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

% ***Judgment reserved on: 06.10.2025***
Judgment pronounced on: 13.11.2025

\+ FAO (COMM) 83/2021

INDIAN OIL CORPORATION LTD. .....Appellant

Through: Ms. Savita Rustogi & Ms. Ashu Tewathia, Advocates.

versus

STANDARD CASTING PVT. LTD. .....Respondent

Through: Mr. Bhuvan Gugnani, Mr. Rupender Sharma & Ms. Nupur Mantoo, Advocates.

\+ FAO (COMM) 84/2021

INDIAN OIL CORPORATION LTD. .....Appellant

Through: Ms. Savita Rustogi & Ms. Ashu Tewathia, Advocates.

versus

STANDARD CASTING PVT. LTD. .....Respondent

Through: Mr. Bhuvan Gugnani, Mr. Rupender Sharma & Ms. Nupur Mantoo, Advocates.

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. These Appeals instituted under Section 37(1)(c) of the **Arbitration and Conciliation Act, 1996**[1], read with Section 13 of the

[1] A&C Act

Commercial Courts Act, 2015, have been preferred assailing the **Judgments dated 13.01.2020**[2] passed by learned **Additional District Judge-01, South-West District, Dwarka Courts, New Delhi**[3], in Arbtn. No. 80/2017 [renumbered as OMP (Comm.) No. 72/2019], and Arbtn. No. 81/2017 [renumbered as OMP (Comm.) No. 73/2019], both titled as '*Standard Casting Pvt. Ltd. vs. Indian Oil Corporation Ltd.'*.

2. By separate Impugned Judgments, the learned District Court set aside the respective Arbitral Awards dated 16.03.2011 passed by the learned Sole Arbitrator, pertaining to distinct but substantially identical contracts for the fabrication and supply of aviation refuellers with capacities of 27 KL and 45 KL, respectively.

3. Since both these Appeals arise out of separate Arbitral Awards rendered by the same learned Arbitrator, between the same parties, and involve similar tender conditions and virtually identical contractual provisions, and as the Impugned Judgments of the learned District Court are founded upon the same reasoning and conclusion, both appeals raise a common question of law, *namely*, whether the learned District Court erred in setting aside the Arbitral Awards on the ground that the Appellant had not pleaded or proved actual loss as contemplated under Section 74 of the **Indian Contract Act, 1872**[4], while enforcing a liquidated damages clause, accordingly, both these Appeals were, with the consent of the parties, heard together and are being disposed of by this common judgment, as the determination of the aforesaid issue shall effectively govern the outcome of both matters.

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[2] Impugned Judgement
[3] District Court
[4] IC Act

4. For the sake of clarity, the brief and necessary facts of each Appeal are narrated separately under the respective heads below.

BRIEF FACTS OF FAO (COMM) 83/2021:

5. The material facts leading to the filing of this Appeal are as follows:

(i). The Appellant, **Indian Oil Corporation Ltd.**[5], is a public sector undertaking engaged in the supply and distribution of petroleum and allied products across India. The Respondent, **Standard Casting Pvt. Ltd.**[6], is a private limited company incorporated under the Companies Act, 1956, engaged in the manufacture and supply of aviation refuellers and allied equipment, and has been a long-standing supplier to IOCL for over three decades.

(ii). On 02.05.2001, IOCL issued Tender No. AV/PT/2001-02/02 for the supply of five 27 KL capacity aviation refuellers. SCPL participated in the tender and submitted its bid on 25.06.2001.

(iii). Upon evaluation, SCPL was declared the lowest bidder. Consequently, IOCL, by letter dated 12.02.2002, placed a Work Order upon SCPL for the fabrication and supply of five articulated aviation refuellers of 27 KL capacity for aircraft fuelling. The said Work Order incorporated detailed terms and conditions concerning technical specifications, delivery schedule, payment terms, warranty, performance security, and liquidated damages. The contract envisaged that IOCL would procure the chassis and supply them to SCPL within three months from 10.01.2002, while SCPL was required to complete

[5] IOCL
[6] SCPL

fabrication, assembly, and delivery of the refuellers within twelve months from the Letter of Intent dated 10.10.2002.

(iv). After issuance of the Work Order, SCPL commenced fabrication work. Several communications were exchanged between the parties concerning chassis specifications, engineering drawings, and approval of component layouts.

(v). During execution, several difficulties arose owing to the fact that the chassis models supplied were newly introduced and required extensive modifications to be adapted for refueller application. Additional delays occurred due to the need for first-time importation and installation of certain components in India, redesigning arrangements, and obtaining necessary engineering clearances.

(vi). Consequently, SCPL sought repeated extensions of time for delivery, which IOCL granted up to 20.01.2004. The final deliveries were made between April 2004 and July 2004.

(vii). IOCL, however, contended that despite such extensions, SCPL failed to deliver within the rescheduled timelines. Accordingly, IOCL invoked the liquidated damages clause and deducted Rs. 33,19,950/- from SCPL's bills towards the delay in supply of 27 KL refuellers. SCPL protested the deductions, contending that the delays were attributable to circumstances beyond its control, particularly the delay in the supply of chassis, technical modifications, and statutory approvals.

(viii). IOCL declined to refund the deducted amount, giving rise to disputes between the parties.

(ix). Resultantly, SCPL issued a Notice dated 19.08.2006 invoking the arbitration clause. IOCL appointed Shri M.K. Jain as the learned Arbitrator.

(x). SCPL filed its Statement of Claim seeking refund of the deducted amount along with interest. IOCL contested the claim, asserting that time was the essence of the contract and that the deductions represented a genuine pre-estimate of loss occasioned by delay in delivery. Upon considering the pleadings, documents, and submissions, the learned Arbitrator, by Arbitral Award dated 16.03.2011, dismissed SCPL's claim.

(xi). Aggrieved by the said Award, SCPL filed a petition under Section 34 of the A&C Act, seeking its setting aside. After examining the record and the applicable law, the learned District Court, by Judgment dated 13.01.2020, allowed the petition and set aside the Arbitral Award on the ground that IOCL neither pleaded nor proved actual loss, and that the learned Arbitrator had incorrectly applied Section 74 of the IC Act, thereby rendering the Award patently illegal and contrary to public policy. The Arbitral Award dated 16.03.2011 was accordingly set aside, leading to the filing of the present Appeal.

BRIEF FACTS OF FAO (COMM) 84/2021:

6. The relevant facts giving rise to this Appeal are as follows:

(i). On 02.05.2001, IOCL issued Tender No. AV/PT/2001-02/01 for the supply of six 45 KL capacity aviation refuellers. SCPL participated in the tender and submitted its bid on 23.06.2001.

(ii). Upon evaluation, SCPL was declared the lowest bidder. IOCL, by letter dated 25.02.2002, placed a Work Order upon SCPL for the fabrication and supply of six articulated aviation refuellers of 45 KL capacity. The Work Order incorporated terms relating to technical specifications, delivery schedule, payment, warranty, performance security, and liquidated damages. The contract provided that IOCL would procure and supply chassis within three months from 06.02.2002, while SCPL was to complete fabrication, assembly, and supply of refuellers within twelve months from the Letter of Intent dated 05.02.2003.

(iii). After issuance of the Work Order, SCPL commenced fabrication, and extensive correspondence ensued regarding chassis specifications, engineering drawings, and layout approvals.

(iv). Similar to the earlier contract, difficulties arose due to the newly introduced chassis models requiring substantial modifications for refueller adaptation. Additional delays occurred due to first-time importation and integration of specialised components, re-engineering requirements, and obtaining necessary technical clearances.

(v). SCPL sought repeated extensions of time, which were granted by IOCL up to 21.02.2004. Final deliveries were made between February 2004 and June 2004.

(vi). IOCL, however, alleged non-compliance with the rescheduled timelines and accordingly invoked the liquidated damages clause, deducting Rs. 29,32,500/- from SCPL's bills. SCPL protested, reiterating that the delays were occasioned by factors

beyond its control, particularly the delay in chassis supply and requisite technical modifications.

(vii). IOCL refused to refund the deducted amounts, resulting in disputes.

(viii). SCPL issued notice invoking arbitration, and IOCL appointed Shri M.K. Jain as Sole Arbitrator.

(ix). SCPL filed its Statement of Claim seeking refund of the deducted amount with interest, which IOCL contested on similar grounds as in the earlier case. The learned Arbitrator, by Award dated 16.03.2011, dismissed SCPL's claim.

(x). Aggrieved thereby, SCPL filed a petition under Section 34 of the A&C Act. The learned District Court, by Judgment dated 13.01.2020, allowed the petition and set aside the Award on identical reasoning as in FAO (COMM) 83/2021, holding that IOCL neither pleaded nor proved actual loss and that the learned Arbitrator had erroneously applied Section 74 of the IC Act, thereby rendering the Award patently illegal and contrary to public policy. The Arbitral Award dated 16.03.2011 was thus set aside, giving rise to the present Appeal.

7. IOCL, being aggrieved by the common reasoning and findings contained in the Judgments dated 13.01.2020 passed in both Section 34 Petitions, has preferred the present Appeals under Section 37 of the A&C Act before this Court.

CONTENTIONS OF THE APPELLANT/IOCL:

8. Learned Counsel for IOCL would contend that the Impugned Order is wholly unsustainable in law, for it is based on conjectures and surmises, and the learned District Court acted both arbitrarily and

illegally in holding the Arbitral Award to be against public policy without any cogent reasoning or due application of mind.

9. Learned Counsel for IOCL would further contend that the learned District Court erred both in law and on facts, as it passed the Impugned Judgment in a mechanical and perfunctory manner, and failed to properly appreciate the well-settled legal principles as well as the factual matrix governing the dispute concerning the imposition of liquidated damages.

10. Learned Counsel for IOCL would submit that the learned District Court failed to appreciate that the liquidated damages were imposed strictly in accordance with the contractual terms, and that both parties had duly accepted and acted upon the same. It would further be submitted that though the clause was not open to arbitral interference, the learned Arbitrator rightly found that the delay in delivery of the refuellers caused tangible operational losses to the Appellant, such as impediment to refuelling operations, blockage of funds, and loss of man-hours, which justified the invocation of the clause since the losses could not be precisely quantified.

11. Learned Counsel for IOCL would further submit that the learned District Court failed to recognise that the Arbitral Award was a well-reasoned and speaking one, rendered in strict conformity with the terms of the Agreement and the governing law, and that no error apparent on the face of the record was established to warrant interference under Section 34 of the A&C Act.

12. Learned Counsel for IOCL would submit that the learned District Court completely overlooked the fact that SCPL was grossly negligent and repeatedly defaulted in adhering to the contractual schedule, and that the delay in delivery by several weeks resulted in

substantial financial loss and operational inconvenience to the Appellant, thereby fully justifying the invocation of the liquidated damages clause in accordance with the work order.

13. Learned Counsel for IOCL would also submit that the learned District Court failed to appreciate that, once the parties had consciously pre-estimated the loss under Section 74 of the IC Act, there was no necessity for independent proof of actual loss, and that the learned Arbitrator had rightly relied on the ratio laid down in ***ONGC v. Saw Pipes Ltd.***[7], wherein the Hon'ble Supreme Court upheld such pre-estimated damages as valid and enforceable.

14. Learned Counsel for IOCL would further submit that the learned District Court erred both in fact and law in observing that the Appellant had neither pleaded nor proved that the stipulated amount represented a genuine pre-estimate of loss, whereas the said clause was expressly incorporated in the Agreement and was consciously accepted by both contracting parties, thus rendering the said finding perverse and contrary to record.

15. Learned Counsel for IOCL would lastly contend that the Impugned Judgment runs counter to the legislative intent underlying Section 34 of the A&C Act, for the said provision does not permit re-appreciation of evidence or substitution of the learned Arbitrator's view with that of the Court, and therefore, by setting aside a well-reasoned and lawful arbitral award, the learned District Court exceeded its jurisdiction and acted contrary to settled principles governing judicial restraint in arbitral matters.

[7] AIR 2003 SC 2629

CONTENTIONS OF THE RESPONDENT/SCPL:

16. Learned Counsel for SCPL would contend that the Impugned Judgment is well-reasoned and consistent with the settled principles of contract and arbitration law, and that the learned District Court rightly set aside the Arbitral Award as being patently illegal and contrary to the public policy of India; hence, no interference is called for in the present Appeal.

17. Learned Counsel for SCPL would further contend that the delay in the supply of refuellers occurred due to circumstances wholly beyond SCPL's control, including the All India Transporters' Strike, which severely disrupted the transportation of essential parts and components required for fabrication; and in view of these genuine difficulties, SCPL sought an extension of time, which was duly granted by IOCL up to January and February 2004, considering the continued supply chain constraints and other issues faced by vendors.

18. Learned Counsel for SCPL would submit that although the refuellers were ultimately delivered with a slight delay up to July 2004, they could not be put to operational use immediately because the chassis supplier had not secured the requisite registration approvals, and consequently, the refuellers became operational only in September 2004, thereby demonstrating that the delay, if any, was not attributable to any fault or negligence on the part of SCPL.

19. Learned Counsel for SCPL would further submit that despite being fully aware of the circumstances causing delay and the justified extensions granted, IOCL wrongfully and unilaterally deducted an amount of approximately Rs. 62 lakhs from SCPL's final bill towards alleged liquidated damages, and that repeated representations made by SCPL seeking reversal of such deduction were ignored.

20. Learned Counsel for SCPL would contend that the learned Arbitrator erred in law in holding that IOCL was not required to prove the genuineness of the estimated loss, and in further concluding that time continued to be the essence of the contract despite multiple extensions having been granted, which clearly demonstrated that strict adherence to the original delivery schedule was waived.

21. Learned Counsel for SCPL would further contend that the learned Arbitrator failed to appreciate that the liquidated damages stipulated under the Agreement merely represented an upper limit and could not be imposed in the absence of proof of actual loss, as mandated under Sections 73 and 74 of the IC Act. It would further be submitted that IOCL neither pleaded nor proved any actual loss or damage occasioned due to the alleged delay in supply.

22. Learned Counsel for SCPL would submit that the reasoning adopted by the learned Arbitrator is contrary to the settled legal position laid down by the Hon'ble Supreme Court in ***Indian Oil Corporation Ltd. v. Lloyd Industries Ltd.***[8], wherein it was held that liquidated damages stand on the same footing as ordinary damages and must be adjudicated upon proof of actual loss; and the learned Arbitrator also failed to appreciate that the contract did not confer any authority upon IOCL to unilaterally retain or appropriate sums under the guise of liquidated damages prior to such adjudication. Further reliance would be placed by the learned Counsel for SCPL on the judgment of a learned Single Judge of this Court in ***Vivek Khanna v. OYO Apartments Investments LLP***[9], to fortify his case.

[8] 2007 SCC OnLine Del 1169
[9] 2023 SCC OnLine Del 5792

ANALYSIS:

23. We have heard the learned Counsel appearing for both parties at length and have carefully perused the Impugned Judgments, the respective Arbitral Awards, and the entire record of the present Appeal.

24. At the outset, we note that we are conscious of the limited scope of jurisdiction conferred upon this Court while adjudicating a challenge under Section 37 of the A&C Act, and the extent of interference permissible in such an appeal is narrow, as has been consistently laid down by the Hon'ble Supreme Court in a catena of decisions. In a recent judgment, ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***[10], 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 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

[10] 2024 SCC OnLine SC 2632

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.

> **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)***

25. As noted earlier, there are slight variations in the contractual specifications pertaining to both tenders; however, while rejecting the claims of SCPL, the learned Arbitrator adopted identical reasoning in both Arbitral Awards. The relevant portion of the reasoning in the Awards is as follows:

> "**ISSUE NOs. l** (both cases):
> **"Whether the respondent has wrongly or illegally invoked the clause of the contract and has wrongly recovered the amount of liquidated damages as alleged by the claimant?"**
> This issue relates to the basic claim/contention of both the parties/claim and the finding on this issue also cover the following **issue nos. 3, 4 and 5 of both cases -**
> **"Whether the time ceased to be the essence of the contract as alleged by the Claimant in view of the time extension granted by Respondent? (OPC)."**
> **"Whether the respondent is not entitled to recover the liquidated damages under the agreement?**
> **(OPC). "**
> **"Whether the recovery of the amount by way of Liquidated damages is in accordance with the terms of the agreement? (OPR) ".**
> Counsel for the claimant stated that the delay in making the delivery in time is not denied. He, however, says that the contract do not specifically or otherwise provide for "time to be the essence" of the contract. Therefore, liquidated damages for delay should not have been deducted. He also stated that although the terms of the contract do not provide for "Extension of time", but the respondent has been extending time for completion of the contract from time to time and, therefore, assuming though not admitting that time was the essence of the contract by the conduct of the parties, time has ceased to be the essence of the contract even if, clause 22.0 of the tender document pertaining to liquidated damages is to be construed as "time to be the essence of the contract". Thus liquidated damages ought not to have been deducted from the payment due to the Claimant. Counsel for the Claimant further argued that assuming though not admitting that

time was the essence of the contract; by granting extension of time, the Respondent has waived the condition for supply of the refuelers by a specified date for completion of the contract. Thus liquidated damages ought not to have been deducted. He has also argued that if the clause in the contract provides for compensation or free for delayed completion such as ½% for each week etc. then in any event, time as the essence of the contract loses its significance or becomes ineffective. Thus liquidated damages for delay could not have been deducted. He has also argued that the amount quantified as liquidated damages is only an upper cap. Assuming that liquidated damages are payable by the Claimant, the said damages can only be a reasonable sum not exceeding the upper cap quantified in the contract. However, if no legal injury is caused to the Respondent for any delay, the Respondent is not entitled to any such amount towards liquidated damages. It is averred by him that the question whether injury has been caused is for the Respondent to prove. The Respondent has failed to produce any material on record to show actual injury, therefore, liquidated damages ought not have been deducted. He has also stated that the liquidate damages must be genuine pre-estimate by the parties as a measure of reasonable compensation and according to him there is no material on record which established or even prima facie shows that there was any pre-estimate agreed by the parties much less a genuine pre-estimate and, therefore, it is stated by him that the respondent has without any application of mind, with mala fide intent and without any loss or injury caused to them deducted an amount of 10% of the contracted price of the material, which is the upper cap and the same is illegal and unjustified and, therefore, the claimant is entitled to get back the refund of the liquidated damages along with interest @ 18% p.a.

Counsel for the respondent on the other hand has stated that the time was always the essence of the contract and if the extension has been granted by the Indian Oil Corporation Ltd. on the representation of the claimant, the time does not cease to be the essence of the contract. All the terms and conditions of the tender and the terms of the agreement was studied by the claimant in advance at the stage of tendering as well as at the time of obtaining the drawing approval from the IOCL and at no point of time the claimant has ever raised any suspicion or ambiguity with regard to the terms of the contract and the claimant has entered into agreement with wide open eyes with an experience of 30 years. The claimant had agreed to the delivery schedule in toto and since he has shown his difficulties faced/expressed by them and confirmed their agreeing to abide by all other terms and conditions of the work order, he was granted time extension for two months. All the constraints pointed out in the letter of the claimant were duly considered and time was again given to them for giving the supply and extension was granted upto 20.1.2004 for 27 KL

refuellers and upto 21.02.04 for 45 KL refuellers vide letters dated 26.9.2003. However, despite the extensions, the claimant has failed to deliver it in time and defaulted in completing the delivery by the agreed date of 20h January 8 2141 February, 2004 and, therefore, there was no justification in giving further extension and the claimant has, therefore, committed the breach of the terms of the agreement and the respondent is well within its right to invoke the clause of liquidated damages i.e. clause 22 of the agreement The delay was not resulted because of any act beyond the control of the claimant and once the extension was. granted that does not mean that time has ceased to be the essence of the contract. The respondent has suffered the less on account of delay in supplying the refuellers by the claimant. The delay in delivery of refuellers to the locations was causing serious impediment in the refuelling business of the respondent and it has resulted into serious operational problems and the loss has been caused to the respondent which cannot be estimated exactly. The claimant has failed to do his part of the duty, and, as such, Indian Oil Corporation Ltd. has not deviated or done anything beyond the terms of the tender. The delayed delivery of the refuellers is beyond the extended delivery dates and, therefore, the calculation of the liquidated damages was in line with the agreed terms and conditions of the purchase order and the liquidated damages has been rightly deducted from the bills of the claimant, therefore, the claimant is neither entitled to get the refund of the same nor any interest.

The claimant has relied upon the judgments filed by the claimant. *Fateh Chand vs Balkishan Das AIR 1.963 SC 1405; Indian Oil Corporation Ltd. vs Lloyds Steel Industries Ltd 2007(4) Arb.LR 84 (Delhi); Union of India vs Raman Iron Foundry: (1974) 2 SCC 231*. Incidentally both the parties. Incidentally both the parties have also relied upon *Oil & Natural Gas Corporation Ltd. vs Saw Pipes Ltd. (2003) 5 SCC 705*.

I have also seen the terms of the contract and also clause of liquidated damages, which clearly lays down that the liquidated damages and not as penalty an amount equal to ½% (half per cent) of the contracted price so delayed for each week OR part thereof of such delay in delivery subject to maximum 10% of such price shall be recovered from the Invoice. For the purpose of calculating liquidated damages, date of delivery of equipment will be taken as date of supply as specified under clause No. 22 of General Terms and Conditions of the Tender.

Furthermore it is also clear from the pleadings of the parties that because of the delay in delivery of refuellers, the loss has been caused to Indian Oil Corporation Ltd. resulting in impediment in refuelling operations, severe business operations, blockage of funds, interest loss or payment made to supplier of chassis, man-hour wastage by Aviation Department and, therefore, the losses

have been suffered. These losses cannot be ascertained and that is why the parties have mutually agreed with open eyes to the liquidated damage clauses as incorporated in the agreement.

From the pleadings, it is also clear that in spite of extensions given on the claimant's request, there was further delay in execution of work on the part of the claimant. It is also admitted by the Claimant that as per the terms of the Agreement, the liquidated damages has been recovered by invoking liquidated damages clause. It is further admitted by the claimant that a representation was sent by the claimant vide letter dated 14.01.2005 and the respondent has responded back to the said appeal regarding granting extension of delivery schedule vide letter dated 09.02.2005 for denying the same.

Parties are bound by the terms of the agreement and I find nothing wrong in invoking the said clause by the Indian Oil Corporation Ltd. The reasonable amount deducted as liquidated damages is in accordance with the contract and. as per the judgments more particularly *ONGC Ltd. vs Saw Pipes Ltd*., there is no requirement for Indian Oil Corporation Ltd. to prove the genuineness of the pre-estimated loss as contended by the claimant. When the parties have expressly agreed as per their conduct by entering into a contract that recovery from the contractor for breach of the contract is pre-estimated liquidated damages and is not by way of penalty duly agreed by the parties, there was no justifiable reason for the Arbitral Tribunal to arrive at a conclusion that still the purchaser should prove actual loss suffered by it because of delay in supply of refuellers. Moreover the Arbitral Tribunal is required to decide the dispute in accordance with the terms of the contract (see para 40 and 42 of ONGC Ltd. vs Saw Pipes Ltd.). It is well settled law as has been stated in the above judgment when the terms of the contract are clear then its meaning is to be gathered only from the words used therein. In the present case agreement was executed by the experts in the field and it cannot be held that the intention of the parties was different from the language used therein. Incidentally judgment of ***Fateh Chand vs Balkishan Das*** has also been discussed in the present case whereas in the present case it would be difficult to prove exact loss of damage, which the party suffered because of the breach thereof. The defaulted parties have pre-estimated the loss after clear understanding to arrive at conclusion that the party who commits breach is liable for giving compensation. There was no reason for the Tribunal not to rely on the pre-estimated damages because of the delay of the supply of the refuellers. Therefore, the contention of the claimant counsel that the claimant is entitled to get refund is not tenable. Learned counsel for the claimant has also drawn my attention to the judgment of ***Indian Oil Corporation Ltd. vs. Lloyds Steel Industries Ltd.*** decided by the Hon'ble Supreme Court. I have gone through the said judgment.

The said judgment can be distinguished from the fact that in the said case Indian Oil Corporation, td. was also responsible for causing the delay but in the present case there is no allegation that the delay was on account of Indian Oil Corporation Ltd. but in the cited case it was observed by the Arbitral Tribunal in para 6 that the aspect of delay was considered by the arbitral tribunal under Issue No. 2. The learned Arbitral Tribunal has also held that the delay in execution of the project is attributable partly to the respondent and partly to the petitioner 'as. both attributed to the implementation of the contract. Thus in the present case the delay after the grant of extension of time was totally attributable to the claimant and the claimant has also fairly conceded while arguing the case that the delay was admitted on the part of the claimant, therefore, the judgment cited by the learned counsel for the claimant i.e. Indian Oil Corporation Ld. vs. Lloyds Steel Industries Ltd. is not applicable..

From a bare perusal of the record; it is also clear that the claimant through. their various letters made firm commitments for adhering to the extended dates of delivery given on claimant requests.

Further as per clause-4 of the Purchase Agreement "time is the essence on the part of the seller" which is contrary to the contentions of the claimant. Extension was given as per the request of the claimant on the justified grounds and the respondent secured their right under the contract and had not waived their rights to impose damages as per the Clause-22 of the Contract and the same was evidently mentioned by the respondent in their letters that extension are being given without prejudice to their rights as per the terms & conditions of the purchase order and other terms and conditions of the work order/tender remain unchanged.

It is also noticed that the claimant made deliveries of 45 KL and 27 KL refuellers on 18.06:04 and on 01.07.04 respectively, however, they applied for final extension up to the dale of actual deliveries only on 04.10.04 after knowing about the deductions of liquidated damages from their payments, hence the claimant after agreeing to the revised delivery date of 20.01.04 and 21.02.04 for 27 KL and 45 KL refuellers respectively has not asked for any further extension from IOC upto September, 2004 i.e. upto the period of 4 to 6 months. It shows that the claimant was not sure about the time for completion of fabrication work and date of delivery of the refuellers as extension was finally asked by the claimant only after giving delivery of the refuellers to the respondent.

In view of the above facts & circumstances of the case and also considering the various citations given by both the parties particularly the well settled principles of law. by the Hon'ble Supreme Court in ***Oil & Natural Gas Corporation Ltd. vs. Saw Pipes Ltd.***, I hold and decide as under:-

I hold that the claimant was responsible for the delay in supply of 6 Nos. 45 KL and 5 no. of 27 KL refuellers.

I also hold that the time did not cease to be the essence of the contract because of extension was granted.

I also hold that the recovery of the liquidated damages by the respondent was in accordance with the terms of the agreement. Hence issue nos.1, 3, 4 and 5 are decided in favour of the respondent and I hold, that the respondent has not wrongly or illegally invoked the clause of the contract and recovery of the amount of liquidated damages. was in accordance with the terms of the contract.

Issue No.2 (both cases) :

"Whether the delay in supply. of 5 Nos. of 27 KL/ 6 nos. of 45 KL Refuellers is attributable to third parties? If so, of what effect? (OPC)?"

During the proceedings, claimant has neither lead any specific evidence nor tendered any arguments to prove this issue. Further, since both the parties are bound by the terms & conditions of the contract, therefore, I hold the issue against the claimant.

Issue No.6:

"Whether the Claimant is entitled to refund of an amount of Rs. 33,19,950.00 and Rs.29,32,500.00 as claimed by it in the statement of claims? (OPC)?"

I also hold that the claimant is not entitled to get any refund of amount of Rs. 62.52 lacs (Rs. 29.325 lacs + Rs.33.199 lacs) covering both the cases.

Issue No.7:

"Whether the claimant is entitled to any Interest? If so, at what rate? (ORC)".

Since the claimant's claim regarding refund of the liquidated damages in both the cases have been rejected, there is no question of payment of interest, however, I leave the parties to bear their own costs.

The award is made at Delhi on this 16th day of March, 2011."

26. The learned Arbitrator essentially made the following observations and conclusions, while rejecting SCPL's claim regarding the imposition of liquidated damages by IOCL:

(a) The contract explicitly provided for the recovery of liquidated damages at the rate of 0.5% of the contract price per week of delay, subject to a maximum of 10%, and such liquidated damages were not in the nature of a penalty.

(b) The delay in delivery of refuellers caused operational and financial losses to IOCL, including impediments in refuelling

operations, blockage of funds, interest loss, and wastage of man-hours in the Aviation Department.

(c) Since the exact loss could not be precisely quantified, the parties had mutually agreed upon a pre-estimated measure of damages through the liquidated damages clause, entered into with full understanding of its implications.

(d) Despite the extensions granted by IOCL at SCPL's request, SCPL further delayed execution of the work and thereby became liable to pay liquidated damages, which were recovered in accordance with the agreement from the final bills.

(e) The correspondence between the parties, including SCPL's letter dated 14.01.2005 and IOCL's reply dated 09.02.2005, confirmed that the extension of the delivery schedule was denied and that the recovery was made as per contractual terms.

(f) The parties were bound by the terms of the contract, and IOCL's invocation of the liquidated damages clause was lawful and justified.

(g) The judgment in ***Saw Pipes Ltd.*** (*supra*) was applicable, as it held that actual loss was not required to be proven when the parties had pre-estimated damages and agreed that such recovery was not penal in nature.

(h) SCPL's reliance on ***Lloyds Steel Industries Ltd.*** (*supra*) was distinguishable on facts since, in that case, the party claiming damages was partly responsible for the delay, whereas here, the delay was entirely attributable to SCPL.

(i) Clause 4 of the Purchase Agreement made time the essence of the contract; and although extensions were granted at SCPL's

request, they were granted without prejudice to IOCL's right to recover damages.

(j) SCPL sought a final extension only after the delivery and after learning about the deduction of liquidated damages, demonstrating uncertainty and lack of diligence in adhering to the delivery timelines.

(k) SCPL neither led any specific evidence nor advanced any arguments to prove that third parties were responsible for the delay in meeting the extended timelines.

27. In challenge to these findings, the learned District Court found them unsustainable and, while adopting identical reasoning for both Arbitral Awards, reversed the conclusions in the following manner:

> "**8.** With the above said preposition of law I would like to advert to the facts of the present case. It may be noted that the first contention of the petitioner that Ld. Arbitrator has wrongly held that petitioner failed to prove by way of documentary evidence that the delay in supply of Refuellers was attributable to the third parties. In this regard, it may be noted that Ld. Arbitrator has given finding of fact recorded under Issue no. 2, wherein it has been categorically held that petitioner has led neither lead any specific evidence not tendered any arguments in this regard therefore, this finding of fact is not permissible to be interfered as per law laid down by Superior Courts.
>
> **9.** So far as contention regarding the time is essence of the contract or not in as much as respondent time and again granted extension of time to complete the delivery is concerned, suffice is to say that no separate finding of fact has been given under issue no. 3, otherwise this issue has been decided along with other issues namely issue nos. 1,4 & 5 holding that the respondent is entitled to the 10% of the contract amount as liquidated damages for delay in supply of Refuellers in violation of terms and conditions of the agreement. In addition to it, main contention of Ld. Counsel for the petitioner is that under Section 74 of the Indian Contract Act, liquidated damages cannot be granted on the mere asking of the parties, otherwise, a party claiming such damages must plead and prove that on account of breach of contract committed by the parties, the parties claiming the damages has suffered losses.

10. It may be relevant here to mention that as per Section 73 & 74 of the Indian Contract Act 1872 and in the light of the decision of the Superior Courts, explaining the true scope of the said provision, any compensation or damages could not be awarded unless respondent was able to show that it actually suffered any loss or damages. It was also neither pleaded by the respondent that the amount stipulated in the contract was the genuine pre-estimate of the loss likely to be suffered on account of breach nor it is not the case of respondent that on account of delayed delivery of Refuellers, respondent has suffered any losses.

11. It may be noted that in judgment ***TEMA India Ltd. v. Engineers India Ltd.*** (OMP NO. 239/2013), passed by Hon'ble Single Bench of High Court of Delhi, the findings regarding interpretation of Section 74 of Indian Contract Act has been upheld by the Division Bench in the appeal titled ***Engineers India Ltd. v. TEMA India Ltd.*** in FAO (OS) NO. 487/2015 and in TEMA (supra), the law laid down with regard to grant of liquidated damages has been discussed in the following paras :

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12. In the present case, the burden of proof was on the respondent to plead and prove that any loss has been suffered by the respondent on account of the delayed delivery of Refuellers. But not to talk of any such pleading, no proof has been led as to how much losses has been suffered by the respondent on account of non supply of Refuellers within the stipulated time. The onus to prove would have shifted on the petitioner, in case, the respondent had pleaded and proved on record that on account of non-supply of Refuellers by the petitioner within the stipulated period of agreement, how much losses/damages has been suffered by the respondent. Therefore, only if the respondent had, in first place, pleaded and proved that respondent has suffered losses and damages as a result of delayed delivery, only then the petitioner was supposed to prove that no such loss has been suffered by respondent and shift the onus again on the shoulders of the respondent to prove otherwise.

13. The learned Arbitrator has made following observations regarding the losses claimed to be suffered by the respondent which is as under :

> *"Furthermore it is also clear from the pleading of the parties that because of the delay in delivery of refuellers, the loss has been caused to Indian Oil Corporation Ltd. Resulting in impediment in refuelling operations, severe business operations, blockage of funds, interest loss on payment made to supplier of chasis, man hour wastage by Aviation Department and, therefore, the losses have been suffered. These losses cannot be ascertained and that is why the parties have mutually agreed with open eyes to*

the liquidated damage clauses as incorporated in the agreement."

14. A bare perusal of these findings depicts that the Ld. Arbitrator has recorded finding of fact that losses cannot be ascertained and therefore, parties had mutually agreed for liquidated damages. However, the respondent must have also documentary records to show as to how lossess were suffered on account of non supply of Refuellers within time agreed upon.

15. From a bare perusal of the written statement filed on behalf of the respondent to the statement of claim filed by the petitioner, it is clear that there is no specific pleadings that how much losses respondent has suffered for the non supply of Refuellers within the stipulated time in as much as in the preliminary objection of written statement of respondent in last five lines, it is stated as under :

".....The liquidated damages has been imposed by the respondent strictly in accordance with the terms of the agreement and they have been rightly imposed. The claimant is, therefore, not entitled to get any amount and the statement of the claim filed by the claimant is liable to be rejected."

16. A bare perusal of these pleadings depicts that respondent has claimed damages only on account of terms and condition so provided in the agreement between the parties and there is no specific pleadings as to how much losses respondent has suffered on account of the non supply of Refuellers within the stipulated time.

17. From the above discussion, it can be safely concluded that the findings recorded by Ld. Arbitrator that the liquidated damages was neither the clause for penalty, otherwise it is pre-estimated damages payable by the petitioner to the respondent is contrary to the public policy of Indian Law and can not be sustained in terms of Section 34(2)(v) (ii) of the Arbitration & Conciliation Act.

18. In view of the above said reasons, the petition under Section 34 of Arbitration & Conciliation Act 1996, filed by the petitioner is allowed. ***The Arbitral Award dated 16.03.2011, passed by Sh. M.K. Jain, the Sole Arbitrator is set aside***.*"*

28. From the analysis of the learned District Court, it is unambiguously clear that the following factual and legal aspects were considered before setting aside the Arbitral Awards:

(a) SCPL contended that the learned Arbitrator erred in holding that the delay in the supply of refuellers was not attributable to third parties; however, the learned Arbitrator correctly recorded

a finding of fact that SCPL neither led any specific evidence nor advanced any arguments to prove this contention.

(b) As per Sections 73 and 74 of the IC Act, damages cannot be granted unless the party claiming them pleads and proves actual loss resulting from the breach.

(c) IOCL neither pleaded nor proved that the stipulated amount in the contract was a genuine pre-estimate of loss, nor did it produce any evidence of actual loss or damage caused by delayed delivery.

(d) The burden of proof to establish actual loss lay on IOCL, and since no such pleading or evidence was produced, the onus never shifted to SCPL to disprove the same.

(e) Although the learned Arbitrator observed that losses could not be ascertained and hence the parties had agreed to liquidated damages, IOCL was still required to produce documentary material demonstrating the nature or extent of loss suffered, which it failed to do.

(f) IOCL's written statement merely stated that liquidated damages were imposed in accordance with the terms of the agreement, without specifying or quantifying any actual loss suffered due to delayed supply.

(g) Consequently, the finding of the learned Arbitrator that the liquidated damages clause represented a genuine pre-estimate of loss, and not a penalty, was held to be contrary to the public policy of India and therefore unsustainable under Section 34(2)(b)(ii) of the A&C Act.

29. From an analysis of the findings of the learned Arbitrator, it is evident that the learned Arbitrator relied solely on Clause 16 of the contract relating to liquidated damages and essentially held that:

(i) Though extensions were granted by IOCL, time continued to remain the essence of the contract, and the subsequent delay by SCPL might have caused loss; and

(ii) Since there was a specific clause in the contract providing for damages due to delay, no further proof of loss was required.

However, the learned District Court disagreed with this reasoning and essentially concluded that:

(i) Despite the delay and the existence of the liquidated damages clause, IOCL was required to plead and prove the loss suffered; and

(ii) Since there was neither pleading nor proof, the initial burden, which lay upon IOCL, never shifted to SCPL.

30. It is a well-settled principle of law governing liquidated damages that the mere existence of a clause stipulating such damages does not, by itself, entitle a party to claim compensation under the IC Act. The party seeking to enforce such a clause must satisfy certain essential conditions, and in the absence thereof, no damages can be awarded.

31. The Hon'ble Supreme Court in ***Kailash Nath Associates v. DDA***[11], following a series of precedents including ***Saw Pipes*** *(supra)*, on which both the learned Arbitrator and IOCL have heavily relied, comprehensively summarised the governing principles relating to contractual liquidated damages and compensation. The Apex Court

[11] (2015) 4 SCC 136

also delineated the circumstances in which courts may interfere with stipulated sums and clarified the evidentiary requirements regarding proof of actual loss. The relevant analysis and conclusions set out in that judgment are as follows:

> "**32.** By an amendment made in 1899, the section was amended to read:
>
> "**74.*Compensation for breach of contract where penalty stipulated for***.—When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.
>
> ***Explanation*.—**A stipulation for increased interest from the date of default may be a stipulation by way of penalty.
>
> ***Exception*.—**When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of any condition of any such instrument, to pay the whole sum mentioned therein.
>
> ***Explanation*.—**A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested."
>
> **33.** Section 74 occurs in Chapter 6 of the Contract Act, 1872 which reads "Of the consequences of breach of contract". It is in fact sandwiched between Sections 73 and 75 which deal with compensation for loss or damage caused by breach of contract and compensation for damage which a party may sustain through non-fulfilment of a contract after such party rightfully rescinds such contract. It is important to note that like Sections 73 and 75, compensation is payable for breach of contract under Section 74 only where damage or loss is caused by such breach.
>
> **34.** In ***Fateh Chand* v. *Balkishan Dass*, (1964) 1 SCR 515**, this Court held : (SCR pp. 526-27 & 530 : AIR pp. 1410-12, paras 8, 10 and 15)
>
> "The section is clearly an attempt to eliminate the somewhat elaborate refinements made under the English common law in distinguishing between stipulations

providing for payment of liquidated damages and stipulations in the nature of penalty. Under the common law a genuine pre-estimate of damages by mutual agreement is regarded as a stipulation naming liquidated damages and binding between the parties : a stipulation in a contract in terrorem is a penalty and the Court refuses to enforce it, awarding to the aggrieved party only reasonable compensation. The Indian Legislature has sought to cut across the web of rules and presumptions under the English common law, by enacting a uniform principle applicable to all stipulations naming amounts to be paid in case of breach, and stipulations by way of penalty….

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Section 74 of the Contract Act deals with the measure of damages in two classes of cases (*i*) where the contract names a sum to be paid in case of breach and (*ii*) where the contract contains any other stipulation by way of penalty. We are in the present case not concerned to decide whether a covenant of forfeiture of deposit for due performance of a contract falls within the first class. The measure of damages in the case of breach of a stipulation by way of penalty is by Section 74 reasonable compensation not exceeding the penalty stipulated for. In assessing damages the Court has, subject to the limit of the penalty stipulated, jurisdiction to award such compensation as it deems reasonable having regard to all the circumstances of the case. Jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; but compensation has to be reasonable, and that imposes upon the Court duty to award compensation according to settled principles. The section undoubtedly says that the aggrieved party is entitled to receive compensation from the party who has broken the contract, whether or not actual damage or loss is proved to have been caused by the breach. Thereby it merely dispenses with proof of 'actual loss or damages'; it does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted, because compensation for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from the breach.

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Section 74 declares the law as to liability upon breach of contract where compensation is by agreement of the parties pre-determined, or where there is a stipulation by

way of penalty. But the application of the enactment is not restricted to cases where the aggrieved party claims relief as a plaintiff. The section does not confer a special benefit upon any party; it merely declares the law that notwithstanding any term in the contract pre-determining damages or providing for forfeiture of any property by way of penalty, the court will award to the party aggrieved only reasonable compensation not exceeding the amount named or penalty stipulated. The jurisdiction of the court is not determined by the accidental circumstance of the party in default being a plaintiff or a defendant in a suit. Use of the expression 'to receive from the party who has broken the contract' does not predicate that the jurisdiction of the court to adjust amounts which have been paid by the party in default cannot be exercised in dealing with the claim of the party complaining of breach of contract. The court has to adjudge in every case reasonable compensation to which the plaintiff is entitled from the defendant on breach of the contract. Such compensation has to be ascertained having regard to the conditions existing on the date of the breach."

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37. And finally in ***ONGC Ltd.* v. *Saw Pipes Ltd.*** **[(2003) 5 SCC 705]**, it was held : (SCC pp. 740-43, paras 64 & 67-68)

"***64.*** It is apparent from the aforesaid reasoning recorded by the Arbitral Tribunal that it failed to consider Sections 73 and 74 of the Contract Act and the ratio laid down in ***Fateh Chand* v. *Balkishan Dass*, (1964) 1 SCR 515**, SCR at p. 526 wherein it is specifically held that jurisdiction of the court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; and compensation has to be reasonable. Under Section 73, when a contract has been broken, the party who suffers by such breach is entitled to receive compensation for any loss caused to him which the parties knew when they made the contract to be likely to result from the breach of it. This section is to be read with Section 74, which deals with penalty stipulated in the contract, inter alia (relevant for the present case) provides that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of breach is entitled, whether or not actual loss is proved to have been caused, thereby to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named. Section 74 emphasises that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not

actual loss is proved to have been caused by such breach. Therefore, the emphasis is on reasonable compensation. If the compensation named in the contract is by way of penalty, consideration would be different and the party is only entitled to reasonable compensation for the loss suffered. But if the compensation named in the contract for such breach is genuine pre-estimate of loss which the parties knew when they made the contract to be likely to result from the breach of it, there is no question of proving such loss or such party is not required to lead evidence to prove actual loss suffered by him.…

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67. … In our view, in such a contract, it would be difficult to prove exact loss or damage which the parties suffer because of the breach thereof. In such a situation, if the parties have pre-estimated such loss after clear understanding, it would be totally unjustified to arrive at the conclusion that the party who has committed breach of the contract is not liable to pay compensation. It would be against the specific provisions of Sections 73 and 74 of the Contract Act. There was nothing on record that compensation contemplated by the parties was in any way unreasonable. It has been specifically mentioned that it was an agreed genuine pre-estimate of damages duly agreed by the parties. It was also mentioned that the liquidated damages are not by way of penalty. It was also provided in the contract that such damages are to be recovered by the purchaser from the bills for payment of the cost of material submitted by the contractor. No evidence is led by the claimant to establish that the stipulated condition was by way of penalty or the compensation contemplated was, in any way, unreasonable. There was no reason for the Tribunal not to rely upon the clear and unambiguous terms of agreement stipulating pre-estimate damages because of delay in supply of goods. Further, while extending the time for delivery of the goods, the respondent was informed that it would be required to pay stipulated damages.

68. From the aforesaid discussions, it can be held that:

(*1*) Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming damages is entitled to the same.

(*2*) If the terms are clear and unambiguous stipulating the liquidated damages in case of the breach of the contract unless it is held that such estimate of damages/compensation is unreasonable or is by way of penalty, party who has committed the breach is required to

pay such compensation and that is what is provided in Section 73 of the Contract Act.

(*3*) Section 74 is to be read along with Section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. The court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of a contract.

(*4*) In some contracts, it would be impossible for the court to assess the compensation arising from breach and if the compensation contemplated is not by way of penalty or unreasonable, the court can award the same if it is genuine pre-estimate by the parties as the measure of reasonable compensation."

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40. From the above, it is clear that this Court held that ***Maula Bux* v. *Union of India*, (1969) 2 SCC 554**, was not, on facts, a case that related to earnest money. Consequently, the observation in ***Maula Bux* v. *Union of India*, (1969) 2 SCC 554**, that forfeiture of earnest money under a contract if reasonable does not fall within Section 74, and would fall within Section 74 only if earnest money is considered a penalty is not on a matter that directly arose for decision in that case. The law laid down by a Bench of five Judges in ***Fateh Chand* v. *Balkishan Dass*, (1964) 1 SCR 515**, is that *all stipulations* naming amounts to be paid in case of breach would be covered by Section 74. This is because Section 74 cuts across the rules of the English common law by enacting a *uniform principle* that would apply to all amounts to be paid in case of breach, whether they are in the nature of penalty or otherwise. It must not be forgotten that as has been stated above, forfeiture of earnest money on the facts in ***Fateh Chand* v. *Balkishan Dass*, (1964) 1 SCR 515** was conceded. In the circumstances, it would therefore be correct to say that as earnest money is an amount to be paid in case of breach of contract and named in the contract as such, it would necessarily be covered by Section 74.

41. It must, however, be pointed out that in cases where a public auction is held, forfeiture of earnest money may take place even before an agreement is reached, as DDA is to accept the bid only after the earnest money is paid. In the present case, under the terms and conditions of auction, the highest bid (along with which earnest money has to be paid) may well have been rejected. In such cases, Section 74 may not be attracted on its plain language because it applies only "when a contract has been broken".

42. In the present case, forfeiture of earnest money took place long after an agreement had been reached. It is obvious that the amount sought to be forfeited on the facts of the present case is sought to

be forfeited without any loss being shown. In fact it has been shown that far from suffering any loss, DDA has received a much higher amount on re-auction of the same plot of land.

43. On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:

43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.

43.2. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.

43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.

43.4. The section applies whether a person is a plaintiff or a defendant in a suit.

43.5. The sum spoken of may already be paid or be payable in future.

43.6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.

43.7. Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction *before* agreement is reached, Section 74 would have no application."

(emphasis supplied)

32. The above conclusions in ***Kailash Nath Associates*** *(supra)* make it abundantly clear that where a sum is specified in a contract as liquidated damages payable upon breach, only reasonable compensation can be awarded, and such compensation cannot exceed

the amount so stipulated. Furthermore, where it is possible to prove actual damage or loss, such proof cannot be dispensed with. The Hon'ble Supreme Court further held that it is only in situations where loss or damage is difficult or impossible to quantify that the liquidated amount specified in the contract, if representing a genuine pre-estimate of probable loss, may be awarded.

33. It therefore follows that in all cases, whether or not actual loss can be proved, some form of substantiation or evidence is always required from the party claiming such damages. The liquidated damages stipulated in a contract represent merely the upper ceiling of compensation that may be awarded; they do not become automatically payable upon breach. When it is possible to establish the actual loss, the claimant must adduce cogent evidence demonstrating the extent of the loss suffered as a direct consequence of the breach.

34. However, in cases where it is impracticable or impossible to precisely quantify the loss, the claimant must still establish that the liquidated damages specified in the contract constitute a "genuine pre-estimate of loss" made by the parties at the time of entering into the agreement. This requires showing, with reasonable probability, that the stipulated figure was intended to reflect a fair and *bona fide* estimate of potential loss, and not imposed as a penalty. A mere bald or general assertion without any evidentiary foundation cannot satisfy this requirement.

35. Thus, a mere generalized claim that loss might have been incurred due to reasons such as delay or default is insufficient. Courts will not grant damages based solely on vague or unsubstantiated assertions. The burden of proof lies squarely upon the party claiming liquidated damages to demonstrate either the actual loss suffered, or

that the stipulated amount was, at the time of contracting, a reasonable and genuine pre-estimate of likely loss based on objective grounds.

36. In the present case, the record leaves no room for doubt that IOCL has neither pleaded nor produced even the slightest material to demonstrate its entitlement to damages. There is not a single document, statement, or averment that indicates any actual loss suffered by IOCL on account of the alleged delay. In such circumstances, the finding of the learned District Court warrants no interference.

37. It is a settled principle of law that a party claiming damages must, at the very least, lay the foundational pleading and provide some evidence to show the occurrence of loss or the basis for claiming compensation. IOCL has failed to discharge even this elementary obligation. The absence of any such pleading or proof renders its claim wholly speculative. The law does not permit a party to seek damages as a matter of course or to cast a negative burden on the opposite party to prove that no loss was caused.

38. Unless the claimant first establishes a *prima facie* case of loss, no question arises of calling upon the other side to disprove it. Therefore, in the absence of even the minimal factual foundation or supporting evidence, IOCL's claim for damages stands on untenable grounds, and the learned District Court was fully justified in setting aside the Arbitral Awards.

CONCLUSION:

39. For the reasons stated above, we are of the considered opinion that no grounds have been made out by IOCL to warrant interference with the Impugned Judgments dated 13.01.2020 passed by the learned

District Court. Accordingly, the Impugned Judgments are upheld, and the present Appeals are dismissed.

40. The record further shows that, after the learned District Court set aside the Arbitral Awards *vide* the Impugned Judgements, SCPL invoked Section 11 of the A&C Act and filed petitions before a learned Single Judge seeking fresh appointments of arbitrators to adjudicate its claims. Pursuant to those petitions, an arbitrator was appointed by order dated 07.09.2021 to hear the disputes afresh. In light of this subsequent referral to arbitration, we consider it neither necessary nor appropriate to adjudicate ancillary factual issues in these appeals that could prejudice the fresh arbitral process.

41. It is clarified that we have expressed no opinion on the merits of the various claims and all factual matters relevant to the merits of the claims are left open for determination in the re-opened proceedings.

42. The present Appeals, along with pending application(s), if any, are disposed of in the above terms.

43. No order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 13, 2025/sm/kr