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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 5/2020 & I.A. 6813/2020

MEERA GOYAL

.... Petitioner

Through: Mr. Ashwini Kumar Mata, Sr.
Adv. with Mr. Abhishek Puri, Mr. V.
Siddharth and Mr. Surbhi Gupta and Mr.
Karan Gaur, Advs.

versus

PRITI SARAF

..... Respondent

Through: Ms. Manisha Parmar, Mr.
Kapil Chaudhary, Advs.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****J U D G M E N T**

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04.12.2023

[Statutory provisions have been reproduced in footnotes only to the extent they are relevant.]

1. Meera Goyal (“Meera” hereinafter) challenges, in this petition under Section 34¹ of the Arbitration and Conciliation Act 1996 (“the

¹34. **Application for setting aside arbitral award. —**

- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
- (2) An arbitral award may be set aside by the Court only if—
- (a) the party making the application 45[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

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1996 Act”), award dated 8 May 2020 passed by the learned Sole Arbitrator in an arbitration instituted against Meera by the respondent Priti Saraf (“Priti” hereinafter).

2. The learned Arbitrator has awarded Priti ₹ 38 crores along with interest thereon, @ 9 % p.a. w.e.f., 30 January 2013 till realisation.

Facts

3. The dispute emanates from an Agreement to Sell (ATS) dated 24 December 2011 executed between Meera and Priti. By the said

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

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1. – For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, —

(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.

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.

(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

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agreement, Priti agreed to purchase 1205.23 sq. yds. of a property owned by Meera situated at 37, Friends Colony (East), New Delhi (“the disputed property”). Meera came into possession of the disputed property *vide* sale deed dated 4 May 2005. The total area of the property, as owned by Meera, was 3930 sq. yds. The following covenants of the ATS are relevant:

“1. That in consideration of the aforesaid total sale consideration of Rs. 63,28,50,750/- (Sixty Three Crores Twenty Eight Lacs Fifty Thousand Seven Hundred and Fifty Only) and upon the terms and conditions contained herein, the VENDOR doth hereby agree to sell, convey, transfer and assign the SAID PROPERTY (fully described above) with all fittings, fixtures, connections, structure standing thereon, free from all encumbrances, unto the VENDEE.

2. (a) That out of the total sale consideration, the VENDEE has paid to the VENDOR a sum of Rs. 12,50,00,000/- (Rupees Twelve Crores Fifty Lacs Only), as earnest money at the time of execution of this Agreement to Sell, vide Manager’s Cheque No. 068829, dated 24.12.2011, drawn on HDFC Bank, New Friends Colony, New Delhi, the receipt of which the VENDOR hereby admits and acknowledges.

(b) The payment of the balance sale consideration of Rs. 50,78,50,750/- (Rupees Fifty Crores Seventy Eight Lacs Fifty Thousand Seven Hundred and fifty only) will be paid by the VENDEE to the VENDOR on or before 07.04.2012, subject to completion of the Compulsory Requirements by the VENDOR, simultaneously when the vacant physical possession of the SAID PROPERTY will be delivered by the VENDOR to the VENDEE and also all the deeds and documents as may be required by the VENDEE for the conveyance, transfer and sale of the SAID PROPERTY will also be executed and registered by the VENDOR in favour of the VENDEE or her nominee.

3. That upto 24.03.2012, the VENDOR shall complete the following Compulsory Requirements, at her own cost and expenses:-

a) Pay/Settle/Clear all the dues of the said Bank and also obtain No Dues Certificate and get all the original title deeds released from the Bank.



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b) Get the building plan sanction from the authorities concerned for the re-construction of the ENTIRE PROPERTY (for which drawings on the SAID PROPERTY shall be provided by the VENDEE to the VENDOR upto 10.01.2012), as an incidence whereof, the VENDEE be permitted to construct/re-construct a fresh residential building comprising of Basement, Stilts, Ground, First, Second and Third Floors with Terrace on the SAID PROPERTY by utilizing proportionate FAR and proportionate number of dwelling units as may be available for the entire plot of land. It is clarified that the costs and expenses incurred in getting such building plans sanctioned shall be paid and borne by the VENDEE, immediately so being demanded by the VENDOR, which cost have been mutually agreed between the parties to be approx. 20 to 22 lacs. Further, it is agreed that the drawings/ plans to be provided by the VENDEE shall adhere to building byelaws.

herein referred to as 'THE COMPULSORY REQUIREMENTS'. Upon completion of the Compulsory Requirements, the Vendors will inform the VENDEE by registered A.D. Post.

4. That the actual physical vacant possession of the SAID PROPERTY will be delivered by the VENDOR to the VENDEE, on receiving the balance sale consideration.

5. That it has been specifically agreed between the parties, that time is the essence of this Contract, and in case the VENDEE fails to make the payment of balance sale consideration to the VENDOR, within the stipulated period upto 10.04.2012, subject to the completion of the compulsory requirements by the VENDOR, then the earnest money so received by the VENDOR from the VENDEE shall stand forfeited and this Agreement to Sell shall be treated as cancelled without any further reference to the VENDEE by refund of the remaining amount hereby received back to the VENDEE. HOWEVER, in case the VENDOR fails to complete the compulsory requirements upto 24.03.2012 and thereafter execute and register sale deed in respect of the SAID PROPERTY in favour of the VENDEE or her nominee(s) within the period as herein agreed, despite the VENDEE being ready and willing to pay the balance sale consideration, then the VENDEE shall have right to get this transaction enforced through the court of law by specific performance at the cost and expenses of the VENDOR.

9. That pending completion of the sale, the VENDOR shall not enter into any agreement of sale in respect of the SAID

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PROPERTY or any part thereof nor the VENDOR will in any manner create any charge, mortgage and or deal with the SAID PROPERTY in any manner or enter into any arrangement in respect of the SAID PROPERTY.

11. That self attested Photostat Copies of all relevant documents in respect of the ENTIRE PROPERTY have been handed over by the VENDOR to the VENDEE and all original documents in respect of the ENTIRE PROPERTY as are presently available (viz. Sale Deed dated 04.05.2005, in favour of the Vendor) shall be kept by the VENDOR, for the VENDEE and other owners of the ENTIRE PROPERTY and hereby undertakes to show/produce the same as and when asked/required by the VENDEE and hereby further undertakes not to encumber the same with respect to the SAID PROPERTY, under any circumstances.

23. That any dispute or difference arising out of or in relation to or in connection with this agreement including without limiting the disputes relating to a breach or non-compliance with the terms of this Agreement shall be settled by arbitration by a Sole Arbitrator appointed by the parties. The sole arbitrator shall be mutually appointed by the parties within 30 days of the dispute occurring, failing which the arbitrator shall be appointed in accordance with the Arbitration & Conciliation Act, 1996. The seat and venue of arbitration shall be at New Delhi and the arbitration proceedings shall be conducted in accordance with the Arbitration & Conciliation Act, 1996 and rules made thereunder for the time being in force.”

4. Thus, sub-clauses (a) to (c) of clause 3 of the ATS required Meera to comply with certain Compulsory Requirements on or before 24 March 2012. Three such requirements were envisaged. Sub-clause (a) required Meera to clear the dues payable to the State Bank of Patiala (hereinafter “the Bank”), from whom Meera had availed a loan, obtain a No Dues Certificate from the Bank and get the original title deeds of the disputed property released from the Bank. Sub-clause (b) required her to get the building plans of the disputed



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property sanctioned from the Municipal Corporation of Delhi (MCD) for the purposes of reconstruction. Sub-clause (c) required her to get the property demarcated by installation of pillars. Meera was required to convey, to Priti, the compliance of the aforesaid Compulsory Requirements by Registered AD post.

5. The ATS recorded that the total sale consideration for the disputed property was ₹ 63,28,50,750/-, out of which ₹ 12.5 crores was paid by Priti to Meera at the time of execution of the ATS as earnest money. The balance amount of ₹ 50,78,50,750/- was payable by Priti to Meera on or before 7 April 2012, subject to completion of the afore-noted Compulsory Requirements by Meera. In that event, vacation and physical possession of the property was also required simultaneously to be handed over by Meera to Priti along with all documents necessary for transfer of title in respect of the disputed property.

6. Clause 5 of the ATS envisaged time as being of the essence of the contract, and provided for the consequence in the event of default either by Meera or by Priti of their respective obligations. In the event of completion, by Meera, of the Compulsory Requirements, and failure on the part of Priti to make payment of the balance sale consideration to Meera till 10 April 2012, the earnest money of ₹ 12.5 crores paid by Priti to Meera would stand forfeited and the ATS would be liable to be treated as cancelled, with Priti being entitled to refund only of the further amount of ₹ 5.4 crores paid by her. If, however, Meera failed to comply with the Compulsory Requirements up to 24



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March 2012 and thereafter to execute and register the sale deed in respect of the disputed property in favour of Priti, within the time stipulated in that regard, despite Priti being ready and willing to pay the balance sale consideration, Priti would have the right to have the transaction enforced through the court of law by seeking specific performance.

7. On 24 December 2011, Meera handed over 11 postdated cheques (PDCs) to Priti as security, covering a total amount of ₹ 25.5 crores. According to Meera, the said cheques included the earnest money amount of ₹ 12.5 crores paid by Priti to her. The cheques, being of three months' validity, expired between 10 August 2012 and 30 August 2012.

8. The case of Priti, as set up before the learned Arbitrator, was that Meera failed to comply with the Compulsory Requirements before the *terminus ad quem* of 24 March 2012, though additional time in that regard was also granted by Priti.

9. The impugned award has substantially rejected this contention of Priti. The learned Arbitrator holds that sub-clauses (b) and (c) of Clause 3 of the ATS were in fact fulfilled by Meera and clause (a) was also partly fulfilled, to the extent of clearance of the dues of the Bank and obtaining of a No Dues Certificate. The learned Arbitrator has found Meera, however, to be remiss in her obligation under Clause 3 of the ATS to the extent of the requirement of getting the original title deeds of the disputed property released from the bank.



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10. The findings against Priti, to the extent of substantial compliance, by Meera, with the Compulsory Requirements envisaged by Clause 3 of the ATS, are not under challenge by Priti. They have, therefore, to be taken as correct. The only default, on Meera's part, in respect of compliance with the Compulsory Requirements envisaged only in Clause 3 of the ATS was, as per the impugned award, therefore, only in failing to have the original title deeds of the disputed property released from the bank.

11. Meera's contention, both before the learned Arbitrator and before this Court, is, however, that she had complied with the Compulsory Requirements envisaged in Clause 3 of the ATS, albeit belatedly. The delay in compliance with the Compulsory Requirements, according to Meera, was because Priti defaulted in her obligation to submit the building plans in respect of the disputed property on or before the last week of January 2012. Meera contends, however, that, even if it were to be presumed that there was delay on her part in complying with the Compulsory Requirements envisaged by Clause 3 of the ATS, that did not extend the date of 10 April 2012, by which date Priti was required to pay the balance sale consideration to Meera. The additional time granted by Priti to Meera to comply with the Compulsory Requirements, too, according to Meera, did not extend the said date.

12. Meera's case, before the learned Arbitrator as well as before this Court, is that it was Priti who defaulted in her obligation to pay the balance sale consideration to Meera on or before 10 April 2012.



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13. On 11 May 2012, Meera wrote to Priti, informing her that the building plans, in respect of disputed property, had been sanctioned by the MCD. On 2 June 2012, No Dues Certificate was obtained by Meera from the bank, and the requirement of the demarcation of the dispute property by erection of pillars was also fulfilled. According to Meera, with this, the Compulsory Requirements envisaged in Clause 3 of the ATS stood met by her. At the highest, therefore, contends Meera, Priti would have had to make the balance payment of the sale consideration within 17 days (being the difference between 10 April 2012 and 24 March 2012) from 2 June 2012, which also expired on 19 June 2012. Priti, however, failed to make the balance payment even by 19 June 2012.

14. On 23 May 2012, Priti made an additional payment of ₹ 5.4 crores to Meera. According to Meera, this payment was made only because the building plans in respect of the disputed property had been sanctioned by the MCD on 11 May 2012. According to Priti, however, the said payment was made at Meera's request.

15. As the 11 PDCs for ₹ 25.5 crores, handed over by Meera to Priti, had expired, Priti wrote on 26 February 2013 to Meera, requesting her to revalidate the cheques and hand over the possession of the disputed property to Priti. Further, according to Priti, as Meera had failed to comply with the Compulsory Requirements on or before 24 March 2012, it was agreed between the parties that Priti could pay the balance sale consideration as per mutual agreement between them.



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16. Meera has, however, denied both these assertions, i.e., that Priti requested Meera to revalidate the cheques and hand over possession of the disputed property to her and that there was any agreement, between them, re-scheduling the period within which Priti was to make payment of the balance sale consideration to Meera.

17. According to Priti, the default, on Meera's part, in complying with the Compulsory Requirements envisaged in Clause 3 of the ATS by 24 March 2012 resulted in novation of Clause 3 of the ATS within the meaning of Section 62² of the Indian Contract Act.

18. Besides refuting the plea of novation, Meera further averred, before the learned Arbitrator, that there was no pleading to the said effect. Priti, however, sought to point out, before the learned Arbitrator, that a specific plea to this effect was contained in sub-paras (v) to (xii) of the Statement of Claim (SOC), filed by Priti, before the learned Arbitrator, which read thus:

“v. That, after completion of the aforesaid requirements, which was to be done by the Respondent latest by 24.03.2012, the Claimant was to pay the balance Sale Consideration to the Respondent by 10.04.2012. It was specifically agreed between the parties in the said Agreement that time was the essence of the contract and in case the Respondent failed to complete the aforesaid requirements by 24.03.2012 and as a result thereof failed to execute and register a Sale Deed in favour of the Claimant within the stipulated period, the Claimant shall have the right to get the transaction through a Court of Law.

vi. It is pertinent to mention herein that despite the fact that the Respondent had to fulfil the aforesaid compulsory requirements before the execution and registration of the Sale Deed, the Claimant still paid such a huge sum of Rs. 12,50,00,000/- to the

² 62. **Effect of novation, rescission and alteration of contract.** – If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.



Respondent at the stage of execution of the Agreement, purely at the insistence of the Respondent who purportedly was in dire need of money at that time. That in order to secure the interests of the Claimant, the Respondent handed over certain post-dated cheques for a sum of Rs. 25,50,00,000/- to the Claimant as security with the clear understanding that in case the transaction is not effected due to any default on the part of the Respondent, the Claimant shall be entitled to the amount of Rs. 25,50,00,000/- towards damages and injury by encashing the said cheques.

vii. However, despite the clear and unequivocal terms and conditions enumerated in the Agreement, the Respondent failed to complete the aforesaid requirements within the time stipulated in the Agreement (i.e. on or before 24.03.2012). That the Respondent approached the Claimant and requested her to extend the time period for completing the said requirements on the pretext that the Respondent was trying to complete the requirements at the earlier. Even though time was the essence of the contract, as was also categorically enumerated therein, the Claimant agreed to grant some additional time to the Respondent for completing the requirements.

viii. The building plans were sanctioned on 11.05.2012 and at the request of the Respondent, the Claimant paid a further sum of Rs. 5,40,00,000/- (Rupees Five Crore and Forty Lakhs) to the Respondent. However, the Respondent still did not manage to obtain a No Dues Certificate from the State Bank of Patiala, which was one of the mandatory requirements under the Agreement. It is pertinent to mention herein that since the Respondent had failed to complete the aforesaid compulsory requirements enumerated in the Agreement on or before 24.03.2012, it was agreed by the Respondent that the balance sale consideration amount of Rs. 50,78,50,750/-, which was payable by the Claimant to the Respondent under the terms of the Agreement, would be paid by the Claimant in the manner which would be mutually agreed to between the parties subsequently. Accordingly, Clause 5 of the Agreement, under which the Claimant was to pay the balance sale consideration to the Respondent, subject to the completion of the aforesaid compulsory requirements by the Respondent on or before 24.03.2012, stood novated by the conduct of the Respondent. It is pertinent to mention herein that as a result of the omissions of the Respondent in completing the compulsory requirements within the stipulated time the Claimant had lost her trust in the Respondent and accordingly at the time of payment of the further amount of Rs. 5,40,00,000/- the Claimant requested the Respondent to either revalidate the cheque issues by the Respondent (for the amount of Rs. 22,50,00,000/-) or to handover the possession of the Property to the Claimant. However, the Respondent failed to either



revalidate the cheques or handover the possession of the property to the Claimant.

ix. That on 30.01.2013, the Claimant was shocked to receive a purported termination letter dated 30.01.2013 issued by the Respondent thereby levelling false, frivolous and concocted allegations against the Claimant. The said letter was issued by the Respondent with a view to defraud and cheat the Claimant and was a clear attempt on the part of the Respondent to avoid her obligations under the Agreement. Along with the said letter, the Respondent sent a cheque of Rs. 5,40,00,000/- to the Claimant and retained the balance amount which had been paid by the Claimant towards the Sale Consideration. It is submitted that the said letter was issued by the Respondent in order to defeat the legitimate rights of the Claimant under the Agreement and to illegally and unlawfully grab the hard-earned money of the Claimant. It is clear that the purported termination letter was a feeble attempt on the part of the Respondent to take advantage of his own wrong as the aforesaid Clause 5 of the Agreement stood novated solely due to the conduct of the Respondent in not completing the compulsory requirements within the time stipulated in the Agreement.

x. That the Claimant, vide her letter dated 26.02.2013, duly replied to the purported termination letter, categorically stating therein that the Agreement was still valid, subsisting and binding and called upon the Respondent to perform her part of the Agreement. It was further stated in the said reply that since the Agreement was still valid and Clause 5 of the Agreement stood novated by the conduct of the Respondent, she was not entitled to forfeit the sum of Rs. 12,50,00,000/- paid by the claimant to the Respondent and she was also not entitled to invoke the provision for termination of the Agreement contained in Clause 5. Further, since the validity of the post-dated cheques issued by the Respondent to the claimant as security for the performance of the Agreement had expired, the Claimant called upon the Respondent to furnish fresh cheques for a sum of Rs. 25,50,00,000/- as security for the performance of the Agreement. Further, the Claimant even issued two further letters dated 13.03.2013 and 23.05.2013 to the Respondent thereby categorically reiterating that Clause 5 of the Agreement stood novated by the conduct of the Respondent and that the Agreement to Sell is still valid and subsisting and that the Respondent was not entitled to forfeit the amount of Rs.12,50,00,000/- paid by the Claimant to the Respondent.

xi. That upon the failure of the Respondent to perform her obligations under the Agreement or to pay the aforesaid amount of Rs.12,50,00,000/- to the Claimant, the Claimant approached the Economic Offences Wing of the Delhi Police on 24.11.2014 and filed a Complaint against the Respondent for fraud, cheating,



criminal misappropriation and breach of trust. Further, on 04.05.2015, the Claimant also issued a letter to the Joint Commissioner of Police, Economic Offences Wing, New Delhi thereby reiterating the aforesaid Complaint against the Respondent. That the Claimant even filed an Application under Section 156(3) of the Code of Criminal Procedure, 1973 against the Respondent before the Court of the Chief Metropolitan Magistrate, Saket District Courts for the registration of an FIR against the Respondent, which was allowed by the Hon'ble Court vide its order dated 15.11.2016 and the Police were directed to register an FIR against the Respondent. However, the Respondent has still neither performed her obligations under the Agreement nor has she refunded the money along with the damages to the Claimant.

xii. That from the conduct of the Respondent, it became clear to the Claimant that right from the inception, the intention of the Respondent was to cheat and defraud the Claimant and to grab the hard-earned money of the Claimant and that the Respondent had no intention of parting with her property. Constrained by the failure of the Respondent to refund the money of the Claimant (along with the damages which had been agreed upon between the parties), the Claimant initiated arbitration proceedings against the Respondent by sending her a legal notice dated 28.01.2016 for invoking the arbitration clause in the Agreement and for commencement of arbitration proceedings to recover the money (along with damages) illegally and unlawfully retained by the Respondent.”

19. On 28 December 2012, Meera wrote to Priti alleging that Priti had failed to pay the balance sale consideration on or before 10 April 2012 and further stating that, if the said amount was not paid by Priti within 15 days, Meera would terminate the ATS, forfeit the earnest money of ₹ 12.5 crores paid by Priti and return, to Priti, the later payment of ₹ 5.4 crores made by her.

20. Meera contends that Priti failed to pay the balance sale consideration even within this later period of 15 days stipulated by Meera in her letter dated 28 December 2012 so that, on the expiry of the said period of 15 days, Meera became entitled to terminate the ATS, and forfeit the earnest money of ₹ 12.5 crores paid by Priti after



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refunding, to Priti, the second payment of ₹ 5.4 crores made by her.

21. On 30 January 2013, Meera again wrote to Priti, stating that she was terminating the ATS and enclosing, with the letter, a cheque for ₹ 5.4 crores. The said cheque was admittedly encashed by Priti. Meera's contention is that this act of encashment amounted to deemed acceptance, by Priti, of the terms of the letter dated 30 January 2013 including the factum of termination of the ATS. She relies, for this purpose, on Section 8 of the Contract Act as well as the judgment of the Supreme Court in *Bhagwati Prasad Pawan Kumar v. U.O.I.*³. The said communication was followed up by reminders on 13 March 2013 and 23 May 2013.

22. That both the aforesaid letters dated 28 December 2012 and 30 January 2013 were in fact received by Priti, is manifest from the fact that Priti provided a consolidated response *vide* letter dated 26 February 2013, addressed to Meera. Priti asserted, in the said reply, that Clause 5 of the ATS, which envisaged the balance sale consideration being made by Priti on or before 10 April 2012, stood novated by the default, on Meera's part, to comply with the Compulsory Requirements stipulated in Clause 3 of the ATS on or before the cut off date of 24 March 2012. As such, she refuted Meera's contention that she was entitled to terminate the ATS. Priti asserted that the ATS continued to remain valid and subsisting and called upon Meera to comply with her obligations thereunder. She also asserted, therefore, that Meera had no right to forfeit the earnest



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money of ₹ 5.4 crores paid by Priti. Priti reiterated her request to Meera to revalidate the cheques of ₹ 25.5 crores handed over by Meera which had expired by efflux of time.

23. As none of the communications elicited any response from Meera, Priti addressed a notice, under Section 21⁴ of the 1996 Act, to Meera on 28 January 2016, purporting to invoke arbitration in terms of Clause 23 of the ATS.

24. Meera, however, denies receipt of the aforesaid notice dated 28 January 2016, addressed by Priti to her.

25. This denial constitutes a main bone of contention between Meera and Priti. Meera's contention is that the original notice dated 28 January 2016, and the postal receipt evidencing service of the said notice on Meera, never saw the light of day and that Priti only filed a certified copy of the said notice before the learned Arbitrator after conclusion of arguments. She further contends that, as the notice dated 28 January 2016 is not a public document, no presumption of validity attaches to it under the Indian Evidence Act, 1872 and that, therefore, Priti had necessarily to prove the document by moving an application to lead secondary evidence. Meera relies, for this proposition, on the judgment of the Supreme Court in *Dr. Gurmukh Ram Madan v. Bhagwan Ram Madan*⁵.

⁴ **21. Commencement of arbitral proceedings.** – Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

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26. Priti contends, *per contra*, that the plea of non-receipt of the notice dated 28 January 2016 has no legs whatsoever to stand on. She points out that reference to the said notice figures in para 9 of the Arb. Pet. 585/2016 filed by her before this Court (in which this Court referred the dispute to arbitration), which reads thus:

“9. Owing to the failure of the Respondent to perform her obligations under the Agreement or to pay the aforesaid amount to the Petitioner, the Petitioner was constrained to initiate arbitration proceedings against the Respondent by issuing her a legal notice dated 28.01.2016 for invoking the arbitration clause in the said Agreement and for commencement of arbitration proceedings. That the said notice was duly received by the Respondent. Annexed hereto and marked as **Annexure P-6 (Colly)** is the Legal Notice dated 28.01.2016 along with original postal receipts.”

27. The contents of the said paragraph, she submits, were not denied by Meera in the corresponding paragraph of her reply to Arb. Pet. 585/2016, which, however, is seen to read thus:

“9-10 That in response to the contents and averments made in paras 9 and 10 it is submitted that Respondent did not receive the alleged legal notice dated 28.01.2016.”

28. Priti further points out that the legal notice as well as the original postal receipt evidencing dispatch and service thereof on Meera were filed along with Arb. Pet. 585/2016 before this Court.

29. Priti further seeks to substantiate the fact of receipt of notice dated 28 January 2016 by Meera on the basis of order dated 15 March 2019, passed by this Court in Crl. M.C. 1718/2017, which records Meera’s contention that the parties had invoked arbitration in terms of the agreement between them. Invocation of arbitration, contends Priti,



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could only be by way of the notice dated 28 January 2016, as there is no other communication, cited by Meera, whereby arbitration was invoked.

30. As there was no response from Meera to the aforesaid notice dated 28 January 2016, Priti instituted Arb. Pet. 585/2016 before this Court, seeking appointment of an arbitrator to arbitrate on the dispute between Meera and Priti. The said petition was disposed of, by this Court, *vide* order dated 4 November 2016, appointing Hon'ble Mr. Justice Mukul Mudgal, an eminent former Judge of this Court and Chief Justice of the High Court of Punjab and Haryana as sole arbitrator to arbitrate on the dispute.

31. Mukul Mudgal, J. recused from the arbitral proceedings, whereupon this Court, *vide* order dated 14 December 2018, appointed Hon'ble Ms. Justice Indermeet Kaur, also a learned retired Judge of this Court, to arbitrate on the dispute. The impugned award has come to be passed by Hon'ble Ms. Justice (Retd.) Indermeet Kaur.

Rival stands before the learned Arbitrator

32. Predicated on the above assertions, Priti, in her SOC filed before the learned Arbitrator, submitted that, as the ATS could not be effectuated owing to the default on Meera's part in complying with the Compulsory Requirements envisaged in Clause 3 of the ATS on or before 24 March 2012, Priti had become entitled to damages of ₹ 25.5 crores, apart from a refund of the earnest money of ₹ 12.5 crores paid by her. Thus, Priti claimed, in the arbitral proceedings, the aforesaid



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amount of ₹ 25.5 crores and ₹ 12.5 crores, totalling to ₹ 38 crores, apart from pre-arbitration interest and interest from the date of institution of the arbitral proceedings till the payment of the aforesaid amount.

33. Apart from the submissions already noted hereinbefore, Meera, in her Statement of Defence (SOD), submitted, before the learned Arbitrator, that, Priti's claims were hopelessly barred by time. It was submitted that, as the ATS had been terminated on 15 January 2013, the period of limitation, for claiming refund of earnest money deposit, expired, at the latest, on 15 January 2016. The notice invoking arbitration – even if it were to be treated as having been received – having been issued only on 28 January 2016, was barred by time. Similarly, it was contended that Priti's claim of ₹ 25.5 crores, relatable to the expired cheques tendered by Meera was also barred by time, as the last cheque had expired on 30 August 2012. Without prejudice, Meera contended that Priti could have encashed the said cheques before they became invalid.

34. Meera further categorically denied receipt of the notice dated 28 January 2016, whereunder Priti purportedly invoked arbitration. An arbitral proceeding, which is not preceded by a Section 21 notice, contended Meera, was *ab initio* invalid, for which purpose reliance was placed on the judgment of this Court in *Alupro Building Systems Pvt Ltd v. Ozone Overseas Pvt Ltd*⁶.



35. Meera emphatically denied the charge of any default, on her part, in complying with the Compulsory Requirements envisaged in Clause 3 of the ATS. She submitted that all requirements stood complied with, and that the question of return of the original title deeds was never an issue between the parties. Meera sought to place reliance on the cross-examination of her husband, Suresh Chand Goyal, who deposed as RW-1, in which, according to her, RW-1 had specifically admitted that he had received back the original title deeds from the Bank and that they were lying with him. However, in the same breath, Meera also contended before the learned Arbitrator, that the evidence of RW-1 could not be relied upon, as it was contradictory in terms and as he had specifically stated that he was not personally aware of the relevant facts.

36. Insofar as the delay in complying with the Compulsory Requirements was concerned, Meera contended that the delay was attributable only to the delay on Priti's part in providing the relevant drawings. Inasmuch as the Compulsory Requirements stood fulfilled by Meera, and Priti, nonetheless, failed to pay the balance sale consideration by 10 April 2012 or even up to 15 January 2013, Meera contended that she had correctly forfeited the earnest money deposit of ₹ 12.5 crores made by Meera. She relied, for this purpose, on the judgment of the Supreme Court in *Satish Batra v. Sudhir Rawal*⁷.

37. Meera also disputed Priti's claims for interest, as she submitted that Priti's claim was not covered by Section 3⁸ of the Interest Act,

⁷ (2013) 1 SCC 345

Power of court to allow interest. –



1978. She relied, for this purpose, on the judgment of the Supreme Court in *State of Rajasthan v. Ferro Concrete Construction Pvt. Ltd.*⁹. Moreover, she submitted that Priti had not claimed any interest in her notice dated 28 January 2016, whereunder she purportedly initiated arbitral proceedings against Meera.

The Impugned Award

38. The learned Arbitrator held, with respect to the various issues which arose for consideration, as under.

(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say, -

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings:

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

(2) Where, in any such proceedings as are mentioned in sub-section (1),—

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person, or in respect of a person's death,

then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages.

(3) Nothing in this section,—

(a) shall apply in relation to —

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement;

(b) shall affect —

(i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881 (26 of 1881); or

(ii) the provisions of Rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908);

(c) shall empower the court to award interest upon interest.



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39. Re. limitation

39.1 In this context, the learned Arbitrator first addressed the submission of Meera that she had not received the notice dated 28 January 2016 issued by Priti under Section 21 of the 1996 Act. She observed that the said notice was a document which found mention in all pleadings filed by Priti since inception. It also found mention in OMP (I) 28/2016 filed by Priti under Section 9 and Arb. Pet. 585/2016 filed by Priti under Section 11 of the 1996 Act, as well as in the SOC filed by Priti before the learned Arbitrator. She also noted that, admittedly, the notice dated 28 January 2016, as well as the postal receipt evidencing service of the said notice on Meera had been annexed with OMP (I) 28/2016 and Arb. Pet. 585/2016.

39.2 The postal receipt, notes the learned Arbitrator, showed that the notice dated 28 January 2016 had, in fact, been received by Meera, whose name was mentioned on the Registered AD cover. She also notes that the tracking number and the name of the respondent as it figured on the receipt column tallied. The address reflected on the registered AD cover was admittedly the address of Meera, where she was residing even at that stage. As such, there was a legal presumption, under Section 114(g)¹⁰ of the Evidence Act, about

¹⁰ This appears to be a wrong reference. The learned Arbitrator is apparently citing Illustration (f) below Section 114 of the Evidence Act:

“114. Court may presume existence of certain facts. – The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume—

(f) that the common course of business has been followed in particular cases;



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receipt of the notice by Meera.

39.3 The learned Arbitrator also noted that, in para 6 of Arb. Pet. 585/2016, Priti had clearly stated that the original postal receipt was attached with the notice. Meera, even while denying receipt of the notice, did not dispute the fact that the original postal receipt was filed with Arbitration Petition. Submission to that effect was only made belatedly at the stage of final arguments before the learned Arbitrator.

39.4 The learned Arbitrator also relied on the order dated 15 March 2019 of this Court in Crl. M.C. 1718/2017, which recorded Meera's statement that the parties had invoked arbitration, which was pending. The only notice invoking arbitration was the letter dated 28 January 2016. Having admitted that arbitration had been invoked, Meera could not now seek to contend that she had not received the notice dated 28 January 2016.

39.5 In view of all these facts, the learned Arbitrator held that the fact of issuance of notice dated 28 January 2016 by Priti, and receipt thereof by Meera on 30 January 2016 stood duly proved.

39.6 The learned Arbitrator also found the submission of Meera that the ATS was terminated on 15 January 2013 to be incorrect. She noted that the termination notice was dated 30 January 2013, which

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it—

as to *illustration (f)* –the question is whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

Signature Not Verified

Digitally Signed
By: HARIOM
Signing Date: 05.12.2023
12:33:14

OMP 5/2020

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Meera herself relied upon. The notice dated 30 January 2013 unequivocally stated that the ATS was “hereby terminated with immediate effect”.

39.7 Inasmuch as arbitration was invoked on 28 January 2016, which was within a period of 3 years reckoned from 30 January 2016, the learned Arbitrator found that the invocation of arbitration was within limitation.

39.8 She also noted, in this context, that the cause of action for both the claims in the claim petition i.e. for the claim of ₹ 12.5 crores and 25.5 crores arose only after termination of the ATS. Similarly, there was no question of claiming pre-suit interest at any earlier point of time. As such, all claims filed by Priti were found to be within limitation. The plea of limitation, urged by Meera was, therefore, rejected.

40. On merits

40.1 On merits, the learned Arbitrator holds that Clause 5 of the ATS was clear and categorical in requiring payment of the balance sale consideration to be made by Priti on or before 10 April 2012 only subject to compliance, by Meera, with the Compulsory Requirements envisaged in Clause 3 on or before 24 March 2012. There were three Compulsory Requirements, envisaged in sub-clauses (a) to (c) of Clause 3 of the ATS. The Compulsory Requirements envisaged in sub-clauses (b) and (c) of Clause 3 had been fulfilled by Meera. Insofar as the Compulsory Requirements in sub-clause (a) of Clause 3



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were concerned, though Meera had obtained a No Dues Certificate from the Bank, there was no evidence either oral or documentary, indicating that the original title deeds of the property had been collected by Meera from the Bank at any point of time. The requirement of obtaining the original title deeds of the disputed property from the Bank was not an empty formality, but was necessary in view of Clauses 9 and 11 of the ATS, of which Clause 9 proscribed Meera, pending completion of sale of the disputed property, to enter into any agreement *qua* the said property with any third party and Clause 11 required the original documents in respect of the disputed property to be retained by Meera, pending completion of sale of the disputed property, with Priti having the right to inspect and peruse the documents. The letter dated 2 June 2012 from the Bank to Meera clearly stated that the original title deeds of the disputed property were still with the Bank, and advised Meera to have them collected. There was no evidence to indicate that Meera heeded this advice and had the original title deeds collected from the Bank. The learned Arbitrator also holds that, even before her, Meera was unable to produce the original title deeds.

40.2 As such, the Compulsory Requirements envisaged in Clause 3(a) of the ATS were not fulfilled by Meera to the extent they required her to collect the original title deeds of the disputed property from the Bank.

40.3 In view of non compliance, by Meera, with the Compulsory Requirements envisaged in Clause 3 of the ATS by 24 March 2012,



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Priti could not be compelled to pay the balance sale consideration on or before 10 April 2012. The learned Arbitrator also relied, in this context, on a suggestion put to Priti, deposing as CW-1, by Meera, that Priti was willing to comply with her obligations under the ATS upto the end of January 2013. This clearly indicated that time was no longer of the essence of the contract.

40.4 The aforesaid circumstances also indicated that Clause 5 of the Agreement stood novated/alterd by the conduct of the parties. The learned Arbitrator relies, in this context, on the judgment of the Supreme Court in *Nathu Lal v. Phool Chand*¹¹, which holds that, where obligations under a contract are to be performed in a particular sequence, the obligation to perform a later act in that sequence would arise only after the earlier act was performed. Meera having defaulted in complying with the Compulsory Requirements envisaged in Clause 3(a) before 24 March 2012, the requirement of Priti having to comply with the obligation to pay the balance payment on or before 10 April 2012 never arose.

40.5 In that view of the matter, the learned Arbitrator holds that Meera could not have forfeited the EMD of ₹ 12.5 crores made by Priti, as Clause 5 of the ATS permitted forfeiture of the earnest money only when, in the first instance, there was compliance, by Meera, with the Compulsory Requirements envisaged in Clause 3, within the time stipulated therein. The amount of ₹ 12.5 crores was, therefore, required to be refunded to Priti. As time was no longer of the essence



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of the contract, and the obligation of Priti to pay the balance sale consideration in accordance with Clause 5 of the ATS had not arisen, it could not be said that Priti was in default of the requirement of making payment of the balance sale consideration on or before 10 April 2012. There was nothing to indicate that the said amount included the EMD of ₹ 12.5 crores initially paid by Priti. As there was default, on the part of Meera, in complying with the Compulsory Requirements envisaged in Clause 3 of the ATS within the time stipulated in that regard, Priti was entitled to encash the cheques for ₹ 25.5 crores paid towards damages and injury in accordance with the agreement between the parties.

Rival Submissions before this Court

41. Considerations of brevity dictate that I deal with each of the issues raised by Meera by way of challenge to the impugned Award, the response of Priti, and return my findings issue wise thereafter. Before doing so, however, it is necessary to appreciate the true scope of interference, by the Court, under Section 34 of the 1996 Act, with an arbitral award. Decisions on the point are numerous. One need only refer to the latest exposition of law, by the Supreme Court, on the issue, as it would reflect the existing and extant legal position.

42. The two most recent judgments, from the Supreme Court, on Section 34, are *Indian Oil Corporation Ltd v. Shree Ganesh Petroleum*¹² (IOCL) and *Konkan Railway Corporation Ltd v.*



Chenab Bridge Project Undertaking¹³.

43. Without entering the factual thicket in that case, suffice it to note that, in *IOCL*, a learned Single Judge of the High Court of Bombay, in a challenge to an arbitral award under Section 34 of the 1996 Act, preferred not to interfere, opining that there were two possible views regarding the correct construction to be placed on the contractual covenants, and that the Arbitral Tribunal had adopted one of them, which was a reasonable interpretation. The Division Bench, however, reversed the decision of the learned Single Judge and reinterpreted Clause 5.1.2 of the contract, holding that the said clause also included indirect taxes such as service tax, GST, Works Contract Tax, etc. In doing so, the Division Bench applied the *ejusdem generis* principle. Proceeding therefrom, the Division Bench held that the Arbitral Tribunal, and the learned Single Judge, had erroneously assumed that the tax liability of the items forming part of the Bill of Quantities was “inbuilt” in the quoted costs and that no evidence was supplied to substantiate the conclusion. The matter was carried to the Supreme Court.

44. Observing, at the outset, that the scope of jurisdiction under Section 34 and 37 of the 1996 Act was similar, the Supreme Court proceeded, on the aspect of the scope of interference with the arbitral awards by the Court, to rule thus:

“19. Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction. [*UHL Power Co. Ltd. v. State of H.P.*¹⁴. See also: *Dyna*

¹³ (2023) 9 SCC 85

(2022) 4 SCC 116, para 15



*Technologies (P) Ltd. v. Crompton Greaves Ltd.*¹⁵] It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal. [*Ibid*; *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*¹⁶; *Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*¹⁷] In *Dyna Technologies (P) Ltd.*, this Court held:

“24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.”

20. In the present case, the Arbitral Tribunal interpreted the contractual clauses and rejected the respondent's claims pertaining to Disputes I, III and IV. The findings were affirmed [*Chenab Bridge Project Undertaking v. Konkan Railway Corpn. Ltd.*¹⁸] by the Single Judge of the High Court in a challenge under Section 34 of the Act, who concluded that the interpretation of the Arbitral

¹⁵ (2019) 20 SCC 1, paras 24, 25

¹⁶ (2019) 15 SCC 131

¹⁷ (2019) 7 SCC 236

¹⁸ (2019) SCC OnLine Bom 13296



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Tribunal was clearly a possible view, that was reasonable and fair-minded in approach.

22. The Single Judge of the High Court affirmed the findings of the Arbitral Tribunal. The reason for upholding the decision of the Tribunal is not that the Single Judge exercising jurisdiction under Section 34 of the Act is in complete agreement with the interpretation of the contractual clauses by the Arbitral Tribunal. The learned Judge exercising jurisdiction under Section 34 of the Act kept in mind the scope of challenge to an Arbitral Award as elucidated by a number of decisions of this Court. Section 34 jurisdiction will not be exercised merely because an alternative view on facts and interpretation of contract exists.

25. The principle of interpretation of contracts adopted by the Division Bench of the High Court that when *two constructions are possible, then courts must prefer the one which gives effect and voice to all clauses*, does not have absolute application. The said interpretation is subject to the jurisdiction which a court is called upon to exercise. While exercising jurisdiction under Section 37 of the Act, the Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the challenge to the arbitral award. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. Accordingly, the question of reinterpreting the contract on an alternative view does not arise. If this is the principle applicable to exercise of jurisdiction under Section 34 of the Act, a Division Bench exercising jurisdiction under Section 37 of the Act cannot reverse an award, much less the decision of a Single Judge, on the ground that they have not *given effect and voice to all clauses* of the contract. This is where the Division Bench of the High Court committed an error, in re-interpreting a contractual clause while exercising jurisdiction under Section 37 of the Act. In any event, the decision in ***Radha Sundar Dutta v. Mohd. Jahadur Rahim***¹⁹, relied on by the High Court was decided in 1959, and it pertains to proceedings arising under the Village Chaukidari Act, 1870 and Bengal Patni Taluks Regulation of 1819. Reliance on this judgment particularly for interfering with the concurrent interpretations of the contractual clause by the Arbitral Tribunal and Single Judge under Section 34 of the Act is not justified.



26. As far as the decisions in *South East Asia Marine Engg. and Constructions Ltd. v. Oil India Ltd.*²⁰ and *Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd. (NEEPCO)*²¹ are concerned, in both the cases, this Court affirmed the interference by a court exercising jurisdiction under Section 37 of the Act, with the concurrent findings of the Arbitral Tribunal as well as the Court under Section 34 of the Act, for good and valid reasons. In *South East Asia Marine Engg. and Constructions*, the Section 37 Court interfered with the award as the Arbitral Tribunal allowed the claim for price escalation for High-Speed Diesel under the “Change in Law” clause, by construing the circular increasing the HSD price as having “force of law”. The “Change in Law” clause therein provided for reimbursement of any additional costs on account of “change in or enactment of any law or interpretation of existing law”. The High Court, exercising jurisdiction under Section 37 of the Act, and this Court, found that the Arbitral Tribunal incorrectly construed the “Change in Law” clause as akin to a force majeure clause and allowed the claims. This was held to not be a possible interpretation of the contract and hence, the award was set aside. Similarly, in *Patel Engg.*, the arbitral award was found to be based on irrelevant facts and the outcome was found to result in unjust enrichment, the latter being in violation of public policy of India under Section 34(2) of the Act. Therefore, in both these cases, this Court was convinced that the view of the Arbitral Tribunal was not even a possible view, and hence, perverse in nature.

27. In the present case, we have examined the appreciation of evidence by the Arbitral Tribunal as well as the Single Judge of the High Court. We are convinced that their appreciation of the facts and interpretation of the contract is reasonable, and comprises a possible view. Keeping in mind the mandate of Section 5 of the 1996 Act,:

“5. Extent of judicial intervention. – Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.” we note the observation of this Court in *Vidya Drolia v. Durga Trading Corpn.*²²:

“18. Arbitration is a private dispute resolution mechanism whereby two or more parties agree to resolve their current or future disputes by an

²⁰ (2020) 5 SCC 164

²¹ (2020) 7 SCC 167

(2021) 2 SCC 1



Arbitral Tribunal, as an alternative to adjudication by the courts or a public forum established by law. Parties by mutual agreement forgo their right in law to have their disputes adjudicated in the courts/public forum. Arbitration agreement gives contractual authority to the Arbitral Tribunal to adjudicate the disputes and bind the parties.”

28. The conclusion of the Division Bench of the High Court that the award is liable to be set aside on the ground of perversity is incorrect, as it overlooks the principle laid down in *Associate Builders v. DDA*²³, wherein this Court held:

“32. A good working test of perversity is contained in two judgments. In *STO v. Gopi Nath & Sons*²⁴], it was held:

‘7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.’

In *Kuldeep Singh v. Commr. of Police*²⁵:

‘10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.’

33. It must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. *A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is*

²³ (2015) 3 SCC 49

²⁴ 1992 Supp (2) SCC 312

²⁵ (1999) 2 SCC 10



the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score [Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows: “General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong”. It is very important to bear this in mind when awards of lay arbitrators are challenged.”

(emphasis supplied)

29. Having considered the matter in detail, we are of the opinion that the Division Bench of the High Court committed an error in setting aside the concurrent findings of the Arbitral Tribunal and the Single Judge of the High Court. The award of the Arbitral Tribunal and the decision of the Single Judge of the High Court under Section 34 of the Act cannot be termed as perverse or patently illegal as concluded by the Division Bench of the High Court. The decision of the Arbitral Tribunal is a plausible view, and the Single Judge refrained from interfering with it under Section 34 of the Act. We are of the opinion that the Division Bench should not have interfered with these orders.”

(Italics and underscoring supplied)

45. Paras 41 to 53 of the decision in *IOCL* clearly delineate the scope of interference, by Courts with arbitral awards under Section 34 of the 1996 Act:

“41. As held by this Court in *Associate Builders*, cited by Mr Prasenjit Keswani, learned counsel appearing on behalf of the respondent, Section 34 in conjunction with Section 5 of the 1996 Act makes it clear that an arbitral award that is governed by Part I of the 1996 Act, can only be set aside on grounds mentioned under Sections 34(2) and (3) of the said Act and not otherwise. The Court considering an application for setting aside an award, under Section 34 of the 1996 Act cannot look into the merits of the



award except when the award is in conflict with the public policy of India as provided in Section 34(2)(b)(ii) of the 1996 Act.

42. In *Associate Builders*, this Court held that an award could be said to be against the public policy of India in, inter alia, the following circumstances:

42.1. When an award is, on its face, in patent violation of a statutory provision.

42.2. When the arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.

42.3. When an award is in violation of the principles of natural justice.

42.4. When an award is unreasonable or perverse.

42.5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.

42.6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court.

43. An Arbitral Tribunal being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract.

44. However, a distinction has to be drawn between failure to act in terms of a contract and an erroneous interpretation of the terms of a contract. An Arbitral Tribunal is entitled to interpret the terms and conditions of a contract, while adjudicating a dispute. An error in interpretation of a contract in a case where there is valid and lawful submission of arbitral disputes to an Arbitral Tribunal is an error within jurisdiction.

45. The Court does not sit in appeal over the award made by an Arbitral Tribunal. The Court does not ordinarily interfere with interpretation made by the Arbitral Tribunal of a contractual provision, unless such interpretation is patently unreasonable or perverse. Where a contractual provision is ambiguous or is capable of being interpreted in more ways than one, the Court cannot interfere with the arbitral award, only because the Court is of the



opinion that another possible interpretation would have been a better one.

46. In *Associate Builders*, this Court held that an award ignoring the terms of a contract would not be in public interest. In the instant case, the award in respect of the lease rent and the lease term is in patent disregard of the terms and conditions of the lease agreement and thus against public policy. Furthermore, in *Associate Builders* the jurisdiction of the Arbitral Tribunal to adjudicate a dispute itself was not in issue. The Court was dealing with the circumstances in which a court could look into the merits of an award.

47. In this case, as observed above, the impugned award insofar as it pertains to lease rent and lease period is patently beyond the scope of the competence of the arbitrator appointed in terms of the dealership agreement by the Director (Marketing) of the appellant.

48. The lease agreement which was in force for a period of 29 years with effect from 15-4-2005 specifically provided for monthly lease rent of Rs 1750 per month for the said plot of land on which the retail outlet had been set up. It is well settled that an Arbitral Tribunal, or for that matter, the Court cannot alter the terms and conditions of a valid contract executed between the parties with their eyes open.

49. In *Ssangyong Engg. & Construction*, this Court held :

“76. However, when it comes to the public policy of India, argument based upon “most basic notions of justice”, it is clear that this ground can be attracted only in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice. It can be seen that the formula that was applied by the agreement continued to be applied till February 2013 — in short, it is not correct to say that the formula under the agreement could not be applied in view of the Ministry's change in the base indices from 1993-1994 to 2004-2005. Further, in order to apply a linking factor, a circular, unilaterally issued by one party, cannot possibly bind the other party to the agreement without that other party's consent. Indeed, the circular itself expressly stipulates that it cannot apply unless the contractors furnish an undertaking/affidavit that the price adjustment under the circular is acceptable to them. We have seen how the appellant gave such undertaking only conditionally and without prejudice to its argument that the Circular does not



and cannot apply. This being the case, it is clear that the majority award has created a new contract for the parties by applying the said unilateral circular and by substituting a workable formula under the agreement by another formula dehors the agreement. This being the case, a fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered into with the other party. Clearly, such a course of conduct would be contrary to fundamental principles of justice as followed in this country, and shocks the conscience of this Court. However, we repeat that this ground is available only in very exceptional circumstances, such as the fact situation in the present case. Under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the Court. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the 1996 Act, as has been noted earlier in this judgment.”

50. In *PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust*²⁶, this Court referred to and relied upon *Ssangyong Engg. & Construction*, and held:

“85. As such, as held by this Court in *Ssangyong Engg. & Construction*, the fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a contract has been foisted upon an unwilling party. This Court has further held that a party to the agreement cannot be made liable to perform something for which it has not entered into a contract. In our view, re-writing a contract for the parties would be breach of fundamental principles of justice entitling a court to interfere since such case would be one which shocks the conscience of the Court and as such, would fall in the exceptional category.”

51. In *PSA Sical Terminals* this Court clearly held that the role of the arbitrator was to arbitrate within the terms of the contract. He had no power apart from what the parties had given him under the contract. If he has travelled beyond the contract, he would be acting without jurisdiction.

52. In *PSA Sical Terminals* this Court referred to and relied upon the earlier judgment of this Court in *Army Welfare Housing*



*Organisation v. Sumangal Services (P) Ltd.*²⁷ and held that an Arbitral Tribunal is not a court of law. It cannot exercise its power ex debito justitiae.

53. In *Satyanarayana Construction Co. v. Union of India*²⁸, a Bench of this Court of coordinate strength held that once a rate had been fixed in a contract, it was not open to the arbitrator to rewrite the terms of the contract and award a higher rate. Where an arbitrator had in effect rewritten the contract and awarded a rate, higher than that agreed in the contract, the High Court was held not to commit any error in setting aside the award.

(Emphasis supplied)

46. I have also attempted, in my judgment in *Calcom Cement India Ltd v. Binod Kumar Bawri*²⁹, to summarize the legal position that presently applies to Section 34 of the 1996 Act, in the following passages:

“49. Section 34(2)(a)(iv) of the 1996 Act, as it stood prior to its amendment by the Arbitration and Conciliation (Amendment) Act 2016, expressly envisaged interference with an arbitral award, insofar as the merits of the award were concerned, only where

- (i) the award dealt with a dispute which was not contemplated by, or falling within the terms of the submission to arbitration or
- (ii) the award contained decisions on matters beyond the scope of the submission to arbitration.

50. Apart from this, the only other provision which envisaged interference with an arbitral award, on the merits of the award, was Section 34(2)(b)(ii), which permitted such interference where the arbitral award was “in conflict with the public policy of India”. In this regard, the explanation to the said clause clarified that an award would be treated as in conflict with the public policy of India if

- (a) its making was induced or affected by fraud or corruption,
- (b) the award was violative of Section 75³⁰ or
- (c) the award was violative of Section 81³¹ of the 1996 Act.

²⁷ (2004) 9 SCC 619

²⁸ (2011) 15 SCC 101

²⁹ 2022 SCC OnLine Del 3453

³⁰ Section 75 requires matters relating to conciliation proceedings to be kept confidential.

³¹ Section 81 proscribes reliance upon, or introduction as evidence, in arbitral or judicial proceedings, of, *inter alia*, suggestion, admissions and proposals, in conciliation proceedings. Breach of these clauses would, therefore, result an arbitral award being in conflict with the public policy of India.



51. However, the Explanation was specifically “without prejudice to the generality of” Section 34(2)(b)(ii). The generally wide scope and ambit of the expression “public policy of India” was not, therefore, compromised by the Explanation. The scope of interference with arbitral awards, on merits, under the pre-amended Section 34 had, therefore, to be restricted to cases where the award was in conflict with the “public policy of India”. In this regard, guidelines are to be found in the judgments of the Supreme Court in *ONGC Ltd. v. Saw Pipes Ltd.*³² and *Associate Builders*. Both these decisions advocate a wide interpretation of the expression “public policy of India”. Read together, they hold that an arbitral award would be contrary to the public policy of India if it was (i) contrary to fundamental policy of Indian law or (ii) contrary to the interest of India or (iii) contrary to justice or morality or (iv) patently illegal.

52. Thus was introduced, by judicial fiat, the concept of patent illegality, as a ground to interfere with an arbitral award, though the said ground did not find express place in Section 34 as legislatively enacted.

53. “Patent illegality” was also regarded as a ground for interfering with arbitral awards in *McDermott International Inc. v. Burn Standard Co. Ltd.*³³ and *DDA v. R.S. Sharma & Co.*³⁴. *McDermott* held that, if the arbitrator had “gone contrary to or beyond the express law of the contract or granted relief in the matter not in dispute, the award would be “patently illegal”. *R.S. Sharma* further widened the expression by holding that an award which was:-

- (i) contrary to substantive provisions of law, or
- (ii) contrary to the provisions of the Arbitration and Conciliation Act, 1996, or
- (iii) against the terms of the respective contract, or
- (iv) patently illegal, or
- (v) prejudicial to the rights of the parties, would be vulnerable to interference under Section 34(2).

54. “Patent illegality”, therefore, unquestionably visits an award which is contrary to the contract between the parties. This is but obvious, as the arbitral tribunal is a creature of the contract between the parties, and it is well settled that no court, or other judicial or quasi-judicial authority, can go behind the contract, or statute, to which it owes its existence.

³² (2003) 5 SCC 705

³³ (2006) 11 SCC 181

(2008) 13 SCC 80



55. The Arbitration and Conciliation (Amendment) Act, 2016 introduced, with effect from 23rd October 2015, Explanations 1 and 2 in Section 34(2) and sub-section (2A) in Section 34 of the 1996 Act. These provisions read thus:

“Explanation 1. - For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if-

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 of 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.

Explanation 2. - For the avoidance of any 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.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award.

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.”

56. By this amendment, the legislature departed, somewhat, from the view expressed, in the decisions cited hereinabove, with respect to the scope of expression “public policy of India”. The expression “public policy of India” was, by Explanation 1, restricted only to cases where the award was

- (i) induced or affected by fraud or corruption,
- (ii) violative of Section 75,
- (iii) violative of Section 81,
- (iv) in contravention with the public policy of Indian law, or
- (v) in conflict with the most basic notions of morality or justice.

57. Thus, a new expression “fundamental policy of Indian law” came to be introduced in Section 34, while entering a note of caution that, in examining whether the award was in contravention



with the fundamental policy of Indian law, the court would not review the merits of the dispute.

58. “Patent illegality” was engrafted as a separate ground to vitiate an award, by Section 34(2A), but was not included within the ambit of the expression “public policy of India”. Thus, “patent illegality” continued to remain a ground for a valid challenge to an arbitral award and, in addition, the award was also liable to be interfered with, if it was found to be in contravention with the fundamental policy of Indian law.

59. Eight decisions, rendered in the context of the amended Section 34, are of relevance. They are *Ssangyong Engineering & Construction, SEAMEC, Project Director, NHAI v. M. Hakeem*³⁵, *State of Chhattisgarh v. Sal Udyog Pvt. Ltd.*³⁶, *NHAI v. P Nagaraju, Delhi Airport Metro Express*³⁷, *PSA Sical* and *IOCL*.

60. *Ssangyong Engg & Construction* held, *inter alia*, that an arbitral award was susceptible to interference on the ground that it had overlooked an issue of importance if the issue was such that, had it been dealt with, the whole balance of the award would have been altered and its effect would have been different. *SEAMEC*, even while endorsing the view propounded in earlier decisions, that the mere possibility of an alternative interpretation to the contractual covenants, different from that accorded thereto by the arbitral award, would not constitute a legitimate basis to interfere therewith, held, significantly, that the Section 34 court was justified in examining “whether the interpretation provided to the contract in the award of the tribunal *was reasonable and fair*, so that the same passes muster under Section 34 of the Arbitration Act”. “Reasonability” and “fairness” in the manner in which the Arbitral Tribunal had interpreted the contractual covenants, thereby, became a relevant consideration, for the Section 34 court.

61. *Sal Udyog* is an example of a case in which the Supreme Court found the interpretation, by the learned Arbitral Tribunal, of the relevant clauses of the agreement to be unacceptable and “patently illegal” by an incisive examination of the contractual clauses. Insofar as the concept of “patent illegality”, as a ground to interfere with the arbitral awards, under the amended Section 34 of the 1996 Act, is concerned, paras 43 to 45 of the report in *PSA Sical* are relevant, and may be reproduced thus:

³⁵ (2021) 9 SCC 1

³⁶ (2022) 2 SCC 275

(2022) 1 SCC 131



“43. It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of “public policy of India”, which has been held to mean “the fundamental policy of Indian law”. A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Section 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

44. A decision which is perverse, though would not be a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. However, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

45. To understand the test of perversity, it will also be appropriate to refer to paragraph 31 and 32 from the judgment of this Court in *Associate Builders*, which read thus:

“31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

- (i) a finding is based on no evidence, or
- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or



(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

32. A good working test of perversity is contained in two judgments. In *Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons*³⁸, it was held:

“7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.”

In *Kuldeep Singh*, it was held:

“10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.”

62. *IOCL* examined, in depth, once again, Section 34 of the 1996 Act, having noted the law earlier enunciated in that regard. Paras 33, 42 to 46 and 53 of the report in that case read thus:

“33. The arbitral award is liable to be set aside insofar as the same deals with disputes with regard to the lease agreement which are not contemplated by the arbitration clause in the dealership agreement and/or in other words, do not fall within the terms of the submission to arbitration. The arbitral award is thus liable to be set aside under Section 34(2)(a)(iv) of the 1996 Act. The decision enhancing the lease rent is patently beyond the scope of the



submission to arbitration. Moreover, the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the lease agreement dated 20-9-2005.

42. In *Associate Builders*, this Court held that an award could be said to be against the public policy of India in, inter alia, the following circumstances:

42.1. When an award is, on its face, in patent violation of a statutory provision.

42.2. When the arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.

42.3. When an award is in violation of the principles of natural justice.

42.4. When an award is unreasonable or perverse.

42.5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.

42.6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court.

43. An Arbitral Tribunal being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract.

44. However, a distinction has to be drawn between failure to act in terms of a contract and an erroneous interpretation of the terms of a contract. An Arbitral Tribunal is entitled to interpret the terms and conditions of a contract, while adjudicating a dispute. An error in interpretation of a contract in a case where there is valid and lawful submission of arbitral disputes to an Arbitral Tribunal is an error within jurisdiction.

45. The Court does not sit in appeal over the award made by an Arbitral Tribunal. The Court does not



ordinarily interfere with interpretation made by the Arbitral Tribunal of a contractual provision, unless such interpretation is patently unreasonable or perverse. Where a contractual provision is ambiguous or is capable of being interpreted in more ways than one, the Court cannot interfere with the arbitral award, only because the Court is of the opinion that another possible interpretation would have been a better one.

53. In *Satyanarayana Construction*, a Bench of this Court of coordinate strength held that once a rate had been fixed in a contract, it was not open to the arbitrator to rewrite the terms of the contract and award a higher rate. Where an arbitrator had in effect rewritten the contract and awarded a rate, higher than that agreed in the contract, the High Court was held not to commit any error in setting aside the award.”

63. Rewriting of a contractual covenant has been held, in *NHAI v. Bumihway DDB (JV)*³⁹, to be against the law of the land, and fatal to the award. The decisions in *Union Territory of Pondicherry v. P.V. Suresh*⁴⁰, *Shree Ambica Medical Stores v. Surat People's Co-operative Bank Limited*⁴¹, *IFFCO Tokio General Insurance Co. v. Pearl Beverages Ltd.*⁴², *Tata Consultancy Services v. Cyrus Investments (P) Ltd.*⁴³ and *Maharashtra State Electricity Distribution Co. v. Maharashtra Electricity Regulatory Commission*⁴⁴, to which allusion is already to be found in para 2.6 hereinabove, also hold that clauses of a commercial contract cannot be rewritten by a court or arbitral tribunal.”

47. Judgments on Section 34 of the 1996 Act elucidate several stellar principles that delineate and demarcate the scope of the said provision. Not all are relevant for the case at hand. For the purposes of the dispute at hand, suffice it to state that, while interference with arbitral awards, under Section 34, is not proscribed, circumspection

³⁹ (2006) 10 SCC 763

⁴⁰ (1994) 2 SCC 70

⁴¹ (2020) 13 SCC 564

⁴² (2021) 7 SCC 704

⁴³ (2021) 9 SCC 449

(2022) 4 SCC 657



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has to constitute the guiding principle. The Court does not sit in appeal over the arbitral award. Errors committed by the arbitrator, *whether of fact or of law*, are ordinarily impervious to interference. The arbitrator is the final arbiter of the facts, and the law. Equally, the arbitrator is free to follow her, or his, own procedure in administering the arbitration. Strict rules of evidence do not apply, although basic principles cannot be jettisoned. The relevance and materiality of the evidence is also a matter over which the arbitrator exercises discretionary dominion. There is a complete proscription on the Section 34 court re-examining or revisiting the evidence, and holding, on that basis, that the evidence points to a conclusion other than that at which the arbitrator has arrived, *so long as the decision of the arbitrator does not suffer from patent illegality or perversity*. The Court must also be chary of broadening the scope of the expression “patent illegality” and drawing, within it, mere illegality. The word “patent” has to be accorded its due importance. It is only, therefore, where the findings of the arbitrator shock the conscience of the Court, or are so contrary to the facts and law that no person legally informed would arrive at such findings, that the Court would interfere with the award.

48. Proceeding, now, to rival contentions of learned Counsel, apropos the impugned award.

49. Limitation

49.1 Mr. Mata, learned Senior Counsel for the petitioner, submits



that the learned Arbitrator erred in holding that Priti's claims were within time. Mr. Mata submits that the *terminus a quo*, for commencement of limitation could, without prejudice to each other, be 24 March 2012, May 2012, 29 September 2012, 24 December 2012 or 15 January 2013. Reckoned from any of the said dates, the institution of arbitration by Priti – assuming receipt of the notice dated 28 January 2016 by Meera – was beyond time. He justifies the computation of the starting point for limitation as one or other of the aforementioned dates on the following reasoning:

(i) Admittedly, the ATS required Meera to fulfil the Compulsory Requirements envisaged in Clause 3 on or before 24 March 2012. Priti's allegation, and the very basis of her claim, was that Meera defaulted in doing so. Under Article 27⁴⁵ of the Limitation Act, 1963, the starting point for limitation for institution of arbitration would be 24 March 2012.

(ii) Alternatively, Mr. Mata relies on para 3(viii) of the SOC and the cross examination of CW-2, Rohit Saraf on 19 August 2019 to contend that, in terms of Article 55⁴⁶ read with Article 54⁴⁷ of the Limitation Act, the starting point for limitation, for Priti, would be May 2012.

⁴⁵ Article 27 requires any suit for "compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency" to be instituted within 3 years of the date "when the time specified arrives or the contingency happens".

⁴⁶ Article 55 provides that the period of limitation for institution of proceedings "for compensation for the breach of any contract, express or implied, not herein specially provided for" would be 3 years from the date "when the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases".

⁴⁷ Article 54 provides that the suit "for specific performance of a contract" has to be instituted within 3 years of "The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."



(iii) Alternatively, Mr. Mata contends that the period of 3 years, envisaged by Article 55 of the Limitation Act, could be reckoned from 29 September 2012, when the last of the 11 PDCs tendered by Meera to Priti expired.

(iv) Alternatively, Mr. Mata submits, relying on the cross-examination of Priti, deposing as CW-1, that she had lost confidence, having been cheated by Meera on 24 December 2012, when Meera communicated, to Priti, her intention to cancel the ATS, that the period of three years, for the purposes of Article 55 of the Limitation Act, could be reckoned from 24 December 2012.

(v) Alternatively, Mr. Mata submits, relying on the contents of the letter dated 28 December 2012 addressed by Meera to Priti, that it was made clear, in the said communication, that failure, on Priti's part, to pay the balance sale consideration would result in *ipso facto* termination of the said agreement on the expiry of fifteen days of receipt of the letter by Priti. Priti having received the letter on 31 December 2012, the ATS stood, therefore, terminated w.e.f. 15 January 2013. The period of 3 years, for the purposes of Article 55 read with Article 113⁴⁸ of the Limitation Act could, by this reckoning, be computed from 15 January 2013.

⁴⁸ Article 113 provides that "any suit, for which no period of limitation is provided elsewhere in the Schedule" to the Limitation Act can be instituted within 3 years of the date on which "the right to sue accrues".



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The alleged Section 21 notice having been issued by Priti on 28 January 2016 was, therefore, beyond limitation, and the learned Arbitrator has erred in holding to the contrary.

49.2 Mr. Sethi submits, in response, that the findings of the learned Arbitrator on the aspect of limitation have taken into consideration all the contentions of Meera and provides detailed reasons for holding the institution of arbitration by Priti to be within time. These findings, submits Mr. Sethi, do not brook interference within the limited scope of Section 34 of the 1996 Act. Mr. Sethi submits, relying on the words used in the communication dated 30 January 2013 from Meera to Priti, the affidavit dated 16 September 2019 filed by way of examination-in-chief by RW-1, S. C. Goyal, and the order dated 15 March 2019, passed by this Court in CRL. M. C. 1718/2017, that termination of the ATS had been effected by way of notice dated 30 January 2013. Mr. Sethi, therefore, emphatically refutes the contention of Mr. Mata that the ATS stood terminated on any date prior to 30 January 2013.

50. Delivery of Notice dated 28 January 2016

50.1 Mr. Mata sought to contend that the learned Arbitrator erred in her finding that the letter dated 28 January 2016 was issued by Priti and received by Meera. He submits that Priti had failed to prove, in the arbitral proceedings, that the said notice had been delivered to Meera. Meera, for her part, specifically denied receipt of any such letter, in her reply to Arb. Pet. 585/2016. This Court, in its order



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dated 4 November 2016, specifically recorded the said submission. The said order also noted that “a copy of the postal receipt for dispatch of the said notice” had been placed on record. Liberty had been reserved with the learned Arbitrator to decide whether the invocation of arbitration was within time and whether Priti’s claims themselves were barred by limitation. In that view of the matter, the question of service of the notice dated 28 January 2016 on Meera had to be strictly decided on the basis of the principles contained in the Evidence Act.

50.2 It is sought to be pointed out that Priti had neither filed the notice dated 28 January 2016, nor any proof of delivery thereof with its SOC and that no evidence in that regard was led during trial. Certain documents were sought to be introduced in the arbitral proceedings after conclusion of arguments, by way of an application under Section 151 of the CPC. This application was opposed by Meera. The learned Arbitral Tribunal, *vide* order dated 4 February 2020, allowed the documents to be brought on record. Mr. Mata seriously objects to the correctness of the order dated 4 February 2020, and submits that the said order is specifically under challenge in the present petition.

50.3 In support of his submission that there was no proof of delivery of the letter dated 28 January 2016 on Meera, Mr. Mata submits that

- (i) the alleged postal receipt did not have any corresponding delivery report, and there was no document evidencing actual delivery of the notice by way of registered post,



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- (ii) neither the alleged courier receipt, nor the corresponding delivery report bore any address or name to which the courier had been delivered and,
- (iii) there was no Registered AD Cover on record before the learned Arbitrator.

50.4 Mr. Mata further submits that the learned Arbitrator erred in relying on the statement of Meera's Counsel as recorded in judgment dated 15 March 2019 in CrI. M. C. 1718/2017. He submits that the said reliance constitutes "patent illegality", within the meaning of Section 34 (2A) of the 1996 Act. The said statement, submits Mr. Mata, was made in view of the order dated 4 November 2016 in Arb. Pet. 585/2016. There was no discussion, in the judgment dated 15 March 2019, on the fact of whether, in fact, the notice dated 28 January 2016 had been served on Meera. In any event, he submits that the judgment dated 15 March 2019 itself directed that the observations contained in the said judgment on merits would not influence the arbitral proceedings.

50.5 Mr. Mata further faults the learned Arbitrator in her finding that, as Meera did not state, in her reply to Arb. Pet. 585/2016, that the original of the notice dated 28 January 2016 and the postal receipts thereof were not on record, they were not proved. This finding, submits Mr. Mata, is perverse, especially as the documents filed with Arb. Pet. 585/2016 was specifically stamped "true copy". Presuming genuineness of such documents, without proof, it is submitted, infracts



Section 63⁴⁹, 65⁵⁰ and 76⁵¹ of the Evidence Act.

50.6 Inasmuch as the said documents were introduced after conclusion of arguments, Mr. Mata submits that his client was deprived of an opportunity to test the veracity of the documents during trial.

50.7 Mr. Sethi contends, *per contra*, that the findings of learned Arbitrator, on the aspect of delivery and receipt of the notice dated 28 January 2016 are based on an appreciation of the material on record,

⁴⁹ **63. Secondary evidence.**—Secondary evidence means and includes—

- (1) certified copies given under the provisions hereinafter contained;
- (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;
- (3) copies made from or compared with the original;
- (4) counterparts of documents as against the parties who did not execute them;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

⁵⁰ **65. Cases in which secondary evidence relating to documents may be given.**—Secondary evidence may be given of the existence, condition or contents of a document in the following cases—

- (a) when the original is shown or appears to be in the possession or power—
of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or
of any person legally bound to produce it,
and when, after the notice mentioned in Section 66, such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
- (d) when the original is of such a nature as not to be easily movable;
- (e) when the original is a public document within the meaning of Section 74;
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India, to be given in evidence;
- (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

⁵¹ **76. Certified copies of public documents.**—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies,



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and do not invite interference under Section 34 of the 1996 Act. He submits that Meera's name clearly found mention in the registered AD cover as well as the receipt column in the postal receipt and that the tracking number was also tallying. The notice was sent to the last known address of Meera, which is admittedly the address where she resides even today. In these circumstances, Mr. Sethi submits that the learned Arbitrator was correct in her observation that the presumption of service of the notice dated 28 January 2016, available under Section 114(g) of the Evidence Act, would apply.

50.8 Further, he submits that it is not open to Meera to contend that she had not received the notice dated 28 January 2016, in view of her statement, recorded in the order dated 15 March 2019 passed by this Court in Crl. M.C. 1718/2017, to the effect that arbitral proceedings stood invoked. Apart from the notice dated 28 January 2016, Mr. Sethi submits that there is no document which invokes the arbitral proceedings. If, therefore, the learned Arbitrator relied on the said order to hold that the invocation of the arbitral proceedings stood admitted by Meera, no error, in the said finding, could be said to exist.

51. Compliance with Compulsory Requirements

51.1 The learned Arbitrator has held Meera to be remiss only in complying with part of the Compulsory Requirements envisaged by sub-clause (a) of Clause 3 of the ATS. Meera has been found to have complied with sub-clauses (b) and (c) and also with sub-clause (a)



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insofar as it required obtaining of No Dues Certificate from the Bank. However, the learned Arbitrator holds that there was no evidence to indicate that Meera had complied with the requirement of obtaining, from the Bank, the original title deeds of the disputed property.

51.2 Meera advances the following submissions to contest the correctness of this finding:

- (i) Priti had neither pleaded nor led any evidence to suggest that Meera had not obtained the title deeds from the Bank.
- (ii) Meera's husband Suresh Chand Goyal, deposing as RW-1 in cross-examination, had stated that the title deeds were taken back from the Bank after receipt of the No Dues Certificate.
- (iii) Meera, in her pleadings, as well as in the affidavit in evidence of RW-1, had stated that the Compulsory Requirements envisaged by Clause 3(a) of the ATS stood completed.
- (iv) The letters dated 28 December 2012 and 30 January 2013 from Meera to Priti also asserted that all Compulsory Requirements stood completed.
- (v) There was no allegation, in the letters written by Priti to Meera in February to April 2013, to the effect that the



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Compulsory Requirements were yet to be complied with.

(v) The Bank had, in its No Dues Certificate dated 2 June 2012, addressed to Meera, also advised Meera to collect the papers relating to the property at any working day, during normal business hours.

(vi) The 11 PDCs issued by Meera to Priti were never encashed. This, too, indicated that Meera was not in breach of the ATS.

(vii) Priti had, in her complaint to the Magistrate under Section 156(3) of the Code of Criminal Procedure, 1973 (Cr. P.C.), clearly stated that the Compulsory Requirements envisaged by Clause 3(a) of the ATS, which included obtaining return of the title deeds, stood completed on 2 June 2012. The FIR, which was registered pursuant to the said complaint, also said so.

51.3 Mr. Mata further submits that the observation of the learned Arbitrator that Meera was unable to produce the original title deeds, even during the arbitral proceedings, was incorrect. It is submitted that, in fact, Meera had submitted to the learned Arbitrator that the title deeds were available with her and could be produced whenever requisitioned. He also submits that it was only at the stage of final arguments that Priti alleged that the title deeds of the dispute property had not been returned. Such issues could not be raised for the first



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time during arguments.

51.4 Mr. Sethi submits, in response, that Priti had, from the very inception, been asserting non-compliance, by Meera with the Compulsory Requirements envisaged in Clause 3 of the ATS. This stand was reflected in the notice dated 28 January 2016, whereby arbitrations were invoked as well as in the SOC filed by Priti before the learned Arbitrator. It was also specifically urged in the affidavit in evidence filed by Priti in the arbitral proceedings. Rather, submits Mr. Sethi, Meera herself, in her statement of defence, had asserted to having had the building plans sanctioned on 11 May 2012, as well as having dues of the Bank cleared and obtaining No Dues Certificate on 2 June 2012 and having the property demarcated by erection of pillars also on 2 June 2012. There was no assertion regarding obtaining the title deeds from the Bank. Suresh Chand Goyal, Meera's husband, too, in his affidavit in evidence as RW-1 did not depose, anywhere, that the title deeds of the disputed property had been obtained from the Bank. Even in his cross-examination, RW-1 was expressing uncertainty regarding the nature of the documents which had been obtained from the Bank as well as the persons to whom the documents had been submitted. He, in fact, sought further time to ascertain these facts.

51.5 Mr. Sethi further submits that, even during the arbitral proceedings, the learned Arbitrator had called upon learned Counsel for Meera to produce the original title deeds, but she was unable to do so. This fact had been specifically recorded in the impugned award.



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51.6 As such, submits Mr. Sethi, the impugned award calls for no interference even on this ground.

52. Re: Consequence of non-compliance by Meera with Clause 3(a) of the ATS

52.1 The relief sought by Priti before the learned Arbitrator, which stands granted in the impugned award, was for refund of the EMD of ₹ 12.5 crores and the security of ₹ 25.5 crores, which had been forfeited by Meera in her letter of termination dated 30 January 2013. It is Meera's own case, in her SOD to the learned Arbitrator as well as before this Court that, in the case of default, by Meera, Priti was entitled to return of the EMD as well as to the amount of ₹ 25.5 crores, which was provided by Meera to secure performance, by her, of her part of agreement, and that, in the event of Priti defaulting, Meera was entitled to retain EMD and was not liable to pay any part of the security of ₹ 25.5 crores to Priti. In the event of default by Priti, Meera's only liability was to return, to Priti, the subsequent amount of ₹ 5.4 crores, which Priti had paid. Mr. Mata's case is that, as Priti defaulted in compliance with her obligations to pay the balance sale consideration in terms of Clause 5 of the ATS, Meera rightfully forfeited the security and EMD of ₹ 12.5 crores and paid back the subsequent amount of ₹ 5.4 crores to Priti.

52.2 The fact that the amount of ₹ 25.5 crores covered by the 11 PDCs furnished by Meera to Priti was intended as security to ensure fulfilment, by Meera, of her obligations under the ATS, is not in



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dispute. Apropos the said amount, the only limited contention advanced by Meera was that it included the EMD amount of ₹ 12.5 crores.

52.3 Apropos the learned Arbitrator's decision, consequent on her finding of default by Meera to comply with the Compulsory Requirements envisaged by Clause 3(a) of the ATS is concerned, Mr. Mata advanced the following submissions.

(i) The direction to return ₹ 12.5 crores was contrary to the judgment of the Supreme Court in *Shri Hanuman Cotton Mills v. Tata Air Craft Ltd*⁵².

(ii) The learned Arbitrator had erred in holding that the amount of ₹ 25.5 crores did not include the EMD of ₹ 12.5 crores. Reliance has been placed, for this purpose, on the deposition of RW-1, in his affidavit in evidence, as well as in his cross-examination. It is asserted that there is no material adduced by Priti to indicate to the contrary.

(iii) In any event, the learned Arbitrator could not have straightway awarded, to Priti, the amount of ₹ 25.5 crores unless Priti was able to establish that she had suffered damages to that extent. Priti was never in a position to come forward with the balance sale consideration and could not, therefore plead that the forfeiture of the amount of ₹ 25.5 crore had prejudicially impacted her. The learned Arbitrator, moreover, had not addressed the issue of whether ₹ 25.5 crores represented



a reasonable amount of damages. Without proof of damages, damages cannot be awarded. Mr. Mata has relied, for this purpose, on the judgments of the Supreme Court in *Kailash Nath Associates v. DDA*⁵³, *Fateh Chand v. Balkishan Dass*⁵⁴ and *Ferro Concrete Construction*, as well as on Sections 73⁵⁵ and 74⁵⁶ of the Contract Act.

52.4 Mr. Sethi submits, *per contra*, as under:

(i) It was an admitted position that the 11 PDCs were handed over by Meera to Priti as security to ensure fulfilment, by Meera, of her obligations under the ATS.

(ii) As the said agreement had been agreed upon, it

⁵³ (2015) 4 SCC 136

⁵⁴ (1964) 1 SCR 515

⁵⁵ **73. Compensation for loss or damage caused by breach of contract.**—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

⁵⁶ **74. Compensation for breach of contract where penalty stipulated for.**—When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of any condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby



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constitutes a genuine pre-estimate of the damages payable by Meera, to Priti in the event of default, by Meera, in complying with her obligations under the ATS. The sum could not be said to be unreasonable in any manner. The Supreme Court had itself held, in *Fateh Chand* and in *Saw Pipes*, while dealing with Sections 73 and 74 of the Contract Act, that where the contract or agreement between the parties envisaged payment of a particular amount as damages, in the event of default, a party was not required to prove actual damages before being entitled to the said payment.

(iii) The fact that the amount of ₹ 25.5 crores constituted a genuine pre-estimate of the damages payable to Priti in the event of default by Meera, was evidenced by furnishing, by Meera, of three demand drafts for ₹ 12.5 crores, ₹ 5.4 crores and ₹ 12.1 crores on 24 December 2012.

(iv) As such, Mr. Sethi submits that there is no occasion for the Court to interfere with the decision of the learned Arbitrator in awarding, to Priti, the amounts of ₹ 12.5 crores and ₹ 25.5 crores.

53. Award of damages of ₹ 25.5 crores

53.1 Mr. Mata submits that the learned Arbitrator could not have awarded Priti damages of ₹ 25.5 crores. In the first place, he submits



that Meera was not in breach of the ATS. Assuming she was, he submits that Priti was never in a position to come forward with the balance sale consideration. Assuming *she* was, Mr. Mata submits that the learned Arbitrator ought to have examined whether the damages of ₹ 25.5 crores was reasonable, before awarding it *in toto*. He relies, in this context, on ***Kailash Nath, Fateh Chand and Ferro Concrete Construction***, apropos Sections 73 and 74 of the Contract Act.

53.2 Mr. Sethi submits, on the other hand, that Meera and Priti had agreed, *inter se*, that, in the event of Meera's failure to fulfil her obligations under the ATS, Priti would be entitled to damages of ₹ 25.5 crores, which was intended as security to ensure fulfilment, by Meera, of her end of the bargain. Neither Section 73, nor Section 74, of the Contract Act, forbids award of such a genuine pre-estimated amount. Where such a genuine pre-estimate has been agreed upon, between the parties, actual loss does not have to be proved. He relies, for this purpose, on ***Fateh Chand and Saw Pipes Ltd.*** The decision of the learned Arbitrator on this issue is, therefore, according to Mr Sethi, unexceptionable.

54. Award of interest

54.1 Mr. Mata submits that the learned Arbitrator could not have awarded interest to Priti either *pendente lite* or future, as Meera's claim did not fall within the purview of Section 3(1)⁵⁷ of the Interest

⁵⁷ 3. **Power of court to allow interest. –**

(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making



Act, 1978. Clause (a) applies where the claim for debt or damages is based on a written instrument payable at a certain time, and clause (b) applies where the claim is not. Clause (a), he submits, would not apply. Clause (b) allows interest from the date mentioned in this regard in a written notice given by the person claiming interest. No such claim for interest was contained in any notice from Priti to Meera. Ergo, submits Mr Mata, Priti is not entitled to interest.

54.2 Mr Sethi relies, *per contra*, on the decisions in *U.O.I. v. Susaka Pvt Ltd*⁵⁸ and *Manalal Prabhudayal v Oriental Insurance Co. Ltd*⁵⁹ to contend that the learned Arbitrator acted entirely within the jurisdiction vested in her in awarding interest.

Findings of the Court

55. Re-delivery of notice dated 28 January 2016

55.1 The findings of the learned Arbitral Tribunal, on the aspect of service and delivery of the notice dated 28 January 2016, as contained in the impugned arbitral award, read as under:

“56. Record reflect that the notice dated 28.1.2016 which was a

such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,—

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings;

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

⁵⁸ (2018) 2 SCC 182

⁵⁹ (2009) 17 SCC 296



notice vide which the claimant had invoked arbitration is a document which finds mention right from the inception of all pleadings which have been filed by the claimant. It finds mention in the Section 9 petition and the Section 11 petition and thereafter in the claim petition filed by the claimant. The fact that this document and the receipt thereof had been appended as an annexure alongwith the section 9 and section 11 petitions is an admitted position. The respondent in his SOD had taken a plea that this notice had not been received by him.

57. The document dated 28.1.2016 is a crucial document. It is this document which would decide the question of limitation. The case of the claimant is that he had sent this notice on 28.1.2016. It is a settled position of law that a legal notice invoking arbitration is the date of the commencement of arbitration. A perusal of this notice dated 28.1.2016 (certified copy of the record filed by the claimant as annexures under section 9 and section 11 petitions before the Hon'ble High Court) shows that the claimant had sent this notice on 28.1.2016 to the respondent. The postal receipt shows that this notice had been received by the respondent namely Meera Goyal whose name finds the mention in the Registered AD cover. The submission of the respondent that the complete address of the respondent not having been mentioned therein for which reason this document has no authenticity is a mistaken argument. The name of the respondent clearly finds mention in the receipt column and the tracking number is also the same. It was sent at the last known address of the respondent which is admittedly the place where the respondent resides even today. It also finds mention in all pleadings of the claimant including his petitions under Section 9 and Section 11) The presumption as contained under section 114(g) of the Indian Evidence Act, clearly lies in favour of the claimant that this document having been sent by Registered AD post at the correct address of the respondent was duly received by the respondent. That apart in the Section 11 petition (Arbitration Petition 585/2016) in para 6 the claimant had clearly stated that alongwith this notice the original postal receipt has been attached. While denying the receipt of the notice the respondent had nowhere ever questioned the fact that the original postal receipt has not been filed. This submission has been made only at the stage of final arguments. Further in the order of the Hon'ble High Court dated 15.3.2019 (Crl. M.C 1718/2017 and Cr. M.A. 7009/2017) (internal page 4) it was the statement of the respondent herself that the parties had invoked arbitration which is pending. The arbitration had been invoked upon this notice dated 28.1.2016. It does not now lie in the mouth of the respondent to deny this document. The presumption raised under the Indian Evidence Act is in addition to what has been discussed supra. The notice dated 28.1.2016 and its receipt by the respondent on 30.1.2016 stand



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duly proved.”

55.2 The finding of the learned Arbitrator that the notice dated 28 January 2016 had in fact been issued to, and served on, Meera is based on the following facts:

(i) Reference to the notice dated 28 January 2016 found mention in all pleadings filed by Priti from the very inception. It found mention in OMP (I) 28/2016 and Arb. Pet. 585/2016 filed by Priti under Sections 9 and 11 of the 1996 Act as well as in the SOC filed before the learned Arbitrator. Copies of the said documents had admittedly been filed as annexures along with OMP (I) 28/2016 and Arb. Pet. 585/2016.

(ii) The postal receipt, a copy of which had been filed before the Court, showed that the notice had been received by Meera, whose name found place in the registered AD cover under which the notice was sent.

(iii) Meera’s contention that her complete address did not find mention on the notice or the registered AD cover was mistaken. Meera’s name clearly found mention in the receipt column and the tracking number also tallied. The notice was sent to the last known address of Meera, where she was residing even on that date.

(iv) Section 114(g) [*sic* Illustration (f) to Section 114] of the Evidence Act presumes service of a document which is sent by registered AD post at the correct address of the addressee. Such



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a document is presumed to have been duly received by the addressee.

(v) In para 6 of Arb. Pet. 585/2016, Priti had clearly stated that, along with the notice dated 28 January 2016, the original postal receipt had been attached. The corresponding paragraph of Meera's reply to para 6 did not deny this fact. In fact, Meera was seeking to deny receipt only at the stage of final arguments.

(vi) In any event, it did not lie in Meera's mouth to deny the fact of receipt of the notice dated 28 January 2016 as she had, in Crl. M.C. 1718/2017, clearly admitted invocation of arbitration, as was recorded in the order dated 15 March 2019 passed by this Court in said proceedings. The only document invoking arbitration was the notice dated 28 January 2016.

55.3 In examining the merits of the rival submissions of learned Counsel in the backdrop of findings of the learned Arbitrator, the Court has to be conscious of Section 19(3) and (4) of the 1996 Act, which clearly empowered the Arbitral Tribunal to conduct the arbitral proceedings in the manner in which it considers appropriate, which includes the power "to determine the admissibility, relevance, materiality and weight of any evidence". The learned Arbitrator was, therefore, entitled to attach, to the documents on record, including the copy of the notice dated 28 January 2016 and the postal receipt, the evidentiary value which she deemed appropriate. It is also well settled that the Arbitrator is not bound by strict principles of evidence.



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55.4 In my considered opinion, and irrespective of other aspects, the learned Arbitrator would have been justified in rejecting Meera's objections on this score even on the basis of the order dated 15 March 2019 passed by this Court in Crl. M. C. 1718/2017. The said order was passed in two petitions, one filed by Meera and the other filed by Priti. The principal grievance was, however, of Meera, against the taking, by the learned Trial Court, of cognisance of an allegation of cheating raised by Priti against Meera. Both petitions arose out of order dated 15 November 2016 passed by the learned Trial Court.

55.5 The sustainability of the said criminal proceedings not being relevant for the dispute at hand, it is not necessary to refer, in any detail, to the observations and findings of this Court on the controversy before it in the aforesaid criminal petitions filed by Priti and Meera. What is of relevance, however, is the submissions made by learned Senior Counsel for Meera, as thus recorded by this Court in its judgment:

“It is also pointed out by learned Senior Counsel for petitioner – Meera Goyal that *the parties have invoked arbitration clause in the Agreement to Sell* and arbitration is pending and since the ingredients of offence alleged are lacking, therefore, criminal proceedings against petitioner ought to be brought to an end.”

(Emphasis supplied)

Thus, a clear and categorical admission was made, by learned Senior Counsel who appeared for Meera, before this Court, that “the parties (had) invoked arbitration clause in the Agreement to Sell”. Invocation of an arbitration clause in an agreement is a specific legal circumstance, envisaged in Section 21 of the 1996 Act. It can only be



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made by a notice issued under the said provision. Significantly, the statement of learned Senior Counsel before this Court was not even that Priti had invoked arbitration proceedings, but that *the parties* had invoked arbitration proceedings under the Agreement to Sell. Invocation of arbitration *ad idem*, was, therefore, conceded by learned Senior Counsel for Meera before this Court, while advancing arguments in Crl. M. C. 1718/2017 as recorded in the order dated 15 March 2019.

55.6 There is really no escape, for Meera, from this concession made before this Court. Meera seeks to contend, now, through Mr. Mata, that the concession did not amount to an admission of service of the notice dated 28 January 2016. It is also sought to be contended that the statement was made only because of the pendency of Arb. Pet. 585/2016. Neither contention, in my view, can be accepted. What has been conceded before this Court is the invocation of the arbitration clause in the Agreement to Sell. The arbitration clause in the Agreement to Sell envisages mutual appointment of an Arbitrator within 30 days of occurrence of the dispute, failing which the Arbitrator would be appointed by this Court. The submissions that arbitral proceedings had been invoked as envisaged in the Agreement to sell amounts, therefore, to a candid acknowledgement of the fact that, in fact, Priti had issued the notice dated 28 January 2016. Sans such a notice, there could be no question of invocation of arbitration in terms of the ATS.

55.7 That apart, I am exercising Section 34 jurisdiction. If the learned Arbitrator has relied on the statement of Meera's Counsel as recorded in the order dated 15 March 2019, as acknowledging the



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invocation of arbitration which would, inter alia, amount to acknowledgement of the notice dated 28 January 2016 having been issued by Priti to Meera, it would be completely outside the limited purview of my jurisdiction to revisit the said finding on facts and arrive at a different conclusion. The statement made by learned Senior Counsel for Meera before this Court, as recorded in the order dated 15 March 2019, is not hedged in by any caveat. It has, therefore, to be taken at face value.

55.8 The reliance, by Mr. Mata, on the concluding observation, in the order dated 15 March 2019, that observations contained in the said order would not be construed to be an expression on merits in the arbitral proceedings, has merely to be urged to be rejected. In relying on the statement made by learned Senior Counsel for Meera, with respect to the aspect of service of the letter dated 28 January 2016 by Priti on her, it can hardly be said that the learned Arbitrator was construing any finding in the order dated 15 March 2019 as an expression of merits in the arbitral proceedings. The concluding caveat, in the order dated 15 March 2019, can also, therefore, not be used by Mr. Mata as a ground to question the validity of the findings of the learned Arbitrator in that regard.

55.9 Also of importance, in this regard, is the order dated 4 November 2016 passed by this Court in Arb. Pet. 585/2016, whereby Mukul Mudgal J. was appointed as the sole arbitrator to arbitrate on the dispute between the parties. Paras 2 and 3 of the said order read thus:



Respondent states that although the Respondent has an objection to the invocation of the arbitration clause as well as to the claim of the Petitioner on the ground of limitation, the said plea can be decided by the learned Arbitrator.

3. The fact that the agreement to sell contains an arbitration clause is not in dispute. Although the Respondent denies having received the legal demand notice dated 28th January 2016 issued by the Petitioner, a copy of the postal receipt for dispatch of said notice has been placed on record. Whether in fact the invocation was within time and whether the claim itself is barred by limitation will be questions to be decided by the learned Arbitrator.”

Apropos the denial, by Meera, of the notice dated 28 January 2016, a reading of para 3 of the order dated 4 November 2016 indicates that this Court, *prima facie*, did not find substance in the submission. The tenor of the sentence “although the respondent denies having received the legal demand notice dated 28 January 2016 issued by the Petitioner, a copy of the postal receipt for dispatch of the said notice has been placed on record” indicates, at the very least, that this Court found the placing of record of the copy of the postal receipt for dispatch of the said notice as evidencing receipt of the notice by Meera. What was left open for consideration by the learned Arbitrator was not, strictly speaking, the correctness of the factum of the receipt of the notice, but only whether the invocation was within time and whether the claim itself was barred by limitation.

55.10 Even if it were to be presumed that the fact of receipt of the notice dated 28 January 2016 was open for consideration and decision by the learned Arbitrator, the afore-extracted sentence “Although the Respondent denies having received the legal demand notice dated 28 January 2016 issued by the Petitioner, a copy of the postal receipt for dispatch of the said notice has been placed on record” clearly indicates



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that it is not open to Meera, at this stage, to contest the issue of delivery and receipt of the notice dated 28 January 2016 on the ground that what had been placed on record was only a copy of the postal receipt. The copy of the postal receipt has been accorded due importance by this Court in its order dated 4 November 2016, while referring the dispute to arbitration.

55.11 As to whether the copy of the postal receipt of the notice dated 28 January 2016, as placed on record, evidenced, or did not evidence its receipt by Meera, may have been open to debate. Even if it was, I do not find, on a consideration of the findings of the learned Arbitrator in that regard, that they suffer either from perversity or patent illegality, as to justify interference by this Court under Section 34 of the 1996 Act.

55.12 The learned Arbitrator has clearly found that Meera's name found mention on the Registered AD cover. Meera's name also found name mentioned in the receipt column and the tracking number also tallied. *The correctness of these findings has not been contested by Meera.* The learned Arbitrator has further noted that, as the document was sent by registered post, the presumption of its receipt by Meera would be available under Section 114 of the Evidence Act. Illustration (f) below Section 114 specifically allows the Court to presume that the common course of business has been followed in particular cases. The illustration goes on, however, to require the Court to, while applying Illustration (f) to the issue of whether a letter was received, take into account interruption of the usual course of post



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by disturbances. It is nobody's case that there was any disturbance after the dispatch of the notice dated 28 January 2016 by Priti, as would impede its onward transmission to, and receipt by, Meera. That being so, the learned Arbitrator cannot be faulted, either on facts or in law, in relying on the dispatch, by Priti, of the notice dated 28 January 2016 by Registered AD post to Meera as evidence of service of the said notice on Meera.

55.13 Much has been sought to be made, by Mr. Mata, of the fact that the original postal receipt had not been filed before the Court or before the learned Arbitrator. It has also been sought to be contended that the learned Arbitrator erred in allowing the said documents to be taken on record after conclusion of arguments *vide* her order dated 4 February 2020.

55.14 It is necessary, in view of the submissions made by Mr. Mata with respect to the order dated 4 February 2020, to reproduce the order in *extenso*, thus:

“There are three applications pending before the undersigned. Pleadings are completed in all the three applications. The first application has been filed by the Claimant under Section 151 CPC seeking permission of the undersigned to place certain documents on record. Ld. Sr. Counsel for the Respondent submits that his application under Section 14(1) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act) be taken up for hearing in the first instance. Obviously the fate of that application would decide the fate of the other two applications. The undersigned is not in agreement with this submission. The application filed first in time shall be taken up for disposal in the first instance.

In this application the prayer is that although the petition under Section 9 and Section 11 of the said Act (filed before the Hon'ble High Court) are a part of the record of this Tribunal yet the

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By: HARIOM
Signing Date: 05.12.2023
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Annexures filed along with the said applications are not a part of the record of this Tribunal and the same be placed on record for the better adjudication of the case. The said Annexures comprise of six documents of which the first five documents are not disputed. The last document is a notice purported to have been issued by the Claimant to the Respondent on 28.01.2016. Ld. Sr. Counsel for the Respondent while responding to this application has in his reply and submission pointed out the order of the Hon'ble High Court dated 04.11.2016 wherein the submissions of the Respondent have been noted that he has not received this legal demand note dated 28.01.2016 issued by the Petitioner. Ld. Sr. Counsel for the Respondent points out that a copy of postal receipt for dispatch of the said notice has been placed on record and is not the original.

The Ld. Sr. Counsel for the Respondent while referring to his objection raised in the reply has pointed out that the documents now sought to be placed on record are only copies of the copied documents and the original have not seen the light of the day; the section 11 and Section 9 petitions having been e-filed the originals had to be retained by the Claimant and this is clear from the High Court Rules framed by the Hon'ble High Court for the purposes of e-filing. Attention has been drawn to the aforementioned documents it is pointed out that these documents bear the stamp of the High Court under Section 70 of the Indian Evidence Act and thus not being public documents, the question of a presumption being raised would not arise. Attention has been drawn to the provisions of sections 70, 74 and 76 of the Indian Evidence Act. It is admittedly pointed out that the parties have been in litigation since the year 2016 and it was way back on 23.5.2017 that the erstwhile Arbitrator has noted that the pleadings would constitute the issues. The documents now purported to be brought on record are being filed hugely belatedly. Reliance have been placed upon certain judgments of the Hon'ble High Court of Delhi, the Hon'ble Apex Court, a judgment of Hon'ble High Court of Gujarat as also the Delhi High Court Rules. The latter have been relied upon to drawn distinction between a private document, a public document and an attested document. Submission being that the said application has necessarily to be dismissed.

In rejoinder these submissions have been refuted.

The undersigned has noted the submissions and the counter submission. The Claimant had concluded her final arguments when the present application was filed. The bone of contention in this application boils down largely to one document i.e. the notice purported to have been issued by the Claimant to the Respondent on 28.01.2016 and its receipts thereof. The other documents are the five annexures appended along with the petition under Section 11



and Section 9 of the said Act. These five annexures are (i) A Power of Attorney issued by the Claimant in favour of her son (ii) Agreement to sell dated 24.12.2011 (iii) 11 Post dated cheques issued by the Respondent to the Claimant (iv) notice dated 30.01.2013 sent by the Respondent to the Claimant and (v) the notice dated 23.05.2013 sent by the Claimant to the Respondent. All the afore-noted documents are admitted except that although receipt of the documents dated 23.05.2013 had been admitted by the Respondent its contents have been denied. Thus, it is only the notice dated 28.01.2016 and its receipt thereof which appears to be the reason for vehemently opposing the present application. The undersigned notes that it is not the case of the Respondent that all the aforementioned six annexures did not form a part of Section 11 and Section 9 petitions. His objections appear to be on the documents not being certified copies and being only copies of the copy. Section 19 of the said Act gives ample power to the Tribunal to conduct proceedings in the manner that it considered appropriate which also includes the power to determine the admissibility, relevance materiality and weight of any evidence.

Ld. Sr. Counsel for the Respondent in the course of its submission had pointed out that the purported receipt of the notice dated 28.01.2016, apart from not being a certified copy would even otherwise have no bearing for the reason that the postal receipt does not spell out the address of the Respondent. This submission of the Ld. Sr. Counsel has been noted. This is a matter of arguments which may be raised at the appropriate stage. The admitted position thus being that the documents now sought to be placed on record (six annexures to the section 11 and section 9 petitions) were admittedly filed in the Hon'ble High Court along with the said petitions.

The judgments relied upon by the Ld. Sr. Counsel for the Respondent do not come to his aid as they were all judgments delivered in contentious civil proceedings under the provisions of order 18 rule 17 and order 7 rule 14 and section 151 of the CPC. Needless to state that these proceedings before the Arbitral Tribunal are under the said Act and it is also not as if some new documents is sought to be placed on record. Even the notice dated 28.01.2016 finds reference in the pleadings as also in the order of Hon'ble Mr. Justice Murlidhar dated 4.11.2016.

The application is allowed. The documents are taken on record. However, the undersigned is of the view that it would not be appropriate at this stage to re-call CW-1. The authenticity, weight and relevance to be attached to the said documents now taken on record will be decided at the time of final arguments noting the



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submissions and counter submissions of both the parties.
Application stand disposed of.”

55.15 It is thus noted, in the order dated 4 February 2020 that Priti sought to introduce, before the learned Arbitrator, six documents. It was pointed out, by Priti, that all these documents formed subject matter of the proceedings in Arb. Pet. 585/2016 and OMP (I) No. 28/2016. It was not, therefore, as though Priti was seeking to introduce a new document in the proceedings, which Meera had no opportunity to refute. The learned Arbitrator noted that, of the six documents that were sought to be placed on record by Priti, receipt of five of the documents was admitted by Meera. The only document, of which the receipt formed subject matter of contest, was the notice dated 28 January 2016. The learned Arbitrator notes, in her order dated 4 February 2020, that it was not Meera’s case that these six annexures did not form part of Arb Pet 585/2016 or OMP (I) No. 28/2016. The objection was, rather, that the documents were only copies of copies and not certified copies. In this regard, the learned Arbitrator has placed reliance on Section 19 of the 1996 Act, which empowered her to conduct the proceedings in the manner which she deemed best appropriate and also to determine admissibility, relevance, materiality and weight of any evidence. The admitted position, nonetheless, as she had noted, was that the said documents were in fact filed before this Court along with OMP (I) No. 28/2016 and Arb. Pet. 585/2016. The notice dated 28 January 2016 and the postal receipt whereby it was dispatched to Meera, as the learned Arbitrator correctly notes, also finds reference in the order dated 4 November 2016 passed by this Court in Arb Pet 585/2016, whereby

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Mukul Mudgal, J. was appointed as the sole arbitrator to arbitrate on the disputes.

55.16 In that view of the matter, it cannot be said that the decision of learned Arbitrator, in her order dated 4 February 2020, to allow the said documents to be taken on record, resulted in any miscarriage of justice or suffered from patent illegality. The only one of the said documents which forms subject matter of contest in the present proceedings is the letter dated 28 January 2016 and, specifically, the fact of its having been issued to, and received by, Meera. On that aspect, the learned Arbitrator had, for independent reasons, found the contention of Meera regarding non-service of the said notice not to be sustainable, and I find no reason to interfere with the said decision in exercise of the limited jurisdiction conferred by Section 34 of the 1996 Act. It has to be remembered that the Court, while exercising Section 34 jurisdiction would not interfere with findings of the learned Arbitrator, even if they are erroneous on facts or in law, unless they suffer from patent illegality or perversity as defined by the Supreme Court in the decisions already cited earlier in this judgment.

55.17 What Mr Mata exhorts this Court to do is to revisit the material which was on record as evidencing receipt of the notice dated 28 January 2016 by strictly applying the provisions of the Evidence Act and, in the manner in which a civil court trying the matter in a suit would proceed, to hold that the evidence did not unequivocally establish service of the notice dated 28 January 2016 on Meera. The grounds on which Mr. Mata seeks to question the receipt of the notice



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dated 28 January 2016 by Meera involve an entire reappreciation of the evidence relating to dispatch and receipt of the notice. Such an endeavour cannot be undertaken by this Court, while exercising jurisdiction under Section 34 of the 1996 Act.

55.18 For these reasons, the findings, of the learned Arbitrator, that the notice dated 28 January 2016 was, in fact, dispatched by Priti and received by Meera does not suffer from any patent illegality as would justify interference under Section 34 of the 1996 Act.

56 Re-limitation

56.1 That the period of limitation which applies in the present case is three years, irrespective of the Article of the Limitation Act which would apply, is not in dispute.

56.2 It is also not in dispute that the period of three years would have to be reckoned backwards from 28 January 2016, when the purported notice invoking arbitration under Section 21 of the 1996 Act was sent by Priti to Meera.

56.3 Mr. Mata has sought to contend that he had not accepted the date of termination of the ATS as the starting point for limitation. Rather, it is submitted that the date of termination of the ATS was only one of the five dates from which, according to Mr. Mata, limitation for instituting arbitration would commence. He submits that the learned Arbitrator has not addressed herself to Meera's contention that, in fact, limitation would commence from 24 March



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2012, May 2012, 29 September 2012 and 24 December 2012 and 15 January 2013.

56.4 At this point, it is necessary to note that the failure, on the part of the Arbitrator, to address an issue raised before her (or him) is not *ipso facto* fatal to the arbitral award. In ***Ssangyong Engg & Construction***, the Supreme Court approvingly cited the following passage from the judgment of the Singapore Court of Appeal in ***CRW Joint Operation v. PT Perusahaan Gas Negara (Persero) TBK***⁶⁰, which, in turn, relied on Redfern and Hunter on International Arbitration, 5th Edn, 2009 on the question of the extent to which failure, on the part of the arbitral tribunal, to address an issue which was raised before it, imperils its award:

“32. Second, it must be noted that a failure by an Arbitral Tribunal to deal with *every* issue referred to it will *not* ordinarily render its arbitral award liable to be set aside. The crucial question in every case is whether there has been real or actual prejudice to either (or both) of the parties to the dispute. In this regard, the following passage in Redfern and Hunter correctly summarises the position:

The significance of the issues that were not dealt with has to be considered in relation to the award as a whole. For example, it is not difficult to envisage a situation in which the issues that were overlooked were of such importance that, if they had been dealt with, the whole balance of the award would have been altered and its effect would have been different.”

As such, it is only if the point which has not been considered by the Arbitrator is one which, if considered, would affect the final award, or result in a different final outcome, that non-consideration of the point becomes a ground for interference under Section 34.



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56.5 In the present case, the findings of the learned Arbitrator on the points of limitation read thus:

“58. The submission of the respondent that that ATS stood terminated on 15.1.2013 is also a wrong submission. The document dated 30.1.2013 is the termination notice sent by the respondent to the claimant. The language contained in this document is clear and unequivocal. This document has been relied upon by the respondent. A perusal of the contents of this document shows that it was on 30.1.2013 that the respondent had terminated the ATS with the claimant. It inter alia states: *"This in view of the aforesaid breaches committed by you, the agreement dated 24.12.2015 is hereby terminated with immediate effect and the earnest money of Rs. 12.5 crores paid by you is forfeited as provided in the agreement"*. It was this notice which had “new” terminated the ATS. The notice invoking arbitration by the claimant dated 28.1.2016: received by the respondent on 30.1.2016 was thus invoked within a period of 3 years from the date when the contract stood terminated. This period has to be counted from the date of its receipt which was obviously after 30.1.2013. The notice dated 28.1.2016 fell within this period of 3 years. The cause of action for filing the claim petition qua both the claims in the present petition i.e. for the return of EMD amount of Rs. 12.50 crores and the second amount of Rs. 25.50 crores (in lieu of a security and an injury for non performance of the ATS by the respondent) would only arise once the ATS was terminated. The pre-suit interest of Rs. 19.55 crores also obviously could not have been cleared earlier. At the cost of repetition the ATS was terminated by the respondent on 30.1.2013. The notice invoking the arbitration is dated 28.1.2016 i.e. within 3 years from 30.1.2013. All claims filed by the claimant are within the period of limitation. This argument is accordingly decided in favour of the claimant.”

56.6 The learned Arbitrator has observed that the relief sought by Priti in the arbitral proceedings, which was for return of the amount of ₹ 38 crores, of which ₹ 12.5 crores constituted EMD and ₹ 25.5 crores represented the amount paid by Meera to Priti by way of the five PDCs which had expired by efflux of time, would arise only on the date when the ATS was terminated, as, prior to termination of the



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ATS, no occasion for Priti to seek return of the said amounts would arise. The correctness of this position of law, as enunciated in the impugned award, is not disputed by Meera. That being so, the date of termination of the ATS alone has significance, and the fact that the learned Arbitrator may not have chosen to individually reject the alternative dates of commencement of the cause of action, as suggested by Meera, cannot vitiate the award, applying the principle noted in para 56.4 *supra*.

56.7 The letter dated 30 January 2013 specifically alleged thus:

“That despite the fact that a reasonable time of 15 days was given to you to rectify your default, you failed to remit balance amount of Rs. 45,38,50,750/-. Thus, the said agreement became liable to be cancelled on the expiry of 15 days of receipt of the aforesaid letter dated 28.12.2012. Since you have committed default and thus not fulfilling your obligation in terms of the agreement even when a final opportunity was granted to you vide my letter dated 28.12.2012, which clearly shows that you are not in a position to fulfill your obligation under the said agreement and not financially capable to make the balance payment in terms of the agreement. You have also failed to respond to my letter sent to you on 7.1.2013 which was received by you on 8.1.2013. Thus, in view of the aforesaid breaches committed by you *the agreement dated 24.12.2011 is hereby terminated with immediate effect* and the earnest money of Rs. 12.5 crores paid by you is hereby forfeited as provided in the agreement. So far as the balance sum of Rs. 5.4 crores, which was received by me over and above the earnest money, has become refundable to you and accordingly. I am sending you a cheque of Rs. 5.4 crores issued by Goyal MG Gases Pvt Ltd., on my behalf, issued in your favour towards refund of your entitled amount under the agreement and towards full and final settlement of all your claims under the agreement on account of the aforesaid termination. This cheque of Rs. 5.4 crore, No. 264973, dated 29/01/2013 of State Bank of India, Branch Jawahar Vyapar Bhawan, New Delhi, along with a letter no. CAG/AMT-6/2012-13/308 dated 29/01/2013 of State Bank of India, confirming that this cheque of Rs. 5.4 crores is good for payment if presented on or before 28/02/2013”

(Emphasis supplied)



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There is no ambiguity or equivocation whatsoever in the afore-extracted passage from the letter dated 30 January 2013. It terminates the ATS *with immediate effect*. That being so, there is no illegality, whatsoever, in the learned Arbitrator treating the letter dated 30 January 2013 as the starting point of limitation for invoking the arbitral proceedings.

56.8 As the letter dated 30 January 2013 expressly terminates the ATS with immediate effect, Mr Mata's submission, predicated on Section 8 of the Contract Act and the judgment of the Supreme Court in *Bhagwati Prasad*, that the encashment of the cheque of ₹ 5.4 crores tendered by Meera amounted to an implied acknowledgement of termination of the contract by Priti, cannot sustain.

56.9 The findings of the learned Arbitrator on this ground do not, therefore, call for any interference.

57 Re: Obtaining of title deeds:

57.1 The learned Arbitrator has held, on the aspect of obtaining of title deeds, thus:

"82. The document dated 2.6.2012 (admitted document) was issued by the General Manager, State Bank of Patiala to the respondent. It reads herein as under:

"STATE BANK OF PATIALA
COMMERCIAL BRANCH, 2nd FLOOR
CHANDERLOK BUILDING, 36 JANPATH, NEW
DELHI
Ph: 011-23739775, 23319553, 2373806 Extn-243,



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Fax Email..... Website

Ref.No.GB/AMT-IV/

Date: 2nd June, 2012

Ms. Meera Goyal,

A-38, 1st Floor,

Mohan Cooperative Industrial Estate,

Main Mathura Road

Delhi-110044

Dear Sir,

No due certificate of Term Loan of Rs.18.00 crore

With reference to your letter dated 02.06.12, we advise you that the loan has been fully adjusted and nothing is due toward you on date.

We further advise you that you can collect the papers related to the property at any working day in normal business hours.

Yours faithfully

Sd/-

Chief Manager (AMT-IV)"

This document had granted No Dues Certificate to the respondent on a term loan of Rs. 18.00 crores advising the respondent to collect the papers related to the property at any working day in normal business hours.

83. There is no evidence on record to show that the papers of the property i.e. the original title deeds of the property were collected by the respondent from the Bank. The question of showing these title deeds to the claimant thus does not arise. Clause 3(a) clearly stipulated that the original title deeds had to be got released by the respondent from the bank. At the cost of repetition there is no evidence filed by the respondent to show that he had taken back the title deeds from the bank. In fact in the course of the arguments a question had been put by this Tribunal to the respondent and his Counsel on this score for which his answer was absolutely evasive. Even before this Tribunal the respondent was not in a position to produce the original title deeds of the property. It is not as if this compulsory requirement envisaged that the respondent would hand over the title deeds to the claimant but the compulsory requirement was that he would obtain the title deeds from the Bank in order that the claimant could satisfy himself that the property was now free of encumbrance. This has

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not been complied with.

84. Clause 9 and Clause 11 of the ATS are relevant. They are extracted below:

"9. That pending completion of the sale, the VENDOR shall not enter into any agreement of sale in respect of the SAID PROPERTY or any part thereof nor the VENDOR will in any manner create any charge, mortgage and or deal with the SAID PROPERTY in any manner or enter into any arrangement in respect of the SAID PROPERTY.

11. That self attested Photostat Copies of all relevant documents in respect of the ENTIRE PROPERTY have been handed over by the VENDOR to the VENDEE and all original documents in respect of the ENTIRE PROPERTY as are presently available (viz. Sale Deed dated 04.05.2005, IN FAVOUR OF THE Vendor) shall be kept by the VENDOR and the VENDEE and other owners of the ENTIRE PROPERTY and hereby undertakes to show/produce the same as and when asked/required by the VENDEE and hereby further undertakes not to encumber the same with respect to the SAID PROPERTY, under any circumstances."

Clause 9 and 11 stipulated that pending completion of the sale "*the vendor shall not enter into any agreement of sale in respect of the said property or any part thereof.... the self attested photostat copies of all relevant documents in respect of the entire property in possession of the respondent.*

85. Thus in terms of clause 9 the respondent pending completion of the sale of the said property would not enter into any agreement to sell qua the said property with any their party. In terms of clause 11 all original documents in respect of the entire property pending completion of sale shall be kept by the respondent for the claimant to inspect and to see with it on the undertaking on the part of the respondent to show/produce the same as and when required by the claimant and not to create any further encumbrance upon the said property.

86. A conjoint reading of the aforementioned clauses shows that what was required from the respondent was not only to obtain a No Dues Certificate from the State Bank of Patiala but also to get the original title deeds released from the Bank. This was to safeguard the interests of the claimant in order that the respondent would not enter into any further agreement to sell with any third party pending the completion of the sale with the claimant. Further the



original title deeds were to be retained by the respondent but the claimant had a right to examine them as and when required. The letter dated 2.6.2012 sent by the Bank to the respondent clearly states that although a No Dues Certificate had been issued by the Bank to the respondent but the original papers of the said property were still lying with them with an advice to get them collected from the bank. There is no evidence either oral or documentary to substantiate that the original title deeds or the property were taken back by the respondent from the Bank. At the cost of repetition the respondent even on a specific query on this point had no answer. He was not able to show the title deeds even before this Tribunal. The first compulsory requirement required to be completed by the respondent was thus not completed by him.”

57.2 To my mind, there is no substance whatsoever in Meera’s contention insofar as obtaining of the title deeds from the Bank is concerned. There is, indeed, nothing to indicate that the title deeds were obtained except for one stray statement made by RW-1 in his cross-examination. Priti, from the stage of the notice invoking arbitration dated 28 January 2016, through the SOC filed before the learned Arbitrator as well as affidavit in evidence filed by her as CW-1, consistently adopted the stand that there was no compliance, by Meera, with any of the Compulsory Requirements envisaged in Clause 3 of the ATS. Once there was an allegation of wholesale failure, on Meera’s part, to comply with Compulsory Requirements stipulated in Clause 3 of the ATS, it can obviously not be argued that there was no specific allegation of Meera having failed to obtain title deeds from the Bank.

57.3 I am also entirely in agreement with Mr. Sethi in his submission predicated on the assertion contained in SOD filed by Meera before the learned Arbitrator. The averments in the SOD are revealing, and are severely damaging to the submission that Mr. Mata seeks to



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advance before this Court. It is specifically stated in the SOD thus:

“It may be noted that building plans were sanctioned on 11.05.2012, dues of bank were cleared and NOC was obtained on 02.06.2012 and demarcation of property by putting of pillars at site was also completed on 02.06.2012. Hence all the compulsory requirements mentioned in Clause 3(a) to 3(c) of agreement to sell dated 24.12.2012 were completed by 02.06.2012.”

Clearly, Meera has admitted that she only had the building plans sanctioned, Bank’s dues cleared, No Dues Certificate issued by the Bank and property demarcated by erection of pillars. Any reference to obtaining of the title deeds of the disputed property from the Bank is conspicuously absent in the SOD. It is therefore obvious that the title deeds, in fact, were not obtained from the Bank.

57.4 The letter dated 2 June 2012 issued by the Bank also confirms this position. It is clearly stated in the letter that the loan had been adjusted and there was nothing due from Meera towards the Bank. However, the letter does not enclose the original title deeds. Rather, it calls upon Meera to take back the title deeds from the Bank. There is nothing – barring a lone statement in the record of cross-examination of RW-1 – to indicate that, in fact, the original title deeds were taken back by Meera from the Bank at any point of time.

57.5 The position that emerges from a reading of the evidence of RW-1 is interesting. The deposition of RW-1 insofar as it relates to obtaining of documents from the Bank, deserves to be reproduced, thus:

During cross-examination on 17 October 2019:

“The title deeds of the property were handed over to the Respondent by the bank after 02.06.2012 i.e. after the time when



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the No dues certificate was given by the bank. I will have to check to state as to what documents were handed over by the bank to Goyal MG Gases Pvt. Ltd. after the No dues certificate had been given. I do not recall if apart from the title deeds of the property any other document have been handed over by the bank to the Respondent. I do not know whether the Respondent had personally received the title deeds or any other documents from the bank and for this I will have to check and also whether I was present with her at that time or not. Vol. I was always present with the Respondent on all transactions.”

During cross-examination on 11 November 2019:

“I checked my record (in terms of the last order) but I could not trace out the detail of the documents which have been handed over by the bank to the Respondent at the time of issuance of No Dues Certificate. It is incorrect to suggest that I am in possession of all the documents which were handed over by the bank to the Respondent including the valuation reports and I am deliberately withholding the same.”

57.6 Clearly, RW-1’s initial deposition in cross-examination that the title deeds of the dispute property were handed over to Meera by the Bank after 2 June 2012 cannot be accepted at face value. The subsequent statements made by RW-1 substantially dilute and, in fact, almost completely erode the value of that initial assertion. Immediately after making the said statement, RW-1, in the very next sentence, states that he would have to verify what documents were handed over by the Bank to Meera after No Dues Certificate had been given. In the next statement, while deposing that he could not recall whether, apart from the title deeds of the dispute property, any other document was handed over by the Bank to Meera, he immediately retracts on that assertion by stating that he was unaware whether Meera had personally received the title deeds or any other document from the Bank. Then again, he proceeds to make two statements which are contradictory to each other, stating, first, that he would have



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to check whether he was present with Meera at the time of receipt of documents and, immediately thereafter, voluntarily stating that he was always present with Meera during all transactions.

57.7 RW-1 is, therefore, clearly an unreliable witness. While these assertions are themselves sufficiently damaging the case that Meera seeks to set up, the statements of RW-1 in his subsequent cross-examination on 11 November 2019 puts the nail in the coffin as it were. While, on 17 October 2019, RW-1 stated that he had to check the position, on 11 November 2019, after checking the actual position and scrutinizing the books, RW-1 executed a *volte face*, by stating that he was unable to trace out the details of the documents which were handed over by the Bank to Meera at the time of issuance of No Dues Certificate and further clarifying that he was not in possession of the said documents.

57.8 There is, therefore, effectively nothing to indicate that, in fact, at the time of issuance of the No Dues Certificate or at any time thereafter, original title deeds of the disputed property had been taken back by Meera. The specific stand adopted by Meera herself, in her SOD, clearly indicates to the contrary.

57.9 The onus to prove that she had complied with the Compulsory Requirements envisaged in Clause 3 of the ATS was clearly on Meera. She miserably failed to discharge that onus, insofar as the question of receipt of the original title deeds of the disputed property from the Bank was concerned. The repeated reference, by Mr. Mata, to



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communications addressed by Meera to Priti, in which she ascertained that she had complied with by Compulsory Requirements, are of no value whatsoever. For that matter, even in the SOD, while asserting that she had liquidated the dues of the Bank and obtained a No Dues Certificate, had the building plans sanctioned and had the property demarcated by erection of pillars within the time stipulated in that regard by Clause 3 of the ATS, Meera sought to contend that, therefore, that she had complied with all Compulsory Requirements envisaged by the said Clause. In so asserting, Meera seems to have forgotten that an additional Compulsory Requirement envisaged by Clause 3(a) of the ATS was obtaining of the original title deeds from the Bank.

57.10 The learned Arbitrator has also relied on Clauses 8 and 9 of the ATS to emphasize why the obtaining of the original title deeds from the Bank was necessary. The findings, in that regard, by the learned Arbitrator have not been questioned by Meera either during oral arguments or in the written submissions tendered to the Court. They, therefore, have to be accepted as they stand.

57.11 Even otherwise, irrespective of the reason for requiring the original title deeds to be obtained from the Bank, the parties to the ATS consciously incorporated the condition as a Compulsory Requirement in Clause 3(a) of the ATS. The Compulsory Requirements have necessarily to be obeyed.

57.12 The finding of the learned Arbitrator that there was no complete



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compliance by Meera with the Compulsory Requirements as envisaged by Clause 3 of the ATS, too, therefore, does not call for interference.

58. Re: Consequence of non-compliance by Meera with Clause 3(a) of the ATS

58.1 The learned Arbitrator, relying on the judgment of the Supreme Court in *Nathu Lal*, holds that whether a contract envisages performing of obligations by the parties to the contract in a particular sequence, the obligations to perform a later act would arise only if the earlier act is first performed. Clause 5 of the ATS clearly envisaged payment of the balance sale consideration by Priti, by 10 April 2012 only if, in the first instance, Meera completed the Compulsory requirements. This finding is, on a plain reading of Clause 5 of the ATS, clearly unassailable and indeed Meera has also not sought to join issue thereon. The finding of the learned Arbitrator that, as Meera had failed to comply with the Compulsory Requirements envisaged in Clause 3(a) of the ATS within the time stipulated in that regard, the time no longer remained of the essence of the contract and the requirement of Priti paying the balance sale consideration on or before 10 April 2012, as envisaged by Clause 5 of the ATS stood novated, does not call for any interference.

58.2 In view of the clear words of Clause 5 of the ATS, no real occasion to examine the applicability of the contractual principle of novation would arise.



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58.3 As there was no want of compliance, by Priti, of any obligation cast on her under the ATS, Meera could not have forfeited the EMD of ₹ 12.5 crores. Even in its judgment in *Kailash Nath*, the Supreme Court clearly held that EMD could not be forfeited unless the party forfeiting the EMD was not in default and had suffered a loss owing to the act of the opposite party. In the present case, the default being on the part of Meera, and not on the part of Priti, there could be no justification for Meera, to forfeit the EMD of ₹ 12.5 crores.

58.4 As such, the learned Arbitrator's decision to direct refund of the amount of ₹ 12.5 crores to Priti calls for no interference.

58.5 Equally unassailable in law, in my view, is the direction of the learned Arbitrator for payment of ₹ 25.5 crores by Meera to Priti. Meera herself acknowledged, in her SOD, that the amount of ₹ 25.5 crores represented security towards fulfillment, by Meera, of her obligations under the ATS. Meera and Priti had, therefore, agreed between themselves that if Meera failed to comply with her obligations under the ATS, Priti would be entitled to the amount of ₹ 25.5 crores. Given the amount involved and the fact that the amount had been worked out between the parties even prior to the default having been committed by Meera, it is obvious that the amount represents the genuine pre-estimate of the damages payable by Meera to Priti in the event of Meera being unable to perform her obligations under the ATS.

58.6 Where the contractual agreement between the parties stipulates



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a particular amount being paid as damages in the event of default and the amount represents a genuine pre-estimate of the damages payable, there can be no objection to the amount being awarded by the learned Arbitrator.

58.7 In any event, in the face of the fact that, admittedly, the amount of ₹ 25.5 crores was intended as security towards fulfillment, by Meera, of her obligations under the contract, and as Meera, in fact, failed to perform her obligations, there could be no question of this Court, within the limited scope of its jurisdiction under Section 34 of the 1996 Act, interfering with the decision of the learned Arbitrator to award the said amount to Priti.

59. Award of damages of ₹ 25.5 crores

59.1 The rival contentions on this issue throw into sharp relief what may be called the *Saw Pipes-Kailash Nath* axis, which has been a subject of judicial discussion on more than one occasion.

59.2 Para 106 of the impugned Award holds, in this regard, thus:

“106. The respondent had handed over 11 post dated cheques amounting to Rs. 25.5 crores to the claimant. This was a security amount given by the respondent to the claimant with the clear understanding *inter se* the parties that if the transaction is not effected due to any default on the part of the respondent the claimant will be entitled to the aforementioned amount towards damages and injury. This has been specifically stated by the claimant in para 8 of his SOC. In the corresponding para of the SOD this position is not disputed. It is admitted by the respondent that he had issued 11 cheques worth Rs. 25.5 crores to the claimant towards the security for the performance of the ATS but since there was no delay on the part of the respondent in performing the said agreement there was no occasion to enforce this security.



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Further case of the respondent on this score being that the EMD in the sum of ₹ 12.5 crores was included in this sum of Rs. 25.5 crores.”

59.3 Where the contract between the parties envisages a particular amount as being payable in the case of breach, then the party guilty of breach is liable to pay, to the party who has suffered the breach, “*a reasonable compensation not exceeding the amount so named*”. Mr. Mata’s submission is predicated on the concluding words “not exceeding the amount so named”, as interpreted by the Supreme Court in ***Kailash Nath***. Where breach occurs, therefore, proof of actual resultant damage is not in any case necessary. The issue in controversy is the amount to which the party complaining of the breach would be entitled. Specifically, in the present case, the issue is whether Priti was entitled, consequent to breach of the ATS by Meera, to the entire amount of ₹ 25.5 crores, and, therefore, whether the learned Arbitrator was justified in awarding said amount. Mr. Mata would urge that she was not; she ought to have ascertained, in the first instance, whether the said amount was a “reasonable compensation”. As she failed to do so, and awarded ₹ 25.5 crores straightaway, the award, he would submit, stands vitiated.

59.4 Before ***Kailash Nath***, there was, however, ***Saw Pipes***. The Supreme Court has, in ***Desh Raj v. Rohtash Singh***⁶¹, after noticing both ***Saw Pipes*** and ***Kailash Nath***, clarified the position thus:

“41. In our considered opinion, Section 74 of the Contract Act primarily pertains to the grant of compensation or damages when a contract has been broken and the amount of such compensation or damages payable in the event of breach of the contract, is



stipulated in the contract itself. In other words, *all pre-estimated amounts which are specified to be paid on account of breach by any party under a contract are covered by Section 74 of the Contract Act as noted by this Court in **Kailash Nath**. In **Fateh Chand**, the Constitution Bench ruled that Section 74 dispenses with proof of “actual loss or damage” and attracts intervention by courts where the pre-estimated amount is “penal” in nature.*

42. We may at this juncture also note the following observations made by this Court in **Saw Pipes**:

“64. ... Section 74 emphasises that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not actual loss is proved to have been caused by such breach. Therefore, the emphasis is on reasonable compensation. If the compensation named in the contract is by way of penalty, consideration would be different and the party is only entitled to reasonable compensation for the loss suffered. But if the compensation named in the contract for such breach is genuine pre-estimate of loss which the parties knew when they made the contract to be likely to result from the breach of it, there is no question of proving such loss or such party is not required to lead evidence to prove actual loss suffered by him. Burden is on the other party to lead evidence for proving that no loss is likely to occur by such breach.”

(emphasis supplied)

43. Hence, in a scenario where the contractual terms clearly provide the factum of the pre-estimated amount being in the nature of “earnest money”, the onus to prove that the same was “penal” in nature squarely lies on the party seeking refund of the same. Failure to discharge such burden would treat any pre-estimated amount stipulated in the contract as a “genuine pre-estimate of loss”.

(Italics in original; underscoring supplied)

59.5 Thus, if the contract stipulates a particular sum as payable by the “breaching” party to the party who suffers the breach, the factum of breach itself entitles the latter to damages without having to prove loss, or the actual quantum thereof. However, the party who has suffered the breach may not be entitled to the entire amount so



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contracted, and the Court would have to satisfy itself that the amount awarded is reasonable. The Supreme Court has, however, by its judgments, engrafted an exception to this principle by providing that, where the contracted amount is a genuine pre-estimate of the damages, the amount can straightaway be awarded.

59.6 Given the restraints inbuilt in Section 34 of the 1996 Act, interference with the decision, of the learned Arbitrator, to award ₹ 25.5 crores by this Court would be justified only if the finding is either patently illegal or perverse. For this, the Court must find, *prima facie*, that an arguable case against the awarding, to Priti, of the said amount, exists.

59.7 To my mind, the pleadings of Meera, both before the learned Arbitrator as well as before this Court, completely foreclose her very right to urge such a plea. Para 3(vi) of the SOC filed by Priti before the learned Arbitrator clearly averred that “in order to secure the interests of the Claimant, the Respondent handed over certain post-dated cheques for a sum of ₹ 25,50,00,000/- to the Claimant as security *with the clear understanding that in case the transaction is not effected due to any default on the part of the Respondent, the Claimant shall be entitled to the amount of ₹ 25,50,00,000/- towards damages and injury by encashing the said cheques.*” In response, Meera has averred thus, in her SOD:

“It is submitted that respondent issued 11 cheques worth ₹ 25,50,00,000/- (which included earnest money of ₹ 12,50,00,000/- plus amount towards damages, penalty, injury, etc.) to Claimant *towards security for performance of agreement to sell dated 24.12.2011 at respondent’s end.* It is submitted that *as there is no default on the part of respondent in performance of said*



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agreement, there was/is no occasion for claimant to enforce security.”

(Emphasis supplied)

It is clearly recorded in the FIR dated 28 April 2017 lodged by Priti against Meera that the 11 cheques were tendered by Meera on 24 December 2011, *i.e., along with the execution of the ATS*. Even at the time of execution of the ATS, therefore, there was not only a clear understanding between Meera and Priti that Priti would be entitled, in the event of Meera defaulting in complying with her obligations under the ATS, to the amount of ₹ 25.5 crores, but PDCs for the said amount were also tendered by Meera. Meera has also acknowledged, in her SOD, that the said PDCs represented the amount to which Priti would be entitled in the event of Meera defaulting on her obligations under the ATS. In her written submissions filed before this Court, too, Meera has admitted, in para 26, that the cheques were “part of *the transaction*”. The words “the transaction” themselves indicate that the transaction was whole, and indivisible.

59.8 Meera cannot, therefore, be now heard to contend that her default in complying with the Compulsory Requirements under Clause 3 of the ATS would entitle Priti not to ₹ 25.5 crores, but to some lesser amount.

59.9 I do not, therefore, find any convincing ground to interfere with the decision of the learned Arbitrator to award Priti ₹ 25.5 crores, either.

60. Award of interest

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By: HARIOM
Signing Date: 05.12.2023
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60.1 Section 31(7)(a) empowers the arbitrator, in a money award, to include, “in the sum for which the award is made interest”, on the whole or any part of the awarded sum, *between the date on which the cause of action arose and the date on which the award is made.*

60.2 The issue is covered by several decisions of the Supreme Court.

Paras 15 and 16 of ***Manalal Prabhudayal*** hold:

“15. It is, thus, clear that the arbitrator has power to award interest at all the three stages, namely, pre-reference period, pendente lite and post-award period provided there is no provision to the contrary in an arbitration agreement and the rate of interest is not unreasonable.

16. Once it is conceded that an arbitrator has power to grant interest and has also discretion in granting interest at a particular rate provided it is reasonable, the award of the arbitrator cannot be held to be bad in law or interfered with on the ground that he could not have granted interest or could not have awarded it at a particular rate unless the court is convinced that the grant of interest was not at a “reasonable rate”. From the record, it is clear that the arbitration proceedings started in 1995 and the award was passed in 1999. The arbitrator had granted uniform interest @ 12 per cent per annum all throughout. The award was made rule of the court and the Court of the Civil Judge (Senior Division), Bhubaneswar did not find illegality therein. The High Court, in our opinion, therefore, should not have interfered with the said order and reduced the rate of interest from the date of award till the date of realisation of the amount.”

(Emphasis supplied)

Susaka, in a similar vein, opines:

“31. In our considered view, the grant of award of interest on arbitrable claims by the Arbitral Tribunal is not inherently illegal or against any public policy or per se bad in law or beyond the powers of the Arbitral Tribunal. In other words, it is permissible to award interest in arbitrable claims by the Arbitral Tribunal.



32. Indeed, Sections 31(7)(a) and (b) of the Act empower the Arbitral Tribunal to award interest on the awarded sum and secondly, it is always subject to the agreement between the parties.

33. It is a well-settled principle in Arbitration Law that the award of an Arbitral Tribunal once passed is binding on the parties. The reason being that the parties having chosen their own arbitrator and given him an authority to decide the specific disputes arising between them must respect his decision as far as possible and should not make any attempt to find fault in each issue decided by him only because it is decided against one party. It is only when the issue decided is found to be bad in law in the light of any of the specified grounds set out in Section 34 of the Act, the Court may consider it appropriate to interfere in the award else not. The case at hand falls in the former category.”

(Emphasis supplied)

T.P. George v. State of Kerala⁶² held, in a similar vein:

“10. The next question is whether the High Court was right in setting aside the award of the interest from the date of the award. This Court has held in the case of ***Jagdish Rai & Bros. v. U.O.I.***⁶³ that the award of interest ought to be granted in all cases when there is a decree of money unless there are strong reasons to decline the same. In the case of ***Jagdish Rai*** this Court has held that there are four stages of grant of interest, viz., (1) from the stage of accrual of cause of action till filing of the arbitration proceedings, (2) during pendency of the proceedings before the arbitrator, (3) future interest arising between date of award and date of the decree, and (4) interest arising from date of decree till realisation of the award. *The power of court to grant interest from date of decree is not in doubt.* In the case of ***Hindustan Construction Co. Ltd. v. State of J & K***⁶⁴ this Court has held that *the arbitrator is competent to award interest from the date of the award.* This Court has held in the case of ***Secy., Irrigation Deptt., Govt. of Orissa v. G.C. Roy***⁶⁵ that *the arbitrator has power to grant interest pendente lite.* Recently in the case of ***Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj***⁶⁶ this Court has held that *an arbitrator can award interest for the pre-reference period. Thus as per law laid down by this Court interest can be awarded at all four stages.* The reasoning given by the High Court that interest cannot be awarded

⁶² (2001) 2 SCC 758

⁶³ (1999) 3 SCC 257

⁶⁴ (1992) 4 SCC 217

⁶⁵ (1992) 1 SCC 508

⁶⁶ (2001) 2 SCC 721



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by the arbitrator is thus fallacious and cannot be sustained. In our view the direction to pay interest from the date of award, cannot be faulted. The impugned judgment to the extent that it disallows the interest from the date of the award, is set aside.”

(Emphasis supplied)

60.3 Meera does not seek to contend that the ATS, or any other agreement between Priti and herself, contained any proscription against award of interest by the arbitrator. Rather, the arbitration clause in the ATS envisaged the arbitration being conducted as per the 1996 Act, and Section 31(7) of the 1996 Act confers unfettered power on the learned Arbitrator to award interest. The judgment of the Supreme Court in *Hyder Consulting (UK) Ltd v. State of Orissa*⁶⁷, in fact, went a step further in holding that the arbitrator could include, in the “sum” awarded, interest, and, if it was so included, it lost its character as interest and became part of the sum awarded on which, under Section 31(7)(a), further interest could be awarded. This position was reiterated in *Morgan Securities & Credits (P) Ltd v. Videocon Industries Ltd*⁶⁸ which clarified, relying on *Hyder Consulting*, that interest could also be awarded on interest.

60.4 *Stata of Haryana v. S.L. Arora*⁶⁹, which was, on another point, overturned in *Hyder Consulting*, clearly held that Section 3 of the Interest Act does not deal either of *pendente lite* or future interest. Insofar as the power to award interest from the date of arising of the cause of action is concerned, that power stands conserved by Section 31(7)(a) of the 1996 Act, and the judgments already cited *supra*.

⁶⁷ (2015) 2 SCC 189

⁶⁸ (2023) 1 SCC 602

(2010) 3 SCC 690



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60.5 The decision, in the impugned Award, to grant interest to Priti from 30 January 2013 till date of payment, therefore, also does not call for any interference.

61. Ground EEEE in the present petition also voices a grievance regarding the fees charged by the learned Arbitrator. Though subsequent developments also find reference in the written submissions filed by Meera, they find no mention in the petition itself. In any event, the grievance of Meera, if any, with the fees charged by the learned Arbitrator cannot constitute a ground to set aside the impugned award, under Section 34 of the 1996 Act.

Conclusion

61. In view of the aforesaid, there is clearly no ground to interfere with the impugned award, within the limited confines of the jurisdiction vested in this Court by Section 34 of the 1996 Act.

62. The petition is dismissed with no orders as to costs.

C. HARI SHANKAR, J.

DECEMBER 4, 2023

ar/ dsn/rb