
(2022) 03 DEL CK 0082

In the Delhi High Court

Case No : Original Miscellaneous Petition (COMM) No. 54 Of 2020 and IA Nos. 1059, 3111 Of 2020

Prium Verma

APPELLANT

Vs

Kedrion Biopharma India Pvt. Ltd. & Anr.

RESPONDENT

Date of Decision : 15-03-2022

Acts Referred:

Drugs And Cosmetic Rules, 1945 — Section 104A
Arbitration And Conciliation Act, 1996 — Section 34, 34(2A)
Negotiable Instruments Act, 1881 — Section 138

Citation : (2022) 03 DEL CK 0082

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Sameer Bhatnagar, Sudhir Nandrajog, Purnima Malik, Saurabh Sharma

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The petitioners have filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter the 'A&C Act') impugning an arbitral award dated 20.09.2019 (hereafter the 'impugned award') rendered by an Arbitral Tribunal comprising of a Sole Arbitrator (hereafter the 'Arbitral Tribunal').

2. The impugned award was rendered in respect of disputes that had arisen between the parties in connection with a Distribution Agreement dated 05.02.2016 (hereafter the 'Distribution Agreement').

3. In the year 2015, a partnership firm under the name and style, Qualichem Biologicals (hereafter the 'Firm') was constituted by three partners – Ms Jyoti Verma, Ms Prium Verma [the petitioner in OMP (Comm) 54/2020] and Ms Vineeta Sharma [represented through her legal representative Mr Pramod

Sharma, as the petitioner in OMP (Comm) 502/2019].

4. The Firm was, inter alia, engaged in the business of distribution and sale of pharmaceutical products.

5. Admittedly, Ms Jyoti Verma resigned from the Firm on 01.01.2015 and, the Firm was reconstituted with the existing partners (Ms Prium Verma and Ms Vineeta Sharma), holding equal shares in the Firm.

6. Respondent No. 1 (hereafter 'Kedrion') is a company incorporated under the Companies Act, 2013 and is a fully owned Indian subsidiary of Kedrion S.p.A, a company registered under the laws of Italy. Kedrion is an exclusive distributor in India of blood derivatives including other pharmaceutical products manufactured by the Kedrion Group.

7. On 05.02.2016, the Firm and Kedrion entered into the Distribution Agreement, for sale and import of pharmaceutical products manufactured by Kedrion S.p.A through the Firm as its exclusive distributor.

8. In terms of the Distribution Agreement, it was agreed that the Firm would issue post-dated cheques for placement of monthly pharmaceutical orders, prior to its import; however, the said cheques would be encashed by Kedrion only on issuance of the Purchase Order.

9. Kedrion claims that the Firm (and its constituent partners) failed to discharge their obligations under the Distribution Agreement and pay its dues to Kedrion. It further asserts that the Firm had tampered with the label and packaging of the drug – RhoGAM and the same was a violation of the Drugs and Cosmetic Rules, 1945 as well as the Distribution Agreement.

10. On 10.02.2017, Kedrion issued a 'Cease and Desist Notice' to the Firm restraining the petitioners from sticking labels, which used the name of the Firm on Kedrion's products and, to further indemnify Kedrion, in the event, any action was taken by the concerned authorities.

11. Kedrion claims that several invoices raised by it in favour of the Firm, remain unpaid. Accordingly, on 07.06.2017, Kedrion issued a notice to the Firm claiming payment of the outstanding dues amounting to ₹15,99,93,880/- and further calling upon it to cure the violations of the provisions of Rule 104A of the Drugs and Cosmetic Rules, 1945.

12. Ms Vineeta Sharma expired on 05.07.2015. Ms Prium Verma [the petitioner in OMP (Comm) 54/2020] continued to manage the affairs of the Firm.

13. Kedrion states that on 18.09.2017, one Mr Ashwani Verma, who claims to be the Chief Executive Officer of the Firm, sent an email to Kedrion wherein, he delineated a detailed schedule of probable dates for encashment of the post-dated cheques. However, despite the Firm and Prium Verma admitting their dues, the Firm did not act in accordance with the timeline indicated in the email dated 18.09.2017 and requested that the presentation of the cheques be postponed.

Aggrieved by the conduct of the petitioners, Kedrion terminated the Distribution Agreement on 23.10.2017.

14. It is Kedrion's case that the Firm and its partners failed to discharge their obligations under the Distribution Agreement in respect of twenty invoices raised by it amounting to ₹16,69,90,615/-. Out of the twenty invoices, fourteen invoices were directly raised by Kedrion, while the remaining six invoices were raised by M/s Parekh Integrated Services Private Limited (hereafter 'PISPL'). Kedrion claims that PISPL acted as its Agent for logistical support.

15. The Firm responded to the Notice of Termination on 07.12.2017, wherein it admitted that it was in possession of Kedrion's stock amounting to ₹16,38,52,982.51/-. Thereafter, several proposals and communications were exchanged between the parties for payment of the outstanding dues by the petitioners.

16. Kedrion claims that on 12.02.2018, it presented fourteen cheques for encashment. However, the said cheques were dishonoured with the endorsement "Payment Stopped by Drawer".

17. The parties, once again, entered into negotiations for an amicable resolution of the disputes. However, the same did not fructify. On 16.03.2018, Kedrion issued a legal notice to the petitioners under Section 138 of the Negotiable Instruments Act, 1881 calling upon the petitioners to make the payment of ₹1 crore within a period of fifteen days from the date of receipt of the said notice.

18. On 28.03.2018, the legal representative of Ms Vineeta Sharma through his legal counsel issued a letter, wherein he stated that the Firm had denied him access to the books of accounts as well as stock records and denied the liability to pay any amount. In response to the legal notice dated 16.03.2018, Ms Prium Verma through her advocate issued a letter dated 03.04.2018, denying that any payments were due and outstanding under the Distribution Agreement.

19. Subsequently, on 14.06.2018, certain goods invoiced by Kedrion were discarded by the Firm at Kedrion's Drug Licensed Warehouse. Whereas, Kedrion asserts that the Firm and Ms Prium Verma had dumped the goods; Ms Prium Verma states that the said goods were never accepted.

20. In view of the disputes, on 01.08.2018, Kedrion invoked the agreement to refer the disputes to arbitration. Thereafter, on 10.12.2018, the LCIA Court constituted the Arbitral Tribunal for adjudication of disputes by arbitration.

21. Before the Arbitral Tribunal, Kedrion filed its Statement of Claims. The claims raised by Kedrion are summarized as under:-

Claim no 1

Claim on account of outstanding debt. (₹ 8,62,33,015/- raised by Kedrion to the Firm plus

☐ 8,07,57,600/- raised by Kedrion through PISPL)

☐ 16,69,90,615/-

Claim no 2

Claim on account of interest on outstanding payment till 15.02.2019.

☐ 4,79,68,384/-

Claim no 3

Claim on account of demurrage charges and other incidental charges.

☐ 21,60,000/-

Claim no 4

Claim on account of damages for breach of contract sought for late payment of invoices;

non compliance with marketing plans; non response to letter dated 10.02.2017 on violation of provisions of Rule 104A of the Drugs and Cosmetic Rules, 1945.

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Claim no 5

Claim on account of damages for loss of business.

☐ 15,90,000

Claim no 6

Cost of Litigation/Expenses.

☐ 21,87,280/-

22. The Firm and Ms. Prium Verma filed the Statement of Defence raising certain counter-claims. Paragraph XIV of the Statement of Defence contains the summary of counter-claims and the same is set out below:-

A

Rent, electricity and maintenance not paid by claimant

☐ 28,97,888/-

B

Market recoverables held up on account of irregular/non supply by Claimant

☐ 19,82,402/-

C

Compensatory Relief

(i) Refund of expenses incurred on account of development of infrastructure

☐ 1,17,05,313

(ii) Refund of Marketing and Business Promotion expenses

☐ 3,13,98,708.48

(iii) Expenses incurred on attending conference(s)

☐ 4,07,500

D

Reimbursement on account of donation of short expiry RhoGAM

☐ 93,82,020/-

E

Reimbursement of GST paid by the respondent

☐ 50,94,360.71/-

F

Loss occurred by respondent on account of non-compliance of Government Notification(s) by claimant

☐ 1,02,33,628.45

G

Loss of profit in relation to Human Albumin suffered by respondent on account of inaction of claimant

☐ 3,23,11,792/-

H

Claim on account of short expiry RhoGAM and Debit note issued by respondent but not settled by claimant

☐ 2,51,00,266/-

I

Loss suffered by Respondent on account of subsequent change in price of products by Claimant in violation of the contractual price.

☐ 2,18,82,690/-

J

Demurrage charges

☐ 1,19,32,318

K

Expenses incurred by respondent in Tender Process(es)

☐ 3,62,18,660/-

L

Claims related to Parekh Integrated Service Private Limited (PISPL)

☐ 3,23,85,217/-

TOTAL

☐ 23,29,32,763.98

23. The Arbitral Tribunal framed the following issues for consideration:

“(1) Issue No. 1: Has there been a breach of the Distribution Agreement due to non-payment of the invoices raised by the Claimant?

(2) Issue No. 2: Were the cheques handed over to the claimant issued as security or for the discharge of payment obligations under the Distribution Agreement?

(3) Issue No. 3: Are the claims pertaining to M/s Parekh Integrated Services Private Limited (“PISPL”) beyond the ambit of these arbitration proceedings?

(4) Issue No. 4: Is the Claimant entitled to the claim for INR 16,69,90,615/- under the Distribution Agreement?

(5) Issue No. 5: Is the Claimant entitled to receive demurrage charges and other incidental charges, as set out in the notice dated 4 August 2018?

(6) Issue No. 6: Is the Claimant entitled to damages for breach of contract, including but not limited to violation of Rule 104A of the Drugs and Cosmetics Rules 1945?

(7) Issue No. 7: Whether the Claimant is entitled to an interest at the rate of 18% per annum or on pro rata basis from the date of the invoice as per Article 7 of the Distribution Agreement till the filing of this claim and pendente lite?

(8) Issue No.8: If issues 1 to 6, or any of them are answered in the affirmative, are the Second Respondent and the Third Respondent jointly and severally liable for the liabilities of the First Respondent?

(9) Issue No. 9: Are the First Respondent and the Second Respondent entitled to:

a. Reimbursement for the RhoGAM donation;

b. Reimbursement of GST;

c. Claim for short expiry products;

d. Recovery of market recoverables, rent, maintenance and electricity not paid

by the Claimant;

e. Refund of expenses incurred by them on the development of infrastructure, marketing of the Claimant's products, attending conferences and tender processes;

f. Demurrage charges; and

g. Losses.

(10) Issue No. 10: Is the Third Respondent a proper and necessary party to the present proceedings?

(11) Issue No. 11: Has the Third Respondent been discharged of all liabilities upon the execution of a fresh agreement between the Claimant, Second Respondent and HLS?

(12) Issue No. 12: Does the legal notice dated 16 March 2018 issued by the Claimant absolve the Third Respondent from all liabilities towards the Claimant?

(13) Issue No. 13: Is the Claimant entitled to any amount from the Third Respondent?"

The Impugned Award

Issue nos. 1 and 2

24. The Arbitral Tribunal held that the Distribution Agreement was a valid contract and the non-payment of goods supplied by Kedrion to the Firm would constitute a breach of the Distribution Agreement. The Arbitral Tribunal referred to Articles 22 and 20.3 of the Distribution Agreement to draw its conclusion. Article 22 stipulated that any modification/amendment to the Distribution Agreement would be valid only if it was by way of a written instrument signed by both the parties. Article 20.3 of the Distribution Agreement provided that Kedrion's failure to insist upon strict performance of any of the terms and conditions of the Distribution Agreement or delay in exercising any of its remedies would not constitute a waiver of such terms and conditions or a waiver of any default or remedy. The Arbitral Tribunal, accordingly, held that the payment mechanism stipulated in the Distribution Agreement bound the parties and crystallized the liability of the Firm. The Arbitral Tribunal also referred to the affidavit and cross examination of one Ms. Jendrsczok (CW1) and found that the 14 cheques issued by Ms. Prium on the Firm's account were handed over to Kedrion for the purposes of security. Thus, the Arbitral Tribunal held that the Firm is bound to pay Kedrion for all the goods received by it under the Distribution Agreement.

Issue no. 3

25. The Arbitral Tribunal rejected the contention of the petitioners/ the Firm that the Purchase Orders constituted a separate agreement between PISPL and the Firm and PISPL required to institute a separate action for recovery of its dues.

The Arbitral Tribunal held that the products supplied through PISPL were in terms of the Distribution Agreement and Kedrion is entitled to raise claims pertaining to the invoices raised by PISPL. The Arbitral Tribunal would have the jurisdiction to adjudicate the said claims. The Arbitral Tribunal further held that the internal arrangement between Kedrion and PISPL cannot be used as a means of obviating liability on the part of the Firm.

Issue nos. 4-5 (Claim nos. 1 and 3)

26. The Arbitral Tribunal accepted Kedrion's contention that the total outstanding sum under the unpaid invoices amounted to ₹16,69,90,615/-. However, the Arbitral Tribunal held that Kedrion was not entitled to the amount of ₹2,67,23,425/- in respect of invoice nos. KQ/04/2017-18 and KQ/07/2017-18 as there was evidence that some of the goods supplied under those invoices had been returned and sold by Kedrion to another entity. Accordingly, the Arbitral Tribunal awarded a sum of ₹14,02,67,190/- against Claim no. 1, on account of outstanding payments for goods supplied by them to the Firm under the Distribution Agreement. Kedrion's claim for demurrage and other incidental charges (Claim no. 3) was dismissed.

Issue no. 6

27. During the course of the arbitral proceedings, Kedrion decided to not pursue the aforesaid issue and thus, the Arbitral Tribunal did not adjudicate on the same.

Issue no.7 (Claim no. 2)

28. The Arbitral Tribunal referred to Article 7.10.1 of the Distribution Agreement and awarded simple interest at the rate of 18% per annum on the sum of ₹14,02,67,190/- from 12.02.2018 till the filing of claims and further, awarded pendente lite interest at the rate of 18% per annum from the commencement of proceedings till the date of award, against Claim no. 2.

Issue nos. 8, 10, 11, 12 and 13

29. The Arbitral Tribunal held that Ms Prium Verma and Late Ms. Vineeta Sharma would be jointly and severally liable to Kedrion for the debts of the Firm, however, the liability of Late Ms. Vineeta Sharma (former partner of the Firm) was restricted to the amounts due and payable prior to the date of her demise, that is, before 05.08.2017.

Issue no. 9 (Counter-claims)

30. The Arbitral Tribunal rejected Kedrion's contention that two credit notes dated 08.01.2018 and 02.05.2018 amounting to ₹11,72,818/- and ₹5,90,118/- respectively were issued to the Firm for the outstanding expenses relating to rent, electricity and maintenance till the period March, 2018 on the ground that same had not been filed. Thus, it was not possible for the Arbitral Tribunal to ascertain the credit notes with respect to payment of the outstanding receivables and the period for which the credit notes had been issued. Accordingly, the

Arbitral Tribunal held that Kedrion was liable to pay the outstanding amount till the month of September, 2018 and thus, awarded a sum of ₹28,97,888/- to the Firm on account of outstanding rent, electricity and maintenance. (Counter-claim A).

31. All the other counter claims preferred by the petitioners were rejected by the Arbitral Tribunal.

Costs

32. Additionally, a sum of ₹17,87,280 on account of legal and other costs and a sum of ₹15,00,000/- on account of arbitration costs was awarded to Kedrion, which was to be borne by the Firm and Ms. Prium to the extent of 80% and the balance 20% was to be borne by Late Ms. Vineeta Sharma (through her legal heir).

33. Paragraph XI of the impugned award, which summarises the amounts awarded, is set out below:-

“(1) The Claimant is entitled to a sum of INR 14,02,67,190/- (Rupees Fourteen Crores Two Lakhs Sixty Seven Thousand One Hundred Ninety only) on account of outstanding payments for goods supplied by them to the First Respondent under the Distribution Agreement;

(2) The Claimant is entitled to simple interest at the rate of 18% per annum on the aforesaid sums from 12 February 2018 to the commencement of this claim, and thereafter pendente lite interest at 18% till this Award;

(3) The Respondents are jointly and severally liable to the Claimant for the amounts set out above, save and except that the liability of the Third Respondent is restricted to amounts due and payable prior to 5 July 2017;

(4) The Claimant is obligated to pay to the First Respondent a sum of INR 28,97,888/- (Rupees Twenty Eight Lakhs Ninety Seven Thousand Eight Hundred Eighty Eight Only), towards Counterclaim A;

(5) The Claimant is entitled to costs for its legal and other expenses in the sum of INR 17,87,280/- (Rupees Seventeen Lakhs Eight Seven Thousand Two Hundred Eighty Only), to be borne 80% by the First Respondent and the Second Respondent and 20% by the Third Respondent; and

(6) The Claimant is entitled to arbitration costs in the sum of INR 15,00,000 (Rupees Fifteen Lakhs Only), to be borne 80% by the First Respondent and the Second Respondent and 20% by the Third Respondent.

(7) All other claims and/or counterclaims raised by the parties are dismissed.”

Submissions

34. The learned counsel appearing for Ms Prium Verma has challenged the impugned award on two grounds. First, that the Arbitral Tribunal had grossly

erred in rejecting the contention that the Firm (and its constituent partners) had suffered a loss on account of failure on the part of Kedrion to comply with the NPPA Guidelines (National Pharmaceutical Pricing Authority). He submitted that the products in question were drugs under the Drug Price Control Order 2013 (DPCO) and therefore, were required to comply with the ceiling price and other mandatory provisions of the DPCO. He submitted that labelling of the products was not compliant with the necessary requirements and therefore, the said products could not be sold in the open market. Selling such products in the open market would invite punitive action from the concerned authorities.

35. Second, he submitted that the Arbitral Tribunal had erred in not appreciating that with effect from 01.07.2017, the products in question were exigible to Goods and Service Tax (GST). He submitted that prior to the roll out of GST, the products were exempt from any sales tax; however, after 01.07.2017, the Firm was required to pay GST at the rate of 5%, which resulted in the Firm incurring an additional cost of ₹50,94,360/-. The Firm claimed that this amount was liable to be reimbursed by Kedrion.

36. Mr Saurabh Sharma, learned counsel appearing on behalf of Pramod Sharma [the petitioner in OMP(COMM) 502/2019], submitted that the Firm stood dissolved on 05.07.2017 on the demise of Ms Vineeta Sharma. He stated that the Directors of Kedrion were aware of her demise, yet they continued to enter into business transactions with Ms Prium Verma, her father Ashwani Verma and her brother Aru Verma. He stated that Ms Prium Verma and her brother Aru Verma had constituted another partnership firm and carried on the business under the name and style of "M/s Human Life Sciences". He submitted that the business of the Firm was effectively taken over by M/s Human Life Sciences along with all its liabilities.

37. He contended that the Arbitral Tribunal had failed to appreciate that the Distribution Agreement stood novated and therefore, it was no longer required to be performed. He referred to the Legal Notice dated 16.03.2018 issued by Kedrion and on the strength of the said notice submitted that Kedrion had acknowledged that M/s Human Life Sciences had assumed liabilities of the Firm. He submitted that this was also specifically mentioned in the response to the said legal notice.

38. He submitted that the Arbitral Tribunal had neither considered the question of novation of the Distribution Agreement nor the issue regarding estoppel. He submitted that these were noted by the Arbitral Tribunal in paragraph 88 of the impugned award but were not effectively adjudicated. He submitted that the impugned award was thus, non-speaking and unreasoned and therefore, was liable to be set aside. He also relied on the decision of the Debt Recovery Tribunal, Chennai in N. Sanjeeva and Anr. v. State Bank of Travancore: (2006) 130 Comp Cas 659, and the decision of the High Court of Rangoon in A. C. Chettier v. A.S.P.S.K.R. Karuppan Chettyar and Anr.: AIR 1941 Rangoon 129, in support of his contentions.

Reasons and Conclusion

39. At the outset, it is relevant to note that in the petition filed by Ms. Prium Verma, setting aside of the impugned award is sought on several grounds (sixty-one in number). Most of the grounds are in the nature of seeking re-adjudication of the disputes already considered by the Arbitral Tribunal. However, before this Court, the learned counsel appearing for Ms Prium Verma had confined his contentions to assail the impugned award only on the two grounds, as have been noticed above.

40. In view of the above, this Court does not consider it apposite to advert to the other grounds except to briefly note that most of the grounds, as mentioned, seek to invite this Court to reappreciate the evidence and to re-adjudicate the questions that have been extensively discussed and covered in the impugned award.

41. The first and foremost question to be addressed is whether the impugned award is vitiated on the ground of patent illegality inasmuch as the Arbitral Tribunal has not accepted the contention that the goods supplied by Kedrion did not comply with the NPPA Guidelines or the Drug Price Control Order, 2013 (DPCO). Kedrion had raised invoices for the goods claimed to have been supplied to the Firm/Ms. Prium Verma. The contention whether the products were compliant with the DPCO was considered with reference to each invoice. The Arbitral Tribunal had asked the parties to furnish a Convenience Chart to reflect the objections in reference to each invoice. The Arbitral Tribunal had also examined the pleadings and considered the evidence placed on record and found that in respect of invoice nos. KQ/01/2016-17, KQ/02/2016-17, KQ/04/2017-18 and KQ/06/2017-18, there were no substantial issues with respect to the products. The Arbitral Tribunal noticed that in respect of these invoices, only a general averment had been made without any specific allegation.

42. The petitioner (Ms. Prium Verma) has also not been able to point out any substantial material, which would persuade the Arbitral Tribunal to accept that there was a serious dispute regarding the quality of the products supplied against the said invoices. Paragraph 140 and 142 of the impugned award reads as under:

"140. A review of the convenience chart filed by the Claimant shows that but for Invoice No. KQ/04/2017-18 and Invoice No. KQ/07/2017-18, the goods supplied pursuant to all other purchase orders were accepted by the First Respondent, without any complaints.

142. On a review of the pleadings and the evidence which has been filed before the Tribunal, it is obvious that in relation to Invoice No. KQ/01/2016-17, Invoice No. KQ/02/2016-17, Invoice No. KQ/04/2017-18, and Invoice No. KQ/06/2017-18, no issues have been raised by the First Respondent and the Second Respondent regarding the products covered under these invoices, either as to their short shelf life or non-compliance with the NPPA notifications. The assertions in relation to the short shelf life and non-compliance with the NPPA

notifications was in the pleadings as only a general assertion with no specific invoices identified. Had any specific invoices been identified, the Claimant would have had an opportunity to address those invoices in their response and evidence. That is a reasonable assumption given that the Claimant has otherwise, in its pleadings and evidence, denied both the allegations of short shelf life and non-compliance with NPPA notifications. For that reason, the Tribunal is unable to accept the First Respondent and the Second Respondent's assertions that it can be said that there is a dispute between the parties for short expiry or NPPA non-compliance specifically in relation to the aforementioned invoices, on account of the goods being short expiry or NPPA non-compliant."

43. In the Statement of Defence filed on behalf of the Firm/Ms Prium Verma, it was asserted that stocks supplied by the claimant (Kedrion) had an MRP higher than the prescribed selling price and it was for this reason that the Firm/Ms Prium Verma was unable to sell the stock in the market. It was also averred that in terms of the Notifications dated 12.04.2016, 30.06.2017 and 20.09.2017, Kedrion being a manufacturer within the meaning of DPCO was required to revise the price. The Firm/Ms Prium Verma claimed that Kedrion used to supply a product under the name of 'Ig Vena' and the price of the said product was revised by a Notification dated 10.03.2017 issued by NPPA. In terms of the said notification, the price of a single vial of 'Ig Vena' was fixed between ₹6,000/- to ₹7,000/-. However, the MRP of the product supplied by Kedrion was ₹9,250/- and therefore, it could not be sold. It was asserted that the Firm/Ms Prium Verma had requested Kedrion to take back the said stocks but Kedrion had not done so initially. However, after the Firm/Ms Prium Verma had protested, the said products were taken back by Kedrion.

44. It was further claimed in the Statement of Defence that even after issuance of the notification, Kedrion had, in order to complete its sales target, tried to supply products bearing MRPs different from those as prescribed by the NPPA, under invoice nos. KQ/04/2017-18 and KQ/07/2017-18. It was averred that the Firm/Ms Prium Verma had accepted the invoices on Kedrion's assurance that the products with corrected MRP would be supplied. However, the Firm/Ms Prium Verma had refused to take possession of the products under the said invoices.

45. In respect of the products covered under invoice nos. KQ/04/2017-18 and KQ/07/2017-18, there are certain specific averments.

46. The Arbitral Tribunal had evaluated the evidence in respect of the products covered under the said two invoices (Invoice nos. KQ/04/2017-18 and KQ/07/2017-18). It was Kedrion's case that the goods covered under the said invoices had been dumped by the Firm/Ms Prium Verma and it was compelled to destroy the same. However, the Arbitral Tribunal found that the said averments were not entirely accurate as there was evidence that a part of the said goods had been sold to other customers. After evaluating the evidence led by the parties, the Arbitral Tribunal had rejected Kedrion's claim for the value of the goods covered under those invoices (Invoice nos. KQ/04/2017-18 and

KQ/07/2017-18).The Arbitral Tribunal's conclusion to reject Kedrion's claim in respect of the said invoices rested on another issue. In view of the said decision to reject Kedrion's claim for any amount in respect of the said invoices,the question whether the goods supplied under the said invoices were non-compliant with the DPCO, is not relevant.

47. In respect of the other invoices, clearly, there was no material to substantiate that the products accepted by the Firm/Ms Prium Verma, were not compliant with the DPCO.

48. The scope of examination under Section 34 of the A&C Act is limited and this Court is not required to re-evaluate and re-appreciate the evidence and supplant its opinion in place of that of the Arbitral Tribunal. This Court is unable to find any fault in the Arbitral Tribunal's conclusion that there were hardly any specific pleadings or material on record to establish that the products supplied by Kedrion in respect of other invoices (invoices other than KQ/04/2017-18 and KQ/07/2017-18) were in violation to provisions of the DPCO or any guidelines issued by NPPA.

49. The Firm/Ms Prium Verma had also raised a Counter-claim for the loss allegedly suffered on account of Kedrion supplying products at an MRP higher than the selling price fixed under the DPCO/NPPA Notifications. The Arbitral Tribunal found that the evidence in support of the Counter-claim was insufficient to prove the loss as claimed. The Firm/Ms Prium Verma had relied upon a statement showing the market average price if the products had been sold at a price compliant with the DPCO. The Arbitral Tribunal found that the same was not supported by any other evidence and the testimony of the witness was not found sufficient.

50. As noted above, this Court cannot re-appreciate and re-evaluate the evidence in detail to determine whether the decision of the Arbitral Tribunal is vitiated on the ground of patent illegality. In Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.: 2021 SCC OnLine SC 695, the Supreme Court had faulted this approach of the courts to re-appreciate and re-evaluate the evidence for determining whether the arbitral award was vitiated by patent illegality. The Supreme Court had further explained as under:

29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression 'patent illegality'. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression 'patent illegality'. What is prohibited is for courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2A) on the ground of patent illegality is when the arbitrator takes a view which is not

even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression 'patent illegality'."

51. This Court is unable to accept that the decision of the Arbitral Tribunal that there was insufficient evidence to establish that products supplied by Kedrion contravened the DPCO, can be interfered with under Section 34(2A) of the A&C Act.

52. The next question to be examined is whether the decision of the Arbitral Tribunal to reject the Firm's/Ms Prium Verma's Counter-claim for reimbursement of GST, is patently illegal. It was asserted by the Firm/Ms Prium Verma that prior to 31.06.2017, all products related to human blood plasma were exempt from taxes. However, with effect from 01.07.2017, the said products were exigible to GST at the rate of 5%. Therefore, Kedrion was liable to bear the additional costs on account of GST, which was quantified at ₹50,94,360/-. Kedrion had contested the aforesaid Counter-claim by referring to Articles 3.10 and 7.9 of the Distribution Agreement. In terms of Article 3.10, the Firm was responsible for paying all levies, duties, taxes imposed on the product purchased by it and in terms of Article 7.9 of the Distribution Agreement, it was agreed that the Firm would be solely responsible for any national, local or other sales, use, value added or any other direct or indirect taxes, tariffs, custom duties, excise or assessments levied or imposed in relation to or arising from any transaction contemplated under the Distribution Agreement.

53. The Arbitral Tribunal had considered the aforesaid disputes and found in favour of Kedrion. The Arbitral Tribunal had noted that the Counter-claim for reimbursement of the financial cost arising as a result of imposition of GST, was premised on the industry practice. However, the Arbitral Tribunal found that in view of the express provisions of the Distribution Agreement, Kedrion was not liable to pay GST. This Court finds no ground to interfere with the aforesaid conclusion.

54. In view of the above, the petition filed by the Firm/Ms Prium Verma (in OMP (COMM) No.54/2020), is unmerited and liable to be rejected.

55. Insofar as the petition preferred by Mr. Pramod Sharma is concerned (in OMP (COMM) No.502/2019), the only question to be addressed is whether the impugned award is vitiated by patent illegality as the Arbitral Tribunal has not accepted the petitioner's (Pramod Sharma's) contention that the Distribution Agreement was discharged by novation.

56. Ms. Vineeta Sharma was admittedly a partner of the Firm. She expired on 05.07.2017 and Mr. Pramod Sharma was impleaded as her legal heir. His case that the obligation of the Firm to pay any amount due to Kedrion under the Distribution Agreement stood discharged by novation is premised on three assertions. First, the legal notice dated 16.03.2018 issued by Kedrion expressly mentioned that M/s Human Life Sciences, a partnership firm constituted by Ms Prium Verma and Mr Aru Verma, had acknowledged the liability of the Firm including the outstanding invoices. He contended that this established that M/s Human Life Sciences had taken over all obligations of the Firm and the Firm was no longer liable.

57. Second, that the Service Agreement dated 17.01.2018 entered into between Kedrion and M/s Human Life Sciences expressly provided that M/s Human Life Sciences had assumed the obligations under the Distribution Agreement, which was included as Schedule 'I' to the Service Agreement.

58. Third, that the petitioner had asserted, in the response to the legal notice issued by Kedrion, that M/s Human Life Sciences had assumed all liabilities of the Firm.

59. The legal notice sent on behalf of Kedrion did mention that the liabilities of the Firm had been acknowledged by M/s Human Life Sciences. However, the said assertion cannot be read to mean that the Distribution Agreement was novated or assigned, in favour of another party (M/s Human Life Sciences). The contention that the petitioner (Mr Pramod Sharma) had asserted, in response to the legal notice, that the liabilities of the Firm were taken over by M/s Human Life Sciences also does not in any manner establish that the Distribution Agreement between Kedrion and the Firm was novated.

60. The Service Agreement dated 17.01.2018 entered into between M/s Human Life Sciences and Kedrion is a separate agreement and is required to be performed on its own terms. Clause 4.13 of the said Agreement provides that M/s Human Life Sciences (referred to as 'Service Provider') has assumed the obligations as per the agreement annexed in Schedule 'I' dated 05.02.2016 (the Distribution Agreement).

61. The assignment of certain obligations by the Firm did not absolve the Firm from making payments under the Distribution Agreement. The Arbitral Tribunal had noted that it was not the case of the Firm/Ms Prium Verma that the Distribution Agreement was novated. Further, neither the Firm nor Mr. Pramod Sharma were parties to the Service Agreement.

62. The Arbitral Tribunal had accepted the contention advanced by Kedrion that since the Firm had not accepted that the Distribution Agreement or their liabilities had been novated/assigned to M/s Human Life Sciences, the Distribution Agreement was not novated. This view is certainly a plausible view and warrants no interference by this Court in the proceedings under Section 34 of the A&C Act.

63. The Arbitral Tribunal had also restricted the liability of Late Ms Vineeta Sharma to those invoices, which had been raised for goods supplied, while she was the partner of the Firm and not in respect of the Purchase Orders that were raised after her demise.

64. In view of the above, this Court finds no ground to interfere with the Arbitral Award. The petitions are, accordingly, dismissed. The pending applications are also disposed of.

65. The parties are left to bear their own costs.