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

Reserved on: 13th May, 2026
Pronounced on: 09th September, 2026

\+ O.M.P. (COMM) 292/2019

UNION OF INDIA .....Petitioner

Through: Ms. Shiva Lakshmi, SPC, Mr. Praver Dennison, Advocate
Mr. Rakesh Kumar, SPC for Union of India

versus

NCC LIMITED .....Respondent

Through: Ms. Priya Kumar, Senior Advocate with Ms. Renu Gupta, Ms. Pratiksha Jalan and Ms. Ekka Singh, Ms. Anamika Singh, Advocates

\+ OMP (ENF.) (COMM.) 209/2019 & EX. APPLs. (OS) 941/2019, 3096/2022, 3825/2022 & O.A. 77/2022

NCC LTD (FORMERLY KNOWN AS NAGARJUNA CONSTRUCTION COMPANY LIMITED) .....Decree Holder

Through: Ms. Priya Kumar, Senior Advocate with Ms. Renu Gupta, Ms. Pratiksha Jalan and Ms. Ekka Singh, Ms. Anamika Singh, Advocates

versus

UNION OF INDIA .....Judgement Debtor

Through: Mr. Rakesh Kumar, SPC for Union of India

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

INTRODUCTION:

1. The petition being *O.M.P. (COMM) 292/2019* has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 **("Arbitration Act")**, by the Union of India **("UOI")** represented by the Director General, Married Accommodation Project **("DG MAP")**, assailing the Arbitral Award dated 18th March, 2019 **("Award")**, passed by the learned Sole Arbitrator with regard to the disputes between the petitioner-UOI and the respondent-NCC Limited, arising out of Contract Agreement dated 09th March, 2010.

2. The petition being *OMP (ENF.) (COMM.) 209/2019* has been filed under Section 36 of the Arbitration Act, read with Order XXI of the Code of Civil Procedure, 1908 **("CPC")**, by the decree holder, i.e., claimant/respondent-NCC Limited seeking enforcement of the Award dated 18th March, 2019.

3. By way of the impugned Award, the learned Sole Arbitrator has allowed, in whole or in part, ten of the fifteen claims preferred by the respondent-NCC Limited, and has awarded a sum of Rs. 12,14,18,020/- together with interest to it. Further, directions have also been given to the judgment debtor, i.e., petitioner-UOI, for release of the performance bank guarantee of Rs. 9,53,00,000/- to the respondent that has been furnished by it to the petitioner. Further, all the four counter-claims raised by the petitioner have been rejected.

PROCEEDINGS BEFORE THIS COURT:

4. By way of order dated 31st July, 2019, this Court directed that the bank guarantee shall not be invoked by the petitioner without seeking leave of this Court. Further, *vide* order dated 03rd July, 2020, in

OMP(ENF.)(COMM.) 209/2019, the petitioner-UOI was directed to forthwith return the performance bank guarantee issued by the State Bank of India **("SBI")** for a sum of Rs. 9,53,00,000/- to the petitioner, along with all the extension letters in original.

5. *Vide* order dated 26th November, 2021, this Court stayed the execution of the Award, subject to the petitioner depositing the awarded amount with the Registry of this Court. In pursuance of the same, the petitioner deposited a cheque dated 22nd March, 2022, for an amount of Rs. 18,79,53,001/- in favor of the Registrar General, Delhi High Court.

6. Thereafter, by way of order dated 31st October, 2022, as modified by order dated 14th November, 2022, in *OMP (ENF.) (COMM) 209/2019*, the Joint Registrar (Judicial) took note of the dispute between the parties regarding the amount on which simple interest at the rate of 8% per annum was payable, in terms of paragraph 141 of the impugned Award. After hearing the submissions of the parties, the petitioner was directed to deposit simple interest on the amount of Rs. 9,53,00,000/- at the rate of 8% per annum from 01st October, 2016, to 14th September, 2020, with the Registry of this Court, within 30 days from date of the said order. Learned counsel for the respondent also prayed for future interest as per the specific directions given in paragraph 158(b) of the impugned Award, however, the learned counsel for the petitioner sought time to give clarification on this point.

7. *Vide* order dated 02nd November, 2022, the respondent offered a bank guarantee as security for release of the deposited amount. As an interim measure, this Court directed the Registry to release the amount deposited by the petitioner to the respondent, subject to furnishing of the bank guarantee

to the satisfaction of the Registrar General. This Court noted that further orders with respect to replacement of said security with security of immovable properties would be considered after hearing the petitioner.

8. Subsequently, on 13th December, 2022, the Joint Registrar (Judicial) held that the amount of Rs. 50,00,000/- as mentioned in paragraphs 139 and 140 of the impugned Award was covered under the definition of "awarded sum" under Section 31(7) of the Arbitration and Conciliation (Amendment) Act, 2015 **("Amendment 2015")**, and the intention of the learned Arbitrator was to impose future simple interest thereupon. Thus, the petitioner-UOI was liable to pay future simple interest @12% per annum from the day after the date of the impugned Award to the date of actual payment on awarded sum of Rs. 50,00,000/-. However, it was held that the petitioner-UOI was not liable to pay interest on the amount of Rs. 13,50,000/- towards arbitration costs as mentioned in paragraph 168 of the impugned Award.

9. By way of order dated 19th January, 2023, the bank guarantee dated 08th December, 2022, was found to be acceptable and therefore, Rs. 18,79,53,001/- was directed to be released to the respondent, subject to the condition that the bank guarantee will be kept alive till the disposal of the case.

10. On hearing dated 06th February, 2024, the Court did not permit withdrawal of the deposited amount on the basis of the security offered by the respondent, *viz*., Agreements to Sell and Share Certificates with respect to immovable properties. The respondent was directed to renew the bank guarantee furnished pursuant to order dated 02nd November, 2022, read with order dated 02nd November, 2023, in *OMP (ENF.) (COMM.) 209/2019*.

11. The extended bank guarantee dated 21st February, 2026, for a sum of Rs. 18,79,53,001/- was found to be in order, and was accepted *vide* order dated 30th March, 2026, and the respondent was directed to keep the same alive during the pendency of the proceedings.

BRIEF FACTS:

12. The brief facts, as culled out from the record, are as under:

12.1. The petitioner raised a project to construct married accommodation for officers in Army, Navy and Air Force. The respondent is a construction company incorporated in Hyderabad, Telangana, and was declared as a successful bidder for construction of the said dwelling units.

12.2. Accordingly, Contract Agreement dated 09th March, 2010 was executed between the parties, for construction of dwelling units at Binnaguri and Cooch Behar in West Bengal, for an amount of Rs. 190,58,14,773.69/-.

12.3. The site was handed over to the claimant/respondent on 18th March, 2010, and the work was to be completed in three phases, within two years from the date of execution of the said Contract Agreement, in following manner:

- Phase 1 (a) - 17th September, 2010
- Phase 1 (b) - 17th September, 2011
- Phase 2 - 17th March, 2012

12.4. However, the completion of the project was delayed by 76 months, and after multiple extensions, the work was finally completed, on 18th July, 2016.

12.5. Subsequent to completion of work, various disputes arose between the parties with respect to payment of the final bill amount. The petitioner paid Rs. 38,40,162/- towards the undisputed portion of the final bill.

However, due to non-payment of the disputed portion of the final bill, the respondent herein invoked arbitration under Clause 60 of General Conditions of Contract **("GCC")**, by issuing a notice to the Engineer-in-Chief, Army Headquarter, New Delhi, for appointment of an arbitrator.

12.6. The petitioner as well as the respondent herein signed an Agreement for appointment of Arbitrator on 29th June, 2017, and 26th May, 2017, respectively, for appointment of Sh. Sudesh Kumar Gupta, Addl. Director General (Contracts) as the Sole Arbitrator, and waived their objection under Section 12(5) of the Arbitration Act. Thus, Sh. Sudesh Kumar Gupta, Addl. Director General (Contracts), was appointed as the Sole Arbitrator on 16th August, 2017.

12.7. The learned Arbitrator *vide* letter dated 01st September, 2017, entered into reference and issued timelines to file the statement of claims and pleadings in defence, along with supporting documents. The said letter mentioned that the time fixed will not be extended under any circumstances, since the Award has to be published within six months.

12.8. Upon completion of pleadings, the learned Arbitrator *vide* letter dated 14th March, 2018, fixed the date of hearing from 17th to 19th April, 2018 at the Office of the Panel of Arbitrators (Chandigarh).

12.9. The petitioner filed an application dated 03rd April, 2018, under Section 16 of Arbitration Act, requesting for change in venue, as well as date of hearing to any date after 10th July, 2018. The said application was rejected by the learned Arbitrator by letter dated 12th April, 2018.

12.10. Thereafter, the hearing took place on the 17th and 18th April, 2018, at Chandimandir Cantt., Chandigarh. In the said hearing dated 17th April, 2018, the petitioner again filed letter dated 16th April, 2018, requesting for adjournment and change of venue to Delhi, as its Director (Contracts) had been posted outside. The petitioner also sought fixing of arbitral procedure for production of witnesses and admission and denial of documents.

12.11. However, the same was rejected by the learned Arbitrator as the grounds for adjournment were not considered sufficient. After the submissions of the respondent, the petitioner submitted its arguments in brief on 17th April, 2018, and was permitted to continue on 18th April, 2018.

12.12. Both the parties gave consent for enlargement of mandate of the Arbitral Tribunal up to and including 31st August, 2018, for making and publishing of Award, and confirmed that they got full and fair opportunity to present their cases, as recorded in the brief record of hearing held on 17th-18th April, 2018. However, the petitioner issued letter dated 19th April, 2018, stating that said brief record of hearing had been signed under protest, and the same was detrimental to the interest of justice.

12.13. Further, the petitioner issued a letter dated 02nd May, 2018, to the learned Arbitrator seeking him to withdraw from the office of the Sole Arbitrator on multiple grounds, including, failure to give disclosure under Section 12 of the Arbitration Act and to decide the procedure for conduct of arbitral proceedings. As per the impugned Award, the said letter was received by the learned Arbitrator on 09th May, 2018.

12.14. The learned Arbitrator issued a disclosure under Section 12 of the Arbitration Act on 03rd May, 2018. Additionally, by way of letter dated 03rd May, 2018, the learned Arbitrator fixed a hearing for 16th-17th July, 2018, in Chandigarh to afford another opportunity to the petitioner to argue its case effectively.

12.15. Additionally, the brief record of hearing dated 17th-18th April, 2018, notes that upon request of the petitioner, directions were given to the respondent to produce certain documents. The respondent forwarded copies of documents *vide* letter dated 14th May, 2018.

12.16. However, by letter dated 28th May, 2018, the petitioner requested the learned Arbitrator not to admit said documents in evidence, on various grounds.

12.17. The petitioner again issued a letter dated 27th May, 2018, seeking change of venue of hearing scheduled for 16th-17th July, 2018, to Delhi and fixing of procedure. However, the same was rejected by the learned Arbitrator *vide* letter dated 12th June, 2018.

12.18. However, the hearing scheduled for 16th-17th July, 2018, was re-scheduled upon request of petitioner, and was held on 21st July, 2018, in Chandigarh, which was attended by advocates of both the parties.

12.19. In the hearing dated 21st July, 2018, the petitioner filed an application under Section 19 of the Arbitration Act for determination of procedure to be followed. Notice was issued to the respondent, which filed its reply dated 27th July, 2018, in this regard. The said application was ultimately rejected by the learned Arbitrator in the impugned Award itself, on the ground that the same was only sought to delay and derail the arbitration proceedings.

12.20. Further, on the said date of hearing, upon submission of the petitioner that the documents supplied by respondent in terms of order dated 18th April, 2018, were not legible, the respondent was directed to supply soft copy of the said documents to the petitioner. By letter dated 16th August, 2018, to the learned Arbitrator, the petitioner again stated that the documents provided by the respondent cannot be admitted in evidence.

12.21. The mandate of the learned Arbitrator under Section 29A of the Arbitration Act was terminated on 31st August, 2018. Further, the learned Arbitrator resigned *vide* letter dated 06th September, 2018, and superannuated from service on 31st October, 2018.

12.22. The respondent filed *O.M.P (MISC.) (COMM.) 313/2018* before this Court seeking extension of the mandate of the learned Arbitrator. By way of order dated 26th November, 2018, this Court extended the mandate of the learned Arbitrator by six months from date of said order, i.e., up to 26th May, 2019 for publication of the Award. Also, a cost of Rs. 25,000/- was imposed on the petitioner.

12.23. Consequently, the learned Arbitrator fixed the matter for hearing on 11th-12th January, 2019, in Chandigarh. On the said date of hearing, the petitioner submitted a letter dated 09th January, 2019, stating that they are in the process of filing an appeal against the order dated 26th November, 2018, in *O.M.P (MISC.) (COMM.) 313/2018*. However, no such appeal came to be filed.

12.24. Considering that none of the documents submitted by the parties had been objected to/disputed by the opposite party, the learned Arbitrator on 11th January, 2019, decided to finalise the Award on the basis of the written submissions and documents on record, without requirement of production of any witness by any of the parties. The brief record of hearing dated 11th January, 2019, was signed by the petitioner under protest.

12.25. The impugned Award was published on 18th March, 2019. The claim wise disposal by the learned Arbitrator, is as follows:

I. **Claim No. 01**, i.e., Payment for works executed beyond Contract's stipulations not recorded in the Measurement Book **("MB")**, being approvals denied and not paid being claim against denial to make payment for supply and fixing of CP fixtures: Allowed by awarding Rs. 1,90,38,433/- in favour of the claimant/respondent herein.

II. **Claim No. 02**, i.e., Denial to make payment of extra work arising from revision of Sections of Aluminum Windows: Allowed by awarding Rs. 55,64,649/- in favour of the claimant/respondent herein.

III. **Claim No. 03**, i.e., Towards non-payment for work done against provision of Kota Stone Floor over Garage Terrace: Allowed by awarding Rs. 50,58,346/- in favour of the claimant/respondent herein.

IV. **Claim No. 04**, i.e., Reimbursement of amount deducted under Deviation Order **("DO")** no. 41 dated 30th July, 2016, termed as measurable: Rejected.

V. **Claim No. 05**, i.e., Increased cost of procurement of electrical fittings: Rejected.

VI. **Claim No. 06**, i.e., Towards less payment against work done arising from incorrect interpretation of revised offer of 2009-10, subsequent to submission of tender *vide* NCC Limited Letter dated 04th March, 2010: Allowed by awarding Rs. 27,52,596/- in favour of the claimant/respondent herein.

VII. **Claim No. 07**, i.e., Towards difference in payment under the provision of Special Condition 19 of the Contract Agreement *vis-a-vis* Condition 13 of GCC: Allowed by awarding Rs. 1,31,71,996/- in favour of the claimant/respondent herein.

VIII. **Claim No. 08**, i.e., Towards payment of reimbursement for increase in process of other material (excluding cement and steel): Rejected.

IX. **Claim No. 09**, i.e., Towards additional expenses due to prolongation of contract on overheads and site establishment, deployment of manpower, etc., beyond the stipulated date of completion: Allowed in part by awarding Rs. 6,94,82,805/-, rounded to Rs. 6,94,82,000/- in favour of the claimant/respondent herein, against claim of Rs. 16,15,29,353/-.

X. **Claim No. 10**, i.e., Towards additional expenses due to prolongation of contract on deployment of plant, machinery, tools, etc., beyond the stipulated date of completion: Rejected.

XI. **Claim No. 11**, i.e., Towards locked up deposit bank guarantees and expenses on renewal of bank guarantees in the extended period: Allowed in part by awarding Rs. 50,00,000/- as compensation in favour of the claimant/respondent herein, with direction to UOI to release the performance bank guarantee of Rs. 9,53,00,000/- in favor of the claimant/respondent herein, within thirty days from receipt of the impugned Award, failing which simple interest @ 8% per annum was held to be payable with effect from 01st October, 2016, to the date of actual release.

XII. **Claim No. 12**, i.e., Towards loss of Head Office ("HO")/Regional Office ("RO") overheads and loss of profitability arising from working in the prolonged period: Rejected.

XIII. **Claim No. 13**, i.e., Towards interest: Allowed in favour of the respondent by awarding past and *pendente lite* interest on Claim nos. 1,2,3,6,7 and 9 @ 12% per annum simple interest, from 01st September, 2017, to the date of the impugned Award. If payment was not made by UOI within 03 months of the impugned Award, then future interest @ 12% per annum at simple interest was payable from a day after date of the impugned Award to date of actual payment.

XIV. **Claim No. 14**, i.e., Reimbursement of statutory taxes on the impugned Award: Allowed, by way of direction that Goods and Services Tax **("GST")**, if any, levied on the awarded amount, shall be reimbursed by the petitioner herein to the claimant/respondent herein, within a period of forty-five days of submission of proof of payment, failing which interest @ 8% per annum was directed to be paid w.e.f. a day after the receipt of proof to the date of actual payment.

XV. **Claim No. 15**, i.e., Cost of arbitration: Allowed by awarding Rs. 13,50,000 /- in favour of the claimant/respondent herein.

13. Furthermore, all the four counter-claims as preferred by the petitioner, have been rejected by the learned Arbitrator in their entirety. Thus, the present petitions came to be filed.

SUBMISSIONS OF THE PARTIES:

14. The following challenges to the impugned Award have been raised by the petitioner:

14.1. The impugned Award is liable to be set aside under Section 34(2)(a)(iii) and Section 18 of the Arbitration Act, as the petitioner was unable to present its case, and the proceedings were conducted in a manner contrary to Principles of Natural Justice. The request for adjournment moved by the petitioner had been rejected by the learned Arbitrator, and the proceedings on 17^{th} and 18^{th} April, 2018, were carried out in undue haste, in the absence of a key official of the petitioner. Despite multiple requests, the learned Arbitrator failed to fix proper procedure for conduct of arbitral proceedings, and did not permit leading of witness and admission/denial of documents.

14.2. The petitioner further suffered prejudice as its application challenging the admissibility and credibility of documents was not dealt in accordance with law.

14.3. The impugned Award is also liable to be set aside under Section 13(5) of the Arbitration Act, as the independence and impartiality of the learned Arbitrator stood compromised under Point 16 in the Seventh Schedule to the Arbitration Act, as the learned Arbitrator has dealt with previous disputes between the parties.

14.4. The learned Arbitrator furnished a disclosure under Section 12 of the Arbitration Act, only when the petitioner raised a formal objection in this regard. Thus, the said disclosure was belated and contrary to the mandate of Section 12(1) of the Arbitration Act, which operates independently of any waiver under Section 12(5) of the Arbitration Act.

14.5. Even though the petitioner filed an application under Section 14(1)(b) of the Arbitration Act seeking withdrawal of the learned Arbitrator, the same was rejected without application of mind, and the proceedings were continued.

14.6. The impugned Award has been passed without jurisdiction since the mandate of the learned Arbitrator already stood expired. Upon extension of the mandate *vide* order dated 26th November, 2018, passed in *O.M.P (MISC.) (COMM.) 313/2018*, the resignation tendered by the learned Arbitrator became operative, and therefore, there was no subsisting mandate enabling the learned Arbitrator to continue.

14.7. The impugned Award is patently illegal in terms of Section 34(2-A) of Arbitration Act, since the learned Arbitrator has awarded damages in complete breach of Section 73 of the Indian Contract Act, 1872 **("Contract Act")**, without any proof of actual loss having been suffered by the respondent. Further, damages were awarded purely on the basis of assumptions, as the learned Arbitrator mechanically applied notional percentages drawn from the Military Engineer Services **("MES")** Manual on Contracts.

14.8. The impugned Award is also challenged for grant of excessive interest, particularly, in the absence of any notice for interest under the Interest Act, 1978 **("Interest Act")**, to the petitioner.

14.9. The impugned Award is in material violation of the GCC as the claim of the respondent was allowed, even though the sub-contracting of work by the respondent was without consent of the petitioner.

14.10. As per the learned Arbitrator's own finding, delay of only 35 months was attributable to the petitioner. Therefore, the balance delay of 17 months was attributable to the respondent. However, the learned Arbitrator has arbitrarily penalized only the petitioner for the said delay.

14.11. Clause 13(B) of the GCC bars grant of compensation as a result of extension. However, the learned Arbitrator allowed Claim no. 09 of the petitioner and granted compensation for delay, in direct contravention of Clause 13(B) of the GCC. Thus, the learned Arbitrator has re-written the contract between the parties.

15. The challenge raised by the petitioner has been resisted by the respondent, in the following manner:

15.1. The objections raised by the petitioner are limited to the findings of the learned Arbitrator *qua* Claim nos. 09 and 13.

15.2. The petitioner was granted full opportunity to present its case before the learned Arbitrator. The petitioner's request dated 03rd April, 2018, for adjournment was contrary to Section 18 of the Arbitration Act, and would have denied the respondent of equal treatment.

15.3. The learned Arbitrator offered the petitioner full opportunity to continue its arguments on 18th and 19th April, 2018, which the petitioner denied. Further, full opportunity of hearing was granted to the petitioner on 21st July, 2018, as well.

15.4. The appointment of the learned Sole Arbitrator is not hit by Section 12 of the Arbitration Act, as the parties had entered into a written Agreement specifically waiving objections to the appointment of the learned Arbitrator under Section 12(5) of the Arbitration Act.

15.5. Since the parties did not agree upon any procedure for conduct of arbitral proceedings, the learned Arbitrator had the power to conduct the proceedings in the manner it considered appropriate, without being bound by any procedural laws.

15.6. None of the documents submitted by the parties were disputed or denied. Thus, there was no requirement for leading of oral evidence. Difference as to interpretation of documents does not require leading of oral evidence. The petitioner merely intended to stall and derail the arbitral proceedings.

15.7. The mandate of the learned Arbitrator stood extended by the Court in *O.M.P(MISC.)(COMM.) 313/2018*, and the same has attained finality.

15.8. The major cause of delay in the project was attributable to the petitioner. The petitioner may have given Extension of Time **("EOT")**, under Clause 13 of GCC, however, this was regularly protested against by the respondent. The grounds on which extension has been granted were not relatable to Clause 13A of GCC, and thus, the prohibition under Clause 13(B) of the GCC did not apply. Therefore, the learned Arbitrator rightly held that compensation was payable to the respondent.

15.9. Further, the learned Arbitrator quantified Claim no. 09 using the petitioner's own document, i.e., MES Manual on Contracts which provides 2.5% of estimated cost per month as establishment charges. The period considered by the learned Arbitrator was 35 months, which is deliberately conservative compared to the actual delay of 52 months. The amount awarded under this claim was substantially less than the amount claimed by the respondent. Thus, the quantification method used by the learned Arbitrator was the petitioner's own accepted method.

15.10. The respondent had filed various documents before the learned Arbitrator showing proof of the actual loss suffered by it, including that its resources remained deployed on site for the extended period. Thus, Claim no. 09 was not awarded on the basis of assumption or presumption, or in the absence of documents showing actual proof of loss.

15.11. The Court under Section 34 of the Arbitration Act cannot interfere with factual findings of the learned Arbitrator with respect to delay. Further, the method to be used for computation of damages falls within the domain of the learned Arbitrator. The petitioner, under the guise of "public policy", cannot seek re-appreciation of evidence.

15.12. The grant of 12% interest by the learned Arbitrator is reasonable, and the same is within the learned Arbitrator's discretion under Section 31(7) of the Arbitration Act.

ANALYSIS AND FINDINGS:

Scope Of Interference Under Section 34 Of The Arbitration Act

16. Before examining the rival contentions, it is expedient to set out the scope of interference available to this Court under Section 34 of the Arbitration Act. It is well settled that a Court exercising jurisdiction under Section 34 of the Arbitration Act does not sit in appeal over the findings of the Arbitral Tribunal, and cannot reappreciate evidence to arrive at a different conclusion on facts.

17. However, in case, an Award suffers form patent illegality, which has also been defined to include ignoring a binding precedent or a clear prohibition stipulated in the contract, this Court under Section 34 of the Arbitration Act, can interfere with the Award.

18. Thus, in the case of ***Ramesh Kumar Jain Versus Bharat Aluminum Company Limited (BALCO), 2025 SCC OnLine SC 2857***, it was held as follows:

> *"xxx xxx xxx*
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> ***28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts***

exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In ONGC Limited. v. Saw Pipes Limited[14], this court held that an award can be set aside under Section 34 on the following grounds:"(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal."

xxx xxx xxx

33. ***In 2015, by way of the Arbitration and Conciliation (Amendment) Act a new sub-section (2A) to section 34 of A&C Act was inserted which in addition to statutorily recognizing the 'patent illegality' ground for setting aside a domestic arbitral award made it an independent and distinct ground from 'public policy' under section 34. The proviso to the newly inserted clause further provided that an award "shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence".*** *The legislative intent behind insertion of this proviso was to avoid excessive intervention to arbitral award by the courts under the ground of 'patent illegality'.* ***However, the Amendment clarified that "an erroneous application of the law" or "re-appreciation of evidence" does not fall under patent illegality. Hence, the courts are not to treat every factual error or every divergent interpretation as an illegality. The illegality must be of a kind that strikes at the heart of the award's validity. For instance, if an arbitrator ignores a binding precedent or a clear prohibition in the contract, that may be patent illegality. Likewise, a finding based on no evidence at all can be said to be perverse and thus patently illegal. But where there is some evidence and a reasonably plausible inference has been drawn by the arbitrators, the courts should ordinarily refrain themselves from supplanting the views arrived by the arbitrator as that would be the true import of the legislative intent inherent in the Amendment Act.***

34. ***Thereafter, this court elucidated the meaning of the expression 'patent illegality' in Ssangyong Engg. & Construction Co. Ltd. v. NHAI[22] while taking into consideration the amendment act of 2015 and held it as a glaring, evident illegality that goes to the root of the award.***

This includes : (a) an award deciding matters outside the scope of the arbitration (beyond the contract or submission); (b) an award contradicting the substantive law of India or the Arbitration Act itself; (c) an award against the terms of the contract; and (d) an award so unreasoned or irrational that it manifests an error on its face.

35. Considering the aforesaid precedents, in our considered view, the said terminology of 'patent illegality' indicates more than one scenario such as the findings of the arbitrator must shock the judicial conscience or the arbitrator took into account matters he shouldn't have, or he must have failed to take into account vital matters, leading to an unjust result; or the decision is so irrational that no fair or sensible person would have arrived at it given the same facts. A classic example for the same is when an award is based on "no evidence" i.e., arbitrators cannot conjure figures or facts out of thin air to arrive at his findings. If a crucial finding is unsupported by any evidence or is a result of ignoring vital evidence that was placed before the arbitrator, it may be a ground the warrants interference. However, the said parameter must be applied with caution by keeping in mind that "no evidence" means truly no relevant evidence, not scant or weak evidence. If there is some evidence, even a single witness's testimony or a set of documents, on which the arbitrator could rely upon or has relied upon to arrive at his conclusions, the court cannot regard the conclusion drawn by the arbitrator as patently illegal merely because that evidence has less probative value. This thin line is stood crossed only when the arbitral tribunal's conclusion cannot be reconciled with any permissible view of the evidence.

xxx xxx xxx"

(Emphasis Supplied)

19. In this regard, reference may be made to the decision in the case of ***OPG Power Generation Private Limited Versus Enexio Power Cooling Solutions India Private Limited and Another***, ***(2025) 2 SCC 417***, wherein, the Supreme Court held that a Court does not sit in appeal over the decision of the learned Arbitrator, and a possible view by the learned Arbitrator on facts is to be respected as the learned Arbitrator is the ultimate master of the

quantity and quality of evidence to be relied upon. However, where 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.

20. It is also essential to note that though an Arbitral Tribunal is the final arbiter of questions of fact and of the construction of the contract, however if the view taken by an Arbitral Tribunal is not a plausible view, then this Court can interfere with the Award under its jurisdiction under Section 34 of the Arbitration Act.

21. In this regard, reliance is placed upon ***Ssangyong Engineering and Construction Company Limited Versus National Highways Authority of India (NHAI), (2019) 15 SCC 131****,* whereby, the ground of patent illegality for the purpose of interference by the Court in an arbitral award has been elucidated as under:

> *"xxx xx xxx*
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> ***41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , 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. 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.***
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> *xxx xxx xxx*
>
> ***69. We therefore hold, following the aforesaid authorities, that in the guise of misinterpretation of the contract, and consequent "errors of jurisdiction", it is not possible to state that the arbitral award would be beyond the scope of submission to arbitration if otherwise the aforesaid***

misinterpretation (which would include going beyond the terms of the contract), could be said to have been fairly comprehended as "disputes" within the arbitration agreement, or which were referred to the decision of the arbitrators as understood by the authorities above. If an arbitrator is alleged to have wandered outside the contract and dealt with matters not allotted to him, this would be a jurisdictional error which could be corrected on the ground of "patent illegality", which, as we have seen, would not apply to international commercial arbitrations that are decided under Part II of the 1996 Act. To bring in by the backdoor grounds relatable to Section 28(3) of the 1996 Act to be matters beyond the scope of submission to arbitration under Section 34(2)(a)(iv) would not be permissible as this ground must be construed narrowly and so construed, must refer only to matters which are beyond the arbitration agreement or beyond the reference to the Arbitral Tribunal.

xxx xxx xxx"

(Emphasis Supplied)

The Petitioner Herein Had Full Opportunity To Present Its Case In The Arbitral Proceedings

22. In the present proceedings, the primary ground on which the impugned Award has been assailed by the petitioner is that there was denial of a fair and reasonable opportunity to the petitioner to present its case, in violation of Section 34(2)(a)(iii) of the Arbitration Act. Furthermore, it has been averred that the learned Arbitrator failed to fix proper procedure for the conduct of the arbitration proceedings.

23. It is to be noted that Section 34(2)(a)(iii) of the Arbitration Act permits interference where a party establishes that it was otherwise unable to present its case. The same would refer to a real and demonstrable denial of a fair hearing.

24. It is a settled position of law that 'full opportunity' to present case under Section 18 of the Arbitration Act, should be seen from the threshold of reasonability. Every rejected request for adjournment or every

inconvenience of a party would not fall within the realm of not being able to present the case before the learned Arbitrator. Denying an adjournment does not inherently constitute a denial of an opportunity to a party to present its case before the learned Arbitrator.

25. In this regard, reference may be made to the decision of this Court in the case of ***LDK Solar Hi-Tech (Suzuhou) Co. Ltd. Versus Hindustan Cleanenergy Limited (Formerly Moser Bear Clean Energy Limited), 2018 SCC OnLine Del 9652***, in the context of enforcement of a foreign Arbitral Award. The Court held that the requirement of natural justice must depend upon the facts and circumstances of the case, and some real prejudice must be shown to have been suffered by the party complaining of the violation of Principles of Natural Justice. Where reasonable notice was given to the parties to the dispute by fixing the schedule much in advance, if the schedule was followed rigorously and adjournment was refused, the same would not amount to denial of Principles of Natural Justice. The relevant paragraphs of the said judgment read as under:

> *"xxx xxx xxx*
>
> ***27. It has been repeatedly held that natural justice is no unruly horse. It cannot be put in a straightjacket formula. It cannot be put into rigid rules and there is no such thing as mere technical infringement of natural justice. The requirement of natural justice must depend upon the facts and circumstances of the case and some real prejudice must be shown to have been suffered by the party complaining of the violation of Principles of Natural Justice.*** *In Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee, (1977) 2 SCC 256, the Supreme Court held:—*
>
> *"Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all.* ***If fairness is shown by the***

*<u>**decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of.**</u> <u>**Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction.**</u> No man shall be hit below the belt-that is the conscience of the matter."*

28. *In Aligarh Muslim University v. Mansoor Ali Khan, (2000) 7 SCC 529, the Supreme Court further held as under:—*

*"24. <u>**The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L. Tripathi v. State Bank of India (1984) 1 SCC 43, Sabyasachi Mukherji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved.**</u> It was observed a: quoting Wade Administrative Law, (5th Edn.PP.472-75) as follows: (SCC p. 58, para 31)*

> *"….<u>**it is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as to their scope and extent ….There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so forth**</u>".*

*<u>**Since then, this Court has consistently applied the principle of prejudice in several cases.**</u> The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala v. S.K. Sharma (1996) 3 SCC 364. In that case, the principle of*

'prejudice' has been further elaborated. The same principle has been reiterated again in Rajendra Singh v. State of M.P. (1996) 5 SCC 460."

29. ***In relation to the arbitration proceedings, the Supreme Court in Sohan Lal Gupta v. Asha Devi Gupta, (2003) 7 SCC 492, held as under:—***

"23. For constituting a reasonable opportunity, the following conditions are required to be observed:

1. ***Each party must have notice that the hearing is to take place.***
2. ***Each party must have a reasonable opportunity to be present at the hearing, together with his advisers and witnesses.***
3. ***Each party must have the opportunity to be present throughout the hearing***
4. ***Each party must have a reasonable opportunity to present evidence and argument in support of his own case.***
5. ***Each party must have a reasonable opportunity to test his opponent's case by cross-examining his witnesses, presenting rebutting evidence and addressing oral argument.***
6. ***The hearing must, unless the contrary is expressly agreed, be the occasion on which the parties present the whole of their evidence and argument.***

xxx xxx xxx

30. *In D.L. Miller and Co. Ltd. v. Daluram Goganmull, AIR 1956 Cal 361, the law is stated in the following terms:—*

"13. The doctrine of arbitrators' legal misconduct has been so overworked in recent years that across the whole branch of case-law on this point one finds the blazing trial of principles of natural justice. They are discussed and agitated in an atmosphere of complete unreality and divorced from the facts of each case.

*Somehow the obvious point is missed in most of such cases that when the parties agree to go to arbitration they stipulate not so much for vague principles of natural justice as for concrete principles of contractual justice according to the contracts of the parties and their specific stipulations. **Where the contract of arbitration itself prescribes a private procedure of its own, then so long as such agreed private procedure is not against the laws and the statutes of the land, then such agreed procedure must prevail over the notions and principles of natural justice.**"*

***31.** In Hari Om Maheshwari v. Vinitkumar Parikh, (2005) 1 SCC 379, the Supreme Court has held as under:*

"13. In the above circumstances, the question for our consideration is: was the High Court justified in interfering with the discretionary jurisdiction of the arbitrators while entertaining a petition under Section 30 to set aside an award.

xxxx

*14. **A bare reading of the said section shows that the civil court has very limited jurisdiction to interfere with an award made by the arbitrators and it certainly does not permit the civil court including the High Court to interfere with the discretionary order of granting or refusing an adjournment.***

xxxx

*16. **From the above it is seen that the jurisdiction of the court entertaining a petition or application for setting aside an award under Section 30 of the Act is extremely limited to the grounds mentioned therein and we do not think that grant or refusal of an adjournment by an arbitrator comes within the parameters of Section 30 of the Act. At any rate the arbitrator's refusal of an adjournment sought in 1999 in an arbitration proceeding pending since 1995 cannot at all be said to be perverse keeping in mind the object of the Act as an***

<u>alternate dispute resolution system aimed at speedy resolution of disputes.”</u>

32. *In National Ability S.A. v. Tinna Oil & Chemicals Ltd., (2008) 105 DRJ 446, this Court has also considered and rejected the plea of violation of Principles of Natural Justice in arbitration proceedings with the following observation:—*

“One cannot be oblivious of the nature of such international arbitration proceedings. The schedule fixed by the arbitral tribunals is strictly adhered to and only in exceptional circumstances adjournments are given. There is a rational and justification for the same. In respect of disputes relating to international commercial dealings, such arbitral tribunals ensure that they are decided with utmost alacrity and promptness. Such proceedings are not allowed to be dragged on unnecessarily causing delays. In fact, this is the culture which needs to be set-in in all kinds of arbitration proceedings, whether international or domestic.

It is stated by the petitioner that proceedings were conducted in accordance with the established practice in England and procedure followed there. This is an important fact which cannot be lost sight off. If such procedure is followed as prevalent in the country where the arbitration took place, it cannot be said that the same would be in violation of principles of natural justice when considered on the touchstone of law prevailing in India. Way back in the year 1963, the Supreme Court in the case of R. Vishwanathan v. R. Gajambal Ammal, AIR 1963 SC 1, made following pertinent observations relating to enforcement of foreign judgments in India:—

“40. Before we deal with the contentions it may be necessary to dispose of the contention advanced by the executors that it is not open in this suit to the plaintiffs to raise a contention about bias, prejudice, vindictiveness or interest of the Judges constituting the Bench. They submitted that according to recent trends in the development of Private International law a plea

that a foreign judgment is contrary to natural justice is admissible only if the party setting up the plea is not duly served, or has not been given an opportunity of being heard. In support of that contention counsel for the executors relied upon the statement made by the Editors of Dicey's "Conflict of Laws", 7th Edition Rule 186 at pp. 1010-1011 and submitted that a foreign judgment is open to challenge only on the ground of want of competence and not on the ground that it is vitiated because the proceeding culminating in the judgment was conducted in a manner opposed to natural justice. The following statement made in "Private International Law" by Cheshire, 6th Edition pp. 675 to 677 was relied upon:

> *"The expression contrary to natural justice' has, however, figured so prominently in judicial statements that it is essential to fix, if possible, its exact scope. The only statement that can be made with any approach to accuracy is that in the present context the expression is confined to something glaringly defective in the procedural rules of the foreign law. As Denman, C.J. said in an early case:*
>
> > *"That injustice has been done is never presumed, unless we see in the clearest light that the foreign law, or at least some part of the proceedings of the foreign court, are repugnant to natural justice: and this has often been made the subject of inquiry in our Courts"*

In other words, what the Courts are vigilant to watch is that the defendant has not been deprived of an opportunity to present his side of the case. The wholesome maxim audi alteram partem is deemed to be of universal, not merely of domestic application. The problem, in fact, has been narrowed down to two cases.

The first is that of assumed jurisdiction over absent defendants…. Secondly, it is a violation of natural justice if a litigant, though present at the

proceedings, was unfairly prejudiced in the presentation of his case to the Court.

xxxx

I do not find the objection of the respondent No. 2 getting covered by any of the principles on which such an award could be challenged, namely, the respondent No. 2 could not establish that the Tribunal did not consist of impartial persons or it did not act fairly, without bias, or in good faith. ***Reasonable notice was given to the parties to the dispute by fixing the schedule much in advance and if that schedule was followed rigorously and even if adjournment was refused, that would not amount to denial of principles of natural justice. The Apex Court in Hariom Maheshwari v. Vinit Kumar Parikh, JT (2004) 10 SC 360, clearly laid down that where a party is refused an adjournment and where it is not prevented from presenting its case, it cannot, normally, claim violation of natural justice and denial of a fair hearing."***

33. Applying the above principles to the facts of the present case, it cannot be said that the applicant was denied a proper notice of the appointment of the Arbitral Tribunal or of the arbitration proceedings or was otherwise unable to present its case before the Arbitral Tribunal due to which the enforcement of the Impugned Award can be refused*.*

xxx xxx xxx"

(Emphasis Supplied)

26. From the facts and circumstances of the present case, it is evident that the Arbitral Tribunal gave full opportunity to the petitioner to present its case. The Arbitral Tribunal entered upon reference on 01st September, 2017, and issued directions to the parties to file their pleadings as per the timelines

mentioned, and directing that *'under no circumstances date fixed will be extended'*.

27. However, the petitioner sought extension for filing of its pleadings, which was allowed by the Arbitral Tribunal. On completion of the pleadings, Arbitral Tribunal gave advance notice dated 14th March, 2018, to the parties, fixing hearing from 17th April, 2018, to 19th April, 2018, with hearing *'on subsequent days till completion'*.

28. The petitioner sought adjournment through letter dated 03rd April, 2018, stating that its Director (Contracts) was unavailable and requested for changing the venue of proceedings from Chandimandir Cantt., Chandigarh to Delhi. The Arbitral Tribunal dealt with both the grounds raised by the petitioner by sending response to the petitioner *vide* letter dated 12th April, 2018, stating that the request of the petitioner does not fall under the provisions of Section 16 of the Arbitration Act.

29. Subsequently, the petitioner filed letter dated 16th April, 2018, before the learned Arbitrator and again requested for adjournment of hearing and change of venue to Delhi as its Director (Contracts) had been posted out and it was left with no time to mobilize its resources to effectively defend the case. The said request was not agreed to by the learned Arbitrator, as the grounds for adjournment were not considered sufficient.

30. Thus, the petitioner's principal grievance concerns the rejection of its adjournment request for the hearing of 17th-19th April, 2018. However, it is to be noted that the learned Arbitrator had given over a month's notice of that hearing to both the parties *vide* letter dated 14th March, 2018. The reasons preferred for adjournment by the petitioner, were matters substantially within the petitioner's own administrative control.

31. Since the learned Arbitrator had given a reasonable notice to the parties by fixing the schedule much in advance, the learned Arbitrator cannot be faulted for following the said schedule rigorously.

32. More significantly, the record, including, the recital of proceedings of the impugned Award, shows that the petitioner was, in fact granted latitude at multiple stages. The petitioner commenced its arguments on 17th April, 2018, and was permitted to continue its submissions the next day, i.e., 18th April, 2018.

33. Against the petitioner's request for two months, the learned Arbitrator granted time until 14th May, 2018, for submission of comments on the case law relied by respondent. The copies of documents as sought by the petitioner to be submitted by the respondent, were directed to be provided to the petitioner by the learned Arbitral Tribunal. Further, the documents submitted by both the parties during hearing were taken on record.

34. Furthermore, a subsequent hearing was fixed for 16th-17th July, 2018, in the learned Arbitrator's own words, to give the petitioner, *'another opportunity….to argue their case more effectively'*. The aforesaid hearing fixed for 16th-17th July, 2018 was rescheduled on 21st-22nd July, 2018, as per request of the petitioner. In the said hearing, the petitioner was represented through two advocates and five departmental and technical representatives. Thus, an opportunity for a full and adequately staffed presentation of its case was availed by the petitioner.

35. It is manifest that rejection of request for adjournment in no manner prevented the petitioner from presenting its case. Thus, the petitioner cannot claim violation of Principles of Natural Justice and denial of a fair hearing.

36. It is also noted that the petitioner *vide* its letter dated 28th May, 2018, also submitted its comments on the documents submitted by the respondent.

37. When the documents submitted by the respondent were claimed to be illegible by the petitioner, the learned Arbitral Tribunal directed the respondent to provide soft copies of the documents to the petitioner, which were duly provided by the respondent. Thereafter, *vide* its letter dated 16th August, 2018, the petitioner submitted its comments on documents provided by the respondent in soft copy.

38. After the extension of mandate *vide* order dated 26th November, 2018, passed by this Court, the learned Arbitrator further fixed the matter on 11th-12th January, 2019, wherein, the petitioner was duly represented. In the said hearing, the petitioner submitted a letter dated 09th January, 2019, before the learned Arbitrator stating that it was filing an appeal before the Supreme Court against the aforesaid order of this Court dated 26th November, 2018, in *O.M.P.(MISC.)(COMM.) 313/2018*. However, no such appeal was filed.

39. The learned Arbitral Tribunal concluded that the objection of the petitioner that it has not been afforded full opportunity to represent and argue, *'stand to no logic at all'*, further holding that written submissions of both the parties were complete and that none of the documents/exhibits filed by the parties had been objected to/disputed by the opposite party.

40. This Court would give due weightage to the findings and conclusions of the learned Arbitrator in the assessment of whether a real denial of opportunity, in fact occurred. The petitioner has not, either before the learned Arbitrator or in this petition, identified any specific evidence it was thereby, prevented from placing on record. Moreover, no specific prejudice

that was caused to the petitioner has been shown, except general assertions of unfairness.

41. Accordingly, no merit is found in this ground.

Arbitral Tribunal Was Within Its Right To Determine Procedure For Arbitral Proceedings:

42. The petitioner has also averred that the learned Arbitrator failed to fix procedure for conduct of the arbitral proceedings, and arbitrarily denied leading of evidence through witnesses.

43. In the present case, the parties had not agreed upon any procedure for conducting arbitration proceedings. In such situation, as per Section 19(3) of the Arbitration Act, the learned Arbitral Tribunal has the authority to conduct the proceedings in the manner it considers appropriate, including, as to the necessity of oral evidence. The learned Arbitral Tribunal is not bound by the CPC and Bharatiya Sakshya Adhiniyam, 2023 **("BSA")** (formerly, Indian Evidence Act, 1872).

44. Since the parties in the present case had not agreed upon any specific procedure, it was for the learned Arbitrator to determine what the arbitral proceedings required.

45. This Court notes that in the brief record of arbitration hearing held on 11th January, 2019, the learned Arbitrator dealt with the request of the petitioner-UOI to produce witness to support their arguments regarding claim of damages by the respondent-NCC Limited. Upon hearing the submissions of the parties, the learned Arbitrator expressly recorded that since none of the documents submitted by the parties had been objected to by the opposite party, the Award would be finalized on the basis of the written submissions, and there was no requirement for production of

witnesses. The relevant portion of the said brief record of hearing held on 11th January, 2019, which had been signed under protest by the petitioner, is reproduced as under:

"xxx xxx xxx

2. UOI at the outset filed their letter no. 81956/Map/PH-II/PKG-18/ ARB(New)/89/E-8 Dt. 09 Jan 2019 and stated that documents requested to be given by contractor as per brief record of having Dt. 17 Apr. 2018 have still not been handed over. In reply Ld. Consultant of contractor stated that soft copy of document as availed with them have already been handed over to DGMAP. He also relied upon the Ex. ED-07 to RD-10 submitted by UOI along with their pleadings in defence which is the record of works diaries maintained at site of workduly signed by both the parties. He does not dispute any of those documents submitted by UOI. In reply UOI again insisted for those documents as recorded in brief record of hearing. UOI also requested to

   produce witnesses to support their arguments basically regarding claims for damages of contractor.

3. After considering the submissions of both the parties and the facts that none of documents submitted by the parties has been objected to by the opposite party it is decided to finalize the award based on written submissions of the parties and there is no requirement of any witnesses to be produced before me. documents submitted by UOI has been taken on record.

4. Both the parties confirmed that they have no further submissions to make except as provided herein before and as such hearing is considered as complete and hence closed at 1230 Hrs on 11 Jan 2019.

xxx xxx xxx"

46. Thereafter, in the impugned Award, the learned Arbitrator again recorded that the documents on record were not disputed by the parties, and found no merit in the submissions of the petitioner to produce witness to

substantiate its pleadings, as the same was only to derail and delay the process of arbitration.

47. It was open to the learned Arbitrator to come to such conclusion, being an assessment made by the learned Arbitrator, after hearing a formal application under Section 19 of the Arbitration Act filed by the petitioner, and rejecting the said application for the reasons, as noted above. Thus, the learned Arbitrator decided to finalize the impugned Award on the basis of written submissions, documents on record, as well as hearing given to the parties. The findings by the learned Arbitrator in this regard, are reproduced as under:

"xxx xxx xxx

44. AND WHEREAS, the objection of Union of India that they have not been afforded full opportunity to represent and argue and their so many applications are pending before AT stand to no logic at all. Written submissions of both the parties are complete. None of the documents/Exhibits filed by parties has been objected to/disputed by the opposite party. As regards various alleged applications stated to be pending with AT, these are basically the additional submissions regarding admissibility of a claim or otherwise and these will be considered while adjudicating the claims of the parties hereinafter except some application have been rejected hereinbefore as well. The hearing of the case was complete on 18 Apr 2018 itself as per brief record of hearing circulated under my letter no PAC/2792/SKG/22/E8 dated 18 Apr 2018 and signed by both the parties without any reservation. Though Union of India has subsequently stated to have signed the brief record of hearing *under protest* vide their letter dated 19 Apr 2018 received in my Office on 23 Apr 2018. I do not find any merit in the submissions of Union of India to produce witnesses to substantiate their pleadings except to derail and delay the process of present arbitration again;

45. AND WHEREAS, in the light of above, I have decided to finalize the award based on written submissions before AT and hearing the matter at length from both the parties in various hearings brought out hereinbefore;

xxx xxx xxx"

48. The learned Arbitrator, who was best placed to assess the conduct of the parties before him, recorded his own contemporaneous finding in rejecting the petitioner's application under Section 19 of the Arbitration Act,

by concluding that he found '*no merit in the submissions of Union of India except to delay and derail the arbitration proceeding*'. The relevant portions of the impugned Award read as under:

"xxx xxx xxx

29. AND WHREAS, M/s NCC Ltd submitted reply on application of Union of India under Section 19 vide their letter no NCCL/DG MAP/1091 dated 27 Jul 2018, wherein it has been brought out procedure for arbitration proceedings in the present matter is already in vogue and is in harmony with the provisions under Section 19 of Arbitration & Conciliation Act 1996. Further there is no infringement on its rights nor is the Claimant prejudiced in any manner that may be stated to be violation of the provisions under Section 18 of the Arbitration & Conciliation Act 1996. Claimant further submits that the submission of the parties are complete long back and all along has been respecting the integrity of Respondent as there is no reason at the end of the Claimant to think that the documents submitted by Respondent have been falsely prepared and being matters of common records. Claimant as such requested that hearing be concluded based upon the documents relied upon by both the parties to support their respective contentions during the hearing. The Claimant further brought out that the issue of examining witnesses raked up by Union of India to prove deployment of resources is only a dilatory tactics to deny proper justice and to evade the consequences of breach of contract. Claimant further brought out that it does not dispute the tabular presentation by the Respondent at length *detailing the deployment of resources viz. Engineer, Supervisor, Mason, Mazdoor, Carpenter, Bar binder, plumber, Machine operator, Painter, Electrician*, Mate *and Fabricator etc. Machineries like Road roller, Vibrator, Tractor roller, Bar bending machine, Bar cutting machine, Earth rammer, JCB, DG Set, Total Station, Vibrators, Batching plant, Drilling machine, Compressor, Welding set, Gas cutting set, Cement Silo etc.* In the light of submissions made by the parties and considering them very minutely, I find that there is no merit in the submissions of Union of India except to delay and derail the arbitration proceeding and accordingly I reject the application of Union of India.

xxx xxx xxx"

49. Accordingly, it is manifest that none of the documents submitted by the parties were disputed or denied by either party, though the interpretation

of the parties in that regard may differ. If the documents are not disputed, then interpretation of such documents, as such, does not require leading of evidence. The reasoning of the learned Arbitrator in dismissing the plea of the petitioner in this regard is a plausible view, and does not make a case for interference in the impugned Award on this account.

50. The petitioner has failed to set out the disputed facts and the evidence which it wanted to lead before the learned Arbitral Tribunal. Neither before the learned Arbitrator nor before this Court has the petitioner identified any specific witness it was thereby prevented from examining, or any specific document whose genuineness, as distinct from interpretation, remained in dispute. Thus, the petitioner has failed to show the relevance of any witnesses, and in what manner the non-production of such witnesses has caused prejudice to the petitioner in its defense.

51. Therefore, the learned Arbitrator was within his authority to deem it fit to proceed with the matter without the need for leading oral evidence.

52. In this regard, reliance is placed on the decision in the case of ***Telecommunication Consultants India Limited Versus B.R. Sukale Construction, 2021 SCC OnLine Del 4863***, wherein, this Court held that unless otherwise agreed to by the parties, the learned Arbitral Tribunal has the power to decide whether proceedings shall be conducted on the basis of documents and other materials, or whether oral evidence is required or not. The procedure that the Tribunal may adopt for conducting the proceedings need not be evolved by consensus of the parties, and it is for the Tribunal to devise its own procedure, if the parties have themselves not evolved the procedure consensually under Section 19(2) of the Arbitration Act. The relevant paragraphs of the said judgment are reproduced as under:

"xxx xxx xxx

11. *The legal position that emerges from a reading of the aforesaid provisions of the Arbitration Act is summarised below:*

- *(i)* ***The Arbitral Tribunal is not bound by the procedure laid down under the Civil Procedure Code, 1908 or the Indian Evidence Act, 1872.***
- *(ii)* ***Parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting its proceedings.***
- *(iii)* ***If there is no agreement between the parties, the Arbitral Tribunal may conduct the proceedings in the manner it considers appropriate.***
- *(iv)* ***The Arbitral Tribunal has the power to determine the admissibility, relevance, materiality and the weight of any evidence.***
- *(v)* ***Unless it has been otherwise agreed to by the parties, the Arbitral Tribunal has the power to decide whether proceedings shall be conducted on the basis of documents and other materials or whether oral evidence is required or not.***
- *(vi)* ***In the event that the Arbitral Tribunal decides that oral evidence is required, it would hold hearings for presentation of evidence on a day-to-day basis.***

12. *The scope of the aforesaid provisions have been duly considered by this Court in Silor Associates SA (supra), wherein it has been observed as under:*

> *"17.* ***Section 19(1) of the Act, inter alia, provides that "The Arbitral Tribunal shall not be bound by the Civil Procedure Code, 1908 (5 of 1908) or the Evidence Act, 1872(1 of 1872)". This means that the Tribunal is not bound by the rigor and strict provisions of the Civil Procedure Code, 1908 (CPC), or the Evidence Act, 1872 (Evidence Act).***
>
> *18. Section 19(2) states that subject to the provisions of Part I, the parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting its proceedings.* ***In the present case, the parties have not agreed on any specific procedure to be followed by the Arbitral Tribunal in conduct of its proceedings. Section 19(3) states***

that "failing any agreement referred to in sub-section (2), the Arbitral Tribunal may, subject to this part conduct the proceedings in the manner it considers appropriate". Therefore, the Arbitral Tribunal is free to devise its own procedure, subject to the condition that such procedure should conform with the provisions of Part I of the Act. The procedure that the Tribunal may devise should meet the basic tenets of an adjudicatory process, namely, that the procedure should treat parties equally, and each party should be given a full opportunity to present its case (see Section 18). The procedure to be evolved by the Tribunal cannot be such that it curtails the rights of the parties under Sections 13, 16, 17, 22, 23, 24, 25 & 26 of the Act, or any of them.

(emphasis supplied)

19. ***There is nothing in the Act to contra indicate the existence of jurisdiction/power in the Tribunal to require the parties to produce documents, exhibits or other evidence, as the Arbitral Tribunal may determine. The aforesaid provision has the effect of vesting the Tribunal with much greater autonomy in the matter of regulating its procedure for conduct of the arbitration proceedings, than that exercised by a civil court-which is bound by the rigour of the Code of Civil Procedure (CPC) and the Evidence Act The scheme contained in Section 19 of the Act is not to denude the Arbitral Tribunal of its power to regulate its procedure for effective and expeditious conduct of the arbitration proceedings in a transparent and fair manner. On the contrary, the legislative intent appears to be vest the Arbitral Tribunal with autonomy and flexibility in the matter of conduct of its proceedings so as to expedite the proceedings and cut the procedural wrangles witnessed in courts - which are governed by the CPC and the Evidence Act.***

20. ***The procedure that the Tribunal may adopt for conducting the proceedings need not be evolved by consensus of the parties. It is for the Tribunal to devise its own procedure, if the parties have themselves not evolved the procedure consensually under Section 19(2)."***

13. Admittedly in the present petitions, there is no agreement between the parties with regard to the procedure for carrying

out the arbitration proceedings. In the absence of any agreement between the parties, the sole arbitrator has the absolute authority to decide on whether to allow evidence in a particular case or to proceed with the adjudication of the matter on the basis of documents and other materials. In the present cases, the sole arbitrator having decided that the matter can be adjudicated on the basis of the documents on record, has held that no evidence by way of witnesses/oral evidence is required for the time being. No fault can be found in the decision of the arbitrator in this regard.

14. Furthermore, the reliance of the counsel for the petitioner on the provisos to Section 24(1) of the Arbitration Act is totally misplaced. The provisos have be read in context of the main provision being Section 24(1) of the Arbitration Act, which states that the arbitral tribunal shall, inter alia, decide whether to hold oral hearings for the presentation of evidence. The provisos to the main provision cannot be read as taking way the absolute discretion of the arbitral tribunal as provided under Section 24(1) of the Arbitration Act, or as making the presentation of evidence through oral hearing procedurally mandatory.

***15.** There is no merit in the submission of the counsel for the petitioner that since, the present arbitrations are not fast track arbitrations as envisaged under Section 29B of the Arbitration Act, there was no requirement to dispense with oral evidence for early disposal of the dispute. The mandate of the Arbitration Act, as amended from time to time, is to ensure early and expeditious disposal of all arbitration proceedings. Merely because the arbitration is not being conducted in the fast track procedure, does not mean that the arbitration need not be decided in an expeditious manner. Furthermore, it may be noted that a time limit of 12 months from the date of completion of pleadings for making an arbitral award has been statutorily specified under Section 29A of the Arbitration Act.*

16. As regards the objection of the counsel for the petitioner that the respondent has denied the documents filed on behalf of the petitioner, even if the said documents have been denied by the respondent, it does not mean that the arbitrator cannot consider the admissibility and the materiality of the said documents at the stage of final hearing.

17. The counsel for the respondent has rightly relied upon the judgment of this Court in Surender Kumar Singhal (supra), wherein the scope for interference with regard to arbitration matters, in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India has been prescribed. Paragraph 25 of the said judgment is set out below:

> *"25. A perusal of the above-mentioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Article 226/227 in challenges to orders by an arbitral tribunal including orders passed under Section 16 of the Act.*
>
> *(i) An arbitral tribunal is a tribunal against which a petition under Article 226/227 would be maintainable;*
> *(ii) The non-obstante clause in section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a Constitutional provision;*
> *(iii) For interference under Article 226/227, there have to be 'exceptional circumstances';*
> ***(iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere;***
> ***(v) Interference is permissible only if the order is completely perverse i.e., that the perversity must stare in the face;***
> ***(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process;***
> ***(vii) Excessive judicial interference in the arbitral process is not encouraged;***
> *(viii) It is prudent not to exercise jurisdiction under Article 226/227;*
> ***(ix) The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown;***
> ***(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided"***

18. Since no exceptional circumstances or exceptional rarity have been demonstrated/made out in the petitions or during the hearing and given the stage at which the arbitration

proceedings are, there is no occasion to warrant the exercise of jurisdiction by this Court under Article 227 of the Constitution of India.
xxx xxx xxx"

(Emphasis Supplied)

53. Accordingly, this ground also fails.

Independence And Impartiality Of The Learned Arbitrator Under Section 12 Of The Arbitration Act Is Upheld:

54. The next ground raised by the petitioner is with regard to independence and impartiality of the learned Arbitrator. The petitioner's grievance in this regard rests on the timeline of the disclosure under Section 12 of the Arbitration Act, and on the fact that the learned Arbitrator had previously adjudicated a dispute between the same parties under the same contract.

55. The impugned Award records that a dispute between the same parties concerning non-payment of price variation dues under the same contract, had earlier been referred to arbitration during the currency of the work, resulting in an arbitral Award dated 16th June, 2014, in favour of the respondent. The said arbitral Award was upheld by this Court in a petition under Section 34 of the Arbitration Act and the Special Leave Petition of the petitioner was dismissed by the Supreme Court on 31st August, 2015. This Court notes the submission that the same Arbitrator, as in the present case, had presided over the earlier reference, as well.

56. In this regard, it is to be noted that Clause 60 of the GCC, to which the petitioner was itself a party, specifically contemplates a serving officer of the petitioner's own establishment as a Sole Arbitrator. Such stipulation is a long-recognized feature of standard-form government work contract, a circumstance that would ordinarily attract the bar under Section 12(5) read

with the Seventh Schedule of the Arbitration Act, but for an express written waiver. Clause 60 of the GCC is reproduced as under:

"xxx xxx xxx

60. **Arbitration.**

All disputes, between the parties to the contract (other than those for which the decision of the DG MAP or any other person is by the contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of serving officer having degree in Engineering or equivalent or having passed Final/Direct Final Examination of Sub Division II of Institution of Surveyors (India) recognised by the Govt of India to be appointed by the Engineer-in-Chief, Army Headquarters, New Delhi or in his absence, the officer officiating as Engineer-in-Chief or Director General of Works if specifically delegated in writing by Engineer-in-Chief, Army Headquarters, New Delhi whose decision shall be final, conclusive and binding. The Arbitration shall be governed by Arbitration and Conciliation Act, 1996.

Unless both parties agree in writing, such reference shall not take place until after the completion or alleged completion of the Works or termination or determination of the Contract under Condition Nos.49 and 50 hereof.

Provided that in the event of abandonment of the works or cancellation of the Contract under Condition Nos. 46, 47 or 48 hereof, such reference shall not take place until alternative arrangements have been finalised by the Government to get the works completed by or through any other Contractor or Contractors or Agency or Agencies.

Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the contractor as provided in condition 57 hereof.
If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place:
The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of case and pleading in defense.

The Arbitrator may proceed with the arbitration, exparte, if either party, inspite of a notice from the Arbitrator, fails to take part in the proceedings.

The Arbitrator shall give his reasoned award in writing on all matters referred to him and shall indicate his findings, alongwith sums awarded, separately on each individual item of dispute.

The venue of arbitration shall be such place or places as may be fixed by the Arbitrator in his discretion.

The award of the Arbitrator shall be final and binding on both the parties to the Contract.

xxx xxx xxx"

57. The learned Arbitrator was a serving officer of the petitioner, who was appointed in accordance with the terms of the Contract Agreement. Both the parties, i.e., the petitioner and the respondent, signed a written

Agreement for appointment of the learned Arbitrator on 29th June, 2017, and 26th May, 2017, respectively, specifically waiving objections to the appointment of the learned Arbitrator in accordance with Section 12(5) of the Arbitration Act. The said Agreement is reproduced as under:

"

AGREEMENT FORAPPOINTMENT OF ARBITRATOR

1. A contract was concluded Between

Director General – MAP, DGMAP (Ph –II) Project, E-in-C's Branch,Integrated HQ of MoD (Army),Kashmir House, Rajaji Marg , New Delhi – 110 011

AND

M/s. N C C Limited, NCC House, Madhapur, Hyderabad

on 9th March 2010 for the provision of Construction of Dwelling Units including Allied Services for Officers, JCOs and ORs at Binnaguri & Cooch Behar Military Station bearing Contract Agreement No. DGMAP/ PHASE –II/ PKG. -18/ ARMY/ 19 of 2009-2010.

2. WHEREAS certain disputes have arisen in the above contract and both the parties are desirous for appointment of arbitrator to adjudicate upon the disputes;

AND WHEREAS as per para 8 of the Arbitration and Conciliation (Amendment) Act 2015 of Arbitration and Conciliation Act, 1996, the parties may agree for waiver of the applicability of the Sub-section 5 of Section 12 of the Arbitration and Conciliation Act, 1996 by an express agreement in writing;

AND WHEREAS the office of the Engineer-in-Chief, E-in-C's Branch, Army HQ, Kashmir HouseNew Delhi – 110011 is the persona designate for appointment of the Arbitrator under Condition 60 of the General Conditions of Contract of the subject Contract Agreement;

AND WHERAS the office of the Engineer-in-Chief, E-in-C's Branch, Army HQ vide its letter no. 13600/DG MAP/33/19/E8 dated 15 May 2017 has submitted the names of its serving officers from its Standing Panel of Arbitrators in reply to M/s. NCC Limited letter no. NCCL/DGMAP/1057 dated 21/01/2017;

AND WHEREAS M/s. NCC Limited does express its consent in writing for the selection of Sh. S K Gupta, ADG, from the Standing Panel of Arbitrators, Chandigarh to act as the Sole Arbitrator to adjudicate upon the disputes arising out of the subject Contract Agreement;

3. We both the parties to the Agreement, hereby agree for appointment of Sh. S K Gupta, ADG, a serving officer as arbitrator by the Engineer-in-Chief who is having degree in engineering or equivalent or having passed final/direct final examination of sub division II of the Institution of Surveyors (India).

For NCC Limited

Signature of Contractor
Designation: DGM
Name: KTRSS Vara Authorised Signatory
Date : 26 / 05 /2017

Signature of Accepting Officer
Designation: DGMAP
Name: Maj Gen SANJEEV JAIN
Date : 29 / 06 /2017

Signature of Witness:

1. Santosh Kumar Mishra
S/o Late Binod Kumar Mishra
C/o NCC Ltd Binnaguri

2. Ashardeen M/s RBS Project Ltd
427 Somdutt Ch-II

"

58. It is to be noted that this Court while extending the mandate of the Arbitral Tribunal under Section 29A of the Arbitration Act, *vide* order dated 26th November, 2018, specifically considered and upheld the validity of such

a waiver. This decision was never challenged by the petitioner and it has become final and binding.

59. The fact that the same Arbitrator had earlier adjudicated a connected dispute between the same parties, in an arbitral Award that was itself upheld through the Supreme Court, does not in any manner establish justifiable doubts as to independence or impartiality of the learned Arbitrator. The same is an ordinary incident of the Arbitration Clause in the present case for appointment of a serving officer as an Arbitrator, to which the petitioner itself agreed.

60. Accordingly, no merit is found in the aforesaid ground also.

Mandate Of Arbitrator Validly Extended:

61. The next ground taken by the petitioner is that the mandate of the learned Arbitrator had already expired prior to making of the impugned Award.

62. It is true that the mandate of the learned Arbitrator, as per the law as existed prior to 2019, reckoned from the date of reference, i.e., 01st September, 2017, was terminated by operation of Section 29A(1) and (4) of the Arbitration Act on 31st August, 2018, as the petitioner declined consent to an extension under Section 29A(3) of the Arbitration Act. Section 29A(1) of the Arbitration Act prior to its amendment by Arbitration and Conciliation (Amendment) Act, 2019 **("Amendment 2019")**, stood as under:

> *"xxx xxx xxx*
>
> ***29-A.*** *Time limit for arbitral award. –*
>
> *(1)* ***The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference****.*

Explanation.– For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) ***If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:***

> *Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay.*

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) ***It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.***

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

xxx xxx xxx"

(Emphasis Supplied)

63. Subsequently, the learned Arbitrator by letter dated 06th September, 2018, communicated his resignation, citing both the termination of the mandate for want of consent and his impending superannuation on 31st October, 2018.

64. The respondent thereafter applied to this Court under Section 29A of the Arbitration Act, by way of *OMP(MISC.)(COMM.) 313/2018*, seeking EOT for making the Award, and requested the learned Arbitrator's consent to continue, in the event this Court extended time under Section 29A of the Arbitration Act or otherwise restored his position as the learned Sole Arbitrator.

65. By way of order dated 26th November, 2018, in *OMP(MISC.)(COMM.) 313/2018*, this Court extended the time for making and publishing the Award by six months, from the date of the said order. The aforesaid order dated 26th November, 2018, passed by this Court also addressed the issue of superannuation of the learned Arbitrator, resignation by the Arbitrator impending his superannuation, and provisions contained in Section 29A of the Arbitration Act.

66. In the aforesaid order, this Court also dealt with the issue of appointment of the learned Arbitrator *vis-à-vis* Section 12(5) of the Arbitration Act. However, it was noted that in view of the specific written waiver recorded in the supplementary Agreement between the parties

regarding the appointment of the present Arbitrator, the bar under Section 12(5) of the Arbitration Act, did not operate. The operative parts of the order dated 26th November, 2018, passed in *O.M.P.(MISC.)(COMM.) 313/2018*, are reproduced as under:

> *"xxx xxx xxx*
>
> 8. At this stage, I may only note that the petitioner has produced a letter dated 23.10.2018 from the Arbitrator giving his consent to continue as an Arbitrator in the event this Court extends the time for making of the Award. In any case, as the resignation letters are addressed post termination of the mandate of the Arbitrator, the same can have no effect.
>
> 9. The learned counsel for the respondents has drawn reference to the minutes of the arbitration proceedings held on 17th and 18th April, 2018. He submits that the Arbitrator did not grant proper opportunity to the respondents to make the submissions. He further submits that the Arbitrator having tendered his resignation, the substitute Arbitrator had to be appointed in accordance with Section 15 of the Act by observing the same procedure as prescribed in the Arbitration Agreement.
>
> 10. I have considered the objections raised by the counsel for the respondents, however, find no merit in the same.
>
> 11. Section 29A of the Act is intended to sensitize the parties as also the Arbitral Tribunal to aim for culmination of the arbitration proceedings expeditiously. It is with this legislative intent, Section 29A was introduced in the Act by way of the Arbitration and Conciliation (Amendment) Act, 2015. This provision is not intended for a party to seek substitution of an Arbitrator only because the party has apprehension about the conduct of the arbitration proceedings by the said Arbitrator. The only ground for removal of the Arbitrator under Section 29A of the Act can be the failure of the Arbitrator to proceed expeditiously in the adjudication process.
>
> 12. In the present case, the Arbitrator in the first notice itself, issued on 01.09.2017 had stated that he would like to publish the Award within six months from the date of entering upon the reference. By subsequent notice dated 14.03.2018, he fixed the schedule for hearing and called upon the parties to produce all the documents in support of their respective case. In fact, it is the respondents who were seeking postponement of the hearing by filing applications before the Arbitrator.
>
> 13. Surely the respondent cannot now make a complaint against the Arbitrator for him having not concluded the arbitration proceedings within the stipulated period of one year as prescribed under Section 29A of the Act.
>
> *xxx xxx xxx*

15. As far as the issue of resignation of the Arbitrator is concerned, as noted above, the mandate of the Arbitrator had terminated on 31.08.2018. Faced with the situation, he had addressed two letters tendering his resignation. However, on a query being raised by the petitioner, the Arbitrator had clarified that he will be willing to continue as the Arbitrator if the time for making of the Award is extended by this Court. In my view, as the respondents have contributed to the failure of the Arbitrator in not being able to pass the Award within the stipulated period, purported resignation of the Arbitrator was out of frustration more than free will. In the present case, this Court is only to consider the application seeking the extension of time for the Arbitrator to make the Award. Incase the Arbitrator still considers that for any reason he would not like to continue as an Arbitrator, it would always be open to the Arbitrator to tender his resignation in accordance with the law.

16. The submission of the counsel for the respondent that the Arbitration Agreement between the parties requires only a serving officer of the respondents to be appointed as an Arbitrator and as the Arbitrator has superannuated on 31.10.2018, the substitute Arbitrator is to be appointed, I may only note that the said provision of serving officer being appointed as an Arbitrator is violative of Section 12(5) of the Act and can no longer be enforced except on a specific waiver by the respondent. The said specific waiver, as recorded in the Supplementary Agreement has been given by the petitioner only on the appointment of the present Arbitrator. Therefore, the submission of the counsel for the respondents has no merit.

17. In view of the above, I extend the time for making of the Award by the Arbitrator by a further period of six months with effect from today. However, the Arbitrator shall remain uninfluenced by any observations made by this Court. The observations made in the present order shall also be not read to prejudice the respondent in any other proceedings.

18. The petition is disposed of in the above terms. The respondents shall pay a cost of Rs.25,000/- for the present proceedings to the petitioner. ”

67. Thus, by way of the aforesaid order dated 26th November, 2018, the time for making and publishing the impugned Award was extended. In these

circumstances, the learned Arbitrator's mandate stood revived and continued in force, upon the extension being granted. It is not in dispute that the aforesaid order passed by this Court extending the mandate of the learned Sole Arbitrator was never assailed by the petitioner. Accordingly, the order stands unchallenged and the same has attained finality.

68. Thus, it is not open to the petitioner to raise an ancillary challenge regarding the mandate of the learned Arbitrator, by contending that instead some different procedure ought to have been followed.

69. The decision of Calcutta High Court in the case of ***Ircon International Ltd. Versus M/s. S.R. Associated Construction Co. P. Ltd., 2009 SCC OnLine Cal 16****,* relied upon by the petitioner, is clearly distinguishable. The said judgment addresses a materially different situation wherein, there was termination of arbitral proceedings by the Arbitrator's own withdrawal by reasons unconnected with Section 29A of the Arbitration Act, on account of which, the learned Arbitrator was substituted therein, in accordance with the appointment procedure. However, the present case is governed by Section 29A of the Arbitration Act, wherein, extension of the mandate of the learned Arbitrator was granted by this Court following automatic termination for want of consent.

70. It is to be noted that in the present case, the mandate of the learned Arbitrator had statutorily terminated on 31st August, 2018. In the absence of extension of the mandate, the learned Arbitrator resigned from his appointment *vide* letter dated 06th September, 2018, on account of his impending superannuation on 31st October, 2018. Thereafter, by letter dated 22nd October, 2018, the respondent informed the learned Arbitrator that it had approached this Court under Section 29A of the Arbitration Act and

requested his consent to continue as the Sole Arbitrator in the event this Court extended time. Thus, the learned Arbitrator by his subsequent letter dated 23rd October, 2018, gave his consent to continue as the Sole Arbitrator in the event this Court extended the mandate. Thus, the present case is materially different from the decision of the Calcutta High Court in the case of ***Ircon International Limited (Supra)***, as relied by the petitioner.

71. As to the learned Arbitrator's superannuation from service on 31st October, 2018, Clause 60 of GCC, as reproduced hereinabove, required that the Arbitrator would be a serving officer at the time of appointment. On a plain reading, the said Clause does not require that such person remains in service throughout the pendency of the reference. No specific prejudice flowing from his post retirement status has been demonstrated.

72. Accordingly, this ground also fails.

<u>Findings Of Arbitrator Under Claim Nos. 07 And 09 Are Patently Illegal:</u>

73. The next ground raised by the petitioner is that the impugned Award suffers from patent illegality on the ground that Clause 13(B) of the GCC bars any compensation claim in respect of a period covered by an EOT granted under Clause 13(A) of the GCC.

74. It is to be noted that Claim nos. 07 and 09 are in the nature of compensation arising out of EOT. While under Claim no. 07, the respondent has claimed amounts towards price escalation on account of EOT, which has been awarded to the tune of Rs. 1,31,71,996/-. On the other hand, Claim no. 09 is towards the compensation due to the prolongation of the Contract, under which compensation towards costs of establishment have been awarded by the learned Arbitrator to the tune of Rs. 16,15,29,353/-.

75. In this regard, it is to be noted that the learned Arbitrator records that against the stipulated period of completion of 24 months, the work in fact took approximately 76 months. Thus, there was prolongation of the work by 52 months for which period EOT was granted to the respondent without levy of compensation. Examining the various EOT proformas placed on record as *Ex. C-33, Ex. C-36A* to *C-36F, C-40* and *C-43*, the learned Arbitrator held that EOT had been granted on ten distinct grounds.

76. While dealing with Claim no. 07, the learned Arbitrator noted the reasons based on which EOT was granted to the respondent. Thus, the learned Arbitrator has held as follows:

"xxx xxx xxx

110. I have heard, examined and considered the submissions, arguments and pleadings of both the parties and also perused the provisions of contract relied upon by the parties. I have also perused following court judgments relied upon by Learned Consultant of Claimant:-

(a) Union of India versus K Tech Engineers Builders Pvt Ltd and Anr in OMP no 331/2014 decided on 11 May 2015 by Hon'ble Delhi High Court.

(b) State of Goa versus M/s Jyoti Limited decided on 28 Mar 1995 by Bombay High Court 1996 (5) Bom CR 27.

(c) PM Paul versus Union of India AIR 1989 SC 1034.

I have also perused various extension of time proformas placed at Exhibit C-33, C-36A, 36B, 36C, 36D, 36E and 36F and C-40 & C-43. I find that extension of time has been granted mainly on the following grounds:-

(a) Delay in fixing of plinth height.

(b) Non availability of approval vendor for ATT Chemical treatment

(c) Time lost on account of local bandhs/ strikes/ local elections.

(d) Visits by Senior Officers.

(e) Widespread rains, earthquake.

(f) Late handing over of site at Cooch Behar.

(g) Change in design for footings at Binnaguri, CZ1, NN Road, Cooch Behar.

(h) Delay due to completion of work relating to external services by other agency resulting in delay in connection of internal water supply, sewage lines etc. by the Claimant

(i) Delay due to non availability of bitumen.

(j) Nonpayment/ delay in payment of escalation amount in RARs as per agreed conditions of the contract on flimsy grounds for which ultimately arbitration had to be invoked. Even the award of Arbitrator was contested by Respondent right up to Hon'ble Supreme Court and payment of Arbitral award was made after abnormal delay.

111. I have noticed that major portion of extension has been granted on account of delay in handing over unhindered site/change in site, delay in completion of work relating to external services by other agency resulting in delay in connection of sewage lines, internal water supply etc also resulting in space constraint for execution of road, path and culverts etc due to dumping of material by other agency. These reasons by no stretch of imagination even fall under the ambit of Condition 13 (A) of GCC on Serial page 95 of Contract Agreement. It is thus incorrect on the part of Union of India to freeze the price indices for reimbursement of escalation on the original date of completion of work especially when Union of India has failed to fulfill their prior obligations under the contract. I have perused the details of claim given in Annexure-7 and do not find any infirmity therein. Union of India has also not offered any comments on the details of claim and thus I am constrained to consider the details as correct. The claim is thus sustained in full.

xxx xxx xxx"

77. Out of the aforesaid ten reasons on account of which EOT was granted, the learned Arbitrator held that the major portion of the extension is attributable specifically to the following grounds, *viz*. delay in handing over unhindered site/change in site; delay in completion of work relating to external services by other agency resulting in delay in connection of sewage lines, internal water supply, etc., and resultant space constraint for execution of road, path and culverts due to dumping of material by other agencies. The learned Arbitrator further held that the reasons for granting EOT do not fall under the ambit of Clause 13(A) of GCC.

78. Accordingly, while awarding amounts under Claim no. 07, the learned Arbitrator has given a finding that the grounds on which EOT has been granted do not fall within the ambit of Clause 13(A) of GCC. Thus, amount towards escalation has been granted in favour of the respondent by holding that it was incorrect on the part of UOI to freeze the price indices for

reimbursement of escalation on the original date of completion of work, when the petitioner-UOI has failed to fulfil their prior obligation under the Contract.

79. Likewise, while dealing with Claim no. 09, the learned Arbitrator has relied upon his finding under Claim no. 07 with reference to the reasons for the grant of EOT by holding that the said reasons do not fall under the ambit of Clause 13(A) of the GCC. The findings of the learned Arbitrator are reproduced as follows:

> *"xxx xxx xxx*
>
> 125. I have heard, examined and considered the submissions, arguments and pleadings of both the parties. I have also perused the following court judgments relied upon by Learned Counsel very minutely and find that in all the cases damages for prolongation have been upheld by various Courts:-
>
> (a) *Union of India versus K Tech Engineers Builders Pvt Ltd and Anr in OMP no 331/2014 decided by Hon'ble High Court of Delhi on 11 May 2015.*
>
> (b) *M/s Simplex Concrete Piles (India) Ltd versus Union of India in CS (OS) no 614-A/2002 decided on 23 Feb 2010 by Hon'ble High Court of Delhi.*
>
> (c) *M/s Hind Construction Contractors versus State of Maharashtra AIR 1979 SC 720.*
>
> (d) *McDermott International Inc versus Burn Standard Co Ltd 2006 AIR SCW 3276.*
>
> 126. I have noticed that original period of contract for 24 months has got extended to 76 months resulting in a prolongation of contract of 52 months. As already brought out hereinbefore, I have perused various extension time proformas and find that major delay has been on account of delay in handing over of unhindered site/change in site, delay in completion of work relating to external services by other agency resulting in delay in connection of sewage liens, internal water supply connection to main line also resulting in space constraint for execution of work relating to Road, path and culvert due to dumping of material etc by other agency as also listed in Para 110 hereinbefore and also as is evident from various extension time proformas enclosed as Exhibits C-58A, 58B, 58C, 58D, 58E, 58F, 58F, 58H, 58I and 58J. The reasons for delay in completion have been explained in detail by Claimant *Station wise, Zone wise and Pocket wise* vide Para 17.1 to Para 17.4 of Claimant's Statement of Claims. These reasons by no stretch of imagination even fall under the ambit of Condition 13 (A) of GCC on Serial page 95 of contract agreement. Union of India during hearing stated that extension to period of completion was granted by Accepting Officer under coercion as otherwise contract might have to be cancelled. This argument is hard to digest as a contractor cannot coerce under any circumstances mighty Union of India. More over Union of India had not done any favour to Claimant by granting extension of time for their own defaults and failure to fulfill their own prior obligations.
>
> *xxx xxx xxx"*

80. It is pertinent to note that Clause 13(A) of the GCC enumerates seven specific grounds for EOT, in the following manner:

"xxx xxx xxx

13. Time, Delay and Extension.

(A) Time is of the essence of the Contract and is specified in the contract documents.

As soon as possible after Contract is let or any substantial Works Order is placed and before Work under it is begun, the P.M. and the Contractor shall agree upon a Time and Progress Chart. The Chart shall be prepared in direct relation to the time stated in the contract documents or the Works Order for completion of the individual items thereof and / or the Contract or Works Order as a whole. It shall indicate the forecast of the dates for commencement and completion of the various trade processes or sections of the work, and shall be amended as may be required by agreement between the P.M. and the Contractor within the limitation of time imposed in the contract documents or Works Order. If the Works be delayed:-

(i) by force majeure, or
(ii) by reason of abnormally bad weather, or
(iii) by reason of serious loss or damage by fire, or
(iv) by reason of civil commotion, local combination of workmen, strike or lockout, affecting any of the trades employed on the work, or
(v) by reason of delay on part of nominated sub-contractors, or nominated suppliers which the Contractor has, in the opinion of P.M., taken all practicable steps to avoid, or reduce, or
(vi) by reason of delay on the part of Contractors or tradesmen engaged by Government in executing works not forming part of the contract, or
(vii) by reason of any other cause, which in the absolute discretion of the Accepting Officer is beyond the Contractor's control; then, in any such case, the Accepting Officer may make fair and reasonable extension in the completion dates of individual items or groups of items of Works for which separate periods of completion are mentioned in the contract documents or Works Order, as applicable.

Upon the happening of any such event causing delay, the Contractor shall immediately, but not later than 30 days of the happening of the event, give notice thereof in writing to the P.M. but shall nevertheless use constantly his best endeavor to prevent or make good the delay and shall do all that may reasonably be required to the satisfaction of the P.M. to proceed with the works.

Contd...

Condition No 13 (Contd...)

In case the Contractor fails to notify the P.M. of happening of an event(s) causing delay within the period of 30 days stipulated in fourth sub para above, he shall forfeit his right to claim extension of time for the delay caused due to such event(s).

Extension of time, as granted above, shall be communicated to the Contractor by P.M. in writing and shall be final and binding.

xxx xxx xxx"

81. When the extensions are granted as per the conditions mentioned in Clause 13(A) of the GCC, then Clause 13(B) of the GCC stipulates that no claim in respect of compensation shall be admitted, in the following manner:

> *"xxx xxx xxx*
>
> (B) No claim in respect of compensation or otherwise, howsoever arising, as a result of extensions granted under Condition mentioned above shall be admitted.
>
> *xxx xxx xxx"*

82. In this regard, reference may fruitfully be made to the decision in the case of ***Ramnath International Construction (P) Ltd Versus Union of India, (2007) 2 SCC 453,*** wherein, the Supreme Court while interpreting a Clause identical to the one in the present case, has held that where extensions of time are granted for delays over which the contractor has no control, or the delay is attributable to the contractor or the employer or both, the contractor is not entitled to claim any compensation whatsoever on account of such delay.

83. The relevant portions of the said judgment in the case of ***Ramnath International (Supra),*** read as under:

> *"xxx xxx xxx*
>
> *6. **The basis of the disputed claims is that the execution of work was delayed on account of breaches on the part of the employer and the employer is liable to compensate the contractor for all losses and extra cost on account of such delay and extended execution**.*
>
> *xxx xxx xxx*
>
> *8. The arbitrator held that where the work was delayed on account of delays attributable to the employer, grant of extension of time by the employer for completing of work does not exonerate the employer from the liability to pay damages for breach on account of the delay caused by the employer unless the employer establishes that the contractor has consented to accept the extension of time alone, in satisfaction of his claims*

for the delay. The arbitrator held that in these two contracts, the employer was not released of his liability for damages on account of the delays, by granting extension of time. He, therefore, proceeded to quantify the loss and awarded the amounts as aforesaid. The awards of the arbitrator on these items were affirmed by the learned Single Judge by making the awards a rule of the court, by judgments dated 24-8-1994 and 22-9-1995.

9. ***The Division Bench of the High Court after considering the threadbare submissions on the question of law arrived at a conclusion that the arbitrator has exceeded its jurisdiction in making an award towards Claim 24 in the Hangar Contract and an award towards Claims 13 to 16 in the Road Contract, as they were made in derogation of clause 11(C) of the contract, which prohibited the contractor from making any claim for compensation or otherwise, howsoever, arising, as a result of extension of time granted under the contract***.

10. ***The core questions which arise for our consideration are these***:

*(a****) Whether Claim 24 of the Hangar Contract and Claims 13 to 16 of the Road Contract are unsustainable being in derogation of clause 11(C) of the contract, which prohibits any compensation as a result of extension of time granted by the department?***

(b) Whether the arbitrator committed a legal misconduct for not acting in terms of clause 11(C) of the contract though pleaded and submitted before him*?*

Re: Question (i)

11. Clause 11 of the General Conditions of Contract relates to time, delay and extension. We extract below the portions of clause 11 relevant for our purpose:

> ***"11. Time, delay and extension.—(A) Time is of the essence of the contract and is specified in the contract documents or in each individual works order.***
>
> ***As soon as possible, after contract is let or any substantial work order is placed and before work under it is begun, the GE and the contractor shall agree upon the time and progress chart. The chart shall be prepared in direct relation to the time stated in the contract documents or the works***

order for completion of the individual items thereof and/or the contract or works order as a whole. It shall include the forecast of the dates for commencement and completion of the various trades, processes or sections of the work, and shall be amended as may be required by agreement between the GE and the contractor within the limitation of time imposed in the contract documents or works order. If the work be delayed:

(i) by force majeure, or

(ii) by reason of abnormally bad weather, or

(iii) by reason of serious loss or damage by fire, or

(iv) by reason of civil commotion, local combination of workmen, strike or lockout, affecting any of the tradesmen employed on the work, or

(v) by reason of delay on part of nominated sub-contractors, or nominated suppliers which the contractor has, in the opinion of GE, taken all practicable steps to avoid, or reduce, or

(vi) by reason of delay on the part of contractors or tradesmen engaged by the Government in executing work not forming part of the contract, or

*   *   *

(viii) by reason of any other cause, which in the absolute discretion of the accepting officer is beyond the contractor's control; then in any such case the officer hereinafter mentioned may make fair and reasonable extension in the completion dates of individual items or groups of items of works for which separate periods of completion are mentioned in the contract documents or works order, as applicable.

*   *   *

(B) If the works be delayed:

(a) by reason of non-availability of government stores in Schedule B or

(b) by reason of non-availability or breakdown of government tools and plant listed in Schedule C;

then, in any such event, notwithstanding the provisions hereinbefore contained, the accepting officer may in his discretion, grant such extension of time as may appear reasonable to him and the same shall be communicated to the contractor by the GE in writing. The decision so communicated shall be final and binding and the contractor shall be bound to complete the works within such extended time.

(C) No claim in respect of compensation or otherwise, howsoever arising, as a result of extensions granted under Conditions (A) and (B) above shall be admitted."

12. ***Clause (C) provides that where extensions have been granted by reason of the delays enumerated in clause (A) which were beyond the control of the contractor, or on account of the delays on the part of the employer specified in clause (B), the contractor is not entitled to make any claim either for compensation or otherwise, arising in whatsoever manner, as a result of such extensions. After enumerating certain delays, sub-clause (viii) of clause (A) specifically mentions delay on account of any other cause beyond the control of the contractor. The causes for delays specified in clause (A), thus, encompass all delays over which the contractor has no control. This will necessarily include any delays attributable to the employer or any delay for which both the employer and the contractor are responsible. The contract thus provides that if there is any delay, attributable either to the contractor or the employer or to both, and the contractor seeks and obtains extension of time for execution on that account, he will not be entitled to claim compensation of any nature, on the ground of such delay, in addition to the extension of time obtained by him. Therefore, the claims for compensation as a consequence of delays, that is Claim 24 of the Hangar Contract and Claims 13 to 16 of the Road Contract are barred by clause 11(C).***

xxx xxx xxx"

(Emphasis Supplied)

84. In this regard, this Court further notes the decision in the case of ***National Highways Authority of India Versus Oriental Structural Engineers Pvt. Ltd., 2026 SCC OnLine Del 6323,*** whereby, the Court has

held that once the Supreme Court has authoritatively explained the Clause/Contract, this Court cannot ignore such binding declaration while examining whether an Award suffers from patent illegality under Section 34(2A) of the Arbitration Act. The relevant excerpts of the said judgment are as follows:

> *"xxx xxx xxx*
>
> ***80.** It is true that the award in the present case preceded the decision in Progressive-MVR (JV) (supra). Equally, however, the question before this Court is not whether the Tribunal acted in disregard of that judgment.* ***<u>The question is whether the award, viewed in the light of the law declared by the Supreme Court under Article 141 of the Constitution, can be sustained as an interpretation rendered in accordance with the terms of the Contract. Once the Supreme Court has authoritatively explained the Clause/contract, this Court cannot ignore such binding declaration while examining whether the award suffers from patent illegality under Section 34(2A).</u>***
>
> *xxx xxx xxx*
>
> ***85.** Significantly, the Supreme Court also considered the applicability of its interpretation to pending proceedings wherein, the Court held that the interpretation placed upon Clause 70 would govern all cases where the arbitral award had not attained finality and judicial proceedings remained pending. The Court observed that the principle of issue estoppel would apply only to matters which had attained finality and that, in all pending challenges to arbitral awards involving this issue, the interpretation declared therein would govern the outcome.*
>
> ***86. <u>When a Section 34 Court adjudicates a challenge to an arbitral award, it is bound to apply the law prevailing on the date of adjudication. The timing of the award does not grant immunity against setting aside an award that stands directly in the teeth of a binding declaration of law</u>.***
>
> ***87.** In the present case, the majority Tribunal proceeded on the premise that the expression "actual percentage cost" occurring in the Note to sub-Clause 70.3(xi) necessarily derives its content from the general definition of "Cost" contained in Clause 1.1(g)(i) of the GCC. On that basis, the Tribunal directed*

inclusion of transportation charges, taxes and allocable overheads while determining the variables x, y and z. ***The interpretation adopted by the Tribunal, therefore, proceeds on a premise fundamentally inconsistent with the construction subsequently and authoritatively placed upon the same contractual provisions by the Supreme Court.***

88. *This Court is conscious that the impugned award preceded the decision in Progressive-MVR (JV) (supra). Nevertheless, the said judgment expressly clarifies that the interpretation declared therein governs all pending challenges where the award has not attained finality.* ***This Court is, therefore, bound to examine the validity of the impugned award in the light of the law declared by the Supreme Court under Article 141 of the Constitution.***

xxx xxx xxx"

(Emphasis Supplied)

85. Significantly, the Supreme Court in ***Ramesh Kumar (supra)*** has elucidated that if an Arbitrator ignores a binding precedent or a clear prohibition in a contract, that may be patent illegality. Further, in the decision in the case of ***Indian Oil Corporation Limited Versus Shree Ganesh Petroleum Rajgurunagar, (2022) 4 SCC 463,*** the Supreme Court has held that the Arbitral Tribunal is bound to act in terms of the contract under which it has been constituted and it cannot ignore the specific terms contained therein. An Award would be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of the contract. The relevant excerpts of the said judgement, are reproduced as under:

"xxx xxx xxx

43. An Arbitral Tribunal being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract.

> *44. However, a distinction has to be drawn between failure to act in terms of a contract and an erroneous interpretation of the terms of a contract. An Arbitral Tribunal is entitled to interpret the terms and conditions of a contract, while adjudicating a dispute. An error in interpretation of a contract in a case where there is valid and lawful submission of arbitral disputes to an Arbitral Tribunal is an error within jurisdiction.*
>
> ***45.** The Court does not sit in appeal over the award made by an Arbitral Tribunal.* ***The Court does not ordinarily interfere with interpretation made by the Arbitral Tribunal of a contractual provision, unless such interpretation is patently unreasonable or perverse.*** *Where a contractual provision is ambiguous or is capable of being interpreted in more ways than one, the Court cannot interfere with the arbitral award, only because the Court is of the opinion that another possible interpretation would have been a better one.*
> *xxx xxx xxx"*
>
> (Emphasis Supplied)

86. In view of the above, it is noted that the decision of ***Ramnath International (supra)*** lays down a categorical interpretation of Clause 11 in the said case, which is *pari materia* to Clause 13 of the GCC, as in the present case. The Supreme Court in ***Ramnath International (supra)*** has brought forth that, in case, the delay is beyond the control of the contractor or attributable to either the contractor or the employer or to both, and the contractor seeks and obtains EOT for execution on that account, the contractor will not be entitled to claim compensation of any nature, in view of the contractual terms.

87. It is well established that once the Supreme Court has authoritatively explained a Clause/Contract, this Court cannot ignore such binding declaration while examining whether an award suffers from patent illegality under Section 34(2A) of the Arbitration Act. An interpretation of a Clause/Contract given by the Supreme Court becomes a binding law, and

therefore, an Arbitrator is bound to follow the interpretation as laid down by the Supreme Court.

88. Furthermore, as per the law expounded by Hon'ble Supreme Court in a catena of judgments, an Arbitrator has to remain within the bounds of the terms of the contract. Pertinently, an Award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of the contract.

89. Considering the aforementioned decisions, the learned Arbitrator in the present case was bound by the interpretation laid down by the Supreme Court in ***Ramnath International (supra)*** *qua* Clause 13 of the GCC. However, the learned Arbitrator has failed to abide by the same, and has awarded compensation under Claim nos. 07 and 09 in *lieu* of the EOT, contrary to the express bar contained in the said Clause, and interpretation of the said Clause by Supreme Court.

90. It is a settled tenet of law that arbitration is a party driven process, wherein, party autonomy drives the nuances of the same. Thus, if the parties have categorically opted out of certain obligations/liabilities, then an Arbitrator cannot travel beyond those terms and construe the liabilities beyond what has been agreed between the parties.

91. Thus, the finding by the learned Arbitrator that the reasons for the delay did not fall under the ambit of Clause 13(A) of the GCC, and awarding Claims despite the express bar under Clause 13(B) of the GCC, is patently illegal, having been passed in ignorance of a binding precedent.

92. The respondent has placed reliance on the decision in the case of ***Union of India Versus Inderjit Mehta Construction Private Limited, 2018 SCC OnLine Del 9063,*** to submit that while interpreting a Clause similar to

Clause 13A of GCC, this Court held that interpretation of the contract squarely falls within jurisdiction of the learned Arbitrator and these cannot be interfered by the Court under Section 34 of the Arbitration Act.

93. However, the said judgment of this Court is clearly distinguishable and does not apply to the facts and circumstances of the present case. The Clause interpreted in the ***Inderjit Mehta (supra)*** is materially different from the Clause in the present case, as the Clause in ***Inderjit Mehta (supra)*** applies to delay caused due to any cause such as transporters' strike, local strike, shortage of local material, which is beyond the contractor's control. In the said case, the Court held that the use of the words "such as" limits the expression "any cause". Thus, it was held as follows:

> *"xxx xxx xxx*
>
> ***32.*** *The learned counsel for the petitioner had relied on the decision of the Supreme Court in Ramnath International Construction Pvt. Ltd. (supra) in support of his contention that the decision of the Arbitral Tribunal was contrary to the terms of the Contract Agreement. He submitted that, in that case, the Supreme Court had considered Clause 11 of the General Conditions of the Contract (in that case), which is almost identical to Clause 13 of the GCC in the present case. This Court is of the view that the said decision would not be applicable as to the controversy involved in the present case. In that case, the Court held that Clause 11(A)(vii) of the GCC was comprehensive and encompassed all delays over which the contractor has no control.* ***As noticed by the Arbitral Tribunal, there is material difference between Clause 13(A)(vii) of the GCC in the present case and Clause 11(A)(vii) of the General Conditions of Contract in that case. Clause 11(A)(vii) of the General Conditions of Contract, which was considered by the Supreme Court in Ramnath International Construction Pvt. Ltd. (supra), covered all reasons which, in the absolute discretion of the accepting officer, was beyond the contractor's control.*** *The said clause is set out below:—*

xxx xxx xxx

33. ***Clause 13(A)(vii) of the GCC in the present case is materially different from the aforesaid clause, as it applies to delay caused due to any cause such as transporters strike, local strike, shortage of local material, which is beyond the contractor's control. The use of the words "such as" limits explains the expression "any cause".***

34. *The Arbitral Tribunal considered the above and observed as under:*

"20.6.37. This condition 13A(vii) is very much different from Condition 11A(vii) of the MES contract and hence the decision of the Supreme Court given on the basis of Condition 11A(vii), just cannot be made applicable to the present case. As held by the Supreme Court "reason of any other cause beyond contractor's control", would cover even Department's fault. However, in the subject contract condition, three specific grounds have been mentioned and it has also been mentioned that other grounds have to be like these grounds. This is therefore a case where the rule of "Ejusdem Generis" would squarely apply."

xxx xxx xxx"

(Emphasis Supplied)

94. However, in the present case, Clause 13(A)(vii) of the GCC, unlike the Clause interpreted in ***Inderjit Mehta (supra)***, does not qualify the expression "any other cause" with any conditions. It is identical to Clause 11(A)(viii) interpreted by the Supreme Court in the case of ***Ramnath International (supra)***. Thus, it is evident that the judgment of this Court in the case of ***Inderjit Mehta (Supra)*** is not applicable to the facts of the present case.

95. To sum up, Clause 13 of the GCC bars any claims or compensation arising out of any extension of the time. However, the learned Arbitrator has awarded compensation under Claim nos. 07 and 09 to the respondent despite the said bar. The findings of the learned Arbitrator in awarding amounts

under Claim nos. 07 and 09 go beyond the stipulated contractual terms. It is settled law that an Arbitrator cannot travel outside the terms of a contract and award claims in derogation of the contractual terms.

96. Accordingly, in the present case, the impugned Award insofar as it relates to determination of Claim nos. 07 and 09, stands vitiated on account of patent illegality. The said portion of the impugned Award, therefore, cannot be sustained and is liable to be interfered with; accordingly, it is set aside.

<u>Severability Of Claims In The Impugned Award:</u>

97. Turning now to the question of severability of the impugned Award insofar as it pertains to Claim nos. 07 and 09, it becomes imperative to advert to the necessary principles governing the doctrine of severability.

98. In this regard, reliance may be made on the decision in the case ***Gayatri Balasamy Versus ISG Novasoft Technologies Limited, (2025) 7 SCC 1,*** whereby, the doctrine of severability has been elucidated. The relevant excerpts of the said judgement, read as under:

> *"xxx xxx xxx*
>
> ***33. <u>We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.</u>***
>
> ***34. <u>To this extent, the doctrine of omne majus continet in se minus—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not</u>***

only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.

35. *However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may not be feasible when the "valid" and "invalid" portions are legally and practically inseparable.* ***In simpler words, the "valid" and "invalid" portions must not be interdependent or intrinsically intertwined. If they are, the award cannot be set aside in part.***

xxx xxx xxx"

(Emphasis Supplied)

99. This Court further notes that except to the extent of Claim nos. 07 and 09, the impugned Award does not warrant any interference. These claims are capable of being dealt with separately, without impacting the findings in regards to the other claims. This Court, within the limited scope of Section 34 of the Arbitration Act, limits the setting aside of the impugned Award to the aforesaid claims.

Grant Of Interest By The Arbitrator Is Reasonable:

100. The next ground taken by the petitioner is regarding excessive rate of interest. In this regard, it is to be noted that Section 31(7) of the Arbitration Act confers a wide discretion on the learned Arbitrator regarding award of interest. The direction for grant of *pendente lite* and future interest @ 12% simple interest per annum, is well within the discretion conferred on an Arbitral Tribunal under Section 31(7) of the Arbitration Act. Such rate of interest has consistently been held by the Courts to be reasonable. Such grant of interest can neither be considered to be arbitrary nor punitive. Accordingly, no ground arises to exercise the limited jurisdiction of this Court.

101. It would be fruitful to refer to the decision in the case of ***McDermott International Inc. Versus Burn Standard Co. Ltd. and Others, (2006) 11 SCC 181***, wherein, the Supreme Court held that Section 31(7)(a) of the Arbitration Act provides that the Arbitral Tribunal may award 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 award is made. The same is subject to the agreement as regards the rate of interest on unpaid sums between the parties.

102. The Supreme Court further held that the question as to whether interest would be paid on the whole or part of the amount or whether it should be awarded in the pre-award period would depend upon the facts and circumstances of each case. The Arbitral Tribunal in this behalf will have to exercise its discretion as regards (i) at what rate interest should be awarded; (ii) whether interest should be awarded on the whole or part of the award money; and (iii) whether interest should be awarded for the whole or any part of the pre-award period.

103. Thus, the determination of the period for which interest is payable, including, the date from which it is to commence, squarely falls within the discretion vested in the Arbitral Tribunal under Section 31(7)(a) of the Arbitration Act. In the present case, the exercise of such discretion by the Arbitral Tribunal was neither arbitrary nor contrary to the Contract. Accordingly, no case for interference of Court under Section 34 of the Arbitration Act is made out.

104. The contention of the petitioner that no pre-reference interest could have been awarded by the learned Arbitrator in the absence of a notice under Section 3 of the Interest Act, is misconceived.

105. It is now well settled that under Section 31(7)(a) of the Arbitration Act, the power of the Arbitral Tribunal to grant pre-reference interest from the date on which the cause of action arose till the date on which the award is made, has been statutorily recognized.

106. In this regard, reliance is placed on the decision of the Supreme Court in the case of ***Interstate Construction Versus National Projects Construction Corporation Limited, (2026) 2 SCC 780*****,** wherein, it was held as under:

> *"xxx xxx xxx*
>
> ***35.*** *We are unable to agree with the view expressed by the Division Bench. Even in Sayeed Ahmed & Co. [Sayeed Ahmed & Co. v. State of U.P., (2009) 12 SCC 26 : (2009) 4 SCC (Civ) 629] relied upon by the Division Bench,* ***the Bench held that Section 31(7) had carved out two periods, the first period being from the date on which the cause of action arose till the date on which the award is made and the second period being from the date of award till the date of payment. As regards the first period, the Bench clarified that it includes the pre-reference period plus pendente lite period. Though the Arbitral Tribunal had granted interest for three periods: pre-reference period, pendente lite and post award period, the first two periods basically comprise of the period contemplated under clause (a) of sub-section (7) of Section 31. It is another matter that the Arbitral Tribunal awarded varying degrees of interest for the two sub-periods: 18% p.a. for the pre-reference period and 12% as pendente lite, excluding from the said period, the period of eight years when the appellant was found to be remiss in pursuing its claims before the Arbitral Tribunal****. This is also permissible as we shall explain.*
>
> ***36. Therefore, Sayeed Ahmed & Co. [Sayeed Ahmed & Co. v. State of U.P., (2009) 12 SCC 26 : (2009) 4 SCC (Civ) 629] does not exclude or does not say that interest should not be granted for the pre-reference period. All that it explains is that Section 31(7)(a) has joined the two periods of interest: pre-reference and pendente lite****.*
>
> ***37.*** *This position has been clarified by a recent decision of this*

Court in Pam Developments (P) Ltd. v. State of W.B. [Pam Developments (P) Ltd. v. State of W.B., (2024) 10 SCC 715 : (2024) 4 SCC (Civ) 642] ***After extracting Section 31(7) of the 1996 Act, this Court held that power of the arbitrator to grant pre-reference interest, pendente lite interest and post-award interest under Section 31(7) of the 1996 is now fairly well settled.*** *The Bench, thereafter, culled out the following legal propositions in this regard highlighting the difference in the position of law qua the Arbitration Act, 1940 vis-à-vis the 1996 Act: (SCC pp. 724-26, paras 23-24)*

> *"23. The power of the arbitrator to grant pre-reference interest, pendente lite interest, and post-award interest under Section 31(7) of the Act is fairly well-settled. The judicial determinations also highlight the difference in the position of law under the Arbitration Act, 1940. The following propositions can be summarised from a survey of these cases:*
>
> *23.1. Under the Arbitration Act, 1940, there was no specific provision that empowered an arbitrator to grant interest. However, through judicial pronouncements, this Court has affirmed the power of the arbitrator to grant pre-reference, pendente lite, and post-award interest on the rationale that a person who has been deprived of the use of money to which he is legitimately entitled has a right to be compensated for the same [State of Orissa v. G.C. Roy, (1992) 1 SCC 508, para 43(i). Also see State of Orissa v. N.C. Budharaj, (2001) 2 SCC 721; Union of India v. Krafters Engg. & Leasing (P) Ltd., (2011) 7 SCC 279 : (2011) 3 SCC (Civ) 533].* ***When the agreement does not prohibit the grant of interest and a party claims interest, it is presumed that interest is an implied term of the agreement, and, therefore, the arbitrator has the power to decide the same*** *[State of Orissa v. G.C. Roy, (1992) 1 SCC 508, paras 43(iv) & 44] .*
>
> *23.2. Under the 1940 Act, this Court has adopted a strict construction of contractual clauses that prohibit the grant of interest and has held that the arbitrator has the power to award interest unless there is an express, specific provision that excludes the jurisdiction of the arbitrator [Port of Calcutta v. Engineers-De-Space-Age, (1996) 1 SCC 516, paras 4 and 5; Madnani Construction Corpn. (P) Ltd.v. Union of India, (2010) 1 SCC 549 : (2010) 1 SCC (Civ) 168; Tehri Hydro Development Corpn. Ltd. v. Jai Prakash Associates Ltd., (2012) 12 SCC 10 : (2013) 2 SCC (Civ) 122, paras 18-*

20; Union of India v. Ambica Construction, (2016) 6 SCC 36 : (2016) 3 SCC (Civ) 36 (First Ambica Construction Case); Ambica Construction v. Union of India, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257 (Second Ambica Construction Case); Raveechee & Co. v. Union of India, (2018) 7 SCC 664 : (2018) 3 SCC (Civ) 711; Reliance Cellulose Products Ltd. v. ONGC Ltd., (2018) 9 SCC 266 : (2018) 4 SCC (Civ) 351] from awarding interest for the dispute in question [State of U.P. v. Harish Chandra & Co., (1999) 1 SCC 63] .

23.3. ***Under the 1996 Act, the power of the arbitrator to grant interest is governed by the statutory provision in Section 31(7). This provision has two parts. Under clause (a), the arbitrator can award interest for the period between the date of cause of action to the date of the award, unless otherwise agreed by the parties. Clause (b) provides that unless the award directs otherwise, the sum directed to be paid by an arbitral award shall carry interest @ 2% higher than the current rate of interest, from the date of the award to the date of payment*** *(referring to the post 23-10-2015 position).*

23.4. The wording of Section 31(7)(a) marks a departure from the Arbitration Act, 1940 in two ways: first, it does not make an explicit distinction between pre-reference and pendente lite interest as both of them are provided for under this sub-section; second, it sanctifies party autonomy and restricts the power to grant pre-reference and pendente lite interest the moment the agreement bars payment of interest, even if it is not a specific bar against the arbitrator [Sayeed Ahmed & Co. v. State of U.P., (2009) 12 SCC 26, paras 14, 23, 24 : (2009) 4 SCC (Civ) 629; Union of India v. Saraswat Trading Agency, (2009) 16 SCC 504 : (2011) 3 SCC (Civ) 499; Sree Kamatchi Amman Constructions v. Railways, (2010) 8 SCC 767, para 19 : (2010) 3 SCC (Civ) 575; Union of India v. Bright Power Projects (India) (P) Ltd., (2015) 9 SCC 695, para 13 : (2015) 4 SCC (Civ) 702; Reliance Cellulose Products Ltd. v. ONGC Ltd., (2018) 9 SCC 266, para 24 : (2018) 4 SCC (Civ) 351; Jaiprakash Associates Ltd. v. Tehri Hydro Development Corpn. (India) Ltd., (2019) 17 SCC 786, paras 13-15 : (2020) 3 SCC (Civ) 605; Delhi Airport Metro Express (P) Ltd. v. DMRC, (2022) 9 SCC 286, paras 16-20, 24 : (2022) 4 SCC (Civ) 623] .

23.5. ***The power of the arbitrator to award pre-reference***

and pendente lite interest is not restricted when the agreement is silent on whether interest can be awarded *[Jaiprakash Associates Ltd. v. Tehri Hydro Development Corpn. (India) Ltd., (2019) 17 SCC 786, para 13.2 : (2020) 3 SCC (Civ) 605]* ***or does not contain a specific term that prohibits the same*** *[Oriental Structural Engineers (P) Ltd. v. State of Kerala, (2021) 6 SCC 150, paras 15-18 : (2021) 3 SCC (Civ) 548] .*

23.6. While pendente lite interest is a matter of procedural law, pre-reference interest is governed by substantive law [Central Bank of India v. Ravindra, (2002) 1 SCC 367, para 39 : (2001) 107 Comp Cas 416 following State of Orissa v. G.C. Roy, (1992) 1 SCC 508, para 43(v)]. Therefore, the grant of pre-reference interest cannot be sourced solely in Section 31(7)(a) (which is a procedural law), but must be based on an agreement between the parties (express or implied), statutory provision (such as Section 3 of the Interest Act, 1978), or proof of mercantile usage [Central Bank of India v. Ravindra, (2002) 1 SCC 367, para 39 : (2001) 107 Comp Cas 416; Central Coop. Bank Ltd. v. S. Kamalaveni Sundaram, (2011) 1 SCC 790, para 13 : (2011) 1 SCC (Civ) 331] .

24. ***In view of the above, the High Court had no reason to interfere with the arbitral award with respect to grant of pre-reference interest, since the contract between the parties does not prohibit the same****."*

38. *This position has been further explained by a recent decision of this Bench in North Delhi Municipal Corpn. v. S.A. Builders Ltd. [North Delhi Municipal Corpn. v. S.A. Builders Ltd., (2025) 7 SCC 132 : (2025) 3 SCC (Civ) 388] . After adverting to Section 31(7) of the 1996 Act, this Court explained as under:*

> *"36.1. From a minute reading of sub-section (7), it is seen that it has got two parts: the first part i.e. clause (a) deals with passing of award which would include interest up to the date on which the award is made. The second part i.e. clause (b) deals with grant of interest on the 'sum' awarded by the Arbitral Tribunal."*

39. Thereafter the Bench in S.A. Builders [North Delhi Municipal Corpn. v. S.A. Builders Ltd., (2025) 7 SCC 132 : (2025) 3 SCC (Civ) 388] observed that under Section 31(7) of the 1996 Act, an Arbitral Tribunal has the power to grant:

<u>(i) pre-award,</u>
<u>(ii) pendente lite, and</u>
<u>(iii) post-award interest</u>.

The Bench explained the reason for award of such interest in the following manner:

> *"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."*

<u>40. Thus, what Section 31(7)(a) has done is that there is now a statutory recognition of the power of the Arbitral Tribunal to grant pre-reference interest from the date on which the cause of action arose till the date on which the award is made. There was a vacuum in the Arbitration Act, 1940 as there was no such provision for granting pre-reference interest. It was through judicial pronouncements that such power of the arbitrator to grant pre-reference interest was conferred. Now under Section 31(7)(a) of the 1996 Act, such power is statutorily recognized.</u>

***41.** Let us revert back to clause (a) of sub-section (7) of Section 31 of the 1996 Act. A careful and minute reading of this provision will make it clear that the Arbitral Tribunal has the discretion to include in the sum awarded interest at such rate as it deems reasonable on the whole or any part of the money awarded for the whole or any part of the period from the date on which the cause of action arose till the date on which the award is made. We may exclude that part of the sentence "on the whole or any part of the money" from our analysis since this is not relevant to the controversy. If we exclude this portion, what then becomes discernible is that the Arbitral Tribunal has the discretion to include in the sum awarded: firstly, interest at such* *rate as it deems reasonable; and secondly, 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. This would mean that the Arbitral Tribunal can exclude a period from the date on which the cause of action arose till the date on which the award is made for the purpose of grant of interest, as has been done in the present case. **It would also mean that the Arbitral Tribunal can grant interest 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**. It can be a composite period or the said period can be further sub-divided, as done in the present case i.e. from the date of cause of action to filing of the claim and from the date of filing of the claim till the date of the award excluding the period when the appellant was found to be remiss. **It would also mean that there can be one rate of interest for the whole period or one or more rates of interest for the sub-divided periods as has been done in the instant case. In our opinion, this would be the correct approach to interpret Section 31(7)(a), given the scheme of the 1996 Act**.*

***42.** That being the position, we are of the view that the Division Bench had fallen in error by holding that the Arbitral Tribunal had no jurisdiction to award interest for two periods i.e. pre-reference and pendente lite when the statute provides for only one period viz. from the date when the cause of action arose till the date of the award. The view expressed by the High Court is not the correct interpretation of Section 37(1)(a) of the 1996 Act as explained by us supra as well as in Pam Developments [Pam Developments (P) Ltd. v. State of W.B., (2024) 10 SCC 715 : (2024) 4 SCC (Civ) 642] and S.A. Builders[North Delhi Municipal Corpn. v. S.A. Builders Ltd., (2025) 7 SCC 132 : (2025) 3 SCC (Civ) 388] .*

xxx xxx xxx"

(Emphasis Supplied)

107. Likewise, reference may also be made to the case of ***Haresh Advani Versus Suraj Jagtiani, 2015 SCC OnLine Bom 1649,*** wherein, it has been held that since the Arbitral Tribunal has been granted such power by the legislature under Section 31(7) of the Arbitration Act, the claimant is not required to comply with the provisions of the Interest Act for issuance of

any notice for making the claim for interest on claims raised. The relevant excerpts of the said judgment are as under:

> *"xxx xxx xxx*
>
> ***147.** From the perusal of the judgment of Supreme Court in the aforesaid judgment and judgments of this court, the following statement of law can be culled out:—*
>
> *"a) **Section 31(7) of the Arbitration and Conciliation Act, 1996 deals with the power of the arbitrator to award interest at such rate as it deems reasonable on the whole or any part of the money in 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 subject to the agreement as regards the rate of interest on unpaid sums between the parties.***
>
> *(b) **Judgment of Supreme Court under the Arbitration Act, 1940 holding that the arbitrator had a discretion to award interest during pendente lite period inspite of any bar against interest contained in the contract between the parties are not applicable to arbitrations governed by the Arbitration and Conciliation Act, 1996.***
>
> *(c) **The bar against award on interest would operate not only during the pre-reference period but also during the pendente lite period. Bar in the agreement would not operate for the future interest.***
>
> *(d) **Under section 31(7)(a) an award for payment of money may be inclusive on interest and on sum of the principal amount plus interest may be directed to be paid by the arbitral tribunal for the pre-award period.***
>
> *(e) **The arbitral tribunal is empowered to grant interest even in the absence of clause in the contract for grant of interest. The arbitral tribunal has power to grant interest on interest under section 31(7)(b).***
>
> *(f) **Under section 31(7) it does not contain any prohibition like one contained under section 3 of the Interest Act and empowers the arbitrator to award interest on the entire sum for which the award is made which may include the amount of interest.***

> *(g) Power of the arbitrator under section 31(7) is not restricted to award interest on the principal only.*
>
> *(h)* ***Section 3(3) of the Interest Act will not operate in view of section 31(7) of the Arbitration and Conciliation Act, 1996****.*
>
> *(i)* ***Under section 31(7), the arbitrator has power to award interest on damages prior to the date of award, even if no notice under section 3(b) of the Interest Act, 1978 is issued by the claimant."***

148. In my view there is thus no substance in the submission of the learned senior counsel for the petitioner that the arbitral tribunal could not have awarded any interest on the claim for compensation/damage upto the date of award. In my view the respondent was not required to issue any notice under the provisions of Interest Act, 1978 for making the claim for interest on damages. The arbitral tribunal is empowered to award interest on damages from the due date till the date of award and even to award future interest even if no notice under the provisions of Interest Act, 1978 is issued by the claimant. In my view, since the arbitral tribunal has been granted such power by the legislature under section 31(7) of the Arbitration and Conciliation Act, 1996, the claimant is not required to comply with the provisions of Interest Act, 1978 for the purpose of claiming interest for the past period on the compensation/damages.

xxx xxx xxx"

(Emphasis Supplied)

108. Accordingly, this ground also fails.

CONCLUSION*:*

109. This Court does not find any infirmity in the impugned Award on the grounds of infraction of Principles of Natural Justice or other grounds pertaining to independence and impartiality of the Arbitrator or mandate of the learned Arbitrator. Thus, no interference is warranted by this Court to that extent.

110. However, this Court finds that the impugned Award suffers from patent illegality on the award of amounts towards Claim nos. 07 and 09, and is accordingly set aside to that extent.

111. The interim stay on execution of the Award granted *vide* order dated 26th November, 2021, and all consequential orders passed thereafter, shall stand vacated.

112. List *OMP (ENF.) (COMM.) 209/2019* before the Roster Bench, on 28th September, 2026, for determination of questions with respect to the final amount payable in terms of the Award dated 18th March, 2019, including, interest. The chamber appeal being *O.A. 77/2022* filed against order dated 31st October, 2022, modified on 14th November, 2022, passed by the Joint Registrar (Judicial) in *OMP (ENF.) (COMM.) 209/2019,* shall also be decided in the said proceedings.

113. Accordingly, the petition being *O.M.P. (COMM.) 292/2019* is partly allowed in the aforesaid terms and disposed of.

MINI PUSHKARNA
(JUDGE)

SEPTEMBER 9, 2026/KR