



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

% **Judgment reserved on: 09.04.2026**
Judgment pronounced on: 20.04.2026

+ O.M.P. (COMM) 416/2023 & I.A. 19782/2023
INDIAN SUGAR EXIM CORPORATION
LIMITEDPetitioner

Through: Mr. Jayant Mehta, Sr. Adv.
with Ms. Shruti Sabharwal, Ms.
Avlokita Rajvi, Mr. Lakshya
Khanna, Mr. Bakhshind Singh
and Ms. Sidhika Nagrath, Advs.

versus

SAKUMA EXPORTS LIMITEDRespondent

Through: Mr. Rajeeve Mehra, Sr. Adv.
with Mr. V Anush Raajan, Ms.
Shreya V Mehra and Mr.
Pradyumn Yadav, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

1. The petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') is filed challenging the arbitral award dated 09.06.2023.
2. The brief facts are that the petitioner is engaged in the export of sugar. The respondent/claimant is in the business of commodity trading. Vide notification dated 28.09.2018 minimum export quota in respect of each sugar mill was notified, including the sugar mills of Uttar Pradesh. Thirteen contracts were executed between the parties to the *lis*. The present dispute germane from contract dated 10.05.2019



(hereinafter referred to as 'Morna Contract'), whereunder the petitioner had to supply 8,419 MT (+/- 5% on seller's option) of Indian white sugar from the quota of Morna Sugar Mill. The delivery was to be completed before 31.05.2019. The respondent on 13.05.2019 entered into a contract with a foreign buyer-R&R Foodstuff Trading LLP, UAE for supply of 8,600 MT of sugar (hereinafter 'export contract') and shipment was to be completed by 30.06.2019.

2.1 It is the case of the respondent that due to failure of the petitioner to supply sugar the export contract could not be performed. The foreign buyer vide notice dated 08.07.2019 claimed damages of USD 645,000 for non-supply of sugar, which after negotiations were reduced to USD 498,800. The foreign buyer issued a debit note dated 25.07.2019 on the respondent. Vide communication dated 02.08.2019, the respondent requested the petitioner to supply the sugar within seven days. On failure of the petitioner to supply sugar, the damages claimed by the foreign buyer from the respondent were passed to the petitioner by issuing a debit note dated 08.08.2019 to the tune of Rs.3,61,20,000/-. The petitioner issued credit note no.21 dated 17.03.2020 for rupees two crores but it was withdrawn on 18.03.2020.

2.2 The contract between the parties provided for dispute resolution through arbitration and the respondent invoked arbitration on 14.12.2020 by issuing notice under Section 21 of the Act. The proceedings culminated in the impugned award. The arbitral tribunal (for short 'tribunal') held that the Morna Contract was neither novated nor substituted and that the petitioner failed to supply 8,419 MT of



sugar. The respondent under Section 73 of the Indian Contract Act, 1872 (for short 'Contract Act') was awarded damages of Rs.1,40,00,000/- for loss of profit and rupees two crores towards the claim raised by the foreign buyer against the respondent due to the non-performance of the export contract. Interest at the rate of nine percent per annum was granted.

3. Learned senior counsel for the petitioner contends that there was no co-relation between the Morna Contract and the export contract. In the alternative it is argued that no steps were taken by the respondent to mitigate the losses. The quantification of losses by the tribunal on guess work by deducting 50% towards expenses is in violation of Section 73 of the Contract Act. Reliance is placed upon the decision of the Supreme Court in *Unibros v. All India Radio* 2023 SCC OnLine SC 1366, the decisions of Division Bench of this Court in *Delhi Transco Limited v. KEC International Limited* 2025 SCC OnLine Del 3736, *Union of India v. Ahluwalia Contracts (India) Limited* 2025 SCC OnLine Del 4066, *Nandi Infratech Pvt. Ltd. v. R.K. Bararia & Ors.* 2024 SCC OnLine Del 4287 and the decisions of Single Bench of this court in *Steel Authority of India Ltd. v. Great Eastern Shipping Company Ltd.* 2017 SCC OnLine Del 7269, *GTM Builders & Promoters Pvt. Ltd. v. Sneh Developers Pvt. Ltd.* 2018 SCC OnLine Del 9653, *India Yamaha Motor Pvt. Ltd. v. Divya Ashish Jamwal* 2019 SCC OnLine Del 6912 to contend that damages including loss of profit is not to be awarded in the absence of proof of actual loss and cannot be based on assumptions.



3.1 With regard to the damages of rupees two crores, it is submitted that the export contract was never disclosed to the petitioner. It is contended that no evidence was produced to show that the export order was implemented and that the foreign buyer had paid mandatory 10% advance in pursuance thereof. The contention is that the issuance of a debit note by the foreign buyer by itself is not proof of loss and the respondent failed to prove that the amount claimed by the foreign buyer was either paid or adjusted against due payments. The grievance is that the tribunal ignored relevant evidence in concluding that the petitioner by issuing credit note no.21 agreed to compensate damages to the tune of rupees two crores. The submission is that the respondent despite twice being asked for, failed to produce documents to substantiate the damages claimed of Rs.3,61,20,000/-. The emphasis is that the credit note dated 17.03.2020 was issued under a mistaken belief and was withdrawn on 18.03.2020 upon realising that the claim made by the respondent was not backed by supporting documents.

3.2 It is canvassed that the tribunal erred in holding that the credit note no.21 was issued with regard to the Morna Contract. The cross-examination of CW-1 is relied upon wherein it was stated that the debit note of Rs.3,61,20,000/- was for all losses. The contention is that 'all losses' included the claim for loss of profit as well as defaults in supply, yet two separate claims were made.

3.3 Lastly, it is argued that from the email of the petitioner dated 20.05.2019 and the reply of the respondent thereto asking for factory wise quota proved that the Morna Contract was novated. The submission is that as per the terms of the contract the respondent had



supplies from the sugar mills were meant for export and communications included details of docking of ships for loading of the vessel. The submission is that from the email dated 02.08.2019, it is evident that the petitioner lifted 4,819 MT of sugar from Morna Sugar Mill but with a dishonest intent did not supply it to the respondent. The finding of the tribunal that there was an admission of the petitioner to compensate rupees two crores towards the loss is defended by stating that the conclusion is based on the material on record and there cannot be re-appreciation of evidence under Section 34 of the Act. It is argued that the award is reasoned and the view taken by the arbitrator is plausible one.

4.2 It is submitted that the challenge to finding that there was no novation of the Morna Contract is an attempt that the court should re-appreciate the evidence which is not permissible under Section 34 of the Act. Reliance is placed upon the decisions of the Supreme Court in *Associate Builders v. Delhi Development Authority* (2015) 3 SCC 49, *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India* (2019) 15 SCC 131, *Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.* (2022) 1 SCC 131 and *Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum, Rajgurunagar* (2022) 4 SCC 463 to buttress the contention that the court u/s 34 of the Act can interfere only on grounds of patent illegality, perversity or if the award is against the public policy of India. Reliance is placed on *The State of Jharkhand & Ors. v. HSS Integrated SDN & Ors.* 2019 9 SCC 798, *UHL Power Company Ltd. V. State of Himachal Pradesh* 2022 4 SCC 116,



Konkan Railway Corporation Limited v. Chenab Birdge Project Undertaking 2023 9 SCC 85 and ***S.V. Samudram v. State of Karnataka & Ors.*** 2024 SCC OnLine SC19 to submit that where two views are possible the court cannot interfere with the plausible view taken by the arbitrator. The decisions in ***Anglo American Metallurgical Coal Pty. Ltd. v. MMTC Ltd.*** 2021 3 SCC 308 and ***Reliance Infrastructure Ltd. v. State of Goa*** 2024 1 SCC 479 are relied to contend that the arbitrator is the master of the quantity and quality of evidence.

5. Heard learned senior counsel for the parties at length and perused the relevant record with their able assistance.

6. The parties to the *lis* entered into a contract for supply of 8,419 MT of white sugar from the quota of Morna Sugar Mill. The source of supply was subsequently changed and supplies were to be made from Gajraula, Baghat and Ramala (hereinafter referred to as 'three mills'). The tribunal examined emails dated 20.05.2019, 21.05.2019 and 23.05.2019 and concluded that the Morna Contract was not novated. The Morna Contract was for supply of 8,419 MT of sugar whereas the supply from the three mills was only of 5,321 MT and no evidence was produced to show reduction of quantity of Morna Contract. Further that the emails relied upon were not indicating novation of the Morna Contract.

7. The tribunal relied upon Ex. RW-1/C10, RW-1/C15 and RW-1/C10 to conclude that the subsequent three contracts for supply of 5,321 MT of sugar from three mills were independent contracts with no reference to the Morna Contract or that the supplies was in



pursuance thereof. The subsequent contracts were of different dates and had no proximity of time with each other. The tribunal rightly held that mill-wise details sought by the respondent in response to the email of the petitioner stating that the supply for the Morna Contract shall be made from other three sugar mills is not an evidence of novation of the Morna Contract. The tribunal concluded that non-payment of 100% advance was not helping the case of the petitioner. CW-1 in cross-examination stated that advance payment was not made in view of the ongoing payment flows across contracts. The petitioner failed to discredit the deposition of the witness by placing on record that advance payment was being insisted upon in respect of other contracts.

8. Be that as it may, under Section 34 of the Act the award cannot be set aside for every factual or legal error. The view arrived at by the tribunal is a plausible one and does not suffer from perversity or patent illegality.

9. The respondent claimed that the difference between the purchase price and the export price was the loss suffered. The tribunal rightly took note of the fact that the difference between the two prices shall include the cost of freight and other expenses. The Morna Contract was at ex-mill rate whereas the export contract was on CNF basis and there was no quantification of expenses by the respondent. On failure of respondent to prove the net loss figure the claim for damages of Rs.3,80,79,137/- cannot be awarded.

10. The tribunal on considering the lack of evidence to prove the actual loss proceeded to quantify the loss by deducting 50% from the



gross profit, though it is the case of the respondent that in fact the deduction of 65% was made. The present is not a case where the expenses could not have been proved, more so when the respondent was engaged in export business and was exporting sugar in pursuance of other contracts. No books of accounts were produced to prove the percentage of expenses incurred for exporting sugar. There cannot be a quarrel with the proposition that for quantification of damages certain degree of guesswork is involved but it cannot be stretched to the extent that in the absence of evidence damages can be assessed solely on conjecture. The reliance by the respondent on decision of this court in case of *Cobra Instalaciones Y Servicios, S.A. & Shyam Indus Power Solution Pvt. Ltd.* (supra) is of no avail. In that case, loss suffered was not in issue but exact contribution of loss attributable to each contract was not possible and it was held that so long as there is material on record that damage was suffered the arbitrator has leeway to employ honest guesswork.

11. The law is well settled that for claiming damages under Section 73 of the Contract Act, actual loss or damage suffered is to be proved and only in cases where such proof is not possible, a honest genuine estimate may be made. In the case in hand, neither the actual damages were proved nor it was a case where damages/loss cannot be proved yet damages were awarded on sheer guesswork. The award of damages is vitiated being contrary to public policy and is set aside.

12. Having upheld that the Morna Contract was not novated, the fact remains that the petitioner failed to supply 8,419 MT of sugar to the respondent. The case of the respondent is that for failure to comply



with the export order the foreign buyer issued a debit note of Rs.3,61,20,000/- and this figure was arrived at after negotiations with the foreign buyer thereby reflecting an attempt by the respondent to mitigate the losses. Further that the debit note (Ex.CW-1/14) for Rs.3,61,20,000/- was raised on the petitioner pursuant to the debit note of the foreign buyer. After negotiations the petitioner issued three credit notes aggregating to Rs.3.83 crores but on the next day the credit notes were withdrawn. The tribunal held that the credit note no.21 of rupees two crores was issued against the debit note of Rs.3,61,20,000/- and other two credit notes were not related to the Morna Contract. The contention of the learned senior counsel for the petitioner that the credit note no.21 was not for the Morna Contract is substantiated by the email dated 16.03.2020. The relevant portion is reproduced below:

“To,

Saurabh Sir

As discussed on phone, we agree to give you credit notes of Rs. 3.83 Crores as per details given below;

- 1. UP default: 2 Cr.*
- 2. Sakuma Interest: 1.59 Cr.*
- 3. UP Shipment Interest: 0.23 Cr*

Total: Rs. 3.83 Cr.

Please note we have yet to receive from you Rs. 4.84 Cr. As per account statement sent to Hiral Madam on 13.03.2020,



copy attached. There are other 2 points for which reco is pending as per statement enclosed.”

13. It is evident that rupees two crores was attributed to ‘UP default’ and not specifically to the Morna Contract. It cannot be overlooked that there were thirteen contracts between the parties including Gajraula, Sarsawa, Najibabad, Morna, Belrayan, Budaun, Semikhera, Bilaspur, Puranpur, Nanauta and Sathiaon which pertained to sugar mills in Uttar Pradesh.

14. The credit note no.21 refers to ‘Sugar Export Claim being the amount payable for non-delivery of sugar from UP Federation Mills to Sakuma Exports Limited’. It is relevant to note that the credit note refers to non-supply of sugar by the mills of Uttar Pradesh and not to a mill i.e., Morna Sugar Mill. Moreover, in the arbitration a failed attempt was made by the respondent to raise the issue of short supply of sugar under other contracts.

15. Another aspect is that the tribunal relied upon the gap of seven months between the issuance of the debit note dated 08.08.2019 and the credit note dated 17.03.2020, to hold that the decision to issue credit note cannot be said to have been taken in haste. The relevant evidence on record was not considered by the tribunal that on the very next day of issuance of the credit note it was cancelled. The communication cancelling the credit note stated that perusal of the record revealed that the documents or relevant material forming the basis of the claim were not provided by the respondent and it would not be possible to honour the credit note no.21 dated 17.03.2020. The letters on record dated 18.03.2020 and 16.07.2020 also demonstrate



that the petitioner consistently sought supporting documents and it is admitted by the respondent that the documents were not furnished till June, 2020. It would be relevant to note that the tribunal has not recorded a finding that the documents supplied in July, 2020 even prima facie proved the basis for issuance of a debit note.

16. CW-1 in cross-examination stated that payments and adjustments in export transactions as per practice are made through debit and credit notes and that the foreign buyer had withheld the amount of debit note. It would be pertinent to note that in a double entry accounting system, every debit note corresponds with a credit note for payment or adjustment of the amount. There is nothing on record to prove that the respondent by issuing credit note had paid the amount of the debit note issued by the foreign buyer or was adjusted against due amount and thereby suffered the loss.

17. The finding of the tribunal that the respondent is not entitled to damages of Rs.3,61,20,000/- and only to rupees two crores is unchallenged. It is relevant to note that in the arbitral award the reduction of the claim from Rs.3,61,20,000/- to rupees two crores is not on the basis of proof of actual loss but by holding that the petitioner by issuing credit note no.21 admitted the claim of rupees two crore and the respondent accepted the credit note no.21 without protest. The conclusion recorded by the tribunal that there was an admission by the petitioner to compensate rupees two crores towards damages is perverse and as discussed above is recorded ignoring the relevant evidence on record.



18. There is no quarrel with the propositions that scope of interference under Section 34 of the Act is limited and that where two views are possible the court cannot interfere with the plausible view taken by the tribunal for which judgments are cited by the respondent. However, in the case in hand for reasons mentioned above the award suffers from patent illegality and perversity.

19. The petition is allowed. The award is set aside. Pending applications stand disposed of.

AVNEESH JHINGAN, J

APRIL 20, 2026/Ch

Reportable:-**Yes**