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

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Judgment reserved on: 04.02.2026***Judgment pronounced on: 10.03.2026******Judgment uploaded on: 10.03.2026*****+ FAO(OS)(COMM) 153/2024****M/S SYNERGY CONSULTANTS****.....Appellant****Through: Mr. Sandeep Bisht, Mr. Sahil
Nindawat & Mr Prarabdh
Tiwari, Advs.****versus****M/S T.D. WILLIAMSON INDIA PVT. LTD.Respondent****Through: Ms. Fereshte D Sethna, Mr.
Mohit Tiwari & Mr. Devansh
Jain, Advs.****CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE AMIT MAHAJAN****J U D G M E N T****ANIL KSHETARPAL, J.:**

1. Through the present Appeal, the Appellant assails the correctness of order dated 23.04.2024 [hereinafter referred to as 'Impugned Order'] passed by the learned Single Judge of this Court in OMP (COMM) 451/2019 whereby the objections preferred by the Appellant under Section 34 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'the Act'] were dismissed and the arbitral award dated 11.05.2019 was upheld.

2. The issue which arises for consideration in the present Appeal is whether the learned Single Judge, while exercising jurisdiction under Section 34 of the Act, committed any error warranting interference under Section 37 of the Act in declining to set aside the arbitral award dated 11.05.2019, particularly insofar as the learned

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Sole Arbitrator rejected the Appellant's claim for commission in respect of the ONGC Hazira 42 HTPCS (Hot Tapping Project) and declined the claim for pre-suit interest.

FACTUAL MATRIX:

3. In order to appreciate the controversy involved in the present Appeal, the relevant facts, shorn of unnecessary details, are required to be noticed.

4. The Appellant is a proprietorship firm engaged in providing consultancy services in the petroleum, gas and oil sector. Shri Anand Mallick is stated to be its proprietor. The Appellant claims to be engaged in liaisons, business development, facilitating meetings, assisting in drafting specifications for pre-tender meetings, follow-up of tenders and rendering assistance in developing business relations with public sector undertakings.

5. The Respondent is a company incorporated under the Companies Act, 1956, and is stated to be a subsidiary of M/s TD Williamson Inc., Tulsa, Oklahoma, USA. The dispute between the parties arises out of a "Representative Agreement" dated 01.07.2012 executed between the Appellant and the Respondent.

6. In terms of the aforesaid Agreement dated 01.07.2012, the Appellant was appointed as a Commission Representative of the Respondent for the Market Area specified in Schedule I thereto. Schedule I defined the geographic area as "India" and the industry as "Oil & Gas Transmission and Distribution", limited to customers



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specified therein, including Oil and Natural Gas Corporation Limited [‘ONGC’] and public sector refining units. The Schedule I to the Agreement reads as under:

“1. Market Area: The market area covered by this agreement is that indicated by the box filled with specifics or limitation on filled in lines:

X. Geographic-India

X. Industry(ies)-Oil & Gas Transmission and (Limited to Customers Listed Below)

X. Customer(s)-ONGC, Oil & Natural Gas Corporation LTD. and Public Sector Refining Units

2. This Agreement is Exclusive or Nonexclusive as indicated by the box filled in (thus X)

X. This Agreement is Nonexclusive to Representative for the market area:

TDW retains the right to quote, sell and invoice Products and Services to any customers within the Market Area, either directly or through their other representative without participation by or payment of a Commission to Representative. TDW shall advise Representative in writing before exercising this right.

For orders involving TDW or other organizations having TDW's authorization to sell Products and services, Representative is not subject to commission component credits or debits in accordance with Schedule III except on an individual order as agreed in writing between the parties prior to receipt of the order by TDW.

This agreement is Exclusive to Representative for the market area for products and services listed in Schedule III.

TDW retains the right to quote, sell and invoice Products and Services to any customers within the Market Area, without participation by representative. TDW shall advise representative in writing before exercising this right and only when the sale order value is over \$500 USD shall pay representative a commission for these sales in accordance with Schedule III.

For a sale of products and services valued for \$500 USD, when more than one organization having TDW's authorization to sell products and services is involved in such a transaction, it shall be within TDW's discretion to make a division of commission in accordance with Schedule III.

Exclusively applies to all Products and Services listed in Schedule II, except which are NONEXCLUSIVE”

7. Section I of the Agreement provided for appointment of the

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Appellant as a TDW Commission Representative for the specified Market Area, which is reproduced as under:

“SECTION I- APPOINTMENT

1.1 Representative had meeting with the TDW management and the TDWIL has agreed that the Representative shall be appointed as its authorised representative on 1st July 2012.

1.2 TDW hereby appoints the Representative to be a TDW commission representative for the market specified in Schedule I hereto (hereinafter referred to as the “Market Area”), under the terms and conditions set forth herein, with respect to the fulfilment of the activities specified herein, including those set forth in Schedule II hereto and the sale of products and services as set forth on Schedule III hereto (hereinafter referred to individually and collectively as 'Products and Services').

1.3 Representative is hereby granted the right to indicate its status as “Authorized Representative of TDW” within the Market Area in a manner which is in accordance with Section I.

1.4 In consideration of Representative fulfilling its obligations and responsibilities under and in accordance with this Agreement, the Representative shall receive a commission, based on the amounts received by TDW from sales of Products and Services which is subject to and paid in accordance with the terms of this Agreement, including Schedules I and III hereto.”

8. Section IV of the Agreement, titled “Prices, Commissions & Expenses”, *inter alia* provided that the Respondent may contract with and invoice customers directly within the Market Area for sales of products and services and would pay the representative a commission based on the amounts received from such sales in accordance with Schedule I and Schedule III. Relevant clauses of Section IV thereof read as under:

“SECTION IV - PRICES, COMMISSIONS & EXPENSES

4.3 TDW may contract with and invoice customers directly within the market area for sales of products & services & will pay representative a commission (herein after referred to as 'Commission') based on the amount received from those sales in accordance with Schedule I & III



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4.5 Any commission, due under this agreement shall be paid within 30 days following the month in which claimant has received from the customer.”

The commission payable to the Appellant was in terms of Schedule III (Representative Commission) read with Section IV (Prices, Commissions & Expenses), which provided for commission primarily at the rate of 6% in respect of tender-based sales and 8% in respect of nomination-based sales.

9. The Agreement was stated to be non-exclusive. Schedule I further provided that the Respondent retained the right to quote, sell and invoice products and services to any customer within the Market Area either directly or through other representatives without participation by or payment of commission to the Appellant, subject to advising the Appellant in writing before exercising such right.

10. Schedule II to the Agreement, titled “Services of Representative”, set out the routine services to be rendered by the Appellant, including developing relations at all levels with customers listed in the Market Area, assisting the Respondent in drafting specifications, facilitating visits between customers and employees of the Respondent, attending pre-tender meetings and following up on tenders.

11. Disputes arose between the parties in relation to commission allegedly payable to the Appellant in respect of certain projects of ONGC, namely the ONGC Uran Project and the ONGC Hazira 42 HTPCS (Hot Tapping Project).

11A. It is the case of the Appellant that the officials of the

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Respondent had taken the services of the Appellant for the ONGC Projects at Uran and Hazira in terms of the Agreement dated 01.07.2012 and that the Appellant had worked on priority basis in respect of both the ONGC Uran Project and the ONGC Hazira 42 Project. According to the Appellant, after securing the said projects and receiving payment from ONGC, the Respondent refused to pay the commission without justifiable reason.

11B. *Vide* letter dated 03.01.2017, the Respondent terminated the Representative Agreement dated 01.07.2012 and offered to pay a sum of Rs. 18,39,278/- as full and final settlement of all dues alleged or otherwise under the Agreement, subject to execution of a settlement agreement. The Appellant did not accept the said amount, claiming that a sum of Rs. 3,06,00,000/- apart from GST was outstanding towards commission.

11C. The Appellant filed Arbitration Petition No. 837/2017 under Section 11 of the Act before this Court. By order dated 10.04.2018, this Court referred the parties to the Delhi International Arbitration Centre for appointment of a Sole Arbitrator.

12. Apart from the Agreement dated 01.07.2012 relating to ONGC, the parties had also entered into another Commission Representative Agreement dated 05.04.2014 concerning Gas Authority of India Limited ['GAIL']. Under the said agreement, the Respondent had paid commission on quarterly basis till the quarter ending June 2016. Thereafter, commission payments were stopped. The Agreement was terminated *vide* letter dated 03.01.2017 w.e.f. 02.02.2017, with an



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offer of Rs. 29,06,755/- as full and final settlement, which was not accepted.

12A. Accordingly, Arbitration Petition No. 839/2017 was filed under Section 11 of the Act. The learned Sole Arbitrator conducted proceedings in Arbitration Claim No. DAC/2003/04-18 (relating to ONGC) and DAC/2005/04-18 (relating to GAIL) and passed a joint award dated 11.05.2019.

13. In DAC/2005/04-18 (GAIL), the Arbitrator awarded Rs. 29,06,755/- to the Appellant. No petition under Section 34 was filed in respect thereof.

14. Insofar as Arbitration Claim No. DAC/2003/04-18 (ONGC) is concerned, the learned Sole Arbitrator held that the Appellant was entitled to commission at the rate of 6% on the sale price of Rs. 11,03,74,769/-, amounting to Rs. 66,22,486/-, which was rounded off to Rs. 66,22,500/-, in respect of the ONGC Uran Project. However, the learned Sole Arbitrator rejected the Appellant's claim for commission in respect of the ONGC Hazira 42 HTPCS (Hot Tapping Project), and also declined the claim of the Appellant for pre-suit interest on the amount awarded.

15. Aggrieved thereby, the Appellant filed objections under Section 34 of the Act being OMP (COMM) 451/2019 before the learned Single Judge of this Court, challenging the award dated 11.05.2019 insofar as it rejected the claim for commission in respect of the ONGC Hazira 42 HTPCS (Hot Tapping Project) and declined the claim for pre-suit interest. The learned Single Judge, by the Impugned Order

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dated 23.04.2024, dismissed the petition under Section 34 of the Act and upheld the arbitral award.

16. Aggrieved thereby, the present Appeal under Section 37 of the Act has been preferred.

CONTENTIONS OF THE PARTIES:

17. Contentions of the Appellant:

17.1. Learned counsel for the Appellant submitted that the present Appeal under Section 37 of the Act arises from the rejection of the Appellant's claim for commission in respect of the ONGC Hazira 42 HTPCS (Hot Tapping Project) and the denial of pre-reference interest on the commission awarded for the ONGC Uran Project. It was contended that both the ONGC Uran Project and the ONGC Hazira Project were secured by the Respondent as a consequence of the services rendered by the Appellant under the Representative Agreement dated 01.07.2012.

17.2. It was contended that although the learned Sole Arbitrator awarded a sum of Rs. 66,22,500/- towards commission in respect of the ONGC Uran Project, the Arbitrator declined the claim for pre-institution interest for the period between July 2015 and May 2018. It was submitted that such denial of pre-reference interest is unsustainable. It was further contended that the denial of pre-institution interest was without any reasoning and contrary to settled principles governing award of interest.

17.3. Insofar as the ONGC Hazira 42 HTPCS (Hot Tapping Project)

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is concerned, it was argued that the learned Sole Arbitrator acted unreasonably in rejecting the claim for commission, particularly when the claim regarding ONGC Uran and ONGC Hazira allegedly stood on the same footing and were based on the same set of documents and email correspondence. It was submitted that the learned Sole Arbitrator drew an artificial distinction between the ONGC Uran and ONGC Hazira projects despite both pertaining to hot tapping and stopping services and being founded on substantially similar correspondence and material on record.

17.4. Learned counsel submitted that the learned Sole Arbitrator as well as the learned Single Judge failed to correctly appreciate the terms of the Representative Agreement dated 01.07.2012. It was argued that under Clause 4.3 read with Schedules I, II and III, the Respondent was liable to pay commission on amounts received from customers within the Market Area, including ONGC. The Agreement was non-exclusive; however, the Respondent was mandatorily required to advise the Appellant in writing before directly quoting, selling or invoicing any customer without payment of commission.

17.5. It was contended that the ambit of the Agreement was not confined to any specific project but pertained to the customer, namely ONGC, and the services required to be rendered by the Appellant included brand building, developing relations at all levels, assisting in drafting specifications, facilitating meetings and promoting the Respondent's services. According to the Appellant, it acted in terms of the Agreement and continuously promoted the Respondent's hot tapping and stopping services before ONGC.

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17.6. Learned counsel referred to email correspondence dated 26.03.2013 and other emails exchanged between the parties, as well as minutes of meetings dated 06.03.2013 circulated *vide* email dated 08.03.2013, to contend that the Appellant had actively participated in meetings with ONGC, GAIL and Engineers India Limited for brand building of the Respondent. It was further submitted that the sole witness of the Respondent had admitted that emails were exchanged between the parties relating to both ONGC Uran and Hazira projects.

17.7. It was further submitted that the ONGC Hazira Project was valued at approximately Rs. 22,47,20,000/- and was awarded in urgent circumstances involving exposure of a subsea pipeline, and that ONGC had directly approached the Respondent in July 2014 as a consequence of continuous brand-building and promotional efforts undertaken by the Appellant. According to the Appellant, such approach was the result of continuous efforts made by it in promoting the Respondent's expertise in hot tapping and stoppling technology before ONGC.

17.8. Learned counsel argued that the learned Sole Arbitrator erroneously rejected the claim for commission in respect of ONGC Hazira on the ground that there was no specific written request or authorization from the Respondent to work on the said project, which, according to the Appellant, was contrary to the terms of the Agreement.

17.9. It was further contended that the Award, to the extent it rejected the claim for commission in respect of ONGC Hazira and denied pre-



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institution interest, is contrary to the terms of the Agreement and is vitiated by patent illegality and perversity, thereby warranting interference.

18. Contentions of the Respondent:

18.1. *Per contra*, learned counsel for the Respondent submitted that the present Appeal is devoid of merit and seeks reappreciation of evidence examined by the learned Sole Arbitrator, which is impermissible under Section 37 of the Act.

18.2. It was argued that the scope of interference under Section 34 of the Act is narrow and that the jurisdiction under Section 37 is even more circumscribed. Reliance was placed on the decisions of the Supreme Court in *UHL Power Co. Ltd. v. State of H.P.*¹; *Renusagar Power Company Limited v. General Electric Company*²; and *Associate Builders v. DDA*³, to contend that interference is permissible only where the award is contrary to public policy, shocks the conscience of the Court, or suffers from patent illegality

18.3. Learned counsel submitted that the learned Single Judge, in paragraphs 29 and 30 of the Impugned Order, correctly held that the Appellant failed to establish any ground for interference under Section 34 of the Act and that the Award did not violate basic notions of morality or justice.

18.4. It was further contended that the learned Sole Arbitrator, after

¹ (2022) 4 SCC 116

² 1994 Supp (1) SCC 644

³ (2015) 3 SCC 49



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considering the documentary evidence and email correspondence on record, returned findings of fact with regard to the Appellant's alleged entitlement to commission in respect of the ONGC Hazira Project. The Court, while exercising jurisdiction under the Act, does not sit as a Court of Appeal to re-assess or re-appreciate the evidence.

18.5. It was also submitted that several grounds raised in the present Appeal travel beyond the grounds urged in the Section 34 petition and are therefore impermissible.

18.6. On merits, it was contended that in the Statement of Claim dated 16.05.2018, the Appellant had claimed a total commission of Rs. 3,06,00,000/- in respect of ONGC Uran Project and ONGC Hazira 42 Project, along with interest at 18% per annum. The Award granted commission of Rs. 66,22,500/- in respect of ONGC Uran Project along with *pendente lite* and future interest at 9% per annum and proportionate costs, while rejecting the claim for commission in respect of ONGC Hazira Project and the claim for pre-award interest.

18.7. It was submitted that the learned Single Judge rightly upheld the interpretation placed by the learned Sole Arbitrator on the Agreement, including Schedule II thereof, holding that the Appellant was required to establish active participation in securing allotment of the ONGC Hazira Project in order to qualify for commission. The argument that email correspondence relied upon in respect of ONGC Uran Project equally applied to ONGC Hazira Project was rejected as an attempt to reinterpret correspondence already examined by the Arbitrator.



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18.8. Insofar as pre-institution interest is concerned, it was submitted that the learned Single Judge correctly upheld the decision of the learned Sole Arbitrator to grant only *pendente lite* and future interest, observing that in the absence of any admission of liability for pre-reference interest, no interference was warranted.

ISSUES FOR DETERMINATION:

19. In view of the rival submissions advanced on behalf of the parties and having regard to the limited scope of interference under Section 37 of the Act, the following issues arise for consideration in the present Appeal:

I. Whether the learned Single Judge, while exercising jurisdiction under Section 34 of the Act, committed any jurisdictional error or applied an incorrect legal standard in declining to interfere with the arbitral award dated 11.05.2019 insofar as it rejected the Appellant's claim for commission in respect of the ONGC Hazira 42 HTPCS (Hot Tapping Project)?

II. Whether the refusal of the learned Sole Arbitrator to grant pre-institution interest on the amount awarded, as affirmed by the learned Single Judge, suffers from patent illegality, perversity, or violation of the terms of the Agreement so as to warrant interference under Section 37 of the Act?

III. Whether any of the grounds urged by the Appellant fall within the limited parameters of interference available in an appeal under Section 37 of the Act?



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ANALYSIS & FINDINGS:

20. This Court has considered the submissions advanced on behalf of learned counsel for the parties and perused the material on record. At the outset, it is apposite to note that this Court, while exercising jurisdiction under Section 37 of the Act, does not sit in appeal over the findings of fact recorded by the learned Sole Arbitrator. Interference is permissible only where the order passed under Section 34 itself suffers from a manifest error in the application of the settled principles governing challenge to arbitral awards.

21. In ***UHL Power Co. Ltd.*** (supra), the Supreme Court has held that the scope of interference under Section 37 of the Act is even narrower than under Section 34 of the Act. The appellate court is required to bear in mind the limited grounds available under Section 34 of the Act and must be slow to interfere unless the view taken by the Arbitral Tribunal is patently illegal or perverse. Similarly, in ***Renusagar Power Co. Ltd.*** (supra), the Supreme Court explained that interference on the ground of public policy is warranted only when the award is contrary to the fundamental policy of Indian law, the interests of India, justice or morality. The concept of “public policy” is not to be expanded so as to convert the proceedings into an appellate review on merits. In ***Associate Builders*** (supra), the Supreme Court further clarified that patent illegality must go to the root of the matter. A mere erroneous application of law or reappreciation of evidence does not justify interference. Where the Arbitral Tribunal has adopted a plausible interpretation of the contract, the Court cannot substitute its own view merely because another interpretation is possible.



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22. The issues framed above shall therefore be examined within the aforesaid limited contours.

ISSUE I- Rejection of Commission in respect of ONGC Hazira 42 HTPCS (Hot Tapping Project)

23. The principal grievance of the Appellant pertains to the rejection of its claim for commission in respect of the ONGC Hazira 42 HTPCS (Hot Tapping Project). At the outset, it must be emphasised that the present Appeal is not directed against the arbitral award simpliciter, but against the order of the learned Single Judge refusing to set aside the award under Section 34 of the Act. The Appellate Court is not required to examine whether a different view on facts or interpretation of the Agreement was possible, but whether the learned Single Judge committed any jurisdictional error or ignored the settled parameters governing interference with arbitral awards.

24. A perusal of the award reveals that the learned Sole Arbitrator examined the terms of the Representative Agreement, including the clauses relating to entitlement to commission, the nature of the Appellant's obligations, and the requirement of participation in securing orders within the designated Market Area. The Arbitrator analysed the documentary material, including the email correspondence relied upon by the Appellant, and returned a categorical finding of fact that, insofar as the ONGC Hazira Project was concerned, the Appellant failed to establish a nexus between its alleged promotional activities and the award of the said contract to the Respondent.

25. The Arbitrator recorded that mere existence of a representative

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arrangement or general brand-building efforts would not *ipso facto* entitle the Appellant to commission on every project awarded by ONGC. The Arbitrator held that entitlement to commission was not automatic but dependent upon the Appellant establishing performance of its contractual obligations in relation to the specific project. On appreciation of the evidence, the Arbitrator concluded that such involvement, in respect of the ONGC Hazira Project, had not been established.

26. It is also necessary to note that the learned Sole Arbitrator undertook a construction of the Representative Agreement dated 01.07.2012 and interpreted the nature of the Appellant's entitlement to commission in the context of the obligations cast upon it. The Agreement, *inter alia*, required the Appellant to provide consultancy services, to use its reasonable best efforts to promote the sale of products and services within the market area, to assist the Respondent's personnel, and to keep the Respondent informed of customer activities and market developments. The Arbitrator construed these stipulations to mean that commission was not envisaged as an automatic or blanket entitlement for every sale secured within the market area during the subsistence of the Agreement. Rather, the entitlement was held to be co-related to the discharge of contractual obligations, namely, the rendering of services, assistance, participation, or demonstrable efforts in promoting or facilitating the specific project in question.

27. Such a construction cannot be said to be either implausible or contrary to the language of the Agreement. A commercial



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arrangement of this nature, whereby a representative is appointed to promote products and assist in securing projects, reasonably admits of an interpretation that commission is linked to the services rendered and the extent of participation in the concerned transaction. The view adopted by the Arbitrator, that the representative would be entitled to commission commensurate with the work performed or assistance actually rendered, is a possible and commercially sensible interpretation of the Agreement. Once such interpretation is found to be a plausible view emerging from the contractual text, this Court, in exercise of jurisdiction under Section 37 of the Act, would not substitute its own interpretation merely because another view is conceivable.

28. The learned Single Judge, while exercising jurisdiction under Section 34, examined the reasoning of the Arbitrator and held that the interpretation placed on the Agreement was a plausible one. The learned Single Judge further observed that the conclusions drawn were based on appreciation of evidence and did not suffer from perversity, patent illegality, or contravention of fundamental policy of Indian law.

29. The submission of the Appellant before this Court is essentially that the material relied upon for grant of commission in respect of the ONGC Uran Project ought to have led to a similar conclusion in respect of ONGC Hazira, since both projects involved the same customer and similar services. This argument, however, proceeds on the assumption that similarity of customer or nature of services automatically translates into entitlement to commission. Such an inference does not arise as a matter of law and was expressly rejected



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by the Arbitrator on appreciation of the evidence.

30. In so far as the ONGC Hazira 42 HTPCS (Hot Tapping) Project is concerned, the award records a categorical finding that the Appellant failed to discharge the burden of proof cast upon it. The learned Arbitrator noted that except for a solitary email communication dated 29.03.2012, no material was produced to demonstrate that the Appellant had, in fact, rendered consultancy services, participated in negotiations, assisted the Respondent's personnel, or otherwise performed any obligation relatable to the said project.

31. The said email, addressed to the Chairman-cum-Managing Director of ONGC, merely contained a reference to the project and was not shown to establish any substantive effort undertaken by the Appellant in furtherance of the sale. The Arbitrator expressly observed that the mere mention of the project in an email would not *ipso facto* lead to the conclusion that the Appellant was instrumental in securing the project or had fulfilled its contractual duties in relation thereto. No contemporaneous correspondence, meeting records, technical assistance documents, market intelligence reports, or other cogent material were produced to evidence active involvement.

32. The finding that the Appellant neither provided consultancy services nor participated in any manner in relation to the Hazira project is thus founded squarely upon appreciation of the evidentiary record. It is trite that an arbitral finding based on evaluation of evidence, particularly where the burden of proof lay upon the



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claimant, cannot be interfered with unless it is demonstrated to be perverse, i.e., based on no evidence or by ignoring vital material. In the present case, the Arbitrator has not ignored evidence; rather, he has recorded that no cogent evidence was forthcoming beyond the solitary email. Such a conclusion, emerging from the record itself, does not warrant interference under Section 37 of the Act.

33. It is well settled that where the Arbitrator has interpreted the terms of a contract and such interpretation is a possible and reasonable one, the Court cannot substitute its own construction merely because another view may also be possible. Re-appreciation of evidence, reassessment of correspondence, or drawing of alternate factual inferences falls outside the permissible scope of interference under Sections 34 and 37 of the Act.

34. In the present case, the findings relating to absence of proven participation or causative linkage in respect of the ONGC Hazira Project are findings of fact based on appreciation of evidence. The Appellant has not demonstrated that such findings are perverse in the sense of being based on no evidence, ignoring vital evidence, or being such that no reasonable person could have arrived at them. It is also noteworthy that the learned Sole Arbitrator awarded commission in respect of the ONGC Uran Project while rejecting the claim in respect of the ONGC Hazira Project. This itself indicates that the Arbitrator did not adopt a blanket or mechanical approach but examined each project on its own evidentiary footing.

35. This Court finds no material to conclude that the learned Single



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Judge applied an incorrect legal standard or failed to exercise jurisdiction vested in it under Section 34. The impugned order reflects due consideration of the grounds raised and a conscious adherence to the limited scope of interference.

36. Accordingly, Issue I is answered in the negative.

ISSUE II- Refusal to Grant Pre-Institution Interest:

37. The second limb of challenge relates to the refusal of the learned Sole Arbitrator to award pre-institution (pre-reference) interest for the period prior to commencement of arbitral proceedings, despite awarding commission in respect of the ONGC Uran Project along with pendente lite and future interest.

38. The power of an arbitral tribunal to award interest is traceable to Section 31(7) of the Act, subject to the terms of the contract and the discretion of the Tribunal. In the absence of a contractual prohibition or stipulation governing such interest, the award of pre-reference interest lies within the discretion of the Arbitral Tribunal. Section 31(7) of the Act reads as under:

“(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.”

39. In the present case, the Arbitrator, after considering the claim



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for interest at 18% per annum, awarded pendente lite and future interest at a reduced rate but declined pre-institution interest. The learned Single Judge upheld this determination, noting that no ground under Section 34 was made out warranting interference.

40. The Appellant has not been able to demonstrate that the refusal to grant pre-institution interest was in the teeth of an express contractual stipulation or that the Arbitrator ignored any mandatory provision of law. At best, the contention relates to the manner in which discretion was exercised.

41. Exercise of discretion by the Arbitrator, particularly in matters relating to rate and period of interest, does not warrant interference under Section 34 or Section 37 unless it is shown to be arbitrary, capricious, or contrary to the contract. No such infirmity has been established in the present case.

42. The learned Single Judge, therefore, cannot be faulted for declining to interfere with the Arbitrator's determination on pre-institution interest.

43. Issue II is accordingly answered in the negative.

ISSUE III- Whether the Grounds Urged Fall Within Section 37 Parameters

44. Having examined the submissions of the Appellant, it is evident that the gravamen of the Appeal is an invitation to this Court to undertake a re-evaluation of the evidence and to adopt an alternate interpretation of the Representative Agreement.



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45. The statutory framework of Sections 34 and 37 of the Act does not contemplate such an exercise. The appellate jurisdiction under Section 37 is confined to examining whether the Court under Section 34 has acted within the bounds of law. It is not a forum for rehearing on facts.

46. None of the grounds urged by the Appellant demonstrate that the award is vitiated by patent illegality apparent on the face of the award, contravention of fundamental policy of Indian law, or perversity in the legal sense recognised in arbitration jurisprudence.

47. The Impugned Order reflects a correct appreciation of the limited scope of interference and does not suffer from jurisdictional infirmity.

CONCLUSION:

48. For the foregoing reasons, this Court finds no merit in the present Appeal. The learned Single Judge was justified in declining interference with the arbitral award dated 11.05.2019.

49. The present Appeal is accordingly dismissed.

ANIL KSHETARPAL, J.

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