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

Reserved on: 06th May, 2026
Pronounced on: 17th August, 2026

\# **CNR No. DLHC010392462019**

\+ O.M.P. (COMM) 404/2019 & I.A. No. 13516/2019

INDIA TOURISM DEVELOPMENT CORPORATION
.....Petitioner

Through: Mr. S.D. Sanjay, Sr. Adv. with Mr. Krishan Kumar, Mr. Seemant K. Garg, Mr. Nitin Pal, Ms. Parthvi Ahuja, Mr. Akanksha Raj, Advocates (M:9560904323)

versus

M/S BAJAJ ELECTRICALS LTD .....Respondent

Through: Mr. B. Devasekhar and Mr. Pawan Kumar, Advs.
Mob: 9873276424

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

I. INTRODUCTION

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 **("Arbitration Act")** for setting aside the arbitral Award dated 30th October, 2018 **("Award")**, and subsequent order for termination of the mandate dated 01st May, 2019, passed by the Sole Arbitrator in the arbitration proceedings titled as "*Bajaj Electricals Ltd. Versus India Tourism Development Corporation Ltd*".

2. By way of the impugned Award, the Arbitral Tribunal, in sum and substance, directed the petitioner herein, i.e., India Tourism Development Corporation to pay to the claimant/respondent herein the principal amount of Rs. 46,92,298.22/-, along with interest of Rs. 33,27,886/- for the period from 25th July, 2009 to 16th April, 2013 on Rs. 73,88,556.22, and interest of Rs. 31,17,742.91/-, as *pendente lite* interest from 17th April, 2013 till 30th October, 2018 on Rs. 46,92,298.22. The respondent herein was also awarded future interest from the date of the Award till the date of payment.

3. It is to be noted that *vide* judgment dated 13th January, 2023, this Court decided the applications, i.e., *I.A. 1351/2019* and *I.A. 13519/2019* thereby, condoning the delay in filing and in re-filing the petition, respectively.

4. Further, by way of the order dated 08th July, 2025, this Court had directed the petitioner to deposit the decretal amount, subject to which, there shall be a stay on the impugned Award. However, the petitioner has failed to deposit the said amount as directed by this Court.

5. This Court notes that respondent herein had initially filed company petitions, namely, *CO. PET. 396/2011*, *CO. PET. 472/2011* and *CO. PET. 473/2011*, wherein, by way of the order dated 16th April, 2013, this Court has recorded that the petitioner herein had paid an amount to the tune of Rs. 26,96,258/- to the respondent herein.

II. BRIEF FACTS

6. Shorn of unnecessary details, the germane facts leadings to the dispute between the parties are as follows:

6.1. The petitioner floated a Notice Inviting Tender **("NIT")** for the work of Supply, Installation, Testing and Commissioning **("SITC")** of items required for specialized and state of art Illumination/Lightening work at Safdarjung Tomb Monument in New Delhi. Subsequently, the respondent, amongst other tenderers, submitted its tender *vide* Letter dated 06th February, 2007.

6.2. By way of the Letter of Intent **("LOI")** dated 04th April, 2007, the petitioner awarded the subject works to the respondent for a total amount of Rs. 2,08,90,095/-. After acceptance of LOI by the respondent, a detailed Work Order dated 10th April, 2007 was issued by the petitioner to the respondent. As per the terms and conditions, the respondent was required to submit drawings, i.e., cable route plan, electrical load details, enclosure construction details, etc.

6.3. Subsequently, the parties herein signed a Contract on 22nd May, 2007, wherein, the respondent accepted the General Conditions of Contract and Standard Contract Forms for Engineering and Architectural Works **("GCC")**.

6.4. The GCC, which is part of the NIT and the Contract dated 22nd May, 2007, was duly signed by the parties, including, Clause nos. 10, 11, 42, 43, 44 therein. Thus, under the Contract, the respondent was required to complete and commission the subject work, by providing complete material and manpower required to do so.

6.5. During the progress of the work, news articles were published in the newspaper on 03rd October, 2007 and 05th October, 2007, pointing out certain damages on the Safdarjung Tomb Monument, due to the execution of work by the respondent. Pursuant thereto, Archeological Survey of India **("ASI")** desired to revise the fixture lay out plan, and accordingly, ASI and the petitioner herein entered into a Memorandum of Understanding dated 31st

December, 2007 **("MoU")**. In terms of the said MoU, a Committee was constituted to scrutinize and finalize the drawings for light fixtures, placement plan, fixing arrangements and cable routes.

6.6. Thereafter, the petitioner *vide* letter dated 20th March, 2008 requested the respondent to complete the work as per the revised approved drawings for cable routes and light fitting fixtures. Further, by way of the letter dated 05th May, 2008, the petitioner forwarded the duly approved revised drawings and requested the respondent to restart and complete the subject work at the site.

6.7. By way of the communication dated 23rd April, 2009, the respondent sent requisite documents with regard to fully completed and operational installation of the lightning system at the site. Subsequently, on 01st June, 2009, the ASI took over the illumination work at the site.

6.8. Consequently, the respondent submitted the final bill of Rs. 1,18,95,572/- on 08th June, 2009 out of the total value of the work, i.e., Rs. 2,39,75,000/-.

6.9. Thereafter, the respondent on multiple occasions requested the petitioner for payment of the outstanding amount, however, on account of non-payment, dispute arose between the parties, leading to the filing of Company Petition bearing *CO. PET. 472/2011* before this Court. By way of the order dated 17th April, 2013 passed in the said petition, the Court noted the statements made by the counsels for the parties on instruction, that they had no objection to the nomination of an Arbitrator for adjudication of disputes between the parties. In view of the aforesaid statements, this Court disposed of the said company petition by appointing an arbitrator for adjudication of the disputes, in terms of the Arbitration Clause, i.e., Clause 48 of the GCC.

6.10. Subsequently, the Sole Arbitrator passed the impugned Award, thereby awarding the principal amount of Rs. 46,92,298.22/-, along with interest of Rs. 33,27,886/- for the period from 25th July, 2009 to 16th April, 2013 on Rs. 73,88,556.22, and interest of Rs. 31,17,742.91/-, as *pendente lite* interest from 17th April, 2013 till 30th October, 2018 on Rs. 46,92,298.22. The respondent herein was also awarded future interest from the date of the Award till the date of payment.

6.11. Thereafter, an application for review of the impugned Award for the Safdurjung Tomb site was moved, however, the Arbitral Tribunal terminated the arbitral proceedings with regard to the said application, by way of order dated 01st May, 2019, by stating that none of the parties had deposited the Arbitrator's fee, as directed by the Arbitral Tribunal.

6.12. Aggrieved thereby, the petitioner has challenged the impugned Award on the grounds of it being unreasonable, perverse, patently illegal and failure of the Arbitrator to adopt a judicial approach in deciding the disputes between the parties.

III. SUBMISSIONS MADE BY THE PETITIONER

7. The following contentions have been put forth by the petitioner for setting aside the impugned Award:

7.1. The Sole Arbitrator did not appreciate the provisions of the Contract and law of contract in correct perspective while allowing the claim with respect to materials which were neither supplied nor used by the petitioner.

7.2. The Arbitrator failed to consider the deductions of Rs. 11,07,832/- made by the petitioner towards non-execution of civil and electrical works by the respondent, in contravention to the Book of Quantities **("BoQ")** and the Contract dated 22nd May, 2007, as the respondent used *1100D HDPE pipe* instead of *1000D HDPE pipe*, used *30W white lamp* instead of *32W white lamp*, used *0.95m carbonate tube* instead of *1m carbonate tube*, and did not provide *MS enclosure for 12V x 50 ground burial fixtures*, etc., which was duly recorded in the *Measurement Book no. 1613*. Such deductions to the tune of Rs. 11,07,832/- were then finally incorporated in the Final Measurement Book, in accordance with the clauses of the Contract dated 22nd May, 2007.

7.3. The Arbitrator although had noticed that the respondent never came forward to sign the Measurement Books after 13th August, 2013, however, he has erroneously proceeded to conclude that the total value of the work done by the respondent, including, extra items was Rs. 1,97,04,171/-. The said finding was arrived at by the Arbitral Tribunal on the basis of statement made by *DW-1*, i.e., Mr. Dinesh Mahajan, Assistant Manager of the petitioner in his Evidence Affidavit dated 14th October, 2014, wherein, it has been stated that the total value of the work done is Rs. 1,95,17,988.62/- along with extra items of Rs. 1,86,182.60/-.

7.4. However, Arbitrator has committed perversity in ignoring the defense of the petitioner and has considered the statements of *DW-1* in piecemeal, since paragraph 83 of Statement of Defense and paragraph 68 of the *DW-1*'s evidence expressly stated and deposed, respectively, that the total value of works done was Rs. 1,85,96,339.22/- after deductions for items of Rs. 11,07,832/-.

7.5. The aforesaid deduction, as duly recorded in the Measurement Book, were never considered nor dealt with by the Sole Arbitrator, which shows that the Arbitrator failed to adopt a judicial approach while passing the Award and committed perversity in not considering the facts available on record thereto.

7.6. No payment is admissible if the same is not recorded in the Measurement Books. There is no explanation by the respondent that such deduction of Rs. 11,07,832/- is not as per the Contract entered into between the parties. The measurements were never protested and in fact, despite several requests, the respondent did not come forward to sign the Final Measurement Book. Therefore, the Award to the extent of the principal amount of Rs. 11,07,832/- and the accrued interest w.e.f. 25th July, 2009 till date is liable to be set aside.

7.7. No *Challans* were ever deposited by the respondent towards the deposit of the Service Tax. Under Clause 15(a)(4) of the GCC and Clause 2 of the Work Order, the cost of materials and works were to be inclusive of all taxes, including Service Tax, and was to be borne by the respondent.

7.8. The Arbitral Tribunal in paragraph 38 of the Award erroneously awarded the withheld amount of Rs. 7,58,507/- towards Service Tax to the respondent against the bills raised by the respondent for the subject work. However, the aforesaid amount of Rs. 7,58,507/- was deducted by the petitioner on account of Service Tax, since the said amount was already deposited by the petitioner towards service tax with the concerned statutory authority.

7.9. Further, the Arbitral Tribunal has reached a perverse finding that during the course of arguments in the arbitral proceedings, the respondent has submitted the *Challans* for payment of Service Tax. However, no such *Challans* evidencing the proof of deposit of Service Tax were ever submitted by the respondent, only copies of Service Tax forms, i.e., *ST-3* Forms have been submitted.

7.10. Without prejudice, even if the deduction on account of Service Tax is not tenable, interest could not have been granted by the Arbitral Tribunal for the period from 25th July, 2009 till 30th October, 2018, as such *Challans* were allegedly submitted by the respondent at the time of final arguments during the arbitral proceedings.

7.11. Under Clause 4 of the of the Work Order and Clause 16.1 of the GCC, the respondent was required to adhere to the compliances of the Employees' State Insurance Act, 1948 **("ESI Act")** and the Employees Provident Funds and Miscellaneous Provisions Act, 1952 **("EPF & MP Act")** wherein, the respondent was required to deposit the statutory amounts towards ESI and EPF to the concerned statutory authorities.

7.12. The Arbitral Tribunal in paragraph 38 of the impugned Award has erroneously awarded the withheld amount of Rs. 14,86,312/- towards ESI/EPF to the respondent against the bills raised by the respondent for the work done. However, the petitioner herein has already deposited the same amount with the concerned statutory authority.

7.13. The respondent failed to submit the *Challans* for the deposit of EPF and ESI, as required under Clause 4 of the Work Order and Clause 16.1 of the Contract, and thus, the respondent was never entitled to the amounts deducted for non-deposit of EPF/ESI as it was the responsibility of the principal employer, i.e., petitioner to ensure the compliances of such labour laws.

7.14. Further, the Arbitral Tribunal committed perversity and failed to adopt a judicial approach, by reaching an erroneous finding that the Contract dated 22nd May, 2007 allows the release of ESI/EPF deductions to the respondent merely upon submission of Indemnity Bonds. However, there is no such stipulation under the said Contract.

7.15. In view of the aforesaid, the Arbitral Tribunal had no jurisdiction to make an Award against the specific terms of the Contract. Therefore, the Award regarding the release of ESI/EPF deduction is liable to be set aside.

7.16. Even otherwise, if the deduction on account of ESI/EPF is not tenable, interest could not have been granted by the Arbitrator for the period from 25th July, 2009 till 30th October, 2018, as the Indemnity Bonds were allegedly submitted by the respondent at the time of final arguments during the arbitration proceedings.

7.17. Under Clause 16.1 of the GCC, the respondent was required to adhere to the compliances of all labour welfare laws, including, the Building and Other Construction Workers Welfare Cess Act, 1996 **("Workers Welfare Cess Act")**, wherein, the respondent was required to deduct 1% towards labour cess from the bills of the petitioner and deposit the statutory amounts towards the concerned statutory authorities.

7.18. The Arbitral Tribunal erroneously awarded the withheld amount of Rs. 1,85,963/- towards labour cess to the respondent against the bills raised by the respondent for the works done. The aforesaid amount had already been deposited by the petitioner towards labour cess with the concerned statutory authorities, and the same has not been disputed.

7.19. The aforesaid amount also stands reflected in the Measurement Book, which was completely ignored by the Arbitral Tribunal. It is evident that the Arbitrator reached an erroneous finding that the petitioner has not shown as to why labour cess was not deducted from the Running Account bills if it was payable and that dispute has not been raised during the proceedings about the liability of the respondent or non-payment of labour cess by the respondent.

7.20. Thus, the petitioner was entitled to enforce recovery under Clause 47.2 from the final bill of the respondent. Therefore, the Award regarding the release of labour cess deduction of Rs. 1,85,963/- is liable to be set aside.

7.21. The Sole Arbitrator erroneously awarded interest @ 12% per annum, which is excessive when all the payments were already made by the petitioner to the respondent from time to time and final payment could not be made only on account of the fact that despite several communications, the respondent did not come forward to sign the Measurement Book and to take the payment.

7.22. The petitioner also made a payment of Rs. 13,93,368/- to the respondent *vide Cheque no. 302416* dated 09th July, 2019, and therefore, future interest on the same ought not to be granted.

7.23. The total value of the work done by the respondent, as accepted on 13th August, 2008, was Rs. 1,28,82,376.20/-. The fifth and final bill submitted by the respondent was recorded in the Measurement Book by the Site Engineer. Further, the total value of the work done on completion and handing over of the site was to the tune of Rs. 1,90,45,990/-. A perusal of the Measurement Book shows that the net payable amount comes to Rs. 57,06,432/- and subsequent to the directions of this Court, an amount of Rs. 26,96,258/- was paid in April, 2013 after the legitimate deductions.

7.24. The aforesaid deductions are legitimate deductions, including, the statutory deductions, and thus, no amount is payable except what is reimbursable upon satisfaction of the respondent.

7.25. Therefore, after taking into consideration all the aforesaid deductions of Rs. 35,38,614/- and post award payment of Rs. 13,93,368/-, the petitioner is entitled to a recovery of Rs. 2,39,629.78/- from the respondent against the principal award amount of Rs. 46,92,298.22/-. Thus, the respondent is not entitled to any amount towards interest.

7.26. The Sole Arbitrator failed to appreciate that for ascertaining the intention of the parties, documents need to be read as a whole, and one has to look at the substance of the document and not the form/nomenclature the parties have adopted.

7.27. The respondent has failed to furnish any evidence that any work other than the work recorded in the Measurement Book was undertaken by the respondent. The claim of the respondent that work done on earlier occasion was demolished has not been proved by any document on record.

7.28. Further, the contention of the respondent that the additional works were done on the instruction of the petitioner is false and unless the same is in writing, it cannot fasten any liability. Moreover, the bills furnished by the respondent towards the additional works are false and fabricated. The said additional works are for the period before 13th August, 2008, till when the Measurement Book was signed, and thus, no claim for any additional work can be put forth by the respondent. Considering the same, the Measurement Book is final and no amount can be claimed beyond the Measurement Book.

IV. SUBMISSIONS MADE BY THE RESPONDENT

8. Rebutting the contentions of the petitioner, respondent has made the following submissions before this Court.

8.1. The respondent herein was allotted the illumination/lighting work at three sites, namely, Safdurjung Tomb Monument, Purana Quila Monument and Subj Burj Monument by the petitioner. Subsequently, for the disputes with respect to the Purana Quila Monument and Subj Burj Monument, the Arbitral Tribunal passed the Awards dated 02nd February, 2018 and further clarificatory order dated 30th October, 2018, whereas, the impugned Award dated 30th October, 2018 was passed in relation to the Safdurjung Tomb Monument.

8.2. As far as the Award passed for Purana Quila Monument and Subj Burj Monument are concerned, the same has attained finality and are binding on the parties in terms of Section 35 of the Arbitration Act, since no objection has been filed against the same. The only objection filed by the petitioner in the present petition pertains to impugned Award with respect to the Safdurjung Tomb Monument.

8.3. The petitioner herein alleged that the terms and conditions of the Contract dated 22nd May, 2007, *inter alia*, provided that the results of the findings of the Chief Technical Examiner shall be binding on the parties. Since, Chief Technical Examiner inspected the work executed by the respondent only at Purana Quila on 15th December, 2008 and 16th December, 2008 and not the Safdurjung Tomb Monument, and final findings of the Chief Technical Examiner were yet to be received, the petitioner herein could not release the final payment with regard to the Safdurjung Tomb Monument as well.

8.4. The Arbitral Tribunal in paragraph 53 of the impugned Award has rightly considered the CTE's replies dated 20th December, 2012 and 07th January, 2013 to the Right to Information **("RTI")** applications filed by the respondent before the CTE. In the reply dated 20th December, 2012, it has been specifically mentioned that Chief Technical Examiner does not issue any final report to its extensive examination reports, whereas, the reply dated 07th January, 2013 clearly states that sites at Subj Burj and Safdurjung Tomb Monuments were not inspected by the CTE.

8.5. By relying upon the said replies of the CTE, the Arbitral Tribunal has correctly come to the finding that defense of the respondent for non-payment of outstanding dues of Safdurjung Tomb Monuments is untenable since the Chief Technical Examiner does not submit any final report, and hence, there was no ground for withholding the payments.

8.6. Further, the contentions of the petitioner herein that the respondent did not come forward to sign the Measurement Book is misplaced as the petitioner processed the final bill only after filing of the claim petition in the year 2014, as apparent from the statement of *DW-1*, i.e., Mr. Dinesh Mahajan.

8.7. The contentions of the petitioner that there are discrepancies in the impugned Award while calculating the amounts under different heads, such as, for Service Tax, 1% Labour cess and ESI/EPF, are liable to be rejected. The Arbitral Tribunal, in relation to Purana Quila Monument, has in paragraphs 27 and 28 of the Award dated 02nd February, 2018, has given an identical finding, and the same has not been challenged by the petitioner herein.

8.8. The Court while dealing with a petition filed under Section 34 of the Arbitration Act can set aside an Award only on certain limited grounds and the petitioner herein cannot come and furnish fresh evidence to improve their case.

8.9. The Work Order dated 10th April, 2007, issued by the petitioner, in paragraph 4, clearly states that the petitioner shall be solely responsible for complying with all labour related laws. The said paragraph further states that in the event of any liability on the petitioner by virtue of it being a principal employer, due to failure of the respondent to comply with such laws, the respondent will be liable to indemnify and reimburse the said amount.

8.10. In terms of the aforesaid, the respondent herein has provided/submitted the requisite Indemnity Bonds to the petitioner and the same has been rightly recorded by the Arbitral Tribunal in paragraph 38 of the impugned Award by stating that the respondent herein has submitted the necessary Indemnity Bonds and therefore, the petitioner herein is not entitled to deduct any amounts on account of ESI/EPF.

8.11. The Arbitral Tribunal in the 32nd arbitration proceeding dated 11th August, 2017, has clearly recorded that the counsel for the respondent herein has filed copies of the Service Tax *Challans* and Tax Deducted at Source **("TDS")** Certificates. Further, the impugned Award in paragraph 38 also records that *"during the course of arguments, the Claimant submitted the Challans for payment of ESI/EPF"*. Moreover, the order passed by the Arbitral Tribunal in 36th arbitration proceedings dated 21st December, 2017, also records that the respondent herein has filed copies of the Indemnity Bonds submitted with the respondent with respect to all the three cases for the claims towards EPF and ESI dues. In view of the aforesaid, the respondent has complied with the requirements mentioned in the Contract between the parties by furnishing the Indemnity Bonds and the petitioner illegally withheld the amount.

8.12. The argument put forth by the petitioner with regard to deduction of Rs. 11,07,832/- towards non-execution of civil and commercial electrical works, as recorded in the Measurement Book, not being considered by the Arbitral Tribunal is untenable, since firstly, the petitioner has failed to provide any break-up of the said amount before the Arbitral Tribunal and secondly, the said Measurement Book only bears the signature of the petitioner.

8.13. Though the petitioner had raised the argument that the Measurement Book was not signed by the respondent despite various opportunities, however, the said Measurement Book only bears the signature of the Site Engineer of the petitioner. In contrast, the Measurement Book was required to be signed by three persons, namely, the Contractor/respondent, Site Engineer and the Architect Consultant.

8.14. It is pertinent to mention that the issue with respect to said deduction of Rs. 11,07,832/- was not raised before the Arbitral Tribunal by the petitioner and was subsequently raised by filing a review application, wherein the petitioner failed to deposit the requisite fee for the Arbitrator, leading to the termination of proceedings for the review. Thus, the petitioner herein cannot raise the ground that the Arbitral Tribunal failed to consider the deductions made by respondent, at this stage, when the petitioner itself failed to press its claim before the Arbitral Tribunal.

V. ANALYSIS AND FINDINGS

9. I have heard learned counsels appearing for the parties and have perused the relevant documents on record.

10. Before dealing with the objections to the impugned Award passed by the learned Arbitrator, it would be apposite to note the position of law with regard Section 34 of the Arbitration Act. The law is well settled that in a petition under Section 34 of the Arbitration Act, the Court does not sit in appeal over the Arbitral Award.

11. Thus, in the case of ***MMTC Limited Versus Vedanta Limited, (2019) 4 SCC 163***, the Supreme Court held as follows:

> *"xxx xxx xxx*
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> *11. **As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India.** As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.*
>
> *12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate*

Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]. Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705]; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445]s; and McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])

13. ***It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.***

xxx xxx xxx"

(Emphasis Supplied)

12. Further, the Court under Section 34 of the Arbitration Act cannot re-appreciate evidence and substitute its own conclusion to the one arrived at by the learned Arbitrator, even though a different conclusion can be reached on re-appreciating evidence. An Arbitral Award would not be interfered by the Court if the view taken by the Arbitrator is a possible view based on facts of the case.

13. In this regard, reference is made to the decision in the case of ***OPG Power Generation Private Limited Versus Enexio Power Cooling Solutions India Private Limited and Another, (2025) 2 SCC 417,*** wherein, it has been held that while exercising power under Section 34 of the Arbitration Act, the Court does not sit in appeal over the Arbitral Award. Interference with an Arbitral Award is only on limited grounds as set out in Section 34 of the

Arbitration Act. A possible view by the Arbitrator on facts is to be respected as the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an Arbitral Award could be categorised as perverse, that on an error of fact an Arbitral Award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an Award.

14. Delving on the issue of reasoning to be given in an Award, the Supreme Court in the case of ***Dyna Technologies Private Limited Versus Crompton Greaves Limited, (2019) 20 SCC 1***, held that 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 the 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.

15. The Supreme Court in the aforesaid case held that an order should be proper, intelligible and adequate, in order to consider the same as being reasoned. If the challenge to an Award is based on adequacy of reasons, the Court while exercising jurisdiction under Section 34 would 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. 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.

16. Having considered the exposition of law, this Court proceeds to deal with the objections as raised by the petitioner.

***(I) Total Value Of Work, Including Extra Items*:**

17. The first ground on which the petitioner has challenged the Award is that though the Arbitrator observed that the claimant/ respondent herein never came forward to sign the Measurement Book after 13th August, 2008, the Arbitrator erroneously concluded that the total value of work done by the claimant/ respondent herein, including extra items, was Rs. 1,97,04,171.22/- (Rupees One Crore Ninety Seven Lacs Four Thousand One Hundred Seventy One and twenty two paisa only). The petitioner contends that this conclusion was drawn solely on the basis of the statement made by the petitioner's own witness, being *DW-1*, i.e., Dinesh Mahajan, whereby, in his Evidence Affidavit, it is stated that the total value of the work done was Rs. 1,95,17,988.62/- (Rupees One Crore Ninety Five Lacs Seventeen Thousand Nine Hundred Eighty Eight and Sixty Two paisa only) along with extra items of Rs. 1,86,182.60/- (Rupees One Lac Eighty Six Thousand One Hundred Eighty Two and Sixty paisa only). Petitioner has further stated that the Arbitrator committed perversity in ignoring the defense of the petitioner and considering the statements of *DW-1* in piecemeal as the petitioner in paragraph 83 of its Statement of Defense and *DW-1* in paragraph 68 of his Evidence Affidavit expressly stated and deposed, respectively that the total

value of works done was Rs. 1,85,96,339.22/- (Rupees One Crore Eighty Five Lacs Ninety Six Thousand Three Hundred Thirty Nine and Twenty Two paisa only) after deduction for items of Rs. 11,07,832/- (Rupees Eleven Lacs Seven Thousand Eight Hundred Thirty Two only).

18. In this regard, it is pertinent to note that in paragraphs 21 and 22 of the Evidence Affidavit of *DW-1*, i.e., Mr. Dinesh Mahajan, following categorical admissions have been made:

> *"xxx xxx xxx*
>
> 21. I say and submit that the details given in the annexure to the invoice No. 15 dated 08.06.2009 (annexed with the Claim) are incorrect to the extent they do not tally with the MB. The total value of the work done by the claimant is Rs. 1,95,17,988.62. /-. That the claimant have been paid Rs. 1,20,80,000/-. That the respondents have made statutory deduction.
>
> 22. I say that the total amount of extra items executed by claimant is of Rs. 1,86,182.60 only and not Rs. 36,91,780.55/.
>
> *xxx xxx xxx"*

19. A perusal of the above-noted submissions made by the petitioner in its Evidence Affidavit of its witness DW-1, clearly and evidently shows that as per the petitioner's case itself, the total value of the work done by the claimant/respondent herein was to the tune of Rs. 1,95,17,988.62/- and the total amount of extra items executed by the claimant/respondent herein was Rs. 1,86,182.60/-. Thus, it is evident that the aforesaid finding of the learned

Arbitrator is based upon the submissions of the petitioner itself as given in the Evidence Affidavit of its witness. Thus, a finding by the learned Arbitrator on the basis of submissions of the petitioner itself, cannot be faulted with. Clearly, such finding by the learned Arbitrator is based upon the evidence on record. This Court in the present proceedings cannot go into the merits of the evidence or the findings of the learned Arbitrator, as the present proceedings are not in the nature of an appeal. Once the findings of the learned Arbitrator are found to be based on some evidence, the same cannot be set aside by reappreciating the evidence.

20. The contention of the petitioner that despite the amounts recorded in the *Measurement Book no. 1613*, after the date of 13th August, 2008, not being held admissible, the Arbitrator erroneously concluded that the total value of work done by the claimant/ respondent herein, including extra items, was Rs. 1,97,04,171/-, also fails to shock the conscience of this Court as to warrant any interference. When the total value of work and the value of extra items have been admitted by the petitioner, the same does not warrant any interference under Section 34 of the Arbitration Act.

21. The Supreme Court in the case of ***Ramesh Kumar Jain Versus Bharat Aluminum Company Limited (BALCO), 2025 SCC OnLine SC 2857***, held that if there is some evidence, even a single witness's testimony on which the Arbitrator could rely upon and has relied upon, then the Court cannot regard the conclusion of the Arbitrator as being patently illegal. The relevant portion of the judgment is reproduced as under:

> *"xxx xxx xxx*
>
> *35.* ***Considering the aforesaid precedents, in our considered view, the said terminology of 'patent illegality' indicates more***

<u>than one scenario such as the findings of the arbitrator must shock the judicial conscience or the arbitrator took into account matters he shouldn't have, or he must have failed to take into account vital matters, leading to an unjust result; or the decision is so irrational that no fair or sensible person would have arrived at it given the same facts.</u> *A classic example for the same is when an award is based on "no evidence" i.e., arbitrators cannot conjure figures or facts out of thin air to arrive at his findings. If a crucial finding is unsupported by any evidence or is a result of ignoring vital evidence that was placed before the arbitrator, it may be a ground the warrants interference. However, the said parameter must be applied with caution by keeping in mind that "no evidence" means truly no relevant evidence, not scant or weak evidence.* ***<u>If there is some evidence, even a single witness's testimony or a set of documents, on which the arbitrator could rely upon or has relied upon to arrive at his conclusions, the court cannot regard the conclusion drawn by the arbitrator as patently illegal merely because that evidence has less probative value. This thin line is stood crossed only when the arbitral tribunal's conclusion cannot be reconciled with any permissible view of the evidence.</u>***

xxx xxx xxx"

(Emphasis Supplied)

<u>(II) Deduction Of Rs. 11,07,832/- Towards Non-Execution of Civil And Electrical Works</u>:

22. According to the petitioner, the deduction of Rs. 11,07,832/- was towards non-execution of civil and electrical works by the claimant/ respondent herein. As per the petitioner, the said non-execution by the claimant/respondent herein was in contravention of the BoQ and the Contract, as the claimant/ respondent herein used *1100D HDPE* pipe instead of *1000D HDPE pipe*; *30W white lamp* instead of *32W white lamp*; *0.95m carbonate*

tube instead of *1m carbonate tube*; and did not provide *MS enclosure for 12V x 50 ground burial fixture*, etc., which was duly recorded in the *Measurement Book no. 1613.*

23. Thus, as per the petitioner, such deductions were done in accordance with the clauses of the Contract and were then recorded in the Final Measurement Book. However, the same were never considered nor dealt with by the learned Arbitrator.

24. *Per contra*, the respondent herein has argued that the contention put forth by the petitioner regarding the deduction of Rs. 11,07,832/- towards non-execution of civil and commercial electrical works, as recorded in the Measurement Book, not being considered by the Arbitral Tribunal is untenable, since the petitioner has failed to provide any break-up of the said amount before the Arbitral Tribunal.

25. The respondent has further stated that the petitioner had raised the argument that the Measurement Book was not signed by the respondent despite various opportunities, however, the said Measurement Book only bears the signature of the Site Engineer of the petitioner. In contrast, the Measurement Book was required to be signed by three persons, namely, the Contractor/respondent, Site Engineer and the Architect Consultant.

26. On the basis of the evidence on record, the learned Arbitrator has held that the work done till 13th August, 2013, as recorded in the Measurement Book, would be the value of the work undertaken by the claimant/ respondent herein, by considering that the Measurement Book was lastly signed by the claimant/respondent on the said date. The finding of the learned Arbitrator in this regard, is as follows:

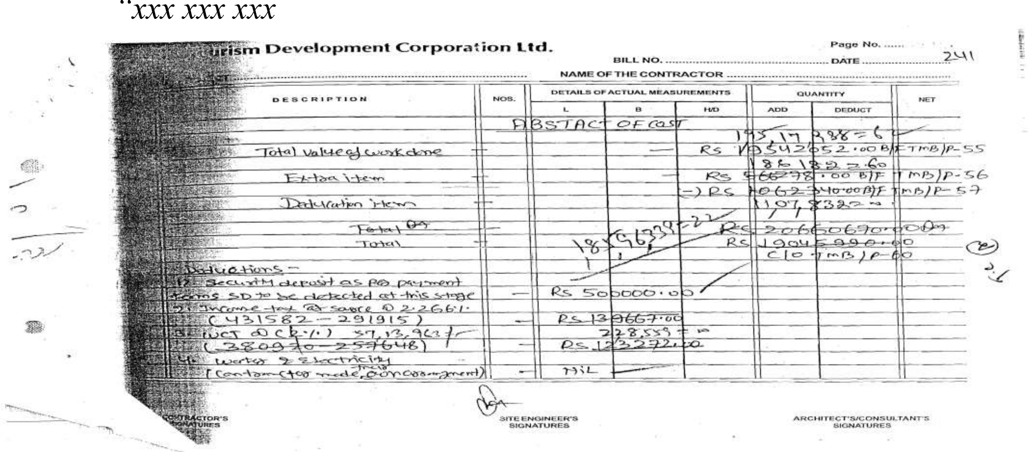
"xxx xxx xxx

31. The Claimant has signed the Measurement Books up to 13.08.2013. The value of work done till this date cannot be disputed by the Claimant. The Claimant has not filed any record maintained by them in regular course of business to show the total value of work done. The Respondents have filed the Measurement Books where the work done by the Claimant has been recorded. It is the case of the Claimant this Measurement Book was not recorded by the Respondent in its presence. On the other hand it is the case of the Respondent that the Claimant did not come forward to sign the Measurement Books after 13.08.2013. Whatever may be the case there is no other evidence to show the total value of work done by the Claimant. I, therefore hold that the total value of work done by the Claimant including Extra items was Rs. 1,97,04,171.22. ---- (A)

xxx xxx xxx"

27. This Court may note that as per the *Measurement Book no. 1613*, the Measurement Book was signed up till 51 pages bearing the signatures of the Contractor, Site Engineer, and Architect/Consultant, whereby, the last signatures are recorded to be done on 13th August, 2008. The deduction of Rs. 11,07,832/- is subsequently recorded at page 66 of the *Measurement Book no. 1613*, whereby, the said page only bears the signature of the Site Engineer, in the following manner:

"xxx xxx xxx


...urism Development Corporation Ltd.

Page No. ...... BILL NO. ...... DATE 241

NAME OF THE CONTRACTOR ......

DESCRIPTION	NOS.	L	B	H/D	ADD	DEDUCT	NET
		ABSTACT OF COST					
Total value of work done					Rs 195,17,388=6 / Rs 19542052.00 B/F		MB/P-55
Extra item					86,182=60 / Rs 566278.00 B/F		MB/P-56
Deduction item					(-) Rs 1062340.00 B/F / 1,07,832=		MB/P-57
Total					Rs 20660690.00		
Total		18,96,339-22			Rs 1904599.00 / C/O MB/P-60		
Deductions –							
1. Security deposit as per payment terms SD to be detected at this stage		Rs 500000.00					
2. Income-tax @ source @ 2.2661% (431582 – 291915)		Rs 139667.00					
3. WCT @ (k%) 57,13,963/- (380970 – 257648)		228,559= / Rs 123272.00					
4. Water & Electricity (Contractor made own arrangement)		NIL					

CONTRACTOR'S SIGNATURES — SITE ENGINEER'S SIGNATURES — ARCHITECT'S/CONSULTANT'S SIGNATURES

xxx xxx xxx"

28. The claim raised by the petitioner herein is a question of appreciation of evidence, specifically, pertaining to whether the deductions recorded in one portion of the Measurement Book were duly carried forward into the final computation of the payable amount. The learned Arbitrator has categorically held that since the claimant/respondent herein never came forward to sign the Measurement Book after 13th August, 2008, the amounts stipulated thereafter would not be considered. Since the amount of Rs. 11,07,832/-, is recorded in the *Measurement Book no. 1613* after 13th August, 2008, and was not signed by all the concerned officials, henceforth, it has been excluded by the learned Arbitrator in the computation of the final payable amount.

29. In this regard, this Court further notes the statements of *DW-1*, i.e., Mr. Dinesh Mahajan, Assistant Manager of the petitioner, placed on record before the Arbitrator in the Evidence Affidavit *qua* the SITC work of Safdarjung Tomb. In the said affidavit, the said witness stated that the Measurement Book has not been scrutinized/checked by the ITDC Scrutiny Cell and Accounts Department, and thus, no amount can be determined to be payable even if the same has been recorded in the Measurement Book. The relevant portions of the said affidavit is extracted hereunder:

> *"xxx xxx xxx*
>
> *.... The total value of work is based on the measurements recorded in the measurement book but the same have not been scrutinized/checked by ITDC Scrutiny Cell and Accounts Department as till date and in the absence of CTE finding, no amount can be determined to be payable even if the same has been recorded in the measurement book. The total value of work done duly accepted by M/s Bajaj up to 13.08.2008 was of 1,28,82,376.20. The 5th and final bill submitted by M/s Bajaj was recorded in the measurement book by the Site Engineer. The total value of work done on completion and handing over recorded was 1,90,45,990.00. The measurements recorded in*

measurement book have not been scrutinized/checked by ITDC Scrutiny Cell and Accounts Department as till date….

xxx xxx xxx"

30. Additionally, it is pertinent to afford attention to the cross-examination of *DW-1*, i.e., Mr. Dinesh Mahajan, Assistant Manager of the petitioner, who expressly stated that he does not remember if any objection or deficiencies were noticed at the time of handing over the project after completion. Furthermore, he admitted that there was no enquiry by CVC, and that there was no visit by Chief Technical Engineer of CVC for Safdurjung Tomb Monument. He further stated that he did not remember if there was any site order book in which the defects in this work were noted. The relevant portion of *DW-1*'s cross-examination dated 20th November, 2014, reads as under:

"xxx xxx xxx

It is correct that all the lights were switched on at the time of inauguration. Electric connection was available and the lighting was done from that connection. I do not remember if two generator sets were deployed on the day of inauguration by the claimant to light the monument. I do not remember and therefore cannot deny that there was no electricity connection available on the day of inauguration. It is correct that Ex. CWR-17 is the first drawing. It is correct that EX. R-45 is the second drawing. This is the approved drawing and the work was done according to this drawing. It is correct that after completion of the work the site was handed over to ASI. We do not have any site order book. ***I do not remember if any objections or deficiencies were noticed at the time of handing over the project after the completion. It is correct that there was no enquiry by CVC. There was no visit by Chief Technical Examiner Under CVC for this monument. I do not remember if there was any site order book in which the defects in this work were noted.*** *It is wrong to suggest that we have intentionally not produced the site order book because it contained all the details of the work done.*

xxx xxx xxx"

(Emphasis Supplied)

31. Further, *DW-1* has admitted that the work was done by the claimant/respondent under the supervision of the petitioner's officers. In this regard, the relevant portion of *DW-1*'s cross-examination dated 24th April, 2015, reads as under:

> *"xxx xxx xxx*
>
> *It is not in my knowledge that Site Order Book and Hindrance Register are two different documents and are maintained separately. It is correct that the agreement Ex. R-11 provides for maintainance of Hindrance Register in clause 28.3 and for Site Order Book in clause 35.5. I have seen the Measurement Book No. 1613 at page No. 60. It bears my signatures at point 'A' on the noting Mark-B which is my hand. I do not remember whether the cable route drawings were revised several times. It is wrong to suggest that the delay was due to several revisions of cable route drawings and not on account of the claimant.* ***It is incorrect to suggest that ITDC officers used to supervise the work on day to day basis however, they used to come regularly and check the work. It is correct that the work was done by the claimant under the supervision of ITDC officers****...*
>
> *xxx xxx xxx"*

(Emphasis Supplied)

32. In view of the aforesaid, it is evident that no deficiency in execution of work has been recorded by the petitioner. This fact becomes all the more important considering the fact that it is an admitted position that the work was executed by the claimant/respondent herein under the supervision of the officers of the petitioner. Furthermore, it has also come on record that no inspection of the work at Safdarjung Tomb monument was carried out by the Chief Technical Engineer. Therefore, there is nothing on record to justify the deduction of Rs. 11,07,832/- towards alleged non-execution of civil and electrical works. The findings of the learned Arbitrator are based on the

evidence on record. No patent illegality in the said finding has been pointed out.

33. This Court is of the considered opinion that the decision of the learned Arbitrator, in not admitting the amounts recorded in the *Measurement Book no. 1613*, after 13th August, 2008, let alone the amount of Rs. 11,07,832/-, is based on appreciation of evidence on record. Therefore, the objection raised by the petitioner does not fall within the parameters of interference by this Court in the present proceedings.

(III) Deduction Of Rs. 14,86,312/- Towards ESI/EPF:

34. Petitioner has stated that under Clause 4 of the Work Order dated 10th April, 2007, and Clause 16.1 of the GCC, the respondent was required to adhere to the compliances of labour laws including the ESI Act and the EPF & MP Act. In view of the said compliance, the respondent was required to deposit the statutory amounts towards ESI and EPF to the concerned statutory authorities.

35. Clause 4 of the Work Order dated 10th April, 2007, categorically states that the respondent herein shall be solely responsible for complying with all provisions related to ESI and EPF & MP Act, and in the event of any liability on the petitioner herein by virtue of being the principal employer, the respondent herein shall indemnify and reimburse the amount payable to the petitioner herein. Clause 4 of the said Work Order is reproduced as hereinunder:

"xxx xxx xxx

4. You shall be solely responsible for compliance of labour related laws, the following clause shall be applicable.

"The contractor shall be solely responsible for complying with all the provision of EPF and miscellaneous provisions Act 1952 and ESI Act relating to manpower engaged for this contract and in the event of any liability on ITDC by virtue of its being principal employer due to failure of the contractor to comply with the said Act, the contractor shall indemnify and reimburse the amount payable by ITDC on this account."

xxx xxx xxx"

36. Clauses 16.1 and 16.2 of the GCC also require the respondent herein to comply with the provisions of the ESI Act and the EPF & MP Act, and to indemnify the petitioner herein against any payment made. The said Clauses 16.1 and 16.2 of the GCC read as follows:

"xxx xxx xxx

16.1 The Contractor shall comply with the provisions of the Payment of Wages Act, 1936, Minimum Wages Act, 1948, Employers Liability Act, 1938, Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, Maternity Benefit Act, 1961, and Mines Act, 1952. The Employees States insurance Act, 1948, Safety Code and Labour Welfare Acts, or rules, or any modifications thereof or any other law relating thereto and rules made there under from time to time.

16.2 The Contractor shall indemnify the Corporation against any payment to be made under and for observance of the Regulations aforesaid without prejudice to his right to claim indemnity from his sub-contractors.

xxx xxx xxx"

37. In this regard, this Court also notes Clause 16 of the Special Conditions to Contract **("SCC")**, which is reproduced as under:

"xxx xxx xxx

16. The Contractor shall be solely responsible for complying with all the provisions of EPF & Miscellaneous Provisions ACT-1952 & ESI Act relating to manpower engaged for this contract and in the event of any liability to I T.D.C. by virtue of its being the Principal employer due to failure of the contract comply with ~~the said~~ Acts. The contractor shall indemnify & reimburse the amount payable by ITDC on his account.

xxx xxx xxx"

38. It is the case of the petitioner that the learned Arbitrator awarded the withheld amount of Rs. 14,86,312/- towards ESI/EPF to the respondent against the bills raised by the respondent for the works done, even though the aforesaid amount has already been deposited by the petitioner with the concerned statutory authority. The petitioner has further contended that the Indemnity Bonds submitted by the respondent herein are not sufficient, as the respondent herein was required to submit *Challans*.

39. Petitioner has also stated that without prejudice to his earlier contentions, even if the deduction on account of ESI/EPF is not tenable, interest could not have been granted by the learned Arbitrator for the period from 25th July, 2009, till 30th October, 2018, as such Indemnity Bond was allegedly submitted by the respondent at the time of final arguments during the arbitral proceedings.

40. It is to be noted that in terms of the aforesaid contractual covenants, it is evident that the claimant/respondent herein was required to indemnify the petitioner herein for any payment made by the petitioner in regard to EPF and ESI dues. The record categorically evinces that the respondent herein has provided the requisite Indemnity Bond to the petitioner. Thus, on the said

basis, the learned Arbitrator has held that since the respondent herein has submitted the necessary Indemnity Bond, and therefore, the petitioner herein is not entitled to deduct any amounts on account of ESI/EPF dues.

41. Moreover, the order passed by the Arbitral Tribunal in the 36th Arbitration Proceeding dated 21st December, 2017, also records that the respondent herein has filed copies of the Indemnity Bonds submitted with the respondent with respect to all the three cases for the claims towards EPF and ESI dues. Therefore, it is to be noted that the respondent has complied with the requirements mentioned in the Contract between the parties by furnishing the Indemnity Bond. Therefore, on the basis of evidence and facts on record, the learned Arbitrator has arrived at the decision that the petitioner had illegally withheld the amount. Thus, the learned Arbitrator has held as follows:

> *"xxx xxx xxx*
>
> *38. The Respondent has also sought to deduct a sum of Rs. 14,86,312/- +7,58,507/- = 22,44,819/- on account of Service Tax, ESI/EPL withheld. During the course of arguments the Claimant submitted the challans for payment of ESI/EPF. The agreement between the parties provides that the amounts deposited by the contractor on account of ESI/EPF have to be reimbursed on submission of Indemnity Bond. The Claimant has now submitted the necessary Indemnity Bonds and therefore the Respondent is not entitled to deduct any amounts on account of ESI/EPF.*
>
> *xxx xxx xxx"*

42. In the 36th Arbitration Proceeding dated 21st December, 2017, the learned Arbitrator has made the following observations:

"

BEFORE SHRI DINESH DAYAL, SOLE ARBITRATOR
9, UPPER BELA ROAD, CIVIL LINES, DELHI-110054 15

In Re:

M/s Bajaj Electricals Ltd ....**CLAIMANT**

VS

India Tourism Development Corporation Ltd.......RESPONDENTS

36th ARBITRATION PROCEEDINGS DATED 21.12.2017

Present: Mr B. Devashekhar Advocate with Mr.Tapan K Bhadra Deputy Manager of the claimant.

Mr. Ujjwal K. Jha Advocate for the respondent

The claimant has filed copies of the indemnity bonds submitted with the respondent with respect to all the three cases with respect to the claims towards PF and ESI dues. The learned counsel for the claimant has also pointed out that the respondent has not yet furnished the TDS certificates for certain TDS deducted.

The learned counsel for the respondent has concluded oral arguments in Purana Quila and Subz Burj cases and submits that he would be filing written arguments in these cases on the next date.

It is noticed that the claimant has deposited Arbitration Fee for 31 hearings. The claimant is directed to deposit the Arbitration Fee for the remaining 5 hearings before the next date.

The respondent has also deposited Arbitration Fee for 31 hearings with a short fall of Rs. 12,500/- in the payments made vide Cheque No. 306316 SBH Janpath, dated 28.11.2013 (Short by Rs. 7,500/-) and Cheque No. 467320 SBH Janpath, dated 07.02.2014 (Short by Rs. 5,000/-). The respondent is directed to makeup the deficiency and deposit the entire remaining Arbitration Fee for 36 hearings before the next date.

Matter to come up on 04.01.2018 at 3.00 P.M. for final arguments by the respondents.

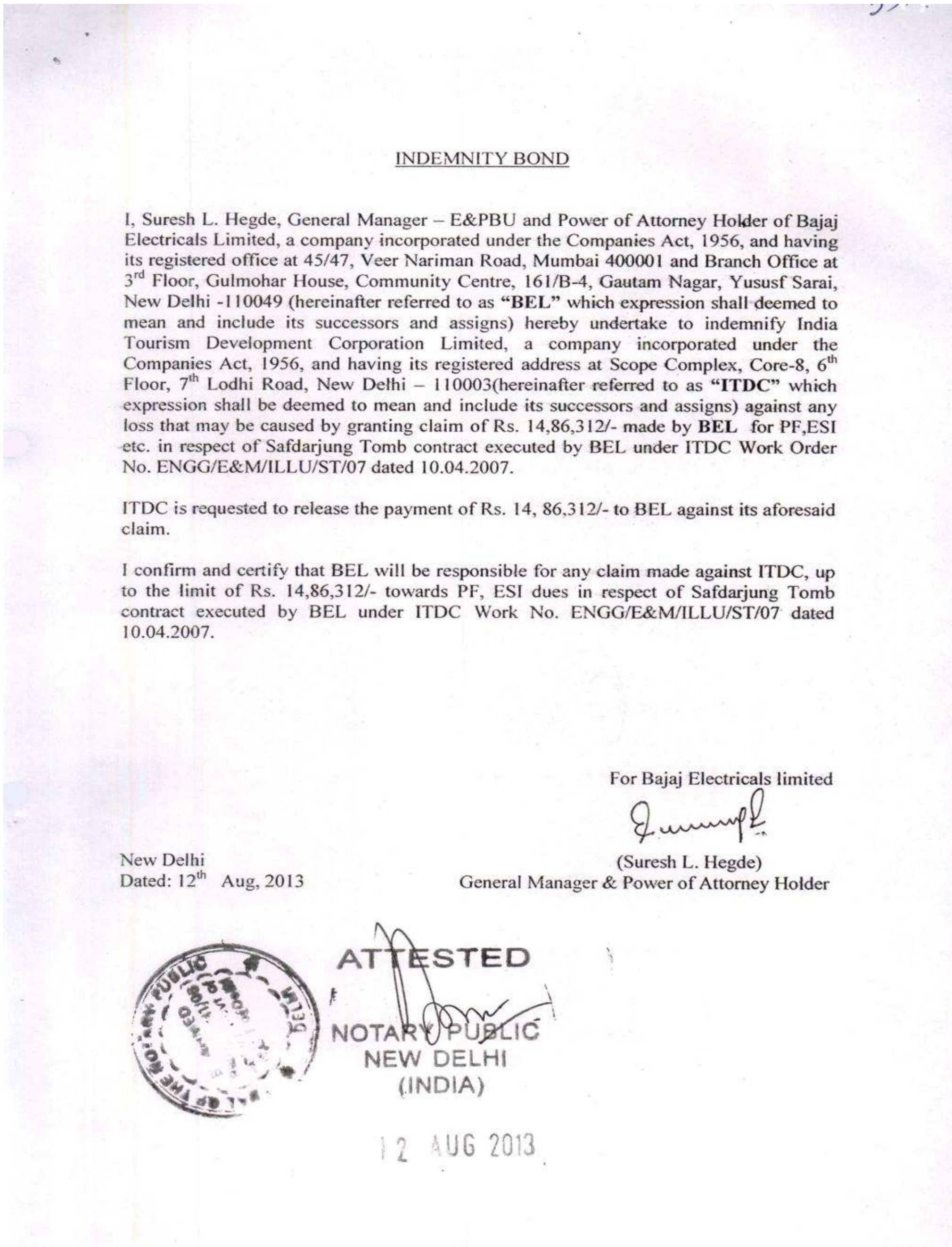
Dinesh Dayal

DINESH DAYAL
Sole Arbitrator
21.12.2017

"

43. The Indemnity Bond as submitted by the respondent and duly recorded, is as follows:

“



INDEMNITY BOND

I, Suresh L. Hegde, General Manager – E&PBU and Power of Attorney Holder of Bajaj Electricals Limited, a company incorporated under the Companies Act, 1956, and having its registered office at 45/47, Veer Nariman Road, Mumbai 400001 and Branch Office at 3rd Floor, Gulmohar House, Community Centre, 161/B-4, Gautam Nagar, Yususf Sarai, New Delhi -110049 (hereinafter referred to as **“BEL”** which expression shall deemed to mean and include its successors and assigns) hereby undertake to indemnify India Tourism Development Corporation Limited, a company incorporated under the Companies Act, 1956, and having its registered address at Scope Complex, Core-8, 6th Floor, 7th Lodhi Road, New Delhi – 110003(hereinafter referred to as **“ITDC”** which expression shall be deemed to mean and include its successors and assigns) against any loss that may be caused by granting claim of Rs. 14,86,312/- made by **BEL** for PF,ESI etc. in respect of Safdarjung Tomb contract executed by BEL under ITDC Work Order No. ENGG/E&M/ILLU/ST/07 dated 10.04.2007.

ITDC is requested to release the payment of Rs. 14, 86,312/- to BEL against its aforesaid claim.

I confirm and certify that BEL will be responsible for any claim made against ITDC, up to the limit of Rs. 14,86,312/- towards PF, ESI dues in respect of Safdarjung Tomb contract executed by BEL under ITDC Work No. ENGG/E&M/ILLU/ST/07 dated 10.04.2007.

For Bajaj Electricals limited

(Suresh L. Hegde)
General Manager & Power of Attorney Holder

New Delhi
Dated: 12th Aug, 2013

ATTESTED

NOTARY PUBLIC
NEW DELHI
(INDIA)

12 AUG 2013

”

44. In view of the above, this Court is of the considered opinion that the finding of the learned Arbitrator in this regard, is based upon interpretation of the contractual terms between the parties and the evidence on record. Thus,

this Court finds no reason to interfere with the finding of the learned Arbitrator.

***(IV) Deduction Towards Service Tax*:**

45. The petitioner has contended that the learned Arbitrator erroneously awarded the withheld amount of Rs. 7,58,507/- towards Service Tax to the respondent, against the bills raised by the respondent for the works done. The aforesaid amount was already deposited by the petitioner towards Service Tax with the concerned statutory authorities.

46. The amount of Rs. 7,58,507/- was deducted by the petitioner on account of Service Tax. As per the petitioner, however, the respondent till date has not furnished the proof of deposit of such Service Tax and therefore, the learned Arbitrator reached a perverse finding that during the course of the arguments in the arbitral proceedings, the respondent has submitted the *Challans* for payment of Service Tax.

47. This Court takes note of the Clause 20 of the SCC, as per which the Contractor, i.e., the respondent herein was only required to submit the proof of Service Tax as paid against the Contract before payment of final bill. Clause 20 of the SCC is reproduced as under:

> *"xxx xxx xxx*
>
> 20 Contractor shall have to submit the proof of service tax paid against the contract before payment of final bill.
>
> *xxx xxx xxx"*

48. In this regard this Court notes the 32nd Arbitration Proceeding dated 11th August, 2017, whereby, it was expressly recorded that the claimant/ respondent herein has filed copies of the Service Tax *Challans* and TDS

Certificates. The said arbitration proceedings dated 11th August, 2017 is reproduced as under:

"

BEFORE SHRI DINESH DAYAL, SOLE ARBITRATOR
9, UPPER BELA ROAD, CIVIL LINES, DELHI-110054

20

In Re:

M/s Bajaj Electricals Ltd ....CLAIMANT

VS

India Tourism Development Corporation Ltd.......RESPONDENTS

32nd ARBITRATION PROCEEDING DATED 11.08.2017

Present Mr B. Devashekhar Advocate with Mr.Tapan K Bhadra Deputy Manager of the claimant.

Mr Prateek Gaur Advocate for Mr. Ujjwal Kr. Jha Advocate for the respondent

The learned counsel for the claimant has filed copies of the Service Tax Challans ans TDS Certificates.

The learned counsel for the respondent requests for some time for further arguments.

Matter to come up on 15.09.2017 at 3.00 P.M. for final arguments by the respondents.

Dinesh Dayal

DINESH DAYAL
Sole Arbitrator
11.08.2017

"

49. Therefore, having placed the requisite evidence of the Service Tax *Challans* before the learned Arbitrator, the petitioner's contention of the same not being deposited till date, cannot be accepted by this Court. A corollary of

the same reflects the basis for the learned Arbitrator's finding for disallowing the deduction amounting to Rs. 7,58,507/- sought to be made by the petitioner.

(IV) Labour Cess Deductible As Per The Terms Of The Contract:

50. The petitioner has stated that as per Clause 16.1 of the GCC, the respondent was required to adhere to the compliances of all labour welfare laws, including, the Workers Welfare Cess Act, wherein the respondent was required to deduct 1% of the amount towards labour cess from the bills of the petitioner and deposit the statutory amounts towards the concerned statutory authorities.

51. He further contends that the learned Arbitrator has erroneously awarded the withheld amount of Rs. 1,85,963/- towards Labour Cess to the respondent against the bills raised by the respondent for the work done. As per the petitioner, the aforesaid amount has already been deposited by the petitioner with the concerned statutory authorities.

52. In this regard, the learned Arbitrator in paragraph 37 of the impugned Award observed as under:

> *"xxx xxx xxx*
> *The Respondent has also sought to deduct a sum of Rs. 1,85,963/- on account of labour cess. This amount has been calculated on the total value of work done. The Respondent has not shown why labour cess was not deducted from the RA bills if it was payable. No dispute had been raised during the proceeding about the liability of the Claimant or the non-payment of the labour cess by the Claimant. I find that the Respondent is not entitled to recover this amount.*
> *xxx xxx xxx"*

53. Thus, the learned Arbitrator has categorically recorded that no dispute was raised by the petitioner herein during the course of the proceedings about the liability of the respondent towards labour cess or its non-payment. Further, the learned Arbitrator recorded that the petitioner herein had sought to deduct a sum on account of labour cess from the total value of the work done, and has not deducted the same from the running account bills.

54. In this regard, it is to be seen that deduction towards labour cess is not specifically mentioned in the Clause 16.1 of the GCC between the parties, except a general reference that the Contractor shall comply with provisions of various Acts, including Labour Welfare Acts. Clause 16.1 of the GCC is reproduced again for the ease of reference:

> *"xxx xxx xxx*
>
> 16.1 The Contractor shall comply with the provisions of the Payment of Wages Act, 1936, Minimum Wages Act, 1948, Employers Liability Act, 1938, Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, Maternity Benefit Act, 1961, and Mines Act, 1952. The Employees States insurance Act, 1948, Safety Code and Labour Welfare Acts, or rules, or any modifications thereof or any other law relating thereto and rules made there under from time to time.
>
> *xxx xxx xxx"*

55. In view of the aforesaid contractual condition, wherein, deduction of labour cess is not specifically mentioned, the finding by the learned Arbitrator with regard to no such submission being raised by the petitioner *qua* the liability of the respondent herein towards payment of labour cess or deduction of the said amount from the bills of the respondent, becomes relevant.

56. If the Contract and the liabilities therein have been interpreted by the learned Arbitrator in a certain way, then the same would not be re-examined by this Court, in a petition under Section 34 of the Arbitration Act. Considering the narrow scope of judicial interference in a petition under Section 34, this Court finds no reason to interfere with the conclusion arrived at by the learned Arbitrator.

57. In this regard, reference may be made to the case of ***Punjab State Civil Supplies Corporation Limited and Another Versus Sanman Rice Mills and Others, 2024 SCC OnLine SC 2632**,* wherein, the Supreme Court held that the mere possibility of an alternative view on facts or interpretation of a contract would not be enough to reverse the findings of the Arbitral Tribunal. Merely because the view, other than the one taken by the Arbitrator, is a better view would not suffice in rejecting the arbitral award. Thus, in the said judgment, it was held as under:

> *"xxx xxx xxx*
>
> *18. Recently a three-Judge Bench in Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking [Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking (2023) 9 SCC 85] referring to MMTC Limited (supra) held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the courts should not interfere with the arbitral award lightly in a casual and*

a cavalier manner. ***<u>The mere possibility of an alternative view on facts or interpretation of the contract does not entitle the courts to reverse the findings of the arbitral tribunal.</u>***

xxx xxx xxx

20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. ***<u>The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.</u>***

xxx xxx xxx"

(Emphasis Supplied)

58. It is well-settled that Courts ought not to interfere with the Arbitral Award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle Courts to reverse the findings of the Arbitral Tribunal. (**See:** ***Konkan Railway Corporation Limited Versus Chenab Bridge Project Undertaking, (2023) 9 SCC 85)***

59. At this stage, this Court may also fruitfully refer to the judgment in the case of ***National Highways Authority of India Versus Hindustan Construction Company Limited, (2024) 6 SCC 809***, wherein, it has been held in clear terms that as far as the construction of the terms of a contract is concerned, it is for the Arbitral Tribunal to adjudicate upon. If, after considering the material on record, the Arbitral Tribunal takes a particular view on the interpretation of the contract, the Court under Section 34 of the Arbitration Act does not sit in appeal over the findings of the arbitrator.

60. Considering the detailed discussion hereinabove, the view taken by the learned Arbitrator is a plausible view, and that being the position, the same does not warrant interference by this Court.

***(V) Interest Amount*:**

61. Petitioner has stated that the learned Arbitrator has erroneously awarded interest @12% per annum, which is excessive in view of the fact that all the payments were already made by the petitioner to the respondent from time to time and final payment could not be made only for the reason that despite several communications, the respondents did not come forward to sign the Measurement Book and to take the payment.

62. The legal framework on interest in arbitration is well settled. Section 31(7) of the Act (as amended in 2015) confers power on the Arbitral Tribunal to award interest for the pre-reference period, the period during arbitral proceedings, i.e., *pendente lite*, and the post-award period. Section 31(7) of the Arbitration Act is reproduced as hereinunder:

"xxx xxx xxx

***31. Form and contents of arbitral award**.—*

xxx xxx xxx

(7)(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

[(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of Section 2 of the Interest Act, 1978 (14 of 1978).]

xxx xxx xxx"

(Emphasis Supplied)

63. Accordingly, an Arbitral Tribunal is vested with the authority to award interest at such rate as it deems reasonable. Determination of the appropriate rate of interest lies primarily within the domain of the learned Arbitrator. Reference in this regard may be made to the judgment in the case of ***M.A. Zahid Versus Jindal SAW Ltd., 2025 SCC OnLine Del 5227***, wherein, it has been held as follows:

"xxx xxx xxx

16. ***Under the 1996 Act, power of the Arbitrator to grant interest is governed by Section 31(7). This provision is in two parts. Under Clause (a), in the absence of an agreement between the parties to the contrary, an Arbitrator can award interest for the period between the date of cause of action to the date of the award, either for the whole***

or part of the said period. Clause (b) provides that unless the award otherwise directs, the sum directed to be paid by the Arbitrator shall carry interest @ 2% higher than current rate of interest from the date of the award to the date of payment. *This amendment was brought about from 23.10.2015 by virtue of Amendment Act No. 3 of 2016. Be it noted that this Court is not delving into the pre-reference and pendente lite interest as the contest in the present case is only with respect to post-award interest.*

17. ***Read simply and as observed by the Supreme Court in Morgan Securities and Credits Private Limited v. Videocon Industries Limited, 2022 SCC OnLine SC 1127, both clauses (a) and (b) of Section 31(7) are qualified. While clause (a) is qualified by the arbitration agreement, clause (b) is qualified by the arbitration award and placement of the phrases is crucial to their interpretation. As can be seen from the amended Section, the phrase 'unless otherwise agreed by the parties', occurs at the beginning of clause (a) qualifying the entire provision while phrase 'unless the award otherwise directs', occurs after the words 'a sum directed to be paid by an arbitral award shall' and before the words 'carry interest at the rate of two per cent', and therefore, the phrase qualifies the rate of post-award interest. It is settled that the Arbitrator has a wide discretion to grant: (a) pre-reference; (b) pendente lite; and (c) post-award interest****. In North Delhi Municipal Corporation v. S.A. Builders Ltd., 2024 SCC OnLine SC 3768, the Supreme Court held that grant of post award interest serves a salutary purpose and primarily acts as a disincentive to the award-debtor not to delay payment of arbitral amount to the award-holder.*

18. ***In Morgan Securities (supra), albeit the Supreme Court was dealing with unamended Section 31(7)(b), it was held that Section 31(7)(a) confers a wide discretion on the Arbitrator to grant pre-award interest and determine the rate of interest, the sum on which it is to be paid and the period and when a discretion has been conferred in regard to grant of pre-award interest, it would be against the grain of statutory interpretation to presuppose that legislative intent was to reduce the discretionary power of the Arbitrator for grant of post-award interest under clause (b). It was observed that clause (b) only contemplates a situation where the arbitral award is silent on the post-award interest, in which event the award-holder is entitled to the post-award interest @ 18% stipulated in Section 31(7)(b), the unamended provision. It was held that the Arbitrator has the discretion to grant post-award interest and this discretion is not fettered by clause (b) albeit it is open to the Arbitrator to decline interest in its discretion. It was highlighted that purpose of granting post-award interest is to***

ensure that the award-debtor does not delay the payment of the awarded amount. *With proliferation of arbitration, issues involving both high and low financial implications are referred to arbitration and Arbitrator takes note of various factors such as financial standing of the award-debtor and circumstances of the parties in dispute before awarding interest.* ***No provision under the 1996 Act restricts the exercise of discretion to grant post-award interest by the Arbitrator though Arbitrator must exercise the discretion in good faith taking into account relevant considerations and must act reasonably and rationally.*** *It was concluded by the Supreme Court that according to Section 31(7)(b) only where the Arbitrator does not grant post-award interest, provisions of second part of sub-clause (b) will come into play.*

xxx xxx xxx

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

21. On a plain reading of the impugned award in the instant case and applying the settled law, the reasoning adopted by the learned Arbitrator for awarding the rate of interest cannot be faulted with. Arbitrator has considered all relevant factors such as: (a) Petitioner's admission of his liability to pay the principal amount to the Respondent; (b) violation of the terms of settlement in the Deed of Settlement and related documents executed on the same day; (c)

financial loss caused to the Respondent; and (d) the admitted fact of the Respondent being deprived of its right to enjoy the monies due to it for several years, etc. Arbitrator has exercised the discretion vested in him judiciously, taking into consideration relevant facts/factors and eschewing irrelevant considerations.

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

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

Limited (supra), the Supreme Court was dealing with an International Commercial Arbitration involving Rupee as well Euro components and moreover, the rate of interest was reduced in respect of foreign currency component to bring the interest rate in line with international rate on the ground that rate of interest prevailing on the rupee debt in India and on international currency in abroad were different and international rates were lower, which was not the case before the Supreme Court in Reliance Infrastructure (supra). It was further held that the Arbitral Tribunal was well within its jurisdiction under Section 31 to award interest at the rate of 15% per annum and no justification was found to reduce the same. Significantly, it was also observed that the High Court was not exercising any equity jurisdiction to re-settle the rate of interest as deemed fit by it as this was a matter relating to an award made by an Arbitral Tribunal in a commercial dispute. *Relevant passages from the judgment in Reliance Infrastructure (supra), are as follows:—*

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

90. We are of the view that the aforesaid reduction of rate of interest by the High Court is also unjustified. We have noticed the provisions of Section 31(7)(b) that unless the award otherwise directs, the sum payable under the arbitral award shall carry interest @ 2% higher than the current rate of interest prevalent on the date of the award, from the date of the award to the date of payment. The expression "current rate of interest" has been explained in the Explanation to the said section to have the same meaning as assigned under Section 2(b) of the Interest Act, 1978. The High Court has referred to the decision in Vedanta [Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd., (2019) 11 SCC 465 : (2019) 4 SCC (Civ) 724] to hold that a Court may reduce interest awarded by the arbitrator when such interest does not reflect the prevailing economic condition or where it is not found reasonable or where it promotes interest of justice.

91. ***We do not find any basis in the impugned judgment [State of Goa v. Reliance Infrastructure Ltd., 2021 SCC OnLine Bom 306] of the High Court for reducing the rate of interest,*** *as in Vedanta [Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd., (2019) 11 SCC 465 : (2019) 4 SCC (Civ) 724], wherein this Court was dealing with an International Commercial Arbitration involving rupee as well as euro components. Moreover, in Vedanta [Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd., (2019) 11 SCC 465 : (2019) 4 SCC (Civ) 724], the rate of interest was reduced in respect of the foreign currency component to bring the interest rate in line with the international rate on the ground that the rate of interest prevailing on the rupee debt in India and on international currency abroad were different and the international rates were lower. Such a situation is not obtaining in the present case.*

92. The High Court seems to have not considered the relevant factual aspects. On the contrary, as has been submitted before us as well as the High Court, the prevailing interest rate being the prime lending rate of State Bank of India was in the range of 13% to 14% p.a. Thus, the Arbitral Tribunal was justified in granting interest @ 15% p.a. post-award. In our view, the Arbitral Tribunal was well within its jurisdiction under Section 31 of the Act to award interest @ 15% p.a. and there was no justification to reduce the same to 10% p.a. We may observe with respect that the High Court was not exercising any equity jurisdiction so as to resettle the rate

<u>of interest as deemed fit by it. It had been a matter relating to an award made by the Arbitral Tribunal in a commercial dispute.</u>"

xxx xxx xxx"

(Emphasis Supplied)

64. Accordingly, the learned Arbitrator was well within his right and authority to grant interest @ 12% per annum. There is no material before this Court that the award of interest or the rate of interest, suffers from any illegality or perversity, within the contours of the jurisdiction under Section 34 of the Arbitration Act. Consequently, there is no justification to interfere with the award of interest granted by the learned Arbitrator.

<u>(VI) Post-Award Payment Of Rs. 13, 93,368/-</u>:

65. The petitioner has stated that a payment of Rs. 13,93,368/- was made to the respondent on 09th July, 2019, *vide Cheque no. 302416* dated 09th July, 2019, and therefore, the same must be subtracted from the principal amount while calculating the future interest on the pending payable amount.

66. This contention, as raised by the petitioner, is not a challenge to the impugned Award *per se*. Rather it related to compliance with the Award and the final amount payable. This Court would not go into the merits of this contention since Section 34 of the Arbitration Act does not stipulate an adjudicatory mechanism for verifying part-payments or crediting amounts said to have been paid subsequent to, or even prior to, the passing of the Award. The scope of a petition under Section 34 is confined to examining whether the Award suffers from any of the grounds enumerated therein, and it does not extend to a re-computation or reconciliation of accounts between the parties on the basis of payments allegedly made outside the arbitral record.

67. If the petitioner is of the view that a part-payment of Rs. 13,93,368/- was in fact made on 09th July, 2019, and that the same stands unaccounted for in the impugned Award, the appropriate remedy would be to raise this contention at the stage of execution of the Award, where such factual disputes regarding satisfaction or part-satisfaction of the decretal amount can be examined and adjudicated in accordance with law, including, under Order XXI of the Code of Civil Procedure, 1908 **("CPC")**, as made applicable to execution of Arbitral Awards. This Court, exercising jurisdiction under Section 34 of the Arbitration Act, is neither the appropriate forum nor possessed of the requisite mechanism to record evidence or verify such a factual claim.

68. Accordingly, the contention raised by the petitioner regarding adjustment of the alleged payment of Rs. 13,93,368/- against the principal amount for the purpose of calculating future interest is left open to be agitated before the Executing Court, and does not warrant interference with the impugned Award under Section 34 of the Arbitration Act.

VI. CONCLUSION

69. Considering the detailed discussion hereinabove, this Court finds no grounds to interfere in the findings arrived at by the learned Arbitrator within the scope of interference under Section 34 of the Arbitration Act. The present petition is, accordingly, dismissed.

MINI PUSHKARNA
(JUDGE)

AUGUST 17, 2026
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