for the petitioner submit that it was not in dispute that the respondent appended its signatures on the Agreement at New Delhi and thereafter transmitted the same to Mumbai for the signatures of the petitioner. The petitioner appended its signatures on the Agreement at Mumbai and, therefore, in terms of Section 3(a) of the Maharashtra Stamp Act, 1958 (hereinafter referred to as the 'Maharashtra Stamp Act'), the Agreement was chargeable to the Stamp Duty in accordance with the Maharashtra Stamp Act only. The Maharashtra Stamp Act requires the document to be stamped on an *ad valorem* fee. In support, the learned senior counsels for the petitioner placed reliance on the judgment of this Court in ***Religare Finvest Limited v. Asian Satellite Broadcast Private Limited and Others***, 2022 SCC OnLine Del 221.

5. They submit that mere mention of the document having been executed at New Delhi or being stamped in accordance with the

Indian Stamp Act, 1899 (hereinafter referred to as the 'Indian Stamp Act') as applicable to the State of NCT of Delhi, would not make the Agreement sufficiently stamped. The Agreement was, therefore, insufficiently stamped and should have been impounded by the learned Sole Arbitrator during the course of the Arbitral Proceedings. They submit that in view of the judgment of the Supreme Court in ***M/s N.N. Global Mercantile Private Limited v. M/s Indo Unique Flame Ltd. & Ors.***, 2023 SCC OnLine SC 495, the Agreement being insufficiently/improperly stamped, could not have been acted upon by the learned Sole Arbitrator.

6. They submit that the learned Sole Arbitrator has also wrongly stated that no submissions on this issue were made at the stage of the final arguments. Relying upon the written submissions filed before the learned Sole Arbitrator, they submit that this issue was raised before the learned Sole Arbitrator even at the stage of the final arguments.

7. On the question of the direction in the Impugned Award for the petitioner to pay a sum of Rs. 5 crores to the respondent, the learned senior counsels for the petitioner, placing reliance on Articles 2.3, 2.4, 6.1 and 8.2 of the Agreement, submit that the Agreement was, as is evident from the title itself, a Barter Agreement. In terms of the said Agreement, the parties were to promote each other's business interests through their respective business mediums. It was agreed that the total value of the Agreement in terms of spots/advertising space shall be Rs.10 crores, however, Article 6.1 of the Agreement clarified that this amount in no way indicates minimum guarantee or commitment of any nature and was only indicative in nature. In terms of Article 8.2,

on termination of the Agreement, the accounts were to be squared off, meaning thereby that whatever excess usage that the petitioner had over the respondent, in terms of the Agreement, the petitioner would pay for the same. They submit that, therefore, at best the petitioner could have been made liable to pay Rs.2.01 crores, which was the amount for which the spots were used by the petitioner on the respondents' platform. They submit that the learned Sole Arbitrator has ignored the second part of Article 6.1 of the Agreement, and the interpretation placed by the learned Sole Arbitrator on the terms of the Agreement is perverse and cannot be sustained.

8. They further submit that the respondent had not placed any evidence on record to show any loss being caused to the respondent on account of the respondent not placing any inventory on the platform of the petitioner. They submit that in the absence of any proof of loss, the learned Sole Arbitrator has clearly erred in awarding the damages to the respondent.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE RESPONDENT

9. On the other hand, the learned senior counsel for the respondent submits that the Agreement in question was, in fact, executed at New Delhi as is evident from the various terms of the Agreement itself, including its recital, which states that it was executed at New Delhi.

10. The learned senior counsel for the respondent submits that the learned Sole Arbitrator has considered the exchange of the e-mails between the parties to reach at the conclusion that, with the consent of

the parties, the Agreement has been executed at New Delhi. In this regard, he draws my reference to the order dated 13.02.2020 passed by the learned Sole Arbitrator on the application filed by the petitioner under Section 16 of the Act, relevant portions of which have been reproduced by the learned Sole Arbitrator even in the Impugned Award.

11. He further submits that the petitioner, during the course of its Oral Submissions, did not raise this issue again, as has been rightly recorded by the learned Sole Arbitrator in paragraph 28 of the Impugned Award. He submits that a mere clandestine insertion of the ground in the written submissions cannot, now, be used as a ground to challenge the Impugned Award.

12. He further submits that, in fact, no such objection was taken by the petitioner prior to the filing of the application under Section 16 of the Act. In the exchange of notices between the parties, specifically, in the reply(s) dated 18.03.2019, 09.05.2019, and 17.05.2019, or even in answer to the petition filed by the respondent under Section 11 of the Act seeking the appointment of the learned Sole Arbitrator, being ARB.P. 392/2019, the petitioner never raised a plea that the Agreement was executed at Mumbai or that the Agreement is insufficiently stamped and should be stamped as per the Maharashtra Stamp Act. He submits that, in fact, this Court in the order dated 31.05.2019 passed in above referred petition, recorded that the petitioner herein did not dispute the existence of the Arbitration Agreement or the invocation thereof, meaning thereby that the petitioner did not also dispute that the Agreement was properly

stamped. Even the witness of the petitioner in his cross-examination did not dispute the fact that no such objection had been taken by the petitioner before the commencement of the Arbitration Proceedings. The plea was later taken, only with a *mala fide* intent of somehow denying the *bona fide* claims of the respondent.

13. On the interpretation of the Agreement, placing reliance on the various terms of the Agreement, he submits that the interpretation placed by the learned Sole Arbitrator on the terms of the Agreement is correct. He submits that it was the term of the Agreement that any inventory that is not used by the respondent would be paid for by the petitioner at the end of the Agreement period. He submits that, in fact, the respondent is entitled to claim Rs.10 crores, as was rightly claimed by the respondent in the Arbitration Proceedings, however, the learned Sole Arbitrator has confined the claim of the respondent to only Rs.5 crores. He submits that the respondent has agreed to the Impugned Award, however, the interpretation now being placed by the petitioner is completely incorrect.

14. On the issue of damages being awarded without any evidence, he submits that the amount was payable in terms of Article 2.4 of the Agreement itself. The respondent was not to separately prove any damages being suffered by the respondent.

15. He submits that, therefore, no infirmity can be found in the Impugned Award passed by the learned Sole Arbitrator.

ANALYSIS AND FINDINGS

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16. I have considered the submissions made by the learned senior counsels for the parties.

Stamping of the Agreement:

17. On the issue of insufficient/improper stamping of the Agreement, the Agreement itself records that the same has been executed at New Delhi. The petitioner does not dispute that the Agreement has been stamped in accordance with the rates as applicable to the NCT of Delhi. The dispute raised is that the said Agreement was signed by the respondent at New Delhi and thereafter sent to the petitioner for its signatures at Mumbai. The petitioner contends that the Agreement, therefore, should have been stamped in accordance with the Maharashtra Stamp Act, and having not been done so, was to be impounded by the learned Sole Arbitrator.

18. The learned Sole Arbitrator in the Impugned Award has rejected the above submission of the petitioner, relying upon his earlier order dated 13.02.2020 passed on an application filed by the petitioner under Section 16 of the Act. I shall reproduce hereinbelow the extract from the said order, which has also been extracted by the learned Sole Arbitrator in the Impugned Award:-

> *"26. Insofar as facts leading to entering into the Barter Agreement are concerned, there is hardly any dispute. In fact, the submission of learned Counsel for the Claimant that Contract was concluded in Delhi was not refuted by the learned Counsel for the Respondent. As mentioned above, response of the Respondent was that it is not the place where the Contract is concluded, which would be relevant, but the place where the Contract is executed is material for the purpose of attracting the stamp duty. When it is not in*

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dispute that in the given facts, the place of conclusion of Agreement is Delhi, various judgments cited by the learned Counsel for the Claimant in support of his submission that Contract was concluded in Delhi need not be discussed.

27. Let me now examine the case keeping in view the provisions of Section 3(a) of the Act. This clause makes an instrument chargeable with duty under the Stamp Act if it is executed in the State of Maharashtra and is not previously executed by 'any person'. In the first blush, having regard to the proposition advanced by the learned Counsel for the Respondent, one may say that since the document was signed by the Respondent in Mumbai, which was the last act, the place where the document is executed is Mumbai. If one applies this principle, document would attract the duty as per the Maharashtra Stamp Act as well. At the same time, there are certain very peculiar features in this case which may desist me from arriving at the conclusion that the document should have been stamped in accordance with Maharashtra Stamp Act. In the instant case, the document was prepared in Delhi on the stamp papers purchased as per the Stamp Act applicable in Delhi. Admittedly, stamp duty as per applicable in Delhi has been affixed on the instrument i.e., the Barter Agreement. It is also signed in Delhi by the Claimant.

28. Thus, the admitted facts are that Claimant is based in Delhi whereas office of the Respondent is located in Mumbai. It is also an admitted fact that prior to the execution of the Barter Agreement, terms and conditions of the Agreement were negotiated between the parties which were revised from time to time. It appears that a draft Agreement was prepared, ultimately some changes were made by the Respondent, which was sent to the Claimant. On 25.04.2017, Claimant sent e-

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mail to the Respondent stating that the Claimant was fine with the changes made and attached the execution version of the Agreement. In this mail, it was also stated that Claimant shall be sharing its scanned copy and sending the original via courier. To this, Respondent had replied by e-mail of 25.04.2017 that it was fine with the Respondent and Respondent gave its nod to the Claimant for going ahead. Thereafter, stamp paper was purchased by the Claimant in Delhi and the Agreement was typed in Delhi at the level of the Claimant. This Agreement is on non-judicial stamp paper of the value of INR 100/-. Opening para of the Agreement states that it is "entered into at New Delhi, India on 19th day of April 2017". Pertinently, therefore, the parties have agreed that the place of entering into this Agreement is Delhi. For this reason, and as per the agreed understanding between the parties, the stamp papers were purchased in Delhi. There is no dispute that as per duty applicable in Delhi, it is adequately stamped.

29. Para 9.7 of the Agreement pertains to settlement of disputes and governing laws. It, inter alia, mentions that if any disputes or differences arise between the parties, the parties shall make an attempt for a period of 30 days from the receipt of the notice of the existence of disputes to settle such disputes by mutual discussion between the parties, failing which parties agreed to refer the matter to a mutually agreed Arbitrator. This clause further states that arbitration proceedings shall be held under the provisions of the Arbitration & Conciliation Act. Here again, it needs to be emphasised that the venue of arbitration proceedings is agreed to be New Delhi only. It is also agreed that the courts/tribunals at New Delhi shall have the exclusive jurisdiction over any dispute relating to the subject matter of this Agreement. Therefore, insofar as this Arbitration

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Agreement is concerned, the seat of Arbitration is Delhi and it bears proper stamp duty as per law applicable in Delhi.

30. Thus, we are faced with a situation where recital of the Agreement states that it is executed in Delhi, and by signing this Agreement, the Respondent has accepted this part of the recital. That by itself may not be determinative. However, what is important is that, after conclusion of the Contract in Delhi and on the understanding that the Agreement was executed in Delhi, it was prepared in Delhi for which non-judicial stamp papers as per the prevailing law in Delhi were purchased. More importantly, even the place of contract, for which it is executed, is Delhi which has been specifically agreed to by the parties. Above all, as per para 9.7, the sole jurisdiction of Court/Tribunals is rested at New Delhi to the exclusion of jurisdiction of any other place. Seat of arbitration is also Delhi. Therefore, for all practical purposes, the Agreement is to be worked out in Delhi. In. a situation like this, it would be difficult to accept the position that stamp duty as applicable under the Maharashtra Stamp Act should also have been affixed. After all, one needs to give purposive interpretation to the provisions of the Maharashtra Stamp Act. In a situation when everything happens in Delhi and the document is even signed in Delhi by one of the parties, and insofar as Arbitration Agreement is concerned, it is subject to jurisdiction in Delhi, affixing the stamp duty as per Maharashtra Stamp Act appears to be somewhat incongruous.

31. Even if we proceed on the basis that document is executed in Mumbai when it was signed by the Respondent, then in law, it was the obligation of the Respondent to put the requisite stamp duty as per the Maharashtra Stamp Act. For the sake of clarify, it needs to be repetitive by observing that insofar as

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> *Claimant is concerned, it had completed all the requisite formalities. Document was prepared in Delhi, recital of the document mentions that it is executed in Delhi; stamp papers as per applicable law in Delhi were purchased and the document is prepared on the said stamp papers; and is signed by the Claimant in Delhi. When such a document is sent to the Respondent in Mumbai and Respondent takes a position that it is deemed executed in Mumbai only, the Respondent, on receiving the document and before signing the same, should have put required stamp duty as per the provisions of Maharashtra Stamp Act. Conscience of this difficulty which may come in the way of Respondent, it has tried to make out a case in the Application under Section 16 of the Act (para 2.10) that it was always the understanding between the parties that stamp duty and other applicable charges would be borne by the Claimant. This is specifically denied by the Claimant. In any case, stamp duty as applicable in Delhi was paid by the Claimant. Even if it is accepted for the sake of argument that stamp duty under the Maharashtra Stamp Act was also payable by the Claimant, the Respondent, before signing the Agreement, should have called upon the Claimant to pay that duty. In that eventuality, it is the Respondent who would be liable for this lapse."*

19. At the outset, it is to be emphasized that the above finding is a mixed question of facts and law. The learned Sole Arbitrator has found the Agreement to be properly stamped, observing that under the Agreement it was agreed that the same has been executed in New Delhi; everything under the Agreement was to happen in New Delhi; and the document is even signed in New Delhi by one of the parties. It is settled law that the Court exercising jurisdiction under Section 34 of

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the Act does not sit as a Court of Appeal against the findings of the learned Arbitral Tribunal. Its jurisdiction under Section 34 of the Act is rather limited and even a contravention of a statute, that is not linked to a public policy or public interest, cannot be a ground for setting aside an Arbitral Award under Section 34 of the Act. In ***Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI)***, (2019) 15 SCC 131, the Supreme Court has held as under:-

> ***"37.*** *Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law.* ***In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.***
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> ***38.*** *Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.*
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> ***39.*** *To elucidate, para 42.1 of Associate Builders, namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders, however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that*

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> *would certainly amount to a patent illegality on the face of the award."*
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> *(Emphasis supplied)*

20. In ***Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation Limited***, (2022) 1 SCC 131, the Supreme Court again emphasised as under:

> ***"29.*** *Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorized as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality…."*.
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> *(Emphasis Supplied)*

21. Therefore, even assuming that the learned Sole Arbitrator made a mistake in the interpretation of the Maharashtra Stamp Act, in my view, it cannot be a ground to interfere with the Arbitral Award in the exercise of the limited jurisdiction under Section 34 of the Act.

22. What is also relevant in the facts of the present case is that no such challenge on the ground of the Agreement not being properly stamped was raised by the petitioner herein in its reply to the legal notices or in the reply to the petition filed by the respondent under Section 11 of the Act. Even in the affidavit of admission/denial of the documents of the respondent, filed by the petitioner herein on 12.10.2019 in the Arbitration Proceedings, the Agreement was admitted and no such objection to its admissibility in evidence was taken by the petitioner.

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23. As noted hereinabove, the petitioner also filed an application under Section 16 of the Act before the learned Sole Arbitrator, challenging the admissibility of the Agreement on the ground of it not being properly stamped. The said challenge was rejected by the learned Sole Arbitrator in his order dated 13.02.2020, albeit later framing an issue on the admissibility of the said document.

24. The learned Sole Arbitrator explained the reasons for framing the issue with respect to the admissibility of the Agreement, vide his Order dated 27.05.2020, as under:-

> *"6. I have, otherwise, considered the submissions of both the parties on the question as to whether issue about the admissibility of the document in question should be framed or not. No doubt, certain observations have come in the Order dated 13.02.2020 about the admissibility of the document. At the same time, I agree with the Respondent that the said Order is under Section 16 of the Act. He is also right in his submission that while formulating the points of differences in the main proceedings, points should be formulated independent of the order passed in Section 16 of the Act. Therefore, I am inclined to formulate this point of difference as well. I, however, make it clear that while deciding this point of difference, it will be open to the Claimant to argue that the admissibility of the Agreement was challenged only on the ground that the document is not sufficiently stamped and that issue stands decided. At this stage, I do not make any observation on this aspect. I make it clear that this point of difference is formulated without prejudice to the rights and contentions of both the parties on the merits thereon and all the arguments which would be permissible/admissible in law will be taken into in consideration at the final stage while deciding this point of determination."*
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> *(Emphasis supplied)*

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25. The learned Sole Arbitrator in the Impugned Award has further recorded that no 'new' submission was made by the learned senior counsel for the petitioner herein at the time of the final arguments and, therefore, the learned Sole Arbitrator felt no reason to deviate from its earlier opinion recorded in the order dated 13.02.2020. I may quote from the aforesaid observation of the learned Sole Arbitrator in the Impugned Award, as under:-

> *"28. It may be mentioned that at the time of final arguments, the learned senior counsel for the Respondent did not raise any further/ additional arguments when the arguments which were advanced while arguing the Application under Section 16 of the Act and rested his case at that. Since no new argument is raised and the arguments raised earlier have already been considered and rejected by the Tribunal in its Order dated 13.02.2020, the Tribunal does not find any reason to deviate from the same. This issue [POD (iii)] is accordingly answered in the affirmative holding that the Agreement dated 19.04.2017 is admissible in law."*
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> *(Emphasis supplied)*

26. The learned Sole Arbitrator, therefore, rejected the objection of the petitioner on the admissibility of the Agreement for being not properly stamped, and admitted the Agreement in evidence.

27. Section 36 of the Indian Stamp Act states that where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61 of the Indian Stamp Act, be called in question at any stage of the same suit or proceeding or on the ground that the instrument has not been duly stamped.

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28. Section 61 of the Indian Stamp Act provides that when any Court, in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898, makes any order admitting any instrument in evidence as duly stamped, the Court to which appeals lie from, or references are made by, such a Court, of its own motion or on the application of the Collector, take such order into consideration. In our case, the court is of the opinion that such an instrument should not have been admitted in evidence without the payment of duty and penalty under Section 35 of the Indian Stamp Act, it may record a declaration to that effect and determine the amount of duty with which such an instrument is chargeable and may impound such instrument. Proviso (b) to sub-Section 4 of Section 61 of the Indian Stamp Act further provides that except for the purposes of such prosecution by the Collector, any declaration made under Section 61 of the Indian Stamp Act, shall not affect the validity of any order admitting any instrument in evidence.

29. Sections 36 and 61 of the Indian Stamp Act are reproduced hereinbelow:-

> ***36. Admission of instrument where not to be questioned.*** *—Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not duly stamped.*
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> *xxxxx*
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> ***61. Revision of certain decisions of Courts regarding the sufficiency of stamps.*** *—(1) When any Court in the exercise of its civil or revenue jurisdiction of any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI*

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of the Code of Criminal Procedure, 1898 (V of 1898), makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie form, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument:

Provided that--

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty;

(b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42."

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30. In ***Javer Chand and Others v. Pukhraj Surana,*** (1962) 2 SCR 333, the Supreme Court, relying upon Section 36 of the Indian Stamp Act, held that when a document has once been admitted in evidence, such admission cannot be called into question at any stage of the suit or the proceedings on the ground that the instrument had not been duly stamped. The only exception recognized by the Section 36 is the class of cases contemplated by Section 61. Section 36 does not admit of any other exceptions. Once the Court, rightly or wrongly, decides to admit the document in evidence, so far as the parties are concerned, the matter is closed; it is not open either to the Trial Court itself or a Court of Appeal or Revision Court to go behind the order admitting such an instrument in evidence; such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or even by a Court of superior jurisdiction.

31. The above view has been followed by the Supreme Court in its judgment in ***Shyamal Kumar Roy v. Sushil Kumar Agarwal***, (2006) 11 SCC 331; and the order dated 14.11.2022 passed by the Supreme Court in ***Sirikonda Madhava Rao v. N. Hemalatha,*** SLP (C) No. 14882 and 14883/2022. The above proposition has been specifically applied to reject a challenge to an Arbitral Award on account of a document not being properly stamped in ***Rung Lal Kalooram v. Kedar Nath Kesriwal***, vide the judgment dated 11.07.1921, Volume 27 the Calcutta Weekly Notes 513, observing as under:-

> *"In any event it seems to me clear that the submission in this case was a document which had to be put in evidence before the arbitrators. It was their duty to see that it was properly stamped. It was not stamped. If an*

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objection had been taken at the time then the proviso to sec. 35 would have come into force, and upon payment, of the stamp duty and the penalty the instrument would have been admitted in evidence in accordance with the proviso. That was not done. It is necessary therefore to refer to another section. Sec. 36- which provides, "where an instrument has been admitted in evidence, such admission shall not, except as provided in sec. 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped." The provisions of sec. 61 are not material to the question which arises in this case. The submission was, in my judgment, admitted in evidence by the arbitrators, and having been admitted in evidence by the arbitrators, it was not open to either of the parties to call in question such admission in the arbitration proceedings on the ground that the submission had not been duly stamped. The award, therefore, which was made upon the submission, was in my judgment a valid award. It was filed in accordance with the provisions of the Arbitration Act. In my judgment it is not now open to the Plaintiffs who are parties to the submission, and who thereby agreed to the matter being referred to the arbitration of the two arbitrators and who raised no objection to the agreement, containing the submission, being admitted in evidence to rely upon the fact that the submission bore no stamp, for the purpose of showing that the award was invalid. It has to be remembered that the provisions in the Stamp Act were passed for the purpose of protecting the revenue and, in my judgment, the words, which have been relied upon by the learned Advocate-General of sec. 35, under the circumstances of this case and having regard to the proviso of sec. 35 and the terms of sec. 36 of the Stamp Act, have not the effect of rendering the award invalid."

(Emphasis supplied)

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32. Recently, a Coordinate Bench of this Court also rejected a similar challenge to an Arbitral Award in ***SNG Developers Limited v. Vardhman Buildtech Private Limited,*** 2021:DHC:4100, observing as under:-

> *"**20.** Section 36 of the Indian Stamp Act, 1899, clearly prohibits calling into question the admission of any document in any suit or proceeding once the document has been admitted in evidence, on the ground that it has not been duly stamped. In arbitral proceedings, it is well-settled that strict rules of the Code of Civil Procedure, 1908, would not apply and that the learned Arbitral Tribunal is entitled to chalk out its own procedure. In doing so, the governing consideration has to be an expeditious resolution of the disputes between the parties, without subjecting the arbitration to the lengthy and cumbersome rigours of procedure as otherwise contained in the CPC, 1908. Once the parties agree to the procedure as formulated by the learned Arbitral Tribunal, the parties are bound by such procedure. The Court sitting in judicial review over the decision of the learned Arbitral Tribunal, cannot, therefore, ordinarily interfere with the order on the ground that it does not follow, strictly the procedure envisaged by the CPC.*
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> ***26.** Even otherwise, as I have already noted hereinabove, the rigours of procedure which attach to civil proceedings under the CPC and the Evidence Act, would not apply, proprio vigore, to arbitral proceedings. The proceeding before the learned Arbitral Tribunal was governed by para 7.8 of the order dated 9th May, 2019, which was accepted by both parties. That being so, if the learned Arbitral Tribunal, took the view that*

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> *the petitioner, having admitted the copy of the Agreement to Sell dated 4th April, 2011, as filed by the respondent, at the stage of admission and denial of documents, without reservation, could not be allowed to raise the ground of insufficient stamping at a later stage, that view does not call for interference by this Court in exercise of its jurisdiction under Section 34 of the 1996 Act."*

33. The submission of the learned senior counsels for the petitioner that the learned Sole Arbitrator has wrongly recorded that no submission on the question of the Agreement not being properly stamped was raised in the course of the final arguments, also cannot be accepted. Though the written submissions filed by the petitioner raised the issue of the document not being properly stamped, it also stated as under:-

> *"2. Before adverting to the objections to the claim, at the very outset, it is pertinent to state that the present arbitration proceedings are non-est in so far this Hon'ble Tribunal does not have the jurisdiction to adjudicate the disputes between the parties since the Barter Agreement containing the arbitration agreement is not stamped as per the provisions of the Maharashtra Stamp Act, 1958 ("**Maharashtra Stamp Act**"), and thus, cannot be acted upon unless the proper stamp duty and penalty, if any, is paid on it as per the Maharashtra Stamp Act. Therefore, the same needs to be impounded and adjudicated under the Maharashtra Stamp Act before the claims of the Claimant, if any, are adjudicated by this Hon'ble Tribunal. This objection was taken by the Respondent in their application under Section 16 of the Arbitration and Conciliation Act, 1996. However, vide order dated 13.02.2020, the Respondent's application under Section 16 was not allowed by this*

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Hon'ble Tribunal. The Respondent reserves the right to challenge the order as per law."
(Emphasis supplied)

34. That apart, the learned Sole Arbitrator has held that 'no new' submission was made by the learned counsel for the petitioner herein at the stage of final arguments and all submissions that were made had already been dealt with by the learned Sole Arbitrator while passing the order dated 13.02.2020.

35. I find merit in the submission of the learned senior counsel for the respondent that the judgment in ***Religare Finvest Limited*** *(Supra)* was not referred to in the written submissions of the petitioner herein, even though it forms a part of a compilation of judgments filed by the petitioner. The petitioner having already stated that this plea would be later challenged by it in accordance with law, cannot now, in view of discussion hereinabove, be allowed to challenge the Award on the above ground. The Arbitrator had given an opportunity to the petitioner to re-agitate the issue of the Agreement not being properly stamped, however, the petitioner chose not to avail of such opportunity. Now, by operation of law, the petitioner is debarred from challenging the Award based on such Agreement.

36. Before concluding this issue, it must be emphasised that though in terms of the judgment of the Supreme Court in ***N.N. Global*** *(supra)*, the Agreement, not being properly stamped, could not have been admitted in evidence, however, once having been admitted in evidence by the Arbitrator, the Award passed by relying thereon cannot be faulted on this ground. This Court does not act as a court of appeal against the Award and therefore, may not even have the powers

vested in Section 61 of the Indian Stamp Act. Even assuming that Section 61 of the Indian Stamp Act applies, in view of the Proviso (b) to Section 61 of the Indian Stamp Act, the Court would only impound the document (in the present case by calling upon the petitioner to produce the original of the same) and refer it to the Collector of Stamps for adjudication on the proper stamp duty and penalty (in the present case to be paid by the petitioner), however, the same shall not, in any manner, effect the enforcement or the validity of the Arbitral Award.

37. The Impugned Arbitral Award, therefore, cannot be faulted on this ground.

Interpretation placed to the terms of the Agreement:

38. As noted hereinabove, the learned senior counsels for the petitioner submits that the learned Sole Arbitrator has erred in interpreting the terms of the Agreement to conclude that even where the respondent did not consume the inventory and it remained unsold, the petitioner herein was under an obligation to pay back for such unconsumed/unsold inventory to the respondent and the respondent would become entitled to receive payment for the said unconsumed/unsold inventory.

39. They have submitted that the Agreement in question being a Barter Agreement, at best, the petitioner would have been liable to pay only for the inventory that it used in excess of the inventory that was used by the respondent. As the respondent did not consume any

inventory of the petitioner, the petitioner would at best be liable pay only a sum of Rs.2.01 crores to the respondent.

40. I am unable to agree to the above submission of the learned senior counsels for the petitioner.

41. At the outset, I would again remind myself of the limited jurisdiction that this Court is vested with under Section 34 of the Act, especially on the interpretation placed by the Arbitrator on the terms of the Agreement.

42. In ***Ssangyong Engineering and Construction Company Limited*** *(Supra)*, the Supreme Court has reiterated that the construction of the terms of the Contract is primarily for an Arbitrator to decide and unless the Arbitrator construes a Contract in a manner that no fair-minded or reasonable person would, that is, where the Arbitrator's view is not even a plausible view to take or where the Arbitrator wanders outside the Contract and deals with the matter not allotted to him, only then a ground of challenge to the Award under Section 34 would be available to the party.

43. This view was reiterated by the Supreme Court in ***Delhi Airport Metro Express Private Limited*** (supra) by cautioning the courts as under:-

> *"**28.** This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the*

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Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.

29. *Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to*

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> *challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality"."*

44. Articles 2.3, 2.4, 6.1, 7.5 and 8.2 of the Agreement, on which reliance has been placed by the learned senior counsels for the petitioner, are reproduced hereinbelow:-

> *"2.3 The Parties agree that they shall consume and fulfill their respective commitments under the Agreement, within the Term of the Agreement and in the manner set out in Articles 5 and 7 below.*
>
> *2.4 That ARG also accepts and agrees that HT shall have the right to use (including, to sell without restriction) the said inventory of ARG upto 1 (one) year from the Commencement Date. Post completion of 6 month from the Commencement Date, it shall be obligatory on ARG to assist HT in selling unconsumed/unsold inventory within the remaining term of the Agreement. The parties also agree that if HT and ARG are not, either jointly or severally, able to sell any part of the unconsumed/unsold inventory of ARG within the term of the Agreement, then ARG shall be under an obligation to buy-back such unconsumed/unsold inventory from HT within a period of 180 (one hundred eighty) Days following expiry of the Term or within 30 (thirty) days following the date of termination of the Agreement, whichever is earlier. In such an event, HT shall receive payment for the Total value of consideration stated in Article 6.1 below as reduced by the acknowledged value of inventory of AGR used or sold by HT*

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and/or ARG under this Agreement. Both the Parties agree that this understanding is fully binding on the Second Party and shall never be disputed at any point of time, notwithstanding anything to the contrary stated in Article 2.3 or any other tenet of the Agreement entered into between the Parties.

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6.1 The Total value of this Agreement in terms of spots/ advertising space consumed by both the Parties on or before the end of Term shall be Rs. 10,00,00,000 (Rupees Ten Crores only). It is however clarified that this amount in no way indicates minimum guarantee or commitment of any nature and is only indicative in nature.

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7.5 Both Parties will reconcile their barter statement on a monthly/ basis.

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8.2 In the event there is a shortfall in such consumption by either Party, such Party shall ensure that, and shall be obliged to so consume and fulfill its proportionate part of the Agreement, so outstanding on the date of the termination notice, on or before completion of the stipulated notice period of 30 days. The obligation of ARG under clause 2.4 shall apply mutatis mutandis to this clause. In such an event, upon completion of this notice period and proportionate consumption of the contract value, the accounts shall be squared off and both Parties shall be absolved from their respective responsibilities and neither Party shall have any rights, title, claims or interest against the other, of any nature whatsoever, at any point of time."

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45. A reading of the above Articles would show that in case there was unconsumed/unsold inventory of the respondent on completion of six months from the Commencement Date, the petitioner was to assist the respondent in selling the same within the remaining terms of the Agreement. It was specifically agreed that in case the petitioner and the respondent are not, either jointly or severally, able to sell a part of the unconsumed/unsold inventory of the respondent within the term of the Agreement, then the petitioner shall be under an obligation to buy back such unconsumed/unsold inventory from the respondent within a period of 180 days following the expiry of the term of the Agreement. It was further agreed that in such an event, the respondent was to receive a payment of the total value of consideration stated in Article 6.1 of the Agreement as reduced by the acknowledged value of inventory of the petitioner used or sold by the respondent and/or the petitioner under the Agreement.

46. In the present case, the respondent had not used any inventory of the petitioner and the same also remained unsold. The respondent was, therefore, entitled to receive the full value of the inventory in terms of Article 2.4 of the Agreement.

47. The learned Sole Arbitrator has also found the same by observing in the Impugned Award, as under:-

> *"60. Whereas no consequence is stipulated in the event Respondent did not consume its part of the inventory, reverse is not true inasmuch as the Claimant has been given certain rights under Article 2.4. In case the Claimant did not consume the inventory and it remained unsold, its share of inventory was INR 5.00 crore which remained unconsumed/unsold. In*

that event, the Respondent was under obligation to 'bay back such unconsumed/unsold inventory' from the Claimant and the Claimant became entitled to receive payment for the said unconsumed/unsold inventory. The Respondent had made a conscious choice for such an arrangement. It knew that part of its inventory vested with the Claimant remains unconsumed/unsold, the Respondent will have to pay for that. Therefore, the Respondent would be liable to pay a sum of INR 5.00 crore to the Claimant.

61. It is a fact that though the Respondent could consume inventory in the sum of INR 5.00 crore of the Claimant and as against that, it has consumed Claimant's inventory of INR 2.01 crore. However, as pointed out above, in the event the Respondent is not able to use the entire inventory of the Claimant, no implication thereof is stated. Notwithstanding that the Respondent chose not to utilise the inventory of the Claimant to the fullest extent i.e., INR 5.00 crore, even after it knew fully well that the unconsumed inventory will not yield any results. It simply lapsed. Thus, the Respondent cannot say that it should be made to pay only INR 2.01 crore which is the inventory consumed by the Respondent.

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63. It needs to be emphasised that the Agreement in question is of commercial nature between two business entities. Therefore, it can be safely inferred that the parties knew the implications flowing from the Agreement, particularly Article 2.4 thereof……

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> *64. The Tribunal is conscious of the fact that under the given circumstances, when the Respondent has utilised inventory only for an amount of INR 2.01 crore, it is called upon to pay a sum of INR 5.00 crore. That is what the Agreement provides for. The Tribunal is supposed to decide the matter having regard to the provisions of the Contract and cannot apply the principles of equity, as per the clear mandate of Section 28(2) of the Arbitration and Conciliation Act 1996."*

48. I find no fault/infirmity in the interpretation placed by the learned Sole Arbitrator to the Agreement. Consequently, I find no merit in the challenge to the Award on this account.

Application of Section 74 of the Contract Act:

49. As noted hereinabove, the learned senior counsels for the petitioner have also contended that in the absence of any proof of damage being suffered by the respondent, the learned Sole Arbitrator has erred in law in passing the Impugned Award in favour of the respondent. I find no merit in the said submission.

50. In the present case, the claim of the respondent is not based on any alleged breach of the Agreement by the petitioner. What the respondent herein claims is the consideration payable under the Agreement itself. The question of proof of damage, therefore, is not at all relevant to the said claim of the respondent. As the learned Arbitrator has rightly observed, this is a Commercial Agreement and the parties have decided on the consideration payable under the same.

Inadequacy of consideration is not a ground that vitiates the Agreement. It is also not open to the Arbitrator or for this Court to rewrite the Agreement to what may appear to it to be more just and fair.

51. I therefore, find no merit in this challenge of the petitioner as well.

CONCLUSION:

52. In view of the above, I find no merit in the present petition. The petition and the pending application are dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J.

JULY 04, 2023/*rv*/RP/AN