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

Judgment reserved on: 03.11.2025
Judgment pronounced on: 20.02.2026

\+ FAO(OS) 38/2022
TOMMORROWLAND LIMITED .....Appellant

versus

HDFC BANK LTD. .....Respondent

\+ FAO(OS) 45/2022
TOMMORROWLAND LIMITED .....Appellant

versus

SHARMA AND CO. AND OTHERS .....Respondents

\+ FAO(OS) 46/2022
TOMMORROWLAND LIMITED .....Appellant

versus

V. JETHALAL RAMJI SHARE BROKERS PVT LTD & ORS. .....Respondents

\+ FAO(OS) 47/2022
TOMMORROWLAND LIMITED .....Appellant

versus

HARYANA STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. .....Respondent

\+ FAO(OS) 85/2022, CM APPL. 31837/2022 and CM APPL. 35794/2025
HDFC BANK LIMITED .....Appellant

versus

TOMORROWLAND LIMITED .....Respondent

\+ FAO(OS) 48/2022
TOMMORROWLAND LIMITED .....Appellant

versus

ESSAR CAPITAL LTD. NOW KNOWN AS VAJRESH CONSULTANT LIMITED .....Respondent

\+ FAO(OS) 49/2022
TOMMORROWLAND LIMITED .....Appellant

versus

JALAN AND CO. .....Respondent

\+ FAO(OS) 50/2022
TOMMORROWLAND LIMITED .....Appellant

versus

STERLING HOLIDAY FINANCIAL SERVICES LTD .....Respondent

\+ FAO(OS) 51/2022
TOMMORROWLAND LIMITED .....Appellant

versus

VEERHEALTH CARE LTD .....Respondent

\+ FAO(OS) 52/2022
TOMMORROWLAND LIMITED .....Appellant

versus

NICCO UCO ALLIANCE CREDIT LTD .....Respondent

\+ FAO(OS) 53/2022
TOMMORROWLAND LIMITED .....Appellant

versus

ANALYSIS TRADE CONSULTANCY LLP .....Respondent

\+ FAO(OS) 54/2022
TOMMORROWLAND LIMITED .....Appellant

versus

NAVODAY MANAGEMENT SERVICES LIMITED
.....Respondent

\+ FAO(OS) 55/2022 and CM APPL. 24638/2025
TOMMORROWLAND LIMITED .....Appellant

versus

PRESSMAN ADVERTISING LIMITED .....Respondent

\+ FAO(OS) 57/2022
TOMMORROWLAND LIMITED .....Appellant

versus

REAL GROWTH FINANCIAL SERVICES LTD NOW RGF CAPITAL MARKETS LTD .....Respondent

\+ FAO(OS) 58/2022
TOMMORROWLAND LIMITED .....Appellant

versus

SANCHAY FINVEST LIMITED .....Respondent

\+ FAO(OS) 59/2022
TOMMORROWLAND LIMITED .....Appellant

versus

R. N. AHUJA AND CO. .....Respondent

\+ FAO(OS) 60/2022

TOMMORROWLAND LIMITED .....Appellant

versus

HEMDEV SECURITIES INDIA PVT. LTD. .....Respondent

\+ FAO(OS) 61/2022

TOMMORROWLAND LIMITED .....Appellant

versus

PRASAD AND CO. AND OTHERS .....Respondents

\+ FAO(OS) 62/2022

TOMMORROWLAND LIMITED .....Appellant

versus

S. K. NAHATA AND CO. & ORS. .....Respondents

\+ FAO(OS) 63/2022

TOMMORROWLAND LIMITED .....Appellant

versus

DCM FINANCIAL SERVICES LTD .....Respondent

\+ FAO(OS) 64/2022

TOMMORROWLAND LIMITED .....Appellant

versus

CLARITY FINANCIAL SERVICES LTD. .....Respondent

\+ FAO(OS) 65/2022

TOMMORROWLAND LIMITED .....Appellant

versus

MANOJ BHARGAVA AND CO. .....Respondent

\+ FAO(OS) 66/2022
TOMMORROWLAND LIMITED .....Appellant

versus

DWARKADAS HARINARAYAN MAHESHWARI & ORS.
.....Respondents

\+ FAO(OS) 69/2022

TOMMORROWLAND LIMITED .....Appellant

versus

DOLF LEASING LIMITED .....Respondent

\+ FAO(OS) 70/2022

TOMMORROWLAND LIMITED .....Appellant
versus

SHAKTI AND CO. & ORS. .....Respondents

\+ FAO(OS) 116/2022 and CM APPL. 44208/2022

HARYANA STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD .....Appellant
versus

TOMMORROWLAND LIMITED .....Respondent

\+ FAO(OS) 125/2022, CM APPL. 47561/2022, CM APPL. 47562/2022 and CM APPL. 47564/2022

DOLF LEASING LTD. .....Appellant

versus

TOMMORROWLAND LIMITED .....Respondent

\+ FAO(OS) 140/2022, CM APPL. 52288/2022, CM APPL. 52290/2022 and CM APPL. 52291/2022

DCM FINANCIAL SERVICES LTD. .....Appellant

versus

TOMMORROWLAND LIMITED .....Respondent

Appearances:

Mr. Raman Kapur, Senior Advocate with Mr. Rishab Raj Jain and Ms. Kirti Garg, Advocates for Respondent/HDFC Bank Ltd. in FAO(OS) 38/2022
Mr. Raman Kapur, Senior Advocate with Mr. Rishab Raj Jain and Ms. Kirti Garg, Advocates for Appellant/HDFC Bank Ltd. in FAO(OS) 85/2022
Mr. Sachin Chopra, Ms. Astha Gupta, Ms. Aakriti Jain, Advocates for Respondent in FAO(OS) 63/2022
Mr. Sachin Chopra, Ms. Astha Gupta, Ms. Aakriti Jain, Advocates for Appellant in FAO(OS) 140/2022
Mr. Pawan Sachdeva, (in person) with Mr. Ishan Sachdeva and Mr. K.K.R. Dass, Advocates for Respondent in FAO(OS) 85/2022, FAO(OS) 116/2022, FAO(OS) 125/2022 and FAO(OS) 140/2022
Mr. Rajesh Banati, Mr. Ashish Sareen, Mr. Adil Asghar, Mr. Aditya Mishra, Mr. Ankit Banati, Advocates for Respondent in FAO(OS) 53/2022
Mr. Sudhansu Palo, Mr. Rajesh Palo, Mr. Rakesh Palo, Mr.

Budhadev Palo and Ms. Ipsita Behura, Advocates for Respondent in FAO(OS) 58/2018
Mr. Prashant Katara and Ms. Sakshi Jain, Advocates for Respondent in FAO(OS) 602022
Ms. Noopur Singhal and Ms. Sanchari Debnath, Advocates for Respondents in FAO(OS) 47/2022
Ms. Noopur Singhal and Ms. Sanchari Debnath, Advocates for Appellant in FAO(OS) 116/2022
Mr. Vijyant Singh Kundu, Proxy Counsel for Appellant in FAO(OS) No. 55/2022.
Mr. Rahul Gupta, Mr. Arav Kapoor, Mr. Arav Kapoor, Mr. Mridul Vats and Mr. R.P. Rao, Advocates for Respondent in FAO(OS) 52/2022
Mr. Indranil Gosh, Ms. Mrinal Chaudhry, Advocates for Respondent in FAO(OS) No. 55/2022
Mr. Sameer Nandwani and Ms. S. Arora, Advocates for Respondent No.1 in FAO(OS) 50/2022
Mr. Aaditya Vijay Kumar, Ms. Akshita Katoch, Mr. Anirudh Anand, Advocates for Respondent in FAO(OS) 66/2022
Mr. Kunal Manav and Mr. Yatender Bhardwaj, Advocates for Petitioner in FAO(OS) 125/2022
Mr. Kunal Manav and Mr. Yatender Bhardwaj, Advocates for Respondent in FAO(OS) 69/2022

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. With the consent of the parties, the present batch of twenty-eight appeals was heard together. After extensive and prolonged hearings conducted on various dates, these appeals are now being finally disposed of by way of this common judgment.

PROLOGUE

2. The present appeals have been preferred under Section 39 of the **Arbitration Act, 1940** [1], and all pertain to disputes involving *Tommorrowland Ltd.* These appeals arise from various judgments rendered by the learned Single Judge of this Court in suits instituted under Sections 14 and 17 of the 1940 Arb Act by Tommorrowland Ltd., seeking judgments and decrees in terms of distinct arbitral awards. By the respective Impugned Judgments, the learned Single Judge decreed the suits in favour of the plaintiff therein, *namely* Tommorrowland Ltd., while making certain modifications to the arbitral awards passed by the learned Arbitrator.

3. Each suit instituted by Tommorrowland Ltd. before the learned Single Judge arose from a distinct arbitral award and was adjudicated independently by separate judgments. Aggrieved by the modifications made by the learned Single Judge, Tommorrowland Ltd. has preferred twenty-four separate appeals, which form the subject matter of the present adjudication. In these appeals, the challenge is narrowly confined to the limited extent to which the learned Single Judge, while otherwise affirming the arbitral awards, modified the same, specifically with respect to the alteration of the quantum of damages and the disallowance and reduction of interest awarded by the learned Arbitrator.

4. In addition thereto, in respect of four of the said judgments, the respective opposite parties, *namely* the Underwriters, having felt aggrieved, have filed four separate appeals. These appeals are in the nature of cross-appeals corresponding to four out of the twenty-four appeals preferred by Tommorrowland Ltd.

[1] 1940 Arb Act

5. For the sake of clarity and convenience, a consolidated chart indicating the appeals and the corresponding cross-appeals, wherever applicable, which are before us for adjudication, is set out hereinbelow:

CROSS APPEALS			
S. NO.	**CASE NO. BEFORE THIS COURT**	**APPELLANT**	**RESPONDENT**
1.	**1A.** FAO(OS) 38/2022	Tommorrowland Limited	HDFC Bank Ltd.
	1B. FAO(OS) 85/2022	HDFC Bank Ltd.	Tommorrowland Limited
2.	**2A.** FAO(OS) 47/2022	Tommorrowland Limited	Haryana State Industrial and Infrastructure Development Corporation Ltd
	2B. FAO(OS) 116/2022	Haryana State Industrial and Infrastructure Development Corporation Ltd	Tommorrowland Limited
3.	**3A.** FAO(OS) 63/2022	Tommorrowland Limited	DCM Financial Services Ltd
	3B. FAO(OS) 140/2022	DCM Financial Services Ltd	Tommorrowland Limited
4.	**4A.** FAO(OS) 69/2022	Tommorrowland Limited	Dolf Leasing Limited
	4B. FAO(OS) 125/2022	Dolf Leasing Limited	Tommorrowland Limited
APPEALS BY TOMMORROWLAND			
5.	FAO(OS) 45/2022	Tommorrowland Limited	Sharma And Co. and Others
6.	FAO(OS) 46/2022	Tommorrowland Limited	V. Jethalal Ramji Share Brokers Pvt Ltd & Ors.
7.	FAO(OS) 48/2022	Tommorrowland Limited	Essar Capital Ltd. Now Known as Vajresh

			Consultant Limited
8.	FAO(OS) 49/2022	Tommorrowland Limited	Jalan And Co.
9.	FAO(OS) 50/2022	Tommorrowland Limited	Sterling Holiday Financial Services Ltd
10.	FAO(OS) 51/2022	Tommorrowland Limited	Veerhealth Care Ltd
11.	FAO(OS) 52/2022	Tommorrowland Limited	Nicco Uco Alliance Credit Ltd
12.	FAO(OS) 53/2022	Tommorrowland Limited	Analysis Trade Consultancy LLP
13.	FAO(OS) 54/2022	Tommorrowland Limited	Navoday Management Services Limited
14.	FAO(OS) 55/2022	Tommorrowland Limited	Pressman Advertising Limited
15.	FAO(OS) 57/2022	Tommorrowland Limited	Real Growth Financial Services Ltd Now RGF Capital Markets Ltd
16.	FAO(OS) 58/2022	Tommorrowland Limited	Sanchay Finvest Limited
17.	FAO(OS) 59/2022	Tommorrowland Limited	R. N. Ahuja and Co
18.	FAO(OS) 60/2022	Tommorrowland Limited	Hemdev Securities India Pvt. Ltd
19.	FAO(OS) 61/2022	Tommorrowland Limited	Prasad And Co. And Others
20.	FAO(OS) 62/2022	Tommorrowland Limited	S. K. Nahata And Co. & Ors
21.	FAO(OS) 64/2022	Tommorrowland Limited	Clarity Financial Services Ltd.
22.	FAO(OS) 65/2022	Tommorrowland Limited	Manoj Bhargava And Co.
23.	FAO(OS) 66/2022	Tommorrowland Limited	Dwarkadas Harinarayan Maheshwari & Ors.
24.	FAO(OS) 70/2022	Tommorrowland Limited	Shakti And Co. & Ors.

6. Upon a careful consideration of the record, we find that all the arbitral awards in question were rendered by the same learned Arbitrator and are founded upon a substantially identical line of reasoning while granting relief in favour of Tommorrowland Ltd. The factual substratum of each dispute arises from almost identical agreements, involving common obligations, similar allegations of breach, and identical issues that culminated in reference to arbitration.

7. Likewise, while adjudicating the suits under Sections 14 and 17 of the 1940 Arb Act, the learned Single Judge, *mutatis mutandis*, adopted an identical reasoning in the Impugned Judgments, subject only to minor variations dictated by the facts of the individual awards.

8. In these circumstances, we propose to examine the present batch of appeals in a composite manner. We shall initially undertake a detailed examination of one appeal filed by Tommorrowland Ltd. and the corresponding appeal filed by the opposite party arising out of the same Impugned Judgment. Upon arriving at conclusions on the issues raised therein, the same reasoning would be applied to the remaining appeals, as far as permissible in law, as the broader factual background, legal issues, and grounds of challenge urged by the parties are substantially identical.

9. Notably, even during the course of oral submissions, the parties, in the connected matters, largely adopted the arguments advanced by the lead counsel, with only minor variations on certain residual aspects in a few appeals. We therefore consider it appropriate, and indeed judicially expedient, to hear and decide these appeals together, which would facilitate a clearer understanding of the disputes and ensure consistency in adjudication.

10. During the course of arguments, Tommorrowland Ltd. addressed its principal submissions in ***FAO(OS) 38/2022***, while the corresponding appeal preferred by the opposite party, *namely*, ***FAO(OS) 85/2022***, arising from the same Impugned Judgment, was treated as the lead matter from the underwriters' side.

11. With the consent of all parties, these two appeals were taken as the lead cases, and the submissions advanced therein were, to a substantial extent, adopted in the remaining appeals. Accordingly, for the purposes of convenience, brevity, and clarity, we propose to first examine one set of cross-appeals arising out of the same Impugned Judgment, *namely*, **FAO(OS) 38/2022, filed by Tommorrowland Ltd., and FAO(OS) 85/2022, filed by HDFC Bank Ltd.**[2].

FAO(OS) 38/2022 & FAO(OS) 85/2022, CM APPL. 31837/2022 and CM APPL. 35794/2025

12. These cross appeals, filed under Section 39 of the 1940 Arb Act, challenge the **Judgement and Decree dated 27.04.2022**[3] passed by the learned Single Judge in CS(OS) 2152/2012 titled *'Tommorrowland Limited (formerly Tommorrowland Technologies Exports Limited) vs. HDFC Bank Ltd.'.*

13. The aforesaid suit was instituted under Sections 14 and 17 of the 1940 Arb Act seeking a Judgment and Decree in terms of the Arbitral Award dated 30.05.2012, along with future interest and costs. During the pendency of the suit before the learned Single Judge, three Interlocutory Applications were filed, which are as follows:

[2] Cross appeal/ First set of cross appeal
[3] Impugned Judgement

(i). I.A. No. 19050/2012 (filed by the Defendant therein under Section 151 of the **Civil Procedure** Code**, 1908**[4], seeking enlargement of time to file objections to the Award within 30 days of receiving notice of the filing of the Original Award before the Court);

(ii). I.A. No. 12965/2012 (filed by the Plaintiff therein under Section 28 of the 1940 Arb Act, which pertains to the power of the Court only to enlarge time for making an award); and

(iii). I.A. No. 3610/2013 (filed by the Defendant therein under Sections 30 and 33 of the 1940 Arb Act).

14. By the Impugned Judgment, the learned Single Judge allowed I.A. No. 19050/2012 and I.A. No. 12965/2012, and substantially rejected I.A. No. 3610/2013, and consequently decreed the suit in favour of the plaintiff. While doing so, the Learned Single Judge:

(a). reduced the damages awarded by the learned Arbitrator from Rs. 80 per **Fully Convertible Debenture**[5] to Rs. 20 per FCD;

(b). disallowed the interest awarded for the pre-reference period and for the duration of the arbitral proceedings;

(c). reduced the post-award interest from 18% p.a. to 7% p.a. from the date of the Award until the date of the Impugned Judgment; and

(d). directed that in the event of default in payment within eight weeks from 27.04.2022, the decretal amount shall thereafter carry interest at 4.5% p.a.; and

(e). while doing so, the learned Single Judge did not interfere with the costs awarded by the learned Arbitrator.

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[4] CPC
[5] FCD

15. For the sake of clarity, brevity, and convenience, the parties concerning this cross appeal shall hereinafter be referred to as "***Tommorrowland***" and "***Underwriter***".

Brief Facts:

16. The factual background underlying all the appeals is broadly similar, subject to minor variations in certain aspects. The learned Single Judge has succinctly and accurately recorded the material facts, so far as they relate to the present cross-appeals, from the inception of the disputes up to the adjudication of the suit, in the Impugned Judgment. We therefore consider it unnecessary to reformulate the entire factual narrative herein, as doing so would only render the present adjudication unduly cumbersome. For ease of reference, the relevant portion of the Impugned Judgment pertaining to the present cross-appeals is extracted below:

> "2. The Plaintiff launched a public issue for 1,75,84,800 zero interest unsecured Fully Convertible Debentures (hereinafter, 'FCDs') of Rs.199 each for cash and at par aggregating to Rs.349,93,75,200/- to the public and issue of 31,28,500 FCDs of Rs.250/- each for cash at par aggregating to Rs.78,21,25,000/- to non-resident Indians / persons of Indian origin resident abroad / OCBs on firm allotment basis together aggregating to Rs.428,15,00,200/- (hereinafter 'public issue'). The disputes in these cases relate only to FCDs issued to the public in India. The issue was publicized along with a prospectus, which was duly vetted by the Securities and Exchange Board of India (hereinafter 'SEBI').
>
> 3. The issue was opened on 14th February, 1995 and the closing date for the issue was to be not later than 24th February 1995. The earliest closing date was 18th February, 1995. The Lead Managers to the issue were SBI Capital Markets Ltd., Tourism Finance Corporation of India Limited, Lloyds Finance Limited, Indian Merchant Banking Services Ltd. and Bank of Baroda. The Registrar to the issue was MAS Services Pvt. Ltd. The FCDs, which were to be allotted to the subscribers, were to be compulsorily and automatically converted into one equity share of Rs. 10/- each fully paid up, at a premium of Rs. 189/- in the case of Indian public, on the date of conversion i.e. on the

expiry of seventeen and a half months from the date of allotment of these debentures. Each debenture was to have a face value of Rs.199/-. No interest was payable thereon.

4. Until the allotment of shares, no rights and privileges were to be enjoyed by the debenture holders. The sums received in respect of the public issue were to be retained in a separate bank account and the Company would not have access to the fund unless the approval of the Delhi Stock Exchange was obtained for allotment. The Letters of Allotment / Debentures Certificate(s) /Share Certificate(s) were to be delivered within three months from the date of allotment. In the event of over-subscription, the allotment was to be made by the Board in consultation with the Regional Stock Exchange at Delhi and a SEBI nominated representative was to be associated in the process of finalisation of the basis of allotment, in case of oversubscription by more than two times. In case of non-allotment of the debenture(s) applied for, the excess amounts were to be refunded to the concerned applicants within 70 days from the closing of the Subscription List.

5. The entire issue was underwritten, insofar as the component offered to the Indian public for subscription was concerned. The clause relating to underwriting in the prospectus reads as under:

> *"UNDERWRITING*
> *The entire issue of 1,75,84,800 Zero Interest Unsecured Fully Convertible Debentures of Rs.199 each aggregating Rs.3,49,93,75,200 offered to Indian Public for subscription in terms of this Prospectus has been fully underwritten as under:……"*

6. There were 267 Underwriters in total, including the abovenamed Defendant HDFC Bank Ltd. (formerly known as 20th Century Finance Corporation Ltd. at that time). The prospectus specified the exact amount which was underwritten by each of the Underwriters. It was certified by the Board and the Lead Managers that the resources of the Underwriters are adequate to meet their respective underwriting obligations.

7. In the case of the present Defendant, the amount which was underwritten was to the tune of Rs.4,99,99,000/- (2,51,256 FCDs of Rs. 199/- each for cash at par aggregating to the total figure of Rs. 499.99 lakhs) by Underwriting Agreement dated 10th January, 1995.

8. The public issue opened on 14th February, 1995, as scheduled. On 17th February, 1995, a communication was issued by the Registrar and Lead Manager to the issue informing the Plaintiff that the issue was fully subscribed. Accordingly, on 18th February, 1995, an advertisement was issued by the Plaintiff in

various print outlets stating that the issue would be closed on the said date and the issue was closed on the earliest closing date i.e., 18th February, 1995.

9. However, SEBI noticed certain anomalies in the public issue offer price of Rs.199/- and accordingly directed the Plaintiff-Company to disclose to the public that the shares were quoted on cum-rights basis, which means that it was not adjusted for the higher equity that would result from a rights issue that was scheduled to follow the public issue. Corrigenda are stated to have issued by the Plaintiff on 13th February, 1995, prior to the opening of the issue. However, some advertising continued to allegedly reflect the market price. SEBI is then stated to have issued a letter dated 6th March, 1995 addressed to the Lead Manager of the issue, directing that an option be given to investors to either withdraw their applications or continue to subscribe to the issue. The said letter reads as under:

"Securities and Exchange
Board of India
Ref: IMID/; XX/95
March 6, 1995

The General Manager
SBI Capital Markets Limited
New Delhi,
Sir,

RE: PUBLIC ISSUE OF M.S. SHOES EAST LIMITED
Please refer to your fax message dated February 20, 1995 and your subsequent discussion at SEBI.
We are herewith sending a draft of the approved letter to be issued by M.S. Shoes East Limited along with the letter of allotment. Please ensure that the letter is issued in the form in which it has been approved by us without modification of any kind and also that they are actually despatched to the successful applicants along with the allotment letter. You had indicated that the issuer company has agreed to do so. The person/agency to whom the letter requesting refund should be addressed, must be specifically indicated in the letter. Lead Manager should also ensure that arrangements are made for immediate refund of monies to those who opt to do so. We would like to add that SEBI reserves to itself the right to take appropriate action against the issuer company and the lead manager for their lapses in this regard.

Please arrange to acknowledge receipt of this letter and also keep us informed of the action taken by the company.
Company.
(USHA NARAYANAN)
DIVISION CHIEF"

10. The above letter is disputed by the Plaintiff. However, from the contemporaneous evidence available on record, there is no doubt that, in fact, letters were addressed by SEBI to the Plaintiff directing it to give an option to the investors to get refund of money paid by them with interest. Public announcements/ notifications were also issued by SEBI asking the company to refund application monies to all those who wanted to withdraw from the public issue. Subsequent to the said direction, a large number of the subscribers withdrew their applications and the subscription fell below the minimum of 90% of the total issue stated in the prospectus.

11. Devolvement notices were issued by the Plaintiff to all the Underwriters on 15th March, 1995, informing them that the issue had been undersubscribed, and hence, the underwriters' obligations as per the Agreements entered into therewith, are triggered. Again, on 24th March, 1995 and 17th April, 1995, letters/notices were sent by the Plaintiff-Company to the Underwriters informing them of their liability. Since the Underwriters did not subscribe and pay the said amount within the stipulated period of 60 days after the closure of the issue, the Plaintiff-Company had to refund the entire application money collected from the public.

12. The Plaintiff then sought the intervention of the Delhi Stock Exchange and requested for reference of the disputes between the Plaintiff and the Underwriters to arbitration, vide letter dated 2nd May, 1995. However, vide letter dated 26th April, 1997, the Delhi Stock Exchange refused to conduct the arbitration proceedings, which led the Plaintiff-Company to file petitions under Section 20 of the Arbitration Act, 1940 before the High Court of Delhi. Vide the initial order dated 14th March, 2007 in two suits filed by the Plaintiff under Section 20 of the Arbitration Act, 1940 i.e., ***CS (OS) No. 1299A/1997*** and ***CS(OS) No. 845-1076/2006***, Hon'ble Ms. Justice (Retd.) Manju Goel was appointed as the ld. Sole Arbitrator. The relevant extract of the order dated 14th March, 2007 reads as under:

"13. I am in full agreement with the aforesaid view and deem it appropriate that the matter has to go to arbitration since the arbitration clause is not disputed.
14. the respondents having been called upon to refer the dispute to arbitration and having failed to do so,

have lost their right to appoint an arbitrator. In fact, respondent no. 1 is stated to have specifically declined to appoint an arbitrator.

15. In view of the aforesaid, Hon'ble Ms. Justice (Retd.) Manju Goel, B-6, Dr. Zakir Hussain Marg, New Delhi (Phone No. 2378-2616) is appointed as the sole Arbitrator. It will be for the Arbitrator to fix the sitting fee, subject to a total fee of Rs.2.00 lacs, apart from the out-of-pocket expenses. The fee of the Arbitrator shall initially be borne by the petitioner to form part of the main cause.

16. The parties to appear before the learned Arbitrator on 21.4.2007 at 11.00 A.M."

13. Thereafter by order dated 22nd April, 2010 in CS(OS) No. 1199A/1998, similar disputes were also referred to the same Ld. Arbitrator. Cumulatively, there were total of 267 claim petitions, which were referred to the ld. Arbitrator.

14. In respect of 103 Respondents against whom claims were settled and withdrawn, awards were passed on 25th September, 2010. Similar awards were passed qua 3 Respondents on 14th May, 2011 and qua 34 Respondents on 21st January, 2012. The awards under challenge in the present 27 connected suits before the Court were passed on various dates between May to July, 2012.

15. In the case of the present Defendant, the Ld. Arbitrator pronounced the Award on 30th May, 2012, by which the Ld. Arbitrator awarded a total sum of Rs.4,94,11,776/- along with pendente lite and future interest in favour of the Plaintiff-Company in the following terms:

*"28. If the loss quantified in paragraph 26 above is proportionately distributed over the deficit procurement of shares viz 1,06,42,000 (exhibit PW1/54), the amount comes to Rs. 76.30 per defaulting share approximately. However, keeping in view the fact that the claimant's actual damages would have been much higher, it will not be altogether wrong to assess reasonable damages at Rs. 80/- per share that the defaulting underwriters failed to pay for when the FCDs devolved on them. In this case since the respondent was required to take 193317 shares that devolved on him, I assess reasonable compensation at 193317 *Rs. 80 amounting to Rs. 1,54,65,360/-. I am conscious of the fact that the claimant has settled his claim against some of the underwriters against whom he had filed his claim before this tribunal. The claimant submits in a statement that he has recovered Rs.*

2.45 crores from the settled claims in suit no. 1299A/97 and Rs. 0.35 crores in suit no. 1199A/98 i.e. a total amount of Rs. 2.80 crores against commitment of Rs. 349.93 crores. Clearly the claimant has settled with those who offered to do so at a rather low figure. However, the deficiency caused by such concessional settlements cannot be made good by receiving any extra amount from those who have not settled. The calculation of reasonable damages per share, rather than per underwriter takes care that each underwriter is burdened with reasonable damage recoverable from him and no one is burdened with the damage caused by others who may have contracted to underwrite different numbers, of FCDs.

29. The claimant is entitled to interest on this amount till the filing of claim petition. The claimant has asked for interest @ of 24% per annum. The claimant himself raised loans at that time on interest @18.5%. The claim for interest is based on Interest Act and not on contract. The learned amicus curiae suggested that interest @ 18% would be reasonable. Awarding interest @ 18% the claim of the claimant towards interest for 146 months 10 days from 02.05.1995, the date when the respondent was liable to pay for the devolved FCDs till the date of filing of the claim on 11.7.2007 comes to Rs.3,39,46,416/- . Thus the total reasonable damages along with interest till the filing of the claim petition comes to Rs. 4,94,11,776/-.

30. The claimant is entitled to interest pendente lite and future till recovery. Since the nature of the claim is commercial, the interest pendente lite and future till recovery can also be awarded @ 18%. Hence I pass an award for Rs. 4,94,11,776/- with pendente lite and future interest @18% from the date of filing of the claim petition till realization in addition to costs calculated hereunder Interest pendente lite on Rs. 4,94,11,776/- for 4 years and 10 months and 7 days comes to Rs. 4,31,61,179/-.

COST:

31. The claimant is entitled to cost of the proceedings. The respondent did not pay even his share of the fees of the Arbitration, which the claimant has paid. The claimant incurred further expenses on behalf of the Arbitration towards service of notice and publication in the newspaper. The venue for the Arbitration has always been the PHD House at Khelgaon, August

Kranti Marg and total expenses towards venue charges comes to Rs. 5,05000/-. Further Amicus Curiae was also engaged to ensure that no injustice is done to any respondent who is proceeded exparte. Further there have been costs involved for keeping records and bringing them to the venue. The claimant has assessed such cost per respondent at Rs. 11,050/- which I assess as reasonable. Further an administrative cost of Rs. 2500/- is also being assessed for the Arbitrator for the entire proceedings since throughout the course of this matter no such cost has been charged by the Arbitrator. Further the stamp paper of Rs. 92,680/- is annexed to the award. Hence the total cost is assessed at Rs. 1,06,230/- payable by the respondent to the claimant for the entire proceedings. Needless to say that the administrative cost of Rs. 2500/-is initially payable by the claimant to the Arbitrator."

16. Similar awards have been passed against all the Underwriters who are Defendants in the 27 suits presently being decided. The said awards are sought to be enforced by the Plaintiff under Sections 14 and 17 of the Arbitration Act, 1940, seeking pronouncement of judgment and decree in terms of the respective Awards for the aforesaid amount along with interest @18% p.a. till the date of realisation of payment.

17. The Defendants/Respondents, upon being served, have resorted to filing two different types of objections to the Awards. One set of Respondents have filed objections under Section 16 of the Arbitration Act, 1940, challenging the legality of the award and other Respondents have filed applications under Sections 30 and 33 of the Act, seeking setting aside of the awards and opposing the prayer for pronouncement of judgment in terms of the awards.

18. The broad grounds raised by the Respondents are:

a) That the Respondents were not properly served in the arbitral proceedings;
b) That the time period for passing the award had expired and no ground exists for extension of time under Section 28 of the Act;
c) That on merits, the obligations of all the Underwriters stood discharged as the issue was fully subscribed, and it was not even kept open for the entire period. This issue has not even been considered by the ld. Arbitrator;
d) That the computation of damages and award of interest is not as per law.

19. In the present case, apart from the main suit seeking pronouncement of judgment under Sections 14 and 17 of the Act, the following three applications have also been filed

a) ***I.A. No. 19050 of 2012*** (for enlargement of time)

b) ***I.A. No. 12965 of 2012*** (under Section 28 of the Arbitration Act, 1940)

c) ***I.A. No. 3610 of 2013*** (under Sections 30 and 33 of the Arbitration Act, 1940)."

17. During the proceedings before the learned Single Judge, the Underwriter filed its objections under Sections 30 and 33 of the 1940 Arb Act, by way of I.A. No. 3610/2013. Two additional applications were also filed during the pendency of the suit. The first was I.A. 19050/2012, filed by the Underwriter, seeking enlargement of time to file objections against the Impugned Award. The second was I.A. 12965/2012, filed by Tommorrowland under Section 28 of the 1940 Arb Act, seeking *post-facto* extension of the time for conducting the arbitration proceedings from 20.08.2007 to 30.05.2012, the date on which the Award was ultimately pronounced by the learned Arbitrator.

18. While adjudicating I.A. 19050/2012, the learned Single Judge considered the Underwriter's request for extension of time to file objections within 30 days of receiving notice of the filing of the Original Award in Court. The Court observed that although the Underwriter was at all times aware of the arbitral proceedings, it chose not to participate. However, the restructuring processes and mergers undergone by the Underwriter may have contributed to delays. The Court also noted that the application had been pending for several years, and that the objections to the Award had already been incorporated in the Underwriter's reply to Tommorrowland's suit, wherein the Award was opposed. It being a settled principle that

Courts should endeavour to decide matters on merits where possible, the learned Single Judge held that the circumstances justified enlargement of time. Accordingly, the application was allowed.

19. With respect to the application seeking *post-facto* extension of time under Section 28 of the 1940 Arb Act, the learned Single Judge allowed the request after considering the peculiar facts of the case. The learned Arbitrator had been required to adjudicate claims involving more than 260 Underwriters, had held over 50 sittings over a five-year period, and had dealt with the disputes extensively. In view of these circumstances, and since such extension is permissible in law, the application was allowed.

20. Thereafter, the learned Single Judge partly decreed the suit in favour of Tommorrowland, disposed of I.A. No. 3610/2013 filed by the Underwriter, and, in doing so, adjudicated the issues raised, which may be summarized as follows:

a. **Non-service of arbitral proceedings and *ex parte* Award:** The learned Single Judge rejected the Underwriter's contention that notices in the arbitral proceedings were not duly served and that the learned Arbitrator had wrongly proceeded *ex parte*. It was held that the Underwriter's counsel had duly entered appearance and that multiple notices had been issued through counsel, calling upon the Underwriter to participate in the proceedings. The arbitral record further showed that the learned Arbitrator had repeatedly passed directions which the Underwriter failed to comply with. In these circumstances, the plea of non-service and the challenge to the Award on the ground that it was *ex parte* were found to be untenable and were accordingly decided.

b. **Devolution of liability on the Underwriter and consideration of the issue by the learned Arbitrator:** While addressing the objection concerning devolution of liability, the learned Single Judge examined the relevant clauses of the Underwriting Agreement between the parties. It was held that the Underwriter's stand that its liability stood discharged upon the initial closure of the issue on the earliest closing date, was contrary to the scheme of the said Agreement and therefore liable to be rejected. On the second limb, the learned Single Judge rejected the Underwriter's argument that the learned Arbitrator had proceeded on the basis of an incorrect letter. This plea had never been raised during the arbitral proceedings. Moreover, the record showed that the learned Arbitrator was aware of the letter of the **Securities and Exchange Board of India**[6], and had noted Tommorrowland's compliance, and had even framed an issue pertaining to the letter. Among the other things, on these grounds, the objection was rejected.

c. **Computation of damages and award of interest:** While considering the question of reasonable compensation payable by the Underwriter, the learned Single Judge noted that several Underwriters had settled their disputes with Tommorrowland at different amounts and interest rates. It was also held that although Tommorrowland suffered losses, it too bore some responsibility for those losses. Taking into account the overall circumstances, the learned Single Judge held that the compensation payable by the Underwriter warranted reduction. Accordingly, the compensation was reduced to one-fourth of the

[6] SEBI

amount awarded. The learned Single Judge further disallowed the interest awarded for the pre-reference period and for the duration of the arbitral proceedings. The learned Single Judge also reduced the post-award interest from 18% per annum to 7% per annum from the date of the Award until the date of the Impugned Judgment; and directed that in the event of default in payment within eight weeks from 27.04.2022, the decretal amount would thereafter carry interest at 4.5% per annum. The costs awarded by the learned Arbitrator were not interfered with.

Submissions by Tommorrowland:

21. On behalf of Tommorrowland, the following submissions have been made:

(i) In re: Merit of its appeal

(a) It is submitted on behalf of Tommorrowland that the learned Single Judge exceeded the permissible scope of interference under Section 15(b) of the 1940 Arb Act. Section 15(b) empowers the Court only to correct typographical, clerical, or arithmetical errors; and it does not authorise the Court to substitute or alter the learned Arbitrator's reasoning, findings, or conclusions. The changes made by the learned Single Judge, *namely*, altering the quantum of damages and reducing the rate of interest, were substantive modifications and not clerical corrections. Such interference amounts to a rewriting of the Award, which is legally impermissible. Furthermore, while doing so, the learned Single Judge misplaced its reliance on ***Atlanta Ltd. v. Union of India***[7].

(b) It is further submitted that it is well settled that the

[7] (2022) 3 SCC 739

determination of the amounts payable between parties falls squarely within the learned Arbitrator's jurisdiction. In support of this principle, reliance is placed on the judgements of the Hon'ble Supreme Court in ***Hindustan Vidyut Products Ltd. v. State of Rajasthan***[8], ***Ravindra Kumar Gupta & Co. v. Union of India***[9] and ***Arosan Enterprises Ltd. v. Union of India***[10].

(c) It is also submitted that the learned Single Judge correctly upheld the learned Arbitrator's finding that the Underwriter failed to discharge its contractual obligations. It has also been rightly affirmed that the learned Arbitrator had properly applied Sections 73 and 74 of the **Indian Contract Act, 1872**[11] to determine reasonable compensation. The Award was neither held to be perverse nor vitiated by legal misconduct. Having upheld the Award on merits and confirmed the Underwriter's liability, the learned Single Judge could not thereafter modify the damages from Rs. 80 to Rs. 20 per FCD, deny pre-arbitration interest, or alter the post-award interest. Once the Court held that the Award was free from jurisdictional, factual, or legal infirmities under Sections 16 and 30 of the 1940 Arb Act, no substantive modification was permissible.

(d) It is submitted that the law is now well settled that an Arbitrator has the power to award interest for the pre-reference period, and for this purpose, reliance is placed on

[8] (1999) 3 SCC 536
[9] (2010) 1 SCC 409
[10] (1999) 9 SCC 449
[11] IC Act

the judgments of the Hon'ble Supreme Court in ***Irrigation Deptt., Govt. of Orissa v. G.C. Roy***[12]**,** and ***Dhenkanal Minor Irrigation Division v. N.C. Budharaj***[13].

(ii) In re: Maintainability of the Underwriter's appeal

(a) It is submitted that a judgment passed under Sections 14 and 17 of the 1940 Arb Act can be challenged only in the manner prescribed under Section 17. Section 17 expressly provides that no appeal shall lie from such a decree except on the ground that it is in excess of, or not in accordance with, the Award. Since the Underwriter's appeal does not invoke the limited grounds permitted under Section 17, the appeals are not maintainable.

(b) It is further submitted that under Section 17, an appeal challenging the Award on grounds identical to those already rejected under Section 33 is barred, both by the express language of Section 17 as well as by Section 39 of the 1940 Arb Act. Section 17 recognises a limited right of appeal but restricts it solely to the two grounds mentioned in the latter part of the provision.

(c) In support of this proposition, reliance is placed on the Division Bench judgment of this Court in ***Mahanagar Telephone Nigam Ltd. v. Unibros***[14] and on the Kerala High Court's decision in ***State of Kerala and Ors. vs. K.V. Abraham***[15].

(d) It is also contended that, insofar as the decree is a money

[12] (1992) 1 SCC 508
[13] (2001) 2 SCC 721
[14] 2008 SCC OnLine Del 1349
[15] 1998 SCC OnLine Ker 19

decree, the present appeal is not maintainable as the appropriate court fee has not been paid by the Underwriter.

(iii)In re: On merit of the Underwriter's appeal

(a) In response to the Underwriter's appeal on merits, Tommorrowland adopts and reiterates the reasoning of the learned Single Judge and supports the findings recorded therein.

(b) With respect to the issue of service of notices by the learned Arbitrator, reliance is placed on Section 42 of the 1940 Arb Act. It is submitted that the findings of the learned Single Judge, forming the foundation of the Impugned Judgment, are correct. Additional reliance is placed on ***Union of India v. Bhatia Tanning Industries***[16] and ***Kapoor and Sons v. Raj Kumar Khanna***[17].

Submissions by Underwriter:

22. In response to the maintainability objections raised by Tommorrowland, it is submitted that the present Appeal has been filed under Section 39 of the 1940 Arb Act and not under Order XLI of the CPC. Section 39 directly applies in this case because the Impugned Judgment modifies the Arbitral Award, and an appeal against such a judgment lies before the court competent to hear appeals from original decrees of that court. The Impugned Judgment was not passed in a civil suit under Section 9 of the CPC; it was passed in a petition (though titled as a civil suit) under Sections 14 and 17 of the 1940 Arb Act.

23. The Underwriter's submissions on merits, in substance, are as

[16] 1984 SCC OnLine Del 303
[17] 1955 SCC OnLine Punj 57

follows:

(i) Improper ex parte proceedings

(a) It is submitted that the arbitral proceedings were vitiated due to serious procedural impropriety. After the merger, no notice of the arbitral proceedings was ever issued to or served upon the Underwriter. The learned Arbitrator proceeded *ex parte* solely on the basis of the appearance of an advocate who represented the predecessor-in-interest of the Underwriter. The learned Single Judge failed to appreciate the advocate's affidavit stating that he had never been appointed by the Underwriter.

(b) It is further submitted that the learned Arbitrator's decision to proceed *ex parte* was contrary to law and resulted in an erroneous Award in favour of Tommorrowland. It is argued that Tommorrowland intentionally withheld service on the Underwriter, despite having been directed by the learned Arbitrator on 13.01.2009 to take necessary steps. Consequently, the Impugned Award and Judgment violate the Principles of Natural Justice and deserve to be set aside.

(c) To support this contention, reliance is placed on ***Lovely Benefit Chit Fund and Finance Pvt. Ltd. Vs. Puran Dutt Sood & Ors.***[18] and ***Ram Ram Niranjan vs Union of India & Ors***[19].

(ii) Award passed beyond the statutory time without the Court's extension

(a) The Award dated 30.05.2012 was passed five years after the reference was made. Rule 3 of the First Schedule to the

[18] 23 (1983) DLT 261
[19] AIR 2001 Del 424

1940 Arb Act mandates delivery of the Award within four months unless the Court grants an extension. No such extension was sought during the arbitral proceedings. Hence, the learned Arbitrator lacked jurisdiction to render the Award.

(b) It is submitted that the learned Single Judge erred in allowing the *post facto* application under Section 28 of the 1940 Arb Act to extend the time. The learned Single Judge overlooked that Tommorrowland deliberately avoided seeking extension during the arbitral proceedings in order to evade service on the Underwriter. The reasons cited for seeking *post facto* extension are also stated to be frivolous.

(c) To support this contention, reliance is placed on several judicial authorities, including, ***Union of India vs. Peeco Hundrulic Prv. Ltd.***[20]***, Chanderkan & Co. vs. DDA & Anr***[21]***, Hari Krishna Wattal vs. Vaikunth Nath Pandya (Dead) by LRs & Anr***[22] and ***Jatinder Nath vs. Chopra Land Developers (P) Ltd. & Anr***[23].

(iii) Wrongly held the Underwriter liable despite no underwriting liability

(a) It is contended that neither undersubscription nor the withdrawal of subscribers can be attributed to the Underwriter. Investors withdrew because Tommorrowland itself issued letters offering them the option to withdraw. The SEBI letter dated 06.03.1995 triggered the under-subscription, due to Tommorrowland's fraudulent and

[20] 189 (2012) DLT 264
[21] 2014 SCC OnLine Del 2692
[22] (1973) 2 SCC 510
[23] 2007 11 SCC 453

misleading conduct, not due to any default by the Underwriter, and the learned Single Judge failed to notice this fact.

(b) It is further contended that the obligations of the Underwriter under the SEBI (Underwriters) Regulations, 1993, stood discharged once the public issue was fully subscribed. This aspect was erroneously disregarded by the learned Single Judge.

(c) It is submitted that although the learned Single Judge noted several instances of misconduct by Tommorrowland, the learned Single Judge nevertheless decreed the claim in Tommorrowland's favour, *albeit* with partial modification.

(d) It is also submitted that the learned Single Judge failed to appreciate the malpractices committed by Tommorrowland, which are evident from the record.

(e) To support this contention, reliance is placed on ***Grid Corporation of Orissa Ltd. & Anr. vs. Balasore Technical School***[24] and ***Gujarat Water Supply and Sewerage Board vs. Unique Erectors (Gujarat) Pvt. Ltd.***[25].

(iv) On the issue of powers of the court under Sections 30 and 33 of the 1940 Arb Act

(a) It is submitted that the learned Single Judge failed to consider that the Award suffers from legal misconduct under Sections 30 and 33 of the 1940Arb Act. The Arbitrator did not address core issues central to the dispute, including whether underwriting obligations stood discharged upon full subscription, the legal implications of

[24] 2000 (9) SCC 552
[25] 1989 (1) SCC 532

SEBI's refund directions, whether the contract was vitiated by fraud or misrepresentation, and the proper basis for quantifying any alleged loss.

(b) It is further submitted that the learned Single Judge overlooked that the Award does not even consider Clause 2 of the Underwriting Agreement, which governs termination of underwriting liability upon full subscription within the specified 10-day period. Instead, the Award proceeds on general observations without applying the contractual terms that actually determine liability. The learned Arbitrator awarded damages despite acknowledging the absence of quantified proof of actual loss or any material explaining the alleged financial deficit. The Award also grants interest for periods when the Underwriter was not before the learned Arbitrator, including delays attributable to the learned Arbitrator, an approach that is legally impermissible.

(c) To support this contention, reliance is placed on several judicial authorities, including, ***Naini Gopal Lahiri vs. State of U.P.***[26]***, Satwant Kumar Sandhu vs. New India Assuance Co. Ltd.***[27] and ***K.P. Poulose vs. State of Kerala & Anr***[28]**.**

(v) Arbitration agreement and claim vitiated by fraud

(a) It is submitted that the entire dispute is tainted by fraud on the part of Tommorrowland, including the circulation of a misleading prospectus, leading to SEBI investigations and criminal proceedings. The Greater Mumbai Special Judge's order dated 30.09.1998 acknowledges breaches of SEBI

[26] 1965 (35) CompCas 30 (SC)
[27] 2009 (8) SCC 316
[28] 1975 (2) SCC 236

guidelines. The learned Arbitrator as well as the learned Single Judge failed to consider these material facts and documents, rendering the Award unsustainable.

(b) To support this contention, reliance is placed on ***Republic of India vs. Agusta Westland International Ltd***[29] , ***Ameet Lalchand Shah & Ors. vs. Rishabh Enterprises & Ors***[30]**, *N. Radhakrishnan vs. Maestro Engineers & Ors*** [31] and ***Ayyasamy vs. A. Paramasivam & Ors***[32].

Analysis:

24. We have heard the learned counsel for both parties and, with their valuable assistance, examined the entire record of the Appeal as well as the documents placed before us, including the written submissions and other documents filed during the hearing.

25. Having due regard to the nature and scope of the challenges raised by the respective parties, we consider it appropriate to examine the issues arising for our determination under distinct and sequential heads. The issues shall be addressed in an order of priority, keeping in view that the findings returned on one issue may have a bearing on, or spill over into, the consideration of the subsequent issues.

In re: Maintainability of the Underwriter's appeal

26. We find no substance in the objection raised by Tommorrowland regarding the maintainability of the Underwriter's appeal. It is an undisputed fact that the Underwriter had filed an application under Sections 30 and 33 of the 1940 Arb Act, which came to be substantially rejected when the learned Single Judge

[29] 2019 SCC OnLine Del 6419
[30] (2018) 15 SCC 678
[31] (2010) 1 SCC 72
[32] 2016 (10) SCC 386

passed a decree in terms of the Award, *albeit* with certain modifications.

27. It is apposite to note that Section 39 of the 1940 Arb Act, circumscribes the appellate jurisdiction in arbitration matters in clear and unambiguous terms. In particular, clauses (iii) and (vi) of Section 39(1) expressly provide that an appeal shall lie from the nature of orders enumerated therein, to the Court authorised by law to hear appeals from original decrees of the Court passing such orders. The categories of appealable orders specifically include orders modifying or correcting an arbitral award, as well as orders setting aside or refusing to set aside an award. For ready reference, Section 39 of the 1940 Arb Act is reproduced below:

> *"**39. Appealable orders***. (1) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order: -
> An order-
> (i) superseding an arbitration;
> (ii) on an award stated in the form of a special case;
> (iii) modifying or correcting an award;
> (iv) filing or refusing to file an arbitration agreement;
> (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;
> (vi) setting aside or refusing to set aside an award;
> Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.
> (2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the [Supreme Court]."
>
> ***(emphasis supplied)***

28. In the present case, while adjudicating the application filed by the Underwriter under Sections 30 and 33 of the 1940 Arb Act, the learned Single Judge has, in substance, refused to set aside the arbitral award, *albeit* while making certain limited modifications thereto. Such an order squarely falls within the ambit of Section 39(1)(vi) of the

1940 Arb Act and, therefore, satisfies the statutory threshold for maintainability of the present appeals.

29. Further, Tommorrowland's reliance on ***Mahanagar Telephone Nigam Ltd.*** *(supra)* is misplaced. In that case, the Court specifically noted that the application under Sections 30 and 33 had *not yet been decided*, and therefore, an appeal under Section 39 was not maintainable. In contrast, in the present case, the Underwriter's application has been adjudicated and substantially rejected by the learned Single Judge. The relevant observations from ***Mahanagar Telephone Nigam Ltd.*** *(supra)* are as follows:

> "**11.** Keeping in view the aforesaid submissions, we are of the view that an appeal is maintainable against only those orders which are mentioned in Clauses (i) to (vi) of Section 39 of the old Arbitration Act, 1940 and from no other orders. In fact, in view of the categorical judgment of this Court in ***Hard Shankar's case*** (supra), we are of the view that no appeal is maintainable against an order of the learned Single Judge dismissing or allowing a petition under Sections 14 and 17 of the Arbitration Act, 1940.
>
> **12.** In our view, an appeal under Section 39(1)(vi) would certainly lie; against an order setting aside or refusing to set aside an award. However, in the present instance, we find that learned Single Judge has not dismissed the application bearing IA No. 3170/2002 filed under Sections 30 and 33 of the old Arbitration Act. The learned Single Judge has only treated the Appellant's application filed under Sections 30 and 33 of the old Arbitratior Act as having been filed under Section 34 of the new Arbitration Act, 1996. This order, in our view, cannot be treated as having refused to set aside award. We do not agree with Mr. Tripathi's submission that by virtue of the impugned order the objections to the Award filed by the Appellant under Section 30 & 33 had been dismissed or set aside by the learned Single Judge.
>
> **13.** Since we did not find any ground in the appeal challenging the conversion of Appellant's application under Sections 30 and 33 of the of Arbitration Act to Section 34 of the new Arbitration Act, 1996 we asked the learned Counsel for the Appellant to show if there was any specific ground challenging the conversion or treatment of the Appellant's application being I.A. No. 3170/2002. Learned Counsel for the Appellant fairly stated that there was no specific ground in the appeal challenging the conversion of the Appellant's application.

> **14.** Consequently, we are of the view that since the Appellant's objections to the Award under Sections 30 and 33 under the old Arbitration Act have not been refused, the present appeal is not maintainable. In case, the Respondents were to raise the plea that the Appellant's objections under Section 34 of the new Arbitration Act, 1996 were beyond limitation, the Appellant would be well advised to take all its defences including the plea that the issue of limitation already stood settled by the learned Single Judge's order by converting or treating the Appellant's objections filed by way of IA No. 3170/2002 under Section 34 of the new Arbitration Act, 1996. Moreover, in case, the Appellants are still aggrieved by any subsequent order, they would be at liberty to challenge the same.
>
> **15.** Consequently, the present appeal is dismissed as not maintainable, but with no order as to costs."
>
> ***(emphasis supplied)***

30. Similarly, the judgment in ***K.V. Abraham*** *(supra)* of the Kerala High Court does not assist Tommorrowland. In that case, the application under Section 30 of the 1940 Arb Act was dismissed on the ground of delay, not on the merits. Instead of challenging that dismissal order, the appellant in that case directly filed an appeal under Section 39, which was held to be impermissible. The Court made it clear that where the challenge is to the judgment and decree making the Award rule of court, the remedy lies under Section 17, and that an appeal under Section 39 is maintainable only against the specific orders enumerated therein. The relevant portion of ***K.V. Abraham*** *(supra)* is reproduced below:

> "**5.** When the matter came up for hearing learned Government Pleader advanced arguments setting aside the Award under Section 30 of the Arbitration Act, 1940. We are of the view all these appeals are incompetent and not maintainable. We have already indicated that the court below has already dismissed the applications preferred by the State for setting aside the Award of the Arbitrator against which they have not filed appeal under Section 39(vi) of the Act. Under Section 39(vi) of the Act State is attempting to challenge the Judgment and Decree passed by the court below. We are of the view such an order passed by the court below making the Award rule of the court by passing: the

Judgment and Decree could be challenged only on the grounds available under Section 17 of the Act. Section 17 reads as follows:

> **17. Judgment in terms of Award.--**Where the Court sees no cause to remit the Award or any of the matters referred to arbitration for reconsideration or to set aside the Award, the Court shall, after the time for making an application to set aside the Award has expired, or such application having been made, after refusing it, proceed to pronounce Judgment according to the Award, and upon the Judgment so pronounced a Decree shall follow, and no appeal shall lie from such Decree except on the ground that it is in excess of, or not otherwise in accordance with the Award.

Since State has not filed appeal against the Judgment and Decree on the-grounds available under Section 17 of the Act these appeals are not maintainable. These appeals are not maintainable on Anr. ground as well. Appeal under Section 39 is maintainable only against those orders mentioned therein. In the instant case the State has not challenged those orders dismissing the petition for condonation of delay and the order dismissing the application for setting aside the Award. Though court fee was paid in M.F.A. 482/98 and M.F.A. 647/96, no challenge was made against the order dismissing the application for condoning delay and the order refusing the application for setting aside the Award. In this connection we may refer to some of the Judgments pronounced on the point. The Calcutta High Court in ***Union of India v. N.P. Singh A.I.R. 1936 Cal 1***, considered a similar issue. The Court held as follows:

> Where the grounds of appeal do not suggest that the Decree is either in excess of or not in accordance with the award but on the contrary the grounds urge that the Decree is in terms of the Award which is bad, then such an appeal is not entertainable under Section 17 of the Act. Under Section 17 of the Act aground of appeal which goes to challenge an Award on the very same ground on which an application to challenge an Award under Section 33 has already failed is, barred both by the express language of the conditions mentioned in Section 17 of the Act as well as by Section 39 of the Act.

A Division Bench of the Allahabad High Court in ***Ram Babu v. Lakshmi Narain and Anr. MANU/UP/0075/1963: A.I.R. 1963 All 252***, has considered the scope of Sections 17, 39(2) and 41 of the Act and held as follows:

> Section 41 of the Arbitration Act makes the provisions of the Code of Civil Procedure applicable

> to proceedings under the Arbitration Act and the result is that a Decree passed under Section 17 of the Arbitration Act could be challenged by a first appeal under Section 96 of the Code of Civil Procedure and on appropriate grounds in a second appeal under Section 100 of the Code of Civil Procedure. Section 17, however, places some limitations on this right of appeal by laying down that 'no appeal shall lie from such Decree except on the ground that it is in excess of, or not otherwise in accordance with the Award.

This clause contained in Section 17 thus recognised that a Decree passed under Section 17 is subject to right of appeal by the party aggrieved but places a limitation on that right. The right is curtailed to the extent that an appeal can be filed only on the grounds mentioned in this clause, viz., it is in excess of or not otherwise in accordance with the Award. If such grounds do not exist, the right of appeal, which otherwise exists, is taken away by this clause. The right of appeal which is recognised in this clause of Section 17 of the Arbitration Act, is clearly the right conferred by Part VII of the Code of Civil Procedure and, consequently, proceeded to lay down the limitation in Section 17 on that right of appeal. The language of the clause contained in this section is clearly in the form of a limitation on an existing right of appeal and does not by itself create any independent right of appeal. If the Legislature had intended that a Decree passed under Section 17 of the Arbitration Act was not to be appealable under Section 96 of the Code of Civil Procedure and a special provision should be made for an appeal against such a Decree, the language instead of being in the negative form would have been in the positive form conferring a right of appeal.

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6. Almost identical question came up for consideration before Andhra Pradesh High Court in ***Hindustan Steel Works Construction Ltd. v. N.V. Chowdary and Anr. 2001 (1) ALR 291***. The court considered the scope of Sections 14, 17, 30 and 39 of the Arbitration Act and held that a reading of the above provisions it is discernible that Sub-section (1) of Section 39 of the Act provides for an appeal before the Division Bench against an Order passed by the learned Single Judge, if the order appealed against, falls within the six categories enumerated thereunder. The court found that the Impugned Award passed by the learned Single Judge under Sections 14 and 17 of the Arbitration has not been enumerated under any of the above six clauses provided under Section 39(1) of the Act. Consequently the appeal was dismissed as not maintainable. While dealing with the scope of Section 39 the apex court in ***State of West Bengal v. Gourangalal Chatterjee 1993 (2) ALR 95***, held that the Order passed by the learned Single Judge

does not fall in any one of the sis categories of appealable orders under Section 39(1), Consequently appeal was found not maintainable.

7. The above-mentioned judicial pronouncements would positively indicate that if a party is aggrieved by the Judgment and decree passed by a Sub Court making the Award Rule of the Court the same could be challenged only under Section 17 of the Act. Appeal has to be filed under Section 17 on specific ground mentioned therein. If party is aggrieved by an order dismissing an application for setting aside the Award the same has to be challenged under Section 39(vi) of the Act. We have found in this case State preferred M.F.A. 482/98 and 647/96 challenging the Judgment and decree passed by the Sub Court making the Award Rule of the Court. Appeal was filed under Section 39 of the Act and paid court fee also. State failed to challenge the order dismissing the delay condonation petition as well as the consequent dismissal of the application for setting aside the Award. That order was not challenged by the State though court fee has been paid. Instead of challenging the said order State has mistakenly challenged the Judgment and Decree making the Award Rule of the Court under Section 39. Procedure adopted by the State is illegal. This shows the callous manner by which arbitration cases are being filed and conducted. Since the challenge is against the Judgment and Decree of the court below grounds available under Section 17 alone could be raised even if it is stated there is a misquoting of this section. Under such circumstance these appeals are not maintainable."

(emphasis supplied)

31. Further, the objection raised by Tommorrowland with regard to the insufficiency of court fee also does not merit acceptance. Schedule II, Article 17(iv) of the Court-Fees Act, 1870, unequivocally prescribes a fixed court fee in respect of applications filed *"to set aside an award"*. The determinative factor for the purpose of court fee is the nature of the relief sought and the character of the proceedings, and not the consequential effect of the decree that may follow upon adjudication.

32. Merely because the arbitral award results in a monetary liability, or because the decree passed thereon partakes of a monetary consequence, the proceedings do not *ipso facto* assume the character

of a money suit or a money decree for the purposes of court fee. Thus, the submission advanced on behalf of Tommorrowland rests on an erroneous understanding of the statutory scheme governing court fees and overlooks the settled legal position that challenges to arbitral awards under the 1940 Arb Act attract a fixed court fee as prescribed under Schedule II, Article 17(iv). This objection is, therefore, devoid of merit and is accordingly rejected.

33. For all the aforesaid reasons, we hold that the objection raised by Tommorrowland to the maintainability of the Underwriter's appeal is unfounded and unsustainable. The objection is accordingly rejected.

Issue of wrongly proceeding ex-parte against the Underwriter

34. Before examining the merits further, it is necessary to refer to the relevant portion of the Impugned Judgment, wherein the learned Single Judge dealt with the Underwriter's contention regarding wrongful *ex parte* proceedings. The learned Single Judge in the Impugned Judgement observed as under:

> "**44.** The present suit has been filed by the Plaintiff under Sections 14 and 17 of the Arbitration Act, seeking judgment and decree in terms of the Award passed by the ld. Sole Arbitrator, dated 30th May, 2012 passed in arbitration case being *M/s MS Shoes East Limited v. Centurion Bank Ltd. (now HDFC Bank)*. The Defendant has filed an application under Sections 30 and 33 of the Arbitration Act, 1940, seeking setting aside of the impugned award. One of the objections raised by the Defendant is in respect of service in the arbitral proceedings and for having been proceeded ex-parte. The short submission on behalf of the Defendant is that though the Defendant was initially represented before the ld. Sole Arbitrator, on 13th January, 2009, the Advocate appearing on behalf of the erstwhile Centurion Bank of Punjab had informed the ld. Arbitrator that Centurion Bank of Punjab had merged with HDFC Bank Ltd. It is submitted that the entity which engaged the Advocate no longer existed, and therefore, the Advocate did not have instructions to appear on behalf of the new entity i.e. the Defendant herein. It is further submitted that despite the factum of merger having been informed to the ld. Arbitrator, no notice was issued to the Defendant. There was a duty upon the Ld. Arbitrator to issue

notice to HDFC Bank Ltd. and for the claimant to take steps under Order XXII Rule 10 to implead the new entity. The affidavit of the lawyer has also been placed on record to argue that since he was not appointed as a counsel by HDFC Bank Ltd., he could not appear in the matter. It is finally submitted that even at the time when the order proceeding *ex parte* was passed, it was against Centurion Bank of Punjab and not HDFC Bank Ltd., as HDFC Bank Ltd. was not even impleaded. Thus, according to the Ld. Senior Counsel for the Defendant, the entire proceeding was vitiated *qua* the Defendant/Respondent therein and the non-issuance of further notice to HDFC Bank Ltd. constitutes legal misconduct on part of the ld. Arbitrator. Hence, the impugned Award is liable to be set aside.

46. A perusal of the records in the present case would show that Centurion Bank of Punjab Limited was initially served in ***CS (OS) 1299/1997*** i.e., the suit filed under Section 20 of the Arbitration Act, 1940, where the arbitrator was appointed. A *Vakalatnama* was also filed on its behalf. Thereafter, once the ld. Arbitrator had entered reference, notice was issued on 6th July, 2007 to the address contained in the Underwriting Agreement by registered post. The registered post was returned back with the remark "left without address". The claim petition was then again sent by courier to Centurion Bank of Punjab Ltd. on 7th September, 2007, which was duly acknowledged. The acknowledgment of the courier has also been placed on record. Ld. Counsel for the Respondent in the arbitral proceedings appeared before the ld. Arbitrator on 13th January, 2009, and it was recorded as under:

> *"Mr. Dharam Dev, Advocate for HDFC Bank says that Centurion Bank of Punjab has merged in the HDFC Bank. The claimant filed a claim against 20th Centurion Finance Corporation Ltd. The 20th Centurion Ltd. merged in the Centurion Bank of Punjab. The claimant has to take appropriate steps."*

47. On 9th May, 2009, the same Advocate was present on behalf of HDFC Bank Ltd. and was directed to produce documents relating to the merger. On 23rd May, 2009, the ld. Arbitrator records that the said merger related documents had not been filed. Another opportunity was granted for filing of the said documents on 11th July, 2009, on which date as well the Advocate for HDFC Bank Ltd. was present. However, the documents were not filed. Hence on 24th April, 2010, the ld. Arbitrator proceeded with the erstwhile 20th Century Finance Corporation Ltd. (now HDFC Bank Ltd.) – Respondent No.5 as *ex parte*.

48. The proceedings dated 13th January, 2009 extracted above clearly show that the Advocate who was appearing on behalf of Respondent No. 5 in the arbitral proceedings, did not appear only

on behalf of the Centurion Bank of Punjab Ltd. but his appearance was recorded as 'Advocate for HDFC Bank'. This clearly shows that HDFC Bank had notice of the initial suit where the reference order was passed. It also had complete notice of arbitral proceedings where it was duly represented by an Advocate. It is further pertinent that even after the factum of the merger was conveyed to the Ld. Arbitrator, the same Advocate continued to appear for Respondent No. 5, which shows that HDFC Bank Ltd. was represented in the proceedings. However, after a few dates, the Advocate chose not to appear and the Respondent chose not to be represented before the ld. Arbitrator. Finally, the ld. Arbitrator sent the notice of passing the impugned Award dated 30th May, 2012 *vide* communication dated 6th June, 2012 to the Respondent, which was also acknowledged by the Respondent. The ld. Arbitrator had confirmed to the Plaintiff that the copy of the award was supplied and the files and records of the ld. Arbitrator were also inspected by the Defendant/Respondent.

49. In the initial part of the award, the ld. Arbitrator records as under:

> *"The respondent appears through Mr. Sharm (Dharm) Dev Advocate on several dates and stated that the respondent had merged in the HDFC Bank but on demand failed to produce the relevant document regarding merger and despite appearances through its counsels did not file any pleadings and was proceeded exparte on 24.4.2010. An amicus curie was appointed in view of the nature of the case. The claimant led evidence. Arguments were heard."*

50. Thus, the Defendant/Respondent having had adequate notice, this Court holds that the ld. Arbitrator was not expected to continue issuing notices to an entity, which voluntarily chose not to appear before her. The impugned Award does not deserve to be set aside due to any such alleged legal misconduct on part of the ld. Arbitrator. In fact, the records and the proceedings show to the contrary that the ld. Arbitrator had repeatedly passed directions, which were not complied with by the Respondent. The objection as to service is therefore completely untenable and is rejected.

51. The principal question that now arises is to the legality and validity of the impugned award."

35. It is evident that, after thoroughly examining the arbitral and judicial record, the learned Single Judge rejected the Underwriter's objection regarding the *ex parte* proceedings. The Court held that the

Underwriter had adequate notice of the arbitral proceedings and that the learned Arbitrator was not required to continue issuing notices when the party, despite repeated opportunities, chose not to participate in the proceedings concerning Tommorrowland's claim. Consequently, the allegation of legal misconduct was found to be meritless, and the objection regarding non-service was rejected.

36. While examining this issue, we find that certain material facts are not in dispute. The predecessor-in-interest of the present Underwriter was admittedly a party to the reference proceedings before the learned Single Judge. It is also an undisputed position that, subsequent to the merger dated 23.05.2008, learned counsel, who had been appearing on behalf of the predecessor-in-interest, entered appearance before the learned Arbitrator on 13.01.2009 and expressly apprised the learned Arbitrator of the factum of such merger. Therefore, it stands established that the predecessor-in-interest of the present Underwriter had due and effective notice of the arbitral proceedings.

37. We further note that the learned Single Judge, in the Impugned Judgment, recorded that service in the arbitral proceedings had been duly effected and acknowledged by the predecessor-in-interest. The learned Single Judge also noted that the learned counsel appeared on 13.01.2009 as well as on subsequent dates, during which the learned Arbitrator directed the filing of the merger documents. In the present appeal, the Underwriter has neither disputed these categorical findings nor raised any specific ground challenging these factual conclusions. No evidence has been placed before us to demonstrate that the learned Single Judge's findings are incorrect.

38. Further, the Underwriter has not sought any review of these

factual findings of the learned Single Judge, even though such a step would have been the proper course if those factual findings were indeed erroneous.

39. The Underwriter's four-fold submission before us is as follows:

(i) that no notice of the arbitral proceedings was served upon it after the merger;

(ii) that the affidavit filed by the learned counsel was not considered by the learned Single Judge;

(iii) that Tommorrowland deliberately withheld notices; and

(iv) that Tommorrowland failed to file an amended memo of parties despite the learned Arbitrator's direction on 13.01.2009, and therefore, no fresh notice was issued to the present Underwriter.

40. We are unable to accept these submissions, especially in view of the fact that the learned counsel continued to appear before the learned Arbitrator even after the alleged merger. Such continuous appearance cannot be construed as lack of instructions or absence of knowledge on the part of the Underwriter.

41. The contention that the affidavit dated 02.07.2014 filed by the then counsel was not properly considered by the learned Single Judge, is also without merit. The learned Single Judge examined the entire record and reached conclusions that were inconsistent with the assertions in that affidavit. Moreover, the contemporaneous arbitral record does not show that the learned counsel ever sought a formal discharge, contrary to what is claimed in the affidavit.

42. As regards the grievance that Tommorrowland did not file an amended memo of parties despite the learned Arbitrator's direction, the omission appears to be a procedural lapse without substantive

consequence, particularly since the learned counsel continued to appear before the Arbitrator and the merger documents were not filed despite directions.

43. For all these reasons, at this stage, we find no basis to differ from the conclusions of the learned Single Judge. Accordingly, the contention of the Underwriter regarding wrongful *ex parte* proceedings is devoid of merit and is rejected.

Award passed beyond the statutory time without the Court's extension

44. Before proceeding further, it is necessary to refer to the relevant excerpt of the Impugned Judgment wherein the learned Single Judge examined the Underwriter's contention relating to the *post-facto* extension of time under Section 28 of the 1940 Arb Act. The relevant portion reads as under:

> **I.A. No. 12965/2012 (under Section 28 of the Arbitration Act, 1940)**
>
> 25. The present application was filed by the Plaintiff under Section 28 of the Arbitration Act, 1940, seeking post-facto extension of time of the arbitration proceedings from 20th August, 2007 to 30th May, 2012 i.e. the date on which the Award was pronounced by the Ld. Arbitrator, as the time taken by the Ld. Arbitrator to pronounce the Award took more than the 4 months prescribed in Rule 3 of the First Schedule of the Act.
>
> *****
>
> 31. Heard. Clause 3 of the First Schedule to the Arbitration Act, 1940 (Implied Conditions of Arbitration Agreements) prescribes that the ld. Arbitrator shall make the award within four months of entering on the reference, or within such further time as the Court may allow. The said clause reads as under:
>
> > *"3. The arbitrators shall make their award* ***within four months after entering on the reference*** *or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow."*
>
> 32. Further, Section 28 of the Arbitration Act, 1940 reads as under:

> *"28. Power to Court only to enlarge time for making award: -*
>
> *(1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.*
> *(2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect."*

33. It is relevant to note that there were three orders by which reference was made to the ld. Arbitrator i.e. orders dated 14th March, 2007, 8th August, 2007 and 22nd April, 2010 qua various Respondents. The same Sole Arbitrator was appointed in all the references. The ld. Arbitrator was called upon to adjudicate claims filed against more than 260 Respondents. The ld. Arbitrator commenced sending issuance of notices since 2007 onwards and finally the award came to be passed in May 2012 to July, 2012. In respect of several of the Respondents, the disputes were settled. In case of a large number of Respondents, it is evident from the arbitral record that service had proved to be a challenge. Since several Respondents were not served or were not appearing, the ld. Arbitrator appointed an Amicus Curiae in order to have a fair hearing and finally passed the awards. In the meantime, various orders have been passed by the ld. Single Judges of this Court increasing the fees of the ld. Arbitrator. The ld. Arbitrator has held more than 50 sittings over the five-year period and dealt with the matters extensively.

34. The law on Section 28 of the Arbitration Act, 1940 is well settled. In ***Hari Shankar Lal v. Shambhunath Prasad & Ors., AIR 1962 SC 78***, the Hon'ble Supreme Court had observed as under –

> *".. I am, however, inclined to the view that in view of the provisions of s. 28, it is not possible to say that the arbitrators are not competent to act after the expiry of the period of four months from the date of their entering oh the reference. The provisions of this section contemplate the arbitrators having made the award beyond the period of limitation without having previously obtained the order of the Court extending the time of making the award. This implies that the arbitrators would have carried on their proceedings and would have made the award subsequent to the expiry of the period during which they should have made the award. The competency of the arbitrators to act in pursuance of the reference arises out of the reference made by the*

parties and is not dependent on the period during which they ought to make the award. So long as the power vested in them to decide the dispute between the parties is not withdrawn, they continue to be competent to act on the reference in expectation that the period for making the award would be extended by the Court."

35. In ***State of Punjab v. Hardyal, AIR 1985 SC 920***, paragraph 18 reads as under –

"...As I observed earlier, the court has got the power to extend time even after the award has been given or after the expiry of the period prescribed for the award. But the court has to exercise its discretion in a judicial manner....No useful purpose will be served in remanding the case to the trial court for deciding whether the time should be enlarged in the circumstances of this case. In view of the policy of law that the arbitration proceedings should not be unduly prolonged and in view of the fact that the parties have been taking willing part in the proceedings before the arbitrator without a demur, this will be a fit case, in our opinion, for the extension of time. We accordingly extend the time for giving the award and the award will be deemed to have been given in time."

36. This principle of law has been reaffirmed in ***Campagnie De Saint Gobain v. Fertilizer Corporation of India Ltd., (1970) ILR Delhi 927***, wherein it was observed as follows:

"33. The learned counsel have cited a number of judgments for and against the grant of the prayer for enlargement of time; but all of them are based on the fact of each individual case. There can be no doubt that the enlargement of time for making the award is entirely within the discretion of the court. In Kanhayalal Dugar v. Askaran Kishanlal AIR1957 Cal 658, it was observed that the court's power under section 28 to extend time are entirely discretionary and are not limited.. The court can enlarge time for making the award even after the award has been made and even after the time has expired. It was also held that one of the persuasive consideration before the court would be, "that after all the time, expense and trouble in going into arbitration and actually having the award, regarding which there is no meritorious objection, it is it is proper to enlarge the time and make the award, the fruit of so much time, labour and

expense, effective and not to frustrate it by refusing time. Looking to all the facts and circumstance stated above, I am satisfied that it is a fit case. where time for making the award should be extended. I, Therefore, enlarge the time. until 29-9-1969, the date on which the award was made in this case The award was, Therefore, made within the time allowed by law; and is not invalid on the ground of being made beyond time."

37. Relying upon the foregoing judgments, a similar view was taken in ***Milan Kumar Mondal & Anr. v. Deshbandhu Chittaranjan Memorial Society (Regd) & Anr. [MANU/DE/8736/2007]***.

38. The above judgments clearly lay down the position that if no objection is taken during the arbitral proceedings, then the time for passing the award can be extended, even after passing of the award i.e. ex-post-facto. It is within the discretion of the Court as to whether the time is to be extended or not and broadly the facts and circumstances need to be looked into.

****

40. On an application of the decisions cited above to the facts of the present case, the Court cannot help but notice that the arbitral proceedings in these cases under consideration were not ordinary proceedings. They were proceedings which were conducted by the ld. Arbitrator in relation to more than 260 claims. This Court takes judicial notice of the fact that the awards passed by the ld. Sole Arbitrator have been the subject matter of multiple petitions and applications before this Court. A large number of awards passed in favour of the Plaintiff have been resolved due to settlements against several underwriters.

*****

42. Since in respect of these very arbitral proceedings, extensions have already been granted in cases involving other underwriters and in the unusual facts and circumstances of these cases considering the large number of parties and large volume of claims, this Court is of the opinion that this is a fit case for ex-post-facto grant of extension under Section 28 of the Arbitration Act, following the settled legal position as set out above.

43. I.A 12965/2012 is accordingly allowed and disposed of."

45. Challenging the above finding, the Underwriter's objection before us is twofold:

(i) that the Award dated 30.05.2012 was passed nearly five years after the reference, despite Rule 3 of the First Schedule of the 1940 Arb Act mandating that an award be delivered within four

months unless extended by the Court, and no such extension was sought during the arbitral proceedings; and

(ii) that the reasons later cited for seeking *post-facto* extension are frivolous and insufficient.

46. Section 28 of the 1940 Arb Act reads as under:

> "**28. Power to Court only to enlarge time for making award: -**
>
> (1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.
> (2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect."

47. A plain reading of Section 28(1) makes it clear that the Court is empowered to enlarge the time for making an award, irrespective of whether the statutory period has expired and even after the award has already been made.

48. The learned Single Judge relied on a catena of judgments of the Hon'ble Supreme Court, including ***Hari Shankar Lal v. Shambhunath Prasad & Ors***[33] and ***State of Punjab v. Hardyal***[34], which affirm this position. The Underwriter cited several authorities to the contrary; however, each of them has been specifically considered and distinguished in the Impugned Judgment.

49. The Underwriter reiterated the same precedents before us. However, we find no merit in the argument that *post-facto* extension is impermissible in law. None of the authorities relied upon by the Underwriter supports such an absolute bar. On the contrary, Section 28(1) of the 1940 Arb Act expressly empowers the Court to enlarge the time for making the award even after the award has been rendered,

[33] AIR 1962 SC 78
[34] AIR 1985 SC 920

provided such discretion is exercised judiciously, prudently, and in accordance with established legal principles.

50. In the present case, we agree with the learned Single Judge that the arbitration was an unusually large and complex reference involving more than 260 Respondents/Underwriters. The Sole Arbitrator conducted more than 50 sittings over several years, repeatedly dealt with service difficulties, facilitated settlements, and even appointed an *amicus curiae* where necessary. These were not ordinary proceedings; they required exceptional time, coordination, and administrative management.

51. Furthermore, it is a matter of record that similar extensions had already been granted in respect of other underwriters arising from the very same arbitral proceedings, and such extensions continue to subsist, having neither been set aside nor reversed. In these circumstances, we find no justifiable basis to hold that a *post facto* extension could not be granted in the present case.

52. In view of the foregoing and considering the exceptional number of parties, the magnitude of claims, and the distinctive circumstances of this case, the Underwriter's objection to the *post-facto* extension of time is without substance and is accordingly rejected.

In re: liability of the Underwriter under Underwriting Agreement

53. In its appeal, the Underwriter has extensively asserted that both the learned Arbitrator and the learned Single Judge erred in holding it liable, despite, according to the Underwriter, there being no surviving underwriting obligation. It is argued that once the issue appeared fully subscribed, the Underwriter's liability stood extinguished, and that it cannot be held responsible for subsequent developments allegedly

arising from Tommorrowland's own conduct.

54. The Underwriter further submits that the learned Single Judge failed to appreciate that the Award is vitiated by legal misconduct under Sections 30 and 33 of the 1940 Arb Act. It is also argued that the entire dispute is tainted by fraud attributable to Tommorrowland, including the circulation of a misleading prospectus, which led to SEBI investigations and criminal proceedings.

55. The learned Single Judge, in the Impugned Judgment, has comprehensively addressed all relevant factors, including the terms of the Underwriting Agreement executed between Tommorrowland and the Underwriter. The key findings recorded in the Impugned Judgment may be summarised as follows:

(a) The Underwriter failed to discharge its underwriting obligations, as it did not pay for the FCDs that devolved upon it after the issue became under-subscribed due to the withdrawal of investor applications.

(b) The issue ultimately failed because, after SEBI mandated a withdrawal option, the subscription level fell below the mandatory 90%, thereby triggering devolvement on the Underwriter.

(c) The Underwriter's obligations are not discharged merely because the issue initially appeared 90% subscribed on the earliest closing date; the actual status must be assessed after the statutory 30-day period and the SEBI-mandated withdrawal process.

(d) The Underwriter did not invoke its contractual right to terminate the Underwriting Agreement, despite alleging that at the relevant time, Tommorrowland had made statements that were

false, incorrect, or misleading.

(e) Allegations of fraud raised by the Underwriter are rejected as they are neither pleaded nor proved before the learned Arbitrator; moreover, they did not meet the requisite legal threshold to render the disputes non-arbitrable.

(f) The learned Arbitrator correctly held that the Underwriter's liability was confined only to the number of FCDs that actually devolved upon it, and not to the full underwritten amount.

(g) Damages were rightly awarded under Clause 11(d) of the Underwriting Agreement, as the Underwriter's failure directly caused financial loss to Tommorrowland; and also the Underwriting Agreement did not provide for liquidated damages.

(h) The Court reiterated that it cannot re-appreciate evidence or sit in appeal over an arbitral award. Interference is permissible only in cases of errors apparent on the face of the award or arbitral misconduct, neither of which was found here.

(i) Consequently, the arbitral award was upheld, as the learned Single Judge found no perversity, illegality, or misconduct under Sections 30 and 33 of the 1940 Arb Act.

56. It is an undisputed position that at the time the subject public issue was launched, the field of underwriting was governed by the SEBI (Underwriters) Regulations, 1993, and that the Underwriter in the present case was duly registered under the said Regulations.

57. It is further not in dispute that, in accordance with the said Regulations, the Underwriter and Tommorrowland entered into a formal Underwriting Agreement, which governed their respective rights and obligations in relation to the public issue. There is also no

dispute that both the pre-issue and post-issue relationship between the parties was required to be regulated strictly in terms of the said Underwriting Agreement.

58. An underwriting agreement of this nature is, in substance, a contract of guarantee, akin to an insurance arrangement, whereby the Underwriter undertakes to protect the public issue by subscribing to the shares/FCDs to the extent of the underwriting commitment in the event the issue is not fully subscribed by the public. In effect, the Underwriter assures the issuer that it will receive the requisite subscription proceeds up to the agreed threshold if public subscription falls short. The arrangement enables the issuer to access capital from the market with the assurance that any shortfall will be covered by the Underwriter strictly in the manner contemplated under the agreement.

59. Under the Underwriting Agreement, the subscription list was required to open within three months from the date of execution of the agreement, which condition stood satisfied in the present case. The Agreement further stipulated that unless the issue was fully subscribed, the subscription list would remain open for a maximum period of ten (10) calendar days.

60. It is further not disputed that the public issue opened on 14.02.1995 and, as per the prospectus, was scheduled to close on or before 24.02.1995. The prospectus further disclosed 18.02.1995 as the "earliest closing date". Since the issue was subscribed in excess of 90% well before the outer closing date, Tommorrowland exercised its option and closed the issue on 18.02.1995, in strict conformity with the terms and disclosures contained in the prospectus.

61. The dispute arose subsequent thereto, consequent upon the directions issued by SEBI on 06.03.1995. By the said directions, and

for the reasons recorded therein, which cited certain anomalies arising due to the acts or omissions attributable to Tommorrowland, Tommorrowland was mandated to grant its subscribers an option to withdraw their applications. For the sake of ready reference, the said letter is reproduced hereunder *verbatim*:

> *"Securities and Exchange*
> *Board of India*
> *Ref: IMID/; XX/95*
> *March 6, 1995*
>
> *The General Manager*
> *SBI Capital Markets Limited*
> *New Delhi,*
> *Sir,*
>
> *RE: PUBLIC ISSUE OF M.S. SHOES EAST LIMITED*
> *Please refer to your fax message dated February 20, 1995 and your subsequent discussion at SEBI.*
> *We are herewith sending a draft of the approved letter to be issued by M.S. Shoes East Limited along with the letter of allotment. Please ensure that the letter is issued in the form in which it has been approved by us without modification of any kind and also that they are actually despatched to the successful applicants along with the allotment letter. You had indicated that the issuer company has agreed to do so. The person/agency to whom the letter requesting refund should be addressed, must be specifically indicated in the letter. Lead Manager should also ensure that arrangements are made for immediate refund of monies to those who opt to do so. We would like to add that SEBI reserves to itself the right to take appropriate action against the issuer company and the lead manager for their lapses in this regard.*
> *Please arrange to acknowledge receipt of this letter and also keep us informed of the action taken by the company.*
> *Company.*
> *(USHA NARAYANAN)*
> *DIVISION CHIEF"*

62. In compliance with the aforesaid directions, Tommorrowland extended the option of withdrawal to its subscribers. Pursuant thereto, a substantial number of subscribers elected to withdraw their applications, which had the direct and inevitable consequence of

reducing the overall level of subscription to below 90%. Crucially, this contingency, *namely*, a post-closure reduction in subscription below the stipulated threshold as a result of a regulatory mandate, was neither envisaged nor provided for under the terms of the Underwriting Agreement.

63. The Underwriter contends that once the issue had achieved subscription in excess of 90% within the stipulated period, its liability under the Underwriting Agreement stood discharged. It is asserted that subsequent events leading to a fall in subscription could not revive or extend the underwriting obligation. Reliance is placed on Clause 2 of the Underwriting Agreement, which, in effect, provides that if the company closes the subscription list earlier than the maximum stipulated period, the Underwriter shall not be bound to discharge underwriting obligations thereafter.

64. The most significant and undisputed aspect, however, is that pursuant to SEBI's letter dated 06.03.1995, Tommorrowland unilaterally permitted subscribers to withdraw their applications. This unilateral act, undertaken during the subsistence of the Underwriting Agreement, fundamentally altered the contractual framework governing the public issue. Notably, such alteration was effected without the consent of the Underwriter and, indeed, without any prior intimation thereto. Significantly, the Underwriting Agreement neither envisages nor fastens any liability upon the Underwriter arising from a unilateral, post-closure withdrawal of subscriptions permitted by the issuer, for any reason whatsoever, including pursuant to a regulatory directive.

65. Thus, while the Underwriting Agreement operated as a limited contractual assurance against failure of public subscription within the

stipulated period and in accordance with the terms prevailing at the time of closure of the issue, it did not extend to, nor could it be construed as covering, contingencies arising from any unilateral alteration of the contractual arrangements between Tommorrowland and the subscribers after the issue had been successfully completed.

66. At this juncture, we find it imperative to underscore that the controversy in the present case could not have been adjudicated without a proper application of the principles governing contracts of guarantee under the **Indian Contract Act, 1872**[35]. Regrettably, neither the contesting parties, despite the involvement of more than 260 Underwriters, nor the learned Arbitrator, nor even the learned Single Judge, addressed the dispute through the correct prism of statutory contract law. This omission strikes at the very root of the Impugned Award and the Judgment affirming it, as the legal relationship between Tommorrowland and the Underwriter is not merely contractual but is statutorily regulated under Chapter VIII of the IC Act. For the sake of ready and convenient reference, some of the relevant statutory provisions having a bearing on the issues arising in the present case are reproduced hereunder:

"CHAPTER VIII
OF INDEMNITY AND GUARANTEE

> **126. "Contract of guarantee", "surety", "principal debtor" and "creditor".** - A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.
>
> **128. Surety's liability.** - The liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by

[35] IC Act

the contract.

133. Discharge of surety by variance in terms of contract. - Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

134. Discharge of surety by release or discharge of principal debtor. - The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

135. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor. - A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

139. Discharge of surety by creditor's act or omission impairing surety's eventual remedy. - If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

142. Guarantee obtained by misrepresentation invalid. - Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

143. Guarantee obtained by concealment invalid. - Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid."

67. Chapter VIII of the IC Act constitutes a complete and self-contained statutory code governing contracts of indemnity and guarantee. It exhaustively defines the nature of such contracts, delineates the respective rights, duties, and liabilities of the parties involved, and, most importantly, prescribes the precise circumstances in which a surety stands discharged from liability. Though there may be a limited conceptual overlap between indemnity and guarantee, the

scheme of Chapter VIII is primarily concerned with contracts of guarantee and embodies long-settled principles of equity and commercial fairness.

68. These principles have been consciously incorporated by the legislature to ensure that a surety, who undertakes a secondary and contingent liability, is not exposed to unilateral, unforeseen, or inequitable enlargement of risk by acts of the creditor or the principal debtor. The statutory framework thus operates as a protective bulwark, ensuring that a guarantee remains confined strictly to the terms and conditions to which the surety has knowingly and expressly consented.

69. Section 126 of the IC Act lays the statutory foundation of a contract of guarantee. It defines such a contract as an agreement "*to perform the promise, or discharge the liability, of a third person in case of his default*". The provision further classifies, with precision and clarity, the legal roles of the three parties to the transaction, *namely*, the person who gives the guarantee is the "*surety*"; the person in respect of whose default the guarantee is furnished is the "*principal debtor*"; and the person to whom the guarantee is given is the "*creditor*".

70. These definitions are not merely descriptive or illustrative. They are mandatory legal classifications that determine, in a definitive manner, the rights, obligations, and liabilities of each party under the IC Act. Once these roles are identified, the parties are brought squarely within the statutory regime of Chapter VIII, and their relationship must thereafter be governed strictly in accordance with the provisions of the IC Act. Tested on this statutory framework, there can be no ambiguity in the present case that the Underwriter

unmistakably assumes the position of the surety; Tommorrowland occupies the position of the creditor; and the public subscribers, whose failure to subscribe adequately would trigger the guarantee, constitute the principal debtors.

71. Upon fixation of these statutory roles, the subsequent provisions of Chapter VIII regulate the legal consequences flowing from such a tripartite relationship. These provisions are not optional, nor are they merely default rules that can be freely overridden by conduct or implication. Save and except where the statute itself permits variation by contract, the protections afforded to a surety are mandatory and cannot be diluted by unilateral action of the creditor.

72. The legislative intent underlying the law of guarantees is unequivocal and admits of no ambiguity. A surety's obligation is required to be construed strictly, and its liability cannot be enlarged, extended, revived, or otherwise altered except with its free, informed, and express consent. This foundational principle is firmly anchored not only in the statutory framework of the IC Act, but also in long-settled equitable doctrines which recognise that a surety undertakes a secondary and contingent liability, ordinarily without any direct commercial benefit. Consequently, the law accords heightened protection to a surety against the imposition of unforeseen, expanded, or implied risks.

73. This principle has been reiterated by a Division Bench of the Kerala High Court in ***United Breweries (Holding) Ltd. v. Karnataka State Industrial Investment and Development Corporation Ltd.***[36], placing reliance upon the binding exposition of law by the Hon'ble

[36] 2011 SCC OnLine Kar 4012

Supreme Court in ***State of Maharashtra v. Dr. M.N. Kaul***[37]. In that context, the Kerala High Court held as under:

> **"**6. The said letter of comfort nowhere reveals that the appellant stood as guarantor for the loan disbursed by respondent No. 1 in favour of respondent No. 2. It merely states that the associate company (debtor company) will meet the financial and contractual obligations and that the appellant herein undertakes all reasonable steps to ensure that the debtor company conducts its operations efficiently to meet its obligations in the usual course of business. The comfort letter is more in the nature of recommendatory letter. If a person has not stood as guarantor or surety, he cannot be treated a guarantor or surety without there being a specific undertaking by him that he would discharge the liability of the third person, in case of his default. In this context, it is relevant to note the provisions of section 126 of the Indian Contract Act, 1872, which read thus:
>
> > "126. 'Contract of guarantee', 'surety', 'principal debtor' and 'creditor'.—A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor', and the person to whom the guarantee is given is called the 'creditor'. A guarantee may be either oral or written."
>
> 7. From the above, it is clear that the contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. If the entire document in question, i.e., exhibit P14 is read as a whole, the same nowhere reveals that the appellant has entered into a contract or an agreement with respondent No. 1 to discharge the liability of respondent No. 2 herein (principal debtor) in case of its default.
>
> 8. The ***apex court in the case of State of Maharashtra v. Dr. M.N. Kaul reported in AIR 1967 SC 1634,*** while dealing with the aspect of the enforceability of the guarantee has observed thus (page 4 of 38 Comp Cas):
>
> > "The question is whether this guarantee is enforceable. *That depends upon the terms under which the guarantor bound himself. Under the law he cannot be made liable for more than he has undertaken*. It is often said that a surety is a favoured debtor, for in the expressive phrase of Lord Westbury L.C. in *Blest* v. *Brown*, [1862] 4

[37] AIR 1967 SC 1634

De G.F. and J. 367 at page 376:

> 'you bind him to the letter of his engagement.
> Beyond the proper interpretation of that engagement
> you have no hold upon him.'

These observations have been recalled in cases of guarantee and suretyship by the Judicial Committee and also this court. See for example ***Pratapsing Moholalbhai* v. *Keshavlal Harilal Setalvad*, 62 I.A. 23 at page 33; AIR 1935 PC 21 at page 24** and ***M.S. Anirudhan* v. *Thomco's Bank Ltd.*, [1963] 33 Comp Cas 185; [1963] (Supp) 1 SCR 63 at page 77; AIR 1963 SC 746 at page 752**. To this there are some exceptions. In case of ambiguity when all other rules of construction fail the courts interpret the guarantee contra proferentem, that is, against the guarantor or use the recitals to control the meaning of the operative part where that is possible. But whatever the mode employed, the cardinal rule is that the guarantor must not be made liable beyond the terms of his engagement."

(emphasis [Here printed in italics.] supplied)

9. From the above, it is clear that the question as to whether the deed in question is a deed of guarantee or not depends upon the terms under which the guarantor binds himself. Under law, he cannot be made liable for more than what he has undertaken. In our considered opinion, there is no ambiguity in exhibit P14. Under exhibit P14 the appellant has not undertaken that he would repay the loans of respondent No. 2, in case, if respondent No. 2 fails to discharge its liability. Therefore, the appellant cannot be made liable for more than what it has undertaken. It is not in dispute that respondent No. 1 herein has insisted on "letter of comfort" of appellant herein while disbursing the loan in favour of respondent No. 2 herein. Accordingly, the appellant herein being the holding company has given letter of comfort as suggested by the first respondent."

74. The same doctrinal position has been reiterated by the Kerala High Court in ***K.P. Kunjan v. Kerala State Financial Enterprises Ltd.***[38], wherein it was held that:

> "**16.** In this context, I may note that the rule of suretyship enjoins that the liability of a guarantor or surety "cannot be extended by implication or otherwise beyond the actual terms of his engagement." The claim against surety is strictissimi juris (the strictest letter of the law; to be construed strictly)."
>
> ***(emphasis supplied)***

[38] 2017 SCC OnLine Ker 6697

75. A Full Bench of the Gauhati High Court, in ***Chittaranjan Banerjee v. Deputy Commissioner of Lakhimpur***[39], has echoed the same settled legal position and lucidly expounded the jurisprudential basis for treating a surety as a "favoured debtor". The Court in the said judgement held as under:

> "**10.** A surety in the eye of law is a "favoured debtor" and the surety bonds are to be construed strictly; a surety can only be held to be bound if the condition of liability has been fulfilled. Being a "favoured debtor", a surety is entitled to insist upon rigid adherance to the term of his obligation by the "Creditor" and cannot be made liable for more than he has undertaken. The nature of the contract cannot be equated with that of an insurer or uberrima fides, it is one "strictissimi juris". We quote a passage from ***Halsbury's Laws of England,*** 2nd Edition, Vol. XVI, Article 52, p. 59:—
>
> > "The surety is regarded as a favoured debtor. He is entitled, as such, to insist upon a rigid adherence to the terms of his (the surety's) obligation by the creditor, and cannot be "made liable for more than he has undertaken; for, though his contract is not, like that of an insurer, ubenima fides, it is one strictissimi juris." The principle as to the liability of a surety has been enunciated by the Privy Council is ***Pratapsingh Moholalbhai* v. *Keshavlal Harilal,* AIR 1935 PC 21**. To put the principle in a microform the law laid down in that a guarantor cannot be made liable for more than what he has undertaken. The law laid dawn by the Supreme Court as to the nature of the liability of a guarantor or surety may be gathered from the decisions reported in **AIR 1955 SC 478 (*State of Bihar* v. *M. Homi*), AIR 1957 SC 587 (*State of U.P.* v. *Mohammed Sayeed*),** and **AIR 1964 SC 859 (*Kamala Devi* v. *Takhatmal*)**. The Supreme Court has ruled that the provisions in a surety bond which are penal in nature must be very strictly construed. The above decisions were cited at the bar, but we are not oblivious of the decisions of the Supreme Court reported in **AIR 1963 SC 746 (*Anirudhan* v. *Thomco's Bank Ltd.*). AIR 1967 SC 1634 (*State of Maharashtra* v. *Dr. M.N. Kaul*)** and

[39] 1978 SCC OnLine Gau 22

(1972) 3 SCC 85 (*State of Maharashtra* v. *Dadamiya Babumiya Sheikh*). On a perusal of the aforesaid decisions we are of the view that when a question crops up as to whether the guarantee is enforceable or not, it entirely depends upon the terms under which the guarantor or the surety bound himself. Under the law a guarantor or a surety cannot be made liable for more than he has undertaken. However, there are some exceptions to the aforesaid Rules, which have been expressed by the Supreme Court in the ***State of Maharashtra* v. *Dr. M.N. Kaul*** (supra) in the following terms:—

> "To this there are some exceptions. In case of ambiguity when all other rules of construction fail, the Courts interpret the guarantee contra proferentem that is, against the guarantor or use the recitals to control the meaning of the operative part where that is possible. But whatever the mode employed, the cardinal rule is that the guarantor must not be made liable beyond the terms of his engagement"

76. Section 128 of the IC Act provides that the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. While this provision establishes parity in the quantum and immediacy of liability, it does not render the surety's obligation absolute or indefeasible in all circumstances. Co-extensiveness does not imply that the surety remains bound irrespective of subsequent events or changes in the underlying transaction.

77. The liability of the surety subsists only so long as the principal obligation remains intact in law and the foundational terms governing that obligation are not materially altered without the surety's consent. In other words, the concept of co-extensive liability operates within, and not outside, the broader statutory safeguards provided under Chapter VIII of the IC Act. Any reading of Section 128 divorced from the discharge provisions would defeat the carefully balanced statutory

scheme and expose the surety to precisely the kind of unilateral risk escalation that the Act seeks to prevent.

78. It is in this context that the statutory provisions governing the discharge of a surety assume critical significance. Among these, Sections 133, 134, 135, 139, 142, and 143 of the IC Act are particularly relevant to the present factual matrix. These provisions collectively codify the circumstances in which a surety is released from liability by operation of law, irrespective of the creditor's intent or the absence of express termination of the guarantee. They reflect the legislative recognition that certain acts or omissions of the creditor, or changes in the contractual landscape, so fundamentally affect the basis of the guarantee that the law itself intervenes to discharge the surety.

79. Section 133 embodies one of the most fundamental rules of guarantee law. It provides that "*any variance*" made "*without the consent of the surety in the terms of the contract between the principal debtor and the creditor*" discharges the surety as to transactions subsequent to such variance. The language of the provision is absolute and admits of no exception. The underlying rationale is both logical and equitable that a surety consents to guarantee a specific obligation on defined terms, and it cannot be compelled to stand guarantee for an obligation which is materially different in its scope, risk profile, or legal incidents from that which it originally undertook.

80. Sections 134, 135, and 139 of the IC Act further reinforce and complement this principle. Section 134 provides that the surety is discharged by any contract between the creditor and the principal debtor by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the

discharge of the principal debtor.

81. Similarly, Section 135 stipulates that a surety is discharged when the creditor, without the surety's consent, compounds with the principal debtor, gives time to the principal debtor, or agrees not to sue the principal debtor. Section 139 goes a step further by providing that if the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety against the principal debtor is thereby impaired, the surety stands discharged.

82. Collectively, these provisions crystallise a single, unifying and mandatory principle of law and that is the creditor cannot, by any unilateral act, omission, forbearance, or indulgence extended to the principal debtor, alter the subsisting legal or contractual framework so as to enlarge, aggravate, or otherwise increase the risk originally undertaken by the surety, nor can the creditor take any step that impairs, prejudices, or weakens the surety's present or eventual rights of recourse against the principal debtor. Any such unilateral conduct strikes at the very foundation of the contract of guarantee and, by operation of law, attracts the statutory consequence of discharge of the surety.

83. Sections 142 and 143 of the IC Act further fortify the statutory protection accorded to a surety by declaring that any guarantee obtained by misrepresentation or concealment of material facts by the creditor is invalid. These provisions reflect the heightened duty of candour owed by the creditor to the surety at the inception of the contract of guarantee. They reinforce the broader statutory philosophy that a surety's consent must be informed, voluntary, and directed towards a clearly defined risk. Any deviation from this standard,

whether at the stage of formation or during the subsistence of the guarantee, attracts serious legal consequences.

84. Read as a whole, the scheme of Chapter VIII of the IC Act leaves no manner of doubt that the liability of a surety is strictly construed, narrowly confined to the terms originally agreed, and zealously protected by statute against unilateral alteration. The IC Act consciously prioritises certainty, predictability, and fairness in commercial dealings involving guarantees.

85. It further recognises that while guarantees play a vital role in facilitating commerce, they must not become instruments of oppression or vehicles for shifting unforeseen risks onto parties who never agreed to assume them. Any interpretation or application of an underwriting or guarantee arrangement must, therefore, be firmly anchored in these statutory principles and must scrupulously respect the limits imposed by law on the expansion of a surety's liability.

86. In the backdrop of the aforesaid statutory scheme and the settled principles governing contracts of guarantee, the facts of the present case admit of only one inevitable legal conclusion. It is an undisputed position that the public issue was successfully subscribed beyond the stipulated threshold of 90% within the prescribed period and stood validly closed in accordance with the disclosures made in the prospectus. At that stage, the contingency against which the underwriting guarantee had been furnished had not materialised.

87. However, subsequent thereto, and solely pursuant to SEBI's letter dated 06.03.1995, Tommorrowland unilaterally permitted subscribers to withdraw their applications. This step was taken entirely without the knowledge, consent, or concurrence of the Underwriter. Equally, there was no contractual provision under the

Underwriting Agreement, nor any statutory mandate under the IC Act, which authorised Tommorrowland to dispense with the Underwriter's consent or to unilaterally modify the contractual framework governing the issue in a manner affecting the surety's liability.

88. The unilateral permission granted to subscribers to withdraw their applications fundamentally altered the contractual relationship between Tommorrowland and the subscribers. This alteration was not merely procedural or incidental; it went to the very root of the transaction by retrospectively undermining a successfully completed public issue. By necessary and inescapable implication, this act also altered the substratum and legal basis of the contract of guarantee entered into with the Underwriter.

89. The guarantee was premised on a defined risk, *namely*, failure to achieve the minimum stipulated subscription within the prescribed period. Once that risk had not only ceased to exist but had, in fact, been conclusively negated by successful subscription and closure of the issue, any subsequent act which artificially recreated or reintroduced that risk through unilateral conduct amounted to a material variance in the terms of the underlying contract.

90. Such variance squarely attracts the operation of Section 133 of the IC Act, which mandates that any alteration in the contract between the principal debtor and the creditor, made without the consent of the surety, results in the automatic discharge of the surety in respect of all transactions subsequent to such alteration. The discharge in such circumstances is complete, absolute, and operates by force of law, independent of intention or equity.

91. The contention that the initial subscription in excess of 90% somehow preserved or kept alive the underwriting obligation

notwithstanding subsequent unilateral alterations is legally unsustainable. In our considered opinion, once a surety stands discharged by operation of law under Section 133 of the IC Act, such discharge is final and irreversible. The liability of the surety cannot be revived, resurrected, or reimposed by any subsequent act of the creditor, including the issuance of a devolvement notice or the purported invocation of contractual clauses which, by reason of statutory discharge, have ceased to have any legal efficacy.

92. To accept such an argument would be to allow the creditor, by unilateral action or subsequent conduct, to defeat and render otiose the mandatory statutory protections expressly conferred upon a surety under Chapter VIII of the IC Act. It would, in effect, permit the creditor to revive, resurrect, or reimpose a liability which already stood extinguished by operation of law, notwithstanding the absence of the surety's consent and in the face of a clear statutory discharge.

93. In our considered opinion, such an interpretation would not only undermine the carefully calibrated balance struck by the legislature between commercial convenience and equitable protection of a surety but would also strike at the very foundation of the statutory scheme governing contracts of guarantee. It would run directly contrary to the letter, spirit, and object of Chapter VIII of the IC Act, which is designed to ensure that a surety's liability remains strictly confined to the risk originally undertaken and is not enlarged, altered, or revived through unilateral or inequitable conduct of the creditor.

94. This conclusion is further fortified by the express terms of the Underwriting Agreement itself. As noted earlier, the Agreement contains no clause whatsoever which contemplates, permits, or authorises Tommorrowland to unilaterally alter the subscription

framework after the successful closure of the issue. Equally, the Agreement does not contain any express waiver by the Underwriter of the statutory protections available to it under the IC Act, nor does it evince any intention on the part of the Underwriter to assume liability for contingencies arising from post-closure regulatory interventions or unilateral modifications undertaken by the issuer.

95. In the absence of any such express stipulation, the statutory provisions of the IC Act operate with full vigour and prevail over any contractual arrangement to the contrary. The law is well settled that statutory safeguards, particularly those enacted to protect a surety, cannot be diluted by implication or inference. Consequently, the unilateral acts of Tommorrowland, howsoever well-intentioned or regulatory-driven, cannot be used as a basis to fasten liability upon the Underwriter in the teeth of an automatic statutory discharge.

96. Consequently, once the Underwriter stood discharged by the express and automatic operation of Section 133 of the IC Act, Clauses 10, 11, and 14 of the Underwriting Agreement, dealing respectively with the computation of underwriting obligations, the procedure for issuance of devolvement notices, and the consequences flowing from failure to achieve 90% subscription, ceased to have any legal force or application.

97. These contractual provisions are predicated upon the existence of a valid, subsisting, and enforceable contract of guarantee. Where the guarantee itself stands extinguished in law by statutory discharge, the machinery provisions contained in the Agreement cannot survive independently or be invoked in isolation. In other words, contractual clauses cannot operate once their foundational premise has been nullified by operation of statute.

98. We are therefore of the considered view that once a statutory discharge of a surety is attracted, such discharge operates immediately, automatically, and irrevocably in law. It is not contingent upon any formal declaration, acknowledgment, or subsequent conduct of the parties. Equally, such discharge cannot be nullified, reversed, or circumvented by any unilateral, procedural, or administrative act of the creditor.

99. Consequently, the issuance of a devolvement notice by Tommorrowland within the stipulated period of 30 days from the date of closure of the subscription list under Clause 11 of the Underwriting Agreement, or any alleged omission, silence, acquiescence, or non-response on the part of the Underwriter thereto, is wholly devoid of legal consequence and entirely incapable of reviving, re-imposing, or fastening any liability that had already stood extinguished by the express and automatic operation of the statutory mandate under the IC Act.

100. Once a discharge of the surety takes effect in law, the subsequent invocation of contractual machinery provisions cannot resuscitate a liability which no longer exists. To hold otherwise would amount to elevating procedural form over substantive statutory rights, and would impermissibly allow contractual processes to override, dilute, or defeat the mandatory protections enacted by the legislature under the IC Act.

101. Before parting with the matter, it is necessary to emphasise that, in examining and adjudicating upon the aforesaid issues, this Court has scrupulously confined itself to the narrow and well-defined contours of appellate jurisdiction exercisable under Section 39 of the 1940 Arb Act. The scope of interference under the said provision is

admittedly limited and does not permit an appellate court to sit as a court of first appeal over the arbitral award. Conscious of this statutory restraint, this Court has neither embarked upon any re-appreciation of the oral or documentary evidence on record, nor has it undertaken a fresh or independent interpretation of the contractual terms contained in the Underwriting Agreement or any other connected documents. The factual findings returned by the learned Arbitrator have not been disturbed merely because another view may be possible.

102. Our scrutiny has been confined strictly to the application of the governing principles of law to the admitted and undisputed facts. In doing so, we have found that the learned Arbitrator, as well as the learned Single Judge while affirming the Award, failed to apply the mandatory provisions of the IC Act, particularly those contained in Chapter VIII governing contracts of guarantee, which squarely and decisively governed the controversy at hand. The error committed is not one of appreciation of evidence or interpretation of contractual clauses, but a fundamental error of law in ignoring and misapplying statutory provisions which operate by force of law and override contractual arrangements.

103. It is well settled that where an arbitral award discloses an error of law apparent on the face of the record, especially where such error arises from a failure to apply mandatory statutory provisions, the appellate court is not only empowered but duty-bound to interfere under Section 39 of the 1940 Arb Act. An award rendered in disregard of binding statutory mandates cannot be sustained on the ground of arbitral finality, as arbitral autonomy does not extend to permitting decisions contrary to law.

104. In the present case, the manifest errors of law identified herein go to the root of the matter and have a direct bearing on the very existence of liability fastened upon the Underwriter. The interference exercised by this Court is, therefore, neither excessive nor impermissible, but falls squarely within the settled parameters of Section 39 of the 1940 Arb Act. Accordingly, the exercise of appellate jurisdiction in the present case is fully justified, legally sustainable, and in consonance with long-standing judicial precedent governing interference with arbitral awards.

105. For all the aforesaid reasons, this Court is of the considered and unequivocal view that the Arbitral Award, insofar as it fastens liability upon the Underwriter, suffers from a manifest and patent error of law apparent on the face of the record. The learned Single Judge committed the same error in affirming the said Award, having failed to advert to, appreciate, and apply the mandatory provisions of the IC Act, which squarely govern and decisively determine the issues arising in the present case.

106. The findings recorded are, therefore, vitiated by a fundamental misapplication of statutory law. Consequently, the Appeal preferred by the Underwriter is allowed; the Impugned Judgment as well as the Arbitral Award are liable to be set aside; and it is accordingly declared that the Underwriter bears no liability whatsoever towards Tommorrowland under or pursuant to the Underwriting Agreement.

<u>In re: merit of Tommorrowland's Appeal</u>

107. Although the learned Single Judge, by the Impugned Judgment, affirmed the Arbitral Award, certain modifications were made in the Arbitral Award while doing so. The Appeal preferred by Tommorrowland is confined solely to the extent of these

modifications. In particular, the learned Single Judge:

(i) reduced the damages awarded by the learned Arbitrator from Rs. 80 per FCD to Rs. 20 per FCD, thereby proportionately reducing the total award amount;

(ii) disallowed the interest granted for the pre-reference period as well as for the duration of the arbitral proceedings; and

(iii) reduced the post-award interest from 18% per annum to 7% per annum, operative from the date of the arbitral award until the date of the Impugned Judgment.

108. Tommorrowland's challenge in the present Appeal is, therefore, narrowly circumscribed and confined solely to the aforesaid modifications introduced by the learned Single Judge, *namely*, those relating to the quantum of damages awarded and the rate and period of interest granted.

109. However, as has been conclusively and exhaustively determined in the foregoing analysis, the very foundation upon which the Arbitral Award proceeded, *namely*, the existence of a subsisting and enforceable liability on the part of the Underwriter, stands negated in law. We have found that the Underwriter was statutorily discharged from all obligations under the Underwriting Agreement by the express and automatic operation of the mandatory provisions of the IC Act. Such discharge operates independently of, and overrides, any contractual stipulation or arbitral determination to the contrary.

110. Once the existence of liability itself is found to be absent, the entire superstructure of the Arbitral Award collapses. In such a situation, any enquiry into the correctness, adequacy, or proportionality of damages awarded, or into the rate, period, or nature of interest granted, becomes wholly academic, redundant, and devoid

of legal consequence.

111. The Arbitral Award, having been rendered in the absence of a legally enforceable obligation on the part of the Underwriter, is vitiated at its very inception and suffers from a legal infirmity. An award which lacks a lawful foundation cannot be sustained even in part, nor can it be salvaged by modifying or recalibrating the reliefs granted therein.

112. In these circumstances, no live or justiciable issue survives for determination in the Appeal preferred by Tommorrowland. Entertaining the said Appeal would necessarily involve adjudication upon questions relating to damages and interest which have been rendered entirely otiose by the prior and decisive finding of statutory discharge.

113. It is trite law that the Courts do not undertake adjudication of academic or hypothetical issues, particularly where the underlying cause of action itself has been extinguished in law. Any exercise undertaken in this regard would be an empty formality, bereft of legal utility or practical consequence.

114. Accordingly, and for all the reasons aforestated, we are of the considered view that the Appeal preferred by Tommorrowland is liable to be dismissed as infructuous. The Arbitral Award as well as the Impugned Judgment have already been set aside in their entirety on the ground that no enforceable liability subsisted against the Underwriter. Once the principal relief itself stands annulled, no independent challenge to ancillary or consequential modifications can survive.

Decision:

115. In light of the foregoing discussion, we find no merit in the

objections raised by Tommorrowland regarding the maintainability of the Underwriter's Appeal, FAO(OS) 85/2022. Upon examination of the matter on merits, the challenge laid by the Underwriter is found to be well-founded, and accordingly, ***FAO(OS) 85/2022*** is allowed, and both the Arbitral Award as well as the Impugned Judgment, insofar as they fasten liability upon the Underwriter, are set aside.

116. As regards ***FAO(OS) 38/2022***, filed by Tommorrowland, since the Arbitral Award and the Impugned Judgment have been held to be unsustainable and *non-est* in law for being contrary to the provisions of the IC Act, the said appeal stands dismissed as infructuous.

117. Consequently, both Appeals, along with pending application(s), if any, are disposed of in the above terms.

FAO(OS) 47/2022, FAO(OS) 116/2022 & CM APPL. 44208/2022, FAO(OS) 63/2022, FAO(OS) 140/2022 along with CM APPL. 52288/2022, CM APPL. 52290/2022 & CM APPL. 52291/2022, FAO(OS) 69/2022 and FAO(OS) 125/2022 along with CM APPL. 47561/2022, CM APPL. 47562/2022 & CM APPL. 47564/2022

118. We now turn to the examination of the remaining three sets of cross-appeals preferred by the respective parties. FAO(OS) 116/2022 (*filed by Haryana State Industrial and Infrastructure Development Corporation Limited*), FAO(OS) 140/2022 (*filed by DCM Financial Services Limited*), and FAO(OS) 125/2022 (*filed by Dolf Leasing Limited*), akin to the appeal filed by HDFC, which has been examined in the first set of cross appeals, have been instituted by the Underwriters challenging the separate Impugned Judgments, all dated 27.04.2022, passed by the learned Single Judge in distinct arbitral awards rendered by the learned Arbitrator.

119. The remaining three appeals, *namely*, FAO(OS) 47/2022, FAO(OS) 63/2022, and FAO(OS) 69/2022, are cross-appeals filed by

Tommorrowland, assailing the respective Impugned Judgments on limited grounds.

120. Before proceeding to consider the merits of these appeals, it is necessary to address certain applications filed along with two of the aforesaid Appeals, *namely*, CM APPL. 44208/2022 in FAO(OS) 116/2022, and CM APPL. 47561/2022 as well as CM APPL. 47564/2022 in FAO(OS) 125/2022.

121. CM APPL. 44208/2022 has been filed in FAO(OS) 116/2022 seeking condonation of a delay of 38 days in filing the Appeal by the concerned Underwriter. Similarly, CM APPL. 47561/2022 in FAO(OS) 125/2022 seeks condonation of a delay of 88 days in filing the Appeal, while CM APPL. 47564/2022 in the same Appeal seeks condonation of a delay of 26 days in re-filing the appeal.

122. Having carefully considered the reasons disclosed in the aforesaid applications, and keeping in view that the delays in question are neither inordinate nor indicative of any deliberate negligence or lack of *bona fides*, we are satisfied that the applicants have shown sufficient cause within the meaning and scope of Section 5 of the Limitation Act, 1963. In the interests of substantive justice, the delays are accordingly condoned.

123. Consequently, for the reasons stated in the respective applications, the applications seeking condonation of delay in filing and re-filing the Appeals are allowed.

124. In view of the foregoing, CM APPL. 44208/2022, CM APPL. 47561/2022, and CM APPL. 47564/2022 stand allowed.

125. We now turn to the merits of these Appeals.

126. At the outset, it must be noted that the substantial and determinative issues forming the very substratum of the disputes

between the parties have already been comprehensively examined and conclusively decided by us in the earlier cross-appeals, as discussed in the preceding paragraphs.

127. In our considered view, the adjudication of those foundational issues necessarily governs and decisively impacts the outcome of the present Appeals as well. The factual matrix and the legal questions arising herein stand substantially covered by, and are inextricably linked to, the conclusions already reached.

128. In these cross-appeals, on the one hand, Tommorrowland has challenged the respective Impugned Judgments passed by the learned Single Judge on grounds identical to those urged in *FAO(OS) 38/2022* (*the appeal concerning HDFC*), limited to the extent that the learned Single Judge reduced the quantum of damages awarded by the learned Arbitrator and altered the rate and period of interest. On the other hand, the respective Underwriters have assailed the very same Impugned Judgments on the ground that, notwithstanding such modifications, the learned Single Judge substantially affirmed the arbitral awards and proceeded to fasten liability upon the Underwriters, which, according to them, is unsustainable in law.

129. As noted earlier, *FAO(OS) 85/2022* and *FAO(OS) 38/2022* were treated as the lead matters, and the arguments advanced by learned counsel for both sides in those Appeals were, by consent, extended to and adopted in all the remaining Appeals. Although in certain appeals some additional or marginally varied submissions were advanced, the core issues and governing legal principles remain identical.

130. Consequently, the legal principles enunciated and applied in the lead matters, particularly with respect to the correct applicability of the statutory provisions governing contracts of guarantee and the

resultant discharge of the Underwriters, apply *mutatis mutandis* and with equal force to these remaining sets of cross-appeals, including those filed by Tommorrowland challenging the modifications relating to the quantum of damages and alteration of interest.

131. Insofar as the varied or additional arguments sought to be raised by the parties in these appeals are concerned, we are of the considered opinion that they no longer bear any material relevance. Once the fate of the Appeals turns upon the correct application of mandatory statutory provisions, any minor factual variations or nuanced submissions pale into insignificance. Such variations neither alter the legal position nor warrant any departure from the conclusions already reached on the foundational issues.

132. Save for insignificant factual variations, the substantial factual background of all these cases is identical.

133. The governing underwriting agreements, including the rights and liabilities of the parties, are substantially similarly worded; the factual scenarios in which those agreements operated are identical; the nature of liability alleged is the same; the underlying basis of the claims raised by Tommorrowland against the Underwriters is identical; and the references before the same Arbitrator in each case were similar, though separate awards were rendered on different dates.

134. Likewise, the challenges before the learned Single Judge were of the same nature, and although separate Impugned Judgments, all dated 27.04.2022, were passed, the underlying basis for affirming the awards and the nature of modifications made therein were also identical. The substance of the arguments advanced before us in these appeals is likewise common. In these circumstances, we find no reason not to apply the underlying reasoning and conclusions reached

in the first set of cross-appeals to the present set as well. Applying the same *mutatis mutandis*, the outcome of these Appeals must necessarily be governed by, and follow, the same conclusion.

135. At this stage, we may also note that certain factual contentions were raised, such as alleged defects in service upon the Underwriters before the learned Arbitrator, or contentions that the proceedings before the learned Single Judge were not in conformity with the 1940 Arb Act.

136. In our considered opinion, the factual determinations pertaining to the issue of service do not warrant reopening or re-agitation at the appellate stage, particularly in the present cases, where such findings have already been recorded by the learned Single Judge after a detailed and reasoned examination of the material on record. Further, having already held that the Arbitral Awards themselves are not in conformity with the governing legal provisions and are vitiated by errors apparent on the face of the record, we find no justification to undertake any fresh or independent factual reappraisal at this stage. Even otherwise, any reconsideration of the issue of service would be purely academic in nature, as it would have no bearing whatsoever on the ultimate outcome of the Appeals as already have been determined by us in the preceding paragraphs.

137. Equally unpersuasive are the cross-allegations advanced by the parties contending that the proceedings before the learned Single Judge were not in conformity with the scheme of the 1940 Arb Act. Such a contention proceeds on an erroneous understanding of the scope and nature of jurisdiction exercisable under the 1940 Arb Act. Unlike the restrictive and narrowly circumscribed jurisdiction contemplated under Section 34 of the Arbitration and Conciliation

Act, 1996, the Arbitration Act, 1940, vested the court with a wider supervisory and procedural jurisdiction. The learned Single Judge, while dealing with the Arbitral Awards under the 1940 Arb Act, was fully competent to regulate the proceedings and to adopt such procedures as were necessary to ensure a fair, effective, and complete adjudication of the disputes between the parties.

138. It must be borne in mind that the powers of the court under the 1940 Arb Act are to be read harmoniously with, and supplemented by, the provisions of the CPC. The learned Single Judge was therefore entitled to exercise not only the express powers conferred by the statute but also the inherent powers of the court to prevent abuse of process and to secure the ends of justice.

139. Accordingly, in view of the conclusions arrived at by us in ***FAO(OS) 85/2022*** and ***FAO(OS) 38/2022***, we are of the considered opinion that the Appeals preferred by the Underwriters, *namely* ***FAO(OS) 116/2022*** (*filed by Haryana State Industrial and Infrastructure Development Corporation Limited*), ***FAO(OS) 140/2022*** (*filed by DCM Financial Services Limited*), and **FAO(OS) 125/2022** (*filed by Dolf Leasing Limited*), are liable to be allowed. Correspondingly, the Appeals preferred by Tommorrowland, being ***FAO(OS) 47/2022***, ***FAO(OS) 63/2022***, and ***FAO(OS) 69/2022***, stand dismissed, having been rendered infructuous in view of the finding that no enforceable liability subsists against the Underwriters.

140. In view of the foregoing discussion and conclusions, these three sets of cross-appeals, along with pending application(s), if any, are accordingly disposed of in the aforesaid terms.

FAO(OS) 45/2022, FAO(OS) 46/2022, FAO(OS) 48/2022, FAO(OS) 49/2022, FAO(OS) 50/2022, FAO(OS) 51/2022, FAO(OS) 52/2022, FAO(OS) 53/2022, FAO(OS) 55/2022 and CM

141. We now turn to the consideration of the remaining twenty appeals, all of which have been filed exclusively by Tommorrowland challenging the respective Impugned Judgments passed by the learned Single Judge. In each of these Appeals, the challenge is narrowly confined to specific aspects of the Impugned Judgments wherein the learned Single Judge, while substantially affirming the respective Arbitral Awards on merits, proceeded to introduce certain modifications. In particular, while confirming the awards, the learned Single Judge:

(i) reduced the damages awarded by the learned Arbitrator from Rs. 80 per FCD to Rs. 20 per FCD, thereby proportionately reducing the total award amount;

(ii) disallowed the interest granted for the pre-reference period as well as for the duration of the arbitral proceedings; and

(iii) reduced the post-award interest from 18% per annum to 7% per annum, operative from the date of the arbitral award until the date of the Impugned Judgment.

142. These twenty appeals are identical in nature, scope, and substance to ***FAO(OS) 38/2022*** (*appeal relating to HDFC filed by Tommorrowland*), and have been instituted by Tommorrowland seeking identical reliefs on identical grounds against the respective Underwriters. The sole distinguishing feature across these appeals lies in the variation in financial exposure, which necessarily differs depending upon the quantum of underwriting obligation allegedly attributable to each Underwriter.

143. It is material to note that, unlike the earlier four sets of cross-appeals, the present twenty appeals are not cross-appeals. In these cases, the respective Underwriters have consciously chosen not to challenge the Impugned Judgments passed by the learned Single Judge. In fact, in certain matters, the Underwriters have accepted the Impugned Judgments and have even acted in compliance therewith by making payments to Tommorrowland, which payments have admittedly been accepted by Tommorrowland.

144. In the absence of any appeals having been preferred by the respective Underwriters challenging the Impugned Judgments, all dated 27.04.2022, the scope of examination in the present set of appeals is, strictly speaking, limited and circumscribed. Ordinarily, where a party has chosen to accept a judgment and has not invoked the appellate jurisdiction of this Court, the appellate scrutiny would be confined to the grounds expressly urged by the appellant alone.

145. However, such procedural limitation cannot operate to denude this Court of its duty to ensure that the final outcome accords with settled principles of law and does not perpetuate a manifest illegality. We cannot remain oblivious to, nor can we disregard the authoritative findings and conclusions already rendered in the earlier set of cross-appeals, including ***FAO(OS) 85/2022*** and ***FAO(OS) 38/2022***, which involved the same issuer, materially identical underwriting agreements, substantially similar factual matrices, and indistinguishable legal issues.

146. In those lead matters, we undertook an exhaustive examination of the statutory framework governing contracts of guarantee under Chapter VIII of the IC Act, and conclusively held that both the learned Arbitrator and the learned Single Judge had committed manifest and

patent errors of law. Specifically, it has been found that the mandatory provisions governing the discharge of a surety, particularly those embodied in Sections 133 and 134 of the IC Act, and allied provisions, had not been correctly applied.

147. As a result, liability was erroneously fastened upon the Underwriters despite the fact that, by operation of law, they stood statutorily discharged from their obligations. We further held that the unilateral acts of Tommorrowland, undertaken subsequent to successful closure of the public issue, constituted a material variance in the underlying contractual framework, thereby extinguishing the surety's liability in law.

148. Consequently, we have held that the Arbitral Awards, insofar as they imposed liability upon the Underwriters, were contrary to the mandatory statutory scheme and suffered from errors apparent on the face of the record. The Impugned Judgments passed by the learned Single Judge, which affirmed such awards, *albeit* with certain modifications, were likewise found to be legally unsustainable.

149. In view of these foundational defects, the Appeals preferred by Tommorrowland in those matters were held to be infructuous, the very substratum of enforceable liability having been extinguished. These findings, having been rendered after detailed consideration, are not merely persuasive but are binding and determinative for all matters arising out of the same transaction and governed by the same legal framework.

150. The very same legal principles apply with equal force, vigour, and inevitability to the present twenty appeals. Once it has been judicially determined by us that no enforceable liability subsists in law against the Underwriters, there remains no legal basis whatsoever to

grant any relief to Tommorrowland in the present matters.

151. The mere circumstance that the Underwriters in these cases elected not to file cross-appeals, or chose to accept the Impugned Judgments for reasons of commercial expediency or otherwise, cannot operate to revive a liability which has been held to be extinguished by statutory mandate. Liability in law cannot hinge upon the fortuity of whether a party has chosen to appeal, particularly when the issue goes to the root of jurisdiction and enforceability.

152. To accept Tommorrowland's contention in this regard would lead to an anomalous and untenable situation where identically situated Underwriters, governed by identical agreements and subjected to identical legal infirmities, would be treated differently solely on the basis of procedural choices. Such an approach would strike at the very heart of legal certainty, uniformity, and consistency in judicial decision-making. It would also offend basic notions of equity, as it would allow Tommorrowland to derive an unwarranted advantage merely because some Underwriters elected not to pursue appellate remedies, notwithstanding the fact that, in law, no liability subsists against them. Courts cannot permit the perpetuation of an illegality or the conferment of an unjust enrichment under the guise of procedural finality.

153. In this backdrop, this Court is fully empowered, and indeed duty-bound, to exercise its enabling and corrective jurisdiction under Order XLI Rule 33 read with Section 151 of the CPC. Order XLI Rule 33 confers wide and plenary powers upon the appellate court to pass any decree or make any order which ought to have been passed in the circumstances of the case. Significantly, this power may be exercised notwithstanding that the appeal relates only to a part of the decree, and

even in favour of parties who have not preferred any appeal or raised objections. The provision is deliberately couched in broad terms to enable the appellate court to do complete justice between the parties and to prevent the miscarriage of justice resulting from technical or procedural limitations.

154. The underlying object of Order XLI Rule 33 of the CPC is to ensure that the final adjudication reflects the true legal position and that substantive justice prevails over procedural form. When read with the inherent powers preserved under Section 151 of the CPC, the appellate court, *for instance*, this court, is vested with ample authority to mould reliefs, correct manifest errors, and align the final outcome with the law as correctly understood and applied.

155. In the present case, the invocation of these powers is not merely permissible but necessary, as the continuation of reliefs in favour of Tommorrowland would otherwise result in the enforcement of liabilities which we have already held to be non-existent in law. Accordingly, the exercise of jurisdiction under Order XLI Rule 33 read with Section 151 of the CPC is fully justified to ensure that the conclusions reached by this Court are applied uniformly and consistently across all connected matters arising from the same set of transactions.

156. As already noted, save for insignificant and immaterial factual variations, the substantial factual background in all these cases, including those arising in the earlier four sets of cross-appeals, is identical. The governing underwriting agreements, including the rights, obligations, and liabilities of the parties, are substantially similarly worded; the factual circumstances in which those agreements were required to operate are the same; the nature of liability alleged

against the Underwriters is identical; the foundational basis of the claims raised by Tommorrowland is common; and the references to arbitration in all cases were made to the same learned Arbitrator. Although separate arbitral awards were rendered on different dates, the underlying reasoning, approach, and basis of those awards remained materially the same.

157. Likewise, the challenges raised before the learned Single Judge were of an identical nature. While separate Impugned Judgments, all dated 27.04.2022, were passed, the underlying basis for affirming the Arbitral Awards and the nature of the modifications introduced therein were also identical. In these circumstances, we find no reason to depart from, or decline to apply, the reasoning and conclusions already reached by this Court. Applying the same *mutatis mutandis*, the fate of these appeals must necessarily be governed by, and follow, the same conclusions.

158. Accordingly, in view of the conclusions already arrived at in the earlier cross-appeals, we are of the considered opinion that the present twenty appeals preferred by Tommorrowland stand dismissed, having been rendered infructuous in light of the finding that no enforceable liability subsists against the Underwriters.

159. In view of the foregoing discussion and conclusions, these twenty appeals, along with pending application(s), if any, are accordingly disposed of in the aforesaid terms.

CONSOLIDATED SUMMARY OF ALL APPEALS

160. The present batch comprises twenty-eight distinct Appeals, arising out of multiple Impugned Judgments passed in separate proceedings. Notwithstanding their numerical plurality, all these

Appeals emanate from a common factual matrix, substantially similar underwriting arrangements, and overlapping legal issues. For the sake of analytical clarity, this Court has examined these Appeals under different heads in the foregoing discussion and has rendered detailed findings on each of the contentious issues raised.

161. Upon a cumulative consideration of the entire material on record, the applicable statutory framework, and the binding conclusions reached by this Court in the connected matters, the ultimate outcome across all twenty-eight Appeals stands crystallised beyond any ambiguity. We, therefore, have conclusively held that all Appeals preferred by the Underwriters deserve to be allowed**,** whereas all Appeals instituted by Tommorrowland Limited are liable to be dismissed. Our conclusion in this Judgement is a direct consequence of the determination that no enforceable liability subsists in law against the Underwriters and that the Arbitral Awards, as well as the Impugned Judgments to the extent they fastened liability upon the Underwriters, are legally unsustainable.

162. For the sake of convenience, clarity of record, and ready reference, the final conclusions in respect of each Appeal are summarised hereunder in a tabular form:

CROSS APPEALS			
S. NO.	**CASE NO. BEFORE THIS COURT**	**APPELLANT**	**OUTCOME**
1.	**1A.** FAO(OS) 38/2022	Tommorrowland Limited	Dismissed
	1B. FAO(OS) 85/2022	HDFC Bank Ltd.	Allowed
2.	**2A.** FAO(OS) 47/2022	Tommorrowland Limited	Dismissed
	2B. FAO(OS) 116/2022	Haryana State Industrial and Infrastructure Development Corporation Ltd	Allowed

3.	**3A.** FAO(OS) 63/2022	Tommorrowland Limited	Dismissed
	3B. FAO(OS) 140/2022	DCM Financial Services Ltd	Allowed
4.	**4A.** FAO(OS) 69/2022	Tommorrowland Limited	Dismissed
	4B. FAO(OS) 125/2022	Dolf Leasing Limited	Allowed
APPEALS BY TOMMORROWLAND			
	CASE NO. BEFORE THIS COURT	**RESPONDENT**	**OUTCOME**
5.	FAO(OS) 45/2022	Sharma And Co. and Others	Dismissed
6.	FAO(OS) 46/2022	V. Jethalal Ramji Share Brokers Pvt Ltd & Ors.	
7.	FAO(OS) 48/2022	Essar Capital Ltd. Now Known as Vajresh Consultant Limited	
8.	FAO(OS) 49/2022	Jalan And Co.	
9.	FAO(OS) 50/2022	Sterling Holiday Financial Services Ltd	
10.	FAO(OS) 51/2022	Veerhealth Care Ltd	
11.	FAO(OS) 52/2022	Nicco Uco Alliance Credit Ltd	
12.	FAO(OS) 53/2022	Analysis Trade Consultancy LLP	
13.	FAO(OS) 54/2022	Navoday Management Services Limited	
14.	FAO(OS) 55/2022	Pressman Advertising Limited	
15.	FAO(OS) 57/2022	Real Growth Financial Services Ltd Now RGF Capital Markets Ltd	
16.	FAO(OS) 58/2022	Sanchay Finvest Limited	
17.	FAO(OS) 59/2022	R. N. Ahuja and Co	
18.	FAO(OS) 60/2022	Hemdev Securities India Pvt. Ltd	
19.	FAO(OS) 61/2022	Prasad And Co. And Others	

20.	FAO(OS) 62/2022	S. K. Nahata And Co. & Ors	
21.	FAO(OS) 64/2022	Clarity Financial Services Ltd.	
22.	FAO(OS) 65/2022	Manoj Bhargava And Co.	
23.	FAO(OS) 66/2022	Dwarkadas Harinarayan Maheshwari & Ors.	
24.	FAO(OS) 70/2022	Shakti And Co. & Ors.	

163. Accordingly, all twenty-eight Appeals stand finally disposed of in the aforesaid terms.

164. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 20, 2026/sm/va