

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO.3257 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.371 OF 2024**

Jayant Meghani & Ors.

...
Petitioners/
Applicants

Versus

M/s Shree Tirupati Greenfield & Ors.

...Respondents

**WITH
COMMERCIAL ARBITRATION PETITION (L) NO.13004 OF 2024
WITH
COMMERCIAL ARBITRATION PETITION (L) NO.13010 OF 2024
WITH
COMMERCIAL ARBITRATION PETITION NO.392 OF 2024
WITH
INTERIM APPLICATION (L) NO.3246 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.392 OF 2024
WITH
COMMERCIAL ARBITRATION PETITION NO.371 OF 2024
WITH**

Mr. Narayan Sahu a/w. *Lorna i/b. Ashish Pawar & Mamta Magre, Advocates for Petitioner in CARBP/371/2024 & CARBP/392/2024, for Applicant in IA/3257/2024 & IA/3246/2024 & for Respondents in CARBPL/13006/2022 & CARBPL/13010/2022.*

Mr. Simil Purohit, Senior Advocate i/b. *Saurabh Oka, Advocates for Petitioner in ARBPL/13010/2024 & ARBPL/13004/2024 and for Respondent in ARBP/371/2024 & ARBP/392/2024.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : AUGUST 18, 2025

Oral Judgement:

Context and Factual Background:

1. These are cross Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) challenging arbitral awards dated January 9, 2024 (collectively, “***Impugned Award***”). The disputes involve interpretation of an investment in Shree Tirupati Greenfield (“***Tirupati***”), a partnership firm in which Haresh Gurbax Daulatani, Arvind S. Gupta and Sunil S. Gupta are partners (collectively, “***Tirupati***”).

2. Commercial Arbitration Petition No. 371 of 2024 entails an investment by Jayant Meghani, Mahendra Meghani and Taru Meghani aggregating to Rs. 75 lakhs. Commercial Arbitration Petition No. 392 of 2024 entails an investment by Taru Meghani, Mahendra Meghani and Kamal Khandhadia, the amount invested is Rs. 35 lakhs. In this judgement, the aforesaid investors are collectively referred to as “***the Investors***”, all of whom are in the winter years of their lives.

3. For all purposes of this judgment, purely for convenience, all references to the record and the Impugned Award in this judgement are made in relation to Commercial Arbitration Petition No.371 of 2024. Learned Counsel for the parties agree that the determination of issues in the aforesaid Petition would be dispositive of the issues involved in all connected proceedings.

4. Tirupati has challenged the awards on the premise that they proceed on examination of evidence by a one Ms. Shraddha Kandhadia, a power of attorney holder (but also a daughter of Mr. Kamal Khandadia, one of the Investors), without any of the investors personally stepping into the witness box. The Investors have challenged the awards on the premise that the interest awarded ought to have been at the rate of 33% per annum until payment and not at the rate of 33% for just the first year; 12% per annum pending arbitration; and 8% per annum from the date of the Award until the date of realization in full. It is in this context that the captioned Petitions need to be considered.

5. The following factual matrix would outline the relevant facts:-

A) Memoranda of Understanding dated June 7, 2014 and July 22, 2014 (“**MoU**”) were executed between the Investors and Tirupati providing for the Investors making the investment

of funds, for which repayment cheques dated twelve months after such date were issued by Tirupati;

- B) The cheques for repayment are said to have been replaced, extending the deadline for making the payment to January 1, 2016. In other words, the investment was not repaid within a year of the MoU and was extended, by further period for nearly six months;
- C) Evidently, in 2019, Tirupati did not effect the redemption of the investment. In the interim, payments towards “profits/interest” had been made by Tirupati to the Investors which is also in a dispute;
- D) Summary Suit No.1172 of 2019 was filed by the Investors, which led to a Section 8 Petition being filed by Tirupati stating that the disputes ought to proceed to arbitration;
- E) The Section 8 Petition came to be allowed on January 10, 2020. It took nearly two years to constitute the Arbitral Tribunal, with a Section 11 Application having to be filed by the Investors, which was eventually allowed on November 30, 2021, appointing the Learned Arbitral Tribunal;
- F) The arbitration proceedings culminated with the passing of the Impugned Award. The Impugned Award essentially holds that the investment made by the Investors in Tirupati was essentially a loan carrying interest in terms of the MoU and that it ought to be repaid;

- G) On a holistic reading of the various provisions of the MoU, the Learned Arbitral Tribunal concluded that Tirupati's bid to present the MoU as a document evidencing an investment in Flat No. 103 and Flat No. 104 in the 'B' Wing of the Marigold project ("***Subject Flats***"), with the remedy being limited to a recourse to the Subject Flats, if and when, and as and when that flat was available, is untenable; and
- H) The essence of the Impugned Award is that the reference to the Subject Flats in the MoU is only because the interest created in the Subject Flats was in the nature of a security for repayment of the loan, and the fundamental character of the investment was that of a loan extended to Tirupati.

Analysis and Findings:

6. I have heard Mr. Narayan Sahu, Learned Advocate on behalf of the Investors and Mr. Simil Purohit, Learned Senior Advocate on behalf of Tirupati, and with their assistance examined the record bearing in mind the scope of jurisdiction of this Court under Section 34 of the Act.

7. I find that it is common ground that neither the Subject Flats nor even the building meant to house it, were ready in twelve months, which was the initial period of the investment. The post-dated redemption cheques were dated as of the first anniversary of the

investment. The Subject Flats were not ready even by the further extended date of after another six months. Even when the Impugned Award was passed last year, the Subject Flats were nowhere in sight.

8. Cheques for the period of investment (12 months, later extended by another six months), issued by Tirupati towards redemption, were dishonoured. Since the question that fell for consideration is whether the investment was a loan, it is noteworthy that there is nothing on record to indicate that Tirupati had called for a return of the cheques issued, on the premise that the investment was towards acquisition of the Subject Flats and not towards redemption of the investment amount.

9. On the contrary, the post-dated cheques initially issued for redemption in one year, were replaced by new post-dated cheques dated six months later. This is the first core indication of what the agreement was between the parties in relation to the investment.

10. The Investors' Summary Suit was repelled by recourse to Section 8 of the Act but the Investors needed to approach this Court and wait for nearly two more years just to have the Learned Arbitral Tribunal constituted. At this stage in the arbitration proceedings, the stance taken by Tirupati was that the investment was not a loan at all

but was an investment in the Subject Flats. This formed the core issue that has been answered by the Learned Arbitral Tribunal against Tirupati's contention and in favour of the Investors.

Investment – Loan or Acquisition of Subject Flats:

11. Indeed, the Investors' pleadings use the term "interest" as well as "handsome profits" when referring to the return on their investment, and that would indicate a scope for ambiguity on the nature of the investment. Against this backdrop, the Learned Arbitral Tribunal has examined the record and interpreted the clauses of the MoU to hold that the investment was a loan which is required to be repaid. Having examined the Impugned Award, it is apparent that the Impugned Award makes an extensive holistic analysis of the various terms of the MoU to return an eminently plausible finding that the investment was a loan.

12. Tirupati's basis to commend a contrary view that the investment was not a loan but acquisition of an ownership interest in the Subject Flats is primarily based on Clause 6(h) of the MoU. In reliance upon this provision, it is contended that the Investors must necessarily wait for the Subject Flats to become ready. Tirupati would contend that the Investors could then use it themselves or dispose of it to realize the proceeds as a return on their investment. The Learned

Arbitral Tribunal has thoroughly examined Clause 6(h) and juxtaposed it with various other provisions contained in the MoU including Recitals No. 5 and 6; other subclauses of Clause 6 including subclause (b), (c), (d), (e), (f), (g), (i), (l) (m) and Clauses 10 and 18 to repel the contention that the MoU entailed acquisition of ownership interest in the Subject Flats.

13. This finding of the Learned Arbitral Tribunal is not only eminently plausible but appears quite impeccable. In particular, the following is evident from a plain reading of the record:-

- a) Clause 6(c) of the MoU explicitly provides for the investment being a “short term loan” and even provides for the principal amount invested being redeemed twelve months from the date of investment;
- b) Clause 6(d) provides for “repayment” of the respective amounts;
- c) Clause 6(e) ambiguously refers to the amount of Rs. 6.6 lakhs payable per quarter as interest “on account of appreciation profit” on the investment;

d) Clause 6(g) provides for issuance of an allotment letter and that an agreement shall be signed for sale of the Subject Flats;

e) However, Clause 6(h), which lies at the heart of the issue provides that in the event of failure to repay in terms of Clause 6(c), the Investors would have a right to retain the Subject Flats for their own use or to sell the Subject Flats to any other person and receive consideration for the same;

f) Under Clause 6(i), Tirupati is prohibited from selling the Subject Flats only for a period of 12 months. After that, Tirupati is free to sell with information about the transaction being given to the Investors. Out of the sale proceeds, the “minimum assured profit” shall be payable by Tirupati to the Investors;

g) Clause 6(m) provides that the Subject Flats shall be not sold or encumbered until repayment of the amount owed to the Investors; and

h) The Allotment Letter issued alongside the MoU makes it explicitly clear that it is issued merely as a security

against the loan and once the loan is repaid, it would be returned and the Investors would have no interest in the Subject Flats;

14. The Learned Arbitral Tribunal has rightly found that the reliance by Tirupati on Clause 6(h) in isolation and without regard to the other provisions of the very MoU and the Allotment Letter issued contemporaneously is not tenable. The Learned Arbitral Tribunal has held that Clause 6(l) and Clause 6(m) would show that Tirupati even had every right to sell the Subject Flats after the first twelve months with mere intimation to the Investors. It was not even provided that consent of the Investors was necessary for such sale – indicating an interest lower than a negative lien.

15. A simple and fair interpretation of all these clauses put together would lead to an inexorable conclusion that the investment was promised to be repaid within a period of twelve months and post-dated cheques for that said period were also issued. However, that commitment has not been honoured. The extended deadline to repay the amount too has not been met. If the Subject Flats were meant to be acquired by the Investors, there would be no scope for providing for an interest rate in the MoU and for issuance of post-dated cheques for the

agreed period. Indeed, if the Investors had an ownership interest in the Subject Flats, there would be no question of them being simply intimidated about a sale of that flat by Tirupati.

16. In my opinion, the Learned Arbitral Tribunal has returned accurate findings in terms of how to interpret the MOU. In my opinion, a reading of the MoU would demonstrate that that the investment was nothing but a loan, with such an inference being writ large on the face of the MoU, resulting in the view of the Learned Arbitral Tribunal being an eminently plausible view.

17. Effectively, it has been rightly and well plausibly held by the Learned Arbitral Tribunal that the Subject Flats provided for some optionality in the hands of the Investors in connection with enforcement of their right to being repaid, provided the Subject Flats were in existence. Admittedly, the Subject Flats were not even constructed and therefore lost relevance for the adjudication of the disputes. In any case, the Subject Flats, at best worked as a security for the benefit of the Investors and did not constitute a fetter to their entitlement to be repaid the amounts lent by them. This eminently plausible finding is clear, reasonable and well considered, and does not call for any interference in exercise of powers under Section 34 of the Act.

Power of Attorney Holder being a Witness:

18. Tirupati contends that none the Investors stepped into the witness box. Only their constituted attorney Ms. Shraddha Khandhadia, who had been authorized by the Investors to file proceedings and lead evidence was the witness on behalf of the Investors. This, it is contended, is untenable because evidence has to be led by a witness with personal knowledge of the transaction and the holder of a power of attorney cannot be expected to have personal knowledge. Essentially, the contention is that Ms. Khandhadia, a power of attorney holder could not depose to facts and could only execute instruments and file pleadings, and her evidence could never form the basis of adjudication in the matter in answering the questions of fact.

19. A careful persual of the record would show that Ms. Shraddha Khandhadia is a daughter of Mr. Kamal Khandhadia, one of the Investors, whose investment forms subject matter of the Commercial Arbitration Petition No.392 of 2024. She is therefore, an immediate family member, fully acquainted with the facts of case. Whether Ms. Khandhadia was personally acquainted with facts to be a fit witness is a question of fact that could be ascertained, rather than it being contended in a blanket manner that she could never be a witness.

However, the Learned Arbitral Tribunal has actually taken a view that without her witness deposition, the admitted facts and the language in the contract were adequate to adjudicate the matter.

20. Even on this count, the findings of the Learned Arbitral Tribunal are eminently plausible. The Learned Arbitral Tribunal has taken note of the 28 judgments cited on behalf of Tirupati on the subject of power of attorney holder leading evidence, and has pointed out that in none of those 28 judgments, admitted facts of the nature seen in the present proceedings, were involved. The events that transpired in the instant case are admitted – the taking of monies invested, the payment of interim amounts, the default in repayment, the issuance of the Allotment Letters, the extension of time for repayment, the absence of the Subject Flats. The sole issue that fell for consideration of the Learned Arbitral Tribunal was whether as a matter of contract, the investment should be treated as an investment in acquiring the Subject Flats or as a loan backed by the security over the Subject Flats.

21. In Paragraphs 43 to 45 of the Impugned Award, the Learned Arbitral Tribunal has pointed out that pleadings on behalf of the Investors on who Ms. Khandhadia was and why she is the person leading evidence and filing the claims had been set out in the Statement

of Claim. When traversing this pleading, Tirupati merely stated that it offers no comments. The Learned Arbitral Tribunal has rightly noted that throughout the pleadings, there was no objection in this regard. No fault can be found with the Learned Arbitral Tribunal in its findings based on admissions in the pleadings about the underlying facts about the investment contracted in reliance upon the Supreme Court's declaration of the law in *Nagindas Ramdas*¹ to hold that facts that are admitted need not be proved.

22. It is trite law that a witness can only lead evidence on matters in which the witness has personal knowledge. Ms. Khandhadia is the daughter of one of the Investors and they have collectively made the investment, and being a chartered accountant, had assisted her father with the transaction, contracted on the same terms by all the Investors. The Investors are aged approximately between 80 and 90 years, and have sought to lean on Ms. Khandhadia for the transaction and these proceedings. Whether Ms. Khandhadia had or lacked personal knowledge of facts is itself a question of fact. However, Tirupati's attack is premised on an absolute proposition of law that a power of attorney holder could never ever lead evidence, without being nuanced and more discriminating as to whether she had personal knowledge of the matter.

¹ *Nagindas Ramdas vs. Dalpatram Ichharam* – 1974 (1) SCC 242

23. That apart, it is noted by the Learned Arbitral Tribunal that the only witness who actually deposed on behalf of Tirupati (while three witnesses filed affidavits in lieu of examination in chief, two were withdrawn after the deposition of the first one). Tirupati's witness admitted to paying *interest* at the rate of 12% after the first twelve months. Tax was deducted at source on the premise that the payments made was towards interest.

24. Noting that such an admitted factual matrix makes the instant case distinguishable from the plethora of cases cited by Tirupati, the Learned Arbitral Tribunal has noted that even if Ms. Khandhadia's entire witness statement is discarded, it would make no difference to the interpretation of the contract executed between the parties i.e. the findings contained in the Impugned Award would not be impacted at all.

25. Indeed, there is sufficient material writ large on the face of the record for a definite conclusion based on admitted facts that need not be proved, and a plain and simple interpretation of the contract-forming documentation between the parties. In these circumstances, it would be appropriate to note that Tirupati cross-examined Ms. Khandhadia over eight sittings between June 27, 2022 and November 30, 2022. In sharp contrast, three witnesses filed affidavits in lieu of

examination-in-chief on behalf of Tirupati, but apart from one Mr. Haresh Gurbux Daulatani, a partner of Tirupati, who was cross-examined and whose admissions have come on record, it was Tirupati that withdrew its offer to have these two witnesses step into the box for cross-examination.

26. Taking an overall view of the matter, the conduct of the arbitration proceedings cannot be found fault with. The Learned Arbitral Tribunal has correctly ruled that an admitted set of facts with a very clear factual matrix was up for consideration and interpreting the same did not need evidence to be led in terms of the state of mind of the contracting parties to apply the business efficacy test to see what the real intention of the parties could have been. To my mind, an overall view of the transaction is clear from the very reading of the clauses in the MoU and the attendant Allotment Letter, and it is resoundingly clear that the Subject Flats were an additional security option available to the Investors to secure their right to being repaid the loan they had given. To turn an instrument of security and comfort on its head and direct that it is the sole means of recourse of recovery is untenable.

27. Tirupati had full agency to sell the Subject Flats after the initial repayment period with a mere intimation to the Investors. Taking

an overall view of the matter, specifically, the clauses contracted between the parties, there does not appear to be any scope for material ambiguity, necessitating reliance upon evidence led by Ms. Khandhadia to turn the needle one way or another.

28. In these circumstances, the objection on the ground of Ms. Khandhadia having been an invalid witness does not appeal to me for effecting any interference within the framework of Section 34 of the Act.

Applicable Interest Rate:

29. Finally, the Investors are also in challenge to the Impugned Award on the premise that interest was contracted at the rate of 33% and that rate ought to apply until the monies are repaid.

30. The Learned Arbitral Tribunal has dealt with that facet of the matter as well in a fair degree of detail and has noted that the interim payments towards interest made by Tirupati to the Investors had been computed at 12% per annum. Tax has been deducted at source as interest computed at the rate of 12% per annum. This had been embraced by the Investors as well in their filing of tax returns.

31. Therefore, taking note of a specific investment for the specified period as contracted in the MOU, the Learned Arbitral

Tribunal has returned a plausible finding that the said interest rate of 33% applied for the first period of 33 months, and indeed the Impugned Award awards 33% interest for the first 12 months.

32. For the period thereafter and until the making of the Impugned Award, the Learned Arbitral Tribunal has adopted the 12% interest rate, which is consistent with the interest rate applied by the parties in their stance for purposes of tax treatment.

33. Interest at the rate of 33% has rightly been awarded for the period as contracted and the rate of 12% has been adopted on the basis of the conduct of the parties in the course of the interim payments made by Tirupati and received by the Investors.

34. As regards the post-award interest rate, the rate awarded is 8%. Taking into account the provisions of Section 31(7) of the Act, and bearing in mind the limited scope for intervention under Section 34 of the Act, in my opinion, any intervention into the interest rate would need this Court to play the role of an appellate review, which is not tenable.

35. The award of interest and the rate at which it should be awarded squarely falls within the domain of the Learned Arbitral

Tribunal. Unless there is something manifestly arbitrary in the approach to fixing post award interest rate, the Section 34 Court should be hesitant to interfere unless the limited grounds under Section 34 have been made out. The Learned Arbitral Tribunal has adjusted for the respective positions of the parties and has arrived at a just and reasonable award. I am not inclined to interfere with the Impugned Award on the premise of the rate of interest applied by the Learned Arbitral Tribunal.

Conclusion and Costs:

36. It would be appropriate to cite the principles of law applicable when an interpretation of contract is involved in the challenge to an arbitral award as summarised in *OPG Power*² in the following terms:

84. An arbitral tribunal must decide in accordance with the terms of the contract. In a case where an arbitral tribunal passes an award against the terms of the contract, the award would be patently illegal. However, an arbitral tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged,

² *OPG Power Generation Private Limited Vs. Enxio Power Cooling Solutions India Private Limited & Anr.* – 2025 (2) SCC 417

circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not interfere. But where, on a full reading of the contract, the view of the arbitral tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference.

[Emphasis Supplied]

37. The aforesaid statement of the law is a summary of the law declared in ***SAIL vs. Gupta***³; ***Pure Helium***⁴; ***McDermott***⁵; ***MMTC***⁶ and ***SEAMEC***⁷. This declaration of the law would squarely apply to the facts of the case at hand.

38. The Impugned Award is eminently capable of being upheld brooking no interference by Section 34 court, all the Petitions along with all attendant Interim Applications are ***disposed of*** upholding the Impugned Award in its terms. Considering the overall conduct of the parties and the extent to which the Investors have been frustrated in enforcing their rights, the Learned Arbitral Tribunal has rightly imposed costs for that round of litigation, which calls for no interference.

³ *Steel Authority of India Ltd. v. Gupta Brother Steel Tubes Limited* – (2009) 10 SCC 63

⁴ *Pure Helium India (P) Ltd v. ONGC* – (2003) 8 SCC 593

⁵ *McDermott International Inc. v. Burn Standard Co. Ltd.* – (2006) 11 SCC 181

⁶ *MMTC Ltd. v. Vedanta Ltd.* – (2019) 4 SCC 163 59

⁷ *South East Asia Marine Engg. & Construction Ltd. (SEAMEC Ltd.) v. Oil India Ltd.* – (2020) 5 SCC 164

39. For this round of litigation, costs shall follow in an identical and reasonable sum of Rs. 1.5 lakhs per Investor across all the captioned Petitions, which shall be paid within a period of four weeks from the upload of this judgement on the website of this Court.

40. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]