

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-CARB No. 39 of 2025 (O&M)
Reserved on: 14.11.2025.
Date of pronouncement: 13.02.2026

M/s ADITYA BIRLA FASHION AND RETAIL LIMITED ...*Appellant(s)*

V/s

DAYANAND ...*Respondent(s)*

CORAM: **HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA**
HON'BLE MR. JUSTICE ROHIT KAPOOR

Argued by: Mr. Aashish Chopra, Senior Advocate, assisted by
Mr. Vijender Parmar, Advocate,
Ms. Rupa Pathania, Advocate, and
Mr. Yash Pal Sharma, Advocate for the appellant.

Mr. Sumeet Mahajan, Senior Advocate, assisted by
Mr. Saksham Mahajan, Advocate,
Mr. Shrey Sachdeva, Advocate, and
Ms. Radhika Dekshay Advocate, for respondent.

1.	Date when order was reserved	14.11.2025
2.	Date of Pronouncement of order	13.02.2026
3.	Date of uploading of order	16.02.2026
4.	Whether operative part or full order is pronounced	Full
5.	Delay, if any, in pronouncing of full order and reasons thereof.	NA

ASHWANI KUMAR MISHRA, J.

Jurisdiction of this Court under Section 37 of the Arbitration and Conciliation Act, 1996 (for short '*the Act of 1996*') is invoked by M/s Aditya Birla Fashion and Retail Ltd. (hereinafter referred to as the 'appellant') in order to assail the order passed by the Exclusive Commercial Court at Gurugram, dated 22.08.2025, whereby appellant's objection under Section 34 of the Act of 1996 to the Arbitral Award dated 23.12.2023, came to be rejected.

2. Appellant is a company incorporated under the Indian Companies Act, 1956. It is engaged in the business of 'apparels', marketing of garments and garment accessories under various international brand names and trademarks such as 'Van Heusen', 'Louis Philippe', 'Allen Solly', 'Peter England' etc. It intended to establish a warehouse for storage of its products at Gurugram. For such purposes, the appellant entered into an agreement with the claimant/respondent, who was the owner in possession of Khasra No.130/19, 12, 20, 21, 22, 23, 18/2 and 131/25, admeasuring 16674 sq. meters situated in village Pataudi, Ward No.13, Rewari Road, Tehsil Pataudi, Gurugram along with his brothers Ramesh Chand, Bhanu Sherawat (son of late brother of Dayanand) and Naresh Kumar. Plan for construction of the warehouse on the aforesaid land of the claimant was already approved by the concerned authorities in the year 2012-2013. Commercial godown in the name of 'Misha Sehrawat Warehouse' was constructed over an area admeasuring 103982.72 sq. feet (9660.31 sq. meters) allegedly by incurring an amount of INR 8.62 Crores. A loan of Rs.6 Crores was also availed by the claimant from Punjab National Bank, for such purpose, which was repayable in 93 equal installments of Rs.5,16,563/- per month commencing from 30.09.2015. Rest of the amount i.e. approximately Rs.2.62 Crores was incurred by the claimant for construction of warehouse.

3. Finally, a lease deed came to be executed on 20.04.2016 in respect of the leased premises by the claimant/respondent in favour of the appellant at a monthly rent of INR 10,00,000/- with a clause providing for

5% escalation after expiry of one year, commencing from 01.05.2016. The appellant also deposited INR 60,00,000/- with the respondent as interest free refundable security. Under the lease deed, the appellant had the right to install, erect and maintain, at its own cost, in or upon the leased premises, any equipment, machinery or any other structure necessary for the purposes of storing, selling or otherwise carrying on trade in consumer products, allied or other products. The leased godown had carpet area of 103982.72 sq. feet. The lease period was nine years commencing from 01.05.2016 to 30.04.2025.

4. Respective rights and obligations of the parties to the lease have been specified in the lease deed. Clause 13 of the lease deed placed responsibility upon the lessor/claimant-respondent to insure the entire building premises and all equipments provided to lessee, against fire and other perils including earthquake and terrorism etc., during the entire lease period. The responsibility of lessee was limited to insuring of its own goods and equipments etc. during the lease term. Clause 13 is reproduced herein after:-

“13. INSURANCE:

The Lessor shall at all times be responsible for insuring the entire building premises and all equipments provided to Lessee against Fire and other perils including Earthquake and Terrorism, covering the third party liability against all risks at all times and kept valid during the subsistence of the Lease and a copy of such insurance coverage policy shall be made available to Lessee as and when such insurance policy is renewed from time to time without demand by Lessee. Lessee shall be responsible for insuring its equipments,

goods, furnitures, fixtures and belongings in the Demised Premises during the Lease tenure.”

5. Clause 14 of the Lease Deed gave sole right to the lessee i.e. the appellant to terminate the lease by giving three months’ prior written notice without assigning any reason whatsoever.

6. Clause 27 of the lease deed provided for arbitration which is reproduced as under: -

“27. ARBITRATION:

i) All disputes and differences arising out of this deed shall be referred to arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996 and an Arbitrator to be mutually appointed by both the Parties.

ii) The venue for arbitration shall be Gurgaon and the proceedings shall be conducted in English language.”

7. The appellant came in possession of the warehouse in question and the payment of rent commenced from the month of May, 2016. For the first year upto 01.04.2017, the rent was paid at Rs.10,50,000/- which was enhanced to Rs.11,02,500/- per month for next one year i.e. 01.05.2017 i.e. 01.04.2018. The rent was further enhanced to Rs.11,90,700/- per month w.e.f. 01.05.2018 to 01.04.2019. In terms of Clause 13 of the lease deed, the claimant/respondent got the leased premises insured with the Oriental Insurance Company for the period beginning from 29.05.2018, till 28.05.2019 for INR 4.5 Crore for the office-cum-godown/warehouse together with boundary walls and INR 50 Lakh for fire extinguisher appliances. No objection certificate from the Fire Department was also obtained which was valid till 04.07.2019.

THE INCIDENT

8. On 16.10.2018, an incident of fire occurred at the Warehouse/ Leased Premises. According to the appellant, attempts were made by the employees/staff present to extinguish the fire and after such initial attempts failed, the police and the fire departments were informed of the fire incident. Six fire tenders were pressed into service, and the fire was ultimately doused. The insurer M/s Oriental Insurance Company Ltd. was informed of the fire incident. The appellant had also got its stocks kept in the warehouse insured with its insurer M/s TATA AIG which was also informed about the incident. In this incident major damage was caused to the warehouse/godown and the stored material of appellant were all got burnt.

9. According to the claimant/ respondent, incident of fire occurred due to negligence on part of the appellant as the fire hydrants and other fire extinguishers were not activated by the employees of the appellant. It is also the claimant's case that though a water storage tank with a capacity of 1.5 lacs liters of water with two pumps, one of which was electric pump and other was diesel pump, were installed in the warehouse, but were not activated though they were in working condition. As per the claimant, the entire godown was burnt/reduced to ashes causing huge financial loss to him

10. It has come on record that information to fire brigade was forwarded by an employee of the appellant on 16.10.2018 itself in respect of which a report was prepared by the Fire Department on 28.11.2018. The fire tenders were sent to the spot at 10.35 AM (wrongly referred to as PM in various documents). The sole fire tender which came on the spot could not

control the fire and consequently on the information of the Fire Department more fire tenders were requisitioned. As per report of the Fire Department, Pataudi, District Gurugram, *the fire may have been caused by short circuit*’.

THE CLAIM

11. The claimant asserted that for such negligence on part of the appellant, which led to the fire incident he has suffered loss amounting to Rs.7,80,46,520/- and accordingly claimed such amount from the appellant. The claim of respondent/claimant was disputed by the appellant. Initial correspondence/communication between the parties to arrive at an agreed settlement failed. It was in this context that the Claimant instituted claim against the appellant.

INSURANCE

12. As per Clause 13 of the contract, it was the exclusive responsibility of the lessor (claimant) for insuring the entire building premises and all equipments against fire and other perils during the subsistence of the lease. Accordingly, the claimant had secured the lease premises by getting it insured with Oriental Insurance Company. The incident was, therefore, reported to the insurer.

13. The Insurance Company, which had insured the claimant’s godown, deputed its authorized surveyor to inspect the premises and ascertain the losses caused in the incident. The surveyor submitted its final survey report according to which the Standard Fire and Special Perils Policy (hereinafter referred as ‘the policy’), was subsisting on the date of incident. The sum insured was Rs.4,50,00,000/- for office-cum-godown/ warehouse

including the boundary walls, while fire extinguishers were insured for a sum of Rs.50,00,000/-.

14. For the damage caused to the building, shed and others, the Surveyor of the insurance company i.e. M/s Oriental Insurance Company Limited after referring to the statement of the insured; police report; the fire brigade report and other media reports, specified the cause of accident in following words:-

“07.5) Our Opinion

Based on the survey carried out and verification done, we are of the opinion that due to electric short-circuiting in some electric wire, sparks were generated, which caused fire. The fire was aggravated because of availability of combustible material stock nearby and due to which, the fire spread in the entire building shed, damaging it completely. It was verified that the cause of fire is not intentional.”

15. The claimant had initially submitted an estimate of Rs.5,38,10,651/- towards insurance claim, which was later revised to Rs.4,73,50,841/- as being the loss caused to the leased premises in the fire incident, to the insurance company.

16. The claim raised by the respondent from its insurance company ultimately led to the final settlement of loss caused to the leased premises, in the fire incident, being determined as Rs.2.52,39,404/-. The respondent accepted the quantification of loss/damage determined by its insurer and issued a discharge voucher to M/s Oriental Insurance Company. The claimant/respondent also subrogated all his rights and remedies in respect of

loss/damage to the leased premises, in favour of the insurance company, which is reproduced hereinafter:-

“Discharge Voucher:

Thereafter, the respondent in full and final settlement of loss caused to the leased premises on account of fire incident settled the claim with OIC for a sum of INR 2,52,39,404/- and signed a discharge voucher with OIC and subrogated all his right and remedies in respect of loss/damage on account of fire incident at the leased premises in favour of OIC.”

TERMINATION OF LEASE

17. The appellant in the meantime continued to pay the rent for the godown in question till a termination letter was ultimately issued by it on 17.07.2019. Mutual discussions between the parties for an amicable settlement, prior to it, failed. Since the term of lease required three months notice for termination, as such, the termination became effective from 18.10.2019. The vacant possession of the leased premises was offered to the claimant on 18.10.2019. The appellant also adjusted the rent equivalent to the notice period from the security deposit amount lying with the respondent.

LEGAL NOTICE

18. On 27.07.2019, a legal notice was issued by the claimant seeking surrender of security deposit of Rs.60 Lakh and compensation of Rs.3 Crores for the negligence caused on the part of the appellant's staff in handling the fire incident. This notice was objected to by the appellant on 28.10.2019. The appellant disputed any negligence on its part and highlighted that the respondent had the right as per the terms of the lease to

inspect the premises during the continuance of lease period and that no deficiency on the part of the appellant was ever pointed out.

ARBITRATION

19. Arbitration clause was invoked by the claimant after differences remained unresolved between the parties. An application under Section 11 of the Act of 1996 was filed before this Court, being Arbitration Petition No.350 of 2019. The arbitrator consequently came to be appointed by this Court on 09.01.2023.

20. Before the arbitrator, a statement of claim was filed by the respondent claiming following amounts:-

<i>Sr. No.</i>	<i>Particulars of Claims</i>	<i>Amount (INR)</i>
<i>1.</i>	<i>Damage to Leased Premises</i>	<i>5,00,00,000/-</i>
<i>2.</i>	<i>Loss of rent qua the Leased Premises from October, 2019 to 15.08.2021 @ 11,57,625 per month</i>	<i>2,60,46,520/-</i>
<i>3.</i>	<i>Towards pain and suffering</i>	<i>10,00,000/-</i>
<i>4.</i>	<i>Towards litigation expenses</i>	<i>10,00,000/-</i>
	<i>Total</i>	<i>7,80,46,520/-</i>
<i>5.</i>	<i>Interest @ 18% p.a. from 16.10.2018 till realization</i>	

21. A counter claim was submitted by the appellant, while objecting to the claim of respondent, which is as under:-

<i>Sr. No.</i>	<i>Particulars of Counter Claims</i>	<i>Amount (INR)</i>
<i>1.</i>	<i>Balance of security deposit/refundable security deposit</i>	<i>15,23,352/-0</i>
<i>2.</i>	<i>Interest @ 18% p.a. on security deposit from 17.07.2019 till 17.04.2023</i>	<i>10,28,263/-0</i>
	<i>Total</i>	<i>25,51,615/-</i>
<i>3.</i>	<i>Interest @18% p.a. from date of filing till realization</i>	

22. On behalf of the claimant/ respondent, evidence was furnished by Ramesh Chand, brother of the respondent, by filing his affidavit. The claimant placed on record documentary evidence in the form of loan sanction letter issued by Punjab National Bank dated 05.06.2014, sanctioning loan of Rs.6.00 Crores for construction of godown in question. A certificate of chartered accountant dated 28.05.2015 was also filed confirming that as per the information of the claimant, it has incurred Rs.8.43 Crores in connection with construction of warehouse. On behalf of the appellant, evidence was given by Gaurav Kumar, its authorized representative.

THE AWARD

23. The learned Arbitrator has delivered his award on 23.12.2023, allowing the claim of the respondent primarily on the ground that fire incident occurred due to negligence and carelessness of the appellant. Following claims of respondent have been accepted by the Arbitrator:-

<i>Sr. No.</i>	<i>Particulars of Claim</i>	<i>Awarded amount (INR)</i>
<i>1.</i>	<i>Damage to leased premises</i>	<i>2,47,75,446/-</i>
<i>2.</i>	<i>Loss of rent qua the leased premises from October, 2019 to 15.08.2021 @ INR 11,57,625/- per month</i>	<i>2,60,46,520/-</i>
<i>3.</i>	<i>Towards litigation expenses</i>	<i>3,00,000/-</i>
<i>4.</i>	<i>Claimant's share of arbitral fees under Section 31A(1)(a)(i)</i>	<i>7,37,508/-</i>
	<i>Total</i>	<i>5,18,59,474/-</i>

In addition, the Arbitrator awarded interest at the rate of 8% from the date of cause of action till recovery of amount."

24. The counter claim of the appellant was rejected. The Arbitrator held that appellant was not entitled to terminate the lease deed. This award

of the arbitrator came to be challenged on various grounds by filing a petition under Section 34 of the Act of 1996. A reply to the petition was filed by the claimant whereafter the Presiding Officer, Exclusive Commercial Court, Gurugram vide the order impugned dated 28.08.2025 rejected the objections of the appellant and affirmed the award of the arbitrator. Thus aggrieved, the appellant is before this Court.

THE APPEAL

25. The appellant asserts that the Court below has failed to exercise its jurisdiction under Section 34 of the Act of 1996 in refusing to interfere with the award, completely overlooking patent illegality therein, by going against the express terms of the lease deed and basing its findings on no evidence. The claims are allegedly allowed by the Arbitrator by travelling beyond the terms of lease deed which is contrary to the settled principles of applicable law.

26. It is urged that there is no evidence of negligence on the part of the appellant and contrary conclusions of the arbitrator is perverse as it is based on no evidence. It is also contended that the arbitrator has completely overlooked the report of the claimant's Insurer M/s Oriental Insurance Company dated 27.08.2019, which was accepted by the claimant himself without any demure or protest. The conclusion of actual losses caused in the incident, by the claimant's insurer, based on surveyor's assessment report was also ignored.

27. It is further submitted on behalf of the appellant that report of the surveyor of the claimant's insurer as also the report of Fire Department

and police report conclusively established that it was a case of accidental fire due to short circuit, but all such material has been ignored on hyper technical grounds. It is also contended that the testimony of the appellant's witnesses has been misread and misconstrued, and excessive importance is given to the oral testimony of the claimant's witness by overlooking overwhelming evidence, to the contrary, on record. The findings of the arbitrator are thus alleged to be perverse as it is based wholly on conjectures and surmises. It is also the contention of the appellant that there is no proof of actual loss and the entire claim of the respondent is based on imaginary figures contained in the statement of claim as well as the oral testimony of the claimant.

REPLY OF CLAIMANTS

28. The submissions advanced on behalf of the appellant are opposed by learned Senior counsel for the claimant, who submits that the Arbitrator has based its award on the terms of the lease deed, and the Commercial Court has rightly rejected the appellant's objections. He submits that the claimant's witness was not cross-examined on material aspects. He also submits that merely because the amount awarded by claimant's insurer was accepted, it would not mean that the claimant is precluded from claiming losses from the appellant. He also submits that none of the proximate witnesses were examined on behalf of the appellant. Learned senior counsel has also placed plethora of case laws to contend that the discretion exercised by the Arbitrator in allowing the claim cannot be interfered with by the Court in exercise of its jurisdiction under Section 34 of the Act of 1996 nor by this Court under Section 37 of the Act of 1996.

29. We have heard Mr. Ashish Chopra, Learned Senior Counsel for the appellant and Mr. Sumeet Mahajan, Learned Senior Counsel for the claimant/respondent and perused the materials on record.

THE ISSUES

30. We have examined the facts of the case within the confines of this Court's jurisdiction under Section 37 of the Act of 1996, so as to determine the question as to whether the arbitral award dated 23.12.2023 required interference on any of the grounds made permissible under Section 34(2) of the Act of 1996 or not? As a corollary, we are to adjudge whether the Commercial Court has failed to exercise its jurisdiction while rejecting the appellant's objection to the Award, in the facts of this case, on the grounds urged on behalf of the appellant?

31. The aforesaid issues arise in the context of following disputed facts: -

- i) *Whether the incident of fire occurred due to short-circuit or it was caused due to negligence of appellant's employees ?*
- ii) *Whether claimant/ respondent was entitled to the sum awarded towards damage to lease premises, on account of fire incident, on the basis of evidence led by the claimant/ respondent?*
- iii) *Whether the claimant/ respondent was entitled to loss of rent from October 2019 to 15.08.2021 @ Rs. 11,57,625/- per month ?*

ANALYSIS

32. The Arbitrator has primarily allowed claim of the respondent on account of damage caused to the leased premises to the tune of

Rs.2,47,75,446/- and awarded Rs.2,60,46,520/- on account of loss of rental income from October 2019 to 15.08.2021, when the godown was again let out on rent to someone else after its repair/restoration. The basis of award is the finding of Arbitrator that the fire incident was caused due to negligence of the appellant's employees in activating fire fighting equipments and that the appellant had no right to terminate the lease in the facts of the present case.

33. The appellant's primarily urge that the arbitrator's conclusions on both the counts are patently illegal and factually flawed and thus wholly perverse.

34. The Arbitrator had framed 12 issues for consideration vide order dated 10.06.2023. Issues No. ii, iii and iv were the core issues on which the outcome of arbitral proceedings has largely rested. These issues have been dealt with together, by the Arbitrator and are reproduced as under:-

(ii) Whether the respondent was duty bound to maintain the leased premises and the installed fire fighting system and equipment in good, proper and running condition?

(iii) Whether the fire fighting system and equipment was set in motion by respondent at the time of fire incident in the leased premises?

(iv) Whether the fire incident in question at the leased premises in question occurred due to negligence and carelessness of respondent?

35. Admittedly, incident of fire caused substantial damage to the leased premises. The fire incident was reported to the Police, the Fire Brigade and the Insurance Company. These agencies arrived soon after the incident and investigated the cause of incident and the manner in which it occurred. After due investigation, reports were submitted by the Police, the Fire Brigade, Surveyor of the Insurance Company wherein statements were also taken of the witnesses of the appellant and the claimant/respondent. The report of the Police, Fire Department as well as the Surveyor of the claimant's insurer held in categorical terms that fire was accidental and was caused due to short circuit.

36. The Surveyor of the Insurance Company also held that the cause of fire is not intentional. This finding, however, has been discarded by the Arbitrator only on the ground that such material was in the nature of opinion only and cannot be treated to be conclusive, as none of the witnesses have been examined during the course of arbitration. The reasoning assigned by the Arbitrator to ignore all such reports are contained in para 24 of the award, which is reproduced as under:-

“24. (a) Learned counsel for the respondent while relying on the above referred report Ex. RW1/2 has argued that the above named surveyor has opined in clause 9.08 thereof that although the exact cause of fire could not be ascertained but "most probably" the fire could be caused due to electrical short circuiting. This "opinion" is not conclusive because reliance is based therein on the statement of witnesses who were statedly examined by the above named surveyor but none of whom has been or examined by the respondent during the arbitral proceedings in hand.

- (b) *Even the DDR entry Ex. C/12 recorded by ASI Ajit Kumar regarding information of the fire incident in question lodged with him by Om Parkash, an employee of respondent company, as well as report Ex. C/11 dated 17/10/2018 based on the same (wrongly referred to as FIR in the survey report Ex. RW1/2) and relied upon by the respondent is inconclusive because he was statedly informed by one Vinay Kumar regarding the fire incident in question whereupon he alongwith Naresh Kumar and Vinod Kumar had rushed towards the place of fire but none of the above named Om Parkash, Vinay Kumar, Naresh Kumar and Vinod Kumar, all employees of the respondent company had been examined by the above named police official, and nor has any of them been examined by the respondent to establish the cause of fire, or even to pin point the place from which the fire had initially started and ultimately engulfed the entire leased premises spread over approximately ten thousand square meters.*
- (c) *Even the reliance by the above named surveyor in its above referred report Ex. RW1/2 on the fire brigade report Ex. C/13 dated 28/11/2018 is inconclusive because it is mentioned therein that one Suraj had telephonically informed from his mobile number 7039093758 regarding the fire incident in question. The said report makes no mention whatsoever regarding the above named Suraj having disclosed the cause of fire, and nor has he been examined by the respondent. Moreover, the said report Ex. C/13 merely mentions, without reference to any definite source of information, that the cause of fire "appears to be" on account of short circuit"*

37. The Arbitrator was supposed to adjudicate the controversy brought before him keeping in view the express terms of the contract between the parties.

38. The lease deed depicts that the parties had visualized various exigencies which may arise during subsistence of the term of lease. One such exigency was the damage caused to the leased property in an incident of fire. The parties to contract consequently agreed to place exclusive responsibility upon the lessor/respondent of protection of leased property, from fire, by getting it insured.

39. It was, therefore, for the claimant to get the entire leased premises consisting of building premises and all equipments, goods, furniture, fixtures and belongings in the lease premises adequately insured, during the lease tenure. Clause 13 of the Contract clearly reveals such intent of the parties.

40. In terms of Clause 13 of the agreement, a Fire and Perils Policy was availed of by the claimant to secure the lease premises from the Oriental Insurance Company. The claimant for securing the leased premises by way of insurance policy assessed its value @ Rs.5.00 Crores (Rs. 4.50 Crores for the leased premises and Rs. 50.00 Lakhs for fire fighting equipments).

41. The fire incident was duly reported to the insurance-company and its surveyor inspected the premises and ultimately submitted a report determining the losses caused in the fire incident as Rs.2.5 Crores. For determination of insurance claim, the value of leased premises was assessed at Rs.5.00 Crores. The claimant has accepted such determination of insurance claim and received the insurance amount without any protest.

42. The insurance claim was processed on the premise that it was a case of accidental fire due to short-circuit. All agencies that were entrusted

with the task of investigating the incident, have unanimously concluded that the fire occurred due to short-circuit. The claimant has also accepted this position. The claimant not only accepted the insurance claim, but also subrogated his rights to the insurance-company.

43. At the very outset, we may note that the surveyor of the insurance-company had noticed that the insurance policy was under-valued. The final survey report of insurer dated 27.05.2019 has been brought on record before the Arbitrator. It was duly accepted by the claimant. Clause 7 of this report dealt with the cause of loss to the insured premises which is reproduced hereinafter:-

“(7) Cause of Loss

Based on the survey and verifications of the affected site and documents provided, most proximate cause of loss is explained as below:

07.1) Insured's Statement

Statement of insured's officials is enclosed as Refer Annexure - 6. As per insured's officials, the cause of fire is electric short circuit.

07.2) Police Report

The insured reported the matter to local police station at Pataudi, Gurgaon (Annexure - 7). The police authority have booked the case vide General Diary No. 22 dated 17.10.2018 (Annexure – 8).

07.3) Fire Brigade Report

The insured have immediately informed the said incident to the fire brigade and whose service engineer rushed to affected site and control the fire.

Copy of Fire Tender Certificate is enclosed as Annexure - 9.

07.4) News paper

The news was widely covered by the print & electronic media (Annexure - 10). As reported by one of the media channel:

Quote

A major fire broke out at a garment warehouse in Haryana's Gurugram on Tuesday morning. The garment warehouse is located at Rewari road near Pataudi in Gurugram district of Haryana. At least six fire tenders have rushed to the spot to douse the fire.

07.5) Our Opinion

Based on the survey carried out and verification done, we are of the opinion that due to electric short-circuiting in some electric wire, sparks were generated, which caused fire. The fire was aggravated because of availability of combustible material stock nearby and due to which, the fire spread in the entire building shed, damaging It completely. It was verified that the cause of fire is not intentional.

As is clear from above, the cause of loss is sudden and accidental in nature and stands covered under the captioned policy of insurance and hence, there appears to be a liability on the underwriter's w.r.t. the captioned claim.”

44. Interestingly, while lodging the insurance claim, the claimant never asserted that either the fire incident was an outcome of negligence on part of the lessee nor was it claimed that there was any failure on their part in adhering to the safety norms. The conclusions drawn by the surveyor that cause of loss was sudden and accidental in nature and was not intentional have not only become final against the claimant but was actually accepted by the claimant who received the compensation claim assessed by the insurer.

45. Clause 13 of the contract otherwise provides that the responsibility to get the premises secured by way of insurance policy was that of the claimant. The valuer in his report has returned a specific finding

that the building premises was under-insured to the extent of 19.92% while the fire fighting system and other equipments were under-insured to the extent of 54.50%. These findings of the surveyor clearly show that the obligation under the contract on part of the claimant to get the leased premises adequately insured had not been discharged by the claimant. Any failure of such obligation under the contract had the obvious effect of reducing the insurance claim. This short fall/loss, flowing from under valuation of the leased premises for insurance, in terms of the contract, would have to fall upon the claimant.

46. Arbitrator, in his award has virtually tried to make up for this shortfall without appreciating that the contract required the claimant to secure the leased premises by getting it adequately insured. By awarding sum to compensate the losses arising from under valuation of the property, for the purposes of insurance, the Arbitrator has virtually re-written the contract which is not permissible. This aspect has been completely omitted from consideration by the Arbitrator even though the appellant had specifically asserted that securing the leased-out premise against the incident of fire by way of insurance was the exclusive obligation of the claimant.

47. At this stage, it would be worthwhile to refer to the findings of the insurer with regard to under valuation of leased premises, which are reproduced as under:-

9) Adequacy of Sum Insured

To check the Adequacy of Sum Insured, it is imperative to arrive at the Value at Risk as on the date of loss.

A Warehouse Shed

As per the policy, Available Sum Insured is Rs.4,50,00,000/- for Office Cum Godown and Boundary Walls.

The insured have provided us the layout plan of premises (Refer Annexure 5) and valuation report as on 29.04.2019 giving current day construction cost of warehouse (Annexure-11). The relevant detail are per "Valuation Report" are as under:

S. No.	Item	Unit	Qty	Rate	Amount
1.	<i>Shed</i>	<i>Sft</i>	<i>99500</i>	<i>400</i>	<i>3,98,00,000</i>
2.	<i>Boundary Wall</i>	<i>Rmtr</i>	<i>600</i>	<i>1900</i>	<i>11,40,000</i>
	<i>Cost of Mail Rolling gate</i>	<i>--</i>	<i>--</i>	<i>--</i>	<i>50,000</i>
	<i>Iron angle with Barded wire</i>	<i>--</i>	<i>--</i>	<i>--</i>	<i>50,000</i>
3.	<i>Parapet Waal, Fire safety room and canteen with parapet wal</i>	<i>Sft</i>	<i>3465</i>	<i>800</i>	<i>27,72,000</i>
	<i>Fire safety Room+ Toilet Block</i>	<i>Sft</i>	<i>350</i>	<i>500</i>	<i>1,75,000</i>
	<i>Canteen</i>	<i>Sft</i>	<i>2189</i>	<i>700</i>	<i>15,32,300</i>
4.	<i>Fire Fighting System</i>	<i>Cum</i>	<i>9247.2</i>	<i>500</i>	<i>46,23,600</i>
					<i>5,01,42,900</i>

Looking at the type of construction, we have considered Rs.450/- per sft as the present similar construction rate for shed and Rs. 6450/- per Rmt for boundary wall. The rate Analysis for boundary wall is attached as Annexure-12.

The captioned policy is on market value basis the construction of warehouse is 03 years old; hence we have applied 7.5% depreciation (2.5% per annum).

In support of construction year, the Insured have provided us the contractor bills and proof of payment (Annexure - 13).

In addition, the copies of balance sheets were obtained from insured & it was noted that the building was capitalized in 2014-15.

The building drawings were obtained & verified at the site.
Taking present market rates into consideration, the Value at Risk
is calculated as follows:

Sr. No.	Item	Unit	Qty.	Rate	Reinstatement Value (Rs.)	Depreciation		Market Value (Rs.)
						(%)	Amount (Rs.)	
1	Shed	Sft	1,02,295.50	450.00	4,60,32,975.00	7.50%	34,52,473.13	4,25,80,501.88
2	Boundary Wall	Rmtr	600.00	6450.00	38,70,000.00	7.50%	2,90,250.00	35,79,750.00
	Cost of Main Rolling Gate	-	-	--	60,000.00	7.50%	4500.00	55,500.00
	Iron Angle with Barded wire	-	600.00	100.00	65,000.00	7.50%	4875.00	60,125.00
3	Office	Sft	3465.00	1500.00	51,97,500.00	7.50%	3,89,812.50	48,07,687.50
	Fire safety Room + Toilet Block	Sft	350.00	1000.00	3,50,000.00	7.50%	26,250.00	3,23,750.00
	Canteen	Sft	2189.00	1200.00	26,26,800.00	7.50%	1,97,010.00	24,29,790.00
4	Water tanks, plumbing, sanitary & external services	LS			3,00,000.00	7.50%	22,500.00	2,77,500.00
5	External Paving/Road	Sft	25000	90.00	22,50,000.00	7.50%	1,68,750.00	20,81,250.00
TOTAL								5,61,95,854.38

Therefore,

Value at Risk

=

Rs.5,61,95,854

Sum Insured

=

Rs.4,50,00,000

Therefore,

Under Insurance

=

1 - 4,50,00,000

5,61,95,854

X 100

=

19.92%

B. Fire Fighting System

As per policy Available Sum Insured is Rs.50,00,000/- for Fire Extinguishers Appliances Installed in Godown.

The insured have provided us the current value of Fire Extinguishers Appliance as per Valuation Report based on CPWD rates (Annexure-14). The relevant detail is as follows:

Sr. No.	Item	Unit	Qty.	Rate	Amount
1	Fire Fighting System	Cum	9247.20	500	46,23,600.00
Total					46,23,600.00

As per CPWD, Plinth area rates (PAR 2012), the rate for Fire Fighting equipment with automatic sprinkler system & Fire Alarm system is Rs.1250/- per sqm as the present similar cost.

The captioned policy is on market value basis the construction of warehouse is 03 years old, hence we have applied 7.5% depreciation.

Based on the above, value at Risk is calculated as below:-

Sr. No.	Item	Unit	Qty.	Rate	Reinstatement Value (Rs.)	Depreciation		Market Value (Rs.)
						(%)	Amount (Rs.)	
1	Fire Fighting system with sprinkler system	Sqm	9503.48	750	71,27,612.88	7.5%	5,34,570.97	65,93,041.91
	Automatic Fire Alarm	Sqm	9503.48	500	47,51,741.92	7.5%	3,56,380.64	43,95,361.27
							TOTAL	1,09,88,403.18

Therefore,

Value at Risk = Rs.1,09,88,403

Sum Insured = Rs.50,00,000

Therefore,

Under Insurance = $\left[\frac{1 - 50,00,000}{1,09,88,403} \right] \times 100$
= 54.50 %

(10) Insured's Claim

The insured had initially submitted an estimate of Rs.53,81,0651/- later on the insured has submitted their estimate of loss for Rs.4,73,50,841/- as prepared by M/s Jindal Engineers & Contractors towards the captioned loss vide claim bill (Annexure – 15) and claim form (Annexure – 16) towards the captioned loss.

The summarized break-up of estimate of loss is as follows:-

Sr. No.	Description	Claimed (Rs.)
1	Civil Works	4,22,50,091
2	Fire Fighting Works	51,00,750

(11) Our Assessment of Loss

One assessment towards various heads is as under:-

A) Warehouse Shed

- The insured have claimed Rs. 4,22,50,091/- towards the cost of warehouse.
- We have recommended only those items of work with were found as damaged and have coverage under the policy of insurance.
- The captioned policy is issued on market value basis, the construction of warehouse is 03 years old; hence we have applied 7.5% depreciation (2.5% per annum).

Based on the above, our detailed assessment of loss towards the Warehouse Shed is enclosed as Annexure A and summarized summary of assessment is as under:-

Sr. No.	Description	Claimed	Recommended Before Depreciation	Recommended After Depreciation (Market Value) Rs.
1.	Civil Works	4,22,50,091/-	3,82,71,665	3,54,01,290

B) Fire Fighting System

- The insured have claimed Rs.51,00,750/- towards the cost of Fire Fighting System.
- We have recommended only those items which were found damaged as per our inspection and have coverage under the Policy of insurance.
- The captioned policy issued on market value basis the construction of warehouse is 03 years old. Hence, we have applied 7.5% depreciation.

Based on the above, our detailed assessment of loss towards the Fire Fighting System is enclosed as Annexure-B and summarized summary of assessment is as under:-

Sr. No.	Description	Claimed	Recommended Before Depreciation	Recommended After Depreciation (Market Value) Rs.
1.	Fire Fighting System	51,00,750/-	46,70,500/-	43,20,213/-

(12) Salvage

The damaged items constitute salvage value and for which the insured have provided us the 02 salvage quotations and highest quote @ Rs. 12/- per kg (Annexure - 17).

The list of salvage items was prepared and verified.

The salvaging process was Initiated by M/s Salvage Settlers Pvt. Ltd. in line with the CVC guidelines, and advertisements were given in the newspapers and e-auction conducted.

After bidding process, M/s Pradhan Associates was found to be the highest bidder and he had quoted for Rs.20.40 + GST @ 18%.
A total of 220.52 MT scrap sold to highest bidder @ Rs. 20.40/- per kg.

Scrap weight = 220.52 MT

Salvage Rate = Rs. 20.40 per kg (20400 per MT)

Salvage Value = Rs.44,98,608 (A)

Copy of salvage report sale invoice is enclosed as Annexure - 18.

In addition to above, there is still some scrap of structural steel members buries under debris of material like metal racks etc. belonging to tenant, which weight approx. 30 MT

Scrap weight (buries under debris) = 30 MT

Salvage Rate = Rs. 20.40 per kg (20400 per MT)

Salvage Value = Rs.6,12,000 (B)

Also, the quantity of Tor steel claimed in the floor slab claimed is 38.70 MT, which shall constitute salvage after breaking of floor slab.

Taking Rs. 5,000/- per MT as retrieval cost for obtaining the steel after breaking of concrete.

Net Cost of Tor Steel = Rs. 15,400 per MT

Scrap weight (of Tor steel) = 38.70 MT

Salvage Rate = Rs. 15,400 per MT

Salvage Value = Rs.5,95,980 (C)

Therefore,

Total Salvage Value (A + B + C) = **Rs. 57,06,588/-**

Note: The GST component has not been considered as the transaction is between insured & salvage buyer.

(13) Summary of Assessment

Based on the above assessment, Salvage, Applicable Excess & Disposal fee paid by insured, the summary of assessment is as under:

SUMMARY OF ASSESSMENT											
Sr. No.	Description	Claimed	Recommended before depreciation	Dep.	Recommended after depreciation (Market Value)	Salavage	Assessed	Debris removal @ 1%	Net Assessment	U.I. %	Net of U.I.
1	Civil Works	4,22,50,091	3,82,71,665	7.50%	3,54,01,290	48,06,866	3,05,94,424	3,05,944	3,09,00,368	19.92%	2,47,44,113
2	Fire Fighting Works	51,00,750	46,70,500	7.50%	43,20,213	8,99,722	34,20,491	34,205	34,54,696	54.50%	15,71,974
	Total=	4,73,50,841	4,29,42,165		3,97,21,503	57,06,588	3,40,14,915		3,43,55,064		2,63,16,087
									Less : Excess 5%		13,15,804
									Net Assured Loss=		2,50,00,282
									Say =		2,50,00,000

(14) Salvage Disposal Fee

After the salvage disposal, the salvage settler has issued a salvage disposal fee bill vide invoices no. SS/609/18-19 dated 21.02.2019 & SS/19-20/007 dated 02.04.2019 in the name of insured and the salvage disposal fee paid by the insured.

Hence, we have considered the salvage disposal fee. @ Rs. 2,39,404/- without GST in our assessment.

Therefore,

Salvage Disposal Fee = Rs. 2,39,404/-

Therefore,

*Net Liability = Rs. (2,50,00,000 + 2,39,404)
= Rs. 2,52,39,404*

The above amount of Rs. 2,52,39,404/- (Rupees Two Crores Fifty Two Lacs Thirty Nine Thousand Four Hundred and Four Only) is the net liability of the underwriters, if accepted."

The insured have given consent is enclosed as Annexure - 19.

This final survey report is being submitted without prejudice and is subject to the terms & conditions of the policy of insurance."

48. Going by the terms of the contract i.e. lease deed, any loss or damage to the leased premises on account of fire incident had to be made good from the proceeds of insurance claim against the policy availed of by the claimant. Any shortfall on account of award of lesser amount towards insurance claim was a matter between the claimant and its insurer. Such shortfall could not have been made the basis for a claim against the appellant as per Clause 13 of the lease deed.

49. Even if such a claim could be raised against the appellant, notwithstanding Clause 13 of the lease deed, it will have to be seen as to whether it could be allowed on the basis of material placed on record. For such purposes also, the provisions of the lease deed will have to be adhered to.

50. The Arbitrator has accepted the claim of respondent – claimant for compensation relying upon Clause 11 (v) of the Lease Deed/Contract, which reads as under:-

“That the Lessor shall carry out all structural repairs, Leakage and seepage at his own cost in respect of the Leased Premises during the Lease Period, within 2 (TWO) week, after the same has been intimated in writing by the Lessee. However, it is clarified that any material damage/destruction caused to the Leased Premises attributed to any act, of the Lessee or its employees, servants, agents, shall be repaired and rectified by the Lessee alone at its sole costs and expenses.”

51. After coming to the conclusion that fire incident was due to negligence of the appellant, the Arbitrator determined the liability on the strength of following reasons:-

“(e) As per the report Ex. RW2/2 of Protocol Insurance Surveyors & Loss Accessors submitted to the insurance of the claimant namely Oriental Insurance Company, the claimant was liable to be reimbursed only to the extent of Rs. 3,54,01,290/- against the amount of Rs. 4,22,50,091/- claimed by the insured claimant in respect of the warehouse shed and an amount of Rs. 43,20,213/- against the amount of Rs. 51,00,750/-sought by the claimant in respect of loss to fire fighting system but out of which recommended amounts, a total amount of Rs. 2,52,39,404/- only was reimbursed to the claimant vide discharge certificates Ex. RW2/3 to Ex. RW2/5 out of the insured amount of Rs. 4.5 Crores in respect of the warehouse shed and Rs. 50 Lakhs qua the fire fighting system, totalling Rs. 5 Crores.

(f) (i) Qua financial loss suffered by the claimant to the leased premises due to the fire incident in question the above named Ramesh Chander, CW1 has testified that the total cost of construction of the leased premises had amounted to Rs. 8.5 crores.

In this context, the claimant has tendered as Ex. C/8 the confirmation letter dated 28/05/2015 issued by Chauhan Dhamija and Associates, Chartered Accountants confirming that as per information/details provided by the claimant, an amount of Rs. 8,43,51,568/-was incurred for the construction of the warehouse in question which however merely describes, without any supporting documents, that the leased premises in question were constructed at a cost of Rs. 8,43,51,568/-"as per information provided by M/s Dayanand warehouse". However, in the absence of documentary corroboration of expenses incurred statedly to the extent of Rs. 8,43,51,568/, the said confirmation letter and the testimony of CWI Ramesh Chand regarding incurring of expenses to the extent detailed above cannot be considered to be conclusive, more so when insurance policy Ex. C/2 dated 28/05/2018 mentions that the leased premises were insured only for an amount of Rs. 4.5 Crore, whereas the fire hydrant system was insured for Rs. 50 Lakhs, thus totalling Rs. 5 Crores in all."

52. The basis to allow the claim in favour of the respondent is the above analysis, as per which the cost of construction was certified to be Rs.8.43 Crores approximately, by the chartered accountant.

53. Clause 11 (v), however, restricted the liability of lessee to repair/rectify the damage/destruction caused to the leased premises, attributed to any act of lessee/appellant or its employees, servants, agents or to reimburse such costs incurred. For such purposes, the claimant had to furnish proof of the amount spent towards repair/rectification of the leased premises in the fire incident apart from establishing the fact that damage to leased premises in the fire incident was on account of appellant or its agents.

54. A careful scrutiny of the materials placed on record would reveal that the only material in support of such claim is the certificate of the Chartered Accountant certifying the value of the warehouse/leased premises as well as the documents to show the amount of loan allegedly availed for construction of the leased out premises. No evidence has been placed on record by the claimant to demonstrate as to what was the amount actually spent towards repair/restoration of the leased premises after the fire incident. Merely stating or certifying the cost incurred towards construction of the leased premises would not be sufficient to establish a claim under Clause 11 (v) of the Lease Deed/Contract.

55. In order to satisfactorily make out a case for compensation under Clause 11 (v) of the Contract, the claimant was required to furnish evidence of actual amount spent towards repair and rectification of the leased premises. In its absence, no claim towards cost of repair/restoration could have otherwise been accessed and allowed.

56. Merely stating that some loan etc. had been availed by the lessor from the bank also after the fire incident, allegedly for restoration of leased premises, would not amount to proof/evidence of the actual cost of repair/rectification, which alone could be claimed by the lessor from the appellant under Clause 11 (v) of the lease deed.

57. It is apt to state that the Arbitrator had to decide the claim on the basis of specific terms of the contract entered into between the parties. It had no authority to allow the claim contrary to the express terms of the contract or to re-invent the contract itself.

58. The Arbitrator could not have assumed the fire incident to have been caused due to negligence of the appellant's employees, by dislodging admitted evidence of short circuit being the cause of fire incident, when the claimant/respondent had acquiesced to such determination by his own insurer and had subrogated his rights in favour of the insurance company. The police report, the report of fire brigade as well as the report of the surveyor of lessor's insurer categorically found the incident to be accidental in nature and was not found deliberate. All such materials could not have been set at naught by the Arbitrator while holding the incident to have been caused due to negligence of the appellant.

59. It is otherwise admitted that even the appellant suffered huge losses in the form of destruction of stored material to the tune of nearly Rs.120 Crores. Merely because the appellant had its stock adequately insured in terms of the contract and its insurer reimbursed such amount would not lead to an inference that the damage to the leased premises in the fire incident was due to the appellant or its agents/employees.

60. Curiously, the Arbitrator instead of adjudicating the claim of the respondent in accordance with the terms of lease deed/contract, proceeded to make out a new case which was not even the claim set up before him. This would be reflected from the fact that the Arbitrator attributed the cause for destruction of leased premises to the raising of four unauthorized floors providing long span racks for storage in the warehouse which rendered the fire fighting system ineffective. The

arbitrator has held that though lessee is entitled to carry out interior work and to do civil changes but it does not extend to raising of additional floors which rendered the fire fighting system ineffective.

61. The Arbitrator has held as under in Para 27 (b) & (c) of his award:-

“27. XXX XXXX XXXX XXXX XXXXX

(b) No doubt clause 12 (vii) of the lease deed Ex. C/9 dated 20/04/2016 permits the respondent to do all civil changes but the said clause confines such civil changes only to the extent of installation of its machinery by the respondent in the leased premises and therefore raising of four floors i.e.G+3 (in addition to providing long span racks with 4 tier storage) was certainly gross violation of clause 12 (vii) of the lease deed, which height of four floors thus explains the ineffectiveness of the fire hydrant system which. was provided only for meeting the contingency of fire fighting arrangement for ground floor construction and would have not been effective for such 4 floor high structure.

(c) Such 4 floor high structure as adverted to above would thus invite liability on the respondent as per clause 11 (v) of the lease deed Ex. C/9 dated 20/04/2016 which reads as under:-

“That the lessor shall carryout all structural repairs, leakage and seepage at his own cost in respect of the leased premises during the lease period, within 2 (TWO week, after the same has been intimated in writing by the lessee. However, it is clarified that any material damage/destruction caused to the leased premises attributed to any act, of the lessee or its employees, servants. agents, shall be repaired and rectified by the lessee alone at its sole costs and expenses.”

62. Learned senior counsel for the appellant has taken us through the claim petition of the respondent, in its entirety, to show that no such claim was ever raised by the claimant-respondent.

63. We have perused the statement of claim of claimant-respondent which is Annexure A/8 (page 251 to 273 of the paper book) of this appeal. The contents of statement of claim are not disputed. We find substance in the appellant's contention that the claimant-respondent had not even alleged that any unauthorized floors were raised in the leased premises by the appellant. We also find substance in the appellant's contention that in the absence of any such plea taken by the claimant-respondent in its statement of claim, the appellants had no occasion or opportunity to controvert such claim of the respondent.

64. Although during the course of arguments before us certain photographs were produced to show that in fact no additional floors were erected in the leased premises and the storage of goods were only to optimize the utilization of space, by placing racks, which is the normal practice of storage in the warehouse, but we refrain from commenting upon such factual aspects when it is noticed that such facts were never pleaded/set up by the claimant before the arbitrator. The Arbitrator has, therefore, made out a new case to grant relief notwithstanding the fact that the appellants never had an opportunity to controvert it or present its version on this aspect. The finding of the Arbitrator, on this aspect, has thus caused denial of opportunity to the appellant to contest the claim and resulted in causing incapacity for the appellant to contest the claim,

which is one of the recognized grounds under Section 34 of the Act of 1996 to interfere with the award.

65. The Arbitrator in Para 28 of his award has virtually rejected all admitted material available on record with regard to the fire incident in question, including the surveyor's report which had attained finality qua the claimant. Evidence which indicated that attempts were made by the appellant's employees to douse the fire have been rejected by the Arbitrator by going beyond the scope of its jurisdiction. Para 28 of the award is reproduced hereinafter:-

“28. (a) *It may be recalled here that CW1 Ramesh Chander has testified that a water storage tank having capacity of 1.5 lakh litres of water, with two pumps, one of which was an electric pump and the other one was a diesel pump were installed the warehouse in question for the fire hydrant system in which context they had also obtained NOC Ex. C/10 dated 05/07/2018 valid up to 04/07/2019 from the fire department. The said aspect of his testimony goes unchallenged during his cross-examination. Furthermore, RW1 Gaurav Kumar authorized representative of the respondent company has admitted during his cross-examination that fire hydrant system stood installed in the premises in question and was in working condition.*

(b) *It may also be recalled that the above named Gaurav Kumar RW1 has deposed in para no. 10 of his affidavit that Shri Om Parkash, warehouse in charge of the respondent company along with Mr. Naresh Kumar and Vinod Kumar had been present at the premises in question at the time of fire incident in question around 10:20 PM on 16/10/2018 and had made attempts to extinguish the fire by using hand held fire extinguisher present in the said premises and had also assisted the other official of the respondent company to acuate therefrom.*

(c) *Om Parkash above named who had lodged the fire incident report Ex. C/11 dated 17/10/2018 with the police had mentioned therein that he and his associate workers had attempted to douse the fire with the help of one fire extinguishment cylinder but they could not use the second one and were unsuccessful due to intensity of fire and they had thus all come out of the godown area and yet the above referred report Ex. RW1/2 submitted by Associated Surveyors & Consultants through Tata AIG General Insurance Company (insurer of the respondent) mentions in clause 8.05 thereof that as per information furnished by employees of the respondent company, security guards and contractual workers (none of whom is named in the said report nor has any of them been examined by the respondent during the arbitral proceedings in hand all the workers/employees present there had attempted to control the fire with the help of in house fire fighting arrangement by connecting the nozzle of the fire hose etc. because the seat of fire was at a height of 24 feet. This unsubstantiated version introduced by the above named surveyor in its report dated 28/06/2019 regarding the fire incident dated 16/10/2018 does not therefore inspire any confidence.*

(d) *It will also be pertinent to recall that a water storage tank, having capacity of 1.5 lakh litres of water, with two pumps, one of which was an electric pump and the other one was a diesel pump were installed in the warehouse in question for the fire hydrant system in which context they had also obtained NOC Ex. C/10 dated 05/07/2018 which was valid up to 04/07/2019 from the fire department as so testified by CW1 Ramesh Chand and yet no evidence worth the name has been led by the respondent to establish that any of its employees was specially trained/familiarized by it with use of fire hydrant system water nozzle from above referred electric/diesel pumps, and nor has any of them been examined by it to establish that any of them had in fact even started the electric or diesel pump for dousing the fire for which reason also the above referred version introduced by the above named surveyor in its report Ex. RW1/2 cannot be considered to have any credence. In*

these circumstances, observations of the Punjab and Haryana High Court in the case titled M/s Amartex Industries Ltd and another versus Aakash Education Services Ltd arising out of RSA No. 1387 of 2021(O&M) decided on 28/01/2022 filed by the counsel for the respondent are not attracted to the controversy in hand and rather the observations of the Hon'ble Supreme Court in the case titled Vohra Sadikbhai Rajakbhai and others versus State of Gujrat and others reported in 2016 (3) RCR (civil) 107 cited by the learned counsel for the claimant would apply. The said judgment itself relies on Rylands versus Fletcher, (1868) LR3 HL. 330, wherein it was held inter-alia as under:-

"The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so is prima facie answerable for all the damage which is the natural consequence of its escape."

(e) *It may, at the cost of repetition, be pointed out that in the case in hand, the respondent in utter disregard of safety norms, erected four floors i.e. G+3 for the storage/stacking of stocks, in addition to long span racks with 4 tier storage. The total floor area covered by this section was thus 33110 square feet (approx.) as so mentioned in clause 7.04.1 of the report Ex.RW1/2 of Associated Surveyors & Consultants submitted to the insurer of the respondent viz Tata AIG General Insurance Company to which height the water could not have been pumped as the pump was meant for ground floor building only as which was constructed as per the sanctioned site plan."*

66. The finding of the Arbitrator that fire fighting equipments were not put to use or that trained staff for fire fighting was not employed by the appellant are all self imagined pleas deployed by the Arbitrator to allow the

claim even though such pleas never formed the basis of claim set up by the claimant/respondent.

67. It is well settled that the scope of exercise of jurisdiction under Section 34 of the Act of 1996 is narrow and is dependent upon exigencies enumerated therein. Section 34 of the Act of 1996 is reproduced hereinafter:-

“34. Application for setting aside arbitral award.

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3). (2) An arbitral award may be set aside by the Court only if

(a) the party making the application 1 [establishes on the basis of the record of the arbitral tribunal that]—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate,

or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1. —For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.”

68. We may also refer to Section 28 (3) of the Act of 1996 which provides as under:-

“Rules applicable to substance of dispute.—(1) Where the place of arbitration is situated in India:

1 and 2 XXXXXXXX

(3) While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.”

69. The possible grounds on which an award can be interfered with under Section 34 of the Act of 1996 includes the ground where the party making application under Section 34 of the Act of 1996, furnishes proof of some incapacity; was unable to present his case; or the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or contains decision on matters beyond the scope

of submission to arbitration. These grounds are in addition to the otherwise well accepted ground of it being in conflict with Public Policy of India.

70. In **Associate Builders vs. Delhi Development Authority 2015 (3) SCC 49**, the Supreme Court referred to an earlier judgment of the Court in **DDA vs. R.S. Sharma and Company (2008) 13 SCC 80**, para 21 to observe as under:-

“In Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445, this Court held:

"14. The High Court did not have the benefit of the principles laid down in Saw Pipes [(2003) 5 SCC 705] , and had proceeded on the assumption that award cannot be interfered with even if it was contrary to the terms of the contract. It went to the extent of holding that contract terms cannot even be looked into for examining the correctness of the award. This Court in Saw Pipes [(2003) 5 SCC 705] has made it clear that it is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India."

71. The Court cautioned on the limits on power of Court to interfere with the arbitral award under various heads and restricted it to Public Policy of India including (I) Fundamental Policy of Indian Law consisting of compliance with statutes and judicial precedents; need for judicial approach; natural justice compliance and; wednesbury reasonableness; (II) Interest of India; (III) Justice or Morality and (IV) patent illegality in the nature of contravention of substantive law of India; contravention of Act of 1996 and contravention of the terms of the contract.

72. The principles laid down in Associate Builder's case (supra) has been reiterated in various judgments (i) Ssangyong Engg and Construction Company Ltd. Vs. National Highway Authority of India (2019) 15 SCC 131, Unibros vs. All India Radio 2023 SCC OnLine SC 1366, PSASical Terminals Private Limited vs. Board of Trustees of VO Chidambranar Port Trust Tuticorn and others (2023) 15 SCC 781, Delhi Metro Rail Corporation Limited vs. Delhi Airport Metro Express Pvt. Ltd. (2024) 6 SCC 357, PAM Developments Private Limited vs. State of West Bengal (2024) 10 SCC 715, Batliboi Environmental Engineering Limited vs. Hindustan Petroleum Corporation Ltd. (2024) 2 SCC 375, Sepco Electric Power Construction Corporation vs. GMR Kamalanga Energy Ltd. 2025 SCC OnLine SC 2088, Larsen and Toubro Limited vs. Puri Construction Pvt. Ltd. And others 2025 SCC OnLine SCC 830, UHIL Power Company Ltd. Vs. State of Himachal Pradesh (2024) 4 SCC 116, National Highway Authority of India vs. Hindustan Construction Company Ltd. (2024) 6 SCC 809, Haryana Tourism Ltd. Vs. Kandhari Beverages (2022) 3 SCC 237, Consolidated Construction Consortium vs. Software Technology Parks of India (2025) 7 SCC 757 and C & C Construction Ltd. Vs. IRCON International Pvt. Ltd. (2025) 4 SCC 234.

73. Where the Arbitrator's award is found to be contrary to the express terms of the contract or where the award suffers from patent illegality it would be lawful for the Court to interfere with it in exercise of its powers under Section 34 of the Act of 1996.

74. In the facts of the present case, the lease deed had fastened liability upon the claimant/respondent to get the leased premises insured at all times during the existence of lease. The records reveal that this responsibility was not discharged by the claimant who had, contrary to the terms of the lease deed, under insured the leased premises. This led to a lesser amount being awarded by the insurance company to the claimant. The Arbitrator has completely ignored this crucial part of the contract between the parties and has referred to irrelevant facts to allow the claim which suffers from patent illegality.

75. The award of Arbitrator since proceeds on grounds which was not even the pleaded case of the respondent as such, the appellant has been denied opportunity of contest in the matter and has suffered incapacity, which is one of the grounds on which the Court was required to interfere.

76. The other limb of arbitrator's award is the acceptance of claim of rent till the leased premises was let out to someone else.

77. Clause 14 of the Contract, provided for termination of lease deed upon giving of three months prior notice, without assigning any reason whatsoever. Clause 14 is reproduced :-

“14. TERMINATION:

i) The Lessee shall have the sole right to terminate the Lease by giving 3 (Three) months prior written notice to the Lessor without assigning any reason whatsoever. The Lessee shall, on the expiry or earlier determination of the Lease, be entitled to remove from the Leased Premises, all its furniture and fixtures, equipment and/ or appliances that may have been brought in and/or installed therein by the Lessee.

- ii) *The Lessor shall be locked-in for the entire term of the Lease.*
- iii) *This Deed will automatically come to an end on the expiry date or early termination as written above, or on expiry of the extensions hereof.*
- iv) *Upon the expiry/ termination/ early determination of the Lease, the Lessee shall forthwith remove itself and its staff together with its furniture, fixtures and belongings so as to vacate the Leased Premises, for the Lessor to occupy the Leased Premises, subject to the terms and conditions mentioned herein.*
- v) *If any due to the effect of any statutory act of the authorities the Leased Premises are demolished either partly or otherwise or the statutory act affects the said business of the Lessee in whatsoever manner then the Lessee shall notwithstanding the contents herein contained be entitled to terminate the Lease with a notice of one month to the Lessor and the Lessor shall be obliged to refund the security deposit forthwith.*
- vi) *The Interest Free Security Deposit shall be refundable by the Lessor to the Lessee, simultaneously at the time of handing over of the vacant and peaceful physical possession of the Leased Premises by the Lessee to the Lessor.*
- vii) *If the Lease Deed is terminated because of default Clause no. 15 then the Lessor shall be obliged to refund the security deposit as per the Clause no. 5.*
- viii) *After the expiry / termination of Lease Deed, Lessor to give Lessee 30 (thirty) days rent free period to vacate the Lease Premises.”*

78. In terms of Clause 14, a notice for termination was served upon the lessor on 18.10.2019. Rent for three months' notice period was

admittedly paid to the claimant. In such circumstances, question arises as to whether the Arbitrator could fasten liability upon the appellant to continue to pay rent upon the appellant till the leased premises was let out to someone else after its restoration?

79. There is no provision in the lease deed/Contract providing for continuation of tenancy despite service of termination notice and payment of rent for three months. Service of notice of termination as also the payment of rent for the notice period in terms of Clause 14 of lease deed upon claimant is also undisputed. The other question that arises for our consideration is as to whether the arbitrator could unilaterally modify the express terms of the contract and award rent despite the termination of tenancy in terms of Clause 14?

80. Law is settled that Arbitrator is bound by the terms of contract and has no authority to rewrite it, or to add a stipulation which otherwise does not exist in the contract. This is so as the Arbitrator has to enforce the contract and not to substitute it by a clause which has not been agreed upon by the parties.

81. Appellant is the lessee and in terms of Clause 14 of the Lease Deed had the authority under the contract to terminate the lease in the manner stipulated. Once, such right has been exercised by the lessee in accordance with the Lease Deed it was impermissible for the Arbitrator to have allowed payment of rent till a new tenant was inducted in the premises.

82. For allowing payment of rent till a new tenant was inducted, to the Claimant, the Arbitrator has given following reasons:-

“ii) Learned counsel for the respondent has argued that even after the fire incident in question dated 16/10/2018, the respondent had, purely on humanitarian grounds, continued paying rental upto September 2019 to the claimant in view of various e-mails exchanged between the parties hereto. However, the contention of the respondent having continued payment of rental to the claimant upto September 2019 on "humanitarian grounds" even after the fire incident in question dated 16/10/2018 tantamount to self praise where none is warranted keeping in view the fact that the said fire incident had occurred due to gross negligence on the part of the respondent as discussed in detail in my finding under issue nos. 2, 3 & 4 above and therefore observations in the case titled Onida Finance Ltd versus Malini Khanna reported in Manu/DE/2441/2002 of the Delhi High Court cited on behalf of the respondent are not attracted to the facts of the case in hand.

(iii) It may also be recalled here that it is the own case of the respondent company that it had terminated the lease deed Ex. C/9 vide notice Ex. RW1/9. dated 17/07/2019 w.e.f. 18/10/2019 onwards, statedly owing to "business contingencies" which termination has been held by me in my finding under issue numbers 2 to 4 above to be unjustified in as much as the fire incident in question dated 16/10/2018 had taken place in the leased premises on account of gross negligence on the part of the respondent and the respondent was liable to repair/rectify at its own cost and expense the damage to the leased premises by virtue of clause 11 (v) of the lease deed Ex. C/9 dated 20/04/2016 but instead of doing so, the respondent chose to terminate the lease vide notice Ex. C/14-RW1/9 dated 17/07/2019 effective from 18/10/2019 thereby resulting in loss of rental income to the claimant from 18/10/2019 onwards till reconstruction of the fresh building over the same land after incurring further expenses to the tune of Rs. 5 Crores taken as loan for the second time from PNB and leasing out the same to M/s Pathways Retail Pvt Ltd vide fresh

lease deed Ex. C/30-A dated 12/07/2021 effective from 15/08/2021 @ Rs. 12 Lakhs per month, which loss of rental income comes to Rs. 2,60,46,520/- calculate @ 11,57,625/- which was admittedly the amount being paid to the claimant by the respondent and which amount is thus recoverable by the claimant.”

83. It is well settled that an Arbitrator lacks the power to deviate from, or to re-interpret the terms of the Contract while making an Award. The Award must be within the parameters of the Agreement entered into between the parties.

84. In *Sepco Electric Power Construction Corporation vs. GMR Kamalanga Energy Ltd., 2025 SCC OnLine SC 2088* the Supreme Court of India has elaborately examined the scope of powers of Arbitrator to hold as under in paragraph Nos.91 to 96:-

“91. Numerous precedents laid down by this Court have often emphasised that an arbitrator lacks the power to deviate from or to reinterpret the terms of the contract while making an award. The awards must be within the parameters of the agreement entered between the parties.

92. This Court in Saw Pipes (supra) has reiterated that any deviation from the mandate of Section 28 Sub-Section 3 of the 1996 Act is a valid ground for lambasting an arbitral award. Commenting on the duty of the arbitrators, this Court observed as follows:

“73. It is to be reiterated that it is the primary duty of the arbitrators to enforce a promise which the parties have made and to uphold the sanctity of the contract which forms the basis of the civilized society and also the jurisdiction of the arbitrators. Hence, this part of the award passed by the Arbitral Tribunal granting interest on the amount deducted by the appellant from the bills payable to the respondent is against the terms of the contract and is, therefore, violative of Section 28(3) of the Act.”

93. *To substantiate that the contract is paramount to the working, scope, and interpretation for the purpose of an award by the arbitrator, a reference may be made to another 3-Judge Bench decision in South East Asia Marine Engineering and Constructions Limited v. Oil India Limited⁶⁰. Therein, while rejecting the challenge to setting aside of the arbitral award, this Court made the following observations:*

“28. In this context, the interpretation of Clause 23 of the contract by the Arbitral Tribunal, to provide a wide interpretation cannot be accepted, as the thumb rule of interpretation is that the document forming a written contract should be read as a whole and so far as possible as mutually explanatory. In the case at hand, this basic rule was ignored by the Tribunal while interpreting the clause.

29. The contract was entered into between the parties in furtherance of a tender issued by the respondent herein. After considering the tender bids, the appellant issued a letter of intent. In furtherance of the letter of intent, the contract (Contract No. CCO/FC/0040/95) was for drilling oil wells and auxiliary operations. It is important to note that the contract price was payable to the “contractor” for full and proper performance of its contractual obligations. Further, Clauses 14.7 and 14.11 of the contract state that the rates, terms and conditions were to be in force until the completion or abandonment of the last well being drilled.

30. From the aforesaid discussion, it can be said that the contract was based on a fixed rate. The party, before entering the tender process, entered the contract after mitigating the risk of such an increase. If the purpose of the tender was to limit the risks of price variations, then the interpretation placed by the Arbitral Tribunal cannot be said to be possible one, as it would completely defeat the explicit wordings and purpose of the contract. There is no gainsaying that there will be price fluctuations which a prudent contractor would have taken into margin, while bidding in the tender. Such price fluctuations cannot be brought under Clause 23 unless specific language points to the inclusion.

31. The interpretation of the Arbitral Tribunal to expand the meaning of Clause 23 to include change in rate of HSD is not a possible interpretation of this contract, as the appellant did not introduce any evidence which proves the same.”

94. Further clarification of this proposition is brought about through observations of this Court in a further decision by 3-Judge Bench in Union of India v. Bharat Enterprise⁶¹ wherein it was underlined that the existence and powers of an arbitrator are a creature of the agreement between the parties, and it is the terms of the contract which serves as a fundamental basis for the procedure to be adopted by the arbitral tribunal. Therefore, the concerned arbitrator is restricted to the terms of the contract thereof and cannot go outside its scope or what is, per se, specified. In words of the Bench, “A disregard of the specific provisions of the contract would incur wrath of the Award being imperiled. This position cannot be in the region of dispute.”

95. In order to achieve an enhanced understanding apropos the scope of the powers and jurisdiction of an arbitrator, a reference may also be made to a decision of this Court in Associated Engineering (supra), which was determined vis-à-vis Section 30 of the Arbitration Act, 1940 wherein, it was observed that:

“24. The arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bounds of the contract, he has acted without jurisdiction. But if he has remained inside the parameters of the contract and has construed the provisions of the contract, his award cannot be interfered with unless he has given reasons for the award disclosing an error apparent on the face of it.

25. An arbitrator who acts in manifest disregard of the contract acts without jurisdiction. His authority is derived from the contract and is governed by the Arbitration Act which embodies principles derived from a specialised branch of the law of agency (see Mustill and Boyd's Commercial Arbitration, 2nd edn., p. 641).

He commits misconduct if by his award he decides matters excluded by the agreement (see Halsbury's Laws of England, Volume II, 4th edn., para 622). A deliberate departure from contract amounts to not only manifest disregard of his authority or a misconduct on his part, but it may tantamount to a mala fide action. A conscious disregard of the law or the provisions of the contract from which he has derived his authority vitiates the award.

26. *A dispute as to the jurisdiction of the arbitrator is not a dispute within the award, but one which has to be decided outside the award. An umpire or arbitrator cannot widen his jurisdiction by deciding a question not referred to him by the parties or by deciding a question otherwise than in accordance with the contract. He cannot say that he does not care what the contract says. He is bound by it. It must bear his decision. He cannot travel outside its bounds. If he exceeded his jurisdiction by so doing, his award would be liable to be set aside. As stated by Lord Parmoor: [Attorney-General for Manitoba v. Kelly, [1922] 1 A.C. 268, 276: [1922] All ER Rep 69] (AC p. 276)*

'It would be impossible to allow an umpire to arrogate to himself jurisdiction over a question which, on the true construction of the submission, was not referred to him. An umpire cannot widen the area of his jurisdiction by holding, contrary to the fact, that the matter which he affects to decide is within the submission of the parties.'

Evidence of matters not appearing on the face of the award would be admissible to decide whether the arbitrator travelled outside the bounds of the contract and thus exceeded his jurisdiction. In order to see what the jurisdiction of the arbitrator is, it is open to the court to see what dispute was submitted to him. If that is not clear from the award, it is open to the court to have recourse to outside sources. The court can look at the affidavits and pleadings of parties; the court can look at the agreement itself. Bunge & Co. v. Dewar and Webb [(1921) 8 Ll L Rep 436].

27. *If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a*

jurisdictional error. Such error going to his jurisdiction can be established by looking into material outside the award. Extrinsic evidence is admissible in such cases because the dispute is not something which arises under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. The dispute as to jurisdiction is a matter which is outside the award or outside whatever may be said about it in the award.

The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is that the nature of the dispute is something which has to be determined outside and independent of what appears in the award. Such jurisdictional error needs to be proved by evidence extrinsic to the award. [See Alopri Parshad & Sons, Ltd. v. Union of India [(1960) 2 SCR 793 : AIR 1960 SC 588]; Bunge & Co. v. Dewar & Webb [(1921) 8 Ll L Rep 436]; Christopher Brown Ltd. v. Genossenschaft Oesterreichischer [[1954] 1 Q.B. 8 : [1953] 3 WLR 689]; Rex v. Fulham [[1951] 2 Q.B. 1 : [1951] 1 All ER 482]; Falkingham v. Victorian Railways Commission [[1900] A.C. 452 : 69 LJ PC 89]; Rex v. All Saints, Southampton [(1828) 7 B&C 785 : 1 Man & Rey KB 663]; Laing (James), Son & Co. (M/C) Ltd. v. Eastcheap Dried Fruit Co. [(1961) 1 Ll L Rep 142, 145]; Dalmia Dairy Industries Ltd. v. National Bank of Pakistan [(1978) 2 Ll L Rep 223]; Heyman v. Darwins Ltd. [[1942] A.C. 356 : [1942] 1 All ER 337]; Union of India v. Kishorilal Gupta & Bros. [AIR 1959 SC 1362 : (1960) 1 SCR 493]; Renuagar Power Co. Ltd v. General Electric Company [(1984) 4 SCC 679 : (1985) 1 SCR 432]; Jivarajbhai v. Chintamanrao [(1964) 5 SCR 480 : AIR 1965 SC 214]; Gobardhan Das v. Lachhmi Ram [(1954) 1 SCC 566 : AIR 1954 SC 689, 692]; Thawardas Pherumal v. Union of India [(1955) 1 SCC 372 : (1955) 2 SCR 48 : AIR 1955 SC 468]; Omanhene Kobina Foli v. Chief Obeng Akessee [AIR 1934 PC 185, 188: 40 MLW 138]; F.R. Absalom, Ltd. v. Great Western (London) Garden Village Society, Limited [[1933] A.C. 592 : [1933] All ER Rep 616] and M. Golodetz v. Schrier [(1947) 80 Ll L Rep 647].]”

96. *Examining the principles involved, a reference to decisions under the Arbitration Act, 1940, may also be apprised through the*

decision of a 3-Judge Bench of this Court in Allen Berry and Co. Pvt. Ltd. v. Union of India, New Delhi⁶² wherein this Court considered the proper scope of judicial review of arbitral awards and iterated that a court has the right to review documents that are specifically included in an award while reviewing it. However, as also observed in some cases, the courts, especially in the United Kingdom, have travelled farther and set aside the awards in which the contracts have merely been referred in passing, and apparently were incorrectly incorporated, forming the foundation of a verboten award.”

85. Viewed in light of the specific provision of the Contract i.e., Clause 14 which confers right on the lessee to terminate the tenancy on three months’ notice and in view of the admitted factual position that such notice along with three months’ rent was actually given/paid it would be difficult to sustain the Arbitrator’s award of awarding rent to the Claimant beyond the termination of tenancy as per Clause 14.

86. We are, therefore, of the considered opinion that the Arbitrator could not have allowed payment of rent for the period post termination of tenancy vide Clause 14. No right could have been created in the Claimant to continue to receive rent till the leased premises was let out to someone else.

87. The Commercial Court, Gurugram while adjudicating the objection of the appellant under Section 34 of the Act of 1996 has failed to advert to the express terms of contract which gave unencumbered right to the lessee to terminate the tenancy by adhering to Clause 14 of the Contract. The Court has also failed to appreciate that by allowing rent beyond the termination of tenancy, the Arbitrator has not only gone against the express

terms of the Contract but has virtually re-written the Contract which was beyond the jurisdiction of the Arbitrator.

88. The Commercial Court while rejecting the objection of appellant under Section 34 of the Act of 1996 has, therefore, failed to exercise jurisdiction vested in it. Such failure, in our considered view, is liable to be corrected by us under Section 37 of the Act of 1996.

89. In view of the our analysis aforesaid, we come to the following conclusions:-

CONCLUSIONS:

- (i) By virtue of Clause 13 of the Lease Deed, it was the obligation of the claimant/respondent to secure the leased premises in an incident of fire by adequately availing an insurance policy;
- (ii) The claimant had availed of an insurance policy and for the fire incident lodged a claim which was allowed by its insurer and a sum of Rs. 2,52,39,404/- was paid to him;
- (iii) In case the actual losses in the fire incident were more than the awarded claim, then the claimant could have litigated for higher damages against its insurer. Moreover, any reduction in the insurance claim due to under valuation of the leased premises had to be suffered by the claimant himself;
- (iv) Onus lay on the claimant to establish actual losses in the fire incident in order to establish a claim under Clause 11(v) of the Lease Deed, which he failed to prove;

- (v) The Arbitrator could not have travelled beyond the terms of the contract nor could have ignored evidence on record as per which the fire incident was caused accidentally, on account of short circuit;
- (vi) The finding of Arbitrator regarding negligence on part of the appellant leading to fire incident is contrary to overwhelming evidence available on record and consequently, suffers from patent illegality;
- (vii) The Arbitrator went beyond the pleaded case of claimant and allowed the claim by carving out a new case which not only incapacitated the appellant in contesting the claim but also caused denial of opportunity to him;
- (viii) By virtue of Clause 14 of the Lease Deed, the lessee – appellant had the sole right to terminate the lease by giving three months' prior notice without assigning any reason whatsoever. This power under the contract was unqualified and was duly invoked. As such, appellant had no obligation to pay rent after the termination of lease and the contrary decision of the Arbitrator is in teeth of the express terms of the contract and thus unsustainable;
- (ix) By awarding rent to the claimant even after termination of lease agreement, the Arbitrator has re-written the contract contrary to the express terms thereof, which suffers from patent illegality.

90. We have carefully perused the judgment of the Commercial Court which is impugned herein. We find that the aspects highlighted in this judgment were taken and pressed as grounds to interfere with the award of

the Arbitrator under Section 34 of the Act of 1996. However, the Commercial Court has not dealt with such objections and has cursorily rejected the objections in a routine and mechanical manner. The order impugned, of the Commercial Court, therefore, cannot be sustained.

91. Consequently, this appeal succeeds and is **allowed**. The order passed by the Commercial Court at Gurugram, dated 22.08.2025, is set-aside. The objection of the appellant to the arbitral award dated 23.12.2023, filed under Section 34 of the Act of 1996, is allowed. As a result, the arbitral award dated 23.12.2023, is set-aside. The parties are, however, left to bear their own costs.

[ASHWANI KUMAR MISHRA]
JUDGE

[ROHIT KAPOOR]
JUDGE

February 13, 2026
VS/Rajesh

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>