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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 16.09.2025

Judgment pronounced on: 27.11.2025

+ **O.M.P. (COMM) 533/2016, I.A. 5516/2022, I.A. 19918/2025, I.A. 19919/2025**

ORIENT GREEN POWER COMPANY LTD.Petitioner

Through: Mr. Rahul Sharma, Shubham
Shekhar, Himanshu Singh, Advs.

versus

SM MILKOSE LIMITED & ORS.Respondents

Through: Mr. Anirudh Bhakru, Mr. Manish
Kaushik, Mr. Mishal Johari, Mr.
Vikas Ashwani, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") seeking to challenge the Arbitral Award dated 01.08.2016 ("**impugned Award**") only with reference to Issues No. 1, 4, 5 and 6 passed in the arbitration proceedings titled as "*M/s SM Milkose Limited and Ors. vs. M/s Orient Green Power Company Ltd.*".
2. The petitioner before this Court was the respondent in the arbitration proceedings and the respondents herein were the claimants.



FACTUAL BACKGROUND

3. The petitioner i.e., M/s Orient Green Power Company Ltd. (OGPCL) entered into a Memorandum of Understanding dated 16.01.2008 (“**MOU**”) with the respondents for acquiring licenses to establish various biomass based power projects as well one existing biomass project in the State of Rajasthan. The respondents owned/ owned shareholdings in the said projects. The following are the 5 biomass based power project/ licenses under the MOU:-

S. No.	Project Name	Capacity	Consideration
1.	Amrit Environmental Technologies Private Limited, Kotputli, Jaipur District, Rajasthan (“ Project No. 1 ”)	8 MW (Running Project)	Rs. 1260 Lakhs
2.	SM Environmental Technologies Private Limited, Pachhar, Chhipa Barod, Rajasthan (“ Project No. 2 ”)	8 MW (License)	Rs. 550 Lakhs
3.	SM Environmental Technologies Private Limited, Chhipa Barod, Rajasthan (“ Project No. 3 ”)	8 MW (License)	Rs. 8 Lakhs plus 10% equity without any financial consideration
4.	SM Environmental Technologies Private Limited, Naroli, Bayana, Rajasthan (“ Project No. 4 ”)	8 MW (License)	Rs.350 Lakhs plus 10% equity without any financial consideration
5.	SM Milkose Limited, Rajasthan (“ Project No. 5 ”)	15 MW (License)	Rs.15 Lakhs plus 10% equity without any financial consideration – only if fuel availability is established at site



4. The said MOU contains an arbitration clause being Clause No. 12 of General Terms and Conditions, which reads as under:-

“12. In case of disputes, the same will be settled amicably through negotiation and if settlement is not reached within 30 days of disputes being referred by either Purchaser or Seller, the same will be referred to a panel of three arbitrators, one to be nominated by the Purchaser, one to be nominated by the Seller and one to be appointed by such two selected arbitrators jointly. Such three arbitrators would form a panel which would decide any dispute between the parties and the decision of such panel of arbitrators would be final and binding on all the parties. All proceedings in any such arbitration shall be conducted in English language and shall be governed by the provisions of the Arbitration and Conciliation Act, 1996, and shall take place at Chennai or Delhi.”

5. In pursuance of the MOU, a Share Holder’s Agreement dated 26.04.2010 (“**SHA**”) was executed between the parties. In the SHA it was recorded as under:-

“B) From OGPL’s side

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5. 30% equity in SMETPL, Chhipabarod, 8 MW completed project has not been duly issued for which the Seller left a sum of Rs. 450 lacs towards consideration of 30% equity in fully completed project. M/s SM Milkose Limited a company of SM Group holds 200265 shares of SMETPL as on date.



AND

10% equity (without any payment by the Seller) in 8+8+15MW = 31MW licences also remains unissued as on date.

In connection with 30% equity in SMETPL, 8 MW Chhipabarod project and 10% equity in 8+8+15MW=31MW licences, it has been mutually agreed between the parties that the Buyer will pay a sum of Rs. 500 lacs towards purchase of 200265 shares (30% equity in SMETPL) held by SM Milkose Limited and Buyer will also pay a sum of Rs. 500 lacs towards 10% equity in 8+8+15MW=31MW licences. The payment of the same has been agreed as under:

First Payment

The Buyer will pay a sum of Rs. 125 lacs towards 10% equity in 8+8+15MW=31MW licences and another Rs. 125 lacs towards 30% equity in SMETPL i.e. a total of Rs. 250 lacs at the time of signing of this SHA.

The Seller will hand over all 200265 shares alongwith duly signed transfer deeds for the same after receiving the above mentioned amount. However, the Buyer undertakes not to sell or pledge any of these shares such transferred till full payment is made under this SHA to the Seller.

Second Payment

The Buyer will Pay a sum of Rs. 150 lacs towards 10% equity in 8+8+15MW=31MW licenses and another Rs. 150



lacs towards 30% equity in SMETPL i.e. total of Rs. 300 lacs on or before 30.09.10 and under any circumstances not later than 31.10.2010.

Third Payment

The Buyer will Pay a sum of Rs. 225 lacs towards 10% equity in 8+8+15MW=31MW licenses and another Rs. 225 lacs towards 30% equity in SMETPL i.e. total of Rs. 450 lacs on or before 30.11.10 and under any circumstances not later than 31.12.2010.

After making the above payments, the Seller will not be left with any interest whatsoever in 30% equity in SMETPL and 10% equity in 8+8+15MW=31MW licenses.”

6. The said SHA also contains an arbitration clause, which is identical to the arbitration clause in the MOU (Clause No. 12 of General Terms and Conditions of the MOU, as reproduced above).
7. The SHA shows that 30% equity in Project No. 2 had not been duly issued for which the respondents left a sum of Rs. 450 lakhs towards consideration of 30% equity in the project. Also 10% equity in Projects No. 3, 4 and 5 also remained unissued as on that date. Hence, it was agreed in the SHA that to purchase the 30% equity in Project No. 2, the petitioner shall pay Rs. 5 crores and for Projects No. 3, 4 and 5 the petitioner will pay a sum of Rs. 5 crores. Hence, Rs. 10 crores was the total agreed consideration to be paid in three instalments, as mentioned in the SHA. The petitioner has paid an admitted total consideration of Rs. 7.50 crores and on the petitioner's failure to pay the remaining consideration of Rs. 2.50 crores disputes



arose between the parties.

8. Since there were disputes between the parties, the respondents invoked the arbitration process and consequently, the Sole Arbitrator was appointed.
9. The Sole Arbitrator framed the following issues on 06.02.2015:-
 - “1. Whether claimant is entitled to award of recovery of Rs. 4,07,50,000/- as claimed or any other amount from the respondent? OPC*
 - 2. Whether the respondent is liable to pay to the claimant any amount in lieu of CERs? OPC*
 - 3. Whether respondent is liable to pay to the claimant any amount in cases/claims of AETPL and SM Environmental Technologies Pvt. Ltd pending adjudication as per list as Annexure E to the statement of claims? OPC*
 - 4. If issue No. 1 is in the favour of the claimant, whether it is entitled to any interest? If so, at what rate and what period? OPC*
 - 5. Whether the counter claim of the respondent is within limitation? OPR*
 - 6. Whether the respondent is entitled to award of an amount of Rs. 5,00,00,000/- or any other amount towards 81815 CERs from the claimant as claimed in counter claim? OPR*
 - 7. Reliefs”*
10. After hearing both parties and considering the documents placed on record and witnesses evidence, the Sole Arbitrator passed the impugned Award, in favour of the respondents and against the



petitioner for a sum of Rs. 4,07,50,000/- (being Rs. 2.50 cores as principle amount towards third tranche of payment schedule plus Rs. 1,57,50,000/- being interest @ 18% from 01.01.2011 to 30.06.2014) with *pendente lite* simple interest @ 9% per annum from 03.07.2014 to 31.07.2016, and giving a period of two months i.e., from 01.08.2016 till 30.09.2016 to the petitioner to make the awarded sums, failing which future simple interest @18% per annum will be applicable with effect from 01.08.2016 till the date of realization.

11. Feeling aggrieved by the impugned Award, the petitioner has filed the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

12. Mr. Sharma, learned counsel for the petitioner submits that the impugned Award is contrary to the provisions of the contract, public policy of India, law, facts and circumstances of the case, and therefore, is liable to be set aside.
13. It is submitted that the petitioner abstained itself from paying Rs. 2.50 crores because the petitioner was induced to enter into the MOU and SHA on the basis of false representations made by the respondents, as the project sites were not viable. As of the 47 MW in the said 5 Projects, only 24 MW in 3 Projects could be established, which drastically affected the financials of the petitioner.
14. It is submitted that the petitioner had *vide* email dated 06.01.2011 intimated that all payments to be made under the MOU would be made by the petitioner except for two projects for Jalawar and Banswara since these projects are not viable due to non-availability of fuel. The intimation was based on a conjoint reading of Clause No. 3



of Terms and Conditions for Project 5 of the MOU read with Clause No. 7 of the General Terms and Conditions of the MOU. The Sole Arbitrator without taking into account the terms of the MOU and SHA and the evidence on record wrongly directed the petitioner to pay the balance amount.

15. It is submitted that the Sole Arbitrator has erred in holding that the petitioner breached the terms and condition of the SHA and MOU. The site and fuel were not available with respect to Jalawar and Banswara project and the same resulted in shutdown of Project No. 1 and henceforth, the petitioner did not pursue the project. Therefore, withholding part payment as sites not being viable is no breach. Further, it is submitted that the Sole Arbitrator erred in failing to note that the petitioner conveyed dissatisfaction regarding the project on 06.01.2011 and did not waive its rights.
16. Further, the Sole Arbitrator has only considered the defence of the petitioner on the basis of email dated 06.01.2011, whereas the defence of the petitioner as substantiated by affidavit of its witness, has been totally ignored by the Sole Arbitrator.
17. It is submitted that Sole Arbitrator has given contradictory findings. While in paragraph No. 35 of the impugned Award the Sole Arbitrator holds that the email dated 06.01.2011 sent by petitioner has not been proved as per law nor was it put to respondents' witness in the cross-examination and therefore, this email alone was not enough to substantiate the defence of petitioner, however, on the other hand in paragraph No. 37 of the impugned Award has construed this email as admission of liability of Rs. 250 lakhs by petitioner.



18. Further, it is submitted that the Sole Arbitrator has misdirected by linking email of Mr. Sharad Maheshwari with petitioner's email dated 06.01.2011. The said email of Mr. Sharad Maheshwari is in respect of 9 Hydel Power Projects and in respect of another contract with a group Company Leitner Shriram and has nothing to do with subject Bio Mass Projects. The email of the petitioner dated 06.01.2011 therefore is not and cannot be read as an admission of liability.
19. It is submitted that the Sole Arbitrator failed to appreciate that the respondents' failure to verify the documents resulted in shutdown of Project No. 1 and further loss of carbon credits and thus, the petitioner suffered loss of Rs. 5 crores. As per the MOU, Project No. 1 plant was registered for 7.5 MW, whereas, the plant was commissioned as 8 MW, as a result of which, the petitioner suffered a huge loss. The respondents were bound to make good these losses to the petitioner and the Sole Arbitrator by rejecting the claim of the petitioner in this regard, has acted contrary to the terms of the MOU and SHA.
20. It is submitted that the Sole Arbitrator did not refer to the Regulation 83(7) (b) of the RERC (Tariff) Regulation, 2009, which clearly stated that no distinction is made between the installed capacity or the gross or the exportable capacity. The respondents misrepresented the installed capacity of Project No.1 because of which the petitioner was not able to trade in carbon credits with respect to Project No.1.
21. It is submitted that the Sole Arbitrator has failed to appreciate that only Project No. 1 was operational and the entire consideration for it was paid. Projects No. 2 to 5 were mere licenses and yet to start. For Project No. 2, Rs. 5 crores was paid and Projects No. 3 and 4 did not



start, hence, no equity was brought in by the petitioner and the question of allotting 10% equity in non-existent Projects did not arise. Further, it is stated that for Project No. 5, as per Clause No. 3 of the Terms and Conditions for Project 5 of the MOU, it was the respondents' responsibility to arrange the site and raw material availability, which they failed to do. The assignment of License in the name of SM Milkose for Project No. 5 to the petitioner was refused by Rajasthan Renewable Energy Corporation and the petitioner, on its own obtained fresh license for 15 MW. However, only 8 MW of Project No. 5 could be operationalized looking at the raw material availability.

22. Further, it is contended that the petitioner ought to have paid a sum of Rs. 6,29,03,000/-, as per the consideration payable per MW as per industry practice, whereas it has in actuality paid an amount of Rs. 7,50,00,000/-. Hence, the petitioner has overpaid a sum of Rs. 1,20,97,000/-, which it is entitled to be reimbursed by the respondents and no amount is due and payable to the respondents by the petitioner.
23. Lastly, it is submitted that the Sole Arbitrator has awarded 18% pre-suit/ pre-reference interest in favour of the respondents, which is excessive and contrary to the provisions of the Interest Act, 1978. Reliance has been placed upon the judgment of *State of Rajasthan v. Ferro Concrete Construction (P) Ltd., (2009) 12 SCC 1* wherein the Hon'ble Supreme Court has held that where is no express bar in the contract and where there is also no provision for payment of interest, as in the present case, then principle of Section 3 of the Interest Act, 1978 will apply in regard to the pre-suit/ pre-reference interest.



Section 3 of the Interest Act, 1978 provides that where in a proceeding for recovery of any debt or damages, a claim for interest is made, the Court may if it thinks fit, allow interest at a rate not exceeding the current rate of interest.

24. Hence, the learned counsel for the petitioner, on the above mentioned grounds, submits that the impugned Award passed by the Sole Arbitrator is in conflict with the public policy of India and patently illegal and hence, liable to be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

25. Mr. Bhakru, learned counsel for the respondents submits that the present petition challenging the impugned Award does not fall within any of the grounds provided under Section 34 of the 1996 Act.
26. It is submitted that the plea of the petitioner that it did not pay the outstanding amount of Rs. 2.50 crores because the plants at Jalawar and Banswara Projects were not operational is misconstrued since these Projects were not forming part of the MOU and/or the SHA. The perusal of the MOU shows that it was concerned with only 5 projects i.e., projects at Kotputli, Naroли, Kishanganj and 2 projects at Chhipa Barod and the same is also duly confirmed by the witness of the petitioner in his cross examination.
27. It is further contented that the petitioner acknowledged its liability in its email dated 06.01.2011, by stating that excluding the consideration for the Jalawar and Banswara Projects, the balance amount of Rs. 250 lakhs would be paid to the respondents by February, 2011, which is the amount in dispute.
28. It is submitted that in terms of Section 91 of the Indian Evidence Act,



1872, when terms of contracts have been reduced in the form of a document, no evidence could be given in proof of the terms of such contract except the document itself. Moreover, the stand taken by the petitioner in the reply is totally contradictory to the stand taken in its affidavit. The stand taken in paragraph No. 8 of the affidavit was not even pleaded in the reply.

29. It is submitted that the counter-claim of the petitioner is barred by limitation and has been filed without any actual basis or grievance. The petitioner has averred that the counter-claim has been filed for the CER's/ Carbon Credit accrued till May, 2011. As such, the counter-claim filed on 16.09.2014, is beyond the period of 3 years from the date of cause of action, and even otherwise is beyond the period of 3 years from the date of accrual of the CER's/ Carbon Credit.
30. Even on merits, there was neither any representation nor assurance to the petitioner that the respondents would get any CER's/ Carbon Credit. Since there no representation or assurance there could be no breach or cause of action in favour of the petitioner. On the contrary, as per the Clause 2(vi) of the Terms and Conditions for Project 1 of the MOU, the parties contemplated a situation where CER's/ Carbon Credit may not even be received. Further, the petitioner has further not even led any evidence to prove the alleged loss suffered by it.
31. Lastly, it is submitted that interpretation of the terms of a contract are the exclusive domain of the Arbitrator and if the Arbitrator takes a plausible view the same cannot be interfered with in a petition filed under Section 34 of the 1996.
32. In view of above, the learned counsel for the respondents has



submitted that the Sole Arbitrator has rightly appreciated the complete conspectus of the case and terms of the MOU and SHA. Hence, the impugned Award needs no interference.

ANALYSIS AND FINDINGS

33. I have heard learned counsels for the parties and perused the material available on record.
34. Before proceeding, it is pertinent to mentioned that the Court under Section 34 of the 1996 Act has very limited and narrow scope of interference against an Arbitral Award. The Hon'ble Supreme Court in ***Consolidated Construction Consortium Limited v. Software Technology Parks of India, 2025 INSC 574*** has laid down the scope of interference under Section 34 of the 1996 Act and more particularly in paragraph No. 23, which reads as under:-

“23. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the



arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.”

(Emphasis added)

35. A bare perusal of the said paragraph shows that under Section 34 of the 1996 Act the Court does not sit in appeal over an Arbitral Award or re-appreciates the evidence. The Court is not to reassess the factual findings or substitute its own views with those arrived at by the Arbitral Tribunal and can only set aside an Arbitral Award under the limited grounds expressly provided in Section 34 of the 1996 Act or when the Arbitral Award is contrary to terms of the contract or provisions of the law.
36. With said principles in mind, I shall now proceed to consider the rival contentions raised by both the parties, issue-wise.
37. The petitioner has challenged the impugned Award to the extent of findings given pertaining to Issues No. 1, 4, 5 and 6 (as reproduced above).

Issue No. 1 as framed by the Sole Arbitrator: “Whether claimant is



entitled to award of recovery of Rs. 4,07,50,000/- as claimed or any other amount from the respondent?" (The respondents in the present petition were the claimants in the arbitral proceedings)

38. The Sole Arbitrator framed Issue No. 1 as whether the respondents were entitled to award of recovery of Rs. 4,07,50,000/-. The respondents' claim of Rs. 4,07,50,000/- arises from the fact that the petitioner has only paid Rs. 2 crores as against the outstanding Rs. 4.50 crores towards the third payment as per SHA, hence, an amount of Rs. 2.50 crores still remains outstanding. Thereafter, the respondents assessed interest @18% per annum on amount of Rs. 2.50 crores at Rs. 1,57,50,000/-, from 01.01.2011 till the filing of the statement of claims.
39. It is undisputed that the MOU pertains to 5 Projects, as mentioned above and the SHA, which was executed almost 2 year after the MOU, also pertains to the same 5 projects. As per the SHA the total consideration to be paid was Rs. 10 crores for Projects No. 2, 3, 4 and 5, in three instalments.
40. The petitioner's case is that the balance of Rs. 2.50 crores is consideration for Jalawar and Banswara Projects and since, the same were not viable due to non-availability of fuel, the petitioner was not liable to pay the said consideration. In support of the said contention the petitioner has relied upon its email dated 06.01.2011. The said email is extracted below:-



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Subject: FW: Re: SHPs

--Original Message follows--

Subject: Re: SHPs

From: "Krishnakumar" <Krishnakumar@orientgreenpower.com>

To: "Sharad Maheshwari" <sharad@smgpower.com>

Date: 06.01.2011, 17:22

Dear Sir,

Regarding SHPs, as discussed during telecon you can proceed for all projects indicated below on same terms agreed upon for 6 projects earlier.

On payments I was under the impression as indicated by you Leitner would have been paid from our last payment. Also please note as mentioned during our last meeting, we may not go ahead with Jalawar/Banswara due to fuel no-availability and viability of project itself based on our experience to date on plants operating in Rajasthan acquired from you. However we certainly will pay if we go ahead with the project as envisage. Balance excluding these 2 projects amounting to Rs. 250 lacs we expect to clear by first week of Feb. 11 only and please kindly bear with us.

Best Regards,

Krishnakumar

On Thu 6 Jan 2011 17:12:09 +0530, Sharad Maheshwari wrote

>

>Dear Mr. Krishakumar,

> As confirmed by you over phone, we are proceeding ahead with 9 SHPs i.e. 3 each in AETPL SMETPL & OGPCL.

> Please release the balance payment in terms of our agreement dated 26.04.2010 which has fallen due in November/December 2010. We need these funds very urgently but positively within coming week as we have to make

True. Typed copy



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payment to your group company Leithner Shriram to whom we have already given a commitment taking into account the funds to be received from your end. Any further delay in this matter will put us to unbearable loss.

>we hope that you will understand the gravity of the matter and will do the needful at the earliest & oblige.

>Best Regards

>Sharad Maheshwari

P. Krishnakumar
Orient green power Company Limited
No. 9, Vanagaram Road,
Ayanambakkam,
Chennai- 600095
Ph/Fax: +91-44-26530732, 26533109-EXTN: 200, M- +919084089646


"TRUE TYPED COPY"

41. The Sole Arbitrator while dealing with the said email and contention of the petitioner observed as under:-

"37. It is evident from the reading of the said email that the respondent had admitted its liability of the balance payment of Rs. 250 lacs and had sought time till first week of February 2011. The said email in fact goes against the respondent's stand taken in the pleadings as well as in evidence. It also comes out that the linking of non-payment of outstanding Rs. 2.5 crores towards the 3rd tranche of agreed payment with Jalawar and Banswara



projects was an afterthought and highly misconceived effort.”

42. I am in complete agreement with the said observation of the Sole Arbitrator. A perusal of the email, as extracted above, clearly shows that the petitioner has stated that the balance “excluding these 2 projects” i.e., Jalawar and Banswara Projects, amounts to Rs. 2.50 crores. Further, it is also stated that the petitioner at the moment is not going ahead with Jalawar and Banswara Projects due to non-availability of the fuel and that the petitioner will pay if they decide “to ahead with the project”. This clearly shows that the balance of Rs. 2.50 crores stated in this email is not pertaining to the Jalawar and Banswara Projects but for the other projects. Hence, petitioner’s contention that the balance of Rs. 2.50 crores was the consideration for Jalawar and Banswara Projects and the petitioner did not pay such consideration as such Projects were not viable due to non-availability of fuel is misconceived and contrary to the document on record i.e., the email dated 06.01.2011.
43. Further, the petitioner has also contended that the Sole Arbitrator has only considered the defence of the petitioner on the basis of the email dated 06.01.2011, and overlooked the petitioner’s defence as evidenced by affidavit of its witness, by holding the same to be an afterthought. I am unable to agree with same as the Sole Arbitrator has given due consideration to the petitioner’s witness evidence and the same is evident from paragraphs No. 29 and 33 of the impugned Award, which are reproduced below:-



“29. In response to a question that out of the total agreed payment of Rs. 10 crore, the respondent paid Rs. 7.5 crores, and out of which Rs. 3.75 crore was towards project No. 2 and Rs. 3.75 crore towards project No. 3, 4 and 5, Respondent witness Mr. Ranjan Kumar stated that they paid Rs. 7.5 crore and he does not want to add anything more. In answer to questions that the payments of Rs. 2.5 Crore and Rs. 3.00 crore were made by Respondent towards the first and second tranche of payment schedule after the SHA, he stated that Rs. 7.5 crore was paid towards SHA out of which Rs. 5 Crore was towards the first payment and the remaining Rs. 2.5 crore was in fact excess to what was payable to the claimants. In answer to the question that as per the SHA the respondent was to make payment of Rs. 3 Crore by 31.10.2010 and that the respondent paid this amount vide two payments of Rs. 1.5 crore each on 25.11.2010 and 27.12.2010, he admitted it to be correct. Interestingly, in answer to another question that the respondent was to pay Rs. 4.5 Crore as per SHA towards third payment by 31.12.2010, and out of which, the respondent paid only Rs. 2 crore vide four payments of Rs. 50 lakhs each on 02.02.2011, 10.02.2011, 17.03.2011, 13.07.2011, the witness did not deny but repeated that they have paid Rs. 7.5 crore and does not want to add anything to all this.

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33. Now coming back to the statement of RW Ranjan Kumar. He categorically stated and admitted that the MOU and SHA were in respect of the five projects only which are mentioned therein. While stating so as above, he went to state that Jalawar and Banaswada projects being not viable, the alleged sum of Rs. 2.5 crores is not payable to the claimants. He also referred to the email dated 06.01.2011 in this respect. It is essentially relevant to note the veracity of this witness at this stage. In answer to a question that there was no formal agreement between the parties for the projects at Jalawar and Banaswada, but the parties mutually decided consideration of these two projects at Rs. 2.5 crore, he stated to be having no knowledge about this and unable to comment. Further, he gave similar answers to other related questions that the respondent thereafter told the claimant that the Jalawar and Banaswada plants could not take off and consequently neither payment of Rs. 2.5 crore was made to the claimants, nor the claimants demanded the same from the respondent. Likewise in answer to the question that in addition to the projects mentioned in MOU dated 16.01.2008, the OGPCL (Respondent) was also interested in setting up projects in Banaswada and Janawar, he stated it to be matter of record as per the said email (dated 06.01.2011).”

44. Further, the learned counsel for the petitioner has contended that the



reason for non-payment for Rs. 2.50 crores was because as per the terms of the MOU, the balance amount was to be paid only subject to the satisfaction of the petitioner about the availability of the raw material/change of the site and as the fuel was not available with respect to Jalawar and Banswara Project, withholding part payment was not in breach of the terms of the MOU and/or SHA.

45. The said contention of the petitioner is based on Clause No. 3 under Terms and Conditions for Project 5 of the MOU and Clause No. 2 and 7 of General Terms and Conditions of the MOU. The said clauses are extracted below:-

***“TERMS AND CONDITIONS FOR PROJECT 5- SM
MILKOSE LIMITED – LICENSE- 15MW:-***

xxxxxxx

3. The above is subject to Purchaser satisfaction of Raw Material availability for the Project and change in suitable site arranged by Seller for the said Project.

xxxxxxx

GENERAL TERMS AND CONDITIONS

xxxxxxx

2. The Purchaser further agrees that in case of any other viable projects in Rajasthan for which the seller arranges valid license and able to demonstrate to the satisfaction of the Purchaser on the availability of fuel, then the purchaser agrees to implement such projects and also agrees to issue 10% sweat equity of project to Seller, subject to due diligence by purchaser and subject to the



provisions of Section 79A of the Companies Act, 1956, and also subject to the rules as laid down Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003. ...

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7. It is agreed between the Seller and Purchaser that Purchaser will give 10% equity in all other new Biomass Power projects towards license to set up Projects arranged by the Seller without any financial consideration in the state of Rajasthan in future. This applies to setting up new Biomass Power project/s and decision for taking up such Projects is solely at the discretion of the Purchaser based on financial viability.”

- 46.** Clearly, the Jalawar and Banswara Project were “other viable projects” as per Clause No. 2 of the General Terms and Conditions of the MOU and there were some discussions between the parties pertaining to the same, however the petitioner, as is clear from the email dated 06.01.2011, decided not to go ahead with the said two projects due to non-availability of the fuel. Hence, clearly the Jalawar and Banswara Project are separate from the 5 Projects provided in the MOU and SHA, as also observed by the Sole Arbitrator.
- 47.** Further, the learned counsel for the petitioner has contended that for Project No. 5 it was the responsibility of the respondents to arrange the site and raw material, as per Clause No. 3 under Terms and Conditions for Project 5 of the MOU, which they failed to do.
- 48.** The learned Arbitrator has dealt with the said contention of the petitioner in paragraphs No. 45 and 46 of the impugned Award, which



read as under:-

“45. Regarding clause (7) of the General Terms and Conditions, which is reproduced above, it has been noticed this and clause (2) pertain to future projects, which may be arranged by the claimants in Rajasthan, and it was in respect of such projects that the decision of viability of fuel, financial etc. rested with the Respondent. Regarding above clause (3), it is noticed that this was specific to project No. 5 in that its acquisition on terms prescribed was subject to purchaser’s (Respondent) satisfaction of raw material availability for the project and change in suitable site arranged by the seller (Claimant) for the said project. This clause of MOU provided discretion to the Respondent to satisfy as regard to availability of fuel for this project No. 5, but then this got crystallized in the SHA, wherein it is specifically stipulated that it is in continuation of MOU, which has been duly complied with by both the parties and all transactions in connection with same have been completed except those specifically mentioned therein. One of the terms of MOU which remained to be complied by the Respondent as per SHA was as under:

"30% equity in SMETPL, Chhipabarod, 8 MW completed project has not been duly issued for which the seller left a sum of Rs.450 lacs towards consideration of 30% equity in fully completed



project. M/s S.M. Milkose Limited a company of SM Group holds 200265 shares of SMETPL as on date.

10% equity (without any payment by the Seller) in 8+8+15 MW= 31 MW licenses also remain unissued as on date.

In connection with 30% equity in SMETPL, 8 MW Chhipabarod project and 10% equity in 8+8+15 MW = 31 MW licenses, it has been mutually agreed between the parties that the Buyer will pay a sum of Rs. 500 lacs towards purchase of 200265 shares (30% equity in SMETPL) held by SM Milkose Limited and buyer will also pay a sum of Rs.500 lacs towards 10% equity in 8+8+15 MW = 31 MW licenses. The payment of the same has been agreed as under:"

46. Then this clause provides the schedule of payments by the Respondent in 3 installments for all the five projects. This all would imply that clause (3) of project No. 5, which left to the satisfaction of the respondent about the raw material availability, got superseded or agreed to be waived or ignored by Respondent. In any case, the Respondent never at any point of time between the execution of MOU on 16.1.2008 and SHA on 26.4.2010 expressed or conveyed any dissatisfaction regarding any project, much less project No.5 till it was commissioned



on 06.10.2013. On the other hand, the Respondent continued to make substantial payments to the Claimant towards all projects. The Respondent's witness Mr. Ranjan Kumar was put a specific question regarding clause (3) of project No. 5, which he did not deny, but answered as under:

"Q. 17 I put it to you that in respect of project No. 5 the earlier subclause 3 with respect to raw material availability was superseded by the terms of Shareholders Agreement dated 26.04.2010 and the payment alongwith its schedule against the entitlement of 10% stake was fixed and was unconditional.

Ans. I have nothing to add beyond what is stated in my affidavit of evidence."

49. A perusal of the same shows that the Sole Arbitrator noted that Clause No. 3 under Terms and Conditions for Project 5 of the MOU and also that the same provided discretion to the petitioner to go only ahead with Project No. 5 upon satisfaction of availability of fuel. After two years of MOU, the SHA was executed providing schedule for payment of the Projects. Hence, the Sole Arbitrator correctly observed that Clause No. 3 under Terms and Conditions for Project 5 of the MOU either got superseded or waived or ignored by the petitioner. The petitioner never raised any objection between the execution of the MOU on 16.01.2008 and SHA on 26.04.2010, regarding non-availability of fuel for Project No. 5.



- 50.** I find no infirmity with the said finding of the Sole Arbitrator. The said findings of the Sole Arbitrator are reasonable and plausible view and shows due application of mind to the facts of matter, pleadings, documents on record and witnesses evidence. This Court in a petition under Section 34 of the 1996 Act is not to re-examine the evidence or reassess the facts of the matter. The Arbitrator is the primary word on the construction of the terms of the contract and unless, the same are found to be so perverse as to shock the conscience of the Court, the Court under Section 34 of the 1996 Act must refrain itself from interfering with the view of the Arbitrator.
- 51.** As for petitioner's contention that the Sole Arbitrator has given contradictory findings by first holding the email dated 06.01.2011 as not proved and therefore, not enough to substantiate petitioner's defence and then later also construing the same email as admission of liability of Rs. 2.5 crores by petitioner, also does not persuade me. The impugned Award clearly shows that the Sole Arbitrator has not merely relied on the email dated 06.01.2011 but also considered the clauses of the MOU and SHA and evidence on record and thereafter, arrived at the findings that the petitioner was liable to pay the balance consideration of Rs. 2.50 crores.
- 52.** Furthermore, the petitioner argument that the Sole Arbitrator wrongly linked the email of Mr. Sharad Maheshwari with petitioner's email dated 06.01.2011, as email of Mr. Sharad Maheshwari was in respect of another contract with a group Company Leitner Shriram does not appeal to my understanding. The email of Mr. Sharad Maheshwari, as extracted above, clearly states that the due balance is in regards to the



“agreement dated 26.04.2010” i.e., the SHA which is dated 26.04.2010. Besides, the mention of Company Leitner Shriram was only to explain the urgency of the funds as the respondents had to further make payments to Company Leitner Shriram. It was in reply to the said email of Mr. Sharad Maheshwari that the petitioner wrote the email dated 06.01.2011 and admitted to pay the balance Rs. 2.50 crores by first week of February 2011.

53. The learned counsel for the petitioner has also contended that not only is it not liable to pay Rs. 2.50 crores but instead it has paid in excess. It is stated the petitioner ought to have paid a sum of Rs. 6,29,03,000/- , as per the consideration payable per MW as per industry practice, whereas it has paid Rs. 7,50,00,000/-. Hence, the petitioner has overpaid a sum of Rs. 1,20,97,000/-, which it is entitled to be reimbursed by the respondents. The Sole Arbitrator has while rejecting the said contention of the petitioner observed as under:-

“38. The matter does not end here. Thinking that the linking of non-payment of Rs 2.5 crores with Jalawar and Banswara projects may not work, the Respondent's witness Mr. Ranjan Kumar brought in a new defence, much contrary to pleadings, as regards the price of the subject projects. In paragraph (8) of his affidavit of evidence he states as under:

“I say that from the shareholders agreement, it is apparent that Rs. 1000 lakhs was the total consideration being Rs. 500 lakhs for 30% equity in the SMETPL 8 MW Project in Chippa Barod and Rs. 500 Lakhs for the 10%



equity in the 8+8+15 MW =31 MW licenses. I say that the consideration payable per MW as per industry practice in case of 10% equity in the 8+8+15 MW licenses is arrived by dividing the total consideration by the number of MW. Therefore Rs. 500 lakhs/ 31 MW = Rs. 16.129 Lakhs per MW. I say that the total consideration payable for projects 3 and 4 was equal to Rs. 629.03 Lakhs being the consideration payable for 30% equity in SMETPL + 10% equity in the 8 MW project at Kishanganj. However, over and above this amount, the Respondent has paid an admitted total consideration of Rs. 750 Lakhs. As such it is apparent that the respondent ought to have paid a sum of Rs. 629.03 Lakhs whereas it has in actually paid an amount of Rs. 750 Lakhs. As such, respondent has overpaid a sum of Rs. 120.97 Lakhs, which it is entitled to be reimbursed by the Claimant. I say that in the light of the above, no monies are due and payable to the Claimant as alleged or at all. Consequently the question of paying any interest thereon on the alleged sums does not arise.”

39. What is noticeable from the above is that it was never the case of respondent, nor it was a part of the terms of MOU or SHA. It is noticed above that at one place he had stated that the excess amount of Rs. 2.5 crore was paid to the claimants. Mr. Ranjan Kumar in his cross was confronted that the plea as taken in para (8) of affidavit



of evidence is beyond the pleadings or counterclaim. From all this, it comes out that the Respondent while admitting the outstanding payment of Rs. 2.5 crores has tried to find out one after the other excuse, and in the process overlooked its own defence after having realised that the said defence of linking of Rs. 2.5 crores with Jalawar and Banswara was not well founded, has introduced an afterthought plea of valuation of projects as per alleged industry practice.

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42. While denying the suggestions that these were all afterthoughts, Mr. Ranjan Kumar stated that such pleas find mentioned in para (8), (10) & (11) of statement of defence. Since he also denied the suggestion that such pleas are not there in the statement of defence or counter claim, it is essential & relevant to look at those, which are these.

“8. That the contents of para 8 are matter of record of the share holders agreement dated 26.4.2010 and anything contrary to the same are wrong and denied. However, it is submitted that the Respondents have paid entire amount except a sum of Rs.250 lacs, as the project at Jalawar/Banswara (Rajasthan) were not pursued in terms of the MOU dated 16.1.2008. As per the terms and conditions enumerated herein above and in the MOU dated



16.1.2008, further project was subject to purchaser's satisfaction of availability of raw material/ fuel for the project and change in suitable site arranged by seller for the said project. The site as well as the raw material was not available, therefore, the Respondent did not pursue the said project and same was duly communicated to the Claimant vide e-mail dated 6.1.2011. Thus, the allegations of non-payment are frivolous. It is stated that the Claimants are not entitled to an amount of Rs.250 lacs (i.e. Rupees Two Crore Fifty Lacs only)

10. That the contents of para 10 are wrong and denied. It is denied that the Respondent defaulted in payment of last installment as alleged in the para under reply. It is further denied that the Respondents liable to pay any amount to the Claimant. It is stated that the Respondent has not breached any terms and conditions of the share holders agreement dated 26.4.2010 and MOU dated 16.1.2008. The allegations deserve merit rejection.

11. That the contents of para 11 are wrong and denied. It is denied that the Claimants are entitled to sum of Rs.2,50,00,000/- and it is further denied that the Claimant are entitled to the interest @



18% p.a. w.e.f. 1.1.2011. There are no agreement on payment at interest either in the MOU or in the shareholders agreement. It is also denied that the Claimant is entitled to the interest of Rs.1,57,50,000/-. It is also denied that the Claimant is entitled to a sum of Rs.4,07,50,000/-. It is also denied that the Claimant is entitled to the future interest @ 18% p.a.””

54. A perusal of the above reproduced paragraphs clearly show that the Sole Arbitrator has rejected the said contention as an afterthought and beyond the pleadings. The Sole Arbitrator has quoted the paragraphs from the Statement of Defence, wherein Mr. Ranjan Kumar had argued that the said plea was mentioned. I find myself in agreement with the finding of the Sole Arbitrator that the argument of the petitioner that it had paid consideration as per MW payable as per industry practice was not a part of the pleadings.
55. As already observed, the law on the limited scope of interference under Section 34 of the 1996 Act is well settled. The Arbitrator is the sole judge of quantity and quality of evidence and the Courts under Section 34 petition should refrain itself from interfering with finding on fact and evidence by the Arbitrator, reliance is placed on ***Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49.***
56. From the above discussion, it is evident that the petitioner has failed to justify withholding the outstanding amount of Rs. 2.50 crores for any reason whatsoever and thus, the respondents were entitled to the same, as also observed by the Sole Arbitrator. The findings of the learned



Arbitrator are based on a detailed and reasoned analysis of the terms and conditions of the MOU and SHA, pleadings and evidence placed on record by both sides. To my mind, the impugned Award pertaining to Issue No. 1 does not disclose any perversity or contravention of public policy. I find no reason to interfere with or set aside the award granted to the respondents by the Sole Arbitrator under Issue No. 1.

Issue No. 4 as framed by the Sole Arbitrator: “If issue No. 1 is in the favour of the claimant, whether it is entitled to any interest? If so, at what rate and what period?” (The respondents in the present petition were the claimants in the arbitral proceedings)

57. Since, the Issue No. 1 was decided in favour of the respondents, the Sole Arbitrator decided Issue No. 4 also in favour of the respondents and awarded pre-suit/ pre-reference interest @ 18% per annum, apart from *pendent lite* interest and future interest. The operative portion of the impugned Award is extracted below:-

“51. Thus, the Claimants are entitled to Rs. 4,07,50,000/- being Rs. 2.5 crore payable by the respondent towards third tranche of payment schedule, and Rs. 1,57,50,000 being the interest @ 18% from 01.01.2011 to 30.06.2014. Regarding the pendente-lite interest as claimed by the claimant, it is noticed that there has been some delay in disposing of this petition also on the part of this Tribunal due to various unavoidable reasons. Thus, in this given situation the claimants can be granted pendent-lite simple interest @ 9% per annum from 03.07.2014 till 31.07.2016. Further, the claimants will also be entitled to



simple future interest @ 18% per annum on the aforesaid amount of Rs.4,07,50,000/- from the date of this award till the date of realization, in the event it fails to pay the awarded sum a sabove in two months from the date of Award.”

58. The learned counsel for the petitioner has only challenged the pre-suit/ pre-reference interest granted @ 18% per annum and contends that the awarded pre-suit/ pre-reference interest @ 18% per annum is excessive and contrary to the provisions of the Interest Act, 1978.
59. The learned counsel for the petitioner submits that where there is no express bar in the contract and where there is also no provision for payment of interest, as in the present case, then principle of Section 3 of the Interest Act, 1978 will apply, reliance is placed on ***Ferro Concrete Construction (supra)***, wherein was held was under:-

“60. The appellants contend that there was no provision in the contract for payment of interest on any of the amounts payable to the contractor and therefore no interest ought to be awarded. But this Court has held that in the absence of an express bar, the arbitrator has the jurisdiction and authority to award interest for all the three periods - pre-reference, pendente lite and future ... In the present case as there was no express bar in the contract in regard to interest, the arbitrator could award interest.

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67. In regard to the rate of interest, we are of the view that the award of interest at 18% per annum, in an award governed by the old Act (the Arbitration Act, 1940), was an error apparent on the face of the award. In regard to award of interest governed by the Interest Act, 1978, the rate of interest could not exceed the current rate of interest which means the highest of the maximum rates at which interest may be paid on different classes of deposits by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by Reserve Bank of India under the Banking Regulation Act, 1949. Therefore, we are of the view that pre-reference interest should be only at the rate of 9% per annum. It is appropriate to award the same rate of interest even by way of pendente lite interest and future interest up to the date of payment.”

(Emphasis added)

- 60.** In *Ferro Concrete Construction (supra)*, the Hon’ble Supreme Court was dealing with an Award governed under the Arbitration Act, 1940. The law pertaining to power of an Arbitrator to grant interest has evolved especially under the 1996 Act. The Hon’ble Supreme Court in *Pam Developments (P) Ltd. v. State of W.B., (2024) 10 SCC 715* while highlighting the difference in the position of law *qua* the Arbitration Act, 1940 *vis-à-vis* the 1996 Act observed as under:-

“23. The power of the arbitrator to grant pre-reference interest, pendente lite interest, and post-award interest



under Section 31(7) of the Act is fairly well-settled. The judicial determinations also highlight the difference in the position of law under the Arbitration Act, 1940. The following propositions can be summarised from a survey of these cases:

23.1. Under the Arbitration Act, 1940, there was no specific provision that empowered an arbitrator to grant interest. However, through judicial pronouncements, this Court has affirmed the power of the arbitrator to grant pre-reference, pendente lite, and post-award interest on the rationale that a person who has been deprived of the use of money to which he is legitimately entitled has a right to be compensated for the same. When the agreement does not prohibit the grant of interest and a party claims interest, it is presumed that interest is an implied term of the agreement, and therefore, the arbitrator has the power to decide the same.

23.2. Under the 1940 Act, this Court has adopted a strict construction of contractual clauses that prohibit the grant of interest and has held that the arbitrator has the power to award interest unless there is an express, specific provision that excludes the jurisdiction of the arbitrator from awarding interest for the dispute in question.



23.3. Under the 1996 Act, the power of the arbitrator to grant interest is governed by the statutory provision in Section 31(7). This provision has two parts. Under clause (a), the arbitrator can award interest for the period between the date of cause of action to the date of the award, unless otherwise agreed by the parties. Clause (b) provides that unless the award directs otherwise, the sum directed to be paid by an arbitral award shall carry interest @ 2% higher than the current rate of interest, from the date of the award to the date of payment.

23.4. The wording of Section 31(7)(a) marks a departure from the Arbitration Act, 1940 in two ways : first, it does not make an explicit distinction between pre-reference and pendente lite interest as both of them are provided for under this sub-section; second, it sanctifies party autonomy and restricts the power to grant pre-reference and pendente lite interest the moment the agreement bars payment of interest, even if it is not a specific bar against the arbitrator.

23.5. The power of the arbitrator to award pre-reference and pendente lite interest is not restricted when the agreement is silent on whether interest



can be awarded or does not contain a specific term that prohibits the same.

23.6. While pendente lite interest is a matter of procedural law, pre-reference interest is governed by substantive law. Therefore, the grant of pre-reference interest cannot be sourced solely in Section 31(7)(a) (which is a procedural law), but must be based on an agreement between the parties (express or implied), statutory provision (such as Section 3 of the Interest Act, 1978), or proof of mercantile usage.

(Emphasis added)

- 61.** It is pertinent to note here that the law is well settled that under Section 34 of the 1996 Act the Court can only modify post-award interest granted by the Sole Arbitrator, as held by the Hon'ble Supreme Court in ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd., (2025) 7 SCC 1*** as under:-

“IX. Post-award interest

73. The next question that arises is: Do courts possess the power to declare or modify interest, especially post-award interest?

74. 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).

75. For the post-award interest in terms of Section 31(7)(b), the courts will retain the power to modify the interest where the facts justify such modification.

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77. Our reasoning is bolstered when considering the practical aspects. The Arbitral Tribunals, when determining post-award interest, cannot foresee future issues that may arise. Post-award interest is inherently future-oriented and depends on facts and circumstances that unfold after the award is issued. Since the future is unpredictable and unknown to the arbitrator at the time of the award, it would be unreasonable to suggest that the arbitrator, as a soothsayer, could have anticipated or predicted future events with certainty. Therefore, it is appropriate for the Section 34 Court to have the authority to intervene and modify the post-award interest if the facts and circumstances justify such a change.”

(Emphasis added)

- 62.** A bare perusal of the paragraphs reproduced above clearly show that the Court under Section 34 of the 1996 Act cannot change the *pendent lite* interest as the same would amount to modification of Award and has only two options to either set aside the rate of interest or remand the matter back to the Arbitrator.



63. Although, the Hon'ble Supreme Court in *Gayatri Balasamy (supra)* has not specifically mentioned pre-suit/ pre-reference interest, however, to my mind pre-suit/ pre-reference interest shall be treated similar to *pendente lite* interest. The reason behind providing power to modify the post-award interest is that post-award interest is a future event and the Arbitral Tribunal cannot anticipate future circumstances that might make the awarded post-award interest unreasonable. However, the same cannot be said for *pendente lite* interest and similarly cannot be said for pre-suit/ pre-reference interest. Therefore, pre-suit/ pre-reference interest shall be treated similar to *pendente lite* interest and thereby, applying the principles as laid down in *Gayatri Balasamy (supra)*, I in a petition under Section 34 of the 1996 Act cannot modify the pre-suit/ pre-reference interest granted by the Sole Arbitrator.
64. Additionally, most recently the Hon'ble Supreme Court in *Sri Lakshmi Hotel (P) Ltd. v. Sriram City Union Finance Ltd., 2025 SCC OnLine SC 2473*, after discussing the entire case law observed that high rate of interest cannot be said to be in conflict with the public policy of India unless the rate of interest is so outrageous so as to shock the conscience of the Court. The relevant paragraphs of the said judgement are extracted below:-

“53. In the light of the aforesaid discussion, reverting back to the instant matter, on a plain and grammatical construction of clauses (ii) and (iii) of Explanation 1 to Section 34(2)(b) of the Act, 1996 it cannot be said that the imposition of an exorbitant interest in the background



of contemporary commercial practices, would be against the fundamental policy of Indian Law, or against the basic notions of morality or justice. It is well-settled that fundamental policy of Indian law does not refer to violation of any Statute but fundamental principles on which Indian law is founded. Any difference or controversy as to rate of interest clearly falls outside the scope of challenge on the ground of conflict with the public policy of India unless it is evident that the rate of interest awarded is so perverse and so unreasonable so as to shock the conscience of the Court sans which no interference is warranted in the award, whereby interest is awarded by the Arbitrator.”

(Emphasis added)

65. In the present case, the Sole Arbitrator was well within its power to grant the interest, in absence of any express bar to the grant of interest for the pre-award period in the MOU and/or SHA. I find no reason to set aside the impugned award with respect to grant of pre-suit/ pre-reference interest.

Issue No. 5 as framed by the Sole Arbitrator: “Whether the counter claim of the respondent is within limitation?”

Issue No. 6 as framed by the Sole Arbitrator: “Whether the respondent is entitled to award of an amount of Rs. 5,00,00,000/- or any other amount towards 81815 CERs from the claimant as claimed in counter claim?”

(The petitioner in the present petition was the respondent in the



arbitral proceedings)

66. Pertaining to Issue No. 5, the Sole Arbitration held that the counter-claim of the petitioner was barred by limitation in paragraph No. 61 of the impugned Award, which reads as under:-

“61. Regarding issue of limitation, the Ld. Counsel of respondent contends that counter claim is within time as the respondent has stopped operations due to acute shortage of fuel in May 2012 and on account of the possibility of obtaining the CERs being permanently foreclosed to the Respondent on account of the Claimants willful negligence and misrepresentations. The counter claims being instituted in September 2014 would be well within time. In this regard it may suffice to notices, that the counter claim was filed by the respondent on 16.09.2014 for the alleged losses to the tune of 500 lacs for 81815 CERs accrued till May 2011, which is apparently barred by limitation, which period expired in May 2014. The counter claim is thus is liable to be dismissed on this ground alone.”

67. The learned counsel for the petitioner has raised no arguments in relation to the said Issue. I am of the view that the Sole Arbitrator has correctly held that the counter-claim of the petitioner is barred by limitation.
68. As the counter-claim of the petitioner is held to be barred by limitation, I find no reason to decide challenges raised by the learned counsel for the petitioner pertaining to rejection of petitioner's



counter-claim on merits.

CONCLUSION

- 69.** In view of the aforesaid discussion, I find no merit in the submissions made by the learned counsel for the petitioner to set aside the impugned Award with reference to Issues No. 1, 4, 5 and 6. The impugned Award is not in contravention with the public policy of India or patently illegal. The findings of the Sole Arbitrator are plausible views and cannot said to be perverse or impossible, that no reasonable person could have arrived at. Thereby, the present petition is dismissed.
- 70.** All pending applications are consequently disposed of.

NOVEMBER 27th, 2025 / (HG)

JASMEET SINGH, J