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

% ***Judgment reserved on: 25.02.2026***

Judgment pronounced on: 12.05.2026

Judgment uploaded on: 12.05.2026

\+ FAO(OS)(COMM) 172/2020

GOYAL MG GASES PVT LTD ...Appellant

Through: Mr. Simran Mehta, Mr. Prakash Chand and Mr. Archit Vashistha, Advs.

versus

CLASSIC MOTORS PVT LTD ....Respondent

Through: Mr. Rahul Saxena and Ms. Padamja Sharma, Advs.

\+ FAO(OS)(COMM) 23/2021

GOYAL MG GASES PVT LTD ...Appellant

Through: Mr. Simran Mehta, Mr. Prakash Chand and Mr. Archit Vashistha, Advs.

versus

CLASSIC MOTORS PVT LTD ....Respondent

Through: Mr. Rahul Saxena and Ms. Padamja Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.:

1. Through the present Appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'Act of 1996'], the Appellant (Respondent before the Tribunal/Licensee) assails the correctness of the common Judgment dated 20.03.2018 [hereinafter referred to as 'Impugned Judgment'] passed by the Single

Bench (SB) of this Court, whereby the application filed by the Respondent (Claimant before the Tribunal/Licensor) under Section 34 of the Act of 1996, challenging the Arbitral Award (AA) dated 25.09.2014 along with the corrigendum dated 22.11.2014, came to be allowed, while dismissing the application filed by the Appellant.

2. For the sake of clarity, consistency and ease of reference, the parties in the present Appeal shall be referred to in accordance with their respective status before the Arbitral Tribunal [hereinafter referred to as 'AT'].

3. Pithily put, the Respondent contends that the SB, while passing the Impugned Judgment, has substituted its own view for that of the AT, while re-appreciating the evidence and thereby increasing the rate of licence fee to be paid to the Claimant for the period of the contract. Accordingly, the question that is now put for our consideration is whether the SB while allowing the application of the Claimant under Section 34 of the Act of 1996, has travelled beyond the permissible scope of interference provided within the contours of the Act of 1996.

4. Since both the Appeals arise from the same *lis* and are founded on the challenges raised controverting the decision of the SB in the Impugned Judgment; they are with the consent of learned counsel for the respective parties, being disposed of by this consolidated judgment. However, for the sake of convenience and with the consent of parties, FAO(OS)(COMM) 23/2021 is being treated as the lead case to extrapolate our decision in both the Appeals.

FACTUAL MATRIX:

5. In order to comprehend the issues involved in the present case, the relevant facts in brief are required to be noticed.

6. The contractual relationship between the parties find its genesis in the Leave and License Agreement dated 18.09.2016 [hereinafter referred to as 'Agreement'] executed in respect of premises admeasuring covered area of 10,625 sq. ft. and service area of 600 sq. ft. situated at the First Floor of property bearing no. A-38, Mohan co-operative Industrial Estate, Main Mathura Road, New Delhi against a Licence fee of Rs. 6,73,500/- per month for an initial period of 11 months. As per the terms of the Agreement, the Respondent, as a licensee, was at a liberty to renew said arrangement for two successive terms of 11 months each, without any escalation in the Licence fee for two more terms of 11 months. Further, the Agreement also contemplated the extension of the Agreement by way of a new Agreement after the passage of 33 months from 25.09.2006, with an increased rate of 25% on the licence fee last paid, w.e.f. 26.06.2009.

7. Consequently, the record reflects that the contractual arrangement did not remain static, rather the Agreement was extended twice at the behest of the Respondent, firstly on 16.05.2007 and thereafter on 07.05.2008, each for a further period of 11 months. Thereafter, on 29.05.2009, the parties entered into an Addendum to the Agreement [hereinafter referred to as 'Addendum'], whereby the license was continued for a limited period from 26.06.2009 to 31.12.2009, *albeit* with a marginal enhancement of 5% on the last paid

licence fee. It may be pertinent to highlight that during all three extensions sought, the Respondent has raised various grievances, *inter alia*, a specific demand raised *vide* its communication dated 21.07.2009 for a documentary proof issued by MCD highlighting the permissible commercial use of the subject premises and eventually proceeded to withhold payment of licence fee from July 2009 onwards.

8. Faced with such withholding, the Claimant issued a notice dated 22.08.2009 calling upon the Respondent to clear the outstanding dues. However, upon failure of the Respondent to release the withheld amount of licence fee, the Claimant *vide* its notice dated 16.10.2009, terminated the Agreement thereby calling upon the Respondent to hand over the possession of the subject premises. Aggrieved by the inaction of the Respondent, the Claimant invoked arbitration clause contained in the Agreement, thereby referring the matter to the AT.

9. The Claimant and the Respondent before the AT, by way of Statement of Claim and Counter-Claim, respectively, sought relief on 9 counts. However, since the controversy before us, in essence, is narrowed down to the determination of appropriate rate of licence fee/damages payable by the Respondent, we deem it unnecessary to deal with all the claims, while restricting ourselves only to the Claims and Counter-Claim, that formed the fulcrum of the observation made in the Impugned Judgment. The Claimant, *inter alia*, sought the following claims:

> ***"Claim No. II***- Arrears of Licence fee w.e.f. July 2009 till the date of termination of Agreement, i.e., 31.10.2009.

> ***Claim No. III***- Damages/charges towards illegal occupation of the premises after the termination of License w.e.f. the midnight of 31.10.2009.
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> ***Claim No. IV***- Damages/charges towards illegal occupation of the premises after the expiry of the extension period of License w.e.f. the midnight of 31.12.2009."

In response thereto, the Respondent by way its Statement of Counter-Claim, *inter alia*, sought the following relief:

> **"Counter Claim No. 2**- For Rs. 1,84,40,000/- :Damages towards difference in the rate of rent for office purpose and industrial purpose Sept 2006 to Jan 2010."

10. In the interregnum, the AT, while adjudicating an application under Section 17 of the Act of 1996, *vide* its Order dated 03.05.2010 directed the Respondent to pay a sum of Rs. 40,00,000/- per month w.e.f. July 2009 till the pendency of the arbitration proceedings. The said Order travelled through successive judicial scrutiny, culminating in direction by the Hon'ble Supreme Court, requiring the Respondent to comply with the order of AT, while staying the order passed by this Court, wherein the order of AT was set aside.

11. Upon completion of pleadings and hearing of the parties, the AT, passed the AA dated 25.09.2014. The AT, while conjointly adjudicating Claim Nos.II, III and IV, held that the Claimant is entitled to monthly Licence fee/Damages for use and occupation at the rate of Rs. 20/- per sq. ft. from the period from September 2006 to April 2011 and at the rate of Rs. 60 per sq. ft. from May 2011 till the date of handing over of the subject premise. The findings returned on these claims were also adopted by the AT while adjudicating Counter Claim No.2.

12. Aggrieved by the findings of the AT, the parties challenged the AA before the SB, who, by way of Impugned Judgment, allowed the objections raised by the Claimant, thereby modifying the operative directions of the AA by restoring the Licence fee to the contractual rate for the period from 25.09.2006 to 25.06.2009, whereas for the period from 26.06.2009 to 31.12.2009, the Licence fee was directed to be paid in accordance with the Addendum and for the illegal usage and occupation by the Respondent for the period from 01.01.2010 to 27.03.2016, the Fee was payable at the agreed rate of Addendum.

13. Accordingly, dissatisfied by the findings rendered by the SB in the Impugned Judgment, the Respondent by way of this Appeal has sought the indulgence of this Court in examining the correctness of findings thereof.

CONTENTION OF PARTIES:

14. Learned counsel for the Respondent, while controverting the findings of the Impugned Judgment and supporting the observations made in the AA, has made the following submissions:

14.1 It has been argued that the SB while exercising power under Section 34 of the Act of 1996, has substituted his own view for that of the AT, in as much as, the AT did not re-write the contract and the Claim Nos.II to IV and Counter Claim No.2, were adjudicate based on evidence and a categorical finding by the AT that the contractual rate of rent was obtained through misrepresentation on the part of the Claimant, by wrongfully stating in Clause 8(c) of the Agreement that the subject premises is commercially usable.

14.2 Further, it has been contended that the SB erred by awarding the contractual rate for the entire period from September 2006 to March 2016, disregarding the AT's finding that the contractual rate applied only from April 2011. On the aforesaid premise, it has been contended that by doing so the SB effectively rewrote the AA on merits, which runs contrary to the law laid down by the Supreme Court in ***Gayatri Balawamy v M/S. ISG Novasoft Technologies Limited***[1].

14.3 It has been the case of the Respondent that AT correctly applied the law, holding that damages for misrepresentation are measured by the difference between contractual rate and the actual market values, not actual user of the premises. Additionally, it has been contended that the Claimant had misrepresented the premises since the inception of the Agreement. Nevertheless, the SB absolved the Respondent of the consequences of such misrepresentation, holding that, since the conversion charges were made retrospectively from 2007, no misrepresentation existed with effect from 01.04.2007. However, this view is argued to be patently erroneous.

15. *Per contra*, learned counsel for the Claimant, while supporting the findings rendered in the Impugned Judgment, has opposed the present Appeal, in as much as the same does not call for any interference.

ANALYSIS:

16. This Court has heard the submissions advanced by the parties at

[1] 2025 INSC 605

length and has conducted a thorough examination of the pleadings, documents, Impugned Judgment and the AA.

17. The core issue that falls for the consideration of this Court is whether, within the narrow confines of interference permissible under Sections 34 and 37 of the Act of 1996, the Respondent has been able to make out any ground to set aside the Impugned Judgment, by way of which the findings of the AA, with respect to the rate of Licence fee, came to be modified.

18. At the outset, it is necessary to highlight that while exercising jurisdiction envisaged under Section 37 of the Act of 1996, we are conscious of the fact that the appellate adjudicatory power we hold today, is one of the narrower ambits of the Arbitration jurisprudence, as has been consistently laid down by the Hon'ble Supreme Court in a catena of decisions.

19. This Court in ***NHAI v. HK Toll Road (P) Ltd.***[2], observed as under:

> "*57. The Appellate Court is not required to substitute its views with the view taken by the Arbitral Tribunal which is a reasonable or a plausible view except where the discretion is exercised arbitrarily or where the AT has ignored the settled principles of law. In fact, the whole purpose to bring the 1996 Act is to give supremacy to the discretion exercised by the AT. The Appellate Court is not required to interfere in the arbitral orders especially a decision taken is at an interlocutory stage. The Appellate Court is only required to see the whether the AT has adhered to the settled principles of law rather than re-assessing the merits of the AT's reasoning.*"
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> **(Emphasis Supplied)**

[2] 2025 SCC OnLine Del 2376

20. The Hon'ble Supreme Court has also reiterated that the jurisdiction conferred on the Court under Section 34 of the Act of 1996, alike Section 37 of the Act of 1996, is tailored. However, the powers exercised by the Courts under Section 37 of the Act of 1996, the jurisdiction of the Appellate Court in examining an order setting aside or refusing to set aside an Award is even more circumscribed. The Hon'ble Supreme Court in ***Larsen Air Conditioning & Refrigeration Co. v. Union of India***[3], has observed as under:-

> *"15. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality i.e. that "illegality must go to the root of the matter and cannot be of a trivial nature"; and that the Tribunal "must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground" [ref : Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , SCC p. 81, para 42]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34."*
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> **(Emphasis Supplied)**

21. Having delineated the scope of interference permissible under Sections 34 and 37 of the Act of 1996, we shall now advert to the rival submissions made by the parties, with respect to the enhancement of Licence fee granted by the SB, in exercise of his jurisdiction under Section 34 of the Act of 1996.

22. At the outset, it may be noted that under Section 28(3) of the Act of 1996, an Arbitral Tribunal seated in India is mandatorily

[3] (2023) 15 SCC 472

required to decide the dispute before it in accordance with the terms of the contract while giving due consideration to the applicable trade usages. This Court in ***Divya Ashish Jamwal v India Yamaha Motor Pvt. Ltd.***[4] held that absent an express authorisation to decide the dispute *ex aequo et bono,* the Tribunal cannot travel beyond or rewrite the bargain entered between the parties by way of a contract, on the basis of abstract notion of equity or fairness.

23. The Supreme Court in ***Associate Builders v DDA***[5]**,** clarified that if an AA is contrary to the substantive provision of law of India, in effect, it is in contravention of Section 28(1)(a) of the Act of 1996. Similarly, violation of the terms of contract, in effect, would qualify as a contravention of Section 28(3) of the Act of 1996. Therefore, an award granting relief not anchored in the contract, or directly contradicting the terms and arrangements arrived at by the parties, will be treated as being violative of Section 28(3) of the Act of 1996, thereby amounting to patent illegality for the purpose of Section 34 of the Act of 1996.

24. The Supreme Court in ***Associate Builders*** *(Supra)*, while providing a broader meaning to the term patent illegality highlighted that, it shall include: *(i)* decision contrary to substantive law or the Act *(ii)* decision contrary to terms of the contract; and *(iii)* perversity.

25. Having delineated the above principles, we shall now turn to the facts and circumstances that have arisen in the present dispute. The AT while rendering the AA has rested Claim Nos.II, III and IV and

[4] 2026:DHC:1645-DB
[5] (2015) 3 SCC 49

Counter-Claim No.2, on a finding that Clause 8(c) of the Agreement contained a misrepresentation by the Claimant, that the subject premise could be used for office purposes and that such usage was permissible under the applicable laws. Against this backdrop, the AT refused to grant the agreed licence fee and instead held that for the period from September 2006 to April 2011, the Claimant was entitled to receive only Rs. 20 per sq. ft. per month (described as an industrial rate) and Rs. 60 per sq. ft. per month thereafter once conversion charges were paid.

26. On the contrary, the SB while evaluating Section 19 of the Indian Contral Act, 1872 [hereinafter referred to as 'Act of 1872'], expressly factored in the conduct of the Respondent after it had begun to raise red flags about MCD sanction. The Respondent despite issuing its letter dated 21.07.2009 seeking documentary proof of permissibility of official use of the subject premise from MCD, did not rescind the contract or surrender the possession back to the Claimant. Instead, the Respondent, proceeded to execute the Addendum and continued occupation in the subject premises.

27. The SB also while analysing the factual matrix as also put forth before the AT, found that *(i)* the Respondent had been in continuous, unhindered commercial occupation of the premises, running its office throughout; *(ii)* the original Agreement had been renewed twice, at the instance of the Respondent and without escalation, up to 25.06.2009; *(iii)* by way of the Addendum, the parties again mutually agreed to continue the arrangement from 26.06.2009 to 31.12.2009 at a 5% enhancement, specifically affirming that all other terms and

conditions remained unchanged; and *(iv)* no letter seeking MCD permission or raising misuse was written by the Respondent before 21.07.2009, while the first MCD demand for conversion charges itself arose only on 25.03.2011, and was met by payment in April 2011.

28. In the considered view of this Court, the AT neither identified any contractual clause authorising the re-pricing nor properly worked out damages linking the alleged misrepresentation to a quantified pecuniary loss; rather, the AT merely substituted the agreed rate of licence fee with a notional industrial benchmark drawn from an unrelated lease.

29. Before turning to the examination of the jurisdiction exercised by the SB, we deem it pertinent to highlight that the in terms of Section 19 of the Act of 1872, once a contracting party, after discovering the alleged misrepresentation, elects to continue under the contract and even enters into a further arrangement (the Addendum) on the same footing, its conduct is consistent with affirmance of the contract rather than rescission. Therefore, the SB rightly held that the Respondent could not approbate and reprobate, continuing in possession and commercially exploiting the premises while simultaneously seeking to rework the agreed licence fee by invoking misrepresentation.

30. The approach adopted by the AT, in effect, permitted a legally impermissible dichotomy, permitting the Respondent to retain the substantive benefits of the contract, including continued commercial user, while simultaneously re-engineering the financial substratum

thereof. Such an exercise runs afoul of the statutory scheme of Section 19 of the Act of 1872, which does not contemplate selective avoidance or partial rescission confined to economic obligations while affirming the remainder of the contract. The SB's reliance on the post-disclosure conduct of the Respondent, particularly the execution of the Addendum, furnishes a cogent and determinative basis to hold that the AA's re-pricing mechanism was *ex facie* contrary to both statutory mandate and the sanctity of the contractual bargain entered into by the parties.

31. Applying the parameters delineated in ***Associate Builders** (Supra)*, the SB was right in characterising the impugned portion of the AA as suffering from perversity and patent illegality because it ignored the aforesaid vital aspects of the conduct of the Respondent. The absence of any recorded finding as to actual loss, combined with the grant of a substantial financial adjustment predicated on an industrial benchmark, renders the AA vulnerable on the touchstone of reasonableness and fidelity to evidence. This was not a mere instance of adopting one plausible view of evidence over another; rather, the view of the AT was one that no reasonable adjudicator could take while remaining faithful to the contract and applying Section 19 of the Act of 1872 as well as Section 28(3) of the Act of 1996.

32. On the aspect of relief, the SB exercised circumscribed jurisdiction under Section 34 of the Act of 1996 by confining his interference to the severable component of the award that impermissibly altered the agreed licence fee for the period spanning September 2006 to April 2011. The SB by restoring the stipulated

rates under the Agreement and the Addendum, as the governing measure of licence fee and consequential damages, and leaving the remainder of the award intact, adhered to the doctrine of severability as judicially recognised in ***Gayatri Balasamy*** *(Supra)*. Such calibrated intervention and added emphasis by the SB on the conduct of the Respondent underscores that the SB's endeavour was not to supplant the arbitral tribunal's domain, but to excise the legally untenable portion and uphold the integrity of the parties' consensual bargain.

33. Pithily put, the SB correctly held that despite raising red flags, the Respondent executed the Addendum thereby continuing the commercial use amounting to an unequivocal affirmance of the contract under Section 19 of the Act of 1873, thereby excluding recission. Similarly, the AT's substitution of the agreed licence fee with an industrial rate, in the absence of proof of actual loss and in disregard of the parties' subsequent conduct, was *ex facie* contrary to Section 19 of the Act of 1872, Section 28(3) of the Act of 1996, and the contractual stipulations, rendering the award perverse within the meaning of ***Associate Builders*** *(Supra)*.

34. Therefore, the limited interference exercised by the SB, setting aside the severable and patently illegal component of the AA, while restoring the Agreement/Addendum rates, was a legitimate exercise of powers conferred under Section 34 of the Act of 1996, grounded in the parties' own conduct and elections, and does not disclose any excess of jurisdiction warranting interference of this Court under Section 37 of the Act of 1996.

CONCLUSION:

35. In view of the foregoing discussion and findings, this Court finds no infirmity in the Impugned Judgment dated 20.03.2018 passed by the Single Bench of this Court. The Appellant has failed to demonstrate any ground warranting interference by this Court in exercise of its appellate jurisdiction under Section 37 of the Act of 1996.

36. The present Appeals, being devoid of merit, are accordingly dismissed.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

MAY 12, 2026
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