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

% ***Judgment reserved on: 01.09.2025***
Judgment pronounced on: 09.10.2025

\+ FAO (COMM) 146/2025 and CM APPL. 34141/2025

DELHI TRANSCO LIMITED .....Appellant
Through: Mr. S.K. Singh, Adv.

versus

M/S HINDUSTAN URBAN INFRASTRUCTURE LIMITED .....Respondent
Through: Mr. Chirag Kher, Ms. Neha Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR J.

1. The present appeal has been filed under Section 37 of the **Arbitration and Conciliation Act, 1996**[1] read with Section 13 of the Commercial Courts Act, 2015, impugning the **Judgment dated 28.03.2025**[2], passed by the learned **District Judge-08, Tis Hazari Courts (Central), Delhi**[3], in Arbitration Case No. 117/2017 (*earlier registered as O.M.P. No. 33/2009*).

2. By the Impugned Judgment, the learned District Court dismissed the petition filed by the Appellant under Section 34 of the A&C Act, wherein the Appellant had sought to set aside the **Arbitral**

[1] A&C Act
2 Impugned Judgment
3 District Court

Award dated 02.09.2008[4] passed by a **three-member Arbitral Tribunal**[5].

BRIEF FACTS:

3. The Appellant, Delhi Transco Limited, is a statutory undertaking engaged in the transmission of electricity within the National Capital Territory of Delhi.

4. In 1991, the Appellant invited bids for the supply of 1500 kilometers of ACSR "Bersimis" Conductors to be utilized in the construction of a 400 KV Double Circuit Transmission Line, forming part of the 400 KV Delhi Ring Main System.

5. The Respondent, M/s Hindusthan Urban Infrastructure Limited (*formerly M/s Hindusthan Vidyut Products Ltd.*), submitted its bid on 13.05.1991. The bid was accepted by the Appellant on 29.05.1992 and a detailed Letter of Award/Purchase Order was issued on 30.06.1992, setting out the respective obligations of both parties.

6. In compliance with the contractual terms, the Appellant opened a Revolving Letter of Credit on 10.02.1994, which was communicated to the Respondent on 18.02.1994. Upon the Respondent's request, the supply schedule was revised and rescheduled, and the revised schedule was formally communicated by the Appellant on 28.02.1994.

7. According to the Appellant, despite granting several extensions and indulgences, the Respondent failed to fulfill its contractual obligations within the stipulated timelines. Consequently, by letter dated 11.11.1997, the Appellant rejected the Respondent's request for

[4] Arbitral Award
[5] Arbitral Tribunal/ Tribunal

waiver of **Liquidated Damages**[6], citing persistent delays in performance.

8. The Respondent, however, contended that the Appellant itself failed to perform its obligations under the contract. It was pleaded that the contract imposed reciprocal obligations, and the Respondent's performance depended upon corresponding performance by the Appellant. Despite numerous letters, notices, and efforts made by the Respondent during the contractual period, the Appellant allegedly failed to discharge its duties. The Respondent further asserted that even after the parties renegotiated and altered certain terms of the contract, the Appellant did not comply with its obligations, which resulted in material delays and, ultimately, partial non-performance of the supply contract.

9. The Appellant alleges that, due to the Respondent's failure to supply the full contracted quantity of conductor (falling short by 304 kilometers), it terminated the contract on 26.02.2002 and imposed LD. Subsequently, on 14.03.2002, the Appellant invoked the Bank Guarantee furnished by the Respondent to the extent of Rs. 23,92,462/-, appropriating the same towards LD.

10. Thereafter, on 01.03.2004, the Respondent invoked the arbitration clause of the contract, seeking reference of the disputes to arbitration. Consequent thereto, an Arbitral Tribunal consisting of three members was constituted, and on 07.12.2005, the disputes were formally referred to arbitration with directions for filing of pleadings and supporting documents.

11. The Respondent filed its Statement of Claim on 20.12.2005,

[6] LD

seeking relief, *inter alia*, for wrongful foreclosure of the contract, wrongful invocation of the bank guarantee, damages and other consequential reliefs. The Appellant filed its Reply and Counter Claim on 28.07.2006, contending that the Respondent was solely responsible for contractual defaults and seeking damages or, in the alternative, adjustment/set-off of its losses.

12. Upon completion of pleadings and hearing of the parties, the learned Arbitral Tribunal passed its award on 02.09.2008.

13. Aggrieved by the Arbitral Award, the Appellant preferred a petition under Section 34 of the A&C Act, which was registered as OMP No. 33/2009 before this Court. The petition was first listed on 21.01.2009, when interlocutory application seeking condonation of delay was allowed. The petition was formally admitted on 05.02.2009, and notice was issued to the Respondent.

14. By Order dated 14.12.2016, the petition under Section 34 was transferred to the learned District Court, where it was renumbered as Arbitration No. 117/2017.

15. After hearing the parties and considering their submissions, the learned District Court dismissed the petition under Section 34 by the Impugned Judgment. The learned District Court held that the petition was barred by limitation and further, on merit, observed that no grounds were established by the Appellant to warrant interference with the Arbitral Award under Section 34 of the A&C Act.

<u>CONTENTION OF THE APPELLANT</u>:

16. Learned Counsel for the Appellant would contend that both the Arbitral Award and the Impugned Judgment are liable to be set aside, for they suffer from perversity and manifest illegality, and he would

argue that the learned District Court erred in revisiting the issue of limitation under Section 34 of the A&C Act, which had already been adjudicated at an earlier stage.

17. He would submit that the Section 34 petition was first instituted before the learned Single Judge of this Court, who condoned the delay by Order dated 21.01.2009 and thereafter, admitted the petition, and since the matter was later transferred to the District Court in 2016, it was not open to the learned District Court to re-examine limitation, and such reconsideration was both impermissible in law and erroneous in the exercise of jurisdiction.

18. It would be further urged by the learned Counsel for the Appellant that although the issue of limitation concerning the Respondent's claims was framed before the learned Arbitral Tribunal, the Tribunal neither adjudicated upon it nor returned any findings, and this omission strikes at the root of the Award.

19. Learned Counsel would contend that the learned Tribunal failed to consider the pleadings, materials, and the defence raised by the Appellant, and since there was no discussion or reasoning on limitation qua the Respondents' claims, despite it being specifically raised, the Award is bereft of reasoning and tainted by patent illegality, and further, that the Tribunal dismissed the Appellant's contentions without cogent reasons and against the record.

20. In support of his submissions, learned Counsel for the Appellant would place reliance on the judgment of the Hon'ble Supreme Court in ***MMTC Ltd. v. Vedanta Ltd.***[7], which, according to him, affirms that under Section 3 of the Limitation Act, 1963, the

[7] (2019) 4 SCC 163

learned Arbitral Tribunal is under a statutory obligation to examine the question of limitation, irrespective of whether it has been specifically pleaded by the parties. It would be further contended that the learned Arbitral Tribunal's failure to discharge this mandatory duty not only renders the Award unsustainable but also amounts to a violation of the fundamental policy of Indian law.

21. Learned counsel for the Appellant would further submit that the Arbitral Award is arbitrary, cryptic, and lacking in reasoning, particularly with respect to the counter-claims filed by the Appellant, and he would argue that since the learned Tribunal failed to return any findings on the counterclaims and the learned District Court also failed to address this specific objection, the dismissal of the Section 34 petition cannot be sustained in law.

22. It would be urged by the learned Counsel for the Appellant that the Arbitral Tribunal, while rendering the Award in favour of the Respondent, incorrectly granted interest upon interest, and since such a grant is contrary to settled principles of law and suffers from inherent legal infirmity, the Award itself becomes unsustainable in the eyes of law.

CONTENTION OF THE RESPONDENT:

23. *Per Contra*, learned counsel for the Respondent would submit that the allegation that the learned District Court summarily dismissed the Section 34 petition on the ground of limitation is inaccurate, for in fact the District Court passed a reasoned judgment on merits after considering the entire record, and the Appellant has therefore, mischaracterised the basis of the rejection.

24. On the issue of limitation regarding the Respondent's claims, it

would be argued by the learned Counsel for the Respondent that even if the learned Tribunal omitted to return a specific finding, such omission would not invalidate the Award, for the omission was not material to the outcome.

25. Learned Counsel would contend that the contract was foreclosed on 26.02.2002 and the bank guarantee was invoked on 14.03.2002, and since arbitration was invoked on 01.03.2004, the claims were within limitation whether reckoned from February or March 2002, and thus, the issue was duly considered by the learned District Court.

26. It would further be submitted by the learned Counsel for the Respondent that the learned Tribunal considered all issues and rendered findings on evidence, and since the Respondent's principal claims were allowed in entirety, the counterclaim became infructuous and was rightly dismissed, and therefore, the Award cannot be said to be arbitrary.

27. Learned Counsel for the Respondent would submit that the contention regarding the award of interest upon interest is nothing but an afterthought, for it was never raised by the Appellant during the proceedings under Section 34, and it is a settled principle that an objection not urged before the Court below cannot be permitted to be raised for the first time in appellate proceedings.

28. Finally, it would be argued by the learned Counsel for the Respondent that the Appellant failed to establish any ground under Section 34 for setting aside the Award, and thus, the dismissal of the petition was justified.

ANALYSIS:

29. This Court has heard the submissions of both parties at length and has conducted a thorough examination of the pleadings, documents, the Impugned Judgment, and the Arbitral Award.

30. At the outset, it is necessary to emphasize that this Court is cognizant of the limitations of its jurisdiction while adjudicating a challenge under Section 37 of the A&C Act. The scope of interference in an appeal under Section 37 is extremely narrow and is confined to identifying errors of law or jurisdictional defects in the Impugned Order. This provision does not empower the Court to re-appreciate evidence, re-assess factual findings, or revisit the merits of the dispute. This principle has been consistently affirmed by the Hon'ble Supreme Court in numerous judgments. In a recent judgment, ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***[8], the Hon'ble Supreme Court summarized the settled position as follows:

> "**11.** Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.
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> **12.** It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.
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> **13.** In paragraph 11 of ***Bharat Coking Coal Ltd. v. L.K. Ahuja***, it has been observed as under:
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> > "11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has

[8] 2024 SCC OnLine SC 2632

applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."

14. It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.

15. In ***Dyna Technology Private Limited v. Crompton Greaves Limited***, the court observed as under:

"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

16. It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act.

In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.

17. In paragraph 14 of ***MMTC Limited v. Vedanta Limited***, it has been held as under:

> "14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

18. Recently a three-Judge Bench in ***Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking***referring to***MMTC Limited*** *(supra)* held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the courts should not interfere with the arbitral award lightly in a casual and a cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle the courts to reverse the findings of the arbitral tribunal.

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CONCLUSION:

20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. **It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act.** Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not

> liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.
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> **21.** It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement."
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> ***(emphasis supplied)***

31. In the present case, the Appellant filed the petition under Section 34 of the A&C Act, seeking to set aside an Arbitral Award. However, there was a delay in filing the petition. The Appellant, being a public sector undertaking, attributed this delay to extensive internal administrative procedures, which it contended, were unavoidable and not the result of any negligence or laches. While initially, the matter was pending before this Court, the learned Single Judge examined the application for condonation of delay. Exercising judicial discretion, the learned Single Judge condoned the delay and later admitted the petition by issuing notice to the Respondent.

32. Pursuant to the enactment of the Commercial Courts, 2015, and the establishment of the Commercial Division and Commercial Appellate Division, along with the subsequent revision of pecuniary jurisdictions, the matter was transferred from the High Court to the District Court by order dated 14.12.2016. Upon transfer, it was renumbered as Arbitration Case No. 117/2017. Since the delay had already been condoned by the learned Single Judge, the District Court had no necessity to revisit or reconsider the question of delay. There was no review, recall, or challenge to the order dated 21.01.2009

condoning the delay by the Respondent, and therefore, the District Court was bound to proceed with the matter on the merits.

33. Once the learned Single Judge exercised discretion and condoned the delay, that decision attained finality. Under established principles of judicial discipline and jurisdiction, a matter adjudicated by a competent authority cannot be reopened by a subsequent court unless specifically challenged or reviewed by the parties, which did not occur in this case.

34. We are mindful that, while the Impugned Judgment reflects that the learned District Court, in dismissing the Section 34 petition, did not base its decision solely on the ground of delay but also considered the merits of the claim, it was nonetheless entirely unwarranted for the District Court to revisit the same in light of the prior condonation of delay by the learned Single Judge, which had attained finality.

35. In light of the foregoing, the learned District Court's determination that the petition was time-barred was legally flawed.

36. Now, turning to the merits of the other contentions, the Appellant advanced three principal submissions before this Court, *first*, that the learned Arbitral Tribunal erred in failing to consider the delay in filing claims; *second*, that the Arbitral Award did not provide any express reasoning regarding the Appellant's counter-claim, leaving that aspect unaddressed; and *third*, that the learned Tribunal's award of interest upon interest was legally unsustainable.

37. With regard to the objection concerning limitation in filing the claim, it is noted that this issue was raised before the learned District Court, which, after considering the submissions of both parties, found no merit in the contention. The relevant extract of the Impugned

Judgment reads as follows:

> "**a) Objection qua limitation period**
> The petitioner has claimed that the Ld. Arbitrators did not consider the fact that the claim filed by the respondent was time barred. Per contra, Ld. Counsel for the respondent argued that his claim was well within limitation period and the Ld. Arbitrators decided the claim rightly as per law. In this context the relevant dates are hereby mentioned which are as under: -
> a) The offer of the respondent was accepted by the petitioner on 29.05.1992;
> b) That as per the agreement, the respondent was to supply the Bersimis Conductor on or before 30.06.1993;
> c) Delivery schedule was rescheduled with effect from February, 1994,
> d) Thereafter, dispute arose between the parties and meeting was held on 30.06.1992 and thereafter again on 14.12.1995 whereby the respondent did not raise any issue of waiver of liquidated damages and the issues were resolved.
> e) According to the petitioner respondent failed to deliver the entire material finally on 26.02.2002, the petitioner foreclosed the contract.
> f) Vide letter dated 01.03.2004, the petitioner invoked clause no. 30 of appointment of Ld. Arbitrator.
> g) The petitioner, in the para no. 22 of the petition has categorically stated that the institute of engineers (India) appointed the arbitrator, however the same was challenged before the Hon'ble High Court in civil writ petition no. 19783/2004 vide order dated 03.08.2005, the Hon'ble court was pleased to direct the IEL to appoint 3rd arbitrator from Delhi.
> h) On 29.11.2005, the arbitration tribunal was informed in terms direction of Hon'ble High Court thereafter the arbitration commenced and the petitioner filed the claim on December, 2005.
> From the above admitted facts, the cause of action for the respondent arose when the petitioner herein foreclosed the contract i.e. on 26.02.2002, thereafter, the respondent invoked the clause no. 30 for appointment of arbitrators vide letter dated 01.03.2004, but the same was challenged and it was finally decided on 29.11.2005, vide which, 3rd arbitrator from Delhi was directed to be appointed. It is only after the above said order of the Hon'ble Delhi High Court, the respondent could file the claim. Therefore, the claim of the petitioner was well within limitation period."

38. Before proceeding further, it is pertinent to outline the settled legal position regarding the limitation governing the initiation or commencement of arbitration proceedings under the A&C Act. The

Hon'ble Supreme Court, in ***Arif Azim Co. Ltd. v. Aptech Ltd.***[9], provided a detailed exposition on this issue, clarifying the distinction between the limitation period for invoking arbitration and the limitation for raising substantive claims. The relevant portion of the judgment is reproduced below for ready reference:

> "***(a) When does the right to apply under Section 11(6) accrue?***
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> **53.** It has been held in a catena of decisions of this Court that the limitation period for making an application seeking appointment of arbitrator must not be conflated or confused with the limitation period for raising the substantive claims which are sought to be referred to an Arbitral Tribunal. The limitation period for filing an application seeking appointment of arbitrator commences only after a valid notice invoking arbitration has been issued by one of the parties to the other party and there has been either a failure or refusal on the part of the other party to make an appointment as per the appointment procedure agreed upon between the parties.
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> ***(b) When does the cause of action arise?***
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> **79.** We are not impressed with the submission canvassed on behalf of the respondent that the cause of action for raising the claims arose on 1-11-2017 and thus the limitation period for invoking arbitration should commence from the said date. The petitioner has alleged that the respondent received the payment for the course from ICCR on 3-10-2017. However, the perusal of the communication exchanged between the parties indicates that it is only on 28-3-2018 that the right of the petitioner to bring a claim against the respondent could be said to have been crystallised. The position of law is settled that mere failure to pay may not give rise to a cause of action. However, once the applicant has asserted its claim and the respondent has either denied such claim or failed to reply to it, the cause of action will arise after such denial or failure.
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> **80.** In*B & T AG* v. *Union of India*, (2024) 5 SCC 358, three principles of law came to be enunciated by this Court regarding the manner in which the point in time when the cause of action arose may be determined. First, that the right to receive the payment ordinarily begins upon completion of the work. Secondly, a dispute arises only when there is a claim by one side and its denial/repudiation by the other and thirdly, the accrual of cause of action cannot be indefinitely postponed by repeatedly writing letters or sending reminders. It was further emphasised by this

[9] (2024) 5 SCC 313

Court that it was important to find out the "*breaking point*" at which any reasonable party would have abandoned the efforts at arriving at a settlement and contemplated referral of the dispute to arbitration. Such breaking point would then become the date on which the cause of action could be said to have commenced.

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(*c*) *When is arbitration deemed to have commenced?*

88. Section 21 of the 1996 Act provides that the arbitral proceedings in relation to a dispute commence when a notice invoking arbitration is sent by the claimant to the other party:

> "**21. *Commencement of arbitral proceedings***. — Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

89. In *Milkfood Ltd.* v. *GMC Ice Cream (P) Ltd.*, (2004) 7 SCC 288, it was observed thus: (SCC pp. 301-302 & 307, paras 26-27, 29 & 49)

> "*26.* The commencement of an arbitration proceeding for the purpose of applicability of the provisions of the Indian Limitation Act is of great significance. Even Section 43(1) of the 1996 Act provides that the Limitation Act, 1963 shall apply to the arbitration as it applies to proceedings in court. Sub-section (2) thereof provides that for the purpose of the said section and the Limitation Act, 1963, an arbitration shall be deemed to have commenced on the date referred to in Section 21.
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> *27.* Article 21 of the Model Law which was modelled on Article 3 of the UNCITRAL Arbitration Rules had been adopted for the purpose of drafting Section 21 of the 1996 Act. Section 3 of the 1996 Act provides for as to when a request can be said to have been received by the respondent. Thus, whether for the purpose of applying the provisions of Chapter II of the 1940 Act or for the purpose of Section 21 of the 1996 Act, what is necessary is to issue/serve a request/notice to the respondent indicating that the claimant seeks arbitration of the dispute.
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> ***
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> *29. For the purpose of the Limitation Act an arbitration is deemed to have commenced when one* party *to the arbitration agreement serves on the other a notice requiring the appointment of an arbitrator*. This indeed is relatable to the other purposes also, as, for example, see Section 29(2) of the (English) Arbitration Act, 1950.
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> *49. Section 21 of the 1996 Act, as noticed hereinbefore, provides as to when the arbitral proceedings would be*

deemed to have commenced. Section 21 although may be construed to be laying down a provision for the purpose of the said Act but the same must be given its full effect having regard to the fact that the repeal and saving clause is also contained therein. Section 21 of the Act must, therefore, be construed having regard to Section 85(2)(a) of the 1996 Act. Once it is so construed, indisputably the service of notice and/or issuance of request for appointment of an arbitrator in terms of the arbitration agreement must be held to be determinative of the commencement of the arbitral proceeding."

(emphasis supplied)

90. Similarly, in *BSNL* v. *Nortel Networks (India) (P) Ltd.*, (2021) 5 SCC 738, it was held by this Court thus: (SCC p. 766, para 51)

"*51.* The period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, [*S.S. Rathore* v. *State of M.P.*, (1989) 4 SCC 582 : 1990 SCC (L&S) 50; *Union of India* v. *Har Dayal*, (2010) 1 SCC 394; *CLP (India) (P) Ltd.* v. *Gujarat Urja Vikas Nigam Ltd.*, (2020) 5 SCC 185] or mere settlement discussions, where a final bill is rejected by making deductions or otherwise. Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions. Section 9 of the Limitation Act makes it clear that:'where once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it'. *There must be a clear notice invoking arbitration setting out the "particular dispute"* [Section 21 of the Arbitration and Conciliation Act, 1996.] *(including claims/amounts) which must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail*."

…."

(emphasis supplied)

39. In cases involving wrongful encashment of bank guarantees or imposition of LD, the Supreme Court in ***B & T AG v. Union of India***[10] clarified that the cause of action accrues when all material facts exist that entitle a party to seek relief. The Apex Court held that the "breaking point", i.e., the moment when the aggrieved party could

[10] (2024) 5 SCC 358

no longer pursue settlement and had to invoke arbitration, marks the commencement of the limitation period. The relevant excerpt of the said judgment reads as follows:

> "**63.** Mookerjee, J. in*Dwijendra Narain Roy* v. *Joges Chandra De*, 1923 SCC OnLine Cal 214, has explained the true test to determine when a cause of action could be said to have accrued observing as under : (SCC OnLine Cal para 10)
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> > "*10. … The substance of the matter is that time runs when the cause of action accrues and a cause of action accrues when there is in existence a person who can sue and another who can be sued, and when all the facts have happened which are material to be proved to entitle the plaintiff to succeed Coburn* v. *Colledge*, (1897) 1 QB 702 (CA)*; Gelmini* v. *Moriggia*, (1913) 2 KB 549. *The cause of action arises when and only when the aggrieved party has the right to apply to the proper tribunals for relief: Whalley* v. *Whalley*, (1816) 1 Mer 436: 35 ER 734. *The statute does not attach to a claim for which there is as yet no right of action and does not run against a right for which there is no corresponding remedy or for which judgment cannot be obtained. Consequently the true test to determine when a cause of action has accrued is to ascertain the time when plaintiff could first have maintained his action to a successful result*."
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> > (emphasis supplied)
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> **64.** "Cause of action" means the whole bundle of material facts, which it is necessary for the plaintiff to prove in order to entitle him to succeed in the suit. In delivering the judgment of the Board in *Chand Kour* v. *Partab Singh*, 1888 SCC OnLine PC 14 Lord Watson observed: (SCC OnLine PC)
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> > "*… Now the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the* [**Ed.**: The matter between two asterisks has been emphasised in original.] *media* [**Ed.**: The matter between two asterisks has been emphasised in original.] *upon which the plaintiff asks the court to arrive at a conclusion in his favour*."
> >
> > (emphasis supplied)
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> **65.** Cause of action becomes important for the purposes of calculating the limitation period for bringing an action. It is imperative that a party realises when a cause of action arises. If a

party simply delays sending a notice seeking reference under the 1996 Act because they are unclear of when the cause of action arose, the claim can become time-barred even before the party realises the same.

66. *Russell on Arbitration* by Anthony Walton (19th Edn.) at pp. 4-5 states that the period of limitation for commencing an arbitration runs from the date on which the "cause of arbitration" accrued, that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place upon the dispute concerned. The period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued:

> "Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued."

Even if the arbitration clause contains a provision that no cause of action shall accrue in respect of any matter agreed to be referred to until an award is made, time still runs from the normal date when the cause of action would have accrued if there had been no arbitration clause.

67. In *Law of Arbitration* by Justice Bachawat at p. 549, commenting on Section 37, it is stated that subject to the 1963 Act, every arbitration must be commenced within the prescribed period. Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date when the cause of action accrues, so in the case of arbitrations the claim is not to be put forward after the expiration of a specified number of years from the date when the claim accrues. For the purpose of Section 37(1) "action" and "cause of arbitration" should be construed as arbitration and cause of arbitration. The cause of arbitration arises when the claimant becomes entitled to raise the question, that is, when the claimant acquires the right to require arbitration. An application under Section 11 of the 1996 Act is governed by Article 137 of the Schedule to the 1963 Act and must be made within 3 years from the date when the right to apply first accrues. There is no right to apply until there is a clear and unequivocal denial of that right by the respondent. It must, therefore, be clear that the claim for arbitration must be raised as soon as the cause for arbitration arises as in the case of cause of action arisen in a civil action.

68. Whether any particular facts constitute a cause of action has to be determined with reference to the facts of each case and with reference to, the substance, rather than the form of the action. If an

> infringement of a right happens at a particular time, the whole cause of action will be said to have arisen then and there. In such a case, it is not open to a party to sit tight and not to file an application for settlement of dispute of his right, which had been infringed, within the time provided by the Limitation Act, and, allow his right to be extinguished by lapse of time, and thereafter, to wait for another cause of action and then file an application under Section 11 of the 1996 Act for establishment of his right which was not then alive, and, which had been long extinguished because, in such a case, such an application would mean an application for revival of a right, which had long been extinguished under the 1963 Act and is, therefore, dead for all purposes. Such proceedings would not be maintainable and would obviously be met by the plea of limitation under Article 137 of the 1963 Act.
>
> ******
>
> **72.** At the cost of repetition, we state that when the bank guarantee came to be encashed in the year 2016 and the requisite amount stood transferred to the Government account that was the end of the matter. This "Breaking Point" should be treated as the date at which the cause of action arose for the purpose of limitation."
>
> ***(emphasis supplied)***

40. In the present case, it is undisputed that the Appellant foreclosed the contract and imposed liquidated damages on 26.02.2002. This action was followed by the actual encashment of the bank guarantee amounting to Rs. 23,92,462/- on 14.03.2002, which constituted a concrete financial determination. The Respondent, aggrieved by these actions, invoked arbitration and filed its Statement of Claim, which eventually led to the Arbitral Award.

41. As per the authorities cited hereinabove, arbitration must be invoked within three years from the accrual of the cause of action. Here, counting three years from the date of contract foreclosure or the date of bank guarantee encashment, the limitation period was adhered to. It is also an undisputed fact that the Respondent invoked the arbitration clause on 01.03.2004, leading to the constitution of a three-member Arbitral Tribunal. The disputes were formally referred to arbitration on 07.12.2005, within three years of the notice invoking

arbitration, which fully aligns with the principles in ***Arif Azim*** (*supra*).

42. During the course of arguments before us, the principal submission advanced on behalf of the Appellant on this issue was that even if the alleged non-consideration of the plea of limitation by the learned Arbitral Tribunal is otherwise inconsequential, the very fact that the plea was raised but not specifically dealt with, should, by itself, constitute sufficient ground for setting aside the arbitral award. In essence, the Appellant sought to contend that non-adjudication of an issue raised before the Tribunal, regardless of its materiality, *ipso facto* vitiates the award.

43. What the Appellant seeks is to let loose the proverbial "unruly horse" that Justice Krishna Iyer in his celebrated Judgment in ***Board of Mining Examination and Chief Inspector of Mines v. Ramjee***[11] sought to rein in. To our mind, such a demand is tantamount to mandating Judicial authorities to tackle every plea thrown at them, without affording them the discretion to winnow the inconsequential and unnecessary chaff from the substantive grain, the material aspects of a matter.

44. In the context of Arbitral proceedings, which are intended to ensure expeditious adjudication of disputes, with minimal judicial interference, such a mandate would run contrary to the very essence of the expedition on which it is predicated.

45. The jurisdiction of a Court under Section 34 of the A&C Act is supervisory in nature and circumscribed by narrow grounds expressly enumerated therein. An arbitral award can be set aside only if one or

[11] (1977) 2 SCC 256

more of such grounds are clearly established and only if the defect goes to the root of the matter, thereby rendering the award patently illegal, perverse, or in conflict with the fundamental policy of Indian law.

46. To permit the setting aside of an award on the basis of the particular omission alleged in the present case, which, to our mind, is not only incorrect, but also does not, in any manner, affect the merits of the decision, would run contrary to the very object and purpose of the A&C Act.

47. The mere non-consideration of a plea, which admittedly would not impact the outcome of the proceedings, cannot be held to be a patent illegality, and therefore, does not provide fertile ground for setting aside an award under Section 34. The threshold to declare an award or a finding, or the lack of it, as being Patently Illegal, is extremely high, and to our mind, the plea taken herein in respect of non-consideration of a plea that would make no material difference to the final outcome, would fail to even attempt to scale this threshold.

48. At this stage, we find it pertinent to refer to the judgment of the Hon'ble Supreme Court in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[12]. The relevant observations made therein are extracted below for ready reference:

> "**38.** In ***ONGC Ltd.* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705**, a two-Judge Bench of this Court, in the context of a challenge to a domestic arbitral award under Section 34(2)(*b*)(*ii*) of the 1996 Act as it stood prior to the 2015 Amendment, ascribed wider meaning to the expression "public policy of India" in the following terms: (SCC pp. 727-28, para 31)
>
> > "*31*. … the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. *It can be stated that the concept of public policy connotes*

[12] (2025) 2 SCC 417

some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view, in addition to narrower meaning given to the term "public policy" in *Renusagar case* [***Enexio Power Cooling Solutions India (P) Ltd.* v. *Gita Power & Infrastructure (P) Ltd.*, 2021 SCC OnLine Mad 5035**], it is required to be held that the award could be set aside if it is patently illegal. The result would be — award could be set aside if it is contrary to:

(*a*) fundamental policy of Indian law; or

(*b*) the interest of India; or

(*c*) justice or morality, or

(*d*) in addition, if it is patently illegal.

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 the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void*."

(emphasis supplied)

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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.

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68. In ***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131: (2020) 2 SCC (Civ) 213**, 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. case*, (2019) 15 SCC 131, para 37: (2020) 2 SCC (Civ) 21**3]. Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award [See ***Ssangyong Engg. case*, (2019) 15 SCC 131, para 38: (2020) 2 SCC (Civ) 213**].

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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.

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169. In the instant case, the appellate court took pains, and rightly so, to understand and explain the underlying reason on which the claim of Enexio was found within limitation. As noticed above, Para 16.03(*d*) of the award contains the reason based on which the Arbitral Tribunal concluded that Enexio's claim was within limitation. However, in Para 16.03(*d*), the Arbitral Tribunal failed to state, in so many words, that it was treating the minutes of meeting dated 19-4-2018 as an acknowledgment within the meaning of Section 18 of the 1963 Act. This omission on the part of the Arbitral Tribunal was trivial and did not travel to the root of the award, therefore, in our view, the appellate court was well within its jurisdiction to explain the underlying legal principle which the Arbitral Tribunal had applied; and in doing so, it did not supplant the reasons provided in the award. In this view of the matter, the impugned order [***Enexio Power Cooling Solutions India (P) Ltd.* v. *Gita Power & Infrastructure (P) Ltd.*, 2021 SCC OnLine Mad 5035**] of the Division Bench does not suffer from any legal infirmity. Sub-issue (*e*) is decided in the aforesaid terms."

(emphasis supplied)

49. In view of the foregoing, we are of the considered opinion that the objection relating to limitation, as urged by the Appellant before the learned District Court, was wholly devoid of substance. The learned District Court, after duly considering the submissions of the

Appellant on this aspect, rightly rejected the same. We see no infirmity in the District Court's reasoning or conclusion in this regard.

50. The Appellant has advanced another substantive challenge, contending that the learned Arbitral Tribunal failed to provide independent or sufficient reasoning while dismissing its counter-claims. It is argued that such omission purportedly violated the principles of natural justice and the requirement of a reasoned award under Section 31(3) of the A&C Act.

51. For context, the findings of the Arbitral Tribunal in the Award dated 02.09.2008 are extracted below:

> "**5.0**. AT framed following Issues in consultation with the parties.
> General Issues:
> a) Whether claim submitted by the claimant is Time barred? ----------(OPC)
> b) Whether counter claim of Respondent is Time barred? ----------(OPR)*
> c) Whether AT can adjudicate upon the c/claim being beyond scope of reference? ------(OPR)
>
> Specific Issues:
> d) Whether the Claimant is entitled to the return of LD amount, which was sourced after encashment of claimant's BG? ----------(O PC)
> e) Whether the Respondent has committed breach of contract? If so is the claimant is entitled to damages/expenses as claimed? ----------(OPC)
> f) Whether the claimant is entitled for Interest? If so on what amount, which period & at what rate? ----------(OPC)
> g) Whether the Claimant has committed breach of contract due to non-supply of 304.72 Kms conductors? If so is the Respondent is entitled to damages/ to what amount? ----------(OPR)
> h) Whether the Respondent is entitled to Interest on un adjusted Advance as per c/claim no.27 (OPR)
> i) Whether Respdt. is entitled to Interest, if so on what amount, which period & at what rate?----(OPR)
> j) Relief.

6.0. Now therefore the Arbitral Tribunal, after hearing the parties at length, examination & carefully considering the evidence adduced & all the submissions concerning the issues framed & the arguments advanced by them, do hereby make & publish the award Claim-wise as follows:

Claims:

Claim No. (i) (a).

Refund / Return of the amount realized under the Bank guarantee on the ground of alleged liquidated damages.

Claim amount: Rs 23,92,462.

Analysis:

i) After expiry of originally agreed contract completion date on 30.06.'93, the performance under the contract was continuing without any mutually agreed delivery schedule between the parties.

ii) The period of non-performance i.e., short supplies of 304.72 kms of conductors relates to the period of Feb. '94 to July '94, which is beyond originally stipulated completion period.

iii) Amended LC as required by claimants was established on 04.03.194, where as supplies were sought from Feb '94. Such demand for supplies by respondents is not conforming to the approved bar chart-which calls for 02 months of preparatory time. Besides the above. Revolving LC, needed revalidation/re-in-statement within 07 days, & the same was delayed by respondents.

iv) There is no record to confirm that any formal notice was issued reserving respondents' right to impose LD after July '94, except for letter dtd. 11.11.'97 wherein it was stated 'that no reason for waiver of LD' for the expected performance in July 194. Even this intimation is after more than 03 years of occurrence of the event.

v) LD for the above was sought to be levied amounting to Rs. 23,92,462 on 26.02.102, i.e. after 07 Years.

vi) LD was levied for non-performance during the period when no mutually agreed delivery schedule existed.

vii)It is improper on the part of respondent to ask for delivery in Feb 194, whereas the LC established by the respondents was in March 194. Further this is in contravention to the agreed bar chart, which provided for at least 02 months of preparatory period. The respondent failed to establish reasonableness of delivery schedule. Respondents insisted unilateral supply schedule. The respondents did not establish/revalidate the revolving LC in time, therefore in view of the above the claimants were not obliged to supply.

viii) The period of non-performance was from Feb. 94 to July 194, which was beyond originally stipulated completion period. There was no communication for more than 03 years on this issue. As late as Nov. 197 the respondents merely conveyed to the claimants that there was no reason for waiver of LD. Where as up to that stage no LD was levied. Late after more than 07 years period

sought to levy LD amounting to Rs. 2292462 on 26.02.102. To realize the LD amount the respondents en-cashed BG on 14.03.02.

In view of the above, levy of LD was incorrect & not justified. Therefore AT accepts the claim, & directs the respondent to return the LD amount levied to the Claimant.
Amount of Award Rs. 23,92,462/-

Claim No. (1) (b)
Interest @ 15% P.A. there on from 18.02.2004 up to date of claim i.e. 10.12.05.
Claim amount: Rs. 6,49,651.
Analysis/Amount of Award:
AT considers that the interest @ 09% PA is reasonable from 01.03.04 (in place of 18.02.104) to 10.12.105
i.e. for 01 year 09 months & 09 days.
Amount of award works out to Rs.367459/-

Claim No. (ii)
Interest @ 15% P.A. on delayed payment for supplies as per details in Annexure-M.
Claim amount: **Rs 2,62,564**
Analysis/Amount of Award:
The claim pertains to delayed payment of 13 bills raised during 25.02.194 to 30.07.194. The delay ranged from 11 days to 32 days. AT considers the claim justified & interest @ 09% PA is reasonable.
Amount of award works out to Rs 157538/-

Claim No. (iii)
a). Guarantee, commission & other charges paid by the Claimant. (Though entitled from 01.06.1993, however limited to from 01.04.1995 unto 31.12. 2000 as per statement with debit notes issued by bank marked Annexure-N collectively).
a) Claim amount: Rs15, 87,124.
b) Interest there on @ 15% P.A. from 31.12.2000 till date of claim i.e. 10.12.2005.
Claim amount: Ra 11,77,026
Analysis/Amount of Award:
The claim preferred by the claimant pertains to the period before encashment of BG by the respondents. Hence the AT considers the claim is not justified**. Amount of Award Rs. - Nil**

Claim No. (iv)
Damages/compensation towards idle infrastructure, labour, storage of materials, due to breach on, the part of respondents preventing the claimant from making supplies as per the contract.

Claim amount: Rs1500,000
Analysis/Amount of Award:
Actuals & proof there of have not been placed on record by the claimant, hence the claim is rejected.
Amount of Award Rs. ---------- Nil

Claim No. (v).
Legal, Traveling, & other expenses incurred by the claimant from time to time
Claim amount: Rs. 500,000.
Analysis/Amount of Award:
In the facts of the case the parties shalt bear their respective costs.
Amount of Award Rs. --------Nil

Claim No. (vi)
Further interest @ 15% P.A. on Rs total Rs 80,68,827. (Total of the above claims) from the date of above claim till date of award/payment.
Claim amount: Not quantified.
Analysis/Amount of Award:
This part of interest is covered in the ABSTRACT of Award.

Counter Claims:
C/Claim No. 1
Extra cost incurred by the Respondent due to non supply of 304.72 kms conductor during Feb '94 to July 1994.
Claim amount: **Rs 73,29,717.97**
Analysis/Amount of Award:
In view of the reasons/analysis under claim No. 1 of claimants, the counter claim no.1 is not justified & as such rejected.
Amount of Award Rs. Nii

Claim No. 2
Interest amount on account unadjusted advance.
Claim amount: **Rs. 68,11,582**
Analysis/Amount of Award:
The advance was granted as per obligations under the contract. In as much as Respondents did not fulfill their own obligations, the counter claim is not justified and hence rejected.
Amount of Award Rs. Nil.

7. ABSTRACT OF AWARD AMOUNTS:
a). Total amount awarded to Claimants:
Claim (i) (a) Rs. 23,92,462/--
(i)(b) Rs. 3,67,459/---
Claim (ii) Rs. 1,57,538/---
Claim (iii) Rs. Nil -------

Claim (iv) Rs. Nil -------
Claim (v) Rs. Nil -------
Claim (vi) @ 9% from the date of claim till the date of award (from 19.12.'05 to 02.09.'08, say 2.727 years on the above Rs. 2917459/-). This works out to RS 7,16,031/-
TOTAL Rs. 36,33,490/--

b). Total amount awarded to Respondent:
c/Claim 1 Rs. Nil
c/Claim 2 Rs. Nil
Other claims Rs.Nil
*Total RS. Nil

4. Each party to the dispute shall bear the expenses on their own. Claimants paid charges for Arbitration venue for 22 hearings. Respondents paid charges for Arbitration venue for 03 hearings. Since this exp. is to be shared equally by the parties, the respondents will pay to the claimants, the charges for 9.5 meetings amounting to Rs. 10050/-.
5. In view of the foregoing, Arbitral Tribunal awards that the Respondent shall pay an amount of RS. 36,33,490/- + Rs. 10050/- towards arbitration venue charges, all totalling to Rs. 3643540/- to the Claimant, with in a month of publishing the Award, beyond this period an interest 18% PA shall be payable by the respondents.
6. The Award is made & published on September 02, 2008."

52. In considering the Appellant's contentions in the Impugned Judgment, the learned District Court observed and analyzed the issue as follows:

"**b)Objection qua "dismissal of counter claim without making any observation"**
Ld. counsel for the petitioner has contended that alongwith reply to the claim of the respondent he also filed counter claim, but the same was dismissed by holding that "in view of reasons / analysis in claim no. 1 of the counter claimant, the counter claim no. 1 was not justitfied and as such rejected". The above said contention was refuted by the respondent stating that the Ld. Arbitrators made detailed observations while deciding the claim filed by the respondent. The counter claim was also based on the same facts, accordingly the Ld. Arbitrators rejected the counter claim on the basis of detailed analysis made by them discussing the facts before them.

16. I have perused the impugned award dated 02.09.2008. The counter claim was rejected holding that, "in view of the reasons and analysis, the counter claim stands rejected."

17. For the sake of easy reference, the analysis of the Ld. Arbitrators made as under: -

Analysis: -

"i) After expiry of originally agreed contract completion date on 30.06.1993, the performance under the contract was continuing without any mutually agreed delivery schedule between the parties.

ii) The period of non-performance i.e. short supplies of 304.42 kms of conductors relates to the period of February, 1994, which is beyond originally stipulated completion period.

iii) Amended LC as required by claimants was established on 04.03.1994, where as supplies were sought from Feb, 1994. Such demand for supplies by respondents is not conforming to the approved bar chart-which calls for 02 months of preparatory time. Besides the above. Revolving LC, needed revalidation/re-in-statement within 7 days, & the same was delayed by respondents.

iv) There is no record to confirm that any formal notice was issued reserving respondents' right to impose LD after July, 1994 except for letter dated 11.11.1997 wherein it was stated 'that no reason for waiver of LD' for the expected performance in July, 1994. Even this intimation is after more than 3 years of occurrence of the event.

v) LD for the above was sought to be levied amounting to Rs. 23,92,462/- on 26.02.2002, i.e. after 07 years.

vi) LD was levied for non-performance during the period when no mutually agreed delivery schedule existed.

vii) It is improper on the part of respondent to ask for delivery in February, 1994, whereas the I.C established by the respondents was in March, 1994. Further this is an contravention to the agreed bar chart, which provided for at least 2 months of preparatory period. The respondent failed to establish reasonableness of delivery schedule. Respondents insisted unilateral supply schedule. The respondents did not establish / revalidate the revolving LC in time, therefore, in view of the above the claimants were not obliged to supply.

viii) The period of non-performance was from February, 1994 to July 1994 which was beyond originally stipulated completion period. There was no communication for more than 3 years on this issue. As late as November, 1997 the respondents merely conveyed to the claimants that there was no reason for waiver of L.D. Where as up to that stage

> no LD was levied. Later after more than 7 years period sought to levy LD amounting to Rs. 2292462/- on 26.02.2002. To realize the LD amount the respondents en-cashed BG on 14.03.2002."
>
> **18.** The above said analysis makes it evident that the Ld. Arbitrators while deciding the claim and counter claim, discussed the facts in entirety including the claim as well as counter claim. Therefore, the objections raised by the petitioner stands nowhere as the counter claim of the petitioner was not rejected without giving any reasoning. The Ld. Arbitrators were not bound to give separate findings/analysis for deciding the counter claim. Both the parties were heard on the claim as well as counter claim and then impugned award was passed on merits while giving detailed reasoning/analysis."

53. A meticulous examination of the arbitral record reveals that the Respondent's claims for refund of LD and the Appellant's counter-claims for additional costs arising from alleged short-supply were intrinsically adversarial, yet stemmed from a common factual matrix concerning the performance, breach, and termination of the same contract. The learned Arbitral Tribunal, in its award addressing multiple issues, conducted a thorough and detailed analysis of the contractual timeline, the conduct of the parties, the validity of the LD imposition, and the encashment of the bank guarantee.

54. At this stage, we also deem it appropriate to take note of the judgment of the Hon'ble Supreme Court in ***Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.***[13]. The relevant paragraphs of the said judgment read as under:

> "**34.** The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

[13] (2019) 20 SCC 1

> **35.** When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards."
>
> (***emphasis supplied***)

55. The learned Tribunal's principal finding that the levy of LD by the Appellant was unjustified because it related to a period without a mutually agreed delivery schedule and was effected after an inordinate delay directly undermined the basis of the Appellant's counter-claim, which sought to recover losses arising from the very same alleged breach.

56. The learned District Court correctly held that when the foundational basis of a counter-claim is conclusively negated by the reasoning applied to the principal claim, this constitutes sufficient compliance with the statutory requirement of a reasoned award.

57. When read as a whole, the Award leaves no ambiguity that the dismissal of the counter-claims was the *ergo* to the learned Tribunal's

findings on the claims of the Appellant.

58. Even a bare perusal of the Arbitral Award demonstrates that the learned Tribunal applied the same analytical approach consistently when considering other claims raised by the Respondent.

59. Accordingly, there is no infirmity in the learned District Court's finding on this point, and the Appellant's objection regarding the adequacy of reasoning for the counter-claims is without merit.

60. The Appellant further contended before us that the learned Arbitral Tribunal had allegedly granted "interest upon interest" in its Award.

61. However, upon a careful perusal of the record, it is evident that the Appellant did not raise any such objection during the proceedings under Section 34 of the A&C Act, either in its pleadings or during the course of oral submissions.

62. Even in the pleadings filed under Section 37, no specific ground has been taken in this regard. The only reference is in a vague and general ground which does not demonstrate, with any clarity, how the learned Arbitral Tribunal is alleged to have wrongly awarded either "interest upon interest" or interest simpliciter. The relevant ground in the Section 37 appeal reads as follows:

> "(v) Because the Ld. Court below failed to appreciate that the Ld. Arbitral Tribunal was consequently not justified in awarding interest under either of the Claims."

63. It was only during the course of arguments in the Section 37 appeal that the learned counsel for the Appellant, for the first time, sought to urge the objection of "interest upon interest"; and when specifically queried by this Court as to whether such a ground had ever been raised before the Section 34 Court, the response was vague

and evasive.

64. It is a settled principle of law, consistently reaffirmed by judicial precedents, that the scope of jurisdiction under Section 37 of the Act is narrower than that under Section 34. An appeal under Section 37 is not intended to serve as a second round of challenge on merits; rather, it is confined to examining whether the order of the Section 34 Court suffers from patent illegality, jurisdictional error, or other infirmities apparent on the face of the record. The appellate court under Section 37 does not sit in substantive review of the arbitral award, nor can it reappraise evidence or entertain entirely new grounds that were never urged earlier.

65. While it is true that a pure legal issue for which no additional enquiry or proof is required may be raised in proceedings under Section 37, as held by this Court in ***Union of India v. Inland World Logistics Pvt. Ltd.***[14], it is evident that, in the present case, no such averments were made in the Section 34 petition, nor were any supporting details provided. Similarly, the present Section 37 proceedings contain neither specific averments nor any factual or documentary material to lend even a semblance of support to this contention.

66. Even assuming, arguendo, that this proposition were to be examined, a foundational basis would at the very least need to be established. This Court, in its exercise of jurisdiction under Section 37, cannot engage in a fresh appreciation of the entire matter that would require delving into the factual gamut.

67. This objection, therefore, stands rejected.

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***CONCLUSION*:**

68. In light of the foregoing discussion, no grounds have been made out by the Appellant to set aside the Impugned Judgment dated 28.03.2025 passed by the learned District Judge and the present Appeal is dismissed.

69. The present appeal, along with pending application(s), if any, stand disposed of in the above terms.

70. No order as to costs.

ANIL KSHETARPAL
(JUDGE)

HARISH VAIDYANATHAN SHANKAR
(JUDGE)

OCTOBER 09, 2025/sm/ds