

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JANUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE UMESH M ADIGA

WRIT PETITION NO. 27708 OF 2025 (GM-RES)

BETWEEN:

1. SCARPE MARKETING PRIVATE LIMITED,
(A PRIVATE LIMITED COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 2013),
E-MAIL: BAPUJI.SIMHADRI@SMPLIN.COM,
PHONE NO: 94554 41006,
FLAT NO.4B, RAMA CLASSIC 9,
SHILPI VALLEY, GAFOOR NAGAR, MADHAPUR,
HYDERABAD, TELANGANA-500 081,
REPRESENTED BY ITS DIRECTOR,
SHRI. S.V.BAPUJI, AGED ABOUT 44 YEARS.
2. SHRI. SATHISH BABU SANA,
S/O. LATE SHRI SANA SUBBA RAO,
AGED ABOUT 46 YEARS,
E-MAIL: SATISHSANA@GMAIL.COM,
PHONE NO: 6309996766
VILLA NO. 72, HILL RIDGE VILLAS, GACHIBOWLI,
BESIDE INDIAN SCHOOL OF BUSINESS,
HYDERABAD, TELANGANA -500 032.
3. SHRI. S.V.BAPUJI,
S/O. SATYANARAYANA S,
AGED ABOUT 44 YEARS,
E-MAIL: BAPUJI.SIMHADRI@GMAIL.COM,
PHONE : 9945541006,
H.NO. 301, SRINIVASAM,
KPHB, 6TH PHASE, KUKATPALLY,
HYDERABAD, TELANGANA-500 072.
4. SHRI. S.GURUJU,
S/O. G PRATAP KUMAR,
AGED ABOUT 45 YEARS,

E-MAIL: SASIBHUSHAN1111@GMAIL.COM,
 PHONE: 9581201111,
 FLAT NO.504, BLOCK-1, SWATHI HEIGHTS,
 PRASHANT NAGAR COLONY, A S RAO NAGAR,
 HYDERABAD, TELANGANA-500 062.

...PETITIONERS

(BY SRI.UDAYA HILLA, SENIOR COUNSEL FOR
 SRI.SANTOSH SAGAR KAPILAVAI, ADVOCATE)

AND:

1. ANHEUSER BUSCH INBEV INDIA LIMITED,
 (A PUBLIC LIMITED COMPANY INCORPORATED
 UNDER THE COMPANIES ACT, 1956)
 E-MAIL : aiyappa.cb@in.ab-inbev.com,
 PHONE N/A UNIT NO.301-302, DYNASTY BUSINESS
 PARK 'B' WING, 3RD FLOOR, ANDHERI KURLA
 ROAD, ANDHERI (EAST),
 MUMBAI, MAHARASHTRA-400 059.
2. EAST GODAVARI BREWERIES PRIVATE LIMITED,
 (CURRENTLY UNDER CORPORATE INSOLVENCY
 RESOLUTION PROCESS),
 REPRESENTED BY RESOLUTION PROFESSIONAL,
 E-MAIL: ip.caier@gmail.com
 PHONE: 9248123333
 4TH FLOOR, PLOT NO.12, PHASE III,
 ROAD NO.82, JUBILEE HILLS,
 HYDERABAD, TELANGANA-500 033.

...RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A CERTIORARI OR AN ORDER WRIT OR DIRECTION IN THE NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT TO SET ASIDE THE IMPUGNED ORDER BEARING No. NIL DATED 30.07.2025 IN THE MATTER OF ANHEUSER BUSCH INBEV INDIA LIMITED Vs EAST GODAVARI BREWERIES PRIVATE LIMITED AND OTHERS PASSED BY THE ARBITRAL TRIBUNAL IN ANNEXURE-A FOR BEING ILLEGAL ARBITRARY UNSUSTAINABLE IN LAW, ALONG WITH THE ATTENDANT ACTIONS (2) ISSUE A MANDAMUS OR AN ORDER WRIT, OR DIRECTION IN THE NATURE OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT DIRECTING THE ARBITRAL TRIBUNAL TO TAKE ON RECORD THE FINANCIAL STATEMENTS OF

RESPONDENT No-1 FILED BY THE PETITIONERS ALONG WITH THE APPLICATION BEARING No.NIL DATED 10.07.2025 IN ANNEXURE-J AND ADJUDICATE THE ARBITRATION PROCEEDINGS IN ACCORDANCE OF LAW. (3) GRANT SUCH OTHER RELIEF AND PASS SUCH OTHER ORDERS AND FURTHER ORDERS THAT THIS HONBLE COURT MAY DEEM FIT INCLUDING THE COST OF THIS PETITION IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 15.09.2025, COMING ON FOR 'PRONOUNCEMENT OF ORDER' THIS DAY, **JAYANT BANERJI J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
AND
HON'BLE MR. JUSTICE UMESH M ADIGA

CAV ORDER

(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)

Heard learned counsel for the petitioners.

2. This petition has been filed challenging an order dated 30.07.2025 passed by the Arbitral Tribunal in the matter of ***Anheuser Busch Inbev India Limited V. East Godavari Breweries Private Limited & Ors.***

Further, direction has been sought from the Arbitral Tribunal to take on record the Financial Statements of Respondent No.1 filed by the petitioners along with the application bearing No.Nil dated 10.07.2025 at Annexure-J.

3. The petitioners are the respondents in the aforesaid arbitration proceedings. The respondent No.2/East Godavari Breweries Private Limited, is stated to be undergoing Corporate Insolvency Resolution proceedings. A Brewing Agreement was executed between SABMiller India Limited (now called Anheuser Busch InBev India Ltd) and the respondent No.2 that is East Godavari Breweries Private Limited. On 06.02.2015, for setting up of a brewery in Chepuru Village, Andhra Pradesh, for manufacturing and sale of bottled beers of the following brands-Haywards 5000, Knock Out, Foster's, Royal Challenge ("Core Brands"). The Brewing Agreement was further modified on 08.05.2015. An advance sum was paid to the respondent No.2, who was required to obtain licenses/permission and set up the brewery.

4. On 11.11.2016, on account of SABMiller's acquisition by the respondent No.1, the respondent No.2 was asked to stop working on the project until further instructions. Accordingly, all ongoing operations were paused. After more than 20 months, on 03.08.2018, the respondent No.1 issued a notice for termination of the

Brewing Agreement to the respondent No.2 and demanded the return of the advanced amount paid under the Brewing Agreement along with an interest of 18%. The respondent No.2 denied the allegation made in the letter of termination by way of a reply dated 06.09.2018 and called upon the respondent No.1 to reimburse the expenditure incurred by the respondent No.2.

5. A notice of invocation of guarantee dated 23.08.2018 was issued to the petitioners on the allegation that petitioners had agreed to guarantee the repayment of advance, the alleged guarantee was denied. Thereafter, the Arbitration was invoked under the Brewing Agreement by the respondent No.1 against the respondent No.2, and the petitioners, though not being signatories/parties to the Brewing Agreement, came to be added as parties to the arbitration proceedings in their capacity as alleged guarantors.

6. In proceedings under Section 11 of the Arbitration and Conciliation Act, 1996, by an order dated 31.03.2021, arbitrators were appointed by this Court. This

stood constituted with effect from 01.05.2021. On account of the demise of an arbitrator, another arbitrator was appointed as the Presiding Arbitrator.

7. The statement of claim was filed on 30.06.2021 along with 32 supporting documents. It is alleged that thereafter, without the leave of the Arbitral Tribunal, on 20.08.2021 two additional documents were placed on record. Lastly, on 03.09.2021, the respondent No.1- claimant once again filed 4 additional documents in the nature of financial statements of the respondent No.2, without leave of the Tribunal. The respondent No.2 filed a counter claim and the petitioners filed their statement of defence. The pleadings were completed on 20.11.2021 and thereafter, the Arbitral Tribunal framed issues on 12.07.2022 which were modified by way of order of the Arbitral Tribunal dated 03.08.2022.

8. In the meanwhile, an application under Section 9 of the Insolvency and Bankruptcy Code, 2016, the National Company Law Tribunal, Amaravathi, admitted an application under Section 9 on 17.11.2021 and *inter alia*,

declared a moratorium. However, the Arbitral Tribunal, by an order of 16.02.2022, held that the arbitration proceedings would continue against the petitioners herein. It is contended that in the light of the order of 16.02.2022, the burden of defending the claim of respondent No.1 has now fallen on the petitioners, who are stated to be the guarantors.

9. After the extension of the mandate of the Arbitral Tribunal, dates were fixed for recording of evidence of the witnesses. Witnesses of the parties were examined on multiple dates from 15.05.2025 to 04.07.2025.

10. During the cross-examination held on 15.05.2025 of the fact witnesses of respondent No.1, certain questions were posed to the CW1, *inter alia*, regarding the date of takeover of SABMiller by Anheuser Busch InBev India Ltd., and the claims of respondent No.1. It is stated that the CW-1 expressed his ignorance in respect of most of the queries. Moreover, the expert witness who testified as CW-2, filed a report in support of

the monetary claims of the respondent No.1, and his cross-examination was held on 26.06.2025.

11. It is contended by the learned counsel that the answers to the queries posed were evasive. It is contended that though the CW-2 admitted having placed reliance on the financial statements of respondent No.1 for arriving at the computation of damages at the figure after computation of the damages, however, the financial statements were either filed by respondent No.1 or CW-2. The petitioners then obtained the financial statements of the respondent No.1, from the website of the Ministry of Corporate Affairs.

12. The contention is that in view of the various inconsistent and fallacious statements made by the CW1 and CW2, which could be established through the financial statements, on 04.07.2025, the petitioners sought to file a compilation of financial statements of the respondent No.1 for different periods of time, as Annexures R(2)-D11 to R(2)-D13. Since the Arbitral Tribunal refused to accept the same in the absence of an application to place these

documents on record, an application was filed by the petitioners seeking leave of the Arbitral Tribunal, under the provisions of Order VIII Rule 1A(3) of the Code of Civil Procedure, 1908¹ for bringing those documents on record.

13. On 19.07.2025, the respondent No.1 filed its reply to the application. By means of the impugned order, that application under Order VIII Rule 1A(3) of CPC has been rejected. Learned counsel for the petitioners has relied upon the provision of Section 18 of the Act, 1996, to contend that by rejecting the application for leave, the Arbitral Tribunal has denied equality to the parties. It is stated that additional documents were filed by the claimant/respondent No.1 by means of *e-mail* and they were accepted on record. However, when it came to the case of the petitioners, equal treatment was denied by rejecting the aforesaid application.

14. Learned counsel has referred to certain judgments of the Supreme Court as well as the Division Bench of the Madhya Pradesh High Court in the case of

¹ CPC

Wadi V. Amilal and Others² and Sugandhi (Dead) by Legal Representatives and Another V. R.Rajkumar, Represented by his Power Agent Imam Oli³, , to contend that procedural and technical hurdles ought not to be allowed to come in the way of the Court while doing substantial justice, the Courts must lean towards doing substantial justice rather than relying upon procedural and technical violations.

15. A judgment of the Madhya Pradesh High Court in the case of ***Madhya Pradesh State Agro Industries Development Corporation Limited V. Murliwala Agrotech Private Limited and Others⁴***, which relates to a matter arising out of the rejection of an application under Order VIII Rule 1-A of the CPC and Order VI Rule 17 of the CPC in arbitration proceedings, has also been relied upon to contend that an amendment has to be construed liberally and given the time frame of the proceedings, the application for amendment/Order VIII Rule 1A of the CPC was wrongly rejected.

² (2015) 1 SCC 677

³ (2020) 10 SCC 706

⁴ 2025 SCC Online MP 2360

16. The judgment of the Supreme Court in the case of ***Bhavesh Construction Through Authorised Signatory Premjibhai K.Shah Vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Another***⁵, has been relied upon to contend that the instant case is one of those rare and exceptional cases in which interference under Article 227 of the Constitution may be made by this Court.

17. As it appears from the record of this petition, on an application moved under Section 11 of the Arbitration and Conciliation Act, 1996⁶ by an order dated 31.03.2021 this Court appointed two retired judges of the Supreme Court as arbitrators, who in turn nominated another retired judge of the Supreme Court as the presiding arbitrator. The Arbitral Tribunal stood constituted with effect from 01.05.2021. However, on account of demise of the presiding arbitrator, the remaining arbitrators nominated another retired judge of the Supreme Court as the presiding arbitrator.

⁵ (2022) 1 SCC 75

⁶ Act of 1996

18. The respondent No.1-claimant filed its statement of claim on 30.06.2021 along with documents. The petitioners filed their statement of defence and the respondent No.2 filed a counter claim. The pleadings were completed on 20.11.2021 and issues were framed on 12.07.2022 which were modified on 03.08.2022. On account of expiry of the mandate of the Arbitral Tribunal under Section 29A of the Act 1996, an application was filed by the respondent No.1 before the Commercial Court concerned, seeking extension of the mandate of the Arbitral Tribunal, which application was allowed by an order dated 10.09.2024 by the Commercial Court, extending the mandate of the Tribunal by one year.

19. The witnesses of the parties were examined on multiple dates from 15.05.2025 to 04.07.2025. It is stated on behalf of the petitioners that during the cross-examination of the CW-2, reliance was placed by the CW-2 on certain financial statements of the respondent No.1 for arriving at the computation of damages. It is alleged that no financial statements were filed either by the

respondent No.1 or CW-2. Thereafter the petitioners obtained the financial statements of the respondent No.1 from the website of the Ministry of Corporate Affairs. It is stated that on perusal of the financial statements it was evident that the CW-1 and CW-2 had made various inconsistent and fallacious statements which can be established through the financial statements. Therefore, on 04.07.2025, the petitioners sought to file a compilation of financial statements of the respondent No.1 for the period 01.04.2016 until 31.03.2019. This was refused to be accepted by the Arbitral Tribunal in the absence of an application to place on record these documents. Then, an application was filed by the petitioners under Order VIII Rule 1-A (3) of the Code of Civil Procedure on 10.07.2025. A reply was filed by the respondent No.1 and thereafter the impugned order dated 30.07.2025 was passed.

20. The Arbitral Tribunal in its impugned order, noted the issues framed by it on 12.07.2022 and the fact that by that very order, it had directed the parties to file lists of witnesses on or before 27.07.2022 and simultaneously file affidavits of evidence of their witnesses

on 24.08.2022. The claimants and the respondents (in the arbitration) filed separate list of witnesses on 01.08.2022 and 10.08.2022.

21. By an order of 03.08.2022, the Arbitral Tribunal modified certain issues and framed an additional issue.

22. Despite the Tribunal fixing certain dates in the months of October and November 2022 for recording evidence of the parties, the same had to be deferred because substantial time was taken in deciding applications of the petitioners, which came to be dismissed by an order dated 16.12.2022. Even after 16.12.2022, the evidence of the parties could not be recorded, because the Resolution Professional appointed by the National Company Law Tribunal had resigned from the position of Resolutinal Professional. Therefore, an order dated 18.03.2023 was passed by the Tribunal for issuance of notice to the Director of the respondent No.2.

23. It is noted in the order that thereafter, for extension of time of the Arbitral Tribunal, proceedings

under Section 29A of the Act 1996 were required to be taken. The claimant sent an email dated 18.09.2024 with a request that the arbitral proceeding may be continued from the stage of fixing the dates for recording evidence because the Commercial Court had extended the mandate of the Tribunal by 12 months. In view of a writ petition filed before this Court, the arbitration proceedings were deferred and the dates fixed were cancelled. On dismissal of the writ petition by an order dated 06.02.2025 passed by this Court, by an order dated 09.02.2025, the Tribunal fixed 14.05.2025 to 19.05.2025 for recording evidence of the parties.

24. On 09.05.2025, the claimant sent an email enclosing an application for substitution of Sri. Aiyappa C.B., as witness in place of Sri. Karthikeya Raval whose evidence affidavit had been filed on 07.09.2022. The application, for want of any reply, was allowed by the Tribunal by an order 13.05.2025. Thereafter, statements of the witnesses of the parties were recorded in the meetings of the Tribunal on several dates between 15.05.2025 and 04.07.2025. On 04.07.2025, dates were

fixed in the months of September and October for hearing final arguments.

25. An *e-mail* dated 10.07.2025 was sent by the counsel for the petitioners enclosing the aforesaid application under Order VIII Rule 1-A(3) of the CPC for bringing on record the financial statements. The contention on behalf of the petitioners before the Tribunal was that the witnesses of the claimant CW-1 and CW-2 had made false and incorrect statements regarding the date of take over of SABMiller by the claimant and sales in Andhra Pradesh. The financial statements were required for demonstrating the inconsistencies in the statements made by the witnesses of the claimant.

26. It was argued on behalf of the claimants that the financial statements have no bearing on the merits of the pleaded case of the parties. Moreover the financial statements of the claimants had been uploaded in the website of the Ministry of Corporal Affairs in the relevant financial years and were very much available to the petitioners before filing of the statements of defence and

commencement of the exercise for recording of evidence. Moreover, no question was put to CW-1 or CW-2 to demonstrate that there was any discrepancy or inconsistency in their affidavits and the financial statements of the claimant.

27. The application was opposed by the claimant. It was stated that after the stage of cross-examination was over, the parties cannot be allowed to file additional documents. It was further stated that the documents sought to be filed were well within the knowledge and possession of the defendants and there can be no justification for filing the same after several years of filing the statement of defence. Inconsistencies in the statements of the CW-1 and CW-2, if any, should have been brought forth during the stage of cross-examination and as such, the documents are to be filed only as an after thought with the intention to cure the gaps in the cross-examination of the claimant's witnesses.

28. The Arbitral Tribunal noticed the provisions of Order VIII Rule 1A CPC and the provisions of Sections 18,

19 and 23 of the Act of 1996 and considered the purport of the same. It was observed that the procedural order No.1 dated 18.05.2021 did not reflect that the Tribunal had on the basis of agreement reached between the parties decided to follow the principles underlined the provisions of the CPC. It was held that after completion of the exercise for recording of evidence, there was no legal justification to entertain the prayer made in the application. It was held that the financial statements for that period had been filed by the claimant with the Registrar of Companies as part of its statutory obligation and the same was available on the website of the Ministry of Corporate Affairs and the financial statements were obtained from the website. However, neither was it stated in the application nor was it demonstrated that they were not aware of the financial statements of the claimant for that period, till the filing of the statement of defence, filing of affidavit of evidence by the parties and cross-examination of the witnesses. It was further observed that the respondents in the arbitration had failed to disclose as to when they obtained those financial

statements from the website of the Ministry of Corporate Affairs. The evidence affidavit of the witnesses of the parties were filed on 07.09.2022 and the witnesses were cross-examined on various dates in the months of May and June 2025. It was held that in the absence of any contrary averment in the application, it was reasonable to presume that the respondents in the arbitration were very much in the know of the financial statements of the claimants at the time of filing the statement of defence, framing the issues and filing of the evidence affidavits of their witnesses or at least at the stage of cross-examination of the CW-1 and CW-2 in the months of May and June 2025. They had not offered any explanation as to why the witnesses of the claimant were not confronted with these documents to demonstrate any discrepancy or inconsistency or falsehood in their evidence affidavits or the answers given in reply to the questions put in cross-examination. It was also held that none of the issues framed had anything to do with the date of take over of SABMiller by Anheuser Busch InBev of sales in Andhra Pradesh and in cross-examination no question was put to

CW.1 and CW.2 on these points. The parties are seeking adjudication on the legality of termination of the Brewing Agreement by the claimant, legality of the guarantees furnished by respondent nos. 2 to 5 (petitioners herein) in the arbitration and their liability as guarantors to the transaction between the claimant and the respondent under the Brewing Agreement.

29. Accordingly, the application was dismissed.

30. The judgments that are cited by the learned counsel for the petitioners in support of his contention are not applicable in the facts and circumstances of the instant case. The Arbitral Tribunal has exhaustively dealt with the relevant aspects of the matter and has arrived at correct findings while dismissing the application of the petitioners under Order VIII Rule 1A of CPC. Given the mandate of the Supreme Court, in the case of **Deep Industries Limited Vs. ONGC**⁷ and in **Bhavesh Construction** (supra), we find no jurisdictional error in the impugned order of the Arbitral Tribunal that would

⁷(2020) 15 SCC 706

merit interference. Even otherwise, the aforesaid writ petition is filed before us sitting in a Division Bench seeking issuance of writs of certiorari and mandamus which cannot be said to be a petition under Article 227 of the Constitution.

31. For the reasons aforesaid, this writ petition is ***dismissed.***

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(UMESH M ADIGA)
JUDGE**

PK/KGR