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

Judgment reserved on: 23.03.2026
Judgment pronounced on: 13.04.2026

\+ FAO(OS) (COMM) 156/2024, CM APPL. 43047/2024

RADIANCE INFRACON AND DEVELOPERS PVT LTD .....Appellant
Through: Mr. Jeevesh Nagrath, Sr. Adv. with Mr. Rupesh Gupta and Ms. Kritika Tuteja, Advs.

versus

GLS INFRATECH PVT LTD .....Respondent
Through: Mr. Nakul Sachdeva, Mr. Shreyansh Rathi, Mr. Sagar Arora, Ms. Shrinkhala Tiwari and Mr. Abhinandan Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT
% **13.04.2026**

OM PRAKASH SHUKLA, J.

Introduction

1. The Appellant has filed the present intra-court appeal under Section 37 of the Arbitration and Conciliation Act, 1996[1], read with Section 13 of the Commercial Courts Act, 2015 and Section 151 of Civil Procedure Code, 1908, assailing the order dated 20.05.2024[2] passed by the learned Single Judge in O.M.P. (COMM) No. 223/2024.

[1] "the Act", hereinafter
[2] "Impugned Order" hereinafter

The said order arose from a petition filed by the Respondent under Section 34 of the Act seeking to set aside the arbitral award dated 27.11.2023[3], as modified by the order dated 22.02.2024, to the limited extent of Rs. 15,90,00,000/- awarded as mesne profits from 01.07.2019 to 30.11.2023 and further till actual hand-over of possession of the land in dispute, in favour of the Appellant.

2. In a nutshell, the present dispute arises out of a Collaboration Agreement dated 07.06.2016[4] between the Appellant (landowner), and the Respondent (Collaborator) for commercial development of the Appellant's land in Gurugram. The Respondent was required to complete construction within the stipulated timelines and pay a non-refundable consideration of Rs. 5.50 crore. Due to delayed payments and failure to commence the project, the Appellant terminated the Agreement in June 2019, and subsequently invoked the arbitration clause.

3. The learned Sole Arbitrator allowed Claim Nos. 1 and 2 of the Appellant, i.e., (i) handover of possession of the land in dispute and amount for actual loss of profits, (ii) costs of the proceedings, and consequently awarded a sum of Rs. 16,27,50,000 to the Appellant, while rejecting all Counter-Claims except Counter-Claim No. 4, which was partly allowed for Rs. 7,55,33,437/-. After adjustment, a net sum of Rs. 8,72,16,563/- was awarded in favour of the Appellant, along with mesne profits at the rate of Rs. 30,00,000/- per month till actual hand over of the possession of the land to the Appellant.

[3] "Arbitral Award" hereinafter
[4] "Agreement" hereinafter

4. Aggrieved by the Arbitral Award, the Respondent herein filed a petition under Section 34 of the Act before this Court.

5. By the Impugned Order, the learned Single Judge allowed the petition and set aside the Arbitral Award to the extent of Rs. 15,90,00,000/- towards mesne profits, holding that the quantification of loss of profit lacked evidentiary support, while granting liberty to the Appellant to pursue the Claim in accordance with law.

6. The present appeal is confined to examining the correctness of the quantification of mesne profits by the learned Sole Arbitrator and the legality of the interference by the learned Single Judge.

<u>Facts</u>

7. The Respondent herein claims to be a company engaged in the business of development and construction of commercial and residential properties in Gurugram, Haryana. On the other hand, the Appellant is the owner of the land located at Sector 16, Mehrauli Road, Gurugram[5].

8. Both the parties entered into a Collaboration Agreement dated 07.06.2016 for the commercial development of the subject land, under which the Respondent undertook to carry out construction and allied works and was obliged to pay a total consideration of Rs. 5.50 crore in instalments between June 2016 and December 2016.

9. In addition to the said consideration, the Respondent was

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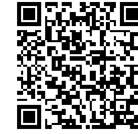
[5] "subject land" hereinafter



obligated to develop and construct a building and consequently, upon completion of the project, the Respondent was entitled to a 54% share in the build-up area, along with a proportionate share in the land underneath, while the Appellant was to get 46% share.

10. The scope of work and timelines are set out under Clause 11 of the Agreement. The same reads as follows:

For preparation of building plans for submission to competent authority.	By or before the expiry of 30 days from the date of this Agreement.
Removal of overhead wire and laying of underground wire including approval from competent authority.	By or before the expiry of 06 months from the date of this Agreement.
Approval of building plan from competent authority.	By or before the expiry of 02 months from the date of removal of overheard wires.
Construction of building as per approved plan and agreed specifications.	By or before the expiry of 16 months from the date of sanction of building plans or any other extended period as mutually agreed in writing.
Obtaining of completion certificate & occupation certificate.	By or before the expiry of 03 months of completion of building.

11. It is made out from the record that a 66 kVA[6] overhead electricity line was passing through the subject land. As per the Agreement, permission for the removal of overhead wire and laying of underground cable had already been issued by the Haryana Vidyut Prasaran Nigam Ltd.[7] *vide* letter dated 31.01.2014. For the proper construction and use of the proposed commercial building, it was

[6] Kilovolt-ampere
[7] "HVPNL" hereinafter

necessary to remove the overhead wire and replace it with an underground cable.

12. Adverting to the controversy, disputes arose between the parties regarding compliance with the agreed timelines.

13. By October 2016, the Respondent had paid only about Rs. 1.15 crores, whereas, around Rs. 3.50 crores were due at that time as per the agreed schedule, out of the total consideration of Rs. 5.50 crores.

14. According to the Appellant, this shortfall constituted a fundamental breach of the Agreement, especially since time was of the essence as per Clause 13 of the Agreement. It was further alleged that the construction schedule was not adhered to and key prerequisites for construction such as removal of the overhead transmission line and laying of the underground cable, were not completed within the stipulated timelines. Consequently, no construction activity took place on the subject land till 2017.

15. In view of the continuing defaults, the Appellant issued a Notice of Breach dated 13.02.2017 alleging breach of the Agreement. The Respondent, in its reply, denied any breach and attributed delays to the Appellant's lack of cooperation. The Appellant refuted these allegations *vide* reply dated 10.04.2017, but still granted a further grace period of 15 days to the Respondent to pay the outstanding sum of Rs. 4.35 crore. The Respondent, however, by its subsequent communication dated 29.05.2017, reiterated its earlier stand and disputed the Appellant's entitlement to unilaterally enforce the payment schedule.

16. Despite the earlier disputes, the parties executed an Addendum Agreement dated 15.11.2017[8], extending the timeline for payment of Rs. 4.35 crores till 10.02.2018. So far as the schedule of construction was concerned, the substantive obligations remained the same, but the timelines for completion of those obligations were extended till 15.02.2020.

17. It is not in dispute that the Respondent eventually paid the entire balance consideration of Rs. 4.35 crores, albeit belatedly, with the last payment made on 15.06.2018.

18. According to the Appellant, despite payment, construction did not commence. The Respondent attributed delays to factors beyond its control, particularly the requirement for fresh approvals for the overhead transmission wire as the earlier permission dated 31.01.2014 obtained from HVPNL had become ineffective due to a change in the concerned authorities.

19. As no progress was made, the Appellant repeatedly raised concerns with the Respondent. Due to lack of satisfactory response and the project remaining inchoate, the Appellant issued a Termination Notice dated 15.06.2019 and called upon the Respondent to hand over vacant and peaceful possession of the subject land. The Respondent, in its reply, disputed the validity of the termination, and refused to hand over possession.

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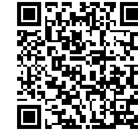
[8] "Addendum Agreement" hereinafter



20. Thus, it could be understood that the *lis* between the parties centred around the alleged breaches of the Agreement by the Respondent, particularly its failure to follow the agreed payment schedule and complete construction within the stipulated timelines. It also involved the validity of the termination of the Agreement by the Appellant and the consequences arising from it including the recovery of possession of the subject land and loss of profits.

21. In view of the Respondent's non-compliance with the Termination Notice, the Appellant invoked arbitration under Clause 21(f) of the Agreement by notice dated 04.07.2019.

22. Pursuant thereto, by order dated 27.02.2020, this Court appointed Justice A.K. Sikri, Supreme Court (Retd.), as the learned Sole Arbitrator. Before the learned Arbitrator, the Appellant sought possession of the subject land along with damages for loss of profits on account of the Respondent's continued possesion. The Respondent resisted the Claims and filed a Counter-Claims seeking specific performance of the Agreement, asserting its readiness and willingness to perform, and in the alternative, sought reimbursement of expenses allegedly incurred.

<u>Proceedings before the Arbitral Tribunal and Arbitral Award</u>

23. The Appellant raised two Claims before the learned Arbitral Tribunal[9] and the Respondent raised five Counter-Claims. Upon consideration of the pleadings, evidence, and submissions, the learned

[9] "Tribunal" hereinafter

Tribunal allowed the Appellant's Claims with certain modifications and rejected the Respondent's Counter-Claims, save and except Counter-Claim No. 4, which was partly allowed. A tabulation of the same is thus:

Sr. No.	Particulars	Claimed Amount (Rs.)	Awarded Amount (Rs.)
Claim No.1	Relief for possession and damages for actual loss suffered by the Appellant	75.27 crore	15,90,00,000 along with possession
Claim No.2	Cost of proceedings		37,50,000/-
Counter Claim No.1	Claim for Specific Performance and direction to Appellant for registration of documents		Rejected
Counter Claim No.2	Claim for loss of profits suffered by the Respondent during the delayed period	15,40,88,479/-	Rejected
Counter Claim No.3	Cost of Arbitration		Rejected
Counter Claim No.4	Claim for Damages	9,89,85,929/-	7,55,33,437/-
Counter Claim No.5	Claim for Loss of Profit	42,80,23,552	Rejected

24. Through Claim No. 1, the Appellant sought (i) peaceful and vacant possession of the subject land, and (ii) a sum of Rs. 75,27,00,000/- towards loss of profits for four years, alleging that the Respondent induced the Appellant to execute the Agreement and the Addendum Agreement by assurances of timely payment and construction, but failed to perform its obligations, undertook no effective construction, retained possession of the land, and thereby,

caused financial loss to the Appellant.

25. Upon consideration of the material on record, the learned Tribunal noted that removal of the 66 kVA overhead transmission line was a necessary precondition for development. The learned Tribunal recorded that under Clause 11, the Respondent was obligated to complete specified developmental activities within the stipulated timelines, including preparation of building plans, removal of the overhead wire, and execution of construction. It was found that none of these milestones were achieved within the agreed timelines and that only Rs. 1.15 crore had been paid by December 2016 which is in contravention of Clause 12.

26. Thereafter, the learned Tribunal examined the effect of the Addendum Agreement, whereby revised timelines were agreed. While noting that the Appellant had accepted delayed payments, it held that even the revised timelines were not adhered to. The removal of the overhead wire, which was to be completed by 15.05.2018, was in fact achieved only in 2019, and the building plans were not prepared even till the date of termination on 15.06.2019. The explanations advanced by the Respondent, including delays in regulatory approvals, were not accepted, in view of the fact that the obligation to obtain such approvals formed part of the Respondent's contractual responsibilities, and the Respondent failed to adhere to it.

27. On a cumulative assessment, the learned Tribunal held that the Respondent had failed to perform its obligations within the stipulated or even a reasonable time, with no realistic possibility of completion

within the extended period, i.e., by 15.02.2020. It was found that the Respondent lacked readiness and willingness to perform, and accordingly, the Termination Notice dated 15.06.2019 was upheld as valid. Therefore, the Appellant was held entitled to the recovery of possession.

28. Insofar as the Claim for damages is concerned, the learned Tribunal distinguished between the pre-termination and post-termination periods. The claim for loss of profits up to the date of termination was rejected since the project had not reached a stage where profits could have been realised. Therefore, the claim for loss of profits up to 15.06.2019 was rejected.

29. For the period subsequent to termination, the learned Tribunal held that the Respondent's continued possession entitled the Appellant to compensation in the nature of mesne profits. However, the learned Tribunal rejected the Appellant's computation at Rs 2.10 crore per month, based on valuation report dated 27.05.2020 prepared by CBRE South Asia Pvt. Ltd.[10] as excessive and unsupported. It was further recorded that no evidence had been led by either party to establish precise quantification. Thereafter, the learned Tribunal proceeded to determine the amount on guesswork. It accordingly awarded mesne profits at Rs 30,00,000/- per month with effect from 01.07.2019, aggregating to Rs 15,90,00,000/- up to 30.11.2023, with a direction that the same would continue at the said rate till the delivery of possession.

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[10] "CBRE report" hereinafter

Claim No. 2, pertaining to the costs of arbitration, was partly allowed, and 50% of the costs were awarded to the Appellant.

30. The Respondent raised five Counter-Claims before the learned Tribunal. Insofar as Counter-Claim No. 1, seeking specific performance of the Agreement, is concerned, the learned Tribunal, while relying upon its findings recorded in respect of Claim No. 1, held that the Respondent had failed to establish its continuous readiness and willingness to perform its contractual obligations. The learned Tribunal also noted that there were repeated defaults on the part of the Respondent. In view of the finding that the Termination notice dated 15.06.2019 was valid, the learned Tribunal held that the question of granting specific performance did not arise. Counter-Claim No. 1 was, accordingly, rejected.

31. Counter-Claim No. 2, seeking registration of documents and allied reliefs, along with claims for loss of profits, was rejected since delays were attributable to the Respondent and not to the Appellant. Counter-Claim No.3, relating to the cost of Arbitration was also rejected.

32. Counter-Claim No. 4 was partly allowed. The learned Tribunal permitted adjustment of the consideration amount of Rs. 5.50 crores which inured to Appellant's benefit and allowed reimbursement for certain expenditures, including removal of the overhead transmission wire, payments made to contractors, and statutory dues such as property tax and water charges. However, the claims pertaining to expenditures

that were either unsubstantiated or did not result in any benefit to the Appellant were rejected.

33. Counter-Claim No. 5, seeking damages towards loss of profits based on a report of M/s Colliers International (India) Property Services Pvt. Ltd.[11], estimating potential revenue, was rejected holding that no claim for loss of profits could be sustained due to lack of performance of the agreement and that delay was attributed to the Respondent.

34. After adjustment, the learned Tribunal awarded Rs. 8,72,16,563/- in favour of the Appellant and against the Respondent, along with mesne profits at the rate of Rs. 30,00,000/- per month from 01.07.2019 to 30.11.2023 and further till the hand-over of possession of the subject land.

Impugned Order

35. Aggrieved by the Arbitral Award insofar as it allowed Claim No. 1, particularly the grant of mesne profits, the Respondent filed a petition under Section 34 of the Act, contending that the quantification suffered from patent illegality, being based on no cogent evidence and mere conjecture.

36. Upon examining the Arbitral Award, it was noted by the learned Single Judge that the Agreement did not provide for pre-estimated damages. It was further noted that the learned Tribunal itself categorically recorded that no evidence was led by either party to substantiate the quantum of damages, and yet proceeded to award

[11] "Collier Report" hereinafter

mesne profits at Rs. 30,00,000/- per month by resorting to guesswork, which was held to be impermissible in law. In this context, reliance was placed on ***Airwil JKM Infracon (P) Ltd. v. Cadillac Infotech (P) Ltd.***[12], wherein it was held that where a claimant fails to establish damages, the Arbitral Tribunal cannot *suo motu* determine the quantum on a notional basis, as it is bound to decide in accordance with law under Section 28 of the Act and cannot resort to equitable considerations unless authorised. The learned Single Judge also considered the Appellant's submission that damages may, in certain circumstances, be assessed on a reasonable or approximate basis, with reference to decisions such as ***Construction & Design Services v. DDA***[13], ***NHAI v. ITD Cementation India Ltd.***[14]***, Mohd. Amin v. Mohd. Iqbal***[15] but distinguished them on the ground that those cases had some evidentiary or contractual basis for quantification.

37. Further reliance was placed on ***Edifice Developers & Project Engineers Ltd. v. Essar Projects (India) Ltd.***[16], wherein the arbitral award towards overhead losses was set aside on the ground that it lacked any basis. Accordingly, it was concluded that the grant of mesne profits at Rs. 30,00,000/- per month, aggregating to Rs. 15,90,00,000/-, was unsupported by evidence and liable to be set aside. The Arbitral Award was thus interfered with to this limited extent, while leaving it open to the Appellant to pursue its Claim in accordance with law.

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[12] **2021 SCC OnLine Del 5126**
[13] **(2015) 14 SCC 263**
[14] **2010:DHC:404**
[15] **2024 SCC OnLine Del 2395**
[16] **2013 SCC OnLine Bom 5**

Rival Contentions Before This Court

38. Mr. Jeevesh Nagrath, learned Senior Counsel appearing for the Appellant, contended that the learned Single Judge erred in setting aside the Arbitral Award insofar as it granted mesne profits, as the same did not suffer from any patent illegality. It was submitted that the learned Tribunal had, upon appreciation of the material on record, returned a categorical finding that the Respondent remained in illegal possession of the subject land from 01.07.2019, thereby depriving the Appellant of its right to commercially exploit the same and entitling it to compensation in the nature of mesne profits. In these circumstances, it was argued that, in the absence of any challenge to the finding of wrongful possession, interference with the Arbitral Award on the ground of quantification alone was unwarranted.

39. It was contended that the learned Single Judge erred in holding that the Arbitral Award was based on no evidence, as the learned Tribunal had considered expert material, including the CBRE report relied upon by the Appellant, and, upon evaluation, reduced the claim from Rs. 2.10 crore per month to Rs. 30 lakh per month, thereby adopting a reasonable approach. It was further submitted that the learned Single Judge exceeded the limited jurisdiction under Section 34 of the Act by re-appreciating evidence and substituting his own view on quantification. Reliance was placed on ***Associate Builders v. DDA***[17], to contend that interference is not warranted where the Tribunal's view is plausible.

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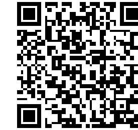
[17] **(2015) 3 SCC 49**



40. Learned Senior Counsel also pointed out that the quantification of mesne profits was, in fact, traceable to the Colliers report relied upon by the Respondent, which indicated rental values in the range of Rs. 50–80 per sq. ft. for an approximate project area of 60,000 sq. ft., yielding a potential monthly income between Rs. 30–48 lakh. Thus, it was submitted that the learned Tribunal, while adopting a figure of Rs. 30 lakhs per month, had undertaken a reasonable estimation based on such material, and it could not be characterised as a guesswork being based on no evidence so as to warrant interference.

41. Learned Senior Counsel further submitted that the learned Single Judge failed to appreciate the settled principle that in claims for damages, particularly loss of profits or mesne profits, exact mathematical precision is not required. Reliance was placed on ***Cobra Instalaciones y Servicios S.A. v. Haryana Vidyut Prasaran Nigam Ltd.***[18], ***Bharat Heavy Electricals Ltd. v. Delkon India Pvt. Ltd.***[19], ***Construction & Design Services v. DDA***[20], ***A.T. Brij Paul Singh v. State of Gujarat***[21], ***Hindustan Petroleum Corporation Ltd. v. Mohanjit Singh (Deceased) Through Legal Heirs***[22], ***Krishan Kumar v. UOI***[23] **and** ***Mohd. Salamatullah v. State of Andhra Pradesh***[24], to contend that where breach and resultant loss are established, but precise quantification is difficult, the Tribunal is entitled to adopt a reasonable or "rough and ready" method, including honest guesswork. It was argued that in the present case, the Respondent's continued occupation

[18] **2024 SCC OnLine Del 2755**
[19] **2026 SCC OnLine Del 482**
[20] **(2015) 14 SCC 263**
[21] **(1984) 4 SCC 59**
[22] **2019 SCC OnLine Del 9419**
[23] **(2015) 15 SCC 220**
[24] **AIR 1977 SC 1481**

and failure to undertake construction for several years clearly established loss, and in the absence of exact evidence, the learned Tribunal was justified in awarding reasonable compensation based on honest guesswork, warranting no interference.

42. In support of methodology for adoption of honest guesswork by the learned Arbitrator, reliance was also placed on ***Ramesh Kumar Jain v Bharat Aluminium Co. Ltd***[25]***, New Okhla Industrial Development Authority v. Harnand Singh***[26]***, Gemini Bay Transcription (P) Ltd. v. Integrated Sales Service Ltd.***[27]***, Mahendra Singh Jaggi v. Dataram Jagnnath***[28]***, Flovel Hydro Technologies (P) Ltd. v. Mecamidi SA***[29], ***DDA v. Anand and Associates***[30] and ***Jaiprakash Associates Ltd. v. Ircon International Ltd***[31].

43. It was also contended that the Impugned Order suffers from a patent error, inasmuch as it sets aside the Arbitral Award only to the extent of the quantification of mesne profits while sustaining the remaining findings. It was argued that the Arbitral Award was rendered on a holistic basis, with mutual adjustments between the Claims and Counter-Claims. Therefore, interference with one component in isolation without disturbing the corresponding adjustments is legally unsustainable.

44. It was further submitted that the Appellant was denied a fair

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[25] **2025 SCC OnLine SC 2857**
[26] **2024 SCC OnLine SC 1691**
[27] **2022 1 SCC 753**
[28] **(1998) 9 SCC 28**
[29] **2024 SCC OnLine Del 5039**
[30] **2008 SCC OnLine Del 179**
[31] **2024 SCC OnLine Del 3142**

opportunity to address the basis of quantification as no notice was served in the Section 34 petition, nor was any opportunity granted to seek recourse under Section 34(4) of the Act, thereby violating the principles of natural justice. The reliance on ***Airwil JKM Infracon Pvt. Ltd.*** *(supra)* was also contended to be misplaced.

45. *Per contra,* Mr. Nakul Sachdeva, learned Counsel for the Respondent supported the Impugned Order, contending that the learned Single Judge rightly set aside the Arbitral Award to the limited extent of quantification of mesne profits. It was submitted that the learned Tribunal itself recorded that no evidence had been led to establish the quantum of damages, and yet proceeded to award mesne profits at Rs. 30,00,000/- per month by resorting to guesswork, which is impermissible in law.

46. It was further contended that the Appellant's reliance on the principle of reasonable estimation is misconceived, as such estimation is permissible only where some foundational material exists to enable approximation. In the present case, the learned Tribunal had discarded the valuation reports and expert evidence and relied on no benchmark, thereby rendering the determination based on pure conjecture. It was emphasised that entitlement to compensation and its quantification are distinct, and even if wrongful possession is assumed, damages cannot be awarded in the absence of cogent evidence such as market data or reliable expert material. Reliance was placed on ***P. Radhakrishna Murthy v. NBCC Ltd.***[32]***, Power Grid Corporation of India v. Ranjit***

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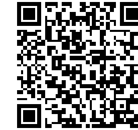
[32] **(2013) 3 SCC 747**



Singh and Co. LLP*[33]*, Delhi Metro Rail Corporation v. Kone Elevators India Pvt. Ltd.*[34]*, Edifice Developers & Project Engineers Ltd. v. Essar Projects (India) Ltd.*[35]*, BCCI v. Deccan Chronicle Holding Ltd.*[36]*, and M/s SGS India Pvt. Ltd. v. M/s Vedanta Ltd.[37]

47. It was also contended that the learned Tribunal acted beyond its jurisdiction in resorting to "guesswork" in the purported interest of justice, without any authorisation under Section 28(2) of the Act. In the absence of such consent, it was submitted that the learned Tribunal was bound to decide strictly in accordance with law and the evidence on record and could not invoke equitable considerations to determine the quantum.

48. Mr. Nakul Sachdeva further contended that the award of mesne profits cannot be based on conjecture or judicial assumption and must be supported by cogent evidence demonstrating actual profit that could have been earned by the Respondent. In the present case, it was submitted that in the absence of any such evidence having been accepted by the learned Tribunal, the grant of mesne profits is unsustainable in law.

49. Lastly, it was contended that the learned Single Judge had not re-appreciated the evidence but confined scrutiny to the legality of the Arbitral Award, particularly the absence of reasoning and evidentiary basis for quantification. It was further submitted that reliance on ***Airwil JKM Infracon Pvt. Ltd.*** *(supra)* was not determinative, as the

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[33] **O.M.P (COMM.) NO. 134 of 2023**
[34] **2021 SCC Online Del 5048**
[35] **2013 SCC OnLine Bom 5**
[36] **2021 SCC Online Bom 834**
[37] **O.S.A. No. 306 of 2019**

impugned order rests on settled principles, and correctly identifies patent illegality warranting no interference.

Analysis

50. We have heard learned Counsel for both parties and have undertaken a thorough and comprehensive examination of the entire record placed before us.

51. Before commencing, it would be apposite to remind ourselves of the limited scope and ambit of interference under Sections 34 and 37 of the Act, as consistently delineated in a line of decisions of the Supreme Court and this Court. For this purpose, we find it profitable to refer the decision in ***PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust, Tuticorin***[38], wherein the Supreme Court encapsulated the scope of interference under Sections 34 and 37, reiterating its earlier view in ***MMTC Ltd. v. Vedanta Ltd.***[39], in the following words:

> *"**38**. Before that, it will be apposite to refer to the judgment of this Court in MMTC Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , wherein this Court has revisited the position of law with regard to scope of interference with an arbitral award in India. It will be relevant to refer to the following observations of this Court in MMTC Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] : (SCC pp. 166-67, paras 11-14)*
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> > *"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal*

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[38] **2021 SCC OnLine SC 508**
[39] **(2019) 4 SCC 163**

position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts.[40]

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be

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[40] **(See *Associate Builders* v. *DDA* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Also see *ONGC Ltd.* v. *Saw Pipes Ltd.* [*ONGC Ltd.* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705] ; *Hindustan Zinc Ltd.* v. *Friends CoalCarbonisation* [*Hindustan Zinc Ltd.* v. *Friends Coal Carbonisation*, (2006) 4 SCC 445] ; and *McDermott International Inc.* v. *Burn Standard Co. Ltd.* [*McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181])**

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

52. Recently, this Court, speaking through one of us (Om Prakash Shukla, J.) in ***M/s JSW Ispat Steel Limited (now known as JSW Steel Limited) v. M/s Gas Authority of India Limited***[41], while referring to ***Jan De Nul Dredging India Pvt. Ltd. v. Tuticorin Port Trust***[42] and ***M/s Larsen Air Conditioning and Refrigeration Company v. Union of India & Ors.***[43], reiterated that the scope of judicial review under Sections 34 and 37 of the Act is extremely limited, and powers of a court under Section 37 are circumscribed and extend only to examining whether the Section 34 Court has acted within its jurisdiction. It was further reiterated that the appellate court cannot re-appreciate the evidence or substitute its own view merely because another interpretation is possible. An interference is permissible only on grounds, such as patent illegality, or violation of public policy, and only where such infirmity goes to the root of the matter.

53. Keeping the aforesaid principles in mind, we proceed to deal with the controversy in the present appeal.

54. It is not in dispute that the Respondent breached the Agreement

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[41] **DHC:1922-DB**
[42] **(2026) 3 SCC 186**
[43] **(2023) 15 SCC 472**

by failing to adhere to the timelines stipulated under Clause 11 and the extended timelines under the Addendum. In view thereof, the Appellant issued a Termination Notice dated 15.06.2019, and the validity of the said notice was upheld by the learned Tribunal. The learned Tribunal further held that upon termination, the Respondent was required to hand over possession within a reasonable time, and its continued occupation of the subject land beyond such period would entitle the Appellant to mesne profits, which were quantified at Rs. 30,00,000/- per month from 01.07.2019 till actual hand over of the possession.

55. The learned Counsel for the Respondent contended that the award of mesne profits was unsustainable in the absence of evidence establishing the actual profit derived by the Respondent from its continued possession, which, according to the Respondent, is a prerequisite for the grant of mesne profits.

56. It is pertinent to note that the learned Single Judge interfered with the Arbitral Award only to the limited extent of quantification on the ground of lack of evidentiary support. Accordingly, our consideration under Section 37 is confined to examining whether the setting aside of mesne profits quantified at Rs. 30,00,000/- per month for want of any evidentiary foundation or reasoning was justified or not. The Appellant's entitlement to mesne profits, including whether the Respondent derived actual profit from its continued possession, does not arise for our consideration in this appeal.

57. The primary reason that weighed with the learned Single Judge in setting aside the Arbitral Award to the extent of Rs. 15,90,00,000/- was that the said figure had been arrived at without any evidentiary

basis and without even a semblance of reasoning. The relevant portion of the Impugned Order is reproduced below:

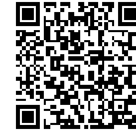
> "**21.** In the present case also, the learned Arbitrator passed the award on the basis of stating that, "Unfortunately, no evidence is led in this behalf by either party and therefore, there is no other alternative for the Arbitral Tribunal but to award some amount by making some guesswork." It is a matter of the fact as recorded in the impugned award also that the claimant had not produced any evidence in support to his claim. It is also pertinent to mention here that learned Arbitrator has not passed an award stating that the figure has been taken on the basis of the evidence of the respondent. The perusal of the impugned award indicates that the learned tribunal awarded the mesne profits @ Rs.30lakhs per month. However, not even a single reasoning has been given for reaching on this amount. This court is conscious of the fact that in exercise of jurisdiction under Section 34 of the Arbitration and Conciliation Act, this court cannot sit in appeal over the findings of the learned tribunal but at the same time, within the limited power conferred by the legislation, the court is required to see whether there is even an iota of reasoning for reaching the award. Hence, in the circumstances and in view of there being no evidence to the same, the impugned award to the extent of grant of Rs.15,90,00,000/- is set aside."
>
> (emphasis supplied)

58. The learned Senior Counsel for the Appellant sought to assail the aforesaid finding by contending that the quantification of mesne profits by the learned Tribunal was not arbitrary, but based on honest guesswork after duly considering the facts and circumstances of the case. It was argued that such an approach is legally sustainable where loss is established but precise quantification is not possible. In this context, it becomes apposite to examine the reasoning adopted by the learned Tribunal:

> "**142.** While coming to this conclusion, the Tribunal also finds force in the submission of the Respondent that the Claimant has not been able to substantiate this claim. Had the Respondent completed the Project, it would have got 54% share therein. Now, with the termination of the is Contract, the Claimant is in a more

advantageous position as it not required io part with the said share. The Claimant is, therefore, is in a better position than it would have been in the event the terms of the Contract had been performed. There is another aspect highlighted by the Respondent which cannot be ignored. Even as per the Valuation Report relied upon by the Claimant, the revenue potential of the Subject Land, after all construction is presumed ta be completed, was to be INR 120.00 crore. The Claimant has admitted that the Claimant would only be entitled to INR 55.00 crore of the aforesaid alleged amount of INR 120.00 crore had the contract been performed and not terminated. While the Respondent categorically denies the valuation report relied upon by the Claimant and all of its findings, if the same is accepted on a demurrer, the market value of the subject land as on date is stated to be INR 57.00 crore as per the same, and in the event the Claimant manages to somehow wriggle out of the Agreement, he can benefit out of 100% of the sale proceeds. This further establishes that even as per the best case of the Claimant, the Claimant has incurred an losses whatsoever. The Tribunal, therefore, rejects the claim for the period up to 15.06.2019.

143. The Claimant has, however, also raised the claim for the period from 01.06.2020 as well till the date of actual hand-over of the Project land by the Respondent to the Claimant. preferred @ INR 2.10 crore. It may be claimed that in the Termination Notice dated 15.06.2019, the Claimant had asked for re-possession of the land of which the Claimant is the owner. The Respondent, refused to do so forcing the Claimant to initiate the present arbitration proceeding where the claim for handing over the possession of land is also made. The same has been allowed. Since this demand was made in the Termination Notice and is found to be justified, the Respondent was supposed to handover the possession within a reasonable period. The Claimant would be entitled to the loss on this account for the subsequent period. Giving an allowance of 15 (fifteen) days within which possession should have been handed over by the Respondent, the Claimant would be entitled to damages w.e.f. 01.07.2019. INR 2.10 crore per month. The Claimant has calculated losses @ INR 2.10 crore per month. For this purpose, the Claimant has produced Mr. Pankaj Tekchandani (CW-2) who has given his report about the land in question and its commercial prospects. As against that, the Respondent has produced Mr. Amit Chawla, RW-2 who has also deposed about the commercial viability of the property including its location, etc. Going by the considerations of location of the property, the fact that even the Claimant could not develop this property from 2006 to 2014 and ultimately, handed over the same to the Respondent for development, its marketability and other such considerations, the Tribunal is of the view that calculations of loss made by the Claimant for loss @ INR 2.10 crore per month is not justifiable.



144. As already mentioned above, the Respondent has disputed the validity of the valuation report (CBRE report) relied upon by the Claimant. The Respondent has made detailed submissions during arguments and also in the closing written submissions. The Respondent has also referred to various questions put to CW-2 and reply given to those questions. It may not be necessary to produce the entire discussion in this behalf. It is sufficient to mention that calculation of INR 2.10 crore per month made in the manner in the said report and relied upon by the Claimant cannot be accepted. At the same time, the claim for the period in question cannot be rejected in toto as the Claimant would be entitled to some claim because of illegal occupation of the Project land by the Respondent even after the termination of the Agreements. **Unfortunately, no evidence is led in this behalf by either party and therefore, there is no other alternative for the Arbitral Tribunal but to award some amount by making some guesswork.**

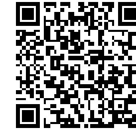
145. Taking into consideration all the relevant facts and circumstances of the case, in the opinion of the Tribunal, interest of justice would be subserved in granting mesne profit for withholding the possession beyond 01.07.2019 @ INR 30.00 lakh per month from 01.07.2019 which would come to four years and five months i.e., 30.00 lakh X 53 = to 15,90,00,000/- till 30.11.2013. The Claimant shall also be entitled mesne profits at this rate with effect from 01.12.2023 till the possession of the land is handed over to it."

(emphasis supplied)

59. Upon a plain reading, it is clear that while the learned Tribunal acknowledged the absence of evidence on both sides, it nonetheless proceeded to quantify mesne profits at Rs. 30,00,000/- per month on the basis of guesswork.

60. Thus, in order to assess whether the reliance on guesswork by the Arbitrator finding is permissible and consistent with applicable law, it is necessary to understand the scope of "guesswork" in the context of arbitral awards.

61. This Court is aware that reliance on a "rough and ready" estimate



or guesswork is not alien to arbitral jurisprudence and has received recognition from the Supreme Court as well as this Court.

62. In ***DDA v. Anand and Associates (supra)*,** the methodology of adopting some degree of guesswork was affirmed. The relevant observations are as follows:

> "**6.** …It is true that while awarding a sum of Rs. 1,91,659/- towards increase in the labour charges and Rs. 3,50,000/- on account of the increase in the price of materials, the arbitrator has observed that no books of accounts had been produced before him and that he has determined the amount from whatever is available on record yet interference with that part of the award would also not be justified in view of the settled legal positions that the court would not set aside an award simply because it was to an extent based upon some guesswork. Reference may in this regard be made to Mohd. Salamatullah and Ors. v. Government of Andhra Pradesh 1977 SC 1481 where the court has observed:—
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> > "We are not able to discern any tangible material on the strength of which the High Court reduced the damages from 15% of the contract price to 10% of the contract price. If the first was a guess, it was at least a better guess than the second one. We see no justification for the appellate court to interfere with a finding of fact given by the trial Court unless some reason, based on some fact, is traceable on the record. There being none we are constrained to set aside the judgment of the High Court in regard to the assessment of damages for breach of contract."
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> (emphasis supplied)

63. Similarly, a Division Bench of this Court in ***Cobra Instalaciones Y Servicios, S.A. (supra)***, while considering ***Construction Design (supra)***, observed that such a method is a permissible tool available to an arbitrator, particularly in a situation where material exists to show that loss has been suffered, but does not furnish granular details for precise quantification.

64. More recently, another Division bench of this Court in ***Bharat Heavy Electricals Ltd. (supra)*** taking into account ***Cobra Instalaciones Y Servicios (supra),*** affirmed the adoption of honest guesswork in the following terms:

> **35.** In our opinion, there may be three situations. First, there is no evidence of any loss to a party raising a claim. In such situation arbitrator cannot presume any loss and award compensation. Second, where there is evidence of loss as well as evidence on quantum of damages. This would be an ideal situation in awarding damages and compensation. Third is the situation where there is evidence of loss but either there is meager evidence or absence of evidence in support of claim of damages. In such situation the arbitrator can use rough and ready method by using a practical guess work to determine the damages and compensation. But such compensation should be reasonable in the sense that in given situation no man of prudence would call it excessive. The third situation occurs in the present case and therefore, while exercising very limited jurisdiction under Section 37, we have only to see as to whether the damages/compensation awarded to Delkon is reasonable or not.
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> ****
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> **39.** The counter claim no. 3 is towards cost of pre assembly and part wielding completed. The Arbitrator had relied upon the report of Local Commissioner and awarded lesser amount of interest at the rate of 12% (against 15% as per clause 57.3 (1) (A) (i) of the contract) of the contract rate as appropriate and reasonable and held that value for 12.908 MT works out to Rs. 4182/-. In appeal the appellant submits that clause 57.2 (1A)(i) does not deal with the breakup of the cost but instead pertains to the payment milestone. Again in our considered view, even if the aforesaid clause is misapplied, the awarded amount of Rs. 4182/- is so meager that it has to be accepted as the cost of pre assembly and part wielding completed.
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> ****
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> **46.** The argument of learned Counsel for the appellant is that there is no evidence on record to show that value of T&P was Rs. 40 lakhs. Further, no evidence has been led to prove respondent's claim on damages. Learned counsel for the appellant assailed the method adopted by the Arbitrator for calculating withholding charges.
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> ***
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> **50.** After perusing the material available on record, we are of the opinion that in respect of the heavy machinery, the Arbitrator has reached to a plausible conclusion that the value of the withheld machinery would be about Rs. 40,00,000/- and the depreciation

value to be Rs. 10,00,000/-. We concur with the learned District Judge on Arbitrator's finding on the computation of 210 days and the methodology adopted for awarding Rs. 5,75,342/- to the respondent on account of the appellant's illegal withholding of T&P. In other words the Arbitrator had some basis for calculating withholding charges of Rs. 5,75,342/-, which is not at all unreasonable if we consider the nature of T&P which included heavy equipments/machinery including two Cranes, one Tractor, two Trailors and one Metador Pickup Van etc. and the duration of 210 days for which the same were withheld. Hence, we agree with the view of Arbitrator and learned District Judge on contract clause no. 7 being reasonable and uphold the same.

COUNTER CLAIM NO. 13 AND 15

51. The respondent-Delkon had raised these counter claims towards cost of mobilization and demobilization of T&P, equipment and manpower. The appellant has drawn our attention to the observation of Arbitrator that Delkon has not submitted any documents for actual expenses incurred by them in mobilization and demobilization. Therefore, awarding a sum of Rs. 10,52,800/- is based upon mere surmises and conjectures.

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53. We are of the opinion that even if no documents were furnished by respondent-Delkon before the Arbitrator, the conclusion of the Arbitrator has been arrived at on "the analysis of unit rates", which is Annexure -E to Tender No. BHEL: NR(SCT):RGTTP:BLR:42. This Annexure - E forms the part of the contract No. 50/96 between the parties. This finding of Arbitrator, about 65% of the overheads having been consumed in mobilization and demobilization, is a finding on fact and therefore we are not inclined to go deeper into it especially when it is based upon Local Commissioner's report. The Arbitrator has calculated these charges on the basis of Annexure - E. Therefore, even if no documents were filed by Delkon to prove expenditure of this overhead, the calculation by learned Arbitrator is reasonable and justified.

54. Learned District Judge observed that the award of amount of Rs. 10,52,800/- towards mobilization and demobilization costs cannot be held to be without reasons or material evidence on record **and held that as long as there is sufficient material available on record on the basis of which an estimation of loss/expenses/costs incurred can be drawn, an award of that estimate can be granted. We are of the opinion that view of learned District Judge is correct on this issue especially when the Arbitrator had based his estimation on the basis of Local Commissioner's report and "analysis of unit rates" which is part of the contract**. The Arbitrator adopted a rough and ready method with reasonable and

honest guess work on this issue. Consequently, we find no infirmity in the impugned award and the impugned judgment on this issue.

(emphasis supplied)

65. An analysis of the above-mentioned precedents indicates that, although the adoption of a "rough and ready" method or honest guesswork has been judicially recognised, the same is not unguided.

66. The decision of the Division Bench in ***Cobra Instalaciones y Servicios S.A***. ***(supra)*** clarifies that such latitude is available in a situation where there is material on record to establish that loss has indeed been suffered, but the evidence falls short of providing precise quantification. We note that the above principle stands further elucidated in ***Bharat Heavy Electricals Ltd. (supra)*** in context of unliquidated damages, where this Court upheld the award of damages not merely because guesswork was employed, but because such determination was founded upon a discernible and rational methodology traceable to the material on record.

67. In ***Bharat Heavy Electricals Ltd. (supra)***, the Court was dealing with multiple claims where the Arbitrator had awarded compensation despite absence of strict proof of expenditure under certain heads. However, in our considered view, what weighed with the Court while assessing reasonability was that, in each such instance, the Arbitrator had relied upon some identifiable material such as contractual clauses, reports of the Local Commissioner, admitted quantities, or standard rates and had applied a rational method of computation. Most significantly, while upholding the award relating to claim for

withholding of machinery, the Court expressly noted that *"the Arbitrator had some basis for calculating... which is not at all unreasonable"*. It shows that the existence of a foundational basis, however limited, is a *sine qua non* for sustaining such quantification.

68. The same principle is echoed in ***DDA v. Anand and Associates (supra)***, where the Court declined to interfere with an award partly based on guesswork, as the arbitrator had determined the amount "*from whatever is available on record*". It thus emerges to us that while exactitude in proof of damages is not insisted upon, the adjudicatory process must nevertheless disclose a rational nexus between the material available and the figure ultimately awarded or atleast some line of reasoning in mind of the learned Arbitrator to justify the reasonability of the figure.

69. This approach also emerges from ***Gemini Bay Transcription (P) Ltd. (supra)***, wherein, although the guesswork method was allowed, it was also noted that the Arbitrator had made assessment taking into account some material on record. The relevant observations are as follows:

> "**77.** The arbitrator correctly held that as nothing was forthcoming from any of the appellants, he would have to make a best judgment assessment for damages. In making that assessment, he took into account the commission that was being earned by GBT from the two clients of DMC and arrived at a figure of 100,000 USD per month and then found, on a reasonable estimate, that they would continue to be clients for a period of four years, as a result of which the figure of 6,948,100 USD was reached.
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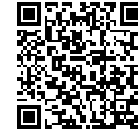
> **78.** That such "guesstimates" are not a stranger to the law of damages in the US and other common law tradition nations has been established very early on in a judgment of Asutosh Mookerjee, J.



reported as Frederick Thomas Kingsley v. Secy, of State for India AIR 1923 Cal 49…"

(emphasis supplied)

70. Thus, what the law countenances is not guesswork in *vacuo*, but a reasoned approximation founded on some material, some method, or at the very least, a discernible line of reasoning.

71. In the present case, the learned Tribunal rejected the CBRE Report, holding it to be unreliable and proceeded on the premise that since no evidence was led by either party for quantification of damages, mesne profits could be discerned by way of guesswork. The Arbitral Award, however, discloses no discussion or reasoning for arriving at the figure of Rs. 30,00,000/- per month.

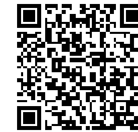
72. On behalf of the Appellant, Mr. Nagrath suggested that the said figure is traceable to the material on record by relying on the Colliers Report furnished by the Respondent. However, it does not merit our acceptance.

73. As per the Appellant, Colliers Report indicates rental values of Rs. 50–80 per sq. ft. for an approximate built-up area of 60,000 sq. ft., yielding a possible range of Rs. 30–48 lakh per month. However, the Arbitral Award neither records reliance on this Report nor adopts such a methodology. An Award must stand or fall on the reasons contained therein, and it is impermissible for a party to supplement or reconstruct the reasoning by reference to material not relied upon by the learned Tribunal. Even otherwise, there are multiple outcomes possible based on Colliers Report, and in the absence of any reasoning by the learned

Arbitrator linking the material to the figure awarded, the quantification cannot be sustained. Moreover, it is settled law that the Arbitrator is the master of facts and evidence. Once the learned Arbitrator itself recorded that no evidence had been led by either party, it necessarily follows that the quantification was not based on any material such as the Colliers Report. In such circumstances, this Court cannot attribute a basis to the Arbitral Award which the learned Tribunal itself has not disclosed, nor can it hold that the figure is traceable to the record when the learned Tribunal has expressly found otherwise.

74. It is no doubt true that in cases of unliquidated damages, particularly those arising from wrongful retention of property, some degree of estimation is inevitable. However, such estimation must be reasoned and based on a discernible foundation. In the present case, the Arbitral Award proceeds merely on the premise that the Appellant is entitled to compensation on account of wrongful possession of the subject land by the Respondent, without any analysis of the extent of loss or any indication of the basis of computation. The absence of such reasoning renders the determination unsustainable in law.

75. The Supreme Court has consistently emphasised that the latitude available for 'honest guesswork' does not dispense with the requirement of a reasoned determination. In ***New Okhla Industrial Development Authority (supra)***, the Supreme Court clarified that while some degree of estimation or "guesstimation" is permissible in determining compensation, the exercise cannot be speculative or purely subjective. The discretion to adopt guesswork is not unfettered and must have a nexus with the material on record and other relevant factors. It



was observed as follows:

> ***"33.*** *Having said that, it is important to clarify that the process of determining compensation is not entirely subjective. While it may not be possible to arrive at a definitive figure, the exercise is still epistemologically objective in so far as it is grounded in evidence and the consideration of relevant factors. In case the compensation is fixed agnostically to the factors affecting the valuation of the land, the resultant figure might be arbitrary and may fail to adequately compensate the landowner for the expropriated land. Hence, while some subjectivity may exist in fixing the final figure based on these factors, the sliding scale of judicial discretion cannot be extended to mere speculation.*
>
> ***34.*** *Accordingly, while the Court can use the principle of guesstimation in reasonably estimating the value of land in the absence of direct evidence, the exercise ought not to be purely hypothetical. Instead, the Court must embrace a holistic view and consider all relevant factors and existing evidence, even if not directly comparable, to arrive at a fair determination of compensation. Trishala Jain v. State of Uttaranchal,[9] summarizes these yardsticks as follows:*
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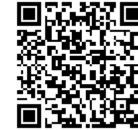
> > *"65. It will be appropriate for us to state certain principles controlling the application of "guesstimate":*
> >
> > *(a) Wherever the evidence produced by the parties is not sufficient to determine the compensation with exactitude, this principle can be resorted to.*
> >
> > *(b) Discretion of the court in applying guesswork to the facts of a given case is not unfettered but has to be reasonable and should have a connection to the data on record produced by the parties by way of evidence. Further, this entire exercise has to be within the limitations specified under Sections 23 and 24 of the Act and cannot be made in detriment thereto."*
>
> (emphasis supplied)

76. Similarly, in ***Ramesh Kumar Jain (supra)***, the guesswork by the arbitrator was upheld since it was based on taking into account some evidence. In ***Ramesh Kumar Jain (supra)***, it was also held that an Arbitral Award may be interfered with if it is based on "no evidence" because an arbitrator cannot conjure findings out of thin air. The

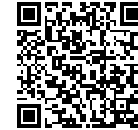


relevant excerpt is thus:

> *"**35.** Considering the aforesaid precedents, in our considered view, the said terminology of 'patent illegality' indicates more than one scenario such as the findings of the arbitrator must shock the judicial conscience or the arbitrator took into account matters he shouldn't have, or he must have failed to take into account vital matters, leading to an unjust result; or the decision is so irrational that no fair or sensible person would have arrived at it given the same facts. <u>A classic example for the same is when an award is based on "no evidence" i.e., arbitrators cannot conjure figures or facts out of thin air to arrive at his findings. If a crucial finding is unsupported by any evidence or is a result of ignoring vital evidence that was placed before the arbitrator, it may be a ground the warrants interference.</u> However, the said parameter must be applied with caution by keeping in mind that "no evidence" means truly no relevant evidence, not scant or weak evidence. If there is some evidence, even a single witness's testimony or a set of documents, on which the arbitrator could rely upon or has relied upon to arrive at his conclusions, the court cannot regard the conclusion drawn by the arbitrator as patently illegal merely because that evidence has less probative value. This thin line is stood crossed only when the arbitral tribunal's conclusion cannot be reconciled with any permissible view of the evidence."*
>
> (emphasis supplied)

77. The Appellant also contended that the Arbitral Award must be read in its entirety and not by isolating a particular paragraph, and that the quantification must be understood in the context of the overall findings recorded by the learned Tribunal.

78. We have, accordingly, perused the Arbitral Award as a whole. While the learned Tribunal has furnished reasons in respect of the breach and the validity of termination, it is conspicuously silent on the aspect of quantification of mesne profits. There is no discussion of material or any discernible methodology or reasoning for arriving at the figure awarded. The submission on behalf of the Appellant that such

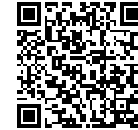


reasoning can be gathered from the record cannot be accepted, as it is impermissible for this Court to supply reasons which the Arbitral Award itself does not disclose.

79. The distinction between an arbitral award where reasons are either lacking or unintelligible and an award where reasons are explicit but appear inadequate was carved out by the Supreme Court in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[44]. The Court therein held that where reasons are merely inadequate or insufficient but the underlying basis is understandable on a holistic reading, the Court may sustain the award by explaining such reasoning. However, the present case falls in the category of awards suffering from a complete absence of reasoning for quantification. Any attempt to justify the reasonableness of the quantification on the basis of submissions advanced before us by the learned Senior Counsel for the Appellant would amount to impermissibly supplanting the findings of the learned Tribunal by this Court, which are based on no evidence or reasoning, by substituting them with this Court's own interpretation of the evidence on record which is impermissible.

80. A mere observation in the Arbitral Award that the determination is based on the "all the relevant facts and circumstances of the case" cannot, in our considered view, suffice in a matter of unliquidated damages. While it may be that the learned Tribunal considered material such as the CBRE and Colliers reports, along with the testimony of the expert witnesses, however, <u>the same were ultimately not accepted for</u>

[44] **(2025) 2 SCC 417**



quantification as the learned Tribunal itself recorded that no evidence had been led by the either party. Once such evidence stood rejected, the quantification cannot be sustained on the basis of the very same evidence. Therefore, no linkage can be found between the figure arrived at and material on record. We may have accepted the linkage between the said reports and the quantification, had the learned Tribunal not expressly recorded that there was no evidence. Once such a finding is returned and the learned Tribunal nevertheless resorts to guesswork, it was incumbent to disclose some reasoning or basis for the quantification. In the absence thereof, the figure arrived at remains one based on mere conjecture and lacks any foundational basis.

81. In the absence of reasons employed by the learned Tribunal, the contours of patent illegality assume significance. The Supreme Court in ***DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd.***[45], explained the same in the following words:

> *"**39.** In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A "finding" based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An Award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating a fundamental principle of natural justice".*
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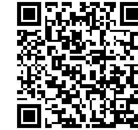
> (emphasis supplied)

[45] **(2024) 6 SCC 357**



82. This principle has also been reiterated in ***Ssangyong Engineering & Construction Co. Ltd. v. NHAI***[46] and ***PSA SICAL Terminals Pvt. Ltd.*** (supra) wherein it was held that a finding based on no evidence is perverse and liable to be set aside on account of patent illegality.

83. On the touchstone of the aforesaid principles, we find that the Arbitral Award insofar as it quantifies the mesne profits to the extent of Rs. 30,00,000 per month cannot be sustained. The learned Tribunal, having discarded the valuation material and not followed any benchmark or evidentiary basis, nonetheless proceeded to determine a fixed figure without disclosing any rationale or methodology. As held in ***Ramesh Kumar Jain (supra),*** while sufficiency of evidence is not for the Court to reappreciate, a finding based on "no evidence" warrants interference, as an Arbitrator cannot conjure a figure out of thin air without any supporting basis.

84. The above conclusion is further reinforced by the decisions in ***Bharat Heavy Electricals Ltd (supra)***, ***Gemini Bay Transcription (P) Ltd. (supra)*** *and* ***New Okhla Industrial Development Authority (supra),*** which clarify that while a degree of approximation is permissible in assessing damages, such an exercise must be anchored in some evidence/material on record, method, or identifiable reasoning. In our view, the latitude for 'honest guesswork' is confined to situations where the record furnishes a foundation, however limited, for a rational estimation. In the present case, the Arbitral Award discloses no such

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foundational basis, nor is there any attempt to identify the parameters which may guide this determination. The quantification, therefore, ceases to be an exercise in estimation and instead assumes the character of an fixation without any basis, thereby attracting the vice of patent illegality. Therefore, the learned Single Judge was justified in interfering with the Arbitral Award to this limited extent. Also, reliance on ***Flovel Hydro (supra)*** is misplaced, as the said decision was rendered in the context of an international commercial arbitration, where the scope of interference is more circumscribed, and the ground of patent illegality is not available for interference.

85. Insofar as the submission regarding adjustment of Claims and Counter-Claims is concerned, we find no merit in the same. The Claims and Counter-Claims have been adjudicated independently on their respective merits. The setting aside of the quantification of mesne profits does not, by itself, warrant reopening of the Counter-Claims or disturb the findings rendered thereon, unless specifically challenged on merits in proceedings under Section 34. The adjustment is merely consequential to the final determination and does not create such interdependence as to require that the fate of one must necessarily govern and/or follow the other.

86. The Appellant's contention that the Impugned Order was vitiated due to violation of the principles of natural justice is also devoid of merit. The record shows that the Appellant was duly represented and participated in the proceedings, and all its submissions were considered in the Impugned Order. The mere fact that the petition was disposed of at the initial stage, or that no opportunity was granted to file a written

reply, does not, *ipso facto*, amount to a violation of principles of natural justice.

Conclusion

87. Upon a comprehensive consideration of the material on record, the reasoning of the learned Tribunal, and the settled principles governing interference under Sections 34 and 37 of the Act, we find no infirmity in the Impugned Order.

88. 'Honest guesswork' or a 'rough and ready' approach may be adopted in appropriate cases. However, such estimation must still be based on some material on record or must show a rational nexus. In the present case, the learned Tribunal, after rejecting the valuation reports and recording that there was no evidence, nonetheless proceeded to fix mesne profits without indicating any method, benchmark, or supporting material. Such an approach goes beyond the limits of permissible estimation.

89. Thus, the Arbitral Award, to the extent it awarded Rs. 30,00,000 per month towards mesne profits suffers from patent illegality being both unsupported by evidence and devoid of reasons. The learned Single Judge has rightly exercised its jurisdiction in setting aside the quantification of mesne profits. We also find no merit in the Appellant's contentions regarding adjustment of Claims and Counter-Claims or alleged violation of principles of natural justice, as the same do not disclose any ground warranting interference.

90. We make it clear that the liberty granted by the learned Single Judge shall remain, and the Appellant shall be at liberty to agitate its Claim in accordance with law. If such liberty is exercised, the concerned authority shall endeavour to decide the same expeditiously.

91. In light of the foregoing discussion, we dismiss the present appeal, along with any pending applications, if any.

92. There shall be no order as to costs.

OM PRAKASH SHUKLA, J.

C.HARI SHANKAR, J.

April 13, 2026/*ss*/pa