IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

COMMERCIAL APPEAL NO.358 OF 2022

BETWEEN:

MR. T. K. AJITH KUMAR
PROPRIETOR
AGE 65 YEARS
LAKSHMI ENTERPRISES
NO.39, 1038,
UDAYARESHMI
KARAKKAT ROAD
KOCHI 682 016

...APPELLANT

(BY SRI. H. N. NARENDRA DEV, ADV A/W
SMT. PARINA LALLA, ADV)

AND:

3M INDIA LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING ITS OFFICE AT:
CONCORDE BLOCK,
U. B. CITY, 24,

Digitally signed by PAVITHRA N
Location: High Court of Karnataka

VITTAL MALLYA ROAD
BANGALORE 560 001
REPRESENTED HEREIN BY ITS DIRECTOR

…RESPONDENT

(BY SMT. MANEESHA KONGOVI, ADV FOR
SRI ABHINAY V., ADV)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT 2015 R/W SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT, 1996, PRAYING TO SET ASIDE THE JUDGMENT DATED JULY 16, 2022 PASSED BY THE LEARNED LXXXIV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BENGALURU (CCH-85) IN COM.A.P.NO.39/2020 (ANNEXURE-O), AND CONSEQUENTLY, SET ASIDE THE ARBITRAL AWARD DATED SEPTEMBER 30, 2019, AS MODIFIED BY THE FURTHER AWARD DATED NOVEMBER 29, 2019 (ANNEXURES H AND L), PASSED BY LD. ARBITRATOR IN ARBITRATION PROCEEDINGS BEARING A.C.NO.114/2018.

THIS COMAP HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 11.09.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
AND
HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

This appeal arises from the judgment and order dated 16.07.2022 passed by the LXXXIV Additional City Civil and Sessions Judge (CCH-85), Bengaluru ('Commercial Court') in Com.A.P.No.39/2020, whereby the Commercial Court dismissed the petition filed by the appellant herein under Section 34 of the Arbitration and Conciliation Act, 1996 ('Arbitration Act'), and upheld the Arbitral Award dated 30.09.2019 as modified by Order dated 29.11.2019.

2. We have heard Shri. H.N. Narendra Dev along with Smt. Parina Lalla, learned counsel appearing for the appellant, Smt. Maneesha Kongovi learned counsel appearing for the respondent.

3. The learned counsel appearing for the appellant submits that respondent - 3M India Limited and appellant - Proprietor of Lakshmi Enterprises, Kochi entered into a Consignee Sales Agent Agreement ('Agreement' for short) dated 03.09.2012, with effect from 01.04.2012. Under this Agreement, the appellant was to provide logistics services

for the respondent's products, including storage, maintenance and distribution. The appellant was also to collect payments from customers on the invoices raised, and remit and reconcile those amounts with the respondent's finance team. The goods entrusted to the appellant remained the property of the respondent throughout. Stock was transferred between the parties, and F-Forms had to be issued for those stock transfers so that the respondent could claim tax exemption.

4. Disputes arose between the parties regarding the appellant's remittance of amounts collected for the respondent's homecare and healthcare products and the issuance of F-Forms. The accounts were reconciled in July-August 2014, and the respondent claims that Rs.25,60,680/- (homecare) and Rs.2,77,12,102/- (healthcare) were found due from the appellant. The appellant issued a cheque for Rs.25,60,680/-. The cheque was dishonoured, and the respondent initiated proceedings under Section 138 of the Negotiable Instruments Act in C.C.No.51103/2017. According to the appellant, the cheque

was given only as security pending final settlement of accounts.

5. Owing to failed attempts at a settlement, the respondent invoked the arbitration clause by notice dated 29.09.2016. The respondent then approached this Court in CMP No.20/2017 under Section 11 of the Arbitration Act, whereby this Court by Order dated 06.04.2018 appointed the learned Sole Arbitrator in the matter. The respondent filed its Statement of Claim on 27.07.2018 seeking Rs.3,02,72,782/- as the amount due for homecare and healthcare products, a direction to the appellant to hand over F-Forms for stock worth Rs.4,17,44,278/- and in the alternative, Rs.78,78,202/- as the loss suffered for non-issuance of F-Forms, with interest at 18% p.a. The appellant filed the Statement of Defence along with a Counterclaim, wherein the appellant contended that Clause 19 of the Agreement had not been complied with, the Agreement was insufficiently stamped, so there was no valid arbitration agreement and a direction to the

respondent to issue F-Forms, or in the alternative, Rs.32,11,800/- as penalty.

6. The learned Arbitrator framed 11 issues and recorded the evidence of both parties. By Award dated 30.09.2019, the claim and the counterclaim were allowed in part. The appellant was directed to pay Rs.3,02,72,782/- as amounts collected from customers but not remitted and Rs.4,17,44,277/- towards the worth of the F-Forms. Both amounts carried interest at 12% p.a. from the date of the claim petition. Further, the counterclaim relating to F-Forms, was allowed to the extent of Rs.2,02,33,644/- and it was held that the respondent had handed over F-Forms worth Rs.2,02,33,644/- to the appellant before the Tribunal on 20.09.2019.

7. The appellant then filed an application under Section 33 of the Arbitration Act. The appellant sought rectification of the Award and an additional award on the counterclaims. The respondent conceded that the direction on the F-Forms needed correction but prayed that its claim for Rs.78,78,202/- be granted. By order dated 29.11.2019,

the application was allowed in part. The Tribunal clarified that the appellant was to hand over F-Forms for stock worth Rs.4,17,44,278/-. In the alternative, the appellant was to pay Rs.78,78,202/- with interest at 12% p.a. towards the loss suffered by the respondent.

8. The appellant challenged the Award, as modified, by filing Com.A.P.No.39/2020 under Section 34 of the Arbitration Act on 03.06.2020. The Commercial Court held that the indemnity clause in the Agreement does not state any amount to be secured. In the absence of evidence on the amount secured, the stamp duty of Rs.200/- paid was sufficient under Article 29 read with Article 47(b) of the Karnataka Stamp Act. The Commercial Court held that it was the appellant himself who moved the Section 33 application, and the respondent conceded the correction. Relying on ***McDermott International Inc. v. Burn Standard Co. Ltd.,*** reported in ***(2006) 11 SCC 181***, and ***Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd.***, reported in ***(2006) 11 SCC 245***, it was held that Section 33 of the Arbitration Act permits the Tribunal

to correct and interpret the Award, even at its core. Further, Ex.P30, which established the loss of Rs.78,78,202/-, was not challenged in evidence, and PW2 was examined to prove the loss. The Tribunal had also refused to reconsider the counterclaims under Section 33 of the Arbitration Act. This showed that it had not reviewed the merits. The order dated 29.11.2019 was therefore a correction and clarification, not a modification. The Commercial Court held that no ground under Section 34 of the Arbitration Act was made out. By judgment dated 16.07.2022, the petition was dismissed. Aggrieved, the appellant has filed the present appeal under Section 37 of the Arbitration Act.

9. The learned counsel appearing for the appellant contends that the Award is patently illegal and opposed to the public policy of India. It is contended that the Commercial Court treated every ground as a plea for re-appreciation of evidence and thereby failed to exercise the jurisdiction vested in it under Section 34 of the Arbitration Act. It is contended that the Agreement was not duly stamped as stamp duty of Rs.200/- was payable under

Article 5(j) of the Karnataka Stamp Act. Since the Agreement contains an indemnity clause, a further Rs.200/- was payable under Article 29 read with Article 47(b) of the Karnataka Stamp Act. The Commercial Court considered only the indemnity clause and not the duty payable under Article 5(j). It is further contended that the learned Arbitrator, despite framing an issue on stamp duty, gave no finding on it, and based the entire Award on the Agreement.

10. It is further contended that the award of Rs.3,02,72,782/- rests only on Ex.P2 and Ex.P3. The Note on Ex.P2 and on the first sheet of Ex.P3 records that the accounts were unsettled as on 13.08.2014 and were subject to further reconciliation. It is further contended that reconciliation never took place, and PW1 admitted in his evidence that the accounts were never finally settled. It is contended that Ex.P3 records payments of Rs.7,34,43,000/- for the period from January 2013 to July 2014. However, the table on which that figure is based covers only January 2013 to January 2014. The payments made between February and July 2014 were left out. It is also contended

that the respondent's own bank statement shows payments of Rs.10,49,07,895/- by the appellant for the same period. The difference of Rs.3,14,64,895/- exceeds the amount claimed. The appellant learnt of these payments only when the respondent marked Ex.P26.

11. It is further contended that the Commercial Court erred in holding that these grounds fell within the realm of re-appreciation of evidence. It is contended that the grounds were in fact about vital evidence that the Arbitrator had ignored. It is contended that, under prayers the respondent sought only the F-Forms or, in the alternative, Rs.78,78,202/- but did not claim Rs.4,17,44,278/-. The original Award therefore granted a relief that was never claimed. By the order dated 29.11.2019, the Arbitrator replaced the relief altogether. This amounts to a review, which is beyond the power under Section 33(1)(a) of the Arbitration Act. It is contended that this is so even though it was the appellant who filed the Section 33 application. It is contended that consent, acquiescence or estoppel cannot confer on the Tribunal a

jurisdiction it does not have. It is also contended that Section 33(1)(b) of the Arbitration Act has no application, as no interpretation of the Award was ever sought.

12. It is further contended that neither the Award nor the order under Section 33 of the Arbitration Act gives any reason for awarding Rs.78,78,202/-. There is also no finding on limitation. The arbitration notice was issued only on 29.09.2016, so the entries up to September 2013 were barred by limitation. It is contended that, to this extent, the Award is a non-speaking award. It is contended that the Commercial Court did not frame an issue on the Tribunal's overreach of jurisdiction under Section 33 of the Arbitration Act as a point for consideration.

13. It is further contended that the Arbitrator did not consider the counterclaim prayers which included the claim for commission and freight charges, and gave no reasons for rejecting them. Since these counterclaims had to be adjusted against the respondent's claim, they cannot be remanded separately, and the Award must be set aside as a whole. It is therefore contended that the Award and the

impugned judgment of the Commercial Court are both liable to be set aside.

14. The learned counsel appearing for the respondent contends that the appellant is seeking a re-appreciation of the evidence, which is impermissible under Sections 34 and 37 of the Arbitration Act. A plausible view taken by the Arbitrator on facts cannot be interfered with, since the Arbitrator is the final judge of the quantity and quality of evidence. It is contended that, the appellant repeatedly failed to remit the amounts collected, and the Agreement was therefore terminated. It is contended that three of the four pages of the reconciliation were signed by the appellant's brother, who was also his power of attorney holder, and the appellant has admitted his brother's authority to sign. Ex.P2 records that Rs.25,60,680/- was due for homecare products and that a cheque was issued for that amount. The first page of Ex.P3 is not signed, but it shows Rs.2,77,12,102/- as due for healthcare products. That page cross-refers to the next two pages, which are signed by both parties. The total due therefore works out to

Rs.3,02,72,782/-. This figure is supported by the invoices (Ex.P23) and the respondent's bank statement (Ex.P26). The appellant has never denied executing the reconciliation.

15. It is further contended that the Note on Ex.P2 reserved only the appellant's claim for indemnity for tax proceedings. This is at best a claim for set-off and not a dispute about the amount. The Tribunal rejected that claim of the Award for want of proof. It is contended that Ex.P26 covers payments for all eight divisions, whereas the reconciliation related only to homecare and healthcare. The plea of excess payment was neither pleaded nor proved before the Tribunal. It is further contended that the liability is also established by the appellant's cheque and by the emails all of which the Tribunal considered.

16. It is further contended that the appellant himself sought the Section 33 modification, stating on oath that the direction to pay Rs.4,17,44,278/- was an "oversight". The appellant is therefore estopped from challenging it now. It is contended that the loss arose because the appellant admittedly failed to furnish F-Forms, and that the loss was

computed under the Central Sales Tax Act in Ex.P30. The Award itself shows that the Tribunal intended to grant the F-Forms or the loss, and the figures were only interchanged. This was a typographical error, correctable under Section 33(1)(a) of the Arbitration Act. Alternatively, the modification was a consensual interpretation under Section 33(1)(b) of the Arbitration Act.

17. It is further contended that the relief relating to the F-Forms is severable, and the award of Rs.3.02 Crores can stand on its own. It is contended that the counterclaims were considered and rejected as time-barred and unproved. It is further contended that the objection on stamp duty was given up before the Tribunal and cannot be raised now. It is therefore contended that no ground under Section 34 of the Arbitration Act is made out, and the respondent prays that the appeal be dismissed.

18. The learned counsel appearing for the respondent places reliance on the following decisions:-

- ***Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt.,*** reported in ***(2024) 6 SCC 357;***

- ***Associate Builders v. Delhi Development Authority,*** reported in ***(2015) 3 SCC 49;***

- ***Javer Chand & Others v. Pukhraj Surana,*** reported in ***MANU/SC/0036/1961;***

- ***H. Krishnappa v. M.D.Ashwathnarayan Singh,*** reported in ***MANU/KA/1260/2010;***

- ***K. Hemalata v. Nagaraju,*** reported in ***MANU/KA/4152/2021;***

- ***McDermott International Inc. v. Burn Standard Co. Ltd. and Ors.,*** reported in ***MANU/SC/8177/2006;***

- ***Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd.,*** reported in ***MANU/SC/8146/2006;***

- ***Master Construction Co.(P) Ltd. v. State of Orissa and Ors.,*** reported in ***MANU/SC/0304/1965;*** and

- ***Gomantak Mazdoor Sangh v. State of Goa & Ors.,*** reported in ***MANU/SC/0619/2022.***

19. We have considered the contentions advanced and have perused the materials on record. The questions that arise for consideration in this appeal are, whether clause 3 of the Arbitral Award, as originally passed and as

modified by order dated 29.11.2019 under Section 33 of the Arbitration Act, requires interference.

20. The learned counsel appearing for the appellant challenges the order dated 29.11.2019, by which the Tribunal corrected clause 3 of the Award under Section 33 of the Arbitration Act. It is contended that the original Award directed the appellant to pay Rs.4,17,44,277/- towards the worth of F-forms, which the respondent had never claimed. It is further contended that an alternative sum of Rs.78,78,202/- was awarded without any finding that the respondent had actually suffered that loss. It is contended that Section 33 of the Arbitration Act permits the Tribunal only to correct clerical or typographical errors, and by replacing one relief with another the Tribunal reviewed its own Award.

21. In the Claim Statement filed by the respondent, a direction was sought to the appellant to hand over F-Forms for stock worth Rs.4,17,44,278/-, or in the alternative, to pay Rs.78,78,202/- as the loss arising from their non-issuance. The Tribunal in the Award found that

the appellant was liable to furnish the F-Forms, however, directed the appellant to pay Rs.4,17,44,277/-, being the value of the stock itself. The appellant then filed an application under Section 33 of the Arbitration Act, stating that this direction had been passed by an oversight. In its objections, the respondent conceded that the direction required correction, but also prayed that its claim for Rs.78,78,202/- be granted. By the order dated 29.11.2019, the Tribunal replaced clause 3 with two directions- Clause 3(i) directs the appellant to hand over the F-Forms and Clause 3(ii) directs that, in the alternative, the appellant shall pay Rs.78,78,202/- with interest at 12% per annum. The Commercial Court held that the order was only a correction and clarification within the scope of Section 33 of the Arbitration Act.

22. We notice that the entire claim of the respondent relating to the F-Forms was based on the potential tax liability likely to incur, in the event the F-Forms are not furnished. The F-Forms were required to be furnished by the appellant so that the respondent could establish before

the assessing authority that the transfer of stock to the appellant in Kerala, is a transfer to its agent, and not an inter-State sale, and thereby claim exemption from Central Sales Tax. The respondent contended that in the absence of the F-Forms, it would be denied that exemption and would be liable to pay differential tax. The direction in the original Award to pay the value of the stock, the direction at clause 3(i) to hand over the F-Forms, and the alternative direction at clause 3(ii) to pay Rs.78,78,202/- rest on the apprehended liability.

23. The appellant brought to the notice of the Tribunal, in the affidavit filed in support of the application under Section 33, that the assessments for the relevant years had been completed and that the loss apprehended by the respondent had not arisen. The respondent did not deny this. Before this Court, the learned counsel for the respondent concedes that the VAT assessment has been completed and that no additional tax has been levied. Therefore, it is not in dispute that the respondent has

suffered no fiscal liability on account of the non-issuance of the F-Forms.

24. Section 73 of the Indian Contract Act, 1872 entitles a party who suffers from a breach of contract to receive compensation for the loss or damage caused to him by that breach. The provision compensates for loss that has actually been suffered. The Apex Court in ***Kailash Nath Associates v. Delhi Development Authority***, reported in ***(2015) 4 SCC 136***, held that reasonable compensation is to be fixed on the principles found in Section 73 of the Indian Contract Act, and that damage or loss caused is a *sine qua non* for awarding it. The Apex Court reiterated the most basic principle on the award of damages— namely, that compensation can only be given for damage or loss suffered. If damage or loss is not suffered, the law does not provide for a windfall.

25. Since the assessment has been completed without any additional tax being levied, the respondent has suffered no loss on account of the non-issuance of the F-Forms. A direction to pay any sum on that account, whether

the value of the stock as in the original Award or the estimated loss of Rs.78,78,202/- as in the modified Award, would amount to compensation for a loss that was never suffered. Further, the F-Forms were needed only to claim the tax exemption in the assessment proceedings. Since those proceedings have been concluded and no tax has been levied, the award, as modified, to the extent of awarding damages for the non handing over of the F-Forms cannot be sustained.

26. In ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.***, reported in ***(2025) 7 SCC 1***, a Constitution Bench of the Apex Court held that the power to set aside an award under Section 34 of the Arbitration Act inherently includes a limited power to modify the award. The power may be exercised, *inter alia*, where the award is severable, by severing the 'invalid' portion from the 'valid' portion, provided the two are legally and practically separable and not intertwined.

27. Clause 3 of the Award arises from the respondent’s claim relating to the F-Forms, and rests on

Ex.P30 and the evidence of PW2. The direction to pay Rs.3,02,72,782/- arises from a distinct claim relating to the amounts collected by the appellant from customers and not remitted, and rests on entirely different evidence. Clause 3 is therefore clearly separable from the rest of the Award. Following the principle laid down in ***Gayatri Balasamy's*** *case* (supra), clause 3 of the Award, as originally passed and as modified by order dated 29.11.2019, is severable and can be set aside without affecting the other portions of the award.

28. The learned counsel appearing for the appellant contended that the order dated 29.11.2019 went beyond the scope of Section 33 of the Arbitration Act and amounted to a review of the Award. The learned counsel appearing for the respondent contended that it was the appellant himself who sought rectification of clause 3, and that the order only corrected an oversight. The order dated 29.11.2019 operated only on clause 3 of the Award. As noted above, clause 3 of the Award both as originally passed and modified by order dated 29.11.2019, is liable to be set aside

in its entirety, since the respondent has suffered no loss, therefore, the question whether the modification was within the scope of Section 33 of the Arbitration Act does not arise for consideration.

29. The learned counsel appearing for the appellant also contended that the claim for Rs.78,78,202/- was barred by limitation. It was submitted that the said amount was computed on the basis of Ex.P30, which sets out the differential tax with interest on each stock transfer. Since the notice invoking arbitration was issued only on 29.09.2016, the entries relating to the period up to September 2013, which make up the larger part of the amount were beyond the period of limitation. The learned counsel appearing for the respondent contended that no such plea was raised before the Arbitral Tribunal. The contention was raised before the Commercial Court but not decided. Since we have held that clause 3 of the Award is liable to be set aside in its entirety, as the respondent has suffered no loss, the question whether the claim for

Rs.78,78,202/- was barred by limitation also does not survive for consideration.

30. The further question that arises for consideration is whether the direction of the Arbitral Tribunal to pay Rs.3,02,72,782/- calls for interference.

31. The claim of the respondent for this amount rests on two reconciliation statements, Ex.P2 and Ex.P3, prepared when the accounts between the parties were reconciled in July and August 2014. Ex.P2 relates to the homecare division and shows Rs.25,60,680/- as due from the appellant. Ex.P3 relates to the healthcare division. It records the total billing for the period from January 2013 to July 2014. It deducts the payments of Rs.7,34,43,000/- made by the appellant and the tax adjustments, and records the total outstanding as per the respondent as on July 2014 as Rs.2,77,12,102/-. The learned counsel appearing for the appellant contends that Ex.P26, the bank statement of the respondent, shows that the appellant paid Rs.10,49,07,895/- during the same period. It is contended

that if these payments are considered, the entire amount claimed stands paid.

32. The Arbitral Tribunal rejected this contention and held that the appellant was liable to pay Rs.3,02,72,782/-. It noticed that Ex.P2 was signed on behalf of the appellant by his brother and power of attorney holder, Shri T.K. Premanand, and that the appellant had issued a cheque for Rs.25,60,680/- towards that amount, which was dishonoured. It was found that Shri T.K. Premanand had also signed the annexure to Ex.P3, which recorded the payments of Rs.7,34,43,000/- made by the appellant. The Arbitral Tribunal relied on the emails exchanged between the parties, the invoices and bank statement at Ex.P23 and Ex.P26, which established that the appellant had received payments from the customers but had not remitted them. The Tribunal drew an adverse inference against the appellant for his failure to produce his own bank statements, deposit slips and list of customers, and for his failure to examine Shri T.K. Premanand, who had conducted the reconciliation on his behalf.

33. The Commercial Court held that the Tribunal had considered Ex.P26 and the vouchers at Ex.P23, along with the admission of RW1 regarding the transfer of funds. It was held that the documentary evidence establishing the short payment, and the gaps in the appellant's evidence, had been discussed in the Award. The Commercial Court held that the contentions of the appellant based on Ex.P2, Ex.P3 and Ex.P26 fell within the realm of re-appreciation of evidence, which is barred by the *proviso* to Section 34(2A) of the Arbitration Act.

34. The third ground which is raised by the learned counsel for the appellant is with regard to the rejection of counter claim raised before the Arbitrator. It is contended that it was without considering any of the contentions raised that the counterclaims were rejected. The Commercial Court considered these contentions and found that the only counterclaim which could be considered had been considered by the Tribunal. It was found that the said counterclaim was with regard to the handing over of the F-Forms. However, in view of the fact that the issue with

regard to the damages which had occurred to the claimant by the non-issuance of the F-Forms, now stand settled and set aside, the said head in the counterclaim does not require consideration. With regard to the counterclaim raised by the appellant, each aspect of the counterclaim has been specifically considered by the Arbitral Tribunal and has been rejected on the ground of lack of evidence and limitation. We are of the opinion that the consideration of such contentions with regard to the counterclaim at this juncture would definitely amount to re-appreciation of evidence, which is not permissible in law.

35. The learned counsel appearing for the appellant contended that the Agreement was insufficiently stamped, and that the Arbitral Tribunal acted upon it without rendering a finding on the issue of stamp duty. Further, the appellant did not press this ground during the Section 33 proceedings and the same was recorded in the order dated 29.11.2019. The Commercial Court held that the Agreement was marked in evidence without objection, that the objection was given up before the Arbitral Tribunal, and that

the stamp duty of Rs.200/- paid was sufficient under Article 29 read with Article 47(b) of the Karnataka Stamp Act. In view of Section 35 of the Karnataka Stamp Act, the admission of the Agreement in evidence cannot now be called in question. We find no ground to interfere with this finding.

36. The scope of interference of this Court in an appeal under Section 37 of the Arbitration Act has been categorically laid down by the Apex Court ***MMTC Ltd. v. Vedanta Ltd.*** reported in ***(2019) 4 SCC 163.*** The Apex Court held that a court under Section 34 of the Arbitration Act does not sit in appeal over an arbitral award. It may interfere on merits only where the award is opposed to the public policy of India, which includes a violation of the fundamental policy of Indian law, conflict with justice or morality, and patent illegality. Such interference does not entail a review of the merits of the dispute. It is confined to cases where the findings of the arbitrator are arbitrary, capricious or perverse, where the conscience of the court is shocked, or where the illegality goes to the root of the

matter. An award cannot be interfered with if the view taken by the arbitrator is a possible view on the facts. The Apex Court further held that interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. Where an award has been confirmed by the court under Section 34, the appellate court must be extremely cautious and slow to disturb such concurrent findings.

37. These principles were reaffirmed in ***Konkan Railway Corpn. Ltd. v. Chenab Bridge Project*** reported in ***(2023) 9 SCC 85***, wherein the Apex Court held that the jurisdiction of the court under Section 37 of the Arbitration Act is akin to its jurisdiction under Section 34 of the Arbitration Act, and that the scope of interference in an appeal under Section 37 of the Arbitration Act, while examining an order setting aside or refusing to set aside an award, is restricted to and subject to the same grounds as a challenge under Section 34 the Arbitration Act. It was also held that the jurisdiction under Sections 34 and 37 the

Arbitration Act is not in the nature of normal appellate jurisdiction.

38. The narrow jurisdiction under Section 37 of the Arbitration Act was also laid down in ***UHL Power Company Ltd. v. State of Himachal Pradesh*** reported in ***(2022) 4 SCC 116***. This line of reasoning was further affirmed in ***Larsen Air Conditioning & Refrigeration Co. v. Union of India*** reported in ***(2023) 15 SCC 472***, wherein the Apex Court held that the jurisdiction of the court under Section 34 of the Arbitration Act is limited and extremely circumscribed, permitting interference only on the ground of patent illegality which goes to the root of the matter and is not of a trivial nature.

39. In the above facts and circumstances of the case, we find no grounds to interfere with the decision of the Arbitral Tribunal, to the extent of the award of Rs.3,02,72,782/- with interest.

40. In the result:-

(i) The Commercial Appeal is ***allowed in part***;

(ii) The judgment dated 16.07.2022 passed by the Commercial Court in Com.A.P.No.39/2020 is modified;

(iii) The Arbitral Award dated 30.09.2019 passed in A.C.No.114/2018, as corrected by order dated 29.11.2019, is set aside only to the extent of the direction issued at clause 3 of the Arbitral Award.

(iv) The Arbitral Award to the extent it directs the payment of Rs.3,02,72,782/- with interest and rejects the counterclaims is upheld.

All pending Interlocutory Applications shall stand *disposed of.*

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(T.P.VIVEKANANDA)
JUDGE

cp/PN*