

**In the High Court at Calcutta
Original Civil Jurisdiction
Commercial Division**

The Hon'ble Justice Sabyasachi Bhattacharyya

**AP-COM No. 388 of 2024
(Old Case No. AP 777 of 2023)**

**Deepak Bhargava and Ors.
Vs
Jagrati Trade Services Ltd. and Ors.**

With

**AP-COM No. 389 of 2024
(Old Case No. AP 783 of 2023)**

**Jagrati Trade Services Ltd. and Ors.
VS
Deepak Bhargava and Ors.**

For the Petitioner in
AP-COM 388 of 2024 : Mr. S. N. Mookherjee, Sr. Adv. (VC),
Mr. Suman Dutt, Adv.,
Mr. Paritosh Sinha, Adv.,
Mr. K. K. Pandey, Adv.

For the respondent in
AP-COM 389 of 2024 : Mr. S. N. Mookherjee, Sr. Adv. (VC),
Mr. Suman Dutt, Adv.,
Mr. Paritosh Sinha, Adv.,
Mr. K. K. Pandey, Adv.,
Mr. Zeeshan Haque, Adv.,
Ms. Yamini Mukherjee, Adv.,
Mr. Subhrojyoti Mukherjee, Adv.

For the
petitioner/respondent : Mr. Ratnanko Banerjee, Sr. Adv.,
Mr. Anirban Ray, Adv. (VC),
Mr. Rudrajit Sarkar, Adv.,
Mr. Debangshu Dinda, Adv.,
Mr. Jai Kr. Surana, Adv.,
Ms. Arundhuti Barman Roy, Adv.,
Ms. Muskan Bangani, Adv.

Hearing concluded on : 28.08.2024

Judgment on : 04.09.2024

Sabyasachi Bhattacharyya, J:-

1. Two applications under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, “the 1996 Act”) have fallen for consideration before this Court. AP-COM 388 of 2024 has been preferred by respondent nos. 1 to 11 in the arbitral proceeding whereas AP-COM 389 of 2024 has been filed by the claimant.
2. The matter emanates out of a Share Purchase Agreement (SPA) dated March 24, 2011 entered into between the parties. The claimant sought specific performance of the contract, along with damages for breach of the contract, whereas the respondents, in their counter claim, sought specific performance of their version of the self-same agreement.
3. The claimant’s prayer for specific performance was refused by the learned Arbitrator on the ground that the copy of the contract filed by it is incorrect, suspicious and differs from the original as well as that the entire payment obligation of 36 per cent of the shares of Rs. 82 Cr. was not discharged by the claimant by payment of Rs. 19.92 Cr.
4. Damages were also refused to the claimant. However, the respondents were directed to refund the amount of Rs. 19.92 Cr. (Approx.) which was admittedly received by the respondents from the claimant as consideration. Interest was also granted on the same at the rate of 9 per cent per annum from the date of filing of the Statement of Claim till recovery.

5. The claimant challenges the non-grant of interest from the date of payment till the date of commencement of the arbitration whereas the respondent nos. 1 to 11 assail the award as a whole, including the dismissal of their counter claim.
6. Learned senior counsel for the respondent nos. 1 to 11 in the arbitral proceeding (hereinafter referred to as “the respondents”) argues that since the learned Arbitrator found that the document produced by the claimant is doctored and refused to grant the relief of specific performance on such ground, no claim for refund, which is an equitable relief, ought to have granted in favour of the claimant. As the claimant did not come with clean hands, the discretionary relief, based on equity was also to be denied.
7. It is also argued that the claimant did not claim the relief of refund of the amount paid at all. Section 22(2) of the Specific Relief Act, 1963 (in brief, “the 1963 Act”) provides that no relief under Clause (a) or Clause (b) of sub-section (1) of the said Section shall be granted by the court unless it has been specifically claimed. Although the proviso thereto permits an amendment to be allowed where the plaintiff has not claimed any relief in the plaint for including a claim for such relief, no such amendment was asked for by the claimant and as such, the refund was directed in contravention of Section 22(2) of the said Act.
8. Insofar as the interest is concerned, since no relief was claimed for refund, the cause of action for the said relief could arise only on the date of the award, as it was the award itself that for the first time

created such right for the claimant. As such, no pre-award interest could be granted to the claimant.

9. Learned senior counsel appearing for the respondents places reliance on Section 31(7)(a) of the 1996 Act which provides that interest can be granted for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. In the present case, cause of action for interest having arisen only on the date of the award, no interest could be granted at all.
10. It is further argued by the respondents that the payment which was made to the respondent no. 13 in the arbitral proceeding (the Company) was not paid by the claimant of its own. Two assignees of the claimant substantially paid such amount. As such, since the said assignees, namely one Tirupathi Vancom and one Goldsmith, were not parties either to the SPA or the arbitration agreement, no relief of refund of the amount paid by them could be granted by the learned Arbitrator. As such, the direction to refund the entire amount to the claimant was unlawful.
11. It is next argued by learned senior counsel for the respondents that the liability of refund has been imposed by the award jointly and severally on all the respondents whereas the consideration was received as per their respective number of shares. Hence, the ratio of shares which were paid for by each of the respondents ought to have been the yardstick for saddling the respondents with the liability of refund, if refund was to be directed at all.

12. It is further argued that a substantial portion of the payments were made by way of loans to the respondent no. 13-Company. As such, the shareholders could not be held to be jointly and severally liable to pay/refund the portion of payments made by way of such loans. If at all, the said liability is cast on the Company itself.
13. Insofar as costs are concerned, the learned Arbitrator refused to grant the same on the ground that cost-sheets were not filed by the respondents, whereas no direction was given to file such cost-sheets. In any event, the remuneration of the Arbitrator and the administration fees, which were admittedly shared in half by each of the parties, was available as a parameter for grant of costs, which was not availed of by the learned Arbitrator, although in the first sitting dated August 13, 2019, the distribution of costs was enumerated by the learned Arbitrator himself.
14. Learned senior counsel appearing for the respondents/petitioners herein cites *S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs. and others*, reported at (1994) 1 SCC 1 to argued that a person whose case is based on falsehood has no right to approach the court and can be summarily thrown out at any stage of the litigation. A litigant who approaches the court is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

15. Learned senior counsel next cites *Dalip Singh v. State of Uttar Pradesh and others*, reported at (2010) 2 SCC 114 where the court took into consideration the fact that the post-Independence period has seen drastic changes in our value system and a creed of litigants has cropped up who shamelessly resort to falsehood and unethical means for achieving their goals. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, it was held that his petition may be dismissed at the threshold without considering the merits of the claim.
16. Learned senior counsel next cites *Ssangyong Engg. & Construction Co. Ltd. v. National Highways Authority of India (NHAI)*, reported at (2019) 15 SCC 131, where the Supreme Court, while discussing the context of “Public Policy of India”, observed that the same means firstly that a domestic award is contrary to the fundamental policy of Indian Law as understood in Paragraph Nos. 18 and 27 of *Associate Builders* or secondly that such award is against basic notions of justice or morality as understood in Paragraph Nos. 36 to 39 of *Associate Builders*. Patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law, was also linked to public policy or public interest.
17. Next relying on *Associate Builders v. Delhi Development Authority*, reported at (2015) 3 SCC 49, it is argued that the binding effect of a judgment of a superior court being disregarded would be violative of

the fundamental policy of Indian Law. The Supreme Court held therein that if an award is against justice or morality, the third ground of public policy in Section 34(2) of the 1996 Act is satisfied. To come under the purview of such yardsticks, an award has to shock the conscience of the court.

18. Learned senior counsel also cites *Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd. and another*, reported at (2024) 2 SCC 375 to argue that computation of damages should not be whimsical and absurd, resulting in a windfall and bounty for one party at the expense of the other. Further, the computation of damages should not be disingenuous and the damages should commensurate with the loss sustained.
19. Learned senior counsel next cites *S.V. Samudram v. State of Karnataka and another*, reported at (2024) 3 SCC 623, where the Supreme Court laid down the parameters of when an award can be said to be against public policy of India, including situations where an award is patently illegal or in contravention of any substantive law of India or is unreasonable or perverse or in patent violation of a statutory provision.
20. Lastly, learned senior counsel cites *Project Director, National Highways No. 45E and 220 National Highways Authority of India v. M. Hakeem and another*, reported at (2021) 9 SCC 1 where the contours of interference and modification of an arbitral award by the court under Section 34 were dealt with by the Supreme Court.

21. Learned senior counsel for the claimant/respondent no. 1 submits that the respondents/present petitioners have consistently made an offer to refund the amount of Rs. 19.92 Cr. which was admittedly received by them from the claimant. Findings to that effect of the learned Arbitral Tribunal at various places of the award are cited in support of such contention. Learned senior counsel for the claimants also hands over a copy of a modification application filed by the present petitioners in connection with an application under Section 9 of the 1996 Act. In Paragraph No. 6 thereof, it was stated on oath by the respondents/applicants that they accept the portion of the award directing payment of the principal sum of Rs. 19,92,30,500/- to the petitioner and intend to pay the said sum at the earliest. It was also clarified that the applicants therein further intended to challenge the portion of the award whereby interest had been awarded on the said sum. Thus, the respondents/petitioners themselves and through counsel, have repeatedly reiterated the offer of refund of the amount of Rs. 19.92 Cr. (approx.) at various stages of the litigation, also post-award, and expressed the specific intention that they wanted to challenge only the interest component of the award and not the refund of the principal. It is argued that thus, the respondents/petitioners cannot now resile from such position and challenge the refund as directed by the learned Arbitrator.

- 22.** It is further argued that the agreement between the parties includes the possibility of refund with interest. The limited scope of forfeiture was up to Rs.1 Crore and is not applicable in the present case at all.
- 23.** Learned senior counsel next argues that the provision of Section 22(2) of the 1963 Act regarding a relief having to be claimed for being granted is a technical objection and not mandatory. Since an amendment is provided for in the proviso thereto, which could be done at any stage during the course of the arbitration, the relief cannot be refused for non-inclusion of the same in the original pleadings.
- 24.** It is submitted that the bar in Section 22(2) is merely to ensure that none of the parties are taken by surprise by a particular claim. In the present case, the relief of refund and interest was argued by both sides extensively and dealt with by the learned Arbitrator. This, coupled with the fact that the respondents/petitioners repeatedly offered a refund of the amount, establishes that there is no conceivable reason as to why the non-mention of the same in the Statement of Claim would disentitle the claimant from being granted such amount altogether.
- 25.** It is next submitted by learned senior counsel for the claimant/respondent no. 1 that the claim of interest on the principal amount of refund is severable into two different components – interest from the date of cause of action till initiation of the arbitral proceeding and interest payable from commencement from the arbitral proceeding till recovery. It is argued that theoretically, the arbitral award may be

passed on the very same date as the filing of the pleadings. The time taken by the Arbitral Tribunal in hearing the matter and passing the award cannot be a relevant consideration for calculation of interest. Thus, the interest regime as contemplated in Section 31(7) of the 1996 Act is applicable for the pre-arbitral proceeding period as well. In fact, Section 31(7)(a) of the 1996 Act empowers the learned Arbitrator to grant interest for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. It is contended that since the learned Arbitrator has awarded refund of the principal amount, the cause of action for interest would also commence not from the date of the award but from the date of the payment of such principal amount by the claimant, which was the cause of action for the refund as well.

- 26.** Thus, it is argued that the respondents ought to have been granted interest not from the commencement of the arbitral proceeding but from the date of payment of the principal amount.
- 27.** Upon hearing learned counsel for the parties, the Court comes to the following conclusions:
- 28.** The first limb of challenge by the respondents/petitioners is that the Arbitral Tribunal acted with patent illegality in directing refund of the consideration of Rs. 19.92 Cr. (Approx.) to the claimant. The claimant has raised an objection to the effect that the respondents/petitioners consistently gave out before the Tribunal as well as this Court, in

connection with an application under Section 9 of the 1996 Act, that it was ready and willing to refund the said amount to the claimant.

- 29.** A careful perusal of the impugned award shows that before the Tribunal, the respondents/petitioners have all along argued that they are agreeable to refund the amount of consideration to the claimant. However, subsequently, learned senior counsel for the respondents before the Tribunal resiled from such position and argued that since there was no prayer by the claimant for such refund, the Tribunal cannot refund the said amount.
- 30.** Thus, despite having agreed before the Tribunal to refund the entire amount of consideration without interest, the only ground on which the claim of refund was contested was that no relief to that effect was sought by the claimant in its pleadings.
- 31.** On principle, however, the respondents/petitioners admit that the consideration amount was paid by the claimant to them and that they had no qualms to refund the same, otherwise than the technical objection that relief to that extent was not sought in the pleadings.
- 32.** What is more clinching on the count of admission by the respondents/petitioners is that, in a post-award application under Section 9 of the 1996 Act filed by the claimant, the respondents took out an application for modification, in Paragraph No. 6 of which it was categorically admitted that the respondents/petitioners *accept the portion of the award dated June 29, 2023 directing payment of the principal sum of Rs.19,92,30,500/- to the claimant and intend to pay*

the sum at the earliest. It was also stated that the respondents/petitioners intend to challenge the portion of the award whereby interest was granted on such sum.

- 33.** Thus, from their own conduct all through and even post-award, the respondents/present petitioners have unambiguously given out that they accept the portion of the award directing refund of the principal amount and do not intend to challenge the refund of the principal sum but would restrict their challenge only to the interest component of the same.
- 34.** Before this Court, the respondents/petitioners have taken a specious plea that Section 22(2) of the 1963 Act stipulates that no relief shall be granted by the Court unless it has been specifically claimed.
- 35.** However, the proviso thereto dilutes the said restriction by empowering the Court to allow the plaintiff to amend the plaint for introducing such relief.
- 36.** Thus, the bar contemplated in Section 22(2) is not absolute and the court is empowered at any point of time to allow an amendment to get over the technical bar of no relief being claimed.
- 37.** Thus, seen in proper perspective, the bar cannot be said to be absolute. The power of the court to permit amendment to incorporate the relief and grant the same, even if not sought in the original pleading, has been vested by the statute itself.
- 38.** In the present case, there was no occasion or necessity to amend the pleading, since both parties have addressed the issue at length before

the Arbitral Tribunal. Not only that, the respondents/petitioners, by their specific admission and expression of willingness, have entitled the claimant to get the refund of the entire principal sum. In view of the acceptance of the right of the claimant to get such refund, there arose no further occasion for the claimant to seek an amendment to its pleading or for the Tribunal to allow the same. Hence, the claimant acted on the basis of the impression given by the respondents, that they conceded to payment of the principal consideration amount, by not seeking any further amendment to the pleading despite having argued for such refund before the Tribunal.

- 39.** Hence, the doctrine of Estoppel is fully attracted, since the respondents, by their very stand that they are agreeable to refund the entire principal consideration, prompted the claimant to act in such a manner so as to not seek any further amendment, which if sought, could easily have been allowed by the Tribunal under the proviso to Section 22(2) of the 1963 Act.
- 40.** Hence, the respondents/petitioners are barred by the principle of Estoppel from challenging the part of the award whereby refund was directed in respect of the principal amount of consideration admittedly paid by the claimant to the respondents.
- 41.** Another limb of the argument on such count advanced by the respondents/petitioners is that, having held that the claimant placed reliance on a doctored document, the claimant could not claim a refund on the basis of the same.

- 42.** However, the claim of refund stands on a different footing than specific performance. Whereas the relief for specific performance was based entirely on the SPA, the claimant's version of which was disbelieved by the Tribunal, the claim of refund stood on the footing of admitted payment of consideration by the claimant to the respondents. The position might have been otherwise if the Tribunal allowed a claim of damages in the alternative of specific performance, since such relief would then be based on the agreement. However, the claim for refund of the consideration amount was based on the admitted fact that the amount was paid by the claimant and not a relief based on the veracity of the agreement.
- 43.** Hence, the mere fact that the Tribunal had disbelieved the copy of the SPA furnished by the claimant could not have deterred the Tribunal from granting the relief of refund, which was not based on the agreement but on the payment having admittedly been made and the subsequent refusal of the relief of specific performance, which entitled the claimant to a refund of the consideration amount.
- 44.** Also, the learned Arbitral Tribunal was justified in observing that the respondents could not be permitted to reap the benefit of unjust enrichment, being permitted to retain the amount of consideration paid to them despite specific performance having been refused.
- 45.** The Tribunal divorced the claim of specific performance and/or damages based on breach of the agreement (which were refused) from the direction to refund the consideration amount which stood on a

different footing. I find such distinction to be perfectly justified, calling for no interference by the court.

46. As such, the component of the arbitral award whereby the principal sum of Rs.19,92,30,500/- was directed to be refunded by the respondents/petitioners to the claimant/respondent no. 1 cannot be interfered with.
47. Learned senior counsel appearing for the respondents/petitioners cites *S.P. Chengalvaraya Naidu (dead) by LRs. (supra)* to argue that a litigant who approaches the court is bound to produce all documents executed by him and if he withholds vital document in order to gain advantage then he would be held guilty of playing fraud on the court as well as on the opposite party. A case based on falsehood deprives the person relying on such falsehood from approaching the court.
48. Again in *Dalip Singh (supra)*, the Supreme Court highlighted the new creed of unscrupulous litigants who do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in court proceedings.
49. A careful perusal of the impugned award, however, shows that the Arbitral Tribunal did not take the production of an incorrect version of the SPA by the claimant to the level of deliberate and willful fraud on the Tribunal so that it would vitiate the entire claim. Insofar as the claims directly based on the said document, such as specific performance of contract and/or damages for breach of the contract, those were refused by the Arbitral Tribunal. In Paragraph No. 92 of

the award, the Tribunal held that the claimant has not led the foundational evidence for introducing the photocopy which was the secondary evidence for the SPA, for which it was held that the copy of SPA filed by the claimant (CD-1) cannot be relied upon as secondary evidence of the original SPA. Lack of explanation on the part of Mr. Sarda, a signatory to the SPA, regarding his absence when amendments were allegedly carried out in the agreement, was the basis of the Tribunal's disbelief of the said document. Discrepancies were pointed out by the Tribunal in the document. It was also held that a person who comes with a claim for specific performance of a contract by disclosing a contract which is incorrect and suspicious and differs from the original is not entitled to an order for specific performance.

- 50.** However, the refusal to grant specific performance was not solely based on such finding. In Paragraph No. 109 of the award, the Tribunal held that apart from the incorrectness of the claimant's version of the SPA, the delay in making the claim was also a determinant of such refusal. The Tribunal held that the subject property is fairly close to the office of the claimant and was being developed since 2014. A huge property in the heart of Calcutta was demolished and advertisements were inserted, which came in the public domain; thus, the claimant could not dispute before the Tribunal that it was aware of construction going on in the property

since 2014. Yet, the claimant initiated arbitration only in 2019. Such delay was another ground for refusal of specific performance.

- 51.** Thirdly, the Tribunal held that the claimant had not paid its 36 percent share of Rs. 82 Cr., taking into account share consideration price and loan amount, and that its payment of Rs. 19.92 Cr. was not sufficient to discharge its 36 per cent obligation. In such view as well, it was held that the claimant is not entitled to specific performance.
- 52.** Hence, the refusal to grant specific performance of the SPA was not based solely on the incorrectness of the copy of the SPA furnished by the claimant but was based on other grounds as well.
- 53.** Thus, the judgements cited on fraud and the effect thereof are not germane in the present context.
- 54.** The Tribunal, in fact, elaborately discussed that there is no provision in the SPA for forfeiture or confiscation of the consideration amount and that arguments were elaborately advanced by both sides on the question of refund of money; as such, neither of the parties were taken by surprise, to necessitate introduction by amendment of the relief of refund in specific terms.
- 55.** Hence, there cannot be any scope of interference with the direction of the Tribunal for the respondents to refund the consideration money to the claimant.
- 56.** The other limb of argument of the respondents/petitioners is that the language of Section 34 of the 1996 Act mandates the court, if satisfied that the award is vitiated by patent illegality or fraud, to set aside the

same. It is argued that even if the respondents/petitioners had conceded to refunding the principal sum, there cannot be any Estoppel against the statute and, as such, this Court ought to set aside the relevant portion of the award even if the respondents/petitioners had conceded to the refund of the principal.

- 57.** However interesting might such argument be at the first blush, the same is not tenable in the eye of law. Section 34 of the 1996 Act merely provides a gateway for the court to interfere with an arbitral award. However, the key to such gateway lies in an application being made by the aggrieved party. Section 34(1), in no uncertain terms, provides that recourse to a court against an arbitral award may be made *only by an application* for setting aside such award in accordance with sub-sections (2) and (3) of the said Section. Thus, filing of an application by the aggrieved party is a pre-requisite and a *sine qua non* for conferring jurisdiction on the court under Section 34. As such, it is optional for the aggrieved party to file or not to file the application to invoke such power of the court. As such, the aggrieved party definitely has a conscious right to relinquish its grievance by not filing such application. Thus, the right of challenge under Section 34 is waivable at the instance of the aggrieved party and consequently the concept of Estoppel against the law cannot be applied in the present context, as it is entirely on the aggrieved party to elect as to whether or not to file a challenge under the said provision.

- 58.** Thus, since the respondents/petitioners have elected repeatedly, even post-award, to relinquish such right in respect of the refund of the consideration amount, they cannot now resile and argue the principle of Estoppel against the law to turn back and assail such portion of the award.
- 59.** The propositions laid down in *Ssangyong Engg. & Construction Co. Ltd. (supra)* and *Associate Builders (supra)* are well-settled. The contours of interference under Section 34 on the ground of contravention of basic notions of morality or justice are circumscribed by the notion of the award being “shocking to the conscience of the court”. The infraction has to be of fundamental notions or principles of justice to satisfy the high ground of “shocking to the conscience of the court”. The concept of morality was discussed threadbare in *Associate Builders (supra)*. The conclusion arrived at by the Supreme Court was that an award can be said to be against justice only when it shocks the conscience of the court and basic notions of morality.
- 60.** Insofar as the grant of interest by the Tribunal in the impugned award is concerned, the interest component goes hand-in-hand with the direction to refund of the consideration price to the claimant. Section 31 of the 1996 Act empowers the Arbitral Tribunal to include interest on the sum for which the award is made at such rate as the Tribunal deems reasonable, on the whole or any part of the money for the whole or any part of the period between the date on which the cause

of action arose and the date on which the award is made. Section 31(7)(a) is vividly clear on such aspect.

- 61.** Thus, it is well within the discretion of the Tribunal to grant interest on any sum awarded to the claimant. Therefore there is no illegality in the Tribunal granting such interest in the present case, as the consideration amount was directed to be refunded well within the confines of law and the agreement between the parties and the associated consequential relief of interest cannot be said to be illegal or beyond the powers of the Tribunal.
- 62.** The further question which arises is whether the cause of action should be deemed to have arisen for the purpose of interest from the date of the award.
- 63.** Such argument cannot be accepted at all. The entitlement of the claimant to interest goes hand-in-hand with the entitlement to get a refund of the consideration amount. The causes of action of the two reliefs cannot be dissociated as such. The interest component cannot be segregated from the main awarded amount, since the entitlement of the refund arose on the date when the claimant became entitled to the consideration amount itself. Rather, the Tribunal has been lenient on the respondents/petitioners by awarding interest not from the date of the cause of action but from the date of the initiation of the arbitral proceeding. Such lenience was also within the discretion of the Tribunal; hence, there cannot be any interference on such count.

- 64.** The basis of the petitioner's argument that cause of action for interest arose from the date of the award is its stand that no relief of refund was claimed at any point of time, nor was any interest claimed on such amount. However, the issue of the petitioner's liability to refund the consideration amount has been discussed above threadbare, as was done by the Tribunal itself. Having held that the petitioner is liable to refund of the entire amount, despite no relief being specifically included in that regard in the Statement of Claim, there cannot be any justifiable reason to hold that only the interest component can be segregated and its cause of action held to have arisen with the award.
- 65.** Thus, there is no basis for such argument of the petitioner. Once having held that the claimant is entitled to the refund of the principal consideration, interest thereon becomes a necessary corollary.
- 66.** The petitioners cite *Batliboi Environmental Engineers Ltd. (supra)* for the argument that computation of damages should not be whimsical and absurd, resulting in a windfall and bounty for one party. However, neither the refund of the consideration admittedly paid, nor interest thereon, can be held to be a bounty or a windfall but comes well within the contractual and statutory rights of the claimant to obtain.
- 67.** Insofar as the challenge of the claimant/respondent no. 1 is concerned, regarding interest not being granted from the date of the cause of action till the commencement of the arbitral proceeding, the

same was within the discretion of the Tribunal. Section 5 of the 1996 Act precludes the court from interfering in any manner with an arbitral proceeding or award except so far as provided in the 1996 Act. Section 34 of the said Act does not empower the court to substitute its own view or notions of discretion in place of that exercised by the Arbitrator. There was no patent illegality on the part of the Arbitrator in granting interest from the date of the commencement of arbitration and not from the date when the amount became due. Sufficient reasons have been afforded for such non-grant and the same cannot be interfered with by this Court only on the ground that the said component of interest *could have been* granted by the Tribunal.

- 68.** In *Project Director (supra)* as well as *S.V. Samudram (supra)*, the Supreme Court has reiterated that the Section 34 court can at best set aside an award if the requirements of Section 34 are satisfied, but cannot modify the same, supplanting its own view in place of the Arbitrator which would be impermissible, being completely *de hors* the jurisdiction under Section 34.
- 69.** It has been held by the Supreme Court time and again that the power under Section 34 to set aside the award does not include the power to modify the same. Seen from such perspective as well, there is no scope of allowing the challenge of the claimant/respondent to the extent of grant of interest from the date when the claimant became entitled to the refund of consideration, which would have the effect of

modifying the award by tinkering with the discretion exercised by the Arbitral Tribunal.

- 70.** Hence, the challenge preferred by the claimant/respondent to non-grant of such additional interest between the period from when the refund became due till the date of commencement of the arbitration is also refused.
- 71.** Accordingly, AP-COM No. 388 of 2024(Old Case No. AP 777 of 2023) with AP-COM No. 389 of 2024 (Old Case No. AP 783 of 2023) are dismissed on contest without, however, any order as to costs.
- 72.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)