

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 689/2024

[Arising out of impugned final judgment and order dated 24-03-2023 in IA No. 1606/2019 passed by the High Court of Delhi at New Delhi]

AIR LIQUIDE NORTH INDIA PVT LTD

Petitioner(s)

VERSUS

INOX AIR PRODUCTS PVT LTD

Respondent(s)

IA No. 202007/2024 - CONDONATION OF DELAY IN FILING REJOINDER

Date : 04-08-2026 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARAVIND KUMAR
HON'BLE MR. JUSTICE VIPUL M. PANCHOLI

For Petitioner(s) : Mr. Gaurav Goel, AOR

For Respondent(s) : Mr. Jayant Bhushan, Sr. Adv.
Mr. Joseph Pookkatt, Adv.
Mr. Nilesch Sharma, Adv.
Mr. Dhawesh Pahuja, Adv.
Ms. Awantika Manohar, Adv.
M/s AP & J Chambers, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. This is a classic case and mirror to the fact that the parties instead of playing at the goalpost are playing in the outer field, and we say so for the brief reasons indicated hereinbelow. On account of parties not being *ad idem* on issue arising out of a contract dated 14.12.2009 / 19.12.2009, said differences blossomed

itself into a dispute resulting in the parties igniting the arbitration clause which culminated into an arbitral award dated 02.02.2018. It is apt and appropriate to note at this juncture itself that the respondent herein, in order to substantiate its claim, produced certain documents namely 60 documents, the production of which was opposed by the petitioner herein. The arbitral tribunal, by its order dated 05.12.2015 (Anexure P-22), allowed the respondent to place those documents on record on payment of costs and directed that documents are to be proved as per law. In the midst of recording of oral evidence, an order came to be passed on 25.01.2016, (Annexure P-23) as under:

“The Tribunal had started recording the statement of the Claimant's witness. However, after some cross examination, it was agreed between the parties that there is no need of recording any oral evidence and the matter can straight away be fixed for arguments. It is also agreed that whatever oral evidence was recorded today will not be read.

While fixing dates, it was noticed that the venue at the Delhi International Arbitration Centre is not available till middle of March-2016. Parties, therefore, agreed that matter may be fixed for arguments in the office of Arbitral Tribunal.

In view of the above, the matter will come up for arguments on 25.02.2016 at 3PM, 29.02.2016 at 5PM and on 03.03.2016 at 3PM for arguments in the office of the Arbitral Tribunal at A-27, Defence Colony, New Delhi. The E-mails placed on record by the parties will be read without any formal proof. It will be appreciated if the parties file a brief synopsis of their respective case at least three days before the date fixed for arguments.”

Subsequently, final arguments could not be concluded on account of the sad demise of the learned sole arbitrator, resulting in substitution of a new arbitrator and after reconstitution of the arbitral tribunal, as noticed hereinabove, passed an award came to be passed on 02.02.2018 whereunder a sum of Rs.2,29,36,249/- with interest at 18% per annum, and costs of Rs. 10 lakhs, came to be awarded in favor of the petitioner herein.

2. Being aggrieved by the same, the respondent herein has filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996, for setting aside the same on various grounds urged therein. When the matter was at the stage of arguments, the petitioner herein filed an application under Section 34(4) of

the Act, *inter alia* seeking for adjourning the proceedings for a fixed period of time, in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings to eliminate the grounds of challenge regarding purported non-consideration of the respondent's documents (60 documents), if any, for setting aside the arbitral award, as has been urged in the petition filed under Section 34 of the Act. By the impugned order, the learned Judge has held that Section 34(4) cannot be invoked to enable an arbitral tribunal to reopen the conclusion reached. Hence, this petition.

3. The learned counsel senior counsels appearing for the parties have stood to their grounds as urged in their respective pleadings and it was vehemently contended by the learned senior counsel appearing for petitioner that in the light of the purported 60 documents, having not been considered by the tribunal, had vitiated the award as canvassed by the respondent herein, is an issue which will have to be thrashed out by examining the said documents itself by the tribunal and this would give less scope for interference under Section 34 of the Act. Per contra, Shri Jayant Bhushan, learned senior counsel appearing for the respondent, would support the impugned order and prays for dismissal of the petition.

4. Having heard the learned senior counsels appearing for the parties and on perusal of the entire case papers, it would not detain us for too long to brush aside the contentions raised by the learned senior counsel appearing for the petitioner, for two reasons, firstly, the order dated 05.12.2015 passed by the arbitral tribunal at first instance, would clearly go to show that the respondent herein was permitted to place the documents on record on payment of costs and undisputedly the cost has been paid and received. In such circumstances, it is not open to the petitioner to reagitate the said issue, or in other words, to contend that the application ought not to have been allowed. Secondly, the tribunal by its record of proceedings dated 25.01.2016 has clearly recorded that oral evidence was unnecessary and fixed the matter for final arguments. This would only indicate that obviously the tribunal intended to examine the said documents.

5. At this juncture, a pointed question was posed to the learned senior counsel appearing for the petitioner as to whether the petitioner had disputed the very existence of the documents or the contents of the documents? And the learned senior counsel fairly submitted, on instructions, that it is only the contents of the documents which have been disputed. If it were to be so, it was the duty of the tribunal to have examined the veracity of the said documents. However, we do not propose to enter into any discussion with regard to the same for the simple reason that these are the contentions which have been urged and countered by the parties in pending Section 34 proceedings and said issue is still at large. Any scrutiny or examination of the said issue by this Court will definitely prejudice the rights of either of the parties. Hence, we leave at it.

6. In view of the purported 60 documents having not been considered by the tribunal, according to the respondent herein, has vitiated the award. In what manner it has so prejudiced the rights of the parties, is an issue which will have to be thrashed out by examining the documents which are on record, by the Court which is adjudicating the petition under section 34. As such, we do not see any infirmity in the impugned order and judgment which would warrant our interference at the hands of this Court. Hence, the Special Leave Petition is dismissed. Parties to bear their costs.

7. Pending application(s), if any, shall stand disposed of.

(RASHI GUPTA)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)