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

Date of decision: 01st JULY, 2026

IN THE MATTER OF:

\+ **O.M.P. (COMM) 307/2022**

TBEA ENERGY INDIA PRIVATE LIMITED .....Petitioner

Through: Mr. Vinam Gupta, Ms Pragya Narayan and Ms. Nabam Yama, Advocates

versus

M/S BHARAT HEAVY ELECTRICALS LIMITED .....Respondent

Through: Ms. Priya Kumar, Sr. Adv. with Mr. Atul Shaker Mathur, Ms. Priya Singh, Mr. Umang Katariya, Ms. Sarvapreya Makkar & Ms. Ghanishtha Mishra, Advs.

\+ **O.M.P. (COMM) 294/2022 & I.A. 10912/2022**

M/S BHARAT HEAVY ELECTRICALS LIMITED .....Petitioner

Through: Ms. Priya Kumar, Sr. Adv. with Mr.Atul Shaker Mathur, Ms. Priya Singh, Mr. Umang Katariya, Ms. Sarvapreya Makkar & Ms. Ghanishtha Mishra, Advs.

versus

TBEA ENERGY (INDIA) PRIVATE LIMITED .....Respondent

Through: Mr. Vinam Gupta, Ms Pragya Narayan and Ms. Nabam Yama, Advocates

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present petitions are filed under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as* "**the Act**") for setting aside the Arbitral Award (*hereinafter referred to as* "**the impugned award**") dated 06.01.2022, passed by the learned Sole Arbitrator, Justice (Retd) Vinay Kumar Jain.

2. There are cross objections to the Impugned Award, and for the sake of convenience, it is stated that TBEA Energy India Private Limited (*hereinafter referred to as* "**the Petitioner**") was the Claimant before the Arbitrator and M/S Bharat Heavy Electricals Limited (*hereinafter referred to as* "**the Respondent**") was the Respondent before the Arbitrator.

3. Shorn of unnecessary details, relevant facts leading to the present petition are as follows:

   a. The Petitioner, TBEA Energy India Private Limited, is a company incorporated under the Companies Act, 1956, engaged in the business of Manufacturing, Designing, Supply and Service of Transformers and Reactors.

   b. The Respondent, Bharat Heavy Electricals Limited is a Public Sector Undertaking incorporated under the Companies Act, 1956. The Respondent is engaged in the business of Design, Engineering, Manufacturing, Construction, Testing, Commissioning and Servicing of a wide range of power, transmission, oil, gas and transportation products.

c. That Tamil Nadu Transmission Corporation Limited (*hereinafter referring to as* "**TANTRANSCO**") issued an NIT to the Respondent for the supply of six units of 765 KC, 500 MVA ICT Transformers for 10 Transco Ariyalur Project. For the said purpose, the Respondent issued a tender, as a result of which a Purchase Order dated 18.12.2017 (herein referred to as the "PO") was issued to the Petitioner for an amount of Rs. 67,00,39,376 /-

d. It is stated that at the time of entering the bid, the Petitioner had to meet the Prequalification Requirement (*hereinafter referred to as* "**PQR**"). It is stated that the Petitioner opted for B) (ii) of the PQR and in furtherance of the same issued to the Respondent a letter dated 19.08.2017 and furnished an undertaking dated 12.12.2017 stating that the Parent Company of the Petitioner will furnish an Additional Performance Bank Guarantee (herein referred to as APBG) equivalent to 10% of the Contract.

e. Under the PO, an Activity Schedule was prepared stating the obligation of the respective parties during the terms of the PO. The said schedule was prepared by the Respondent and was agreed to by the Petitioner. The schedule as agreed to is reproduced hereunder**:**

Sl. No.	**Activity**	**Activity time in weeks**	**Cumulative time in weeks (from LOI/PO date)**	**Remarks if any**
1	Submission of master document list	1 Week	1 Week from PO	Max. within 1 week by vendor
2	Submission of	5 Weeks	6 Weeks from	

Sl. No.	Activity	Activity time in weeks	Cumulative time in weeks (from LOI/PO date)	Remarks if any
	document necessary for getting manufacturing clearance like Drawings, data sheet etc.		PO	
3	Review and Approval of documents and issue of manufacturing clearance	3 Weeks by BHEL	9 Weeks from PO	Design review documents shall not be submitted. However, calculation of No load & load loss shall be submitted
4	Manufacturing Time	15-27 Weeks	24-36 Weeks from PO	After receipt of drawing approval supported with manufacturing clearance. Manufacturing shall be commencing 1st unit in 24 to 26 weeks & then after 2 to 3 units per 4 weeks/1 month
5	Inspection	2 Weeks by BHEL	26-38 Weeks from PO	
6	Issue of MICC/MDCC	1 Week by BHEL	27-39 Weeks from PO	
7	Dispatch	1 Week	28-40 Weeks from PO	
8	Transit time upto Site	6 Weeks	34-46 Weeks from PO	

Sl. No.	Activity	Activity time in weeks	Cumulative time in weeks (from LOI/PO date)	Remarks if any
Note : 1) Supplier must ensure the completeness and correctness of the requisite documents before submission for approval. 2) Delay in approval on account of inspection call should be given in the prescribed format only. Inspection calls not in the prescribed format shall not be entertained 3) Qty to be offered for Inspection should be in accordance within Delivery-schedule lot. BHEL reserves the right not to entertain multiple inspection calls				

f. Under the said Schedule, a total of six weeks were granted to the Respondent, three weeks for review, approval of documents and issuance of manufacturing clearance, two weeks for inspection and one week for issue of MICC/MDCC.

g. The Petitioner was allotted 6 weeks from the date of the Purchase order for submission of documents necessary for the clearance, 15-27 weeks for the manufacture, one week for the dispatch of ICTs and 6 weeks for transit time up to the site where the ICTs were to be delivered.

h. That Clause 7 of the arrangement laid down the time for delivery of the proposed transformers along with the finalization of the activity schedule. Clauses 8 and 8.1 laid down the requirement of deposition of Security- Cum Performance BG by the Petitioner and APBG by the Petitioner's Parent Company respectively. Clause 9 provided for imposition of liquidated damages for

delayed delivery and services. Relevant clauses are reproduced hereunder**:**

"Clause 7 - Delivery Period

"Delivery as per project requirement. Present indication: 05-Nov-2018 within 40+6=46 weeks from PO date considering 3 weeks for review and approval of documents and issue of manufacturing clearance, 2 weeks for inspection and 1 week for issue MICC I MDCC)

Early delivery acceptable. Date calculated as per activity schedule. To be re-fixed as per actual time taken by BHEL vendor. Date of receipt of material at site, shall be considered as delivery date."

Clause 8-Security-Cum Performance BG

"Supplier shall arrange to submit Performance BG I Deposit on a non ...j udicial stamp paper of appropriate value along with first invoice or within 120 days from placement of Purchase Order (PO) whichever is earlier in line with follows:

PBG for 10% of the total PO value, (and any subsequent amendments thereof) valid for 60 months from the date of taking over by TANTRANSCO (date is 31.03.2019) or from the date of delivery at site (whichever is later). With claim period of 3 months over and above. Total PO value at the time of placement of PO shall be considered for calculation of the PBG amount. In case of extension of BG Period is required, bidder to ensure extension of PBG accordingly."

Clause 8.1-Additional Performance BG

"Supplier shall arrange to submit Additional Performance Bank Guarantee from Parent Company (Mis TBEA Shenyang Transformer Group Co. Ltd, China) for an amount of 10% of the ex-works cost of the 500 MV A Auto Transformer. This Bank Guarantee shall remain valid for 60 months from the date of taking over by T ANTRANSCO (date is 31. 03.2019) or from the date of delivery at site (whichever is later), with claim period of 3 months over and above. In case of extension of BG Period is required, bidder to ensure extension of PBG accordingly."

Clause 9-Liquidated Damages for delayed delivery and for delayed services

"In case of delay in execution of Purchase Order beyond the contractual delivery time, an amount of 0.5% of the total Purchase Order value for supply (incl. taxes and duties, freight & Insurance as applicable) per week of delay or part thereof subject to a maximum of 10% of the total Purchase Order value for supply (incl. taxes and duties, freight & insurance as applicable) shall be deducted as Liquidated Damages (LD) along with applicable GST (if any), on LD

Note:

i) in case of any amendment/ revision in PO/ WO, the LD shall be linked to the amended / revised Purchase Order/ Contract value and delivery/completion time/ schedule. if applicable.

ii) Date of receipt of material at site, shall be considered as delivery date and same shall be treated for levying LD as above.

If, as per supplier, delay is not attributable to the supplier delay analysis with documentary evidence may be submitted by the supplier at the earliest but not later than six months from the end of the financial year in which the payment is withheld. Based on the above details / documents submitted by the supplier. BHEL shall take final decision and if considered appropriate by BHEL withheld amount (full or part as the case may be) shall be released otherwise, full or balance withheld amount shall be treated as deduction of Liquidated Damages (LD) towards delayed delivery"."

i. The dispute between the parties arises of out the following causes:

   I. Imposition of liquidated damages by the Respondent on the Petitioner amounting to INR 7,85,41,104 due to delay in the delivery of the ICTs. (Raised by the Petitioner)

   II. Non-payment of Additional BG by the Parent Company of the Petitioner and withholding of an amount of Rs. 5,23,76,868 by the Respondent as a result of non-payment. (Raised by the Respondent)

   III. Award of Cost by the Arbitral Tribunal (Raised by the Respondent)

   IV. Refusal to grant future interest (Raised by the Petitioner)

j. The Agreement between the parties contained an Arbitration Clause and the Petitioner, therefore, filed a Petition under Section 11 of the Arbitration and Conciliation Act, 1996 before the Hon'ble High Court of Delhi. Vide order dated 08.02.2021, the

Hon'ble High Court appointed a Sole Arbitrator to adjudicate the disputes that have arisen between the parties.

k. The issues framed by the Learned Arbitral Tribunal are reproduced hereunder:

> 1. *"Whether the time mentioned in the agreement, for the supply of the transformers, was a firm time, as is alleged by the respondent OPR*
>
> 2. *Whether the delay in supply of the transformers is not attributable to the claimant and if so to what effect OPC*
>
> 3. *Whether the respondent suffered losses / damages due to delay in supply of the transformers and if so to what extent OPR*
>
> 4. *Whether the respondent is not entitled to the Liquidated damages, if Issue / Point -3 is not proved OPC*
>
> 5. *Whether the Claimant altered its position on issuance of the credit-notes by the respondent OPC*
>
> 6. *If issue / Point no 4 is answered in affirmative, whether the respondent is not entitled to the Liquidated Damages and the 9 claimant is entitled to the release / payment of INR 78541104, the amount withheld towards the said Liquidated Damages OPC*
>
> 7. *Whether the claimant is entitled to reduction of the PBG from 10% to 3% OPC*
>
> 8. *Whether the respondent was entitled to withhold the amount of INR 52376868 due to non-*

submission of the Additional PBG by the Parent Company of the claimant OPR

9. *Whether the claimant is entitled to release of INR 52376868 against submission of its own Additional PBG OPC*

10. *Whether the claimant is entitled to Pendete-lite and future interest and if so at what rate and to what amount OPC*

11. *Whether the claimant is entitled to the cost of the arbitration proceedings OPC*

12. *Relief"*

4. With respect to the imposition of liquidated damages by the Respondent on the Petitioner amounting to INR 7,85,41,104 due to delay in the delivery of the ICTs, the Arbitrator directed the Respondent to release a sum of Rs.3,92,70,552/- to the Petitioner, which was 50 percent of the amount withheld towards liquidated damages. Along with this, the Arbitrator directed the Respondent to pay proportionate cost on the said amount to be calculated in terms of the Affidavit of cost filed by the Petitioner. On the aspect of non-payment of APBG by the Parent company of the Petitioner, the Arbitrator granted liberty to deposit the APBG in terms of the agreement subject to which the Respondent shall release the amount of Rs. 5,23,76,868/- withheld by it. With regards to cost, the Arbitrator allowed proportionate cost to be paid to the Petitioner by the Respondent. Conclusively, the Arbitrator refused to grant any future Interest to the Petitioner.

<u>OBJECTIONS OF THE PETITIONER TO THE AWARD DATED 06.01.2022 IN OMP(COMM) 307/2022</u>

5. The Petitioner herein has raised objections to the impugned award to the extent that (i) the Respondent was directed to release only 50% of the claim amount, i.e., INR 3,92,70,552 (Rupees Three Crores Ninety-Two Lakhs Seventy Thousand Five Hundred Fifty-Two Only) towards liquidated damages and (ii) the rejection of the Petitioner' claim for future interest.

6. It is submitted by the Petitioner that no loss was caused or proved by the Respondent, as despite delivery of the ICTs in July 2019, not even a single ICT has been commissioned on the date of the Impugned Award due to non- readiness of the site. Despite this, the arbitrator had awarded damages to the Respondent principally by way of penalty, in the absence of any loss caused to the Respondent. Reliance is placed on <u>Kailash Nath vs Delhi Development Authority,</u> **(2015) 4 SCC 13**.

7. It is stated that the Arbitrator on mere assumption and conjectures proceeded to impose damages on the Petitioner, by merely stating that cost of ICTs formed major component of the work which the Petitioner was to execute for the End Customer, TANTRANSCO, however no evidence or document was placed on record by the Respondent which would establish any link between TANTRANSCO Debit Note dated 26.12.2019 issued to the Respondent due to delay in the delivery of ICTs and the Petitioner‘s alleged delays.

8. It is stated by the Petitioner that the Respondent imposed Liquidated Damages despite a clear waiver and refund of LD amount to the Petitioner vide the Credit Notes. It is the Petitioner's case that 05.11.2018 was a tentative date of delivery and was to be refixed as per the project

requirement. Despite non-delivery on the said date, the Respondent made no endeavours to inquire into the status of the ICTs. It is stated that the ICTs were only delivered on 10.07.2019 but no objections were raised by the Respondent with respect to the delivery at that time. It was only two months after the delivery that the Respondent issued two debit notes imposing liquidated damages on the Petitioner.

9. It is stated that time was not the essence of the contract, and in addition to this, the date of delivery was never refixed by the Respondent. Despite this, the Arbitrator had erroneously concluded that it was inconsequential whether 5.11.2018 was revised or not and the Petitioner is in any event liable to pay liquidated damages to the Respondent.

10. It is stated by the Petitioner that the Arbitrator took upon itself the exercise to suo-moto re-fix the date by computing the number of days of delay attributable to each Party, sans any pleading or evidence from the Petitioner. Basis this assessment, the Arbitrator unjustly allowed partial imposition of LD which was 50% of the claim amount on the Petitioner, by stating that Petitioner is liable to pay LD for such period which can be attributable to it. Such exercise is beyond the jurisdiction of the Arbitrator.

11. The second objection raised by the Petitioner relates to the rejection of grant of Future Interest.

12. It is stated that the Arbitrator failed to appreciate that there is no specific bar under Clause 4, which prohibits grant of future interest, in accordance with the mandate of Section 31(7)(b) of the Act.

13. It is the case of the Petitioner that Arbitrator has incorrectly read the observations rendered by the Apex Court in Union of India vs Manraj Enterprises, **(2022) 2 SCC 331,** into the facts of the present case. It is

submitted that reliance on Manraj Enterprises (*supra*) is incorrect as the parties therein were in dispute under Section 31(7)(a) of the Act, which gives paramount importance to the contract entered between the parties and categorically restricts the power of an arbitrator to award pre-reference and pendente lite interest when the parties themselves have agreed against it.

14. It is stated by the Petitioner that the Arbitrator failed to appreciate the difference in the language in 31(7)(a) and 31(7)(b) which indicates that award of future/post-award interest is not discretionary but a mandate of the statute. Reliance was placed on Hyder Consulting (UK) Limited vs State of Orissa, **(2015) 2 SCC 189** and Future Market Networks Limited vs Laxmi Pat Surana and Another, **(2022) SCC Online Cal 919**.

15. It is stated that the inconsistencies, illegalities and infirmities highlighted above are not trivial and go to the root of the matter and therefore impugned Award is hit by Section 34.

SUBMISSIONS OF THE PARTIES IN OMP(COMM) 294/2022

I. Withholding of an amount of INR 5,23,76,868/- due to non-submission of APBG by the parent company and entitlement of the Petitioner to the release of the said amount against submission of the additional bank guarantee on behalf of the Petitioner.

16. It is submitted by the Respondent that the Petitioner is in clear breach of Clause 8.1 of the PO despite accepting the terms of the same vide a letter dated 26.12.2017. It is their case that the arbitrator has rewritten the terms of the contract and has ignored the clear stipulation with respect to additional bank guarantee in terms of clause 8.1 of the PO. By doing so, the arbitrator has amended the terms of the PO as agreed between the parties

17. It is submitted by the Respondent that the furnishing of the said APBG by the Parent Company of the Petitioner was a PQR which was agreed upon by the Petitioner *vide* letter dated 19.08.2017 and a subsequent undertaking dated 12.12.2017.

18. It is submitted that it was outside the scope of the Respondent to accept the APBG from the Petitioner as the Respondent had agreed to accept the same only from the Petitioner's parent Company so as to secure its interest in case the Petitioner is unable to satisfy its obligations.

19. The Petitioner, on the other hand submits that the Petitioner and its Parent Company, issued a Joint Deed of Undertaking in favour of the Respondent. That *vide* this Joint Deed of Understanding, Petitioner and its Parent Company have accepted joint and several liability towards the faithful performance of the Agreement. It was in furtherance of the discharge of this admitted joint and several responsibilities that the parent company vide letter dated 08.11.2019 offered the said APBG through the Petitioner, however, the Respondent rejected the said offer.

20. It is submitted that the Arbitrator took a plausible and reasonable view, after duly appreciating that, in case of any default/breach under the Agreement, the Respondent could enforce the Joint Deed of Undertaking against the Parent Company if the amount of the Bank Guarantees was not sufficient to cover the loss caused to it on account of such breach.

21. It is their case that the Respondent, by withholding Petitioner's sums of INR 5,23,76,868/- against the APBG and not accepting the said APBG from the Petitioner, is guilty of approbate and reprobate. It is further stated that the Respondent proceeded with the Agreement despite non-compliance

of a pre-qualification requirement. In view thereof, the Respondent has clearly waived the said requirement by its conduct.

II. Cost of Arbitration awarded partly to the Petitioner

22. It is submitted by the Respondent that on one hand the Arbitrator had entitled the Respondent to deduct liquidated damages due to delay of 70 days on the part of the Petitioner, while on the other hand it has failed to treat the Respondent as a successful party in terms of Section 31 of the Act, according to which, cost must be awarded to a successful party.

23. It is submitted by the Respondent that the Ld. Sole Arbitrator has awarded proportionate costs to Petitioner, but no calculation has been provided in the impugned award in terms of Section 31(4) of the Act rendering the impugned award vague.

24. It is further submitted that the costs were never quantified by the Petitioner in its Statement of Claim but the same was done by way of Affidavit of Costs when the award was reserved.

25. It is submitted that the impugned award as far as issue no 8, 9 and 11 are decided is patently illegal as the Arbitrator has, without any jurisdiction passed the impugned award in such a manner which amounts to rewriting the terms of the contract and the same is an error in exercise of jurisdiction under the terms of the Contract.

26. On the aspect of award of cost by the Arbitrator, it is submitted by the Petitioner that the Arbitrator, partially allowed the Petitioner’s claim to the extend the Petitioner was successful. Consequently, in terms of the Act more particularly Section 31A, the Arbitrator awarded proportionate costs to the Petitioner computed in terms of the Affidavit of Costs filed by the Petitioner.

27. It is submitted that as Petitioner's claims were partially allowed, the Petitioner can be termed as the "partially successful party" and the Respondent as the "unsuccessful party". This is in consonance with Section 31A of the Act.

28. It is stated that no prayers were sought by the Respondent qua costs in its SoD. The said untenable objection raised belatedly as an afterthought warrants instant dismissal on this ground alone.

29. Heard the counsel for the parties and perused the material on record.

ANALYSIS

30. From the discussion above, it is apparent that the scope of objection in the present petition is limited to the issues mentioned in paragraph (i) above. This court will now proceed to analyse each issue individually.

Imposition of Liquidated Damages by the Respondent on the Petitioner for an amount of INR 7,85,41,104 due to delay in the delivery of the ICTs

31. The Arbitrator had perused RD-4 and has reached to a finding that TANTRANSCO has levied maximum liquidated damages equivalent to 10% of the value on the Respondent on the Respondent submitting the bills for the supply of 765 / 400 KV, 500 MV single phase Inter-connection Transformer OL TC with Nitrogen injection system, online bushing monitoring system, line material required for formation of tertiary delta and neutral bus. While noting this, it was observed by the arbitrator that except for the supply of Nitrogen Oxygen, the whole of the said supply was to be made by the Petitioner.

32. It is observed by the Arbitrator that it was unlikely that the ICT would have been commissioned on the date as fixed i.e. 5.11.2018, due to non-

readiness of the site, hence TANTRANSCO would have still levied liquidated damages on the Respondent.

33. However, a perusal of the award reflects that the imposition of liquidated damages arise out of the delay of 70 days by the Petitioner to supply the ICTs. Relevant paragraph of the award is reproduced hereunder:

> *"43. A perusal of RD-4 would show that Tamil Nadu Electricity Board (Holding Company of T ANTRANSCO) levied maximum Liquidated Damages, equivalent to 10% of the value, when the Respondent submitted bills for "supply of 765 / 400 KV, 500 MV A single phase Inter-connection Transformer OL TC with Nitrogen injection system, online bushing monitoring system and line material required for formation of tertiary delta and neutral bus". Admittedly, the whole of the said supply except Nitrogen injection system was to be made by the Claimant. Though the cost of Nitrogen injection system is not available, it can be hardly disputed that the cost of the said system would be a small fraction of the cost of the system for which the bill was raised by the Respondent on TANTRANSCO. This is not the case of the Claimant in its Rejoinder that RD-4 does not pertain to the ICTs which were to be supplied by it to the Respondent. The case set out in the Rejoinder rather is that the scope of the supply for which Liquidated Damages were imposed by T ANTRANSCO on the Respondent was larger, the said supply having included Nitrogen injection system which the Claimant was not to supply to the Respondent. It is thus seen that though levy of Liquidated Damages to the extent of Rs. 87687329/- including GST by Tamil Nadu Electricity Board / TANTRANSCO upon the Respondent cannot be reasonably disputed, the work which the Respondent had to execute for T ANTRANSCO included interalia a system which the Respondent had not procured from the Claimant. The facts and circumstances including*

the pith and substance of the cross-examination of RW-1 Prateek Kumar also show that the ICTs have not been commissioned till 33 date, thereby proving the case of the Claimant that the site where the ICTs were to be erected / commissioned were not ready in time. It is quite likely that even if ICTs were to be supplied by 5.11.2018, it would not have been possible to commission them in time and, therefore, it is quite possible that T ANTRANSCO I Tamil Nadu Electricity Board would still have levied Liquidated Damages upon the Respondent. But, the facts and circumstances of the case, discussed while deciding Issues / Points No. 1 & 2 also show that there was delay of 70 days on the part of the Claimant in supply of the ICTs. Since the cost of the ICTs constituted overwhelming part of the cost of the work which the Respondent had to execute for TANTRANSCO / Tamil Nadu Electricity Board, it would be difficult to dispute that the delay in supply of the ICTs had also contributed to the overall delay in execution of the work at the site of TANTRANSCO and the said delay resulted in TANTRANSCO / Tamil Nadu Electricity Board levying Liquidated Damages upon the Respondent. It would be highly unfair to place the whole of the delay in completion of the work for TANTRANSCO on the supplier of the Nitrogen injection system or on the failure of the Respondent to procure the said Nitrogen injection system well in time and the delay in the preparation of the sites. In other words, the Liquidated Damages upon the Respondent were levied due to several delays such as delay in procurement of Nitrogen injection system, delay in preparation of the site and delay in the delivery of the ICTs by the Claimant."

34. The contention of the Petitioner that the date originally fixed under the contract i.e. 15.11.2018 was never refixed by the Respondent does not hold any ground. The reasoning of the arbitrator that the date 15.11.2018 is

of no consequence does not warrant interference as each party was allotted a specific period for completion of their respective obligation as per the activity schedule. As the Petitioner was given a period of 40 weeks, this period would be accounted for after excluding the excess time/delay attributable to the Respondent. Relevant observation in the award is reproduced hereunder:

> "*21 . It would in my opinion be inconsequential whether the date of 5th November, 20 1 8 given in Clause 7 of the Agreement was revised or not, since the 15 Claimant would be liable to pay Liquidated Damages only for that much period beyond 5th November, 2018, which can be reasonably attributed to it. Though the Activity Schedule had bifurcated the 40 weeks available to the Claimant under different heads, the time actually taken by the Claimant to complete each of the activities under different heads would be immaterial, since the excess time taken to complete one activity could always be made up by taking lesser time to complete the other activities. The material factor would be the aggregate time taken by the Claimant to perform all its obligations including the delivery of the ICTs at the site and not the time taken by the Claimant to complete individual activities. If the Claimant was to take not more than 40 weeks to perform all its obligations, no Liquidated Damages could be levied on it. Of course, the time taken by the Claimant has to be computed by excluding the excess time which can be reasonably attributed to any delay / inaction on the part of the Respondent.*
>
> *****
>
> *40. It was an admitted position before me that all the ICTs were supplied by 10th July, 2019. Had there been no delay on the part of the Respondent in performing its obligations in , terms of the Activity Schedule, the*

> *Claimant would have been contractually bound to deliver all the six ICTs by 5th November, 2018. The time available to the Claimant under the Activity Schedule was 280 days from the date of the Purchase Order. The time available to the Respondent under the said Activity Schedule was 42 days in aggregate. The total time taken in the delivery of all the six ICTs at the site was 569 days. The time taken by the Claimant for the manufacture and delivery of all the six ICTs therefore can be said to be 569-42-177=350 days. The time available to the Claimant under the Activity Schedule being 280 days, there was delay of 70 days i.e. 10 weeks on its part in the supply of the ICTs.*"

35. Due to a delay of 70 days on account of the Petitioner in supplying the ICTs, the Arbitrator has imposed an amount of INR 3,92,70,552/- on the Petitioner, which is 50 percent of what was originally imposed by the Respondent.

36. From a bare perusal of the above observation made by the Arbitrator, it appears that the imposition of liquidated damages to the above extend is reasonable as a clear case of delay has been made out as against the Petitioner. The reasoning in the award is reproduced hereunder:

> "*51. The legal proposition which emerges from the decisions referred hereinabove including the decision of the Hon'ble Supreme Court in Kailash Nath & Associates (supra) is that even where a sum is named in a Contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation, such liquidated amount, only if it is a genuine pre-estimation of damages and even in such a case only reasonable compensation not exceeding the sum fixed in the Agreement can be awarded against the party in default. The reasonable compensation if made out is required*

to be fixed in terms of the principles contained in Section 73 of the Indian Contract Act. Thus, in order to succeed, in its claim for Liquidated Damages, the party seeking to recover such damages is required to prove that (I) the sum fixed in the Agreement was a genuine pre-estimate of damages and (II) Loss / damage / legal injury has actually been suffered by it on account of the delay / default on the part of the other party. Additionally, the party seeking to recover Liquidated Damages is also required to prove the actual damages suffered by it, wherever it is possible to prove the actual damages. If in a given case, it is not possible to prove the actual damages suffered by the party seeking to recover the Liquidated Damages, the said party would be entitled to a reasonable compensation not exceeding the sum mentioned in the Contract, without proof of the actual damages suffered by it.

52. In the present case, the Respondent, in my opinion, has been able to prove the actual monetary loss suffered by it, the said monetary loss being the amount of Rs. 87687329/- deducted from its bill, by Tamil Nadu Electricity Board. Thus, this is not a case where no monetary loss has been suffered by the Respondent on account of the delay in supply of the ICTs. Moreover, in this case, the quantum of the actual monetary loss suffered by the Respondent also stands proved. However, it has not been proved nor could it have been proved in a transaction of this nature as to how much of the monetary loss suffered by the Respondent is attributable to the delay on the part of the Claimant in the delivery of the ICTs at the site, how much monetary loss is attributable to the delay on the part of the Respondent and/or TANTRANSCO, how much loss is attributable to the delay in procurement of the Nitrogen injection system and how much is attributable to the delay in preparation of the site where the ICTs were to be commissioned. The Respondent having chosen not

to file the correspondence exchanged between it and TANTRANSCO / Tamil Nadu Electricity Board in respect of imposition of Liquidated Damages upon it, it cannot be !mown, by this Tribunal, as to for what period the Liquidated Damages were imposed. But it cannot be disputed that the Claimant was partly responsible for Tamil Nadu Electricity Board / TANTRANSCO imposing Liquidated Damages amounting to Rs. 8 7687329/- upon the Respondent. It is not as if the Respondent could have proved but did not prove the quantum of Liquidated Damages directly attributable to the Claimant. In a Contract of this nature, involving more than one agencies, it is per se impossible to apportion specific amounts to each agency contributing to the delay which resulted in imposition of the Liquidated Damages. The ICTs being the costliest component of the work which the Respondent had to execute for TANTRANSCO, the Claimant cannot be allowed to altogether escape the levy of Liquidated Damages. In the facts and circumstances of the case, the Claimant in my view, is entitled to reasonable compensation from the Claimant for the delay which is attributable directly to the Claimant."

37. The Apex Court in Consolidated Construction Consortium Ltd. v. Software Technology Parks of India, **(2025) 7 SCC 757**, has held as under:

"***42***. *Sections 73 and 74 deal with consequences of breach of contract. Heading of Section 73 is "Compensation for Loss or Damage Caused by Breach of Contract". When a contract is broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it. On*

the other hand, Section 74 deals with compensation for breach of contract where penalty is stipulated for. When a contract is broken, if a sum is mentioned in the contract as the amount to be paid in case of such breach or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled whether or not actually damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or the penalty stipulated for.

***43**. A conjoint reading of Sections 55, 73 and 74 would indicate that in a contract whether time is of the essence or not, if the contractor fails to execute the contract within the specified time, the contract becomes voidable at the option of the promisee and the promisee would be entitled to compensation from the promisor for any loss occasioned to him by such failure. However, in case of a contract where time is of the essence, the contract becomes voidable on account of the contractor's failure to execute the contract within the agreed time. The promisee cannot claim compensation for any loss occasioned by such breach of the contract unless he gives notice to the promisor of his intention to claim compensation. This is made more specific in Section 73. Section 74 contemplates a situation where penalty is provided for and quantified as compensation for breach of contract. In such a case, the party complaining of the breach is entitled to compensation whether or not actual damage or loss is proved to have been caused thereby but such compensation shall not exceed the quantum of penalty stipulated.*"

38. It light of the above enumerated principle, this Court is the opinion that the arbitrator has rightly and reasonably imposed an amount of INR

3,92,70,552/- on the Petitioner, which is 50 percent of what was originally imposed by the Respondent.

39. Hence, on this aspect, no interference is warranted.

Non-payment of APBG by the Parent Company of the Petitioner and withholding of an amount of Rs. 52376868 by the Respondent as a result of non-payment.

40. It was undisputed that to qualify as a bidder, the Petitioner had to submit the bid under option 'B' of the Technical Qualification Requirement. To be a successful bidder, the Petitioner was required to submit a confirmation letter from its Parent Company along with the bid document stating therein that its Parent Company shall furnish APBG equivalent to 10% of the cost of the equipments. It is also undisputed that this APBG was in addition to the Performance Bank Guarantee to be deposited by the Petitioner. The Petitioner and the Petitioner's Parent Company had also submitted a joint deed of undertaking for the same.

41. The Arbitrator observed that the Respondent was entitled to withhold the amount of Rs. 5,23,76,868/- from the dues of the Petitioner till the requisite APBG by its Parent Company was furnished. While holding so, it observed that the Parent Company being a corporate entity, can act through some person. Considering the prayer of the Petitioner who had sought permission to submit an APBG on behalf of its Parent Company without a plea of a specific direction to the Respondent to accept the APBG from the Petitioner, the Arbitrator observed that the Petitioner could deposit the APBG, after being duly authorised by the Parent Company of the Petitioner, who can act through a representative.

42. This observation of the Arbitrator cannot be termed as contrary to the terms of arrangement between the parties. Neither can it be said that the Arbitrator has gone beyond its power and jurisdiction to rewrite the terms of the agreement between the parties.

43. There is a fine distinction between the interpretation of a contract and disregard of the terms of the Contract. It can be said that instead of giving a restrictive meaning to the terms of the contract, the Arbitrator took a practical and commercial approach. Notwithstanding this, the construction of the terms of a contract is within the realms of the Arbitrator to adjudicate upon. If, after considering the material on record, the Arbitral Tribunal takes a particular view on the interpretation of the contract, the Court under Section 34 does not sit in appeal over the findings of the arbitrator. The Apex Court in NHAI v. Hindustan Construction Co. Ltd., **(2024) 6 SCC 809**, Observed as under:

> "***16***. *Now, we turn to the issue of whether the claim for the construction of embankment forms part of the activity of clearing and grubbing and was not payable as embankment work. We may note here that two expert members of the Arbitral Tribunal held in favour of the respondent on this point, whereas the third member dissented. There cannot be any dispute that as far as the construction of the terms of a contract is concerned, it is for the Arbitral Tribunal to adjudicate upon. If, after considering the material on record, the Arbitral Tribunal takes a particular view on the interpretation of the contract, the Court under Section 34 does not sit in appeal over the findings of the arbitrator.*"

44. In fact, it is the opinion of this Court that by permitting the Petitioner, upon due authorization, to furnish the APBG on behalf of its Parent

Company, the Arbitrator has, in effect, ensured adherence to and enforcement of the underlying terms of the contract. Such permission does not amount to any modification, novation, or alteration of the contractual framework agreed upon between the parties. The Arbitrator has merely facilitated the practical compliance of a contractual obligations without disturbing the substantive rights and liabilities arising therefrom. It is further submitted that this measure neither results in the creation of a new contract nor does it alter the essential character, scope, or intent of the relevant contractual clause. Rather, it represents accommodation aimed at effectuating its due performance.

Award of Cost by the Arbitral Tribunal

45. On this aspect of award of cost by the Arbitrator in favour of the Petitioner on the principal amount of Rs. 3,92,70,552/-, to be calculated in terms of the Affidavit of Costs filed by the Petitioner, the following observation has been made by the Arbitrator:

> "*60. Issue / Point No. 11*
>
> *The general rule with respect to payment of cost, incorporated in Section 3 1 A (2)(a) of the Act is that the unsuccessful party will be ordered to pay the costs to the successful party. In determining the costs, the Tribunal is required to have regard to all the circumstances prescribed in sub-section (3) of Section 31 A of the Act. In terms of sub-section (4) of the said Section, the Arbitrator can also make an Award for payment of a proportion of another party' s costs. Considering all the facts and circumstances of the case, the Claimant is awarded proportionate costs on the principal amount of Rs. 392705 52/-, to be calculated in terms of the Affidavit of Costs filed by the Claimant.*"

46. Insofar as the challenge to the award of costs is concerned, this Court finds no infirmity warranting interference. The learned Arbitrator has exercised discretion in consonance with Section 31A of the Arbitration and Conciliation Act, 1996, which embodies the principle that costs ordinarily follow the event. The Arbitrator has duly taken into consideration the facts and circumstances of the case and has awarded proportionate costs on the principal amount, to be computed in terms of the Affidavit of Costs. Such determination falls within the domain of the arbitral tribunal's discretion and does not suffer from perversity, illegality, or arbitrariness.

47. With respect to issues (I), (II) and (III) mentioned in paragraph 3(i), this court will now proceed to analyse the contours of the Court's power under Section 34 of the Act.

48. After a perusal of the award to the extent of issues (I), (II) and (III) mentioned in para 3(i), this court is satisfied that no grounds are made out under Section 34 of the Act.

49. The specific ground for challenging the impugned award dated 06.01.2022 is that the impugned award is patently illegal and goes against the Public Policy of India. There are plethora of jurisprudence on the aspect of scope of inquiry by court on these ground. The Apex Court in DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd., **(2024) 6 SCC 357**, observed as under:

> *"34. The contours of the power of the competent court to set aside an award under Section 34 has been explored in several decisions of this Court. In addition to the grounds on which an arbitral award can be assailed laid down in Section 34(2), there is another ground for challenge against domestic awards, such as the award in the present case. Under Section 34(2-A)*

of the Arbitration Act, a domestic award may be set aside if the Court finds that it is vitiated by "patent illegality" appearing on the face of the award.

35. In Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , a two-Judge Bench of this Court held that although the interpretation of a contract is exclusively within the domain of the arbitrator, construction of a contract in a manner that no fair-minded or reasonable person would take, is impermissible. A patent illegality arises where the arbitrator adopts a view which is not a possible view. A view can be regarded as not even a possible view where no reasonable body of persons could possibly have taken it. This Court held with reference to Sections 28(1)(a) and 28(3), that the arbitrator must take into account the terms of the contract and the usages of trade applicable to the transaction. The decision or award should not be perverse or irrational. An award is rendered perverse or irrational where the findings are:
(i) based on no evidence;
(ii) based on irrelevant material; or
(iii) ignores vital evidence.

36. Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute, as when for instance the award contains no reasons at all, so as to be described as unreasoned.

37. A fundamental breach of the principles of natural justice will result in a patent illegality, where for instance the arbitrator has let in evidence behind the back of a party. In the above decision, this Court in Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC

(Civ) 204] observed : (SCC pp. 75 & 81, paras 31 & 42)

> *"31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law 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.*
>
> *****
>
> *42.1. ... 42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside."(emphasis supplied)*

38. In Ssangyong Engg. & Construction Co. Ltd. v. NHAI [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , a two-Judge Bench of this Court endorsed the position in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , on the scope for interference with domestic awards, even after the 2015 Amendment : (Ssangyong Engg. & Construction Co. case [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , SCC p. 171, paras 40-41)

> *"40. The change made in Section 28(3) by the Amendment Act really follows what is stated in*

paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. … Thus, 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 on the ground of patent illegality. Additionally, 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." (emphasis supplied)

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. [Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd., (2020) 7 SCC 167 : (2020) 4 SCC (Civ) 149.] 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 his jurisdiction or violating a fundamental principle of natural justice."

50. It is trite law that the arbitrator is the master of evidence and the court cannot reopen or look into the evidence relied upon by the Arbitrator. In, Prakash Atlanta (JV) v. National Highways Authority of India, **2026 SCC OnLine SC 98,** the apex Court ruled as under**:**

> "*24. In Associate Builders v. Delhi Development Authority18, this Court noted that the expression 'public policy of India' in Section 34(2)(b)(ii) of the Arbitration Act was given a wider meaning in Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.19. It was held therein that the concept of public policy connotes some matter which concerns public good and public interest. It was observed that what is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time but an arbitral award which, on the face of it, is patently in violation of statutory provisions, cannot be said to be in public interest. It was further observed that such an award is likely to adversely affect the administration of justice. This Court, therefore, held that, in addition to the narrower meaning given to the term 'public policy' by a 3-Judge Bench of this Court in Renusagar Power Co. Ltd. v. General Electric Co.20, an arbitral award can be set aside if it is patently illegal. The result was that an arbitral award could be set aside if it was contrary to the fundamental policy of Indian law; or the interest of India; or justice or morality; or if it is patently illegal. It was observed that illegality must go to the root of the matter but, if the illegality is of trivial nature, it cannot be held that the award is against public policy. It was*

further held that if the award is so unfair and unreasonable that it shocks the conscience of the Court, it would be opposed to public policy.

25. Thereafter, in Oil and Natural Gas Corporation Limited v. Western Geco International Ltd.21, a 3-Judge Bench of this Court added three other distinct and fundamental juristic principles which must be understood as part and parcel of the fundamental policy of Indian law. The first is the principle that in every determination that affects the rights of a citizen or leads to civil consequences, whether by a Court or other authority, such Court or authority is bound to adopt what is, in legal parlance, called 'judicial approach'. The second principle is that a Court and so also a quasi-judicial authority, while determining rights and obligations of parties before it, must do so in accordance with the principles of natural justice. It was observed that, in addition to audi alteram partem, the Court/authority deciding the matter must apply its mind to the attendant facts and circumstances as non-application of mind is a defect that is fatal to any adjudication. It was, therefore, held that the requirement that an adjudicating authority must apply its mind is so deeply embedded in our jurisprudence that it can be described as the fundamental policy of Indian law. The last principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same cannot be sustained. Decisions that fall short of the standards of reasonableness were, therefore, held liable to challenge in a Court of law and even in statutory processes wherever the same were available.

26. It was further held in Associate Builders (supra) that when a Court is applying the public policy test to an arbitral award, it does not act as a Court of appeal and, consequently, errors of fact cannot be corrected.

A plausible view by the arbitrator on facts necessarily has 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 award. It was 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 invalid on this score. Once it is found that the arbitrator's approach was not arbitrary or capricious, then he is the last words on facts.

27. As long back as in the year 2006, in McDermott International Inc. v. Burn Standard Co. Ltd.22, this Court affirmed that construction of a contract is within the jurisdiction of the arbitrator and interpretation thereof is a matter for the arbitrator to determine, even if it gives rise to a question of law. This was affirmed in National Highways Authority of India v. ITD Cementation India Limited23, wherein this Court held that construction of the terms of a contract is primarily for an arbitrator to decide and he is entitled to take the view that he holds to be the correct one, after considering the material and after interpreting the terms of the contract. It was observed that the Court, while considering a challenge to an arbitral award, does not sit in appeal over the findings and decision therein, unless the arbitrator construed the contract in such a way that no fair-minded or reasonable person would do. We may note that, in this case, the issue was whether additional costs owing to a change in the seigniorage fee had been taken into account in the indexing of inputs, while providing for price adjustment in the contract. NHAI had contended that the said levy was already factored into the indexing price formula and, therefore, no further payments were to be made to the contractor."

51. Applying the aforesaid principles to the facts of the present case, this Court finds that the findings rendered by the Arbitrator as far as issue (I), (II) and (III) in paragraph 3(i) are based on due appreciation of evidence on record and a reasonable interpretation of the contractual terms. It cannot be said that the conclusions drawn are perverse, irrational, or based on no evidence, nor is it demonstrated that any vital evidence has been ignored or irrelevant considerations have been taken into account so as to attract the ground of patent illegality or to be against the Public Policy of India under Section 34.

52. Furthermore, there is no material to indicate any breach of the principles of natural justice, jurisdictional error, or contravention of the fundamental policy of Indian law. As reiterated by the Apex Court, this Court does not sit in appeal over arbitral awards and cannot interfere merely because another view or interpretation is possible.

53. Now, the only issue that remains to be considered by this Court is issue (IV) mentioned in paragraph 3(i) which deals with the refusal of the Arbitrator to grant future interest to the Petitioner.

54. Section 31 of the Act entails the legal framework for the grant of interest by the Arbitrator. The relevant section is reproduced hereunder:-

> *"**31. Form and contents of arbitral award**.—*
>
> *(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.*
>
> *(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.*

(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(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.

> *Explanation.—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).*
>
> *(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 31A.*
>
> *Explanation.—For the purpose of clause (a), "costs" means reasonable costs relating to—*
>
> *(i) the fees and expenses of the arbitrators and witnesses,*
> *(ii) legal fees and expenses,*
> *(iii) any administration fees of the institution supervising the arbitration, and*
> *(iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award. "*

55. Section 31(7)(b) of the Act addresses the grant of future interest by the Arbitrator. The use of the term "shall" indicates that the grant of future interest is a statutory mandate unlike the grant of pendente lite interest, which is entirely upon the discretion of the Arbitrator.

56. The statutory mandate of Section 31(7)(b) of the Act has been discussed by the Apex Court in a plethora of cases. In Oil and Natural Gas Corporation Ltd vs. G & T Beckfield Drilling Services Pvt Limited, **2025 SCC OnLine SC 1888,** the Apex Court observed as under:-

> *"**12.** Sub-section (7) of Section 31 of 1996 Act deals with award of interest when the arbitral award is for the payment of money. Sub-section (7) has two clauses. Clause (a) deals with interest for the period between the date on which the cause of action arose and the date on which the award is made. Clause (a) says that when the 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. However, arbitral tribunal's power to award interest for the aforesaid period is subject to the agreement between the parties. Therefore, if the agreement stipulates that no interest is payable, the arbitral tribunal cannot award interest for the aforesaid period and an award contrary to the terms of the contract would be vulnerable to a challenge under Section 34 of 1996 Act. Moreover, such an agreement to waive interest is not ultra vires in terms of Section 28 of the Contract Act, 1872. However, if the agreement is silent on award of interest, the arbitral tribunal can award interest in terms of clause (a) of sub-section (7) of Section 31. As far as clause (b) of sub-section (7) of Section 31 is concerned, it deals with post-award interest. Prior to 2015 amendment, clause (b) mandated payment of interest on the sum awarded at the rate of 18% per annum from the date of the award to the date of payment, unless the award directed otherwise. Interestingly, clause (b) is not subject to an agreement between the parties and, therefore, if the arbitral award is with regard to payment of money, it would carry interest at such rate as the arbitral award directs and if it is not so directed, it would carry statutorily prescribed rate of interest from the date of the award till the date of payment. In a nutshell, the arbitral tribunal has jurisdiction to award interest for three distinct periods, namely, pre-reference, pendente lite, and future i.e., post-award. Award of pre-reference and pendente-lite interest is subject to the agreement between the parties whereas post award interest is statutorily governed and is not subject to the agreement between the parties. In other words, clause (b) does not give the parties the right to 'contract out' interest for the post award period."

57. In Gayatri Balasamy v. ISG Novasoft Technologies Ltd., **(2025) 7 SCC 1,** the Apex Court has observed as under:-

> *"**74.** There can be instances of violation of Section 31(7)(a), and the pendente lite interest awarded may be contrary to the contractual provision. We are of the opinion that, in such cases, the Court while examining objections under Section 34 of the 1996 Act will have two options. First is to set aside the rate of interest or second, recourse may be had to the powers of remand under Section 34(4).*
>
> ***75.** For the post-award interest in terms of Section 31(7)(b), the courts will retain the power to modify the interest where the facts justify such modification. This is why the standard rate stipulated in clause (b) applies when the award itself does not specify the applicable post-award interest. There can be a situation where the party to be paid money is at fault and is guilty of delay which may require a modification in the rate of interest. In the absence of grant of post-award interest in the award, the Court also possesses the power to grant post-award interest. Clearly, as per the legislative mandate, it is not the sole prerogative of the arbitrator.*
>
> ***76.** Compare Section 31 of the 1996 Act with Section 31 of the Model Law. While both sections are titled similarly—"Form and Contents of Award"—only the 1996 Act addresses interest in Section 31(7). The Model Law does not provide standards governing the determination of interest rates. Thus, Section 31(7) is a unique creation of the Indian legislature. It was not borrowed from the Model Law. Specifically, under Section 31(7)(b), the legislature has established a standard rate of interest to guide the arbitrator's discretion when it comes to determining the post-*

> *award interest rate. While the arbitrator retains his flexibility based on facts and circumstances of the case, the standard set by the legislature must weigh in on their consideration. Further, as there is a standard prescribed by the legislature, the post-award interest awarded can be scrutinised by courts against the standards prescribed."*

58. In light of the above settled position, this Court is of the opinion that the Petitioner, is indeed entitled to future interest at the rate of 2 percent higher than the current rate of interest prevalent on the date of the award, from the date of the award to the date of payment.

59. While the reliance on Manraj Enterprises (supra) for barring *pendente lite* interest holds ground, the Court is of the opinion that future interest could not have been denied by the arbitrator as post award interest is a statutory mandate and is not subject to an agreement between the parties. The judgement of Manraj Enterprises (supra) does not discuss a narrative wherein future interest could be denied to the parties.

60. Accordingly, O.M.P. (COMM) 294/2022 is dismissed and O.M.P. (COMM) 307/2022 is allowed to the extent of grant of post-award interest. All pending applications, if any, are also disposed of.

SUBRAMONIUM PRASAD, J

JULY 01, 2026
VG