IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3873 of 2014
[On note for speaking to minutes of order dated 19/08/2026 in R/FA/3873/2014]
With
R/CROSS OBJECTION NO. 15 of 2015
In
R/FIRST APPEAL NO. 3873 of 2014

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NATIONAL INSURANCE COMPANY LTD.
Versus
POLYMECH PLAST MACHINES LTD

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Appearance:
MS LILU K BHAYA(1705) for the Appellant(s) No. 1
MR.CHIRAG K SUKHWANI(6603) for the Defendant(s) No. 1

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CORAM:**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR.JUSTICE D.N.RAY

Date : 11/09/2026

ORAL ORDER
(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

Perused the office note.

It is pointed out that in the entire judgment and order dated 19.08.2026, the details of the Civil Miscellaneous Application (Arbitration) under Section 34 of the Arbitration and Conciliation Act' 1996 decided by the 10th Additional District Judge, Vadodara vide judgment and order dated 11.09.2014 are incorrect, as a result of a typographical mistake.

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In place of **"CMA (Arbitration) No. 73 of 2022"**, it should be **"CMA (Arbitration) No. 73 of 2002"**.

Necessary corrections be carried out at each and every place in the description of the aforesaid case in the body of the judgment and order dated 19.08.2026.

The office note is accordingly, disposed of.

(SUNITA AGARWAL, CJ.)

(D.N.RAY, J.)

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NATIONAL INSURANCE COMPANY LTD.
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Appearance:
MS. LILU K BHAYA(1705) for the Appellant(s) No. 1
MR. PARAS K SUKHWANI(6603) for the Defendant(s) No. 1

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CORAM: **HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR.JUSTICE D.N.RAY

Date : 19/08/2026

JUDGMENT
(PER : HONOURABLE MR.JUSTICE D.N.RAY)

1. Heard Ms.Lilu K. Bhaya, learned advocate appearing for the appellant and Mr.Paras K. Sukhwani, learned advocate for the defendant.

2. The present appeal impugns the judgment and order dated 11.09.2014 passed by the learned 10th Additional District Judge, Vadodara, in CMA (Arbitration) No. 73 of 2022, whereby the appellant's application under Section 34 of the Arbitration and Conciliation Act, 1996 was partly allowed and

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a sum of Rs. 40,28,289/- was awarded to the respondent.

3. Brief facts of the case are as under:-

3.1. The respondent herein manufactures plastic goods, injection moulding machines and allied items. Pursuant to Proposal No. 228 dated 10.07.1997, the appellant-insurer issued Policy No. 97/3300182 dated 10.07.1997, insuring the respondent's machinery, raw material and stock for the period 10.07.1997 to 09.07.1998. It is the case of the respondent-claimant that on the night of 23.08.1997, heavy rainfall in Vadodara caused rainwater to enter the factory sheds on 24.08.1997, submerging machinery, spare parts, and finished goods. By letter dated 28.08.1997, the appellant called upon the respondent to furnish an estimate of the loss; the respondent initially conveyed a rough estimate of Rs. 36 lakhs, having sought time for proper assessment. The appellant appointed M/s. M. Sharma & Co. as surveyor. Upon further assessment and repair estimates, the respondent quantified its loss at approximately Rs. 42 lakhs.

3.2. The respondent contended that the surveyor's final

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report, on the basis of which the appellant sanctioned only Rs. 3,98,387/-, was erroneous, and that its claim exceeded Rs. 40 lakhs. Disputing the quantum offered, the respondent invoked arbitration, claiming Rs. 53,89,180.45 with interest at 18% per annum and costs. Consequent upon the disagreement over quantum, the parties referred the dispute to arbitration, each nominating an arbitrator, who appointed a presiding arbitrator. Following the demise of the first presiding arbitrator during the proceedings, a substitute was appointed with the consent of both parties. The arbitral proceedings culminated in a majority awards dated 07.02.2002 and 22.02.2002, which the appellant challenged under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act, 1996").

3.3. By judgment and order dated 11.09.2014 passed in CMA (Arbitration) No. 73 of 2022, the learned 10th Additional District Judge, Vadodara, partly allowed the application under Section 34 of the Act, 1996, and awarded a sum of Rs. 40,28,289/- to the respondent, and held that:-

"-:: ORDER ::-

- *The present Misc. Civil Application No. 73 of 2002 is*

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hereby partly allowed.

- *Majority awards passed by Ld. Arbitrators Mr. Bajriya and Mr. Bhojani is modified, and it is held that, The insured **Polymech Plast Machines Limited** is entitled to Rs.40,28,289/- against their claim.*
- *The interest awarded @15% p.a. from 1st October 1997 to 31st March 2002, on above claim amount is confirmed.*
- *The interest awarded @18% p.a. from 1st April 2002 till realization of the awarded claim amount is confirmed.*
- *As the cost of Rs. 3,98,250/- and intrest @18% p.a. on cost amount awarded by Ld. Majority arbitrators falls out side the scope of the reference, hence this part of the award is set aside..*
- *The insurer, **National Insurance Company Limited**, having liberty to take over the any scrape lying with the Insured, **Polymech Plast Machines Limited**.*
- *No Order as to costs."*

4. Being aggrieved by the said judgment and order dated 11.09.2014, the appellant has preferred the present First Appeal under Section 37 of the Act, 1996.

5. Ms. Lilu K. Bhaya, learned advocate appearing for the appellant submitted that the policy in question was a Fire "C" Policy, and that the Arbitral Tribunal derived its jurisdiction solely from the terms of the said policy/agreement. It was submitted that the majority arbitrators, having themselves held that the policy was a "specified" policy and not a Fire "C" Policy, thereby divested themselves of the very authority to adjudicate the dispute, since such authority flowed only from the terms and conditions of the Fire "C" Policy. It was argued

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that this inherent lack of jurisdiction was not appreciated by the majority arbitrators or by the learned Court below, and that the Award was, on this ground alone, liable to be quashed and set aside.

5.1. It was further submitted by Ms. Bhaya that the majority award was opposed to public policy. It was contended that, on a consideration of the award in light of the record, the majority Award exhibited an attempt to obstruct justice and a blatant circumvention of the provisions of law so as to confer an unfair advantage upon the respondent, and was thus liable to be declared void and set aside as being opposed to public policy.

5.2. Ms. Bhaya, thereafter, submitted that the respondent, being an established business house that had procured insurance cover from various insurers over more than a decade and had, to its knowledge, previously lodged a claim with United India Insurance Co. Ltd. in 1994, was well conversant with insurance practice. Despite such knowledge, and despite being aware from the proposal form that the full value of stock ought to be insured, the respondent had

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insured its stock only to the extent of Rs. 1 crore, whereas the value of stock on the date of loss, as computed on the surveyor's standard method applying the respondent's own submitted figures, stood at Rs. 2,56,22,832/-. It was submitted that the amount payable stood correspondingly reduced on account of such under-insurance.

6. On the contrary, it was submitted by Mr. Paras K. Sukhwani, learned advocate for the respondent, that once there existed a unanimous finding of the Arbitral Tribunal that the claim was covered under the policy, any exercise undertaken with respect to quantum would necessarily amount to a re-appreciation of evidence. It was accordingly contended that this Court, exercising jurisdiction under Section 37 of the Act, 1996, would not be justified in arriving at a finding different from that recorded by the arbitrators.

6.1. Reliance was placed on the decision of the Hon'ble Apex Court in ***Jan De Nul Dredging India Private Limited v. Tuticorin Port Trust***, reported in ***(2026) 3 SCC 186,*** to delineate the limited scope of interference available to a Court while exercising powers under Section 37 of the Act, 1996.

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Reliance was placed upon the following paragraphs of ***Tuticorin Port*** (Supra):-

> *"29. That being the position, the award of the Arbitral Tribunal was not liable to be disturbed under Section 34 of the Act and was rightly not disturbed. It is settled in law that the appellate powers under Section 37 are limited to the scope of Section 34 and cannot exceed beyond it. Certainly, therefore, if an award is not liable to be disturbed under Section 34 of the Act, the same could not have been interfered with in exercise of powers under Section 37 of the Act.*
>
> *36 In other words, the scope of interference of the court with the arbitral matters is virtually prohibited, if not absolutely barred. The powers of the Appellate Court are even more restricted than the powers conferred by Section 34 of the Act. The appellate power under Section 37 of the Act is exercisable only to find out if the court exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court exercising powers under Section 37 of the Act has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits so as to hold as to whether the award of the Arbitral Tribunal is right or wrong. The Appellate Court in exercise of such power cannot sit as an ordinary court of appeal and reappraise the evidence to record a contrary finding. The award of the Arbitral Tribunal cannot be touched by the court unless it is contrary to the substantive provision of law or any provision of the Act or the terms of the agreement.*
>
> *50. Before parting, we consider it proper to note that the Act is a special enactment which aims to resolve contractual/commercial disputes through arbitration with the minimum intervention of the court, if not without the intervention of the court. In the event, the courts are allowed to step in at every stage and the arbitral awards are subjected to challenge before the courts in hierarchy before court of first instance, through regular appeals and finally by means of SLP/Civil Appeal before the Supreme Court, it would obviate/frustrate and defeat the very purpose of the Act. It is therefore, necessary to accept the arbitral award if it is not patently illegal or does not fall within the scope of*

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intervention under Section 34 of the Act. The appeal thereof has a much narrower scope of intervention particularly when the arbitral award has been upheld under Section 34 of the Act. The appellate jurisdiction acquires little significance only when the arbitral award has been erroneously upheld or set aside by the court in exercise of its power under Section 34 of the Act as discussed earlier, but has no authority of law to consider the matter which was before the Arbitral Tribunal on merits."

ANALYSIS & REASONING:-

7. We have perused the three separate awards of the three member Tribunal. Initially, the Tribunal was formed with the following members :-

1. Mr. G. B. Brahmbhatt, Presiding Arbitrator;
2. Mr. R. N. Mehta, Co-Arbitrator;
3. Mr. B. S. Bajaria, Co-Arbitrator.

8. Unfortunately, upon the death of Mr. G.B.Brahmbhatt, the Co-Arbitrator appointed Mr.G.A.Bhojani as Presiding Arbitrator. The awards in question are by the aforesaid Tribunal. The most detailed award dated 07.02.2002 is by Mr. B. S. Bajaria which is to be found at Page Nos. '2 to 68' of the additional documents, by which the said learned Arbitrator had awarded a sum of Rs. 40,53,289/- along with 15% interest per annum from 01.10.1997 till 31.03.2002.

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9. The heart of the reasoning of the learned Arbitrator, as found from the calculation of the value of stock on the date of loss at Page Nos. ‘8 to 14’ is that the appellant-Insurance Company’s contention that the Fire Policy– “C” is applicable to the claimants, has been rejected by the learned Arbitrator solely on the ground that it could not be established the terms and conditions of the aforesaid Fire Policy-“C” had been issued to the claimants by the Insurance Company. Therefore, the so-called “policy” at Page Nos. ‘171 to 177’ of the aforesaid additional documents has been held to be the relevant policy, based on which the calculation of the affected stock has been arrived at and consequently awarded. The presiding Arbitrator Mr. C. A. Bhojani has concurred with the award dated 07.02.2002 of Mr. B. S. Bajaria in his award dated 22.02.2002. The said award can be found at Page Nos.‘120 to 136’ of the aforementioned additional documents paper-book.

10. On the other-hand, Mr. Ramesh M. Mehta has given a dissenting award and has awarded a total sum of Rs.4,25,000/- based on the calculations of the surveyor and by

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holding that the concerned policy as applicable to the claimant's case would have to be Fire Policy-"C" which at Page Nos. '157 to 167' of the aforesaid paper-book.

11. From the cross-examination of the witness on behalf of the Insurance Company -Mr.Suresh Shah, it will be seen that the following deposition is relevant to the controversy :-

> *"20. Exh.44 which contains 10 pages is incomplete policy. It is not correct that we had given only the paper as contained in ex. 44. Ex.11 is also incomplete policy. It is not true that we have not given any other paper except ex. 11 and ex. 44. We do not keep record for enclosures of the policy. We do not keep any record of hand delivery of policy. I do not recollect that policy in question is given personally or by Applicant company has asked for certified copy of the policy-ex.42. We had given all papers that is policy and the enclosures. I do not recollect that I had taken the signature in token of supply of the policy. Our practice is to give terms and conditions along with the policy. We must have given the terms and conditions of the policy. We do not have any record as to what copies have been given."*

12. We may note that the claimant's contention before the Arbitral tribunal was that it has lost the original policy and applied for the duplicate policy by writing a letter. The insurer had provided them the copies which was filed (the whole) as Mark 4/2, exhibited as Exhibit 11.

13. We may also note the extract of the deposition of the

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claimant's witness, the Personnel & Administration Manager of the claimant company, with regard to the supply of duplicate policy on the request of the claimant:-

> *"I was told by Mr. Rana as well as by Mr. Varma that the insurance covers the losses upto Rs.1 crore. I was also told that the insurance would cover all the losses to the goods which were insured. I was asked to sign some proposal forms wherein the details were not filled in. I had furnished all the information which according me was correct to Mr. Rana as well as Mr. Varma, The original policy which was given to us is not found at our office. The original policy policy is lost. As the policy was lost, I have requested insurance policy to provide a duplicate policy and that request was made by a letter. I had asked the duplicate policy alongwith other relevant papers, the insurer had provided us the copies which I have produced vide list Exhibit No.4. The policy in duplicate is produced at marked 4/2. Marked 4/2 is the whole document provided to me. It is now exhibit at 11. The letter for obtaining the copy of the policy and other papers was signed by our Law Officer, Mr. Dilipbhai Shah. While giving the copies, the insurer had taken the signature of Mr. Dilipbhai as token of having received the papers. Dilipbhai then handedover those papers to me and told me that these are only papers given by the company. Dilipbhai did not tell me that company had given that part of the policy which contains the conditions of fire policy C. The insurer did not given the papers containing fire policy C, when the original policy was also given."*

14. We have carefully scrutinized the so-called insurance policy which the claimant claim to be bound by Exhibit 11 filed by the claimant at page Nos. '171 to 177' of the paper-book. A bare perusal of the aforesaid documents shows that it is nothing but an office-note containing the "agreed bank clause" "attached to and forming part of policy

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No.3300182/97". The aforesaid document is not in the format of any insurance policy, as will be evident from a bare perusal of the same. To construe the same as the extant policy governing the claimant and to exclude Fire Policy -"C" only on the specious ground that the terms and conditions of the said Fire Policy -"C" have not been "issued" to the claimant by the Insurance Company is nothing but a perversity which vitiates the award.

15. The presiding arbitrator while agreeing with the award of one of the arbitrators Mr. B. S. Bajaria opined on the issue of the claimant being covered by the Fire "C" Policy in the following manner:-

> *"During the extensive examination of the Witnesses numerous facts would emerge. As to the evidence of Mr. Shah, he admitted that there was no written evidence with regard to supply of conditions of Fire Policy 'C'. It transpires that when the Claimant had lost the policy, it applied for duplicate policy and same was delivered to Claimant's Legal Officer Mr. Dilipbhai Shah. Mr. Kakadia stated that there was no Annexure with the main policy. Mr. Shah has stated that there was no documentary evidence to show that the Fire Policy 'C' was also supplied with the main policy. The Claimant Company specifically denies having received the Fire Policy 'C'. Not only that we Arbitrators also went to State Bank of Saurashtra, Mandvi branch, Baroda to find out if the policy contains conditions of Fire Policy 'C'. We could not find the same from the Bank's possession."*

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16. In our view, in the award of Mr. B.S.Bajaria, learned Arbitrator, the aforesaid deposition has been twisted out of context to imply that the terms and conditions of Fire Policy -"C" was never issued to the claimant. In our view, such an interpretation of the deposition is perversed on the face of it. It is not a case that the view taken by the learned Arbitrator is a probable view but it is an impossible view which no reasonable person would take/imply from the aforesaid deposition. We are aware that we have looked to the deposition not to reappraise it but to weed out an impossible view taken by the learned Arbitrator.

17. However, we have clearly noticed that the Arbitration Clause under which the Tribunal was constituted and under which the awards have been passed are exclusively to be found in the Fire Policy -"C" brought on record of the tribunal by the Insurer, where, Clause 13 of the said policy reads as under :-

> *"13. If any difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of an arbitrator to be appointed in writing by the parties in difference, or if they cannot agree upon a single arbitrator to the decision of two disinterested persons as arbitrators of whom one shall be appointed in*

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writing by each of the parties within two calender months after having been required so to do on writing by the other party in accordance with the provisions of the Arbitration, Act 1940, as amended from time to time and for the time being in force. In case either party shall refuse or fail to appoint arbitrator within two calender months after receipt of notice in writing requiring an appointment the other party shall be at liberty to appoint sole arbitrator and in case of disagreement between the arbitrator, the difference shall be referred to the decision of an umpire who shall have been appointed by them in writing before entering on the reference and who shall sit with the arbitrators and preside at their meetings.

It is clearly agreed and understood that no difference of dispute shall be referable to arbitration as hereinbefore provided, if the Company has disputed or not accepted liabilities under or in respect of this policy.

It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator, arbitrators or umpire of the amount of the loss or damage shall be first obtained."

18. It is also to be noticed that there is no arbitration clause which is contained in the so-called policy relied upon by the claimant and by the two learned Arbitrators. To our mind, the greatest perversity which is apparent in the award in question is that the policy sought to be excluded by the learned Arbitrator contains the arbitration clause whereas, the policy sought to be relied upon by the said learned Arbitrators do not contain any arbitration clause. For this reason alone, the reliance upon the so-called policy to the exclusion of Fire Policy -"C" vitiate the awards.

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19. It is apparent on the face of the impugned awards that the learned Arbitrators who have relied upon the office-note and have excluded the Fire Policy -"C" have clearly taken into account documents which are wholly extraneous to the subject matter of the dispute and have excluded the relevant documents which should otherwise have formed the subject matter of the dispute. Also, no reasonable person could have ever taken the view that the office-note containing the agreed bank clause can be construed as an insurance policy.

20. We also find that the report of the surveyor dated 28.07.1998 at Page Nos. '176 to 234' of the aforesaid additional paper-books have not been considered or dealt properly with by the two learned Arbitrators who had awarded a sum higher than what was assessed by the said Surveyor. Upon going through the Survey Report, we find that the Surveyor had assessed the loss as per the procedure laid down in the conditions of standard Fire Policy - "C" as will be found at Page Nos. '193 to 197' of the Survey Report and there is no challenge to the surveyor's report on the ground that it is based on consideration of a wrong policy for

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computation of losses. The surveyor's report was only dealt with on quantum and was discarded in the majority awards.

21. In the recent decision of the Hon'ble Apex Court in the case of **Jan De Nul Dredging India Private Ltd. Vs. Tuticorin Port Trust** reported in **(2026) 3 SCC 186**, it has been categorically held that :

> *"34. In a recent case of Bombay Slum Redevelopment Corporation Private Limited vs. Samir Narain Bhojwani, a Bench of this Court, of which one of us (P. Mithal, J.) was a member, had held that the jurisdiction of the Appellate Court dealing with an appeal under Section 37 of the Act against the judgment in a petition under Section 34 of the Act is more constrained than the jurisdiction of the court dealing with a petition under Section 34 of the Act.*
>
> *35. The gist of the aforesaid decisions is that the jurisdiction of the court under Section 37 of the Act is akin to jurisdiction of the court under Section 34 of the Act, and, therefore, the scope of interference by the court in appeal under Section 37 cannot go beyond the grounds on which challenge can be made to the award under Section 34 of the Act. Moreover, the courts exercising powers under Sections 34 and 37, do not act as a normal court, and therefore, ought not to interfere with the arbitral award on a mere possibility of an alternative view.*
>
> *36. In other words, the scope of interference of the court with the arbitral matters is virtually prohibited, if not absolutely barred. The powers of the Appellate Court are even more restricted than the powers conferred by Section 34 of the Act. The appellate power under Section 37 of the Act is exercisable only to find out if the court exercising power under Section 34 of the Act, has acted within its limits as*

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prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court exercising powers under Section 37 of the Act has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits so as to hold as to whether the award of the Arbitral Tribunal is right or wrong. The Appellate Court in exercise of such power cannot sit as an ordinary court of appeal and reappraise the evidence to record a contrary finding. The award of the Arbitral Tribunal cannot be touched by the court unless it is contrary to the substantive provision of law or any provision of the Act or the terms of the agreement."

22. Applying the aforesaid decision to the facts of the present case, we are of the opinion that the learned Commercial Court under Section 34 of the Act, 1996 has failed to examine even whether the award has strayed beyond the contract itself. The learned Court below has failed to correct a situation where the learned Arbitrators have applied a set of covenants in evaluating the claim, which were completely outside the purview of the contract between the Insurance Company and insured and has totally failed to take into account those covenants which actually bound the parties before the Tribunal.

23. Therefore, our disapproval of the awards is not on merits but on the touchstone of Wednesbury unreasonableness and sheer perversity. The majority awards, therefore, shock the conscience of the Court and it would be a travesty of justice to

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allow such awards to remain. In such view of the matter, we find ourselves wholly within our limited jurisdiction under Section 37 of the Act, 1996 to strike down and set aside the majority awards dated 07.02.2002 and 22.02.2002 respectively. Resultantly, we uphold the minority award dated 20.02.2002 of Mr. Ramesh M. Mehta that the Insured have not been able to justify the claim amount and there were breaches of Fire Insurance Policy conditions. The order dated 11.09.2014 passed by the learned 10th Additional District Judge, Vadodara in CMA (Arbitration) No. 73 of 2022 impugned herein is accordingly, quashed and set aside.

24. Consequently, the order passed in the main appeal i.e. First Appeal No. 3873 of 2014, R/Cross Objection No.15 of 2015 does not survive and stands disposed of accordingly.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

BINA SHAH

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