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

Decided on: 04.10.2024

\+ ARB. A. (COMM.) 48/2024 & I.As. 39812-39814/2024

LAVA INTERNATIONAL LIMITED .....Petitioner

Through: Mr. Sonal Kumar Singh, Mr. Abhay Raj Verma, Mr. Ratik Sharma, Mr. Arjun Rekhi, Mr. Parth Sidhwani & Mr. Ritesh, Advocates.

versus

MINTELLECTUALS LLP .....Respondent

Through: Mr. Samrat Nigam & Ms. Arpita Rawat, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. This appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 ["the Act"], is directed against two orders passed by a three-member arbitral tribunal under Section 17 of the Act.

A. Facts:

2. The arbitration proceedings arise out of disputes between the parties under an agreement dated 01.07.2017 entitled "*Research and Collaboration Agreement*". The agreement was for a period of five years i.e., 20 quarters, which have been referred by the parties as Quarters 1 to 20.

3. The respondent, which is the claimant in the arbitration, *inter alia*

contends that quarterly payments of royalty were to be made to it in respect of sales of "*Covered Devices"* sold by the appellant and/or its affiliates, and that the appellant was required to submit quarterly reports with regard to such sales. The impugned orders are in respect of the respondent's claims for the 12th to 20th Quarters.

4. An earlier round of arbitration took place with regard to the respondent's claims for royalty for the 2nd to 5th Quarters. This culminated in an award dated 15.07.2020 against the appellant, for a total sum of Rs. 47.18 crores[1]. The appellant has challenged the award in O.M.P.(COMM) 437/2020, which remains pending.

5. During the pendency of those proceedings, similar disputes arose for subsequent quarters. The respondent filed a petition under Section 9 of the Act before this Court [O.M.P(I)(COMM) 305/2019] seeking security for a sum of Rs.11,31,09,035.38/- towards royalty for the 6th, 7th and 8th Quarters. On 26.09.2019, the appellant undertook before this Court to secure the said claim by furnishing a cheque. After invocation of the arbitration clause, the tribunal was constituted and, by an order dated 12.12.2019, the Section 9 petition was directed to be treated as an application under Section 17 of the Act. The application was ultimately disposed of by a consent order passed by the tribunal on 02.03.2020, continuing the order passed by this Court.

6. The respondent thereafter made another application under Section 17 of the Act, seeking directions for security relating to royalty for the 9th,10th and 11th Quarters. By an order dated 10.01.2021, the application

[1]Total amount awarded against invoices raised for the sales in 4th Quarter [Claim A], 5th Quarter [Claim C] and by the appellant's Affiliates. The amount also includes pre-award and post-award interest.

was disposed of, directing the appellant to furnish similar security i.e., security in the form of a cheque for the same amount as in the earlier orders. The tribunal rejected the respondent's request for enhancement of the security amount, or for change in the nature of the security. The respondent subsequently filed two applications for the same purpose, which were also rejected by order dated 15.09.2021. However, on a further application for clarification moved by the respondent, the tribunal passed an order dated 29.11.2021, granting liberty to the respondent to move a fresh application.

7. The respondent filed an appeal before this Court against the order dated 15.09.2021 [ARB A. (COMM) 76/2021], which was disposed of by an order dated 12.07.2024, permitting the respondent to approach the tribunal for clarification. I am informed that such an application has recently been made, and remains pending.

8. The impugned orders dated 26.05.2024 and 03.08.2024 arise out of yet another application made by the respondent, this time for security over its claims for the 12th to 20th Quarters. By the first of the impugned orders, the arbitral tribunal directed the appellant to offer security to the tune of Rs.62.154 crores for the aforesaid nine quarters, in the form of bank guarantee or any other suitable security, failing which the appellant was to furnish a bank guarantee in the same amount. By the second of these orders, the tribunal rejected the appellant's offer of security in the form of a cheque accompanied by a Positive Pay Confirmation ["PPC"], and an undertaking that the cheque would be honoured upon presentation, if found due and payable, as well as a corporate guarantee. The appellant was however granted a further period of fifteen days to furnish robust,

movable or immovable security, failing which security would have to be furnished in the form of a bank guarantee.

9. The respondent has filed for enforcement of the order dated 26.05.2024 [OMP (ENF) (COMM) 147/2024], which remains pending.

B. Scope of the Challenge:

10. I have heard Mr. Sonal Kumar Singh, learned counsel for the appellant, and Mr. Samrat Nigam, learned counsel for the respondent.

11. The grievance of the appellant against the two impugned orders is with regard to the enhanced quantum of security and the change in the form of security, from a cheque to a more robust security or a bank guarantee. It is the contention of Mr. Singh that such orders have been passed without due regard to the principles underlying Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 ["CPC"], and also revisit the learned arbitral tribunal's own earlier orders, by which it declined to enhance the quantum of security or alter its form. Mr. Singh further submits that the appellant is in good financial health and no orders of this nature were at all required. He also argued that the impugned orders are devoid of reasons.

C. Analysis:

(i) Scope of interference under Section 37(2)(b)

12. Before dealing with these contentions, it may be noticed that the scope of interference with orders passed under Section 17 of the Act is limited. This Court has had occasion to examine the width of the appellate jurisdiction under Section 37(2)(b) of the Act, and held that a discretionary interim order of an arbitral tribunal ought to be interdicted

only if it is perverse or manifestly arbitrary[2]. These conclusions rest both on the overarching principles of party autonomy and minimal curial intervention, which inform interpretation of the Act, and upon general principles governing the exercise of appellate power against discretionary orders, as explained by the Supreme Court in *Wander Ltd. v. Antox India (P) Ltd.*[3]

13. Reference may be made to the judgment of this Court in *Dinesh Gupta v. Anand Gupta*[4], wherein this Court considered the matter with reference to Section 5 of the Act, and the generally limited nature of the Court's power in relation to arbitration proceedings, to conclude as follows:

> *"60. In the opinion of this Court, another important, and peculiar, feature of the 1996 Act, which must necessarily inform the approach of the High Court, is that the 1996 Act provides for an appeal against interlocutory orders, whereas the final award is not amenable to any appeal, but only to objections under Section 34. If the submission of Mr. Nayar, as advanced, were to be accepted, it would imply that the jurisdiction of the Court, over the interlocutory decision of the arbitrator, would be much wider than the jurisdiction against the final award. Though, jurisprudential, perhaps, such a position may not be objectionable, it does appear incongruous, and opposed to the well settled principle that the scope of interference with interim orders, is, ordinarily much more restricted than the scope of interference with the final judgment.*
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> *xxxx xxxx xxxx*
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> *64**. There can be no gainsaying the proposition, therefore, that, while exercising any kind of jurisdiction, over arbitral orders, or arbitral awards, whether interim or final, or with the arbitral process itself, the Court is required to maintain an extremely***

[2] *Green Infra Wind Energy Ltd. v. Regen Powertech Pvt. Ltd.* [2018 SCC OnLine Del 8273], *Dinesh Gupta v. Anand Gupta* [2020 SCC OnLine Del 2099], *Sona Corporation India Pvt. Ltd. v. Ingram Micro India Pvt. Ltd.* [2020 SCC OnLine Del 300] and *Sanjay Arora v. Rajan Chadha* [2021 SCC OnLine Del 4619].
[3] 1990 Supp SCC 727.
[4] 2020 SCC OnLine Del 2099.

> ***circumspect approach.*** *It is always required to be borne, in mind, that arbitration is intended to be an avenue for "alternative dispute resolution", and not a means to multiply, or foster, further disputes. Where, therefore, the arbitrator resolves the dispute, that resolution is entitled to due respect and, save and except for the reasons explicitly set out in the body of the 1996 Act, is, ordinarily immune from judicial interference.*
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> *xxxx xxxx xxxx*
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> *66. In my opinion, this principle has to guide, strongly, the approach of this Court, while dealing with a challenge such as the present, which is directed against an order which, at an interlocutory stage, merely directing furnishing of security, by one of the parties to the dispute. The power, of the learned Sole Arbitrator, to direct furnishing of security, is not under question; indeed, in view of sub-clause (b) of Section 17(1)(ii) of the 1996 Act, it cannot. The arbitrator is, under the said sub-clause, entirely within his jurisdiction in securing the amount in dispute in the arbitration. Whether, in exercising such jurisdiction, the arbitrator has acted in accordance with law, or not, can, of course, always be questioned. While examining such a challenge, however, the Court has to be mindful of its limitations, in interfering with the decision of the arbitrator, especially a decision taken at the discretionary level, and at an interlocutory stage."*[5]

14. In *Sanjay Arora v. Rajan Chadha*[6], the Court went on to hold as follows:

> *"19. This Court has already opined, in Dinesh Gupta v. Anand Gupta (Supra) and Augmont Gold (P) Ltd. v. One97 Communication Ltd (Supra). that the* ***considerations guiding exercise of appellate jurisdiction under Section 37(2)(b) are, fundamentally, not really different from those which govern exercise of jurisdiction under Section 34 of the 1996 Act.***
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> *20****. It is only, therefore, where the order suffers from patent illegality or perversity that the court would interfere with the order of the learned Arbitral Tribunal, under Section 37(2)(b).*** *This is because, unlike appeals under other statutes or under the CPC, appeals against orders of Arbitral Tribunal are subject to the overarching limitations contained in Section 5 of the 1996*

[5] Emphasis supplied.
[6] 2021 SCC OnLine Del 4619.

> *Act, read with the Preamble thereto, which proscribes interference, by courts, with the arbitral process, or with orders passed by learned Arbitral Tribunal, save and except on the limited grounds envisaged in the 1996 Act itself."*[7]

15. The arguments advanced by Mr. Singh, on behalf of the appellant, must be viewed from this perspective.

(ii) Application of Order XXXVIII Rule 5 of the CPC

16. Turning first to the question of adherence to the principles of Order XXXVIII Rule 5 of CPC, the arbitral tribunal has cited the judgment of the Supreme Court in *Essar House (P) Ltd. v. Arcellor Mittal Nippon Steel India Ltd.* [8], which *inter alia* approved the Division Bench decisions of this Court in *Ajay Singh v. Kal Airways Private Limited*[9], and of the Bombay High Court in *Jagdish Ahuja v. Cupino Limited*[10]. These judgments emphasise the broad nature of the powers under Section 9 of the Act, which was held not to be strictly bound by the text of Order XXXVIII and XXXIX of CPC. However, discretion has to be exercised judiciously and on the basis of sound legal principles, for which the provisions of the CPC provide valuable guidance. Paragraphs 49 and 50 of the judgment in *Essar House*[11] read as follows:

> *"49. If a strong prima facie case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments, incorporating the grounds for attachment before judgment under Order 38 Rule 5 of the CPC.*
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> *50. Proof of actual attempts to deal with, remove or dispose of the property with a view to defeat or delay the realisation of an impending*

[7] Emphasis supplied.
[8] 2022 SCC OnLine SC 1219.
[9] 2017 SCC OnLine Del 8934.
[10] 2020 SCC OnLine Bom 849.
[11] Supra (note 8).

> *Arbitral Award is not imperative for grant of relief under Section 9 of the Arbitration Act. A strong possibility of diminution of assets would suffice. To assess the balance of convenience, the Court is required to examine and weigh the consequences of refusal of interim relief to the applicant for interim relief in case of success in the proceedings, against the consequence of grant of the interim relief to the opponent in case the proceedings should ultimately fail."*

17. Mr. Singh referred me to a Division Bench decision of this Court in *Skypower Solar India (P) Ltd. v. Sterling and Wilson International FZE*[12], which considers *Essar House*[13]. He contended that this Court has held the provisions of the CPC to be strictly applicable to grant of interim relief in arbitral proceedings also. I do not, however, find such a reading of *Skypower*[14] to be justified, upon examination of the judgment holistically. In *Skypower*[15], the Division Bench explains and elaborates upon the abovementioned observations of the Supreme Court in *Essar House*[16]. While analysing the judgments on the scope of Section 9 of the Act and the applicability of the CPC, the Division Bench noted that the Court is not strictly bound by the principles of the CPC, although guided by the same principles in determination of the appropriate interim measures of protection. The relevant paragraphs of *Skypower*[17] read as follows:

> *"65. In Essar House (P) Ltd. v. Arcellor Mittal Nippon Steel India Ltd. [Essar House (P) Ltd. v. Arcellor Mittal Nippon Steel India Ltd., 2022 SCC OnLine SC 1219], the Supreme Court had approved the view of this Court in Ajay Singh case [Ajay Singh v. Kal Airways (P) Ltd., (2018) 209 Comp Cas 154 : 2017 SCC OnLine Del 8934] that Section 9 of the A&C Act grants wide powers to the courts in fashioning an appropriate interim order. However, it is material to note that in Ajay Singh v. Kal Airways (P) Ltd. [Ajay Singh v. Kal Airways (P) Ltd.,*

[12] 2023 SCC OnLine Del 7240. The judgment in *Skypower* was carried to the Supreme Court in SLP(C) 6437-38/2023, which was dismissed by order dated 08.04.2024.
[13] Supra (note 8).
[14] Supra (note 12).
[15] Supra (note 12).
[16] Supra (note 8).
[17] Supra (note 12).

> *(2018) 209 Comp Cas 154 : 2017 SCC OnLine Del 8934] ,* ***this Court had also stressed that the exercise of such power should be "principled, premised on some known guidelines." The reference to Orders 38 and 39 CPC was in the aforesaid context. However, the court was not bound by the text of those provisions but had to follow the underlying principles.*** *The decision of the Bombay High Court in Jagdish Ahuja v. Cupino Ltd. [Jagdish Ahuja v. Cupino Ltd., 2020 SCC OnLine Bom 849] is not materially different. The reading of the said decision indicates that the court had followed its earlier decision in Nimbus Communications Ltd. v. BCCI [Nimbus Communications Ltd. v. BCCI, 2012 SCC OnLine Bom 287] and emphasised that the court while exercising the powers under Section 9 of the A&C Act has the discretion to grant a wide range of interim measures of protection.* ***However, the court was required to be guided by the principles which the civil courts ordinarily employ for considering interim relief, particularly, under Order 39 Rules 1 and 2 and Order 38 Rule 5CPC. However, the court reiterated the view that, in exercise of powers under Section 9 of the A&C Act, the court is "not unduly bound by their texts".*** *This is, essentially, the same view as expressed by this Court in Ajay Singh case [Ajay Singh v. Kal Airways (P) Ltd., (2018) 209 Comp Cas 154 : 2017 SCC OnLine Del 8934] .*
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> *xxx xxx xxx*
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> *69….. The law in regard to issuing orders in the nature of securing the claims made by a party are now well-settled.* ***Whilst the court is not unduly bound by the texts or Order 38 Rules 1 and 2 or Order 38 Rule 5 or any other provisions of CPC, the substantial principles for grant of such interim measures cannot be disregarded.*** *These principles must be duly satisfied for the court to issue any interim measures of protection under Section 9 of the A&C Act."*[18]

18. Dealing particularly with *Essar House*[19], the Court came to the following conclusion:

> "*…Thus, the underlying principle that the interim orders for securing a claimant in an arbitral proceeding can be made only in cases where the court is prima facie satisfied that but for securing the claimant, it would be unable to reap the benefits of a favourable award, was satisfied in that case.*"[20]

19. The Division Bench thus proceeded on the basis that the underlying

[18] Emphasis supplied.
[19] Supra (note 8).
[20] *Skypower* (Supra note 12), paragraph 72.

substantial principle applicable to such cases, was that a claimant can be secured if the Court is *prima facie* satisfied that it would otherwise be unable to reap the benefits of a favourable award. This is the ratio of *Essar House*[21], as explained in *Skypower*[22]. This condition was found to be established on the facts of *Essar House*[23]. However, the judgment of the learned Single Judge in *Skypower*[24] was set aside, as no observations or findings to this effect had been made. The Division Bench noted[25] that the learned Single Judge had not rendered a finding that the claimant/petitioner would be unable to enforce an arbitral award that may be made in its favour, absent an order for securing the amounts in dispute.

20. Mr. Singh also referred to a judgment of the Coordinate Bench in *Natrip Implementation Society v. IVRCL Ltd.*[26]. However, that judgment has also been considered in *Skypower*[27], and it is therefore unnecessary to refer to it in detail.

21. In the case at hand, the arbitral tribunal has rendered specific findings with regard to diminution in the liquidity position of the appellant, which are sufficient to establish that, in the opinion of the tribunal, security is necessary to ensure that the respondent is ultimately able to realise any award that may be made in its favour. The tribunal has also noted that earlier orders for grant of security were made despite

[21] Supra (note 8).
[22] *Skypower* Supra (note 12), paragraph 72.
[23] Supra (note 8).
[24] Supra (note 12).
[25] *Skypower* (Supra note 12), paragraph 49.
[26] 2016 SCC OnLine Del 5023. [some additional judgments have been cited in written submissions filed by the appellant, and included in a compilation of authorities, but were not relied upon by Mr. Singh during the course of arguments.]
[27] Supra (note 12).

similar arguments advanced by the appellant. Those orders have remained unchallenged by the appellant. In my view, the rationale offered by the tribunal in the order dated 26.05.2024 is sufficient to satisfy the tests laid down in *Essar House*[28] and *Skypower*[29].

(iii) Re: Quantum of security

22. With regard to the quantum of security, the earlier amount of Rs.11,31,09,035.38/-, for three quarters, was fixed keeping in mind the sales report of the appellant for the 6th, 7th and 8th Quarters. In the absence of any material regarding the actual sales figures for the 9th, 10th and 11th Quarters, the same amount was adopted for those quarters as well. However, the situation was materially different for the quarters under consideration in the impugned orders, as the sales figures for 2020-21 were available with the tribunal, in the form of audited accounts of the appellant. The respondent contended that those sales figures revealed sales of Rs.5524 crores. Consequently, it sought security of 1% of the said amount i.e. Rs.55.24 crores, for 12th to 15th Quarters (01.04.2020 to 31.03.2021), and on the same basis for the 16th to 20th Quarters also.[30]

22. The appellant resisted enhancement in the quantum of security *inter alia* on the ground that all its revenues were not derived from sale of "*Covered Devices*" as defined in the contract. It was also submitted that the tribunal ought to follow the same approach as it did in the order dated

[28] Supra (note 8).
[29] Supra (note 12).
[30] It may be mentioned that the appellant has annexed various documents relating to its financial position, subsequent to the materials considered by the arbitral tribunal, with its appeal. Over 200 pages of documents have been filed as Document – 27. Mr. Singh clarified that these were not before the arbitral tribunal, and he has therefore refrained from referring to the said documents. I have also not considered Mr. Nigam's submissions based on the said documents, which were not before the arbitral

15.09.2021, to reject any increase in the quantum.

23. The tribunal has, in my view, committed no error in taking into account the later sales figures disclosed by the appellant. The figure of Rs. 5524 crores for four quarters was borne out by the appellant's own accounts. This figure has been adjusted, to the extent of 50%, accepting the appellant's contention that it includes sales of non-covered devices also. The security to be offered has thus been computed on the basis of half the said figure, to arrive at the figure of Rs. 62.145 crores for the nine quarters in question.

24. The order for furnishing a security is not a final determination of liability, but an interim arrangement to ensure that the award, if ultimately made, is enforceable. No precise analysis of quantum is necessary at this stage, or indeed possible at a pre-evidence stage of proceedings. The tribunal has relied upon the audited financial statements of the appellant itself, and adjusted it to the extent of 50% on account of non-covered devices. The ultimate amount payable, if any, is yet to be determined, but the documents relied upon provide a reasonable basis for the directions made by the tribunal as to quantum of security

(iv) Nature of security

25. With regard to the form of security, the learned arbitral tribunal noticed the submissions of the respondent that a large amount of the sales revenue of the appellant had been shifted to bank accounts outside India, that its cash flow had been reduced, and that it was liable to pay a sum of Rs.320 crores as on 30.06.2022 in respect of a consent award passed

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tribunal.

between it and a third party[31]. This Court has also delivered a judgment dated 28.03.2024 in CS(COMM) 1148/2016[32], assessing damages of approximately Rs.244 crores against the appellant. The said judgment is under appeal, but has not been stayed. The appellant does not dispute the aforesaid factual position, although the extent of its liability is disputed, to a relatively small extent.

26. The materials placed on record led the tribunal to the conclusion that there has been a drop in the liquidity available with the appellant, and security in the form of a cheque would not serve the purpose. However, in the order dated 26.05.2024, the appellant was given an opportunity to offer *"suitable security"* within fifteen days, failing which it would be liable to furnish a bank guarantee within fifteen days thereafter.

27. The appellant responded by an e-mail dated 12.06.2024, offering security in the form of a cheque, PPC, undertaking and corporate guarantee. Although the communication was belated by two days, the tribunal condoned the delay by the second impugned order dated 03.08.2024. However, the tribunal found that the security of a cheque alongwith the PPC had already been rejected by the order dated 26.05.2024. The undertaking and corporate guarantee were also found to be unrelated to any specific asset, and therefore non-compliant with the order dated 26.05.2024. The arbitral tribunal, however, granted the appellant a further opportunity of fifteen days to furnish security *"in the form of some of robust, movable/immovable asset(s) of the value of Rs.62.154 crores"*, failing which it would be required to furnish a bank

[31] *Telefonaktiebolaget L.M. Ericson v. Lava International Ltd.*
[32] *Telefonaktiebolaget Lm Ericsson(Publ) v. Lava International Ltd & connected matters.*

guarantee.

28. I find no error in the approach of the arbitral tribunal. The tribunal has noted various events, including the consent award dated 08.09.2021 for Rs. 235 crores and the decree dated 28.03.2024 passed by this Court, which are factually undisputed. The tribunal's conclusion that a cheque may not, in these circumstances, continue to provide adequate security, is not perverse or arbitrary, so as to invite interference of this Court under Section 37 of the Act. The tribunal therefore required a "suitable security", i.e.one backed up by a specific asset against which the award, if any, can potentially be satisfied. The additional offer of a corporate guarantee has also, in my view, been rightly rejected by the order dated 03.08.2024, as it is not tied to any asset of the appellant. The tribunal gave the appellant more than one opportunity to offer robust and reliable security. The appellant has failed to do so and no fault can be found with the direction of the tribunal that a bank guarantee must be furnished in these circumstances.

(v) Additional points raised:

29. Mr. Singh has raised a grievance that the earlier orders of the tribunal, outlined above, have been ignored in the impugned orders dated 26.05.2024 and 03.08.2024. The submission is misconceived; as discussed above, the tribunal has come to a specific finding that circumstances have changed on both counts.

30. Mr. Singh's argument with regard to lack of reasons in the orders of the tribunal, is also unmerited. The tribunal has articulated the grounds mentioned above, both for a decision on quantum and nature of security. In analysing the requirement of reasons for an award of an arbitral

tribunal, the approach of the Court has been explained in the recent decision of the Supreme Court in – *OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited & Anr*[33], as follows:

> *"71.2 On the requirement of recording reasons in an arbitral award and consequences of lack of, or inadequate, reasons in an arbitral award, this Court in Dyna Technologies Private Limited v. Crompton Greaves Limited [(2019) 20 SCC 1] held:*
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> > *"34. The mandate under section 31 (3) of the Arbitration Act is to have* ***reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if need be.*** *The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.*
> >
> > *35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided in section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all.* ***Coming to the last aspect concerning the challenge on adequacy of reasons, the court while exercising jurisdiction under section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the tribunal, the court needs to have regard to the document submitted by the parties and the contentions raised before the tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner.*** *On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore,*

[33] Civil Appeals no. 3981-3982 of 2024, decided on 20.09.2024.

> *the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards."*
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> *71.3. We find ourselves in agreement with the view taken in Dyna Technologies (supra), as extracted above. Therefore, in our view, for the purposes of addressing an application to set aside an arbitral award on the ground of improper or inadequate reasons, or lack of reasons, awards can broadly be placed in three categories:*
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> *(1) where no reasons are recorded, or the reasons recorded are unintelligible; (2) where reasons are improper, that is, they reveal a flaw in the decision- making process; and (3)* ***where reasons appear inadequate.***
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> *xxxx* *xxxx* *xxxx*
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> *71.6. Awards falling in category (3) require to be dealt with care. In a* ***challenge to such award, before taking a decision the Court must take into consideration the nature of the issues arising between the parties in the arbitral proceedings and the degree of reasoning required to address them****. The Court must thereafter carefully peruse the award, and the documents referred to therein.* ***If reasons are intelligible and adequate on a fair-reading of the award and, in appropriate cases, implicit in the documents referred to therein, the award is not to be set aside for inadequacy of reasons.*** *However, if gaps are such that they render the reasoning in support of the award unintelligible, or lacking, the Court exercising power under Section 34 may set aside the award."*[34]

In the present case, the findings of the learned arbitral tribunal are, in my view, adequate, particularly in the context of a decision upon interim applications.

D. Conclusion:

31. For the reasons stated above, the instant appeal is without merit, and is dismissed.

PRATEEK JALAN, J

OCTOBER 4, 2024
'Bhupi/KB'/

[34] Emphasis supplied.