2026:DHC:3779-DB

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

% ***Judgment reserved on: 22.01.2026***

Judgment pronounced on: 05.05.2026

Judgment uploaded on: 05.05.2026

\+ RFA(OS)(COMM) 3/2025

CAMPOS BROTHERS FARMS .....Appellant

Through: Mr. Uttam Datt, Sr. Adv. alongwith Mr. Abhishek Mishra, Ms. Sonakshi Singh, Mr. Kumar Bhaskar and Mr. Naman Kumar, Advs.

versus

MATRU BHUMI SUPPLY CHAIN PVT LIMITED & ORS. .....Respondents

Through: Mr. Jayant Mehta, Sr. Adv. with Mr. Sulabh Rewari, Ms. Mansa Shukla, Mr. Shubhansh Thakur and Mr. Om Shelat, Advs. for R-1.
Ms. Riya Singh, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.

1. The issue which arises for consideration in the present Appeal is whether a civil suit can be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 on the premise that the cause of action has merged into a foreign arbitral award, when such award has neither attained enforceability under Part II of the Arbitration and

Conciliation Act, 1996 nor resulted in a decree of an Indian court.

2. The present Appeal, filed by the Appellant [Plaintiff before the learned Single Judge], assails the correctness of judgment and order dated 03.10.2024 [hereinafter referred to as 'Impugned Order'] passed by the learned Single Judge in CS(COMM) No. 1173/2018, whereby the Plaint filed by the Plaintiff came to be rejected at the threshold

FACTUAL MATRIX

3. The relevant facts, in brief, are required to be noticed in order to appreciate the controversy involved in the present Appeal. For the sake of convenience, the parties are being referred to as they were arrayed before the learned Single Judge.

4. The Plaintiff claims to be a U.S. based entity. It is alleged that during the year 2015, four separate and independent contracts were entered into between the Plaintiff and Defendant No.1 (three contracts) and Defendant No.2 (one contract) for the supply of Non-Pareil In-Shell Almonds ['NPIS']. Pursuant thereto, NPIS almonds were supplied to the Defendants. However, according to the Plaintiff, the entire consideration payable in respect thereof has not been paid. While instituting the suit, the Plaintiff disclosed that a foreign arbitral award dated 25.07.2016 had been passed in its favour. The said award was sought to be enforced in India in accordance with Part II of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the '1996 Act'] by filing a petition under Sections 48 and 49 thereof.

5. In support of the suit, the Plaintiff pleaded its cause of action in

paragraph 46 of the plaint, which reads as under:

> *"46.The cause of action is constituted by the entire bundle of facts specified above. The cause of action inter alia arose when upon expiry of the period of credit i.e. from 04.11.2015 onwards, the Defendant failed to make payment of goods. The cause of action further arose when the Plaintiff had to sell the consignments to third parties on the failure of the Defendants to keep their end of the bargain and the contract. The cause of action further arose when the Plaintiff agreed conditionally to not claim damages on losses from sales to third parties, subject and contingent and conditional on the Defendants making full payments on the consignments which the Defendants had duly taken possession of, within the time frame offered. The cause of action further arose when the Defendants further breached even this condition, and did not pay the full contracted value even for these 5 consignments within the times lines offered, thus entitling the Plaintiff to then sue for all losses. The cause of action further arose when the Plaintiff issues legal notices dated 19 February 2016 seeking payment of dues, and when the Defendant issued response legal notice on 11.03.2016 and 01.04.2016. The cause of action arose the various dates the Defendants committed breach of their contractual obligations. The cause of action continues since the payments have not yet been made by the Defendants. The suit is within limitation. In any event, Plaintiff is entitled to the benefit of Section 14 of the Limitation Act for the period of pendency of arbitration and enforcement proceedings."*

6. On the basis of the aforesaid averments, the Plaintiff instituted CS (COMM) No. 1173/2018 seeking, inter alia, the following reliefs:

> *a) Pass a decree of USD 1,155,111 plus interest till date of suit USD 346,533 i.e, total USD 1,501,644 jointly and severally against each of the Defendants, and in favour of the Plaintiff, directing the Defendants to pay the afore stated sums of money to the Plaintiff along with interest @ 18% p.a. pendent lite and future interest till date of payment;*
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> *b) Alternatively to (a), if the matter is considered as per contract, pass a decree of USD 1,208,976 [principal USD 929,981.32 plus interest @ 18% p.a. till 31 August 2018 USD 278,995] against Defendant No.1 and a further decree of USD 292,668 [principal USD 225,129.85 plus interest @ 18% p.a. till 31 August 2018 USD 67,538] against the Defendant No.2, and further against each of Defendant Nos.3-9 jointly and severally,*

and in favour of the Plaintiff, directing the Defendants to pay the afore stated sums of money to the Plaintiff, along with, in each case, interest @ 18% p.a. pendent lite and future interest till date of payment;

c) Alternatively to (a) and (b), if the matter is considered as per invoices, pass a decree of USD 490,215 [principal USD 377,088.83 plus interest @18% p.a. till 31 August 2018 i.e. USD 113,126] against Defendant No.1 and a further decree of USD 1,011,429 [principal USD 778,022.34 plus interest @18% p.a. till 31 August 2018 USD 233,407], and further against each of Defendant Nos. 3-9 jointly and severally, and in favour of the Plaintiff, directing the Defendants to pay the afore stated sums of money to the Plaintiff along with, in each case, interest @ 18% p.a. pendent lite and future interest till date of payment;

d) In the alternative to Prayer (a) to (c), if for any reason under law the payments cannot be made in USD Currency, direct the Defendants, in similar terms and manner as the prayers (a) to (c), to pay the Plaintiff the awarded amount in equivalent Indian Rupees, at the exchange rate prevailing (i) on or about the date of the affirmation of affidavit for filing of the present suit [i.e. 1 USD = 72.57 INR, as per RBI], or (ii) in the alternative to (i), at the exchange rate prevailing on the date of filing of suit or alternatively date of decree, whichever is higher and more beneficial to the Plaintiff between (i) or (ii), or (iii) further in the alternative, at the exchange rate prevailing on such date as in law is to be considered as the relevant date to be considered for rate of exchange;

e) Pass a decree declaring that the actions of the Defendants are illegal and in breach of contract, and further declare that the purchase orders relied upon by the Defendants are not valid or concluded contracts and cannot be enforced, and that the signed contracts executed between the parties are, have been and continue to be valid, entitling the Plaintiff to recoveries in terms of prayers (a) to (d) above;

7. The Plaintiff's attempt to enforce the foreign arbitral award did not succeed in view of the dismissal of its enforcement petition on 02.05.2019. The said order forms the subject matter of challenge in EFA(OS)(COMM) No. 10/2019, which is stated to be pending

consideration before this Court. In the alternative, the Plaintiff had instituted the present suit in September 2018.

8. The learned Single Judge, however, dismissed the suit at the threshold primarily on the following reasoning:

> *"71. In the light of the principles as discussed above, it is hereby concluded that the cause of action having merged in the Foreign Award, which could have been challenged if at all, it could be at the Court at the Seat of Arbitration, which exercises the supervisory or primary jurisdiction. There being no challenge to the Award, it has become binding and the cause of action having merged in the Award, it does not survive to enable to file a fresh suit on the same cause of action in the State of origin that is India."*

9. In essence, the learned Single Judge held that the cause of action forming the basis of the suit stood merged into the foreign arbitral award and, on that premise, concluded that the suit was not maintainable. The learned Single Judge did not examine the suit on merits but confined the dismissal solely to the premise that the cause of action stood extinguished by merger into the foreign arbitral award.

CONTENTIONS OF THE PARTIES

10. Contentions of the Appellant

10.1. Learned counsel representing the Appellant, while placing reliance on Sections 48 and 49 of the 1996 Act, submits that a foreign arbitral award does not, by itself, constitute a decree enforceable in India. It is contended that the statutory scheme mandates the filing of enforcement proceedings under Section 48 read with Section 49 of the 1996 Act, and only upon the Court recording its satisfaction that the foreign award is enforceable under Chapter II thereof does such award

attain the status of a decree of the Court.

10.2. It is further submitted that in the present case, the foreign arbitral award in favour of the Appellant has been held to be unenforceable by the competent court, which finding is presently under challenge in appeal. Consequently, it is urged that the award has not attained finality or enforceability in India.

10.3. Learned senior counsel contends that in the absence of an enforceable foreign award, the doctrine of *res judicata* has no application, and the underlying cause of action cannot be said to have been extinguished or merged. In support of his submissions, learned counsel places reliance on the following judgments –

i. ***Mohammad Sheriff & Co. Ltd. v. A.P.N. Abdul Jabbar and Ors.*** (1996) ILR1 Mad 18

ii. ***Badat and Co. Bombay v. East India Trading Co.*** (1964) 4 SCR 19

iii. ***Paramjeet Singh Patheja v.*** ICDS Ltd. (2006) 13 SCC 322

iv. ***Shree Cement Ltd. Trehan Farms Pvt. Ltd.*** (2016)(6) R.A.J.98

v. ***K.K. Modi v. K.N. Modi*** (1998) 3 SCC 573

vi. ***Rajendran v. Shankar Sundaram*** (2008) 2 SCC 724

11. Contentions of the Respondents

11.1. *Per contra*, learned senior counsel appearing on behalf of the Respondents, while referring to Section 46 of the 1996 Act, submits

that a foreign arbitral award is binding on the parties, and therefore, the cause of action forming the basis of the suit stands merged into the award.

11.2. It is contended that the institution of the civil suit amounts to parallel proceedings and constitutes an abuse of the process of law. Learned senior counsel submits that the learned Single Judge has rightly rejected the Plaint at the threshold as not maintainable.

11.3. It is further urged that the principles of *res judicata* are attracted, since the disputes between the parties have already been adjudicated upon in the foreign arbitral proceedings, rendering the present suit not maintainable. In support of his submissions, learned counsel places reliance on the following judgments –

i. ***Satish Kumar & Ors. v. Surinder Kumar & Ors.*** AIR 1970 SC 833

ii. ***Maimunabai Akbar Ali v. Mumtaz Hussain Akber Ali Topiwali*** (1987) 1 Bom CR 17

iii. ***Badat and Co. Bombay v. East India Trading Co.*** (1964) 4 SCR 19

iv. ***Century Metal Recycling Pvt. Ltd. v. Sachin Chhabra & Ors.*** (2018) 247 DLT 234

v. ***Century Metal Recycling Pvt. Ltd. v. Sachin Chhabra & Ors.*** 09.10.2018- RFA(OS)(COMM) 4/2018

vi. ***Bank Kreiss v. Ashok K. Chauhan*** 2003 (68) DRJ 492

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ANALYSIS & FINDINGS

12. This Court has carefully considered the submissions advanced on behalf of the parties and perused the paper book, which contains the entire record of the civil suit as well as written submissions filed by the parties.

13. The present suit came to be dismissed at the threshold as not maintainable. The power of the Court to reject a plaint at the threshold is traceable to Order VII Rule 11 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC']. Such power is circumscribed by the specific grounds enumerated under clauses (a) to (f) of Rule 11. A plaint may be rejected, *inter alia*, where it does not disclose a cause of action or where the suit appears from the statements in the plaint to be barred by any law.

14. In the present case, the rejection of the plaint was premised on the reasoning that the cause of action forming the basis of the suit had merged into a foreign arbitral award. Such a ground, however, does not find place in any of the clauses of Order VII Rule 11 of the CPC. The plaint was neither rejected on the ground that it did not disclose a cause of action under clause (a), nor on the ground that the suit was barred by law under clause (d). It may be noted that the plea of merger, as urged by the Respondents, is in substance founded on principles analogous to *res judicata*, which could, in a given case, fall within the ambit of a "bar by law" under clause (d). However, the learned Single Judge has neither recorded a finding to that effect nor examined whether the necessary ingredients for such a bar stand

satisfied. In the absence of such determination, the rejection of the plaint cannot be sustained on this ground.

15. It is also well settled that the Arbitration and Conciliation Act, 1996 does not absolutely exclude the jurisdiction of the civil court to adjudicate civil disputes merely because the parties were governed by an arbitration agreement. Section 8 of the 1996 Act enables a party to seek reference of disputes to arbitration, but such an objection is required to be raised by filing an appropriate application before the submission of the first statement on the substance of the dispute. Failure to do so results in waiver of the right to seek reference, and the civil suit is then liable to proceed in accordance with law. Section 8 of the 1996 Act, no doubt, embodies a legislative mandate which, in a given case, may operate as an implied bar to the jurisdiction of the civil court; however, such bar is neither automatic nor absolute, and is conditioned upon a party invoking the provision in the manner and at the stage contemplated therein.

16. The jurisdiction of the civil court to adjudicate civil disputes is plenary, and any exclusion of such jurisdiction has to be strictly construed. Where a foreign arbitral award is rendered but is found to be unenforceable in India, the party in whose favour such award was passed is required to avail such remedies as are permissible in law for enforcement of its substantive rights. One such remedy is the institution of a civil suit. The bar of jurisdiction of the civil court is an exception, and the same must be clearly established by statute or necessary implication.

17. It is significant to note that the cause of action for recovery of the amount claimed does not cease to exist merely because a foreign arbitral award has been passed, particularly when such award has been held to be unenforceable in India. An unenforceable foreign award cannot, by itself, extinguish the underlying civil cause of action, as such award has failed to secure recovery of the amount in favour of the claimant.

18. The contention advanced on behalf of the Respondents based on Section 46 of the 1996 Act also does not merit acceptance. While Section 46 provides that a foreign award shall be binding on the parties, the expression "binding" cannot be read in isolation so as to confer enforceability upon a foreign award which has not satisfied the requirements of Sections 48 and 49 of the Act. Binding effect under Section 46 does not dispense with the statutory requirement of enforceability under Chapter II of Part II of the 1996 Act. It is also relevant to note that the Defendants themselves have taken a specific stand that the foreign arbitral award is not enforceable in India. Having done so, it is not open to them to simultaneously contend that the cause of action has merged into such award so as to non-suit the Plaintiff at the threshold.

19. At this stage, this Court proceeds to examine the judgments relied upon by the learned senior counsel appearing for the Respondents in support of the plea that the institution of the civil suit is barred on account of merger of cause of action into the foreign arbitral award and on the principles of *res judicata*.

19.1. The reliance placed on ***Satish Kumar*** (supra) by the Respondents is misplaced. The said decision arose in the context of a domestic arbitral award under the Arbitration Act, 1940, and the issue before the Supreme Court was whether an unregistered award effecting partition of immovable property could be acted upon without registration. While the Court held that an arbitral award is not a mere waste paper and that the claims referred to arbitration merge into the award, the said observations were made in the backdrop of a valid and subsisting domestic award, which was otherwise capable of being enforced subject to compliance with statutory requirements. The judgment does not deal with the legal effect of a foreign arbitral award which has been held to be unenforceable under Sections 48 and 49 of the Arbitration and Conciliation Act, 1996, nor does it lay down that an unenforceable award extinguishes the underlying cause of action. Consequently, the principles enunciated in ***Satish Kumar*** (supra) cannot be extended to a case where the foreign award has not attained enforceability or finality in India, and therefore, the said decision does not advance the case of the Respondents.

19.2. The decision in ***Maimunabai Akbar Ali*** (supra) is distinguishable and does not support the Respondents' contention. In that case, the Bombay High Court was concerned with a domestic arbitration award under the Arbitration Act, 1940, and the Court held that an award which is not made a rule of the Court is not merely a "waste paper" and has legal efficacy, thus barring a suit on the original cause of action by virtue of Section 32 of the Act. The decision relied heavily on ***Satish Kumar*** (supra), where the Supreme

Court held that an unregistered domestic award is not devoid of legal effect. However, the present case relates to a foreign arbitral award which has been held unenforceable in India, and the award has not attained finality or enforceability under Sections 48 and 49 of the 1996 Act. Consequently, the award cannot be treated as binding for the purpose of merging or extinguishing the cause of action in India. Therefore, the ratio of ***Maimunabai Akbar Ali*** (supra) cannot be extended to a foreign award which is not enforceable in India, and the judgment is not applicable to the facts of the present case.

19.3. In ***Badat and Co. Bombay*** (supra), the Supreme Court examined the maintainability of a civil suit founded upon foreign arbitral awards rendered in New York, in the context of the applicable New York arbitration law. The Court held that under the law governing the arbitration, the arbitral awards had no finality or enforceability by themselves and could attain such status only upon being confirmed by a judgment of the competent court in New York. Since the awards in that case had given way to, and stood superseded by, a foreign judgment, the cause of action was held to arise from the foreign judgment and not from the awards themselves, and consequently, the suit founded upon the awards was found to be not maintainable for want of jurisdiction. The said decision turned entirely on the absence of finality of the foreign awards under the lex arbitri and the consequent substitution of the awards by a foreign judgment. The ratio of the said judgment, therefore, does not advance the case of the Respondents, as it neither lays down that a foreign arbitral award per se extinguishes the underlying cause of action nor holds that a

civil suit is barred merely on account of the existence of a foreign award, particularly where such award has not attained enforceability in India.

19.4. ***Century Metal 2017*** (supra) is clearly distinguishable from the present case. In that decision, the suit was filed on the basis of a foreign judgment and consent terms and the Court was concerned with territorial jurisdiction under Sections 13 and 20 of the CPC, holding that a suit on the basis of a foreign judgment would not be maintainable in a Court where the cause of action did not arise and where the defendants did not "actually and voluntarily reside" or carry on business. The Court further held that a foreign judgment constitutes an independent cause of action, and the original cause of action does not merge into such judgment; therefore, a plaintiff cannot invoke jurisdiction on the basis of the original cause of action if he chooses to sue on the foreign judgment. The ratio of ***Century Metal*** 2017 (supra) is confined to territorial jurisdiction and the independence of cause of action furnished by a foreign judgment, and it does not deal with the legal effect of a foreign arbitral award which has been held to be unenforceable under Sections 48 and 49 of the Arbitration and Conciliation Act, 1996. In the present case, the suit is not founded on a foreign judgment but on the original cause of action, and the foreign award has not attained enforceability in India; therefore, the principles laid down in ***Century Metal 2017*** (supra) do not apply and cannot be pressed into service to reject the suit at the threshold.

19.5. ***Century Metal 2018*** (supra) is also distinguishable. In that case, the suit was founded solely on a foreign consent judgment, and the

Court examined whether the suit could be entertained in Delhi when the cause of action and the personal guarantee were executed in the United States. The Court held that a suit based on a foreign judgment is subject to Section 13 of the CPC, and must satisfy Section 20 of the CPC for territorial jurisdiction; mere allegations of Delhi residence were insufficient and therefore the suit was dismissed. The decision is confined to territorial jurisdiction and the conclusiveness of a foreign judgment, and does not address the question of enforceability of a foreign arbitral award under Sections 48 and 49 of the 1996 Act. In the present case, the foreign award has not attained enforceability in India and the suit is founded on the original cause of action, not on a foreign judgment; therefore, the ratio of ***Century Metal (2018)*** (supra) does not apply and cannot be pressed into service against the Appellant.

19.6. Lastly, the decision in ***Bank Kreiss*** (supra) is clearly distinguishable on facts and in law. That case arose out of a suit founded squarely on a foreign court decree, where the plaintiff sought to amend the plaint to introduce an alternative cause of action based on the original suretyship, after having elected to sue on the foreign judgment. The Court held that once a plaintiff consciously chooses to base the suit on a foreign judgment, he cannot subsequently shift or add an inconsistent cause of action founded on the original contract, particularly when such amendment would alter the very structure of the suit and attract issues of limitation. In the present case, however, the suit is not founded on the foreign award, nor has the foreign award attained enforceability under Sections 48 and 49 of the Arbitration and

Conciliation Act, 1996. The appellant has proceeded on the original cause of action, asserting that the foreign award has not been held enforceable in India. Therefore, the principle in ***Bank Kreiss*** (supra), which turns on election between remedies and amendment of pleadings in a suit based on a foreign judgment, has no application to a case where the foreign award is unenforceable and the cause of action subsists independently.

20. The submission that the institution of the suit amounts to abuse of the process of law is equally untenable. Abuse of process, by itself, is not a ground expressly enumerated under Order VII Rule 11 CPC for rejection of a plaint. Moreover, the Plaintiff was constrained to institute the suit as well as to pursue the appellate remedy against the order dated 02.05.2019 dismissing the enforcement petition, in order to safeguard its claim from being rendered time-barred. In such circumstances, the Plaintiff cannot be faulted for pursuing parallel remedies permissible in law.

CONCLUSION

21. In view of the above discussion, this Court is of the considered opinion that the reasoning adopted by the learned Single Judge in rejecting the plaint at the threshold cannot be sustained. The cause of action pleaded in the plaint cannot be said to have merged into a foreign arbitral award which has not attained enforceability in India. The impugned order, therefore, suffers from a patent error of law and is liable to be set aside.

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22. Accordingly, the Impugned Order is set aside. The suit filed by the Plaintiff is restored to its original number.

23. The parties, through their respective counsel, are directed to appear before the learned Single Judge on 18.05.2026.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

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