IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 274 OF 2025

C/W

COMMERCIAL APPEAL NO. 326 OF 2025

IN COMAP No. 274/2025

BETWEEN:

1. GREEN FINCH TEAM MANAGEMENT PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT 151
THE CORENTHUM, SECTOR-62, NOIDA
UTTAR PRADESH - 201 301
REPRESENTED BY ITS
AUTHORIZED REPRESENTATIVE
MS. JYOTI

…APPELLANT

(BY SRI VINEET CHADHA, ADVOCATE A/W
SRI PAVIT SINGH, ADVOCATE FOR
SRI UDAY SHANKAR R. MANJESHWAR, ADVOCATE)

AND:

1. BUNDL TECHNOLOGIES PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT NO. 55
SY. NO. 8-14, GROUND FLOOR, I AND J BLCOK
EMBASSY TECH VILLAGE
OUTER RING ROAD

DEVARBISANAHALLI
BENGALURU - 560 103
KARNATAKA
REPRESENTED BY ITS AUTHORIZED
REPRESENTATIVE
MR. PRONOY CHATTERJEE

…RESPONDENT

(BY SRI UDAYA HOLLA, SENIOR ADVOCATE FOR
SRI A.S. ANIRUDDHA SAGAR AGARWAL, ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SEC.13 (1-A) OF COMMERCIAL COURTS ACT, 2015 PRAYING TO SET ASIDE THE IMPUGNED ORDER / JUDGMENT DATED 14.03.2025 PASSED BY THE LD. LXXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE (CCH-88) IN COM.AP NO.62/2024 & ETC.

IN COMAP NO. 326/2025

BETWEEN:

1. SWIGGY LIMITED
(FORMERLY BUNDL TECHNOLOGIES PRIVATE LIMITED)
HAVING ITS REGISTERED OFFICE AT
NO.55. SY NO.8-14, GROUND FLOOR
I AND J BLOCK, EMBASSY TECH VILLAGE
OUTER RING ROAD, DEVARBISANAHALLI
BENGALURU - 560 103, KARNATAKA
REPRESENTED BY ITS
AUTHORIZED REPRESENTATIVE
MR. PRONOY CHATTERJEE

...APPELLANT

(BY SRI PRAMOD NAIR, SENIOR ADVOCATE FOR
SRI RAVI RAGHAVAN, ADVOCATE)

AND:

1. GREEN FINCH TEAM MANAGEMENT PRIVATE LIMITED
A COMPANY HAVING ITS
REGISTERED OFFICE AT 151
A COMPANY HAVING ITS
REGISTERED OFFICE AT 151
THE CORENTHUM SECTOR - 62
NOIDA - 201 301, UTTAR PRADESH
REPRESENTED BY ITS
AUTHORIZED REPRESENTATIVE
MS. JYOTI

...RESPONDENT

(BY SRI VINEET CHADHA, ADVOCATE A/W
SRI PAVIT SINGH, ADVOCATE FOR
SRI UDAY SHANKAR R. MANJESHWAR, ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SEC.13 (1-A) OF COMMERCIAL COURTS ACT, 2015 PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT DATED 14.03.2025 PASSED BY THE HON'BLE LXXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-88) IN COM A.P NO.72/2024 PREFERRED UNDER SEC.34 OF THE ARBITRATION AND CONCILIATION ACT AND CONSEQUENTLY SET ASIDE THE ARBITRAL AWARD DATED 04.01.2024 (A.C. NO.375/2022) & ETC.

THESE COMMERCIAL APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellants have filed the present appeals under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**], impugning a common order dated 14.03.2025 [**impugned order**] delivered by the Commercial Court in Com.AP.No.72/2024 and Com.AP.No.62/2024.

2. Green Finch Team Management Private Limited [**Greenfinch**], which was the claimant before the Arbitral Tribunal – had filed the application (Com.AP.No.72/2024) to set aside an arbitral award dated 04.01.2024 [**impugned award**] passed by the Arbitral Tribunal comprising of a sole arbitrator [**Arbitral Tribunal**] to the limited extent that the counter claim raised by Swiggy Limited, formerly Bundl Technologies Private Limited [**Swiggy**], had been allowed. The prayers made in the said application to set aside the impugned award are confined to the decision of the Arbitral Tribunal in respect of "for consideration of point No.3 in the counter claim".

3. Swiggy also filed an application (Com.AP.No.62/2024) assailing the impugned award to the extent that it partly allowed the claims preferred by Greenfinch.

4. Both Swiggy and Greenfinch have filed separate appeals, assailing the impugned order. It is material to note that Swiggy's appeal (Com.AP.No.326/2025) is confined to challenging the impugned order insofar as it relates to Greenfinch’s application to set aside the impugned award (Com.AP.No.72/2024).

5. The decision of the learned Arbitral Tribunal to reject certain counter-claims made by Swiggy was not the subject matter of challenge. Admittedly, Swiggy had accepted the award insofar as it relates to the counter-claims and its challenge to the impugned award before the learned Commercial Court was confined to the amounts awarded in favour of the Greenfinch.

6. By the impugned order, the learned Commercial Court set aside the impugned award solely on the ground that it was premised on the deposition of one Smt. Jyothi, the authorised representative of Greenfinch. The learned Commercial Court held that her evidence should not have been considered by the Arbitral Tribunal as she was not a competent witness. On the basis of the aforesaid finding, the

learned Commercial Court held that the impugned award was vitiated on the ground of patent illegality and proceeded to set aside the impugned award notwithstanding that Swiggy's challenge to the impugned award was confined only to the limited extent of claims awarded in favour of Greenfinch.

Prefatory facts

7. Swiggy, which was, at the material time, known as Bundl Technologies Private Limited, is engaged in the business of delivering food, beverages, and groceries. It claims that pickup and delivery of food and beverages are handled through Pick-Up and Delivery Partners [**PDPs**], who are engaged directly on a principal-to-principal basis, and Temporary Delivery Executives [**Temp DEs**], who are provided by or empanelled by third-party service providers.

8. The disputes in the present case arise in the context of the Master Service Agreement dated 11.04.2019 [**the Agreement**] entered into between the parties, under which Greenfinch had agreed to provide Temp DEs to Swiggy. In terms of the said Agreement, Greenfinch agreed to provide the services as set out in Schedule A to the Agreement. It had agreed to deploy Temp DEs to perform services exclusively for Swiggy. Swiggy had agreed to make

payments for the service on a monthly basis within fifteen (15) days from the date on which Greenfinch duly accepts and agrees to the invoice.

9. The Agreement was an open-ended agreement. Greenfinch provided services in terms of the Agreement and raised invoices from time to time.

10. On 09.12.2019, Swiggy issued a notice, *inter alia*, stating that the Directorate General of GST Intelligence [**GST Department**] had conducted inspections at its premises on 28.11.2019 and 29.11.2019, and the officials had raised queries regarding the remittance of GST by Greenfinch. Swiggy stated that, in view of the above, it was withholding payments due to Greenfinch until the matter was resolved. The said notice set out details of eleven invoices which, according to Swiggy, were admittedly outstanding at the material time. He claimed that the same were under dispute and would be reconciled after necessary adjustments. Additionally, Swiggy stated that it would process the service fee payable to Temp DEs in good faith, albeit directly to the Temp DEs.

11. Thereafter, the parties exchanged communications, including an email dated 26.12.2019, whereby Greenfinch claimed that

invoices (16 in number), aggregating an amount of ₹8,76,86,103/- were outstanding. Greenfinch stated that withholding of the said amounts was directly affecting its commitment to its other partners and Government Bodies, including commitments to pay GST, PF, ESIC, and TDS.

12. Swiggy issued a notice on 28.04.2020, *inter alia,* denying its liability to make payments as demanded. It called upon Greenfinch to indemnify Swiggy for an amount of ₹27,51,45,529/- on account of non-compliance of GST laws and breach of the Agreement, and further pay a sum of ₹1,70,00,000/- (Rupees One Crore Seventy Lakhs only) as compensation for loss, harm and injury caused to its reputation. It is alleged that the Greenfinch's personnel were unavailable at its registered office and were attempting to escape the summons issued by the GST Department.

13. Swiggy alleged that Greenfinch's action breached clause 8.1 of the Agreement, which required it to comply with all applicable Laws, Rules, and Regulations regarding the performance of the Agreement. It called upon the Greenfinch to rectify the breach of the Agreement within a period of two (02) days, failing which the Agreement would stand terminated.

14. Greenfinch responded to Swiggy's notice dated 28.04.2020 by its letter dated 03.06.2020. It countered the allegations that it had not complied with any law or had breached clause 8.1 of the Agreement. Swiggy responded to the said notice by communication dated 25.06.2020, once again calling upon Greenfinch to comply with its notice.

15. Thereafter, Greenfinch issued a legal notice dated 20.10.2020, calling upon Swiggy to pay an amount of ₹21,04,38,919/- for amounts due up to 30.09.2020. Swiggy responded to the said notice by letter dated 04.11.2020. Greenfinch also initiated the process to resolve the disputes amicably. However, the same remained unresolved.

16. In the circumstances, Greenfinch issued a notice dated 29.12.2020 invoking arbitration under Article 23 of the Agreement. Greenfinch also set out its claims aggregating to ₹29,04,62,252/-. Swiggy rejected the said notice by communication dated 29.01.2021.

17. In the aforesaid circumstances, the Greenfinch filed an application under Section 11 of the A&C Act (CMP No.155/2021). Whilst the said petition was pending, on 25.02.2021, Swiggy filed a writ petition being WP.No.4467/2021 against the Central Government and GST Authorities, *inter alia*, praying that directions be issued to

the said respondents to refund an amount of ₹27,51,44,157/- which Swiggy claimed was illegally collected from them, along with interest at the rate of 12% p.a. Swiggy also challenged the Constitutional validity of Section 16(2)(c) of the Central Goods and Services Tax Act, 2017 and Karnataka Goods and Services Tax Act, 2017. The said writ petition was disposed of by an order dated 14.09.2021, *inter alia,* directing the concerned authorities to consider Swiggy's application for refund of the said amount.

18. The concerned GST authorities appealed the said decision (WA.No.1274/2021), which was dismissed by an order dated 03.03.2022. It is material to note that (as is recorded in the said order) the GST department had alleged that Greenfinch is a non-existing company and that Swiggy had not received any services from Greenfinch.

19. Thereafter, by an order dated 23.06.2022, Greenfinch's application under Section 11 of the A&C Act was allowed, and a sole arbitrator was appointed, constituting the Arbitral Tribunal.

Arbitral Proceedings

20. Greenfinch filed its statement raising the following claims:

Claim No.	Description of Claim	Amount Claimed (Exclusive of GST) (INR)	Amount Claimed (Inclusive of GST) (INR)
1(a)	Payments towards Temp DE charges and service charges withheld up to 30.11.2019	7,48,24,987	8,91,84,239
1(b)	Payments towards service charges (including interest) for arbitrary and illegal retention of Temp DEs for the period 01.12.2019 to 30.04.2020	4,28,78,258	5,05,96,345
2	Compensation for service charges due to manpower loss arising out of illegal termination for the period 01.05.2020 to 30.04.2021	8,83,05,108	----
3(a)	Claim of GST amount due as on 30.11.2019	1,43,59,251	----
3(b)	Claim of GST amount payable on service charges	77,18,087	----
4	Claim of penalty payable due to non- payment of 100% GST due as on 30.11.2020	2,20,77,338	-----

21. Claim No.1(a) was for a sum of ₹8,91,84,239/- towards payment of Temporary DE charges and service charges, which were withheld up to 30.11.2019.

22. There is no dispute that Greenfinch had provided the services and had raised invoices for the same. The impugned award indicates that, during the course of the Arbitral proceedings, the claim was examined and it was found that the invoices included four that, according to Swiggy Ltd., had been paid. Greenfinch accepted the

same but introduced four other invoices. Swiggy disputed that any amount was outstanding against the said four invoices; it claimed that the amount in respect of two invoices had been paid, and seriously disputed the other two invoices.

23. The Arbitral Tribunal excluded the value of four invoices and confined Greenfinch's claim to ₹8,76,22,029/-. However, the parties thereafter jointly reconciled the invoices and jointly submitted that the said claim was required to be restricted to ₹7,50,33,791/-.

24. Greenfinch had made the second claim regarding loss of manpower. It claimed that, since Swiggy Ltd. had retained the services of Temp DEs provided by Greenfinch, it was entitled to claim service charges for those services. Greenfinch alleged that Swiggy Ltd. was not entitled to deal directly with Temp DEs and had breached the agreement by dealing with them directly.

25. Greenfinch also claimed the GST payable for November 2019. Greenfinch's claim was founded on the allegation that Swiggy Ltd. had withheld amounts payable to it, thereby effectively preventing Greenfinch from paying the GST. Greenfinch claimed that it was not only entitled to the amount of GST but also the penalty imposed by GST department.

26. Swiggy Ltd. filed its statement of defence and also raised the following counterclaims:

Counter Claim No.	Description of Counter- Claim	Amount Claimed (INR)
1.	Loss due to reversal of input tax credit for October 2019 invoices, as Greenfinch did not deposit tax/file monthly returns under FORM GSTR-3B	3,70,48,450
2.	Interest payable under Section 50 of the CGST Act on reversal of input tax credit for October 2019 invoices	83,67,875
3.	Loss of credit as Greenfinch failed to disclose outward supplies and deposit tax by filing FORM GSTR-I and FORM GSTR-3B for November 2019 invoices	1,65,80,527

27. The principal defence of Swiggy Ltd. was that Greenfinch breached its obligations to comply with all statutory requirements, as it had not deposited the GST collected from Swiggy Ltd. It claimed that the GST authorities had recovered an amount of ₹27,51,45,529/- in respect of the GST against the supply by Greenfinch. Therefore, it had withheld the amounts payable by Greenfinch. It also claimed that it was entitled to an amount of ₹3,70,48,450/- being the amount of GST which was required to be paid by Swiggy Ltd. to Greenfinch against which Swiggy was unable to claim any Input Tax Credit [**ITC**]. It claimed that it was required to reverse the ITC because Green Finch had not paid it. In addition,

Swiggy Ltd. claimed interest and loss of credit arising from Greenfinch's failure to file Form GSTR-1 and Form GSTR-3B for invoices for November 2019.

28. Based on the rival claims and contentions, the Arbitral Tribunal framed the following points for consideration:

A) Points for consideration pertaining to Green Finch's claim:

Issue No	Issue
1.	Whether the claimant proves that it is entitled for a sum of Rs.8,91,84,239/-with held by the respondent?
2.	Whether the claimant proves that the respondent has committed breach of the terms of the agreement due to default in timely payment of the amount due to the claimant under the agreement?
3.	Whether the claimant proves that it is entitled to a sum of Rs.5,05,96,345/- towards payment of service charges for the period 01.12.2019 to 30.04.2020?
4.	Whether the claimant proves that the termination of the contract by the respondent was unlawful; and because of which the claimant is entitled for award of sum of Rs.8,83,05,108/- towards compensation for service charges due to manpower loss for the period 01.05.2020 to 30.04.2021?
5.	Whether the claimant proves that it is entitled to a sum of Rs.1,43,59,251/- towards GST for the withheld invoices? (Deleted as per order dated 28.12.2023)
6.	Whether the claimant proves that it is entitled to a sum of Rs.77,I8,087/- towards GST amount on service charges for the period 01.12.2019 to 30.04.2020? (Deleted as per order dated 28.12.2023)
7.	Whether the claimant proves that it is entitled to a sum of Rs.2,20,77,338/- towards penalty?

8.	Whether the claimant/respondent is entitled to interest on the claimed amounts by the parties, if so, at what rate?
9.	Whether the respondent proves that the claimant is in breach of the agreement due to its non-compliance of GST laws and therefore, the respondent lawfully terminated the Agreement?

B) Points for consideration pertaining to Swiggy Ltd.' claim:

Issue No	Issue
1.	Whether the respondent proves that the claimant has failed to deposit GST for the invoices raised in October 2019 and November 2019 (excluding the withheld invoices) after collecting the invoice amounts (including GST) from the respondent; if so, what is the effect of it?
2.	Whether the respondent proves that the non-compliance of GST law in failing to deposit the tax by the claimant, the claimant has committed breach of the terms of the agreement?
3.	Whether the respondent proves that it suffered a loss of Rs.3,70,48,450/- by being compelled to reverse the input tax credit availed by it due to the claimant's failure to deposit the GST collected in respect of the October 2019 invoices?
4.	Whether the respondent proves that it suffered a loss of Rs.1,65,80,527/- in being unable to avail input tax credit that it was otherwise entitled to due to the claimant's failure to deposit the GST collected in respect of the November 2019 invoices (excluding the withheld invoices)?
5.	Whether the respondent proves that it is entitled to interest at 18% because of it being compelled to reverse the input tax credit due to the claimant's failure to deposit GST collected in respect of the October 2019 invoices?

29. Greenfinch examined its authorised representative, Ms Jyoti, as PW1. She tendered her evidence by way of an affidavit dated 14.07.2023. She was cross examined by the learned counsel for

Swiggy Ltd. Swiggy Ltd. examined Mr Mehul Shah, its Tax Head, as RW1. He tendered his evidence by way of an affidavit dated 24.06.2023. He was cross examined as well.

30. PW1 stated that she worked as an HR Manager at Greenfinch from 01.02.2018 to 31.01.2019 and was not a regular employee from 01.02.2019 onward, but was assigned work on a task-to-task basis. She claimed that she also looked after provident fund and ESIC compliances. However, she had no interaction with Swiggy's staff. She was neither in charge of GST compliance nor had any personal knowledge about GST compliance by Greenfinch or the investigation carried out by the Director General of GST Investigations [**DGGI**].

31. After examining the relevant pleadings and evidence, the Arbitral Tribunal rendered the impugned award. The Arbitral Tribunal reproduced the letter dated 09.12.2019 (Exhibit P7), which Swiggy sent to Greenfinch, informing it that officials of DGGI had conducted inspections at its premises on 28.11.2019 and 29.11.2019. Swiggy acknowledged the outstanding invoices; however, it stated that, in light of the inspections, it was suspending payments to Greenfinch until the matter was resolved. Additionally, it informed Greenfinch that

the Temp DEs engaged through Greenfinch were crucial to Swiggy; hence, it would make the payments due to them directly.

32. The Arbitral Tribunal also reproduced the letter dated 28.04.2020 (Exhibit P8), whereby Swiggy had called upon Greenfinch to cure the breach within two days, failing which the agreement would stand automatically terminated.

33. The Arbitral Tribunal found that, under the Agreement, Swiggy was required to pay the invoices within the stipulated time, and it had defaulted in making payments for invoices raised in November, which were admittedly received by Swiggy. The Arbitral Tribunal found that Swiggy Ltd.'s reliance on Clauses 6.3, 6.6, and 7.4 of the Agreement for withholding the amounts was unsustainable.

34. Accordingly, the Arbitral Tribunal found that Swiggy had defaulted in making payments for invoices raised for supplies that were admittedly received by Swiggy Ltd. The Arbitral Tribunal awarded an amount of ₹7,50,33,791/- in favour of Greenfinch. The Arbitral Tribunal further held that, since Swiggy had unjustifiably withheld this amount, it was also liable to pay interest. Although Greenfinch claimed interest at the rate of 18% per annum, the Arbitral Tribunal awarded interest at the rate of 12% per annum from

15.12.2019 till the date of the impugned award on the aforesaid amount of ₹7,50,33,791/- which was withheld by Swiggy.

35. Insofar as the claim for compensation for manpower loss, claim No.2 for a sum of ₹8,83,05,108/- is concerned, the Arbitral Tribunal noted that the same was computed on the basis of an average monthly profit of ₹73,58,759/-. The Arbitral Tribunal held that Greenfinch would be entitled to the said service charges for a period of five months from December to April, that is, till the termination of the Agreement. However, the Arbitral Tribunal reduced the amount by half (50%) on the ground that Greenfinch had defaulted in depositing the GST for the month of October 2019 and part of November 2019. However, the Arbitral Tribunal denied Greenfinch's claim for interest on the said amount.

36. The Arbitral Tribunal held that termination of the Agreement by Swiggy was wrongful and also awarded compensation, which was quantified to ₹73,58,759/-. The Arbitrator noted that under the Agreement, either party could terminate it by giving 30 days' notice. Therefore, the claim for wrongful termination of the Agreement was limited to one month's profit that Greenfinch would have earned. The

Arbitral Tribunal accepted the service charges claimed for November 2019 as the measure for loss of profits.

37. The Arbitral Tribunal also accepted Swiggy's counterclaim of ₹3,70,48,450/- as supplied by it on account of reversal of ITC for the month of October 2019 and accordingly, awarded the said amount. Additionally, the Arbitral Tribunal also awarded an amount of ₹1,65,80,527/- on account of the GST paid by Swiggy to Greenfinch, which was received by Greenfinch in respect of twenty-one (21) invoices raised for the month of November 2019 but not deposited with the GST Authorities. Additionally, the Arbitral Tribunal also awarded interest at the rate of 12% per annum on the said amount, till the date of the impugned award.

38. As discussed above, an aggregate amount of ₹13,72,99,041/- was awarded in favour of Greenfinch, and a sum of ₹6,16,96,653/- was awarded in favour of Swiggy. Thus, the net amount of ₹7,56,02,388/- was awarded in favour of Greenfinch after setting off the amount awarded in favour of Swiggy. In terms of the impugned award, Swiggy Ltd. is also obliged to pay interest at the rate of 12% per annum from the date of the award till the date of payment.

The Impugned Order

39. Both parties preferred their respective applications to set aside the impugned award under Section 34 of the A&C Act. Swiggy's application (COM.A.P.No.62/2024) was confined to seeking the setting aside of the impugned award to the extent of the amounts awarded in favour of Greenfinch.

40. Swiggy raised several grounds to challenge the impugned award. It claimed that the Arbitral Tribunal had failed to consider that the sole witness (PW1) examined by Greenfinch was not properly authorised and lacked personal knowledge. Second, it was contende that the Arbitral Tribunal's finding that the termination of the Agreement was wrongful and patently erroneous. Third, that the impugned award was contradictory inasmuch as the Arbitral Tribunal had awarded compensation to Greenfinch for breach of contract, but it also awarded a counterclaim for reversal of ITC in favour of Swiggy, which was founded on the basis that Greenfinch had breached the terms of the Agreement. The Arbitral Tribunal held that Swiggy could not allege that Greenfinch had breached its obligations to comply with statutory laws on the basis of any default in the payment of GST, yet it awarded Swiggy's counterclaim for the reversal of ITC.

41. Greenfinch also filed an application (COM.A.P.NO.72/2024) for assailing the impugned award to the extent that the Arbitral Tribunal had allowed Swiggy's counterclaims. Greenfinch claimed that the Arbitral Tribunal had no jurisdiction to adjudicate the counterclaims, which were founded on reversal of ITC. It claimed that GST matters fall within the exclusive jurisdiction of the GST adjudicatory authorities, and that the counterclaim was beyond the scope of the arbitration agreement.

42. Swiggy also resisted Greenfinch's application to set aside the impugned award, *inter alia*, contending that the claims were awarded on admitted facts. It also pointed out that there was no challenge to the award in respect of counter claim No.3 of ₹1,65,80,527/- and the interest amounting to ₹83,67,875/- on the said amount.

43. The learned Commercial Court did not render any specific findings on the issues raised by the parties. However, it accepted Swiggy's contention that PW1 was not a competent witness. The learned Commercial Court referred to the decision of the Supreme Court in **Janki Vashdeo Bhojwani v. IndusInd Bank Ltd. (2005) 2 SCC 217** and held that PW1 was not a competent person to depose

the matter and accordingly, set aside the impugned award in its entirety.

Reasons and Conclusion

44. As noted above, the learned Commercial Court had set aside the impugned award solely on the ground that PW1 was not a competent person to give evidence before the Arbitral Tribunal, and that reliance on her evidence vitiated the impugned award on the ground of patent illegality. The learned Commercial Court also observed that the impugned award was rendered wholly on the basis of PW1's evidence.

45. The fundamental premise that the impugned award is rendered wholly on the basis of PW1's evidence is *ex facie* erroneous. A plain reading of the impugned award indicates that it is mainly based on the admitted documents. There is no dispute that the parties had entered into the Agreement, the terms of which were referred to by the Arbitral Tribunal. The impugned award largely rests on the interpretation of the terms of the Agreement and the admitted communications exchanged between the parties.

46. The finding that PW1 was an incompetent witness is based on the principle that the power of attorney holder cannot depose on behalf of its principal in respect of matters of which the power of attorney holder does not have any personal knowledge. There is no cavil with this proposition. However, there is no impediment for an authorised signatory or a person authorised on behalf of a company to provide evidence as to the records of the company, even though the authorised person may not have any personal knowledge of the facts set out in the record. The knowledge that the records are maintained in the normal course of business may be sufficient to produce the same.

47. The learned counsel appearing for Swiggy also fairly stated that Swiggy's contention that PW1 was incompetent to provide any evidence on behalf of Greenfinch was based on the assertion that no resolution had been passed by the Board of Directors of Greenfinch authorising PW1 to prosecute the case or to give evidence. The learned counsel submitted that the annual reports and returns filed by Greenfinch clearly established that no meeting of the Board of Directors was held on the date on which the resolution authorising PW1 was passed. However, we note that the learned Commercial Court has not based its decision on this conclusion. The Arbitral

Tribunal had also not permitted Swiggy to advance the said contention on the ground that no question had been put to PW1 in regard to the validity of the board meeting held on 17.10.2019. PW1 had produced a copy of the board resolution, and no question was put to the witness regarding the said meeting. Further, no such ground had been urged by Swiggy in its written statement, which would warrant the parties to lead evidence on the said question. Additionally, the Arbitral Tribunal noted that Ms Jyoti (PW1) had represented Greenfinch before the High Court of Karnataka, and that her authority to do so was not questioned even in those proceedings. Clearly, there were no grounds to interfere with the decision of the Arbitral Tribunal on the ground of the competence of PW1.

48. Secondly, it is trite law that the Indian Evidence Act, 1872 or the Civil Procedure Code, 1908 does not apply to arbitral proceedings. Section 19 of the A&C Act expressly stipulates that the arbitral tribunal is not bound by the Code of Civil Procedure, 1908, or the Indian Evidence Act, 1872. Sub-section (4) of Section 19 of the A&C Act also expressly provides that the power of an arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence. Section 19 of the A&C Act is set out below:

> **19. Determination of rules of procedure**.—(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).
>
> (2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.
>
> (3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.
>
> (4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence."

49. PW1 had clearly stated that she was working as an HR Manager at Green Finch from 01.02.2018 to 31.01.2019. However, after 01.02.2019, she was not a regular employee; she was appointed to work on a task-by-task basis. She had also stated that she was not in charge of GST compliance and therefore did not have any personal knowledge of Greenfinch's GST compliance. The question as to what extent the evidence of PW1 could be relied upon, and the weightage to be accorded to the said evidence, is a matter solely within the jurisdiction of the Arbitral Tribunal. Whilst the learned Commercial Court has faulted the Arbitral Tribunal for relying on PW1's evidence, the learned Commercial Court had not specified the link between any finding of the Arbitral Tribunal and the evidence led by PW1. The learned Commercial Court has simply proceeded on the

basis that the entire impugned award is based on the evidence of PW1. A premise that we find is erroneous and is not supported by the plain language of the impugned award.

50. In the foresaid view, the impugned order is liable to be set aside. Since the learned Commercial Court had not examined the other contentions advanced by the parties, we were inclined to remand the matter to the learned Commercial Court. However, considering that the learned counsel had advanced submissions to challenge to the impugned award, we consider it apposite to examine the same in these proceedings.

51. The claims made by Greenfinch and the amounts awarded against the said claims are set out below:

Claim No.	Description of Claim	Amount Claimed	Amount Awarded
1(a)	Payments towards Temp DE charges and service charges withheld up to 30.11.2019	8,91,84,239	7,50,33,791 with interest at the rate of 12% from 15.12.2019
1(b)	Payments towards service charges (including interest) for arbitrary and illegal retention of Temp DEs for the period 01.12.2019 to 30.04.2020	5,05,96,345	1,83,96,897

2	Compensation for service charges due to manpower loss arising out of illegal termination for the period 01.05.2020 to 30.04.2021		73,58,759
3(a)	Claim of GST amount due as on 30.11.2019	----	Rejected
3(b)	Claim of GST amount payable on service charges	----	Rejected
4	Claim of penalty payable due to non- payment of 100% GST due as on 30.11.2020	-----	Rejected

52. The Arbitral Tribunal has awarded a sum of ₹7,50,33,791/- (Rupees seven crores fifty lakhs thirty three thousand seven hundred and ninety one only) in respect of the invoices raised by Greenfinch, which admittedly remained unpaid. These invoices were issued through November 2019. There is no serious dispute that Greenfinch had rendered services in respect of which the said invoices were raised. The Arbitral Tribunal noted that Swiggy had withheld payments due to Greenfinch following inspections by GST Authorities at its premises. Ex.P7, which is a letter written by Swiggy to Greenfinch communicating its decision to withhold payments, which was also set out by the Arbitral Tribunal in the impugned award, is reproduced below:

> "Sub: Notice
> Ref:
> i. Inspection dt. 28/29 November 2019 by DGGSTI Officials at BTPL's office

ii. Memorandum of Understanding dated 14 November 2017 as replaced by Master Service Agreement dated 11 April 2019.

Dears Sirs,

We are writing on behalf of Bundl Technologies Pvt. Ltd., (BTPL) and in reference to the referenced matter and in relation to the Memorandum of Understanding dated 14 November 2017 as replaced by Master Service Agreement dated 11 April 2019 (collectively Agreement(s) executed between BTPL and Greenfinch Team Management Private Limited (Greenfinch) for availing certain services morefully defined thereunder. In relation to the mentioned arragment. It is further specified that we have been receiving services from Greenginch and all invoices rightfully raised have been paid without demur except those provided hereunder.

It is brought to your knowledge that the DGGSTI Officials have conducted an inspection on 28/29th November, 2019 at BTPL Premises and have raised certain queries to us regarding the remittance of GST amounts by Greenfinch and accordingly the eligibility of inputs tax credit in the hands of BTPL. In view of this inspection, we submit that the payment in relation to the Agreement is being suspended and any payment which may be purported to be due to Greenfinch is withheld till resolution of the above matter as abundant caution.

We recognize that the payment of service fees of the temp DEs engaged through Greenfinch is critical to them. This service fee is calculated based on the delivery service provided by them to BTPL, which details are available with us. Therefore, in pendency of resolution of on-going investigation, we shall process the service fee of Temp DEs in good faith to them. We further submit, that this is being done as the payment to the Temp DEs is crucial to their earnings and any default in the same will impact the continuation of operations adversely alongside loss of goodwill to BTPL

Also note, the outstanding invoices as detailed hereunder are under dispute and shall be reconciled after necessary adjustments:

Invoice No.	City	Total billing	Week No.	Month
933	Delhi	4345584	47	November
934	Karnataka	25062488	47	November
936	Maharashtra	10433411	47	November
937	Tamil Nadu	3096830	47	November
940	A.P.	225390	48	November
941	Delhi	3816675	48	November
942	Karnataka	25007355	48	November
943	Karnataka 2	762847	48	November
944	Maharashtra	10556502	48	November
945	Tamil Nadu	3324120	48	November
946	UP	990827	48	November

We submit the above without prejudice to and with full reservation of our rights and contentions to initiate necessary proceedings in the eyes of law. please note, BTPL shall reserve the right to suspend or terminate the Agreement and thereby your service, as may be necessary under the circumstances and reasons aforementioned.

Yours sincerely,

(AUTHORISED SIGNATORY)"

53. The parties thereafter carried out reconciliation of the invoices that were outstanding, and there is no dispute that they had jointly submitted that invoices amounting to ₹7,50,33,791/- were outstanding and remained unpaid.

54. Clause 6 of the Agreement, which sets out the terms of payment, is set out below:

"6. - <u>Payments and Terms of Payment under this Agreement</u>:

6.1 For the Services by the Service Provider under this Agreement, the fees, as stipulated under Annexure B shall be payable by Swiggy to the Service Provider.

6.2 Swiggy shall pay the Service Provider on a monthly basis within 15 days from the date on which Service Provider raises a duly acceptable and agreed invoice on Swiggy.

6.3 Along with the invoices raised by the Service Provider, the Service Provider shall also provide sufficient documentary evidence, as required by Swiggy, regarding all applicable statutory compliances that have been adhered to by the Service Provider. In the event of Swiggy finds any statutory compliance have not been followed or the Service Provider has defaulted in such compliances. Swiggy shall have the right to require the Service Provider to rectify such default as well as indemnify Swiggy for any losses or damage suffered due to such default by the Service Provider.

6.4 The fees specified in this Agreement shall be exclusive of any applicable taxes. Any and all statutory levies should be invoiced at percentages as may be prevailing at the time of providing the Service. The Service Provider shall clearly and separately state any applicable taxes along with registration numbers with appropriate authorities on the invoice for corresponding fees.

6.5 All payments to be made under this agreement shall be subject to the deduction of tax at source, wherever applicable, as per the provisions of the Income Tax Act, 1961. Swiggy shall deduct tax at a lesser rate or shall not deduct any tax at source based on specific certificate obtained by the Service Provider from appropriate taxing authorities and where a copy of the same is produced to Swiggy. Swiggy shall reserve the right to recover the taxes on behalf of the Service Provider from the payments payable under this Agreement and in case of default, same shall be recovered from the Service Provider.

6.6 Swiggy may withhold payment of that portion of the fees that Swiggy dispute in good faith; provided that Swiggy will advice the Service Provider in writing of such

> dispute, including the details of such dispute, by the time such fees would otherwise be due. This clause only applicable to Swiggy's responsibility to pay invoices presented by the Service Provider, and does not limit Swiggy's other remedies under this Agreement."

55. The invoices were to be paid within fifteen days of the date on which Greenfinch raised them. Admittedly, the said payments were not made.

56. It is apparent from the above, the *lis* related to the liability to pay GST. Undisputedly, Greenfinch charged GST on invoices raised on Swiggy, and Swiggy paid the earlier invoices along with GST. Greenfinch had also filed its returns acknowledging the receipt of GST from Swiggy. It also admitted its liability to pay the same. However, it appears that Greenfinch had availed of Input Tax Credit [**ITC**] in respect of the supplies received by it, on which it had paid GST to the supplier. There is no dispute that if Greenfinch had received the supplies/inputs and paid the invoices along with GST, it would be entitled to claim ITC to discharge its GST liability. However, the record indicates that the GST authorities had levelled an allegation against Swiggy that it had not received any supplies from Greenfinch and had fraudulently claimed ITC in respect of the GST paid on the invoices raised by Greenfinch. Swiggy has stoutly disputed the same and it is nobody's case before the Arbitral Tribunal

that Greenfinch had not rendered the services for which it had raised the invoices or that Swiggy had (in the past) not paid the same along with GST.

57. The Arbitral Tribunal found that, in the circumstances, Swiggy's failure to pay the invoices within the agreed period amounted to a breach of the Agreement. Further, there is no dispute that Swiggy had received the services for which Greenfinch had raised the invoices and was thus liable to pay them. In the aforesaid circumstances, the decision of the Arbitral Tribunal allowing the Greenfinch's claim for payment of invoices raised cannot be considered to be vitiated by patent illegality or a decision that no reasonable person would take. Clearly, the impugned award allowing the claim for unpaid invoices cannot be assailed on the ground that has been vitiated by patent illegality.

58. We also find no ground to interfere with the award of interest at the rate of 12% per annum on the said amount of ₹7,50,33,791 from 15.12.2019.

59. The second issue to be considered relates to Greenfinch's claim for compensation for service charges up to the date of termination of the Agreement. Swiggy terminated the Agreement by a letter dated 28.04.2020 [Ex.P8]. In that letter, Swiggy asserted that

Greenfinch had violated Clause 8.1 of the Agreement. According to Clause 8.1, Greenfinch was obliged to comply with all relevant laws, rules, regulations, government orders, and codes of practice concerning its performance under the Agreement. Swiggy also demanded that Greenfinch rectify the alleged breach in accordance with Clause 9.4 within two days, failing which the Agreement would automatically terminate without further notice.

60. According to Swiggy, the breach was not cured, and therefore, the Agreement stood terminated on 30.04.2020. As noted above, certain invoices raised in November 2019 remained unpaid, and Swiggy did not pay any amount to Greenfinch for December 2019 to April 2020. Ex.P7 indicates that Swiggy withheld the service charges but directly paid the amounts to Temp DEs provided by Greenfinch. The amounts payable to Greenfinch under the Agreement comprised two components: first, payments due to Temp DEs, and second, service charges. Swiggy made no payments to Greenfinch after November 2019; however, it paid the amounts due to Temp DEs directly, as stated in its letter dated 09.12.2019 [Ex.P7].

61. On the basis of the material available on record, the Arbitral Tribunal found that the average monthly profit was ₹73,58,759/-. The

Arbitral Tribunal noted that in terms of the Agreement, Greenfinch was entitled to 5.5% of the CTC [Cost to Company] of Temp DEs, that is 5.5% of the amounts paid to Temp DEs. The Arbitral Tribunal thus concluded that for the period of five months Greenfinch would be entitled to a sum of ₹3,67,93,795/-. However, the Arbitral Tribunal further reduced the said amount to 50%, that is ₹1,83,96,897.50 ps. (Rupees one crore eighty three lakhs ninety six thousand eight hundred ninety seven and fifty paise only) on the ground that Greenfinch had admittedly not deposited the GST paid by Swiggy for the month of October 2019. As a result, Swiggy was required to reverse the ITC taken on the basis of the said payment. The Arbitral Tribunal noted that although Greenfinch's default to pay GST for the month of October 2019 was not a ground raised for withholding the payments in the letter dated 09.12.2019 (Ex.P7), it was necessary to bear the said fact in mind. On the basis of this reasoning the Arbitral Tribunal reduced the damages as determined by half.

62. There is an apparent flaw in the reasoning of the Arbitral Tribunal, considering that the Arbitral Tribunal has awarded Swiggy's counterclaim on account of the reversal of ITC. Since the Arbitral Tribunal found that Greenfinch is entitled to service charges for five months, there is no reason to reduce the amount determined by 50%

on account of non-deposit of GST for October and part of November 2019. Swiggy had raised a separate counter claim for loss of reversal ITC for the month of October 2019, amounting to ₹3,70,48,450/-. This counterclaim was allowed along with interest. Additionally, Swiggy had also claimed loss of credit on account of failure on the part of Greenfinch to deposit the tax by filing necessary returns for the month of November 2019, amounting to ₹1,65,80,527/, which was also allowed. Additionally, the Arbitral Tribunal allowed interest on the amount of ITC that Swiggy was compelled to reverse. Thus, having fully compensated Swiggy for the reversal of ITC, the same could not have been considered a factor in reducing any amount found due to Greenfinch. The impugned award, insofar as it quantifies the award against Greenfinch's claim for service charges/compensation for the period December 2019 to April 2020, is vitiated by patent illegality.

63. The last aspect to be examined is the award of compensation for the illegal termination of the Agreement. Clause 9 of the Agreement sets out the provisions for termination of the Agreement. The said clause is set out below:

> "9. Terms & Termination of this Agreement:

9.1 This Agreement is valid for ( ) months, on a non exclusive basis, from its Effective Date unless otherwise renewed in writing by Swiggy in its sole discretion. Provided that any extension in the term of the Agreement shall not automatically entitle the Service Provider to any increase in the consideration payable by Swiggy to it under this Agreement and unless otherwise agreed to in writing by Swiggy.

9.2 This Agreement may be terminated by either Party through a written notice of 30 (thirty) days to the address of the other Party as in this Agreement or as updated from time to time.

9.3 Swiggy shall reserve the right to terminate this Agreement forthwith without prior notice to the Service Provider, in the event the Service Provider has committed a material breach of this Agreement.

9.4 Swiggy shall at its sole discretion have the option of terminating this Agreement without notice or payment in lieu thereof in the event the Service Provider commits any breach of the terms and conditions or the work is unsatisfactory or the Temp PDP of the Service Provider are negligent or there is non-compliance under the statutory legal requirements, provided Swiggy has issued a notice to the Service Provider specifying the breach and granted 2 (two) days' time to the Service Provider for rectifying such breach or negligence and the Service Provider fails to rectify the same within the notice period.

9.5 Either Party may forthwith terminate this Agreement following written notice to the other Party if the other Party (i) ceases to do business in the normal course, (ii) becomes or is declared insolvent or bankrupt, (iii) is the subject of any proceeding related to its liquidation or insolvency (whether voluntary) which is not dismissed within 90 (ninety) calendar days or (iv) makes an assignment of the benefit of creditors, (v) the other Party undergoes or proposes or is likely to undergo a material or significant change in its legal status.

9.6 Nothing in this Agreement shall obligate the Swiggy to terminate this Agreement upon the occurrence of any of the events referred to hereinabove, and Swiggy

> shall be at liberty to pursue any and all other remedies (including claims for damages) which it may have arising out of any non-performance, breach or default by the Service Provider in lieu of terminating this Agreement."

64. Under clause 9.2 of the Agreement, either party may terminate it by giving thirty days' written notice. Thus, Greenfinch's claim for wrongful termination of the Agreement was rightly confined to the compensation payable for thirty days, which was quantified at ₹73,58,759/-. We find no fault with the Arbitral Tribunal's decision to confine the claim for compensation to a period of one month. The award of compensation is based on Arbitral Tribunal's finding that Swiggy had breached the terms of the Agreement.

65. The question whether Swiggy had breached the terms of Agreement was one of the principal disputes addressed by the Arbitral Tribunal.

66. In terms of Clause 9.4 of the Agreement, Swiggy could at its discretion terminate the Agreement if (i) Greenfinch had committed any breach of the terms and conditions of the Agreement; (ii) its work was unsatisfactory; (iii) Temp PDP provided by the Greenfinch was negligent; and (iv) non-compliance with the statutory legal requirements. However, in these cases, Swiggy was required to serve a notice specifying the breach and granting Greenfinch two days' time

to rectify it or address the negligence. If Greenfinch failed to rectify the issue within two days, Swiggy could terminate the Agreement.

67. Swiggy terminated the Agreement under Clause 9 on the ground that Greenfinch failed to comply with statutory requirements. The termination letter (Ex.P8) is set out below:

> " April 28, 2020
>
> Sir,
>
> *Sub - Notice under Clause 9.4 and Clause 23.1 of the Agreement dated April 11, 2019 between Bundl Technologies Private Limited and Green Finch Team Management Private Limited ("Notice")*
>
> *Ref: (i) Our letter dated December 9, 2019 to Green Finch Team Management Private Limited and (ii) Your e-mail dated March 30, 2020.*
>
> We refer to the Agreement dated April 11, 2019 ("Agreement") between Bundl Technologies Private Limited ("Swiggy") and Green Finch Team Management Private Limited ("Greenfinch"), pursuant to which Greenfinch was engaged as a service provider for the provision of the services described thereunder
>
> 2. We further refer to our letter dated December 9, 2019 ("Suspension Letter") addressed to Greenfinch, by which Swiggy raised its concerns regarding the search and inspection conducted on Swiggy's premises at Bengaluru and Gurgaon by the Director General of GST Intelligence, Zonal Unit, Hyderabad ("GST Department"). The GST Department raised concerns regarding Greenfinch's non-compliance with applicable Goods and Service Tax ("GST") laws, improper discharge and remittance of GST on service rendered to Swiggy, remittance of Tax amounts paid by Swiggy to Greenfinch in terms of tax invoices under the Agreement and consequently Swiggy's eligibility to seek input GST credit. The GST Department informed Swiggy of the improper discharge of GST liability by Greenfinch and

non-cooperation with the investigation. This servrely affected the business operations and reputation of Swiggy and caused under harm and hardship to Swiggy. Swiggy has at all times complied with its obligations under the Agreement. Due to non-compliance by Greenfinch of the terms of the Agreement, Swiggy suspended payments to Greenfinch in accordance with Clause 6.6 of the Agreement by the suspension letter.

3. Subsequently during the investigation, on November 28, 2019 to November 30, 2019 and December 26, 2019 on account of improper remittance of GST on amounts paid by Swiggy to Greenfinch under the Agreement, the GST Department instructed reversing the input GST credit taken by Swiggy amounting to Rs.27,51,45,529/- (Rupees twenty seven crores fifty one lakhs forty five thousand five hundred and twenty nine only) on the tax invoices issued by Greenfinch. The details of invoices issued by Greenfinch in respect of which in put GST credit was reversed in annexed as an Annexure to this letter

4. As per Clause 8.1 of the Agreement, Greenfinch was required comply with "all applicable laws, rules regulations... relating to its performance under [the] Agreement". Greenfinch's actions display an overt and to deliberate non-compliance of GST laws and breach of Clause 8.1 of the Agreement.

5. Therefore, in terms of Clause 9.4 of the Agreement, Swiggy hereby calls upon Greenfinch to rectify the above breach of the Agreement, within a period of 2 (two) days, failing which the Agreement will stand automatically terminated, without any further notice.

6. Further, Greenfinch's breach has caused a direct loss of Rs.27,51,45,525/- (Rupees twenty seven crores fifty one lakhs forty five thousand five hundred and twenty nine only) to Swiggy, which Greenfinch is liable to indemnify Swiggy in terms of Clauses 6.3, 8.2 and 13 of the Agreement. Swiggy has also suffered irreparable loss, harm and injury to its reputation, goodwill and business, as a result of the breach of the Agreement by Greenfinch. Greenfinch is therefore liable to compensate Swiggy for an amount of Rs.1,70,00,000/- (Rupees One crore seventy lakhs only) to make good such loss, harm and injury. Greenfinch will also be liable for any consequential loss

suffered by Swiggy on account of any interest and / or penalty that may be levied on Swiggy by the Gst authorities and Swiggy reserves its rights to claim and sue for compensation against such loss.

7. Subject to paragraph 9 below, Swiggy calls upon Greenfinch to forthwith and in any event within a period of 30 (thirty) days from the date of receipt of this letter (i) indemnify Swiggy for the amount of Rs.27,51,45,529/- (Rupees twenty seven crores fifty one lakhs forty five thousand five hundred and twenty nine only) on account of non-compliance with GST laws and breach of the Agreement; and (ii) pay an amount of Rs. 1,70,00,000/- (Rupees One crore seventy lakhs only) as compensation to make good the loss, harm and injury caused to Swiggy's reputation, goodwill and business, failing which (a) interest at the rate of 18% p.a. shall accrue on the abovementioned amounts; and (b) Swiggy shall initiate appropriate criminal and civil proceedings against Greenfinch, at its sole risk as to the costs and consequences thereof.

8. In response to Greenfinch's email dated March 30, 2020 Swiggy deies the contents thereof in their entirety. Swiggy is not liable to make any payments whatsoever to Greenfinch due the Greenfinch's breach of the Agreement, as also in terms of Clause 6.6 of the Agreement, as communicated by the Suspension Letter. Greenfinch's claims are frivolous, vexatious, unsubstantiated and unlawful. Swiggy denies everything to the contrary.

9. Kindly note that the disputes above have been sought to be remedied by Swiggy by good faith discussions for more than 4 (four) months. Swiggy has attempted to resolve the dispute amicably. However, Mr. Manikjeet Singh Kals of Greenfinch has remained absconding and has not come forward for any discussions, let alone extending due co-operation during the investigation. Swiggy is also informed that Greenfinch's directors and employees are not co-operating with the GST Department and are absconding. None of the Greenfinch's personnel are available at its registered office for receipt of notices. Swiggy, its key managerial personnel and executive officers suffered undue hardship and were summoned to be present before the GST authorities from time to time, while Greenfinch and its officers and employees deliberately attempted to escape summonses and failed to co-operate with the investigation,

> of their own non-compliances. However, without prejudice to the above, in terms of Clause 23.1. Swiggy hereby is formally initiating good faith negotiations for the resolution of the above disputes. Swiggy invitees Greenfinch's participation and seeks its co-operation in this regard. If however, Swiggy remains unsatisfied with the outcome of the negotiations after a period of 30 (thirty) days from the date of receipt of this letter. Swiggy shall be entitled to initiate appropriate criminal and civil proceedings against Greenfinch, including arbitration proceedings in terms of the agreement, at Greenfinch's sole risk as to the costs and consequences thereof.
>
> 10. This letter is without prejudice to Swiggy's rights, all of which are expressly resolved.
>
> Yours sincerely.
>
> For Bundl Technologies Private Limited"

68. It is apparent from the termination letter that Swiggy terminated the agreement on account of alleged non-compliance and Greenfinch's failure to comply with its obligations to pay GST. The Arbitral Tribunal had faulted the said termination on principally three grounds. First, the Arbitral Tribunal found that the issue of whether the Greenfinch had wrongfully availed ITC in respect of payments made to its suppliers was not a statutory obligation that was covered under Clause 8.1 of the Agreement. The Arbitral Tribunal also found that the question of whether Greenfinch had complied with the GST was a contentious matter between Greenfinch and the GST Authorities. The Arbitral Tribunal held that the same was not covered under Clause 8.1 of the Agreement, which only referred to statutory

compliance relating to the performance of the Agreement. Second, the issue whether Greenfinch had failed to discharge its obligation under the GST laws was a disputed matter between Greenfinch and the GST Authorities. The said disputes had not been finally adjudicated. The allegation that Greenfinch had wrongfully availed of the ITC had not been finally determined. And third, that the two-day period for curing any alleged default in payment of GST could not be resolved within that period.

69. The Arbitral Tribunal had construed Clause 8.1 of the Agreement to require compliance with applicable laws relating to performance of the Agreement, and held that the same could not be extended to Greenfinch's GST liability.

70. Clause 8.1 of the Agreement is set out below:

> "8.1 The Service Provider agrees at all times and at its own expenses to (i) strictly comply with all applicable laws, rules, regulations, governmental orders and applicable codes of practice, now or hereafter in effect, relating to its performance of this Agreement, (ii) pay all fees and other charges required by such laws, rules and regulations, codes and orders and (iii) maintain in full force and effect all licenses, permits, authorization, registration and qualifications necessary to perform their obligations under this Agreement."

71. Swiggy's contention that, in terms of Clause 8.1, Greenfinch was required to comply with all laws and its failure to comply with

GST laws would amount to a breach of Clause 8.1 of the Agreement, is not insubstantial. However, the Arbitral Tribunal has interpreted the said clause restrictively. The Arbitral Tribunal has, in effect, construed the words “relating to its performance of this Agreement” as controlling the width of the said clause. It is well settled that the question of construction of the Agreement falls within the jurisdiction of the Arbitral Tribunal. In **Sumitomo Heavy Industries Ltd. v. ONGC Ltd. [(2010) 11 SCC 296**, the Supreme Court had observed as under:

> “43. … The umpire has considered the fact situation and placed a construction on the clauses of the agreement which according to him was the correct one. One may at the highest say that one would have preferred another construction of Clause 17.3 but that cannot make the award in any way perverse. Nor can one substitute one's own view in such a situation, in place of the one taken by the umpire, which would amount to sitting in appeal. As held by this Court in Kwality Mfg. Corpn. v. Central Warehousing Corpn. [(2009) 5 SCC 142 : (2009) 2 SCC (Civ) 406] the Court while considering challenge to arbitral award does not sit in appeal over the findings and decision of the arbitrator, which is what the High Court has practically done in this matter. The umpire is legitimately entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the agreement. If he does so, the decision of the umpire has to be accepted as final and binding.”

72. We are unable to accept that the Arbitral Tribunal's interpretation of the terms of the Agreement is manifestly perverse or a view that was impossible for any reasonable person to accept. It is

well established that the contentious issues must be adjudicated by the Arbitral Tribunal, and a court does not have jurisdiction to re-examine the disputes in proceedings under Section 34 of the A&C Act and to replace the Arbitral Tribunal's judgment with its own. In this regard, we cannot accept that the Arbitral Tribunal's interpretation of Clause 8.1 of the Agreement vitiates the impugned award on the ground of patent illegality or conflicts with the public policy of India.

73. As noted above, there is no dispute that the issue between Greenfinch and the GST Authorities regarding its statutory compliance has not been finally adjudicated by the competent authorities. It is also material to note that the DGGI investigation, which pertained to invoices from July 2017 to September 2019, resulted in Swiggy being compelled to reverse ITC of approximately ₹27.51 crores. However, Swiggy challenged this forced reversal before this Court in WP No.4467/2021, contending that it had received services from Greenfinch and was entitled to the ITC. This Court allowed the writ petition and directed consideration of Swiggy's refund application. Admittedly, Swiggy is pursuing its stand that it is entitled to avail the ITC in respect of GST paid by it under invoices raised by Greenfinch prior to October 2019. Thus, the Arbitral Tribunal found that Swiggy's termination of the Agreement by

providing two days' notice was not sustainable. We are unable to accept that the Arbitral Tribunal's view is one that no reasonable person could possibly accept and fails the Wednesbury test of unreasonableness.

74. The Arbitral Tribunal found that Greenfinch had defaulted on depositing GST for October and November 2019, thereby compelling Swiggy to reverse the ITC to which it was entitled. The Arbitral Tribunal also awarded counterclaims on this basis. However, this was not the reason specified in the termination notice. The termination with two days' notice was held to be illegal. In the given circumstances, we are unable to accept that the award of compensation or loss of service charges for a period of one month warrants any interference in the proceedings under Section 37 of the A&C Act.

75. There is no cavil that, if it is finally held that Greenfinch wrongfully availed of ITC and fails to discharge its liability, thereby compelling Swiggy to reverse the ITC, it would be entitled to raise a claim in this regard.

76. The last question to consider concerns Greenfinch's challenge to the counterclaim. As noted above, the Arbitral Tribunal has

awarded counterclaims in respect of amounts paid by Swiggy on account of GST to Greenfinch that Greenfinch did not deposit with the GST Authorities. Consequently, Swiggy was compelled to reverse the ITC claimed on those payments. It is contended on behalf of Greenfinch that Swiggy could not raise any counterclaim on account of the delay on the part of Greenfinch to comply with its obligation to file the GST returns in the months of October and November 2019. It is earnestly contended that Greenfinch is bound to comply with the statutory obligations to file the returns and pay the GST either in cash or by availing ITC. Admittedly, upon payment of GST by Greenfinch, Swiggy would be entitled to claim a credit for that amount. Since there is no dispute that Greenfinch had failed to file its returns, Swiggy was compelled to reverse the ITC availed. Thus, the Arbitral Tribunal's decision to award the counterclaim on this ground cannot be faulted.

77. Having stated the above, we also consider it apposite to note that in the event Greenfinch complies with the statutory requirement of filing its returns and Swiggy can derive any benefit from the delayed payment of GST, Greenfinch would be entitled to raise a claim in respect of the same. It is also open to Swiggy to raise a claim regarding GST if it is compelled to reverse its ITC for GST paid to

Greenfinch upon finalisation of the disputes. These issues must remain open given the tenor of the impugned award.

78. Greenfinch is also entitled to pursue its claim for compensation for service charges for a period of five months, from December 2019 to April 2020. Since this court cannot modify the impugned award, in these proceedings, the impugned award to the extent of the Arbitral Tribunal has awarded claim of ₹1,83,96,897.50 in favour of Greenfinch is set aside. The impugned order is set aside as well.

79. The appeals are disposed of in the aforesaid terms.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C.M. POONACHA)
JUDGE

SD/KPS/AHB