

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL ARBITRATION PETITION NO.26 OF 2024

Lloyds Engineering Works Ltd.	Petitioner
V/S	
Transparent Energy Systems Private Ltd.	Respondent

**WITH
INTERIM APPLICATION NO.717 OF 2025
IN
COMMERCIAL ARBITRATION PETITION NO.26 OF 2024**

Lloyds Engineering Works Ltd.	Applicant
IN THE MATTER BETWEEN	
Lloyds Engineering Works Ltd.	Petitioner
V/S	
Transparent Energy Systems Private Ltd.	Respondent

Mr. Ashish Kamat, Senior Advocate with Mr. Gaurav Srivastav, Mr. Harsh Moorjani, Ms. Manorama Mohanty and Ms. Malika Mondal i/b M/s. S.K. Srivastav & Co. *for the Petitioner.*

Mr. Hasmit Trivedi with Ms. Leanne Dsouza i/b M/s. Praxis Legal *for Respondent.*

**CORAM : SANDEEP V. MARNE, J.
DATE : 10 DECEMBER 2025.**

JUDGMENT:

1. By this Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**), Petitioner challenges Award dated 9 November 2023 of the learned Sole Arbitrator. By the impugned Award, the Arbitral Tribunal has allowed the claim of the Respondent by directing Petitioner to pay to the Respondent sum of

Rs.23,97,000/- together with interest at the rate of 12% per annum from 12 August 2008 till the date of realization.

2. Petitioner is an incorporated entity under the Companies Act, 2013, which was formerly known as Lloyds Steels Industries Limited. It is engaged in the business of engineering and infrastructure solutions, encompassing designing, manufacturing, fabrication and installation of heavy equipment, machinery and systems for customers of hydro-carbon (oil and gas) sector, steel processing industries, captive power plants used in steel plants, marine sector, ports, heat exchangers used by nuclear power plants, other projects, boilers and execution of turnkey projects etc. M/s. Arya Iron & Steel Co. Pvt. Ltd. (**Arya**) appointed Petitioner as an Engineering, Procuring and Construction Contractor for the proposed 1.2 Million Ton Pellet Plant at Barbil, Orissa. Petitioner floated an enquiry for supply of pollution control equipment package for its de-dusting system for setting up 1.2 MTPA iron ore pelletizing plant for Arya. A sister concern of the Respondent M/s. Ecokleen Pollution Control Pvt. Ltd. (**Ecokleen**) submitted its commercial offer. Petitioner issued Letter of Intent (**LoI**) in favour of the Respondent on 25 March 2006 which contained condition *inter alia* for submission of performance guarantee to the extent of 10% of the contract value. Respondent accordingly submitted advance bank guarantee for amount of Rs.35,95,500/-. A formal purchase order was issued by Petitioner to Respondent on 31 March 2006. Thereafter on 10 December 2006, Respondent submitted performance bank guarantee (**PBG**) of Rs.23,97,000/- in favour of the Petitioner.

3. It appears that certain correspondence was exchanged between the parties relating to manner of performance of contractual

obligations by the Respondent. Petitioner complained to the Respondent about problems faced in performance of equipment supplied by the Respondent. Petitioner claims that the principal employer Arya complained about systems supplied by the Respondent on 4 and 9 August 2008. Arya sent debit note for Rs.42,00,000/- to the Petitioner on 11 August 2008.

4. In the above background, Petitioner issued notice to the banker of the Respondent on 12 August 2008 invoking PBG dated 10 December 2007 for Rs.23,97,000/-. Petitioner simultaneously issued notice to the Respondent on 12 August 2008 informing Respondent about invocation of bank guarantee and raising a demand of Rs.58,55,500/- towards liquidated damages as per the contract and for non-supply of items. Respondent's banker paid to the Petitioner amount of Rs.23,97,000/- towards bank guarantee on 16 August 2008. Respondent disputed the allegations made by the Petitioner. After some correspondence between them, Respondent invoked arbitration clause by issuing notice dated 18 October 2008. Petitioner appointed its nominee Arbitrator on 21 November 2008. Ultimately the Arbitral Tribunal comprising of Presiding Officer and two co-Arbitrators was constituted. Petitioner filed its Statement-of-Claim raising the following claims:

1. Claim No.1 – Balance amounts of Rs.32,996
2. Claim No.2 – Unlawfully encashed PBG of Rs. 23,97,000/-
3. Claim No.3 – Delays and Defaults by the Petitioner causing losses of Rs.50,00,000/-
4. Claim No.4 – Interest at the rate of 18% p.a.
5. Claim No.5 – Costs of the Arbitration

5. Respondent filed Statement of Defence and also raised five counterclaims as under:

Claim No.	Para No.	Nature of Claim	Amount (Rs.)
1	70	Liquidated Damages	11,98,500
2	71	Recovery for Non-supply/deviations.	22,60,000
3	72	Recovery towards Non-compliance of warranty and risk purchase.	42,00,000
4	73	Expenses due to extended duration of project in view of delays by Claimant.	18,00,000
5	74	Liabilities arisen due to Pollution caused by the equipment of the Claimant	4,00,000
TOTAL	75		98,58,500

6. The Arbitral Tribunal passed Award dated 8 May 2012 (first Arbitral Award) and rejected all claims raised by Petitioner as well as all counterclaims raised by Respondent. Respondent challenged the first Arbitral Award by filing Arbitration Petition No.1005 of 2012 before this Court. The Petition was disposed of by order dated 17 March 2015 recording consent of both the parties. This Court set aside the Award only *qua* claim No.2 relating to encashment of PBG of Rs.23,07,000/- and upheld the rest of the Award. Claim with regard to encashment of bank guarantee was referred to arbitration by constituting the Arbitral Tribunal. By order dated 1 April 2015, this Court permitted parties to file additional pleadings and evidence in addition to the pleadings and evidence in the first Arbitral proceedings. Accordingly, Petitioner filed Additional Statement of Defence dated 11 June 2015 to which Respondent filed Rejoinder. Petitioner filed Sur-Rejoinder. Arbitral Tribunal framed issues on 12 November 2015. Petitioner led evidence, however, it appears that Respondent did not lead any evidence. After hearing the arguments canvassed on behalf of the rival parties, the Arbitral Tribunal has passed impugned Award dated 9 November 2023 directing that Respondent is entitled to receive

and Petitioner is liable to pay to the Respondent sum of Rs.23,97,000/- together with interest at the rate of 12% per annum from 12 August 2008. The Arbitral Tribunal has also awarded costs of arbitration in favour of the Respondent. Aggrieved by the Arbitral Award dated 9 November 2023, Petitioner has filed the present Petition under Section 34 of the Arbitration Act.

7. Mr. Kamat, the learned Senior Advocate appearing for the Petitioner would submit that the impugned Award is perverse as the same is made in absence of any evidence on behalf of the Respondent proving cause of any loss for claiming damages for encashment of the bank guarantee. That this Court had specifically permitted parties to file additional pleadings and additional evidence in addition to the earlier evidence on record in relation to the claim of encashment of bank guarantee. That Respondent failed to avail the opportunity of leading evidence and in absence of any evidence on the part of Respondent in support of the claim, the Arbitral Tribunal has erroneously proceeded to award the claim in its favour. Relying on judgment of Division Bench of this Court in ***Kisan Sahakari Chini Mills Ltd. vs. Richardson and Cruddas (1972) Limited and Anr.***¹, Mr. Kamat would contend that relief in relation to invocation of bank guarantee is a claim for damages. He would rely upon judgment of this Court in ***Jackie Kakubhai Shroff vs. Ratnam Sudesh Iyer***² in support of the contention that no claim for damages can be awarded in absence of evidence. He would therefore submit that impugned Award suffers from the vice of perversity and patent illegality.

8. Mr. Kamat would further submit that the impugned Award is otherwise perverse and contrary to the reference Orders dated 17

1 1996 (2) MhLJ 1010

2 2018 SCC Online Bom 21214

March 2015 and 1 April 2015 passed by this Court. That the Arbitral Tribunal has erroneously rejected the evidence produced by the Petitioner on the ground that the same was produced at belated stage. That this finding of the Arbitral Tribunal is in the teeth of the order dated 1 April 2015 passed by this Court permitting both the parties to file additional evidence. The evidence is rejected not on quality but because of the stage in which it was led.

9. Mr. Kamat would further submit that the Arbitral Tribunal has erroneously held that since counterclaim Nos.1 and 2 of the Petitioner were negated in the first Arbitral Award, the claim of Respondent relating to legality of invocation of PGB must necessarily be allowed. That orders passed by this Court on 17 March 2015 and 1 April 2015 emphasised deciding of issue related to PBG dehors the finding recorded in the first Arbitral Award and that therefore mere rejection of counterclaims of the Petitioner could not have been a reason for allowing the claim of the Petitioner in the second Arbitral Award.

10. Mr. Kamat would further submit that findings recorded by the Arbitral Tribunal are contrary to the findings recorded in the first Arbitral Award. That in the first Arbitral Award, Respondent was held responsible for delay in performance whereas the Arbitral Tribunal while passing second Arbitral Award, has recorded contrary findings. That the first Arbitral Award had held Arya to be necessary party, whereas the Arbitration Tribunal in the impugned Arbitral Award recorded a contrary finding. That similar contrary findings are recorded in respect of various other aspects in the impugned Arbitral Award.

11. Mr. Kamat would further submit that the impugned award is pronounced after duration of four years from the date of conclusion of

final hearing. That despite conducting final arguments on 15 November 2019, the Award is pronounced on 9 November 2023. He would rely upon judgment of the Apex Court in *Lancor Holdings Limited vs. Prem Kumar Menon and Ors.*³ in support of his contention that inordinate delay in pronouncing the Award having material effect on findings recorded therein is a fit ground for setting aside the Arbitral Award. He would submit that in the present case, Petitioner is severely prejudiced by the delay since it has to suffer the liability of payment of interest.

12. Mr. Kamat would further submit that the impugned Award is passed in contravention of substantive law and by erroneous interpretation of PBG and letter dated 25 August 2007, which is not a plausible view. Lastly, Mr. Kamat would submit that the impugned Award is perverse as it grants exorbitant costs in favour of Respondent without any justifiable reasons. That no reasons are recorded for awarding costs of Rs.34,07,643/- which is contrary to provisions of Section 31(3) of the Arbitration Act.

13. The Petition is opposed by Mr. Trivedi, the learned counsel appearing for the Respondent. He would submit that the Award is passed by the Arbitral Tribunal with due application of mind to documentary and oral evidence, and after recording detailed and cogent reasons. That the impugned Award does not fall in the narrow parameters enumerated under Section 34 of the Arbitration Act. That the Petitioner is seeking reappreciation of evidence on record, which is impermissible under Section 34 of the Arbitration Act. So far as the objection of delay in making the award is concerned, he would submit

³ 2025 SCC OnLine SC 2319

that the Arbitral Tribunal has explained circumstances which caused the delay in passing thereof. That the Arbitral Tribunal had addressed emails dated 30 November 2022 and 4 July 2023 indicating the circumstances which had delayed passing of the Award. Petitioner did not raise any objection at that time and is therefore estopped from raising the ground of delay. Petitioner has not pleaded any harm or prejudice caused to it on account of delay in pronouncement of Award. That it is settled law that mere delay in delivery of Award, by itself, is not a sufficient ground for setting aside the Award. That the delay has not affected the findings nor has any reflection on the findings recorded by the Arbitral Tribunal and therefore as held by the Apex Court in *Lancor Holdings Limited* (supra), the Award cannot be set aside merely on the ground of delay.

14. Mr. Trivedi would further submit that claim relating to encashment of bank guarantee has rightly been awarded by the Arbitral Tribunal considering the position that the Petitioner's counterclaim relating to alleged losses to the tune of Rs.58,55,000/- was rejected in the first Arbitral Award, which has attained finality. Petitioner attempted to prove alleged loss of Rs.42,00,000/- suffered by it by leading additional evidence and by filing additional pleadings which have been appreciated by the Arbitral Tribunal, which has recorded a finding of fact that the Petitioner could not prove cause of loss of Rs. 42,00,000/-.

15. So far as reliance by Petitioner on judgment of this Court in *Kisan Sahakari Chini Mills Ltd.* (supra) is concerned, Mr. Trivedi would submit that the ratio of the said judgment was only with regard to injunctive relief. This Court has decided only the issue of injuncting

the parties from invocation of bank guarantee in absence of cause of any loss. That the judgment cannot be cited in the present case where the facts are clearly distinguishable. That Petitioner's reliance on judgment of this Court in *Jackie Kakubhai Shroff* (supra) is misplaced as the ample evidence is available on record and analyzed by the Arbitral Tribunal for upholding the claim of Respondent in respect of bank guarantee. That even otherwise, if the bank guarantee is wrongfully invoked on the pretext of breach of contractual obligations and if Arbitral Tribunal has arrived at the conclusion that there is no breach of contract by Respondent, sanction of claim relating to bank guarantee would be in the nature of restitution and not by way of liquidated damages. That in such circumstances there is no requirement of proof of cause of loss to the Respondent. Mr. Trivedi would accordingly pray for dismissal of the Arbitration Petition.

16. Rival contentions of the parties now fall for my consideration.

17. Disputes between parties have arisen out of performance of contractual obligations under the contract awarded by the Petitioner to the Respondent for supply of pollution control equipment package for dedusting system required for the purpose of installation of a plant by the Petitioner in pursuance of contract awarded to it by Arya. Respondent has given PBG of Rs.23,97,000/- to the Petitioner, which was invoked by the Petitioner on 12 August 2008 alleging delay, unsatisfactory performance of items supplied by Respondent as well as commission of other breaches of contract. Petitioner claimed amount of Rs.58,55,500/- from the Respondent while invoking bank guarantee on 12 August 2008. Respondent's banker paid amount of Rs.23,97,000/- to the Petitioner in pursuance of invocation of bank guarantee.

18. Arbitral proceedings were conducted in respect of various claims raised by the Respondent. One of the claims raised in the first Arbitral proceedings by Respondent was for Rs.23,97,000/- towards alleged wrongful encashing of the bank guarantee. Four other claims were also raised by the Respondent for balance amount payable under contract, losses due to delays and defaults by Petitioner, interest, and costs. In addition to defending the five counterclaims raised by the Respondent, Petitioner had also raised five counterclaims against the Respondent as under:

Claim No.	Para No.	Nature of Claim	Amount (Rs.)
1	70	Liquidated Damages	11,98,500
2	71	Recovery for Non-supply/deviations.	22,60,000
3	72	Recovery towards Non-compliance of warranty and risk purchase.	42,00,000
4	73	Expenses due to extended duration of project in view of delays by Claimant.	18,00,000
5	74	Liabilities arisen due to Pollution caused by the equipment of the Claimant	4,00,000
TOTAL	75		98,58,500

19. In the first Arbitral Award dated 8 May 2012 by the 3-member Arbitral Tribunal, all claims of Respondent as well as all claims of Petitioner were rejected. In Respondent's challenge to the first Arbitral Award, this Court upheld the first Arbitral Award except in respect of claim No.2 relating to PBG. The claim relating to PBG was referred to arbitration to the second Arbitral Tribunal. By impugned Award, the second Arbitral Tribunal has allowed the claim of Respondent in the sum of Rs.23,97,000/- alongwith interest.

20. Thus, the only claim which was required to be adjudicated by the second Arbitral Tribunal was in respect of Respondent's claim for wrongful encashment of bank guarantee of Rs.23,97,000/-.

21. The first ground of challenge raised by the Petitioner to the Arbitral Award is failure to lead evidence by Respondent to prove cause of any loss or to prove commission of breach of any contractual obligation by the Petitioner. It is contended that orders dated 17 March 2015 and 1 April 2015 passed in Arbitration Petition No.1005 of 2012 permitted parties to file pleadings and evidence in addition to the one forming part of the first Arbitral proceedings. It would be apposite to reproduce orders dated 17 March 2015 and 1 April 2015 which read thus:

Order dated 17 March 2015

By consent of parties, the impugned award dated 8th May, 2012 rendered by the arbitral tribunal to the extent it rejects the claim no.2 made by the petitioner is set aside. Rest of the award is upheld.

2. By consent of parties, the dispute in respect of claim no.2 with interest and cost of arbitration is referred to the arbitration of Shri Justice Pramod D.Kode, former Judge of this Court, having his address at Flat No.702, 7th Floor, Building No.56/B, Chintamani Judges Co-operative Housing Society Limited, Behind Anik Bus Depot, Pratiksha Nagar, Sion Koliwada, Mumbai – 400 022.

3. Both parties have agreed to pay the fees and expenses of the learned arbitrator at the first instance equally which shall be subject to the outcome of the arbitration proceedings.

4. Both parties have agreed that the pleadings and evidence already forming part of the record in the earlier arbitration proceedings can be relied upon by the parties. Parties have agreed not to file any further pleadings and evidence.

5. Learned arbitrator is requested to dispose of the arbitration proceedings expeditiously. There shall be no order as to costs.

Order dt 1 April 2015

Matter is placed on board for speaking to the minutes of the order dated 17th March, 2015 and in particular part of the order recorded in paragraph

(4) thereof. It is clarified that both parties will be entitled to file pleadings and evidence in addition to what is already forming part of the arbitration proceedings. The learned arbitrator shall consider the additional pleadings and evidence also in accordance with law.

22. It is contended on behalf of the Petitioner that to prove its claim, it was incumbent for the Respondent to lead evidence for establishing that Petitioner committed breach of any contractual obligation and/or any loss was suffered by the Respondent due to encashment of bank guarantee. It is contended that Respondent failed to lead any evidence in the second arbitral proceedings and in absence of any evidence on record to prove commission of breach of contractual obligations by the Petitioner, the claim relating to PBG could not have been sanctioned in Respondent's favour. I am unable to agree. Perusal of the letter dated 12 August 2008 of Petitioner, by which Bank guarantee was invoked, would indicate that the amount under the bank guarantee was appropriated by the Petitioner towards its claim of liquidated damages of Rs.11,98,500/-, non-supply of equipment of Rs.22,60,000/- and towards performance of supplied equipment and failure of contractual obligations of Rs.23,97,000/- totally aggregating Rs.58,55,500/-. Out of the said demanded amount of Rs.58,55,500/- Petitioner appropriated the amount of Rs.23,97,000/- by encashing the PBG and demanded balance amount of Rs.34,58,500/-. This is clear from following contents of letter dated 12 August 2008:

In view of the foregoing, the following amounts are recoverable from you:

Nature of Recovery	Amount (Rs)
Agreed and ascertained Liquidated Damages @ 10% of contract value for delay.	11,98,500
Non supply of 1 No. Bag filter regulator lubricating unit, supply of RAV as 8" NB instead of 10" NB, Non Supply of Dryer scrubber main	22,60,000

ID fan damper, non supply of the pneumatic knockers base frame of super cyclone and multi-cyclone, non supply of the main holding plate of super cyclone (6mm) weighing almost 10 MT, non supply of the outlet bellows of super cyclone, deviation in supply of multi-cyclones which were supposed to be in 6mm all but you have considered 6mm AISI 410 only for cylinder portion and valves, curtailment of the main holding plate to 5mm instead of 8mm and damages in resupplied cages.	
Towards performance of the equipment supplied as well as failure in performance of your obligations.	23,97,000
Total	58,55,500

We hereby recover part of the above dues by encashing the Performance Bank Guarantee submitted by your bank for a value of Rs.23,97,000/- and you are required to pay the balance amount of Rs.34,58,500/- to us immediately for reasons narrated in the above statement and paras.

23. In the first arbitral proceeding, Petitioner raised counterclaim for two out of the three claims raised in letter dated 12 August 2008 viz. (i) liquidated damages of Rs.11,98,500/- and (ii) recovery towards non-supply/deviation of Rs.22,60,000/-. The third claim of Rs.23,97,000/- enumerated in letter dated 12 August 2008 which related to performance of supplied equipment and non-performance of contractual obligations by Respondent, was introduced in the form of Counterclaim No.3 under the heading 'recovery towards non-compliance of warranty and risk purchase' of Rs.42,00,000/-. The pleadings in support of Counterclaim No.3 are to be found in paragraph 72 thereof, which reads thus:

72. Claim No.3: The Respondent most humbly submits that the Claimant not only failed to discharge its contractual obligations in its entirety but further failed to discharge the performance warranty guarantee obligations related to the equipment supplied by them. The contract with the Claimant was for design, engineering, manufacture, supply of Pollution control equipment package for the 1.2 MTPA Pellet Plant of

Arya Iron & Steel Co. Pvt. Ltd., Barbil. In terms of the contract, the Claimant was to commission the equipment supplied by them to the satisfaction of the customer cum end user and further to establish the performance parameter to the satisfaction of the customer and end user. The Claimant was required to provide PBG covering entire scope of work including performance warranty guarantee obligations and the same was to be kept valid for a period of 18 months from the date of supply or 12 months from the date of commissioning whichever is earlier. The contract had factored 10% of the amount equivalent to Rs.23,97,000/- towards such performance purposes including guarantee of design, guarantee of equipment, performance of the equipment and dischargement of all such obligations towards the equipment.

The Claimant had failed to perform their obligations. Admittedly, the Claimant had withdrawn the warranty on equipment on 10.04.2008 and failed to commission the various items in terms of the contract and further failed to establish the performance parameters to the satisfaction of the customer cum end user.

The Claimant further failed to continue to provide the warranty guarantee services and/or obligations as a result of which the Respondent had suffered huge financial losses and the Claimant's failure had resulted in carrying out jobs at their risk and cost with respect to rectification and/or replacement of the systems and the Respondent had to bear the debit note and/or recovery of Rs.42,00,000/- from them by the end user in view of the Claimant's failure (Exhibit R-52) and as such the amount of Rs.42,00,000/- and further amounts if any to be incurred and/or to be recovered by the end user till completion of the warranty period has to be borne and/or to be recovered from the Claimant. In view of the above, the Respondent prays the Hon'ble Tribunal to direct the Claimant to pay Rs.42 Lacs to the Respondent and further sum to be incurred till completion of the warranty period and award the same in favour of Respondent.

24. Thus, Counterclaim No.3 specifically referred to PBG of Rs.23,97,000/- submitted by the Petitioner to guarantee the performance of equipment and for performance of contractual obligations. As against originally claimed sum of Rs.23,97,000/- for failure of performance of equipment and failure to perform contractual obligations, Petitioner inflated the claim figure to Rs.42,00,000/- in the Counterclaim. Thus, the third enumerated claim in letter dated 12 August 2008 was incorporated in the form of claim No.3 in the Counterclaim.

25. As specifically stated in the letter dated 12 August 2008, Petitioner had appropriated amount of Rs.23,97,000/- by encashing bank guarantee out of total sums against Respondent. By the first Arbitral Award, all counterclaims of the Petitioner have been rejected. Consequently, appropriation of amount of Rs.23,97,000/- by encashing bank guarantee automatically becomes wrongful. This is exactly what the Arbitral Tribunal has held in the impugned award. For arriving at this conclusion, leading of additional evidence was not necessary. In that view of the matter, the objection of failure to lead evidence sought to be raised by Petitioner is misplaced.

26. Though not really required, the Arbitral Tribunal has dealt with the evidence on record adduced by Petitioner's witness as well as additional Statement of Defence in paragraphs 13.4 to 13.18 of the Arbitral Award. The Arbitral Tribunal has thereafter considered the effect of letter dated 12 August 2008 in paragraphs 14.12 to 14.14 of the Arbitral Award. The Arbitral Tribunal has also considered the contention of Petitioner about invocation of encashment of bank guarantee because of equipment failure in paragraph 14.23 of the Award. Thereafter, there is detailed discussion on the aspect of commissioning of the equipment supplied by the Respondent in paragraphs 15 to 15.11 of the Award. Thus, detailed reasons are recorded by the Arbitral Tribunal after appreciating evidence on record. It therefore cannot be contended that there was total absence of evidence for the purpose of invoking the ground of perversity in the Arbitral Award.

27. It is sought to be contended by Mr. Kamat that in every case, claim arising out of wrongful encashment of bank guarantee is always

a claim for damages. I am unable to agree. In every case, wrongful encashment of bank guarantee need not be a claim in damages. To illustrate, if A believes that Rs.1 crore is due to it from B and encashes bank guarantee of Rs.25,00,000/- submitted by B. In litigation initiated by B if the Court comes to a conclusion that Rs.1 crore was not due or payable by B to A, the claim of B in respect of wrongful encashment of bank guarantee and wrongful appropriation of amount of Rs.25,00,000/- does not necessarily become a claim for damages. It is the claim of restitution of wrongfully appropriated monies. The moment non-entitlement of a party to wrongfully appropriated money by encashment of bank guarantee is established, it is not necessary for party whose bank guarantee is encashed to lead separate evidence of losses suffered by it by such wrongful encashment of bank guarantee. Reliance by Mr. Kamat on judgment of Division Bench of this Court in *Kisan Sahakari Chini Mills Limited* (supra) is inapposite. In that case, Division Bench has dealt with the issue of injuncting the Defendant from invocation of bank guarantee in the light of availability of remedy to sue the Defendant for claiming damages for wrongful invocation of bank guarantee. The Division Bench held in paragraph 18 of the judgment as under:

18. Applying the above principles to the facts of the instant case, it is abundantly clear that it is not a case where the bank should be restrained from honouring its commitment under the bank guarantee. Admittedly, the dispute between the appellants and the respondent No. 1 in this case is whether the respondent No. 1 has performed their contractual obligations under the underlying contract and if they have failed, whether the appellants are responsible for the same. The bank is in no way concerned with the said dispute. In fact, the bank has categorically stated in the bank guarantee that its obligation thereunder is absolute which would not be effected by any dispute between the parties about the performance of the underlying contract. In terms of the bank guarantee, the appellant is the sole judge of and as to whether the other party has committed any breach of the terms and conditions of the underlying agreement and their decision is final and binding on the bank. It is categorically stated in the bank guarantee that it shall not be open to the guarantor to challenge the demand

made by the appellant or to know the fact affecting the demand. The bank is also prohibited from asking the guarantor to produce proof of the liability of the other side to pay the amount before paying the guaranteed amount to the appellant. It has agreed to immediately pay the guaranteed amount to the appellants on demand. Obviously, in the instant case, the bank has failed to fulfil its commitment under the bank guarantee. The learned Single Judge, in these circumstances, in our opinion, committed a grave error of law in restraining the appellants from invoking the bank guarantee and the bank from honouring the same. It is not a case where irretrievable injustice will be caused to the respondent No. 1. The respondent No. 1 are not without any remedy in law. They may sue the appellants for damages if they have invoked the bank guarantee wrongly. There is no justification, whatsoever, in this case for an apprehension of irretrievable damage. So far as fraud is concerned, in the instant case, there is no case of fraud at all, not to speak of fraud which may vitiate the entire underlying transaction. The learned Single Judge, in our view, erred in law in holding that invocation of the bank guarantee on the face of dispute between the parties in regard to fulfilment of the terms of the underlying contract amounted to fraud. That is not so. As has been held by the Supreme Court, it must be a fraud of an egregious nature as to vitiate the entire underlying transaction. That being so, the learned Single Judge should not have interfered with the bank guarantee.

28. It is well-settled position of law that a judgment is an authority for what it decides and not what can be logically deducible therefrom. Reference in this regard to the judgment of this Court in ***Municipal Corporation of Greater Mumbai and Ors. vs. The B.E.S.T. Workers Union⁴*** would be apposite. Paragraphs 19, 20, and 21 of the judgment read as under:

19. It is a well-settled position of law that a judgment is an authority for what it decides and not what can be logically deduced therefrom. In ***Commissioner of Customs (Fort) vs. Toyota Kirloskar Motor (P) Ltd.*** ((2007) 5 SCC 371), the Supreme Court stated the law relating to precedents and held that a decision, as is well known, is an authority for what it decides and not what can logically be deduced therefrom. The ratio of a decision must be culled out from the facts involved in a given case and need not be an authority in generality without reference to the reasons, discussions and facts of the case.

20. In ***Secunderabad Club v. CIT*** (2023 SCC Online SC 1004) the Supreme Court has held thus:

4 Writ Petition No. 1526 of 2008, decided on 28 November 2025

21. In the context of understanding a judgment, it is well settled that the words used in a judgment are not to be interpreted as those of a statute. This is because the words used in a judgment should be rendered and understood contextually and are not intended to be taken literally. Further, a decision is not an authority for what can be read into it by implication or by assigning an assumed intention of the judges and inferring from it a proposition of law which the judges have not specifically or expressly laid down in the pronouncement. In other words, the decision is an authority for what it specifically decides and not what can logically be deduced therefrom.

21. In ***Goan Real Estate & Construction Ltd. v. Union of India*** ((2010) 5 SCC 388) , the Apex Court has held that a judgment must be construed having regard to the text and context in which the same is passed and that the judgment is required to be read in its entirety without reading it as a statute. It is held thus:

31. It is well settled that an order of a court must be construed having regard to the text and context in which the same was passed. For the said purpose, the judgment of this Court is required to be read in its entirety. A judgment, it is well settled, cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Observation made in a judgment, it is trite, should not be read in isolation and out of context. On perusal of para 10 of the judgment, it is abundantly clear that even under the 1991 Notification which is the main notification, it was stipulated that all development and activities within CRZ will be valid and will not violate the provisions of the 1991 Notification till the management plans are approved. Thus, the intention of legislature while issuing the Notification of 1991 was to protect the past actions/transactions which came into existence before the approval of the 1991 Notification.

29. In my view therefore, judgment in ***Kisan Sahakari Chini Mills Limited*** (supra) cannot be cited in support of an abstract position of law that in every case claim towards wrongful encashment of bank guarantee would be a claim in damages requiring leading of evidence. In that view of the matter, reliance by the Petitioner on judgment of Single Judge of this Court in ***Jackie Kakubhai Shroff***(supra) in support

of contention that damages cannot be awarded in absence of evidence is equally inapposite.

30. The first objection raised by the Petitioner is accordingly repelled.

31. The second objection of the Petitioner to the impugned Award is that the same is contrary to the reference orders dated 17 March 2015 and 1 April 2015. Here the ground has three sub-heads viz. i) rejection of additional documents, ii) rejection of Petitioner's defence, and iii) rendering of findings on issues beyond the scope of reference and on issues which had attained finality in arbitration proceedings.

32. So far as the objection of rejection of additional documents is concerned, the same arises out of skewed and myopic reading of findings recorded by the Arbitral Tribunal. It is not that the Arbitral Tribunal has rejected all additional documents produced by the Petitioner produced after reference orders dated 17 March 2015 and 1 April 2015 on the ground of the same being filed at belated stage. The Arbitral Tribunal has considered the effect of each of the additional documents produced by the Petitioner. Considering the evidence of RW1 and bunch of additional documents filed by Petitioner, the Arbitral Tribunal has recorded a finding that the evidence lacked credence and did not inspire confidence for establishing the matters for which the same was sought to be relied upon. It therefore cannot be contended that the additional evidence produced by the Petitioner is discarded altogether by the Arbitral Tribunal.

33. So far as the objection of rejection of defence raised by the Petitioner is concerned, it is seen that the Arbitral Tribunal has rightly rejected the new defence sought to be introduced by the Petitioner by holding that since Petitioner's counterclaims were rejected, the claim for refund of erroneously appropriated amounts by wrongful encashment of bank guarantee should necessarily be allowed. I have already held above that appropriation of amount of Rs.23,97,000/- by the Petitioner was only towards the three claims enumerated in the letter dated 12 August 2008. The very same claims were raised in the Counterclaim which has ultimately been rejected by the first Arbitral Tribunal. Therefore, the objection of rejection of defence raised by the Petitioner is baseless, warranting rejection.

34. The third ground raised by the Petitioner is about recording of findings by the Arbitral Tribunal on issues travelling beyond the scope of reference and on issues which had attained finality in the first arbitral proceedings. In my view, this ground is again totally baseless as seen from the angle of acceptability of the overall conclusion reached by the Arbitral Tribunal about allowing the claim for wrongful encashment of bank guarantee after rejection of all Counterclaims of the Petitioner. Once the overall conclusion reached by the Arbitral Tribunal is found to be acceptable, Petitioner cannot be permitted to raise technical objections. Even otherwise, the Arbitral Tribunal has not recorded any finding contrary to the first Arbitral Award. On the other hand, the award of claim for wrongful encashment of bank guarantee by the Arbitral Tribunal is in tune with rejection of all Counterclaims of the Petitioner in the first Arbitral Award. This ground is therefore without substance, warranting rejection.

35. It is contended by the Petitioner that the Award is pronounced four years after final arguments were heard on 15 November 2019. Here the law relating to delay in pronouncement of Award is well settled by the judgment of the Apex Court in *Lancor Holdings Limited* (supra). The Hon'ble Apex Court has considered the issue of delay in delivery of Arbitral Award in arbitrations invoked prior to insertion of Section 29A in the Arbitration Act. The Apex Court has concluded in paragraph 63 (i) of the judgment as under:

63. To conclude, the questions framed for consideration in these appeals are answered as under:

(i) What is the effect of undue and unexplained delay in the pronouncement of an arbitral award upon its validity? - Delay in the delivery of an arbitral award, by itself, is not sufficient to set aside that award. However, each such case would have to be examined on its own individual facts to ascertain whether that delay had an adverse impact on the final decision of the arbitral tribunal, whereby that award would stand vitiated due to the lapses committed by the arbitral tribunal owing to such delay. It is only when the effect of the undue delay in the delivery of an arbitral award is explicit and adversely reflects on the findings therein, such delay and, more so, if it remains unexplained, can be construed to result in the award being in conflict with the public policy of India, thereby attracting Section 34(2)(b)(ii) of the Act of 1996 or Section 34(2A) thereof, as it may also be vitiated by patent illegality. Further, it would not be necessary for an aggrieved party to invoke the remedy under Section 14(2) of the Act of 1996 as a condition precedent to lay a challenge to that delayed and tainted award under Section 34 thereof.

36. Thus, delay in delivery of Arbitral Award, by itself, is not sufficient to set aside the same and each case has to be examined on its own individual facts to ascertain if the delay has any adverse impact on final decision of the Tribunal. It is only where the Award would stand vitiated due to lapses committed by Arbitral Tribunal owing to such delay or where the effect of undue delay is explicit and adversely reflects in the findings in the Award and where the delay remains unexplained, the Court would be justified in setting aside the Arbitral Award, as being vitiated by patent illegality. In the present case, none

of the parameters laid down by the Apex Court for setting aside Arbitral Award on ground of inordinate delay is made out. Petitioner has not demonstrated before me as to how delay in delivering the Award has impacted the final decision or how delay has any reflection on findings recorded in the Arbitral Award. It is not that the Arbitral Tribunal has forgotten the arguments canvassed by the parties, has failed to deal with any arguments canvassed or has decided something which was not argued. The Award appears to be well-considered, well-reasoned and contains detailed discussion of each and every document, evidence and submissions of parties. In my view, reading of Award in entirety does not reflect that the delay in delivering the same had any impact on the findings recorded therein. It is also not that the delay is entirely unexplained. Majority of the part of delay is covered by lockdown restrictions due to Covid-19 pandemic. Furthermore, letters of Arbitral Tribunal dated 30 November 2022 and 4 July 2023 do indicate the reasons. It appears that the learned Arbitrator faced health issues affecting the movement of his palm and fingers. *Albeit* with some delay, the learned Arbitrator has delivered a well-considered award and his conclusions have found favour with this Court. In my view therefore, no case is made out for vitiation of the Arbitral Award by reason of any patent illegality therein.

37. It is contended that the Arbitral Tribunal has erroneously considered Petitioner's letter dated 25 August 2007. The Arbitral Tribunal has considered clause 4 of Letter dated 25 August 2007 which reads thus:

4. In the event of any problems and/or shortcomings arises within the warranty period related to the equipment supplied by you including the workmanship and Performance Guarantee Parameter, we shall be informing you of the same to enable you to initiate corrective steps. Till

such time the problems and/or shortcomings are rectified and/or repaired and/or replaced, the PBG need to be kept extended and valid.

38. Upon reading of clause 4 of letter dated 25 August 2007, the Arbitral Tribunal has recorded a finding that an opportunity of rectification was condition precedent for invocation of PBG. The interpretation of clause 4 of letter dated 25 August 2007 is a plausible view taken by the Arbitral Tribunal, not warranting any interference in the impugned Award.

39. The Arbitral Tribunal has awarded costs of Rs.34,60,647/- in favour of Respondent. It is submitted that the amount of costs awarded in favour of Respondent is 30% higher than the claim granted in its favour. It is further contended that award of costs is without verifying and examining the bill of costs submitted by Respondent.

40. The Arbitral Tribunal is required to fix costs of Arbitration in accordance with Section 31A of the Arbitration Act. The general rule under Section 31A(2)(a) of the Arbitration Act is that unsuccessful party needs to be ordered to pay costs of successful party. However, the Court or Arbitral Tribunal can make a different order for reasons to be recorded in writing. In determining the costs, the Arbitral Tribunal needs to have regard to all circumstances enumerated in sub-section (3) of Section 31A of the Arbitration Act which are not exhaustive in nature. Section 31(3) of the Arbitration Act mandates that Arbitral Tribunal must state the reasons upon which it is based.

41. The amount of costs awarded in favour of Respondent is higher than the claim amount. Considering the peculiar circumstances, in my view, it would be appropriate to reduce the amount of costs awarded

by the Arbitral Tribunal in favour of the Respondent. In my view, it would be appropriate to award costs of Rs.10,00,000/- in favour of the Respondent and to this limited extent, the impugned Award deserves modification. In *Gayatri Balasamy vs. ISG Novasoft Technologies Limited*⁵ the Constitution Bench has held that Court exercising powers under Section 34 of the Arbitration Act can sever bad part of the Award from good part. In the present case, award of costs which is sought to be modified is not in inseparably intertwined with the rest of the Award and can accordingly be severed.

42. Arbitration Petition accordingly succeeds partly to the limited extent of reduction of amount of costs. The direction for payment of costs of Rs.34,60,647 is set aside and is modified by directing that the Petitioner shall pay to Respondent costs arbitration of Rs. 10,00,000/- Rest of the Award is upheld. The Arbitration Petition is accordingly disposed of.

43. The Interim Application does not survive and the same is accordingly disposed of.

(SANDEEP V. MARNE, J.)

Digitally
signed by
SUDARSHAN
RAJALINGAM
KATKAM
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