



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 544 OF 2018**

Rakesh S. Kathotia ...Petitioner

Versus

Milton Global Ltd. & Ors. ...Respondents

**WITH
ARBITRATION PETITION NO. 545 OF 2018**

Subhkam Ventures (I) Pvt. Ltd. ...Petitioner

Versus

Milton Global Ltd. & Ors. ...Respondents

**WITH
ARBITRATION PETITION NO. 558 OF 2018**

Milton Global Ltd. & Ors. ...Petitioners

Versus

Rakesh S. Kathotia & Ors. ...Respondents

**WITH
ARBITRATION PETITION NO. 577 OF 2018**

Hamilton Housewares Pvt. Ltd. & Ors. ...Petitioners

Versus

Rakesh S. Kathotia & Ors. ...Respondents

Mr. Nikhil Sakhardande, Senior Advocate, a/w Ashish Venugopal, Ravichandra Hegde, Mitravinda Chunduru, Vinit Udernani, i/b RHP Partners, for the Petitioner in ARBP/544/2018 & ARBP/545/2018 & for Respondent Nos.1 & 2 in ARBP/558 OF 2018 & ARBP/577/2018.

Mr. Dinyar Madan, Senior Counsel, i/b Law Charter, for Respondent Nos.2 & 10 to 15 in ARBP/544/2018.

Mr. Sharan Jagtiani, Senior Counsel, a/w Rashmin Khandekar, Apurva Manwani, Mahendra Ghelani, i/b Parikshit Desai, for Respondent Nos.1, 3 to 5, 7 to 9 in ARBP/544/2018.

Mr. Mikhail Behl, i/b Law Charter, for Respondent Nos.2 & 10 to 15 in ARBP/545/2018.

Mr. Parikshit Desai, for Respondent Nos.1, 3 to 5, 7 to 9 in ARBP/545/2018.

Mr. Sharan Jagtiani, Senior Counsel, a/w Apurva Manwani, Mahendra Ghelani, i/b Parikshit Desai, for Petitioner in ARBP/558/2018.

CORAM : SOMASEKHAR SUNDARESAN, J.

RESERVED ON : March 12, 2025

PRONOUNCED ON : November 3, 2025

JUDGEMENT:

Context and Factual Background:

1. The captioned proceedings are cross petitions filed under Section 34 of the Arbitration and Conciliation Act 1996 (“*the Act*”) challenging an arbitral award dated December 23, 2017 and an additional award dated February 16, 2018 (collectively, “*Impugned Award*”) passed by a Learned Arbitral Tribunal comprising a sole arbitrator.

2. The Impugned Award is related to disputes and differences in connection with an equally-owned joint venture between the claimants in the arbitral proceedings, namely Rakesh S. Kathotia (“***Kathotia***”) and Subhkam Ventures (I) Pvt. Ltd. (“***Subhkam***”) (Kathotia and Subhkam are collectively referred to as the “***Subhkam Group***”); and the various respondents other than Milton Global Ltd. (“***Milton JV***”) in the arbitral proceedings (collectively, the “***Vaghani Group***”). Milton JV is the 50:50 joint venture company in which each of the Subhkam Group and the Vaghani Group hold equal ownership.

3. The aforesaid bipartite classification is not only convenient but also appropriate for purposes of these proceedings. The Learned Arbitral Tribunal has returned very detailed and well-reasoned findings in the Impugned Award on how all the Respondents in the arbitral proceedings were inter-related and one collective economic and family unit with aligned interests, and how their initial defences of attempting to indicate separability broke down.

4. The peculiar nature of the Impugned Award has both sides in challenge under Section 34 of the Act.

5. The Subhkam Group is aggrieved by nothing in the Impugned Award except for one vital facet. The Learned Arbitral Tribunal has treated its *rights* in the joint venture agreement as *obligations*. Based

on that finding, the Learned Arbitral Tribunal held that the Subhkam Group had not demonstrated its readiness and willingness to perform such (perceived) obligations. On every other count and every single allegation levelled by the Subhkam Group, the Learned Arbitral Tribunal has found in favour of the Subhkam Group but solely on the premise of the Subhkam Group not having been ready and willing to perform its obligations, the Learned Arbitral Tribunal has ruled that specific relief against violation of non-compete obligations by the Vaghani Group could not be granted, and as a result, damages too could not be granted.

6. The Vaghani Group is aggrieved by the Impugned Award containing extensive findings of, among others, default, deceit, breaches, violative conduct, and misleading conduct on the part of the Vaghani Group. However, since the Impugned Award grants no relief to the Subhkam Group on the premise of the Subhkam Group not having been ready and willing to perform the joint venture agreement, the Vaghani Group has sought a “partial setting aside” of what it terms the aforesaid “would have been” observations that are not warranted, when no relief is being granted.

7. Before analysing the record and the Impugned Award, a short overview of the factual matrix would be appropriate and is set out below:-

a) The Subhkam Group and the Vaghani Group hold 50% each in the equity share capital of the Milton JV. Towards this end, the parties executed a joint venture agreement on September 13, 2000 (“***First JVA***”), which was later amended and restated by a joint venture agreement dated July 14, 2001 (“***JVA***”);

b) The Vaghani Group was in the business of manufacturing, logistics, trading and sales of various products in the nature of consumer durables and kitchenware and this was the subject matter of the JVA for marketing in the brand name ‘*Milton*’;

c) The Subhkam Group and the Vaghani Group structured a commercial relationship and reduced it to writing in the JVA, essentially to provide that the brands *Milton*, *MP* and *Milton Plastics* would be licensed by the Vaghani Group for exclusive exploitation by the Milton JV. On the same date as the First JVA i.e. September 13, 2000, an

agreement was executed to provide for such brand licensing (***“Brand Licensing Agreement”***);

d) One of the Vaghani Group companies, Milton Plastics Ltd. (***“Milton Plastics”***) was to manufacture the goods, and the Subhkam Group was given a stake of 26% in Milton Plastics – this equity interest is said to have been allotted on May 6, 2002 for a consideration of Rs. 3.25 crores. The Milton JV was to be the marketing company that would book all the turnover of the business of the joint venture, with a 50:50 ownership break-up between Subhkam Group and Vaghani Group – this is said to have been allotted for a consideration of Rs. 4 crores;

e) The JVA and the Brand Licensing Agreement entailed non-compete obligations whereby the Vaghani Group could not use the brands licensed to the Milton JV and run the business that was exclusively meant to be run by the Milton JV;

f) According to the Subhkam Group, the Vaghani Group has systematically abused the relationship, by diverting the business meant to be carried out exclusively by the Milton JV to the Vaghani Group company Hamilton Houseware Pvt. Ltd. (***“Hamilton”***). The business of Milton

JV is said to have been secreted out to Hamilton by the Vaghani Group, significantly by 2005-06;

g) The Subhkam Group claimed to the Learned Arbitral Tribunal that it learnt about the subterfuge only in December 2011. On opening the website of the Milton JV (www.milton.in), it was found that the website was being redirected to Hamilton's website (www.hamiltonindia.in) which was entirely the business of Hamilton and the Vaghani Group and not the Milton JV;

h) This discovery is stated to have triggered an investigation by the Subhkam Group, which led to the discovery from multiple sources including the Registrar of Companies that Hamilton was booking all the income and revenues from business that was meant to be the exclusive preserve of the Milton JV. The *Milton* brand name was being used by Hamilton along with the *Hamilton* brand name for the very same products that were meant to be marketed solely by the Milton JV;

i) Therefore, the Subhkam Group's claim was that the Vaghani Group had entirely cannibalised the business of the Milton JV; violated the non-compete obligations; and had contrived and devised a systematic violation of the Subhkam

Group's rights and interests in the joint venture. Based on such investigation, the Subhkam Group claimed to have realised that the turnover of Milton JV had systematically eroded from Rs. 30.85 crores in 2004-05 to Rs. 71,000 in 2013-14. Over the same period, from a net profit of Rs. 9.53 lakhs, Milton JV posted a net loss of Rs 8.42 lakhs in 2013-14. In parallel, Hamilton's sales turnover started with Rs. 119.51 crores in 2005-06 (when Milton JV's turnover fell to Rs. 3.20 crores) and rose to Rs. 595.29 crores, with net profit scaling up from Rs. 6.76 crores to Rs. 38.46 crores over the same timeframe;

j) The Subhkam Group sought a declaration that the non-compete obligations subsisted; a prohibition against further breach of the non-compete obligations; and damages measured by the turnover and profits of Hamilton which was claimed to be the business turnover that was rightfully meant to be earned in the books of the Milton JV;

k) In response, the Vaghani Group did not contest that Hamilton was doing business using the *Milton* brand name. Its defence was variously that the Subhkam Group had abandoned the JVA; it had acquiesced to the rights under the JVA being given a go-by; and also that the Vaghani Group

had pre-existing business operations that were not meant to be interdicted by the non-compete obligations contracted with the Subhkam Group;

l) To begin with, certain constituents of the Vaghani Group attempted to raise objections on the absence of privity to the arbitration agreement contained in the JVA but the Section 11 Court rejected these contentions. The Supreme Court too dismissed the special leave petition seeking to interfere with the appointment of the Learned Arbitral Tribunal. An application under Section 16 was filed by the same persons and the Learned Arbitral Tribunal was pleased to dismiss it with costs of Rs. 2.5 lakhs;

m) These constituents of the Vaghani Group then contended that the Brand Licensing Agreement could not form part of the arbitral proceedings. The Learned Arbitral Tribunal held that the proceedings were under the JVA and if any query were raised about the non-enforceable nature of the Brand Licensing Agreement, the Learned Arbitral Tribunal would go into it;

n) The next attempt was to suggest that since fraud had been alleged by the Subhkam Group, the disputes were

not arbitrable. This too came to naught in view of the law declared in this regard by the Supreme Court;

o) The issue of limitation was then raised by claiming that Subhkam Group could not have not known before December 2011 and they slept on their rights. This was rejected by the Learned Arbitral Tribunal on the ground that every moment when the competing business was carried out by the Vaghani Group, the continuing tort gave rise to a fresh cause of action;

p) One of the constituents of the Vaghani Group, Mr. Kanaiyalal Ishwarlal Vaghani, referred to throughout the Impugned Award as “Respondent No. 6” took the stance that he had cut off from his siblings, while his siblings took the stance that they had no clue of his whereabouts and he had not been served property. The Learned Arbitral Tribunal firmly took a stance against this approach and then Respondent No. 6 started attending the proceedings;

q) Issues were framed on the basis of the pleadings of the parties (other than Respondent No. 6, who came in late). In the Impugned Award, the Learned Arbitral Tribunal has firmly held in favour of the Subhkam Group on every single count. However, the Learned Arbitral Tribunal held that

Subhkam Group could not be said to have been ready and willing to perform the JVA and therefore it was not entitled to any relief;

r) The Subhkam Group contends that the Learned Arbitral Tribunal has turned the provisions of the JVA on their head – by treating its rights as its obligations. Despite holding that the Subhkam Group’s rights had been trampled upon, and that the Subhkam Group had not abandoned the JVA, the Learned Arbitral Tribunal has held that the Subhkam Group was not entitled to any relief; and

s) The Vaghani Group contends that the Learned Arbitral Tribunal has returned plausible findings and they must be accepted. Hamilton contends that the findings on issues were unnecessary when the Learned Arbitral Tribunal had decided not to grant any relief in view of the Subhkam Group not having been ready and willing to perform the JVA. Therefore, it seeks a partial setting aside of what it terms as “would have been” findings.

Analysis and Findings:

8. Against this backdrop, I have heard Learned Advocates for the parties at length and perused the voluminous material on record

with the assistance of their verbal submissions and their well-referenced written submissions.

9. The multiple cross-appeals may be summarised thus:

- a) Arbitration Petition No. 544 of 2018 and Arbitration Petition No. 545 of 2018 are challenges filed by Kathotia and Subhkam respectively;
- b) Arbitration Petition No. 558 of 2018 is a petition filed by the Milton JV; and
- c) Arbitration Petition No. 577 of 2018 is a petition filed by Hamilton.

10. By consent of the parties, all four petitions were heard together since they all pertain to the same Impugned Award. Upon a specific query from this Court in the light of past representation of affiliates of the Subhkam Group on unrelated issues, Learned Advocates for all parties specifically confirmed that they have no objection to this Bench taking up the hearing and disposal of the captioned proceedings.

Scope of Review under Section 34:

11. Before engaging with the contents of the Impugned Award, a word on the scope of review under Section 34 of the Act would be in

order. The scope of jurisdiction under Section 34 of the Act is well covered in multiple judgements of the Supreme Court including *Dyna Technologies*¹, *Associate Builders*², *Ssyangyong*³, *Konkan Railway*⁴ and *OPG Power*⁵. Even implied reasons that are discernible, may be inferred by the Section 34 Court, to support the just and fair outcome arrived at in arbitral awards. To avoid prolixity, I do not think it necessary to burden this judgement with quotations from these judgements. Suffice it to say (to extract from just one of the foregoing), in *Dyna Technologies*, the Supreme Court held thus:

“24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner; unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning

¹ *Dyna Technologies Private Limited v. Crompton Greaves Ltd* – (2019) 20 SCC 1

² *Associate Builders vs. Delhi Development Authority* – (2015) 3 SCC 49

³ *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI)* – (2019) 7 SCR 522

⁴ *Konkan Railways v. Chenab Bridge Project Undertaking* – 2023 INSC 742

⁵ *OPG Power vs. Enoxio* – (2025) 2 SCC 417

provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.”

[Emphasis Supplied]

12. Equally, it is well settled that for a finding in an arbitral award to be regarded as perverse, such finding has to be of a nature that no reasonable person could have arrived at. Likewise, for a finding in an arbitral award to be considered to be in conflict with most basic notions of morality or justice, the finding has to shock the conscience of the Court. It is in this context that I have attempted to analyse the Impugned Award to consider the competing considerations presented by the multiple Petitioners.

Findings in the Impugned Award:

13. A careful reading of the Impugned Award would indicate that the Learned Arbitral Tribunal, the master of the evidence and the final word on findings of fact, has done the following:-

- a) Based on an extensive and expansive analysis of the law and the facts, the Learned Arbitral Tribunal has returned a clear finding that the JVA subsists;
- b) The Learned Arbitral Tribunal has found that every moment for which the competing business is being carried

out by the Vaghani Group is a continuing tort and a continuing breach of the JVA;

c) Analysing every ingredient of Article 55 and Article 58 of the Limitation Act, 1963, the Learned Arbitral Tribunal has found that the Subhkam Group's claim is not barred by limitation;

d) The Learned Arbitral Tribunal has returned a firm finding that the Vaghani Group has "*miserably failed*" to prove that the Subhkam Group has abandoned the JVA, which was also held to be an unbelievable contention;

e) The Learned Arbitral Tribunal also ruled that the contention that abandonment was synonymous with acquiescence is untenable. No party can be presumed to have acquiesced against his own interests. That apart, the pleadings of the Vaghani Group was solely based on abandonment and therefore submissions on acquiescence could not be countenanced;

f) Neither group has terminated the JVA and both groups continue to be shareholders in the Milton JV. The JVA prohibits holding of any interest in a competitor and the Learned Arbitral Tribunal holds the Vaghani Group to be in breach of this vital obligation;

g) The contention that the Brand Licensing Agreement permits Hamilton to conduct competing business has been firmly repelled by the Learned Arbitral Tribunal with a detailed analysis. The Learned Arbitral Tribunal found that the Vaghani Group has “*brazenly lied on oath*” that they were always permitted to carry out competing business using the brand names in question;

h) The Learned Arbitral Tribunal has found that there was no distribution network of Hamilton before 2003-04 and it had no existing business, and in any case, Hamilton made no effort to even prove that it had any existing business before the JVA;

i) The Vaghani Group have dishonestly started a competing business and have been dishonest with the Learned Arbitral Tribunal as well. They tried to pretend that a statement they made to the Learned Arbitral Tribunal was never made;

j) The Vaghani Group had claimed that the amounts due from the Subhkam Group had not been fully paid. Towards this end, the Learned Arbitral Tribunal found the Vaghani Group to have prepared “got up” letters to indicate follow up for payment. The Vaghani Group “*adopted the*

ruse” that such letters had been sent to the Subhkam Group. However, its advocates did not refer to or rely on these letters during submissions and did not put these letters to the witnesses of the Subhkam Group;

k) It was after the Learned Arbitral Tribunal made it clear that it was not willing to believe that Respondent No. 6 had no connection with his siblings that he started appearing in the proceedings from April 2016;

l) The Learned Arbitral Tribunal returned a finding that “*both Mr. Ajay Vaghani and Mr. Chiranjiv Vaghani have not hesitated to tell falsehood in evidence. They have been caught out on a number of occasions. The instances are too many to enumerate*”; and

m) In the teeth of such clear, firm, well-reasoned and logical findings of utter disregard for the rule of law on the part of the Vaghani Group, the Learned Arbitral Tribunal was persuaded to grant no relief to the Subhkam Group on one sole ground – that the Subhkam Group “*did not comply*” with the JVA “*at least after 2004*”. Interpreting the provisions of the JVA that entitled Subhkam Group to participate in the management and governance of the JVA as “*an obligation to participate in the management*”, the Learned Arbitral

Tribunal held that the Subhkam Group could not be regarded as a “passive investor” and if it “*left the Vaghani Group in control the Claimants have only themselves to be blamed*”.

14. I have attempted to reconcile the last finding in the summary above, with the preceding findings. To begin with, the last finding i.e. that the Subhkam Group has not been ready and willing to comply with the JVA has to be examined for perversity on its own. If that finding, in itself, were to be a reasonable view, then too the scope for intervention would get eroded.

Treating Rights as Obligations:

15. In this regard, the Learned Arbitral Tribunal has copiously extracted the provisions of contract regulating the governance of the Milton JV. The Recital of the JVA that indicates the desire of jointly operating and managing the Milton JV has been extracted. Then, Clause 6.3 which declares that the Milton JV is a quasi-partnership where the two groups “*shall have equal say in the management*” has been extracted. Clause 6.4, which deals with the composition of the Board of Directors to provide for equal representation is extracted. Clause 6.5 which provides for a right to nominate and remove directors is extracted. The obligation of the Milton JV to appoint the person nominated by the respective joint venture partner in Clause 6.6 has

been extracted. Clause 6.7 which provides for Milton JV to have one Chairman (a director appointed by the Vaghani Group) and one Vice Chairman (a director appointed by the Subhkam Group) has been noticed. Clause 6.8 which obliges each group to exercise its voting rights in a manner as to ensure such appointments are indeed made to the Board, has been noticed. Clause 6.9, which requires the Milton JV to provide an annual budget and Clause 6.10 which obliges the Milton JV to provide such reports and information as desired by the Subhkam Group, after certification by the Managing Director, has been noticed.

16. Kathotia's statements in the evidence that he got appointed to the Board of Directors and attended two to three Board Meetings between 2001 and 2003 and that he did not visit Milton JV's office after 2004 have been held as a breach of the JVA by the Subhkam Group. The contention by the Subhkam Group's counsel that these were *rights* to participate in the management and not *obligations*, was negatived.

17. The Learned Arbitral Tribunal could not accept the concept of a "passive investor". Kathotia had deposed that the knowledge of the business was with the Vaghani Group and he trusted that they would perform on their promises after the Subhkam Group bailed them out of financial distress and utilise the Subhkam Group's skill sets. This was

not accepted by the Learned Arbitral Tribunal, on the strength of the rights contracted by the Subhkam Group in the JVA. That when the Milton JV was formed, the Kathotia Group also intended to participate in the management was held to belie the premise of being a passive investor. Exchange of financial information and business plan prior to 2004 was noticed. Exchange of correspondence from the Subhkam Group complaining that the Vaghani Group was not taking advantage of its skills and the Vaghani Group's grievance that it expected greater participation and unconditional support from the Subhkam Group was noticed. All of this led to the Learned Arbitral Tribunal repeatedly asserting that the Subhkam Group had failed to fulfil its obligations and was not ready and willing to perform its obligations and therefore was disentitled from pursuing specific performance of the JVA.

18. In the same breath, the Learned Arbitral Tribunal also repelled the Vaghani Group's contentions that the Subhkam Group failed to bring in more investment into the Milton JV. It has been firmly held that there was nothing to prove that there was any commitment on the part of the Subhkam Group to bring in more monies. No issue of additional shares was proposed by the Milton JV and no calls for fresh subscription to shares were made.

19. I am afraid the view that every right of an investor to participate in the management and governance of a joint venture company being converted into an obligation to participate is *ex facie* unreasonable. When an investor invests in a company, he contracts certain rights. These are his rights and it is for him to enforce or to waive. The Learned Arbitral Tribunal has firmly held with detailed reasons that the Vaghani Group has “*miserably failed*” to show abandonment of the JVA by the Subhkam Group. The Learned Arbitral Tribunal has ruled that acquiescence is neither pleaded nor synonymous with abandonment. In the same breath, the Learned Arbitral Tribunal has equated the contractual rights of the Subhkam Group with contractual obligations of the Subhkam Group. This is an untenable and an implausible view.

20. With the greatest respect to the Learned Arbitral Tribunal, it appears to me that the Learned Arbitral Tribunal has imported a public law concept of “power coupled with duty” into the domain of private contract. In matters of public law, when a legislation provides for a discretionary action on the part of a public authority, it is with a certain legislative objective in mind. In such a situation the use of the word “may” could be read as “shall” since the very reason for conferment of such power on a public authority is to have such an authority exercise it to further the legislative objective. This is why a writ of mandamus

may lie to direct the public authority to positively take a certain action within its power. On the other hand, in a matter of private contract, the rights and obligations have no wider public interest considerations and the parties are presumed to contract rights in their own enlightened self-interest. It is the contracting party's sovereign and autonomous power to act upon a right or to trust the counterparty by not insisting on enforcing the right.

21. This is precisely why in my opinion, the Impugned Award is riddled with inherent contradictions. The Learned Arbitral Tribunal has returned a firm view that the case of the Subhkam Group having abandoned the JVA has miserably failed. The Learned Arbitral Tribunal has also stated that the JVA is subsisting and every moment of the Vaghani Group carrying on competing business is a continuing breach of the JVA. If that were so, there can be no question of the Subhkam Group's rights capable of being enforced, also being treated as obligations that the Subhkam Group is meant to perform.

22. Even assuming for the sake of argument, that the Learned Arbitral Tribunal is given a greater play in the joints to interpret the JVA and its treatment of rights as obligations were somehow acceptable, such a finding would not sit with the collateral finding that there has been no abandonment of the JVA. The Learned Arbitral

Tribunal has held that the Subhkam Group has itself to blame for the Vaghani Group's continuing breach of the JVA.

23. To my mind, even holding the provisions of the JVA invoked by the Learned Arbitral Tribunal to be obligations is totally unreasonable, and a finding that no reasonable person interpreting a commercial contract with application of commercial sense, would return. What we have on hand is a case of firm findings that the Vaghani Group blatantly diverted business away from the Milton JV to Hamilton, wrongly seeking to justify it on the ground of abandonment; and even raising the objection of limitation, all of which were firmly put down by the Learned Arbitral Tribunal. Yet, the Learned Arbitral Tribunal would victimise the victim by holding that the party whose rights have been breached, has itself to blame; and that too when adjudicating a cause of action seeking intervention for that very breach. It is a case of holding that there is indeed a breach leading to a cause of action, and yet holding that there is no actionable breach – both of which are in the nature of firm findings that are mutually and inherently contradictory.

24. That these findings, namely, of failure to prove abandonment; of inability to allege acquiescence; of every moment of conducting competing business being a continuing tort; and yet holding

that the tort is not an actionable tort because the party at the receiving end of the tort had purportedly not complied with an obligation, in the teeth of such “obligation” actually being a “right”, are mutually destructive, is writ large on the face of the Impugned Award.

Justice Delivery Subversion turns out Irrelevant:

25. The Learned Arbitral Tribunal has also been pleased to find that the Vaghani Group has lied on oath and has demonstrated a lack of integrity in its participation in justice delivery. The Learned Arbitral Tribunal has had occasion to impose costs on the Vaghani Group for raising an issue of absence of privity of contract despite the Supreme Court not entertaining a challenge to a ruling that certain constituents are parties (veritable or otherwise) to the JVA. The Learned Arbitral Tribunal has returned firm and credible findings on the wanton breach on the part of the Vaghani Group. Yet, by returning an implausible finding that a right is an obligation, specific relief has been held to be impossible to grant. On the ground that specific relief cannot be granted, damages too have been denied. The Impugned Award denying relief in the teeth of the other findings, would shock the conscience of any reasonable person applying commercial common sense. A party firmly found to have indulged in abject contumacious conduct appears to have been allowed to get away with no consequences whatsoever.

26. The Impugned Award, regrettably falls in the realm of being in conflict with the most basic notions of justice and morality, apart from being perverse by reason of being riddled with inherent contradictions, leading to an implausible outcome. By treating a right as an obligation, the Impugned Award is also contrary to the contract. This is exacerbated by the finding that the JVA indeed subsists, and has not been abandoned.

27. In *OPG Power*, the law on the subject is well summarised, citing from antecedent case law, in Paragraphs 57 to 63 (*Justice*); Paragraph 64 (*Morality*); Paragraph 65 to 68 (*Patent Illegality*) and Paragraphs 69 to 73 (*Perversity*). To avoid prolixity, I am not keen to reproduce the same here extensively.

Summary of Conclusions:

28. Suffice it to say, applying the standards to the facts of the case, I have to conclude that:-

- a) The findings contained in the Impugned Award on the absence of abandonment by the Subhkam Group cannot be reconciled with the finding that the Subhkam Group had only itself to blame for the JVA being violated by the

Vaghani Group when the Subhkam Group failed to actively participate in the management of the Milton JV;

b) The finding that the Vaghani Group continues to breach the subsisting JVA, and that too at every moment of Hamilton's engagement in competing business, cannot be reconciled with the finding that such continuing breach of a subsisting JVA has no consequence whatsoever on the premise that the Subhkam Group was not ready and willing to perform the JVA;

c) In an investment, the obligation of the investor is typically to make an investment. In consideration of such investment, the investor gets a bundle of rights. Even if the Subhkam Group were not to be treated as a mere financial investor but as a joint venture partner, it was necessary to spell out which obligation was subject matter of the unwillingness or the non-readiness to perform. The provisions of the JVA referred to by the Learned Arbitral Tribunal are all provisions conferring rights and not provisions fastening obligations on the Subhkam Group. Indeed it must not be forgotten that the Learned Arbitral Tribunal held that the Subhkam Group did not abandon the JVA;

- d) The finding that the right of the Subhkam Group to participate in the governance and management of the Milton JV are obligations to be discharged by the Subhkam Group to the Vaghani Group, even while holding that there is no abandonment of the JVA by the Subhkam Group is perverse inasmuch as such a finding gives a license for continuing with conduct that is actually adjudicated to be violative, thanks to the declaration that no consequence for the violation can be visited upon the Vaghani Group;
- e) The outcome of the Impugned Award is that the conduct of the Vaghani Group, despite deprecation in the Impugned Award, is totally irrelevant. That the misconduct found in the Impugned Award has not resulted even in consideration of costs in a commercial dispute, leave alone denial of specific performance, with damages too being denied on that premise, would shock the conscience of the Court; and
- f) In summary, a finding of a breach of the JVA with impunity, with lies being stated on oath in the arbitral proceedings, the Learned Arbitral Tribunal finding that it was actively misled, all amount to nothing. This has been the case only because a contractual right is treated as a

contractual duty, perhaps with the thinking that they are powers coupled with duty. In the same breath, the Impugned Award holding that there was no abandonment of the rights in the JVA, has resulted in the Impugned Award being regarded as perverse.

Partial Setting Aside Impossible:

29. Before parting with the judgement, I must also state that I have done my best to see if the portion of the Impugned Award that is vulnerable can be excised and partially set aside to save the Impugned Award, particularly due to the strong, reasonable and conceivable findings returned on the facet of absence of abandonment and continuing breach. However, considering that no relief has at all been granted, even setting aside of the portion of the Impugned Award that led to the denial of relief would be of no consequence since it is not open to this Court to positively grant any relief. Therefore, even in such a situation, the parties would need to arbitrate again.

30. That apart, the finding on abandonment does not sit well with the finding of not being ready and willing to perform. If the rights held to be obligations had indeed been held to be rights, it would be hard to reconcile that position with the findings on abandonment. In

other words, the findings in the Impugned Award are inextricably interwoven and therefore, excising one element of the Impugned Award would not lead to the others remaining unaffected. The inherent contradictions do not lend themselves to any surgical excision to save the Impugned Award.

31. Hamilton's plea to partially set aside all adverse findings since they are in the realm of "would have been" findings is also unacceptable. This is a self-serving and cynical prayer in the teeth of plausible adverse findings being arrived at against the Vaghani Group. Indeed, the Vaghani Group would like such adverse findings to be wiped out only because the Learned Arbitral Tribunal has held the right to participate in management and governance of the joint venture to be an obligation to do so. I have already explained why I find the conversion of a contractual right into a contractual obligation to be untenable and contrary to contract. Therefore, the very basis of Hamilton's prayer stands undermined in my assessment. The relief for partial setting aside of adverse findings against the Vaghani Group also cannot be granted.

32. For the aforesaid reasons, I am constrained to ***set aside the Impugned Award*** in exercise of the jurisdiction under Section 34 of the Act. The arbitration agreement subsisting, it is open to the parties to

agitate their disputes afresh. All the Petitions and any interim applications made in them, are *finally disposed of* in the aforesaid terms.

33. It is made clear that the parties shall be at liberty to present the costs for this round of litigation and the earlier round of arbitral proceedings, for consideration by the arbitral tribunal that would be constituted, if the parties pursue arbitration. Since the Impugned Award is being set aside for its own inherent contradictions, I am refraining from imposing costs, but deferring the consideration to the next round of arbitration.

34. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]