IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 15.04.2021

\+ **O.M.P. (COMM) 79/2021**

MEGHA ENTERPRISES AND ORS. ..... Petitioners

versus

M/S HALDIRAM SNACKS PVT. LTD. ..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr P. D. Gupta, Sr. Advocate with Mr Dhruv Gupta and Mr Harshil Gupta, Advocates.

For the Respondent : Mr Varun Goswami, Mr Naveen Grover and Ms Barkha Khattar, Advocates.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter the 'A&C Act') impugning an arbitral award dated 26.10.2020 rendered by an Arbitral Tribunal constituted by a Sole Arbitrator, Justice (Retd.) Dr Mukundakam Sharma, a former Judge of the Supreme Court of India. The arbitration was conducted under the aegis of Delhi International Arbitration Centre (DIAC) and its Rules.

2. Petitioner no.1 (hereinafter 'Megha') is a partnership firm and petitioner nos. 2 to 5 are its constituent partners. Megha is, *inter alia*, engaged, in the business of trading Crude Palm Oil (edible grade). The subject disputes arise out of two agreements dated 02.02.2013 and 25.02.2013, which were entered into between Megha and M/s Coral Products Pvt. Ltd. (hereinafter 'Coral') for sale and purchase of Crude Palm Oil on a High Seas Sale Basis. In terms of the agreement dated 02.02.2013, Coral agreed to sell 1470 MT of Crude Palm Oil of Indonesian origin on board the vessel, MT. Prosperity V.01/13, with Kakinada as the port of delivery, at the rate of ₹46,600/- per MT. In terms of the Agreement dated 25.02.2013, Coral agreed to sell 2500 MT of Crude Palm Oil on board the vessel, MT. Golden Blessing V.1301, with Kakinada as the port of delivery, at the rate of ₹48,750/- per MT.

3. Coral issued two separate invoices dated 02.02.2013 and 25.02.2013 for amounts of ₹6,85,02,000/- and ₹12,18,75,000/- respectively for sale of Crude Palm Oil, in terms of the respective agreements as mentioned above. Thus, according to Megha, an aggregate sum of ₹19,03,77,000/- (Rupees Nineteen Crores Three Lacs Seventy Seven Thousand only) became due and payable by Megha to Coral.

4. In terms of a Scheme of Amalgamation under Section 391-394 of the Companies Act, 1956, Coral merged with the respondent company (hereinafter 'Haldiram'). The said Scheme of Amalgamation of Coral with Haldiram, was approved by this Court by

an order dated 25.04.2014 passed in Company Petition No. 66/2014. In terms of the said Scheme of Amalgamation, the assets of Coral stood vested with Haldiram. These included the amount receivable from Megha in respect of the two High Sea Sale Agreements in question.

5. According to Haldiram, Megha took delivery of the Crude Palm Oil at the port of delivery, Kakinada, on the basis of the documents executed by Coral. Haldiram claims that the aforesaid amount of ₹19,03,77,000/- (Rupees Nineteen Crores Three Lacs Seventy Seven Thousand only) remained outstanding as Megha failed and neglected to pay the same.

6. Accordingly, by a notice dated 18.05.2016 addressed to the petitioners, Haldiram invoked the Arbitration Clauses under the respective High Sea Sales Agreements in question, and sought the consent of the petitioners to appoint a Sole Arbitrator. Haldiram suggested names of three former judges of this Court, one of whom could be appointed as a Sole Arbitrator. In its notice, Haldiram claimed an amount of ₹19,03,77,000/- with interest at the rate of 18% per annum, which according to Haldiram was in terms of the said Agreements as well as the custom and usage of trade.

7. Megha responded to the said notice by a letter dated 03.06.2016. It denied its liability to pay the amount as claimed by Haldiram and also declined to give consent for the appointment of an

Arbitrator. Megha further claimed that the Arbitration Clause was not binding on any of the parties.

8. In the aforesaid circumstances, Haldiram filed a petition under Section 11(6) of the A&C Act, being ***ARB.P. 421/2016: Haldiram Snacks Pvt. Ltd. v. Megha Enterprises and Anr***., seeking appointment of a Sole Arbitrator to adjudicate the disputes in respect of the two High Sea Sale Agreements in question. The said petition was allowed by this Court and by an order dated 18.04.2017, this Court referred the parties to DIAC with the direction for DIAC to appoint an Arbitrator in accordance with the provisions of the A&C Act and its Rules.

9. Haldiram filed its Statement of Claims on 05.06.2017 claiming (a) ₹19,03,77,000/- as the amount outstanding against the sale of Crude Palm Oil (Claim No.1); (b) interest at the rate of 18% per annum from the date the amount became due till the date of filing of the Statement of Claim quantified at ₹14,56,38,405/- (Claim No.2); (c) *Pendente lite* and future interest at the rate of 18% per annum from the date of filing of the claim till payment of the award (Claim No.3); and (d) costs of litigation (Claim No.4).

10. The petitioners filed their Statement of Defence raising several contentions including that Haldiram's claims were barred by limitation. The petitioners contended that the Arbitration Clause was invoked on 18.05.2016, which was beyond a period of three years from the date on which the amounts became payable under the

Agreements in question. In terms of the Agreements, the payments were to be made within ten days of the date of invoices/agreements and thus, the period of three years from the respective invoices expired on 12.02.2016 and 07.03.2016. The petitioners further claimed that Megha had supplied the Crude Palm Oil to M/s Good Health Agro Tech (P) Ltd. and M/s Nikhil Refineries (P) Ltd. at the instance of Haldiram, as Haldiram intended to fudge its balance sheets and show profits from its business under the brand name 'Haldiram'. The petitioners claimed that Megha had not received any amount from the said companies and further, the same had become a NPA (Non-Performing Asset). The petitioners further claimed that Haldiram had received consideration for the said products directly from M/s Good Health Agro Tech (P) Ltd. and M/s Nikhil Refineries (P) Ltd. but had not given credit for the said amounts to Megha.

11. Considering the pleadings, the Arbitral Tribunal framed the following issues:

> "1. Whether this Tribunal has no territorial jurisdiction to try and decide the present proceedings?
>
> 2. Whether the claims of the Claimant are barred by law of limitation?
>
> 3. Whether the Claimant has already received its entire dues as claimed in the present proceedings and if so whether there is accord and satisfaction?
>
> 4. Whether the Claimant is entitled to claim and receive an amount of Rs. 19,03,77,000.00 or any part thereof and if so what amount?

5. In the event, the aforesaid issue is answered in favour of the Claimant, whether the Claimant would also be entitled to claim an amount of Rs. 14,56,38,405.00 towards interest @ 18% per annum till the date of filing the Claim Petition?

6. Whether the Claimant would also be entitled to claim interest on the principal amount, if found due and payable towards pendente lite and future interest and if so at what rate and for which period?

7. Whether the Claimant is also entitled to payment of cost and if so, for what amount?"

12. The Arbitral Tribunal rejected the contention that it had no territorial jurisdiction to decide the claims raised by Haldiram. It noted that the Arbitration Clause under the Agreements expressly provided that the arbitration would be subject to the jurisdiction of Courts at Hyderabad/Delhi. It also noted that the two Agreements in question had been engrossed on stamp paper purchased in Delhi. The Arbitral Tribunal further held that the parties had specifically agreed that the place of arbitration would be Hyderabad or Delhi and thus, both Courts at Delhi as well as Hyderabad would have jurisdiction in respect of the arbitral proceedings. The Arbitral Tribunal, after evaluating the material/evidence brought on record, rejected the defence that Haldiram had already received the entire consideration for the sale of Crude Palm Oil in terms of the High Sea Sale Agreements in question.

13. The Arbitral Tribunal rejected the contention that the claims made by Haldiram were barred by limitation and accordingly, awarded

a sum of ₹19,03,77,000/- as due and payable by the petitioners to Haldiram. The Arbitral Tribunal also awarded interest at the rate of 9% from 01.04.2013, that is, the date from filing the Statement of Claims till the recovery of the said amount. In addition, the Arbitral Tribunal also awarded costs of ₹5,00,000/- in favour of Haldiram.

Submissions

14. Mr Gupta, learned Senior counsel appearing for the petitioners has assailed the impugned order on the solitary ground that Haldiram's claim is barred by limitation and the Arbitral Tribunal's conclusion to the contrary, is patently illegal. He submitted that the High Sea Sale Agreements in question, were entered into, on 02.02.2013 and 25.02.2013. The invoices for the same were also issued on the same date; that is, Invoice dated 02.02.2013 for 1470 MT of Crude Palm Oil (edible grade) for a sum of ₹6,85,02,000/- and Invoice dated 25.02.2013 for 2500 MT of Crude Palm Oil (edible grade) for a sum of ₹12,18,75,000/-. In terms of Clause 11 of the High Sea Sales Agreement, which are identically worded, the payment for the same was required to be arranged on expiry of ten days from the date of the Agreement. Thus, undisputedly, the payment of ₹6,85,02,000/- against the Invoice dated 02.02.2013 was to be paid by 12.02.2013 and the payment of ₹12,18,75,000/- against the Invoice dated 25.02.2013 was required to be paid by 07.03.2013. The notice invoking arbitration was issued on 18.05.2016. Mr Gupta contended that since the said notice was beyond the period of three years from the agreed dates of payment, Haldiram's claim was barred by limitation. He contended

that the Arbitral Tribunal had grossly erred in accepting that during the said period the respondent had issued any acknowledgement of the amount payable under the said invoices. It is stated that the Arbitral Tribunal had accepted Haldiram's contention that one Mr Avneesh Agarwal of Coral had received the letter dated 31.05.2013 acknowledging the said liability. He contended that the said letter was not signed and therefore, could not have been considered as an acknowledgement under Section 18 of the Limitation Act, 1963 (hereinafter 'the Limitation Act'). He submitted that the said letter purportedly did not bear any signatures but it was only scribbled 'for Shekhar' against the authorized signatory. He submitted that there was no evidence that any person named Shekhar was employed by Megha. He submitted that the Arbitral Tribunal had erred in accepting that the said letter had been sent by electronic mode as there was no evidence to the aforesaid effect. He also submitted that the said letter could not be relied upon as the necessary affidavit of evidence under Section 65B of the Evidence Act, 1872 was not submitted.

15. Next, Mr Gupta contended that an email dated 04.06.2013 purportedly forwarding the balance confirmation letter dated 31.05.2013, was purportedly forwarded by one Mr Mohan Maganti of M/s KGF Cottons Pvt. Ltd. to one Avneesh Agarwal. He stated that the said communication could not be construed to extend the period of limitation as it had not been sent by any of the constituent partners of Megha (petitioner nos. 2 to 5). There was no evidence that Mr Mohan Maganti was an employee of Megha. Further, the email itself indicated

that it was sent on behalf of M/s KGF Cottons Pvt. Ltd and a communication by a third party (in this case, an incorporated company) could not be considered as an acknowledgement by the petitioners or on their behalf.

16. Mr Goswami, learned counsel appearing for Haldiram countered the aforesaid submissions. He submitted that the Arbitral Tribunal had carefully examined the evidence on record and concluded that Megha had acknowledged the debt owed against the two Invoices in question. He submitted that the Arbitral Tribunal had seen the email dated 04.06.2013 as well as the letter dated 31.05.2013 attached therewith. He contended that the Arbitral Tribunal had also examined the question whether the acknowledgement dated 31.05.2013 required to be signed. The Arbitral Tribunal had followed the decision of the Karnataka High Court in ***Sudarshan Cargo Pvt. Ltd. v. Techvac Engineering Pvt. Ltd.: 2014 Company Cases 71***, wherein the Court had held that emails can be construed and read as due acknowledgment of debt and, the same would meet the parameters as laid down under Section 18 of the Limitation Act.

Reasons and Conclusion

17. It is apparent from the above that the petitioner's case is founded on the assumption that the Arbitral Tribunal has grossly erred in (a) evaluating the evidence led in the case; and (b) misapplying the provisions of Section 18 of the Limitation Act.

18. The relevant extract of the impugned award setting out the reasoning of the Arbitral Tribunal on the issue of limitation is set out below:-

> "29. The Claimant relies on the ledger account of Megha Enterprises wherein an outstanding balance of Rs.19, 03,77,000/- is shown still outstanding in terms of the aforesaid ledger account. My attention was also drawn to the email dated 04.06.2013 sent by Mohan Maganti with his email address mentioned therein as mohan@goodhealthgroup.com to Avneesh Agarwal, representative of the Claimant. In order to appreciate the exact nature of admission made therein as alleged by the Claimant, I extract the entire contents of the said email hereunder:
>
> *"From: Mohan Maganti [mail to: mohan@goodhealthgroup.com]*
> *Sent: Tuesday, June 4, 2013 4:56PM*
> *To: Avneesh Agarwal*
>
> *Subject: Kind Attn Mr Avneesh Agarwalji- Please find enclosed Balance Confirmation letters of KGF Cottons P.Ltd and Megha Enterprises as* on *31.03.2013.*
>
> *Kind Attn Mr Avneesh Agarwalji- Please find enclosed Balance Confirmation letters of KGF Cottons P. Ltd and Megha Enterprises as on 31.03.2013.*
> *Please refer your balance confirmation letters and email from Shri Mohit dua asking us our balance confirmation letters, Please find enclosed Balance Confirmation letters in the Books of Megha Enterprises and KGF Cottons P,Ltd.*
> *Thank You,*
>
> *for K.G.F. COTTONS PVT. LTD.*

M. Mohan"

30. The said document was sent by Mohan Maganti to the Claimant attaching therewith the balance confirmation letter of KGF Cotton Pvt. Ltd. and Megha Enterprises as on 31.3.2013. The email further stated that the balance confirmation letter in the books of Megha Enterprises is enclosed with the said email. The balance confirmation letter is marked 'Y' which is dated 31.5.2013. That letter is in the letter head of Megha Enterprises and addressed to the Director of M/s Coral Products Pvt. Ltd. The contents of the said letter are also extracted hereunder:

MEGHA ENTERPRISES

Date: 31st May '13.

To,
The Director,
M/s. Coral Products Pvt. Ltd.
R0:2032-34, Katra, Lachhu Singh
Chandni Chowk,
Delhi-110006.

Dear Sir,

Sub: Confirmation of Credit Balance of Rs. 19,03,77,000/- (Due to you)
As on 31.03.2013-Reg.

As part of our Closure of Our Accounts and Audit for the Assessment year 2013-14. We, do hereby inform/confirm that the balance amount Due to your company is Rs.19.03.77,000/- (In Words: Nineteen Crores Three Lakhs Seventy Seven Thousand Only) as reflected in our books of account closing as on 31.03.2013.
Please confirm the Balance with in 7 days on the receipt of the letter and notify the discrepancy if any. If

no communication is received from you we assume that the said balance is confirmed by you.

Thanking you,

Yours faithfully,

for MEGHA ENTERPRISES.,

Sd/-

(Authorised Signatory)

31. This document clearly indicates that in the said letter Megha Enterprises, the Respondent has clearly confirmed that the balance amount due to the Claimant company is Rs.19,03,77,000/- as reflected in the books of account of Megha Enterprises as on 31.3.2013. This letter was attached with the electronically generated mail and is also a part of the electronically generated documents.

32. The email dated 04.06.2013 was sent to M/s Coral Products Pvt. Ltd. through Shri Avneesh Agarwal by Shri Mohan Maganti from email ID being mohan@gpodhealthgroup.com. M/s Good Health Agro Pvt. Ltd. is a part of a group of companies including the Respondent No.1. This is admitted position by the witness of the Respondent in cross examination (Q.No.11). He has also admitted that M/s Good Health Agrotech Pvt. Ltd. has email accounts with one of the domain name "goodhealthgroup.com". He evaded to answer the specific question as to whether Shri Mohan Maganti was an employee of M/s Good Health Agrotech Pvt. Ltd. When asked he replied in his answer to question No.12 in cross examination that he did not remember. Therefore, he did not specifically deny the suggestion that Shri

Mohan Maganti was not an employee of M/s. Good Health Agrotech Pvt. Ltd. The entire evidence when read in proper perspective, it makes it amply clear that the aforesaid email dated 04.06.2013 was sent by and on behalf of the Respondent admitting and acknowledging the balance confirmation of Rs.19,03,77,000/-, the amount which is specifically mentioned in the letter dated 31.05.2013 issued in the letterhead of the Respondent. This letter was an attachment to the electronically generated email dated 04.06.2013.

33. Both the documents, therefore; marked 'Y' and 'Z' which is the email dated 04.06.2013 are found to be admissible in evidence in terms of the various provisions including Section 4 of the Information and Technology Act. In this regard reference can be made to the decision of the Karnataka High Court in the case of Sudarsan Cargo Pvt.Ltd. vs. M/s Techvac Engineering Private Limited, reported in (2014) Comp Cases 71. The following paragraphs being relevant to the issue in question are extracted:-

> *"10. Section 18 does not provide that acknowledgement has to be in any particular form or to be express. Even a statement which, if literally construed, does amount to an acknowledgment, may be sufficient, if it implies an admission of liability. A narrow interpretation should not be put* on *what constitutes acknowledgement under Section 18. An acknowledgement is an admission by the debtor to the creditor indicating that he owes money to the creditor. The acknowledgement requires to be examined in the light of surrounding circumstances by an admission that the writer owes a debt. Generally speaking, a literal construction of the statement* on *which the*

acknowledgement is sought to be founded should be given. If there is an admission of fact of which the liability in *question is a necessary consequence, it should be taken as an acknowledgement. The term 'acknowledgement' has to be construed in its plain literary sense. In Oxford Dictionary II Edition, it has been defined as* under:

> *"acknowledgement" - acceptance of the truth or existence of something; recognition of the importance or quality of something; the expression of gratitude or appreciation for something; the action of showing that one has noticed someone or something; a letter confirming receipt of something."*

In Black's Law Dictionary 9th Edition, it has been defined as:

> *"acknowledgement" - a recognition of something has been factual; an acceptance 'of responsibility; the act of making it known that one has received something; a formal declaration made in the presence of an authorised officer, such as a Notary public, by someone who signs a document and confirms that the signature is authentic.*
>
> *"acknowledgement of debt" - recognition by a debtor of an existence of a debt; an acknowledgment of debt interrupts the running of prescription''*

If the intention of the parties is to acknowledge a pre-existing debt within the period of limitation, then it is an acknowledgment under the Limitation Act, 1963.

An unconditional acknowledgment implies a promise to pay because that is *the natural inference if there is no other contrary material."*

"14. Section 18 of the Limitation Act prescribes that acknowledgement of liability if made in writing before the expiration of the prescribed period, a fresh period of limitation has to be computed from the time when the acknowledgement was so signed. Thus, essential requirements of a valid acknowledgment under Section18 of the Limitation Act, 1963 are:

(a) It must be in writing;

(b) Must be signed by the party against whom such right is claimed;

The word 'writing' employed in Section 18 refers to paper based traditional manual writing."

> *"15. However, the Information Technology Act, 2000 (hereinafter referred to as 'IT Act, 2000' [or brevity) provides for legal recognition [or transactions carried out by means of electronic data/electronic communication which involve the use of alternatives to paper based methods of communication and storage of information. The IT Act, 2000 came in to force with effect from 17.10.2000. On account of advanced technology taking giant steps and the business transactions being conducted through the use of digital technology and communication systems, said Act came into force. It also requires to be noticed that on account of the business community as well as individuals increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents and tor facilitating*

e-commerce and e-governance, the above said Act came into force. It would be necessary to note the Statement and Objects of IT Act, 2000 for better understanding of the said enactment and the relevancy of its application to the facts on hand and for answering the point formulated herein above. It reads as under:

"New communication systems and digital technology have made dramatic changes in the way we live. A revolution is occurring in *the way people transact business. Businesses and consumers are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents. Information stored in electronic form has many advantages.*

It is cheaper, easier to store, retrieve and speedier to communicate. Although people are aware of these advantages, they are reluctant to conduct business or conclude any transaction in the electronic form due to lack of appropriate legal framework. The two principal hurdles which stand in the way of facilitating electronic commerce and electronic governance are the requirements as to writing and signature for legal recognition. At present many legal provisions assume the existence of paper based records and documents and records which should bear signatures. The Law of Evidence is traditionally based upon paper based records and oral testimony. Since electronic commerce eliminates the need for paper based transactions, hence to facilitate ecommerce, the need for legal changes have become an urgent necessity. International trade through the medium of e-commerce is growing rapidly in the past few years and many *countries have switched over from traditional paper based commerce toe-commerce.*

2. xxx

3. *There is need for bringing in suitable, amendments in the existing laws in our country to facilitate e-commerce. It is, therefore, proposed to provide tor legal recognition of electronic records and digital signatures. The will enable the conclusion of contracts and the creation of rights and obligations through the electronic medium. It is also proposed to provide for a regulatory regime to supervise the Certifying Authorities issuing Digital Signature Certificates. To prevent the possible misuse arising out of transactions and other dealings concluded over the electronic medium, it is also proposed to create civil and criminal liabilities for contravention of the provisions of the proposed legislature.*

4. *With a view to facilitate Electronic Governance, it is proposed to provide for the use and acceptance of electronic records and digital signatures in the Government offices and its agencies. This will make the citizens interaction with the Government offices hassle free.*

5. *It is also proposed to make consequential amendments in the Indian Penal Code and the Indian Evidence Act, 1872 to provide for necessary changes in the various provisions which deal with offences relating to documents and* paper *based transactions. It is also proposed to amend the Reserve Bank of India Act, 1934 to facilitate electronic fund transfers between the financial institutions and banks and the Bankers' Books Evidence Act, 1891 to give legal sanctity for books of account maintained in the electronic form by the banks.*

6. xxx

7. xxx

Electronic Mail, most commonly referred to as, is a method of exchanging digital messages from one person to another person or from an author to recipient. Modern email operated across internet by computer network and it is based on store and forward modem. E-mail is an electronically transmitted correspondence between *two or more persons. Thus, any communication between the sender and the recipient would result in privity of transaction. Some of the provisions which have relevance to the word 'e-mail' under IT Act, 2000 are extracted herein below:*

"2. *Definitions. - (1) In this Act unless the context otherwise requires,*

> *(b) "addressee" - means a person who is intended by the originator to receive the electronic record but does not include any intermediary;*
>
> *(r) "electronic form", with reference to information means any information generated, sent, received, or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;*
>
> *(t)"electronic record" means data, record or data generated, image or sound stored, received or sent in electronic form or micro film or computer generated micro fiche.*
>
> *(v) "information" includes data, message, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche.*
>
> *(za)"originator" means a person who sends, generates, stores or transmits any electronic*

message; or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediatery

4. Legal recognition of electronic records - Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is –

a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Section 4 of The IT Act, 2000 provides that if information or any other matter is to be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, the requirement is deemed to have been satisfied if such information or matter is rendered or made available in an ·electronic form' and same is accessible to be used for a subsequent reference.”

"21. A harmonious reading of Section 4 together with definition clauses as extracted hereinabove would indicate that on account of digital and new communication systems having taken giant steps and the business community as well as individuals are undisputedly using computers to create, transmit and store information in the electronic form rather than using the traditional paper documents and as such the information so generated, transmitted and received are to be construed as meeting the requirement of section 18 of the Limitation Act, particularly in view of

the fact that section 4 contains a non obstante clause. Since respondent does not dispute the information transmitted by it is in electronic form to the petitioner by way of message through the use of computer and its network as not having been sent *by it to the petitioner, the acknowledgement as found in the e- mails dated 14.01.2010 and 06.04.2010 originating from the respondent to the addressee namely, petitioner, such e-mails have to be construed and read as a due and proper acknowledgement and it would meet the parameters laid down under section 18 of the Limitation Act, 1963 to constitute a valid and legal acknowledgement of debt due.*

"22. For the reasons aforestated and in view of the discussion made herein above, I am of the considered view that point formulated herein above requires to be answered by holding that an acknowledgement of debt by e-mail originating from a person who intends to send or *transmit such electronic message to any other person who would be the 'addressee' would constitute a valid acknowledgment of debt and it would satisfy the requirement of Section 18 of the Limitation Act, 1963 when the originator disputes having sent the e-mail* to *the recipient."*

34. When these documents are considered, it is clearly proved that the Respondent had acknowledged and admitted the dues payable by the Respondent to the Claimant to the extent of Rs.19,03,77,000/- as on 31.3.2013. Besides, the witness of the respondent was asked the following question in his cross as question No.51 to which he has replied as follows:

"*Q51: Can* you *inform as to what amount has. been paid/remitted by the*

Respondent firm *to M/s. Coral Products Pvt. Ltd. or the claimant for the two purchases made by the Respondent of Crude Oil worth Rs. 19,03,77,000/-?*

A. The Respondent firm has remitted payments of Rs.1.50 crores to the directors of M/s. Coral, Products Pvt. Ltd."

In this answer also there is practically an admission of the dues payable of the amount of Rs.19,03,77,000/- by the Respondent. Therefore, the said amount which is claimed in the Claim Petition is found due and payable to the Claimant by the Respondent. The claim raised by the Claimant through their letter of invocation of arbitration dated 18.05.2016 (Ex.CW1 /13) and the acknowledgment having been sent by letter dated 31.5.2013 and email dated 4.6.2013, the claim is also held to be within the period of limitation. Issue No.2 is accordingly decided in favour of the Claimant."

19. It is apparent from the above that the Arbitral Tribunal had examined the question of limitation in some detail. It had first of all accepted, on evaluation of evidence led before it that the email dated 04.06.2013 had been sent by one Mohan Maganti from the email address, mohan@goodhealth.com, to Avneesh Agarwal, representative of Haldiram. The contents of the said email clearly indicate that the balance confirmation letters of M/s KGF Cottons Pvt. Ltd. and Megha, as on 31.03.2013, were forwarded pursuant to the request made by one Mohit Dua. The letter dated 31.05.2013, which was stated to be attached along with said email, clearly confirms that a sum of ₹19,03,77,000/- was outstanding in the ledger accounts of Megha as

on 31.03.2013. The Arbitral Tribunal also concluded that Good Health Agro Pvt. Ltd. was a part of the same Group as Megha. This was conceded by the witness examined by the petitioners. In this perspective, the Arbitral Tribunal concluded that it was sent on behalf of one of the employees of the group company and thus, obviously on behalf of Megha.

20. It is relevant to note that Megha did not produce its books of accounts or its ledger to otherwise contest the contents of the said email. Thus, no evidence was produced by Megha to establish that the assertion made in the letter dated 31.05.2013, that its ledger accounts reflected a sum of ₹19,03,77,000/- as outstanding towards Coral/Haldiram, was wrong. This was, plainly, evidence within the control of Megha.

21. The affidavit filed by the witness on behalf of Haldiram (CW1) affirmed that the written acknowledgement dated 31.05.2013 was sent through an email dated 04.06.2013 and it had confirmed that the credit balance of ₹19,03,77,000/- was standing in the books of accounts of Megha as on 31.03.2013. The Arbitral Tribunal had accepted the same.

22. The petitioners, essentially, impeach the impugned award on the ground that (a) that the Arbitral Tribunal had grossly erred in evaluating the evidence led by the parties. According to the petitioners, the evidence led by the respondent did not establish that Megha had authorized anyone to forward the letter of

acknowledgement confirming the balance outstanding in its ledger accounts by the letter dated 31.05.2013. Further, according to the petitioners, the said letter was not attached to the email dated 04.06.2013. And, the said email had not been sent on behalf of Megha. Mr Gupta had drawn attention to CW1's response to Question no. 7 which indicates that CW 1 had stated that the email dated 04.06.2013 did not show any attachment. Mr Gupta also emphasized that the requisite evidence, as required in terms of Section 65B of the Indian Evidence Act, had not been filed.

23. As noticed above, the Arbitral Tribunal had after considering the evidence, returned the finding that the letter dated 31.05.2013 was sent electronically by an email sent on 04.06.2013.

24. In view of aforesaid, one of the principal controversy is whether there was any evidence to establish that the letter dated 31.05.2013 was sent as an attachment to the email dated 04.06.2013. CW1's response to Question no. 7 put to him in his cross examination is at the heart of this controversy. Question no. 7 and CW1's response is reproduced below:

> "Q. I put it to you that there is no attachment of the document attached alongwith the email marked Z. what do you have to say?
>
> A: Yes, it is correct that there is no attachment in the said email but in the earlier part of the said email it is shown that a balance confirmation was sent."

25. CW 1's response does indicate that on being confronted with the e-mail dated 04.06.2013 CW 1 had conceded that it did not show any attachment. In view of the aforesaid, this Court had granted an additional opportunity to Haldiram to advance arguments/file a reply. This was also in view of Mr Gosawmi's contention that Megha established before the learned Arbitrator that the letter of acknowledgement dated 31.05.2013 was attached to the e-mail dated 04.06.2013.

26. Along with its reply, Haldiram filed an additional document purporting to be the e-mail dated 04.06.2013, which showed the letter dated 31.05.2013 as an attachment. This was objected to, by Mr Dhruv Gupta. He contended that additional documents could not be accepted at this stage. In this regard, Mr Goswami explained that he had not produced the said document as additional evidence but merely to demonstrate that if a print-out of an email is taken from the electronic mail service hosted by Google Inc, G-mail, it reflects an attachment to the e-mail but if a printout is taken from Outlook Express (Microsoft Office software), the attachment is reflected at the beginning of the chain of e-mails and not as an attachment to the initial mail (the trailing mail). This was also demonstrated over video conferencing. It is necessary to record that after the demonstration, Mr Dhruv Gupta conceded that the email dated 04.06.2013 did reflect the letter dated 31.05.2013 as an attachment. He however, contended that the other objections regarding the evidentiary value of such an attachment, remained.

27. The contention that that the Arbitral Tribunal had grossly erred in accepting the said evidence without an affidavit under Section 65B of the Indian Evidence Act, 1872 is difficult to accept. This is because of two reasons. First, in terms of Section 1 of the Indian Evidence Act 1872, the said Act is not applicable to proceedings before the arbitrator. Second, no such objection was taken on behalf of the petitioners at the appropriate stage, that is, before the Learned Arbitrator.

28. Thus, in substance, Megha's challenge in this regard is limited to the learned Arbitral Tribunal's evaluation of the evidence led by parties.

29. As noted above, the scope of examination of an arbitral award under Section 34 of the A&C Act is extremely limited. It is trite law that this Court would not undertake the exercise of re-appreciation of evidence on the ground of patent illegality.

30. In the present case, no case has been made out by the petitioner that the arbitral award is contrary to the Fundamental Policy of India. The arbitral award cannot by any stretch be considered to be opposed to justice or morality. The dispute in the present case relates to a simple transaction of sale and purchase of goods. All that the Arbitral Tribunal has done is, after having found that the petitioners had not paid for the goods purchased by them, awarded that the said consideration be paid with interest. It is trite that a delay in filing a claim only bars the remedy, it does not extinguish any debt. Viewed in

this perspective, the Arbitral Tribunal has after evaluating the material, rejected Megha's contention that Haldiram be denied its remedy to seek what it claimed to be legitimately due to it. Obviously, there is no question of such an approach offending any sense of morality as is embodied in the expression 'public policy' as used in Section 34(2)(6) of the A&C Act.

31. Insofar as the ground of patent illegality is concerned, it would be relevant to refer to the oft quoted passage from ***Associate Builders v. Delhi Development Authority: (2015) 3 SCC 49***, as set out below:

> **"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 [Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows: "General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong". It is very important to bear this in mind when awards of lay

arbitrators are challenged.] . 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."

32. As is apparent from the above, the evaluation of evidence by the Arbitral Tribunal may be erroneous and perhaps this Court may have taken a different view but that is not the scope of examination under Section 34 of the A&C Act and, this Court cannot interfere with the arbitral award merely on the ground that it does not concur with the

inference drawn by the Arbitral Tribunal from the evidence led by the parties.

33. In ***Ssangyong Engineering and Construction Company Ltd. v. National Highway Authority of India (NHAI): (2019) 15 SCC 131***, the Supreme Court had authoritatively held as under:

> "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."

34. In view of the above, this Court is unable to accept that any interference in the arbitral award is warranted on the ground that the Arbitral Tribunal has arrived at an erroneous conclusion on the evidence led by the parties.

35. The second aspect of the arguments advanced on behalf of the petitioners is that the Arbitral Tribunal has misapplied Section 18 of the Limitation Act.

36. As noticed above, the Arbitral Tribunal had proceeded on the basis that an electronic communication acknowledging the debt would sufficiently meet the parameters of Section 18 of the Limitation Act. The Arbitral Tribunal had drawn strength from the decision of the Karnataka High Court in ***Sudarshan Cargo Pvt. Ltd. v. Techvac Engineering Pvt. Ltd.*** (*supra*). Plainly, the said view is a plausible view and this Court is unable to accept that the said view warrants any interference under Section 34 of the A&C Act. In ***Ssangyong***

Engineering and Construction Company Ltd. v. National Highways Authority of India (NHAI) (*supra*), the Supreme Court had authoritatively clarified that a mere erroneous application of law would also not warrant any interference on the ground of patent illegality as available under Sub-section (2A) of Section 34 of the A&C Act. Paragraph 37 of the said decision is relevant and is set out below:

> **"37.** Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), 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."

37. In view of the above, this Court finds no reason to interfere with the impugned award. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

April, 15, 2021
RK