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

Judgment pronounced on: **05.09.2023**

+ **FAO(OS)(COMM) 354/2019**

GATEWAY IMPEX PVT LTD

... Appellant

Versus

TATA AIG LIFE INSURANCE CO LTD

... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Ravi Shankar Nanda, Ms. Madhurima Sarangi and Mr. Ashish Mukhi, Advocates.

For the Respondent : Ms. Deepika Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.:

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PREFACE:

1. The present Appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as “the Act”] assailing the



order/judgment dated 23.09.2019 [hereinafter referred to as “Impugned Judgment”] passed by the learned Single Judge of this Court in O.M.P. (COMM) 192/2016 dismissing the petition of the Appellant [hereinafter after referred to as “GATEWAY”] under Section 34 of the Act. The Petition under Section 34 of the Act was filed by GATEWAY for partially setting aside/modifying the Award dated 20.11.2014 passed by a three-member Arbitral Tribunal [hereinafter called “the Arbitral Award”].

BRIEF FACTS:

2. The brief facts relevant for adjudication of the Appeal are:

- (i) The premises at Unit Nos. 7th and 8th Floor, of Lotus Towers Community Centre, New Friends Colony, New Delhi, having a built-up area of 16810 sq. feet with fittings and fixtures [hereinafter referred to as “premises”] were leased out to the Respondent [hereinafter referred to as the “TATA AIG”] by GATEWAY for a term of three years commencing 01.10.2004, by a registered Lease Deed dated 20.12.2004 [hereinafter referred to as the “Lease Agreement”].
- (ii) The lease rent under the Lease Agreement in respect of the premises was Rs.10,92,650/- per month calculated at the rate of Rs.65/- per sq. feet per month for the super built up area. An interest free security deposit in the sum of Rs.1,31,11,800/- was also paid by TATA AIG.
- (iii) TATA AIG also entered into a Maintenance Agreement dated 01.10.2004 with GATEWAY for availing of maintenance services at the rate of Rs.50/- per sq. feet.



- (iv) The Lease Agreement being for a period of three years expired on 30.09.2007 by efflux of time.
- (v) TATA AIG, by its letters dated 06.07.2007 and 22.08.2007 and thereafter, communicated its intention to renew the Lease Agreement at an increase in the monthly rent at the rate of 15% relying on Clause 2 of the Lease Agreement for a further term of 36 months on the earlier terms and conditions.
- (vi) Since the premises were not vacated on 30.09.2007, by TATA AIG, GATEWAY addressed a communication dated 23.10.2007, informing TATA AIG that it was not interested in renewing the Lease Agreement and called upon TATA AIG to vacate the premises and hand over the possession thereof within 15 days from date of receipt of the said letter.
- (vii) Despite several requests TATA AIG did not vacate the premises on the expiry of the Lease Agreement and continued in occupation of the premises till 05.11.2009.
- (viii) By its letter dated 26.11.2007, GATEWAY invoked the Arbitration forming part of the clause 10(q) of the Lease Agreement. Both the parties nominated their respective Arbitrators and the Presiding Officer was appointed by this Court. The coram of the Tribunal comprised former Chief Justice of India, Mr. R.C. Lahoti (retired) as the presiding Arbitrator and Mr. P.V. Kapur and Mr. Ravi Shankar Prasad, Senior Advocates.



- (ix) GATEWAY filed a Statement of Claim *inter-alia* seeking the following:
- (a) Possession of the premises;
 - (b) Mesne profit at the rate of 275/- per square feet, per month in the sum of Rs.6,93,41,250/- for use of the use and occupation by TATA AIG pursuant to the expiry of the Lease Agreement;
 - (c) In the alternate to its claim in (b) above, claim in the sum of Rs.23,29,639.06/- towards payment of service tax on the rental;
 - (d) Difference in the escalated maintenance charges in the sum of Rs. 4,41,262.50/-
 - (e) Rs. 6,36,000/- per month plus service tax at the rate of 53,000/- per month for car parking charges of 16 cars;
 - (f) *Pendente lite* and future interest at the rate of 12% per annum on (b) to (d) above.
- (x) TATA AIG filed its Counter Claim praying for a refund in the sum of Rs. 88,92,531/- with interest thereon, *inter-alia* on account of wrongful deductions made by GATEWAY from the security deposit available with the interest at the rate of 12% per annum from 05.11.2009 onwards.
- (xi) The Arbitral Tribunal by an Interim Award dated 31.05.2010 held that there was no covenant of renewal in the Lease Agreement and therefore at the end of three years from 01.10.2004, and TATA AIG had to hand over vacant possession of the premises to the GATEWAY.



- (xii) The Interim Award was challenged in this Court by filing an OMP No. 583/2010 by TATA AIG. The same was disposed of on 01.10.2010, giving liberty to TATA AIG to challenge the Interim Award along with its challenge to the Arbitral Award.
- (xiii) GATEWAY filed an application for mesne profits/damages, recovery of arrears of maintenance charges, car parking charges, etc. on 26.07.2010 before the Arbitral Tribunal. In support of its claim, for mesne profits, GATEWAY examined two witnesses and brought on record two registered lease deeds in respect of the 3rd and 9th floor of the same building as the premises were situated, dated 24.10.2007 and 15.12.2008, reflecting rentals at the rate of Rs.190/- per sq. ft. per month and Rs.276/- per sq. ft. per month, respectively.
- (xiv) TATA AIG on the other hand, produced lease deeds, which were mostly in respect of premises in the same locality, but not of the same building and were of shops with lesser areas or in some cases were basements. One lease deed was produced with respect to a premises in the same building, but this lease deed was a renewal lease deed.
- (xv) Thus, GATEWAY submitted that at least Rs. 75,000/- per day as damages/mesne profits, was to be paid, i.e., Rs. 133.85/- per sq. ft. per month and on the other hand, as per TATA AIG, the market rate was not more than Rs. 74/- per sq. feet per month was payable.
- (xvi) The Arbitral Tribunal examined the contentions and the evidence led by both the parties and came to a conclusion that both the parties were taking two extreme views and therefore a rate somewhere between the



two rates which was just, fair and reasonable to compensate GATEWAY had to be determined. The Arbitral Tribunal decided that damages/mesne profits in the sum of Rs.85/- per sq. ft. per month was to be paid by TATA AIG.

- (xvii) By the Arbitral Award, the Arbitral Tribunal partially allowed the claim for damages/mesne profits of GATEWAY and awarded a sum of Rs. 3,57,45,058/- towards mesne profits for the period from 01.10.2007 to 05.11.2009, the period during which TATA AIG remained in unauthorized occupation of the premises.
- (xviii) In addition, thereto, the Arbitral Tribunal awarded a sum of Rs.52,378/- to TATA AIG and also directed the parties to jointly calculate the amount of service tax due to the authorities. In the event, that the parties are unable to undertake this exercise, GATEWAY would also be required to pay an additional sum of Rs.5,69,435/- on account of service tax.
- (xix) Aggrieved by the Arbitral Award, GATEWAY filed a Petition under Section 34 of the Act *inter-alia* seeking to partially set aside the Arbitral Award. By an order dated 04.09.2019, challenge in this Petition was restricted to claim 1 *qua* use and occupation charges by GATEWAY.
- (xx) The petition of GATEWAY was dismissed by the Single Judge of this Court by the Impugned Judgment, and thereafter, the present Appeal was filed.



3. Notice in this Appeal was issued on 04.12.2019, however, the matter was not heard on account of the ensuing pandemic. Arguments were thereafter heard and judgment was reserved in the matter.
- 3.1 Although opportunity was given to the parties to file their respective Written submissions. Written submissions were filed by GATEWAY alone.

SUBMISSIONS:

4. Learned Counsel for GATEWAY has raised the following contentions:
 - (i) The Arbitral Tribunal devised its own methodology to grant mesne profit and damages to GATEWAY which was contrary to the evidence brought on record. The quality of evidence brought on record by GATEWAY and TATA AIG were not comparable. Rs 75000/- per day for each day of default was a fair and reasonable compensation as the prevailing market rent during the period when TATA AIG was in illegal occupation of the subject premises was in the range of Rs 190/- to Rs. 276/- per sq. ft. per month and in support of these rates, the witness produced lease deeds of two premises in the same building, where the premises were situated. The statement of GATEWAY's witness that the amount so stipulated was a fair and reasonable compensation had gone completely un rebutted. TATA AIG on the other hand, produced lease deeds which were of the same locality but not of the same building, where the shops were with smaller areas and in one case the premises was in a basement.



- (ii) The Single Judge did not appreciate that the Arbitral Tribunal committed “*patent illegality*” in refusing to give effect to liquidated damages as set forth in Clause 6 of the Lease Agreement and has awarded damages at a much lower rate than was stipulated. The finding of the Arbitral Tribunal that Clause 6 was penal in nature and was given, as such, without holding any inquiry by the Arbitral Tribunal. Despite GATEWAY adducing evidence in support of his contention of the prevailing market rent, mesne profit damages were granted at a much lower rate than the prevailing market rent.
- (iii) It is contended that the challenge was made under Section 34 of the Act as it stood prior to the Arbitration and Conciliation (Amendment Act), 2015. Reliance was placed on *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI)*¹ to submit that the Arbitral Award, being passed prior to the amendment under Section 34 of the Arbitration and Conciliation (Amendment) Act, 2015 which came into effect on 23.10.2015 was governed by the provisions of the Act as it stood prior to the amendment. Hence, the grounds of public policy and “*patent illegality*” as enunciated by the Supreme Court in *Associate Builders Vs. DDA*² would apply.
- (iv) The Single Judge failed to appreciate the settled position of law *qua* the liquidated damages to be awarded in similar circumstances.

¹ 2019 SCC OnLine SC 677

² 2015(3) SCC 49



Reliance was placed on the judgments in *Associate Builders* case and *M/s. Pawan Hans Helicopters Ltd. v M/s. Maritime Energy Heli Air Services Pvt. Ltd.*³ to submit that where material evidence is ignored, the Award is “*patently illegal*”.

5. Learned Counsel for TATA AIG has *inter-alia* relied on the Impugned Judgment and the Arbitral Award to submit that both the Arbitral Tribunal and the Single Judge have correctly interpreted Clause 6 of the Lease Agreement and that there is no “*patent illegality*” or infirmity in the Arbitral Award or the Impugned Judgment.
- 5.1 By order dated 18.08.2023, this Court had granted TATA AIG an opportunity to file its written submissions within a week. However, no written submissions have been filed by TATA AIG till date.

ANALYSIS:

6. The dispute between the parties is restricted to the claim of damages and mesne profits for the occupation of the premises for the period from 01.10.2007 to 05.11.2009, after the expiry of the Lease Agreement.
- 6.1 Since the Arbitral Award was passed on 20.11.2014, there is no dispute that the Act as it stood prior to its amendment in 2015, and as is discussed in *Ssangyong Engineering* case shall apply.
7. GATEWAY has challenged the interpretation of the Clause 6 of the Lease Agreement given by Arbitral Tribunal including on the ground

³ 2017 SCC OnLine Del 8773



of it being contrary to public policy and it being “patently illegal”.

Clause 6 of the Lease Agreement reads as follows:

“In case the LESSEE fails to hand over vacant possession of the Demised Premises (including the car parking spaces) to the LESSOR on the expiry or termination of the Lease Deed despite the LESSOR being willing to refund the security deposit as provided in Clause 5.1 above, then without prejudice to the LESSOR’s right to take legal action, the LESSEE shall pay a penal rent of Rs. 75,000 (Seventy Five Thousand Only) per day to the LESSOR. Nothing in this clause shall apply if the LESSEE has not returned the Demised Premises on account of non-refund of the Security Deposit by the LESSOR”

7.1 This challenge was also raised by GATEWAY before the learned Single Judge by GATEWAY. Paragraph nos. 37 and 38 of the Impugned Judgment deals with these contentions of GATEWAY in the following manner:

37. The Arbitral Tribunal was of the view that both the parties were taking an extreme view and that the evidence led by them failed to provide a sound and satisfactory basis to the Tribunal to arrive at a figure of rate of rent at which the subject premises could have been let out during the period of unauthorized occupation. The Tribunal also interpreted the recital in the lease deed and came to a finding that the rent at the rate of Rs. 75,000/- per day mentioned in the said recital itself is referred to as a 'penal rent' in the recital and since the rate of rent at which the premises were let out was only Rs. 65/- per sq. feet per month, this amount being double, was actually exorbitant and hence 'penal'. Interpreting the clause, the Tribunal has further held that though the parties had agreed upon the said figure of Rs. 75,000/- yet a clause which is penal in nature can be refused to be enforced by a judicial or a quasi-judicial forum.

38. The Tribunal, thereafter, having interpreted recital no. 6 adopted a methodology to arrive at a figure which would provide a reasonable and fair compensation/damage to the petitioner. The Tribunal relied on clause 3 of the lease deed



which provided for payment of rent with an escalation of 15% on the expiry of three years from 01.10.2004. Therefore, if the lease deed would have been renewed, the petitioner would have got an escalation of 15% only. However, the Arbitral Tribunal also took cognizance of the fact that if the premises had been vacated at the end of the expiry of the lease, the landlord would have inducted another tenant who would have paid a still higher rate of rent than a mere escalation of 15%. The Tribunal thus awarded an additional factor of 15% and thereby calculated the rate of compensation by taking Rs. 65/- per sq. feet per month escalated by 30%, which worked out to Rs. 84.50/- rounded up to Rs. 85/- per sq. feet per month. Thus, the Arbitral Tribunal has awarded to the petitioner Rs. 3,57,45,058/- @ Rs. 85/- per sq. feet per month towards damages by way of compensation for the entire period in which the respondent was in unauthorized occupation. A reading of the relevant portion of the award shows that the Arbitral Tribunal has given an interpretation to recital no. 6 holding that the rent envisaged @ Rs. 75,000/- is penal. In my view, this Court cannot, in exercise of its power under Section 34 of the Act interfere with the interpretation of the terms of the contract, given by the Arbitral Tribunal.

[Emphasis is ours]

- 7.2 Relying on the judgment in the case of *Associate Builders* case, the Single Judge held that it is settled law that the Court cannot interfere with the interpretation given by the Arbitrator in a matter which is squarely in the domain of the Arbitral Tribunal so long as it is a reasonable construction and based on the intent of the parties gathered from the circumstances.
- 7.3 The Supreme Court in the *Associate Builders* case has held that the Court while applying “public policy” test to an Arbitral Award does not act as a Court of Appeal and consequently, errors of fact cannot be corrected. The Arbitrator examines the quality and quantity of



evidence placed before him when he delivers his Arbitral Award and view, which is possible on the facts as set forth by the Arbitrator must be relied upon.

- 7.4 The Arbitral Tribunal has, after examining the evidence placed before it, noted that the evidence led by both the parties failed to provide a “*satisfactory basis to the Tribunal*” to arrive at a figure of mesne profits/damages. Hence, the Arbitral Tribunal used other material on record to arrive at a reasonable rent which included a discussion on penal rent; the rental escalation clause at the rate of 15% of the Lease Agreement in the event of a renewal; and inflationary market tendencies.
- 7.5 Thus, the Arbitral Tribunal has given its reasons for not strictly enforcing the rate of damages as set forth in Clause 6 of the Lease Agreement. We find no infirmity in the reasoning of the Arbitral Tribunal.
8. While placing emphasis on Section 28(3) of the Act, it is further contended by learned Counsel for GATEWAY that the Arbitral Tribunal by ignoring the penal rent of Rs.75,000/- per day, as set forth in Clause 6 of the Lease Agreement, has affixed mesne profits without taking into account the specific term of the contract between the parties and thus the Arbitral Award is hit by the rules applicable to ‘*patent illegality*’ as set forth, *inter-alia* in the ***Associate Builders*** case.
- 8.1 It is apposite to refer, how “*patent illegality*” has been interpreted. The Supreme Court in the ***Associate Builders*** case has held that the



terms of the contract are to be interpreted in a reasonable manner by the Arbitral Tribunal:

“42. In the 1996 Act, this principle is substituted by the “patent illegality” principle which, in turn, contains three subheads:

42.1. (a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1)(a) of the Act, which reads as under:

“28. Rules applicable to substance of dispute.—(1)

Where the place of arbitration is situated in India—

(a) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;”

42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.

42.3. (c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:

“28. Rules applicable to substance of dispute.—

*(1)-(2)****

(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.”

This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in



such a way that it could be said to be something that no fair-minded or reasonable person could do.”

[Emphasis is ours]

8.2 Recently the Supreme Court while considering the interpretation of “patent illegality”, as it existed prior to the 2015 amendment of the Act, in *State of Chhattisgarh v. SAL Udyog (P) Ltd.*⁴, and the judgments in the *Associate Builders* case and in case of *Delhi Airport Metro Express (P) Ltd. v. DMRC*⁵, briefly summarized the concept of “patent illegality” as follows:

“16. In Delhi Airport Metro Express (P) Ltd. [Delhi Airport Metro Express (P) Ltd. v. DMRC, (2022) 1 SCC 131] referring to the facets of patent illegality, this Court has held as under : (SCC p. 150, para 29)

“29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression “patent illegality”. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression “patent illegality”. What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with

⁴(2022) 2 SCC 275

⁵(2022) 1 SCC 131



matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression “patent illegality”.”

[Emphasis is ours]

- 8.3 A plain reading of provisions of Section 28(3) of the Act shows that Arbitral Tribunal is to render its decision in accordance with the terms of the contract [herein the Lease Agreement] and also taking into account the usages of the trade applicable to the transaction. This is exactly what has been done by the Arbitral Tribunal.
- 8.4 The Arbitral Award, has in great detail explained how the Arbitral Tribunal has reached a finding that the rate of damages @ Rs. 85/- per sq. ft. per month should be the basis on which damages/mesne profits should be awarded. For the sake of convenience, paragraph nos. 47, 48 and 49 of the Arbitral Award is extracted hereafter:

“47. Thus, in short, the evidence of both the parties fails in providing a sound and satisfactory basis to the Tribunal to arrive at a figure of rate of rent at which the subject premises could have-been let out by the landlord during the period 01-07-2007 to 04-11.2009.

*48. There is some other material available on record which can help us in finding out a reasonable rate of rent. We have, in para 32 above, extracted and reproduced two clauses from the lease deed dt. 21-12-2004 in respect of the premises under consideration. **The rate of rent appointed therein is Rs. 65/- per sq.ft. per month. Clause 6 of the lease deed which provides for the payment of rent @ Rs. 75,000/- per day itself records that it***



was 'a penal rent'. Though agreed upon by the parties, yet a clause which is penal in nature may be refused to be enforced by a judicial or a quasi judicial forum. On the contrary, Clause 3 provides for payment of rent with an escalation of 15% in the monthly rent (and also in security deposit) on the expiry of three years from 01-10-2004, the date of commencement of tenancy. If only the lease deed would have been liable to be renewed, the landlord would have got an escalation of 15% only. At the same time keeping in view the inflationary market tendencies it will be reasonable to assume that in the event of the premises being vacated, the landlord would have been, in a position to find out another tenant who may have been willing to pay a still higher rate of rent. An additional factor is that not only the rate of rent would have increased, but the landlord would have also got additional interest free security deposit enabling him to earn some more interest.

49. Thus, keeping in view all the relevant facts and circumstances of the case as discussed hereinabove, and in the absence of there being any positive evidence enabling formation of a different view, y/e are of the opinion that it would meet the ends of justice, if the rate of compensation for use and occupation payable by the Respondent to the Claimant is appointed at Rs. 85/- per sq. ft. per month escalated by 30% i.e. at Rs. 84.50, rounded up to Rs. 85/- per sq. ft. per month. We hold that for the period beginning with 01-10-2007 and continuing upto 05-11-2009, the date on which the premises were vacated by the Respondent the Claimant is entitled to damages by way of compensation for use and occupation by the Respondent of the Claimant's premises which comes to Rs. 14,28,850/- (16,810/- multiplied by Rs. 85/-) per month, making a total of Rs. 3,57,45,058/- (25 months and five days) for the entire period of the Respondent continuing in occupation."

[Emphasis is ours]

- 8.5 As stated above, the Arbitral Tribunal found that the views taken by both GATEWAY and TATA AIG were somewhat extreme and thus devised a formula to arrive at the figure of rent on which the premises could have been let out. After taking into account the amounts already



paid and the Security Deposit deducted, a sum of Rs. 41,63,918/- was awarded to GATEWAY as per paragraph 50 of the Arbitral Award as under:

<i>Mesne Profits for the period 01.10.2007 to 05.11.2009</i>		3,57,45,058/-
<i>Amount paid by Respondent to the Claimant under the interim orders of the High Court dated 05.12.2007</i>	3,01,57,052/-	
<i>Amounts deducted from the security deposit</i>	12,56,548/- 1,67,540/-	
		3,15,81,140/-
<i>Net entitlement of the Claimant</i>		41,63,918/-

- 8.6 Thus, the Arbitral Tribunal in its wisdom devised a methodology to find out an amount that would not be prejudicial to both the parties, and hence, does not fall within the contours of “*patent illegality*” principle as enunciated in the *Associate Builders* case.
9. The contention of GATEWAY that the methodology for calculation of mesne profit/damages has ignored the evidence brought on record by GATEWAY and the settled law on damages, is untenable as well.
- 9.1 The Arbitral Tribunal came to a finding that rental as deposited at the time of entering into the contract [herein the Lease Agreement] was Rs.65/- per sq. ft. per month. In these circumstances, an amount of Rs.75,000/- per day or at the rate of Rs. 133.85/- per sq. ft. per month payable as damages on breach would be more than double of the rent



and such could not be held to be reasonable compensation as laid down in the foregoing judgments.

- 9.2 The Single Judge has dealt with this contention in detail and while relying on the landmark judgments in the case of *Fateh Chand v. Balkishan Dass*⁶, *Union of India v. Raman Iron Foundry*⁷, *Kailash Nath Associates v. Delhi Development Authority & Anr*⁸ and *Oil & Natural Gas Corporation Ltd. v. Saw Pipelines Ltd.*⁹ of the Supreme Court has held that whether the clause is penal or a pre-estimate of the damage, would depend on its construction and its surrounding circumstances at the time of entering into a contract.
- 9.3 It was contended by GATEWAY that the ratio as laid down in the *Pawan Hans* case on grant of liquidated damages was not followed by the Arbitral Tribunal. The facts in the *Pawan Hans* case were that a contract between the parties provided for the delivery of a sea plane at Port Blair and time was of the essence in the said contract. A Coordinate Bench of this Court while relying on *ONGC* case and *Maula Bax v. Union of India*¹⁰, held that the levy of liquidated damages as determined in Clause 5 of the contract between the parties was a genuine pre-estimate of damages and could be granted.

⁶ AIR 1963 SC1405
⁷ 1974 (2) SCC231
⁸ (2015) 4 SCC 136
⁹ 2003 (5) SCC 705
¹⁰ (1969) 2 SCC 554



- 9.4 Reliance on this judgment in the present facts and circumstances is misconceived, as the facts and surrounding circumstances were completely different from the present case, wherein liquidated damages are being sought for continuous occupation of a property after expiry of a Lease Agreement.
10. Learned Counsel for TATA AIG has contended that all the objections and grounds raised by GATEWAY have been previously raised before the Single Judge and already adjudicated upon.
- 10.1 We find ourselves in agreement with the learned Counsel for TATA AIG. The objections and grounds raised by GATEWAY before this Court are mostly a reproduction of the grounds/objections raised before the Arbitral Tribunal and the Single Judge. Thus, adjudication thereupon has already taken place by two forums.
11. In exercise of powers under Section 37 of the Act, the scope of interference of the Courts is narrow. The law is no longer *res integra*. Where the Arbitral Tribunal has assessed the evidence and material placed before them while considering the objections to the Arbitral Award, the Court does not sit as a Court of Appeal or re-appreciate and re-assess the evidence. Unless there is a “*patent illegality*” or perversity, interference by the Court is not warranted. Merely because another view is possible, the Court will not interdict the Arbitral Award.

**CONCLUSION:**

12. In view of the foregoing discussion, and being of the opinion that the view taken by the Arbitral Tribunal as upheld by the Single Judge, is certainly a possible view based on facts in relation to the merits of the disputes, we find no ground to interfere in the Arbitral Award and/or the Impugned Judgment as no infirmity or illegality exists in the Impugned Judgment that would merit such interference.
13. Accordingly, the Appeal and all pending Applications are dismissed.
14. There shall be no orders as to costs.
15. File be consigned to Record.

TARA VITASTA GANJU, J

RAJIV SHAKDHER, J

SEPTEMBER 05, 2023/r.