IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL NO.27 OF 2012

Iqbal Trading Company ...Appellant

Versus

The Union of India & Ors. ...Respondents

Mr. S.K. Halwasia *a/w. Ms. S.S. Halwasia and Mr. Keshav Thakur i/b. Halwasia and Co., Advocates for the Appellant.*

Mr. Mohamedali M. Chunawala *a/w. P.S. Gujar, Advocates for Respondents.*

CORAM : **SOMASEKHAR SUNDARESAN, J.**

RESERVED ON : **May 6, 2025**

PRONOUNCED ON : **November 10, 2025**

JUDGEMENT:

Context and Factual Background:

1. This is an appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 ("***1996 Act***") challenging an order dated October 21, 2011 ("***Impugned Order***") passed by a Learned District Judge, Pune

Aarti Palkar

refusing to exercise jurisdiction under Section 34 of the Act in relation to an arbitral award dated January 16, 1998 ("***Arbitral Award***").

2. The Impugned Order records the opinion of the Learned District Judge that the arbitration proceedings that led to the Arbitral Award is governed by the Arbitration Act, 1940 ("***1940 Act***") and not the 1996 Act. The Impugned Order also returns a finding that the challenge to the Arbitral Award was hopelessly barred by limitation. Applying the standards applicable under the 1940 Act, the Impugned Order also emphatically upholds the Arbitral Award.

3. A brief overview of the factual matrix for purposes of adjudicating this Appeal would be necessary, and is summarised below:-

a) The Appellant, Iqbal Trading Company ("***Iqbal***") is said to have been a registered supplier of meat with the armed forces for 15 years. The Respondents are essentially, the Government of India and various authorities relevant for procurement of meat for the armed forces and for convenience, collectively referred to as "***GOI***" – for all practical purposes, Respondent No. 5, the Commanding

Officer, Supply Depot ASC, Khadki, Pune is the decision maker on behalf of GOI while Respondent No. 6 is a Lt. Colonel who was the arbitrator in the proceedings;

b) In December 1994, GOI floated a tender inviting bids for supply of meat, fowl, eggs and fish for the period between April 1, 1995 and March 31, 1996 ("***Supply Period***");

c) Iqbal filed its bid for supply of meat of sheep and goats with varying prices for direct stores delivery (Rs. 2,799 for 100 kg); for 'meat on hoof' (Rs. 1,000 for 100 kg); and for per-animal skin (Rs. 25), which was accepted by GOI;

d) While the parties did not execute a separate formal agreement, Iqbal had executed various documentation in the course of making its bid, and indeed took various steps pursuant to its selection. These included paying over a security deposit of Rs. 2.20 lakhs ("***Security Deposit***"); supply of meat until May 28, 1995 (after which, it sought to be excused from supply on the premise of meat not being available in scale in the market and prices also having doubled); and raising of invoices at the rate contracted for the period in which supplies were made;

e) Eventually on *June 3, 1995*, Iqbal wrote to GOI stating that it would not be possible to supply meat at the contracted rate;

f) This led to the GOI issuing a show cause notice dated *July 1, 1995* and a letter dated *August 20, 1995* for forfeiture of the Security Deposit;

g) GOI did not desire to let the forfeiture be the sole sanction against Iqbal. It was desirous of making Iqbal pay for all the damages incurred by it owing to his failure to supply. Therefore, it pursued a claim in arbitration. Towards this end, on *April 4, 1996*, GOI appointed the arbitrator, an officer ranked as Lt. Colonel. The Learned Arbitral Tribunal entered upon reference on *April 8, 1996*;

h) Meanwhile, before the Learned Arbitral Tribunal was appointed, the 1996 Act had come into force with effect from *January 25, 1996*;

i) The GOI's claim in the arbitration was for a sum of Rs. ~35.42 lakhs, ostensibly and primarily based on the value of meat procured from the market upon the failure on Iqbal's part to supply meat, valued at Rs. 33.22 lakhs;

j) On *December 7, 1996*, the Learned Arbitral Tribunal dealt with various requests for information and material on which the claim is based. Many requests were rejected;

k) Iqbal took a stance that a formal contract in the name of the President of India had not been executed and a mere cyclostyled acceptance of the bid was the basis of the supplies made, and there was no formal -executed arbitration agreement;

l) Iqbal filed a suit in the local district court and obtained a status quo order which is said to have been vacated on *December 28, 1997* "because of Advocate's mistake";

m) Eventually, the Arbitral Award was passed on *January 16, 1998*, purportedly under the 1940 Act;

n) GOI filed Civil Suit No. 231 of 1998 ("***Suit 231***") seeking declaration of the Arbitral Award as a decree of the Court, as required under the 1940 Act. Iqbal filed Miscellaneous Application No. 383 of 1998 ("***MA 383***") challenging the Arbitral Award;

o) On *August 29, 2005*, seven years later, the Civil Judge, Senior Division, Pune passed a judgement holding that the 1940 Act had no application and returned Iqbal's MA 383, giving Iqbal liberty for 30 days to file an appropriate challenge under Section 34 of the 1996 Act before the District Court ("***Liberty Order***");

p) On *September 26, 2005* (i.e. within the period of 30 days for which liberty had been granted) , Iqbal filed MA 383 which was assigned a number as Miscellaneous Application No. 927 of 2005 ("***Section 34 Application***");

q) Eventually, on *October 21, 2011*, another six years later, the Impugned Order was passed holding all over again, that the Arbitral Award was in fact governed by the 1940 Act. The Section 34 Application was held to be hopelessly barred by limitation. The Section 34 Application was dealt with on merits as if it were an application under the 1940 Act and emphatic findings were returned holding that the arbitration agreement was in existence, and that the grounds for setting aside the Arbitral Award under the 1940 Act had not been attracted;

r) On *September 28, 2012*, the Impugned Order was stayed by a Learned Single Judge of this Court. Since then, the Appeal was stood over from time to time until it was taken up for final hearing and disposal with judgement being reserved on *May 6, 2025*.

Contentions of the Parties:

4. I have heard at length, Mr. S.K. Halwasia, Learned Advocate on behalf of Iqbal and Mr. Mohamedali M. Chunawala, Learned Advocate on behalf of GOI. I have examined the material on record with the assistance of their verbal submissions and their copious written notes on submissions.

5. Mr. Halwasia would submit on behalf of Iqbal, invoking Article 299 of the Constitution of India, that the requirement for a formal validly executed contract in the name of the President of India is necessary to bring into existence a contract with the GOI, which is absent in the instant case. He would submit that a suit was filed by Iqbal because of the absence of an arbitration agreement and indeed, a *status quo* order had also been passed. However, owing to the lapse on

the part of the advocate, the *status quo* order came to be vacated, and forthwith, the Arbitral Award was passed.

6. Mr. Halwasia demanded and obtained inspection of the original contracts relied upon by the GOI, in the course of the proceedings in this Appeal.

7. Mr. Halwasia would submit that after the Arbitral Award was made, both parties, *bona fide,* pursued their respective proceedings under the 1940 Act since the Arbitral Award purported to have been made under that legislation. This was squarely dealt with in the Liberty Order which dismissed Suit 231 as not being covered by the 1940 Act, and returned MA 383 for presentation within 30 days, under Section 34 of the 1996 Act. The Section 34 Application was indeed filed within the period of 30 days in terms of the liberty granted. Therefore, he would submit, it is untenable for the Impugned Order to contain a finding that the Section 34 Application is barred by limitation and that too on the premise that the 1996 would not apply, when the Liberty Order had attained finality.

8. Mr. Halwasia would submit that presenting officer on behalf of GOI was another Lt. Colonel who was senior to the arbitrator and

from the same department, which has vitiated objective and judicial adjudication of the arbitral proceedings. That apart, he would submit that the core evidence on which GOI's claim would have been based was simply not shared with Iqbal, resulting in a gross violation of basic principles of natural justice, thereby vitiating the arbitral proceedings.

9. The Impugned Order, Mr. Halwasia would submit, is diametrically contrary to the Liberty Order and inexplicably brings back the application of the 1940 Act and yet holds that Iqbal was hopelessly barred by limitation, without any explanation for wishing away the liberty granted in the Liberty Order and the timely filing of the Section 34 Application within the time given.

10. Mr. Chunawala, would submit on behalf of the GOI that the contention of non-existence of a written contract is untenable inasmuch as the very conduct of Iqbal by participating in the tender and providing all the documentation; providing the Security Deposit; supplying meat until it was unilaterally stopped; and raising of invoices, were all indicative of the parties having executed the contract. Indeed, Mr. Chunawala also ensured that given the efflux of time, not only an inspection of the original files in the records of the GOI was provided to

Mr. Halwasia but also copies to show execution on behalf of Iqbal were also shared.

11. Mr. Chunawala would defend the Impugned Order by contending that indeed the 1940 Act would apply since the contract had been executed before the 1996 Act and the cause of action i.e. the failure to supply meat, took place in 1995 well before the 1996 Act came into existence. He would also defend the Impugned Order by contending that indeed the Section 34 of the Act is barred by limitation and that there is no scope for showing any "sufficient cause" under the Limitation Act, 1963 for purposes of Section 34 of the 1996 Act. Once it is found that the challenge is barred by limitation, he would submit, it is not even necessary for this Court to enter upon a discussion on merits.

ANALYSIS AND FINDINGS:

12. Having examined the material on record, in my opinion it would be important to analyse specific facets of the matter to return my findings on the status and legal validity of the Impugned Order and the Arbitral Award.

1996 Act to Apply:

13. At the threshold, it is noteworthy that not only would the 1996 Act apply, but also the contention that the Section 34 Application could not have been filed, was untenable. The Liberty Order had attained finality. At the threshold, in my opinion, the Liberty Order was validly passed and declared the law accurately, namely, that the GOI was wrong in its contention that the 1940 Act would apply.

14. Not only was Suit 231 held to be not maintainable but also MA 383 was returned and allowed to be filed as an application under Section 34 of the Act within 30 days. In other words, evidently, the time spent in consideration and disposal of Suit 231 and MA 383 was a *bona fide* pursuit of remedies, primarily because it was the GOI's contention that the 1940 Act would apply, with the GOI-appointed Learned Arbitral Tribunal having purported to have passed the award under the 1940 Act. The GOI did not challenge the Liberty Order. It suited the GOI to proceed on the basis that under the 1996 Act, there was no longer any need for a Court's endorsement of an arbitral award. Yet, GOI seeks to defend the Impugned Order that holds that the 1940 Act applies.

15. Section 85(2)(a) of the 1996 Act makes it abundantly clear that the 1940 Act would not apply to proceedings that commenced after the 1996 Act came into force. The 1996 Act admittedly came into force on January 25, 1996. Under Section 21 of the Act, arbitration proceedings commence on the date on which request for that dispute to be referred to arbitration is received by the counterparty. The Learned Arbitral Tribunal was constituted by GOI on April 4, 1996, well after 1996 Act came into force.

16. Indeed, the Security Deposit of Rs. 2.20 lakhs had been forfeited before January 25, 1996. However, the GOI did not want to rest with that forfeiture. The GOI desired to pursue a claim for Rs. ~35.42 lakhs towards all the expenses (i.e. damages) incurred owing to Iqbal's failure to supply meat. It was the GOI that was the claimant in the arbitration proceedings. The Learned Arbitral Tribunal was appointed on April 4, 1996. The Learned Arbitral Tribunal entered reference on April 8, 1996, and gave notice to Iqbal – all after the 1996 Act came into force. Therefore, the commencement of the arbitral proceedings under Section 21 of the Act was clearly after the 1996 Act came into force. The Liberty Order deals with this facet accurately.

17. Therefore, the Impugned Order is wrong to have held that the 1940 Act would apply. It also had no basis to hold that the Section 34 Application was barred by limitation.

Standard of Review Applied:

18. The next issue that falls for consideration is whether the Impugned Order was at all accurate in how it considered the challenge. To begin with, since the standard of the 1940 Act was applied, there has been no application of the 1996 Act by the Learned District Judge. On this ground alone, the Impugned Order may be liable to be set aside.

19. However, it is well settled law that an appeal is a continuation of the original proceeding. This being an appeal under Section 37 of the 1996 Act, this Court must examine the Arbitral Award through the prism of Section 34, in much the same way the District Court ought to have examined it. This position is well summarised in ***Malluru Mallapa***[1] in the following words:

> *13. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a rehearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of*

1 Malluru Mallapa (D) through LRs vs. Karuvathappa & Ors. – (2020) 4 SCC 313

> *the appellant and therein all questions of fact and law decided by the trial court are open for reconsideration.* ***Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons.*** *The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions.*
>
> ***[Emphasis Supplied]***

20. Therefore, the scope of review of the Section 37 Court being identical and co-extensive with the scope of review that the Section 34 Court ought to have applied, it would be fruitful to extract the law declared by the Supreme Court in ***Konkan Railway***[2] in the following words:

> *14. Analysis:* ***At the outset, we may state that the jurisdiction of the Court under Section 37 of the Act, as clarified by this Court in MMTC Ltd. v. Vedanta Ltd., is akin to the jurisdiction of the court under Section 34 of the Act****.* ***Scope of interference by a court in an appeal under Section 37 of the Act****, in examining an order, setting aside or refusing to set aside an award,* ***is restricted and subject to the same grounds as the challenge under Section 34 of the Act****.*
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> ***[Emphasis Supplied]***

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2 Konkan Railway Corporation Ltd. Vs. Chenab Bridge Project Undertaking - (2023) 11 SCR 215

21. This is the standard that I have applied in considering whether the Arbitral Award is sustainable. Towards this end, I have applied the same scope of review that ought to have been applied by the Section 34 Court.

Natural Justice Denied:

22. Denial of natural justice is one of the grounds on which an arbitral award could be regarded as being in conflict with the fundamental policy of India. What is evident from the record is that the claim made by the GOI before the Learned Arbitral Tribunal was essentially a claim for damages. GOI's claim was that because Iqbal did not deliver the meat as contracted, in addition to the forfeiture of the Security Deposit, the GOI ought to be compensated by Iqbal with the expenditure incurred by GOI by having to procure meat from elsewhere. In the eyes of law, the essence of such a claim is one for damages. To award damages, at the very least, the Learned Arbitral Tribunal ought to have examined, analysed and reasoned the following issues in the Arbitral Award:

a) the price at which meat was actually procured by the GOI;

b) the difference between the price at which meat was actually bought and the price at which Iqbal had promised to supply meat;

c) an assessment of efforts that the GOI took to mitigate losses;

d) an assessment of the veracity of Iqbal's claim that meat of the scale required was not available owing to developments in the marketplace; and

e) an assessment of the veracity of Iqbal's claim that market price had doubled and that it was impossible to supply meat as committed.

23. Towards this end, the information and documents evidencing the claim ought to be considered as evidence and analysed in the Arbitral Award. It is also noteworthy that under Clause 21(g) of the contract between the parties, containing the arbitration agreement, it was explicitly agreed that where the disputed amount is Rs. 30,000 or more, "*the arbitrator shall give reasons for his award*". The Arbitral

Award is conspicuously silent on the reasons for allowing the claim of the GOI in toto. Whatever was claimed by the GOI has been awarded by the Learned Arbitral Tribunal. There is not a whisper of an analysis of the price actually paid by GOI for the meat it procured after Iqbal's failure to deliver meat; the veracity of Iqbal's reasons for being unable to supply; mitigating factors taken by the GOI; veracity of GOI's claim for damages; and not even an analysis of whether the claim was only for the difference between the price actually paid in the market and the price committed to by Iqbal.

24. The Arbitral Award reads like a summary judgement without any analysis whatsoever. It was obligatory as a matter of the contract under which the Learned Arbitral Tribunal was constituted, that the Arbitral Award should have been reasoned, explained and articulated in the Arbitral Award. This is entirely missing. The agreement contained an explicit stipulation that a claim of over Rs. 30,000 would need to be adjudicated with reasons. The GOI's claim was evidently a multiple of this threshold.

25. Worse, when Iqbal sought inspection of such data and material in order to defend against the claim, the Learned Arbitral

Tribunal actually denied supply of the information sought on a number of counts, and even held material information as not being relevant. For example, in response to Iqbal's request for copies of quotations obtained for supply of meat from the market, the Learned Arbitral Tribunal ruled in the record of proceedings held on December 7, 1996 that such information has no relevance to the adjudication. As regards information on the local market rates for the meat purported to have been bought by the GOI, the Learned Arbitral Tribunal ruled that such data could be obtained from the Civil Supplies Officer and no copies need be given in the course of the arbitral proceedings. Copies of supply orders on meat actually procured was denied on the premise that Iqbal was a defaulter contractor and no such information is required to be given. Vouchers for local purchases were also denied on the premise that such information was outside the purview of the arbitral proceedings.

26. Although the Arbitral Award eventually recorded Iqbal's contention that there was no availability of meat in the market on a bulk basis, Iqbal's request for information on availability of bulk meat in the market was refused on the premise that it was Iqbal's duty to deliver the meat as contracted and it was unnecessary to show whether the meat

had been available when the GOI claimed to have purchased it from the market. Even the quantification of meat actually procured compared with the orders placed on Iqbal was not provided and it was stated that this would be "discussed" during the proceedings. The Arbitral Award contains no discussion on the point.

27. I am afraid the approach of the Learned Arbitral Tribunal is untenable and tramples upon basic expectations of natural justice principles. Even a court martial for military personnel entails following the principles of natural justice, of course, in accordance with the rules stipulated therefor. In arbitral proceedings conducted over a commercial contract with a third party, where care has been taken to stipulate that the arbitrator is required to give reasons for disputes of a value of Rs. 30,000 and above, the Learned Arbitral Tribunal has not only refused to provide documents and information that would be relevant for adjudication of the issue but has also denied information about availability of meat in the market despite noticing that one of the grounds of defence was that meat in bulk had simply not been available.

28. Therefore, without delving into merits of the case, and focusing solely on the due process meant to be followed by the Learned

Arbitral Tribunal, what is writ large on the face of the record is that the Arbitral Award is in serious violation of principles of natural justice and has seriously prejudiced Iqbal by denying relevant information as well as by denying reasons in the Arbitral Award. To the extent that the Arbitral Award does not provide reasons, it is also contrary to the contract, since Clause 21(g) explicitly requires reasons to be provided.

Absence of Judicial Approach:

29. In the absence of providing the underlying documents to Iqbal, and in the absence of reasoning for the assessment and quantification of damages, and that too in the teeth of the requirement in Clause 21(g) of the arbitration agreement that reasons should be provided, the Arbitral Award appears to have been made without adopting a judicial approach. The following extracts from the ruling of the Supreme Court in ***Associate Builders***[3], are noteworthy:

> *29. It is clear that the juristic principle of a "judicial approach" demands that a decision be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would obviously not be a determination which would either be fair, reasonable or objective.*

3 Associate Builders vs. DDA – (2015) 3 SCC 49

30. *The audi alteram partem principle which undoubtedly is a fundamental juristic principle in Indian law is also contained in Sections 18 and 34(2)(a)(iii) of the Arbitration and Conciliation Act. These sections read as follows:*

> *"**18.Equal treatment of parties**.—The parties shall be treated with equality and each party shall be given a full opportunity to present his case.*
>
> ***
>
> ***34.Application for setting aside arbitral award**.—(1)****
>
> *(2) An arbitral award may be set aside by the court only if—*
>
> *(a) the party making the application furnishes proof that—*
>
> ***
>
> *(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**;"*

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32. *A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312] , it was held : (SCC p. 317, para 7)*

> *"7. ... **It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law**."*

In Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10 : 1999 SCC (L&S) 429] , it was held : (SCC p. 14, para 10)

> *"10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. **If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with**."*

33. *It must clearly be understood that **when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected**. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. **Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts**. In P.R. Shah, Shares & Stock Brokers (P) Ltd.v.B.H.H. Securities (P) Ltd. [(2012) 1 SCC 594 : (2012) 1 SCC (Civ) 342] , this Court held : (SCC pp. 601-02, para 21)*

> *"21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the*

> *evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act.* ***The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent****. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."*
>
> ***34. It is with this very important caveat that the two fundamental principles which form part of the fundamental policy of Indian law (that the arbitrator must have a judicial approach and that he must not act perversely) are to be understood.***
>
> ***[Emphasis Supplied]***

30. The only reasoning found in the Arbitral Award is about how the contract is indeed in existence since Iqbal had contended that a mere cyclostyled acceptance of the tender had been provided, to

contend that no contract containing an arbitration agreement was in existence. While there are plausible reasons on the issue of existence of the contract and the arbitration agreement, the Arbitral Award, falls woefully short of the standard contracted by the parties for adjudication of their disputes, and is a product of an abject denial of natural justice and the absence of a judicial approach.

31. Therefore, applying the standard of review provided for in Section 34 of the Act, in exercise of the jurisdiction under Section 37, which is an appellate jurisdiction over decisions of the Section 34 Court with the scope of review being identical to the Section 34 jurisdiction, the Arbitral Award deserves to be set aside. Iqbal has been able to prove that it was unable to present its case with the denial of basic factual ingredients that would be necessary to adjudicate the dispute, thereby attracting Section 34(2)(a)(iii) of the Act.

Conflict with Public Policy:

32. I also find that the Arbitral Award is in conflict with public policy for being in conflict with fundamental principles of natural justice by denying inspection of relevant material that would have assisted the Learned Arbitral Tribunal in conducting a fair assessment of a fact-

intensive question of assessment of damages. By failing to do so, the Learned Arbitral Tribunal has simply rendered a summary judgement by awarding whatever had been claimed against Iqbal by GOI.

33. In ***ONGC vs. Discovery***[4] the Supreme Court ruled on a situation where the arbitral tribunal had not permitted inspection of the record that would have enabled consideration of whether a veritable party was involved, before deciding a jurisdictional challenge under Section 16 of the Act. The Supreme Court ruled that denial of discovery and inspection of documents before ruling on jurisdiction was a fundamental error of law and led to denial of natural justice since vital evidence that could have assisted the arbitral tribunal in determination of the challenge under Section 16 was shut out – (paragraphs 73 and 74, including its sub-paragraphs set this out). To avoid further prolixity, I am not extracting these paragraphs. This is precisely the reasoning that weighs with me in holding that the Arbitral Award is against the fundamental requirement of law.

34. In the process, the Arbitral Award indeed betrays a lack of judicial approach in the adjudication entrusted to it. Assessment of damages necessarily involves adjudication of facts relating to the

4 ONGC vs. Discovery Enterprises (P) Ltd. – (2022) 8 SCC 42

damage purportedly suffered. The information sought and denied, as set out above, and the summary judgement on a question of damages, has resulted in the Arbitral Award being unsustainable and untenable.

Conclusion:

35. In the result, I find that the ***Impugned Order*** as well as the ***Arbitral Award*** are unsustainable and deserve to be ***set aside***. The captioned Appeal is therefore ***allowed***.

36. Having examined the conduct of both parties throughout the proceedings right since the commencement of arbitration, I am satisfied that no case is made out for award of costs.

37. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]