$~

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

Reserved on: 8 July 2024
Pronounced on: 18 July 2024

\+ O.M.P. (COMM) 89/2024

MARUTI TRADERS .....Petitioner
Through: Mr. Ramesh Singh, Senior Advocate with Mr. S.K. Chandwani and Mr. Sameer Chandwani, Advocates.

versus

ITRON INDIA PVT LTD .....Respondent
Through: Mr. Abhijit Mittal, Mr. Anukalp Jain, Ms. Shaivya Singh and Mr. Pulkit Khanduja, Advocates

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

% 18.07.2024

1. Arbitral proceedings between the petitioner Maruti Traders and the respondent, conducted by a 3-member Arbitral Tribunal, have resulted in a nil award. All claims of the petitioner, as the claimant before the learned Arbitral Tribunal, stand rejected. Understandably chagrined at this, the petitioner has approached this Court under Section 34[1] of the Arbitration and Conciliation Act, 1996[2].

[1] **34. Application for setting aside arbitral award**. –
(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
(2) An arbitral award may be set aside by the Court only if—
(a) the party making the application establishes on the basis of the record of the arbitral tribunal that—
(i) a party was under some incapacity; or

2. I have heard Mr. Ramesh Singh, learned Senior Counsel for the petitioner and Mr. Abhijit Mittal, learned Counsel for the respondent, at considerable length.

A brief background of the facts

3. The petitioner was authorised, by the respondent, to work as a non-exclusive dealer of domestic and bulk water meters and accessories, manufactured by the respondent, in Chhattisgarh. The petitioner relies, for this purpose, on four dealership authorisations

---

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

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

(b) the Court finds that —

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

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

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

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

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

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

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

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

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

[2] "the 1996 Act" hereinafter

issued by the respondent on 1 January 2009, 1 January 2010, 1 August 2011 and 1 January 2012. Though the third and fourth authorisations, dated 1 August 2011 and 1 January 2012, were in the name of the petitioner, the first two authorisations, dated 1 January 2009 and 1 January 2010, were in favour of Mahamaya Constructions and Agni Enterprises respectively. The petitioner, however, claims that Mahamaya Constructions and Agni Enterprises were its own sister companies, though this assertion has been disputed by the respondent. As no submission to this effect was advanced by the respondent before this Court, I will proceed on the premise that all authorizations pertained to the petitioner.

4. That said, the authorisations were till 31 December of that year; i.e., the authorisation of 1 January 2009 was till 31 December 2009, the authorisation dated 1 January 2010 was till 31 December 2010, the authorisation dated 1 August 2011 was till 31 December 2011 and the authorisation dated 1 January 2012 was till 31 December 2012. There is no letter of authorisation, issued by the respondent to the petitioner, or to any sister concern of the petitioner, after 31 December 2012. This position is not in dispute.

5. The letters of authorisation were identical in form and structure. It would be profitable to reproduce, by way of example, the letter of authorisation dated 1 August 2011:

> "Ref: 0811/IIPL/ MT-RPR Date: 1st August 2011
>
> TO WHOM IT MAY CONCERN
>
> We hereby authorise M/s Maruti Traders, having office at 2nd Floor, Risabh Complex, 229, M.G. Road, Raipur 492001 (CG), to work

as a dealer (Non - exclusive) for Itron India Pvt. Limited (Formerly known as Schlumberger Industries India Limited thereafter as Actaris Industries (India) Pvt. Ltd.) for sale of Domestic and Bulk water meters & Accessories including service & maintenance wherever applicable in the state of Chattisgarh.

They will have all the necessary technical backup & marketing support of MIs. Itron India Private Ltd.

This shall remain valid upto 31st December 2011 and is extendable based on performance.

For Itron India Private Ltd.

Sd/-
Authorised Signatory"

6. In this background, the case of the petitioner, as articulated by Mr. Ramesh Singh, may briefly be stated thus. Mr. Singh contends that, on the basis of the authorisation thus granted by the respondent, the petitioner liaised with various organisations, including Public Sector and Government Undertakings and ensured that, in the tenders issued by them, the requirement of water meters, which conformed to the specifications of the water meters (and associated items) manufactured by the respondent, was also included. Thus, contends Mr. Singh, the petitioner, under due authorisation from the respondent, secured a market for it in the state of Chhattisgarh. The respondent, on being so informed, quoted the prices at which it was willing to sell the water meters manufactured by it. According to the petitioner, there was an "understanding" between the petitioner and respondent that the petitioner could charge, from the customer, a price based on the prices quoted by the respondent, after adding, to it, the petitioner's margin of profit. The petitioner contends that it was entitled to recover the said margin of profit, which it would have earned, had the

respondent not granted the dealership of the water meters to others. Asserting that the respondent could not have granted dealership of the water meters, in respect of the buyers for whom the petitioner had liaised and communicated with the respondent, to anyone else, the petitioner claimed, in the arbitral proceedings, the difference which it would have earned.

7. This position has been thus sought to be explained in para xx to xxiv of the affidavit in evidence dated 7 July 2022 tendered by Mr. Sanjeev Rungta, proprietor of the petitioner, as the petitioner's witness CW1 during the arbitral proceedings:

> **xx. Regarding the understanding of sales and purchase orders, it is stated as under:**
>
> - I state that in accordance with the prevailing practice followed in the Industry in respect of dealership agreements, the Respondent had given the Purchase, Price (rates) of various water meters and the Claimant was asked to offer the sale price to the various customers/agencies for various tenders in the state of Chhattisgarh. The Respondent also diverted the demand/enquiries from various customers to the Claimant.
>
> - It is submitted that during period between March 2017 to October 2017, the Claimant had identified about 13 Numbers of Projects and Tender actions. The Claimant Co-ordinated and contacted various prospective bidders and offered the most competitive sale price of water meters for securing the Contracts. It is submitted that both the parties were in continuous communication during the aforesaid crucial period.
>
> - Following are the Tenders under which the inquiries/demand for the Respondent's water meters were made by various agencies:

Details of House Service Connections Accessories				
S.	**System**	**Muni.**	**Awarde**	**Water Meter**

No.	Tender No.	Corpn.	d to	(Nos.)		
				15 mm	20 mm	25 mm
1	19698	Durg	Laxmi	49379	137	48
2	8196	Bhilai	IHP	73965	13222	2415
3	8348	Korba	IHP	29754	940	626
4	16215	Rajnandgaon	SMC	39075	1234	823
5	16313	Jagdalpur	Gondwana	23115	730	487
6	16331	Raipur	IHP	7560	30	14
7	16377	Ambikapur	Tejas	42548	455	303
8	16410	Korba	ADCC	44870	2170	834
9	17683	Bilaspur	IHP	53438	1688	1125
10	17894	Raipur	IHP	7560	30	14
11	19731	Raigarh	CMR	34995	1105	737

12 13	16330 16329	Raipur Raipur	IHP IHP	4346 496	6	1
	Grand Total (Nos.)			**411101**	**21750**	**7428**

xxi. I state that the Respondent had offered the Purchase price to the Claimant for the above cited projects through various communications (e-mails) placed on record. The details of the Purchase Price offered by the Respondent to the claimant under the Reseller Agreement are as under:

PURCHASE PRICE OFFERED BY RESPONDENT				
SIZE OF WATER METER	**15 mm**	**20 mm**	**25 mm**	**Remark**
Purchase Rate per UNIT (excluding GST and F&I)	1050	1500	4800	e-mail dated 29th March 2017
Special Rate* per UNIT (excluding GST and F&I	1030	1350	4700	Emal dated 5th and 9th October 2017.

- For securing the assignments, special rates were offered by the Respondent.

xxii. I submit that the Claimant had offered the Sale price to various agencies namely M/s SMC, M/s IHP, M/s Tejas, M/s Gondwana, M/s ADCC, M/s Laxmi and M/s CMR for the above cited projects, in consultation with the Respondent through various communications (e-mails) placed on record.

xxiii As per Dealership Agreement and mechanism agreed upon by the parties, the quotations were given by the Claimant to various agencies in consultation with the Respondent, describing quantities and sale rates of water meters. The details of the Sale Price offered by the Claimant to the various agencies for supply of water meters

are as under:

SALE PRICE OFFERED BY CLAIMANT TO THE AGENCIES			
SIZE	15 mm	20 mm	25 mm
Sale Rate per UNIT	1250	1785	5715

The copies of Quotations dated 30.03.2017, 04.04.2017, 10.04.2017, No. 99 of 20.04.2017, No.100 of 24.04.2017, No. 101 of 20.04.2017, 02.05.2017, 04.05.2017, 06.05.2017, 10.05.2017, 12.05.2017, No. 112 of 24.05.2017, No. 113 of 24.05.2017, No. 46 of 09.10.2017, No. 47 of 09.10.2017 and 13.11.2017, are submitted along with SOC as Annexure CD-23 A(Colly), Page C-291 to C-423 of SOC. I state that for easy reference, the details of tenders, name of contractors, quantity of water meters and details of emails endorsed to the Respondent are tabulated separately and placed at Page C-287 to C-290 of SOC. I state that I had submitted the aforesaid copies of the printout taken from my computer system at my office. I have also submitted certificate u/s 65(B) of Evidence Act (Ref: Page C-282 to C-283 of SOC). I state that the contents of the aforesaid documents are true and correct. Therefore, the documents placed at C-287 to C-423 of SOC may please be exhibited and marked as Exhibit CD-17.

- I state that the Claimant vide various emails, kept the Respondent informed about the quotations and rates given by the Claimant to various agencies/contractors for issuance of Authorization/ warrantee certification time to time for submission of bids by contractors. The copy of some relevant emails as exchanged between the parties i.e. email dated 30.03.2017, 08.04.2017, 17.04.2017, 13.11.2017 (15:15), are also submitted along with SOC at Annexure-CD- 23B (Colly), Page C-424 to C 511 of SOC.

- I state that I had submitted the aforesaid copies of the printout taken from my computer system at my office. I have also submitted certificate under Section 65(B) of Evidence Act (Ref: Page C-282 to C-283 of SOC). I state that the contents of the aforesaid documents are true and correct. Therefore, the documents placed at C-424 to C-511 of SOC may please be exhibited and marked as **Exhibit CD-18**.

xxiv. I state that considering the open bid system and prospective bidders in the tender from different regions, it was anticipated that

every bidder or participant might not come through the Claimant but might directly approach the Respondent for obtaining quotations of ITRON's water meter.

Therefore, it was clear understanding between the Respondent and the Claimant that in case, any bidder/agency directly approaches the Respondent for procurement of ITRON's water meters, the Respondent would divert the enquiry to the Claimant and the purchase order of water meters would be routed through the Claimant. The Claimant would give "E-1" Transaction quotation so as to offer the best competitive rates to the customers.

I say that the Respondent had accordingly diverted the orders to the Claimant for giving the sale rates to the bidders / contractors.

The abstract of various communications exchanged between the parties is submitted here with at Annexure A of this Affidavit.

Therefore, the sale and purchase mechanism between the Respondent and the Claimant was accepted by the parties by their conduct. Therefore, the Respondent was contractually bound to sell the water meters through the Claimant only and therefore, the Respondent was barred by estoppel for direct sale of water meters to the contractors for the aforesaid identified projects."

One may also refer, in this context, to paras (DD) and (WW) of the Statement of Claim[3] filed by the petitioner before the learned arbitral tribunal:

"(DD) The understanding between the parties was that the respondent would offer purchase rates to the claimant in the claimant would give the quotations/sales rates to the user's, by retaining the margin component as dealership charges.

*****

(WW) The respondent communicated to purchase rates for the dealer to the claimant and the claimant and accordingly gave the sale rates to various customers."

[3] "SOC" hereinafter

8. To bring this point home, Mr. Ramesh Singh has invited my attention to various emails exchanged between the parties, which may chronologically be noted thus:

(i) e-mail dated 5 August 2011 from respondent to petitioner:

> "Arijit,
>
> Attached herewith the customer creation form.
>
> Please ask the customer to get it signed and stamped with date and furnish the following documents
>
> 4. Copy of Sales Tax registration certificate
> 5. Copy of TIN/VAT Registration
> 6. Copy of PAN
>
> After receiving of the above documents his account would be opened.
>
> Regards R C Shukla"

(ii) e-mail Circular dated 5 July 2012 from Public Health Engineering Department (PHED), Bilaspur, Chhattisgarh

> "विषय- शहरी एवं समूह नलजल प्रदाय योजना में विभिन्न शाखाओं में जल प्रदाय की मात्रा प्रात करने हेतु वाटर मीटर का प्रयोग किये जाने बाबत्।
>
> शहरी जल प्रदाय योजनाओं में हमेशा यह शिकायत बनी रहती है कि अमूक वार्ड में जल प्रदाय ज्यादा मात्रा में किया जा रहा है जबकि कुछ वार्डों में जल प्रदाय पर्याप्त मात्रा में नहीं हो रहा है। वर्तमान में विभाग द्वारा ग्राम पंचायतों की समूह जल प्रदाय योजना तैयार की जा रही है जिसमें भी हमेशा शिकायत आने की संभावना बनी रहेगी कि अमूक प्राम में ज्यादा मात्रा में जल प्रदाय हो रहा है तथा अन्य ग्राम में जल प्रदाय की मात्रा कम है।
>
> उपरोक्त शिकायतें न हो अतः शहरी जल प्रदाय योजनाओं में तथा रामूह ग्रामीण जल प्रदाय योजना व बड़े ग्रामों की जल प्रदाय योजना के जल वितरण प्रणाली के मुख्य शाखाओं में उच्च क्वालिटी का आईएसआई मार्क वाटर मीटर का प्रयोग किया

जाये। सदानुसार योजनाओं के डीपीआर बनाते समय वाटर मीटर का प्रावधान आवश्यक रूप से रखा जाये।"

Translated to English

"Subject: Regarding use of water meter to get the quantity of water supply in various branches in the urban and group tap water supply scheme.

There is always a complaint in urban water supply schemes that water is being supplied in large quantities in certain wards, while in some wards water is not being supplied in sufficient quantity. At present, the department is preparing a group water supply plan for gram panchayats, in which there will always be a possibility of complaints that water is being supplied in large quantities in a particular village and the quantity of water being supplied in other villages is less.

To avoid the above mentioned complaints, high quality ISI mark water meters should be used in the main branches of the water distribution system of urban water supply schemes and Ramuh Rural Water Supply Scheme and water supply scheme of big villages. According to this, provision of water meter should be kept mandatory while preparing DPR of the schemes."

(iii) e-mail (the date is illegible), attaching the PHED Circular dated 5 July 2012

(iv) e-mail (the date is illegible) from the petitioner to the respondent, with the subject "Jagdalpur municipal Corporation demonstration":

"Dear Sir,

With reference to the telephonic discussion held with you we are pleased to inform you that the Commissioner JDP municipal Corporation is interested to see our demo with all the technical staff and if he convinced he will use our meters. The date is finalised as 14.05.13.

Jagdalpur is 300 km away from Raipur. We therefore request you to kindly come to Raipur one day before along with all necessary documents, literatures, samples if any for the purpose of PowerPoint presentation.

Regards,

Sanjeev Rungta: Raipur”

(v) e-mail dated 27 February 2014 from petitioner to respondent with subject “Korba Municipal Corporation, CG”

“Dear Sir,

We are pleased to inform you that we have given demonstration in Korba Municipal Corporation and the authority has assured us to incorporate our meters in their coming tender. The quantity is approx 50,000 m. …

Apart from above we are regularly in touch with PHED department in which Bilaspur project division have (illegible) meters which will also mature in 2014.

Regards”

(vi) e-mail dated 2 July 2014 from petitioner to respondent with subject “water meter tender”:

“Dear Sir,

We have succeeded to incorporate water meters in the tender of PHED, Rajnandgaon. Tender details enclosed.

Regards,

Sanjeev Rungta”

(vii) e-mail dated 15 May 2015 from petitioner to respondent with subject “meters details”

“Dear Sir,

Todays great news. The specification is exactly what we have put in PHED CSR. The sizes are 15, 20 and 25 mm. The quantity will be sent soon as Mr. Sandeep Rungta is today visiting the Department by technical details and

samples. We request you to kindly note the points and do not quote any rates to any contractor for this tender stop please forward the enquiries to us for necessary quotation and supplies.

Further we are in contact with the Korba municipal Corporation also to put meters in their distribution lines and trying to put our specification. This will be a good quantity. If any presentation needed at KMC we will inform you.

Regards,

Sanjeev Rungta"

(viii) e-mail dated 3 September 2015 from petitioner to respondent, with subject "Good news"

"Dear Sir,

We are pleased to inform you that in many schemes we are succeeded to incorporate our meters and in many other schemes are in the pipeline in which meters will be incorporated. We hope that within 3 years people by getting enquiries of approx one lac meters from Raipur, Korba, Charoda, Durg, Bhilai.

All the meter companies are now running after PHED to change the specification in the SOR in which we have put our specification, but we are regularly in contact with the authority to avoid this.

Now we can say that after the continuous legwork of yours the days are coming in which we will get good business from Chhattisgarh. Please refer all the enquiries from the date immediately for necessary action and quotation because we have to keep margins for incidental charges also.

This is for your kind information and necessary action please.

Regards,

Sanjeev Rungta"

(ix) e-mail dated 21 March 2016 from petitioner to respondent the subject "Korba municipal Corporation and Bhilai Municipal Corporation":

> "Dear Sir,
>
> We are pleased to inform you that we have succeeded to incorporate our meter in both the tenders. The approx quantity is 60,000 pcs.
>
> Regards,
>
> Sanjeev Rungta"

(x) e-mail dated 17 June 2016 from petitioner to respondent with the subject "Bhilai and Korba municipal tender"

> "Dear Sir
>
> The above both tender will be flashed next week. Both are more than 100 crore tender in which our water meter specifications are given.
>
> Kindly forward all the enquiries to us for necessary quotation.
>
> Regards
>
> Sanjeev Rungta: Raipur"

(xi) e-mail dated 7 July 2016 from petitioner to respondent with the subject "Bhilai municipal Corporation tender details for water meter"

> "Dear Sir
>
> Finally we had break the ice. The water meter of our specification are as under the tender.
>
> Nil no 8196

15 mm – 42,605 pcs
20 mm – 6576 pcs
25 mm – 1269 pcs
40 mm – 130 pcs

Total 50,580 pcs

This is for your ready reference please. Kindly divert all enquiries related to this tender to us for quotation and supply.

Regards

Sanjeev Rungta: Raipur"

(xii) e-mail (the date is illegible) from respondents to petitioner, by way of reply, with the subject "RE: Bhilai municipal Corporation tender details for water meter"

"Dear Mr. Rungta

We once again thanks for the continuous efforts to preach our specification for various tenders at Chhattisgarh.

Today I will forward you the enquiry and price to quote the bidders.

Regards,

Debasis"

(xiii) e-mail dated 29 March 2017, from respondent to petitioner with subject "Re: Metering House Connections"

"From: Biswas, Debasis
Sent: Wednesday, March 29, 2017 6:18 PM

To: 'Sanjeev Rungta: Raipur' <sanjeev@rungtabrotherscom>; Sandeep Rungta <Sandeep@ Rungta brothers.com>

Subject: RE: Metering House Connections

Dear Sanjeev ji,

Your Special price for these project only as discussed with our Director:- (Multijet, IP68 with Copper CAN, EEC/MID mark, AMR comp. with 5 year warranty.)

15 mm-1050/-INR each set
20 mm-1500/-INR each set
25 mm-4800/- INR each set

Prices are Ex. Dehradun.

F&I @ 2% extra
Packing and forwarding including

CST @ 2% extra against for C.
TPI involved Extra on your account.

Any other tax applicable at the time of delivery will be extra.
.
Please quote contractor accordingly.

Regards,
Debasis'

(xiv) e-mail dated 30 March 2017 from respondent to petitioner with subject "RE: Metering House Connections"

"Rungta ji,

Concerned is calling me day and Night, please quote him immediately (M/s Gondwana Engineers Ltd).

Regards,

Debasis"

(xv) e-mail dated 4 October 2017 from Indian Hume Pipe to petitioner

"Forwarded message
From: "Balaji Peddawad" <balaji@indianhumepipe.com>
Dale: Wed, Oct 4,2017 at 10:08AM +0530
Subject RFQ_Water Meters_Korba II Project
To:"sanieev@rungtabrothers.com"<
sanieev@rungtabrothers.com>

Cc: maruti@rungtabrothers.com <maruti@rungtabrothers.com>

Dear Sir,

Please find attached Multi Jet dry dial inferential type, Horizontal, Magnetically coupled, Class-b Water meters requirement at our ongoing project Korba II project in Chattishgrah state. Kindl note your most competitive offer by return mail on FOR site basis.

Thanks & Regards."

(xvi) e-mail dated 9 October 2017 at 12.04 pm from petitioner to respondent with subject "FW: 20,25, MM Rates"

from: Sanjeev Rungta: Raipur (mailto;sanieev@rungtabrothers.com)
Sent: Monday, October 9, 2017 12:04 PM
To: Biswas, Debasis <Debasis.Biswas@itron.com>; Sandeep Rungta: Raipur <sandeep@rungtabrothers.com>
Subject: 20,25 mm rates

Dear sir

We are in receipt of enquiries from IHP for their different projects of CG. We have received the rates for 15 mm but rest two size rates are awaited. Kindly provide the same and oblige,

Regards
Sanjeev Rungta: Raipur'

(xvii) e-mail dated 9 October 2017 at 12.55 pm from petitioner to respondent with subject "FW: 20,25, MM Rates"

"From: Biswas, Debasis
Sent: Monday, October 9. 2017 12:55 PM
To: 'Sanjeev Rungta: Raipur'
<sanjeev@rungtabrothers.com>; Sandeep Rungta: Raipur'
<sandeep@rungtabrothers.com>
Subject: RE: 20, 25 mm rates

Sir,

20mm- INR 1350 each (Ex. Factory DDN)

25mm- INR 4700 each (Ex. Factory DDN)

GST @ 18%and F&I @ 2% extra.

Regards,
Debasis"

9. Thus, submits Mr. Ramesh Singh, the petitioner was instrumental in securing contracts for the respondent by liaising with various customers, including government departments, and ensuring that tenders floated by them included the requirement of water meters, with specifications matching the specifications of the water maters manufactured by the respondent. It is submitted that the respondent openly acknowledged the petitioner's contribution in this regard and not only thanked the petitioner for promoting the respondent's business but also suggested the prices which could be quoted for the water meters. It is asserted that there was a clear understanding between the petitioner and the respondent that the petitioner would be entitled to the differences between the price charged by the petitioner from the ultimate consumers and the price charged by the respondent from the petitioner.

10. On 1 February 2017, a Reseller Agreement was executed between the petitioner and the respondent. The opening recitals and Clauses 1.01, 2.01 and 17.02 of the Reseller Agreement, which are relevant, read thus:

> "WHEREAS, Itron desires to appoint the Reseller as a reseller to the customers (the "Customers") in the territory (the "Territory") (both as defined in Annex A) certain products developed, manufactured and/or marketed by Itron (as defined in Annex B) (each a "Product" and collectively, "Products")"

> "1.01. This agreement shall commence as of the Effective Date written above. It shall continue in full force and effect for a term of three(3) years, provided that it may be terminated in accordance with Clause 24 hereof."
>
> "2.01. Itron hereby appoints Reseller, and Reseller accepts such appointment, as Itron's authorized non-exclusive reseller for marketing and selling the Products to Customers in the Territory defined in Annex A in accordance with the terms and conditions of this Agreement. Itron retains the right to sell Products directly to Customers within the Territory and to appoint other resellers of Products."
>
> "17.02. Reseller warrants that there are no outstanding obligations or agreements, either written, oral or implied, inconsistent with this Agreement."

The Reseller Agreement also provided for resolution of dispute by arbitration, in Clause 27. The seat of arbitration was fixed by Clause 27.02 as New Delhi.

11. After the Reseller Agreement was executed, the respondent entered into contractual relationships with other entities, appointing them as their authorised resellers for the State of Chhattisgarh in respect of sale and supply of water meters and associated products to the parties with whom the petitioner was initially liaising and who, according to the petitioner, had been sourced as customers for the respondent, solely owing to the petitioner's efforts.

12. The petitioner wrote to the respondent by e-mail dated 7 December 2017, objecting to the respondent contracting with other dealers for sale of their water meters and associated products in the Chhattisgarh, with the vendors/entities with whom the petitioner had

earlier been liaising. This, it was alleged, constituted reputation of the dealership agreement between the petitioner and the respondent.

13. The petitioner asserted that, after considerable delay, the representatives of the respondents directed the petitioner to submit the details of the exact amount of commission owed by the respondent to the petitioner along with supporting documents. The petitioner provided the said details by e-mail dated 2 September 2019, in which it was claimed that "amount of deprived component of sales orders placed so far" worked out to ₹ 9.59 crores. The petitioner also called upon the respondent to honour the pre-existing dealership agreement between the petitioner and the respondent during the remainder of the Reseller Agreement.

14. The above details were once again forwarded by the petitioner to the respondent *vide* letter dated 22 June 2021, in which the petitioner also sought details of the products directly sold by the respondent in the State of Chhattisgarh, so that the petitioner could claim his legitimate share of the sale proceeds, apart from costs and compensation by way of damages. The letter alleged that, by directly dealing with dealers in the State of Chhattisgarh, with whom the petitioner had earlier been liaising, the respondent had committed a fundamental breach of the contractual relationship between the petitioner and the respondent which was violative of the basic intent and objective of the Reseller Agreement.

15. By letter dated 4 August 2021, the respondent rejected the petitioner's demand.

16. The petitioner, thereupon, wrote on 10 August 2021, seeking a convenient date, time and place, so that an amicable resolution of the dispute could be worked out. As the attempt at amicable resolution did not fructify, the petitioner, on 29 November 2021, addressed a notice to the respondent, invoking the arbitration clause in the Reseller Agreement.

17. By *inter se* communications, both sides nominated their respective arbitrators, and the arbitrators, by consent, appointed a learned presiding arbitrator. Thus, came into existence a three-member Arbitral Tribunal which ultimately rendered the award under challenge in the present petition.

The Impugned award

Issues

18. The learned Arbitral Tribunal framed the following issues as arising for consideration:

> "1. Whether the claims of the Claimant relating to the period prior to 28.11.2018 are barred by limitation? OPR
>
> 2. Whether the Respondent is in breach of the terms and conditions of the Reseller Agreement? OPCI

3. Whether the Claimant is entitled to claim as Prayer (c) of its Statement of Claim pertaining to payment of Rs. 12,92,57,630/under Claim NO.1? OPCI

4. Whether the Claimant is entitled to claim as per Prayer (d) of its Statement of Claim pertaining to payment of Rs. 6.895 Crores under Claim NO.2? OPCI

5. Whether the Claimant is entitled to claim as Prayer (e) of its Statement of Claim pertaining to an Award in favour of Claimant and payment of Pre-Arbitration and pendente lite interest by the Respondent under Claim NO.3? OPCI

6. Whether the Claimant is entitled to claim as Prayer (f) of its Statement of Claim pertaining to payment of cost of arbitration including the fees and expenses of Techno-legal consultants, advocates engaged by Claimant and incidental expenses under Claim No.4? OPCI

7. Whether the Claimant is entitled to Prayer (g) of its Statement of Claim pertaining to payment of post award interest @ 15% per annum or any other rate of interest on the amount claimed under Claim Nos. 1, 2, 3 and 4 or any other amount determined by the Arbitral Tribunal in the Award from the date of Award until full payment of the Award? OPCI"

Analysis and reasoning of the learned Arbitral Tribunal

19. The analysis and reasoning in the impugned Award may be set out thus, for ease of reference.

20. Re. Authorization notices dated 1 January 2009, 1 January 2010, 1 August 2011 and 1 January 2012 – Essentials of a valid contract not fulfilled

20.1 The letters dated 1 January 2009, 1 January 2010, 1 August 2011 and 1 January 2012 authorised the petitioner to work for the respondent as a non-exclusive dealer.

20.2 These letters, which were addressed "to whomsoever it may concern", did not contain any other term or condition of the agreement between the petitioner and the respondent.

20.3 The petitioner had also not pleaded the existence of any terms of dealership with the respondent, though it pleaded the existence of a contract with effect from 1 January 2009.

20.4 The question that arose was, therefore, whether, in the absence of any terms and conditions of dealership, a contract could be said to have come into existence in law between the petitioner and the respondent.

20.5 The letters dated 1 January 2009, 1 January 2010, 1 August 2011 and 1 January 2012 may have constituted an agreement by the respondent to authorize the petitioner to work as a dealer of the respondent's water meters, but did not constitute a contract in law, as they did not incorporate either the terms on which the petitioner was to work as dealer, or the consideration to which the petitioner was entitled.

21. <u>No authorization beyond 31 December 2012</u>

Moreover, the authorisation granted by the respondent to the petitioner by the said letters was from 1 January 2009 to 31 December 2012. There was no authorisation or contractual relationship between the petitioner and the respondent from 1 January 2013 till the execution of the Reseller Agreement on 1 February 2017. Nor were there any

communications between the petitioner and the respondent during the said period. There was, therefore, a complete vacuum between 1 January 2013 and 31 January 2017. The learned Arbitral Tribunal could not, therefore, arbitrate on any dispute relatable to that period. Thereafter, till the execution of the Reseller Agreement on 1 February 2017, there was no authorisation by the respondent in favour of the petitioner.

22. Communications between respondent and customers

22.1 The next set of communications to be considered were those written by the respondent to customers who required water meters. By these letters dated 30 November 2011, 4 April 2012, 18 July 2012 and 26 October 2012, addressed by the respondent to various Municipal Corporations and PHEDs, in Chhattisgarh, the customers were asked to route their orders through the petitioner who was the authorised dealer of the respondent in Chhattisgarh.

22.2 These letters, too, however, did not contain any terms and conditions settled between the petitioner and the respondent.

22.3 They, too, therefore, only indicated the existence of an agreement between the petitioner and the respondent. Otherwise, they, too, did not amount to a contract in law, as they neither indicated the terms and conditions of the agreement nor referred to the consideration to which the petitioner was entitled.

23. No contractual relationship between 1 January 2009 and 31 December 2012

Thus, there was no contractual relationship between the petitioner and the respondent during the period 1 January 2009 till 31 December 2012, of which the petitioner could allege breach, by the respondent.

24. Ingredients of Section 70 of Contract Act not fulfilled

24.1 That said, even in the absence of a contract, the petitioner could maintain a claim against the respondent for compensation, in terms of Section 70[4] of the Contract Act, as the above referred documents did indicate the intent of the respondent to appoint the claimant as a dealer of its water meters in Chhattisgarh and a reciprocal intent of the petitioner to work as such dealer. Even in the absence of any terms and conditions of dealership being forthcoming, the petitioner could, under Section 70 of the Contract Act, have sought compensation from the respondent for the benefit enjoyed by the respondent because of the petitioner's actions.

24.2 The petitioner had not, however, invoked Section 70 of the Contract Act. Absent such invocation, the learned Arbitral Tribunal could not adjudicate on the petitioner's entitlement on the basis of Section 70.

[4] **70. Obligation of person enjoying benefit of non-gratuitous act**. – Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

24.3 Nor had the petitioner pleaded or proved the expenses incurred by it for representing itself as a dealer of the water meters of the respondent or the compensation to which the petitioner was entitled. Merely pleading that the petitioner had invested its time, effort and money was not enough. The learned Arbitral Tribunal could not estimate the value of the time, effort and money expended by the petitioner, without any pleading or probative material in that regard.

24.4 There was no pleading or evidence of any order for water meters having been placed on the respondent during 1 January 2009 to 31 December 2012 through the petitioner's efforts. Thus, there was no evidence of the petitioner's efforts having resulted in any benefit which was enjoyed by the respondent, and which could reciprocally entitle the petitioner to compensation in terms of Section 70.

25. No arbitration agreement till Reseller Agreement – Opening recital and Clauses 1.01, 17.02 and 27 of Reseller Agreement

25.1 Moreover, there was no arbitration agreement between the petitioner and the respondent till the Reseller Agreement dated 1 February 2017. There was no document exchanged between the petitioner and the respondent during the period 1 January 2009 to 31 December 2012 to have disputes between them resolved by arbitration. Clause 1.01 of the Reseller Agreement expressly made the Reseller Agreement effective as of the effective date mentioned in the Reseller Agreement, which was 1 February 2017.

25.2 In the absence of any arbitration agreement between the petitioner and the respondent covering the period 1 January 2009 to 31 December 2012, the learned Arbitral Tribunal had no jurisdiction to adjudicate on disputes relating to the said period.

25.3 Clause 27 of the Reseller Agreement provided for arbitration only of disputes arising out of or in relation to the agreement. As such, Clause 27 could not authorize arbitration of claims or disputes arising out of any relationship between the petitioner and the respondent prior to the effective date of the agreement.

25.4 Rather, Clause 17.02 of the Reseller Agreement expressly provided that there were no outstanding obligations or agreement written, oral or implied inconsistent with the Reseller Agreement. The Reseller Agreement, moreover, nowhere provided that it was in continuation of any earlier arrangement or agreement between the parties.

25.5 The opening recital of the agreement also indicated that the relationship between the petitioner and the respondent came into existence only on execution of the Reseller Agreement.

25.6 There was, therefore, no agreement which authorised the learned Arbitral Tribunal to arbitrate on claims of the petitioner other than those arising out of or in relation to the Reseller Agreement, which came into the effect from 1 February 2017. The disputes prior

to 1 February 2017, therefore, could not be said to be in relation to the Reseller Agreement.

25.7 Thus, the petitioner was not entitled to any amount for the period prior to the Reseller Agreement dated 1 February 2017.

26. Re. post Reseller Agreement claims

The learned Arbitral Tribunal, thereafter, took up the claims of the petitioner for the period during which the Reseller Agreement was in force, i.e. from 2017 to 2020.

27. Direct sale by respondent in Chhattisgarh not repudiatory of Reseller Agreement – Clause 2.01 and letter dated 16 August 2017

27.1 The petitioner's contention was that the respondent could not have sold its water meters directly in the State of Chhattisgarh, in view of the agreement with the petitioner. Such direct sale, it was alleged, amounted to repudiation and fundamental breach of the Reseller Agreement.

27.2 Clause 2.01 of the Reseller Agreement clearly stated that the petitioner was appointed as the reseller of the respondent on non-exclusive basis, and that the respondent was retaining the right to directly sell its products to customers as also to appoint other resellers.

27.3 Conscious of this clause and its effect, the petitioner relied on a letter dated 16 August 2017, whereunder the petitioner returned one

copy of the Reseller Agreement with its signature thereon, simultaneously conveying its disagreement with Clause 2.01 and asking for a change thereof. The respondent did not respond. Even so, the petitioner contended that it acted on the presumption that the respondent's silence signified acceptance of the petitioner's objection to Clause 2.01.

27.4 There was no objection, by the petitioner, to being described as a non-exclusive reseller of the respondent's water meters either in the Reseller Agreement or in the letters dated 1 January 2009, 1 January 2010, 1 August 2011 and 1 January 2012. Thus, even if Clause 2.01 of the Reseller Agreement were to be regarded as having been modified as requested by the petitioner in its letter dated 16 August 2017, the petitioner would continue to remain a non-exclusive reseller of the respondent's water meters.

27.5 So long as the description of the petitioner in the Reseller Agreement was that of a non-exclusive reseller, the petitioner could not claim any exclusive right to sell the water meters of the respondent in the State of Chhattisgarh or maintain a claim against the respondent based on that premise.

27.6 As such, it was really irrelevant as to whether the parties were contractually bound by the terms of the Reseller Agreement as it originally stood or as changed/modified in terms of the suggestion contained in letter dated 16 August 2017 of the petitioner.

27.7 The learned Arbitral Tribunal next addressed the effect of the letter dated 16 August 2017. The Reseller Agreement, as forwarded by the respondent to the petitioner for signature, constituted an offer. Had the Reseller Agreement, in the form in which it was forwarded by the respondent, been signed by the petitioner and returned to the respondent, it would amount to acceptance by the petitioner of the respondent's offer. By such offer and acceptance, a contract on the terms and conditions contained in the Reseller Agreement would come into existence.

27.8 The letter dated 16 August 2017, whereby the petitioner requested for a change of Clause 2.01 as contained in the Reseller Agreement, however, constituted a counter offer by the petitioner. For a contract to come into existence, this counter offer was required to be accepted by the respondent on the terms contained in the counter offer. Section 7 of the Contract Act required acceptance of an offer to be absolute, unqualified and expressed in some usual and reasonable manner.

27.9 It required examination, therefore, as to whether, in these circumstances, there was an absolute/unqualified acceptance of the terms of the Reseller Agreement by the petitioner in the manner suggested by the respondent.

27.10 In this, it was necessary to see the language of the letter dated 16 August 2017 and the contemporaneous conduct of the parties.

27.11 A perusal of the minutes of the meeting dated 29 April 2017, which preceded the Reseller Agreement, showed that the respondent had offered the petitioner, in the said meeting, 2-3% commission for direct quotations submitted by the respondent, but that this offer was not acceptable to the petitioner. This indicated that, though the petitioner was aware that the respondent was independently dealing with the dealers in the State of Chhattisgarh, the respondent did not agree to exclusivity of the petitioner.

27.12 In these circumstances, the execution and return of the Reseller Agreement by the petitioner to the respondent, with letter dated 16 August 2017, did not make any substantial difference. The letter dated 16 August 2017 was merely a request by the petitioner to the respondent. In the absence of the acceptance of the said request by the respondent, both parties agreed and intended to continue to function in terms of the Reseller Agreement.

27.13 Viewed from another perspective, if the letter dated 16 August 2017 were to be treated as a counter offer by the petitioner to the respondent, in the absence of any express or implied acceptance of the said counter offer by the respondent, it could not be said that any contract came into existence. The petitioner's argument that the omission, on the part of the respondent, to respond to the letter dated 16 August 2017, constituted acceptance of the said counter offer, was not legally tenable.

28. Ergo, no breach by the respondent of the Reseller Agreement

In view of Clause 2.01 of the Reseller Agreement, the petitioner could not seek to contend that the respondent committed any breach in directly selling its water meters in the State of Chhattisgarh or appointing any other dealer.

29. No proof of entitlement, by the petitioner, to difference between price quoted by respondent and price quoted by petitioner to customers

Mathematically, the petitioner's claims were predicated on the entitlement, of the petitioner, to the difference between the rate at which the water meters were sold by the respondent to the petitioner and the rate at which they were sold further by the petitioner to the customers. No agreement, either stipulating any rate of commission to which the petitioner was entitled, or evidencing entitlement, by the petitioner, to the difference between the two sale prices, was in existence. Nor was there any material to indicate the minimum difference which the petitioner was entitled to maintain between the price at which it purchased the water meters from the respondent and the price at which it sold the water meter to the customers.

30. No orders placed by customers

Had it been a situation in which the petitioner had arrived at a firm arrangement with any of the customers for supply of water meters of the respondent, and had, based thereon, placed any orders for purchase of water meters from the respondent and had, the respondent, in these circumstances, directly supplied the water meters to the said

customers or allowed any other reseller to supply the said water meters to the said customers, resulting in loss to the petitioner, the respondent could then have been held to have caused loss to the petitioner or acted unfairly to the petitioner, despite the non-exclusive nature of the agreement between the two. However, the petitioner had not pleaded any definite agreement or arrangement with any of the customers of water meters or of having placed orders on the respondent for purchase of water meter to supply the said customers.

31. Based on the above reasoning, the learned Arbitral Tribunal has rejected all the claims of the petitioner.

32. The petitioner is before this Court, aggrieved thereby.

Rival contentions and analysis thereof

The impugned award, in precis

33. The claim of the petitioner, in the arbitral proceedings was entirely related to the customers with whom the petitioner had liaised before the execution of the Reseller Agreement on 1 February 2017. The petitioner's contention is that there was a contractual relationship between the petitioner and the respondent, existing all throughout, even prior to the execution of the dealership agreement, whereby the petitioner was to liaise with customers and procure contracts for the respondent and was, in turn, entitled to the difference between the

price charged by the respondent from the petitioner and the price charged by the petitioner from the customers.

34. The learned Arbitral Tribunal has held that there was neither any such contract between the petitioner and the respondent in existence, nor any material to indicate entitlement, by the petitioner, to the difference between the price charged by the petitioner from the customers and the price charged by the respondent from the petitioner. As such, there being no contractual relationship between the petitioner and the respondent till the execution of the Reseller Agreement on 1 February 2017, there was no proscription on the respondent appointing anyone else as its dealer for sale of water meters in Chhattisgarh, even to the customers with whom the petitioner had liaised.

35. The learned Arbitral Tribunal has held, further, that, even in the absence of a contract, the petitioner could have maintained a claim for compensation or damages had it placed on record sufficient material to justify invocation of Section 70 of the Contract Act. Not only did the petitioner not invoke Section 70; the petitioner had not led any evidence on the basis of which a claim under Section 70 could be allowed.

36. Another, and, in the opinion of the learned Arbitral Tribunal, more fundamental, hurdle in the petitioner being able to maintain any claim for the period prior to the Reseller Agreement, was the non-existence of any arbitration agreement between the petitioner and the

respondent. The learned Arbitral Tribunal holds that the first arbitration agreement which came into existence between the petitioner and the respondent was by way of Clause 27 of the Reseller Agreement. Prior thereto, there was no agreement between the petitioner and the respondent to refer the disputes between them to arbitration.

37. The learned Arbitral Tribunal has also relied on Clauses 1.01, 17.02 and 27 of the Reseller Agreement to sustain its conclusion that there was no contractual relationship between the petitioner and the respondent till the Reseller Agreement came to be executed.

38. The claim of the petitioner, insofar as it related to the period prior to the Reseller Agreement coming into existence was, therefore, found incapable of acceptance or grant, or even of being resolved by arbitration.

39. Insofar as the period after the Reseller Agreement came into existence was concerned, the learned Arbitral Tribunal notes that Clause 2.01 of the Reseller Agreement clearly appointed the petitioner as a non-exclusive reseller of the respondent. The clause also expressly entitled the respondent to appoint any other reseller for its products. The petitioner could not, therefore, claim any exclusivity in the matter of reselling of water meters and other products manufactured by the respondent. This would apply equally to the customers with whom the petitioner had also liaised.

Submissions of Mr. Ramesh Singh for the petitioner

40. Mr. Ramesh Singh, learned Senior Counsel for the petitioner submits that the learned Arbitral Tribunal has fundamentally erred in ignoring the relevant evidence on record before it. In holding that there was no contractual relationship between the petitioner and the respondent till the Reseller Agreement came to be executed, he submits that the learned Arbitral Tribunal has only taken into consideration the original authorization notices dated 1 January 2009, 1 January 2010, 1 August 2011 and 1 January 2012, without considering the subsequent correspondence between the petitioner and the respondent, as well as the respondent and the final customers. He submits that the learned Arbitral Tribunal has also ignored the Circular dated 5 July 2012 issued by the PHED. If all the communications were holistically taken into consideration, he submits that the inference that there existed a concluded contractual relationship between the petitioner and the respondent, entitling the petitioner to be reimbursed the difference between the price invoiced by the petitioner to the final customers and the price charged by the respondent from the petitioner, was inevitable. He has drawn my attention to the various communications already extracted in para 8 (*supra*). Thus, according to Mr. Ramesh Singh, a concluded contract was in existence even prior to the execution of the Reseller Agreement.

41. Besides this, Mr. Ramesh Singh submits that the learned Arbitral Tribunal erred in failing to extend, to the petitioner, the benefit of Section 70 of the Contract Act. He further points out that,

in fact, no issue as to the existence or otherwise of a concluded contract between the petitioner and the respondent was even framed by the learned Arbitral Tribunal. It was not open to the learned Arbitral Tribunal to arrive at a conclusion beyond the issues framed. Even on this ground, he submits that the impugned award cannot sustain.

42. Mr. Ramesh Singh further submits that Clause 2.01 of the Reseller Agreement cannot apply to contracts which were procured by the petitioner by expending its own time and efforts. He submits that the learned Arbitral Tribunal appears to have proceeded on a premise that the petitioner was restricting its claim to cases in which no efforts have been put in by the petitioner. He has seriously disputed the understanding, by the learned Arbitral Tribunal, of the case that the petitioner was seeking to set up. He has particularly drawn my attention, in this context, to the findings in paras (X) and (Y) of the analysis and reasoning of the learned Arbitral Tribunal, which read thus:

> "(X) Clause 2.01 of the Reseller Agreement in clear terms authorized the respondent to sell water meters directly to customers within Chhattisgarh as well as to appoint any other reseller of water meters.
>
> (Y) Once it is so, the same knocks the wind out of the sails of the claims of the claimant for the period 2017 to 2020, which are based on entirely on the alleged exclusive right of the claimant to sell in the State of Chhattisgarh the water meters of the respondent and on which basis the claimant has also claimed loss of anticipated returns."

43. Mr. Ramesh Singh has also questioned the correctness of the findings of the learned Arbitral Tribunal in paras (R) to (U) of the impugned award, which read as under:

> "(R) The relevant part of the letter dated 16.08.2017 of the clamant to the respondent is as under:
>
> > "We are in receipt of two copies of the RESELLER AGREEMENT.
> > Thanks for the same.
> >
> > While going through the Agreement, we observe some points in which some clarification is needed & we are also not agree with these points:-
> > …….
> > (2) Clause 2-2.01:
> > It is written that "ITRON retains the right to sell Products directly to Customers within the Territory and to appoint other resellers of Products"
> > We request you to delete the same.
> >
> > We are enclosing herewith the original Agreement duly sealed with signature but all above three be cleared or need to be changed."
>
> (S) As far as the contemporaneous conduct of the parties is concerned, we may notice that the Reseller Agreement though dated 01.02.2017 was admittedly executed in August, 2017. It is the own case of the claimant that the respondent, even prior to August 2017 was indulging in direct sales and which necessitated the meeting dated 29.04.2017. A perusal of the minutes of the said meeting relied by the claimant, and though disputed by the respondent shows that the respondent in the said meeting offered to give 2-3% commission to the claimant for the direct quotations submitted by it but which was not acceptable to the claimant. Therefrom it is evident that it was in the knowledge of the claimant when it signed and returned the Reseller Agreement to the respondent that the respondent was not willing to accept the claimant as the only seller of water meters of the respondent in the State of Chhattisgarh and the respondent on its own also, independent of the claimant, was dealing with the customers of water meters in the State of Chhattisgarh. The minutes of the meeting of 29.04.2017 as per the claimant also do not show the respondent to have in the said meeting also agreed to such exclusivity of the claimant. Rather, the respondent thereafter, in the

> Reseller Agreement forwarded to the claimant for execution, reserved unto itself the right of such direct sales.
>
> (T) In the aforesaid state of affairs, the factum of the claimant having executed and returned the Reseller Agreement to the respondent cannot be treated as anything but an unequivocal absolute acceptance of the Reseller Agreement by the claimant in the manner required by the respondent. The letter dated 16.08.2017, in law, constitutes merely a request of the claimant to the respondent and that in the absence of acceptance of such request by the respondent, the assent and intent of the claimant to function in terms of the Reseller Agreement.
>
> (U) Thus, we hold, that notwithstanding the letter dated 16.08.2017, a contract in terms of the Reseller Agreement came into existence between the claimant and the respondent."

44. Mr. Ramesh Singh's submission is that the petitioner had seriously objected to Clause 2.01 of the Reseller Agreement and could not, therefore, be treated as bound by the said clause. He has drawn my attention to the Statement of Claim filed by the petitioner before the learned Arbitral Tribunal, in which one of the grounds urged by the petitioner was that, having worked for more than eight years with the respondent, without any monetary benefit, the petitioner had no bargaining power or any other option except consenting to signing the non-exclusive Reseller Agreement under compelling circumstances.

45. Mr. Ramesh Singh also questions the manner in which the respondent is seeking to interpret Clause 2.01 of the Reseller Agreement. He submits that Clause 2.01 of the Reseller Agreement did not grant any right to the respondent to repudiate pre-existing contracts. For that reason, he submits that the petitioner's entitlement in respect of the customers with whom the petitioner had interacted prior to the execution of the Reseller Agreement could not be divested by the respondent by invoking Clause 2.01 of the Reseller Agreement.

Mr. Ramesh Singh seeks to rely, in this context, on the fact that even after executing the Reseller Agreement, the respondent was charging, from the customers with whom the petitioner had liaised before the Reseller Agreement was executed, the price indicated in the e-mail communications between the petitioner and the respondent. As such, the understanding of the respondent was also that, in respect of the customers with whom the petitioner had liaised prior to the Reseller Agreement being executed, dealership had necessarily to be through the petitioner and in terms of the communications that had been exchanged between the respondent and the petitioner.

46. Thus, submits Mr. Ramesh Singh, the entire case of the petitioner has been misunderstood by the learned Arbitral Tribunal, fundamentally vitiating the impugned award.

The scope of interference with the arbitral award under Section 34 of the 1996 Act, especially with respect to the interpretation of the terms of the contract

47. The decisions on the scope of Section 34 of the 1996 Act are too numerous to justify any paraphrasing, but the position is, by now, certain. ***UHL Power Co. Ltd v. State of H.P.***[5] and ***Dyna Technologies (P) Ltd v. Crompton Greaves Ltd***[6] hold that the jurisdiction of the Court under Section 34 cannot be likened to normal appellate jurisdiction. Casual and cavalier interference with arbitral awards, and proscription from interfering on the ground that a better, alternative view was possible, stands clearly foreclosed by ***Ssangyong***

[5] **(2022) 4 SCC 116**
[6] **(2019) 20 SCC 1**

Engineering & Construction Co. Ltd v. N.H.A.I.[7] and ***Parsa Kente Collieries Ltd v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd***[8]. The autonomy of the arbitral tribunal was required to be respected and interference with arbitral awards on factual aspects firmly eschewed. At the same time, if the award was found to be perverse, or that the interpretation of the contractual covenants by the Arbitral Tribunal was one which could not possibly be accepted, the Court was bound to interfere.[9] Instances where the construction of the contractual clauses, by the Arbitral Tribunal, was found to be so unacceptable as to justify interference, are ***South East Asia Marine Engineering & Constructions Ltd v. Oil India Ltd***[10] and ***Patel Engineering Ltd v. North Eastern Electric Power Corporation Ltd***[11].

48. "Perversity", as would justify interference with an arbitral award, connoted a situation in which the finding of fact, by the Arbitral Tribunal, was arrived at by ignoring or excluding relevant material, or by taking into consideration irrelevant material, or where the finding was so outrageously in defiance of logic as to suffer from the viced of irrationality.[12] ***Associate Builders*** also placed especial reliance, on the concept of "perversity", on the following clarification, provided in ***Kuldeep Singh v. Commissioner of Police***[13]:

> "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

[7] **(2019) 15 SCC 131**
[8] **(2019) 7 SCC 236**
[9] **Dyna Technologies**
[10] **(2020) 5 SCC 164**
[11] **(2020) 7 SCC 167**
[12] **S.T.O. v. Gopi Nath & Sons, 1992 Supp (2) SCC 312; Associate Builders v. D.D.A., (2015) 3 SCC 49**
[13] **(1999) 2 SCC 10**

> 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."

49. In ***Associate Builders*** and ***Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum***[14], the Supreme Court clearly held that an arbitral award can only be set aside on grounds mentioned under Sections 34(2) and (3) of the said Act and not otherwise. The Court considering an application for setting aside an award, under Section 34 of the 1996 Act cannot look into the merits of the award except when the award is in conflict with the public policy of India as provided in Section 34(2)(b)(ii) of the 1996 Act. An award could be said to be in conflict with the public policy of India, as per ***Associate Builders***, when it is patently violative of a statutory provision, or where the approach of the Arbitral Tribunal has not been judicial, or where the award has been passed in violation of the principles of natural justice, or where the award is patently illegal, which would include a case in which it was in patent contravention of applicable substantive law or in patent breach of the 1996 Act, or where it militated against the interest of the nation, or was shocking to the judicial conscience.

50. An award which ignores the specific terms of the contract, but is not merely a case of erroneous contractual interpretation, is patently illegal.[15] The Supreme Court, in ***Indian Oil Corporation Ltd***, found the case before it to be one such. ***Ssangyong Engineering*** demonstrated an interesting example of a case in which the error in

[14] **(2022) 4 SCC 463**
[15] **Indian Oil Corporation Ltd**

interpretation of the contract was so fundamental as to render the award in conflict with the public policy of India:

> "76. However, when it comes to the public policy of India, argument based upon "most basic notions of justice", it is clear that this ground can be attracted only in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice. It can be seen that the formula that was applied by the agreement continued to be applied till February 2013 - in short, it is not correct to say that the formula under the agreement could not be applied in view of the Ministry's change in the base indices from 1993-1994 to 2004-2005. Further, in order to apply a linking factor, a circular, unilaterally issued by one party, cannot possibly bind the other party to the agreement without that other party's consent. Indeed, the circular itself expressly stipulates that it cannot apply unless the contractors furnish an undertaking/affidavit that the price adjustment under the circular is acceptable to them. We have seen how the appellant gave such undertaking only conditionally and without prejudice to its argument that the Circular does not and cannot apply. This being the case, it is clear that the majority award has created a new contract for the parties by applying the said unilateral circular and by substituting a workable formula under the agreement by another formula dehors the agreement. This being the case, a fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered into with the other party. Clearly, such a course of conduct would be contrary to fundamental principles of justice as followed in this country, and shocks the conscience of this Court. However, we repeat that this ground is available only in very exceptional circumstances, such as the fact situation in the present case. Under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the Court. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the 1996 Act, as has been noted earlier in this judgment."

Yet another such example was highlighted by the Supreme Court in ***PSA Sical Terminals (P) Ltd v. V.O. Chidambranar Port Trust***[16]:

> "85. As such, as held by this Court in Ssangyong Engg. & Construction, the fundamental principle of justice has been

[16] **(2021) 18 SCC 716**

> breached, namely, that a unilateral addition or alteration of a contract has been foisted upon an unwilling party. This Court has further held that a party to the agreement cannot be made liable to perform something for which it has not entered into a contract. In our view, re-writing a contract for the parties would be breach of fundamental principles of justice entitling a court to interfere since such case would be one which shocks the conscience of the Court and as such, would fall in the exceptional category."

PSA Sical, therefore, holds that if the Arbitral Tribunal travels beyond the contract, it acts without jurisdiction, being a creature of the contract, and the award stands vitiated thereby. Following the precedent in ***Army Welfare Housing Organisation v. Sumangal Services (P) Ltd***[17], it was held that an Arbitral Tribunal had strictly to act within the boundaries of the contract, and could not proceed *ex debito justitiae*. For example, as observed in ***Satyanarayana Construction Co. v. U.O.I.***[18], the Arbitral Tribunal could not award a claim at a rate higher than that specified in the contract. Rewriting of the contract is completely proscribed, and fatally imperils the arbitral award, as held in ***N.H.A.I. v. Bumihiway DDB (JV)***[19], ***Union Territory of Pondicherry v. P.V. Suresh***[20], ***Shree Ambica Medical Stores v. Surat People's Co-operative Bank Ltd***[21]. ***IFFCO Tokio General Insurance Co. v. Pearl Beverages Ltd***[22], ***Tata Consultancy Services v. Cyrus Investments (P) Ltd***[23] and ***Maharashtra State Electricity Distribution Co. v. Maharashtra Electricity Regulatory Commission***[24].

---

[17] **(2004) 9 SCC 619**
[18] **(2011) 15 SCC 10**
[19] **(2006) 10 SCC 763**
[20] **(1994) 2 SCC 70**
[21] **(2020) 13 SCC 564**
[22] **(2021) 7 SCC 704**
[23] **(2021) 9 SCC 449**
[24] **(2022) 4 SCC 657**

51. Comprehensively examining and analysing the entire gamut of existing case laws and reiterating the above principles, the Supreme Court, in ***S.V. Samudram v. State of Karnataka***[25], rendered this year, further clarified that an arbitral award could not be modified by the Court, as held in ***N.H.A.I. v. M. Hakeem***[26] and ***Dakshin Haryana Bijli Vitran Nigam Ltd v. Navigant Technologies (P) Ltd***[27]. The latter decision, it was noted, further held that, where the Court set aside the award of the Arbitral Tribunal, the underlying dispute would be required to be decided afresh in an appropriate proceeding. In the event of the Court finding the arbitral award to justify evisceration, the Court, it was held in ***McDermott International Ltd v. Burn Standard Co. Ltd***[28] and ***Larsen Air Conditioning & Refrigeration Co. v. U.O.I.***[29], could only quash the award leaving the parties to re-initiate arbitration should they so choose, but could not itself rewrite or modify the award.

52. These principles also stand exhaustively delineated in ***Reliance Infrastructure Ltd v. State of Goa***[30], also rendered this year.

Applying the principles to the facts

53. Viewed in the light of these principles, it is clear that there is no scope, whatsoever, for this Court to interfere with the findings of the learned Arbitral Tribunal, which has correctly and incisively applied

[25] **(2024) 3 SCC 623**
[26] **(2021) 9 SCC 1**
[27] **(2021) 7 SCC 657**
[28] **(2006) 11 SCC 181**
[29] **(2023) 15 SCC 472**
[30] **(2024) 1 SCC 479**

to the facts, the provisions of the Contract Act and fundamental principles of contract law.

No equity in commercial transactions

54. Before adverting to the findings of the learned Arbitral Tribunal regarding which not much is required to be said, it is necessary to emphasise that there is no equity in commerce. Commercial transactions between private parties, as a legal luminary once said, are red in tooth and claw. The principle of universal brotherhood of man does not apply to commercial relations. There is no compulsion on a person entering into a commercial transaction even to be fair, much less kind or equitable, and no Court can compel him to be so. The colour of money is all that matters.

55. A limited to duty to act fairly and equitably may, on occasion, be read into transactions in which the Government is a contracting party; but, even there, overarching pre-eminence has to be accorded to the contract, and its provisions.

56. The Court cannot, in commercial matters, grant relief on the principles of equity and fairness. The statute governs. Relief, if any, has to be granted within the four corners of the Contract Act, or any other statute which may apply, and not outside its peripheries. Howsoever, unfair the consequence, on the petitioner, of the respondent's actions may be, the petitioner is entitled to relief only if it can establish the existence of a right in contract, entitling it to relief.

The *ubi jus ibi remedium*[31] principle applies with full force in such cases. Every remedy has to be founded on a legal, existing, right.

57. This has to be said, because Mr. Ramesh Singh, with the persuasiveness for which he is well-known, fervently implored the Court to bear in mind the unfairness which was resulting to the petitioner as a consequence of the respondent's act. He sought to submit that, on the strength of the authorization notices dated 1 January 2009, 1 January 2010, 1 August 2011 and 1 January 2012, the petitioner had, *bonafide*, expended time, energy and resources in interacting with various customers, including government departments, and persuaded them to include in their upcoming tenders, the requirement of water meters, conforming to the description of the water meters manufactured by the respondent. The respondent had also interacted with the very same customers and informed them that the petitioner was its authorised reseller. The respondent had also, in writing, thanked the petitioner for sourcing customers for the respondent and facilitating the dealership of the respondent's products in the State of Chhattisgarh. The respondent had also gone to the extent of suggesting the prices which could be quoted to the customers for the water meters in question. Having thus led the petitioner up the garden path by making it believe that there was a *bonafide* contractual relationship between the petitioner and the respondent and having, in that belief, persuaded the petitioner to spend time and money, Mr. Ramesh Singh submits that the respondent

[31] **Where there is a right, there is a remedy.**

could not, at the last moment, execute a *volte face* and divert the dealership to other resellers.

58. The findings of the learned Arbitral Tribunal have been noted in detail earlier in this judgment and it is hardly necessary to reiterate them. They are clearly unexceptionable.

Indicia of a valid contract

59. For all the persuasiveness at his command, Mr. Ramesh Singh has not been able to dent the finding of the learned Arbitral Tribunal that no concluded contract, within the meaning of Section 10[32] of the Contract Act had come into being prior to the execution of the Reseller Agreement on 1 February 2017. Offer, acceptance and consideration are the inalienable indicia of a valid contract. The contract must be with free consent of the parties, otherwise expressed as consensus *ad idem*. The existence, or otherwise, of "free consent" is to be assessed on the anvils of Sections 13 to 15[33] of the Contract Act. The following passage from the judgment of the Supreme Court

[32] **10. What agreements are contracts**. – All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

[33] **13. "Consent" defined**. – Two or more persons are said to consent when they agree upon the same thing in the same sense.

14. "Free consent" defined. – Consent is said to be free when it is not caused by—

(1) coercion, as defined in Section 15, or

(2) undue influence, as defined in Section 16, or

(3) fraud, as defined in Section 17, or

(4) misrepresentation, as defined in Section 18, or

(5) mistake, subject to the provisions of Sections 20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

15. "Coercion" defined. – "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the Indian Penal Code, is or is not in force in the place where the coercion is employed.

in ***Karnataka Power Transmission Corporation Ltd v. JSW Energy Ltd***[34] classically underscores the legal position:

> "**126.** … In order that there must be a contract concluded, undoubtedly, there must be a proposal made, which must be accepted. There must be consideration for the promise. The proposal must be accepted, which must be communicated, as already explained. The acceptance must be unqualified. This is an over simplification of a complex process. We say this, as the parties can be said to have entered into a contract or a contract would be said to be concluded only when they are ad idem on all the essential terms of the contract. In other words, if the proposals containing the essential terms have been accepted, and the acceptance is communicated and, if the other conditions in Section 2 of the Contract Act are complied with viz. that is there is consideration and the contract is enforceable in law, within the meaning of Section 10 of the Act, it would lead to the creation of a concluded contract."

Thus, consideration, and the express stipulation of the terms and conditions to which the parties bind themselves *ad idem*, are inalienable indicia of a valid contract.

60. The concept of "consideration"

60.1 Section 2(d) of the Contract Act defines "consideration" as under:

> "(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."

60.2 Salmond, in Jurisprudence, defines "consideration" thus:

> "A consideration in its widest sense is the reason, motive or inducement, by which a man is moved to bind himself by an agreement. It is not for nothing that he consents to impose an

[34] **(2023) 5 SCC 541**

> obligation upon himself, or to abandon or transfer a right. It is on *consideration* of such and such a fact that he agrees to bear new burdens or to forgo the benefits which the law already allows him."

This definition, as also the definition of "consideration" as "a benefit to the party promising or a loss or detriment to the party to whom the promise is made", as contained in Corpus Juris Secundum Vol 17, were cited with approval by the Supreme Court in ***Commissioner of Central Excise v. Fiat India Pvt Ltd***[35]. ***Sonia Bhatia v. State of U.P.***[36] defines "consideration" as "a reasonable equivalent or other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee". "As a general rule", held the Supreme Court in ***Regional Provident Fund Commissioner v. Shiv Kumar Joshi***[37], "there is a sufficient consideration for a promise *if there is any benefit to the promisor or any loss or detriment to the promisee*".

61. It is true that the respondent had issued letters of authorization, authorizing the petitioner to act as its dealer in the State of Chhattisgarh. It is also true that the respondent had expressed its gratitude to the petitioner for facilitating procurement of contracts in the State of Chhattisgarh and trade in its water meters. It is also true that the respondent had suggested the prices at which the water meter could be sold. It is also true that the respondent had held out to the ultimate customers that the petitioner was its authorised dealer. All these factors, however, even if regarded cumulatively, do not detract from the uncomfortable reality that *no terms and conditions of dealership had been finalized between the petitioner and the*

[35] **(2012) 9 SCC 332**
[36] **AIR 1981 SC 1274**
[37] **AIR 2000 SC 331**

respondent prior to the Reseller Agreement and there is nothing to indicate the amount to which the petitioner was entitled, for acting as the respondent's authorised reseller in the State of Chhattisgarh. These elements were particularized for the first time in the Reseller Agreement.

62. The submission of Mr. Ramesh Singh that the petitioner was entitled to be reimbursed by the respondent, the difference between the price charged by the petitioner from the ultimate customers and by the respondent from the petitioner is unsupported by any evidence. There is no document which manifests any such entitlement of the petitioner. The petitioner may have believed itself to be entitled to be paid the said difference by the respondent; that belief, howsoever *bona fide*, cannot, however, translate into a legal right.

63. Thus, absent any terms and conditions of dealership finalised between the petitioner and the respondent, and any consideration for such dealership specifying amount to which the petitioner was entitled from the respondent, it cannot be said that any concluded contract within the meaning of Contract Act was in existence between the petitioner and the respondent prior to the Reseller Agreement.

64. Section 70 of the Contract Act, not applicable

64.1 Equally, there can be no cavil with the finding of the learned Arbitral Tribunal that the ingredients of Section 70 of the Contract Act

were not satisfied. The findings of the learned Arbitral Tribunal in this regard are as under:

> "(I) It is not as if in the absence of a contract, the claimant could not have had a claim against the respondent on the basis of the aforesaid documents, which do indeed show the intent of the respondent to appoint the claimant as a dealer of its water meters in the State of Chhattisgarh and the intent of the claimant to work as such a dealer. The claimant, even in the absence of any terms and conditions of such dealership being settled and a contract to have come into existence, could have, under section 70 of the Contract Act, recovered from the respondent compensation for the benefit enjoyed by the respondent of the actions of the claimant. The claimant, however, has not invoked the said provision of law. Without the claimant having invoked the said provision of law, this tribunal cannot adjudicate any claim of the claimant on that basis. The claimant even otherwise has not pleaded or proved the expenses if any incurred by it for representing itself as the dealer of the water meters of the respondent and compensation equivalent to which the claimant could be said to be entitled to. Merely pleading that the claimant invested its time, effort and money for having the water meters of the respondent in the list of approved vendors is not enough and we cannot estimate the value thereof without the same being pleaded and proved.
>
> (J) Moreover, there is no pleading or evidence of any orders for water meters having been placed on the respondent during the period from 01.01.2009 to 31.12.2012 through the efforts of the claimant. There is thus no plea of any benefit having been enjoyed by the respondent of the efforts of the claimant and of which benefit the claimant can be said to be entitled to compensation."

Section 70 is founded on the *quantum meruit* principle. Quite apart from other factors, the enjoyment of benefit, by the person for whom the act is done, is a *sine qua non* for Section 70 to apply. Where there is no evidence of such benefit having been obtained, Section 70 was held, in ***Aries Advertising Bureau v. C.T. Devaraj***[38], to have no application.

[38] **AIR 1995 SC 2251**

64.2 The decision of the learned Arbitral Tribunal not to extend, to the petitioner, the benefit of Section 70 of the Contract Act, has a clear and sound legal basis. In the absence of any contract having fructified – indeed, in the absence of any proof of acceptance, by the customers, of the rates quoted by the petitioner – as a result of the petitioner's actions and efforts, no benefit can be said to have enured to the respondent. The most basic ingredients of Section 70 are, therefore, not satisfied.

65. No arbitration agreement

65.1 The observation of the learned Arbitral Tribunal that, quite apart from the entitlement of the petitioner to its claims under contract, the learned Arbitral Tribunal was not competent to deal with any claims relating to the period prior to 1 February 2017 when the Reseller Agreement was executed, is also unexceptionable. The claims of the petitioner cannot be said to be predicated on the Reseller Agreement. What is sought to be contended by Mr. Ramesh Singh is that, *irrespective of the Reseller Agreement*, a contractual relationship existed between the petitioner and the respondent prior to 1 February 2017, *which the Reseller Agreement could not affect*. The arbitration clause in the Reseller Agreement, besides specifically being made applicable only prospectively after the Reseller Agreement came into existence, cannot be invoked to justify claims based on a presumed contractual relationship prior to execution of the Reseller Agreement. At this juncture, it is worthwhile to reproduce the findings of the

learned Arbitral Tribunal in this regard, as contained in para (K) in the impugned award:

> "(K) However, there is a bigger hurdle in the path of the claimant to seeking compensation from this arbitral tribunal for breach of any contract, if any, in respect of the period prior to the date of the Reseller Agreement. This arbitral tribunal is a creature of a contract/ agreement and without any agreement or contract between the claimant and the respondent during the period 01.01.2009 to 31.12.2012 to have their disputes adjudicated by arbitration, this tribunal in any case would not have the power or authority to adjudicate on said matter. Neither the letters dated 01.01.2009, 01.01.2010, 01.08.2011 and 01.01.2012 nor the letters dated 30.11.2011,04.04.2012,18.07.2012 and 26.10.2012 written by the respondent to others contain anything from which it can be said that the parties could be said to have at least agreed on adjudication of disputes between them by arbitration. The arbitration agreement leading to the constitution of this tribunal is contained admittedly in the Reseller Agreement dated 01.02.2017. Clause 1.01 of the said Reseller Agreement is as under:
>
> "1.01. This agreement shall commence as of the Effective Date written above. It shall continue in full force and effect for a term of three (3) years, provided that it may be terminated in accordance with Clause 24 hereof".
>
> The arbitration clause 27 in the said Reseller Agreement is as under:
>
> **"Clause 27 – Arbitration**
>
> 27.01 Any claim, dispute, difference or controversy **(Dispute")** arising out of, or in relation to, this Agreement, including any Dispute with respect to the existence or validity hereof, the interpretation hereof, the activities performed hereunder, the duties or obligations of the Parties or the breach hereof, shall be submitted to arbitration at the request of any party upon written notice to that effect to the other party and such arbitration shall be conducted in accordance with the (Indian) Arbitration and Conciliation Act, 1996 and the rules and regulations made thereunder by a panel consisting of three (3) arbitrators. The parties shall have the right to appoint one arbitrator each, and the arbitrators so appointed shall appoint a third arbitrator who shall act as the presiding arbitrator.
>
> 27.02 The language of the arbitration shall be English. The seat of the arbitration shall be New Delhi, India.

27.03 The parties agree that the award of the arbitrators shall be final and binding upon the parties, and that none of the parties shall be entitled to commence or maintain any action in a court of law upon any matter in Dispute arising from or in relation to this Agreement, except for the enforcement of an arbitral award granted pursuant to this Clause.

27.04 Nothing in this Clause shall, in any way, affect the right of any party to seek such interim relief. The parties agree to submit to the exclusive jurisdiction of the courts in New Delhi in relation to such interim relief.

27.05 The costs of the arbitration shall be borne by the disputing parties in such manner as the arbitrators shall direct in their arbitral award.

The aforesaid clause contains an agreement for arbitration only of claims, disputes, differences, controversy arising out of or in relation to the said agreement and which cannot be construed as an agreement for arbitration of any claims, disputes arising out of any relationship which the parties may have had prior to the effective date of the said agreement. On the contrary, clause 17.02 thereof expressly provides as under, ruling out any possibility of the parties having agreed to arbitration of any claims against each other of the period prior to the agreement:

"17.02. Reseller warrants that there are no outstanding obligations or agreements, either written, oral or implied, inconsistent with this Agreement.

In fact, the said agreement nowhere provides that the relationship thereunder was in continuation of any earlier arrangement agreement between the parties. The recital of the said agreement also are as under:

WHEREAS, Itron desires to appoint the Reseller as a reseller to the customers (the **"Customers")** in the territory (the **"Territory")** (both as defined in Annex A) certain products developed, manufactured and/or marketed by Itron (as defined in Annex B) (each a **"Product"** and collectively, **"Products");**

WHEREAS the Reseller desires to accept the appointment on the terms and conditions as set out in this Agreement;

indicating that the relationship between the parties as described therein was coming into existence only on the execution of the said

> agreement. There is thus no agreement authorizing this tribunal to arbitrate upon the claims of the claimant other than those arising out of or in relation to the Reseller Agreement. The Reseller Agreement providing for its commencement with effect from 01.02.2017, the disputes of prior thereto cannot be said to be in relation to the Reseller Agreement."

65.2 The learned Arbitral Tribunal has correctly noted that Clause 1.01, 17.02 and 27 of the Reseller Agreement clearly indicate that the Reseller Agreement would apply only to claims which came into existence after its execution. The claims relatable to the period prior to the Reseller Agreement, could not, therefore, be covered by it. The arbitration clause contained in the Reseller Agreement would also, therefore, not be applicable to any claims relating to the period prior to the Reseller Agreement.

65.3 The petitioner cannot seek to contend that, as its grievance is with respect to diversion to other resellers, by the respondent, of the business relating to the customers which the petitioner had sourced, the Reseller Agreement and the arbitration clause contained in it would be applicable. The petitioner is not claiming any right under the Reseller Agreement. The reference to the Reseller Agreement is only to contend that the Reseller Agreement could not affect the rights of the petitioner, which was predicated on a pre-existing contractual relationship with the respondent. Specifically, the petitioner's contention is that Clause 2.01 of the Reseller Agreement, which appoints the petitioner as a non-exclusive reseller of the respondent, and allows the respondent to appoint other resellers, cannot apply to the customers with whom the petitioner has liaised prior to the execution of the Reseller Agreement. The petitioner's contention is,

therefore, that the respondent cannot plead Clause 2.01 of the Reseller Agreement as a defence to the petitioner's claim. The claim is, nonetheless, predicated on the presumed existence of a concluded contractual relationship between the petitioner and the respondent *prior to the execution of the Reseller Agreement* on 1 February 2017.

65.4 During that prior period, there was no contract between the petitioner and the respondent. Worse, there was no arbitration clause whereunder any claim of the petitioner could be adjudicated by the learned Arbitral Tribunal. The learned Arbitral Tribunal was, therefore, *coram non judice*, in so far as the claims which were ventilated by the petitioner were concerned.

66. Re. plea of non-consideration of entire material on record

66.1 The submission of Mr. Ramesh Singh that the learned Arbitral Tribunal had not considered all the evidence on record and had restricted its consideration to the original authorisation notices dated 1 January 2009, 1 January 2010, 1 August 2011 and 1 January 2012, is not correct. The learned Arbitral Tribunal has examined not only these documents but also the various communications between the parties, as well as the communications addressed by the respondent to the customers. There is, therefore, no want of consideration by the learned Arbitral Tribunal, of any relevant evidence.

66.2 That apart, as held by the Supreme Court in ***Ssangyong Engineering***, non-consideration, by the learned Arbitral Tribunal, of

available material, could justify setting aside of the resulting award only if the Court is convinced that, had that factor been taken into consideration, the outcome may have been different. In the present case, even on a holistic consideration of the entire material on record, it cannot be said that any concluded contract had come into existence between the petitioner and the respondent prior to the execution of the Reseller Agreement on 1 February 2017.

67. Petitioner was a "non-exclusive" reseller

67.1 Even otherwise, the notices of authorisation dated 1 January 2009, 1 January 2010, 1 August 2011 and 1 January 2012 themselves identify the petitioner as a non-exclusive reseller. The same expression is to be found in Clause 2.01 of the Reseller Agreement. The petitioner had appended his signature to the Reseller Agreement and sent the signed copy back to the respondent. No doubt, the petitioner also addressed a communication to the respondent on 16 August 2017 objecting to Clause 2.01 of the Reseller Agreement. That objection was, however, never accepted by the respondent. In this context, the learned Arbitral Tribunal has held that the letter dated 16 August 2017 can, at best, be regarded as a counter offer and that, as it had not been accepted by the respondent, the benefit thereof could not accrue to the petitioner. Paras (O) to (R) of the analysis and findings of the learned Arbitral Tribunal read thus:

> "(O) Before proceeding to discuss so, we may notice that the claimant, though in the letter dated 16.08.2017 it took objection to the part of clause 2.01 whereunder the respondent retained the right to sell the products directly to customers and to appoint other resellers, did not take any objection to the claimant, in the Reseller Agreement and also as in the four letters aforesaid, being described

as a nonexclusive reseller of the water meters of the respondent. Thus, even if we were to hold that clause 2.01 of the Reseller Agreement stood changed/modified as requested by the claimant in the letter dated 16.08.2017, the changed/modified clause would still constitute the claimant as a non-exclusive reseller of the water meters of the respondent. In our opinion, as long as the description of the claimant in the Reseller Agreement was of a non-exclusive reseller, the claimant cannot claim any exclusivity to the sale of water meters of the respondent in the State of Chhattisgarh and cannot sustain the claims made in the SOC on the said premise. In our opinion, for this reason, really speaking, it matters not whether the parties after execution of the Reseller Agreement were contractually bound in terms of the Reseller Agreement or in terms of the Reseller Agreement as changed/ modified vide letter dated 16.08.2017 of the claimant.

(P) Be that as it may, we proceed to decide, whether the change requested by the claimant in the letter dated 16.08.2017 came into effect or not.

(Q) Taking as correct, the stand of the claimant that the respondent, without any prior negotiations or agreement, forwarded the Reseller Agreement to the claimant for signing, the Reseller Agreement forwarded by the respondent to the claimant for signature, as per the law of contract, constituted an offer of the respondent to the claimant. The factum of the claimant having signed the Reseller Agreement as forwarded by the respondent and returning the same to the respondent, as per the law of contract, constituted acceptance by the claimant of the said offer of the respondent and on the acceptance of which a contract on the terms and conditions contained in the Reseller Agreement came into existence between the claimant and the respondent. The claimant, however, in the letter dated 16.08.2017 under cover of which the signed Reseller Agreement was returned by the claimant to the respondent having requested for change of clause 2.01 as contained in the Reseller Agreement, the letter dated 16.08.2017 of the claimant, under the law of contract, constituted a counter offer of the claimant to the respondent and which counter offer was required to be accepted by the respondent for an agreement binding the parties on the terms contained in the counter offer could be said to have come into existence. As per section 7 of the Contract Act, acceptance of an offer is required to be absolute, unqualified and to be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. What needs to be adjudicated is, whether the act of the claimant of on the one hand returning the Reseller Agreement duly executed, as required by the respondent, to the respondent and on the other hand in the letter dated 16.08.2017 under cover of which the executed

Reseller Agreement was returned to the respondent proposing certain changes in the Reseller Agreement, amounted to an absolute/unqualified acceptance in the manner prescribed by the respondent. For this purpose, we have to see (i) the language of the letter dated 16.08.2017; and, (ii) the contemporaneous conduct of the parties.

(R) The relevant part of the letter dated 16.08.2017 of the clamant to the respondent is as under:

> "We are in receipt of two copies of the RESELLER AGREEMENT.
> Thanks for the same.
>
> While going through the Agreement, we observe some points in which some clarification is needed & we are also
> not agree with these points: -
> …….
>
> (2) Clause 2-2.01:
>
> It is written that "ITRON retains the right to sell Products directly to Customers within the Territory and to appoint other resellers of Products"
> We request you to delete the same.
> ……..
>
> We are enclosing herewith the original Agreement duly sealed with signature but all above three be cleared or need to be changed.""

67.2 These findings clearly pertain to the realm of interpretation of contract, and cannot brook interference under Section 34 of the 1996 Act.

67.3 Besides, they are, even otherwise, unexceptionable in law.

67.4 Having returned the Reseller Agreement duly signed to the respondent, the petitioner cannot escape the rigour of Clause 2.01.

67.5 The learned Arbitral Tribunal has also correctly held that, even *de hors* Clause 2.01, the petitioner continued to remain a non-exclusive reseller of the respondent. In that capacity, the petitioner was not competent to raise any objection to the respondent appointing any other dealers, to act as the resellers of the respondent's water meter to the customers in the State of Chhattisgarh. This freedom, available to the respondent, also extended to the customers with whom the petitioner had liaised prior to the execution of the Reseller Agreement on 1 February 2017.

Conclusion

68. Having thus examined the entire issue in perspective, I am not convinced that any case for interference with the findings of the learned Arbitral Tribunal can be said to exist, and within the limited parameters of Section 34 of the 1996 Act.

69. This petition is, accordingly, dismissed with no orders as to costs.

C. HARI SHANKAR, J.

JULY 18, 2024
d*sn/*rb