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

% *Date of Decision: 4th August, 2025*

\+ O.M.P. (COMM) 114/2023

M. A. ZAHID .....Petitioner

Through: Mr. Navin Kumar and Ms. Rashmeet Kaur, Advocates.

versus

JINDAL SAW LTD .....Respondent

Through: Mr. Gaurav Mitra, Ms. Preeti Goel, Mr. Anubhav Goel, Ms. Rashmi Mishra, Mr. Siddarth Jain, Ms. Lavanya Pathak and Ms. Priyanka Dhyani, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This petition is filed on behalf of the Petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 ('1996 Act') laying a challenge to arbitral award dated 02.11.2022 passed by the learned sole Arbitrator.

2. Factual matrix to the extent relevant is that Petitioner is the sole proprietor of M/s. SMSK Minerals Trading Company and is engaged in supply of iron ore to the Respondent in Karnataka for the last several years. During 06.01.2011 and 01.02.2011, Respondent desired to procure about 44,000 MT of iron ore for a total value of Rs.16,11,60,000/- and had paid the said amount to the Petitioner at the time of placing the said purchase orders. Pursuant to the said arrangement between the parties, Petitioner

supplied iron ore worth Rs.8,94,42,415/- to the Respondent by 31.05.2011 and balance quantity, as averred in the petition, was to be supplied in due course.

3. It is stated that by the Petitioner that pursuant to directions of the Supreme Court dated 07.09.2012 in SLP (C) No. 562/2009 in case titled *'Samaja Parivartan Samudaya & Others v. State of Karnataka',* investigations were carried out by Central Bureau of Investigation ('CBI') against several persons including the Petitioner pertaining to alleged discrepancies in procurement of iron ore and as a result, bank accounts of the Petitioner were frozen and properties were attached by Income Tax Authorities. While the investigation was on-going, Respondent through one of its agents got a Deed of Settlement dated 22.07.2013 signed by the Petitioner along with the covering letter of the same date as also a Promissory Note dated 22.07.2013. As per the Deed of Settlement, it was *inter alia* agreed between the parties that balance amount of Rs.7.23 crores would be refunded to the Respondent by the Petitioner immediately after vacation of order of attachment of bank accounts of the Petitioner.

4. It is averred that despite the execution of Deed of Settlement and Petitioner's assurance to the Respondent that balance amount will be refunded after lifting of the attachment order, Respondent continued to adopt pressure tactics to recover the amount and also sent a legal notice dated 23.05.2016 to the Petitioner demanding the amount with interest, failing which Respondent would invoke the arbitration clause incorporated in the Deed of Settlement. Petitioner responded to the notice reminding the Respondent of the terms of Settlement and stating that the demand was premature. Regardless of this position, Respondent unilaterally appointed a

sole Arbitrator on 17.06.2016 exercising its right under the arbitration clause incorporated in the Deed of Settlement.

5. It is further averred that Petitioner filed an application under Section 16 of the 1996 Act before the Arbitrator which was allowed and proceedings were closed on 22.09.2017 holding that claims of the Respondent were premature. Respondent, however, filed an arbitration petition being ARB. P. 685/2017 before this Court under Section 11(5) of the 1996 Act, which was allowed vide order dated 20.03.2018 and sole Arbitrator was appointed. Respondent filed its statement of claim on 21.04.2018 and Petitioner filed an application under Section 16 of the 1996 Act, which was allowed by the Arbitrator on 15.10.2019 closing the proceedings on the ground that claims of the Respondent were premature. This order was assailed by the Respondent in this Court by filing an appeal under Section 37(2)(a) of the 1996 Act being ARB. A. (COMM) 10/2020. The appeal was allowed on 23.03.2022 recording the concession of the Petitioner that he was not opposing the appeal and Court may set aside the impugned order and refer the parties back to arbitration, which the Petitioner now claims was a concession given by his counsels without his consent, instructions and knowledge.

6. It is stated in the petition that after disposal of the appeal and as a consequence thereof, arbitral proceedings resumed and culminated in the impugned arbitral award dated 02.11.2022. Learned Arbitrator allowed the claim of the Respondent and awarded principal sum of Rs.7,17,17,585/- along with interest @ 12% per annum for a period of 90 days from 23.05.2016 and @ 16% per annum from expiry of the 90 days till the date of payment/actual realisation, along with costs of Rs.15 lac.

7. Learned counsel for the Petitioner assails the arbitral award on two-fold grounds. It was argued that the learned Arbitrator erroneously awarded the principal sum of Rs.7,17,17,585/- in favour of the Respondent overlooking the fact that all documents being the Deed of Settlement, Promissory Note, affidavit and the accompanying letter, all dated 22.07.2013 were signed by the Petitioner under duress and coercion and were inadmissible in evidence. Petitioner was involved in an investigation conducted by the CBI and his bank accounts were frozen and immovable properties were attached, as a consequence of which he was not in a right frame of mind to understand the true import of the documents he was signing on. In any event, even as per the Deed of Settlement, parties had *inter alia* agreed that Petitioner shall pay the balance amount to the Respondent immediately after vacation of order of attachment by the Bank/Income Tax Authorities and if Petitioner failed/neglected to pay within six months from the said date, he shall sell his immovable property to make good the payment and therefore, the Arbitrator ought not to have awarded the principal sum in favour of the Respondent as the claims were premature. This position was appreciated by the Arbitrator when the first proceeding was closed on 22.09.2017 as also when in the second arbitration, the application under Section 16 was allowed on 15.10.2019 *albeit* this order was set aside in appeal on a wrong concession given by Petitioner's counsels.

8. The only other contention of the Petitioner was that the dual interest awarded by the Arbitrator @ 12% per annum from the date of the award till expiry of 90 days and thereafter @ 16% per annum from the date of expiry of 90 days till actual payment is excessive, exorbitant, arbitrary and against

the settled law. In support of this plea, learned counsel relied on the judgment of the Supreme Court in ***Vedanta Limited v. Shenzen Shandong Nuclear Power Construction Company Limited, (2019) 11 SCC 465,*** wherein the Supreme Court held that the dual rate of interest being @ 9% for 120 days post the award and @ 15% if the amount is not paid within 120 days, was unjustified. It was observed that award of a much higher rate of interest after 120 days is arbitrary, since the award-debtor is entitled to challenge the award within a maximum period of 120 days and if the Debtor is called upon to pay a higher rate after 120 days, it would foreclose or seriously affect his statutory challenge to the award by filing objections under Section 34 of the 1996 Act. Moreover, the imposition of 15% interest post 120 days is also exorbitant and has no co-relation with the prevailing contemporary international rates. Reliance was also placed on the judgment of the Division Bench of this Court in ***V4 Infrastructure Pvt. Ltd. v. Jindal Biochem Pvt. Ltd., 2020 SCC OnLine Del 2366,*** where *inter alia* challenge was laid to award of 18% interest per annum from the date of the award till actual realisation and the Division Bench interfered with the rate of interest holding that in the absence of any evidence on record that could justify grant of 18% interest, market rate and trade practice ought to be taken into account and in this backdrop modified the award, reducing the interest rate to 9% per annum.

9. Learned counsel for the Respondent, *per contra,* at the outset, submitted that it is not open to the Petitioner to question the maintainability of Respondent's claims being premature or indirectly challenge the order passed in appeal pursuant to which the arbitral proceedings commenced, in light of the order passed by this Court in the present petition on 02.02.2024,

issuing notice limited to the rate of interest imposed by the Arbitrator, recording the sole contention of the Petitioner that the Arbitrator has erred in imposing penal interest @ 12% per annum on principal sum awarded and escalated to @ 16% per annum till actual payment. In view of the limited notice, the only issue that falls for consideration before this Court is whether the awarded rate of interest is arbitrary and excessive/penal in nature, as alleged by the Petitioner.

10. It was urged that in paragraph 7 of the Deed of Settlement, it was clearly mentioned that Petitioner agreed to remain committed to pay the balance amount of Rs.7.23 crores to the Respondent and paragraph 9 records that both parties executed the Deed of Settlement without any undue pressure and coercion and entirely of their own free will and volition. Therefore, apart from the fact that it is not open to the Petitioner to question the execution of the Deed of Settlement in light of the limited notice by the Court, even otherwise there was no material placed on record before the Arbitrator by the Petitioner to establish that the execution was under coercion.

11. It was further argued that Respondent placed purchase orders on the Petitioner between 06.01.2011 to 01.02.2011 for a total value of Rs.16,11,60,000/- and made 100% advance payment, however, admittedly by 31.05.2011, Petitioner had supplied iron ore only worth Rs.8,94,42,415/- leaving a balance of Rs.7,17,17,585/- worth of supplies undelivered. Concededly, CBI started investigations pursuant to the order of the Supreme Court against several persons including the Petitioner and consequently, all stock and other assets of the Petitioner were seized and bank accounts were frozen. Between July, 2013 and August, 2013, Respondent consistently

communicated with the Petitioner through e-mails, personal meetings and telephonic conversations reminding him of the liability to refund the balance amount. On 22.07.2013, Petitioner sent a letter to the Respondent enclosing the Deed of Settlement along with Promissory Note and an affidavit, all dated 22.07.2013, admitting the liability to pay the amount and undertaking to do so. However, when payment was not made, Respondent sent a legal notice dated 23.05.2016 demanding the principal amount with interest, in response to which Petitioner stated that the claim was premature. The principal amount awarded by the Arbitrator has been due towards the Respondent since 2011 and ideally, Respondent was entitled to interest from 2011, yet the Arbitrator has only granted interest from 23.05.2016 and no infirmity can be found with the award.

12. Respondent has suffered financial loss from 2011 and has been deprived of the monies due to it and failure to award interest at the rate awarded by the Arbitrator, would have resulted in economic loss to the Respondent and would have been unjust. It is well-settled that interest is awarded against a party for breach of contract to place the injured party in the same economic position that it would have been had the contract been duly performed. The sole defence of the Petitioner that his assets were attached and bank accounts were frozen can hardly be of any aid to the Petitioner as this was a fallout of his own wrong doings and moreover, despite attachment, Petitioner unlawfully alienated 22 out of 25 properties to evade the liabilities. This is substantiated by order passed by the Income Tax Department on 28.03.2018 and Petitioner's own affidavit dated 25.05.2022 which were before the Arbitrator.

13. It was argued that the Deed of Settlement did not contain any provision explicitly prohibiting Respondent from claiming interest on the principal amount and therefore, in the absence of any agreement to the contrary between the parties, it is the sole discretion of the Arbitrator, not only to decide the period but also the rate of interest. It is a settled law that when an agreement does not expressly prohibit grant of interest and a party claims it, law presumes interest to be an implied term of the agreement and consequently, Arbitrator can adjudicate the interest claim and decide it in its discretion. ***[Ref.: Garg Builders v. Bharat Heavy Electricals Limited, 2021 SCC OnLine SC 855*** and ***Pam Developments Private Limited v. State of West Bengal and Another, (2024) 10 SCC 715].***

14. Heard learned counsels for the parties and examined their rival submissions.

15. At the outset, it is pertinent to note that during the course of hearing, counsel for the Petitioner made a subtle attempt to indirectly challenge the order passed by this Court on 23.03.2022 in ARB. A. (COMM) 10/2020, whereby appeal against the order of the Arbitrator closing the arbitral proceedings was allowed and with consent of the parties, they were referred back for arbitration and arbitral proceedings resumed. Learned counsel also questioned the execution of the Deed of Settlement on ground of coercion and pressure. However, this Court is not delving into these submissions in light of order dated 02.02.2024 passed by the Court limiting the notice to rate of interest imposed by the Arbitrator. The short question that thus arises for consideration before this Court is whether the rate of interest awarded by the Arbitrator is exorbitant, excessive and arbitrary, as alleged by the Petitioner.

16. Under the 1996 Act, power of the Arbitrator to grant interest is governed by Section 31(7). This provision is in two parts. Under Clause (a), in the absence of an agreement between the parties to the contrary, an Arbitrator can award interest for the period between the date of cause of action to the date of the award, either for the whole or part of the said period. Clause (b) provides that unless the award otherwise directs, the sum directed to be paid by the Arbitrator shall carry interest @ 2% higher than current rate of interest from the date of the award to the date of payment. This amendment was brought about from 23.10.2015 by virtue of Amendment Act No. 3 of 2016. Be it noted that this Court is not delving into the pre-reference and *pendente lite* interest as the contest in the present case is only with respect to post-award interest.

17. Read simply and as observed by the Supreme Court in ***Morgan Securities and Credits Private Limited v. Videocon Industries Limited, 2022 SCC OnLine SC 1127,*** both clauses (a) and (b) of Section 31(7) are qualified. While clause (a) is qualified by the arbitration agreement, clause (b) is qualified by the arbitration award and placement of the phrases is crucial to their interpretation. As can be seen from the amended Section, the phrase '*unless otherwise agreed by the parties',* occurs at the beginning of clause (a) qualifying the entire provision while phrase '*unless the award otherwise directs',* occurs after the words *'a sum directed to be paid by an arbitral award shall'* and before the words '*carry interest at the rate of two per cent'*, and therefore, the phrase qualifies the rate of post-award interest. It is settled that the Arbitrator has a wide discretion to grant: (a) pre-reference; (b) *pendente lite;* and (c) post-award interest. In ***North Delhi Municipal Corporation v. S.A. Builders Ltd., 2024 SCC OnLine SC 3768,***

the Supreme Court held that grant of post award interest serves a salutary purpose and primarily acts as a disincentive to the award-debtor not to delay payment of arbitral amount to the award-holder.

18. In ***Morgan Securities (supra),*** *albeit* the Supreme Court was dealing with unamended Section 31(7)(b), it was held that Section 31(7)(a) confers a wide discretion on the Arbitrator to grant pre-award interest and determine the rate of interest, the sum on which it is to be paid and the period and when a discretion has been conferred in regard to grant of pre-award interest, it would be against the grain of statutory interpretation to pre-suppose that legislative intent was to reduce the discretionary power of the Arbitrator for grant of post-award interest under clause (b). It was observed that clause (b) only contemplates a situation where the arbitral award is silent on the post-award interest, in which event the award-holder is entitled to the post-award interest @ 18% stipulated in Section 31(7)(b), the unamended provision. It was held that the Arbitrator has the discretion to grant post-award interest and this discretion is not fettered by clause (b) *albeit* it is open to the Arbitrator to decline interest in its discretion. It was highlighted that purpose of granting post-award interest is to ensure that the award-debtor does not delay the payment of the awarded amount. With proliferation of arbitration, issues involving both high and low financial implications are referred to arbitration and Arbitrator takes note of various factors such as financial standing of the award-debtor and circumstances of the parties in dispute before awarding interest. No provision under the 1996 Act restricts the exercise of discretion to grant post-award interest by the Arbitrator though Arbitrator must exercise the discretion in good faith taking into account relevant considerations and must act reasonably and rationally.

It was concluded by the Supreme Court that according to Section 31(7)(b) only where the Arbitrator does not grant post-award interest, provisions of second part of sub-clause (b) will come into play.

19. In the present case, the learned Arbitrator has exercised his discretion to grant post-award interest @ 12% per annum for 90 days from 23.05.2016 and 16% per annum from expiry of 90 days till actual payment. The post-award interest is based on a sound reasoning which precedes the grant. Arbitrator has observed that in the various documents executed on 22.07.2013 between the parties, there was acknowledgement of liability by the Petitioner and there was no mention of interest. Parties entered into settlement in the spirit of goodwill, bonhomie and to maintain long term business relations. Respondent was satisfied with the Petitioner paying the principal amount on lifting of the attachment by Income Tax Authorities and/or selling properties. There was no intent of charging interest in the settlement. On this ground, Arbitrator declined interest from 01.06.2011, as sought by the Respondent. Thereafter, the Arbitrator refers to the legal notice dated 23.05.2016 from which date Respondent started demanding the admitted payment expressing its intention to the Petitioner to charge interest. Admittedly, Petitioner made no effort to pay the admitted amount and constrained by circumstances, Respondent invoked arbitration. Arbitrator notes the provisions of the 1996 Act and judgments relating to grant of interest cited by the Respondent as also the fact that the transaction between the parties was undoubtedly a commercial one and the Petitioner though not denying its liability to pay the principal sum even in the reply dated 07.08.2016 to Respondent's legal notice, did not make good his obligation and commitment to pay. In light of the fact that Respondent was denied of

the amount admittedly due to the Respondent for several years, Arbitrator in his discretion awarded interest. The question is whether any interference is warranted in the award to the extent of grant of dual rate of interest for two separate periods.

20. It needs no reiteration that jurisdiction of the Court under Section 34 of the 1996 Act is extremely circumscribed and is limited to the grounds enumerated therein. Petitioner urges that by awarding exorbitant and dual interest, the award is vitiated by 'patent illegality appearing on the face of the award'. The Supreme Court and High Courts have time and again affirmed that 'patent illegality' is an illegality which goes to the root of the matter and cannot be of a trivial nature. ***[Ref.: Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49*** and ***Larsen Air Conditioning and Refrigeration Company v. Union of India and Others, (2023) 15 SCC 472].*** Proviso to Section 34(2A) itself stipulates that an award shall not be set aside merely on erroneous application of law. Division Bench of this Court in ***Aksh Optifibre Limited v. Nantong Siber Communication Co. Ltd., 2024 SCC OnLine Del 4011,*** has held that it is well-settled that fundamental policy of Indian law does not refer to violation of any Statute but fundamental principles on which Indian law is founded. Any difference or controversy as to rate of interest clearly falls outside the scope of challenge on the ground of conflict with the public policy of India unless it is evident that the rate of interest awarded is so perverse and so unreasonable so as to shock the conscience of the Court *sans* which no interference is warranted in the award, whereby interest is awarded by the Arbitrator. Against the said judgment, the Supreme Court dismissed the SLP (C) No. 22495/2024 on 21.10.2024.

21. On a plain reading of the impugned award in the instant case and applying the settled law, the reasoning adopted by the learned Arbitrator for awarding the rate of interest cannot be faulted with. Arbitrator has considered all relevant factors such as: (a) Petitioner's admission of his liability to pay the principal amount to the Respondent; (b) violation of the terms of settlement in the Deed of Settlement and related documents executed on the same day; (c) financial loss caused to the Respondent; and (d) the admitted fact of the Respondent being deprived of its right to enjoy the monies due to it for several years, etc. Arbitrator has exercised the discretion vested in him judiciously, taking into consideration relevant facts/factors and eschewing irrelevant considerations.

22. It is a settled law that in the absence of an express bar in the contract between the parties, it is the Arbitrator who enjoys absolute discretion and has the jurisdiction to award interest including post-award interest. ***[Ref.: State of Rajasthan and Another v. Ferro Concrete Construction Private Limited, (2009) 12 SCC 1;*** and ***Indian Railway Construction Company Limited v. National Buildings Construction Corporation Limited, (2023) 7 SCC 390].*** Clearly, the Deed of Settlement contains no express bar regarding interest and it was thus open to the Arbitrator to award the interest. Once interest is awarded by the Arbitrator, Section 37(1)(b) comes into play where the phrase *'unless the award otherwise directs',* qualifies the rate of post-award interest, which means that once the award grants interest, award-debtor cannot claim any other rate of interest, save and except, where the rate of interest is so excessive or unreasonable that it shocks the conscience of the Court, which is not the case here.

23. Counsel for the Petitioner laid much stress on the judgment of the Supreme Court in ***Vedanta Limited (supra),*** to argue that awarding dual interest and that too at an exorbitant rate of 15% was held to be unjustified by the Supreme Court. In my view, this argument is misconceived and need not detain this Court in light of the judgment of the Supreme Court in ***Reliance Infrastructure Limited v. State of Goa, 2023 SCC OnLine SC 604,*** as also judgments of the Bombay High Court and this Court, to which I shall advert later. In ***Reliance Infrastructure (supra),*** the Supreme Court was examining the legality of the award including the issue of grant of pre-reference and post-award interest. Insofar as the post-award interest is concerned, the High Court had reduced the rate of interest from 15 to 10% following the decision in ***Vedanta Limited (supra)*** and principle of proportionality. The Supreme Court observed that the reduction of rate of interest by the High Court was unjustified. Referring to provisions of Section 31(7)(b), more particularly, the phrase *'unless the award otherwise directs',* and distinguishing the decision in ***Vedanta Limited (supra),*** the Supreme Court held that the observation of the High Court that Court may reduce interest awarded by the Arbitrator when such interest does not reflect the prevailing economic condition or where it is not found reasonable or where it promotes interest of justice, based on the decision in ***Vedanta Limited (supra),*** was without any basis since in the case of ***Vedanta Limited (supra),*** the Supreme Court was dealing with an International Commercial Arbitration involving Rupee as well Euro components and moreover, the rate of interest was reduced in respect of foreign currency component to bring the interest rate in line with international rate on the ground that rate of interest prevailing on the rupee debt in India and on international currency in

abroad were different and international rates were lower, which was not the case before the Supreme Court in ***Reliance Infrastructure (supra).*** It was further held that the Arbitral Tribunal was well within its jurisdiction under Section 31 to award interest at the rate of 15% per annum and no justification was found to reduce the same. Significantly, it was also observed that the High Court was not exercising any equity jurisdiction to re-settle the rate of interest as deemed fit by it as this was a matter relating to an award made by an Arbitral Tribunal in a commercial dispute. Relevant passages from the judgment in ***Reliance Infrastructure (supra),*** are as follows:-

> ***"89.*** *However, insofar as post-award period is concerned, the High Court has reduced the rate of interest from 15% to 10% by following the decision of this Court in Vedanta [Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd., (2019) 11 SCC 465 : (2019) 4 SCC (Civ) 724] . The High Court has relied on the principles of proportionality and has scaled down the rate of interest to 10% p.a. while observing as under : (Reliance Infrastructure case [State of Goa v. Reliance Infrastructure Ltd., 2021 SCC OnLine Bom 306] , SCC OnLine Bom para 175)*
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> > *"175. Mr Bhat handed in a statement indicating the interest rates (Benchmark Prime Lending Rates) of the State Bank of India. For the period 2017-18, the rates indicated range around 13% to 14% p.a. This is no doubt one of the factors to be taken into consideration for determining the prevailing economic conditions when the impugned award was made. Again, reference is also necessary to the principle of proportionality of the amount awarded as an interest to the principal sums awarded. Having cumulative regard to all the factors referred to above, we feel that in the facts and circumstances of the present case, the award of interest @ 15% p.a. is excessive and contrary to the principle of proportionality and reasonableness and the same will have to be scaled down to 10% p.a. In Vedanta [Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd., (2019) 11 SCC 465 : (2019) 4 SCC (Civ) 724] , the award was dated 9-11-2017 and the Court awarded interest @ 9% p.a. for the INR component. The impugned award, in our case, was made on 16-2-2018."*

> ***90.*** *We are of the view that the aforesaid reduction of rate of interest by the High Court is also unjustified. We have noticed the provisions of Section 31(7)(b) that unless the award otherwise directs, the sum payable under the arbitral award shall carry interest @ 2% higher than the current rate of interest prevalent on the date of the award, from the date of the award to the date of payment. The expression "current rate of interest" has been explained in the Explanation to the said section to have the same meaning as assigned under Section 2(b) of the Interest Act, 1978. The High Court has referred to the decision in Vedanta [Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd., (2019) 11 SCC 465 : (2019) 4 SCC (Civ) 724] to hold that a Court may reduce interest awarded by the arbitrator when such interest does not reflect the prevailing economic condition or where it is not found reasonable or where it promotes interest of justice.*
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> ***91.*** *We do not find any basis in the impugned judgment [State of Goa v. Reliance Infrastructure Ltd., 2021 SCC OnLine Bom 306] of the High Court for reducing the rate of interest, as in Vedanta [Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd., (2019) 11 SCC 465 : (2019) 4 SCC (Civ) 724] , wherein this Court was dealing with an International Commercial Arbitration involving rupee as well as euro components. Moreover, in Vedanta [Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd., (2019) 11 SCC 465 : (2019) 4 SCC (Civ) 724] , the rate of interest was reduced in respect of the foreign currency component to bring the interest rate in line with the international rate on the ground that the rate of interest prevailing on the rupee debt in India and on international currency abroad were different and the international rates were lower. Such a situation is not obtaining in the present case.*
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> ***92.*** *The High Court seems to have not considered the relevant factual aspects. On the contrary, as has been submitted before us as well as the High Court, the prevailing interest rate being the prime lending rate of State Bank of India was in the range of 13% to 14% p.a. Thus, the Arbitral Tribunal was justified in granting interest @ 15% p.a. post-award. In our view, the Arbitral Tribunal was well within its jurisdiction under Section 31 of the Act to award interest @ 15% p.a. and there was no justification to reduce the same to 10% p.a. We may observe with respect that the High Court was not exercising any equity jurisdiction so as to resettle the rate of interest as deemed fit by it. It had been a matter relating to an award made by the Arbitral Tribunal in a commercial dispute."*

24. In this context, I may also allude to the judgment of the Division Bench of this Court in ***Aksh Optifibre (supra),*** where the only ground to

challenge the award under Section 34 of the 1996 Act was that the rate of interest @ 8% per annum fell foul of public policy of India and reliance was placed by the Appellant on the judgment in ***Vedanta Limited (supra).*** The Division Bench held that the judgment was distinguishable as in the said case, the Supreme Court had considered an award in two separate currencies but with the same rate of interest and in that context, it was found that the same rate of interest in currencies that operate in different fiscal regimes was inapposite and moreover, the judgment was rendered under Article 142 of the Constitution of India, as earlier observed by another Division Bench of this Court in ***Pradeep Vinod Const. Co. v. Union of India, 2022 SCC OnLine Del 4937.*** The same view was taken by the Bombay High Court in ***Maa Ashish Textile Industries Private Limited v. National Insurance Company Limited, 2019 SCC OnLine Bom 887,*** relevant paragraphs of which are as follows:-

> ***"16.*** *As regards the challenge by respondent to the arbitral award awarding the claim of petitioner for interest on delayed payment of the undisputed claim amount, respondent submitted that there was no propriety in awarding interest wherein the basic claim of petitioner was disallowed. It is further contended that the Arbitrator could not have passed directions restricting the period of payment and awarding 12% interest p.a. to petitioner till full payment is made. Respondent relied upon the judgment of the Apex Court in Vedanta Ltd. v. Shenzen Shandong Nuclear Power Construction Company Ltd. to submit that the award of interest at the rate of 12% is far too excessive and penal in nature. Respondent submitted that to the extent Arbitrator has allowed the claim for interest on delayed payment, the award should be set aside.*
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> ***33.*** *This Court, in Union of India v. Sarathi Enterprises, has held that where the findings rendered by the learned arbitrator are inconsistent and contradictory, there is patent illegality on the face of the award and the award is perverse and must be set aside. The Arbitrator has arrived at inconsistent and contradictory findings in the award which demonstrate non-application of mind by the Arbitrator. The Arbitrator on the one hand,*

in paragraph 32 of the award upholds the validity of the purported Addendum Report and holds that petitioner have accepted the settlement sum of Rs. 15,81,22,177/-. At the same time, however, the Arbitrator, at paragraph 23 of the Award, accepts that a joint survey report dated 03.08.2011 was issued, whereby the loss was assessed as Rs. 17,63,78,222 and that the surveyors called petitioner's representative Shri Gopal Agarwal (CW1), discussed the report with him, pursuant to which petitioner had agreed to finalise the sum of loss at Rs. 17,63,78,222/-.

34. *In direct contradiction of his findings in paragraph 32 of the award, the Arbitrator proceeds to simultaneously find that the Addendum Report has been issued in violation of the timeline and other conditions prescribed in Regulation 9 of the IRDA Regulations. The Arbitrator comes to the conclusion that after the Final Survey Report was issued on 03.08.2011, the Final Survey Report dated 29.10.2011 was issued pursuant to certain queries raised by respondent. The Arbitrator proceeds to hold that a further second query (which was issued by respondent almost 4 months after receiving the Final Survey Report dated 29.10.2011) which is not contemplated under Regulation 9, resulted in the Addendum Report. The Arbitrator thus arrives at the finding in paragraph 35 of the award that respondent has violated the IRDA Regulations. By acknowledging that the Addendum Report was issued in contravention of the IRDA Regulations (which are binding on insurance companies) but at the same time permitting respondent to rely on the same to substantially reduce petitioner's claim, the Arbitrator has allowed respondent to take advantage of its own violation of the law. The Arbitrator, in paragraph 36 of the award, has once again recognised the Final Survey Report dated 03.08.2011 as the valid survey report and states that petitioner, after a meeting with the Surveyors on 09.08.2011, has accepted the settlement of Rs. 17,63,78,222/-. The Arbitrator also proceeds to record that such amount of Rs. 17,63,77,222/- ought to have been paid by respondent to petitioner within 7 days from 09.08.2011, as required by the IRDA Regulations. This is inconsistent with the Arbitrator's findings in paragraph 32 of the award where he holds that petitioners agreed to accept the sum of Rs. 15,81,22,177/- as the settlement sum."*

25. In light of the aforesaid judgments, reliance placed by the Petitioners on the judgment in ***Vedanta Limited (supra)*** in the facts and circumstances of this case is wholly inapt. Equally misplaced is the reliance on the judgment of the Division Bench of this Court in ***V4 Infrastructure (supra).*** Reading of the judgment shows that the claim before the Arbitrator was for

specific performance of Space Buyer Agreements and damages for failure to handover possession of property along with interest. The Arbitral Tribunal rendered an award for refund of the amount paid towards sale consideration along with interest @ 18% per annum, which was questioned in a Section 34 petition before the learned Single Judge of this Court on several grounds. Petition being dismissed, appeal was filed before the Division Bench under Section 37(1) of the 1996 Act. It was *inter alia* contended by the Appellant that grant of refund with 18% interest was incomprehensible in view of the fact that Appellant was prevented from deriving any benefit from the property at the instance of the Respondent. The Division Bench found the interest rate to be perverse, unjustifiable and contrary to the record in the context of a finding based on record that Respondent had never accepted the offer of the Appellant and instead initiated legal proceedings to enforce the agreement. There was no application by the Respondent giving up the claim of specific relief and pressing only refund of sale consideration. Nevertheless, issues were framed by the Arbitrator revolving around claim of refund and thus midstream the arbitration claims got altered and were adjudicated on the erroneous premise that specific performance could not be granted with no reasoning to arrive at this conclusion. It is in this backdrop that the Court held that since the dynamics of the claims were radically and substantively changed, the reason for awarding interest was on a wrong substratum and thus interest of 18% was perverse. The Division Bench also noted that it was conspicuous that during the pendency of the arbitration proceedings, property in dispute continued to be subjected to *status quo* order at the instance of Respondent and could not be sold. If the Respondent's ultimate relief was only for refund of sale consideration, the

extent of interim order would have been different. It was also observed that had the *status quo* order not operated, Appellant could have taken benefit from the property and thus there was no rationale for award of interest. Relevant paragraphs are as follows:-

> ***"20.*** *Respondent never accepted that offer of the Appellant and, instead, initiated legal proceedings to specifically enforce the agreements. If the Respondent was genuinely interested in the alternate claim for refund of the amount paid in terms of the agreements, then it would have accepted the offer of the Appellant contained in the letter dated 19.08.2011. On the basis of the record produced before us, there is also no clarity as to how the transformation or variation was introduced during the course of the arbitration. There is no application filed by the Respondent giving up the claim of specific relief and pressing only for refund of the entire sale consideration. Nevertheless, the issues as framed by the learned arbitrator seem to suggest that the Respondent's claims revolved around the claim of refund of the consideration amount. Thus midstream, the arbitration claims got altered and were adjudicated for refund of money not as an alternate, but as a primary relief. There is also nothing to show that the Respondent ever abandoned the claim of specific performance, just as there is nothing to show that it did not press for specific performance before the Arbitrator. This vital aspect has been completely ignored by the learned arbitrator. Respondent's claims were adjudicated on the erroneous premise that specific performance could not be granted. Curiously, the award is completely silent on the reasoning for arriving at this conclusion or for permitting the Respondent to proceed on this basis. In this situation, the dynamics of the claims were radically and substantively changed, and the reason for award of interest as made out in the award are on a wrong substratum, rendering award of interest @ 18% as perverse, unjustifiable and contrary to the record.*
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> ***21.*** *It is also conspicuous that during the pendency of the arbitration proceedings, the property in dispute continued to be subjected to the status quo order at the instance of the Respondent. As a result, the property could not be sold off and was lying vacant. The order of status quo was obtained by the Respondent for preservation of the property in question, till the final adjudication of the relief of specific performance of the agreement. However, if the Respondent's ultimate relief was only to be refund of the consideration amount, the nature and extent of the interim order would be vastly different. In money claims relating to refund of consideration, courts ordinarily do not grant status quo and entangle the property in dispute. This is because in such situations, there is no need to preserve the property in dispute. At the highest, the amount - of which*

refund is sought, is directed to be secured. In the present case, the Appellant was deprived of the right to deal with the properties in question, solely at the instance of the Respondent and on account of the status quo order obtained by the Respondent on a claim of specific performance. During the course of proceedings, the goalpost was changed. Though the claim petition was for specific performance, the relief granted was for recovery or money/damages without any express relinquishment of the relief of specific relief. The reason for this remains a mystery and grant of interest @ 18% p.a. has had huge ramifications on the final relief granted by the learned arbitrator. We are not suggesting that the Respondent did not have the right to seek damages, recovery of money with interest. In fact, undeniably the law and, in particular the unamended Section 21 of the Specific Relief Act, 1963, applicable to the facts of the case enables the Respondent to choose its relief and confine it to one for recovery of compensation, instead of specific performance. However, in such circumstances, the nature of the interim order obtained by the Respondent was not justified, and the Respondent should also bear the consequences of seeking and obtaining interim relief which was not commensurate with the final relief sought. This, surely, is a key consideration to be taken into account while awarding the final relief. This fundamental change in the circumstances would be a mitigating feature to be weighed with by the court for granting the final relief. If the property would not have been the subject matter of the status quo order, it would have enabled the Appellant to dispose of the same to its benefit. We therefore cannot find the rationale of awarding interest @ 18% p.a. to the Respondent on the refunded amount.

22. *We are strengthened in our view by the judgment of the Supreme Court in Best Sellers Retail (India) Pvt. Ltd. v. Aditya Birla Nuvo Ltd., (2012) 6 SCC 792, where it has been held that an injunction would not lie in a suit for specific performance, where the alternate remedy of refund has been claimed in the suit. If the alternate remedy is to be granted by the court in finality, then the injury suffered on account of refusal of injunction cannot be said to be irreparable. In the said case, the Respondent had claimed specific performance for certain agreements with alternate relief of expenses and losses amounting to Rs. 20 crores. The Respondent also prayed for temporary injunction restraining the plaintiffs from alienating the suit property, which was granted by the Additional City Civil Judge and approved by the High Court. Sitting in appeal, the Supreme Court vacated the injunction since the Respondent could not satisfy that any irreparable harm would be caused to him if the injunction was refused. The Supreme Court noted that the High Court had erred in approving the injunction since if the Respondent ultimately succeeded in getting the alternate relief, no irreparable injury could have been suffered by the Respondent.*

23. *In the final analysis, lets view this controversy from another angle. Is the award of award of interest by way of damages at exceptionally high rate of interest in comparison to the prevalent market rate, sustainable? In a suit for specific performance, the Court is empowered to award compensation in certain cases as provided under Section 21 of the Specific Relief Act, 1963. As on the date of passing of the award, the unamended Section 21(1) of the Specific Relief Act, 1963 provided that in a suit of specific performance of a contract, the plaintiff may also claim compensation for its breach either in addition to, or in substitution of such performance. Section 21(2) of the Specific Relief Act, 1963 provides that in a suit where the Court decides that specific performance ought not to be granted, but there is a contract between the parties which has been broken by the Respondent, the plaintiff is entitled to compensation for that breach and it shall award him such compensation accordingly. Further, Section 21(3) of the Specific Relief Act, 1963 stipulates that in such a suit where the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly. Section 21(4) of the Specific Relief Act, 1963 further stipulates that the award of compensation shall be governed by the principles specified in Section 73 of the Indian Contract Act, 1872. Further Section 21(5) of the Specific Relief Act, 1963 stipulates that no compensation shall be awarded unless the plaintiff had claimed such compensation in the plaint. Thus, the award of compensation in terms of the Specific Relief Act, 1963, is inherently linked to the claim for specific performance of a contract. In these circumstances, even if we were to hold that refund of the consideration amount is an exercise of discretionary power in a proceedings pertaining to specific performance, yet the compensation/damages awarded would have to withstand the test laid down for grant of compensatory relief under Section 73 of the Indian Contract Act. In the instant case the arbitrator has not only awarded damages of Rs. 35 lakhs, but also awarded interest on the principal amount @18% p.a. The learned arbitrator had to be mindful of the fact that under the agreement in question, there is no specified rate of interest. In fact, there is no stipulation under the agreement which enables the Respondent to seek refund of the consideration amount. There is also merit in the stand of the Appellant that if the Respondent was genuinely interested in the refund of the consideration, it should have accepted the offer extended to it vide letter dated 19.08.2011, and the controversy would have been put to rest or, at least, narrowed down. If the learned arbitrator was to award refund of the amount, as an alternate relief under Section 21 of the Specific Relief Act, 1963 it was imperative to first come to a conclusion that the facts of the case did not justify the grant of specific performance and, instead, the relief of compensation would be the*

appropriate relief. This is obviously not the way the claims have to be adjudicated. Ergo, the award of interest by way of damages had to be tested and examined on a different yardstick-Section 73/74 of the Indian Contract Act. In this exercise the claim had to be examined and adjudicated having regard to the terms and conditions of the agreement which, as noted above, are silent as to the contractual right to seek refund. We, therefore, find that the learned arbitrator has committed a perversity which has gone unnoticed by the learned Single Judge. There are contradictory findings in the arbitral award and the impugned order. On one hand, learned Single Judge has observed that even though the Respondent in its statement of claim had sought the relief of specific performance of the agreements, but on the other hand, it is observed that the said relief was not pressed as no issue was claimed in this regard and it would be the discretion of the learned arbitrator as to whether to award specific performance of the agreement, or to award damages in lieu thereof. The learned arbitrator proceeded on a wrong premise, assuming that the Respondent had not claimed relief of specific performance and was instead seeking refund of the sale consideration with interest as a primary relief of damages."

26. From a reading of the aforesaid judgment, it is palpably clear that it was in the facts and circumstances of the case captured therein that the Court had interfered with the rate of interest and reduced the same to 9%. The facts of the case in the present case are completely distinguishable and the judgment in ***V4 Infrastructure (supra)*** cannot aid the Petitioner.

27. For all the aforesaid reasons, I am of the view that the impugned award calls for no interference in exercise of jurisdiction under Section 34 of the 1996 Act.

28. Petition is accordingly dismissed.

JYOTI SINGH, J

AUGUST 04, 2025/*shivam*