

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION APPEAL NO.38 OF 2024

Goa Shipyard Limited through its Authorized
Officer & Additional General Manager (Legal)
Kishore Manohar Samant ... Appellant

Vs.

Shoft Shipyard Pvt. Ltd. ... Respondent

WITH
ARBITRATION APPEAL NO.37 OF 2024
WITH
ARBITRATION APPEAL NO.39 OF 2024
WITH
ARBITRATION APPEAL NO.40 OF 2024
WITH
ARBITRATION APPEAL NO.41 OF 2024
WITH
ARBITRATION APPEAL NO.42 OF 2024
WITH
ARBITRATION APPEAL NO.43 OF 2024
WITH
ARBITRATION APPEAL NO.44 OF 2024
WITH
COMMERCIAL ARBITRATION APPEAL NO.3 OF 2024
WITH
COMMERCIAL ARBITRATION APPEAL NO.4 OF 2024
WITH
COMMERCIAL ARBITRATION APPEAL NO.5 OF 2024
WITH
COMMERCIAL ARBITRATION APPEAL NO.6 OF 2024
WITH
COMMERCIAL ARBITRATION APPEAL NO.7 OF 2024

Mr. Soli Cooper, Senior Advocate a/w. Mr. Surjendu Sankar Das, Ms. Annie Mittal for Appellant (Goa Shipyard Limited).

Mr. Ashwin Shankar a/w. Ms. Ridhi Nyati for Respondent (Shoft Shipyard Private Limited).

**CORAM : P. D. NAIK, J. &
MANISH PITALE, J.**

Reserved on : 04TH APRIL, 2024

Pronounced on: 26TH APRIL, 2024

ORDER : (Per Manish Pitale, J.)

. This is a bunch of thirteen appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996 (Arbitration Act), challenging orders passed by the District Court disposing of applications under Section 34 of the Arbitration Act. While Goa Shipyard Limited (GSL) has filed ten appeals, Shoft Shipyard Private Limited (SHOFT) has filed three appeals. Amongst the ten appeals filed on behalf of GSL, two suffer from delay and hence they are accompanied by applications for condonation of delay.

2. In the light of the submissions made on behalf of the rival parties, various issues arise for consideration. It would be appropriate to first refer to the chronology of events in brief, in order to appreciate the background in which the rival submissions have been advanced.

3. SHOFT is the original claimant in the proceedings initiated under the Arbitration Act. GSL had floated a tender on 05.09.2007 for awarding contracts concerning construction of hull and for installation of machinery. The claimant SHOFT was the successful bidder and work-orders were issued in its favour. Subsequently, certain additional works were added, which were also carried out by SHOFT. There were arbitration clauses in the contracts executed between the parties. Since disputes arose between them, SHOFT called upon GSL to refer the disputes to arbitration. The arbitration clauses required the disputes to be referred to the Chairman and Managing Director of GSL, but SHOFT objected to the same. In this situation, in the context of some of the work-orders / contracts, GSL appointed a former Judge of this Court as

the sole arbitrator and in respect of other work-orders / contracts, proceedings under Section 11 of the Arbitration Act had to be instituted. This led to appointment of another former Judge of this Court as the sole arbitrator. As a consequence, arbitral awards were rendered by the two former Judges of this Court. Three awards were rendered by the sole arbitrator, Justice A. P. Lavande, former Judge of this Court on 29.09.2017 and two awards were rendered by Justice F. I. Rebello, former Judge of this Court on 17.04.2018.

4. Both GSL and SHOFT filed applications under Section 34 of the Arbitration Act to challenge the said awards. By the impugned orders, the District Court disposed of the applications, leading to filing of the present appeals. As noted hereinabove, two appeals filed by GSL suffer from delay of 1040 days. The original claimant i.e. SHOFT, in the said appeals, has vehemently opposed the applications for condonation of delay and hence, this Court is called upon to decide the aforesaid issue, in addition to the issues arising on merits in the context of the submissions made on behalf of the rival parties.

5. Mr. Soli Cooper, learned senior counsel appearing for the appellant GSL in the ten appeals filed on behalf of GSL submitted that the major issues arising on merits in the present appeals pertain to limitation; the entitlement of GSL for adjustment or set-off while determining the quantum payable to SHOFT, if any; interest payable on the awarded amount; absence of power in the Court under Section 34 of the Arbitration Act to modify the arbitral award; and the manner in which the learned arbitrators arrived at the figures pertaining to the amounts awarded to SHOFT. In addition, it was submitted that there was sufficient explanation for delay in filing the aforementioned two appeals and that therefore, the applications for condonation of delay deserved to be allowed so that the said two appeals could also be taken up for

consideration on merits.

6. As regards the issue of limitation, the learned senior counsel for GSL submitted that the learned arbitrators erred in holding in favour of SHOFT on the issue of limitation as the dates, when the period of limitation stood triggered in respect of the references to arbitration, were wrongly determined. It was submitted that the triggering of cause of action, in the first place, was not appreciated in the correct perspective and thereupon, the learned arbitrators erred in applying Section 18 of the Limitation Act to the individual facts of the references. In that context, the learned senior counsel appearing for GSL referred to various documents on record and submitted that a proper reading of the communications exchanged between the parties would show that arbitration was invoked well beyond the period of limitation. According to GSL, the documents taken as a basis for reading acknowledgment of liability by GSL in writing was clearly erroneous, and therefore, incorrect findings were rendered in favour of SHOFT as regards the second and third reference before Justice A. P. Lavande and the fourth and fifth reference before Justice F. I. Rebello. This aspect was dealt with by the arbitrators in a cursory manner although it went to the very root of the disputes between the parties and the District Court in the impugned orders also failed to appreciate the true purport of the documents on record and the contentions raised on behalf of GSL.

7. It was further submitted that if the findings rendered on the effect of the documents on record in the context of Section 18 of the Limitation Act is taken into consideration, there is contradiction, thereby further indicating that the issue of limitation was not dealt with in an appropriate manner. In this context, the learned senior counsel appearing for GSL placed reliance on judgement of the Supreme Court in the case of *Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority*,

(1988) 2 SCC 338. It was emphasized that in the said judgement, the Supreme Court recognized that a party cannot postpone accrual of cause of action by writing reminders and that, where a bill or invoice is finally prepared and a dispute arises in respect of the same, the cause of action is triggered, which cannot be postponed to a later date only because reminders are sent. Reliance was also placed on judgement of this Court in the case of *R. P. Souza and Co. Vs. Chief Engineer PWD*, **2000 (1) Mh.L.J. 558**. According to GSL, despite the aforesaid aspects being pointed out, the District Court did not appreciate the same while exercising jurisdiction under Section 34 of the Arbitration Act. According to GSL, the aforesaid aspect gives rise to the grounds available under Section 34 of the Arbitration Act for interfering with the arbitral award i.e. the award being in conflict with the public policy of India and it being patently illegal.

8. It was further submitted on behalf of GSL that the issue of set-off or adjustment was neither appreciated by the learned arbitrators nor the District Court while holding in favour of SHOFT. It was the case of GSL that it was entitled to adjustment or set-off towards losses it had already suffered due to the actions of SHOFT in respect of two of the contracts. It was emphasized that the question of counter-claims made by GSL was ignored only on the ground that the matter pertaining to such counter-claims was pending before the other arbitrator, but even set-off was not considered, which indicated a fundamental error in exercise of jurisdiction on the part of the arbitrator. GSL was claiming set-off under the principles of Order VII, Rule 6 of the Code of Civil Procedure, 1908 (CPC), but the said aspect was completely ignored by the learned arbitrator while holding against GSL. The question of counter-claim and its admissibility was mixed up by the learned arbitrator with the issue of set-off, leading to erroneous findings against GSL. There was total non-consideration of the issue of set-off, thereby indicating that the limited

grounds available under Section 34 of the Arbitration Act did arise for consideration before the District Court. Yet, the District Court failed to appreciate the contentions raised on behalf of GSL in that regard. In order to demonstrate the error committed by the District Court as regards the said aspect of the matter, reliance was placed on the judgement of the Delhi High Court in the case of *Cofex Exports Limited Vs. Canara Bank*, **1997 (43) DRJ 754**, wherein it was held that the defendant has a right to defend himself by raising all possible pleas permitted by law including set-off and adjustment. It was recognized that an adjustment contemplates existence of mutual demands between the same parties in the same capacity. According to the learned senior counsel appearing for GSL, it was immaterial that GSL was raising demands in respect of another set of contracts so long as the parties were same and they had engaged with each other in the same capacity. Reliance was also placed on judgement of the Karnataka High Court in the case of *State Trading Corporation of India Limited Vs. Vanivilas Co-operative Sugar Factory Ltd.*, **2001 SCC OnLine Kar 239** and judgement of the Bombay High Court in the case of *Raghavendra Raoji Kathawate Vs. Yalgurad Ramchandra Padki*, **1916 SCC OnLine Bom 7**.

9. The learned senior counsel appearing for GSL further submitted that the question of interest was also incorrectly decided by the learned arbitrators. It was emphasized that the issue pertaining to the power of the Court to modify the arbitral award under Section 34 of the Arbitration Act is intertwined with the said issue pertaining to interest. It was submitted that the District Court erred in modifying the award on the question of interest.

10. The submissions on behalf of GSL were then concentrated on the position of law recognized in various judgements to the effect that the

Court exercising power under Section 34 of the Arbitration Act cannot modify an arbitral award. In support of the said contention, the learned senior counsel appearing for GSL relied upon judgements of the Supreme Court in the case of *Project Director, NHAI Vs. M. Hakeem*, (2021) 9 SCC 1; *Larsen Air Conditions and Refrigeration Company Vs. Union of India*, 2023 SCC OnLine SC 982 and other judgements. It was further submitted that even if the Supreme Court has recently passed order dated 20.02.2024 in SLP (Civil) No.15336 of 2021 (*Gayatri Balasamy Vs. ISG Novasoft Technology Limited*) referring the issue pertaining to the power of the Court to modify the award under Section 34 of the said Act to a larger Bench, the recognized position of law manifested in the judgement of the Supreme Court in the case of **Project Director, NHAI Vs. M. Hakeem** (*supra*) and other judgements continued to be binding precedents. The learned senior counsel appearing for GSL further distinguished the judgements upon which reliance was placed on behalf of SHOFT, by contending that wherever the Supreme Court appeared to have modified arbitral awards, it was done by exercising power under Article 142 of the Constitution of India. On this basis, it was submitted that the order of the District Court, modifying the arbitral awards on the question of interest deserved interference and for the same reason, the three appeals filed by SHOFT deserved to be dismissed.

11. The learned senior counsel appearing for GSL further submitted that a perusal of the findings rendered by both the learned arbitrators in the awards as regards the quantum of amount payable to SHOFT, would show that there was no application of mind while arriving at the figures. The learned arbitrators picked up the figures from documents that came on record in pursuance of without prejudice negotiations entered into between GSL and SHOFT. It was submitted that in some cases, the learned arbitrators even recorded that such figures had come to light in

pursuance of without prejudice negotiations and yet, awarded such amounts to SHOFT, without any analysis of the material and evidence on record, thereby demonstrating a fundamental error in rendering the awards. According to the learned senior counsel appearing for GSL, this aspect also gives rise to sufficient grounds under Section 34 of the Arbitration Act for the District Court to have set aside the arbitral awards.

12. It was further submitted on behalf of GSL that the aforesaid glaring errors, being pointed out to this Court in the appeals filed under Section 37 of the Arbitration Act, certainly justify exercise of power under the said provision and interference with the impugned orders passed by the District Court.

13. It was submitted that the claimant i.e. SHOFT is not entitled to contend that the scope of jurisdiction of the Court under Section 37 of the Arbitration Act is narrower than the scope available to the Court under Section 34 thereof. The judgements relied upon on behalf of SHOFT in the said context were sought to be distinguished on the basis that the said judgements really dealt with the scope of jurisdiction under Section 34 of the Arbitration Act. It was vehemently submitted that the material on record abundantly demonstrated patent illegality on the part of arbitrators in partly allowing the claims of SHOFT and that the awards could be said to be in conflict with public policy of India. By placing reliance on judgement of the Supreme Court in the case of *State of Chhattisgarh Vs. M/s. Sal Udyog Pvt. Ltd.*, **(2022) 2 SCC 275**, it was contended that this Court exercising power under Section 37 of the Arbitration Act could *suo motu* exercise power to examine as to whether the ground of patent illegality arises in the facts and circumstances of the present case.

14. It was further submitted on behalf of GSL that in the event, this

Court is inclined to uphold the impugned arbitral awards, since the amounts towards principal were deposited during pendency of the appeals and bank guarantees were furnished to secure the amount towards interest and cost, the interest must stop running against GSL from the date of deposit of such principal amounts in the appeals. It was submitted that this aspect also needs consideration at this stage itself.

15. The learned senior counsel appearing for GSL lastly submitted that this Court ought to adopt a pragmatic approach while considering the applications for condonation of delay in the two appeals suffering from delay in approaching this Court. In the applications for condonation of delay, GSL has made a forthright statement that the delay has occurred due to inadvertence and oversight. It was candidly stated that the advocates representing GSL were under the *bona fide* impression that all the ten appeals arising from the orders passed by the District Court had been filed. The common issues arising in all the appeals are of concern to GSL and there was no reason why the two appeals would have been held back by GSL. It was specifically stated that when the appeals were to be taken up for hearing and convenience compilations were to be prepared to assist the Court, that the advocates for GSL realized that two out of the ten appeals were actually not filed. In that backdrop, the said two appeals were filed along with applications for condonation of delay. It was emphasized that although the delay of 1040 days occurred, but length of the delay would be an irrelevant consideration. The explanation for delay being the only relevant consideration, according to GSL, the material on record does make out sufficient grounds for condonation of delay. The learned senior counsel submitted that merely because GSL happens to be a government organization, it ought not to be given step motherly treatment, particularly when the reasons put forth for seeking condonation of delay cannot be said to be either *mala fide* or without any justification.

Reliance was placed on judgements of the Supreme Court in the case of *Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others*, **(1987) 2 SCC 107**; *N. Balakrishnan Vs. M. Krishnamurthy*, **(1998) 7 SCC 123**; *Bhivchandra Shankar More Vs. Balu Gangaram More and others*, **(2019) 6 SCC 387**; and *Sheo Raj Singh through LRs and others Vs. Union of India and another*, **(2023) 10 SCC 531**.

16. The judgement in the case of *Government of Maharashtra Vs. Borse Brothers Engineers and Contractors Private Limited*, **(2021) 6 SCC 460** on which SHOFT has placed much reliance, was sought to be distinguished by contending that the Supreme Court in the said case frowned upon delay being condoned where *mala fides* were evident and where there was no justification for seeking condonation of delay.

17. On this basis, the learned senior counsel appearing for GSL submitted that delay in the two appeals may be condoned thereby considering the said two appeals on merits.

18. On the other hand, Mr. Ashwin Shankar, learned counsel appearing for SHOFT submitted that in the light of the material on record and the position of law laid down in various judgements, on all the issues raised on behalf of GSL, this Court may render findings in favour of SHOFT. It was submitted that there was no substance in the contentions raised on behalf of GSL, particularly for the reason that this Court is exercising limited jurisdiction under Section 37 of the Arbitration Act while considering the present appeals. It was submitted that the District Court in the impugned orders, except on the question of interest, correctly held that no ground was made out by GSL for interference with the arbitral awards under Section 34 of the Arbitration Act. On the question of interest, it was submitted that the District Court ought to have granted the entire relief as prayed in the applications filed on behalf of SHOFT under Section 34 of the Arbitration Act. It was also

submitted that the applications for condonation of delay in filing the aforementioned two appeals also deserved to be rejected as no ground was made out to condone the delay.

19. While addressing this Court on the specific issues raised on behalf of GSL, the learned counsel appearing for SHOFT submitted in respect of aspect of limitation that, the issues of fact and appreciation of evidence are necessarily involved, which cannot be gone into in the appeals filed under Section 37 of the Arbitration Act. Notwithstanding the said submission, it was submitted that even if the pleadings on behalf of GSL are to be considered, it would be found that GSL itself stated that the claims raised by SHOFT in respect of the additional work or modified work were premature as the parties were yet to negotiate the price for the additional work done under the contractual clause. This indicated the self-contradictory stand of GSL. Apart from this, it was submitted that the findings rendered by the learned arbitrators on the aspect of limitation, particularly by application of Section 18 of the Limitation Act, certainly qualify as a possible view in the matter. Once this conclusion is reached, it becomes evident that no ground is available for GSL to claim that the District Court ought to have interfered with the arbitral awards on the nature of findings rendered with respect to the issue of limitation.

20. Thereupon the learned counsel appearing for SHOFT referred to the findings in each of the arbitral awards and the corresponding findings rendered by the District Court, to impress upon this Court that no case was made out on behalf of GSL on the issue of limitation. The learned counsel appearing for SHOFT submitted on the aspect of set-off that the contentions raised on behalf of GSL were fundamentally flawed because the question of set-off would arise only when there was an ascertained amount or claim of GSL, which could then become the basis

of set-off or adjustment. It was submitted that an inchoate or an indeterminate amount could never become the basis for claiming set-off or adjustment. The whole basis of set-off or adjustment appeared to be the counter-claims of GSL and that too, not in the same proceedings.

21. According to the learned counsel appearing for SHOFT, the law laid down in the context of Order VIII, Rule 6 of the CPC would not apply to the facts of the present case. The contentions raised on behalf of GSL proceeded on an assumption that amounts or claims of GSL based on counter-claims had been already determined so as to provide a basis for claiming set-off. The assumption not being supported by any material on record is fatal to the contention raised on behalf of GSL. The learned arbitrator in the proceedings, where the issue of set-off / adjustment was raised on behalf of GSL, was well aware about the position of law and accordingly dealt with the said contention of GSL. It cannot be said that the findings rendered by the learned arbitrator amount to an impossible view in the matter and therefore, the District Court was justified in not interfering with the arbitral awards on that aspect of the matter. It was submitted that when GSL failed to make out its case under Section 34 of the Arbitration Act, there was no question of GSL having made out any ground on the said aspect of the matter for interference under Section 37 thereof. The judgements relied upon by GSL i.e. **Cofex Exports Limited Vs. Canara Bank** (*supra*), **Raghavendra Raoji Kathawate Vs. Yalgurad Ramchandra Padki** (*supra*) and **State Trading Corporation of India Limited Vs. Vanivilas Co-operative Sugar Factory Ltd.** (*supra*) were sought to be distinguished on the ground that in those cases, the amount to be set-off was an ascertained amount and that the said cases were under the provisions of the CPC and not under the Arbitration Act. On this basis, it was submitted that even on the aspect of set-off / adjustment, GSL failed to make out any case in its favour in the appeals.

22. On the aspect of the learned arbitrators having failed to decide the quantum of claims on merits and error committed in placing reliance on figures finalized on the basis of without prejudice negotiations, it was submitted that this issue was neither raised before the District Court nor has it been raised in the appeals before this Court. It was further submitted that even before the learned arbitrators, there was no whisper on the part of GSL to raise protest in respect of the quantum of claims determined in the arbitral awards. On this short ground, according to SHOFT, the aforesaid contention raised on behalf of GSL deserved to be rejected. Even otherwise, it was submitted that there was sufficient material on record to indicate that the quantum was determined by the arbitrators on a cogent appreciation of material on record.

23. The learned counsel appearing for SHOFT then shifted his attention to the scope of jurisdiction of this Court while deciding the appeals under Section 37 of the Arbitration Act. It was submitted that the scope of jurisdiction under the said provision is narrower than the jurisdiction available to the Court under Section 34 of the Arbitration Act. The limited grounds of challenge available under Section 34 are the arbitral awards being in conflict with the public policy of India and patent illegality. It was submitted that GSL failed to convince the District Court on either of the grounds and under Section 37 of the Arbitration Act, this Court is required to examine only the correctness or otherwise of the orders passed by the District Court, while disposing of the applications filed under Section 34 of the Arbitration Act. It was alleged that the learned senior counsel appearing for GSL had not even adverted to the impugned orders passed by the District Court to demonstrate any error in exercise of jurisdiction. It was further submitted that the grounds raised in the appeals filed by GSL do not justify exercise of jurisdiction to interfere with the impugned orders passed by the District Court, except on the question of interest. It was

emphasized that the tenor of submissions made on behalf of GSL concentrated on challenge to the arbitral awards instead of demonstrating error committed by the District Court while exercising jurisdiction under Section 34 of the Arbitration Act.

24. The learned counsel appearing for SHOFT relied upon judgement of the Supreme Court in the case of *Konkan Railway Corporation Limited Vs. Chenab Bridge Project*, **(2023) 9 SCC 85**, to contend that no new grounds can be taken in appeal filed under Section 37 of the Arbitration Act, other than those raised in the proceeding under Section 34 thereof. While considering an appeal under Section 37 of the Arbitration Act, the Court cannot go into alternative interpretations of terms of contract and only if it is found that the findings rendered by the Court under Section 34 of the Arbitration Act are outrageous or suffer from the vice of irrationality can they be termed as perverse, justifying interference. Reliance was placed on judgement of the Supreme Court in the case of *Dyna Technologies Private Limited Vs. Crompton Greaves Limited*, **(2019) 20 SCC 1** and *MMTC Limited Vs. Vedanta Limited*, **(2019) 4 SCC 163**, to contend that the impugned orders and arbitral awards ought not to be interfered with in a casual and cavalier manner and further the Court under Section 37 of the Arbitration Act is concerned with the impugned order passed under Section 34 thereof and not with the underlying arbitral award. In this context, reliance was also placed on judgements of this Court in the case of *Paramount Limited Vs. Ion Exchange (India) Limited*, **2023 SCC OnLine Bom 1818**; *Azizur Rehman Gulam and others Vs. Radio Restaurant and others*, **2023 SCC OnLine Bom 2320**; *Balaji Pressure Vessels Limited Vs. Bharat Petroleum Company Limited*, **2019 SCC OnLine Bom 476**; as also judgement of the Delhi High Court in the case of *ADTV Communication Pvt. Ltd. Vs. Vibha Goel and others*, **2018 SCC OnLine Del 8843**. It was further claimed that the Supreme Court in the case of *UHL Power*

Company Limited Vs. State of Himachal Pradesh, (2022) 4 SCC 116 has laid down that jurisdiction of the Court under Section 37 of the Arbitration Act is narrower than the jurisdiction of the Court under Section 34 thereof. On this basis, it was urged that there was no question of this Court exercising jurisdiction under Section 37 of the Arbitration Act, going into the merits of the arbitral award and the submissions made in that regard on behalf of GSL deserve to be ignored.

25. The learned counsel appearing for SHOFT further submitted that the applications for condonation of delay filed in two appeals of GSL deserve to be dismissed. It was submitted that the only reasons put forth on behalf of GSL are 'inadvertence' and 'oversight'. It was further submitted that GSL has failed to give any cogent reasons while seeking condonation of delay. The casual and cavalier approach of GSL is evident from the contents of the applications for condonation of delay and also the manner in which the said two proceedings were pursued after having been filed with considerable delay. It was submitted that the conduct of GSL, all through the proceedings after disputes arose between the parties, was such that SHOFT was harassed at every stage of the litigation. If delay in the said two appeals is condoned, it will amount to giving premium to the actions of GSL, which have caused untold harassment to SHOFT. Specific reliance was placed on judgement of the Supreme Court in the case of **Government of Maharashtra Vs. Borse Brothers Engineers and Contractors Private Limited** (*supra*), to contend that in matters pertaining to arbitration, the Court has to be all the more vigilant and stricter in applying the law of limitation, particularly because majority of the disputes in such cases arise out of contractual obligations and delay of each day needs to be adequately explained. It was submitted that the applications for condonation of delay deserve to be dismissed on this ground alone. It was further submitted that the judgements relied upon by GSL while

seeking condonation of delay are distinguishable on facts and in any case, they do not pertain to arbitration proceedings or appeals filed under Section 37 of the Arbitration Act. Most of such cases concerned individuals whose rights were adversely affected and they were able to explain with cogent material on record that the reasons put forth for explaining delay were *bona fide* and acceptable. In the present case, GSL has simply blamed its advocates, who allegedly forgot to file the two appeals and realized the same only when the convenience compilations were being prepared to assist this Court in final hearing. On this basis, it was submitted that the applications ought to be dismissed.

26. The learned counsel for SHOFT further submitted that GSL cannot claim that the District Court has modified the arbitral awards while issuing directions in respect of interest payable on the claims allowed under the awards. All that the District Court did was to grant relief to which SHOFT is entitled by operation of the provisions of the MSMED Act. In such a situation, there is no question of modification of the award as the relief obviously available under the statutory provision has been granted in favour of SHOFT. It was emphasized that the Supreme Court had upheld orders passed by Courts wherein such relief was granted, thereby indicating that the challenge raised on behalf of GSL on that ground is unsustainable. The learned counsel for SHOFT relied upon judgements of the Supreme Court in the case of *Vedanta Limited Vs. Shenzen Shandong Nuclear Power Construction Co. Ltd.*, **(2019) 11 SCC 465**; *M/s. Oriental Structural Engineers Pvt. Ltd. Vs. State of Kerala*, **(2021) 6 SCC 150**; *Shakti Nath and others Vs. Alpha Tiger Cyprus Investment No.3 Limited and others*, **(2020) 11 SCC 685**; *Krishna Bhagya Jala Nigam Limited Vs. Harischandra Reddy and another*, **(2007) 2 SCC 720**; and *Hindustan Zinc Limited Vs. Friends Coal Carbonisation*, **(2006) 4 SCC 445**. Reliance was also placed on the

recent order of the Supreme Court in the case of **Gayatri Balasamy VS. ISG Novasoft Technology Limited** (*supra*), wherein the issue with regard to the question of the power of the Court to modify an arbitral award has been referred to a Larger Bench. It is submitted that the Supreme Court in the referral order has listed the two lines of judgements of the Supreme Court itself taking divergent views, thereby indicating that in certain facts and circumstances, the Supreme Court itself has either modified the arbitral award or upheld such modification. On this basis, it was submitted that no interference with the orders of the District Court is warranted on the ground that the arbitral awards were modified.

27. On the question of interest, it was submitted that the three appeals filed by SHOFT ought to be allowed as the District Court erred to the extent of directing payment of interest only upto the date when the petitioner was registered as a unit under the MSMED Act and also in calculating the points in time under various contracts when the liability to pay interest was triggered. It was submitted that this Court exercising the limited jurisdiction under Section 37 of the Arbitration Act can certainly interfere to only this limited extent so that the statutory interest payable to SHOFT, as the claimant, is realized, and that too from the points in time relevant to each contract when the liability to pay interest stood triggered. On this basis, it was claimed that while the appeals filed by GSL deserve to be dismissed, the appeals filed by SHOFT deserve to be allowed in the interest of justice.

28. On the aspect of interest stopping to run when the principal amounts were deposited in these appeals before this Court, it was submitted that the amounts were withdrawn by SHOFT only upon giving bank guarantees and securities. Therefore, it could not be said that merely by depositing the amounts towards principal and furnishing

bank guarantees in respect of amounts payable towards interest, in the event the awards are upheld, the interest would stop running. According to SHOFT, the interest will keep on running till the amounts are finally realized.

29. Having heard the submissions advanced on behalf of the rival parties, before dealing with the issues that arise for consideration, it would be appropriate that the scope of jurisdiction of this Court under Section 37(1)(c) of the Arbitration Act is appreciated in the light of the position of law laid down in various judgements. In the case of **Konkan Railway Corporation Limited Vs. Chenab Bridge Project** (*supra*), the Supreme Court held that while dealing with an appeal under Section 37 of the Arbitration Act, the Court is really concerned with the question as to whether the Court below properly exercised jurisdiction under Section 34 thereof considering the challenge to an arbitral award. While exercising such jurisdiction, the Court under Section 37 of the Arbitration Act cannot re-appreciate the evidence on record and the merits of the findings rendered in the arbitral award. In the case of **MMTC Limited Vs. Vedanta Limited** (*supra*), the Supreme Court held that the Court exercising jurisdiction under Section 37 of the Arbitration Act cannot travel beyond the restricted jurisdiction available to the Court exercising jurisdiction under Section 34 thereof. It was laid down that while considering an appeal under Section 37 of the Arbitration Act, the Court cannot undertake an independent assessment of the merits of the award and it can only ascertain as to whether the Court below, while exercising power under Section 34 of the Act had exercised the same within the scope of the said provision, and therefore, the Court should be slow in disturbing the concurrent findings and that jurisdiction is to be exercised with extreme caution.

30. In the case of **UHL Power Company Limited Vs. State of**

Himachal Pradesh (*supra*), the Supreme Court appreciated the extent of jurisdiction available to the Court under Section 37 of the Arbitration Act and held that such appellate jurisdiction, while considering an order passed by the Court under Section 34 of the Arbitration Act, is all the more circumscribed. In the order dated **11.01.2022** in **Civil Appeal No.266 of 2022** (*Haryana Tourism Limited Vs. M/s. Khandari Beverages Ltd*) passed by the Supreme Court, it was reiterated that an arbitral award can be set aside only if it is found to be in conflict with fundamental policy of Indian law or the interest of India or in conflict with justice or morality or if it is patently illegal. It was observed that if the Court exercising jurisdiction under Section 37 of the Arbitration Act enters into the merits of the claim then it would amount to erroneous exercise of jurisdiction.

31. This Court in the case of **Azizur Rehman Gulam and others Vs. Radio Restaurant and others** (*supra*) held that jurisdiction under Section 37 of the Arbitration Act is extremely limited and narrow. The Court, while exercising such jurisdiction, cannot consider grounds of challenge against the arbitral award that were not taken at the stage of challenging the award under Section 34 of the Arbitration Act. Similarly, in the case of **Balaji Pressure Vessels Limited Vs. Bharat Petroleum Company Limited** (*supra*), this Court held that the appellant cannot be permitted to urge various contentions for the first time in the appeal, when such contentions were not raised before the Court while challenging the arbitral award under Section 34 of the Arbitration Act.

32. The learned counsel for the rival parties relied upon the said position of law in support of their respective positions. This Court finds that jurisdiction available under Section 37(1)(c) of the Arbitration Act, while considering an order of the Court passed under Section 34 of the Arbitration Act, setting aside or refusing to set aside an arbitral award, is

limited, narrow and hence, the appellant is required to cross a very high threshold to make out a case for interference with the order passed by the Court under Section 34 of the Arbitration Act. With this restrictive jurisdiction, this Court is called upon to consider the challenge raised on behalf of GSL to the orders passed by the District Court under Section 34 of the Arbitration Act. SHOFT has also filed three appeals, limited to the question of interest payable on the awarded amount.

33. But, before this Court proceeds to consider the aforementioned contentions of the rival parties, it would be appropriate to first deal with the two applications for condonation of delay filed on behalf of GSL in Appeal Nos. 41 of 2024 and 42 of 2024.

34. A perusal of the said applications shows that according to the applicant / appellant - GSL, the appeals were drafted to be filed in respect of the orders passed by the District Court under Section 34 of the Arbitration Act. GSL was particularly aggrieved by the orders of the District Court, whereby the arbitral awards were modified by the District Court. According to GSL, the District Court exercising power under Section 34 of the Arbitration Act could not have modified the award. It is the case of GSL that there was no reason why two of such appeals, wherein GSL was seriously aggrieved by the modification of the awards, could have been kept back without filing, while all the other remaining eight appeals were filed within the period of limitation. It was emphasized on behalf of GSL that it had nothing to gain by keeping back the two appeals and everything to lose by not filing the said appeals.

35. In this context, the learned senior counsel appearing for GSL submitted that the reasons stated in the two applications need to be appreciated, which emphasize on oversight or inadvertent error on the part of GSL in failing to actually file the two appeals, although they

were drafted and kept ready for filing with the other eight appeals. It is the specific case of GSL that when this Court directed the parties to prepare synopsis and paper-books for convenience during final hearing, that the advocates representing GSL realized that the aforesaid two appeals were actually not filed. In that context, it is specifically pleaded in the applications that non-filing of the appeals within the period of limitation was purely due to the error on the part of the advocates and that, it was neither intentional nor deliberate. These are the reasons given for seeking condonation of delay in filing the two appeals.

36. The applicant / appellant GSL has relied upon a series of judgements noted hereinabove, in support of its contention that the length of delay is immaterial, so long as the explanation is found to be reasonable and acceptable. Emphasis is placed on the said judgements in the cases of **Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others** (*supra*), *N. Balakrishnan Vs. M. Krishnamurthy* (*supra*), **Bhivchandra Shankar More Vs. Balu Gangaram More and others** (*supra*) and **Sheo Raj Singh through LRs and others Vs. Union of India and another** (*supra*).

37. This Court finds that the Supreme Court has indeed indicated that length of delay in itself cannot be a relevant consideration while considering a prayer for condonation of delay and that the emphasis has to be on sufficiency of cause for condoning delay. A liberal approach has been recommended when the Court does find that genuine reasons have been put forth while seeking condonation of delay. It is also laid down that State authorities cannot claim any special consideration as compared to a private litigant when a prayer for condonation of delay is to be considered. Yet, this Court does find substance in the contention raised on behalf of GSL that merely because it is a State entity, it may not be meted out step-motherly treatment. The Supreme Court has also

distinguished between what can be said to be an explanation as opposed to an excuse while seeking condonation of delay. In other words, if the reasons put forth are found to be *bona fide*, the Court would be inclined to condone delay.

38. On the other hand, the learned counsel appearing for SHOFT has specifically relied on the judgement of the Supreme Court in the case of **Government of Maharashtra Vs. Borse Brothers Engineers and Contractors Private Limited** (*supra*). It is laid down therein that delay of each day has to be explained and that if the explanation is found to be without any justification or *mala fide*, there can be no question of condonation of delay. It is emphasized on behalf of SHOFT that the applications for condonation of delay are brief and without any cogent explanation.

39. The delay in the present case is of 1040 days. It is not as if minor delay is sought to be condoned, and therefore, this Court is required to consider the explanation given in the applications for condonation of delay. As noted hereinabove, the main ground while seeking condonation of delay is that the advocates for the applicant / appellant GSL, due to an inadvertent error, failed to file the said two appeals at the time when the remaining eight appeals were filed on behalf of GSL. The record does show that the aforesaid eight appeals were indeed filed within the period of limitation. The pleadings were completed and the appeals were to be taken up for final hearing. It is at this stage that when convenience compilations were being prepared to assist this Court that the advocates for GSL realized that the aforementioned two appeals had not been actually filed. It is in this context that the explanation pertaining to 'oversight' and 'inadvertent error' has to be appreciated. It is specifically stated that the advocates did not intentionally or deliberately hold back filing of the said appeals. This Court is of the

opinion that when a group of appeals is to be filed, there can be a human error in failing to file all the appeals at one go. It cannot be said in the present case that GSL held back filing of the two appeals in order to gain something in the process. It is not as if some amounts were due and payable to GSL with interest and longer pendency of the appeals would eventually inure to the benefit of GSL in the context of the interest component. On the contrary, GSL is obliged to make payments and the subject appeals that were filed along with applications for condonation of delay pertained to the very question of interest sought to be raised against SHOFT. In these circumstances, it cannot be said that the explanation tendered on behalf of GSL smacks of *mala fide* or that, such applications can be rejected as being without any justification. The Supreme Court, in its judgement in the case of **Government of Maharashtra Vs. Borse Brothers Engineers and Contractors Private Limited** (*supra*), has emphasized upon the requirement of speedy resolution of commercial disputes in the context of the Arbitration Act. In the said case, although the delay was only 131 days beyond the 60-day period provided for filing an appeal in the context of the Commercial Courts Act, 2015, as a matter of fact, the Supreme Court found that there was no explanation worth the name contained in the application for condonation of delay, beyond the usual statements regarding file-pushing and administrative exigencies. It is significant that in the present case, GSL being a State Authority, has not given the usual 'excuse' of file-pushing in the departments for explaining the delay, but a straight-forward, honest and clear explanation is given as to why only the said two appeals could not be filed within the period of limitation, while all the other eight appeals were admittedly filed within the period of limitation.

40. There is substance in the contentions raised on behalf of GSL by relying upon the aforementioned judgements. This Court is of the

opinion that when the other eight appeals of GSL are being considered on merits, including appeals raising the question about the power of the District Court under Section 34 of the Arbitration Act to modify the award in the context of the interest payable, it would be appropriate that delay in filing the two appeals is also condoned so that the said appeals can also be taken up for consideration on merits. In fact, the arguments put forth on behalf of GSL on merits in the said appeals are identical to those raised in the companion appeals on the aforementioned question. Therefore, this Court is inclined to accept the explanation put forth on behalf of GSL and accordingly, the applications for condonation of delay in Appeal Nos.41 of 2024 and 42 of 2024, are allowed. The delay is condoned. The said two appeals are taken up for consideration on merits along with the other appeals of GSL.

41. One of the issues raised on behalf of GSL pertains to limitation. In the present case, five arbitral proceedings were undertaken in respect of five contracts executed between the parties. These concerned the works of building hull, installing machinery and subsequently carrying out additional works awarded by GSL to SHOFT. It is the case of GSL that if the communications exchanged between the parties are to be appreciated, the period of limitation for invoking arbitration had expired, and that therefore, the claims of SHOFT ought not to have been considered on merits by the two learned arbitrators. In this context, the attention of this Court was invited to the said communications exchanged between the parties and it was contended that neither the learned arbitrators nor the District Court considered the material on record in the proper perspective, leading to perverse findings on facts as well as on law.

42. As noted hereinabove, while exercising jurisdiction under Section 37 of the Arbitration Act, this Court cannot re-appreciate evidence and

the limited enquiry to be conducted is, as to whether the interpretation placed on the documents on record can be said to be an impossible interpretation, leading to perverse findings. If this Court reaches the said conclusion, the contentions raised on behalf of GSL on the question of limitation can be accepted. This Court has appreciated the rival submissions and it is found that the learned arbitrators considered the exchange of communications between the parties to reach a finding that Section 18 of the Limitation Act applied as the tenor of the letters addressed by GSL to SHOFT amounted to acknowledgment of liability, although in most instances, it was on an assertion that GSL was also entitled to recoveries and hence to set-off. The learned arbitrators found that such acknowledgment of amounts due to SHOFT, although in the backdrop of the claim of set-off, could not be ignored and that due to such communications addressed by GSL, a fresh period of limitation was triggered. This was the basis for rejecting the assertion made on behalf of GSL that the invocation of arbitration on the part of SHOFT was barred by limitation.

43. A perusal of the impugned orders passed by the District Court shows that on the question of limitation, the Court has not only considered the position of law with regard to Section 18 of the Limitation Act, with reference to the communications exchanged between the parties, but the effect of such communications on the invocation of arbitration has also been considered. The specific submission made on behalf of GSL with regard to the question as to what could be considered as acknowledgment of debt has been considered and analyzed. It is found that the arbitral tribunal correctly rejected the assertion of GSL that the invocation of arbitration or reference to arbitration was barred by limitation. While exercising jurisdiction under Section 37 of the Arbitration Act, this Court could interfere with the impugned orders passed by the District Court if the

findings were perverse i.e. findings that could be said to be outrageous or suffering from the vice of irrationality. This Court would have to hold that the documents on record could never have been interpreted in the manner in which the District Court has done while considering the effect of Section 18 of the Limitation Act. In that context, it would have to be examined as to whether the law laid down in the judgements in the cases of **Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority** (*supra*) and **R. P. Souza and Co. Vs. Chief Engineer PWD** (*supra*) has been correctly applied to the facts of the present case.

44. This Court is of the opinion that the findings rendered by the District Court on the aspect of limitation cannot be said to be perverse. The District Court has found, as a matter of fact that GSL in some instances had claimed adjustment and set-off, demonstrating that such a claim could be made only if the amounts due to SHOFT were acknowledged. The very fact that the set-off and adjustment was claimed, indicated an acknowledgment of debt in writing on the part of GSL. Therefore, this Court is inclined to agree with the District Court on the issue of limitation. The learned counsel appearing for SHOFT was at pains to refer to such letters addressed by GSL, which indicated that the period of limitation was triggered afresh upon such acknowledgment of debt in writing on the part of GSL. It is not as if the District Court was oblivious or ignorant of the said documentary material on record. Such material was not only referred to but it was analyzed and cogent findings were rendered. Hence, no case is made out by GSL on the question of limitation for interference with the impugned orders passed by the District Court.

45. As regards judgements in the cases of **Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority** (*supra*) and **R. P. Souza and Co. Vs. Chief Engineer PWD** (*supra*), it was laid down

therein that the period of limitation cannot be extended by merely sending reminders if the event triggering limitation has occurred, as limitation cannot stop running. But, the said position of law cannot inure to the benefit of GSL for the reason that in the present case in some instances sufficient material was available on record to show that GSL had itself acknowledged the debt in communications addressed to SHOFT, thereby showing that limitation was triggered afresh. In other instances, GSL itself claimed that the claims raised by SHOFT were premature. Thus, the said judgements do not advance the case of GSL any further.

46. The learned senior counsel appearing for GSL had vehemently submitted in the context of set-off that the learned arbitrators as well as the District Court concentrated more on the counter-claims raised by GSL, failing to appreciate that set-off ought to have been granted under Order VIII, Rule 6 of the CPC, only on the basis of the material available on record.

47. In this context, it would be necessary to examine as to whether such a ground was at all taken before the District Court in the applications filed under Section 34 of the Arbitration Act. The material shows that no such ground was raised. In any case, the tenor of submissions made before the District Court also does not show any effort on the part of GSL to raise its claim of set-off without reference to the counter-claims. In fact, a perusal of the judgements and orders of the District Court in Arbitration Appeal Nos.22 of 2018, 23 of 2017 and 24 of 2018, would show that no such arguments were advanced.

48. The points for consideration framed in the aforesaid three applications before the District Court concerned the alleged inability of GSL to present its case before the learned arbitrator on account of rejection of counter-claim. The District Court found that by an order /

interim award dated 07.10.2015, the learned arbitrator had held that he had no jurisdiction to consider the counter-claims raised by GSL. This was evidently an order under Section 16 of the Arbitration Act, appealable under Section 37(2)(a) thereof. Admittedly, GSL failed to file appeals against such orders / interim awards passed by the learned arbitrator in the context of the arbitration proceedings relatable to Arbitration Application Nos.22 of 2018, 23 of 2017 and 24 of 2018 filed before the District Court. Having failed to challenge the said order, the question of counter-claims of GSL could not be agitated at the stage of final hearing before the learned arbitrator. This aspect was deliberated upon by the District Court to correctly find that there was no question of claiming set-off as counter-claims could not even be agitated by GSL in the said proceedings. No effort was made on the part of GSL to claim that the counter-claims filed in the other two arbitration proceedings before the second arbitrator could become the basis of claiming set-off. All that was agitated before the District Court in the three aforesaid proceedings was that GSL was incapacitated or otherwise unable to present its case before the learned arbitrator on account of rejection of its counter-claim at the stage of ascertaining jurisdiction under Section 16 of the Arbitration Act. Strictly speaking, GSL cannot be permitted to raise the question of set-off in the present appeals under Section 37 of the Arbitration Act. In any case, it was never agitated on behalf of GSL that its claim of set-off ought to be considered only on the basis of material on record, without any reference to its counter-claims. The said contention is rejected on this ground itself.

49. Even if the claim of GSL is to be considered on the basis of counter-claims filed before the second arbitrator, this Court is of the opinion that SHOFT is justified in contending that set-off could not have been granted by the first learned arbitrator on the basis of un-ascertained amounts, which were subject matter of counter-claims raised by GSL

before the second learned arbitrator. In the first place, the counter-claims were not in the very proceedings pending before the first learned arbitrator, and secondly, the amounts were admittedly not ascertained amounts. Hence, this Court is of the opinion that the issue of set-off cannot be decided in favour of GSL and that, in any case, the aforesaid issue does not give rise to any ground for interfering with the well reasoned orders passed by the District Court.

50. In this context, much reliance was placed on behalf of GSL on the judgments in the cases of **Cofex Exports Limited Vs. Canara Bank** (*supra*), **Raghavendra Raoji Kathawate Vs. Yalgurad Ramchandra Padki** (*supra*) and **State Trading Corporation of India Limited Vs. Vanivilas Co-operative Sugar Factory Ltd.** (*supra*). This Court is of the opinion that in the said cases, the amounts claimed towards set-off were ascertained amounts, and they were found to be legally recoverable in the context of pure civil cases decided under the CPC. In the present case, the said question is being considered under the limited jurisdiction available to this Court under Section 37 of the Arbitration Act and this Court is of the opinion that in the absence of any material to show an ascertained sum payable to GSL, only an assertion of a counter-claim in distinct arbitration proceedings could not have been the basis of claiming set-off before the first learned arbitrator. As noted hereinabove, GSL did not even agitate its case in this manner before the District Court, while pursuing its applications under Section 34 of the said Act and therefore, it cannot succeed on the aspect of set-off to claim any interference with the impugned orders passed by the District Court. In any case, it cannot be said that GSL had been able to demonstrate before the District Court any ground concerning conflict with public policy of India or patent illegality while challenging the arbitral awards.

51. GSL asserted that both the learned arbitrators committed a grave

error in failing to analyze the material and evidence on record to ascertain the quantum of amounts payable to SHOFT under the five arbitration proceedings. It was alleged that the learned arbitrators simply accepted amounts that were ascertained during ‘without prejudice’ discussions, demonstrating that in the absence of analysis of the evidence or material on record, the amounts granted by the learned arbitrators cannot be supported.

52. A perusal of the impugned orders passed by the District Court shows that there is no whisper of such a ground having been agitated in the applications filed under Section 34 of the Arbitration Act. No such ground has been raised even in the appeals filed before this Court under Section 37 of the Arbitration Act. While discussing the scope of jurisdiction under Section 37 of the Arbitration Act, this Court hereinabove has found that an appellant cannot be permitted to raise grounds that have not been raised before the Court below under Section 34 of the Arbitration Act. This is because, a proceeding under Section 37 of the Arbitration Act may be referred to as an appeal, but it is not an appeal on facts and law as in the classical sense, since the jurisdiction being exercised by the Court under Section 37 of the Arbitration Act is narrow, limited and in any case, it cannot go beyond the specified jurisdiction available to the Court under Section 34 of the Arbitration Act. On this short ground itself, the aforementioned contention raised on behalf of GSL about absence of discussion of relevant evidence and material for arriving at quantum of amount payable to SHOFT deserves to be rejected. In any case, there is nothing even in the arbitral awards to show that GSL tried to raise the said issue. Hence, the said contention pertaining to quantum of claims paid to SHOFT is rejected.

53. On the question of interest, the issue pertaining to the power to modify an arbitral award comes to the fore. This is because the District

Court has specifically interfered with and modified the arbitral awards on the question of interest, as agitated by the original claimant i.e. SHOFT. Therefore, it would be necessary to first discuss the aspect of jurisdiction of a Court under Section 34 of the Arbitration Act to modify an arbitral award.

54. In the case of *Mcdermott International Inc. Vs. Burn Standard Company Ltd. And others*, (2006) 11 SCC 181, the Supreme Court held as follows:

“52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.”

55. Yet, in the facts of the said case, the Supreme Court took recourse to Article 142 of the Constitution of India to do complete justice between the parties and on that basis, reduced the rate of interest. The said position of law, as laid down in the above-quoted paragraph of the judgement of the Supreme Court in the case of **Mcdermott International Inc. Vs. Burn Standard Company Ltd. And others** (*supra*), has held the field and in the case of **Project Director, NHAI Vs. M. Hakeem** (*supra*), it was held as follows: -

“48. Quite obviously if one were to include the power to modify an award in Section 34, one would be crossing the Lakshman Rekha and doing what, according to the justice of a case, ought to be done. In interpreting a statutory provision, a Judge must put himself in the shoes of Parliament and then ask whether Parliament intended this result. Parliament very clearly intended that no power of modification of an award

exists in Section 34 of the Arbitration Act, 1996. It is only for Parliament to amend the aforesaid provision in the light of the experience of the courts in the working of the Arbitration Act, 1996, and bring it in line with other legislations the world over.”

56. On behalf of GSL, it was specifically contended that the said position of law still holds the field despite the recent order dated 20.02.2024 passed by the Supreme Court in the case of **Gayatri Balasamy Vs. ISG Novasoft Technology Limited** (*supra*), whereby the issue with regard to the power of the Court under Section 34 of the Arbitration Act to modify an award has been referred to a Larger Bench. This Court has perused the aforesaid order whereby specific questions have been referred to a Larger Bench. Reference is made to the aforementioned judgement of the Supreme Court in the case of **Project Director, NHAI Vs. M. Hakeem** (*supra*) amongst others while referring the questions to the Larger Bench. The central issue in the reference, of course, is as to whether the courts have power under Sections 34 and 37 of the Arbitration Act to modify the arbitral award. Merely because the issue has been referred to a Larger Bench cannot take away the binding nature of precedents in the cases of **Mcdermott International Inc. Vs. Burn Standard Company Ltd. And others** (*supra*) onwards and **Project Director, NHAI Vs. M. Hakeem** (*supra*) laying down that the Court can only set aside an award or partly set aside a severable portion of an award, but the Court cannot modify the award in any manner. The learned senior counsel appearing for GSL pointed out that in all cases where the Supreme Court did modify the award, the same was done by exercising power under Article 142 of the Constitution of India. This Court is of the opinion that in the cases where the Supreme Court has modified arbitral awards, it has done so to do complete justice between the parties under Article 142 of the Constitution of India. Obviously, such power is not available either with

the District Court under Section 34 of the Arbitration Act or this Court under Section 37 thereof.

57. A perusal of the impugned orders passed by the District Court, in the context of the arguments raised on behalf of SHOFT on the issue of interest payable on the awarded amount, would show that the District Court found substance in the challenge raised on behalf of SHOFT. Upon analyzing the scheme of the Arbitration Act and the MSMED Act, the District Court found that the findings rendered by the learned arbitrators in the five arbitral proceedings on the question of interest could not be sustained. But, a perusal of the impugned orders shows that the District Court did not stop at that and went further to modify the arbitral awards in a specific manner. In fact, the impugned orders of the District Court clearly state that the impugned awards stood modified on the aspect of interest payable on the awarded amounts. This approach adopted by the District Court is in the teeth of the settled position of law as laid down by the Supreme Court in the above-mentioned judgements. Howsoever much the Court may feel that the findings rendered by the arbitrators on a particular issue need correction, as such findings are erroneous, the Court under Section 34 of the Arbitration Act, as per settled position of law, does not have the jurisdiction to make such corrections, thereby modifying the arbitral awards. The said position may appear to be tough for the parties, but as laid down by the Supreme Court in the case of **Project Director, NHAI Vs. M. Hakeem** (*supra*), if power to modify an award was to be included in the power and jurisdiction exercised under Section 34 of the Arbitration Act, it would amount to crossing the *Lakshman Rekha*, even if what is proposed to be done would be in accordance with justice. Considering the said position of law, this Court is required to examine whether the modification of the awards by the District Court in the impugned orders can at all be sustained. A perusal of the impugned orders shows that the District

Court has not only found that the findings rendered by the arbitrators on the question of interest were erroneous, but it has gone ahead to correct the error by modifying the awards in favour of SHOFT. Unfortunately, the aforesaid exercise carried out by the District Court is in the teeth of the aforementioned position of law and to that extent, the impugned orders passed by the District Court deserve to be interfered with and the appeals filed by GSL deserve to be partly allowed.

58. For the same reasons, the three appeals filed by SHOFT deserve to be dismissed. SHOFT is asking this Court to do that which is prohibited by the said position of law. SHOFT is claiming even further reliefs on the question of interest and consequently a further modification of the arbitral awards, which can certainly not be considered or granted by this Court under Section 37 of the Arbitration Act. Therefore, the three appeals filed by SHOFT, concerned with the question of interest and its entitlement for further relief, are dismissed.

59. The District Court could have passed an order in respect of the issue of interest if the directions passed by the learned arbitrators in that context could be said to be either in conflict with the public policy of India or they suffered from patent illegality or they were in conflict with justice or morality. Here again the settled position of law would apply, to the effect that interference would be warranted if the view adopted by the learned arbitrators could be said to be an impossible view in the facts and circumstances of the case or that it could be said to be outrageous or suffering from the vice of irrationality, rendering the findings perverse. This Court is unable to reach such conclusions in respect of the directions issued by the learned arbitrators on the issue of interest and therefore, no case is made out by either of the parties to justify interference with the findings of the learned arbitrators on the issue of interest. Even otherwise, *proviso* to Section 34 (2-A) of the Arbitration

Act specifically provides that an award shall not be set aside on the ground of patent illegality merely because of an erroneous application of law. The arbitrators, in the present case, exercised their discretion on the question of award of interest and even if SHOFT claimed that there was erroneous application of law, that in itself would not give rise to the ground of patent illegality under Section 34 (2-A) of the Arbitration Act. Therefore, this Court is of the opinion that the District Court exercising power under Section 34 of the Arbitration Act ought not to have entertained the challenge raised on behalf of SHOFT in respect of the awards passed by the learned arbitrators.

60. The learned counsel for the parties made submissions before this Court on the question as to whether interest ought to stop running against GSL for the reason that the amounts towards principal were deposited in these appeals, which were withdrawn by SHOFT and that bank guarantees were furnished with respect to the interest payable on the awards. This Court is of the opinion that the said aspect of the matter has nothing to do with challenge to the orders passed by the District Court under Section 34 of the Arbitration Act and they are certainly not concerned with the correctness and otherwise of the arbitral awards passed by the arbitrators. In fact, the said issue would be relevant when execution of the awards is pursued by SHOFT. This is evident from the fact that submissions were made on behalf of the rival parties on the premise that in the event the awards are upheld, the said issue would arise. Therefore, this Court refuses to go into the said aspect of the matter. It is kept open to be agitated by the parties when execution proceedings are pursued in the context of the said arbitral awards. It is also relevant to note that the District Court modified the arbitral awards only in Commercial Arbitration Petition Nos.3 of 2024, 4 of 2024 as also Arbitration Appeal Nos.41 of 2024, 42 of 2024 and 43 of 2024 filed by GSL. In the light of the reasons stated above, only the aforesaid

appeals deserve to be allowed. Rest of the appeals filed by GSL deserve to be dismissed; while the appeals filed by SHOFT also deserve to be dismissed for the reasons stated above.

61. In the light of the above, it is held as follows:

- a. Commercial Arbitration Appeal Nos.3 of 2024, 4 of 2024 as also Arbitration Appeal Nos.41 of 2024, 42 of 2024 and 43 of 2024 filed by GSL are allowed. The impugned orders passed by the District Court are set aside and the applications filed by SHOFT under Section 34 of the Arbitration Act in these cases are dismissed;
- b. Arbitration Appeal Nos.37 of 2024, 38 of 2024, 39 of 2024, 40 of 2024 and 44 of 2024 filed by GSL are dismissed;
- c. Commercial Arbitration Appeal Nos.5 of 2024, 6 of 2024 and 7 of 2024 filed by SHOFT are dismissed;
- d. All pending applications stand disposed of with disposal of the aforesaid appeals; and
- e. There shall be no order as to costs.

(MANISH PITALE, J.)

(P. D. NAIK, J.)

MINAL SANDIP PARAB Digitally signed by MINAL SANDIP PARAB
Date: 2024.04.26 23:42:08 +0530

Minal Parab