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

Date of decision: 30.09.2024

\+ **O.M.P. (COMM) 516/2019, I.A. 17466/2019, I.A. 1618/2023, I.A. 9134/2023**

M/S STAR SHARES & STOCK BROKERS LTD .....Petitioner

Through: Mr. Ranjan Kumar, Mr. Rajeev K. Aggarwal, Advs.

versus

PRAVEEN GUPTA & ANR. .....Respondents

Through: Mr. Rajesh Banati, Mr. Ashish Sareen, Mr. Adil Asghar, Mr. Aditya Mishra, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (*ORAL*)

1. This is a petition filed under section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the Arbitral Award dated 18.02.2019 passed in favour of respondent no. 1.

2. The facts in the present case are that the Respondent No. 1 began investing in sale and purchase of shares through M/s. Gupta Associates through its proprietor Mr. K.C. Gupta. Respondent no. 1 through Mr. K.C. Gupta deposited security amount time and time again with M/s. Gupta Associates, totalling to about Rs. 20.00 lacs as on 24.02.2001.

3. Thereafter, M/s. Gupta Associates merged with the petitioner company merged and the security deposit of Rs 20 lakhs was transferred to the books of the petitioner company with effect from 01.04.2004. The same was confirmed by the petitioner company *vide* letter dated 01.04.2004.

4. In the year 2006, the shares of respondent No. 1 with the petitioner company totalled to about Rs. 24,49,322/-. It is alleged that neither were the

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shares delivered to the respondent no. 1 nor were the sale proceeds from selling the said shares (on request of respondent no.1) were paid to the respondent no.1. In this view, respondent No. 1 filed a complaints with the NSE dated 01.06.2006 and 20.06.2006.

5. Thereafter, NSE *vide* letter dated 23.08.2006 informed the parties that they may resolve the disputes by way of arbitration.

6. Subsequently, an arbitral tribunal came to be constituted and an Award dated 10.05.2007 was passed whereby the claims of respondent No. 1 were rejected on account of being time barred.

7. Meanwhile, respondent No. 1 filed a Company petition No. 611/2007 before the Hon'ble High Court of Bombay for winding up of the petitioner company. The same was allowed *vide* order dated 21.02.2008 subject to the condition that respondent No. 1 shall fulfil the conditions imposed. Since the respondent No. 1 failed to comply with the imposed obligations, the petitioner company was not wound up.

8. Aggrieved by the findings of the Award dated 10.05.2007, the respondent no.1 preferred a petition under Section 34 of the Arbitration and Conciliation Act, 1996 bearing no. O.M.P. No. 445/2007 before this court. The same was allowed *vide* order dated 02.04.2008 and the Award dated 10.05.2007 was set aside, referring the parties to fresh arbitral proceedings.

9. The second Award came to be passed on 06.03.2009, whereby the claims of Respondent No. 1 were once again rejected on the ground that claim is time barred under the NSE Bye-Laws.

10. Aggrieved by the Award dated 06.03.2009, respondent No. 1 again preferred a petition under Section 34 of the Arbitration and Conciliation Act, 1996 being O.M.P. No. 359/2009 before this court. The said petition was

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allowed *vide* judgment dated 30.07.2018 and the Award dated 06.03.2009 was set aside with the direction that the claims of respondent No. 1 will be decided on merits and not by merely holding that the claims are time barred.

11. The arbitration proceedings began once again and the present Arbitral Award dated 18.02.2019 came to be passed, whereby the tribunal allowed part claim filed by the respondent No. 1 to the tune of Rs 2,86,16,282.29 and rejected the other part of the claim on the ground that the same is time barred.

12. The petitioner preferred a petition against the impugned Award before the learned District and Sessions Judge, Patiala House Court and the same was returned due to lack of pecuniary jurisdiction.

13. During the pendency of the above proceedings, Respondent No. 1 also challenged the Award dated 18.02.2019 before the Appellate Arbitral Tribunal, NSE only to the extent of the Award rejected by the Arbitral Tribunal. The appeal was dismissed by the Appellate Arbitral Tribunal, NSE *vide* order dated 30.09.2019.

14. Hence, the present petition.

15. Mr. Kumar, learned counsel for the petitioner states that this court *vide* order dated 30.07.2018 had directed the arbitral tribunal that the claims should be heard and decided on merits however the Arbitral Tribunal instead of deciding the matter on merits and without any discussion/reasoning has held that the claims are within limitation. He draws my attention to the relevant observations and findings of the Arbitral Tribunal, which reads as under*:*

> *"24. It is noted from the Orders dated 02.04.2008 and 30.07.2018 of Hon'ble High Court Delhi that the plea of previous two*

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Arbitration Tribunals regarding limitation have been rejected and the Hon'ble High Court. In Order dated 30.07.2018 in O.M.P. No. 359/2009 has ordered that the claim of the Petitioner is liable to be adjudicated on the merits and the Petitioner had been permitted to seek fresh appointment of arbitrators. Accordingly, the present AT holds that the claim of the Applicant with regard to Security Deposit of Rs.20.00 Lacs with interest @18% p.a. with monthly rests is within the prescribed time limit and it would fair and reasonable to award a sum of Rs.32,07,478.00 in favour of the Applicant along with interest on the said amount @18% p.a. with monthly rests, w.e.f. 23.11.2006 till the date of this award. It may be mentioned that the Respondent has not made any comments on the pricing part of the claim as projected by the Applicant.

25. The Applicant has claimed a sum of Rs.24,49,322.16 towards value of his shares along with dividend up to 31.03.2006. A statement for the above amount along with names of shares, date of purchase etc. has been shown in Annexure-5 to the Statement of Claim dated 22.11.2006 filed before the First Arbitration Tribunal. It is noted from the above Annexure-5 that the shares were bought between 20.09.1999 to 25.07.2003. A period of more than 3 years had already lapsed before 22.11.2006, the date on which the Statement of Claim was filed before the first Arbitral Tribunal which had pronounced the award on 10.05.2007. The AT of the view that the claim of the Applicant for the value of those shares with other benefits such as Dividend, Bonus, Rights and Split, interest etc. is time barred. As such the claim on this account deserves to be dismissed.

26. As regards claim of Rs.5,00,000/- projected by the Applicant toward Compensation/Damages for mental torture, agony and harassment etc., the AT is not convinced about the same and decides to reject the claim.

27. All the Documents, Awards, Orders of Courts etc., referred to in this award, shall be deemed to be as Annexures to this award.

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AWARD

28. The AT awards as under:-

(a) A sum of Rs. 32,07,478.00 (Rupees Thirty Two Lacs Seven Thousand Four Hundred Seventy Eight only) in favour of the Applicant towards the amount of Security deposit of Rs.20.00 Lacs and interest on the above amount till 23.11.2006 @18% p.a. with monthly rests and directs the Respondent to pay the same to the Applicant. Further, the AT awards Interest on the above amount of Rs.32,07,478.00 (Rupees Thirty Two Lacs Seven Thousand Four Hundred Seventy Eight only) w.e.f. 23.11.2006 till the date of this award @18% p.a. with monthly rests and directs the Respondent to pay the same to the Applicant.

(b) The AT award future interest to the Applicant on the sums awarded to Applicant in para (a) above @12% Simple Interest p.a. from the date next to date of this award till the date of payment, provided the awarded amount in para (a) above is not paid by the Respondent to the Applicant within 30 days of this award.

(c) The AT rejects all other claims of the Applicant.

(d) The parties shall bear their respective costs."

16. The learned counsel for the petitioner has stated that the impugned award is devoid of any reasoning and in this regard has relied upon the judgment of the Hon'ble Supreme Court in ***M/s Dyna Technologies Pvt. Ltd. vs. M/s Crompton Greaves Ltd.*** (2019) 20 SCC 1 and more particularly para 35, which reads as under:

"*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 reasoning 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*

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provided under 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 documents 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, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards."

17. The petitioner submits that the award is unintelligible since it has been passed without duly appreciating the fact that the respondent no.1 failed to show that any amount was deposited with the petitioner company. The alleged deposit in M/s. Gupta Associates does not reflect in the balance sheet of M/s. Gupta Associates. The letter relied on by the respondent no. 1 to confirm his deposit is said have been issued by Mr. KC Gupta in his personal capacity without approval of the board of directors of the petitioner company.

18. In addition, the petitioner challenges the grant of interest @18%. It is submitted that the grant of interest is excessive and has been passed without any due reasons.

19. *Per contra*, learned counsel for the respondent submits that the petitioner company has based its challenge on ground that findings of the

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tribunal is not based on evidence and that the tribunal has wrongly interpreted terms of the contract. The said challenge cannot be entertained by this court under the narrow scope under section 34 of the Arbitration and Conciliation Act, 1996. He relies on the judgment of the Hon'ble Supreme Court in *Associate Builders v. DDA*, (2015) 3 SCC 49 wherein the following was held:-

> *33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score [Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows: "General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong". It is very important to bear this in mind when awards of lay arbitrators are challenged.] . Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd.*
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> > *"21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal*

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has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."

20. Reliance is also placed on the judgment of Hon'ble Supreme Court in ***Delhi Airport Metro Express (P) Ltd. v. DMRC,*** **(2022) 1 SCC 131**. The operative portion reads as under:-

*"**28.** This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object,*

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which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.

29. *Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality"."*

21. I have heard learned counsel for the parties.

22. In the present case, the Award passed has to be read as a whole to give it a meaningful interpretation. The Arbitral Tribunal held that the petitioner company is liable to pay ₹ 32,07,478/- towards security deposit of

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₹ 20 lakhs along with interest at the rate of 18% per annum till 23.11.2006. Further, the Arbitral Tribunal awarded interest on the amount of ₹ 32,07,478/- from 23.11.2006 till the date of the award.

23. A perusal of the award shows that the liability of the petitioner company towards payment/refund of the amount of Rs. 20 lakhs in favour of the respondent no.1 is based upon the observations of the Hon'ble High Court of Bombay in the order dated 21.02.2008 passed in Company petition No. 611/207. Para 8 of the Award in this regard reads as under:

> "*8. With regard to liability of the Respondent pertaining to Rs.20.00 Lacs deposited by the Petitioner, the Hon'ble Court held as under:-*
>
> > *"Heard Counsel for the parties. Perused the documents and pleadings on record.*
> > *Having considered the rival submissions and analyzing the materials on record, in my opinion, the Petitioner has made out formidable case to establish the position that the Respondent Company took over the liability in relation to the margin Security Deposit, which was payable by M/s. Gupta Associates to the Petitioner as is stated in the communication addressed to the Petitioner on the letterhead of Respondent Company signed by the Director Mr. K. C. Gupta. There is yet another communication, which restates the liability of the Respondent Company to pay the amount of Rs. 20,00,000/- (Rupees Twenty Lakhs only) to the Petitioner along with the interest accrued thereon, dated 31 March, 2006 at Exh. 'C'. Even this communication is sent to the Petitioner on the letterhead of the Respondent Company duly signed by the Director of the Company Mr. K. C. Gupta. Notably, the said Mr. K. C. Gupta has sworn on affidavits dated 20 February, 2007 and 11 April, 2007, which affidavits were used in the arbitration proceedings, clearly conceding the position that the sum of Rs.20.00 Lakhs was payable by the Respondent Company to the Petitioner in terms of the arrangement recorded in the letter dated 1- April, 2004 Exh. 'B'. In other*

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words, there is ample material to indicate that the Petitioner is entitled to receive the sum of Rs.20 Lakhs along with interest thereon from the Respondent Company……"

24. A perusal of the aforesaid para clearly shows that the impugned award took note of the findings of the Hon'ble High Court of Bombay wherein the Bombay High Court has categorically held that the petitioner had received ₹ 20 lakhs from respondent No. 1 and was liable to return it along with interest.

25. The jurisdiction of this Court under Section 34 of the Arbitration and Conciliation Act, 1996 is narrow and limited. It does not sit as a Court of Appeal, if there is any other possible view based upon the documents/evidence available as taken by the Arbitrator, the Court should refrain from interfering in the findings of the Arbitral Tribunal. The Hon'ble Supreme Court in ***Dyna Technologies Private Limited (supra)*** held as under:

"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate

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dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the Courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

26. The petitioners have failed to show any grounds of perversity in the findings of the Arbitral Tribunal. The only ground raised is that the award devoid of any reasoning. A perusal of the award shows that the same is not true. The Arbitral Tribunal has partially allowed the claims of the respondent no. 1 based on the findings of the Hon'ble High Court of Bombay wherein the petitioner has been held to owe sum of Rs. 20 lakhs to the respondent no. 1. The findings of the Bombay High Court relied upon by the Arbitral Tribunal are integral part of the Award. The petitioner has failed to show any variation or modification of the judgment passed by the Hon'ble High Court of Bombay, and hence there is no infirmity in the reliance of the Arbitral Tribunal on the judgment of the Hon'ble High Court of Bombay.

27. With regard to the contention that the grant of interest @18% is excessive, it is settled that the arbitral tribunal under section 31(7)(a) and 31(7)(b) of the Arbitration and Conciliation Act, 1996 has the discretion to grant pre-award interest and/or post-award interest, on either whole or part of the principal amount. The Hon'ble Supreme Court in *Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd.*, (2023) 1 SCC 602 in this

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regard has held as under:-

> *"25. Section 31(7)(a) confers a wide discretion upon the arbitrator in regard to the grant of pre-award interest. The arbitrator has the discretion to determine the rate of reasonable interest, the sum on which the interest is to be paid, that is whether on the whole or any part of the principal amount, and the period for which payment of interest is to be made — whether it should be for the whole or any part of the period between the date on which the cause of action arose and the date of the award. When a discretion has been conferred on the arbitrator in regard to the grant of pre-award interest, it would be against the grain of statutory interpretation to presuppose that the legislative intent was to reduce the discretionary power of the arbitrator for the grant of post-award interest under clause (b). Clause (b) only contemplates a situation where the arbitration award is silent on post-award interest, in which event the award-holder is entitled to a post-award interest of eighteen per cent.*
>
> *26. The arbitrator has the discretion to grant post-award interest. Clause (b) does not fetter the discretion of the arbitrator to grant post-award interest. It only contemplates a situation in which the discretion is not exercised by the arbitrator. Therefore, the observations in Hyder Consulting [Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38] on the meaning of "sum" will not restrict the discretion of the arbitrator to grant post-award interest. There is nothing in the provision which restricts the discretion of the arbitrator for the grant of post-award interest which the arbitrator otherwise holds inherent to their authority.*
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> *....*
>
> *28. In view of the discussion above, we summarise our findings below:*
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> *28.1. The judgment of the two-Judge Bench in S.L. was referred to a three-Judge Bench in Hyder Consulting on the question of whether*

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post-award interest could be granted on the aggregate of the principal and the pre-award interest arrived at under Section 31(7)(a) of the Act.

28.2. Bobde, J.'s opinion in Hyder Consulting held that the arbitrator may grant post-award interest on the aggregate of the principal and the pre-award interest. The opinion did not discuss the issue of whether the arbitrator could use their discretion to award post-award interest on a part of the "sum" awarded under Section 31(7)(a).

28.3. The phrase "unless the award otherwise directs" in Section 31(7)(b) only qualifies the rate of interest.

28.4. According to Section 31(7)(b), if the arbitrator does not grant post-award interest, the award holder is entitled to post-award interest at eighteen per cent.

28.5. Section 31(7)(b) does not fetter or restrict the discretion that the arbitrator holds in granting post-award interest. The arbitrator has the discretion to award post-award interest on a part of the sum.

28.6. The arbitrator must exercise the discretionary power to grant post-award interest reasonably and in good faith, taking into account all relevant circumstances.

28.7. By the arbitral award dated 29-4-2013, a post-award interest of eighteen per cent was awarded on the principal amount in view of the judgment of this Court in S.L. Arora. In view of the above discussion, the arbitrator has the discretion to award post-award interest on a part of the "sum"; the "sum" as interpreted in Hyder Consulting. Thus, the award of the arbitrator granting post-award interest on the principal amount does not suffer from an error apparent."

28. The Hon'ble Divison Bench of this court in Anil *Kumar Gupta v. MCD*, 2023 SCC OnLine Del 7524 has held reduction of interest by the court under section 34 of the Arbitration and Conciliation Act, 1996

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amounts to modification of the Award and in view of judgment of Hon'ble Supreme Court in *NHAI v. M. Hakeem*, (2021) 9 SCC 1 the same is impermissible. The operative portion of the judgment of the Hon'ble Divison Bench of this court in Anil *Kumar Gupta v. MCD* reads as under:-

> *"6. Apart from the judgment of the Supreme Court in M. Hakeem, Dr. George also drew our attention to a recent decision rendered by the Supreme Court in Larsen Airconditioning and Refrigeration Company v. Union of India where yet again a reduction of the rate of interest from 18% to 9% was described to be an "impermissible modification of the award". We deem it apposite to extract the following passages from that decision:*
>
> > *"13. In the present case, given that the arbitration commenced in 1997, i.e., after the Act of 1996 came into force on 22.08.1996, the arbitrator, and the award passed by them, would be subject to this statute. Under the enactment, i.e. Section 31(7), the statutory rate of interest itself is contemplated at 18% per annum. Of course, this is in the event the award does not contain any direction towards the rate of interest. Therefore, there is little to no reason, for the High Court to have interfered with the arbitrator's finding on interest accrued and payable. Unlike in the case of the old Act, the court is powerless to modify the award and can only set aside partially, or wholly, an award on a finding that the conditions spelt out under Section 34 of the 1996 Act have been established. The scope of interference by the court, is well defined and delineated [refer to Associate Builders v. Delhi Development Authority11, Ssangyong Engineering Construction Co. Ltd. v. National Highways Authority of India (NHAI)12 and Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.13].*
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> > *.....*
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> > *15. The limited and extremely circumscribed jurisdiction of the*

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court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality, i.e., that "illegality must go to the root of the matter and cannot be of a trivial nature"; and that the tribunal "must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground." The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34. It is important to notice that the old Act contained a provision which enabled the court to modify an award. However, that power has been consciously omitted by Parliament, while enacting the Act of 1996. This means that the Parliamentary intent was to exclude power to modify an award, in any manner, to the court. This position has been iterated decisively by this court in Project Director, National Highways No. 45E and 220 National Highways Authority of India v. M. Hakeem15:

....

16. In view of the foregoing discussion, the impugned judgment warrants interference and is hereby set aside to the extent of modification of rate of interest for past, pendente lite and future interest. The 18% per annum rate of interest, as awarded by the arbitrator on 21.01.1999 (in Claim No. 9) is reinstated. The respondent-state is hereby directed to accordingly pay the dues within 8 weeks from the date of this judgment."

....

11. Proceeding then to the power to modulate the terms of an Award, we had in our detailed order dated 15 September 2023 taken note of the principles which came to be enunciated by the Supreme Court in M. Hakeem. The said judgment while explaining

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the extent of the setting aside power as conferred upon a court in terms of Section 34, has categorically held that a modification of the award would clearly not fall within the specie of "setting aside". The Supreme Court in M. Hakeem had also taken notice of the shift in the statutory position and the departure from the power of variation and modification as it earlier existed in the Arbitration Act, 19406. It was on a consideration of the aforesaid aspects coupled with the language in which Section 34 stands couched which weighed upon the Supreme Court to hold that while considering a petition under Section 34 of the Act, a court could only set aside the award as opposed to a variation or modulation of the operative directions that may be framed by the AT.

12. By way of the order of 12 December 2018, it is this injunct which clearly appears to have been breached by the learned Single Judge. The legal position which prevails today clearly renders the aforesaid order unsustainable on this score alone. We find that the decision of the Supreme Court in M. Hakeem has been reiterated in terms of the judgment in Larsen Airconditioning. Larsen Airconditioning was again a case where the Section 34 court had chosen to reduce the rate of interest as awarded by the AT. The Supreme Court had found this as constituting a sufficient ground to set aside the said judgment."

29. From a combined reading of the above judgments, it can be seen that (a) the arbitral tribunal has the discretion to grant pre-award interest and/or post-award interest, on either whole or part of the principal amount; (b) in proceedings under section 34 of Arbitration and Conciliation Act, 1996, it is impermissible to reduce interest awarded since the same amounts to modification of the Award.

30. In the present case, the Arbitral Tribunal has awarded interest reasonably and after duly appreciating evidence before it. The same does not

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warrant any interference by this court under the limited jurisdiction under section 34 of the Arbitration and Conciliation Act, 1996 .

31. For the said reasons, the petition is without merit and is dismissed.

JASMEET SINGH, J

SEPTEMBER 30, 2024/DM
(Corrected and released on 05.10.2024)

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