IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

COMMERCIAL APPEAL NO. 304 OF 2025

BETWEEN:

MR. KRISHNA SARTHAK
AGED ABOUT 33 YEARS
PROPRIETOR OF
M/S. KRISHNA CREATIONS
HAVING OFFICE AT NO.9 AND 10
(NEW NO.433), V.B.H.C.S
4TH PHASE, GIRINAGAR
B.S.K.1ST STAGE, BENGALURU-560 085

ALSO AVAILABLE AT
MR. KRISHNA SARTHAK
S/O LATE S.K. NAGARAJ
AGED ABOUT 33 YEARS
NO.2932, 8TH MAIN ROAD
2ND CROSS, KUMARASWAMY LAYOUT
BENGALURU-560 017

...APPELLANT

(BY SRI: VIVEK SUBBAREDDY, SENIOR ADVOCATE FOR
SRI: RAGHUNATHA K, ADVOCATE)

AND:

MR. VIJAY MILTON
MAJOR IN AGE
PROPRIETOR OF
ROUGH NOTE PRODUCTIONS
DIRECTOR AND DIRECTOR OF PHOTOGRAPHY
NO.14/18, SENTHIL NAGAR

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…RESPONDENT

(BY SRI: M VEERABHADRAIAH, ADVOCATE/CAVEATOR)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1-A) OF COMMERCIAL COURTS ACT, PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT PASSED IN COMA.P 128/2024 DATED 17.02.2025 PASSED BY THE LEARNED LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT (CCH-84) INCLUDING EX-PARTE ARBITRAL AWARD PASSED IN AC NO.511/2023 DATED 29.01.2024 PASSED BY THE LEARNED SOLE ARBITRATOR, BENGALURU BY ALLOWING THIS COMMERCIAL APPEAL AND ETC.

THIS COMMERCIAL APPEAL, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 16.09.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **T.P.VIVEKANANDA J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.P.VIVEKANANDA)

The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (for short 'the Act), impugning an order dated 17.02.2025 passed by the learned LXXXIII Additional City Civil and Sessions Judge, Commercial Court, Bengaluru in COMAP No.128 of 2024. The appellant had filed the said petition under Section 34 of the Act challenging an arbitral award dated 29.01.2024 passed by the sole Arbitrator i.e., the Arbitral Tribunal. In terms of the impugned award, the Arbitral Tribunal has awarded a sum of Rs.80,80,000/- along with interest at the rate of 12% per annum from January 2022 till the date of realisation in favour of the respondent, who is the claimant before the Arbitral Tribunal.

2. The disputes that had arisen between the parties is in connection with the Cinema Direction Agreement dated 14.01.2022. The respondent had invoked the arbitration clause under the agreement by a notice dated 14.11.2022. Thus, in terms of Section 21 of the Act, the arbitral proceedings commenced from the date of receipt of the said notice by the

appellant. The parties did not appoint an Arbitrator and consequently, the respondent filed an application, being Civil Miscellaneous Petition (CMP) No.935 of 2022 before this Court under Section 11 of the Act. The said application was allowed and a sole Arbitrator was appointed to adjudicate the disputes between the parties.

3. The sole Arbitrator accepted his appointment on 04.08.2023 and the Arbitral Tribunal was constituted. The arbitral proceedings were required to be conducted under the Arbitration and Conciliation Rules, 2012 at the Karnataka Arbitration and Conciliation Center, Bengaluru (Domestic and International), which is an Arbitral Institution.

4. The Arbitral Institution issued notice dated 05.09.2023 to the respondent calling upon it to file its statement of claim along with supporting documents in terms of the applicable Rules. However, the respondent failed to file its statement of claim pursuant to the said notice. In the aforesaid circumstances, the arbitral proceedings were terminated. The Arbitral Tribunal passed an order dated 26.10.2023 terminating the arbitral proceedings.

5. Thereafter, the respondent filed an application on 08.11.2023 seeking recall of the order dated 26.10.2023 terminating the proceedings. The notice of the said application was sent to the appellant, but, was returned unserved. There is a dispute whether the appellant was served with notice of the said application. Whereas, the appellant claims that it had not received the notice of further proceedings; the respondent claims that the notice of the application sent through registered post was duly served. The Arbitral Tribunal held that appellant had notice of the respondent's application seeking recall of the order dated 26.10.2023. The appellant did not appear before the Arbitral Tribunal to contest the said application and accordingly, the Arbitral Tribunal allowed the same. Thereafter, the respondent filed a statement of claim annexing the relevant documents.

6. The arbitral proceedings culminated in the impugned award. It is to be noted that the appellant did not participate in the arbitral proceedings and was proceeded *ex-parte.*

7. After the impugned award was delivered, the appellant impugned the same by filing a petition under Section 34 of the Act, which was dismissed by the impugned order.

8. When this appeal came up for before this Court on 05.08.2026, it was recorded as follows:

> *"We have heard the learned counsel for the appellant. Prima facie, we do not find any ground to interfere with the arbitral award or the order passed by the Commercial Court in the Section 34 application.*
>
> *However, to afford the appellant one last opportunity to settle the dispute, if he so wishes, list the matter on 20.08.2026.*
>
> *Call for the trial court records."*

9. The matter was once again listed on 20.08.2026 and adjourned to 15.09.2026. Since no settlement was reported, the parties were heard for final disposal with their consent.

10. Sri Vivek Subbareddy, learned senior counsel appearing for the appellant has contended that the award passed by the learned Arbitrator is an *ex-parte* award and the appellant had no notice of the proceedings upon recalling of the earlier order dated 26.10.2023 terminating the proceedings. It is the vehement submission of learned senior counsel that the

findings of the Arbitral Tribunal that upon recalling of the order dated 08.11.2023, a fresh notice was issued to the appellant/respondent which was returned with a postal shara 'refused' is erroneous and the endorsement of the postal authority that the appellant has refused the notice is not beyond reasonable doubt and there is active participation of the respondent/claimant in postal authorities returning the postal article with the endorsement 'refused'.

11. It is his further submission that the fact of involvement of the respondent/claimant in postal authorities returning the postal article with postal shara as 'refused' is fortified from the fact that even in the execution proceedings initiated by the respondent/claimant, the summons were returned by court amin with a shara 'JDR refused to receive the Court summons'. Immediately, after the return of summons the respondent/claimant moved an application for advancement and obtained an order of attachment of movable property. From the above, it is clear that all along the respondent/claimant was following the service of Court notices through registered post, so also, through the process of the Court and there is serious suspicion of the respondent maneuvering the postal authorities to submit the postal shara

'refused'. Therefore, contends that it is a fit case to remand the matter to the Arbitral Tribunal for reconsideration after providing an opportunity to the appellant.

12. *Per contra,* learned counsel for the respondent/claimant submits that an application dated 08.11.2023 seeking recalling of the order dated 26.10.2023 terminating the arbitral proceedings was filed and the notices were directed to be issued to the appellant through the Arbitration Centre. The said notice was also returned unserved. In addition to the notice sent by the Arbitration Centre, learned counsel for the claimant has also forwarded the copy of application through registered post acknowledgement due and the same has been duly served to the appellant/respondent. The order of termination of proceedings was recalled on 05.12.2023. The respondent/claimant has filed his claim petition after recalling of the order, notice of the main arbitration proceedings was issued to the address furnished in the arbitral proceedings. However, the said notice was returned to the Arbitration Centre with a postal shara 'refused'.

13. Learned Arbitrator proceeded to consider the claim of the claimant *ex-parte* and passed the arbitral award on

29.01.2024 directing the appellant/respondent to pay the claimant a sum of Rs.80,80,000/- along with interest @ 12% p.a. from January, 2022 till the date of realization. The appellant/respondent was also directed to pay the fees of the Arbitrator and administrative expenses paid by the claimant, so also, the legal fee of Rs.3,00,000/- incurred by the claimant in relation to the arbitration proceedings. Therefore, no interference is called for. In addition, learned counsel for the respondent/claimant submits that the District Court has considered the grounds urged in the petition and held that despite the knowledge of filing of the application for recalling the order dated 26.10.2023 failed to participate in the arbitral proceedings. The Court has taken note of the fact that post recalling of the order of termination of arbitration proceedings, the Arbitration Centre has issued the notice on the main arbitration proceedings which was 'refused' by the appellant/respondent. Therefore, none of the grounds contemplated under Section 34(2)(a) of the Act exists for setting aside the arbitral award, accordingly, Commercial Court has rightly dismissed the arbitration suit and thus, prayed for dismissal of the appeal.

14. We have heard learned counsel for the appellant and the respondent and perused the award passed by the Tribunal and judgment of the District Court.

15. The facts narrated above are not in dispute, except the contention of the appellant/respondent that he has not received the notice of the arbitration proceedings. The Arbitral Tribunal, so also, the District Court have recorded a finding that the application for recalling of the order dated 26.10.2023 has been duly served to the appellant/respondent. Despite the same, the appellant remained unrepresented on the date when the application for recalling of the order was considered.

16. It is also recorded that upon the respondent/claimant filing the claim petition, the notice along with the claim petition was issued to the appellant by the Arbitration Centre, which was returned with a postal shara 'refused'. From the above it is clear that, the appellant/respondent was very much in knowledge that the claimant has filed an application for recalling of order of termination of the proceedings. If that be so, it was expected from the appellant that an attempt should have been made to ascertain as to the further proceedings on the application for

recalling. There is no due diligence on the part of the appellant/respondent in defending the claim of the respondent/claimant. There is no explanation for the same.

17. As regards the contention that the respondent/claimant has managed to get the postal article returned with a shara 'refused' is concerned, the appellant/respondent has not produced any acceptable corroborative evidence. Only on the basis of the statement of the appellant/respondent, neither the Arbitral Tribunal nor this Court could presume the active participation of the respondent/claimant in the matter of service of notice by the Arbitration Centre. We say so, because, the notice of the application for recalling has been duly served to the appellant/respondent. If the intention of the respondent/claimant was to avoid the service of notice and obtain an *ex-parte* decree, even the application for recalling would not have been served. It is a presumption under law that if the registered article is sent to the correct address of the addressee and which is returned with a postal shara 'refused', it amounts to deemed service of notice. The said presumption though rebuttable as per Section 27 of General

Clauses Act, however, the appellant/respondent has not placed any legally acceptable evidence to rebut the presumption.

18. The Commercial Court has recorded a finding at paragraph 44 that even in commercial arbitration proceedings, the appellant/respondent has not specifically disputed the postal endorsement and therefore, he cannot contend that there was no proper notice of the arbitration proceedings.

19. Since there was no opposition to the claim of the respondent/claimant, the Arbitral Tribunal had no other option except to accept the case of the claimant and pass the impugned award. The appellant/respondent had not urged any other ground before the Commercial Court other than the contention that he had no notice of the arbitration proceedings and thus, there is violation of principles of natural justice. The said contention has been considered extensively by the Commercial Court from paragraphs 33 to 44 and held that the appellant/respondent has not made out any ground under Section 34(2)(a) of the Act for interfering with the arbitral award.

20. When that being so, this Court while considering an appeal under Section 37 of the Act cannot travel beyond the

reasoning of the Arbitral Tribunal and the District Court, which had exercised the power under Section 34 of the Act. When the District Court itself did not accept the plea of the appellant for setting aside the arbitral award, this Court in an appeal under Section 37 of the Act, which power is narrower than the power under Section 34 of the Act cannot take a different view on the factual findings.

21. We are conscious of the fact that the jurisdiction conferred on Courts under Section 34 of the Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Act. The jurisdiction of the Appellate Court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. The scope of interference by this Court while exercising power under Section 37 of the Act is very limited. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the Court exercising power under Section 34 of the Act has acted within its limits as prescribed there under or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits, so as to find out, as to whether the decision of the

Arbitral Tribunal is right or wrong upon re-appreciation of evidence as if it is sitting in an ordinary Court of appeal. It is only where the Court exercising power under Section 34 of the Act has failed to exercise its jurisdiction vested in it by Section 34 of the Act or has travelled beyond its jurisdiction that the Appellate Court can step in and set aside the order passed under Section 34 of the Act. The power of this Court is more akin to that of superintendence as is vested in Civil Courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference is made out.

22. Learned senior counsel appearing for the appellant/respondent has placed reliance on the judgment rendered by the High Court of New Delhi (DB) in ***Wapcos Limited Vs Virgo Aqua[1].***

23. On noticing the said judgment, we find that there is no ratio laid down in the said judgment. The consideration and the grant of relief is only on the basis of facts and circumstances obtained in the said decision. In order to examine as to whether the relief granted in the said judgment

[1] 2026 SCC Online Del 5066

could be granted in the present case, it is necessary to look at the facts obtaining in the aforesaid case as also the present case. In the said case, as recorded by the Court the appellant had no notice of initiation of the conciliation proceedings. Therefore, the DLSA terminated the conciliation proceedings and initiated the arbitral proceedings before the Facilitation Council. The Facilitation Council passed the exparte award without formally entering reference on arbitration with notice to the appellant, rendering the award to be a nullity. It is also recorded in the judgment that the Facilitation Council failed to show that any conciliation proceedings were held as per the mandate of Section 18(2) of the MSMED Act with due notice to the appellant therein. In addition, there was no order of the Facilitation Council formally recording failure of the conciliation proceedings and entering the reference in arbitration for deciding the disputes in terms of Section 18(3) of the MSMED Act.

24. The further circumstances noticed by the High Court of Delhi is that the party was absent on a single hearing date namely 26.10.2022 and despite the appellant having promptly sought an opportunity to participate in the proceedings and present its case through communication dated 31.10.2022, no

opportunity was given resulting in violation of principle of natural justice. Noticing that despite demonstrating sufficient cause for non appearance on 26.10.2022 the passing of exparte impugned award dated 29.12.2022 was held to be nullity and contrary to the mandate of Section 18 of MSMED Act. It is under the aforesaid circumstances, the Hon'ble Division Bench of Delhi High Court has found it appropriate to accept the proposal of the appellant therein for depositing the amount in dispute before the Court till the final outcome of the proceedings before the Facilitation Council and remanded the matter to the Facilitation Council for adjudication of the proceedings afresh.

25. However, the facts obtaining in the present case is completely different than the one noticed above in the judgment relied upon by the appellant. At the cost of repetition, it is re-iterated that in the present case the order of termination of proceedings dated 26.10.2023 and the application for recalling the said order dated 08.11.2023 has been received by the appellant on 09.11.2023. In addition, post recalling of the order of termination, upon filing of the claim petition by the claimant/respondent, the Arbitration Centre has dispatched the statement of claim which was

returned 'refused'. Therefore, the appellant has not shown any bonafide sufficient cause for not representing on 05.12.2023 when the application for recalling of the order dated 26.10.2023 was considered, so also, for not receiving the notice and the claim petition sent by the Arbitration Centre. The following observations of the Commercial Court in paragraphs 40 and 41 of the impugned judgment falsify the entire contentions of the appellant regarding service of notice, which reads as follows:

> *"40. Although the notices issued by the arbitration center were returned unserved, it is the specific finding of the learned arbitrator at paragraph 5 that a copy of the application sent by the learned counsel for the claimant is said to have been served, and the postal acknowledgement in that regard is marked as Ex.P1. On perusal of Ex.P1, it is seen that the said postal acknowledgment bears the signature of the addressee for having received the said registered post on 09.11.2023. To the naked eye, the signature on the postal acknowledgment at Ex.P1 is similar to the signature on page 1 of the Statement of Truth in support of the present petition. However, the signature at page 2 of the Statement of Truth appears to be the longer form and is different from the signature on Ex.P1.*
>
> *41. Anyhow, the signature on Ex.P1 to the naked eye, appears to be similar to the signature of*

petitioner herein at page 1 of the Statement of Truth. Therefore, in the absence of the petitioner specifically denying the receipt of the registered post acknowledged under Ex.P1 and due to the similarity in the signature of the addressee on Ex.P1 and the signature of the petitioner at page 1 of the Statement of Truth, it follows that this Court has to hold that the notice of application recalling the order was duly served on the petitioner herein. Once this conclusion is reached, it follows that when notice of application for reopening the arbitration proceedings was duly served on the petitioner, the petitioner cannot contend that principles of natural justice were violated and that he was not given proper notice of the arbitration proceedings."

26. In the written submission filed by the appellant in the present appeal, the appellant volunteered to undertake before this Court to furnish bank guarantee for the entire amount covered in the impugned award subject to the orders of this Court and seeks for remand of the matter to the Arbitral Tribunal. The said offer is made in order to bring the case within the scope of consideration made by the Hon'ble High Court of Delhi in ***Wapcos Limited*** *(supra).* The appellant also places reliance on the judgment of the Hon'ble Supreme Court in ***Gayatri Balasamy Vs ISG Nova Soft Technologies***

Limited[2] contending that since this Court cannot modify the arbitral award on merits, seeks for setting aside the award on the ground of violation of principles of natural justice/not providing sufficient opportunity which is one of the ground on which the award of the Arbitrator could be set aside.

27. The request of the appellant for remand of the matter on the ground of not providing sufficient opportunity which is one of the ground stipulated under Section 34(2)(a)(iii) of the Act cannot be considered, inasmuch as, the said contention has been elaborately considered by the Commercial Court and held against the appellant with a just and proper reason at paragraphs 40 and 41 extracted above. No different circumstances are brought before this Court to take different view as that of the view taken by the Commercial Court.

28. The reliance placed on the provisions of Section 34(4) of the Act cannot be applied to the present case, inasmuch, as no such attempt as stipulated in Section 34(4) of the Act is made by the appellant before the Commercial Court when he filed the petition under Section 34(1) of the Act.

[2] (2025) 7 SCC 1

Therefore, the small window provided by the Hon'ble Supreme Court in the case of ***Gayatri Balasamy*** *(supra)* regarding remand of the matter while considering point No.VI of the said judgment cannot be extended to the case of the appellant, since it is not made out that there is patent illegality in the award passed by the learned Arbitrator, inasmuch as, the appellant had failed to participate in the arbitral proceedings by refusing the notice issued by the Arbitration Centre.

29. In the light of the above discussions, we find no merit in the appeal.

30. In the result,

(i) The Appeal is ***dismissed.***

No order as to costs.

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(T.P.VIVEKANANDA)
JUDGE

BGN