



O.P.Nos.138 and 214 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	06.03.2024
Pronounced On	07.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

O.P.Nos.138 and 214 of 2021

O.P.No.138 of 2021

M/s.Bharat Motors Limited,
Represented by its Executive Director
Sandeep Kumar Bajoria

... Petitioner

Vs.

Ashok Leyland Limited

... Respondent

Prayer in O.P.No.138 of 2021: Original Petition is filed under Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996, praying to set aside the impugned Award dated 10.03.2020 passed by the Arbitral Tribunal in A.F.No.143 of 2017 in respect of the petitioner's claim for pre-reference interest and *pendente lite* interest, to grant the petitioner's claim for pre-reference interest and *pendente lite* interest, to direct the respondent to compensate the petitioner for the costs incurred in the proceedings.

O.P.No.214 of 2021

Ashok Leyland Limited

... Petitioner



O.P.Nos.138 and 214 of 2021

Vs.

M/s.Bharat Motors Limited,
Represented by its Executive Director
Sri Aditya Bhalotia

... Respondent

Prayer in O.P.No.214 of 2021: Original Petition is filed under Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996, praying to set aside the impugned Award dated 10.03.2020 in respect of those portions which have been allowed in favour of the respondent and to award costs of the present petition.

In O.P.No.138 of 2021

For Petitioner : Mr.Anirudh Krishnan

For Respondent : Mr.Kuberan
for M/s.Rank Associates

In O.P.No.214 of 2021

For Petitioner : Mr.Kuberan
for M/s.Rank Associates

For Respondent : Mr.Anirudh Krishnan

COMMON ORDER

By this common order, both these Original Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 are being disposed of.

2. O.P.No.138 of 2021 has been filed by the claimant against the impugned Award passed by the Arbitral Tribunal on 10.03.2020 while



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O.P.No.214 of 2021 has been filed by the respondent before the Arbitral Tribunal against the same Award.

3. Before the Arbitral Tribunal, the claimant (the petitioner in O.P.No.138 of 2021) had prayed for the following relief:-

IX. RELIEF SOUGHT

“38. Wherefore, the Claimant respectfully prays that this Hon'ble Tribunal may kindly be pleased to:

- I. Direct the Respondent to make payment of a sum of **INR.2,38,02,369.11/-** due and payable to the Claimant;*
- II. Direct the Respondent to liquidate the spare parts worth **Rs.1,70,39,389.50/-** and make the payment of such to the Claimant;*
- III. Direct the Respondent to make payment of simple interest of **Rs.3,27,71,769.24/-** from the date on which the payments were due/cause of 'action arose till the date of the Statement of Claim along with compound interest till the date of the award calculated at the rate of 18% compounded yearly and future compound interest on the sum awarded (including the interest pendent lite and legal costs) at the rate of 18% compounded yearly from the date of the award till the date of payment;*
- IV. Direct the Respondent to pay costs of the proceedings before this Hon'ble Tribunal;*
- V. Grant such other relief as this Hon'ble Tribunal deems fit to grant in the facts and circumstances of the case.”*

The above claims were under different heads.



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4. The respondent (the petitioner in O.P.No.214 of 2021) had made counter-claim for Rs.1.04 Crores for not furnishing C-Forms to the tune of Rs.5.06 Crores and towards damages.

5. By the impugned Award dated 10.03.2020, the Arbitral Tribunal has partly allowed and partly disallowed/rejected the claim of the claimant. Aggrieved by the same, the claimant has filed O.P.No.138 of 2021 before this Court.

6. The claimant has challenged the impugned Award insofar as the impugned Award denies the interest for the period prior to the institution of arbitration proceedings and *pendente lite* interest on the amount awarded by the Arbitral Tribunal, to the tune of Rs.53,38,614.35/-.

7. The respondent before the Arbitral Tribunal [the petitioner in O.P.No.214 of 2021/respondent in O.P.No.138 of 2021] is aggrieved insofar as the impugned Award allows Claim Nos.1, 2 & 7 of the claimant before the Arbitral Tribunal. There is no serious contest.



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8. The respondent before the Arbitral Tribunal, has not challenged the impugned Award insofar as it rejects its Counter Claim. Details of the claims partly allowed and disallowed in Paragraphs 50 and 51 of the impugned Award read as under:-

“50.This Tribunal holds that the Claimant has proved the claims under the following Heads and entitled for the same:-

Sl. No.	Head	Amount claimed in Rs.	Amount allowed in Rs.
1.	Overriding commission	8,64,317.10	8,64,317.10
2.	Debit Note Claim	6,96,900.00	5,46,489.00
3.	Forecast Claim	6,32,500.00	6,32,500.00
4.	Service Debit Note	2,03,479.00	2,03,479.00
5.	R-Claim	12,58,255.35	2,15,606.35
6.	(Warranty) Accounts(Wrongful debit of vehicle)	28,76,223.00	28,76,223.00
7.	Liquidation of spare parts	1,70,39,389.50	47,65,202.00*
	Total		1,01,03,816.35

(* Challenge in O.P.No.214 of 2021)

“51. This Tribunal also holds that the Claimant has not proved the claims under the following Heads and not entitled for the same:-

S.No.	Head	Rs.
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1.	<i>RVI Claim</i>	<i>5,02,083.50</i>
2.	<i>Pre-Claim</i>	<i>2,74,269.00</i>
3.	<i>Warranty Payment</i>	<i>32,91,298.00</i>
4.	<i>Shortage in payment of Warranty</i>	<i>28,81,691.34</i>
5.	<i>Damaged/Short supply of Spare parts</i>	<i>25,35,250.00</i>
6.	<i>Accounts</i>	<i>36,02,761.00</i>
		<i>41,83,406.00</i>
7.	<i>Disallowed (Debit note claim, R claim, Liquidation of spare parts)</i>	<i>1,34,67,247.50</i>
	Total	3,07,38,006.34

9. Operative Portion of the impugned Award reads as under:-

“XIII. RESULT:

In the result, an Award is passed,

- i. directing the Respondent to pay to the Claimant a sum of **Rs.53,38,614.35/-** with interest @ 18% per annum from the date of Award till the date of payment;*
- ii. directing the respondent to pay to the claimant a sum of **Rs.47,65,202.00/-** on condition that the claimant deliver those stocks backed up by invoices to the respondent's destination of their convenience;*
- iii. Dismissing the counter-claim of the respondent;*
- iv. Parties are directed to bear their own cost.”*

10. The learned counsel for the claimant/petitioner in O.P.No.138 of 2021 would submit that the Arbitral Tribunal has committed a grave error in restricting the interest for the period after the date of Award.



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11. Arguing the case on behalf of the claimant/petitioner in O.P.No.138 of 2021, the learned counsel for the petitioner would submit that the impugned Award restricting the interest on **Rs.53,38,614.35/-** at **18%** from the date of Award till the date of payment is contrary to Section 31(7)(a) of the Arbitration and Conciliation Act, 1996.

12. It is submitted that the Arbitral Tribunal ought to have awarded interest for the period prior to the commencement of the arbitral proceedings and *pendente lite* interest i.e., interest during the pendency of the arbitral proceedings before the Arbitral Tribunal.

13. The learned counsel for the claimant/petitioner in O.P.No.138 of 2021 would submit that as far as interest is concerned, the issue is no longer *res integra* and has been settled by the Hon'ble Supreme Court in “**Indian Hume Pipe Co., Ltd., vs. State of Rajasthan**”, (2009) 10 SCC 187 wherein, the Hon'ble Supreme Court has held that the Arbitral Tribunal is competent to award interest not only for the period prior to the initiation of proceedings but also *pendente lite* during the pendency of the arbitration proceedings and for



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the subsequent period also. It is submitted that this view has been followed by various Courts.

14. The learned counsel for the claimant/petitioner in O.P.No.138 of 2021 would further submit that, in fact, this Court has also awarded interest in the case of **“The Governor of Tamil Nadu, Represented by The Secretary Vs. M/s.GMR Chennai Outer Ring Road Pvt. Ltd.,”** vide its order dated 17.11.2021 in O.P.Nos.124 & 285 of 2021, which decision was also upheld by a Division Bench of this Court by its judgment dated 11.08.2022 in O.S.A.(CAD) Nos. 75 & 76 of 2022.

15. It is submitted that further appeal against the decision of the Division Bench of this Court dated 11.08.2022 is now subject matter of the appeal before the Hon'ble Supreme Court in SLP (C).Nos.17844 & 17845 of 2022 vide its order dated 03.11.2022 and that issue is still pending as on date before the Hon'ble Supreme Court as no further orders have been passed.

16. The learned counsel for the claimant/petitioner in O.P.No.138 of 2021 would also draw attention of this Court to a decision of the Delhi High Court in **“Union of India Vs. Associated Construction Co.,”** 2016 SCC Online Del



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4679 wherein, a learned Judge of the Delhi High Court has followed the Judgment rendered by the Hon'ble Supreme Court in “**Secretary Irrigation Department, Government of Orissa Vs. GC Roy & Regunath Mohapatra**”, AIR 1992 SC 732.

17. The learned counsel for the claimant/petitioner in O.P.No.138 of 2021 would also refer to another decision of this Court rendered in “**J.K.Fenner (India) Limited Vs. Neyveli Lignite Corporation and Ors.**”, in O.P.No.252 of 2014 dated 20.05.2020.

18. Additionally, the learned counsel for the claimant/petitioner in O.P.No.138 of 2021 has relied on few other decisions of the Hon'ble Supreme Court which also state that High Courts are empowered to modify the order insofar as payment of interest is concerned. It has been held that the Court can uphold the Award and therefore, submits that the case need not be referred to back to the Arbitral Tribunal to re-examine the issue.

19. The learned counsel for the claimant/petitioner in O.P.No.138 of 2021/respondent in O.P.No.214 of 2021 submitted that the Arbitral Tribunal has



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committed a grave error in awarding a sum of Rs.1,01,03,816.35/- while passing the impugned Award. However, the learned counsel for the respondent would submit that the respondent is confining the challenge in respect of Claims Nos.1, 2 and 7 alone.

20. Arguing on behalf of the respondent before the Arbitral Tribunal [the petitioner in O.P.No.214 of 2021/respondent in O.P.No.138 of 2021], Mr.V.Kuberan, the learned counsel for M/s.Rank Associates would submit that O.P.No.138 of 2021 is liable to be dismissed as the learned Arbitrator has correctly exercised the discretion under Section 31(7)(a) of the Arbitration and Conciliation Act, 1996.

21. It is, therefore, submitted that challenge to the impugned Award insofar as the denial of interest for pre-institution of the arbitral proceedings and *pendente lite* interest for the period between 03.09.2019 and 10.03.2020 being the date of the Award, does not call for any interference and therefore, prays for dismissal of O.P.No.138 of 2021.

22. It is further submitted that the Arbitral Tribunal has correctly held that the Vehicle Dealer Agreement/Contract does not contemplate any payment



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of interest or any pending amount between the parties and therefore, if at all, the interest payable is only on the Award amount after the date of Award till the date of realization. It is submitted that the challenge to the Award as mentioned above is confined to only awarding of amount towards Claim Nos.1, 2 & 7.

23. It is submitted that the Arbitral Tribunal committed an error in awarding a sum of **Rs.47,65,202/-** for liquidation of spare parts contrary to Article 28 of the aforesaid Vehicle Dealer Agreement dated 31.12.2009.

24. As far as the challenge to the impugned Award of the Arbitral Tribunal insofar as the award of Rs.47,65,202/- is concerned, it is submitted that it is subject to the claimant [petitioner in O.P.No.138 of 2021/respondent in O.P.No.214 of 2021] returning the stock to the respondent.

25. It is further submitted that the Arbitral Tribunal has modified the Vehicle Dealer Agreement/Contract inasmuch as per the Article 28 of the Vehicle Dealer Agreement/Contract between the parties on termination of the Vehicle Dealer Agreement/Contract. It is submitted that the claimant [the petitioner in O.P.No.138 of 2021/respondent in O.P.No.214 of 2021] is not required to take back the stock of unsold shares and it is the responsibility of the claimant [the



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petitioner in O.P.No.138 of 2021/respondent in O.P.No.214 of 2021] to dispose all the stocks at its own risk.

26. In this connection, attention is drawn to Clause 28 of the Vehicle Dealer Agreement/Contract dated 31.12.2009, which reads as under:-

Article 28

UNFULFILLED REQUISITION AND STOCKS AT TERMINATION

On termination of this agreement for any reason whatsoever, such termination shall without liability to AL also operate as a cancellation of all requisitions or orders for the said products or any of them which may have been received by AL from the DEALER and which have not been fulfilled as on the date of such termination.

Upon termination, AL is not obliged in any way to take back any stocks for which sale has been effected to DEALER and it is the responsibility of the terminated DEALER to dispose off the stocks held at his own risk.

27. It is submitted that merely because the communications of the respondent indicate that the issue was under consideration and the amounts will be paid on the actual value after assessment *ipso facto* would not clothe the Arbitral Tribunal to award amounts contrary to Article 28 of the aforesaid Vehicle Dealer Agreement/Contract.



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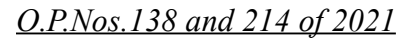
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28. The learned counsel for the respondent [petitioner in O.P.No.214 of 2021] submits that all the decisions cited by the claimant/petitioner before this Court have been rendered in the context of the Arbitration Act, 1940 and therefore, they will not apply to the provisions of the Arbitration and Conciliation Act, 1996.

29. It is therefore submitted that the impugned Award is clearly in violation of Section 28(3) of the Arbitration and Conciliation Act, 1996. That apart, it is submitted that the reasoning of the Arbitral Tribunal while awarding the Debit Note Claim for a sum of **Rs.5,46,489/-** based on the communication relating to “overriding commission” cannot be justified.

30. It is submitted that reliance placed on Ex.C33-Quantification in the impugned Award is unsustainable and shows non-application of mind as Ex.C33-Quantification only deals with overriding commission and does not deal with detail notes.

31. The learned counsel for the respondent has relied on the following decisions of the Hon'ble Supreme Court:



- <https://www.mhc.tn.gov.in/judis>
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said Vehicle Dealer Agreement/Contract was not renewed and therefore, the dealership of the claimant stood terminated on 31.12.2012.

35. On the date of the termination of the dealership with the claimant, the claimant appears to have unsold stock which consisted of unsold vehicle and spare parts procured for providing authorized service for the vehicles manufactured and sold by the respondent through the claimant/petitioner.

36. Thus, the claimant/petitioner in O.P.No.138 of 2021 had raised number of claims. However, the respondent rejected them as not maintainable, which prompted the claimant to initiate the Arbitral proceedings, which culminated in the impugned Award, whereby some of the claims of the claimants were allowed by the Arbitral Tribunal while some of them were rejected.

37. I shall take up the first issue regarding the challenge to the Award insofar as interest for the period before passing the Award.

38. The scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996 is very limited. The challenge to the impugned Award is



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confined to the grounds stated in Section 34 of the Arbitration and Conciliation Act, 1996. While disposing a petition under Section 34 of the Arbitration and Conciliation Act, 1996, this Court is not sitting as an Appellate Court. Court is also not expected to re-appreciate the evidence coming to a different conclusion by substituting its decision on merits.

39. Thus, this Court can neither sit as a Court of Appeal nor re-appreciate the evidence placed before the Arbitral Tribunal or substitute the finding of the Arbitral Tribunal with its own conclusion on facts or evidence as held by the Hon'ble Supreme Court in **“The Project Director, National Highways Authority of India Vs. M.Hakeem and another”**, (2021) 9 SCC 1. There, the Hon'ble Supreme Court held that the power to set aside an Arbitral Award under Section 34 of the Arbitration And Conciliation Act, 1996 does not include the authority to modify the Award. It further held that an Award can be set aside only on limited grounds as specified in Section 34 of the Arbitration and Conciliation Act, 1996 and it is not an appellate provision. It is further held that an application under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside an Award does not entail any challenge on merits.

40. A similar view was taken by the Hon'ble Supreme Court in **“Sutlej Construction Limited Vs. Union Territory of Chandigarh”**, (2018) 1 SCC



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718, wherein it was held that when the Award is a reasoned one and the view taken is plausible, re-appreciation of evidence is not allowed while dealing with the challenge to an Award under Section 34 of the Arbitration And Conciliation Act, 1996. It is further held that the proceedings challenging the Award cannot be treated as a First Appellate Court against the decree passed by the Trial Court.

41. The Hon'ble Supreme Court in “**Ssangyong Engineering and Construction Co. Ltd. Vs. National Highway Authority of India**”, (2019) 15 SCC 131, has held that an Award can be set aside on the ground of patent illegality under Section 34(2-A) of the Arbitration And Conciliation Act, 1996 only where the illegality in the Award goes to the root of the matter. It is further held that finding of erroneous application of law by an Arbitral Tribunal or the re-appreciation of evidence by the Court under Section 34(2-A) of the Arbitration and Conciliation Act, 1996 is not available.

42. The Hon'ble Supreme Court further held that the above ground is available only where the view taken by the Arbitral Tribunal is plausible while



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construing the Contract between the parties or where the Award of the Tribunal lacks justifiable reasons. The Hon'ble Supreme Court further held that an Award can be set aside only if an Arbitrator/Arbitral Tribunal decides the question beyond the Contract or beyond the terms of reference or if the finding arrived by the Arbitral Tribunal is based on no evidence or ignoring vital evidence or is based on documents taken as evidence without notice to the other side.

43. The Hon'ble Supreme Court in “**Patel Engineering Limited Vs. North Eastern Electric Power Corporation Limited**”, (2020) 7 SCC 167 held that patent illegality as one of the grounds for setting aside an Award. is available only if the decision of the Arbitrator is found to be perverse or so irrational that no reasonable person would have arrived at or the construction of the Contract is such that no reasonable person would take or that the view of the Arbitrator is not even a plausible view.

44. The Hon'ble Supreme Court in “**McDermott International Inc. Vs. Burn Standard Co. Ltd**”, (2006) 11 SCC 181, held that while interpreting the terms of a Contract, the conduct of the parties and correspondences exchanged



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between them would also be relevant factors and it is well within the Arbitrator's jurisdiction to deal with the same.

45. The Hon'ble Supreme Court in “**Sheladia Associates Inc. Vs. Tamil Nadu Road Sector Project II, Represented by its Project Director**”, 2019 SCC Online Mad 17883, reminded itself of the Hodgkinson's principle which has been explained by the Hon'ble Supreme Court in the oft-quoted and celebrated Associate Builders Case being “**Associate Builders V. Delhi Development Authority**”, (2015) 3 SCC 49. It has held that Hodgkinson's principle in simple terms means that the Arbitral Tribunal is the best Judge with regard to quality and quantity of evidence before it. It further held that if there is no infraction of Section 28(3) of the Arbitration And Conciliation Act, 1996, the question of challenge on the grounds of public policy does not arise.

46. In “**Photo production Ltd. Vs. Securicor Transport Ltd.,**” [1980] AC 827, it has been held as follows:-

“A basic principle of the common law of contract, to which there are to exceptions that are relevant in the instant case, is that parties to a contract are free to determine for themselves what primary obligations they will accept. They may state these in express words in the contract itself and,



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where they do, the statement is determinative; but in practice a commercial contract never states all the primary obligations of the parties in full; many are left to be incorporated by implication of law from the legal nature of the contract into which the parties are entering. **But if the parties wish to reject or modify primary obligations which would otherwise be so incorporated, they are fully at liberty to do so by express words.**

..... These secondary obligations of the contract breaker and any concomitant relief of the other party from his own primary obligations also arise by implication of law - generally common law, but sometimes statute, as in the case of codifying Statutes passed at the turn of the century, notably the Sale of Goods Act 1893. The contract, however, is just as much the source of secondary obligations as it is of primary obligations; and like primary obligations that are implied by law, secondary obligations too can be modified by agreement between the parties, although, for reasons to be mentioned later, they cannot, in my view, be totally excluded. In the instant case, the only secondary obligations and concomitant reliefs that are applicable arise by implication of the common law as modified by the express words of the contract.

Every failure to perform a primary obligation is a breach of contract. The secondary obligation on the part of the contract breaker to which it gives rise by implication of the common law is to pay monetary compensation to the other party for the loss sustained by him in consequence of the breach; but, with two exceptions, the primary obligations of both parties so far as they have not yet been fully performed remain unchanged. This secondary obligation to pay compensation (damages) for non-performance of primary obligations I will call the "general secondary obligation". It applies in the cases of the two exceptions as well."



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47. In “Central Inland Water Transport Corporation Limited and

Another Vs. Brojo Nath Ganguly and Another”, (1986) 3 SCC 156, it has

been observed as follows:-

“87. In Photo Production Ltd. v. Securicor Transport Ltd. [(1980) AC 827] a case before the Unfair Contract Terms Act, 1977, was enacted, the House of Lords upheld an exemption clause in a contract on the defendants' printed form containing standard conditions. The decision appears to proceed on the ground that the parties were businessmen and did not possess unequal bargaining power. The House of Lords did not in that case reject the test of reasonableness or fairness of a clause in a contract where the parties are not equal in bargaining position. On the contrary, the speeches of Lord Wilberforce, Lord Diplock and Lord Scarman would seem to show that the House of Lords in a fit case would accept that test. Lord Wilberforce in his speech, after referring to the Unfair Contract Terms Act, 1977, said: (at p. 843)

“This Act applies to consumer contracts and those based on standard terms and enables exception clauses to be applied with regard to what is just and reasonable. It is significant that Parliament refrained from legislating over the whole field of contract. After this Act, in commercial matters generally, when the parties are not of unequal bargaining power, and when risks are normally borne by insurance, not only is the case for judicial intervention undemonstrated, but there is everything to be said, and this seems to have been Parliament's intention, for leaving the parties free to apportion the risks as they think fit and for respecting their decisions.”

(emphasis supplied)



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Lord Diplock said (at pp. 850-51):

“Since the obligations implied by law in a commercial contract are those which, by judicial consensus over the years or by Parliament in passing a statute, have been regarded as obligations which a reasonable businessman would realise that he was accepting when he entered into a contract of a particular kind, the court's view of the reasonableness of any departure from the implied obligations which would be involved in construing the express words of an exclusion clause in one sense that they are capable of bearing rather than another, is a relevant consideration in deciding what meaning the words were intended by the parties to bear.”

(emphasis supplied)

Lord Scarman, while agreeing with Lord Wilberforce, described (at p. 853) the action out of which the appeal before the House had arisen as “a commercial dispute between parties well able to look after themselves” and then added: “In such a situation what the parties agreed (expressly or impliedly) is what matters; and the duty of the courts is to construe their contract according to its tenor”.

48. This view has been followed by the Hon’ble Supreme Court in “**Dyna Technologies Private Limited Vs. Crompton Greaves Limited**”, (2019) 20 SCC 1, wherein, it has been observed as under:-

“29. There is no gainsaying that arbitration proceedings are not per se comparable to judicial proceedings before the Court. A party under Indian Arbitration Law can opt for an arbitration before any person, even those



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inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards”.

49. The Hon’ble Supreme Court has reiterated the above position in the case of **“MMTC Limited Vs. Vedanta Limited”**, (2019) 4 SCC 163, wherein, it has been held as under:-

“14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

50. In **“South East Asia Marine Engineering and Constructions Limited (SEAMEC Limited) Vs. Oil India Limited”**, (2020) 5 SCC 164, the Hon'ble Supreme Court has reiterated that if the interpretation of Contract by Arbitral Tribunal is perverse and is not a possible interpretation, the Award



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passed by the Arbitral Tribunal, is liable to be set aside.

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51. In “**Patel Engineering Limited case**” (cited *supra*), the Hon’ble Supreme Court has reiterated the position that while interpreting the Contract, if the view taken by the Arbitral Tribunal was a possible view, the Award is liable to be set aside.

52. In “**Indian Oil Corporation Limited through its Senior Manager Vs. Shree Ganesh Petroleum Rajgurunagar**”, (2022) 4 SCC 463, it has been observed as under:-

46. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , this Court held that an award ignoring the terms of a contract would not be in public interest. In the instant case, the award in respect of the lease rent and the lease term is in patent disregard of the terms and conditions of the lease agreement and thus against public policy. Furthermore, in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] the jurisdiction of the Arbitral Tribunal to adjudicate a dispute itself was not in issue. The Court was dealing with the circumstances in which a court could look into the merits of an award.

47. In this case, as observed above, the impugned award insofar as it pertains to lease rent and lease period is patently beyond the scope of the



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competence of the arbitrator appointed in terms of the dealership agreement by the Director (Marketing) of the appellant.

50. In PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust [PSA Sical Terminals (P) Ltd.v.V.O. Chidambranar Port Trust, 2021 SCC OnLine SC 508] this Court referred to and relied upon Ssangyong Engg. & Construction[Ssangyong Engg. & Construction Co. Ltd.v.NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] and held : (PSA Sical Terminals case [PSA Sical Terminals (P) Ltd.v.V.O. Chidambranar Port Trust, 2021 SCC OnLine SC 508]. SCC para 85)

“85.As such, as held by this Court in Ssangyong Engg. & Construction [Ssangyong Engg. & Construction Co. Ltd.v.NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , the fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a contract has been foisted upon an unwilling party. This Court has further held that a party to the agreement cannot be made liable to perform something for which it has not entered into a contract. In our view, re-writing a contract for the parties would be breach of fundamental principles of justice entitling a court to interfere since such case would be one which shocks the conscience of the Court and as such, would fall in the exceptional category.”

51. In PSA Sical Terminals [PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, 2021 SCC



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OnLine SC 508] this Court clearly held that the role of the arbitrator was to arbitrate within the terms of the contract. He had no power apart from what the parties had given him under the contract. If he has travelled beyond the contract, he would be acting without jurisdiction”.

53. In “**UHL Power Company Limited Vs. State of Himachal Pradesh**”, (2022) 4 SCC 116, the Hon’ble Supreme Court has reiterated the view in “**Dyna Technologies Private Limited case**” (cited supra) and held as under:-

*“18.It has also been held time and again by this Court that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the learned arbitrator proceeds to accept one interpretation as against the other. In **Dyna Technologies (P) Ltd. v.Crompton Greaves Ltd. [Dyna Technologies (P) Ltd.v.Crompton Greaves Ltd., (2019) 20 SCC 1]**, the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus : (SCC p. 12, para 24)*

“24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award.



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Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.”

19. In *Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.* [*Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*, (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552] , adverting to the previous decisions of this Court in *McDermott International Inc.v.Burn Standard Co. Ltd.* [*McDermott International Inc.v.Burn Standard Co. Ltd.*, (2006) 11 SCC 181] and *Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran* [*Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran*, (2012) 5 SCC 306] , wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside on this ground, it has been held thus : (*Parsa Kente Collieries case* [*Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*, (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552] , SCC pp. 244-45, para 9)

“9.1. ...It is further observed and held that construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It is further observed by this Court in the aforesaid decision in para 33 that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact



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cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.

*9.2. Similar is the view taken by this Court in **NHAI v. ITD Cementation India Ltd.** [**NHAI v. ITD Cementation India Ltd.**, (2015) 14 SCC 21 : (2016) 2 SCC (Civ) 716] , SCC para 25 and **SAIL v. Gupta Brother Steel Tubes Ltd.** [**SAIL v. Gupta Brother Steel Tubes Ltd.**, (2009) 10 SCC 63 : (2009) 4 SCC (Civ) 16] , SCC para 29.”*

20. In Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] , the view taken above has been reiterated in the following words : (SCC p. 12, para 25)

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

21. An identical line of reasoning has been adopted in “South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd.** [South East Asia Marine Engg. &**



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Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd.,” (2020) 5 SCC 164 : (2020) 3 SCC (Civ) 1] and it has been held as follows : (SCC p. 172, paras 12-13)

“12. It is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. Recently, this Court in **Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.**[**Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.**, (2019) 20 SCC 1] laid down the scope of such interference. This Court observed as follows : (SCC p. 12, para 24)

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

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the



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arbitrator supported by reasoning. This Court in **Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1]** observed as under : (SCC p. 12, para 25)

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

(emphasis supplied)

22. In the instant case, we are of the view that the interpretation of the relevant clauses of the implementation agreement, as arrived at by the learned sole arbitrator, are both, possible and plausible. Merely because another view could have been taken, can hardly be a ground for the learned Single Judge to have interfered with the arbitral award. In the given facts and circumstances of the case, the appellate court has rightly held that the learned Single Judge exceeded his jurisdiction in interfering with the award by questioning the interpretation given to the relevant clauses of the implementation agreement, as the reasons given are backed by logic”.

54. In “**Larsen Air Conditioning and Refrigeration Company Vs. Union of India and others**”, 2023 SCC Online SC 982, it has been observed as under:-



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“15. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality, i.e., that “illegality must go to the root of the matter and cannot be of a trivial nature”; and that the tribunal “must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground” [ref : Associate Builders (supra)]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34. It is important to notice that the old Act contained a provision which enabled the court to modify an award. However, that power has been consciously omitted by Parliament, while enacting the Act of 1996. This means that the Parliamentary intent was to exclude power to modify an award, in any manner, to the court. This position has been iterated decisively by this court in Project Director, National Highways No. 45E and 220 National Highways Authority of India v. M. Hakeem:

*“42. It can therefore be said that this question has now been settled finally by at least 3 decisions [**McDermott International Inc.v.Burn Standard Co. Ltd.,(2006) 11 SCC 181**], [**Kinnari Mullick v. Ghanshyam Das Damani, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106**], [**Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd., (2021) 7 SCC 657**] of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into*



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Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the Uncitral Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the “limited remedy” under Section 34 is coterminous with the “limited right”, namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996.”

55. In “**Som Datt Builders Limited Vs. State of Kerala**”, (2009) 10

SCC 259, the Hon’ble Supreme Court has held as under:-

“20. Section 31(3) mandates that the arbitral award shall state the reasons upon which it is based, unless—(a) the parties have agreed that no reasons are to be given, or (b) the award is an arbitral award under Section 30. That the present case is not covered by clauses (a) and (b) is not in dispute. In the circumstances, it was obligatory for the Arbitral Tribunal to state reasons in support of its award in respect of Claims 1 and 4-B. By legislative mandate, it is now essential for the Arbitral Tribunal to give reasons in support of the award. It is pertinent to notice here that the 1996 Act is based on Uncitral Model Law which has



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a provision of stating the reasons upon which the award is based.

21. In *Union of India v. Mohan Lal Capoor* [(1973) 2 SCC 836 : 1974 SCC (L&S) 5] this Court said: (SCC p. 854, para 28)

“28. ... Reasons are the links between the materials on which certain conclusions are based and the actual conclusions.”

22. In *Wool combers of India Ltd. v. Workers' Union* [(1974) 3 SCC 318 : 1973 SCC (L&S) 551 : AIR 1973 SC 2758] this Court stated: (SCC pp. 320-21, para 5)

“5. ... The giving of reasons in support of their conclusions by judicial and quasi judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations.”

23. In *S.N. Mukherjee v. Union of India* [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445] the Constitution Bench held that recording of reasons



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“(i) guarantee consideration by the authority;
(ii) introduce clarity in the decisions; and
(iii) minimise chances of arbitrariness in decision-making.” (SCC p. 612, para 35)

24. Learned Senior Counsel for the contractor referred to a decision of the Delhi High Court in Delhi Electric Supply Undertaking v. Victor Cable Industries Ltd. [(2006) 1 Arb LR 297 (Del)] and submitted that where the arbitrator has referred to facts of the case and has noticed some reasoning which in view of the arbitrator was sufficient to arrive at a conclusion for granting relief, award cannot be stated to be unreasoned. He also referred to yet another decision of the Delhi High Court in Kumar Construction Co. v. DDA [(1996) 64 DLT 553] wherein it has been observed that the arbitrator is not expected to write an elaborate judgment and where the arbitrator has noticed contentions of the counsel, it cannot be said that the arbitrator failed in stating reasons for the award”.

56. In **“Union of India Vs. Royal Construction”**, 2001 SCC Online Cal

476, it was held as under:-

“10. Under the old Arbitration Act, 1940, the law was that the arbitrator was not in general compelled to give reasons. Some 30/40 years ago, in practice, arbitrators hardly, if ever, gave reasons for awards. Experienced arbitrators knew that the giving of reasons rendered the award liable to attack on various grounds, including error apparent. Even when I joined the bar in 1970, if an award fell for consideration in a case, and the arbitrator had given reasons, it never failed to cause a twitch of the lips or a raising of the eyebrows of learned



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advocates experienced in the law of arbitration.

11. In those years, cases had not even started to come before the courts, where parties by agreement, were seeking to compel the arbitrators to give reasons. The time upto the decade of the 70's was the time of no reasons in awards.

12. Thereafter things changed a little. In the field of administrative law reasons for orders became compulsory. The administrative waves of demand for reasons hit the arbitral shores. Afterall, the same Judges were sitting on the bench. Parties also started thinking that if they agreed to have a reasoned award then they could compel arbitrators to make a reasoned award.

13. Cases then came before the Court, and the law developed into this, that if the parties expressly agreed that the arbitrator shall give reasons, then a breach of that obligation by the arbitrator might well amount to misconduct and cause the award to be upset.

14. In the stage of the law that we are now in, the situation has changed quite a lot. Under the new Arbitration & Conciliation Act of 1996 it is the law that the arbitrator shall ordinarily give reasons for awards, but it is open to the parties to agree otherwise. Section 31(3) of the new Act might be seen in this regard.

15. In our case, however, we are concerned with the position as under the 1940 Act, but that the arbitrator was here compelled to give reasons is beyond dispute.

17. The authorities on this subject are very helpfully (with respect) set out in an unreported judgment delivered by the Hon'ble Justice Ruma Pal



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when sitting here and the Hon'ble Justice M.H.S. Ansari in a judgment of the Division Bench dated the 25th of March, 1999 in A.P.O. No. 473 of 1998 (**Union of India v. Singh Verma**).

18. One of the cases referred to therein was also referred to by Mr. Roychowdhury and that is the English case of *Re:Royser* reported at 1963 (1) A.E.R. 612. The other cases are, inter alia, *M.L. Kapoor*, AIR 1974 SC 87, *Municipal Corporation of Delhi*, AIR 1987 SC 2316, *Gurdayal Singh*, AIR 1979 SC 1622.

19. On behalf of the respondents two cases referred to in the above unreported judgment were also specifically placed before us. Those are the cases of *Indian Oil Corporation*, reported at AIR 1988 SC 1340 and of *Gujrat Water Supply*, reported at AIR 1989 SC 973. Both these judgments are of the same Bench consisting the Hon'ble Justice Sabyasachi Mukherjee as his Lordship then was and the Hon'ble Justice S. Ranganathan, as his Lordship then was.

20. The law as it appears from the above authorities and especially the two last ones referred to above is as follows:—

1. To make a reasoned award the arbitrator has to make his mind known on the basis which he has acted.
2. Statement of reasons is not the same thing as the giving of a detailed judgment.
3. Reasons are short and intelligible indications of the arbitrator's mind, no more.
4. The reasons must have such connection with the conclusions reached by the arbitrator as to show that the arbitrator has not acted irrelevantly, unreasonably or capriciously.
5. The reasons should deal with the substantial points raised in the reference”.



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57. In **“Government of NCT Delhi Vs. M/s.Garg Builders”**, 2018 SCC

Online Del 9900, the Hon'ble Delhi High Court has observed as follows:

“7. The petitioner in its reply had denied the very maintainability of these claims. Even if the said stand of the petitioner was found to be incorrect, it was for the respondent to have proved the quantification of such claims by way of evidence before the Arbitrator. The respondent cannot rely upon mere non-denial of the figures given in form of a chart by him to sustain such claim. The chart itself cannot be treated as evidence. The award having been passed on basis of no evidence, cannot be sustained.

8. It is indeed surprising that for counter claim no. 2 raised by the petitioner, the Arbitrator has rejected such claim for want of evidence, while the petitioner had pleaded regarding floating tender for the work and award thereof to M/s Raj Construction Company for an amount of Rs. 5,63,967/-. It is also relevant to note that in the earlier award, the Arbitrator had awarded a sum of Rs. 1 lakh in favour of the petitioner towards counter claim no. 2. This Court in its Judgment dated 09.10.2013 had observed that there was no reason given by the Arbitrator for awarding only Rs. 1 lakh in favour of the petitioner. In the Impugned Award, the Arbitrator has completely rejected the counter claim no. 2 of the petitioner. Such finding of the Arbitrator cannot be sustained”.

58. If the Award suffers from any of the vires which would attract Section 34 of the Arbitration and Conciliation Act, 1996, the Award has to be set aside leaving the parties to work out their remedy if any afresh, if cause of action still



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survives.

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59. The Hon'ble Supreme Court in “**J.G.Engineers Private Limited Vs.**

Union of India and Another”, (2011) 5 SCC 758, held as under:-

“25. It is now well settled that if an award deals with and decides several claims separately and distinctly, even if the court finds that the award in regard to some items is bad, the court will segregate the award on items which did not suffer from any infirmity and uphold the award to that extent. As the award on Items 2, 4, 6, 7, 8 and 9 was upheld by the civil court and as the High Court in appeal did not find any infirmity in regard to the award on those claims, the judgment of the High Court setting aside the award in regard to Claims 2, 4, 6, 7, 8 and 9 of the appellant, cannot be sustained. The judgment to that extent is liable to be set aside and the award has to be upheld in regard to Claims 2, 4, 6, 7, 8 and 9.”

60. In “**Oriental Structural Engineers (P) Ltd., vs. State of Kerala**”,

(2021) 6 SCC 150, the Hon'ble Supreme Court held as under:-

“16. On the other hand, the specific term of the agreement entered into by and between the parties provided for payment of interest on delayed payment as terms of the contract. What was not specifically agreed upon was the rate at which such interest would be paid. The blank space in the "appendix to the bid". in our opinion, cannot be construed as cancellation of the clause providing for payment of interest on delayed release of funds. We do not



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think the appellate court or the Arbitration Court were right in adopting the approach that by not specifying the blank space provided for filling in the interest rate. We are of the view that to come to such an inference, active exclusion of payment of interest under that head was necessary to have been incorporated in the agreement. Though G.C. Roy was delivered in a dispute to which the 1940 Act was applicable, the Constitution Bench of this Court has laid down certain general proposition or principle on the aspect of grant of interest. This general proposition was referred to by the Tribunal. It has been held in Para 43(i) of the Report (in G.C. Roy²): (SCC pp. 532-33, para 43)

"43. The question still remains whether arbitrator has the power to award interest pendente lite, and if so on what principle. We must reiterate that we are dealing with the situation where the agreement does not provide for grant of such interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest. On a conspectus of aforementioned decisions, the following principles emerge:

(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34, Civil Procedure Code and there is no reason or principle to hold otherwise in the



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case of arbitrator."

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61. As far as the decision of the Tribunal to award interest only for the period after from the date of an Award till the date of payment is concerned, it *prima facie* appears to be contrary to the law settled by the Hon'ble Supreme Court in **"Secretary Irrigation Department, State of Orissa Vs. G.C.Roy"**, (1992) 1 SCC 508, **"Indian Hume Pipe Co. Ltd., Vs. State of Rajasthan"**, (2009) 10 SCC 187 followed by **"Union of India Vs. Associated Construction Co.,"** 2016 SCC Online Del 4679.

62. Exactly, a somewhat similar situation was considered by the Hon'ble Supreme Court in **"Secretary Irrigation Department, State of Orissa Vs. G.C.Roy"**, (1992) 1 SCC 508. In paragraph 43 while dealing with the situation in the context of Act, 1940, the Hon'ble Supreme Court observed as under:-

"43. The question still remains whether arbitrator has the power to award interest pendente lite, and if so on what principle. We must reiterate that we are dealing with the situation where the agreement does not provide for grant of such interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest. On a conspectus of aforementioned decisions, the following principles emerge:

(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated



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for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34, Civil Procedure Code and there is no reason or principle to hold otherwise in the case of arbitrator."

63. The view taken in **“Indian Hume Pipe Co.Ltd., Vs. State of Rajasthan”**, (2009) 10 SCC 187 has been upheld by the Hon’ble Supreme Court in the context of Arbitration and Conciliation Act, 1996 in **“Oriental Structural Engineers (P) Ltd., vs. State of Kerala”**, (2021) 6 SCC 150.

64. Section 31(7)(a) of the Arbitration and Conciliation Act, 1996 gives discretion to the Arbitral Tribunal to Award interest unless otherwise aggrieved by the parties. As per Section 31(7)(a) of the Arbitration and Conciliation Act, 1996, the Arbitral Tribunal may include in the sum for which the award is made interest, at such rate as it 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.

65. Thus, independently, a reading of Section 31(7)(a) of the Arbitration



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and Conciliation Act, 1996 would show that discretion is vested with the Tribunal to Award interest, at such rate as it 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 in absence of a contract to the contrary. A comparison can be made to Section 31(7)(a) of the Arbitration and Conciliation Act, 1996 and Section 34 of the Code of Civil Procedure.

66. Section 31(7)(a) of the Arbitration and Conciliation Act, 1996 and Section 34 of the Code of Civil Procedure are reproduced below:-



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Section 31(7)(a) of the Arbitration and Conciliation Act, 1996	Section 34 of the Code of Civil Procedure
	Interest:-
Unless otherwise agreed by the parties, where and insofar as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it 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.	(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, <u>order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree</u>, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent. per annum, as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit: Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions. Explanation.- In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970). Explanation II.-For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.



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(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

67. The expression “unless otherwise agreed” by the parties in Section 31(7)(a) of the Arbitration and Conciliation Act, 1996 applies to a situation where the parties decide to go for an Arbitration under an Agreement and specifically agree that no interest is payable or interest is payable at a particular rate. If there is no express agreement to the contrary, discretion can be exercised by the Arbitral Tribunal like a Civil Court exercises its discretion under Section 34 of the Code of Civil Procedure.

68. Therefore, only if it is agreed by the parties, the Arbitrator or the Arbitral Tribunal is bound by the terms of the Contract insofar as award of interest. Only if it is agreed between the parties, the Arbitrator or Arbitral Tribunal can either restrict the interest from the date of award or no interest is to be paid or interest is to be paid at a particular rate. If the parties have agreed



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that no interest is payable, the Arbitral Tribunal cannot award interest. If the Arbitral Tribunal awarded such interest, it would be in contravention of Section 28(3) of the Arbitration and Conciliation Act, 1996.

69. On the other hand, if the Agreement is silent regarding the award of interest, it is the discretion of the Arbitrator to award interest as held by the Hon'ble Supreme Court in “**Secretary, Irrigation Department, Government of Orissa and others Vs. G.C.Roy**”, (1992) 1 SCC 508. The contract between the parties did not contain any condition that interest would not be paid. In the said case, the situation was different. In Paragraph 44 of the said Judgment, it was observed as follows:-

“**44.** Having regard to the above consideration, we think that the following is the correct principle which should be followed in this behalf:

Where the agreement between the parties does not prohibit grant of interest *and* where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendente lite. This is for the reason that in such a case it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all their disputes — or refer the dispute as to interest as such — to the arbitrator, he shall have the



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power to award interest. This does not mean that in every case the arbitrator should necessarily award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view.”

(emphasis in original)

70. The Hon'ble Supreme Court followed the above view in the case of **“Union of India vs. Bright Power Projects India Private Limited”**, (2015) 9 SCC 695.

71. The law on the issue relating to payment of interest not awarded by the Arbitral Tribunal, has also been recently decided by the Hon'ble Supreme Court in **“Larsen Air Conditioning and Refrigeration Company Vs. Union of India and others”**, 2023 SCC Online SC 982 *vide* its Judgment dated 11.08.2023 in Civil Appeal No(s).3798 of 2023. There, the Allahabad High had Court modified the Award by converting the compounding interest as simple interest and reducing the rate of interest from 18% to 9% per annum. In **“Larsen Air Conditioning case”** (cited *supra*), the Hon'ble Supreme Court has referred to the following decisions:-

- i. **Secretary Irrigation Department, Government of Orissa and others Vs. G.C.Roy**, (1991) Supp.3 SCR 417.



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- ii. **Shahi Vs. State of UP & others**, [2019] 11 SCR 640.
- iii. **Associate Builders Vs. Delhi Development Authority**, (2015) 3 SCC 49.
- iv. **Ssangyong Engineering and Construction Co. Ltd. Vs. National Highway Authority of India**, (2019) 15 SCC 131.
- v. **Delhi Airport Metro Express Pvt. Ltd. Vs. Delhi Metro Rail Corporation Ltd.**, [2021] 5 SCR 984.

72. In “**Larsen Air Conditioning case**” (cited *supra*), the Hon'ble Supreme Court has concluded that the Court is powerless to modify the award and can only set aside partially or wholly on a finding that the conditions spelt out under Section 34 of the 1996 Act have been established. The Court held that *“Unlike in the case of the old Act, the court is powerless to modify the award and can only set aside partially, or wholly, an award on a finding that the conditions spelt out under Section 34 of the 1996 Act have been established.”* Paragraphs 13, 14, 15 and 16 of the Judgment in “**Larsen Air Conditioning case**” (cited *supra*) read as under:-

*“13. In the present case, given that the arbitration commenced in 1997, i.e., after the Act of 1996 came into force on 22.08.1996, the arbitrator, and the award passed by them, would be subject to this statute. Under the enactment, i.e. Section 31(7), the statutory rate of interest itself is contemplated at 18% per annum. Of course, this is in the event the award does not contain any direction towards the rate of interest. Therefore, there is little to no reason, for the High Court to have interfered with the arbitrator's finding on interest accrued and payable. **Unlike in***



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the case of the old Act, the court is powerless to modify the award and can only set aside partially, or wholly, an award on a finding that the conditions spelt out under Section 34 of the 1996 Act have been established. The scope of interference by the court, is well defined and delineated [refer to Associate Builders v. Delhi Development Authority, Ssangyong Engineering Construction Co. Ltd v. National Highways Authority of India (NHAI) and Delhi Airport Metro Express Pvt. Ltd. v Delhi Metro Rail Corporation Ltd].

*14. The reliance on Kalsi Construction Company (supra) by the respondent- state, is inapt, given that this court had exercised its Article 142 jurisdiction in light of three pertinent factors – the award had been passed 20 years prior, related to construction of a Paediatrics Centre in a medical institute, and that the parties in that case had left the matter to the discretion of the court. Similarly, in Oriental Structural Engineers (supra) this court held that since the contract stipulated interest entitlement on delayed payments, but contained no mention of the rate of interest applicable – the Tribunal ought to have applied the principles laid down in **G.C.Roy** (supra), and therefore, in exercise of Article 142, this court reduced the rate of interest awarded by the tribunal on the sum left unpaid. The judgment in Municipal Corporation of Greater Mumbai (supra) no doubt discusses the inherent powers of the High Court as a superior court of record, but relates specifically to the jurisdiction to recall its own orders, and offers little assistance in the present dispute.*

15. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality, i.e., that “illegality must



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*go to the root of the matter and cannot be of a trivial nature”; and that the tribunal “must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground” [ref: Associate Builders (supra)]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34. It is important to notice that the old Act contained a provision¹⁴ which enabled the court to modify an award. However, that power has been consciously omitted by Parliament, while enacting the Act of 1996. This means that the Parliamentary intent was to exclude power to modify an award, in any manner, to the court. This position has been iterated decisively by this court in *Project Director, National Highways No. 45E and 220 National Highways Authority of India v M. Hakeem*¹⁵:*

“42. It can therefore be said that this question has now been settled finally by at least 3 decisions [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , [Kinnari Mullick v. Ghanshyam Das Damani, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106] , [Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd., (2021) 7 SCC 657] of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the Uncitral



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Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the “limited remedy” under Section 34 is coterminous with the “limited right”, namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996.”

16. In view of the foregoing discussion, the impugned judgment warrants interference and is hereby set aside to the extent of modification of rate of interest for past, pendente lite and future interest. The 18% per annum rate of interest, as awarded by the arbitrator on 21.01.1999 (in Claim No. 9) is reinstated. The respondent-state is hereby directed to accordingly pay the dues within 8 weeks from the date of this judgment.”

73. In the light of the decision of the Hon’ble Supreme Court in **“Oriental Structural Engineers (P) Ltd., Vs. State of Kerala”**, (2021) 6 SCC 150 and **“Larsen Air Conditioning and Refrigeration Company Vs. Union of India and others”**, 2023 SCC Online SC 982, interest ought to have been granted on the underlying principle that award of interest is essentially compensatory in nature. In case of delay, interest is payable.



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74. Thus, the Impugned Award restricting interest from the date of the award at 18% is not sustainable. If the dealer was entitled to the amount from the date it became due, the dealer is also entitled to interest at such rate as may be awarded in terms of Section 31 of the Arbitration and Conciliation Act, 1996.

75. Thus, no doubt, the claimant is entitled for interest in terms of the above decisions of the Hon'ble Supreme Court. However, power of this Court is limited only to set aside the Award. It cannot modify the Award by substituting the rate of interest either by increasing or decreasing it.

76. To that extent, the impugned Award is liable to be set aside leaving open to the claimant to workout the remedy afresh by excluding the time taken before this Court and before the arbitral proceedings for claiming interest.

77. As far as the decision of the Tribunal to award interest only for the period after from the date of an Award till the date of payment is concerned, it *prima facie* appears to be contrary to the law settled by the Hon'ble Supreme Court in **“Secretary Irrigation Department, State of Orissa Vs. G.C.Roy”**, (1992) 1 SCC 508, **“Indian Hume Pipe Co. Ltd., Vs. State of Rajasthan”**,



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(2009) 10 SCC 187 followed by “**Union of India Vs. Associated Construction Co.,**” 2016 SCC Online Del 4679.

78. Insofar as overriding commission, debit note claim and liquidation spare parts are concerned, it is noticed that the Award insofar as debit note claim is based on Ex.C33-Quantification relied upon by the dealer for overriding commission. Relevant portion of the impugned Award reads as under:-

“7. Therefore, there is a clear admission by the Respondent that ORC amount are payable but will depend on bill to bill in case of direct billing. They have admitted such payment of ORC commission, though there is a bar under Article 24 of the Agreement. Their case is that actual payable amount will be lesser than the claimed amount.

8. To prove their claim, the Claimant has filed Exhibit C33 (Pages 47 to 58) wherein various Debit Notes were raised by them. These Debit Notes are from 12.07.2012 to 27.09.2012. The Invoices are also up to August 2012. Against these documents, there is no contra statement from the Respondent to show that what is the actual payable amount under ORC as stated in Exhibit C8 dt.04.09.2012. Email dt.04.09.2012 is admitted by the Respondent in their Statement of Defense, the only defense taken is that the Debit Notes have been raised for the full amount of the ORC whereas actual applicable amount of ORC depends on bill to bill in case of direct billing. Then the burden is on the Respondent to prove what is raised was not the actual amount but what is payable is lesser amount which they have failed to prove.



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Therefore, this Tribunal is of the view that having admitted the ORC claims are payable and having failed to prove that what is the actual payable, the Claimant is entitled for the amount under Debit Notes produced under Exhibit C33 (Pages 47 to 58). The quantification of the amount was not disputed and therefore the Respondent is liable for ORC claim of Rs.8,64,317/-.

b. Debit Note claim of Rs.6,96,000/-

9. According to the Claimant, whenever the Vehicles are received by the Claimant at their showroom or premises, there used to be certain defects which has to be rectified prior to selling of the Vehicles to the customers and upon rectification of such defects, the Claimant used to raise Debit Notes on the Respondent. According to them, there is a claim of Rs.6,96,000/- towards such Debit Notes. This claim was denied by the Respondent on the ground that the Vehicles were inspected at the Respondent premises by the Claimant's team and if there are any defects, the same shall be recorded in the Register maintained at the stockyard and therefore the claims cannot be maintained. The Claimant have relied on Debit Notes filed under Exhibit C33 (Pages 63 to 98). The Debit Notes filed at Pages 62 to 65 relates to certain excess billing of PTO Pump. The Debit Notes attached to page 66 relates to the amount debited towards Labour charges of Loading, Unloading, Opening and Fitting charges of 1053 Nos. of Tyers and Tubes, etc. This Debit Note is attached with Statement for a sum of Rs.94,770/-. At Page-75, there is a similar claim for a sum of Rs.8,010/-, At Page-78, there is a claim of Rs.6,000/- but in the Debit Note attached in Page-79 & 80 there is a Debit Note for Chassis rectification. Page-81 is a Debit Note for rectification of chassis for Rs.42,000/- and also at Page-



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82 rectification of chassis for a sum of Rs.16,000/-. Other Debit Notes have been raised for certain rectifications.

10. However, the respondent has denied these debit notes on the ground that there was no defects and had there been any defects they shall be entered in a register. By an email dated 03.09.2012, which is a trial mail of 04.09.2012 under Ex.C8 of Pg.42 of the Claimant's document. Mr.Avinash Pandey, who was the Area Manager was examined as RW2 would reply as follows:

"Dear Suresh ji,

As communicated earlier, many of the claims have already been settled/rejected but still reflux in your statement. With regards to ORC claims, debit notes have been raised by you for the full amount of ORC whereas actual applicable amount of ORC will depend on deal to deal in case of direct billing. Hence, actual payable amount will be much less than the claim amount.

You were also aware that we have tried to liquidate your stock through our other dealers. It was communicated to us that time, you have prospective buyers and would like to sell yourself. We will keep looking for the opportunity to liquidate the old stocks available with you. However, the responsibility for such liquidation of stock lies with the dealer only.

We are in the process of settlement of pending claims, if any. Considering the time period involved we are postponing the meeting from 5th to 8th of this month.

We assure all possible help from our side for settlement of claims which are eligible for payment



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after proper checking and validation."

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The above debit notes are not new but pending for long time and as early as 4.09.2012, there was an assurance to settle the pending claims. There is no proof either they are settled claims or rejected claims."

79. In Ex.C.33-Quantification, the manufacturer had debited a sum of Rs.41,83,406/- towards interest charge on delayed payment received from the claim for the year 2010-2011 and 2011-2012 as detailed below:-

Being the amount debited to your account towards interest charged on delay payment received from you for the year 2010-2011 and 2011-2012 received from you as per details mentioned below:-

Details	Amount (Rs.)
Debit Notes	3,12,149
Warranty	20,53,874
Sales Claim	12,40,848
Pre-Sale	5,76,535
Total	41,83,406.00

80. There appears to be a trade practice of allowing overriding commission and payment of spare parts notwithstanding Clause 28 of the Vehicle Dealer Agreement dated 31.12.2009.



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81. As far as overriding commission is concerned, although the Award *prima facie* appears to be contrary to Clause 28 of the Vehicle Dealer Agreement dated 31.12.2009 as extracted above, it is noticed that under Section 28(3) of the Arbitration and Conciliation Act, 1996 as amended *vide* Section 14 of the Act and Section 3 of 2016 with effect from 23.05.2015, the Arbitral Tribunal can also consider trade usages.

82. Prior to the amendment, the Arbitral Tribunal was required to decide a claim strictly in accordance with the terms of the Contract and was required to take into account the usage of the trade applicable to the transaction, whereas post amendment, the Arbitral Tribunal while deciding and making an Award has to take into account the terms of the Contract and trade usages.

83. In this case, admittedly it was a trade usage for awarding amount towards overriding commission. Therefore, overriding commission which has been awarded by the Arbitral Tribunal does not warrant any interference as it is in accordance with Section 28(3) of the Arbitration and Conciliation Act, 1996.



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84. Therefore, the challenge to the impugned Award passed by the manufacturer insofar as overriding commission notwithstanding Clause 28 of the Vehicle Dealer Agreement dated 31.12.2009 is concerned is unsustainable.

85. Similarly, as far as liquidation of spare parts are concerned, the reasoning given for payment of overriding commission will also apply to liquidation of spare parts in view of Ex.C8 indicating existence trade practice and trade usage.

86. Ex.C8 dated 04.09.2012 did not deal with debit notes. The conclusion in Paragraph 11 of the impugned Award, therefore, suffers from non-application of mind. The impugned Award is therefore, unsustainable insofar as the claim of the petitioner in O.P.No.138 of 2021 for debit notes is concerned.

87. Therefore, the impugned Award awarding amounts towards debit notes to the petitioner in O.P.No.138 of 2021 is unsustainable as the Arbitral Tribunal has committed an error in awarding the same. Thus, the impugned Award is liable to be set aside to that extent and O.P.No.214 of 2021 is allowed to that extent.



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88. In the result, the impugned Award insofar as the interest is set aside leaving it open to the petitioner in O.P.No.138 of 2021 to work out the remedy in the manner known to law by excluding the limitation under Section 43 of the Arbitration and Conciliation Act, 1996 during the pendency of the arbitration proceedings and the proceedings before this Court. Similarly, the impugned Award insofar as the debit note is also set aside leaving it open to the petitioner in O.P.No.214 of 2021 to work out the remedy in the manner known to law by excluding the limitation under Section 43 of the Arbitration and Conciliation Act, 1996 during the pendency of the arbitration proceedings and the proceedings before this Court.

89. In the result, O.P.No.138 of 2021 is allowed to the extent of challenge regarding interest with the above liberty and O.P.No.214 of 2021 is partly allowed to the extent of debit notes. No costs.

07.06.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

arb/rgm/jen



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Pre-Delivery Common Order in
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07.06.2024