$~J

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

Reserved on: 13th October, 2026
Pronounced on: 06th November, 2026
Uploaded on: 06th November, 2026

\# **CNR No. DLHC010341402026**

\+ FAO(OS) (COMM) 192/2026 & CM APPL. 49274/2026, CM APPL. 49275/2026 & CM APPL. 49276/2026

DELHI DEVELOPMENT AUTHORITY .....Appellant

Through: Mr. Sanjay Vashishtha, SC with Mr. Siddhartha Goswami & Mr. Aditya Sachdeva, Advs.

versus

JAKSONS DEVELOPERS (P) LTD THROUGH ITS AUTHORISED SIGNATORY SHRI PEAYUSH AGARWAL, CEO .....Respondent

Through: Mr. Sumit Bansal, Sr. Adv. with Mr. Praveen Gupta, Ms. Maheen Khan, Ms. Riya Goyal & Mr. Ashim Shridhar, Advs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE DR. JUSTICE ADITI CHOUDHARY

J U D G M E N T

REPORTABLE

***Per*, ADITI CHOUDHARY, J.**

1. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (for brevity, 'the Act')

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

read with Section 13 (1A) of the Commercial Courts Act, 2015 against the judgment of the learned Single Judge dated 05.05.2026 in OMP(COMM) 349/2023 titled *Jaksons Developers (P) Ltd. v. Delhi Development Authority*, by which the Arbitral Award dated 25.04.2023 read with addendum dated 21.05.2023, has been modified.

FACTUAL MATRIX

2. Shorn of unnecessary details, the facts leading to filing of this appeal are that, the appellant/Delhi Development Authority (for brevity 'DDA') invited bids for commercial plot No. 3B1, Twin District Towers, Rohini (admeasuring 11,130.40 sq. mtrs.) for construction of a hotel in order to provide accommodation for the Commonwealth Games 2010 (for brevity CWG 10). The respondent/Jaksons Developers (P) Ltd. (for brevity, 'JDPL') was the successful bidder. On 04.01.2008, a Demand-cum-Allotment Letter was issued to JDPL. The hotel project was required to be made operational within twenty-four months from the date of allotment.

2.1 In March 2008, JDPL submitted building plans which were approved by the Chief Fire Officer (for brevity 'CFO') in November 2008 and by the Delhi Urban Arts Commission (for brevity 'DUAC') in December 2008. On 09.06.2008, JDPL in terms of the contract, furnished a performance bank guarantee (for brevity 'PBG') for a sum of Rs. 9,30,00,000/- as performance security (equivalent to 5% of the bid amount), valid for a period of four years as per clause 3.14 of the tender document. On 08.09.2008, JDPL was given formal possession of the plot and the conveyance deed was also executed in its favour. JDPL continued construction in anticipation of land approval. On 15.05.2009,

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

JDPL deposited "prior to sanction charges" with DDA being the condition for formal approval of the building plans.

2.2 In May 2010, DDA intended to invoke the PBG for non-completion of work within twenty-four months of the allotment letter. JDPL filed a petition under Section 9 of the Act (OMP No. 360/2010) in this Court seeking stay on the invocation of the PBG. Vide order dated 09.06.2010, DDA was restrained from invoking and encashing the PBG till the next date of hearing. On 21.10.2011, this Court permitted JDPL to file an application under Section 17 of the Act and directed the interim order to continue till such time the learned Arbitrator passes an order in the application. On 15.09.2010, JDPL completed the hotel and made it operational before the CWG 10 and applied for completion/occupancy certificate. On 21.09.2010, DDA rejected the said application. On 24.09.2010, JDPL rectified the deficiencies and sought for limited term permission which was granted on 29.09.2010. The hotel was used during the CWG 10.

3. Vide order dated 12.05.2011, this Court appointed the Arbitrator and disputes between the parties were referred to arbitration. An application under Section 17 of the Act filed by JDPL was decided by the learned Arbitrator vide the said order dated 22.10.2013. The interim order restraining the invocation of the PBG was vacated, subject to the condition that DDA would encash the PBG but the amount would be kept in a fixed deposit (for brevity 'FDR') in a nationalized bank during the course of the arbitration proceedings and that the said amount along with interest accrued thereon, would abide the outcome of the matter.

4. The learned Arbitrator passed the award on 25.04.2023 and an

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

addendum thereto on 21.05.2023. DDA was *inter alia* held not entitled to invoke or encash the PBG and was directed to release the PBG amount i.e. Rs. 9,30,00,000/- to JDPL. Claim No. 8 of JDPL with regard to interest on the awarded amount @ 18% per annum was rejected on the ground of mutual delay attributable to both the parties besides the CFO and DUAC. DDA filed two counter claims to invoke/encash the PBG and seeking interest for the period from expiry of 24 months (for completion of hotel) till the encashment of the PBG. Both the counter claims along with other counter claims filed by DDA were rejected. The addendum to the arbitral award dated 21.05.2023 clarified that since Claim No. 8 of JDPL for interest was rejected, the interest accrued on the PBG shall not be released to the claimant. Aggrieved, JDPL filed the petition under Section 34 of the Act (OMP Comm. No. 349/2023) challenging the award to the extent it withheld the interest on the FDR.

5. The learned Single Judge vide the impugned judgment held that the interest accrued on the FDR was not governed by Section 31(7) of the Act and partook the character of the principle amount kept in the FDR. The condition imposed in the order under Section 17 of the Act, that JDPL shall not use the amount realized by encashing the PBG was to ensure that the FDR be released to the party found entitled to it. There was no reason recorded in the award for not releasing the interest accrued on the FDR. What was denied in the counter claim of DDA was indirectly allowed. The contention of the learned counsel for DDA that the learned Arbitrator had a discretion under Section 31(7) of the Act to grant or not to grant interest was of no avail, as the payment of such money was not awarded by the learned Arbitrator. The conclusion of

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

the learned Arbitrator that DDA could not have invoked the PBG was unambiguous and there was no reason recorded in the award for directing non release of the interest accrued on the FDR to JDPL. The only possible view after concluding that the PBG could not have been invoked is that the FDR as a whole should go to JDPL. The non-release of FDR interest to JDPL relying upon rejection of grant of interest under Section 31(7) of the Act on the claimed amount is against the statutory provision, vitiating the finding with patent illegality. It was further held that the award could be modified since the part of the award directing release of amount of Rs. 9,30,00,000/- realised on encashment of PBG and the directions *qua* the interest accrued on FDR not to be released to the petitioner, are severable. Accordingly, the part of the award directing interest accrued on the FDR not to be released to the JDPL was set aside.

RIVAL SUBMISSIONS OF BOTH SIDES

6. We have heard the learned counsels for both sides.

7. Learned counsel for the appellant/DDA argued that there was no reason for the learned Single Judge to modify the award under Section 34 of the Act, since there was no patent illegality in the award. The learned Single Judge while holding that the interest accrued on the FDR partakes the character of the principal amount relied upon the judgment in ***Central Bank of India v. Ravindra and Others*** (2002) 1 SCC 367, which was decided in an entirely different context of bank-borrower loan accounts and the question of capitalisation of interests under banking regulations. The observation of the Hon'ble Supreme Court in the said case that interest can become "part of the principle" was made

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

specifically in contractual and regulatory setting and had no application to the interest accruing on an FDR, maintained pursuant to a corpus-preservation order under Section 17 of Act. The impugned judgment treats the order under Section 17 dated 22.10.2013, which directed that the FDR amount "*along with interests accrued thereon shall abide the outcome of the matter*" as a substantive direction that pre-determined the entitlement to interest which amounts to a fundamental misreading of the nature and effect of Section 17 orders.

7.1 It was further argued that the finding of the learned Single Judge that Section 31(7) of the Act has "no application" because the payment of money was not awarded by the learned Arbitrator is not legally sustainable. The direction to release Rs.9,30,00,000/- i.e. proceeds of the encashed PBG was plainly a direction relating to payment of money and the award directing release of the said sum constitutes a money award. The question whether any pre-award interest was to accompany the monetary relief fell squarely within the learned Arbitrator's discretion and jurisdiction under Section 31(7)(a) of the Act. The learned Arbitrator having recorded findings of substantial mutual delay attributable to both parties as well as CFO and DUAC took a conscious decision to deny pre-award interest to JDPL. This decision was given expression through Claim no. 8 and was reflected in the addendum. The learned Single Judge erred in treating the learned Arbitrator's findings on interest which were supported by detailed reasons on mutual delay and were in the zone of plausible arbitral conclusion, as patently illegal.

7.2 It was further argued that the Hon'ble Supreme Court in ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.,*** (2025) 7 SCC 1, laid

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

down that the power in the proviso to Section 34(2)(a)(iv) of the Act, permits the Court to set aside only that part of an award which contains decisions on matters that are not submitted to arbitration. The proviso enables Courts to severe the non-arbitral portion from the arbitral portion of an award. In the present case, the interest on the FDR was part of Claim no. 8 in the Statement of Claim which was specifically adjudicated upon and rejected. The proviso to Section 34(2)(a)(iv) of the Act which is the textual basis for severance under ***Gayatri Balasamy*** (*supra*) has no application to a portion of an award that deals with a matter within the scope of submission.

8. *Per contra,* it was argued by learned counsel for the respondent/JDPL that vide the order under Section 17, the PBG was encashed and directed to be kept in an FDR, so that the interest accrued thereon could be given to the party who succeeded with regard to the PBG. Thus, the learned Arbitrator could not deny JDPL the interest accrued on the FDR. The award to this extent suffered from patent illegality which has been rightly modified by the learned Single Judge. There was no question of application of Section 31(7) of the Act to the interest accrued on the FDR, as there was no payment of money awarded by the learned Arbitrator. There was no reason for the learned Arbitrator to award the interest accrued on the FDR to DDA when its counter claims were rejected. The learned Arbitrator totally misdirected himself while mixing up the claim of interest i.e. Claim No. 8 and the interest as accrued on the PBG, as they are two different aspects to be considered by the learned Arbitrator. The claim for interest was upon the claims as made by JDPL before the learned Arbitrator and the

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

interest accrued upon the PBG was a totally different issue inasmuch as the same was interest accrued on the PBG and was different from the grant of interest as claimed under Claim no.8 made before the learned Arbitrator. Where the PBG belonged to JDPL, it was entitled to the interest thereon. Where the invocation was wrongly done, the interest could not be held by DDA which would amount to it benefiting from its own wrong doing.

ANALYSIS OF THE CONTENTIONS AND FINDINGS

9. The issue before us is whether the award to the extent that it denied interest accrued on the FDR (on the encashed PBG amount) to JDPL, suffered from patent illegality warranting interference under Section 34 of the Act. Since the judgment of the learned Single Judge has been challenged on the ground that it ignored the parameters laid down as to the limitations which a Judge hearing objections to an arbitral award under Section 34 is subject to, we deem it necessary to first state the law on the subject. Clauses (2) and (3) of Section 34 of the Act read as follows-:

> ***"34. Application for setting aside arbitral awards***
> *(1)…..*
> *(2) An arbitral award may be set aside by the Court only if—*
> *(a) the party making the application establishes on the basis of the record of the arbitral tribunal that—*
> *(i) a party was under some incapacity, or*
> *(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*
> *(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.-For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.-For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request

had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

10. With regard to the grounds for judicial intervention under Section 34 of the Act, the Hon'ble Supreme Court in ***MMTC Ltd. v. Vedanta Ltd.***, (2019) 4 SCC 163, held as under:

"10. Before proceeding further, we find it necessary to briefly revisit the existing position of law with respect to the scope of interference with an arbitral award in India, though we do not wish to burden this judgment by discussing the principles regarding the same in detail. Such interference may be undertaken in terms of Section 34 or Section 37 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act"). While the former deals with challenges to an arbitral award itself, the latter, inter alia, deals with appeals against an order made under Section 34 setting aside or refusing to set aside an arbitral award.

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 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 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. (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 Coal Carbonisation [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])

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 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."

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

11. In ***Somdatt Builders-NCC-NEC (JV) v. National Highways Authority of India and Others***, (2025) 6 SCC 757, the Hon'ble Supreme Court held as follows:

> *"45. In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163: (2019) 2 SCC (Civ) 293] , this Court held that as far as Section 34 is concerned, the position is well settled that the Court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. Even then, the interference would not entail a review on the merits of the dispute but would be 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. As far as interference with an order made under Section 34 by the Court under Section 37 is concerned, it has been held 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.*
>
> *46. What is public policy of India has been explained in Ssangyong Engg. & Construction [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] . It means the fundamental policy of Indian law. Violation of Indian statutes linked to public policy or public interest and disregarding orders of superior courts in India would be regarded as being contrary to the fundamental policy of Indian law. It would also mean that the arbitral award is against basic notions of justice or morality. An arbitral award can be set aside on the ground of patent illegality i.e. where the illegality goes to the root of the matter but re-appreciation of evidence cannot be permitted under the ground of patent illegality.*
>
> *47. In PSA Sical Terminals [PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2023) 15 SCC 781] , this Court reiterating the well-settled principles held as under: (SCC pp. 803-804, paras 40-41)*

> *"40. It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.*
>
> *41. A decision which is perverse, though would not be a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. However, 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 on the ground of patent illegality.""*

12. Considering that the nature and scope of proceedings before us are under Section 37 of the Act, reference in this regard is made to the decision of the Hon'ble Supreme Court in ***MMTC Ltd.*** (*supra*) which sets out the scope of proceedings under Section 37 of the Act. The relevant paragraph of which is reproduced as under:

> *"14. As far as interference with an order made under Section 34,*

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

13. Applying the tests laid down by the Hon'ble Supreme Court, we have to examine whether the learned Single Judge exceeded his jurisdiction in modifying the impugned arbitral award. The learned Single Judge has held that where the conditional encashment of the PBG and its conversion into an FDR pursuant to the order under Section 17 was subject to the final award and the learned Arbitrator had held that DDA was not entitled to invoke the PBG, the interest accrued on the FDR could not have been retained by DDA. Reliance has been placed on the observation in the order under Section 17, wherein it was observed that "*the amount of PBG along with interest thereon shall abide by the outcome of the matter*". A reading of the said order makes it obvious that the direction was given by the learned Arbitrator as an interim measure to protect the interest of the parties depending upon the final outcome. Despite finding that no exceptions applied for non-invocation of the PBG, the learned Arbitrator allowed its encashment by DDA but however, did not allow DDA to use the encashed amount and directed that the said amount be kept in an FDR so that the principal sum in the interregnum earns interest, as the purpose was to ensure that the FDR i.e. the principal sum and interest is released to the party found

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

'entitled' to the PBG. It has been rightly held by the learned Single Judge that the condition got defeated by permitting DDA to retain the interest on the FDR, in spite of finally holding that DDA was not entitled to invoke or encash the PBG.

14. The learned Single Judge while holding that the interest partook the character of the principal amount kept in the FDR, has relied upon the judgment of the Hon'ble Supreme Court in ***Central Bank of India*** (*supra*). Perusal of the said judgment shows that it is distinguishable on facts as it relates to the law governing the debtor and creditor and is on the aspect of the meaning to be assigned to the phrases, "the principal sum adjudged" and "such principal sum" in Section 34 of the Code of Civil Procedure, 1908 (for brevity 'CPC'), in suits for recovery of money, especially those filed by banking institutions against their borrowers.

15. We shall now deal with the finding whether the non-release of the FDR interest to JDPL relying upon rejection of grant of interest under Section 31(7) of the Act on the claimed amount, is against the statutory provisions vitiating the finding with patent illegality. For proper appreciation, it would be apposite to briefly set out the fate of the claims and counter claims. In the award, JDPL's Claim no.1 for a sum of Rs.50 crores as compensation for business losses suffered by it due to the alleged delays of DDA in granting the requisite permission/ approvals was disallowed since JDPL had also contributed to the delays, and moreover, it failed to produce reliable evidence in support of the claim. Claim no. 2 for directing DDA not to encash the PBG was allowed. Claim no. 3 for repayment of prior to sanction charges was allowed to

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

the extent of Rs. 75,74,701/-. Claim no. 4 for repayment of extra interest on the term loan; Claim no. 5 for extra expenses incurred by JDPL on account of delay in sanction of the building plans; Claim no. 6 for expenses incurred on account of delay in providing electricity connection and electrification of the area and; Claim no. 7 for expenses incurred towards diesel consumption charges and generator rentals etc. along with interest thereon were rejected, since no evidence was adduced. Claim no. 8 for 18% interest on the awarded amount till the actual date of payment was rejected since it was held that JDPL was also guilty of causing substantial delays and had raised unnecessary, frivolous and vexatious claims without any shred of evidence. Claim no. 9 for Rs. 5 lacs with interest as cost of litigation was rejected. Claim no. 10 for Rs. 20 crores as damages was rejected, as no evidence was led.

16. As regards the counter claims, vide Counter Claim no. 1 DDA claimed that JDPL is liable to pay the amount of the said PBG i.e. Rs. 9,30,00,000/- for the various acts, omissions, breaches and defaults of JDPL and particularly its failure to perform its obligations under the contract. Vide Counter Claim no. 2 it was claimed that due to the acts of JDPL, DDA was unable to receive the proceeds of the PBG since 04.01.2010 and accordingly interest was sought on the said amount of the PBG @ 18% per annum from 4.1.2010 till 30.11.2011, and further till the proceeds of the PBG were actually received. In Counter Claim no. 3 DDA sought *pendente lite* and future interest @ 18% per annum on the counter claim amounts from JDPL. Vide Counter Claim no. 4 it was claimed that JDPL was liable to pay the costs of various litigations,

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

quantified at Rs. 2 lacs, besides the actual costs of the arbitration proceedings. All the four counter-claims were rejected.

17. The relevant part of the award regarding invocation of the PBG reads as under:

> *"**Re Invocation of the Bank Guarantee***
> *128. In order to arrive at a decision in this regard, it will be necessary to look at Clause 3.14 of the tender document:*
>
> ***Clause 3.14: Performance Security***
>
> *The construction of the hotel will have to be completed and made functional within a period of 24 months from the date of allotment-cum-demand letter of the land. The intending Tender purchaser shall be required to deposit the performance security to the tune of 5% of the bid amount before the time of execution of the conveyance deed, which shall be in the nature of a bank guarantee in an approved form valid for 4 years. The institution furnishing such security shall be subject to the approval of the same by the Authority. The penalty for delay in completion of the hotel beyond 24 months shall be levied as under:*
>
> | *Sl. No.* | *Delay Period beyond 24 months* | *Penalty Amount* |
> |---|---|---|
> | *1.* | *upto 30 days* | *1% of the bid amount* |
> | *2.* | *Above 30 days and upto 90 days* | *2% of the bid amount* |
> | *3.* | *Above 90 days and upto 180 days* | *4% of the bid amount* |
> | *4.* | *Above 180 days* | *5% of the bid amount* |
>
> *Bank guarantee amount to the extent that there is delay in completion of hotel, will be encashed as per the schedule mentioned above. The date of completion will be treated as the date on which necessary completion certificate is obtained by the intending auction purchaser.*
>
> *129. As is apparent from the aforesaid clause the auction purchaser is required to deposit performance security to the tune of 5 per cent of the bid amount before the execution of the conveyance deed. The said clause further provides that the penalty for delay in completion of the hotel beyond 24 months shall be levied as per the scale and range stipulated in the table incorporated in the clause. It is noteworthy that the said clause does not provide that the levy is for loss or damage that respondent would suffer in the event of delay in completion of the hotel. The said clause also does not provide that the percentage of the bid amount that would be levied for the delay in completing the hotel is a*

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

genuine pre-estimate of loss or damages that respondent/public at large would suffer in the event of delay. The clause does not provide for liquidated damages at all. Words like compensation and liquidated damages are conspicuously missing from the clause. The clause seeks to punish claimant by levy of penalty in the event of delay in completing the hotel. The words 'penalty for delay in completion of the hotel beyond 24 months shall be levied...': indicate that levy for delay is by way of in terrorem. The levy is in the nature of threat and is meant to secure the completion of the hotel building within the period stipulated in the clause by striking fear of punishment in the tenderer that in case he fails to complete the hotel it would be saddled with penalty for the delay. The mere fact that the penalty is variable does not show that the percentage of the amount payable for the delay is in the nature of liquidated damages.

130. A look at the aforesaid provision does not show that it was an agreed genuine pre-estimate for the loss that may be sustained by respondent on failure of claimant to complete the hotel by the stipulated date or before the Common Wealth Games as per the decision of L.G. There is not even an assertion in clause 3.14 that the parties had arrived at a genuine pre-estimate of loss/damages. Rather the provision shows that on breach of the contract respondent will be entitled to penalty calculated on the basis of the aforesaid table. Table reveals that quantum of penalty is linked to bid amount. In case clause 3.14 deals with liquidated damages, question arises how a genuine pre-estimate of damages can be linked to the bid amount. No nexus appears between the two nor has any nexus been established. Such a formulation cannot be construed as a genuine pre-estimate of liquidated damages. The said provision is out and out a penalty clause. The clause must be read as per the words or language used and no extrinsic evidence or pleadings or arguments can be taken into consideration to construe the words of a clause which is unambiguous. Respondent has tried to add to the said clause by its pleadings and contentions, which is not permissible.

131. Dehors the aforesaid discussion regarding substantial delays of the parties as well as of the CFO and DUAC, respondent was not entitled to invoke bank guarantee as the hotel was operational during the Commonwealth Games and thereafter for number of months in accordance with the permission given by respondent. Obviously, the said permission was given as the construction of the hotel was complete and it was found fit for being operationalised. At that stage the hotel only lacked occupancy certificate. Respondent has not pleaded that notwithstanding the fact that the construction of the hotel was not complete and it was not capable of being operationalised, it

was still being given limited term permission. Therefore, since the construction of the hotel was complete, it was operational during the Commonwealth Games and it is not the case of respondent that there were complaints from the customers about any inadequacy in services of the hotel, there cannot be any loss to respondent or public at large on the spacious ground that hotel did not have the completion certificate/occupancy certificate as on 03.01.2010 or on the date limited term permission was granted. In the circumstances the occupancy certificate was a mere formality.

132. Respondent has not adduced evidence to show any loss suffered by it or by the public at large due to the hotel not having been granted occupancy certificate before the Common Wealth Games in terms of clause 4.13 of the tender document. The said clause being a penalty clause, respondent in order to invoke the bank guarantee was bound to show loss suffered by it due to breach, if any, of clause 3.14 of the underlying contract. Learned counsel for respondent has relied on the decisions which deal with clauses that provide for liquidated damages in the event of breach of the underlying contract.

133. In view of the aforesaid discussion respondent was not entitled to invoke and proceed to encash the bank guarantee".

(Emphasis supplied)

18. When the issue of the interest on the FDR was brought up in the application under Section 33, the learned Arbitrator while amending the award by way of the addendum corrected the award on Claim no. 2 to read that DDA shall release to JDPL an amount of Rs. 9,30,00,000/- realised on encashment of the PBG and since Claim no. 8 for interest had been rejected, the interest accrued on the FDR shall not be released to JDPL. The relevant part of the addendum reads as under:

"4. The need to correct the award on claim no.2 has arisen in view of the following order that was passed by this tribunal on October 22, 2013 on the application of claimant under Section 17 of the Arbitration and Conciliation Act, 1996 seeking stay of the invocation of the performance bank guarantee in the amount of Rs 9,30,00,000/-:

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

> *67. Since the invocation of the bank guarantee does not fall in any of the exceptions to the general rule, the interim order restraining the bank guarantee does not deserve to be confirmed. Accordingly the same is vacated subject to the Respondent keeping the amount that may be realised as a result of encashment of bank guarantee in a fixed deposit in a nationalised bank during the course of these proceedings. The said amount along with interest accrued thereon shall abide the outcome of the matter.*
>
> *In the application under Section 33 of the Arbitration and Conciliation Act circulated on behalf of claimant, it is stated to the effect that the respondent encashed the performance bank guarantee and the amount realised has been kept in a fixed deposit. The learned counsel for respondent has confirmed on instructions of his client that the amount realised on encashment of the bank guarantee has been kept in a fixed deposit. In the light of the aforesaid position and having regard to the finding recorded at para 133 of the award dated April 25, 2023, that respondent was not entitled to invoke and encash the performance bank guarantee, the correction in the award on claim no. 2 needs to be carried out. Accordingly, the award on claim no. 2 is corrected to read as under:*
>
> ***Claim No. 2***
>
> *a) The respondent shall release to the claimant an amount of Rs. 9,30,00,000/- realised on encashment of the performance bank guarantee.*
>
> *b) Since claim no. 8 for interest has been rejected, the interest accrued on the bank guarantee shall not be released to the claimant."*
>
> (Emphasis supplied)

19. The learned Arbitrator allowed the interest on the FDR to be retained by DDA since Claim no.8 for interest on the amount awarded to JDPL was rejected. Significantly, Counter Claim no.2 of DDA for interest on the PBG was outrightly rejected by the learned Arbitrator since it was held that DDA is not entitled to invoke the PBG. Where DDA was held not entitled to invoke the PBG or get interest thereon, it

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

remains to be explained how the benefit of the same by way of interest on the FDR could be allowed to be retained by DDA. There is no reasoned finding recorded in the award for denying interest accrued on the FDR to JDPL. It has been rightly held by the learned Single Judge that on the one hand the counter claims of DDA for invoking the PBG and for seeking interest for the period of delay in completion of the hotel was rejected while on the other, DDA was indirectly awarded interest from date of opening of the FDR till encashment and that both of these findings are mutually contradictory.

20. In deciding Claim no. 8 (whether to award interest on the amount awarded to JDPL), the learned Arbitrator was exercising his jurisdiction under Section 31(7) of the Act. The said provision reads as under:

> *"**31.Form and contents of arbitral award***
> *(1)……*
> *(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.*
> *(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two percent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.*
>
> *Explanation.—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978(14 of 1978)"*

21. Seen in the context of the above Section, the encashed amount of PBG was not an amount awarded or "the sum for which the award is made" within the meaning of Section 31(7) of the Act but was given to

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

JDPL since the PBG was not to be invoked by DDA in view of the rejection of its Counter Claim no.1. Thus, the application of Section 31(7) of the Act could not be extended to the interest accrued on the FDR. In the fact situation, it was rightly held by the learned Single Judge that the non-release of FDR interest to JDPL relying upon rejection of grant of interest under Section 31(7) of the Act on the claimed amount, was against the statutory provision, vitiating the finding with patent illegality.

22. Coming to the aspect of modification of the award, the parameters for modification have been laid down by the Hon'ble Supreme Court in ***Gayatri Balasamy*** (*supra*), wherein it was held as under:

> *"**II. Severability of awards***
> *32. In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a twofold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of kompetenz-kompetenz, that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the Court to sever and preserve the "valid" part(s) of the award while setting aside the "invalid" ones. [The "validity" and "invalidity", as used here, does not refer to legal validity or merits examination, but validity in terms of the proviso to Section 34(2)(a)(iv) of the 1996 Act.] Indeed, before us, none of the parties have argued that the Court is not empowered to undertake such a segregation.*
> *33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.*

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

> *34. To this extent, the doctrine of omne majus continet in se minus—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.*
> *35. However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may not be feasible when the "valid" and "invalid" portions are legally and practically inseparable. In simpler words, the "valid" and "invalid" portions must not be interdependent or intrinsically intertwined. If they are, the award cannot be set aside in part."*

23. It was argued by learned counsel for the appellant/DDA that the Hon'ble Supreme Court in ***Gayatri Balasamy*** (*supra*) laid down that the power in the proviso to Section 34(2)(a)(iv) of the Act permits the Court to set aside only that part of an award which contains decisions on matters that were not submitted to arbitration. The proviso enables the Court to severe a non-arbitral portion from the arbitral portion of an award. It was argued that in the present case the interest accrued on the FDR was part of Claim no. 8 in the Statement of Claim which was specifically adjudicated upon and rejected. We cannot accept this argument as the interest on the FDR was not a part of Claim no. 8 in the Statement of Claim. Claim no. 8 was for directing DDA to pay interest @ 18% on the awarded amount till the actual date of payment. With regard to the justification for modification of award, it has been rightly held by the learned Single Judge that the portion of the award directing release of the amount of Rs. 9,30,00,000/- realised on encashment of PBG and the directions *qua* the interest accrued on the FDR not to be

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04

released to the JDPL are severable, and are not dependant on the other claim awarded.

24. Accordingly, the learned Single Judge has rightly set aside the award of the learned Arbitrator to the extent that it did not allow payment of interest accrued/realized on the PBG, which was factually an interest on the FDR which was prepared pursuant to the order dated 22.10.2013 passed by the learned Arbitrator under Section 17 of the Act, after the PBG was encashed. According to us, the interest of the FDR is nothing but the fruit of the principal amount of the FDR. Since the principal amount, being the amount of PBG, was ordered to be given to the claimant/JDPL, the interest as a natural corollary should also go to JDPL and the learned Single Judge has, therefore, rightly modified the award and ordered payment of interest to JDPL.

25. In the above view of the matter, we are not inclined to interfere with the impugned judgment dated 05.05.2026 of the learned Single Judge.

26. The present appeal is therefore dismissed. Pending applications also stand disposed of.

ADITI CHOUDHARY
(JUDGE)

DINESH MEHTA
(JUDGE)

NOVEMBER 06, 2026
naw/p'ma/va

Signature Not Verified
Signed By:PRATIMA
Signing Date:06.11.2026
15:40:04