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

% ***Judgment reserved on: 13.02.2026***
Judgment pronounced on: 01.04.2026

\+ O.M.P. (COMM) 73/2024 & I.A. 43484/2024 (Seeking withdrawal of amount deposited by petitioner)

UNION OF INDIA .....Petitioner

Through: Mr. Vikas Kumar Sharma, Senior Central Government Counsel.

versus

M/S VARINDERA CONSTRUCTIONS LTD. .....Respondent

Through: Ms. Risha Mittal and Mr. Md. Adil Alam, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition under Section 34 of the **Arbitration and Conciliation Act, 1996**[1] has been filed impugning the **Arbitral Award dated 27.08.2023 along with the corrigendum dated 20.10.2023**[2], passed by the learned Sole Arbitrator in disputes arising out of Contract dated 03.11.2014 executed between the parties for the construction of dwelling units under the Married Accommodation Project at Jodhpur.

[1] A&C Act
[2] Arbitral Award

2. By way of the present proceeding, the Petitioner seeks to assail the Impugned Arbitral Award, principally on the ground that the mandate of the learned Arbitrator had expired under Section 29A of the A&C Act, prior to the pronouncement of the Award, and that the grant of interest by the learned Arbitral Tribunal is legally unsustainable.

BRIEF FACTS:

3. Shorn of unnecessary details, the facts germane to the institution of the present Appeal are as follows:

I. Briefly stated, the disputes between the parties arise out of a works contract awarded by **Union of India**[3] to the Respondent for the construction of dwelling units for Officers, JCOs and ORs under the Married Accommodation Project at Jodhpur.

II. The contract was awarded pursuant to a Letter of Acceptance dated 03.11.2014 for a total contract value of ₹138,95,30,116/-. The date of commencement of the work was 27.11.2014 and the stipulated period for completion of the project was 25 months, with the original date of completion being 26.12.2016. The work was eventually completed on 10.03.2017.

III. Upon completion of the work, the Respondent submitted its final bill on 27.06.2017. The undisputed portion of the final bill was paid by UOI on 30.11.2019. Certain disputes thereafter arose between the parties, *inter alia*, concerning alleged delay in payment of the final bill, claims relating to prolonged bank guarantees, delayed or under payments of **Running Account**

[3] UOI

Receipts [4], and claims pertaining to deviation works and additional items.

IV. In view of the disputes having arisen between the parties, an Arbitral Tribunal comprising a learned Sole Arbitrator came to be constituted pursuant to an Order dated 15.09.2020 passed by this Court in ARB.P. 378/2020.

V. The learned Arbitrator entered upon reference and arbitral proceedings commenced under the provisions of the A&C Act.

VI. During the course of the arbitral proceedings, the Respondent filed its Statement of Claim raising several claims, including interest on delayed payment of the final bill, losses on account of prolonged bank guarantees, losses due to delayed and underpayments of RARs, and claims relating to deviation works and additional items. UOI filed its Statement of Defence opposing the claims and also raised a counterclaim.

VII. The Petitioner claims that the pleadings in the arbitral proceedings were completed on 24.05.2021.

VIII. During the pendency of the arbitral proceedings, UOI filed an Application dated 10.04.2023 before the learned Arbitrator, invoking Section 29A of the A&C Act, contending that the mandate of the learned Arbitrator had expired and seeking termination of the arbitral proceedings on that ground. The said Application was heard by the learned Arbitrator and was ultimately dealt with in the Impugned Award.

IX. The learned Sole Arbitrator thereafter rendered the Arbitral Award dated 27.08.2023, whereby several claims of the

[4] RARs

Respondent were partly allowed. Under the Award, amounts were granted under different heads, including claims relating to delayed payment of the final bill, losses arising from delayed and underpayments of RARs, and certain additional works. In aggregate, the Respondent was awarded amounts of approximately ₹6 crores under various claims. The learned Arbitrator further directed payment of interest at the rate of 12% per annum on the sums awarded from 18.03.2020 till the date of payment.

X. Subsequently, on the Petitioner's application, a corrigendum dated 20.10.2023 was issued by the learned Arbitrator.

XI. Aggrieved by the said Award and the corrigendum thereto, UOI has preferred the present Petition under Section 34 of the A&C Act, contending that the Impugned Arbitral Award was rendered after the expiry of the mandate of the learned Arbitrator under Section 29A of the A&C Act and that the grant of interest at the rate of 12% per annum is legally unsustainable.

CONTENTIONS ON BEHALF OF THE PETITIONER:

4. Learned counsel appearing on behalf of UOI would contend that the Impugned Award is liable to be set aside primarily on the ground that the mandate of the learned Sole Arbitrator had expired under Section 29A of the A&C Act prior to the pronouncement of the Arbitral Award. It would be submitted that the scheme of the A&C Act mandates expeditious adjudication of disputes and prescribes a strict timeline for rendering an arbitral award. According to the Petitioner, once the pleadings in the arbitral proceedings stood completed on 24.05.2021, the learned Arbitrator was required to

render the Arbitral Award within a period of twelve months therefrom.

5. Learned counsel for UOI would contend that the statutory period of twelve months for rendering the Arbitral Award expired on 24.05.2022 and no extension of time was obtained either by mutual consent of the parties or from the Court as contemplated under Section 29A of the A&C Act. It would thus be urged that upon expiry of the prescribed period, the mandate of the learned Arbitrator stood terminated by operation of law and the learned Arbitrator thereafter became *functus officio*, and consequently, the Award rendered on 27.08.2023 is without jurisdiction and liable to be set aside.

6. Learned counsel would further submit that UOI had raised the issue of expiry of mandate before the learned Arbitrator by filing an Application dated 10.04.2023, invoking Section 29A of the A&C Act. It would be contended that the said application was argued before the learned Arbitrator and the matter was reserved for orders; however, the learned Arbitrator did not adjudicate the said application independently and instead proceeded to deal with the same while rendering the Arbitral Award. According to the Petitioner, the continuation of the arbitral proceedings despite the alleged expiry of the mandate was contrary to the statutory framework of the A&C Act.

7. Learned counsel for UOI would further contend that the reliance placed by the learned Arbitrator on the Orders passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020 for exclusion of the period between 15.03.2020 and 28.02.2022 is misconceived. It would be submitted that even if the said period is excluded for the purpose of computing the limitation, the learned Arbitrator was still required to render the Award within the

permissible statutory period thereafter. According to the Petitioner, even on such computation, the Award rendered on 27.08.2023 would fall beyond the permissible time limit prescribed under Section 29A of the A&C Act.

8. In support of the aforesaid submission, learned counsel for UOI would place reliance on the judgment of the Hon'ble Supreme Court in ***NBCC Ltd. v. J.G. Engineering Pvt. Ltd.***[5], wherein it was held that an arbitrator is required to render the award within the time prescribed under law or agreed between the parties and that in the absence of consent of the parties for enlargement of time, the authority of the arbitrator would cease upon expiry of the prescribed period.

9. Learned counsel for the Petitioner would further rely upon the judgment of the Telangana High Court in ***Roop Singh Bhatty v. M/s Shriram City Union Finance Limited***[6], wherein it was held that once the statutory period prescribed for rendering the award expires, the arbitrator becomes *functus officio* and any award passed thereafter would be a nullity in the eyes of law.

10. Reliance would also be placed on the decision of the Madras High Court in ***M/s Satyam Caterers Private Limited v. The Assistant Commercial Manager***[7], wherein it was held that the Arbitral Tribunal must complete the arbitral proceedings within the period stipulated under Section 29A of the A&C Act and that any award rendered beyond the permissible period without extension granted by the Court would be patently illegal and liable to be set aside.

[5] 2010 (2) SCC 385
[6] C.R.P.NO.1354 of 2021
[7] O.P. No.592/2018 (Decision Date: 09.08.2018)

11. Apart from the aforesaid jurisdictional challenge, learned counsel for UOI would contend that the learned Arbitrator has erred in awarding interest at the rate of 12% per annum on the sums awarded to the Respondent. It would be submitted that the rate of interest awarded by the learned Arbitrator is excessive and contrary to the prevailing bank rates in the country.

12. Learned counsel would further contend that the learned Arbitrator has granted interest on certain claims despite the absence of any contractual stipulation entitling the Respondent to such interest. It would be submitted that, in terms of Section 3(b) of the **Interest Act, 1978**[8], interest could be awarded only if a written demand notice had been issued by the claimant claiming such interest. According to the Petitioner, no such notice had been issued by the Respondent, and therefore, the grant of past interest is legally unsustainable.

13. Learned counsel for UOI would also contend that the learned Arbitrator has erred in awarding interest on account of the alleged delay in payment of RARs. It would also be submitted that the learned Arbitrator has proceeded on the assumption that the RARs were required to be paid within seven days, which finding is stated to be contrary to the settled position of law.

14. In this regard, reliance would be placed on the judgment of this Court in ***M/s Vascon Engineers Ltd. v. Union of India***[9], wherein it was observed that in the absence of any specific contractual stipulation prescribing a time period for processing of bills, a reasonable period of forty-five days could be taken as the benchmark for determining delay. It would be contended that the learned

[8] Interest Act
[9] 2021:DHC:2828

Arbitrator has ignored the said principle and has erroneously proceeded on the basis of a seven-day period while awarding interest.

15. Learned counsel for the Petitioner would therefore submit that the Impugned Award suffers from patent illegality, jurisdictional error and is contrary to the provisions of the A&C Act. It would accordingly be prayed that the Impugned Award be set aside.

CONTENTIONS ON BEHALF OF THE RESPONDENT:

16. ***Per contra***, learned counsel appearing on behalf of the Respondent would contend that the present Petition under Section 34 of the A&C Act is wholly misconceived and is liable to be dismissed *in limine*. It would be submitted that the grounds urged by UOI do not fall within the limited scope of interference permissible under Section 34 of the A&C Act and that the Impugned Award does not suffer from any patent illegality or jurisdictional error warranting interference by this Court.

17. Learned counsel for the Respondent would first address the contention of UOI regarding the alleged expiry of the mandate of the learned Arbitrator under Section 29A of the A&C Act. It would be submitted that UOI had filed an Application dated 10.04.2023 before the learned Arbitrator, invoking Section 29A and alleging that the mandate of the tribunal had expired on 24.05.2022. According to the Respondent, the learned Arbitrator considered the said application in detail and rejected the same in the Impugned Award.

18. Learned counsel would contend that the conduct of UOI itself demonstrates that the objection relating to the expiry of the mandate is an afterthought. It would be submitted that even though UOI claims that the mandate of the tribunal had expired on 24.05.2022, the

application invoking Section 29A was filed only on 10.04.2023, nearly one year thereafter. It is urged that during this period, UOI continued to participate in the arbitral proceedings without demur.

19. It would further be submitted that even after filing the said application under Section 29A, UOI continued to participate in the arbitral proceedings and addressed arguments on merits before the learned Arbitrator. Learned counsel would submit that UOI participated in the hearings conducted on 12.04.2023 and 21.04.2023 and also participated in the hearing conducted for the Respondent's rejoinder arguments on 08.05.2023. It would therefore be contended that the participation of UOI in the proceedings clearly indicates that the mandate of the learned Arbitrator was accepted and cannot now be challenged.

20. Learned counsel for the Respondent would further submit that even after the Impugned Award was rendered on 27.08.2023, UOI filed an application under Section 33 of the A&C Act seeking correction in the rate of interest awarded by the learned Arbitrator. According to the Respondent, such conduct on the part of UOI clearly demonstrates that it accepted the jurisdiction and mandate of the learned Arbitrator and therefore cannot now be permitted to contend that the tribunal lacked jurisdiction.

21. Learned counsel would further contend that the objection raised by UOI regarding the expiry of the mandate under Section 29A is also untenable in view of the orders passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020, whereby the period between 15.03.2020 and 28.02.2022 was directed to be excluded for the purpose of computing limitation under various statutes, including the timelines prescribed under the A&C Act.

22. It would be submitted that in view of the aforesaid orders of the Hon'ble Supreme Court, the period between 15.03.2020 and 28.02.2022 stood excluded while computing the period prescribed under Section 23(4) and Section 29A of the A&C Act. According to the Respondent, the learned Arbitrator rightly applied the said exclusion while computing the timeline for rendering the Award.

23. Learned counsel would further place reliance on the judgment of the Hon'ble Supreme Court in ***Arif Azim Co. Ltd. v. Aptech Ltd.***[10], wherein it was clarified that the period between 15.03.2020 and 28.02.2022 shall stand excluded for the purpose of computing timelines under Sections 23(4) and 29A of the A&C Act. It would be submitted that the said judgment squarely supports the computation adopted by the learned Arbitrator in the present case.

24. Learned counsel for the Respondent would also rely upon the judgment of this Court in ***Chroma-Ator Energy Systems Pvt. Ltd. v. Indraprastha Gas Ltd.***[11], wherein this Court held that the period excluded by virtue of the orders passed in Suo Motu Writ Petition (C) No. 3 of 2020 would have to be excluded while computing the period of limitation.

25. Reliance is also placed on the decision of this Court in ***Drooshba Fabricators v. Indure Pvt. Ltd.***[12], wherein it was held that the delay occurring during the period covered by the orders passed in Suo Motu Writ Petition (C) No. 3 of 2020 would stand excluded while computing limitation.

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[10] 2024 SCC OnLine SC 215.
[11] 2024 SCC OnLine Del 2480
[12] 2022:DHC:3427

26. Learned counsel would therefore submit that once the exclusion of the aforesaid period is applied, the timeline for rendering the Award stood extended and the Award rendered on 27.08.2023 would fall well within the permissible period. It would thus be contended that the objection regarding the expiry of the mandate of the learned Arbitrator is wholly untenable.

27. Learned counsel for the Respondent would next address the contention of UOI relating to the rate of interest awarded by the learned Arbitrator. According to the Respondent, the Impugned Award clearly reflects that interest at the rate of 12% per annum has been awarded on the sums found due.

28. Learned counsel would submit that the rate of interest awarded by the learned Arbitrator is reasonable and is in consonance with the statutory framework of the A&C Act. Reliance in this regard would be placed on the judgment of the Hon'ble Supreme Court in ***Oil and Natural Gas Corporation Ltd. v. G and T Beckfield Drilling Services Pvt. Ltd.***[13], wherein the grant of interest at the rate of 12% per annum was upheld as reasonable.

29. Learned counsel would further rely upon the judgment of the Hon'ble Supreme Court in ***Sri Lakshmi Hotel Pvt. Ltd. v. Sriram City Union Finance Ltd.***[14], wherein it has been held that disputes relating to the rate of interest awarded by an arbitral tribunal would ordinarily not fall within the limited scope of challenge under Section 34 of the A&C Act.

30. Learned counsel for the Respondent would also place reliance on the judgment of the Hon'ble Supreme Court in ***Consolidated***

[13] 2025 INSC 1066
[14] 2025 INSC 1327

Construction Ltd. v. Software Technology Parks of India[15], wherein it was reiterated that Section 34 of the A&C Act does not confer appellate jurisdiction upon the Court and that the Court cannot reappreciate evidence or substitute its own view merely because another view is possible.

31. It would therefore be submitted that the Impugned Award represents a plausible view taken by the learned Arbitrator on the basis of the material placed on record and does not warrant interference under Section 34 of the A&C Act.

ANALYSIS:

32. This Court has carefully considered the submissions advanced on behalf of both sides and, with their able assistance, has perused the Arbitral Award and the material placed before this Court.

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

34. In this regard, a three-Judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier judgments, in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[16], while dealing with the grounds of conflict with the public policy of India and patent illegality,

[15] (2025) 7 SCC 757
[16] (2025) 2 SCC 417

grounds which have also been urged in the present case, made certain pertinent observations, which are reproduced hereunder:

> *"**Relevant legal principles governing a challenge to an arbitral award***
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> **30.** Before we delve into the issue/sub-issues culled out above, it would be useful to have a look at the relevant legal principles governing a challenge to an arbitral award. Recourse to a court against an arbitral award may be made through an application for setting aside such award in accordance with sub-sections (2), (2-A) and (3) of Section 34 of the 1996 Act. Sub-section (2) of Section 34 has two clauses, (*a*) and (*b*). Clause (*a*) has five sub-clauses which are not relevant to the issues raised before us. Insofar as clause (*b*) is concerned, it has two sub-clauses, namely, (*i*) and (*ii*). Sub-clause (*i*) of clause (*b*) is not relevant to the controversy in hand. Sub-clause (*ii*) of clause (*b*) provides that if the Court finds that the arbitral award is in conflict with the public policy of India, it may set aside the award.
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> ***Public policy***
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> **31.** "Public policy" is a concept not statutorily defined, though it has been used in statutes, rules, notification, etc. since long, and is also a part of common law. Section 23 of the Contract Act, 1872 uses the expression by stating that the consideration or object of an agreement is lawful, unless, inter alia, opposed to public policy. That is, a contract which is opposed to public policy is void.
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> **37.** What is clear from above is that for an award to be against public policy of India a mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of fundamental policy of Indian law including a law meant to serve public interest or public good.
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> ***The 2015 Amendment in Sections 34 and 48***
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> **42.** The aforementioned judicial pronouncements were all prior to the 2015 Amendment. Notably, prior to the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not used by the legislature in either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*). The pre-amended Section 34(2)(*b*)(*ii*) and its Explanation read:
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> **44.** By the 2015 Amendment, in place of the old Explanation to Section 34(2)(*b*)(*ii*), *Explanations 1 and 2* were added to remove any doubt as to when an arbitral award is in conflict with the public policy of India.
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> **45.** At this stage, it would be pertinent to note that we are dealing with a case where the application under Section 34 of the 1996 Act was filed after the 2015 Amendment, therefore the newly

substituted/added Explanations would apply [***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

46. The 2015 Amendment adds two Explanations to each of the two sections, namely, Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*), in place of the earlier Explanation. The significance of the newly inserted *Explanation 1* in both the sections is two-fold. First, it does away with the use of words : (*a*) "*without prejudice to the generality of sub-clause (ii)*" in the opening part of the pre-amended Explanation to Section 34(2)(b)(ii); and (b) "*without prejudice to the generality of clause (b) of this section*" in the opening part of the pre-amended Explanation to Section 48(2)(*b*); secondly, it limits the expanse of public policy of India to the three specified categories by using the words "*only if*". Whereas, *Explanation 2* lays down the standard for adjudging whether there is a contravention with the fundamental policy of Indian law by providing that a review on merits of the dispute shall not be done. This limits the scope of the enquiry on an application under either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*) of the 1996 Act.

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

48. *Explanation 1* to Section 34(2)(*b*)(*ii*), specifies that an arbitral award is in conflict with the public policy of India, *only if*:

(*i*) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(*ii*) it is in contravention with the fundamental policy of Indian law; or

(*iii*) it is in conflict with the most basic notions of morality or justice.

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

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

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

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

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

In contravention with the fundamental policy of Indian law

51. As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644**, in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:

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

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

(*c*) justice or morality.

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

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

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

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

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

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

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Patent illegality

65. Sub-section (2-A) of Section 34 of the 1996 Act, which was inserted by the 2015 Amendment, provides that an arbitral award not arising out of international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is visited

by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

66. In ***ONGC Ltd.* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705**, while dealing with the phrase "public policy of India" as used in Section 34, this Court took the view that the concept of public policy connotes some matter which concerns public good and public interest. If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that illegality must go to the root of the matter and if the illegality is of trivial nature, it cannot be held that award is against public policy.

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

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

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

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

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

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

Perversity as a ground of challenge

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

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

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

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

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

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

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

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

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

> "*39.* In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the

> arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice."
>
> ***Scope of interference with an arbitral award***
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> **74.** The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorised as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.
>
> **75.** In ***Dyna Technologies (P) Ltd.* v. *Crompton Greaves Ltd.*, (2019) 20 SCC 1**, paras 27-43, a three-Judge Bench of this Court held that courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root of the matter and there is no possibility of an alternative interpretation that may sustain the arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law."

35. In the present case, the principal questions that arise for determination are, *firstly*, whether the mandate of the learned Sole Arbitrator had lapsed in terms of Section 29A of the A&C Act prior to the pronouncement of the Impugned Arbitral Award dated 27.08.2023, thereby rendering the said Award without jurisdiction; and *secondly*, whether the grant of interest at the rate of 12% per annum by the learned Arbitral Tribunal on the amounts awarded in

favour of the Respondent calls for interference in the exercise of this Court's jurisdiction under Section 34 of the A&C Act.

i. Expiry of Arbitral Tribunal's Mandate under Section 29A

36. Insofar as the first issue is concerned, it becomes apposite to examine the statutory framework governing the time limit for making an arbitral award. Section 29A of the A&C Act prescribes the period within which an arbitral tribunal is required to render its award and the consequences that ensue upon expiry of such period. For the sake of completeness, the relevant provision is extracted herein below:

> "**29-A. Time limit for arbitral award**. — **(1)** The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23:
> **(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:
>
> Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:
> Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.
> **(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."

37. Before proceeding further, this Court deems it apposite also to extract the findings recorded by the learned Sole Arbitrator on the issue concerning the subsistence of the mandate under Section 29A of the A&C Act. The relevant portions of the Arbitral Award read as under:

> "**47. <u>Respondent's Application under S. 29A (3) of Arbitration Act.</u>**
> Before I embark upon the merit of the various claims, it would be appropriate first to deal with an application filed by the Respondent on 10.04.2023 under S. 29A(3) of Arbitration Act with a prayer for a declaration that the mandate of the Tribunal gets terminated w.e.f. 24.05.2022.
> Notice of the application was accepted and the non-applicant / Claimant preferred to argue the application without filing any formal reply.
> According to the learned counsel for the Claimant the issue is covered by a Supreme Court judgment for the Covid-19 period. Accordingly, the arguments were heard on 11.04.2023 and the order is being pronounced along with the Award.
> <u>Having heard the arguments and perusing the record, I find that the application merits rejection because the application itself has been filed on 10.4.2023 after about one year of the claimed date of termination of the mandate of the Arbitrator i.e. 24.05.2022. Obviously it is after thought. The earlier counsel did not even raise any such plea and had acquiesced in extension of time. The Applicant - Respondent kept on participation in the arbitral</u>

proceedings after 24.5.2022 and impliedly accepted the mandate of the arbitrator.

48. At the stage of argument, it is not possible to accept such a submission because by that time parties may apprehend the results one way or the other from the record of the proceedings and resort to such type of applications at the stage of arguments which must be discouraged. Moreover, Hon'ble Supreme Court in Re-Cognizance for Extension of Limitation with Mis. Application No. 29 of 2023 in Suo Motu Writ Petition (C) No. 3 of 2020 decided on 10.01.2022 has expressed a categorical view that the whole Covid period from 15.03.2020 till 28.02.2022 is to be excluded in computing the period prescribed under Section 23 (4) and 29A of the Arbitration & Conciliation Act, 1996. Para 5(4) of the Judgment of the Hon'ble Supreme Court the aforesaid view finds its expression and the same is set out below verbatim for a ready reference :

> "It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections (4) and 29A of the Arbitration & Conciliation Act, 1996. Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and another laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can delay) termination of proceedings."

49. When the ratio of the judgment as expressed in the quoted para is applied to the facts of the present case, it becomes patent that there is ample time for pronouncement of award and the mandate of the arbitrator cannot be deemed to have been terminated on the claimed date of 24.5.2022. The facts in the present case are that the arbitrator entered reference on 8.12.2020 when Covid 19 was at its peak. The period up to 28.2.2022 as per the mandate of the Hon'ble Supreme Court has to be excluded, inter alia, for the purposes of, Section 23 (4) and Section 29A of the Act. The period of 1 year 6 months would thus commence from 28.2.2022 onwards. Accordingly, 18 months period added to 28.2.2022 would bring the date for pronouncement of award as 28.8.2023.

50. Ld. Counsel for the Respondent however, has insisted on applying Para 5(3) of the Covid-19 judgment of the Supreme Court (Supra). It is argued-that period of 90 days from 01.03.2022 should be taken and adopted. The argument suffers from a basic fallacy because in para 5(4) there is specific reference to sections 23 (4) and section 29A of the Arbitration Act. Moreover, in the instant case the limitation does not expire during the period between 15,03.2020 to 28.2.2022 as is required by Para 5(3) of the Judgment. On facts, it is clear that the arbitrator entered reference on 8.12.2020 and in the ordinary course, he was supposed to pronounce the award on 8.6.2022 (6 months + 1 year) whereas the

> limitation period as per the view of the Hon'ble Supreme Court is required to expire between 15.3.2020 to 28.2.2022 as per para 5(3). It is further appropriate to mention that in para 8 of the application it is conceded that the period for arbitral proceedings did not expire between 15.3.2020 and 28.2.2022.
> As a sequal to the above discussion the application fails and it is accordingly dismissed. It is held that the arbitral Tribunal would be well within its mandate to pronounce the award on or before 28.08.2023."
>
> ***(emphasis supplied)***

38. Section 29A of the A&C Act was introduced by way of the Arbitration and Conciliation (Amendment) Act, 2015, with the avowed legislative objective of ensuring expedition and efficiency in arbitral proceedings. The provision, in essence, prescribes that an arbitral tribunal shall render the award within twelve (12) months from the date of completion of pleadings, subject to extension by consent of the parties for a further period not exceeding six months, and thereafter only by order of the Court upon sufficient cause being shown. The legislative intent underlying this provision is unmistakably to discourage protracted arbitral proceedings and to instil procedural discipline in arbitration. At the same time, the provision cannot be construed in a manner that defeats the very purpose of arbitration by encouraging belated jurisdictional objections or tactical challenges that are raised only after the arbitral process has substantially progressed.

39. The statutory architecture of Section 29A of the A&C Act must therefore be understood not as a rigid mechanism intended to invalidate arbitral proceedings upon a mere lapse of time, but as a supervisory framework designed to ensure timely completion of arbitration while preserving the continuity of the adjudicatory process. The scheme of the provision itself makes this position clear. While

sub-section (1) prescribes the initial twelve-month period and sub-section (3) permits extension by consent of the parties, sub-section (4) expressly empowers the Court to extend the mandate of the arbitral tribunal either prior to or after the expiry of the stipulated period.

40. The legislature has thus consciously vested a wide discretionary jurisdiction in the Court so that arbitral proceedings, once substantially progressed, are not rendered futile merely by efflux of time. The law in this regard has been succinctly laid down by the Hon'ble Supreme Court in the case of ***C. Velusamy v. K Indhera***[17], which reads as under:

> **"VII. Timelines under the 1996 Act**
> **9.** Party autonomy, coupled with minimal intervention of judicial authorities, has been the guiding principle for the 1996 Act. This is perhaps the reason for not provisioning a statutory timeline for delivering awards and prescribing consequences of not delivering them on time.
> **9.1.** In the event of failure of an arbitrator to act without undue delay, recourse was provided under Section 14 of the Act of 1996 to dual remedies-by approaching the arbitrator first and then the Court8. Section 14(1)(a) states that the mandate of an arbitrator would stand terminated if he either becomes *de jure* or *de facto* unable to perform his functions or, for other reasons, fails to act without undue delay. Section 14(2) states that, if a controversy remains concerning any of the grounds referred to in Section 14(1)(a), a party may, unless otherwise agreed with by the parties, apply to the Court to decide on the termination of the arbitrator's mandate. On the other hand, Section 34 of the 1996 Act does not postulate delay in the delivery of the arbitral award as a ground in itself, to set it aside, except, as explained in the ***Lancor Holdings*** (supra), where the negative effect of the delay in the arbitral award is explicit and adversely reflects on the findings of the award.
> **VIII. The felt need for the prescription of timelines for making the award and the recommendation of the law commission**
> **10.** The absence of a statutory time limit under the Act of 1996 had resulted in arbitrations remaining pending for several years, even without Court intervention, thereby defeating the very object of arbitration as a speedy dispute resolution mechanism. Accordingly, the Law Commission proposed the introduction of a structured

[17] 2026 SCC OnLine SC 142

timeline, with limited extensions by party consent and supervisory control by the Court thereafter, not with a view to terminating arbitral proceedings, but to compel their timely progress. The emphasis was on continuation of the arbitration, even pending applications for extension, so that procedural delays do not result in wastage of time, costs, or evidence already led. The legislative intent, therefore, was to ensure that an arbitral award is ultimately passed, with judicial intervention operating as a facilitative and corrective mechanism to curb delay, rather than as a means to abort the arbitral process. The relevant extract from the 176th Report of the Law Commission of India is extracted below:

*****

IX. Introduction of Section 29A & its interpretation:

11. It is in the above-referred background that the Arbitration Act was amended with retrospective effect from 23.10.2015 to effectively deal with delays in arbitral proceedings by inserting Section 29A. The Statement of Objects and Reasons records that practical difficulties had arisen, necessitating amendments to make arbitration more user-friendly, cost-effective, and expeditious. Accordingly, provision was made requiring the arbitral tribunal to render the award within twelve months from the date it enters upon the reference, with liberty to the parties to extend the period by a further six months, any extension thereafter being permissible only by order of the Court on sufficient cause being shown. Thereafter, the Act of 1996 was further amended w.e.f. 30-8-2019 to provide, inter alia, that, where an application seeking extension of time under sub-section (5) of Section 29A is pending, the mandate of the arbitrator shall continue until such application is finally decided.

11.1. Section 29A of the 1996 Act as amended is extracted below for ready reference;

*****

X. International perspective on the validity of the arbitral award rendered after the stipulated statutory time limit.

*****

XI. Conclusions

13. Section 29A, as explained in recent decisions of this Court in ***Rohan Builders*** (supra), ***Lancor Holdings*** (Supra) and ***Jagdeep Chowgule* v. *Sheela Chowgule*15** can be formulated as under:

(I) Sub-section (1) of Section 29A mandates that the award shall be made within 12 months of the completion of pleadings before the Arbitral Tribunal16. While sub-section (2) incentivises expeditious making of the Award, proviso to sub-section (4) and sub-section (8) authorises the Court to impose penalty for delay in making the award.

(II) Sub-section (3) enables parties, by consent, to extend the period of 12 months for making the award by a further period not exceeding 6 months.

(III) If the award is not made within the stipulated period of 12 months or the extended period of 6 months, the mandate of the arbitrator(s) shall terminate17.

(IV) This termination is subject to the power of the Court to extend the period18.

(V) The 'Court' under Section 29A shall be the Civil Court of ordinary original jurisdiction in a district and includes the High Court in exercise of its original civil jurisdiction under Section 2(1)(e), and shall not be the High Court or the Supreme Court under Section 11(6) of the Act. Section 42 of the Act relating to jurisdiction for applications will also not apply to Section 11 of the Act19.

(VI) There is no statutory prescribed time limit for the Court to exercise the power under Section 29A(4) for extending the period, except for its own discretion. The Court can exercise the power before or after the expiry of the period under sub-sections 29A(1) or (3)20. Further, there is no prescription of an outer limit for extending the time for the conclusion of arbitral proceedings. Given this power, the Court will exercise it with circumspection, balancing the remedy with the rights of other stakeholders.

(VII) The power of the Court to extend the time under sub-section (4) may be exercised on an application by any of the parties. Once such an application for extension of time is pending, the mandate of the arbitrator shall continue till the disposal of such application under sub-section (9). The Court shall endeavour to dispose of such an application within 60 days21.

(VIII) Delay in the delivery of an arbitral award, by itself, is not sufficient to set aside that award. It is only when the effect of the undue delay in the delivery of an arbitral award is explicit and adversely reflects on the findings therein, such delay and, more so, if it remains unexplained, can be construed to result in the award being in conflict with the public policy of India.22

(IX) Under Section 29A(6), while exercising the power of extension, it shall be open to the Court to substitute one or all the arbitrators. This is a discretionary power that the Court would exercise in the facts and circumstances of the case. Upon substitution, the reconstituted tribunal shall be deemed to be in continuation of the previously appointed tribunal as per Section 29A(7) and shall continue from the stage already reached and on the basis of evidence already on record. The newly appointed arbitrators shall be deemed to have received the evidence and materials.

(X) Vesting of the power of substitution, under Section 29A(6), is on the "Court" and this Court is the "Court" as defined in Section 2(1)(e). The text, as well as the context for identifying the Court in Section 29A(6), as well as in Section 29A(4), is the Court in Section 2(1)(e). The expression 'Court' in other provisions must be guided by the meaning given in Section 2(1)(e)23.

14. Section 29A of the Act does not, in terms, bar an application for extension of the mandate of an arbitrator in the event of the delivery of an award. There is no such prescription anywhere in the section. In the first place, if an award is made after expiry of the mandate, then there is no doubt about the fact that such an award is *non est*. A better expression would be to hold that such an award would be unenforceable under Section 36. Such an award need not be challenged under Section 34.

15. Naturally, a unilateral act or the indiscretion of the arbitrator in making such an award will have no bearing on the power and jurisdiction vested in the Court under Section 29A. We have more hesitation in concluding that the Parliament has never intended that the act of an arbitrator in delivering an award when the mandate had expired would denude the power and jurisdiction vested in the Court. This power and jurisdiction stand on its own footing and is uninfluenced by the act of the arbitrator in passing an award without mandate.

16. Secondly, the expression, "*if an award is not made*" in sub-section (4) is employed in the context of enabling the Court to extend the mandate of the arbitrator. The context in which the phrase is used makes it clear that the sub-section is not addressing a situation where an arbitral award has been rendered after the mandate of the arbitrator has expired, but rather to declare that the Court can extend the period before or after the expiry of the mandate. This is clearly explained in ***Rohan Builders*** (supra).

17. ***Rohan Builders*** (Supra) also clarifies the context in which the expression 'terminates' has been used in the section. It is explained that it is transitory and is subject to the exercise of power by the Court.

> *"14. Accordingly, the termination of the arbitral mandate is conditional upon the non-filing of an extension application and cannot be treated as termination stricto sensu. The word "terminate" in the contextual form does not reflect termination as if the proceedings have come to a legal and final end, and cannot continue even on filing of an application for extension of time. Therefore, termination under Section 29A(4) is not set in stone or absolutistic in character.*
>
> *20. Lastly, Section 29A(6) does not support the narrow interpretation of the expression "terminate". It states that the court - while deciding an extension application under Section 29A(4) - may substitute one or all the arbitrators. Section 29A(7) states that if a new arbitrator(s) is appointed, the reconstituted Arbitral Tribunal shall be deemed to be in continuation of the previously appointed Arbitral Tribunal. This obliterates the need to file a fresh application under Section 11 of the A & C Act for the appointment of an arbitrator. In the event of substitution*

of arbitrator(s), the arbitral proceedings will commence from the stage already reached. Evidence or material already on record is deemed to be received by the newly constituted tribunal. The aforesaid deeming provisions underscore the legislative intent to effectuate efficiency and expediency in the arbitral process. This intent is also demonstrated in Sections 29A(8) and 29A(9). The court in terms of Section 29A(8) has the power to impose actual or exemplary costs upon the parties. Lastly, Section 29A(9) stipulates that an application for extension under sub-section (5) must be disposed of expeditiously, with the endeavour of doing so within sixty days from the date of filing."

18. Intention of the Parliament to secure the arbitral proceedings and to ensure that they are taken to their logical conclusion of a binding award is evident from provisions such as, enabling Courts to exercise the power of extension before or after the expiry of the 18 month period [Section 29A(4)], declaring continuation of the proceedings till the application for extension is pending [proviso to 29A(4)], declaring that upon extension, the existing proceedings would continue uninterruptedly [Section 29A(6) & (7)]. These provisions make it evident that the intention of the Parliament is to safeguard the conduct and conclusion of arbitral proceedings.

19. Though the fact situation that has arisen in our case was not available in ***Rohan Builders*** (Supra) in the sense that the arbitrator had not passed an award after expiry of the mandate, the following observation in *Rohan Builders* is relevant for our consideration;

"21. ...The power to extend time period for making of the award vests with the court, and not with the Arbitral Tribunal. Therefore, the Arbitral Tribunal may not pronounce the award till an application under Section 29A(5) of the A & C Act is sub-judice before the court. In a given case, where an award is pronounced during the pendency of an application for extension of period of the Arbitral Tribunal, the court must still decide the application under sub-section (5), and may even, where an award has been pronounced, invoke, when required and justified, sub-sections (6) to (8), or the first and third proviso to Section 29A(4) of the A & C Act."

(emphasis supplied)

20. Vesting of power and jurisdiction in the Court, in our opinion, is a complete answer to any apprehension that extension of time, even in cases where an 'award' is passed, could introduce a culture of indiscipline, as arbitrator(s) and/or counsels could become indifferent to the mandatory timelines. This apprehension is not true. There is no automatic extension of time. The Court will and must exercise its discretion only after evaluating the facts and circumstances after close scrutiny. Section 29A, in terms, enables

the court to adopt distinct measures to ensure dynamic and efficient conduct of arbitral proceedings with integrity and expedition. The following empowerments are in the nature of *instruments* in the toolkit of Section 29A, enabling the courts to deploy them as and when the factual matrix demands:

i. Court has the power to extend the time before or after the expiry of the statutorily stipulated period. [Section 29A(4)]

ii. Court is empowered to take measures to reduce the fee of the arbitrators if the Court is of the opinion that the proceedings are delayed for the reasons attributable to the Arbitrators. [Proviso to Section 29A(4)]

iii. Court can grant an extension of the time period upon a finding that there is sufficient cause for such extension. [Section 29A(5)]

iv. Court, while extending the mandate even when there is sufficient cause, is empowered to impose such terms and conditions as it thinks fit for efficiency and integrity of the arbitral proceedings. [Section 29A(5)]

v. Courts are specifically empowered to substitute any one or all the arbitrators, if in the opinion of the Court the facts demand. This is a discretion that the Court would exercise with caution and circumspection24. [Section 29A(6)]

vi. The Court is empowered not only to grant costs but also to impose exemplary and actual costs upon any of the parties, if the situation so demands. [Section 29A(8)]

21. In view of the above analysis, we are of the opinion that provisions of the Act, particularly Section 29A, must not be interpreted to infer a threshold bar for an application under Section 29A(5) for extension of the mandate of the arbitrator even when an award is passed, though after the expiry of the mandate.

22. While interpreting an enactment providing legal remedies for the resolution of disputes, a constitutional court has the obligation to ensure that the provision is: (a) accessible, (b) affordable, (c) expeditious and (d) cohesive. Accessibility requires the remedy to be easily available25. Affordability is an aspect that is related to the cost of availing the remedy, it must be at a reasonable price. Expeditious nature of a remedy is concerned with the quick disposal and abhors unreasonable delays. Yet another facet of effective remedy is in its cohesiveness.

23. In conclusion, we hold that an application under Section 29A(5) for extension of the mandate of the arbitrator is maintainable even after the expiry of the time under Sections 29A(1) and (3) and even after rendering of an award during that time. Such an award is ineffective and unenforceable. But the power of the court to consider extension is not impaired by such an indiscretion of the arbitrator. While considering the application, the Court will examine if there is sufficient cause for extending the

> mandate, and in the process, it may impose such terms and conditions as the situation demands. The Court will also take into account other factors such as reduction of the fee of the arbitrator under proviso to Section 29A(4) and also impose costs on parties if the fact situation so demands. Substitution is an option for the Court as the provision itself says, "*it shall be open for the Court to substitute*", and it will be exercised carefully. If the mandate is extended, the arbitral tribunal will pick up the thread from where it was left, and seamlessly continue the proceeding from the stage at which the mandate had expired, and conclude within the time granted.
>
> ***(emphasis supplied)***

41. The nature of such "termination" of mandate under Section 29A of the A&C Act has been authoritatively clarified in various judicial precedents. In ***Rohan Builders (India) Pvt Ltd v. Berger Paints India Limited***[18], the Hon'ble Supreme Court observed that the termination of mandate under Section 29A is not absolutistic in character but is conditional and transitory, being subject to the power of the Court to extend the mandate. The Hon'ble Supreme Court in ***Rohan Builders*** (*supra*) has held that an Application for extension of mandate under Section 29A(4) read with 29A(5) is maintainable even after the expiry of the 12-month or 6-month extended period.

42. The legislative intent underlying the provision is thus to ensure that arbitral proceedings culminate in a binding adjudication rather than being aborted on technical grounds. The same principle has been reiterated by the Hon'ble Supreme Court in ***Lancor Holdings Ltd v. Prem Kumar Menon***[19] and more recently in ***Jagdeep Chowgule v. Sheela Chowgule***[20].

43. Tested against this statutory and doctrinal framework, the challenge mounted by the Petitioner on the ground of expiry of the

[18] 2024 SCC OnLine SC 2494
[19] 2025 SCC OnLine SC 2319
[20] 2026 INSC 92

mandate of the learned Sole Arbitrator cannot be sustained. The Petitioner has contended that the pleadings in the arbitral proceedings stood completed on 24.05.2021 and, therefore, the learned Arbitrator was required to render the award within twelve months therefrom. According to the Petitioner, the mandate of the learned Arbitrator expired on 24.05.2022 and, in the absence of any extension obtained from the Court, the learned Arbitrator became *functus officio* thereafter. On this basis, it is urged that the Arbitral Award rendered on 27.08.2023 is without jurisdiction.

44. The aforesaid contention, however, cannot be accepted for more than one reason. At the outset, the computation of time under Section 29A cannot be undertaken in isolation from the extraordinary directions issued by the Hon'ble Supreme Court in wake of the COVID-19 pandemic in Suo Moto Writ (Civil) No. 3 of 2020. By virtue of the Order(s) passed therein, the period between 15.03.2020 and 28.02.2022 stood excluded for the purpose of computing limitation across various statutory regimes, including the timelines prescribed under Sections 23(4) and 29A of the A&C Act. The applicability of this exclusion to arbitral timelines has also been authoritatively reiterated by the Hon'ble Supreme Court in ***Arif Azim Co. Ltd. v. Aptech Ltd.***[21]. The relevant portion of the Order dated 10.01.2022 passed in Suo Moto Writ (Civil) No. 3 of 2020 is reproduced herein below:

> "5. …….
> **IV.** It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable

[21] 2024 SCC OnLine SC 215

> Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

45. When the aforesaid exclusion is applied to the facts of the present case, the timeline for completion of the arbitral proceedings necessarily shifts. The arbitral proceedings commenced on 08.12.2020, a date which itself falls squarely within the period excluded by the Hon'ble Supreme Court. Consequently, the statutory timeline for rendering the award must necessarily be computed by excluding the pandemic period. Once the said exclusion is applied, the award rendered on 27.08.2023 cannot be said to have been delivered beyond the permissible statutory timeframe.

46. This interpretation also finds support from decisions of this Court which have consistently applied the exclusion directed in Suo Motu Writ Petition (C) No. 3 of 2020 to arbitration-related timelines. In ***Chroma-Ator Energy Systems Pvt Ltd*** *(supra)*, this Court held that the limitation period would recommence after excluding the pandemic period in accordance with the Hon'ble Supreme Court's directions. Similarly, in ***Drooshba Fabricators*** *(supra)*, it was reiterated that delays occurring during the excluded period would stand condoned in view of the extraordinary directions issued by the Hon'ble Supreme Court.

47. Even otherwise, the conduct of the Petitioner during the arbitral proceedings renders the present challenge wholly untenable. The Petitioner asserts that the mandate of the learned Arbitrator expired on 24.05.2022. Yet, the Application invoking Section 29A of the A&C Act was filed only on 10.04.2023, nearly eleven months thereafter.

48. The chronology of the proceedings, which emerges from the record, may be summarised as under:

Event	Date	Observation
Commencement of arbitral proceedings	08.12.2020	Arbitrator entered upon reference
Completion of pleadings (as alleged by Petitioner)	24.05.2021	Petitioner's computation of the timeline
Alleged expiry of mandate (as per Petitioner)	24.05.2022	No objection raised contemporaneously
Application under Section 29A of the A&C Act filed by Petitioner (*Objection to the mandate under Section 29A*)	10.04.2023	Filed nearly one year after the alleged expiry
Arguments on merits continued before the Tribunal	April-May 2023	Petitioner actively participated
Award pronounced	27.08.2023	Impugned Award
Application under Section 33 of the A&C Act filed by Petitioner	Post-award	Seeking correction of the interest component

49. The above chronology clearly demonstrates that, despite having raised an objection under Section 29A of the A&C Act, the Petitioner continued to actively participate in the arbitral proceedings without pursuing any further remedial steps in that regard. Notably, the Petitioner advanced substantive arguments on merits before the learned Arbitrator on 12.04.2023 and 21.04.2023, and thereafter also participated in the hearing held on 08.05.2023 concerning the Respondent's rejoinder submissions. Such conduct clearly demonstrates that the Petitioner continued to recognise the authority

of the learned Arbitrator and elected to participate in the adjudicatory process without reservation.

50. The position becomes even more significant when it is noticed that, subsequent to the pronouncement of the Arbitral Award on 27.08.2023, the Petitioner itself invoked the jurisdiction of the tribunal under Section 33 of the A&C Act, seeking correction of the interest awarded. The filing of such an application necessarily proceeds on the premise that the Arbitral Award is valid and that the tribunal possessed the authority to render it. Having availed of the statutory remedy available under Section 33 of the A&C Act, the Petitioner cannot now be permitted to approbate and reprobate by simultaneously contending that the tribunal lacked mandate to pronounce the Arbitral Award.

51. In this regard, reference may also be made to the judgment of the Himachal Pradesh High Court in ***Balak Ram v. National Highways Authority of India*** [22], wherein it was observed that continued participation in arbitral proceedings without raising a timely objection may, in appropriate circumstances, amount to an extension of the mandate by conduct of the parties. The relevant portions of the said judgment read as follows:

> "**20.** As per Section 29A(1) of the Arbitration and Conciliation Act, the award has to be made within a period of 12 months from the date the Arbitral Tribunal enters upon the reference. Section 29A(3) provides for extension of the period specified in sub section (1) for a further period not exceeding six months by the consent of the parties.
> **21.** An arbitral award, therefore, can be made within a period of 12 months from the date the Arbitrator enters upon the reference. The parties can extend this period by consent for a further period not exceeding six months. An award made beyond 12 months under

[22] 2023 SCC OnLine HP 944

Section 29A(1) or 18 months under Section 29A(3) shall not be valid.

22. The court can extend the mandate of the Arbitral Tribunal as per Section 29A(4). In the instant case, the Arbitrator entered upon the reference on 08.07.2016. Permissible period of 12 months within which the award could have been validly pronounced under Section 29A(1) lapsed on 07.07.2017. However, both the contesting parties continued with the proceedings. None of the parties objected to the arbitration proceedings conducted by the Arbitrator beyond 07.07.2017. From the conduct of the parties, a tacit consent on their part for extending the period of arbitration can be inferred. Under Section 29A(3), parties by consent can extend the period of arbitration not exceeding six months. In the instant case, the Arbitral Tribunal passed the award within 2 months after the expiry of 12 months. The fact that respondent-NHAI had consented to the continuation of proceedings beyond 12 months is apparent from the fact that even while agitating against the award passed by the Arbitrator, it had not taken any such ground before the learned District Judge that the award passed by the Arbitrator was bad in the eyes of law on the count that mandate of the Arbitral Tribunal had lapsed on 07.07.2017. It was a case of implied consent on part of respondent-NHAI. In this regard, it would be appropriate to refer to (2002) 3 SCC 175 : AIR 2002 SC 1157 (***Inder Sain Mittal* v. *Housing Board, Haryana***). Relevant para from the judgment is as follows:—

> *"13. In the case on hand, it cannot be said that continuance of the proceedings and rendering of awards therein by the Arbitrator after his transfer was in disregard of any provision of law much less mandatory one but, at the highest, in breach of agreement. Therefore, by their conduct by participating in the arbitration proceedings without any protest the parties would be deemed to have waived their right to challenge validity of the proceedings and the awards, consequently, the objections taken to this effect did not merit any consideration and the High Court was not justified in allowing the same and setting aside the award."*

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24. In view of above discussion on facts & law, it has to be held that consent of the parties envisaged under Section 29A(3) of the 2015 Arbitration & Conciliation Act for extending the arbitral period need not necessarily be either express or in writing. There can be a deemed consent, an implied consent of the parties, which can be gathered from their acts and conduct. Their acquiescence in proceeding with the arbitration case beyond twelve months without raising any objection to the continuation of proceeding does amount to consent. On the basis of such consent, the arbitral award if passed within a further period of six months would be a valid

> award. In the given facts, consent of the parties to continue the arbitral proceedings beyond the period of one year (12 months) from the date the Arbitrator entered upon the reference, is writ large. The award was passed by the Arbitrator within further period of two months. The award was thus saved by Section 29A(3) of the Act as it was passed within the period permitted under Section 29A (3) of the Act. The conclusion drawn by learned District Judge about the award being illegal having been passed beyond the mandated period, therefore, being illegal, cannot be justified. Under Section 29A(3) of the Arbitration and Conciliation Act, there is no requirement that consent of the parties has to be expressed and that too, in writing."
>
> ***(emphasis added)***

52. Arbitration rests fundamentally upon principles of party autonomy, procedural fairness and good faith participation in the adjudicatory process. A party cannot be permitted to participate in arbitral proceedings, invite adjudication on merits, and thereafter challenge the very jurisdiction of the tribunal only after the outcome proves unfavourable. To permit such conduct would undermine the finality, efficiency and credibility that the arbitral process seeks to achieve.

53. In this context, it also merits emphasis that once the exclusion directed by the Hon'ble Supreme Court in the Suo Motu proceedings concerning extension of limitation during the COVID-19 pandemic is applied, the statutory timeline under Section 29A of the A&C Act must necessarily be reckoned only from 01.03.2022, i.e., upon the expiry of the period directed to be excluded. In terms of Section 29A(1) read with Section 29A(3) of the A&C Act, the Arbitral Tribunal is permitted to render the award within twelve months, with a further six months' extension by consent of the parties, thereby permitting a cumulative period of eighteen months for completion of the arbitral proceedings. When the statutory timeline is computed from 01.03.2022, the outer limit of the permissible period would

extend to 31.08.2023. The Impugned Arbitral Award, having been pronounced on 27.08.2023, unmistakably falls within the said period of one and a half years from the expiry of the pandemic exclusion period. Consequently, the contention advanced by the Petitioner that the mandate of the learned Arbitrator had lapsed prior to the pronouncement of the Arbitral Award is devoid of merit and cannot be sustained.

54. It must also be borne in mind that the jurisdiction of this Court under Section 34 of the A&C Act is supervisory and not appellate in nature. The Hon'ble Supreme Court in catena of judgments has reiterated that a court exercising jurisdiction under Section 34 of the A&C Act cannot re-appreciate evidence or substitute its own view merely because another interpretation may appear possible. So long as the arbitral tribunal has adopted a plausible view based on the material placed before it, judicial interference would be wholly unwarranted.

55. In the present case, the learned Arbitrator has considered the objection raised by the Petitioner under Section 29A of the A&C Act and has rejected the same upon examining the statutory framework and the chronology of events. The reasoning adopted by the learned Arbitrator is both plausible and legally sustainable. No prejudice whatsoever has been demonstrated by the Petitioner arising from the alleged delay in rendering the Arbitral Award, nor has it been shown that such delay has in any manner affected the reasoning or findings recorded in the award.

56. Viewed in the aforesaid perspective, this Court is unable to accept the contention that the mandate of the learned Sole Arbitrator had expired prior to the pronouncement of the Impugned Arbitral Award. The interpretation urged by the Petitioner would defeat the

legislative purpose underlying Section 29A of the A&C Act and would encourage belated technical challenges aimed at frustrating the arbitral process.

57. Consequently, the challenge mounted by the Petitioner on the ground of alleged expiry of the mandate of the learned Arbitrator is devoid of merit and stands rejected.

ii. Validity of Interest Awarded by the Tribunal

58. The second limb of challenge raised by the Petitioner pertains to the grant of interest by the learned Arbitral Tribunal on the sums awarded in favour of the Respondent.

59. Before adverting to the merits of the rival submissions, it would be appropriate to extract the findings recorded by the learned Sole Arbitrator on the question of interest. The relevant observations forming part of the Impugned Arbitral Award, wherein the learned Arbitrator determined the entitlement of the Respondent to interest and the rate thereof, are reproduced hereinbelow for ready reference:

> "**51. Issue No. 1**
> **Whether the Claimant is entitled to interest on the delayed payment of the final bill @ 12% per annum.**
>
> *****
>
> **56.** It is true that the final bill was required to be submitted within 3 months of the date of completion of work. The work was completed on 31.3.2017 and the final bill was actually submitted on 28.6.2017. It is also clear from Condition No. 56 of GCC that from the date of submission of the final bill the undisputed part was required to be paid within 6 months i.e. on or before 28.12.2017. Therefore, the delay is patent from the fact that approval to D.Os was granted between 16.11.2017 and 04.10.2019 as depicted in the above table.
> **57.** The claim of the Claimant is sought to be defeated on the ground that the accompanying documents were not submitted and there was no notice in terms of Section 3(b) of the Interest Act, 1978. Respondent submitted that Claimant caused delay in the processing of various D.Os. In that regard reliance has been placed

on the correspondence between the parties. Annexure R-29, 30, 33 to 44 and 44 to 46. A casual glance at Annexure 29 dated 20th July, 2017 would reveal that Respondent sought modification of bill by reducing the amount of disputed D.O. in respect of RCC Solar Water Heater Platform which is a separate claim in these proceedings. Likewise a perusal of Annexure R-31 dated 19th March, 2018 would show that either the measurements were awaited or approved D.Os. was not received by the Respondent. Vide Annexure R-35 dated 10th January 2019 some defects of leakage / seepage were pointed out. Similar position obtain in other documents Clause 56 of GCC (Supra) in categorical terms state that undisputed amount of final bill must be paid within six months from the date of receipt. by the Project Manager. The period for removal of defects is separately provided which was to expire on 31.03.2019 (sub clause 40 GCC) and the amount of the Claimant is retained to ensure that Defendants are removed. The Respondent has thus remained unsuccessful to show that there was any serious deficiency in submitting the final bill in Form F as per the provisions of Condition No. 55 of GCC. I am in agreement with the Ld. Counsel for the Claimant that on these excuses payment of undisputed amount could not be withheld nor the delay in approving the D.Os. was justified. Likewise measurement did not need to even wait for association of the Claimant or its representative as last para of clause 52 of GCC provides that Respondent was fully within its right to have measurement done in his absence. The cost could be recovered from the Claimant. The preponderance of evidence indicates to the casual dealing with the approval concerning D.Os. and measurement which caused abnormal delay. Therefore, I find that extraordinary delay in approving D.Os. and measurement has been caused by Respondent which resulted in delay of payment of final bill. Regarding other argument it is not mandatory that a notice under Section 3(b) of the Interest Act is a sine qua non for awarding the amount of interest. There is ample power with the Arbitrator to award interest in the form of compensation given by Section 31 of the Arbitration Act for which no notice is required. Once a person is legitimately entitled to payment of final bill, any delay in making payment would make him entitled for compensation for deprevation of the use of money due to him. In the detailed cross-examination, the witness of the Claimant has stated that the claim of 12% interest has been fixed in respect of Claim No. 1 on the basis of market rate of interest. The interest has been claimed as compensation because of loss of use of money in other business on time, although nothing has been placed on record to prove any such loss. In that regard Shri Parveen Chauhan Ld. Counsel for the - Claimant has rightly placed reliance on para 47 of a judgment of the Supreme Court by 5-Judge Bench in the case of Secretary Irrigation Deptt. V. G.C. Roy & others. It has been held that if a person is deprived of use of

money to which he is legitimately entitled then he has a right to be compensated for deprivation, call it by any name like interest, damages or compensation. The observations have also been quoted verbatim in the other part of this Award (infra). The witness denied the suggestion that Claim No. 1 was unnecessary excessive. However, on checking Commercial Rate of Interest of SBI I find that there is substance in the argument of Shri Parveen Jain Ld. Counsel for the Respondent. The rate of interest claimed by Claimant at 12% needs to be reduced. However, the sum total has not been disputed Accordingly, I am inclined to award interest from 01.01.2018 to 30.11.2019 i.e. for a period of 23 months on the sum of Rs.2,04,36889.00 @ 10% P.A. which works out to be Rs.39,17,071.30. Issue No. 1 related to claim No. 1 is accordingly decided.

58. It is true that during cross-examination CW-1 Shri Sanjay Kumar Katare admitted the contents of document Ex.CW-1/R-48 (R-5) and similar other documents making claim for extra work. The claim made through D.Os. was rejected but it cannot be termed as a sole reason for delay. Moreover rejection of all such D.Os. is also subject matter of claim in these proceedings.

59. Another argument based on clause 52 of the GCC (at P. 576) is that the Contractor is to assist in measurement of the work executed. He is also expected to assist PM/DEPMC for preparation of D.Os. As far as measurement etc. are concerned the Respondent is free to move forward in case the Claimant fails to turn up as per clause. Regarding D.Os. the Claimant tried to project that it was extra work which was not included in the lump sum part yet its claim was rejected which is also subject matter of one of the claim. Therefore, I do not find any merit in submissions advanced by the Ld. Counsel for the Respondent and the same is rejected."

60. Upon perusal of the extracted findings, this Court finds that the learned Arbitral Tribunal has arrived at its conclusion on the question of interest only after undertaking a detailed scrutiny of the contractual framework and the evidentiary material placed on record. The tribunal examined the relevant clauses of the contract governing submission and payment of the final bill and thereafter analysed the documentary exhibits and oral testimony adduced by the parties. The Arbitral Award reflects that the Ld. Arbitral Ttribunal considered the sequence of events, the approvals of deviation orders, and the explanations offered by the parties before determining that the delay in payment

was not attributable to the contractor. Such an appreciation of contractual stipulations and evidence lies squarely within the adjudicatory domain of the Arbitral Tribunal.

61. The learned Tribunal has also correctly addressed the legal basis for awarding interest by invoking the statutory power conferred under Section 31(7) of the A&C Act, which empowers an arbitral tribunal to grant interest as compensation for the deprivation of monies lawfully due. The reasoning recorded in the Arbitral Award demonstrates that the learned Arbitrator did not grant interest mechanically but evaluated the commercial context and moderated the rate claimed by the contractor, thereby exercising a measured and judicious discretion.

62. A perusal of the Arbitral Award reveals that the learned Arbitrator has granted interest at the rate of 12% per annum on the sums found due and payable to the Respondent, commencing from 18.03.2020 until the date of payment. The learned Arbitrator has recorded detailed reasons for awarding such interest, taking into account the fact that the Respondent had been deprived of the use of monies legitimately due under the contract and that the delay in payment was attributable to the Petitioner.

63. The power of an arbitral tribunal to award interest is firmly embedded in the statutory framework of the A&C Act. Section 31(7) expressly recognises the authority of the tribunal to grant interest for the pre-award as well as post-award period unless the parties have agreed otherwise. The provision embodies the well-settled principle that a party who has been unjustifiably deprived of the use of money to which it is legitimately entitled must be compensated by way of

interest. Interest, in such circumstances, is not punitive in nature but compensatory, representing the time value of money.

64. The jurisprudence governing the grant of interest in arbitral proceedings consistently emphasises that the determination of the appropriate rate of interest lies primarily within the domain of the arbitral tribunal. Courts exercising jurisdiction under Section 34 of the A&C Act do not ordinarily interfere with such determination unless the rate awarded is demonstrably arbitrary, unconscionable or in conflict with the fundamental policy of Indian law.

65. At this stage, this Court considers it appropriate to advert to the judgment of a Co-ordinate Bench of this Court in ***M.A. Zahid v. Jindal SAW Ltd.***[23] wherein the grant of interest at the rate of 12% by an arbitral tribunal was examined in the context of the statutory framework governing arbitral interest both prior to and subsequent to the 2015 amendment to the A&C Act. The Court, upon undertaking such analysis, upheld the grant of interest as falling squarely within the powers conferred upon an arbitral tribunal under Section 31(7) of the A&C Act. The relevant observations from the said judgment are reproduced herein below:

> "**16.** Under the 1996 Act, power of the Arbitrator to grant interest is governed by Section 31(7). This provision is in two parts. Under Clause (a), in the absence of an agreement between the parties to the contrary, an Arbitrator can award interest for the period between the date of cause of action to the date of the award, either for the whole or part of the said period. Clause (b) provides that unless the award otherwise directs, the sum directed to be paid by the Arbitrator shall carry interest @ 2% higher than current rate of interest from the date of the award to the date of payment. This amendment was brought about from 23.10.2015 by virtue of Amendment Act No. 3 of 2016. Be it noted that this Court is not delving into the pre-reference and *pendente lite* interest as the

[23] 2025 SCC OnLine Del 5227

contest in the present case is only with respect to post-award interest.

17. Read simply and as observed by the Supreme Court in ***Morgan Securities and Credits Private Limited* v. *Videocon Industries Limited*, 2022 SCC OnLine SC 1127**, both clauses (a) and (b) of Section 31(7) are qualified. While clause (a) is qualified by the arbitration agreement, clause (b) is qualified by the arbitration award and placement of the phrases is crucial to their interpretation. As can be seen from the amended Section, the phrase 'unless otherwise agreed by the parties', occurs at the beginning of clause (a) qualifying the entire provision while phrase 'unless the award otherwise directs', occurs after the words 'a sum directed to be paid by an arbitral award shall' and before the words 'carry interest at the rate of two per cent', and therefore, the phrase qualifies the rate of post-award interest. It is settled that the Arbitrator has a wide discretion to grant: (a) pre-reference; (b) *pendente lite;* and (c) post-award interest. In ***North Delhi Municipal Corporation* v. *S.A. Builders Ltd.*, 2024 SCC OnLine SC 3768**, the Supreme Court held that grant of post award interest serves a salutary purpose and primarily acts as a disincentive to the award-debtor not to delay payment of arbitral amount to the award-holder.

18. In ***Morgan Securities*** (supra), albeit the Supreme Court was dealing with unamended Section 31(7)(b), it was held that Section 31(7)(a) confers a wide discretion on the Arbitrator to grant pre-award interest and determine the rate of interest, the sum on which it is to be paid and the period and when a discretion has been conferred in regard to grant of pre-award interest, it would be against the grain of statutory interpretation to presuppose that legislative intent was to reduce the discretionary power of the Arbitrator for grant of post-award interest under clause (b). It was observed that clause (b) only contemplates a situation where the arbitral award is silent on the post-award interest, in which event the award-holder is entitled to the post-award interest @ 18% stipulated in Section 31(7)(b), the unamended provision. It was held that the Arbitrator has the discretion to grant post-award interest and this discretion is not fettered by clause (b) *albeit* it is open to the Arbitrator to decline interest in its discretion. It was highlighted that purpose of granting post-award interest is to ensure that the award-debtor does not delay the payment of the awarded amount. With proliferation of arbitration, issues involving both high and low financial implications are referred to arbitration and Arbitrator takes note of various factors such as financial standing of the award-debtor and circumstances of the parties in dispute before awarding interest. No provision under the 1996 Act restricts the exercise of discretion to grant post-award interest by the Arbitrator though Arbitrator must exercise the discretion in good faith taking into account relevant considerations and must act

reasonably and rationally. It was concluded by the Supreme Court that according to Section 31(7)(b) only where the Arbitrator does not grant post-award interest, provisions of second part of sub-clause (b) will come into play.

19. In the present case, the learned Arbitrator has exercised his discretion to grant post-award interest @ 12% per annum for 90 days from 23.05.2016 and 16% per annum from expiry of 90 days till actual payment. The post-award interest is based on a sound reasoning which precedes the grant. Arbitrator has observed that in the various documents executed on 22.07.2013 between the parties, there was acknowledgement of liability by the Petitioner and there was no mention of interest. Parties entered into settlement in the spirit of goodwill, bonhomie and to maintain long term business relations. Respondent was satisfied with the Petitioner paying the principal amount on lifting of the attachment by Income Tax Authorities and/or selling properties. There was no intent of charging interest in the settlement. On this ground, Arbitrator declined interest from 01.06.2011, as sought by the Respondent. Thereafter, the Arbitrator refers to the legal notice dated 23.05.2016 from which date Respondent started demanding the admitted payment expressing its intention to the Petitioner to charge interest. Admittedly, Petitioner made no effort to pay the admitted amount and constrained by circumstances, Respondent invoked arbitration. Arbitrator notes the provisions of the 1996 Act and judgments relating to grant of interest cited by the Respondent as also the fact that the transaction between the parties was undoubtedly a commercial one and the Petitioner though not denying its liability to pay the principal sum even in the reply dated 07.08.2016 to Respondent's legal notice, did not make good his obligation and commitment to pay. In light of the fact that Respondent was denied of the amount admittedly due to the Respondent for several years, Arbitrator in his discretion awarded interest. The question is whether any interference is warranted in the award to the extent of grant of dual rate of interest for two separate periods.

20. It needs no reiteration that jurisdiction of the Court under Section 34 of the 1996 Act is extremely circumscribed and is limited to the grounds enumerated therein. Petitioner urges that by awarding exorbitant and dual interest, the award is vitiated by 'patent illegality appearing on the face of the award'. The Supreme Court and High Courts have time and again affirmed that 'patent illegality' is an illegality which goes to the root of the matter and cannot be of a trivial nature. [Ref.: ***Associate Builders* v. *Delhi Development Authority*, (2015) 3 SCC 49** and ***Larsen Air Conditioning and Refrigeration Company* v. *Union of India*, (2023) 15 SCC 472]**. Proviso to Section 34(2A) itself stipulates that an award shall not be set aside merely on erroneous application of law. Division Bench of this Court in ***Aksh Optifibre***

***Limited* v. *Nantong Siber Communication Co. Ltd.*, 2024 SCC OnLine Del 4011**, has held that it is well-settled that fundamental policy of Indian law does not refer to violation of any Statute but fundamental principles on which Indian law is founded. Any difference or controversy as to rate of interest clearly falls outside the scope of challenge on the ground of conflict with the public policy of India unless it is evident that the rate of interest awarded is so perverse and so unreasonable so as to shock the conscience of the Court *sans* which no interference is warranted in the award, whereby interest is awarded by the Arbitrator. Against the said judgment, the Supreme Court dismissed the SLP (C) No. 22495/2024 on 21.10.2024.

21. On a plain reading of the impugned award in the instant case and applying the settled law, the reasoning adopted by the learned Arbitrator for awarding the rate of interest cannot be faulted with. Arbitrator has considered all relevant factors such as: (a) Petitioner's admission of his liability to pay the principal amount to the Respondent; (b) violation of the terms of settlement in the Deed of Settlement and related documents executed on the same day; (c) financial loss caused to the Respondent; and (d) the admitted fact of the Respondent being deprived of its right to enjoy the monies due to it for several years, etc. Arbitrator has exercised the discretion vested in him judiciously, taking into consideration relevant facts/factors and eschewing irrelevant considerations.

22. It is a settled law that in the absence of an express bar in the contract between the parties, it is the Arbitrator who enjoys absolute discretion and has the jurisdiction to award interest including post-award interest. [Ref.: ***State of Rajasthan* v. *Ferro Concrete Construction Private Limited*, (2009) 12 SCC 1;** and ***Indian Railway Construction Company Limited* v. *National Buildings Construction Corporation Limited*, (2023) 7 SCC 390**]. Clearly, the Deed of Settlement contains no express bar regarding interest and it was thus open to the Arbitrator to award the interest. Once interest is awarded by the Arbitrator, Section 37(1)(b) comes into play where the phrase *'unless the award otherwise directs'*, qualifies the rate of post-award interest, which means that once the award grants interest, award-debtor cannot claim any other rate of interest, save and except, where the rate of interest is so excessive or unreasonable that it shocks the conscience of the Court, which is not the case here.

23. Counsel for the Petitioner laid much stress on the judgment of the Supreme Court in *Vedanta Limited* (supra), to argue that awarding dual interest and that too at an exorbitant rate of 15% was held to be unjustified by the Supreme Court. In my view, this argument is misconceived and need not detain this Court in light of the judgment of the Supreme Court in ***Reliance Infrastructure Limited* v. *State of Goa*, 2023 SCC OnLine SC 604**, as also judgments of the Bombay High Court and this Court, to which I

> shall advert later. In ***Reliance Infrastructure*** (supra), the Supreme Court was examining the legality of the award including the issue of grant of pre-reference and post-award interest. Insofar as the post-award interest is concerned, the High Court had reduced the rate of interest from 15 to 10% following the decision in ***Vedanta Limited*** (supra) and principle of proportionality. The Supreme Court observed that the reduction of rate of interest by the High Court was unjustified. Referring to provisions of Section 31(7)(b), more particularly, the phrase *'unless the award otherwise directs',* and distinguishing the decision in ***Vedanta Limited*** (supra), the Supreme Court held that the observation of the High Court that Court may reduce interest awarded by the Arbitrator when such interest does not reflect the prevailing economic condition or where it is not found reasonable or where it promotes interest of justice, based on the decision in ***Vedanta Limited*** (supra), was without any basis since in the case of ***Vedanta Limited*** (supra), the Supreme Court was dealing with an International Commercial Arbitration involving Rupee as well Euro components and moreover, the rate of interest was reduced in respect of foreign currency component to bring the interest rate in line with international rate on the ground that rate of interest prevailing on the rupee debt in India and on international currency in abroad were different and international rates were lower, which was not the case before the Supreme Court in *Reliance Infrastructure* (supra). It was further held that the Arbitral Tribunal was well within its jurisdiction under Section 31 to award interest at the rate of 15% per annum and no justification was found to reduce the same. Significantly, it was also observed that the High Court was not exercising any equity jurisdiction to re-settle the rate of interest as deemed fit by it as this was a matter relating to an award made by an Arbitral Tribunal in a commercial dispute. ***
>
> *****
>
> **27.** For all the aforesaid reasons, I am of the view that the impugned award calls for no interference in exercise of jurisdiction under Section 34 of the 1996 Act.
>
> ***(emphasis added)***

66. To augment, the Hon'ble Supreme Court has repeatedly underscored the limited scope of judicial review in matters relating to interest awarded by arbitral tribunals. In ***Sri Lakshmi Hotel Pvt. Ltd.*** *(supra)*, the Hon'ble Supreme Court reiterated that disputes concerning the rate of interest ordinarily fall outside the narrow confines of judicial review under Section 34 of the A&C Act. The

Court held that a difference of opinion regarding the appropriate rate of interest does not, by itself, constitute a ground to interfere with an arbitral award on the touchstone of public policy.

67. It is also pertinent to note that arbitral tribunals, while determining the rate of interest, are entitled to take into account the commercial nature of the transaction, the conduct of the parties, and the period for which the successful party has been deprived of monies legitimately due to it. The grant of interest thus serves as a restitutionary mechanism ensuring that the party wrongfully withholding payment does not derive an undue advantage from the delay.

68. In the present case, as noted earlier, the learned Arbitrator has carefully considered the factual matrix and has recorded a categorical finding that the Respondent was deprived of the legitimate use of monies due under the contract for a considerable period of time. The award of interest at the rate of 12% per annum is therefore intended to compensate the Respondent for the financial detriment suffered on account of such delay.

69. This Court is therefore of the considered opinion that the rate of 12% per annum awarded in the present case cannot, by any stretch of imagination, be described as exorbitant or unconscionable. On the contrary, it falls well within the range of rates that have been repeatedly upheld by courts in arbitral matters. The rate awarded is thus neither arbitrary nor disproportionate and does not warrant interference in the exercise of jurisdiction under Section 34 of the A&C Act.

70. It must also be emphasised that the Court, while exercising jurisdiction under Section 34, does not sit in appeal over the

conclusions of the arbitral tribunal. As reiterated by the Supreme Court in ***OPG Power Generation*** *(supra)* and ***Consolidated Construction Limited*** *(supra)*, the Court cannot substitute its own view merely because another interpretation of facts or law may appear possible. So long as the arbitral tribunal has adopted a plausible view based on the material before it, the award must be allowed to stand.

71. Applying the aforesaid principles to the present case, this Court finds that the determination of interest by the learned Arbitrator represents a reasoned exercise of discretion grounded in the contractual relationship between the parties and the factual circumstances of the dispute. The Petitioner has failed to demonstrate that the award of interest suffers from any illegality, perversity or violation of public policy.

72. Consequently, this Court finds no justification to interfere with the award of interest granted by the learned Arbitral Tribunal. The challenge raised by the Petitioner on this ground is therefore devoid of merit and stands rejected.

CONCLUSION:

73. In view of the foregoing discussion and the findings returned hereinabove, this Court finds no merit in the challenge mounted by the Petitioner to the Impugned Arbitral Award, passed by the learned Sole Arbitrator. Consequently, the present Petition, being ***O.M.P. (COMM) 73/2024***, stands dismissed.

74. Insofar as ***I.A. 43484/2024***, filed by the Respondent seeking withdrawal of the amount deposited by the Petitioner pursuant to the Order dated 07.02.2024, is concerned, the same is allowed. The Registry is directed to release the amount of ₹3,44,13,536/-, along

with accrued interest, to the Respondent, subject to the Corporate Guarantee furnished on behalf of the Respondent being taken on record.

75. Pending Application(s), if any, stands disposed of.

76. No order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 01, 2026/kr