



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 395 OF 2024
WITH
INTERIM APPLICATION NO.3658 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO. 395 OF 2024

Shetty Sushila Anand

...Petitioner

V/s.

Saraswat Co-operative Bank Ltd.

...Respondent

Mr. Gaurav Mehta with *Ms. Priyanka Fadia i/b. Mr. Shashank N. Fadia*
for the Petitioner.

Mr. Chaitanya M. Jadhav i/b. *M/s. SC Legal* for the Respondent.

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 3 DECEMBER 2025.
Judgment pronounced on: 9 DECEMBER 2025.

Judgment:

1) The Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) challenging the Award of the learned sole Arbitrator dated 10 October 2023. By the impugned Award, the learned sole Arbitrator has allowed the claim of the Respondent-Bank by directing the Petitioner to pay to the Respondent sum of Rs.7,23,44,313.54 forming part of two loan outstanding amounts of Rs.2,06,61,658.53 and Rs.5,16,82,655.01 as on 13 October 2022 with future interest @ 6% per annum from 14 October 2022 till realisation. In addition to arbitration fees of Rs.47,300/- and administrative costs of Rs.9,000/-, the learned Arbitrator has further

declared that the awarded sum is secured by the equitable mortgage of the Unit No.7/19, Bharat Industrial Estate at Ram Mandir Road, Goregaon (East), Mumbai-400 060 and that the Bank can recover the dues by sale/disposal of the mortgaged property. The learned Arbitrator has also restrained the Petitioner from transferring, alienating and /or creating any third-party rights in the mortgaged property. It is further directed that the awarded sum is also secured by hypothecation of machinery, furniture, fixtures, dies and tools, stocks and book debts.

2) M/s. Chetna Metal Industries (**CMI**) was a proprietary concern of late Anand Sankappa Shetty, who passed away on 27 September 2013. Petitioner is the widow of late Anand Sankappa Shetty. The Respondent is a Cooperative Bank registered *inter alia* under the Multi State Co-operative Societies Act, 2002 (**the MSCS Act**). Petitioner's husband was member of the Respondent-Bank and Petitioner was a nominal member. The CMI applied for Term Loan of Rs.2,00,000/- and Cash Credit Limit of Rs.1,00,000/- to the Respondent, which sanctioned Term Loan of Rs.2,00,000/- and Cash Credit Limit of Rs.80,000/- vide letter dated 13 June 1984. The loan facilities were secured by hypothecation of machinery, tools, etc. and personal guarantee of the Petitioner. A collateral security in the form of Life Insurance Policies was also given. CMI was the principal borrower and the Petitioner was the guarantor.

3) According to the Petitioner, the immovable property bearing Unit No.7/19, Survey Nos.14 and 15, Hiss Nos.3, 7, 8, Bharat Industrial Estate, Ram Mandir Road, Goregaon (East), Mumbai -400 060 (**the Property**) was not a collateral security for either of the credit

facilities. On 26 May 1986, the Respondent-Bank issued notice to the Petitioner that the loan accounts were in arrears. In the year 1987 the Respondent-Bank filed dispute before Co-operative Court, Mumbai for recovery of sum of Rs.1,83,423.14 due under Term Loan and Rs.58,833.48 under Cash Credit facility aggregating Rs.2,42,256.62. On 2 December 2002, the Respondent -Bank withdrew the said dispute for unknown reasons.

4) On 31 December 2009, the Respondent-Bank issued possession notice for taking physical possession of the property. Petitioner objected to the notice. After demise of late Anand Sankappa Shetty, the Respondent-Bank issued symbolic possession notice dated 2 June 2014 and called upon the Petitioner to pay Rs.30,09,389.16 as on 30 September 2003. Petitioner filed Securitisation Application No.517 of 2016 against the Respondent before the Debt Recovery Tribunal-II, Mumbai (DRT). The Tribunal allowed the Application and restored possession of the property by order dated 18 March 2021. By notice dated 14 October 2022, the Respondent called upon the Petitioner to pay Rs.7.23 crores as outstanding amount in respect of both the loans. The Central Registrar of Co-operative Societies, New Delhi passed order dated 18 October 2022 under sub-section (4) of Section 84 of the MSCS Act appointing the sole Arbitrator. Respondent-Bank filed its statement of claim. Petitioner also filed statement of defence. Issues were framed based on pleadings. Parties led evidence in support of their respective cases. The learned sole Arbitrator has rendered Award dated 10 October 2023, operative portion of which reads thus:-

a) The claim is allowed with costs & charges.

b) It is hereby declared and ordered that the Opponents No.1 and 2 are jointly and/or severally liable to pay tot he Disputant a sum of

Rs.7,23,44,313.54 (Rupees Seven Crore Twenty Three Lacks Forty Four Thousand Three Hundred Thirteen and Paise Fifty Four Only) sum of ODPUB/252 for Rs.2,06,61,658.53 and SLPUB/29 for Rs.5,16,82,655.01 (loan accounts) as on 13.10.2022 with future interest @ 6% p.a. w.e.f. 14.10.2022 till realization and Arbitration's fees of Rs.47,300.00 as also Administrative cost of Rs.9,000.00

c) It is declared that the abovesaid sum is secured by the Equitable Mortgage of the Unit No.7/19, Bharat Industrial Estate at Ram Mandir Road, Goregaon (East), Mumbai- 400 060, therefore the Disputant can recover the dues by selling/disposing off the said mortgaged property i.e. Unit No.7/19, Bharat Industrial Estate at Ram Mandir Road, Goregaon (East), Mumbai – 400 060. The Opponents are hereby restrained from transferring, alienating and/or in any way creating any third-party right/interest in respect of this property, till realization of entire dues, without consent of Disputant.

d) It is hereby declared that the above said sum is secured by the Hypothecation of Machinery, Furniture, Fixtures, Dies & Tools, Stocks and book Debts as claimed and it can be sold for recovery of above said sum.

Aggrieved by the Award dated 10 October 2023 the Petitioner has filed the present Petition under Section 34 of the Arbitration Act.

5) Mr. Mehta, the learned counsel appearing for the Petitioner would submit that the impugned Award is perverse, patently illegal and contrary to public policy of India being in contravention of fundamental policy of Indian Law and in conflict with the most basic notions of morality and justice. That rate of interest under sanction letter was 13.5% p.a. for Term Loan and 14% p.a. for Cash Credit and the interest was payable at quarterly rest. However, in the notice dated 14 October 2022 interest was computed at 18.30% on monthly rest. That the Arbitrator has blindly awarded sum of Rs.7.23 crores as on 10 October 2023 and claim in notice dated 14 October 2022 without bothering to consider contractual rate of interest agreed between the

parties. Mr. Mehta would further submit that the Arbitrator erred in relying on handwritten entries in computerised statement of claim i.e. 'unapplied interest' of Rs.2.05 crores and 5.15 crores without providing any breakup. That as per contractually agreed rate of interest computed at quarterly rest, the amount outstanding under Term Loan is Rs.30,06,944/- and amount payable under Cash Credit facility is Rs.11,79,772/- as against huge sum of Rs.7.23 crores awarded by the sole Arbitrator. Mr. Mehta would further submit that the learned Arbitrator has committed patent illegality in granting declaration of mortgage in respect of the property in absence of any prayer in the Statement of Claim. That no mortgage in respect of the property was ever created. That the document relied upon by the Bank for deposit of title deed is unsigned and vague. Mr. Mehta would further submit that the two LIC policies were assigned in favour of the Respondent as collateral for the loans. That those policies had matured in 1998-99 and the Bank has not given credit in respect of the said matured policies. Relying on judgments of the Apex Court in ***Indian Railways Catering and Tourism Corp. Ltd. V/s. Brandavan Food Productions¹*** and ***Batliboi Environment Engineers Ltd. Vs HDCL²*** Mr. Mehta would pray for setting aside the impugned Award. He would also invite attention of the Court to Constitution Bench judgment of the ***Gayatri Balasamy V/s. ISG Novasoft Technologies Limited³*** in support of his contention that the rate of interest can be modified by this Court by severing bad part of the Award.

6) Petition is opposed by Mr. Jadhav, the learned counsel appearing for the Respondent-Bank. He would submit that the learned

¹ 2025 SCC OnLine SC 2369

² 2024(2) SCC 375

³ 2025 SCC OnLine SC 986

Arbitrator has considered the entire evidence and material on record for delivering a well-reasoned Award. That in absence of any element of perversity, there is no warrant for interference in the impugned Award. He would submit that the Arbitrator has rightly awarded rate of interest @ 18.30% at quarterly rest since the sanction letter itself contained a clear stipulation that the terms and conditions for credit facilities were subject to change by the Bank at its discretion as per the changes in the money market conditions. That prime lending rate is based on cost of funds to the Bank and that therefore rate of interest for lending can always vary from time to time according to the market conditions.

7) So far as declaration issued by the Arbitrator in respect of the mortgage is concerned, Mr. Jadhav would submit that a specific prayer was made for such declaration in prayer clauses (c) and (g) of statement of claim. He would further submit that mortgage for deposit of title deed was made vide instrument dated 10 October 1985. He would submit that the Award does not suffer from any infirmity and that therefore the Petition is liable to be dismissed.

8) Rival contentions of the parties now fall for my consideration.

9) The case arises out of extremely old loan transaction sanctioned and disbursed vide sanction letter dated 13 June 1984, by which CMI was sanctioned Term Loan of Rs.2,00,000/- and Cash Credit Limit of Rs.80,000/- According to the Respondent-Bank, the outstanding amounts under both credit facilities were not repaid. It

appears that the Respondent Bank started recovery proceedings since 26 May 1986. It first filed case before Co-operative Court, Mumbai for recovery of amount of Rs.1,83,423.14 due under Term Loan and Rs.58,833.48 due under Cash Credit facility. However, after about 15 long years, the Respondent -Bank withdrew the said case for reasons not known at this juncture. Thereafter there was hiatus for about 7 years and Respondent-Bank renewed its efforts for recovery of outstanding loan amounts by directly issuing possession notice under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**) on 31 December 2009 threatening to take physical possession of the property. The Petitioner resisted the same and nothing happened for almost four years. In the meantime, Petitioner's husband and proprietor of CMI passed away on 27 September 2013. After death of her husband, Bank renewed its efforts to recover the outstanding amounts under the loan account and took over symbolic possession of the property vide notice under Section 13(2) of the SARFAESI Act on 2 June 2014. At that time, outstanding amount was indicated as Rs.30,09,389.16 as on 30 September 2003. The notice dated 2 June 2014 was set aside by the DRT by order dated 18 March 2021.

10) In the above background the Respondent-Bank initiated arbitration proceedings by seeking appointment of the Arbitrator under Section 84 of the MSCS Act. The arbitral proceedings have resulted in the impugned Award under which the learned sole Arbitrator has awarded aggregate amount of Rs.7,23,44,313.54 in favour of the Respondent-Bank in addition to declaration of security on equitable mortgage over the property.

11) The first ground of attack by the Petitioner to the impugned Award is ignorance of terms and conditions of sanction letter by the learned Arbitrator while allowing the claim of the Respondent-Bank. It would therefore be apposite to reproduce the relevant terms and conditions of sanction letter dated 13 June 1984 as under:-

AND/8/RGN/III/BSP/3483

13.06.1984.

TO

M/s. Chetna Metal Industries Unit No.7. Bharat Ind. Estate,
Ram Mandir Road,
Goregaon(East),
BOMBAY-400 063.

WITHOUT PREJUDICE

Dear Sirs,

Re: Financial Accommodation.

The Committee at its Meeting held on 7th June 1984 considered your proposal for Term Loan of Rs. 2.00 lakhs and Cash Credit Limit of Rs. 1.00 lakh.

I am directed to inform you that the said proposal has been sanctioned with few modifications on the following terms and conditions:-

- 1) Limit : a) Term Loan Rs. 2.00 lakhs
b) Cash Credit limit Rs. 0.80 lakh.

2) Security : Term Loan

- a) Hypothecation of existing machinery and machinery be purchased, Furniture/Fixtures, Dies & Tools.
- b) Personal guarantee of Mrs. Shetty, wife of the proprietor.

Cash Credit

- a) Hypothecation of Stocks & Book Debts
- b) Personal guarantee of Mrs.Shetty, wife of the proprietor.

Common Security -Collateral- Life Insurance Policy of Rs. 1.00 lakh in the names of the proprietor and his wife.

- 3) Margin : 30% of Stocks.
40% of Book Debts.
40% of machinery/Furniture/Fixtures.
- 4) Interest: a) Term Loan: 13 ½ % per annum with quarterly rests.
b) Cash Credit: 14% per annum with quarterly rests.
- 5) Period : a) Term Loan Repayable on demand but not late than 60 months.
b) Cash Credit - Repayable on demand subject to review within six months from the close of the accounting year of the firm.
- 6) Repayment: Term Loan -Repayable by 40 monthly instalment of Rs. 3,000/- each and 20 monthly instalment of Rs.4,000/- each.
- 7) Valuation : a) Stocks to be valued at cost or market price whichever is less,
b) Book debts not more than 3 months old,
c) Hypothecated machinery/furniture/fixtures, Dies & Tools to be valued at cost or written down value whichever is less.

(emphasis added)

12) Thus, the Term Loan of Rs.2,00,000/- was sanctioned and disbursed at interest rate of 13.5% per annum, payable at quarterly rest. Cash Credit amount of Rs.80,000/- was to be paid with interest of 14% per annum payable at quarterly rest. However, according to the Petitioner the Respondent-Bank has charged interest @ 18.30 % payable at monthly rest as is clear from paragraph 1 of the Statement of Claim, which reads thus:-

1. I say that, I am aware of the fact of case on the basis of the documents executed by the Defendants and records and files available with the said Disputant Bank. I have authority to file the present Claim Affidavit in the said Arbitration Case as I am Power of

Attorney Holder of the Disputant Bank. I say that the Disputant has filed Arbitration Case against the Defendant for recovery of sum of Rs.7,23,44,313.54 (Rupees Seven Crore Twenty Three Lacs Forty Four Thousand Three Hundred Thirteen and Paise Fifty Four Only) with further interest at the rate of @ 18.30% per annum with monthly rest as prayed in the Dispute.

13) The sole Arbitrator has apparently not taken into consideration the rate of interest agreed under the sanction letter. However, lower rate of interest chargeable against the borrower has been noticed in paragraph 16 of the Award when reference is made by the Arbitral Tribunal to Dispute Application filed before the Co-operative Court in the year 1987. Relevant observations in paragraph 16 of the impugned Award read thus:-

16. ... The Disputant Bank had filed its claim on 29/4/1987 under section 91 to 96 of Maharashtra State Cooperative Societies Act 1960 before the Cooperative Court-II Mumbai, being Dispute Application being Case No.CC-II/331 of 1987, for recovery of sum of Rs.1,83,423.14 in Term Loan account and Rs.58,833.48 in CC account as on 31st March 1987 with further interest thereon @ 13.5% per annum and 15% per annum respectively from 1st April 1987.

14) The Arbitral Tribunal has thereafter not bothered to conduct any enquiry as to why and how the Respondent -Bank could charge exorbitant rate of interest at 18.30% on the Petitioner. To make things worst, the lower rates of 13.50% and 14% were payable at quarterly rest whereas the Respondent-Bank has computed interest at monthly rest. On account of double whammy of higher rate of interest of 18.30% coupled with the compounding at monthly rest, principal loan amounts of Rs.2,00,000/- + Rs.80,000/- =2,80,000/- has swollen to Rs.7,23,44,313.54. The Arbitral Tribunal did not even bother to

enquire as to why principal amount of Rs.2,80,000/- could soar upto 7.23 crores in 38 years.

15) The breakup of 7.23 crores is indicated in Bank's notice dated 14 October 2022 was as under:-

SR. No.	NATURE OF FACILITY	RATE OF INTEREST	OUTSTANDING INCLUSIVE OF INTEREST AS ON 13.10.2022
1.	Cash Credit (9028500100000252)	18.30%	Rs.2,06,61,658.53
2.	Term Loan (028700100000029)	18.30%	Rs.5,16,82,655.01
	Total		Rs.7,23,44,313.54

16) However, if the Account Statement produced by the Respondent-Bank before the Arbitral Tribunal is taken into consideration, it is seen that in respect of Cash Credit account the amount due as on 11 October 2022 was reflected as Rs.82,524.53 to which figure of 2,05,79,074/- was added in handwriting towards '*Unapplied Interest as on 13/10/2022*'. Similar is the case in respect of Term Loan account where amount due in the Account Statement is shown as Rs.1,56,727.01 to which figure of Rs.5,15,25,928.00 was added as '*Unapplied Interest as on 13/10/2022*' in handwriting. The learned sole Arbitrator has blindly accepted the above figures without even bothering to seek particulars thereof from the Respondent -Bank.

17) The Arbitral Tribunal has thus travelled beyond the terms of sanction letter dated 13 June 1984. Faced with the difficulty that the impugned Award is in contravention of the agreed rate of interest and the manner of charging the interest, Mr. Jadhav has relied upon following condition in sanction letter dated 13 June 1984:-

Please note that the said terms and conditions are subject to change by the Bank at its discretion from time to time as per the changes in money market conditions.

18) Firstly, the Arbitrator has not utilised the above condition for awarding interest higher than the one agreed upon in sanction letter dated 13 June 1984. Secondly, the above condition is not a license to the Bank to charge interest at its whims and caprices and contrary to the terms and conditions of the sanction letter. Even otherwise, there was no evidence on record about prime lending rate or cost of funds to the Respondent-Bank. Therefore, reliance by Mr. Jadhav on above quoted stipulation does not assist the case of the Respondent- Bank.

19) In my view, the impugned Award, to the extent of allowing interest @ 18.30% computed on monthly rest, is clearly invalid. As the Award ignores the terms and conditions of the contract between the parties, it falls foul to public policy of India doctrine. In recent judgment in *Indian Railways Catering and Tourism Corp. Ltd.* (supra) the Apex Court has summarised grounds for setting aside Arbitral Award in paragraphs 63 to 66 as under:-

63. Pertinently, Section 34(2)(b)(ii) provides that if the Court finds that an arbitral award is in conflict with the public policy of India, the Court would be justified in setting it aside. Explanation 1, as it presently reads, and Explanation 2 were inserted by the Amendment Act No. 3 of 2016 with retrospective effect from 23.10.2015. Explanation 1 provides that, for the avoidance of doubt, it is clarified that an award is in conflict with the public policy of India only if its making was induced or affected by fraud or corruption or was in violation of Sections 75 or 81 of the Act of 1996 or it is in contravention with the fundamental policy of Indian law or it is in conflict with the most basic notions of morality or justice. Explanation 2 provides that, for the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

64. In *Ssangyong Engineering and Construction Company Limited vs. National Highway Authority of India* ((2019) 15 SCC 131), this Court dealt with the expression ‘most basic notions of morality or justice’ mentioned in Explanation 1. It was opined that the breach must be of some fundamental principle of justice, substantively or procedurally, which shocks the Court’s conscience. On facts, this Court found that the award created a new contract by applying a Circular that was not even placed before the arbitral tribunal. It was, therefore, opined that a fundamental principle of justice was breached, viz., that unilateral alteration of a contract cannot be foisted upon an unwilling party nor can a party to an agreement be made liable to perform a bargain not entered into with the other party. This Court held that such course of conduct was contrary to fundamental principles of justice followed in this country and shocked its conscience. It was, however, cautioned that this ground would be available in exceptional circumstances only and under no circumstance can a Court interfere with an award on the ground that justice, in its opinion, was not done.

65. Again, in *PSA Sical Terminals Private Limited vs. Board of Trustees of V.O. Chidambranar Port Trust, Tuticorin, and others* ((2023) 15 SCC 781), this Court found that the arbitral tribunal had thrust a new term into the agreement between the parties and thereby created a new contract for them. Referring to *Ssangyong Engineering* (supra), this Court affirmed that rewriting a contract for the parties would be a breach of the fundamental principles of justice, entitling a Court to interfere as it would shock its conscience and would fall within the exceptional category.

66. A little later, in *State of Chhattisgarh and another vs. SAL Udyog Private Limited*⁷, a 3-Judge Bench of this Court dealt with the issue as to what would constitute ‘patent illegality’ appearing on the face of the award, in terms of Section 34(2A) of the Act of 1996. Reference was made to the earlier decisions in *Associate Builders v. Delhi Development Authority*⁸ and *Ssangyong Engineering* (supra) and it was held that the failure of the arbitral tribunal to decide in accordance with the terms of the contract governing the parties would certainly attract the ‘patent illegality’ ground as the said oversight amounted to gross contravention of Section 28(3) of the Act of 1996, which enjoined the arbitral tribunal to take into account the terms of the contract while making the award.

20) In the present case, the Arbitral Tribunal has clearly written fresh terms of contract between the parties and has foisted a new commercial bargain on the parties. In *PSA Sical Terminals Private*

Limited vs. Board of Trustees of V.O. Chidambranar Port Trust, Tuticorin, and others⁴ the Apex Court has held that the Award can be set aside if it thrusts a new term into the agreement between the parties and has thereby created a new contract for them. In ***Batliboi Environment Engineers Ltd.*** (supra) the Apex Court has held in paragraphs 41 and 44 as under:

41. Subsequently, in *ONGC Ltd. v. Western Geco International Ltd.*,³⁴ a three Judge Bench of this Court observed that the Court, in *Saw Pipes Ltd.*, did not examine what would constitute 'fundamental policy of Indian law'. The expression 'fundamental policy of Indian law' in the opinion of this Court includes all fundamental principles providing as basis for administration of justice and enforcement of law in this country. There were three distinct and fundamental juristic principles which form a part and parcel of 'fundamental policy of Indian law'. The first and the foremost principle is that in every determination by a court or an authority that affects rights of a citizen or leads to civil consequences, the court or authority must adopt a judicial approach. Fidelity to judicial approach entails that the court or authority should not act in an arbitrary, capricious or whimsical manner. The court or authority should act in a bona fide manner and deal with the subject in a fair, reasonable and objective manner. Decision should not be actuated by extraneous considerations. Secondly, the principles of natural justice should be followed. This would include the requirement that the arbitral tribunal must apply its mind to the attending facts and circumstances while taking the view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best done by recording reasons in support of the decision. As noticed above, Section 31(3)(a) of the A&C35 states that the arbitral award shall state the reasons on which it is based, unless the parties have agreed that no reasons are to be given. Sub-clauses (i) and (iii) to Section 34(2) also refer to different facets of natural justice. In a given case sub-clause to Section 34(2) and sub-clause (ii) to clause (b) to Section 34(2) may equally apply. Lastly, is the need to ensure that the decision is not perverse or irrational that no reasonable person would have arrived at the same or be sustained in a court of law. Perversity or irrationality of a decision is tested on the touchstone of *Wednesbury* principle of reasonableness. At the same time, it was cautioned that this Court was not attempting an exhaustive

⁴(2023) 15 SCC 781)

enumeration of what would constitute 'fundamental policy of Indian law', as a straightjacket definition is not possible. If on facts proved before them, the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which on the face of it, is untenable resulting in injustice, the adjudication made by an arbitral tribunal that enjoys considerable latitude and play at the joints in making awards, may be challenged and set aside.

44. The decision of this Court in Associate Builders elaborately examined the question of public policy in the context of Section 34 of the A&C Act, specifically under the head 'fundamental policy of Indian law'. It was firstly held that the principle of judicial approach demands a decision to be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would not satisfy the said requirement.

21) In my view, the impugned Award, to the extent of award of interest of 18.30% and charging the interest at monthly rest, suffers from lack of judicial approach on the part of the learned Arbitrator, who has failed to act in fair, reasonable or objective manner. The award of huge amount of Rs.7.23 crores by the Arbitral Tribunal is arbitrary and whimsical. Therefore, this part of the Award is liable to be set aside.

22) So far as the declaration of security and equitable mortgage in operative clause (c) of the impugned Award is concerned, it appears that no substantive prayer was made by Respondent-Bank for declaration of any such mortgage. It would be apposite to reproduce the prayers in the Statement of Claim as under:-

a. Main Reliefs.

In view of the facts mentioned above the Disputant prays that this Hon'ble Tribunal may be pleased to pass an Order in favour of the Disputant granting the following reliefs:

a. The present reference is adjudicated u/s 84 of the Multi State co- operative Societies Act, 2002. That it be declared that all the Opponents 1 and 2 are jointly and / or severally liable to pay to the Disputant an amount of Rs.7,23,44,313.54 (Rupees Seven Crore Twenty Three Lacs Forty Four Thousand Three Hundred Thirteen and Paise Fifty Four Only) sum of ODPUB/252 for Rs.2,06,61,658.53 and SLPUB/29 for Rs.5,16,82,655.01 loan accounts of balance as on 13.10.2022 With future interest @ 18.30% w.e.f. 14.10.2022 (as per the statement of accounts furnished) till final payment and /or realization as per the particulars of Claim.

b. That Hon'ble Authority may be pleased to order all the opponents 1 and 2 to pay Jointly and severally to the Disputant an amount of Rs.7,23,44,313.54 (Rupees Seven Crore Twenty Three Lacs Forty Four Thousand Three Hundred Thirteen and Paise Fifty Four Only) sum of ODPUB/252 for Rs.2,06,61,658.53 and SLPUB/29 for Rs.5,16,82,655.01 loan accounts of balance as on 13.10.2022 With future interest @ 18.30% w.e.f. 14.10.2022 till the final payment and/or realization.

c. That in the final decision in this matter an order of attachment may please be passed in respect of following securities being

Details of mortgaged and Hypothecation Property.

1. Equitable mortgage of Unit No.7/19, Bharat Industrial Estate, at Ram Mandir Road, Goregaon (East), Mumbai - 400 060

2. Hypothecation of Machinery, furniture dyes and tools.

3. Hypothecation of Stocks and Debtors.

d. That this Hon'ble Tribunal be pleased to order and declare that in the event of there being any deficiency in the net sale proceeds and / or net recoveries and / or net realization order personnel decree against Opponents towards satisfaction of the Disputant dues claimed herein.

e. That in execution of an Interim order and or Award that may be passed by this Hon'ble Authority, the Disputant kindly be permitted to execute the same as Authorized person of this Authority.

f. For cost of this Application.

g. For such further and other reliefs as the nature and circumstances of the case may require.

23) Thus, there was no substantive prayer for declaration of mortgage. Mr. Jadhav has attempted to suggest that prayer (c) in the statement of claim covered even the prayer for mortgage. I am unable to agree. In prayer (c) the Respondent-Bank only prayed for an order of attachment in respect of movable and immovable properties. There is no prayer for declaration of existence of subsisting mortgage. Faced with this position, Mr. Jadhav would contend that prayer of declaration of mortgage is granted by considering the prayer clause (g) of statement of claim. In my view, prayer clause (g) can at best be used only for molding relief and not for grant of substantive relief, which is totally absent in the claim. Grant of claim in absence of prayer would constitute valid ground for setting aside this part of the impugned Award. Accordingly, the Award, so far as the operative clause (c) is concerned, is liable to be set aside.

24) So far as non-grant of credit in respect of LIC policies is concerned, the Arbitral Tribunal has held in paragraph 21 of the Award as under:-

As to Issue No. 6

21. This issue pertains to the LIC policy which was the collateral security. This issue is again raised by the Opponent. In her cross examination she states that she is not aware of assignment of LIC policies and she came to know in respect of that from her Advocate. She further states in her cross examination that she is not aware of the procedure for encashing/ liquidating the policy and whether her consent is required for liquidation of policy. It reveals from record that the Opponent has never raised the plea in respect of LIC policy by sending any communication to the Disputant, nor in her written statement before the Cooperative court also. The written statement also contains a vague statement that "These Opponents

categorically state that considering the EMIS paid by these Opponents and the adjustment of the money received against the LIC policy, there is a high probability that the entire dues of the Disputant have already been cleared'. Therefore, this issue as it is framed casting the liability on the Disputant to prove in respect of LIC policy's appropriation is redundant in absence of specific pleading and accordingly I have recorded my finding.

25) In absence of proper pleadings and evidence on record, the Arbitral Tribunal found it difficult to record a conclusive finding of the Bank encashing maturity value of LIC policies. The Arbitral Tribunal has therefore rightly rejected the Petitioner's defence for non-grant of credit towards LIC policies. It appears that the Respondent-Bank has not encashed the concerned LIC policies therefore Petitioner would be at liberty to approach the LIC and claim the amount of maturity by following appropriate process applicable to lost originals in respect of concerned LIC policy.

26) Petitioner has presented the computation of amount due in respect of both the credit facilities by applying the correct rate of interest (under the sanction letter) calculated at quarterly rest. The calculations are based on the balance indicated in the statement of account as on 06 July 2000 of Rs.1,56,727/- in respect of Term Loan account and in the statement of accounts as on 4 September 2002 of Rs.75,261 in respect of cash credit account. These statements were produced by Respondent's witness Mr. Yatish Samant with his Affidavit of Evidence before the learned Arbitrator which are at Pg. 326 and 329 of the paper-book before me. The computation of interest based on balance indicated in the statement are as under:-

Loan Account A/c 29	Interest Calculations from 06.07.2000 till 13.10.2022
Balance as on 06.07.2000- Rs.1,56,727 [pg.329]	13.5% quarterly rests [per contract]
	30,06,944
Loan Account A/c 252	Interest Calculations from 04.09.2002 till 13.10.2022
Balance as on 04.09.2002- Rs.75,261[Pg.326]	14% quarterly rests [per contract]
	11,79,772

27) In my view, the Award therefore is unsustainable *qua* operative clauses (b) and (c). However, instead of setting aside the Award in entirety, it would be appropriate to sever bad part of the Award from the good part. The Constitution Bench in ***Gayatri Balasamy*** (supra) has held that Court exercising power under Section 34 of the Arbitration Act can modify the Arbitral Award when the Award is severable, by severing the “invalid” portion from the “valid” portion of the Award. The Apex Court has further held that the Court can also modify the rate of interest. It is held in paragraphs 72, 73 and 85 as under:

72. The next question that arises is: do courts possess the power to declare or modify interest, especially post award interest? In respect of pendente lite interest, Section 31(7)(a) (Annexure A), states that unless otherwise agreed by the parties, the arbitral tribunal may include in its sum for the award, interest, at such rate it deems reasonable on whole or part of the money for whole or part of the period on which the cause of action arose and the date on which the award is made. In respect of post-award interest, Section 31(7)(b) (Annexure A) states that unless an award provides for interest on a sum directed to be paid by it, the sum will carry an interest at a 2% higher rate than the current rate of interest prevalent on the date of the award, from the date of the award till the date of payment. The explanation defines the expression ‘current rate of interest’.

73. There can be instances of violation of Section 31(7)(a), and the pendente lite interest awarded may be contrary to the contractual provision. We are of the opinion that, in such cases, the court while examining objections under Section 34 of the 1996 Act will have two options. First is to set aside the rate of interest or second, recourse may be had to the powers of remand under Section 34(4).

xxx

85. Accordingly, the questions of law referred to by Gayatri Balasamy (supra) are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:

- I. when the award is severable, by severing the “invalid” portion from the “valid” portion of the award, as held in Part II of our Analysis.
- II. by correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, as held in Part IV and V of our Analysis
- III. post award interest may be modified in some circumstances as held in Part IX of our Analysis; and/or
- IV. Article 142 of the Constitution applies, albeit, the power must be exercised with great care and caution and within the limits of the constitutional power as outlined in Part XII of our Analysis.

(Emphasis added)

28) In my view therefore, as held by the Apex Court in paragraph 73 of the Judgment in *Gayatri Balasamy* (supra) this Court has two options of either setting aside rate of interest or to take recourse to power of remand under Section 34(4) of the Arbitration Act. However, since the contractually agreed rate of interest vide sanction letter dated 13 June 1984 is available on record, it is not necessary to have recourse to provisions of Section 34(4) of the Arbitration Act. Instead, it would be appropriate to award contractually correct rate of interest. This is how the bad part of Award

under operative clause (b) can be modified by awarding the due amount by charging correct rate of interest. Similarly, operative clause (c) of the Award being invalid, that part of Award can be set aside as the same is not inseparably intertwined with the rest of the Award.

29) I accordingly proceed to pass the following order:-

(a) Operative clause (b) of the Award is set aside and it is instead directed that Petitioner/original Opponent Nos.1 and 2 are jointly and severally liable to pay to the Respondent-Bank sum of Rs.30,06,944/- for Loan Account No. SLPUB/29 and Rs.11,79,772/- for Loan Account No. ODPUB/252 aggregating Rs.41,86,716/- as on 13 October 2022 with future rate of interest @ 6% p.a. w.e.f. 14 October 2022 till realisation of the amount.

(b) Operative clause (c) of the Award is set aside.

30) Arbitration Petition is **partly allowed** to the above extent. Considering the facts and circumstances of the case, I deem it appropriate not to award any costs in the present Petition.

31) In view of disposal of the Arbitration Petition nothing survives in the Interim Application and the same is also disposed of.

[SANDEEP V. MARNE, J.]