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

+ **FAO(OS) (COMM) 46/2021 & CM APPLs.10323-10325/2021 AND
10760/2021**

GURU GOBIND SINGH

INDRAPRASTHA UNIVERSITY

..... Appellant

Through: Mr. Mukul Talwar, Senior Advocate
with Ms. Anita Sahani, Advocate.

versus

ENGINEERING INDIA LTD

..... Respondent

Through: Mr. Uday Gupta, Advocate.

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Date of Decision: 26th March, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. Present appeal has been filed challenging the order dated 13th March 2020 passed by the learned Single Judge.
2. Learned senior counsel for the Appellant submits that the learned Single Judge instead of granting a similar rate of interest @ 12% per

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annum to the Appellant, has asked it to re-agitate the matter as per law despite appreciating that both the Appellant and the Respondent were to be treated on the same footing. He points out that Section 34 of the Arbitration and Conciliation Act, 1996 allows this Court to correct the Award atleast to the extent of directing that same rate of interest shall be granted to both the Respondent and the Appellant.

3. He submits that in the alternate, even if the learned Single Judge felt compelled to direct the Appellant/Counter Claimant to re-agitate its claim for interest, then in that case, the same direction ought to have been issued to the Respondent as well, and the amount of interest of Rs. 74.12 lakhs ought to have been disallowed, and both the parties should have been permitted to re-agitate the matter before a freshly appointed arbitral tribunal.

4. Learned senior counsel for the appellant also contends that there is a calculation error in computing the external development charges by the Arbitrator inasmuch as the factum of the claimant completing only 41.9% work was not taken into account.

5. Issue notice. Mr. Uday Gutpa, Advocate accepts notice on behalf of the Respondent. He submits that as far as interference with an order made under Section 34, as per Section 37 of Arbitration and Conciliation Act is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision.

6. He further submits that as the counter-claim is in the nature of damages, the appellant is not entitled to any interest on the same. In the alternative, without prejudice to his rights and contentions, he would submit that if at all the appellant is held entitled to any interest then the same ought to be calculated from 26th October, 2015 when the original counter-claim was replaced with the amended counter-claim and not from 19th May, 2011. In support of his submission, he relies upon a judgment of the Supreme Court in ***State of Goa vs. Praveen Enterprises, AIR 2011 SC 3814*** wherein it has been held as under:-

“17. As far as counter-claims are concerned, there is no room for ambiguity in regard to the relevant date for determining the limitation. Section 3(2)(b) of the Limitation Act, 1963 provides that in regard to a counterclaim in suits, the date on which the counterclaim is made in court shall be deemed to be the date of institution of the counterclaim. As the Limitation Act, 1963 is made applicable to arbitrations, in the case of a counter-claim by a respondent in an arbitral proceeding, the date on which the counter-claim is made before the arbitrator will be the date of “institution” insofar as counterclaim is concerned. There is, therefore, no need to provide a date of “commencement” as in the case of claims of a claimant. Section 21 of the Act is therefore not relevant for counter-claims. There is however one exception. Where the respondent against whom a claim is made, had also made a claim against the claimant and sought arbitration by serving a notice to the claimant but subsequently raises that claim as a counter-claim in the arbitration proceedings initiated by the claimant, instead of filing a separate application under Section 11 of the Act, the limitation for such counter-claim should be computed, as on the date of service of notice of such claim on the claimant and not on the date of filing of the counter-claim.”

7. Having heard learned counsel for the parties, this Court is of the view that findings of fact as well as of law of the arbitrator/Arbitral Tribunal are

ordinarily not amenable to interference either under Section 34 or Section 37 of the Act. The scope of interference is only where the finding of the tribunal is either contrary to the terms of the contract between the parties, or, ex facie, perverse. The Arbitrator/Tribunal is the final arbiter on facts as well as in law, and even errors, factual or legal, which stop short of perversity, do not merit interference under Sections 34 or 37 of the Act. It has also been repeatedly held that while entertaining appeals under Section 37 of the Act, the Court is not actually sitting as a Court of Appeal over the award of the Arbitral Tribunal and therefore, the Court would not re-appreciate or re-assess the evidence [see: **2018 SCC OnLine Del 8367**, '**M/s. L.G. Electronics India (P) Ltd v. Dinesh Kalra**'].

8. Keeping in view the aforesaid mandate of law and concurrent findings of the fact, this Court is in agreement with the submission of the learned counsel for the respondent that this Court, in the present appeal, cannot examine the contention of the appellant qua any calculation error in computing the external development charges on the basis that the factum of the claimant completing only 41.9% work was not taken into account by the Arbitrator.

9. However, this Court is of the view that as the learned Single Judge in the impugned order has held that the appellant is entitled to interest on the counter-claim, which is in the nature of damages, it ought to have applied the same yardstick with regard to the rate of interest to both the parties. This Court is further of the view that the appellant is entitled to interest from the date it filed its counter claim namely 19th May, 2011. On 26th October, 2015, the appellant had only amended its counter claim and that too by reducing the amount claimed from Rs.6.93 crores to Rs. 6.46 crores.

It is pertinent to mention that the Arbitrator had only awarded Rs.45,50,046/- against the aforesaid counter-claim.

10. The judgment of the Apex Court in *State of Goa* (supra) is inapplicable to the facts of the present case as the said judgment deals with the issue of limitation of a counter claim and not with regard to rate of interest that has to be paid on the counter-claim.

11. Further, this Court is of the view that if the matter is remanded to an arbitrator for fresh adjudication with regard to rate of interest, it would promote and not curtail litigation—an ‘end’ which the Arbitration and Conciliation Act, 1996 seeks to discourage. In fact, this Court is of the opinion that if the argument of learned senior counsel for the appellant with regard to rate of interest is accepted, it would be in consonance with one of the objectives of the Arbitration and Conciliation Act, 1996, namely, finality of arbitration awards.

12. This Court is of the view that if the argument of learned senior counsel for the appellant with regard to rate of interest is accepted, it would promote one of the ‘cherished goals’ of arbitration, namely, finality of arbitration awards.

13. Accordingly, the impugned order of the learned Single Judge is modified to the extent that the appellant shall also be entitled to the same rate of interest as awarded by the Arbitrator to the respondent on the counter-claim, namely, simple interest @ 12% per annum from 19th May, 2011 till the date of award and @ 16% from the date of the award to the date of payment.

14. With the aforesaid modification, the award and impugned order of the learned Single Judge are upheld and the present appeal and pending applications stand disposed of.

MANMOHAN, J

ASHA MENON, J

MARCH 26, 2021

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