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

% **Judgment reserved on : 06 May 2024**
Judgment pronounced on : 19 July 2024

\+ FAO(OS)(COMM) NO. 46/2019, CM APPL. 9205/2019, CM APPL. 38801/2022

M/s BPL LIMITED ..... Appellant

Through: Mr. Sajan Poovayya, Sr. Adv. with Mr. Rishi Agrawala, Mr. Karan Luthra, Mr. Pranjit Bhattacharya, Mr. Prabhav Bahuguna, Ms. Tarini & Mr. Naman, Advs.

versus

M/s MORGAN SECURITIES & CREDITS PVT. LTD. ..... Respondent

Through: Mr. Simran Mehta, Mr. Ankur Chawla, Mr. Amit Ranjan Singh & Mr. Prakash Chand, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. The appellant has preferred this appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996[1] read with Section 13 of the Commercial Courts Act, 2015, assailing the Impugned Order dated 18.12.2018 passed by the learned Single Judge of this Court in OMP (COMM) No. 176/2017 titled "*M/s BPL Ltd. v. M/s Morgan Securities*

& Credits Pvt. Ltd.", whereby the learned Single Judge upheld the arbitral award dated 14.12.2016 to the extent that it directs the appellant to make payments to the respondent/claimant under all Bills of Exchange and proportionate interest thereon, except for one Bill of Exchange bearing No. OMR-35, which claim was given up by the respondent otherwise too.

FACTUAL BACKGROUND:

2. Shorn of unnecessary details, one M/s BPL Display Device Ltd./BDDL had sold certain goods to the appellant herein/BPL over a period of time. As there arose some issues of timely payments, the buyer and seller companies viz., BPL and BDDL, together approached the respondent for extending a bill discounting facility to BDDL, to which the respondent agreed. Accordingly, the bill discounting facility was sanctioned by the respondent *vide* letters dated 27.12.2002 (to the extent of Rs. 6 crores) and 11.06.2003 (to the extent of Rs. 6.5 crores). It would be apposite to bring to the fore, some relevant terms of the Sanction Letters, as mutually agreed between the parties:

- The said Sanction Letters referred to BDDL as the 'Drawer' and the appellant/BPL as the 'Drawee'.
- It was provided that the "*Bill of Exchange /Hundi shall be with recourse to Drawer.*"
- The repayment of the amount was mutually agreed to be both the responsibility of the drawer/BDDL and drawee/appellant jointly and severally.
- The facility was approved at a concessional rate of interest i.e., 22.5% per annum payable upfront as against the normal agreed rate of interest i.e., 36% per annum but in case of default in making payment on its due dates, the concessional rates would stand withdrawn and the normal rate of interest i.e., @ 36% per annum would become payable.

[1] Arbitration Act

- The bill discounting period was up to 150 days.
- As per the Sanction Letter dated 11.06.2003, one M/s Electronic Research Pvt. Ltd./ERPL stood surety for the repayment of Rs. 6,43,32,301/- in the event the drawer and drawee failed to repay the amount due in term of sanction letter dated 11.06.2003. In pursuance of the same, ERPL furnished a 'Comfort letter' along with PDCs guaranteeing repayment of the amounts due and payable to the respondent/claimant.

3. However, dispute between the parties arose when a sum of Rs.25,79,91,096/- against particular Bills of Exchange became due and payable to the respondent/claimant by BPL and BDDL in 2004, which amount they defaulted in repaying despite several reminders on behalf of the respondent/claimant. It is stated that during the subsistence of the contract, BDDL along with ERPL had issued post-dated cheques (PDCs) to discharge their respective partial contractual liabilities towards the respondent/claimant. However, BPL allegedly requested the claimant to not encash the said cheques and assured the respondent/claimant that given some more time, they would make arrangements for the payments. The respondent/claimant, in good faith, considered the requests and upon assurances of BDDL, did not present the cheques for encashment.

4. After an extension of time to make the payments was sought, admittedly, the appellant/BPL made two payments to the respondent herein *vide* Demand Drafts dated 08.08.2005 and 29.08.2005 both drawn on Bank of India for a sum of Rs. 50,00,000/- each, and it is stated that such amounts were adjusted by the respondent/claimant towards seven Bills of Exchange drawn pursuant to the Sanction

Letter dated 11.06.2003, the details of which are reproduced hereinbelow:

SNO.	Bill of Exchange No.	Amount on Bill of Exchange (In Rs.)
1.	OMR13	1753920
2.	OMR14	1160000
3.	OMR11	1893120
4.	OMR15	1624000
5.	OMR16	1624000
6.	OMR17	1519693
7.	NOI12	1658800

5. However, despite the assurances extended by the appellant/BPL and BDDL as well as the indulgence accorded by the respondent, the appellant/BPL and BDDL failed to repay the amounts due with interest and relying upon the letter of acknowledgement of debt dated 02.02.2007 issued by the appellant/BPL, the respondent invoked arbitration by way of issuance of a Notice dated 28.06.2007, against the appellant/BPL as well as BDDL. Accordingly, a sole Arbitrator was appointed to preside over the matter.

ARBITRAL PROCEEDINGS:

6. In a nutshell, the respondent/claimant raised a total of four claims; three claims under the sanction letter dated 11.06.2003, and one claim under the sanction letter dated 27.12.2002, amounting to an aggregate of Rs.25,79,91,096/- which had become due and payable by the appellant/BPL and BDDL to the respondent herein. It is pertinent to note that during the course of the arbitration proceedings, ERPL was impleaded as respondent No.3 and the claim against BDDL was

dropped by the respondent/claimant, since BDDL was undergoing liquidation proceedings.

7. On the basis of the pleadings, the following issues were framed by the learned sole Arbitrator:

1. Whether the claimant is entitled to a sum of Rs.7,27,05,579/- as on 10.08.2007 against Bill Discounting Facility Agreement/ sanction vide letters dated 27.12.2002 and Rs,20,62,28,681/- as on 10.08.2007 on account of the Bill Discounting Facility Agreement/ Sanction letter dated 11.06.2003?
2. Whether the claimant is entitled to any damages. .If so, to what amount?
3. Whether the claimant is entitled to interest. If so, at what rate and from which date?
4. Whether the claimant is entitled to cost?
5. Whether the claims have been validly instituted? OPR2
6. Whether, assuming the Respondent No.2 is liable for payment under the Bill Discounting Facility Agreement dated 27.12.2002 and 11.06.2003, the claim is barred by time? OPR2
7. Whether the Claimant can claim any amount from Respondent No.2 under the Bill Discounting Facility Agreement dated 27.12.2002 and 11.06.2002 in view of the Respondent No.2 having tendered post-dated cheques towards payment of liability on the hundies discounted by the Claimant? OPR2
8. Whether the Respondent N.o.2 made any verbal representation to the Claimant not to present the post-dated cheques issued by the Respondent No.2 as alleged by the Claimant? OPR2
9. If not, did the Claimant waive its right to the payment of the amounts of each cheque issued by Respondent No.2 and under the Bill Discounting Agreement? OPR2
10. Reliefs.

8. As regards Issue No.1, the learned Arbitrator *firstly* rejected the contention of the appellant that the transaction between the parties is governed by the Usurious Loans Act, 1918, as amended by the Punjab Relief of Indebtedness Act, 1934, by observing that the transaction between the parties was neither a loan nor a debt, rather it was simply in the nature of a commercial transaction wherein BPL and BDDL

being ‘traders’, had transacted a deal in the course of their business since BDDL was not in a financial position to pay BPL, and therefore, they together approached the respondent/claimant to pay to the seller the amounts of the transactions, with a stipulation that the same would be repaid to the respondent/claimant along with interest as per the terms agreed upon. *Secondly*, the learned Arbitrator held that it cannot be said that the sanction letters are distinct from the Bills of Exchange/*hundis* or that the bill discounting agreements/sanction letters are not binding upon BPL and BDDL; nor can it be said that the claim of the non-payment of the bills of exchange is not governed by the terms of the said bill discounting agreements/sanction letters. Accordingly, the learned Arbitrator decided Issue No.1 in favour of the claimant/respondent herein.

9. As regards Issue No. 2, it was held by the learned Arbitrator that the claimant has failed to prove that damages had been suffered, and thus, the said issue was decided against the claimant/respondent herein.

10. As regards Issue No.3, relying upon **Class Motors Ltd v. Maruti Udyog Ltd.**[2], **Modi Rubber Ltd v. Morgan Security and Credits**[3] and **West Bengal Cement Ltd v. Syndicate Bank**[4] , the learned Arbitrator held that the terms of payment of interest as mutually agreed upon by the parties *vide* sanction letters dated 27.12.2002 and 11.06.2003 cannot be held to be unconscionable, arbitrary, or excessive in case of non-payment after the stipulated due

[2] 1996 SCC OnLine Del 872
[3] 2009 SCC OnLine Del 3318

date. It was held that BPL and BDDL were under no obligation to enter into a contract with the respondent/claimant in the first place, and thus, having taken the advantage of the contract, the appellant herein, could not be allowed to turn around and raise a plea that the rate of interest was excessive or unconscionable. Moreover, the learned Arbitrator by relying upon **Central Bank of India v. Ravindra and Others**[5], rejected the contention of the appellant that the interest cannot be added to the principal amount and held that since the compounding of interest on monthly rest was provided in the mutually agreed upon terms of the contract entered into between the parties, therefore, the respondent/claimant was entitled to claim interest as per the terms of the contract i.e., @ 36% per annum with monthly rests. Accordingly, Issue No. 3 was decided in favour of the claimant/respondent herein.

11. Issue No. 5 was decided by the learned Arbitrator in favour of the claimant/respondent herein by observing that Section 64 of Negotiable Instruments Act, 1881[6] is not applicable to the facts of the present case and the surety ERPL (Respondent No.3 therein) having admitted the existence of the arbitration agreement/sanction letter dated 11.06.2003, has rightly been impleaded to the arbitration proceedings. It was further held that BPL has also been rightly impleaded in view of the joint liability clause contained in the sanction letters dated 27.12.2002 and 11.06.2003.

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[4] 2002 SCC OnLine Del 546
[5] 2001 SCC OnLine SC 1266
[6] NI Act

12. As regards Issue No.6 *qua* the issue of limitation, the learned Arbitrator while observing that the part payments amounted to acknowledgement and would extend the period of limitation, held that since, admittedly, there was a part payment made by BPL within the period of limitation i.e., in August 2005, and the debt was acknowledged *vide* letter dated 02.02.2007, by no stretch of imagination can the claims of the claimant/respondent herein be said to be barred by time in view of the fact that the claimant invoked arbitration within six months from 02.02.2007. Thus, Issue No. 6 was decided in favour of the claimant/respondent herein.

13. In respect of Issues No. 7, 8 and 9, relying upon the decision in **Harish Chander v. Ganga Singh and Sons** [7], it was held that despite the fact that the claimant/respondent herein did not present the post-dated cheques issued by BDDL, it would not absolve the appellant herein from its liability. However, with regard to ERPL, it was held that its liability stood discharged on account of the failure of the claimant/respondent herein to present the post-dated cheques issued by ERPL for payment coupled with the fact that ERPL never issued any letter of acknowledgement of debt either, and thus, the claim of the respondent herein against ERPL was dismissed as barred by limitation.

14. Resultantly, the learned Arbitrator, by way of the impugned award dated 14.12.2016, directed the appellant to pay a sum of Rs. 7,27,05,579/- as well as Rs. 20,62,28,681/- with interest as applicable in the terms of the sanction letters i.e., @ 36% per annum from the

date these amounts were due till the date of the Award, and @10% per annum from the date of the Award till realization.

FIRST APPEAL UNDER SECTION 34 OF THE ARBITRATION ACT:

15. Aggrieved by the Award dated 14.12.2016, each of the rival parties instituted an application under Section 34 of the Arbitration Act before this Court. On one hand, the appellant herein challenged the directions of the learned sole Arbitrator to make the payment of the claim to the respondent herein, while on the other hand, the respondent herein challenged the dismissal of its claims against ERPL.

IMPUGNED ORDER DATED 18.12.2018:

16. On a careful perusal of the impugned judgment passed by the learned Single Judge, the gist of the observations arrived at appear to be as follows:

(i) The claim of the respondent/claimant was not on the basis of the Bills of Exchange but on the basis of two Sanction Letters to which the appellant herein was admittedly a party. Section 80 of the NI Act, which prescribes a fixed rate of interest to be charged, has no application to the present case.

(ii) As per Section 31(7) of the NI Act, the transaction in question does not fall within the ambit of the Usurious Loans Act, 1918 as amended by the Punjab Relief of Indebtedness Act, 1934 since the transaction in question was not in the nature of a loan or a debt, rather it pertained to discounting of Bills of Exchange which was simply a commercial transaction.

(iii) The interest awarded by the learned sole Arbitrator, having been granted interest in accordance with the terms of the contract between the parties, cannot be set aside by invoking the general principles of fairness or equity.

(iv) Since the respondent/claimant had stated on affidavit that it had adjusted the part payments made by the appellant against seven particular Bills of Exchange, the respondent cannot claim the

[7] 1973 SCC OnLine P&H 40

benefit of extension of limitation for those Bills of Exchange for which it did not receive any payment. Therefore, the claim of the respondent for Bill of Exchange bearing OMR No.35 has to be held as being barred by limitation.

(v) As per Section 37 of NI Act as well as the terms of the Sanction Letters, the Drawer/BDDL and the Drawee/BPL of the Bills of Exchange are jointly and severally liable for repayment of the amounts discounted. Merely because the terms of the Sanction Letters state for reference to the Drawer/BDDL, it cannot absolve the Drawee/BPL of such liability.

(vi) Non-application of Section 64, NI Act to the facts and circumstances of the present case is a finding on fact made by the learned Sole Arbitrator, hence it cannot be interfered into in Section 34, Arbitration Act proceedings.

(vii) There was no acknowledgment of liability by ERPL that could have extended the period of limitation against it. Further, no reason for non-presentation of the Post-Dated Cheques issued by ERPL was presented by the respondent/claimant before the Arbitrator or before this Court. Thus, the ERPL has been rightly discharged from the liability by the ld. Sole arbitrator.

(viii) Post-award interest awarded by the learned Sole arbitrator is a matter of discretion of the arbitrator, hence the same cannot be faulted merely because the Court could have exercised its discretion in another manner.

17. Accordingly, the learned Single Judge *vide* common impugned order dated 18.12.2018, partly allowed the petition under Section 34 of the Arbitration Act preferred by the appellant herein and dismissed the petition filed by the respondent herein while passing the following directions:

> "63. In view of the above, the Award on the principal sum of Bill of Exchange bearing No.OMR-35 of an amount of Rs.75,39,304/- is set aside. The Award inasmuch as it directs the petitioner to make payments to the respondent except for the above Bill of Exchange and proportionate interest thereon, is upheld."

GROUNDS OF APPEAL:

18. The impugned order dated 18.12.2018 passed by the learned Single Judge has been assailed by the appellant herein: *firstly*, on the ground that the learned Single Judge did not appreciate that the awarded claims are *ex-facie* barred by limitation as the letter dated 02.02.2007 cannot be construed as an acknowledgment of debt against the appellant; *secondly*, on the ground that the learned Single Judge erred by not appreciating that the claims of the respondent are based on the Bills of Exchange, and therefore, hit by Section 80 of the NI Act; *thirdly*, on the ground that the learned Single Judge erred in not appreciating that the dispute between the parties is not arbitrable in view of the fact that there is no arbitration clause contained in the Bills of Exchange; *fourthly*, on the ground that the learned Single Judge did not appreciate that the appellant herein stands discharged under Section 64 of NI Act since it is an admitted position that the respondent never presented the post-dated cheques issued by the appellant for payment of its dues; *fifthly*, on the ground that the learned Single Judge ought to have rejected the claim for interest bearing an exorbitant rate of 36% per annum for being excessive and unconscionable, therefore being against the public policy of India; and *lastly*, on the ground that the learned Single Judge did not appreciate that Clause 3 of the Sanction Letters was incorporated in each Bill of Exchange drawn by BDDL that is endorsed with the phrase "With Recourse to the Drawer" which makes it a contract to the contrary within the meaning of Sections 32 and 37 of the NI Act i.e., if the Drawee fails to pay under a Bill of Exchange, the Drawer shall do so.

ANALYSIS & DECISION:

19. We have given our thoughtful consideration to the issues raised and canvassed by the learned counsels at the Bar and we have also gone through the record, including the original record of the arbitration proceedings as also the case laws cited at the Bar.

20. First things first, it would be expedient to elucidate the principles enunciated by the Apex Court in some of the recent decisions pertaining to the scope of challenge and interference with an arbitral award under Section 34 of the Arbitration Act, as also the scope of appeal under Section 37 of the Arbitration Act, which provisions read as under:

> "**34. Application for setting aside arbitral award.** –(1) Recourse to a Court against an arbitral award **may be made only** by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
> (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.
(2-A) 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.
(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

37. Appealable orders.—(1) (Notwithstanding anything contained in any other law for the time being in force, an appeal) shall lie from the following orders (and from no others) to the court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

((*a*) refusing to refer the parties to arbitration under Section 8;
(*b*) granting or refusing to grant any measure under Section 9;
(*c*) setting aside or refusing to set aside an arbitral award under Section 34.)
(2) An appeal shall also lie to a court from an order of the arbitral tribunal—
(*a*) accepting the plea referred to in sub-section (2) or sub-section (3) of Section 16; or
(*b*) granting or refusing to grant an interim measure under Section 17.
(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

[EMPHASIS SUPPLIED]

21. It is well ordained in law that the jurisdiction of the Court under Section 34 of the Arbitration Act is neither in the nature of an appellate remedy nor is it in the nature of a revisional remedy. It is also well settled that an award cannot be challenged on merits except for the limited grounds that have been spelled out *vide* sub-sections (2) and (3) of Section 34, by way of filing an appropriate application. This is exemplified from a bare reading of sub-section (4) whereupon the receipt of an application, the Court may dispose of the Section 34 proceedings and direct the Arbitral Tribunal to resume the arbitral proceedings or take such action as would eliminate the grounds for setting aside the arbitral award and make the same enforceable. Incidentally, it is also relevant to take note that Section 34 is modelled on the UNCITRAL Model Law on International Commercial Arbitration, 1985, under which no power to modify an award is given to a court hearing a challenge to an award[8].

[8] Article 34. Application for setting aside as exclusive recourse against arbitral award.—
(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

22. Avoiding a long academic discussion, we may refer to the decision in the case of **MMTC Ltd. v. Vedanta Ltd**.[9], wherein a plea was advanced that the Appellate Court should be competent to come to a different conclusion based on evaluation of the evidence placed on the record. Outrightly rejecting the aforesaid plea, the Supreme Court elucidated the contours of the powers of a Court under Sections 34 and 37 of the Arbitration Act, and held as under:-

> "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."
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> **[EMPHASIS SUPPLIED]**

23. The Supreme Court in **NHAI v. M. Hakeem**[10], delved into the issue as to whether the power of the Court under Section 34 of the Arbitration Act, to set aside an award passed by an Arbitrator, would also include the power to modify such an award. It was a case wherein the Division Bench of the Madras High Court had disposed of a large number of appeals under Section 37 of the Arbitration Act by laying down, as a matter of law, that arbitral awards made under the

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(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the Arbitral Tribunal's opinion will eliminate the grounds for setting aside."

[9] (2019) 4 SCC 163

[10] (2021) 9 SCC 1

National Highways Act, 1956 read with Section 34 of the Arbitration Act should be read so as to permit the modification of an arbitral award, thereby, the Division Bench enhanced the amount of compensation awarded by the learned Arbitrator. Frowning upon such a course of action, it was categorically held as under:-

> "It can therefore be said that this question has now been settled finally by at least 3 decisions [*McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181] , [*Kinnari Mullick* v. *Ghanshyam Das Damani*, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106] , [*Dakshin Haryana Bijli Vitran Nigam Ltd.* v. *Navigant Technologies (P) Ltd.*, (2021) 7 SCC 657] of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, **revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the Uncitral Model Law** on International Commercial Arbitration, 1985 which, as has been pointed out in *Redfern and Hunter on International Arbitration*, makes it clear that, **given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand** the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996.
>
> {paragraph 42}
>
> Quite obviously if one were to include **the power to modify an award in Section 34, one would be crossing the Lakshman Rekha and doing what, according to the justice of a case, ought to be done.** In interpreting a statutory provision, a Judge must put himself in the shoes of Parliament and then ask whether Parliament intended this result. Parliament very clearly intended **that no power of modification of an award exists in Section 34 of the Arbitration Act, 1996.** It is only for Parliament to amend the aforesaid provision in the light of the experience of the courts in the working of the Arbitration Act, 1996, and bring it in line with other legislations the world over." {paragraph 48}
>
> **[EMPHASIS SUPPLIED]**

24. The *dictum* that there is no power vested in the Court to modify, revise or vary the terms of an award under Section 34 of Arbitration

Act was further reiterated in a decision titled **Hindustan Construction Company Limited v. National Highways Authority of India**[11], wherein the Supreme Court held that "*Courts under Section 34 are not granted the corrective lens and cannot re-appreciate the decision on merits unless the conclusions drawn are patently perverse.*" Likewise, in the case of **Reliance Infrastructure Ltd. v. State of Goa**[12]**,** the decision in the case of **Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation**[13] was referred with approval and it was observed that "*The arbitrator is a Judge chosen by the parties and his decision is final. The Court is precluded from reappraising the evidence. Even in a case where the award contains reasons, the interference therewith would still be not available within the jurisdiction of the Court unless, of course, the reasons are totally perverse or the judgment is based on a wrong proposition of law".*

25. That being the scope and ambit of the powers of this Court, we may further briefly elaborate on how the expression "the public policy of India" contained in Section 34(2)(*b*)(*ii*) of the Arbitration Act is to be construed. The Supreme Court in the case of **ONGC Ltd. v. Saw Pipes Ltd.**[14] explained the expression as under:

> *"31.* Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be

[11] 2023 SCC OnLine SC 1063
[12] 2023 SCC OnLine SC 604
[13] (2022) 1 SCC 131
[14] (2003) 5 SCC 705

> injurious or harmful to the public good or public interest has varied from time to time**. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice.** Hence, in our view in addition to narrower meaning given to the term "public policy" in *Renu Sagar case* [*Renu agar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644] it is required to be held that the award could be set aside if it is patently illegal. The result would be — award could be set aside if it is contrary to:
>
> (*a*) fundamental policy of Indian law; or
>
> (*b*) the interest of India; or
>
> (*c*) justice or morality; or
>
> (*d*) in addition, if it is patently illegal.
>
> **[EMPHASIS SUPPLIED]**

26. Again, avoiding a long academic discussion, the said expression came to be discussed in a recent decision of the Supreme Court in **S.V. Samudram v. State of Karnataka**[15], approving its earlier decision in **Associate Builders v. DDA**[16] (two-Judge Bench) , wherein it was held that an award can be said to be against the public policy of India, *inter alia*, under the following circumstances:

> "42.1. When an award is, on its face, in patent violation of a statutory provision.
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> 42.2. When the arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.
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> 42.3. When an award is in violation of the principles of natural justice.
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> 42.4. When an award is unreasonable or perverse.
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> 42.5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.
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> 42.6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court."

SANCTION LETTERS & ARBITRATION CLAUSE:

[15] (2024) 3 SCC 623

27. In view of the aforesaid proposition of law, reverting to the instant matter, a new plea has been countenanced by the learned counsel for the appellant herein that it was not a signatory to the bill discounting agreements dated 27.12.2002 and 11.06.2003. Unhesitatingly, we find that such a plea was never taken in the arbitral proceedings as also by way of objections during the proceedings under Section 34 of the Arbitration Act. Although, a perusal of the sanction letters dated 27.12.2002 and 11.06.2003 would show that it was under the letter head of the respondent/claimant and addressed to BDDL, there was no denial at any point of time that the same was not binding upon the appellant herein, and as a matter of fact, there was no denial during the arbitral proceedings that the appellant herein was not a signatory to the aforesaid discounting letters as also a beneficiary thereof, pursuant to which the *hundis* were issued from time to time towards payment for the sale of goods to the appellant/BPL, which were by all necessary implication, acquiesced to. Admittedly, both the sanction letters dated 27.12.2002 and 11.06.2003 contained an arbitration clause[17] to which the appellant was also bound, and therefore, the plea countenanced must be rejected at the outset.

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[16] (2015) 3 SCC 49

[17] "Any dispute or difference whatsoever arising between the parties out of or in relation to the construction, meaning, scope, operation or effect of any transaction/s or the validity or the breach thereof arising out of or in connection with the present agreement and for any other transaction/s between the parties shall be settled by Arbitration of a Sole Arbitrator appointed by Chairman of Morgan Securities- Credits Private Limited, who would also have right to appoint alternate Arbitrator in place of the aforesaid Arbitrator, in case of his death or being incapable or refusal to act or in the event of termination of his mandate for any reason. The arbitration proceedings shall be held at New Delhi. The power of the Chairman to appoint a Sole Arbitrator shall not be challenged by either party, Further, the parties agree that the Arbitrator so appointed may be an employee and / or professional retainer and/or a person who has a relation or interest in the company. Both parties agree not to ask for any adjournment except under extra-ordinary reasons. The award given by the arbitrator shall be final and binding upon the parties."

COMPUTATION OF CLAIMS & ISSUE OF LIMITATION:

28. Unhesitatingly, the arbitral record brings out the findings rendered by the learned Arbitrator to the effect that the computation of claims pursuant to sanction letter dated 27.12.2002 Ex.CW-1/294 due as on 10.08.2007, indicating that not even a single *hundi* had been discharged and there was an outstanding amount of Rs. 7,27,05,579/-, was not challenged by the appellant herein. Likewise, the computation of claims arising out of sanction letter dated 11.06.2003 Ex.CW-1/295 due as on 10.08.2007, totalling to Rs. 20,62,28,681/- was also not assailed. Thus, there is no patent illegality or perversity in the finding by the learned Arbitrator that no accounting fallacy had been pointed out by respondent No.2/BPL (appellant herein).

29. As regards the issue of the claims being barred by limitation, the appellant in the present appeal *vide* paragraph (10) has provided tabular details of the Bills of Exchange with respective due dates for repayment in terms of the sanction letter dated 11.06.2003, which is attached as **Annexure 'A' to this judgment**. On a careful perusal of the same, it appears that the respective due dates for payment were 16.02.2004 *vide* entry No. 29, which fell within three years of the letter dated 02.02.2007 Ex.C-281. During the course of the arbitral proceedings, CW-1 Mr. P.K. Gupta in his affidavit-in-evidence dated 12.11.2008 substantiated the statement in the said tabular form, showing part-payments which were made against specific Bills of Exchange as recorded by the respondent/claimant, which is attached as **Annexure-'B' to this judgment**. It was also brought out in the course of the arbitration proceedings that the two post-dated cheques

for Rs. 50 lacs each, dated 10.08.2005 and 31.08.2005 respectively, were not presented for payment by the respondent at the instance of the appellant, as evidently the appellant requested for some more time to make good the amount due and payable.

30. At this juncture, it would be apposite to reproduce the contents of the letter dated 02.02.2007 issued to the respondent/claimant by the appellant, which is reproduced hereinbelow*:*

> "This is with reference to the discussions we had today at our Office with your representative, Mr. Madhukar Dodrajka regarding outstanding dues pertaining to BDDL account.
>
> At the outset, I would like to thank you for your patience and understanding during the really trying phase of BPL Limited.
>
> As you may be aware, BPL Limited has restructured its businesses and has formed a joint venture company for its Colour Television business with our JV partners, SANYO. After the formation of the JV, BPL has been striving hard, to get back to normalcy and is in touch with various financial institutions for sanction of required funds for our working capital requirements and settlement of all outstanding dues. 1 am constantly monitoring the situation and rest assured we will settle your outstandings within the next 6 months.
>
> Looking forward to your support, as always and thank you once again for your patience and understanding."

31. Before deciphering the narrative of the aforesaid letter, a careful perusal of the composite table for both the discounting facilities under the two sanction letters would make it evident that the first part-payment was made on 10.02.2004, which date falls within three years of the letter of acknowledgment dated 02.02.2007 and all other payments were subsequent in time. In respect of the Bills for which there was no part-payment, the due dates fell squarely within three years of the acknowledgment dated 02.02.2007. Although, much mileage was sought to be taken by the learned counsel for the

appellant that OMR 35[18] for Rs. 75,39,304/- had been excluded by the learned Single Judge, which fortifies its plea that each Bill of Exchange was a separate one, learned counsel for the appellant overlooks the fact that its due date was 03.07.2003, thereby beyond three years of the acknowledgment dated 02.02.2007, and therefore, held to be beyond limitation. Incidentally, the claim with regard to such Bill of Exchange was rather given up by the respondent/claimant before the learned Single Judge.

32. There is no escape from the conclusion that the principal liability under the sanction letters dated 27.12.2002 and 11.06.2003 and also the liability for discharge of Bills of Exchange issued thereunder was *joint and several*. That being the case, the learned Single Judge, while construing the contents of the letter dated 02.02.2007 reproduced hereinabove, rightly found that there was clearly an acknowledgment of liability in terms of Section 18[19] of the

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[18] 28th entry in Annexure-'B'

[19] **Effect of acknowledgment in writing.**

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

Limitation Act, 1963 thereby upholding the observations by the learned Arbitrator, and observed as under:

> "45. In my view, the same is clearly an acknowledgment of liability in terms of Section 18 of the Limitation Act. The Arbitrator has also considered the said issue as under and arrived at the same conclusion:
>
> > "Reading of this letter it can safely be concluded that it is a clear case of acknowledgement of liability of the outstanding amounts against hundies pertaining to BDDL account on the part of the respondent No.2. Reading of this letter, nowhere indicate that the respondent was talking about acknowledging of liability of any particular or specific hundi. Moreover, in view of the fact that there was. a part payment made by respondent No.2 within the period of limitation i.e. August 2005 as admitted by the respondent and the acknowledgement made vide letter dated 2/2/2007 within time, by no stretch of imagination it can be said that claims of claimant are barred by time. Within six months of 2/2/2007 when payments was made of outstanding dues, claimant invoked arbitration. Further,
> >
> > 55. Mr. Joshi further contended that letter dated 2/2/2007 cannot be construed as an acknowledgement of liability by respondents as the said letter has been signed by Mr.Ajit Nambiar in his personal capacity as Chairman and Managing Director. It cannot be construed as an acknowledgement of liability by respondent No.2 even though letter is written on the letter head of respondent No.2; Mr. Nambiar was not representing Respondent No.2 nor was authorized to represent respondents No.l or respondent No.3. Tribunal find no merits in this submission of Mr. Joshi because if Mr. Ajit Nambiar was not authorized to represent respondent No.2 he ought to have stepped into the witness box to say so. But he choose not to do so. Mr. Ajit Nambiar, CMD of Respondent No.2 in no uncertain words admitted the liability vide letter dated 2/2/2007 and promised to pay outstanding dues within six months. The issue is, therefore, decided against the respondent No.2."

33. In view of the same, the learned Single Judge held as under:

> "46. As far as the part payments are concerned, though the Arbitrator holds that such payment having not been made by the

> petitioner against particular Bills of Exchange, has to be considered as a part payment and admission of liability towards the entire claim of the respondent, I am unable to agree with the same. In the affidavit of Evidence filed by the respondent, the respondent had clearly shown the adjustment of the part payments against each particular Bill of Exchange. The respondent having itself adjusted such payments against particular Bills of Exchange, cannot claim benefit of extension of limitation even for those Bills of Exchange for which it did not receive any payment. Therefore, the claim of the respondent for Bill of Exchange bearing OMR No.35 has to be held as being barred by limitation. However, the claims against other Bills of Exchange were within the period of limitation and the objection of the petitioner qua those is rejected."

34. We are in agreement with the aforesaid reasoning articulated by the learned Single Judge. The appellant was a direct beneficiary of the two sanction letters and at the cost of repetition, the letter dated 02.02.2007 acknowledged their liability towards the Bills of Exchange, manifestly forming a part of the statements that have been referred to hereinabove. Evidently, the letter dated 02.02.2007 expressly spoke of the "outstanding dues pending to the BDDL account" and time was sought on behalf of the appellant company to settle the outstanding dues within six months. In the face of the fact that the author of the said letter did not enter the witness box on behalf of the appellant, both the learned Arbitrator as well as the learned Single Judge rightly went by the plain and simple grammatical purport of the said letter in light of the larger context of the commercial transactions undertaken amongst the three parties before it.

35. We say no more than to find that the aforesaid reasons are fortified by the decision in the case of **Lakshmiratan Cotton Mills**

Co. Ltd. v. Aluminium Corporation of India Ltd.[20], wherein the Supreme Court had an occasion to examine Section 19 of the Limitation Act of 1908, which provision is in *pari materia* to Section 18 of the 1963 Act, and made the following observations in respect of the issue pertaining to whether or not the letter in evidence before the Arbitrator therein, constituted a valid acknowledgement of liability, which would afford a fresh period of limitation:

> "8. Section 19(1) of the Limitation Act, 1908, provides that where, before the expiration of the period prescribed for a suit in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. The expression 'signed' here means not only signed personally by such a party, but also by an agent duly authorised in that behalf. Explanation 1 to the section then provides that an acknowledgment would be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment has not yet come, or is accompanied by a refusal to pay or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right. The new Act of 1963, contains in Section 18 substantially similar provisions.
>
> **9. It is clear that the statement on which the plea of acknowledgment is founded must relate to a subsisting liability as the section requires that it must be made before the expiration of the period prescribed under the Act. It need not, however, amount to a promise to pay, for, an acknowledgment does not create a new right of action but merely extends the period of limitation. The statement need not indicate the exact nature or the specific character of the liability. The words used in the statement in question, however, must relate to a present subsisting liability and indicate the existence of jural relationship between the parties, such as, for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not be in express terms and can be inferred by implication from the nature of the**

[20] AIR 1971 SC 1482

> **admission and the surrounding circumstances. Generally speaking, a liberal construction of the statement in question should be given.** That of course does not mean that where a statement is made without intending to admit the existence of jural relationship, such intention should be fastened on the person making the statement by an involved and far-fetched reasoning. (See *Khan Bahadur Shapoor Fredoom Mazda* v. *Durga Prasad Chamaria* [1962 (1) SCR 140] and *Tilak Ram* v. *Nathu* [AIR 1967 SC 935 at 938, 939]). As Fry, L.J., *Green* v. *Humphreys* [(1884) 26 Ch D 474 at 481] said "an acknowledgment is an admission by the writer that there is a debt owing by him, either to the receiver of the letter or to some other person on whose behalf the letter is received but it is not enough that he refers to a debt as being due from somebody. In order to take the case out of the statute there must upon the fair construction of the letter, read in the light of the surrounding circumstances, be an admission that the writer owes the debt". As already stated, the person making the acknowledgment can be both the debtor himself as also a person duly authorised by him to make the admission. In *Khan Bahadur Shapoor Fredoom Mazda case* the Court accepted a statement in a letter by a mortgagor to a second mortgagee to save the mortgaged property from being sold away at a cheap price at the instance of the prior mortgagee by himself purchasing it as one amounting to an admission of the jural relationship of a mortgagor and mortgagee, and therefore, to an acknowledgment within Section 19. Also, an agreement of reference to arbitration containing an unqualified admission that whoever on account should be proved to be the debtor would pay to the other has been held to amount to an acknowledgment. Such an admission is not subject to the condition that before the agreement should operate as an acknowledgment, the liability must be ascertained by the arbitrator. The acknowledgment operates whether the arbitrator acts or not. (See *Tejpal Saraogi* v. *Lallanjee Jain* [CA No. 766 of 1962, decided on February, 8, 1965] , approving *Abdul Rahim Oosman & Co.* v. *Ojamshee Prushottamdas & Co.* [1928 ILR 56 Cal 639])."
>
> **[EMPHASIS SUPPLIED]**

SECTION 64 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881:

36. As regards the objections espoused to the effect that since the respondent/claimant failed to present the post-dated cheques given to them by the appellant, the same would absolve the appellant of any

liability, in keeping with Section 64[21] of the Negotiable Instruments Act, 1881, the said plea has been dealt with by the learned Arbitrator in the following manner:

> "60. The admitted facts on record are that post-dated cheques given by respondents were not presented by claimant. What was the reason for that has been explained by. Mr. P.K. Gupta CW1 in his additional affidavit wherein it has clearly been stated that CMD of Respondent No.2 assured him personally with regard to the out-standings amounts and that claimant to have patience and understand the position of respondent. This expression also find mention in the letter dated 2/2/2007. This fact has also been pleaded in para 1.10 and 1.17 of the statement of claim as well as in paras 24 and 29 of the evidence affidavit of CW1. This position was reiterated by CW1 in paras 2 and 3 of his additional affidavit wherein he specifically stated the dates on which Mr. Madhukar Dodrajka visited Bangalore to pursue the matter of outstanding amounts with Respondent No.2 and that the CMD of Respondent No.2 talked to CW1 personally that the outstanding amounts would be paid. Moreover, if the post-dated cheques were given towards discharge of liabilities of hundies, then what was the necessity for the respondent No.2 to make part payments in the year 2004, 2005 and subsequent thereto. No letter has been produced on record to show that the respondent informed the claimant that since post-dated cheques have already been given, therefore its liability under the hundies stood discharged on account of non-presentment of the post-dated cheques. Rather vide letter dated 2/2/2007 the respondent No.2 through its MD acknowledged the liability and asked the claimant to have patience and understanding. Patience

[21] **64. Presentment for payment**.—(1) Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

[Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

(2) Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:

Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly.

> and understanding has been explained by the claimant through its witness Mr. P.K. Gupta CW1 who categorically stated that on presentation of cheques was on the request of Mr. Ajit Nambiar, hence vide letter dated 2/2/2007 he appreciated the patience and understanding of the claimant.
>
> 61. It was for the respondent No. 2 to rebut this averment of the claimant by adducing the evidence of Mr. Ajit Nambiar. Mr. Ajit Nambiar never stepped into the witness box to explain as to why he asked claimant to have patience and understanding or that he never told claimant not to present the cheques. Testimony of Mr. P.K. Gupta CW1 cannot be discarded nor can be called hearsay. In fact from the above discussions, it can safely be concluded that cheques given by respondent No.2 were not presented because of the understanding between the Respondent No. 2 and claimant."

37. At the cost of repetition, in view of the fact that the Managing Director of the appellant company did not step into the witness box, no interference is warranted in respect of the aforesaid findings rendered by the learned Arbitrator. The concurrent findings given by the learned Arbitrator as well as the learned Single Judge are based on evidence and there is nothing to suggest that there is any patent illegality or unconscionability attached to the reasoning accorded. It is also pertinent to mention here that in the additional affidavit dated 09.01.2010 filed by Mr. P.K. Gupta, Authorized Representative of the respondent/claimant, it was deposed that payments pursuant to the accounts were made by way of two cheques for a sum of Rs. 5,00,000/- each, bearing Nos. 920339 and 936616 dated 28.09.2007 and 03.12.2007 respectively, which were thereafter encashed on 05.10.2007 and 11.12.2007 respectively, as reflected in the statement of accounts of the respondent/claimant with HDFC Bank (Ex.CW-1/297 and CW-1/298). Thus, the turnaround by the appellant to agitate

that it was never liable to pay the claims due or in the alternative, the plea that the claims were barred by limitation, falls flat on its face.

ISSUE RAISED UNDER SECTION 80[22] OF THE NEGOTIABLE INSTRUMENTS ACT, 1881:

38. We find from the arbitral record that no plea was taken by the appellant before the learned Arbitrator that the respondent/claimant is entitled to interest @ 18% per annum as no rate of interest was indicated in the Bills of Exchange. In any case, the Bills of Exchange emanated from the sanction letters, which *vide* clause 4 provided as under:-

> "4. The Drawee/Drawer agrees that normal agreed rate for providing Bill Discounting facility is 36% p.a., however as a special case the Discounting Company is providing the Bill Discounting facility at concessional rate of 22.5% p.a. payable upfront. in case of delay or default in making payment of amount of the Bill of Exchange or overdue bill discounting charges/interest or any part thereof on it's due date, the concessional rate will be withdrawn and the normal rate of bill discounting charges of 36% p.a. monthly rests, shall be payable by the Drawee/Drawer from its due date. Margin @ 3% p.m. for 3 days shall be deducted at the time of discounting, to be adjusted against delays in repayment, if any.

39. Agreeing with the reasoning accorded by the learned Single Judge, that a bare reading of Section 80 of the NI Act would show that interest @ 18% per annum is payable when no rate of interest is specified in the instruments, we find that the rate of interest was

[22]**80. Interest when no rate specified**.— When no rate of interest is specified in the instrument, interest on the amount due thereon shall, 1 [notwithstanding any agreement relating to interest between any parties to the instrument], be calculated at the rate of 2 [eighteen per centum] per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such a mount as the Court directs. Explanation.—When the party charged is the indorser of an

expressly provided by the sanction letters to be payable on the *hundis* and the same is *per se* claimable in terms of Section 79[23] of the NI Act. A careful perusal of Section 79 of the NI Act would show that the rate of interest need not be written in the instrument itself. The express condition may be binding by virtue of any agreement executed amongst the drawer, drawee and payee. On a conjoint and harmonious construction of Section 79 and Section 80 of the NI Act, it follows that a provision for interest payable on delayed honouring of an instrument can just as well be made into a separate agreement between the parties. It strikes all the more to reason that if an instrument emanates from an agreement between the parties, both the agreement and the instrument have to be read as whole and the import thereof may be determined on a conjoint reading of Section 79 and 80 of the Negotiable Instruments Act, 1881.

40. All said and done, the learned Arbitrator has chosen to award *pendente lite* interest strictly in terms of the agreement between the parties, thus conforming to the mandate of Section 31(7)(a)[24] of the Arbitration Act. The bill discounting facilities advanced in terms of the sanction letters were pursuant to commercial transactions

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instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

[23] **79. Interest when rate specified**.—When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

[24] **31. Form and contents of arbitral award.-** (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.

undertaken between two corporate entities and there was no plea that the sanction letters in any manner were vitiated by threat, coercion, undue influence, or inequality of bargaining powers as such and therefore, the principle of unconscionability or public policy cannot be culled out.

USURIOUS LOANS ACT, 1918:

41. Without further ado, there is no merit in the plea advanced by the learned counsel for the appellant that the transaction in question falls foul of the Usurious Loan Act, 1918. It would be apposite to refer to the observations made by the learned Single Judge on the said aspect of law, which read as under: -

> "31. The petitioner itself has placed reliance on Section 80 of the NI Act which, in absence of any stipulation in the Bills of Exchange, provides for payment of interest at the rate of 18% per annum. Clearly therefore, Usurious Loans Act would have no application to the transaction in question, which was. of discounting of Bill of Exchange.
>
> 32. The Arbitrator has also considered the nature of transaction in question and has held as under:
>
> > "26. The Usurious Loan Act, 1918 was followed by the Punjab Relief of Indebtedness Act, 1934 (hereinafter called "1934 Act") The said 1934 Act is applicable to the Union Territory of Delhi. Section 2(3) of the 1934 Act defines "loan" to mean "loan whether of money or kind". The question for consideration is whether the present transaction can be called a "loan". To call a transaction a loan it means lending money by one party to the other with condition to repay along with interest. In this case' the claimant had not simply lent money to the respondent No. 1. It was paid on behalf of respondent No.2 because of the business transaction entered into between respondent No.1 and 2. The respondents had a business dealing. It can also be called "commercial transaction" pursuance to which both the respondents approached the claimant to pay the price of the goods upfront to respondent No.1 on behalf of respondent No. 2 on the terms and conditions

stipulated in the sanction letters. Such a transaction which is a business transaction or a trade transaction by no stretch of imagination can be construed as "loan" as defined in sub section 3 of Section 2 of 1934 Act or section 2 of Usurious Loan Act, 1918. This being a commercial transaction or a trade transaction which happened between the two business entities on whose request claimant made payment, hence cannot be said to be a "loan". Respondent No.1 and respondent No.2 transacted business and since respondent No.2 was not in a financial position to pay to respondent No. 1 therefore respondents approached the claimant to pay to the seller the amounts of the transaction with a stipulation that the same would be repaid to the claimant along with the interest as per the terms of the sanction letters. Therefore, this tribunal is of the view that such transaction cannot be called a "loan".

xxxx

30. To arrive at the conclusion that the present transaction is neither a debt nor a loan, help can also be taken from the Punjab Debtors Protection Act, 1936 in short "Act 1936". Section 2 sub section (6) of. the Act' 1936 defines "loans" to mean an advance whether of money or in kind at agreed interest and shall include any transaction which the Court finds to be in substance a loan, but does not include

…….

(iv) a loan advanced by a bank, co-operative society or a company

whose accounts are subject to audit by a certified auditor under the Indian Companies Act) 1913;

(v) a loan advanced to a trader;

(vi) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (XXVI of 1881), other than a promissory note;

31. Sub section (8) of section 2 of Act 1936 also defines the expression "trader" as used in section 2(vi), to mean a person who

in the regular course of business buys and sells the goods or other property, whether moveable or immoveable and shall include six categories (i) a wholesale or retail merchant, commission agent, a broker, a manufacturer, a contractor, a factory owner but shall not include a person who sells his own agriculture produce or cattle or buys agriculture produce or cattle for his own use. In the present case the respondent No. l and 2 are in the business

> where one bought the goods of the other. Therefore, respondents are traders.
> 32. For the reasons stated above, I am of the considered view that the transaction in question was neither a loan nor debt. It was a simple commercial transaction in which one respondent sold its goods and the other respondent bought it. They jointly approached the claimant to pay on behalf of respondent No.2 and provide bill discounting facility."
>
> 33. I am in agreement with the findings of the Arbitrator. The provisions of the Act, especially Section 31(7) and the provisions of NI Act would clearly show that the transaction in question would not fall within the ambit of the Usurious Loans Act."

42. We find that there is not an iota of patent illegality in the aforesaid reasoning spelled out by learned Single Judge except for a typographical error that the learned judge was referring to Section 31(7) of the A& C Act. The Usurious Loan Act, 1918 as followed by the Punjab Relief of Indebtedness Act, 1934, were promulgated in a different era and the power of the Court to adjudicate if the interest on a loan amount is excessive has to give way in view of the plenary powers of the Courts provided under the later enactment i.e., the Arbitration & Conciliation Act. Unhesitatingly, the transactions between the parties whereby payments were made for supply of goods to the appellant by the respondent/claimant were not in the nature of a loan or an advance. In essence, the respondent/claimant had been making payment to the appellant for the supply of goods to BDDL and such payments were purely in the nature of commercial transactions as amongst the parties. Both parties, the appellant herein/BPL and the respondent No.2/BDDL evidently approached the respondent/ claimant for providing bill discounting facilities and agreed to their

joint and several liabilities towards the discounting of the Bills of Exchanges.

FINAL ORDER:

43. In view of the foregoing discussion, this Court finds that neither the learned Arbitrator nor the learned Single Judge, while adjudicating the issues raised by the rival parties, has committed any patent illegality or perversity that go to the root of the matter. The arbitral award, although, has granted interest at a rate which is on the higher side, cannot be held to be so unfair and unreasonable so as to shock the conscience of this Court. There is nothing to suggest that the Award is opposed to public policy, and therefore, inexecutable.

42. In view of the above, the instant appeal is dismissed, thereby holding that there is no illegality, infirmity or incorrect approach adopted by the learned Single Judge in passing the impugned order dated 18.12.2018, thereby awarding a sum of Rs. 7,27,05,579/- and Rs. 20,62,28,681/- with interest as applicable in accordance with the terms of the agreements/Sanction Letters from the date these amounts became due till the date of the award as well as interest @ 10% per annum from the date of the award till realization.

43. The parties are left to bear their own costs.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

JULY 19, 2024
Sadiq

Annexure 'A'

SN	No. of Invoice	Date of Invoice	Amount of Invoice (In Rs.)	Bill of Exchange No.	Amount on Bill of Exchange (In Rs.)	Date of Bill of Exchange	Due Date	Expiry of Limitation
1	6411	02.12.2002	1786400	OMR/001	1786400	17.10.03	15.03.04	15.03.07
2	6412	02.12.2002	2041600	OMR/002	2041600	17.10.03	15.03.04	15.03.07
3	6413	02.12.2002	1893120	OMR/003	1893120	17.10.03	13.03.04	13.03.07
4	6422	03.12.2002	2041600	OMR/004	2041600	17.10.03	12.03.04	12.03.07
5			3190000	NOI/001	3190000	17.10.03	11.03.04	11.03.07
6	6657 6654 6550 6549	29.12.2002 28.12.2002 16.12.2002 16.12.2002	255200 255200 638000 591600 **1740000**	NOI/004	1740000	17.10.03	10.03.04	10.03.07
7	6525 6499 6498	13.12.2002 11.12.2002 11.12.2002	1276000 255200 255200 **1786400**	NOI/005	1786400	17.10.03	09.03.04	09.03.07
8	6427 6426	03.12.2002 03.12.2002	1148400 591600 **1740000**	OMR/005	1740000	17.10.03	08.03.04	08.03.07
9	6947	06.02.2003	1893120	PKD/001	1893120	17.10.03	12.03.04	12.03.07
10	6950	06.02.2003	1893120	PKD/002	1893120	17.10.03	06.03.04	06.03.07
11	6660 6673	30.12.2002 30.12.2002	1183200 1183200 **2366400**	NOI/003	2366400	17.10.03	05.03.04	05.03.07
12	6784	18.01.2003	2041600	OMR/006	2041600	17.10.03	04.03.04	04.03.07
13	6787	18.01.2003	2041600	OMR/007	2041600	17.10.03	03.03.04	03.03.07
14	6789	18.01.2003	1990560	OMR/008	1990560	17.10.03	02.03.04	02.03.07
15	6803	21.01.2003	1893120	OMR/011	1893120	17.10.03	01.03.04	01.03.07
16	6708 6709	08.01.2003 08.01.2003	1276000 382800 **1658800**	NOI/002	1658800	17.10.03	13.03.04	13.03.07
17	6755 6756 6757 6766	16.01.2003 16.01.2003 16.01.2003 17.01.2003	381408 254272 254272 1276000 **2165952**	NOI/006	2165952	17.10.03	28.02.04	28.02.07

18	6816 6817 6766	24.01.2003 24.01.2003 25.01.2003	591600 638000 1276000 **2505600**	NOI/007	2505600	17.10.03	27.02.04	27.02.07
19	6865	29.01.2003	591600 638000 **1229600**	NOI/008	1229600	17.10.03	26.02.04	26.02.07
20	8070	01.08.2003	1753920	OMR/013	1753920	17.10.03	25.02.04	25.02.07
21			1160000	OMR/014	1160000	17.10.03	24.02.04	24.02.07
22			1624000	OMR/015	1624000	17.10.03	26.02.04	26.02.07
23	7621	01.05.2003	1624000	OMR/016	1624000	17.10.03	26.02.04	26.02.07
24			1519693	OMR/017	1519693	17.10.03	21.02.04	21.02.07
25	7923 7924 7965 7966 8027	01.07.2003 01.07.2003 12.07.2003 12.07.2003 22.07.2003	378624 302899 328141 252416 1009664 **2271744**	NOI/009	2271744	17.10.03	20.02.04	20.02.07
26	7898 7899	26.06.2003 26.06.2003	1286208 185600 **1471808**	PKD/006	1471808	17.10.03	19.02.04	19.02.07
27	8047	26.07.2003	1729792	PKD/007	1729792	17.10.03	18.02.04	18.02.07
28	8055	28.07.2003	1729792	PKD/008	1729792	17.10.03	17.02.04	17.02.07
29			2041600	OMR/009	2041600	17.10.03	16.02.04	16.02.07
30			2041600	OMR/010	2041600	17.10.03	02.03.04	02.03.07
31	6804	21.01.2003	1786400	OMR/012	1786400	17.10.03	10.03.04	10.03.07
32	6762	16.01.2003	1893120	PKD/003	1893120	17.10.03	09.03.04	09.03.07
33	6767	17.01.2003	1893120	PKD/004	1893120	17.10.03	08.03.04	08.03.07
34			1893120	PKD/005	1893120	17.10.03	05.03.04	05.03.07
35	9083 9097	17.12.2003 18.12.2003	1925786 1784730 **3710516**	OMR/022	3710516	19.04.04	16.09.04	16.09.07
36	9110 9111	19.12.2003	1925786 1784730 **3710516**	OMR/023	3710516	19.04.04	15.09.04	15.09.07
37	9149 9158	21.12.2003 22.12.2003	1784730 1784730 **3569460**	OMR/025	3569460	19.04.04	14.09.04	14.09.07
38	9326 9327	02.01.2004 02.01.2004	1784730 1781760 **3569490**	OMR/027	3569490	19.04.04	13.09.04	13.09.07

Annexure 'B'

Amount Outstanding	Interest as on Due (10.8.2007)	Date of Payment Recd.	Payment Recd.	Due Date	Net Due	Hundi No.
1,967,360	2,089,436	3-Mar-04	1,967,360	5-Jun-03	2,089,436	PKD22
1,967,360	2,098,268	3-Mar-04	1,967,360	4-Jun-03	2,098,268	PKD23
1,967,360	2,107,099	3-Mar-04	1,967,360	3-Jun-03	2,107,099	PKD24
1,967,360	2,115,931	3-Mar-04	1,967,360	2-Jun-03	2,115,931	PKD25
2,459,200	2,804,768	23-Feb-04	2,459,200	14-May-03	2,804,768	NOI54
2,644,800	3,001,790	23-Feb-04	2,644,800	8-May-03	3,001,790	NOI55
2,816,480	3,211,964	10-Feb-04	2,816,480	2-May-03	3,211,964	NOI56
1,967,360	2,080,604	3-Mar-04	1,967,360	6-Jun-03	2,080,604	PKD21
1,967,360	2,133,594	3-Mar-04	1,967,360	31-May-03	2,133,594	PKD26
1,967,360	2,151,258	3-Mar-04	1,967,360	29-May-03	2,151,258	PKD27
1,967,360	2,116,060	3-Mar-04	1,967,360	29-May-03	2,116,060	PKD28
2,115,840	2,279,404	23-Feb-04	2,115,840	28-May-03	2,279,404	PKD29
2,115,840	2,298,512	23-Feb-04	2,115,840	26-May-03	2,298,512	PKD30
2,115,840	2,327,173	23-Feb-04	2,115,840	23-May-03	2,327,173	PKD31
2,552,000	2,887,561	23-Feb-04	2,552,000	16-May-03	2,887,561	NOI86
1,276,000	1,443,781	23-Feb-04	1,276,000	16-May-03	1,443,781	NOI87
1,967,360	1,999,007	5-Mar-04	1,967,360	17-Jun-03	1,999,007	PKD32
1,967,360	2,007,565	5-Mar-04	1,967,360	16-Jun-03	2,007,565	PKD33
1,967,360	2,023,664	5-Mar-04	1,967,360	13-Jun-03	2,023,664	PKD34
1,967,360	1,990,450	5-Mar-04	1,967,360	18-Jun-03	1,990,450	PKD35
2,115,840	2,011,822	5-Mar-04	2,115,840	2-Jul-03	2,011,822	OMR28
2,115,840	3,071,073	5-Mar-04	1,688,181	30-Jun-03	3,498,732	OMR29
2,115,840	2,076,247	7-May-04	2,115,840	25-Jun-03	2,076,247	OMR30
1,322,400	1,555,348	7-May-04	1,322,400	27-Jun-03	1,555,548	NOI89
2,115,840	2,515,989	7-May-04	2,115,840	24-Jun-03	2,515,989	OMR31
2,023,040	2,388,073	7-May-04	2,023,040	26-Jun-03	2,388,073	OMR32
2,115,840	2,451,690	7-May-04	2,115,840	1-Jul-03	2,451,690	OMR33
1,721,440	5,817,864			3-Jul-03	7,539,304	OMR35
2,060,160	3,270,597	7-May-04	1,652,040	4-Jul-03	3,678,717	OMR34
1,753,920	2,485,343	10-Aug-05	1,753,920	25-Feb-04	2,485,343	OMR13
1,100,000	1,645,375	10-Aug-05	1,160,000	24-Feb-04	1,645,375	OMR14
1,624,000	2,309,035	31-Aug-05	1,624,000	23-Feb-04	2,309,035	OMR15
1,624,000	2,360,869	31-Aug-05	1,624,000	26-Feb-04	2,360,869	OMR16
1,519,693	2,235,249	31-Aug-05	1,519,693	21-Feb-04	2,235,249	OMR17
1,471,808	3,662,420			19-Feb-04	5,134,228	PKD6
1,729,792	4,310,369			18-Feb-04	6,040,161	PKD7

1,729,792	4,316,355			17-Feb-04	6,046,147	PKD8
2,271,744	5,645,104			20-Feb-04	7,916,848	NOI9
1,658,800	3,568,458	31-Aug-05	425,267	13-Mar-04	4,801,991	NOI2
2,165,952	5,323,913			28-Feb-04	7,489,865	NOI6
2,505,600	6,167,338			27-Feb-04	8,672,938	NOI7
1,229,600	3,029,927			26-Feb-04	4,259,527	NOI8
2,041,600	4,982,599			4-Mar-04	7,024,199	OMR6
2,041,600	4,989,459			3-Mar-04	7,031,059	OMR7
1,990,560	4,871,410			2-Mar-04	6,861,970	OMR8
1,893,120	2,646,705	10-Aug-05	1,893,120	1-Mar-04	2,646,705	OMR11
1,740,000	4,223,149			8-Mar-04	5,963,149	OMR5
1,893,120	4,569,250			12-Mar-04	6,462,370	PKD1
1,893,120	4,607,507			6-Mar-04	6,500,627	PKD2
2,366,400	5,767,335			5-Mar-04	8,133,735	NOI3
1,786,400	4,293,751			15-Mar-04	6,080,151	OMR1
2,041,600	4,907,144			15-Mar-04	6,948,744	OMR2
1,893,120	849,030	3-Aug-04	1,893,120	13-Mar-04	849,030	OMR3
2,041,600	4,927,723			12-Mar-04	6,969,323	OMR4
3,190,000	7,710,285			11-Mar-04	10,900,285	NOI1
1,740,000	4,211,456			10-Mar-04	5,951,456	NOI4
1,786,400	4,329,764			9-Mar-04	6,116,164	NOI5
1,786,400	4,323,762			10-Mar-04	6,110,162	OMR12
1,893,120	4,588,425			9-Mar-04	6,481,545	PKD3
1,893,120	4,594,786			8-Mar-04	6,487,906	PKD4
3,710,516	487,262	3-Nov-04	3,710,516	16-Sep-04	487,262	OMR22
3,710,516	6,824,334		0	15-Sep-04	10,534,850	OMR23
3,569,460	6,574,949		0	14-Sep-04	10,144,409	OMR25
3,566,490	6,579,514		0	13-Sep-04	10,146,004	OMR27
132,323,523	**219,245,945**		**72,456,977**		**279,112,491**	
SUMMARY		**UPTO 10, Aug 2007**				
TOTAL AMOUNT RECOVERABLE WITH PENAL INTEREST					351,569,468	
LESS:						
TOTAL AMOUNT RECEIVED					72,456,977	
MARGIN MONEY HELD BY US					**178232**	
BALANCE AMOUNT RECOVERABLE					**278,934,259**	