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IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO.5 OF 2016

1. State of Goa
Through the Chief Secretary
Having his office at Sachivalaya,
Porvorim, Goa.

2. The Director of State Lotteries
And Ex-officio Joint Secretary,
Government of Goa, having its
office at Panaji, Goa.

... Appellants

Versus

M/s Commercial Corporation of India Limited
A Company registered under the Companies Act,
1956, represented by its managing Director,
having its office at Syndicate House, Manipal,
Karnataka State

... Respondent.

WITH

MISCELLANEOUS CIVIL APPLICATION NO.416 OF 2018

M/s Commercial Corporation of India Limited
A Company registered under the Companies Act,
1956, represented by its managing Director,
having its office at Syndicate House, Manipal,
Karnataka State

.... Applicant.

Versus

1. State of Goa
Through the Chief Secretary
Having his office at Sachivalaya,
Porvorim, Goa.

2. The Director of State Lotteries
And Ex-officio Joint Secretary,
Government of Goa, having its
office at Panaji, Goa.

... Respondents.

Mr Deep D. Shirodkar, Additional Government Advocate for the Appellants in AUA/5/2016 and for the Respondents in MCA/416/2018.

Mr Hiroo Advani, Advocate with **Mr Navdeep Dahiya** and **Mr Aniket Kunde, Advocates** for the Respondent in AUA/5/2016 and for the Applicant in MCA/416/2018.

**CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.**

Reserved on : 10th OCTOBER, 2025

Pronounced on : 17th OCTOBER 2025.

JUDGMENT: (Per BHARATI DANGRE, J.)

1. The present Commercial Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 raise a challenge to the order dated 06.02.2016 passed by the Sessions Judge, North Goa, Panaji thereby upholding the Arbitral Award passed by the learned Arbitrator, Shri Justice G. D.Kamat on 24.06.2008.

We have heard the learned Additional Government Advocate, Shri Deep Shirodkar, for the Appellants and the learned Advocate, Mr Hiroo Advani with Mr Navdeep Dahiya for the Respondents.

The Appeal is filed raising the following primary grounds:

“I. The Hon’ble Principal District Judge, North Goa, Panaji failed to consider that the Impugned Order dated 24.06.2008 passed by Ld. Arbitrator is in total disregard of the law pertaining to the matters for submission for reference to the Arbitration, as such judgement suffers from considering the matters beyond the scope of the agreement between the parties.

II. The Hon'ble Principal District Judge, North Goa, Panaji failed to consider that the Ld. Arbitral Tribunal could not decide on issues that Arose under the Tender Documents. The Hon'ble Arbitral Tribunal was required, as per clause 19 of the Agreement dated 07.07.2000, to decide only those issues that arise in case of any dispute on account of the agreement only and not out of any other document. Further, any dispute that arises with regard to the tender document can only be resolved by a competent Court in Panjim as has been clearly mentioned in Clause 13 of the Tender Document.

III. The Hon'ble Principal District Judge failed to appreciate that the said award is oppose to public policy and in contravention of law in as much as when there is a formal contract between the parties, the earlier correspondence between the parties, of any nature, cannot be looked into.

IV ...

V. The Hon'ble Principal District Judge, North Goa, Panaji failed to consider that the agreement constitutes a complete code between the parties subject to clause 16 of the Agreement. There is absolutely nothing in the Agreement that indicates that any previous correspondence or for that matter the terms and conditions of the Tender would become part of the Agreement.

VI. The Hon'ble Principal District Judge, North Goa, Panaji failed to consider that once the formal agreement is signed, all earlier dealings between the parties whether written or unwritten cannot be relied upon unless there is specific clause making it a part of the Agreement.

VII ..

VIII. The Hon'ble Principal District Judge, North Goa failed to consider that all throughout in tender document as well as in the Agreement, it has been clearly envisaged that the unclaimed prize money shall be the property of the Government. If that being the case neither the Ld. Arbitrator nor the Hon'ble Principal District Judge could have relied upon a stray sentence that too from the annexure to the tender document (which is not the part of the Agreement) for the purpose of interpretation of the Agreement. Appellant seeks to rely upon the Privy Council judgment Bomanji Ardeshir Wadia and ors. Vs. Secretary of State for India in Council AIR 1929 PC 34 wherein it has been held that when parties have entered into a formal contract that contract must be construed according to its own terms and not to be explained or interpreted by the antecedent communings which led up to it."

2. On hearing the respective Counsel, we have perused the Award of the sole Arbitrator along with the impugned judgment with the able assistance of the respective Counsel.

Mr Shirodkar has also tendered a compilation of documents for the sake of convenience which include the tender document as well as the contract signed between the parties.

3. The claimant, M/s. Commercial Corporation of India Ltd., (hereinafter referred to as 'CCIL'), a Company incorporated under the Companies Act, having its registered office in Karnataka, is involved primarily in the business of sale and distribution of lotteries on all India basis as sole distributor, entered into an Agreement on 21.12.1989 with the State of Goa, as the Company was appointed as an agent for sale and distribution of Goa State Lotteries for a terms of three years. By a Supplementary Agreement dated 14.01.1993, the term was extended for a further period of five years. A further Agreement was entered between the parties on 09.01.1995 appointing CCIL as a sole distributor for sale and distribution of the Goa State Lotteries for a term ending 04.03.1998 and since there was a Clause contained therein which permitted further extension, by another Supplementary Agreement dated 23.01.1998, the term was extended upto 04.03.2001.

4. As per the Claimant, at the time of entering into the Agreement on 09.01.1995, the Lotteries (Regulations) Act, 1998 was not enacted, and hence the legal relationship between the Claimant and the Respondent was required to be governed by the guidelines laid down by the Hon'ble Supreme Court in the case of **State of Haryana v/s. Suman Enterprises and others**¹. The Regulations came into force on 02.10.1997.

5. According to the Claimant, in accordance with the Agreement entered with the State, a Tripartite Agreement was entered into with three printers of lottery and on the alleged ground that entering into such a Tripartite Agreement was violative of the Lotteries (Regulation) Act, 1998 and also the direction of the Supreme Court, the Respondents proceeded to declare not only the Tripartite Agreement as null and void, but also declared the Agreement dated 09.01.1995 and the Supplementary Agreement dated 23.01.1998 as being null and void. The Claimant's grievance is that the unilateral decision which was not even preceded with minimum compliance of the principles of natural justice and fair play, was contained in a communication dated 06.10.1999 under which the Claimant was asked to stop forthwith from acting under the Principal Agreement as well as the Supplementary

¹ 1994 (4) SCC 217

Agreement and the draw to be held on 07.11.1999 was directed to be dislocated.

Aggrieved by the abrupt termination, the Claimant preferred a Writ Petition before the High Court but in the wake of the existence of an Arbitration clause for resolution of the disputes arising out of the Agreement, staked its claim before the Arbitral Tribunal which included 8 claims, the major claims being set up before the Tribunal are to the following effect:

(A) CLAIM NO. 1 :- Claimant is entitled to a Declaratory Award that the Agreement dated 7/7/2000 along with the guidelines appended thereto which forms a part and parcel of the Agreement dated 7/7/2000 was null and void, being opposed to the provisions of Lotteries (Regulations) Act, 1998 and consequently opposed to Public Policy.

(B) CLAIM NO. 2 :- On basis that the Agreement dated 7/7/2000 was null and void, the Claimant is entitled to an amount of Rs.41,09,38,886/- (Rupees forty one crores nine lakhs thirty eight thousand eight hundred eighty six only) from the Respondents, which amount corresponds to the advantage that the Claimant has received on basis of the void contract dated 7/7/2000. On assumption though not admitting that the agreement dated 7/7/2000 is not null and void the Claimant says that the Claimant has terminated/rescinded the said agreement by notice dated 5th July 2001, in terms of which the agreement contract stands rescinded with effect from 5/7/2001. On this basis the Claimant is entitled to recover from the Respondent a sum of Rs.17,97,82,066/-.

In addition, the Claim No.7 also prayed for interest at the rate of 12% per annum to be awarded and by way of cost and legal expenses the Claimant sought to recover an amount of Rs.2,00,000/- (Rupees Two Lakhs only) from the Respondents.

6. Another issue raised by the Claimant was about the invocation of Bank Guarantee and appropriation of Rs.6 Crores by the Respondents which was stated to be arbitrary, illegal and amounting to highhandedness, as it was pleaded that there was no justification for invocation of the Bank Guarantee and the Respondents themselves had styled the Agreement dated 07.07.2000 as being violation of provisions of Lotteries (Regulation) Act, 1998 and the Agreement itself provided for minimum compliance of principles of natural justice and there was no such compliance and the action was therefore arbitrary.

7. The controversy before the Tribunal revolved around the Agreement dated 07.07.2000, appointing the Claimant as sole distributor for period of three years, and the Agreement entered into between the Government of Goa and CCIL on the other hand, as the sole distributor, was in the wake of the decision of the Government to conduct, organise and promote State Lotteries in accordance with the provisions of Lotteries (Regulation) Act, 1998 and further decision of the Government to enter into an agreement adhering to the directions

of the Hon'ble Supreme Court in this regard and the guidelines issued by the Government of India on 26.06.1984.

The Agreement set out the terms of appointment of the sole distributor and since the bone of contention of the parties revolve around the unsold tickets and it is the claim of the Government that the unpaid amount belong to the Government and the Claimant as a sole distributor had no right over the said money, on account of the unsold tickets, we would refer to the relevant clauses in the Agreement:

“(5). Sale of tickets to the Sole Distributor:-

The Sole Distributor shall lift the entire stock of lottery tickets printed for each draw on "all sold basis" at a discounted price to be mutually determined by the Government and the Sole Distributor. Unsold tickets or tickets remaining unsold with the Sole Distributor shall not be taken back by the Government.

(6) Purchase price of lottery tickets:-

The Government shall sell the tickets of lotteries covered under this Agreement and the Sole Distributor shall buy the full lot of lottery tickets thereof at the prices determined by the Government for each lottery at the time of the launching of the lottery Scheme. However, the discounted price of the lottery tickets may be changed if necessitated by change in the prize structure or any other factor by mutual consent, of parties to this Agreement.

(7) Deposit of sales proceeds:-

The Sole Distributor shall deposit with the Government the amount payable in relation to the sale of lottery tickets in the manner specified in the guidelines executed between the two parties under clause (16) hereunder.

(8) Payment of Prizes:-

(i) Payment of prize money to the winners in respect of all the lottery tickets shall be made by the Government out of the sale proceeds of the tickets.

(ii) The Sole Distributor shall be called upon to assist the Government in disbursement of prizes of the value of Rs. 5000/- and less to the winner after completion of all the formalities like identification, verification for its genuineness, etc., for which purpose, required sums will be placed at the disposal of the Sole Distributor by the Government out of discounted amount. The Sole Distributor shall keep and maintain correct account of prizes of value disbursed and submit the same to the Director of State Lotteries, Government of Goa, from time to time, alongwith necessary documentary evidence to the effect that such prizes of the value have actually been paid by it. If any prize money remains or otherwise not disbursed, it shall revert to and become the property of the Government.

(9) Bank Guarantee:-

The Sole Distributor shall furnish to the Government to secure the due performance of its obligations under this Agreement, an irrevocable Bank Guarantee of Rs. 6.00 Crore (Rupees Six Crore only) from a Nationalised Bank / Scheduled Bank with its branch situated at Panaji or in the form of F.D.R. for Rs. 6.00 Crore (Rupees six crore only) pledged in favour of the Director of State Lotteries, Government of Goa.

The Sole Distributor shall maintain the irrevocable Bank Guarantee valid throughout the life of this Agreement and upto three (3) months after expiry or determination/ termination of this Agreement or till such time the accounts are finally settled, whichever is later.

The Government shall in addition to all other rights be entitled forfeit any part or entire amount of the security furnished, in case of breach of any of the terms and conditions of this Agreement, after giving due notice and opportunity to the Sole Distributor.

8. In addition to the aforesaid Clauses, Clause No.16 refer to the Guidelines of the Government of India to be followed for proper and smooth running of Goa State Lotteries and the said clause read thus:

“(16) Guidelines:

For proper and smooth working of this Agreement guidelines not inconsistent with the decision of the Hon'ble Supreme Court, the

Lotteries (Regulation) Act., 1998 or the guidelines of Government of India of 1984 may be drawn up in consultation with the Sole Distributor and executed as an agreement. Both parties shall be bound to comply with the guidelines so executed.

The Guidelines to be followed for proper and smooth running of Goa State Lotteries, which is considered to be an integral part of the Agreement, refer to the scheme and contain a clause as regards the sale of tickets and contain several other Clauses and for our reference, it is necessary to re-produce the following ones:

“6) SALE OF TICKETS:

- (i) The Sole Distributor shall take the delivery of entire lot of tickets from the designated depots on all sold basis at the discounted price to be calculated as per clause 8 below. The Government shall not take back any stock of tickets remaining unsold with the Sole Distributor. The Sole Distributor shall lift a minimum of Rs. 1000 Crore (Rupees one thousand crore only) worth of tickets in a business year.
- (ii) After taking delivery of the tickets, the Sole Distributor shall verify the same and shall report to the Director any defects or shortages found in the stock within three days from the date of delivery.

7. MINIMUM NET GUARANTEED REVENUE:-

The Sole Distributor shall secure the payment to the Government a minimum net guaranteed amount of Rs. 14.00-Crore (Rupees fourteen crore only) per annum on a turnover of Rs.1000 Crore. The minimum net guaranteed amounts shall proportionately increase for annual turnover of Rs. 1000 Crore. The mode of payment shall be as hereafter provided.

8. Deposit of Sales Proceeds:

The Sole Distributor shall deposit with the Government the amount payable in relation to the sale of lottery tickets in the manner specified below:-

(A) One day before the draw.

- (a) 1.4% of the total turnover of that particular scheme.
- (b) 50% of printing, packing and freight of all tickets relating to that draw/scheme or such higher amount as may be determined to ensure that the annual expenditure on these activities by the Government does not exceed Rs.4.00 crore (Rupees four crore)
- (c) Amount of prizes of over Rs. 5,000/- as per details of that scheme;
- (d) Amount of prize of Rs.5000/- and below as per details of that schemes;

(B) Last working day of month:

- (i) Rs.1.16 crore minus payment effected in that month under item (A)(a) above for the first 11 (eleven) months of the year and in the 12 month, Rs. 14.00 crore minus payment effected in the entire 12 month period under item (A)(a) above or this item, as long as the turnover is Rs 1000 crore or less. In case total payment of Rs.14.00 crore is made before the completion of 12 months and the turnover has not exceeded Rs.1000 crore the Sole Distributor shall not liable to make further payment during that year. In case the annual turnover exceed Rs.1000 Crore the Sole Distributor shall effect payment of such amount during the 12' month as will make the entire payment during the year equal to 1.4 % of the turnover achieved during that year.
- (ii) In the event of Sole Distributor failing to make the payment within scheduled time specific in sub-clause (A) supra, the Government shall in addition to the right to refuse any further sale of lottery tickets to it, be entitled to charge interest commencing from such due date until the date of actual payment. The Government shall also be entitled to invoke the Bank Guarantee, furnished as per clause(9) of the Agreement dated 7TM July,2000 to secure the defaulted payment.
- (iii) The discounted price of each lot of tickets shall be reduced by an amount equal to the prize amount declared to numbers among the tickets remained unsold with the Sole Distributor and those covered under clause (3)(vi) of the Agreement dated 7th July, 2000.
- (iv) The formula for calculating the discounted price of tickets released for each draw and mode of payment shall be as laid

down in these guidelines. In case of any failure or delay on the part of Sole Distributor to deposit the sale proceeds in accordance with the terms of this agreement, the Sole Distributor shall make good to the Government such amount of penalty subject to a maximum of Rs.5.00 lakhs (Rupees five lakhs only) as may be levied by the Finance Secretary to the Government of Goa.

...

10. UNSOLD TICKETS

- (i) The tickets remaining unsold with the Sole Distributor shall be the property of the Sole Distributor. The Government shall not be responsible to bear the loss on account of the unsold tickets.
- (ii) However, as per clause 8 (Supra) the discounted price of the lot of tickets shall stand reduced by an amount equal to the prizes declared to the numbers among the unsold tickets.

...

...

13. PAYMENT OF PRIZES:

- (i) The time limit shall be 30 days from the date of draw for claiming the prizes by the winners in respect of all lottery schemes.
- (ii) The Government shall pay the prize of value of more than Rs.5000/- each. The Director is authorised to make payment of such prizes after observing, the formalities of checking the genuineness of tickets. The claims for the prizes of above Rs.5000/- shall be in the schedule-III annexed hereto.
- (iii) The Sole Distributor is authorised to make the payment of prizes of the value of Rs.5000/- and below on behalf of the Government. For this purpose, he is authorised to deduct this amount from the 1st installment of sales proceeds payable by him as per clause 8 (A)(d) supra.
- (iv) The Sole Distributor shall render an account showing the amount disbursed and the amount remaining unclaimed on the 60th day from the last day prescribed for claiming the prizes under sub-clause (i) Supra. The amount so remaining unclaimed subject to the minimum mutually agreed upon

shall be remitted to the Government by the Sole Distributor alongwith the submission of Account. The statement of account shall be in performa annexed as scheduled-IV.

- (v) The prize paid tickets shall be retained by the Sole Distributor in properly arranged packets and shall be only indexed. The Sole Distributor will be holding possession of the said prizes paid tickets on behalf of the Government for one year and thereafter the same shall be destroyed in the presence of a representatives of the Director of State Lotteries and Sole Distributor.

9. The whole conundrum or the genesis of dispute before the Arbitrator is in respect of the unsold tickets and it is the submission of Mr Deep Shirodkar relying upon the Clauses in the Agreement and the Guidelines, that the unclaimed prize money belong to the State Government and the thrust of his argument is, that the learned Arbitrator has gone beyond the contract and looked into the tender document which is not permissible to be looked into and therefore, this amount to patent illegality.

Apart from this, it is also his submission that the finding rendered by the learned Arbitrator is contrary to the Lotteries Act, as there is a specific prohibition about this money being utilized as the money belong to the Government and therefore the decision of the learned Arbitrator is also contrary to public policy as it violates the statutory provision.

Coming to the Award passed by the learned Arbitrator, it is urged that the learned Arbitrator has noted that before execution of the

Agreement dated 07.07.2000, tender was floated and the Claimant was found to be the highest bidder for allotment of the tender and the Agreement dated 07.07.2000 was executed after due negotiations and Guidelines appended thereto were framed after mutual understanding and discussion. On consideration of the Claims, the Tribunal noted that the Claims raised by the Claimant were strongly contested by the Respondents and in fact, even the Respondents raised counter claims against the Claimant, which read to the following effect:

“The first Counter Claim is towards unclaimed prize amount of Rs.5,000/- and below. According to the Respondents the amount outstanding as on 3-9-03 is Rs.2,82,26,728/-.

Counter Claim No. 2 is in a sum of Rs.14,00,00,000/- being assured revenue from 4/9/02 to 3/9/03.

Counter Claim No.3 is Income Tax amount due on the amount of prizes above Rs.5,000/- won by the sole distributor during the period from September 2000 to September 2002 i.e. income tax of Rs.22,68,24,530/- plus surcharge of Rs.1,30,19,338/- (excluding interest/penalty). The total claim made is Rs.3,98,43,868/ -.

Counter Claim No.4 claims short realization of assured revenue for the year 2000 to 2001 and 2001 to 2002 in an amount of Rs.38,20,337/ -.

Counter Claim No.5 seeks a declaration regarding sales tax payable to the State of Kerala for the period 4/9/2000 to 3/9/2002 in an amount of Rs.949,03,45,000/- i.e. 50% of the total turnover of Rs.1898,06,90,000/- at the rate of 2% from 4/9/2000 to 3/9/2002 (excluding interest) which in a total amount claimed is Rs.18,98,06,900/ -.

Counter Claim No.6 is for a declaration regarding sale tax payable to the Karnataka Government for the period 4-9-2000 to 3-9-2002 in an amount of Rs.68,22,852/ -.

Counter Claim No.7 is for amount recoverable due to the loss caused by the Claimant by filing Writ Petition No.320/99 in an amount of Rs.159,00,00,000/ -.

Counter Claim No.8 is for amount claimed due to transfer of scheme from the sole distributor CCI Ltd., Manipal at Rs.120,00,00,000/ -.

Counter Claim No.9 is for amount towards damages and compensation for loss of goodwill, reputation in the lottery business in the country in an amount of Rs.500,00,00,000/-.
Grand total being Rs.839,85,20,685/ -.

Counter Claim No.10 is for interest at the rate of 12% per annum on the claimed amount of Rs.339,85,20,685/-.”

10. The learned Arbitrator made a reference to the Tender Notice issued in the name of Director of State Lotteries for and on behalf of the Governor which invited bid for appointment of a sole distributor for sale of Goa State Lottery from experienced registered firms and the tender document mentioned the eligibility of the bidder as a Sole Distributor. For adjudicating the claim raised by the Claimant along with the counter-claim of the Respondent State, the Arbitrator referred to the Tender Notice issued for and on behalf of the Government, inviting the bids for appointment of a sole distributor for sale of Goa State Lottery with the requisite experience.

The learned Arbitrator also refer to the Scheme contemplated under the Lotteries (Regulations) Act, 1998 and the Guidelines laid down by the Supreme Court in case of **Suman Enterprises** (supra).

Exhaustive reference is also made to the Tender Document which clearly stipulated that the Government shall arrange to print the lottery tickets under its supervision and the sole distributor shall lift the entire stock of lottery tickets printed for each draw on all sold basis at the discounted price to be mutually determined by the Government and the sole distributor with a clarification that the unsold tickets will not be taken back by the Government.

With reference to the specific clause in the Tender Document where it was mentioned the price of the value of above Rs.5000/- shall be disbursed to the winners by the Government directly and the sole distributor shall be authorized by the Government to disburse of the prizes of the value of Rs.5,000/- and less, to the winner after completion of all formalities like identification, verification of ticket etc, for the purpose of which the required sum will be placed at the disposal of the Government. The Tender Document also contemplate that the sole distributor shall keep and maintain correct accounts of the prizes of value of disbursed and submit the same to the Director of State Lotteries.

The relevant clause in that regard was in form of para (k) where it is stated that all unclaimed prize amounts shall revert and become the property of the Government and the sole distributor shall have no

right, title or interest if there is any unclaimed prize amount and it shall vest exclusively with the Government.

11. The Arbitrator, by referring to the relevant Clauses in the Tender Document, also noted that Clause 7 of the Document stipulated that the tenderer shall quote the guaranteed revenue to the State Government for a turnover (face value) of Rs. 1000,00,00,000/- and this revenue shall have to be assured to the State Government even if the actual turnover is less than Rs.1000,00,00,000/- and there shall be pro rata increase in the revenue payable to the State Government if the turnover is more than Rs.1000,00,00,000/-. In addition, the Tender Document also contain Clause 9 stipulating that the sole distributor shall furnish security deposit of Rs.6,00,00,000/- by way of Bank Guarantee in favour of the Director of State Lotteries, within 15 days of execution of the agreement.

12. With the able assistance of Mr Shirodkar, we have carefully perused the Tender Document which is accompanied with Annexure I, which are the guidelines issued by the Supreme Court and Appendix II which is a Tender Notice containing conditions and a format for submitting financial bids for Goa State Lotteries for tenders to be opened on 30.05.2000. This format is a letter addressed to the Director of State Lotteries where the claimant is required to give the minimum

guaranteed revenue under A upto Rs,1000,00,00,000/- and under B the minimum guaranteed revenue on A above shall not be less than Rs.12,00,00,000/-. Para B (a) clearly provide that the net guaranteed revenue will be a proportionate increase for annual turnover of Rs.1000,00,00,000/- and (b) the minimum guaranteed revenue shall be paid by the sole distributor even if the annual turnover falls short of Rs.1000,00,00,000/-. The said form under clause (c) state thus:

“the amounts of prizes which are not claimed or otherwise not distributed shall become the property of the Government. This amount shall count towards the net guaranteed revenue in A above.”

13. Our attention is invited by the learned Counsel for the Respondent, Mr Advani, to this specific form which was filled in and furnished to the Director of Goa State Lotteries by the bidder, where it agreed the offer of minimum net guaranteed revenue per annum upto a turnover of Rs.1000 Crores and he had quoted the amount of Rs.14 Crores as the minimum net guaranteed revenue.

The aforesaid, according to Mr Advani, amount to an offer by the bidder as he assured to the Government that for a turnover of Rs.1000,00,00,000/-, the Claimant would pay revenue of Rs.14,00,00,000/- and even for the sum above Rs.1000,00,00,000/- the offer was restricted to Rs.14,00,00,000/-.

This offer being accepted by the Director of Lotteries, which had offered Rs.14,00,00,000/- per annum as minimum net guaranteed revenue and subject to these stipulations, he came to be appointed as sole distributor for sale of Goa State Lottery tickets under the terms and conditions of the Tender Document, it was urged before the sole Arbitrator and even before us that once the minimum net guaranteed revenue was offered by the bidder, i.e. CCIL, and the Agreement having been signed, the Government was assured of a guaranteed revenue of Rs.14 Crores per annum whether or not the tickets are sold and it is in this background it is the case of the Respondent bidder that the Government has no right to claim the amount of unsold tickets to the tune of Rs.5,000/- or less and it is so because payment of prizes as stipulated in Clause 8, which specifically deal with distribution of prizes of value of Rs.5000/- and less to the winner after completing the formalities and though the Agreement contemplated that if no money is distributed it shall revert and become property of the State Government and the sole distributor shall have no right to the sale, the learned Arbitrator has rightly looked into the Tender Document which was floated for ensuring a minimum guaranteed revenue to the State Government per year. As far as the dispute about whether the termination was legal or not, the learned Arbitrator did not focus his attention upon the same as the Tribunal rendered a finding that the notice of termination or asking for annulment was a half-hearted

exercise as according to the Claimant it was on the ground that the provisions of the Agreement were violative of Lotteries Regulation Act and claiming money over and above the minimum net guaranteed revenue of Rs.14 Crores, it cannot stand the scrutiny of the guidelines of the Supreme Court as well as the decision of the Supreme Court. However, ultimately the Arbitrator concluded that the notice dated 05.02.2001 is not a proper notice under law and the question of giving any relief on the ground that the Claimant is entitled to recover a sum of Rs.17,97,82,066/- do not arise and therefore, the monetary claim raised by the Claimant in that regard was held to be not maintainable and declined by the learned Arbitrator. However, the Agreement being declared null and void on the ground that the same is in violation of guidelines laid down by the Supreme Court in **Suman Enterprises** (supra), the Arbitrator focused his attention on the Agreement dated 07.07.2000 which also contain stipulations that if any prize money remains unclaimed, within stipulated time limit or otherwise not disbursed shall revert to and become the property of the Government of Goa. Based on this, the Claimant was requested to deposit all such unclaimed prize money within 15 days from the receipt of the letter along with the interest @12% and the Claimant on 19.06.2001 replied to the letter, and it remained consistent in its stand even today that the unclaimed prize amount is already included in the bid of Rs.14 Crores

per annum and therefore there is no question of claiming refund or accounting such money to the Government.

The Director of State Lotteries however invited attention of the Claimant to Clause (f) of Section 4 of the Lotteries Regulation Act which provided that prize money unclaimed within such a time as may be prescribed by the State Government or not otherwise distributed shall become the property of the Government and this being the position even indicated in the guidelines, the tender documents or any other mutual agreement between the parties is in violation of the Regulation. The Respondent therefore adopted a stand before the Arbitrator that the Tender Documents or guidelines annexed to the Agreement dated 07.07.2000 cannot take away the right of the Government under the Agreement and therefore there can be no infraction of the provision of Lottery Regulation Act and therefore the Government reiterated its claim for unclaimed prize money or prizes which are not distributed or which remain undistributed within the stipulated period.

14. While deciding this claim, the learned Arbitrator, at the insistence of the Claimant referred to Clause 8 of the Tender Document along with paragraphs 3 and 6 of Annexure II indicating that all that the Claimant was required to pay by way of revenue to the Government

for sale and distribution of State Lotteries was Rs.14 Crores and whatever prize money unclaimed or not distributed was included in this amount of Rs.14 Crores and the Arbitrator referred to a correspondence entered between the parties which included the communication dated 05.07.2001 as well as 06.07.2001. Recording that an attempt was made on behalf of the Government to interpret the Clause in the Agreement and the stand adopted that the Agreement will prevail over the Guidelines and the Tender Notice cannot be accepted as they are violative of Lotteries Regulation Act, the Arbitrator rendered the following finding:

“The question is simple and pure. Whether the Government was justified in saying that unclaimed prize revenue on A money or otherwise not distributed must revert to and become the property of the Government and the provision of clause no.8(ii) of the Agreement dated 7/7/2000 being the trump card in their hands and which is vehemently disputed by the Claimant, this simple and pure question requires a very simple interpretation based on the principle of intention of the parties. The Tender Notice published by the Government bearing No.3-36-2000/DSI/2033 invites bids. The tender document annexed is found at page 118 of the compilation. Under clause 4(k) says that all unclaimed prize amounts shall revert and become the property of the Government and the Sole Distributor shall have no right, title or interest in any unclaimed prize amount and all of which shall vest exclusively in the Government. The sole distributor shall keep proper account of the disbursed prizes of value of tickets and render the same to the Director of State Lotteries, Government of Goa at the end of each calendar month after publication of the lottery draw. Annexure II which is format for submission of final bid in clause 8 invites a minimum net guaranteed revenue per annum upto to a turnover of Rs.1000,00,00,000/- and under B the minimum guaranteed above shall not be less than Rs.12,00,00,000/ -. Sub clause (c) is

the most vital. The amount of prizes which are not claimed or otherwise not cases i.e. upto Rs.1000,00,00,000/- and above distributed shall become the property of the Government and it further reads "this amount shall count towards the net guaranteed revenue in A above". The Claimant gives his bid and Annexure II says under clause B(c) the amount of prizes which are not claimed or otherwise not distributed shall become the property of the Government. This amount shall count towards the net guaranteed revenue in A above. What does A say is the offer of minimum net guaranteed revenue per annum upto a turnover of Rs.1000,00,00,000/- is inclusive of unclaimed or undistributed prizes. The bid given on this format of Annexure II is Rs.14,00,00,000/- in both the Rs.1000,00,00,000/-.

It is therefore required to be seen that the Government itself has made a representation to the offerors that unclaimed prizes or undistributed prizes shall revert to the Government but the same shall be counted towards the net offer to be made by the offeror. This representation is now sought to be gone back insofar as the Respondents are concerned. . Needless to mention that the Respondents accepted the bid of Rs.14,00,00,000/- from the Claimant on the basis that it includes the amounts of undistributed prizes or prizes which are not claimed. Whereafter indeed comes the agreement dated 7/7/2000.

It is therefore clear that the unclaimed prizes or undistributed prizes is no doubt and indeed is the property of the Government. But the parties have executed Guidelines to be followed for proper and smooth running of Goa State Lotteries and this has become the part of the agreement itself. In the very opening recital it says that the following guidelines are to be followed for the proper and smooth running of Goa State Lotteries in terms of clause 16 of the agreement executed on 7th July 2000 between the Government of Goa and M/s Commercial Corporation of India Ltd., Manipal and form and integral part of the said agreement. Clause 7 of the guidelines stipulates that the sole distributor shall secure the payment to the Government a minimum net guaranteed amount of Rs. 14 crores per annum on a turnover of Rs.1000,00,00,000/-. The minimum net guaranteed amount shall proportionately increase for annual turnover of Rs.1000,00,00,000/-. The mode of payment shall be as hereafter provided and that mode has been also provided. Therefore looking at the case in any way it is clear that when

tender represented to the party that the offer made by them in the format issued by the Government itself should be for a minimum turnover of Rs.1000,00,00,000/- and secondly a bid for turnover of above Rs.1000,00,00,000/- and further indicating that whatever amount is to be offered by the tenderer shall also include the amount which shall include the amounts of prize money not claimed or not distributed. Therefore despite the fact that clause 8(ii) of the agreement stipulates that the undistributed prizes or unclaimed prizes shall revert to the Government it does appear that the Government while publishing the tender has taken into account the eventuality of unclaimed prizes or prizes which are not distributed and which are deemed included in the net offer. Therefore it stands to reason that there is no question of the Claimant requiring to pay anything in excess of Rs.14,00,00,000/- per annum. It is therefore difficult to accept the submission on behalf of the Respondent that because the clause 4 of Lotteries Regulation Act, 1999 stipulates that the prizes which are not claimed or not distributed shall revert to the Government and that is why the demand made by the Government is justified from the Claimant does not appear to be correct on a true interpretation of the tender document as also the Agreement and the Guidelines. It is required to be noticed that on a perusal of the entire gamut of situation the parties or at least the Government knew that there is an eventuality of unclaimed prizes or prizes which are not distributed and those amounts need to be included in the offer to be given. Therefore if we in reality look even at clause 8(ii) it does meet the requirement of clause 4 of the Lotteries Regulation Act but those amounts stand included in the offer already made by the Claimant to the State Government. The State Government and Lottery Department had enough experience in the trade of Lotteries from the year 1989 - 90 and being so must be held to know that they have estimated the eventualities of unclaimed prizes and hence made the offer that way. I am clearly of the opinion that clause 8(ii) of the Agreement stands and very much alive but the amounts as stated elsewhere of unclaimed prizes are already included in the bids invited. How they have worked out is not the concern of the Claimant nor me as Arbitrator. Therefore it is not permissible for Respondents to now say that throw away the representations made in the tender document. Don't look to the guidelines and acceptance letter dated 14-4-2000 go strictly by the provision of clause 8(ii) of the agreement in isolation that those amounts of unclaimed prizes or

undistributed prizes must revert back to the Government in addition to the offer of Rs. 14,00,00,000/- which the Claimant has been making without any dispute. Therefore to my mind this controversy stands resolved.”

15. The aforesaid being a clear finding based on interpretation of the Tender Document and the conclusion drawn that despite the fact that the Agreement stipulate that undistributed prizes or unclaimed prizes shall revert to the Government, it is clear that while publishing the tender, the Government has taken into account the eventuality of unclaimed prizes or prizes which are not distributed or which are deemed to be included in the net offer. The Tribunal has therefore concluded that the Claimant is not required to pay anything in excess of Rs.14 Crores per annum and merely because Section 4 of the Lotteries Regulation Act, 1998 stipulate that the unclaimed money shall revert to the Government, is not a correct view as the Agreement will have to be interpreted and read along with the Tender Document and Guidelines. The gist of the conclusion of the learned Arbitrator therefore is based on a reading of the documents in view of Agreement/Tender Document along with the Guidelines which assured the Government a sum of Rs.14 Crores per annum and this was inclusive of the unclaimed money.

On this count, the Claimant staked a claim that it has suffered a loss of Rs.12,65,10,043/- which the Respondent Government is duty bound to refund.

16. Dealing with the submission of encashment of Bank Guarantee, though the learned Arbitrator referred to a particular clause in the Agreement i.e., Clause No.12, requiring the Claimant to give six months' notice for termination of the Agreement, it is concluded that there was no question of the Respondent resorting to unauthorized and illegal action in violation of contractual clause which was sans the principles of natural justice. In any case, the Bank Guarantee having been already encashed, the Tribunal concluded that no Notice was given which was a deliberate act well intended and if no Notice is given to the Claimant for invocation of the Bank Guarantee, the Claimant could have approached the Court for appropriate injunction.

As far as the claim for damages and interest is concerned, the Tribunal declined the same on the ground that the Agreement dated 07.07.2000 do not provide for payment of any interest and it is the discretion of the Arbitrator to award interest strictly within the parameters of Arbitration and Conciliation Act, 1996.

With this finding being rendered, the claim raised by the Claimant in form of Claim No.2 and 3 came to be rejected. However,

the Notice of Termination dated 28.03.2002 is held to be valid and the Agreement dated 07.07.2000 along with the Guidelines is declared to be terminated from 03.09.2002. As regards the Claim No.5, on purported arbitrary denial of approval of several lottery schemes, the same came to be rejected but under this head, dealing with the illegality in withholding refund due to surrender of unsold lottery tickets above Rs.5000/-, the claim was allowed.

The Respondents, i.e., the State was directed to refund to the Claimant amount corresponding to the amount retained by the Government towards unclaimed undistributed prizes of lottery tickets above Rs.5000/- and this amount was directed to be determined on the basis of established principles of Accounting and Reconciliation, which was to bear interest @ 12% per annum from the date the amounts were wrongfully withheld till the date of payment. Similarly, the State is also directed to pay to the Claimant a sum of Rs.6 Crores corresponding to the Bank Guarantee unlawfully encashed by the State on 21.01.2003, with a direction that it shall carry interest @ 14% per annum from 21.01.2003 till its payment. Though the Claimant was held entitled to cost of Rs.50,000/-, it was without interest.

17. As far as the counter-claim staked by the State in form of Claim No.1 to 10 are concerned, the learned Arbitrator rejected them in entirety.

18. Being aggrieved by the Award to the aforesaid effect, the State of Goa preferred an Appeal under Section 34 and even when the same was rejected, the present Appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996.

During the course of the hearing of the Appeal, we indicated to Mr Shirodkar that the scope of interference under Section 37 is very limited and it is restricted to setting aside or refusing to set aside the Arbitral Award under Section 34, with the parameters being well carved out by the Apex Court from time to time. The Appellate power under Section 34 of the Act of 1996 is limited within the domain of Section 34 of the Act and it is exercisable only to find out, if the Court exercising power under Section 34 of the Act has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred.

In the recent decision of the Apex Court in the case of **Punjab State Civil Supplies Corporation Ltd & Another V/s. Sanman Rice Mills & Others**², the scope of interference under Section 37 is culled out and rather reiterated in the following words:-

“20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the

² 2024 INSC 742

Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.

22. In the case at hand, the arbitral award dated 08.11.2012 is based upon evidence and is reasonable. It has not been found to be against public policy of India or the fundamental policy of Indian law or in conflict with the most basic notions of morality and justice. It is not held to be against any substantive provision of law or the Act. Therefore, the award was rightly upheld by the court exercising the powers under Section 34 of the Act. The Appellate Court, as such, could not have set aside the award without recording any finding that the award suffers from any illegality as contained in Section 34 of the Act or that the court had committed error in upholding the same. Merely for the reason that the view of the Appellate Court is a better view than the one taken by the arbitral tribunal, is no ground to set aside the award.

23. Thus, in our opinion, the Appellate Court committed manifest error of law in setting aside the order passed under Section 34 of the Act and consequently the arbitral award dated 08.11.2012.”

19. In the wake of the settled legal position about the scope of interference in an Appeal under Section 37, we directed Mr Shirodkar to produce before us the copy of the application under Section 34 filed before the District Court, North Goa at Panaji as our scope of interference under Section 37 would depend upon the grounds raised under Section 34 and the adjudication of these grounds by the District Judge in exercise of his power under Section 34.

Accordingly, Mr Shirodkar has placed before us the copy of the application preferred under Section 34 and we had an opportunity of appreciating the ground raised before us as Mr Shirodkar has urged that the decision of the Arbitral Tribunal is in ignorance of the terms in the Agreement but heavy reliance being placed upon the Tender Document and the Guidelines, and this goes beyond the contract and not only this, it is also in violation of the provisions of the Lottery Act, as the scheme of the Act has stipulated the conditions subject to which the lotteries may be organized by a State and therefore, there is a patent illegality in the Award, it being in violation of the statute and even the Award is against public policy of the State.

20. We perused the application in form of Arbitration Petition No.12/2012(New) filed by the State of Goa along with the Directorate of State Lotteries in form of objection of the Arbitration and Conciliation Act, 1996 to the Award dated 24.06.2008 and when we stressfully struggled to find out the ground of the decision of the Arbitrator being contrary to the provisions of the statute or beyond the scope of his reference but unfortunately, we could not find any specific ground to that effect as we find that the grounds are largely revolve around the invocation of the Bank Guarantee and only two grounds as regards the amount to be vested in the Government in regards unsold tickets below Rs.5000/- and also the finding that the Arbitrator had included it in the refunded in guaranteed amount are found to be set out in the following manner:

“F) That the Ld. Arbitrator has wrongly granted claim of unclaimed prices despite the clause in the agreement that whenever any price money remains or otherwise not disbursed it shall revert and become part of the property of the government, in terms of clause 9, of the said agreement, which is in consonance with the Lotteries Act. As such, Ld. Arbitrator has not applied mind to the terms of the agreement, thus arbitrating the beyond the agreement.

...
...

J) That the Ld. Arbitrator has erred while granting the claims in respect of unsold lottery tickets has wrongly included the amount towards the undistributed unclaimed prices of lottery tickets above Rs.5000/- without giving justifiable reasons to support the grant of claim.

K) That the Ld. Arbitrator has mixed up the issue of unsold lottery tickets with unclaimed undistributed prizes by lottery

tickets above Rs.5000/-, which clearly suggest the Ld. Arbitrator has traveled beyond the terms of reference.

- L) That the Ld. Arbitrator erred in law in ignoring the terms of the agreement submitting the parties for arbitration, thus granting the claims raised by applicants on unsustainable grounds and beyond the scope of agreement, as such award be quashed and set aside.”

Apart from the aforesaid grounds, relating to unclaimed prize money, we do not find any grounds specifically raised. As far as the encashment of Bank Guarantee is concerned, the grounds raised in 34 Application is specific, that the Arbitrator has failed to appreciate that the invocation of the Bank Guarantee is within the scope of Clause 9 of the Agreement which provided that the Bank Guarantee was to be furnished to secure the performance of obligations under the Agreement, which the CCIL had failed to honour. However, as we have found that the ground on which the direction is issued by the Tribunal to refund the sum under the Bank Guarantee is on account of not following the procedure prescribed and not affording an opportunity of making good the said amount before the Bank Guarantee was invoked.

21. As far as Section 34 of the Arbitration and Conciliation Act is concerned, the Arbitral Award is permitted to be set aside by the Court only on the ground set out in Sub-Section (2)(a) and (b) of Section 34. Indisputably, the scope of Section 34 is wider than under Section 37

and this include the ground of an Award being in conflict with public policy in India, with the Explanation as to when an Award shall be in conflict with the public policy of India and is on the following grounds:

- (i) The making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- (ii) It is in contravention with the fundamental policy of Indian law; or
- (iii) It is in conflict with the most basic notions of morality or justice.

However, the foresaid interference is further constricted by Explanation 2 appended to Section 34 which reads thus:

“Explanation 2. -For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”

The scope of interference and Award is further constricted by a Section 2(a) along with the proviso which reads thus:

“(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of

the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or..”

22. In light of the scheme of the Arbitration and Conciliation Act, 1996 with a challenge being permitted to be raised to the Award on the ground that it is in conflict with the public policy of India or it is vitiated by patent illegality appearing on the face of the award, is permissible only at the stage of Section 34 and it is necessary that such grounds are raised before the first Court with the limited scope being left for interference at the stage of Section 37, which must come through a filter being put at Section 34. The power of the Court under Section 37 is restricted to considering whether the Court under Section 34 has in any manner gone wrong.

It is a well settled position in law that if the Court has taken considered view on the facts and interpretation of the contract in the Award, the Appellate Court will not interfere with the same unless the findings of the first Court are patently illegal or against the public policy. The scope of Section 37 is thus restricted to examining the scope of challenge before the District Judge and an Award can be set aside on the ground of “patent illegality”, only if the illegality goes to the root of the matter and is not a mere erroneous application of law.

In **Ssangyong Engineering and Construction Company Limited v/s. NHAI**³, the Apex Court has further narrowed the scope of Section 37 by holding that a finding is perverse only if it is based on no evidence or if the Arbitrator consider something irrelevant or ignores vital evidence or if the finding is so irrational that no reasonable person could have arrived at it. The scope of interference under Section 37 would depend upon the finding rendered by the Court dealing with the application/objection under Section 34 of the Arbitration and Conciliation Act.

23. From perusal of the application filed before the District Judge under Section 34, what is urged before us today by Mr Shirodkar is conspicuously absent and since the scope of Section 34 proceedings is

³ 2019 15 SCC 131

summary in nature, the grounds of perversity or patent illegality ought to have been raised but we do not find any such ground being raised in Section 34 Appeal, leaving very limited scope for us under Section 37.

24. We have also perused the Judgment passed by the learned District Judge with the determining the limited points/grounds raised in the application with the wider scope as compared to the one which we are entitled to at the stage of Section 37 and we find that the judgment in Arbitration Petition 12/2012 dated 06.02.2016 being a well-reasoned judgment based on the factual aspect as the District Judge referred to the Tender Notice dated 10.03.2000 which was accompanied with the Terms and Conditions and the acceptance of the bid submitted by the bidder on 14.01.2000, finally confirmed by the Agreement dated 07.07.2000 appointing it as a sole distributor with regard to sale and distribution of Goa State Lotteries.

In great detail, the 34 Court dealt into the Tender Document published by the Directorate of Goa State Lotteries stipulating certain conditions which were required to be complied with for the purpose of bid and he refer to the specific clauses like Clause (d), (i), (j) and a particular clause stating that all unclaimed prize amount shall revert to and become property of the Government and the sole distributor shall have no right, title or interest on any unclaimed prize amount and all

of it shall exclusively vest in the Government. The Court also referred to the Agreement dated 07.07.2000 reflecting that the conditions mentioned in the Tender Document became a part of the Agreement and in specific, reliance was placed upon Appendix-I and Annexure-2 which were also considered as a part and parcel of the Tender Document; Appendix-I being the extract of the order of the Apex Court in case of **State of Haryana v/s. Suman Enterprises And Others**⁴, whereas, Annexure-2, being the Offer.

Reference is also made to the Guidelines to be followed by the State for proper and smooth functioning of the lotteries which form part of the Agreement dated 07.07.2000 which specifically included the Clause for “minimum net guaranteed revenue” which was described as the amount which the sole distributor shall secure payment to the Government a minimum net guaranteed amount of Rs.14 Crores per annum from a turnover of Rs.1000 Crores with a proportionate increase for annual turnover above Rs.1000 Crores. Clearly recording that with these stipulations in the Tender Document, the bidder agreed to pay net revenue of Rs.14 Crores and this bid was accepted pursuant to the Agreement entered between the parties on 07.07.2000. The following finding rendered by the District Judge

⁴ (1994) 4 SCC 217

dealing with the application under Section 34 with the scope being determined, deserve reproduction:

“32. Considering the broad principles of the contract executed between the parties, it was clear that the distributor was supposed to lift all the tickets printed by the Government and that it was his responsibility to sell the same and in case of failure to sell the entire lot or part of it, he was not entitled to return back the unsold tickets. No doubt there was condition of discounted price to be negotiated mutually for sale of entire stock; however, clause no.8 of the agreement was providing the details of such mutually negotiated price. Therefore it was clear that whatever tickets are printed by the Government will have to be purchased by the distributor without any refund thereby guaranteeing minimum amount to be paid to the Government, subject to the turnover of ₹1000 crores. The Government was further secured with the minimum guaranteed revenue from the distributor per annum of ₹14 crores.

33. The combined reading of the tender document together with its annexures and the agreement executed between the parties together with the guidelines clearly show that the Government itself represented in the tender document that the unclaimed prizes undistributed amount shall revert back to the Government subject to the minimum net offer i.e. ₹14 crores. The wordings in Annexure-II appended to the tender document show that this amount shall count towards the net guaranteed revenue mentioned in (A) above. Once such offer is made and the bid has been accepted by the sole distributor which resulted in executing agreement between the parties, the same cannot be reverted back on the precise ground that the same is violative of the guidelines framed by the Supreme Court. The sole distributor submitted his bid on considering the relevant tender document as a whole which include the Appendix and the Annexure and accepted that he has to pay minimum Rs.14 crores to the Government.

25. The finding rendered by the learned Arbitral Tribunal was further appreciated by the District Judge as he recorded thus:

“35. The Ld. Arbitral Tribunal has elaborately discussed the above aspect which is found from page 83 onwards till page 89 and found that the unclaimed prizes are already included in the bid invited as found in annexure attached to the tender document. Therefore it is not permissible for the respondent/Government to now say that the said representations in the tender document vide annexure should be ignored and not to look into the guidelines appended to the said letter and to only look into the provision of clause no.8 of the agreement.

36. The above observation of the Ld. Arbitral Tribunal is on the basis of the interpretation of the agreement, the tender document, the guidelines and the settled proposition of law and to my mind this interpretation is a plausible interpretation of the conditions to the agreement. Nothing has been brought before me to show that such interpretation is illegal or against the settled proposition of law. The scope of Section 34 of the said Act is now well settled and therefore it is the duty of this court to give finality to the award whenever it is found that the same is not against the Public Policy of India or shocking to the conscience of the court. It is well settled that any other interpretation though permissible and plausible under the given circumstances is found by this court, the same cannot be replaced with the findings arrived at by the Ld. Arbitral Tribunal as this court is not sitting as an appellate court re-appreciating all aspects of the matter. Thus as far as the above aspect is concerned, I am not inclined to accept the arguments canvassed across the bar by the Ld. Counsel appearing for the respondent/Government.

26. As far as the encashment of Bank Guarantee is concerned, the District Judge recorded the contention on part of the Government that they only encashed the Bank Guarantee and not forfeited the amount and thereafter issued a Show Cause Notice was not an acceptable stand, as document at Annexure XL6 show that Arbitrator had referred to a letter dated 21.01.2003 and this negated the claim of the Government that they only encashed the Bank Guarantee and not

forfeited the amount and the learned Judge has reproduced the contents of the letter which clearly indicate that the Government of Goa demanded from Karnataka Bank Limited, Panaji an amount to be paid under the said Bank Guarantee.

Recording that the Tribunal after considering various aspects and the definition of the word 'forfeiture' found in Black's Law Dictionary, observed that the communication contemplated a composite action and when Notice was not given before encashing Bank Guarantee, it was violative of principles of natural justice as well as Article 14 and therefore was rightly found to be arbitrary and on this aspect also, the District Judge felt that there is no scope for interference as there was no patent illegality.

With the aforesaid observation, the objection filed by the Applicant/the Government under Section 34 of the Arbitration and Conciliation Act, against the impugned Award came to be rejected.

27. On appreciating the finding rendered by the District Judge under Section 34, with the limited grounds raised, since we find that no ground of patent illegality or the Award being passed against public policy being in violation of the statute was even set out in the application filed under Section 34 nor was it urged before the District Judge, we are of the firm view that very limited scope is left for us for

determining the legality of the Award and since we find that it is a plausible view based upon the facts which were placed before the learned Arbitrator, we are not inclined to show any indulgence in the Appeal filed under Section 37 with this scope being very limited.

As result, the Appeal Under Arbitration No.5 of 2016 is dismissed.
No order as to costs.

At this stage, Mr Advani, the learned Counsel for the Respondent seek permission for releasing the amount of Rs.6 Crores deposited in this Court along with the interest, if any, accrued thereon.

Since, we have dismissed the Appeal filed by the State of Goa, we permit the amount to be withdrawn by the Respondent Claimant along with the accrued interest.

Pending interim application stand disposed of.

ASHISH S. CHAVAN, J.

BHARATI DANGRE, J.