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

% ***Judgment reserved on: 05.02.2026***
Judgment pronounced on: 06.04.2026

\+ O.M.P. 709/2011

MCD .....Petitioner

Through: Mr. Sunil Goel, Standing Counsel with Ms. Dimple Aggarwal, Mr. Himanshu Goel, Ms. Varsha, Advocates along with Bhanu Pratap AE, MCD

versus

ANIL GUPTA AND ORS .....Respondents

Through: Mr Aditya Chhibber, Advocate.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been instituted under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], by the **Municipal Corporation of Delhi**[2], seeking setting aside of the **Arbitral Award dated 01.04.2011**[3] rendered in the arbitration proceedings titled "*Shri Anil Gupta v. Municipal Corporation of Delhi*".

[1] A&C Act
[2] MCD/Petitioner
[3] Impugned Award

2. The Impugned Award arises out of disputes emanating from the **Work Order dated 28.08.2004**[4], awarded by the Petitioner to Respondent No.1 for execution of certain works.

3. At the outset, it is noted that the present Petition was earlier disposed of by a Judgment dated 12.12.2018. Subsequently, upon an application filed by the Petitioner seeking modification, the learned Coordinate Bench modified the said judgment *vide* Order dated 08.08.2019, whereby the learned Single Judge set aside the interest component awarded under the Impugned Award in *toto*. Aggrieved thereby, Respondent No. 1 preferred an appeal before the Division Bench of this Court, which, *vide* Judgment dated 30.11.2023, remanded the matter for fresh adjudication confined to the limited issue of grant of interest. Consequently, the present Petition is now listed before this Court for consideration on the said issue.

4. At this stage, the parties are *ad idem* that the controversy stands narrowed to the issue of interest, which remains the sole surviving point of contention between them. Accordingly, the present adjudication is confined to this aspect alone.

BRIEF FACTS:

5. The present proceedings arise out of disputes between the MCD and Respondent No. 1 in relation to a works contract awarded for the construction of the Zonal Building at Narela. The said work was originally awarded in the year 1998 to another contractor, *namely*, M/s Satish Chander Ramesh Kumar. However, the said contractor abandoned the work after completing only the basement structure.

[4] Work Order

6. Subsequently, the Petitioner invited fresh tenders for completion of the remaining work. Pursuant thereto, the Petitioner issued the Work Order in favour of Respondent No. 1 for the balance work of construction of the Zonal Office Building at Narela for a contractual value of ₹4,29,00,830/-, with a stipulated completion period of 24 months. The work was to commence shortly thereafter and the stipulated date of completion was 03.09.2006.

7. Disputes subsequently arose between the parties in relation to certain claims raised by Respondent No. 1, including, *inter alia*, escalation under Clause 10CC, watch and ward expenses, and interest. In view of the arbitration clause contained in the contract, the disputes were referred to arbitration and Shri Amrit Lal Agarwal, Chief Engineer (Retd.), MCD, was appointed as the Sole Arbitrator by Order dated 28.10.2009 passed by this Court in ARB. P. 120/2009.

8. Respondent No. 1 filed his Statement of Claims before the learned Arbitrator seeking various monetary claims, whereas the Petitioner herein filed its Statement of Defence and also preferred counter-claims. Upon completion of the arbitral proceedings, the learned Arbitrator rendered the Impugned Arbitral Award dated 01.04.2011, whereby certain claims of Respondent No. 1 were allowed, including a claim towards escalation under Clause 10CC and watch and ward charges, together with interest at the rate of 18% per annum and costs.

9. Aggrieved by the said Arbitral Award, the Petitioner instituted the present proceedings under Section 34 of the A&C Act, before this Court, seeking the setting aside of the Impugned Award.

10. The present Petition was initially adjudicated by a learned Single Judge of this Court *vide* Judgment dated 12.12.2018, whereby the Impugned Arbitral Award was partially upheld. The learned Single Judge set aside the award in respect of Claim No. 2, which pertained to reimbursement of the amount expended on watch and ward arrangements after completion of the work. Further, the learned Single Judge modified the award of interest to a limited extent.

11. While the learned Arbitrator had granted interest at the rate of 18% per annum from the date of cause of action, i.e., 08.03.2004, the learned Single Judge held that interest would instead run only from the date of invocation of arbitration, i.e., 06.07.2008, till the date of the Award at the rate of 18% per annum. Additionally, for the period during which the Section 34 petition remained pending before this Court, the rate of interest was reduced to simple interest at 12% per annum on the awarded amount, applicable up to the date of the decision on the Section 34 petition. The learned Single Judge further held that if the entire payment is made within a period of eight weeks, no further interest shall be payable. However, in the event the payment is not made within the stipulated period of eight weeks, the entire outstanding amount shall carry simple interest at the rate of 18% per annum.

12. Subsequently, the Petitioner filed an Application being I.A. No. 2364/2019 seeking modification of the Judgment dated 12.12.2018, placing reliance upon certain documents relating to the tender negotiations which, according to the Petitioner, demonstrated that the condition pertaining to 24% interest mentioned in the tender had been withdrawn prior to the award of the contract.

13. The learned Single Judge, upon consideration of the said application, *vide* the Judgement dated 08.08.2019, modified the earlier judgment and held that Respondent No. 1 would not be entitled to interest as well as the costs of the arbitral proceedings, and accordingly directed the Petitioner to pay only the principal amount awarded under Claim No. 1.

14. Aggrieved by the Judgments dated 12.12.2018 and 08.08.2019, Respondent No. 1 preferred an appeal before the Division Bench of this Court being FAO(OS)(COMM) 315/2019 titled "*Anil Kumar Gupta v. Municipal Corporation of Delhi & Anr.*".

15. The Division Bench, upon hearing the parties on the issue of interest, rendered its Judgment dated 30.11.2023, whereby it set aside the aforesaid judgements passed by the learned Single Judge and restored the present Petition for fresh consideration in light of the observations contained in the said judgment.

16. In view of the aforesaid Judgment dated 30.11.2023, the present Petition stood restored to the file of this Court for fresh adjudication, confined to the issue of interest, in accordance with law.

CONTENTIONS ON BEHALF OF THE PETITIONER:

17. Learned counsel appearing for the Petitioner would contend that the learned Arbitrator has erred in law in awarding interest at the rate of 18% per annum, which, according to the Petitioner, is excessive, arbitrary and contrary to the statutory framework governing the grant of interest.

18. Learned counsel for the Petitioner would further contend that the amounts awarded under Claim No. 1 (escalation under Clause

10CC) are essentially in the nature of compensation or damages, and therefore, the grant of interest upon such amounts is legally impermissible. It would be contended that interest itself constitutes a form of compensation and, therefore, awarding interest upon compensation effectively amounts to granting interest on interest, which is prohibited under Section 3(3)(c) of the **Interest Act, 1978**[5].

19. Learned counsel would further contend that the learned Arbitrator has awarded interest at the rate of 18% per annum without assigning any cogent or legally sustainable reasons, particularly when the prevailing bank rates during the relevant period were substantially lower. It would be contended that in terms of Section 3(1) of the Interest Act, interest ought not to exceed the "current rate of interest", which broadly corresponds to the rates offered by scheduled banks, and which during the relevant period ranged around 6-7% per annum.

20. Learned counsel would further contend that the learned Arbitrator has erroneously proceeded on the basis that Respondent No. 1 had demanded interest at higher rates in certain communications and that such demands were not disputed by the Petitioner. It would be contended that the mere demand of interest by a claimant cannot justify the grant of such a rate by the learned Arbitral Tribunal without independently examining the reasonableness and legality of the rate so claimed.

21. Learned counsel would also contend that the learned Arbitrator has adopted an erroneous method of computation, which effectively results in the grant of interest upon amounts that already include

[5] Interest Act

previously calculated interest, thereby leading to interest on interest, which is impermissible in law.

22. Learned counsel would further contend that the learned Arbitrator has adopted an incorrect starting point for the computation of interest by treating 08.03.2004 as the date from which interest is payable. It would be contended that the said date corresponds to the issuance of the tender and not the accrual of any cause of action.

23. Learned counsel would contend that the Work Order was issued subsequently on 25.08.2004, and therefore, the adoption of 08.03.2004 as the starting point for interest is factually erroneous. It would further be contended that, at the highest, interest could have been considered only from the date of invocation of arbitration, i.e., 06.07.2008**.**

24. Learned counsel would also contend that the Petitioner is a public authority discharging statutory functions under the Delhi Municipal Corporation Act, 1957, and the work in question was undertaken as part of its public duties and not as a commercial venture. It would therefore be contended that the grant of interest at such a high rate imposes an undue burden upon the public exchequer and is contrary to the settled principles governing the award of interest in matters involving public authorities.

25. On the aforesaid grounds, learned counsel for the Petitioner would contend that the award of interest at the rate of 18% per annum is patently illegal and excessive, and therefore, warrants interference by this Court within the limited parameters of Section 34 of the A&C Act.

CONTENTIONS ON BEHALF OF RESPONDENT No. 1:

26. ***Per contra***, learned counsel appearing on behalf of Respondent No. 1 would contend that the challenge laid by the Petitioner to the grant of interest at the rate of 18% per annum is wholly misconceived and does not fall within the limited parameters of interference prescribed under Section 34 of the A&C Act.

27. Learned counsel for Respondent No. 1 would contend that Respondent No. 1, in the Statement of Claim, had specifically claimed interest at the rate of 18% per annum. It would be contended that the learned Arbitrator has taken note of the fact that Respondent No. 1 had, on multiple occasions, demanded interest at the said rate through various communications addressed to the Petitioner, and that the said demands were never disputed by the Petitioner.

28. Learned counsel for Respondent No. 1 would further contend that the award of interest at the rate of 18% per annum is fully in consonance with the statutory framework governing arbitral proceedings under the pre-amendment regime of the A&C Act.

29. It would also be contended that, in terms of Section 31(7) of the A&C Act, as it stood prior to the 2015 amendment, where the Arbitral Award does not otherwise specify the rate of post-award interest, the awarded sum shall carry interest at the rate of 18% per annum from the date of the award until payment.

30. Learned counsel would contend that the statutory recognition of 18% interest under Section 31(7) of the A&C Act itself reflects the legislative benchmark as to what constitutes a reasonable rate of interest in arbitral proceedings governed by the unamended Act. It would thus be contended that the grant of 18% interest by the learned

Arbitrator cannot be characterised as excessive or unconscionable, particularly when the statute itself prescribes the said rate as the default rate of interest.

31. Learned counsel for Respondent No. 1 would further contend that the aforesaid position has been consistently recognised in judicial pronouncements, including the decision of the Hon'ble Supreme Court in ***Sayeed Ahmed & Co. v. State of Uttar Pradesh & Ors.***[6], wherein the Court observed that under the scheme of Section 31(7)(b) of the A&C Act, an award would carry interest at the rate of 18% per annum in the absence of any contrary direction in the award.

32. Learned counsel for Respondent No. 1 would further contend that the learned Arbitrator has not granted interest solely on the basis of any condition relating to 24% interest in the tender document. It would be contended that the primary basis for the grant of interest was the consistent demand made by Respondent No. 1 in its communications and the failure of the Petitioner to dispute such demands at the relevant time.

33. Learned counsel for Respondent No. 1 would further contend that the documents relied upon by the Petitioner in the subsequent proceedings to contend that the condition relating to 24% interest stood withdrawn cannot be looked into for the purpose of deciding the present petition. It would be contended that the said documents were neither part of the Arbitral Record nor produced before the learned Arbitrator and were sought to be introduced at a belated stage after the disposal of the Section 34 petition. According to Respondent No. 1,

[6] (2009) 12 SCC 26

such material cannot be relied upon in proceedings under Section 34 of the A&C Act.

34. Learned counsel would further contend that the Division Bench of this Court, *vide* Judgment dated 30.11.2023 in FAO(OS)(COMM) 315/2019, has already held that the Court exercising jurisdiction under Section 34 does not possess the power to modify or vary an arbitral award, and therefore, the scope of interference is extremely limited.

35. Learned counsel for Respondent No. 1 would thus contend that the award of interest at the rate of 18% per annum is a result of a reasoned exercise of discretion by the learned Arbitrator and does not disclose any patent illegality, perversity, or violation of public policy so as to warrant interference under Section 34 of the A&C Act.

ANALYSIS:

36. This Court has heard the learned counsel appearing on behalf of the parties at length and, with their able assistance, has carefully perused the paperbook and other material documents placed on record, including the record of the Arbitral Tribunal, as well as the written submissions filed by the respective parties.

37. At the outset, it is apposite to note that this Court is conscious of the limited scope of its jurisdiction while examining an objection petition under Section 34 of the A&C Act. The contours of judicial intervention in such proceedings have been authoritatively delineated and settled by a consistent and evolving line of precedents of the Hon'ble Supreme Court.

38. In this regard, a three-judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier

decisions, in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[7], while dealing with the grounds of conflict with the public policy of India and perversity, grounds which have also been urged in the present case, made certain pertinent observations, which are reproduced hereunder:

> *"**Relevant legal principles governing a challenge to an arbitral award***
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> **30.** Before we delve into the issue/sub-issues culled out above, it would be useful to have a look at the relevant legal principles governing a challenge to an arbitral award. Recourse to a court against an arbitral award may be made through an application for setting aside such award in accordance with sub-sections (2), (2-A) and (3) of Section 34 of the 1996 Act. Sub-section (2) of Section 34 has two clauses, (*a*) and (*b*). Clause (*a*) has five sub-clauses which are not relevant to the issues raised before us. Insofar as clause (*b*) is concerned, it has two sub-clauses, namely, (*i*) and (*ii*). Sub-clause (*i*) of clause (*b*) is not relevant to the controversy in hand. Sub-clause (*ii*) of clause (*b*) provides that if the Court finds that the arbitral award is in conflict with the public policy of India, it may set aside the award.
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> ***Public policy***
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> **31.** "Public policy" is a concept not statutorily defined, though it has been used in statutes, rules, notification, etc. since long, and is also a part of common law. Section 23 of the Contract Act, 1872 uses the expression by stating that the consideration or object of an agreement is lawful, unless, inter alia, opposed to public policy. That is, a contract which is opposed to public policy is void.
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> **35.** In ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644**, a three-Judge Bench of this Court observed that the doctrine of public policy is somewhat open—textured and flexible. By citing earlier decisions, it was observed that there are two conflicting positions which are referred to as the "narrow view" and the "broad view". According to the narrow view, courts cannot create new heads of public policy whereas the broad view countenances judicial law making in these areas. In the field of private international law, it was pointed out, courts refuse to apply a rule of foreign law or recognise a foreign judgment or a foreign arbitral award if it is found that the same is contrary to the public policy of the country in which it is sought to be invoked or enforced. However, it was clarified, a distinction is to be drawn

[7] (2025) 2 SCC 417

while applying the rule of public policy between a matter governed by domestic law and a matter involving conflict of laws. It was observed that the application of the doctrine of public policy in the field of conflict of laws is more limited than that in the domestic law and the courts are slower to invoke public policy in cases involving a foreign element than when a purely municipal legal issue is involved. It was held that contravention of law alone will not attract the bar of public policy, and something more than contravention of law is required.

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37. What is clear from above is that for an award to be against public policy of India a mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of fundamental policy of Indian law including a law meant to serve public interest or public good.

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40. In ***ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263, paras 35, 38 & 39**, which also related to the period prior to the 2015 Amendment of Section 34(2)(*b*)(*ii*), a three-Judge Bench of this Court, after considering the decision in***ONGC Ltd.* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705**, without exhaustively enumerating the purport of the expression "fundamental policy of Indian law", observed that it would include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. The Court thereafter illustratively referred to three fundamental juristic principles, namely:

(*a*) that in every determination that affects the rights of a citizen or leads to any civil consequences, the court or authority or quasi-judicial body must adopt a judicial approach, that is, it must act bona fide and deal with the subject in a fair, reasonable and objective manner and not actuated by any extraneous consideration;

(*b*) that while determining the rights and obligations of parties the court or Tribunal or authority must act in accordance with the principles of natural justice and must apply its mind to the attendant facts and circumstances while taking a view one way or the other; and

(*c*) that its decision must not be perverse or so irrational that no reasonable person would have arrived at the same.

41. In ***Associate Builders* v. *DDA*, (2015) 3 SCC 49**, a two-Judge Bench of this Court, held that *audi alteram partem* principle is undoubtedly a fundamental juristic principle in Indian law and is enshrined in Sections 18 and 34(2)(*a*)(*iii*) of the 1996 Act. In addition to the earlier recognised principles forming fundamental policy of Indian law, it was held that disregarding:

(*a*) orders of superior courts in India; and

(*b*) the binding effect of the judgment of a superior court would also be regarded as being contrary to the fundamental policy of Indian law.

Further, elaborating upon the third juristic principle (i.e. qua perversity), as laid down in ***ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263**, it was observed that where:

(*i*) a finding is based on no evidence; or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse [***Associate Builders case*, (2015) 3 SCC 49, para 31**].

To this a caveat was added by observing that when a court applies the "public policy test" to an arbitration award, it does not act as a court of appeal and, consequently, errors of fact cannot be corrected; and a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score. Thus, once it is found that the arbitrator's approach is not arbitrary or capricious, it is to be taken as the last word on facts.

The 2015 Amendment in Sections 34 and 48

42. The aforementioned judicial pronouncements were all prior to the 2015 Amendment. Notably, prior to the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not used by the legislature in either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*). The pre-amended Section 34(2)(*b*)(*ii*) and its Explanation read:

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44. By the 2015 Amendment, in place of the old Explanation to Section 34(2)(*b*)(*ii*), *Explanations 1 and 2* were added to remove any doubt as to when an arbitral award is in conflict with the public policy of India.

45. At this stage, it would be pertinent to note that we are dealing with a case where the application under Section 34 of the 1996 Act was filed after the 2015 Amendment, therefore the newly substituted/added Explanations would apply [***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

46. The 2015 Amendment adds two Explanations to each of the two sections, namely, Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*), in place of the earlier Explanation. The significance of the newly inserted *Explanation 1* in both the sections is two-fold. First, it does away with the use of words : (*a*) "*without prejudice to the generality of sub-clause (ii)*" in the opening part of the pre-

amended Explanation to Section 34(2)(b)(ii); and (b) "*without prejudice to the generality of clause (b) of this section*" in the opening part of the pre-amended Explanation to Section 48(2)(*b*); secondly, it limits the expanse of public policy of India to the three specified categories by using the words "*only if*". Whereas, *Explanation 2* lays down the standard for adjudging whether there is a contravention with the fundamental policy of Indian law by providing that a review on merits of the dispute shall not be done. This limits the scope of the enquiry on an application under either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*) of the 1996 Act.

47. The 2015 Amendment by inserting sub-section (2-A) in Section 34, carves out an additional ground for annulment of an arbitral award arising out of arbitrations other than international commercial arbitrations. Sub-section (2-A) provides that the Court may also set aside an award if that is vitiated by patent illegality appearing on the face of the award. This power of the Court is, however, circumscribed by the proviso, which states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

48. *Explanation 1* to Section 34(2)(*b*)(*ii*), specifies that an arbitral 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.

49. In the instant case, there is no allegation that the making of the award was induced or affected by fraud or corruption, or was in violation of Section 75 or Section 81. Therefore, we shall confine our exercise in assessing as to whether the arbitral award is in contravention with the fundamental policy of Indian law, and/or whether it conflicts with the most basic notions of morality or justice. Additionally, in the light of the provisions of sub-section (2-A) of Section 34, we shall examine whether there is any patent illegality on the face of the award.

50. Before undertaking the aforesaid exercise, it would be apposite to consider as to how the expressions:

(*a*) "in contravention with the fundamental policy of Indian law";

(*b*) "in conflict with the most basic notions of morality or justice"; and

(*c*) "patent illegality" have been construed.

In contravention with the fundamental policy of Indian law

51. As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in ***Renusagar Power Co.***

***Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644**, in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:

(*a*) the fundamental policy of Indian law; and/or

(*b*) the interest of India; and/or

(*c*) justice or morality.

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55. The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of *Explanation 1*. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

(*a*) violation of the principles of natural justice;

(*b*) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and

(*c*) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in *Explanation 2* to Section 34(2)(*b*)(*ii*).

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Patent illegality

65. Sub-section (2-A) of Section 34 of the 1996 Act, which was inserted by the 2015 Amendment, provides that an arbitral award not arising out of international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is visited by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

66. In ***ONGC Ltd.* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705**, while dealing with the phrase "public policy of India" as used in Section

34, this Court took the view that the concept of public policy connotes some matter which concerns public good and public interest. If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that illegality must go to the root of the matter and if the illegality is of trivial nature, it cannot be held that award is against public policy.

67. In ***Associate Builders* v. *DDA*, (2015) 3 SCC 49**, this Court held that an award would be patently illegal, if it is contrary to:

(*a*) substantive provisions of law of India;

(*b*) provisions of the 1996 Act; and

(*c*) terms of the contract [See also three-Judge Bench decision of this Court in ***State of Chhattisgarh* v. *SAL Udyog (P) Ltd.*, (2022) 2 SCC 275**].

The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(*a*) of the 1996 Act. Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.

68. In ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131** this Court specifically dealt with the 2015 Amendment which inserted sub-section (2-A) in Section 34 of the 1996 Act. It was held that "patent illegality appearing on the face of the award" refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also clarified that what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to "public policy" or "public interest", cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality [See ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**]. Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award [See ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

Perversity as a ground of challenge

69. Perversity as a ground for setting aside an arbitral award was recognised in***ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263**. Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.

70. In ***Associate Builders* v. *DDA*, (2015) 3 SCC 49** certain tests were laid down to determine whether a decision of an Arbitral Tribunal could be considered perverse. In this context, it was observed that where:

(*i*) a finding is based on no evidence; or

(*ii*) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(*iii*) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.

71. In ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**, which dealt with the legal position post the 2015 Amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse [See ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

72. The tests laid down in ***Associate Builders* v. *DDA*, (2015) 3 SCC 49** to determine perversity were followed in ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131** and later approved by a three-Judge Bench of this Court in ***Patel Engg. Ltd.* v. *North Eastern Electric Power Corpn. Ltd.*, (2020) 7 SCC 167**.

73. In a recent three-Judge Bench decision of this Court in ***DMRC Ltd.* v. *Delhi Airport Metro Express (P) Ltd.*, (2024) 6 SCC 357**, the ground of patent illegality/perversity was delineated in the following terms: (SCC p. 376, para 39)

> "*39.* In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and

liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice."

Scope of interference with an arbitral award

74. The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorised as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.

75. In ***Dyna Technologies (P) Ltd.* v. *Crompton Greaves Ltd.*, (2019) 20 SCC 1**, paras 27-43, a three-Judge Bench of this Court held that courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root of the matter and there is no possibility of an alternative interpretation that may sustain the arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law.

*****

Scope of interference with the interpretation/construction of a contract accorded in an arbitral award

84. An Arbitral Tribunal must decide in accordance with the terms of the contract. In a case where an Arbitral Tribunal passes an award against the terms of the contract, the award would be patently illegal. However, an Arbitral Tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not intefere [See: ***SAIL* v. *Gupta Brother Steel Tubes Ltd.*, (2009) 10 SCC 63; *Pure Helium India (P) Ltd.* v. *ONGC*, (2003) 8 SCC 593; *McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181; *MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163**]. But where, on a full reading of the contract, the view of the Arbitral Tribunal on the

terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference [*South* ***East Asia Marine Engg. & Constructions Ltd.*** **v.** ***Oil India Ltd.*****, (2020) 5 SCC 164**].

Whether unexpressed term can be read into a contract as an implied condition

85. Ordinarily, terms of the contract are to be understood in the way the parties wanted and intended them to be. In agreements of arbitration, where party autonomy is the *grund norm*, how the parties worked out the agreement, is one of the indicators to decipher the intention, apart from the plain or grammatical meaning of the expressions used [***BALCO*** **v.** ***Kaiser Aluminium Technical Services Inc.*****, (2016) 4 SCC 126**].

86. However, reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by the parties thereto. An unexpressed term can be implied if, and only if, the court finds that the parties must have intended that term to form part of their contract. It is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them. Rather, it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, forms part of the contract [***Adani Power (Mundra) Ltd.*** **v.** ***Gujarat ERC*****, (2019) 19 SCC 9**].

87. But before an implied condition, not expressly found in the contract, is read into a contract, by invoking the business efficacy doctrine, it must satisfy the following five conditions:

(*a*) it must be reasonable and equitable;

(*b*) it must be necessary to give business efficacy to the contract, that is, a term will not be implied if the contract is effective without it;

(*c*) it must be obvious that "it goes without saying";

(*d*) it must be capable of clear expression;

(*e*) it must not contradict any terms of the contract [***Nabha Power Ltd.*** **v.** ***Punjab SPCL*****, (2018) 11 SCC 508**, followed in ***Adani Power case*****, (2019) 19 SCC 9**].

(emphasis supplied)

39. The solitary issue that arises for consideration in the present Petition pertains to the legality and sustainability of the Award of interest at the rate of 18% per annum granted by the learned Arbitrator.

40. At this stage, this Court finds it apposite, before adverting to the rival submissions advanced by the parties, to extract and examine the findings recorded by the learned Arbitrator in respect of Claim No. 4 in the Impugned Award pertaining to the award of interest. The relevant portion of the Impugned Award is reproduced herein below:

> "**Claim No.: 4 Interest @ 18% on Pre suit and pendente lite and future**
>
> The claimant in his claim no. 4 has stated that since the claimants genuine amount got block and could not be used or put to rotation. and became a bad debt as: such the claimant suffered loss and to compensate the loss, the payment of interest is a must. The claimant has sought interest @ 18% on all the above amount with effect from 01.01.2007 under 10 CC and for the delayed payment of running bills from the due date of payment to the date of actual payment.
>
> In this case the claimant vide his letters no C 13 dt. 02.02.2008, C 14 dt. 17.04.2008, C 15 dt. 05.06.2008 and C 16 dt. 06.07.2008 had been repeatedly requesting the respondent to the pay the amount as per clause 10 CC of the agreement with 18% interest per annum. But no action in respect of payments was taken by the respondent. The claimant in his reply has invoked clause 3 (1) a of the interest act which reads as under
>
> **CLAUSE 3 (1) A OF THE INTEREST ACT**
>
> **3. Power of court to allow interest. -** (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid in made, the court may, If It thinks fit, allow interest to the-person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to. say-
>
> (a) If the proceedings, rebate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings.
>
> Comments (vi) In case of notice was sent by plaintiff demanding interest on amount advanced by him to defendant the plaintiff entitled to interest for period from date of service of notice on defendant to date of filing of suit; M.S. Rajput. V. M/s. The Cellar, AIR 1993 Kant 9.
>
> As per this clause interest not exceeding the current rate can be paid from the date when the debt is payable to the date of institution of proceedings i.e. up to 31.12.2009. When the proceedings started on 7.01.2010. The claimant in his reply has

also dragged the judgement of Delhi High Court, in the case of DDA V/s S.S. Jatley, where in the Hon'ble High Court has upheld pre-suit and pendente lite suit interest @12% awarded by the arbitrator on demand by the claimant and from the date of demand till the date of filing of suit and till the date of decree and future interest from the date of degree awarded:@.16% per annum.

In another case referred by the claimant is of Hon'ble Andhra Pradesh High court in the case of Union of India V/s Satya Narayan. Construction Company where the High Court has upheld the interest of 12% per annum awarded by the arbitrator from the date of degree to the date of payment.

The respondent has at no stage challenged the calculation submitted by the claimant. The respondent in their reply to claims has stated that the claimant did not serve any notice of interest to the respondent and there is not provision in the agreement for the payment of interest. In this regard it is pointed out that the respondent submitted copy of the agreement dt 25.08.2004 and copy of the work order dt: 8.03.2004. The perusal shows that the claimant laid down encircled condition at page R-18 that "our rate are hold good for monthly payments. If monthly payments are not done then 24% interest will be charged.

The cause of action arose on 8.03.2004, when the claimant gave in writing to have his right to claim interest @ 24% in case monthly payments are not made. The Hon'ble Supreme Court of India has upheld this version in the case of Major (Regd) Inder Singh Rekhi V/s DDA (Decision on 24.03.1988)

This version has also been upheld by the Hon'ble Supreme court of India in the case of Union of India and other V/s L.K. Ahuja and Company decided on 05:04.1988.

It is therefore concluded that the stand of the respondent has no standing and is turned down and the claim of the claiming for demand of interest @ 24% w.e.f. 8.03.2004 holds good without any shadow of doubt, for all intents and purchases and up to date of payment in the interest of justice. But at the time of submission of claim and in his correspondence, the claimant has stuck to interest @ 18% only. Therefore his claim of interest @ 18% w.e.f, the date of cause of action i.e. 08:03.2004 till the date of filing suit, date of degree and date of payment holds goods as per law. It will be worth pointing out that the respondent has never objected to the rate of interest of 18%, claimed by the claimant repeatedly almost in all letters. The details of the claim worked out is attached."

(emphasis added)

41. A careful perusal of the aforesaid findings recorded by the learned Arbitrator reveals that the grant of interest essentially was

neither mechanical nor arbitrary. On the contrary, the learned Arbitrator undertook an examination of the various factors, including the correspondence exchanged between the parties, and the conduct of the Petitioner during the subsistence of the dispute. The relevant portion of the Impugned Award indicates that the learned Arbitrator took into account the repeated communications addressed by Respondent No. 1/Claimant therein seeking payment of its dues along with interest at the rate of 18% per annum, which communications were not controverted by the Petitioner at the material time.

42. The reasoning adopted by the learned Arbitrator further reflects that although Respondent No. 1 had, at an earlier stage, alluded to a higher rate of interest, the claim was consciously restricted before the learned Tribunal to interest at the rate of 18% per annum. The learned Arbitrator, therefore, proceeded to evaluate the claim on the basis of the rate actually pressed before the learned Tribunal and arrived at a finding that the said rate was justified.

43. Viewed in this light, the reasoning contained in the Impugned Award is cogent and reflects a clear and reasonable nexus between the factual findings recorded by the learned Arbitral Tribunal and the ultimate determination regarding the grant of interest.

44. Now turning to the principal plank of the challenge raised by the Petitioner, which is predicated upon the provisions of the Interest Act. It has been contended that in terms of Section 3(1) of the said Interest Act, interest cannot be awarded at a rate exceeding the "*current rate of interest*", which expression under Section 2(b) of the Interest Act is understood to mean the highest of the deposit rates offered by scheduled banks. The Petitioner, therefore, has submitted

that, given that the prevailing fixed deposit rates during the relevant period were in the vicinity of 6-7% per annum, the learned Arbitrator could not have granted interest at a rate as high as 18% per annum, and that the Impugned Award of interest is consequently contrary to the statutory framework governing the grant of interest.

45. At first blush, the submission advanced by the Petitioner appears attractive; however, upon a closer scrutiny of the statutory framework governing arbitral proceedings, the said contention does not withstand judicial examination.

46. The arbitral proceedings in the present case are governed by the A&C Act, which constitutes a special and self-contained legislative framework regulating arbitral adjudication, including the authority of the learned Arbitral Tribunal to award interest. Significantly, the arbitral proceedings were invoked on 06.07.2008, i.e., much prior to the amendment introduced to the A&C Act by Act 3 of 2016 with effect from 23.10.2015. Consequently, the present dispute necessarily falls to be examined under the statutory regime prevailing prior to the 2015 amendment, and the issue pertaining to the grant of interest must therefore be determined in accordance with Section 31(7) of the A&C Act as it stood prior to the said amendment. The pre-amended provision, which governed the field at the time the Arbitral Award in the present case came to be rendered, read as under:

> **"Section 31(7)** –
>
> *******
>
> (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 eighteen per cent per annum from the date of the award to the date of payment."
> ***(emphasis added)***

47. Under the statutory framework prevailing prior to the 2015 amendment, Section 31(7)(a) of the the A&C Act, conferred a wide and substantive discretion upon the learned Arbitral Tribunal to award pre-reference as well as *pendente lite* interest at such rate as it deemed reasonable, unless the parties had expressly agreed otherwise. The provision, in its plain terms, recognised the autonomy of the Arbitral forum to determine the appropriate rate of interest having regard to the factual matrix of the dispute, the conduct of the parties, and the period during which the claimant was deprived of monies found due.

48. In the present case, it is not in dispute that the Agreement executed between the parties is conspicuously silent with respect to the prohibition or restriction on the grant of interest. In the absence of such contractual embargo, the statutory discretion vested in the learned Arbitrator remained wholly unfettered.

49. Equally significant is the scheme embodied in Section 31(7)(b) in its pre-amendment form, which stipulated that a sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of 18% per annum from the date of the award until payment. The legislative prescription of 18% per annum as the statutory default rate of interest unmistakably indicates the benchmark contemplated by the Parliament within the arbitral framework. When the statute itself envisaged interest at the said rate as the normative

default, it would be wholly incongruous to characterise the grant of interest at 18% per annum as per se excessive or unconscionable.

50. Viewed through this statutory lens, the determination of the learned Arbitrator granting interest at the rate of 18% per annum cannot be regarded as aberrant or disproportionate. On the contrary, the rate awarded finds resonance with the legislative design of the A&C Act as it stood at the relevant time. The power to award interest under Section 31(7) of the A&C Act is intended to compensate a party for the deprivation of the legitimate use of money during the subsistence of the dispute. Interest, in such circumstances, operates not as a punitive device but as a restorative and compensatory mechanism, ensuring that the successful claimant is not left economically disadvantaged by the delay inherent in the adjudicatory process.

51. The jurisprudence on the subject consistently recognises that pre-award, *pendente lite*, and future interest serve the important purpose of placing the claimant, as far as monetary compensation can, in the position they would have been in, had the amounts due been paid on time. The statutory discretion vested in the Arbitral Tribunal is therefore to be respected unless the rate awarded is demonstrably arbitrary, capricious, or so unconscionable as to shock the judicial conscience. The legal position in this regard has been authoritatively clarified by the Hon'ble Supreme Court in ***North Delhi Municipal Corporation v. S.A. Builders Ltd.***[8], wherein the Court elucidated the underlying rationale governing the grant of interest, observing as follows:

[8] (2025) 7 SCC 132

> **"39.** Generally, going by the provisions contained in Section 31(7) of the 1996 Act, it is evident that an Arbitral Tribunal has the power to grant: (i) pre-award, (ii) pendente lite, and (iii) post-award interest. Intention behind awarding pre-award interest is primarily to compensate the claimant for the pecuniary loss suffered from the time the cause of action arose till passing of the arbitral award. Further, this is also to ensure that the arbitral proceeding is concluded within a reasonable period to minimise the impact of the pre-award interest as well as interest pendente lite; thereby promoting efficiency in the arbitration process. Similarly, grant of post-award interest also serves a salutary purpose. It primarily acts as a disincentive to the award debtor not to delay payment of the arbitral amount to the award-holder."
>
> ***(emphasis added)***

52. This Court now proceeds to consider the contention advanced on behalf of the Petitioner that the Impugned Award results in the grant of "*interest upon interest*", which, according to the Petitioner, is impermissible in law.

53. In the considered opinion of this Court, the aforesaid submission of the Petitioner is equally devoid of merit. The legal position on this aspect stands conclusively settled by the Hon'ble Supreme Court in ***Hyder Consulting (UK) Ltd. v. Governor, State of Orissa***[9], wherein a three-Judge Bench authoritatively interpreted Section 31(7) of the A&C Act. The Apex Court clarified that the expression *"sum directed to be paid by an arbitral award"* occurring in Section 31(7)(b) is not confined merely to the principal amount but would include the aggregate amount determined by the arbitral tribunal, including any interest awarded for the pre-award period under Section 31(7)(a). Consequently, where the arbitral tribunal includes pre-reference or *pendente lite* interest in the amount determined as payable, the composite sum so awarded constitutes the

[9] (2015) 2 SCC 189

"*sum*" for the purposes of Section 31(7)(b), and post-award interest may legitimately run on such amount. The grant of such interest therefore does not amount to impermissible "*interest upon interest*", but represents a statutorily recognised compensatory mechanism intended to account for the continued deprivation of money found due to the claimant. The relevant portions of ***Hyder Consulting*** *(supra)* read as under:

> "**66.** Clause (a) of Sub-section (7) provides that where an Award is made for the payment of money, the Arbitral Tribunal may include interest in the sum for which the Award is made. In plain terms, this provision confers a power upon the Arbitral Tribunal while making an Award for payment of money, to include interest in the sum for which the Award is made on either the whole or any part of the money and for the whole or any part of the period for the entire pre-award period between the date on which the cause of action arose and the date on which the Award is made. To put it differently, Sub-section (7)(a) contemplates that an Award, inclusive of interest for the pre-award period on the entire amount directed to be paid or part thereof, may be passed. The "sum" awarded may be principal amount and such interest as the Arbitral Tribunal deems fit. If no interest is awarded, the "sum" comprises only the principal. The significant words occurring in Clause (a) of Sub-section (7) of Section 31 of the Act are "the sum for which the award is made." On a plain reading, this expression refers to the total amount or sum for the payment for which the Award is made. Parliament has not added a qualification like "principal" to the word "sum," and therefore, the word "sum" here simply means "a particular amount of money." In Section 31(7), this particular amount of money may include interest from the date of cause of action to the date of the award.
>
> **67.** The Oxford Dictionary gives the following meaning to the word "sum":
>
> > Sum, 'if noun' : A particular amount of money.
> >
> > Sum, 'if verb' : The total amount resulting from the addition of two or more numbers, amounts, or items.
>
> **68.** In Black's Law Dictionary, the word "sum" is given the following meaning:
>
> > SUM. In English law-A summary or abstract; a compendium; a collection. Several of the old law treatises are called "sum." Lord Hale applies the term to summaries of statute law. Burrill. The sense in which the term is most commonly used is "money"; a

quantity of money or currency; any amount indefinitely, a sum of money, a small sum, or a large sum. ***U.S.*** v. ***Van Auken 96 US 366 (1877): 24 L.Ed. 852; Donovan*** v. ***Jenkins 52 Mont. 124, 155 P. 972, 973***.

69. Thus, when used as a noun, as it seems to have been used in this provision, the word "sum" simply means "an amount of money"; whatever it may include- "principal" and "interest" or one of the two. Once the meaning of the word "sum" is clear, the same meaning must be ascribed to the word in Clause (b) of Sub-section (7) of Section 31 of the Act, where it provides that a sum directed to be paid by an Arbitral Award "shall carry interest…." from the date of the Award to the date of the payment i.e., post-award. In other words, what Clause (b) of Sub-section (7) of Section 31 of the Act directs is that the "sum," which is directed to be paid by the Award, whether inclusive or exclusive of interest, shall carry interest at the rate of eighteen per cent per annum for the post-award period, unless otherwise ordered.

70. Thus, Sub-section (7) of Section 31 of the Act provides, firstly, vide Clause (a) that the Arbitral Tribunal may include interest while making an award for payment of money in the sum for which the Award is made and further, vide Clause (b) that the sum so directed to be made by the Award shall carry interest at a certain rate for the post award period.

71. The purpose of enacting this provision is clear, namely, viz. to encourage early payment of the awarded sum and to discourage the usual delay, which accompanies the execution of the Award in the same manner as if it were a decree of the court vide Section 36 of the Act.

72. In this view of the matter, it is clear that the interest, the sum directed to be paid by the Arbitral Award under Clause (b) of Sub-section (7) of Section 31 of the Act is inclusive of interest pendent lite.

*****

77. In the result, I am of the view that S.L. Arora's case is wrongly decided in that it holds that a sum directed to be paid by an Arbitral Tribunal and the reference to the Award on the substantive claim does not refer to interest pendente lite awarded on the "sum directed to paid upon Award" and that in the absence of any provision of interest upon interest in the contract, the Arbitral Tribunal does not have the power to award interest upon interest, or compound interest either for the pre-award period or for the post-award period. Parliament has the undoubted power to legislate on the subject and provide that the Arbitral Tribunal may award interest on the sum directed to be paid by the Award, meaning a sum inclusive of principal sum adjudged and the interest, and this

has been done by Parliament in plain language."

(emphasis added)

54. At this juncture, this Court also deems it apposite to refer to the judgment of a Co-ordinate Bench of this Court in ***Delhi Development Authority v. MSJ Constructions Pvt. Ltd.*** [10], wherein the Court had occasion to expound upon the legal position pertaining to the grant of interest upon interest. The relevant portions of the said judgment read as follows:

> **17.** In ***Oil & Natural Gas Commission*** (supra), the Supreme Court was concerned with a case where the two main claims were themselves relating to interest for delayed payment, and after awarding the two main claims, the Arbitrator had awarded interest at 12% per annum from the date of award till the date of award till realization. On the question of whether, on the said interest amount, further interest would be liable to be awarded from the date ofaward till realization, the Supreme Court observed as under:
>
> > *"3. Shri B. Datta, learned senior counsel for the appellant, contended that what was awarded by the Arbitrators in respect of the two claims referred to earlier in the course of this order is itself interest for different periods. He, therefore, submitted that Arbitrators could not have further awarded interest on the claims awarded at 12% per annum from the date of award till realisation, He did not dispute, and very fairly and correctly, that the Arbitrators do have the power to grant interest on the amount claimed in the arbitration and the power* of *the Arbitrators was very characteristically described by him as 'before, during and after' of the arbitration proceedings. His point is that there cannot be interest upon interest when the claim itself is one of interest and interest upon that amount could not have been granted by the Arbitrators and relied upon Section 3 of the Interest Act.*
> >
> > *4. There cannot be any doubt that the Arbitrators have powers to grant interest akin to Section 34 of the CPC which is the power of the court in view of Section 29 of the Arbitration Act, 1940. It is clear that interest is not granted upon interest awarded but upon the claim made. The claim made in the proceedings is under two heads -*

[10] 2021 SCC OnLine Del 5166

one is the balance of amount claimed under invoices and letter dated February 10, 1981 and the amount certified and paid by the appellant and the second is the interest on delayed payment. That is how the claim for interest on delayed payment stood crystallized by the time the claim was filed before the Arbitrators. ***Therefore, the power*** *of* ***the Arbitrators to grant interest on the amount of interest which may, in other words, be termed as interest on damages or compensation for delayed payment which would also become part of the principal****. If that is the correct position in law, we do not think that Section 3 of the Interest Act has any relevance in the context ofthe matter which we are dealing with in the present case. Therefore, the first contention raised by Shri Datta, though interesting, deserves to be and is rejected."*

18. In ***Three Circles*** (supra), the Supreme Court once again had the occasion to examine the Arbitrator's power to award interest upon interest. In this regard, the Supreme Court relied upon the decision in ***McDermott International Inc.*** **v.** ***Burn Standard Co. Ltd.,*** **[(2006) 11 SCC 181]** and held that the same was permissible in law, and observed as under:

15. Now the question comes which is related to awarding of 'interest on interest'. According to the appellant, they have to pay interest on an amount which was inclusive of interest and the principal amount and, therefore, this amounts to a liability to pay 'interest on interest. This question is no longer res integra at the present point of time. This Court in **McDermott International Inc.** ***v.*** **Burn Standard Co. Ltd.** ***(2006) 11 SCC 181*** *has settled this question in which it had observed as follows:*

> *The Arbitrator has awarded the principal amount and interest thereon upto the date of award and future interest thereupon which do not amount to award on interest on interest as interest awarded on the principal amount upto the date of award became the principal amount which is permissible in law.*

16. The High Court on this question has also rightly relied on a decision of this Court in the case of **Oil and Natural Gas Commission** ***v.*** **M.C. Clelland Engineers S.A.** ***AIR 1999 SCW 1224****. That being the position, we are unable to find any ground to set aside the judgment of the Division Bench of the High Court while considering the ground of 'interest on interest'.*

(emphasis added)

55. In the facts of the present case, the learned Arbitrator has awarded interest in exercise of the discretion vested under Section 31(7)(b) of the A&C Act, on the sum determined as payable to Respondent No. 1. In view of the legal position noticed hereinabove, the grant of interest on the awarded sum cannot be construed as impermissible interest upon interest. The contention advanced by the Petitioner on this ground, therefore, does not merit acceptance.

56. At this juncture, this Court considers it apposite to advert to the judgment rendered by the three-Judge Bench of the Hon'ble Supreme Court in ***Shahi & Associates v. State of U.P.***[11], wherein the factual matrix bore close resemblance to the circumstances obtaining in the present case. In the said decision, the Hon'ble Supreme Court examined the issue relating to the grant of interest within the statutory framework prevailing prior to the 2015 amendment to the A&C Act, and clarified the governing principles applicable to Arbitral Awards rendered during that period. The Apex Court noted that in the proceedings before the High Court, the rate of interest awarded by the Arbitral Tribunal had been reduced from 18% per annum to 6% per annum.

57. However, in the said decision, upon a detailed consideration of Section 31(7) of the A&C Act as it then stood, the Hon'ble Supreme Court reversed the said finding and restored the rate of interest to 18% per annum, holding that the determination of interest by the Arbitral Tribunal fell squarely within the statutory discretion conferred under the pre-amendment regime. The relevant portions of the said judgment are reproduced herein below:

[11] (2019) 8 SCC 329

"**9.** The 1996 Act has come into force with effect from 22-8-1996. Section 85 of the 1996 Act expressly repeals the provisions of the Arbitration Act, 1940. Thus, the 1996 Act would be applicable to all arbitral proceedings which have commenced on or after the said Act came into force. Para 7-A inserted by Section 24 of the U.P. Amendment Act was an amendment to the First Schedule of the Arbitration Act, 1940. This amendment was introduced by the U.P. Act No. 57 of 1976. The provisions of the Arbitration Act, 1940 including the State amendment will have no application to the proceedings commenced after coming into force of the 1996 Act.

10. Section 31(7)(*b*) of the 1996 Act, before its amendment by Act 3 of 2016, which has come into force with effect from 23-10-2015, is relevant for the purpose of this case, empowers the arbitrator to award pre-award and post-award interest. This section clearly states that unless otherwise specified, the awarded sum would carry an interest @ 18% p.a., as extracted below:

> "**31.** ***Form and contents of arbitral award***. - (1)-(6)
>
> ***
>
> (7)(*a*) Unless otherwise agreed by the parties, where and insofar 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 eighteen per centum per annum* from the date of the award to the date of payment."
>
> (emphasis supplied)

11. Section 31(7)(*b*) of the 1996 Act clearly mandates that, in the event the arbitrator does not give any specific directions as regards the rate of interest on the amount awarded, such amount "shall" carry interest @ 18% p.a. from the date of award till the date of payment. Since the Arbitration Act, 1940 has been repealed by way of Section 85 of the 1996 Act, the Schedule to the Arbitration Act, including the State amendment, also stands repealed. The only exception is provided in sub-section (2)(*a*) of Section 85 where a proceeding which had commenced when the Arbitration Act of 1940 was in force and continued even after coming into force of the 1996 Act, and all parties thereto agreed for application of the old Act of 1940. Therefore, the provisions of Arbitration Act, 1940 including the State amendment, namely, para 7-A inserted by Section 24 of the U.P. Amendment Act will have no application to the proceedings commenced after coming into force of the 1996 Act.

> **12.** In the instant case, though the agreement was earlier to the date of coming into force of the 1996 Act, the proceedings admittedly commenced on 27-10-1999 and were conducted in accordance with the 1996 Act. If that be so, para 7-A inserted by Section 24 of the U.P. Amendment Act has no application to the case at hand. Since the rate of interest granted by the arbitrator is in accordance with Section 31(7)(*b*) of the 1996 Act, the High Court and the District Judge were not justified in reducing the rate of interest by following the U.P. Amendment Act."
>
> ***(emphasis added)***

58. The aforesaid legal position has further been asserted by the Hon'ble Supreme Court in ***Larsen Air Conditioning & Refrigeration Co. v. Union of India***[12], wherein, following the reasoning in ***Shahi & Associates*** *(supra)*, the Apex Court observed that under Section 31(7) of the A&C Act, as it stood prior to the 2015 amendment, the Arbitral Tribunal enjoys a wide discretion to award pre-reference and *pendente lite* interest at such rate as it deems reasonable, and that such determination ought not to be interfered with by a court exercising jurisdiction under Section 34 of the A&C Act, save in cases of patent illegality or manifest arbitrariness. The relevant portions of the said judgment are reproduced herein below:

> "**11.** Section 31(7)(*b*) of the 1996 Act, was amended by Act 3 of 2016, w.e.f. 23-10-2015. The pre-amended provision, empowers the arbitrator to award both pre-award and post-award interest, and specifies that the awarded sum would carry an interest of 18% p.a., unless provided otherwise, from the date of award till the date of payment. The pre-amended section, as it stood on the date of award by the arbitrator (21-1-1999), read as follows:
>
> *****
>
> **13.** In the present case, given that the arbitration commenced in 1997 i.e. after the 1996 Act came into force on 22-8-1996, the arbitrator, and the award passed by them, would be subject to this statute. Under the enactment i.e. Section 31(7), the statutory rate of interest itself is contemplated at 18% p.a. Of course, this is in the event the award does not contain any direction towards the rate of

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interest. Therefore, there is little to no reason, for the High Court to have interfered with the arbitrator's finding on interest accrued and payable. Unlike in the case of the old Act, the court is powerless to modify the award and can only set aside partially, or wholly, an award on a finding that the conditions spelt out under Section 34 of the 1996 Act have been established. The scope of interference by the court, is well defined and delineated [refer to ***Associate Builders* v. *DDA*, (2015) 3 SCC 49, *Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131 and *Delhi Airport Metro Express (P) Ltd.* v. *DMRC*, (2022) 1 SCC 131]**.

14. The reliance on ***Post Graduate Institute of Medical Education & Research* v. *Kalsi Construction Co.*, (2019) 8 SCC 726** by the respondent State, is inapt, given that this Court had exercised its Article 142 jurisdiction in light of three pertinent factors — the award had been passed 20 years prior, related to construction of a Paediatrics Centre in a medical institute, and that the parties in that case had left the matter to the discretion of the court. Similarly, in ***Oriental Structural Engineers (P) Ltd.* v. *State of Kerala*, (2021) 6 SCC 150** this Court held that since the contract stipulated interest entitlement on delayed payments, but contained no mention of the rate of interest applicable — the Tribunal ought to have applied the principles laid down in *G.C. Roy* [*State of Orissa* v. *G.C. Roy*, (1992) 1 SCC 508] , and therefore, in exercise of Article 142, this Court reduced the rate of interest awarded by the Tribunal on the sum left unpaid. The judgment in ***Municipal Corpn. of Greater Mumbai* v. *Pratibha Industries Ltd.*, (2019) 3 SCC 203,** no doubt discusses the inherent powers of the High Court as a superior court of record, but relates specifically to the jurisdiction to recall its own orders, and offers little assistance in the present dispute.

15. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality i.e. that "*illegality must go to the root of the matter and cannot be of a trivial nature*"; and that the Tribunal "*must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground*" [ref: ***Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204**], SCC p. 81, para 42]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34.

16. It is important to notice that the old Act contained a provision which enabled the court to modify an award. However, that power has been consciously *omitted* by Parliament, while enacting the 1996 Act. This means that the Parliamentary intent was to exclude power to modify an award, *in any manner*, to the court. This

position has been iterated decisively by this Court in ***NHAI* v. *M. Hakeem*, (2021) 9 SCC 1**: (SCC p. 28, para 42)

> "*42*. It can therefore be said that this question has now been settled finally by at least 3 decisions [***McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181**]' [***Kinnari Mullick* v. *Ghanshyam Das Damani*, (2018) 11 SCC 328**]' [***Dakshin Haryana Bijli Vitran Nigam Ltd.* v. *Navigant Technologies (P) Ltd.*, (2021) 7 SCC 657**] of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in *Redfern and Hunter on International Arbitration*, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996."
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> **17.** In view of the foregoing discussion, the impugned judgment [***Union of India* v. *Larsen Air Conditioning & Refrigeration Co.*, 2019 SCC OnLine All 7205**] warrants interference and is hereby set aside to the extent of modification of rate of interest for past, pendente lite and future interest. The 18% p.a. rate of interest, as awarded by the arbitrator on 21-1-1999 (in Claim 9) is reinstated. The respondent State is hereby directed to accordingly pay the dues within 8 weeks from the date of this judgment."
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> ***(emphasis added)***

59. The principles emerging from the aforesaid decisions, when applied to the facts of the present case, leave no room for doubt. The arbitral proceedings herein were invoked on 06.07.2008, and the Impugned Award was rendered squarely within the pre-2015 statutory regime of the A&C Act. Consequently, the determination relating to interest necessarily falls to be examined in the light of Section 31(7) of the A&C Act as it stood prior to the amendment. Under the said framework, the Arbitral Tribunal was vested with a broad statutory

discretion to award pre-reference and *pendente lite* interest at such rate as it deemed reasonable, subject only to any contractual stipulation to the contrary.

60. In the present case, it is an undisputed fact that the Agreement between the parties does not contain any clause either prohibiting or regulating the grant of interest. The learned Arbitrator, upon consideration of the material placed on record, concluded that Respondent No. 1 was entitled to interest at the rate of 18% per annum. The reasoning adopted by the learned Arbitrator demonstrates a conscious exercise of the statutory discretion vested under Section 31(7) of the A&C Act and cannot be said to suffer from any infirmity in law.

61. Viewed in this backdrop, the contention advanced by the Petitioner seeking a reduction of the rate of *pendente lite* interest is wholly unsustainable. The impugned determination does not disclose any patent illegality, perversity, or contravention of the fundamental policy of Indian law, nor does it transgress the terms of the contract between the parties. Interference by this Court would, in effect, amount to re-appreciating the merits of the arbitral determination and substituting the Court's view in place of the arbitrator's, an exercise which stands expressly proscribed within the narrow confines of jurisdiction under Section 34 of the A&C Act.

62. Accordingly, in the considered opinion of this Court, the award of interest at the rate of 18% per annum by the learned Arbitrator constitutes a lawful, justified, and reasoned exercise of arbitral discretion within the contours of the governing statutory framework. The challenge mounted by the Petitioner on this aspect is, therefore,

devoid of merit and does not warrant acceptance on any of the grounds urged hereinbefore.

63. However, at this stage, this Court considers it necessary to closely scrutinize the grant of interest by the learned Arbitrator in the Impugned Award insofar as it has been directed to run from the alleged date of cause of action, i.e., 08.03.2004.

64. In the considered opinion of this Court, the award of interest from the aforesaid date cannot be sustained for multiple, cogent reasons. At the outset, it is pertinent to note that it was not even the case of the Claimant therein/Respondent No. 1 herein to seek interest from 08.03.2004. On the contrary, a specific and conscious claim for interest was made only from a later date, *namely*, 01.01.2007. This position is not in dispute and, in fact, stands duly reflected in the Impugned Award itself.

65. In such circumstances, the learned Arbitrator could not have travelled beyond the scope of the claim as laid before it and granted interest from an anterior date which was neither prayed for nor pressed during the arbitral proceedings. Such a grant, being *dehors* the pleadings and the reliefs sought, is legally untenable and liable to be interfered with.

66. At this stage, this Court is guided by the judgment of the Constitution Bench of the Hon'ble Supreme Court in ***Gayatri Balasamy v. M/s ISG Novasoft Technologies Limited***[13], which comprehensively delineates the principles governing the award of interest in arbitral proceedings, as well as the limited contours within

[13] 2025 SCC OnLine SC 986

which modification thereof may be undertaken in proceedings under Section 34 of the A&C Act.

67. Having due regard to the ratio laid down therein, and in order to ensure that the grant of interest is in consonance with the statutory framework and settled legal principles, this Court considers it appropriate to recalibrate the operative period for which such interest is to be awarded. The exercise undertaken herein is not in the nature of a reappreciation of the merits of the award, but a limited correction to align the relief with the permissible legal parameters.

68. Accordingly, while maintaining the rate of interest at 18% per annum as awarded by the learned Arbitrator, it is directed that the said interest shall run from the date of invocation of arbitration, i.e., 06.07.2008, and shall continue until the date of realization.

CONCLUSION:

69. In view of the foregoing discussion, the rate of interest at 18% per annum, as awarded in the Impugned Award, is upheld. However, the date of applicability of such interest is modified, and it shall now be computed from the date of invocation of arbitration, i.e., 06.07.2008, instead of 08.03.2004.

70. Accordingly, the present Petition, being *O.M.P. 709/2011*, insofar as it pertains to the issue of interest, stands disposed of in the above terms.

71. Pending application(s), if any, also stand disposed of.

72. No order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 06, 2026/sm/kr