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

Reserved on: 14.11.2024
Pronounced on: 10.02.2025

\+ **FAO(OS) (COMM) 245/2024 & CM APPL. 65789/2024**
\+ **FAO(OS) (COMM) 246/2024 & CM APPL. 65793/2024**
\+ **FAO(OS) (COMM) 247/2024 & CM APPL. 65797/2024**
\+ **FAO(OS) (COMM) 248/2024 & CM APPL. 65799/2024**
\+ **FAO(OS) (COMM) 249/2024 & CM APPL. 65804/2024**
\+ **FAO(OS) (COMM) 250/2024 & CM APPL. 65806/2024**
\+ **FAO(OS) (COMM) 251/2024 & CM APPL. 65808/2024**
\+ **FAO(OS) (COMM) 252/2024 & CM APPL. 65810/2024**
\+ **FAO(OS) (COMM) 253/2024 & CM APPL. 65812/2024**
\+ **FAO(OS) (COMM) 254/2024 & CM APPL. 65814/2024**
\+ **FAO(OS) (COMM) 255/2024 & CM APPL. 65816/2024**
\+ **FAO(OS) (COMM) 256/2024 & CM APPL. 65818/2024**
\+ **FAO(OS) (COMM) 257/2024 & CM APPL. 65820/2024**

INDIAN RAILWAYS CATERING AND TOURISM CORP. LTD. (IRCTC)

.....Appellant

Through: Mr. Tushar Mehta, SG & Mr. Ciccu Mukhopadhaya, Senior Advocate with Mr.Saurav Agrawal, Mr.Anshuman Choudhary and Ms. Kirutika S., Advs.

versus

M/S BRANDAVAN FOOD PRODUCTS .....Respondent
M/S BRANDAVAN FOOD PRODUCTS .....Respondent
M/S BRANDAVAN FOOD PRODUCTS .....Respondent
M/S R.K. ASSOCIATES AND HOTELIERS PVT LTD. .....Respondent
M/S BRANDAVAN FOOD PRODUCTS .....Respondent
SATYAM CATERERS PVT. LTD. .....Respondent

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M/S BRANDAVAN FOOD PRODUCTS .....Respondent
M/S BRANDAVAN FOOD PRODUCTS .....Respondent
M/S R.K. ASSOCIATES AND HOTELIERS PVT LTD. .....Respondent
SATYAM CATERERS PVT. LTD. .....Respondent

Through: Mr.Sanjay Jain & Mr.Joy Basu, Senior Advocates with Mr.Sudhir Mishra, Ms.Ritwika Nanda, Ms.Shruti Gupta, Advs.

Reserved on: 23.12.2024
Pronounced on: 10.02.2025

\+ **FAO(OS) (COMM) 262/2024**
\+ **FAO(OS) (COMM) 263/2024**
\+ **FAO(OS) (COMM) 264/2024**
\+ **FAO(OS) (COMM) 265/2024**
\+ **FAO(OS) (COMM) 266/2024**

BRANDAVAN FOOD PRODUCTS .....Appellant

Through: Mr. Sanjay Jain & Mr. Joy Basu, Sr. Advs. with Mr. Sudhir Mishra, Ms. Ritwika Nand, Ms. Shruti Gupta, Mr. Anurag Sarda, Ms. Harshita Sukhija, Ms. Palak Jain & Mr. Anoop George, Advs.

versus

INDIAN RAILWAY CATERING AND TOURSIM COPORTATION LTD .....Respondent

Through: Mr. Tushar Mehta, Solicitor General of India with Mr. CICCU Mukhopadhyay, Sr. Adv. with Mr. Saurav Agrawal,

Standing Counsel (IRCTC) with Mr. Anshuman Choudhary, Mr. Ajay Sharma, Mr. Shivam Chaudhary & Ms. Aarya Bhatt, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

NAVIN CHAWLA, J.

1. This set of cross appeals has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (in short, 'A&C Act'), challenging the Order dated 13.08.2024 (hereinafter referred to as 'Impugned Order') passed by the learned Single Judge of this Court in OMP (COMM.)411/2022, OMP (COMM.)47/2023, OMP (COMM.) 517/2022, OMP (COMM.) 500/2022, OMP (COMM.) 46/2023, OMP (COMM.) 495/2022, OMP (COMM.) 504/2022, OMP (COMM.) 447/2022, OMP (COMM.) 506/2022, OMP (COMM.) 505/2022, OMP (COMM.) 502/2022, OMP (COMM.) 45/2023, OMP (COMM.)446/2022, allowing, in part, the said petitions filed by the Indian Railways Catering and Tourism Corporation Ltd. (hereinafter referred to as, 'IRCTC') under Section 34 of the A&C Act, by partially setting aside the Arbitral Award dated 27.04.2022 passed by the learned Sole Arbitrator (hereinafter referred to as the 'Impugned Award').

2. Both the parties to the petitions, that is, IRCTC and M/s Brandavan Food Products Ltd., being aggrieved of the parts of the

impugned order, have challenged the same in form of this batch of cross-appeals.

3. In these are cross-appeals, IRCTC shall be referred to as the 'respondent', while M/s Brandavan Food Products Ltd. shall be referred to as the 'claimant'.

4. There were a total of 13 claims filed by the claimant before the learned Sole Arbitrator, with respect to 13 different trains (Rajdhani, Shatabdi and Duranto trains). As similar background facts are involved in the cross-appeals, for the sake of convenience and brevity, the facts from FAO(OS)(COMM) 246/2024 are being referred to.

Brief Background of Facts:

5. The claimant had filed the Statement of Claim before the learned Sole Arbitrator, contending therein that the respondent is a public listed Central Public Sector Enterprise (CPSE) working under the aegis of the Ministry of Railways, Government of India, whereas the claimant is a private contractor providing catering services on the trains run by the Indian Railways.

6. In terms of the Catering Policy of 2010 issued by the Railway Board (hereinafter referred to as '2010 Policy'), the tenders for providing catering services on trains were called for on the basis of bids for License Fee payable by the Contractor to the respondent, while the Catering/Apportionment charges were to be reimbursed to the Contractor for providing such catering services as calculated on the basis of Catering Tariff fixed by the Railway Board. The

Catering/Apportionment charges are fixed by way of Commercial Circulars issued by the Ministry of Railways, through the Railway Board, and are applicable to all existing licenses/contracts as well as those which are to be issued in the future.

7. In pursuance of the said policies and practices, the Northern Railways published a tender, inviting bids on 27.05.2013 for the provision of Catering Services in, *inter alia*, the New Delhi-Dibrugarh Rajdhani Express, Train No. 12423-24 for a period of 5+5 years (hereinafter referred to as, 'Subject Tender').

8. At the relevant time, the Catering/Apportionment Charges for the said tender had been calculated on the basis of the Catering Tariff fixed in the year 1999 *vide* Letter dated 27.05.1999 (hereinafter referred to as, '1999 Policy') and was a part of the tender document itself.

9. The claimant, on 27.06.2013, submitted its Bid *qua* the Subject Tender and quoted Rs. 35,63,00,000/- as the License Fee for a period of 5 years.

10. Prior to opening the bids for the Subject Tender, the Ministry of Railways, through the Railway Board, issued a Commercial Circular No. 63/2013 dated 09.10.2013 (hereinafter referred to as, 'Circular dated 09.10.2013'), whereby a new concept of 'Combo Meal' was introduced by the Railway Board as a measure to reduce food wastage for the meal being served for dinner. It provided that instead of a second Regular Meal/full meal being served in the course of the journey, only a Combo Meal, which was a smaller meal consisting of

lesser items and quantity of food, shall be served. It was priced at Rs. 66.50/- for 1AC/2AC/3AC, as against the Regular Meal, which was priced at Rs. 129.50/- for 1AC and Rs. 112.50/- for 2AC/3AC.

11. However, after a feedback from the Zonal Railway offices, the Railway Board, *vide* Commercial Circular No. 67/2013 dated 23.10.2013 (hereinafter referred to as, 'Circular dated 23.10.2013'), discontinued the Combo Meal service by deleting paragraph 1.4 of the Circular dated 09.10.2013, by which the concept of Combo Meal was introduced, and once again decided that a Regular Meal be served as the Second Meal of the day.

12. The claimant asserts that, therefore, the Subject Tender was governed by the Circular dated 09.10.2013 read with the Circular dated 23.10.2013, and, in the course of a journey requiring two meals to be served, the claimant was obliged to serve two Regular Meals instead of one Regular Meal and one Combo Meal. This is not disputed by the respondent.

13. The Northern Railways issued a Letter of Award dated 17.01.2014 (hereinafter referred to as, 'LOA'), and the claimant started providing the catering services on the train with effect from 21.01.2014.

14. The claimant and the Northern Railways thereafter entered into a Master License Agreement dated 21.04.2014 (hereinafter referred to as, 'MLA').

15. By the Commercial Circular No. 32/2014 dated 06.08.2014 (hereinafter referred to as, 'Circular dated 06.08.2014'), it was

stipulated that henceforth a Welcome Drink will be served to all passengers of the AC classes on the commencement of the journey.

16. The claimant asserted that the charges for the Welcome Drink were not notified by the Railways/the respondent herein.

17. The claimant asserted that it made representations to the Northern Railways, dated 22.06.2015, 03.08.2016, 23.08.2016 and 25.11.2016, calling upon the Railways to pay charges for the Welcome Drink. The said issue, however, remained pending with the Railways.

18. A Tripartite Agreement dated 10.08.2017 (hereinafter referred to as, 'Tripartite Agreement') was executed between the Northern Railways, the respondent, and the claimant, whereby, the management of catering services stood transferred to the respondent.

19. In December 2017, the claimant filed a Writ Petition being, W.P.(C)11548/2017 titled ***M/S Brandavan Food Products & Anr. v. Union of India & Ors.***, *inter alia* seeking quashing of the Circular dated 06.08.2014. The claimant sought the following reliefs in the said petition:

> *"A. Issue an appropriate writ, order or directions quashing the impugned circular bearing Commercial Circular No. 67 of 2013 dated 23-10-2013 and Commercial Circular No. 32 of 2014 dated 6-08-2014 issued by the Respondent; and*
> *B. Issue an appropriate writ, order or direction commanding the Respondent to refund an amount of Rs. 7,82,49,945.00 incurred by the Petitioner for providing regular meal at the price of combo meal from 17.10.2013 to 30.11.2017 along with 18%*

> *interest from the date when the amount became due and payable; and / or*
> *C. Issue a writ, rule, order or direction in the nature of Mandamus directing the Respondent to refund an amount of Rs. 1,80,57,132.42 along with 18% interest from the date when the amount became due and payable incurred by the Petitioner for providing Welcome Drink from 01.08.2014 to 30.11.2017."*

20. This Court, *vide* its Judgment dated 23.09.2019, dismissed the said Writ Petition, however, granted liberty to the claimant to initiate arbitration proceedings. We may quote from the said judgment, as under:

> *"17. It is for the petitioner to take up the issues before an appropriate forum. Liberty is granted to the petitioner to take steps for appointment of an arbitrator to look into the grievance of the petitioner. In case such arbitration proceedings are initiated, the learned arbitrator may adjudicate the disputes raised by the petitioner uninfluenced by any observations made by this court."*

21. Subsequently, the claimant invoked arbitration proceedings *vide* Letter dated 02.02.2020, *inter-alia* claiming from the respondent a sum of Rs.27,82,13,600/- for providing Regular Meals at the price of Combo Meals from October 2013 to March 2020, and Rs.5,34,89,753/- for providing Welcome Drinks from August 2014 to March 2020.

Arbitral Award:

22. The learned Sole Arbitrator, *vide* the Arbitral Award dated 27.04.2022, allowed the claims of the claimant herein and awarded the

claimant sums towards the differential costs for the supply of Second Regular Meals instead of Combo Meals and for the supply of Welcome Drinks, along with simple interest at the rate of 6% per annum payable from January 2018 till the date of the Award and interest at the rate of 9% per annum in case the payment is not made within a period of 4 months.

23. In summary, the learned Sole Arbitrator held as under:-

(a) Giving the benefit of Section 14 of the Limitation Act, 1963 (in short, 'Limitation Act') to the claimant for the time spent in the Writ Petition, the claimant would be entitled to seek the claim for the period commencing from January, 2015;

(b) Only on the ground that it raised bills without claiming the additional amounts for the Second Regular Meal or the Welcome Drink, and accepted payment of the bills so raised, the claimant cannot be non-suited on the ground that it has waived or abandoned its right to seek recovery of the amount due for the supplies made;

(c) The plea that the claimant unduly benefited due to the increase in tariff pursuant to the Circular dated 09.10.2013, cannot be accepted as the said Circular was issued by the Railways on its own to fix the adequate rate of catering services;

(d) The respondent enjoys a superior and dominant position in the contract over the claimant;

(e) Clause 1.3.1 of the Tender Document does not clothe the respondent with unilateral powers to issue any directions whatsoever which would then automatically deem to bind the claimant. It cannot be used to say that if the respondent directs the claimant to render a particular service which leads to additional costs being incurred, then, even without the express consent of the claimant, the respondent can assume or assert that the claimant will not be reimbursed for such additional costs incurred by it on account of the services rendered by it on the specific instruction of the respondent

(f) Similarly, while Clause 8 of the MLA authorises the respondent to make revisions in the catering menu and tariff, it cannot come to the aid of the respondent to contend that they would not pay for the services rendered;

(g) In the facts of the case, as the respondent called upon the claimant to serve a Second Regular Meal for dinner instead of a Combo Meal, and as rates for both have been specified in the Circular dated 09.10.2013, the respondent cannot invoke Clause 8.1 of the MLA to reimburse the claimant at the rate of the Combo Meal instead of the rate of the Regular Meal;

(h) Similarly, Clause 8.1 of the MLA cannot be invoked to deny the payment/reimburse the claimant for the Welcome Drink;

(i) Clause 1.4 of the MLA also has no application as the rates and prices contained in the Circular dated 09.10.2013 remained unchanged;

(j) The claimant is entitled to seek recoveries of monies due and payable to it on account of having supplied the Second Regular Meal and the Welcome Drink;

(k) As far as the computation of the amount due is concerned, the claimant has based its claim on the Occupancy Certificate, and bills based thereon already submitted by it with the respondent. It has, therefore, discharged its initial burden of proving the computation of the amount. The respondent, however, has not given any contrary figure of the numbers of Second Regular Meals and Welcome Drinks supplied, and in the absence of any contrary evidence, the amount computed by the claimant is accepted;

(l) Even in the absence of the bills on record, the claimant, by producing the Chartered Accountant as a witness, has been able to prove the quantum of its claim in terms of Section 65(g) of the Evidence Act, 1872;

(m) The plea of the respondent that in some trains, like the morning Shatabdi, where in terms of the Circular dated 06.08.2014, Welcome Drinks were to be supplied with the rider that whenever the serving of the Welcome Drink was followed immediately by the serving of breakfast, then the

Fruity/tetra-pack to be provided along with the breakfast was not required to be served as it would neutralize the effect of service of Welcome Drink, also cannot be accepted as the respondent failed to prove the same and did not raise any set-off or counter-claim in this regard;

(n) The plea of the respondent that there was a non-joinder of parties inasmuch as the Indian Railways was not impleaded, was also rejected;

Impugned Order:

24. The respondent filed the above mentioned petitions under Section 34 of the A&C Act, challenging the Arbitral Award.

25. The learned Single Judge, *vide* the Impugned Order, has upheld the Award of the learned Sole Arbitrator as regards the finding on limitation, waiver/estoppel *vis-à-vis* the Welcome Drink, recovery of monies *vis-à-vis* the Welcome Drink, computation of claims *vis-à-vis* the Welcome Drink, and on the interest awarded. However, the Award of the learned Sole Arbitrator has been set aside as far as the findings of the learned Sole Arbitrator on waiver/estoppel *vis-à-vis* the Second Regular Meal, and the recovery ordered *vis-à-vis* the Second Regular Meal are concerned.

26. A summary of the findings of the learned Single Judge is as under:-

(a) The finding of the learned Sole Arbitrator on the issue of limitation was upheld;

(b) In terms of Clause 8.1 and Clause 1.4 of the MLA, the respondent had a right to modify/alter the tariff without consultation with the claimant. Therefore, the claimant had no right under the contract to claim the difference in rates specified in the Circular dated 09.10.2013 and the Circular dated 23.10.2013;

(c) Clause 21.6 of the MLA had no application to the facts of the case as the claimant had no legitimate right to make the claim;

(d) The finding of the learned Sole Arbitrator that the bills were raised by the claimant under duress, coercion and because the claimant was in a financially precarious situation, is not supported by any evidence.

(e) The learned Sole Arbitrator has also erred in holding that because the respondent had a dominant position in the contract, the claimant could not have easily surrendered the contract and had no other choice but to raise the bills and receive payments as per the Commercial Circulars. These were mere bald assertions of the claimant without any evidence to support the same;

(f) The claimant cannot claim benefit under the Circular dated 09.10.2013 and in the same breath seek to resile from the Circular dated 23.10.2013 on the ground of it being inequitable;

(g) The doctrine of waiver was irrelevant in the present case as

the claimant had entered into the contract with the respondent and did not have any right to seek reimbursement of the price difference for providing the Second Regular Meal as per the charges stipulated in the Circular dated 09.10.2013;

(h) The conduct of the claimant falls squarely within the definition of 'estoppel' as it raised bills upon the changed tariff, accepted payments pursuant to those bills without demur or protest, and issued a letter of protest only after 1.5 years had passed;

(i) By the Circular dated 09.10.2013, there was, in fact, a change in the tariff from Rs.150/- (pre-bid tariff) to Rs.178.50/-, and post the Circular dated 23.10.2013, merely the concept of Combo Meal as the Second Meal was substituted by a Regular Meal, however, no change was made to the tariff pertaining to the Second Meal, which remained at Rs.66.50/-;

(j) The learned Sole Arbitrator had erred in relying upon the respondent's letter dated 05.07.2019 to the Railways and the Railway's change of policy *vide* Letter dated 03.10.2019, as the claimant could not have claimed amounts prior to the change of policy;

(k) As far as the Welcome Drink is concerned, it does not fall within the ambit of Clause 8.1 or Clause 1.4 of the MLA, as even though the respondent had the power to

modify/alter the menu/tariff, it could not have asked the claimant to provide an additional item without intending to reimburse the claimant for the same;

(l) There was no infirmity in the findings of the learned Sole Arbitrator regarding the quantification of the claim as far as the Welcome Drink is concerned;

(m) The finding on the non-impleadment of the Indian Railways also does not warrant an interference;

(n) As the learned Sole Arbitrator had the discretion to award interest, therefore, the challenge to the award of interest is not interfered with.

Submissions of the learned Solictor General appearing for the Respondent:

27. Mr. Tushar Mehta, the learned Solicitor General, appearing for the respondent, submits that for the catering services, the IRCTC charges the pre-fixed tariff from the customers/passengers and passes it on to the caterers without retaining any amount for itself pursuant to an invoice raised by the Caterer.

28. As far as the claim of the claimant towards the Welcome Drink is concerned, the learned Solicitor General submits that the claimant had supplied the Welcome Drink to the passenger without any demur or protest or objection of any nature whatsoever. It is only after a gap of almost 11 months that a vague representation was made by an association without any material particulars. In the later

representations of the claimant, no claim was made for reimbursement towards the past supply of the Welcome Drink. The bills continued to be raised by the claimant without any claim for the Welcome Drink.

29. He submits that in terms of Clause 1.4 and Clause 8.1 of the MLA, an unfettered right has been vested in the respondent to modify/alter the catering tariff and menu including without addition to the tariff. The Circular dated 06.08.2014 was issued in exercise of this power. The claimant accepted the same and did not raise any bill claiming any amount towards the Welcome Drink. Any objection to the supply of Welcome Drink or for the claim of money for the same should have been raised by the claimant immediately as it was to be passed on to the passengers. To get over the same, the claimant raised a vague plea of coercion, which the learned Sole Arbitrator accepted without any evidence.

30. He submits that, on merits, since the claimant failed to provide day-to-day or month-to-month consumption/supply of the Welcome Drink in the monthly bills, the claimant cannot claim any amount *qua* the same. He submits that the claimant has not discharged the burden of proving the quantity of Welcome Drinks supplied, and even the sole witness of the claimant, that is, CW-1, a Chartered Accountant, has admitted in his cross examination that he was not aware of the number of Welcome Drinks supplied by the claimant. Therefore, the learned Sole Arbitrator and the learned Single Judge erred in allowing the claim towards the supply of Welcome Drinks without any evidence being led by the claimant.

31. He submits that the claimant accepted the LOA and commenced services from 21.01.2014 and, in fact, even raised an invoice on 31.01.2014. He submits that the claimant entered into the MLA, knowing the catering tariff and menu for the different meals. The MLA contained a detailed chart of pre-determined tariff as per the Circular dated 23.10.2013, and the said chart is not disputed by the claimant in its evidence before the learned Sole Arbitrator. He submits that the learned Sole Arbitrator erred in interpreting the said apportionment chart and Clause 1.4 of the MLA in a manner that gives rise to a new contract between the parties.

32. He further submits that the learned Single Judge had rightly held the finding of the learned Sole Arbitrator *qua* the Second Regular Meal to be patently illegal and perverse. He submits that there was no scope of ambiguity in the applicable rates of the Second Regular Meal and the claimant is bound by the guidelines/policies/instructions issued by the respondent. The learned Solicitor General submits that the finding of the learned Sole Arbitrator that this is not a case of change of tariff, is also erroneous, because *vide* the Circular dated 09.10.2013 and the Circular Dated 23.10.2013, the tariff had, in fact, been changed from Rs.150/- (pre-bid tariff) to Rs. 178.50. Post the Circular Dated 23.10.2013, merely the concept of the Combo Meal as the Second Meal was substituted by a Regular Meal. No changes were made to the tariff pertaining to the Second Meal, which remained at Rs.66.50-. Hence, the learned Sole Arbitrator's view based on equity was patently illegal, as it contravened the agreed terms between the

parties. He submits that the plea of coercion has been rejected by the learned Single Judge in the Impugned Order as far as the Second Regular Meal is concerned. He submits that there was, therefore, no reason for the learned Single Judge to have accepted the plea of coercion as far as the claim of Welcome Drink is concerned, as they both rested on the same facts and submission of the claimant. He submits that in case the plea of coercion is to be rejected, the claim of the claimant would be clearly barred by contract as also Principle of Waiver and Estoppel.

33. He submits that the reliance of the claimant on the internal file noting of the Railways and the Railway's Board letter dated 03.01.2019 is also ill-founded as the said decision taken by the Railways would operate only prospectively. He submits that these documents were also not relied upon by the claimant before the learned Sole Arbitrator or before the learned Single Judge in the petition filed under Section 34 of the A&C Act. In any case, internal file noting cannot be construed as orders of the Government or create binding obligations on the respondent.

34. He submits that the learned Sole Arbitrator has also erred in allowing the claim of the claimant on the ground of equity. He submits that under Section 28(2) of the A&C Act, the Arbitral Tribunal can decide *ex aequo et bono* only if the parties have expressly authorized it to do so. He submits that in the present case, no such authorization was given to the learned Sole Arbitrator by the parties.

35. He further submits that there was no evidence led by the claimant towards the quantification of its claim for the Welcome Drink. He submits that the Occupancy Certificate only shows the number of passengers travelling in the train and it is not necessary that every passenger would have had the Welcome Drink. He submits that the claimant did not produce any bill for purchase of Welcome Drink or particulars of the cost incurred by it for the same. He submits that, therefore, the claim of the claimant had been rightly denied by the respondent. In spite of the same, the learned Sole Arbitrator and the learned Single Judge erred in allowing the same by placing the onus to disprove this claim on the respondent.

36. As far as the reliance of the learned Sole Arbitrator and the learned Single Judge on the testimony of the Chartered Accountant is concerned, he submits that the Chartered Accountant produced by the claimant, in his cross-examination, has admitted that he was not aware of the number of the Welcome Drinks supplied by the claimant.

37. He submits that the present case was, therefore, not of mere incorrect appreciation of evidence by an Arbitrator but the case of an Arbitrator rendering his Award without there being any evidence.

38. He submits that even otherwise, the claim as far as the Welcome Drink is concerned, arose with the Commercial Circular 06.08.2014 and in terms of Article 55 of the Schedule to the Limitation Act, the period of limitation shall end on 05.08.2017. Every purported instance of supply will not give rise to a new cause of action. In support, he places reliance on the Judgments of the Supreme

Court in ***Raja Ram Maize Products v. Industrial Court of M.P.***, (2001) 4 SCC 492 and in ***BSNL v. Nortel Networks (India) Pvt. Ltd.***, (2021) 5 SCC 738.

39. He submits that the claim of the claimant *qua* the Circular dated 06.08.2014, mandating the claimant to serve a Welcome Drink, and the claim of the Claimant *qua* the Circular dated 23.10.2013, mandating the claimant to serve two Regular Meals instead of one Regular Meal and one Combo Meal, are barred by estoppel and even, in fact, by the MLA. He submits that Clause 1.4 read with Clause 8.1 of the MLA bestowed a unilateral and unfettered right upon the respondent to modify/alter the catering tariff and the menu, including without addition to the tariff. He submits that the Circular dated 06.08.2014 was issued by the respondent in exercise of the said powers.

40. He submits that the claimant had not objected to any such additions/alterations in the menu earlier. Rather, the claimant had merely made vague representations in respect of the additions/alterations in the menu, *vide* Letters dated 22.06.2015, 03.08.2016, 23.08.2016 and 25.11.2016. However, in none of these representations did the claimant claim any amount for reimbursement for the additions/alterations in the menu. Therefore, the claimant cannot now seek such a claim at this belated stage.

41. He submits that the claim of the claimant *qua* the Welcome Drink and the Second Regular Meal are barred by limitation as the cause of action for the alleged breach arose with the introduction of

the Circulars, and therefore, in terms of Article 55 of the Schedule to the Limitation Act, the period of limitation for the claim of the Second Regular Meal began to run from the date of the Circular dated 23.10.2013, or at best, from the date of commencement of service by claimant, that is, 21.01.2014, or from the date of first invoice, that is, 31.01.2014, and would end on 31.01.2017.

42. He submits that the limitation for the claim of the Welcome Drinks commenced on 06.08.2014 and ended on 05.08.2017. He further submits that the claimant cannot rely on every purported instance of supply of the Second Regular Meal or Welcome Drink as being a cause of action, because the alleged breach that has taken place is a one-time breach and any alleged supply was based on the said breach itself, that is, the Circular dated 23.10.2013 and Circular dated 06.08.2014. In support, he places reliance on the Judgments of the Supreme Court in ***Raja Ram Maize Products*** (supra) and in ***Nortel Networks India Pvt. Ltd***. (supra).

43. He submits that even if it is presumed that the claim of the claimant is based on each supply, the learned Sole Arbitrator and the learned Single Judge have failed to appreciate that there were no bills raised by the claimant for the amounts now claimed. Therefore, the cause of action cannot be said to be arising from these bills.

44. He submits that in any case, the claimant cannot take benefit of Section 14 of the Limitation Act for pursuing the Writ Petition filed by it**,** as the prayer of the claimant therein was seeking setting aside of the Circulars dated 23.10.2013 and 06.08.2014 and consequential

relief, however, the relief sought by the claimant in the Statement of Claim before the learned Sole Arbitrator was that of reimbursement of monies. Hence, the relief being different, and the conduct of the claimant not being '*bona fide*', the claimant cannot claim the benefit of Section 14 of the Limitation Act. In support, he places reliance on the Judgment of this Court in ***Niyogi Offset Printing Press Ltd. v. Doctor Morepen Ltd***., 2007 SCC OnLine Del 358.

45. Challenging the award of interest, he submits that the Impugned Award grants interest to the claimant from 01.01.2018. As interest has been awarded on the lump sum amount awarded in favour of the claimant, it would mean that even for the amount that would become due post 01.01.2018, interest has been awarded from date prior thereto. This has also become evident from the claim raised by the claimant in the Execution Proceedings.

46. Defending the setting aside of the Award as far as the claim of the claimant towards the Second Regular Meal is concerned, he submits that the learned Sole Arbitrator had erred in accepting the plea of coercion raised by the claimant in absence of any evidence to support the same. This finding was therefore, rightly set aside by the learned Single Judge. Reiterating that the claimant had not raised any bill towards the enhanced amount of Second Regular Meal, but had continued to raise bill for the Combo Meal, he submits that the MLA had been executed by the claimant after the Commercial Circular dated 23.10.2013 had been issued providing that no extra charge shall be payable for the supply of Second Regular Meal in place of a

Combo Meal. He submits that along with the MLA, the chart for Apportionment Charges that was attached also showed the charges in accordance with the Circular dated 23.10.2013, which the claimant accepted. He submits that therefore, the learned Single Judge has rightly held that the claimant was estopped from now claiming the said amount.

47. He submits that the learned Single Judge has rightly held that the respondent, in terms of Clause 1.4 read with Clause 8.1 of the MLA, was within its right to change the menu and tariff and therefore, the claimant was under an obligation to supply the Second Regular Meal though at the charges applicable for a Combo Meal. He submits that the learned Single Judge has rightly held that the Arbitral Award had been passed on ground of equity rather than on contract and had, in fact, created a new contract between the parties. This was not a mere interpretation of contract, but creation of a new contract.

48. He submits that even otherwise, the claim of the claimant towards Regular Second Meal was barred by Law of Limitation as it arose with Commercial Circular dated 23.10.2013.

Submissions of the learned Senior Counsels for the Claimant:

49. Mr. Sanjay Jain and Mr. Joy Basu, the learned senior counsels for the claimant, on the other hand, submitted that the learned Single Judge erred in setting aside the Arbitral Award with respect to the Second Regular Meal. They submit that the learned Single Judge erred in not appreciating the limited jurisdiction of interference with an

Arbitral Award enjoyed by a Court under Section 34 of the A&C Act. They submit that the learned Single Judge has exceeded his jurisdiction in setting aside the Award in so far as it had allowed the claim on account of supply of Second Regular Meal in favour of the claimant. They submit that a mere possibility of an alternative view on facts or on the interpretation of the contract, does not entitle the Courts to reverse the findings of the Arbitral Tribunal under Section 34 of the A&C Act.

50. As far as the finding of the learned Single Judge on the claim for Welcome Drink is concerned, they submit that the scope of judicial intervention of this Court under Section 37 of the A&C Act is limited and akin to Section 34 of the A&C Act. In support, they place reliance on the Judgments of the Supreme Court in ***Konkan Railway Corpn. Ltd. v. Chenab Bridge Project,*** (2023) 9 SCC 85***, Punjab State Civil Supplies Corpn. Ltd. & Anr. v. Sanman Rice Mills & Ors.,*** 2024 SCC OnLine SC 2632 and ***MMTC Ltd. v. Vedanta Ltd.,*** (2019) 4 SCC 163. They submit that therefore, no interference is called for in the concurrent findings of the learned Sole Arbitrator and the learned Single Judge on this claim.

51. They submit that the claim of the claimant *qua* the supply of the Second Regular Meal and the Welcome Drinks are not barred by waiver/estoppel. They submit that the claimant has duly agitated the issue of supply of Second Regular Meal and the Welcome Drinks *vide* Letters dated 22.06.2015, 03.08.2016, 23.08.2016, and 25.11.2016. Further, the claimant, by way of the above mentioned Writ Petition

filed before this Court, had also challenged the decision of the respondent to mandate the supply of Welcome Drink. They submit that, in any case, Clause 21.6 of the MLA provides that any delay or omission on part of any party to exercise its rights under the MLA shall not be construed as a waiver. In support, they place reliance on the Judgment of the Supreme Court in ***Kalpraj Dharamshi & Anr. v. Kotak Investment Advisors Ltd. & Anr.,*** (2021) 10 SCC 401.

52. They submit that the claimant had filed its claim within the limitation period. They submit that the learned Sole Arbitrator and the learned Single Judge have rightly extended the benefit of Section 14 of the Limitation Act to the claimant, as the claimant had *bona fidely* challenged the Circular dated 06.08.2014 by the above mentioned Writ Petition. While dismissing the Writ Petition, this Court had granted liberty to the petitioner to raise its claims in arbitration, in exercise of which, the claimant had invoked the arbitration agreement between the parties. In support, he places reliance on the Judgments of the Supreme Court in ***Rameshwarlal v. Municipal Council, Tonk & Ors.,***(1996) 6 SCC 100, and ***M.P. Steel Corpn. v. CCE,*** (2015) 7 SCC 58.

53. They submit that even on merits, the claimant has proved its claim for the reimbursement for supply of the Second Regular Meal and the Welcome Drink by the Occupancy Certificate duly certified by the Train Superintendent, which provides the number of passengers on the train. The claimant had also filed a detailed computation of its claim certified by CW-1, a Chartered Accountant. They further submit

that the rate of the Welcome Drink was calculated in terms of the Circular dated 09.10.2013 and the Railway Policy.

54. They submit that since the claimant have provided the Second Regular Meal instead of the Combo Meal, they were to be compensated for the same, as was rightly held by the learned Sole Arbitrator. However, the learned Single Judge erred in interpreting the Circulars dated 09.10.2013 and 23.10.2013 and Clause 1.4 and 8.1 of the MLA. They submit that the interpretation placed by the learned Sole Arbitrator on the said Circulars, could not have been interfered with by the learned Sole Arbitrator only because it preferred another interpretation to the same.

Analysis and Findings:

55. We have considered the submissions made by the learned counsels for the parties.

Scope of Appeal under Section 37 of the A&C Act

56. At the outset, we may state that the jurisdiction of the Court under Section 37 of the A&C Act is limited only to examine if the learned Court from which the appeal arises, has erred in applying the principles applicable to the limited jurisdiction vested in such Court under Section 34 of the A&C Act. If the Award or part thereof has been set aside by the Court going beyond the limited grounds stated in Section 34 of the A&C Act, the Court in exercise of its powers under Section 37 of the A&C Act, shall set aside such order. Equally, if the learned Court has refused to set aside an Arbitral Award though the grounds set out in Section 34 of the A&C Act were made out, the

Court exercising its powers under Section 37 of the A&C Act, shall again set aside such order as also the Arbitral Award. To put it succinctly, the jurisdiction of the Court under Section 34 of the A&C Act and Section 37 of the A&C Act is akin and *pari materia* as far as considering the challenge to the Arbitral Award is concerned. They are circumscribed by the limited scope of challenge to the Arbitral Award on the grounds mentioned in Section 34 of the A&C Act. This limitation on jurisdiction has been explained by the Supreme Court in ***MMTC Ltd.*** (supra), in the following words:

> *"14.As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."*

57. The Supreme Court recently, in ***Punjab State Civil Supplies Corpn. Ltd.***(supra), while expounding the law laid down in ***MMTC Ltd.*** (supra), and ***Konkan Railways*** (supra), held as under:

> "***8.*** *The short question on the submission of the parties, which arises for our consideration is about the scope of powers of the Appellate Court under Section 37 of the Act and whether the Appellate Court was justified in setting*

aside the award dated 08.11.2012 which had already been confirmed under Section 34 of the Act.

9. *The object of the Act is to provide for a speedy and inexpensive alternative mode of settlement of dispute with the minimum of intervention of the courts. Section 5 of the Act is implicit in this regard and prohibits interference by the judicial authority with the arbitration proceedings except where so provided in Part-I of the Act. The judicial interference, if any, is provided inter-alia only by means of Sections 34 and 37 of the Act respectively.*

10. *Section 34 of the Act provides for getting an arbitral award set aside by moving an application in accordance with sub-Section (2) and sub-Section (3) of Section 34 of the Act which inter-alia provide for the grounds on which an arbitral award is liable to be set aside. One of the main grounds for interference or setting aside an award is where the arbitral award is in conflict with the public policy of India i.e. if the award is induced or affected by fraud or corruption or is in contravention with the fundamental policy of Indian law or it is in conflict with most basic notions of morality and justice. A plain reading of Section 34 reveals that the scope of interference by the court with the arbitral award under Section 34 is very limited and the court is not supposed to travel beyond the aforesaid scope to find out if the award is good or bad.*

11. ***Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.***

12. *It is pertinent to note that an arbitral award is not liable to be interfered with only*

on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.

13. *In paragraph 11 of Bharat Coking Coal Ltd. v. L.K. Ahuja, it has been observed as under:*

> *"11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."*

14. <u>It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.</u>

15. *In Dyna Technology Private Limited v. Crompton Greaves Limited, the court observed 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 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."*

16.<u>It is seen that the scope of interference in an appeal under Section 37 of the Act is</u>

restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.

17. *In paragraph 14 of MMTC Limited v. Vedanta Limited, it has been held as under:*

> *"14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."*

18. *Recently a three-Judge Bench in Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking 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. 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.*

19. *In Bombay Slum Redevelopment Corporation Private Limited v. Samir Narain Bhojwani, a Division Bench of this Court followed and reiterated the principle laid*

down in the case of MMTC Limited (supra) and UHL Power Company Limited v. State of Himachal Pradesh. It quoted and highlighted paragraph 16 of the latter judgment which extensively relies upon MMTC Limited (supra). It reads as under:

> *"16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293], the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)*
>
> *"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 Ltd. v. Wednesbury Corpn., [1948] 1 K.B. 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.""

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. 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.***
> ***21.*** *It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit.* ***Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.****"*
>
> *(Emphasis Supplied)*

58. In ***Delhi Metro Rail Corporation Limited vs. Delhi Airport Metro Express Private Limited***, (2024) 6 SCC 357, the Supreme Court reiterated the above principle as under:-

> *"**40.** A judgment setting aside or refusing to set aside an arbitral award under Section 34 is appealable in the exercise of the jurisdiction of the court under Section 37 of the Arbitration Act. It has been clarified by this Court, in a line of precedent, that the jurisdiction under Section 37 of the Arbitration Act is akin to the jurisdiction of the Court under Section 34 and restricted to the same grounds of challenge as Section 34."*

Scope of Interference with an Arbitral Award under Section 34 of the A&C Act:

59. Section 34 of the A&C Act states the grounds for setting aside an Arbitral Award. So far as it is relevant for the grounds on which an Arbitral Award may be set aside by the Court, reads as under:-

> *"(2) An arbitral award may be set aside by the Court only if--*

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that--

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that--

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.--For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,--

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.--For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral

> *tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.*
>
> *(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.*
>
> *(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party."*

60. A reading of the above provision would show that apart from other specific grounds, an Arbitral Award may be set aside by a Court where the Court finds it to be in conflict with the public policy of India, which concept has been clarified in Explanation 1 and 2 to Section 34(2) of the A&C Act. An Arbitral Award arising out of domestic arbitrations, as is the case herein, may also be set aside by the Court if the Award is vitiated by patent illegality appearing on the face of the Award. Proviso to Section 34(2A) of the A&C Act, however, clarifies and warns that an Award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

61. In ***Delhi Metro Rail Corporation Limited*** (Supra), the Supreme Court relying upon its earlier judgments in ***Associate Builders vs. DDA***, (2015) 3 SCC 49 and ***Ssangyong Engg. & Construction Co. Ltd. vs. NHAI***, (2019) 15 SCC 131, held that the ground of patent

illegality is available if the decision of the Arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or the view of the Arbitrator is not even a possible view. A finding based on no evidence at all or an Award which ignores the vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of '*patent illegality*'. So would be an Award without reasons or where the Arbitrator decides a matter not within his jurisdiction or in violation of the principles of natural justice.

62. From a reading of the above judgments, it is evident that a petition under Section 34 of the A&C Act is not an appeal on merits against the Arbitral Award. The jurisdiction of the Court, while adjudicating on a petition under Section 34 of the A&C Act against a Domestic Award, is on extremely limited grounds.

63. Even on the question of interpretation of the contract, the Supreme Court in ***Konkan Railways*** (supra) held that the Arbitral Tribunal is the final authority and the Court, while exercising its power under Section 34 of the A&C Act, cannot interfere with the Arbitral Award merely because the interpretation of the contractual terms by the Arbitral Tribunal is found to be incorrect. The principle that when two constructions are possible, then Court must prefer the one which gives effect and voice to all clauses, does not have absolute application in exercising powers under Section 34 of the A&C Act. While exercising the jurisdiction under Section 34 of the A&C Act,

the Court is only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. The question of reinterpreting a Contract on an alternative view does not arise. Similar restrictions are placed on a Court hearing an appeal against an order passed in a petition under Section 37 of the A&C Act. We may quote from the said judgment as under:-

> "**25.***The principle of interpretation of contracts adopted by the Division Bench of the High Court that when two constructions are possible, then courts must prefer the one which gives effect and voice to all clauses, does not have absolute application. The said interpretation is subject to the jurisdiction which a court is called upon to exercise. While exercising jurisdiction under Section 37 of the Act, the Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the challenge to the arbitral award. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. Accordingly, the question of reinterpreting the contract on an alternative view does not arise. If this is the principle applicable to exercise of jurisdiction under Section 34 of the Act, a Division Bench exercising jurisdiction under Section 37 of the Act cannot reverse an award, much less the decision of a Single Judge, on the ground that they have not given effect and voice to all clauses of the contract. This is where the Division Bench of the High Court committed an error, in re-interpreting a contractual clause while exercising jurisdiction under Section 37 of the Act. In any event, the decision in Radha Sundar Dutta, relied on by the High Court was decided in 1959, and it pertains to proceedings arising under the Village Chaukidari Act, 1870 and Bengal*

Patni Taluks Regulation of 1819. Reliance on this judgment particularly for interfering with the concurrent interpretations of the contractual clause by the Arbitral Tribunal and Single Judge under Section 34 of the Act is not justified."

Consideration on merits:

64. Keeping the above cardinal principles of law in mind, we now proceed to consider the cross-appeals of the parties.

65. From the above narration of facts, what would be evident is that the dispute before the learned Sole Arbitrator was on two claims of the claimant:-

a) Whether the claimant was entitled to additional payments for having served a Second Regular Meal (dinner) instead of a Combo Meal as the Second Meal;

b) Whether the claimant was entitled to claim reimbursement for the Welcome Drink served by the claimant.

Claim for supply of second Regular Meal:

66. To further appreciate the claim of the claimant *qua* the supply of Second Regular Meal, a brief timeline of how these claim arose, would need a reiteration:-

i) The Indian Railways had invited bids on 27.05.2013 for the Subject Tender. At the relevant time, the menu and the tariff were governed by the 1999 Policy, issued by the Indian Railways.

ii) The claimant submitted their bids on 27.06.2013, however,

before the issuance of the LOA, two major incidents took place:-

a. By Circular dated 09.10.2013, the Indian Railways introduced the concept of a 'combo meal'. The Circular, so far as it is relevant to the present set of appeals, is reproduced hereinunder:-

> *"The Menu & tariff of catering services for Rajdhani/Shatabdi/Duronto express trains was last revised in the year 1999. Rajdhani/Shatabdi/Duronto Express trains are the prestigious premier trains of Indian Railway. Since 1999, the cost of raw materials used for catering services has increased manifold due to inflation etc. A review of menu and tariff has been done through committees set up by the Board to determine the norms for apportionment of catering charges in the fares of Rajdhani/Shatabdi/Duronto express trains. Accordingly, based on the committee's recommendations, Board has decided to revise the menu and tariff which are given as under.*
>
> *****
>
> *1.4 The concept of combo meal for Rajdhani/Duronto express trains has been introduced in place of regular Second Meal of the day where more than one meal services are provided. The third/following meal shall be the regular meal and the sequence of every alternate meal as combo meal shall be followed for the particular train. At one point of time only one type of meal will be served in the entire train.*
>
> ******

IA/EC		
Type of service	*Revised catering charges to be disbursed to the licensee without service tax.*	*Revised catering charges to be included in fare (Inclusive of present service tax @8.66%.)*
(1)	*(2)*	*(3)*

.....	.....	.....
Lunch	*129.50*	*145.00* .....
Dinner	*129.50*	*145.00*
Combo meals	*66.50*	*75.00*
2AC/3AC/CC		
Type of service *(1)* ..... *Lunch*	*Revised catering charges to be disbursed to the licensee without service tax.* *(2)* *112.00*	*Revised catering charges to be included in fare (Inclusive of present service tax @8.66%.)* *(3)* *125.00*
.....	.....	.....
Dinner	*112.00*	*125.00*
Combo meals	*66.50*	*75.00*

b) Within a few days of the issuance of the Circular dated 09.10.2013, Indian Railways issued the Circular dated 23.10.2013 as *Corrigendum* no.1 to the Circular dated 09.10.2013, which, so far as is relevant to the issues in the present set of appeals, is reproduced hereinunder:-

> *"(Commercial Circular No. 67 of 2013)*
> *(Corrigendum No.1 to Commercial Circular No. 63 of 2013)*
>
> ***Sub: Revision of Menu/tariff of catering services in Rajdhani/Shatabdi/Duronto Express Trains***
>
> ***Ref: Commercial Circular No. 63/2013 issued vide Board's letter no. 2011/TG- III/631/5 dated 09/10/13***
>
> *A. review of decision on revision of menu/tariff of catering services in Rajdhani/Shatabdi Duronto Express Trains has been undertaken based on the feedback received from Zonal Railways.*

Accordingly, the following instructions may be complied with immediate effect:-
(i) Regular Meal, in place of Combo Meal, may be restored. Accordingly, Paral.4 of CC 63/2013 regarding combo meal is deleted.
(ii) Quantity of Paneer dish, Chicken dish and Dal be restored to 150gms. Paneer dish with seasonal veg. (150gms with Paneer 70gms) and Chicken dish with thick gravy (150gms with Chicken 80-100gms) should be served (Neck and wing portion of chicken should not be served).
(iii)Kathi Roll/ Samosa/ Patties/ Kachori/ Sandwiches be served in Evening Tea.
(iv) Flavoured Milk/Milk Shake be served to the passengers in food grade per bottles/tetra pack.
(v) Sale of beverages on board is pended. Accordingly, Para 13 of CC 63/2013 may be kept pended.
The above changes will be done without any increase in charges."

67. A reading of the above Circulars would show that the Combo Meal, which was introduced by the Circular dated 09.10.2013, was disbanded/discontinued and the Second Regular Meal was re-introduced. There were also changes made in the quantity of the dishes to be served and the composition of the evening tea. It was also provided that "*the above changes will be done without any increase in charges"*.

68. As noted hereinabove, the learned senior counsel for the claimant has asserted that the above Circular, so far as it states that the changes will be without increase in charges, can have no effect on the claim of the claimant inasmuch as its claim is based on the same

charges as have been provided for in the Circular dated 09.10.2013 for a Regular Meal, while, on the other hand, the learned Solicitor General has submitted that the above stipulation would mean that though the claimant was to now provide a Second Regular Meal instead of a Combo Meal, the Second Regular Meal will be provided at the rate that was applicable to a Combo Meal.

69. The learned Sole Arbitrator, in his Impugned Award dated 27.04.2022, rejected the plea of the learned Solicitor General, by observing as under:-

> *"122. I also find that there has been no change in the catering tariff as such and therefore, the reliance of the Respondent on this Clause is not proper. Admittedly, the rates contained in Commercial Circular dated 09.10.2013 wherein the rates of both the regular meal as well as the combo meal are specified. The computation done by the Claimant is on the basis of the rates specified therein only. In other words, the Respondent's action to direct the Licensees to supply dinner and yet contend that while making payment, rates of combo meal will be considered, obviously cannot be an instance falling under Clause 8.1, since this is not an instance of change in catering tariff In fact, the present factual scenario is one where the Respondent directed the Claimant to serve dinners for which a rate or price is specified and thus, the question is whether the Claimant are entitled to be reimbursed at the price of the regular meal or at any price lesser. Merely because the Respondent has chosen to reimburse them at the rate of combo meal would not bring this under Clause 8.1. Similarly, with regard to the services of Welcome Drink to the passengers, the same also cannot be treated to fall within the scope of Clause 8.1."*

70. The learned Single Judge, however, invoked the Doctrine of Waiver against the claimant by wrongly holding that the rate of the "first Regular Meal was Rs.112 (in 2AC/3AC/CC) and the second Regular Meal was Rs.66.50". The learned Single Judge failed to appreciate that the rate of Rs.66.50/- was prescribed in the Circular dated 09.10.2013 as a rate for a Combo Meal and not for a Regular Meal, as has been rightly held by the learned Sole Arbitrator.

71. The learned Single Judge has then invoked Clause 8.1 and Clause 1.4 of the MLA against the claimant. Clause 8.1 of the MLA reads as under:-

> *"8.1 Railway reserve the rights to change catering tariff and menu for the Train at any time after the award of the License. In the event of any such change by the Railway, the Licensee shall maintain the same quality and hygiene standards for preparation, supply and service of food/meals to passengers on the Train as it were prior to such change."*

72. A reading of the above Clause would show that the Railways/respondent, had a right to change the catering tariff and the menu for the train at any time after the award of the licence. In the present case, there was a change of menu, however, there was no change in the tariff, as is evident when the two Commercial Circulars, that are, the Circular dated 09.10.2013 and the Circular dated 23.10.2013, are read together.

73. The learned Sole Arbitrator had also discussed the effect of Clause 8.1 on the claims of the claimant, by observing as under:-

"120. Once again, I am unbale to agree with the sweeping and overarching submissions made by the Respondent. In my view, the contracts cannot be interpreted in a manner which will make it inequitable for one of the contracting parties. I may note that Article 8 of the Master License Agreement deals with changes in menu, tariff and duration of train. Clause 8.2 provides that the Railways has a right to change the time table, frequency, halts and stoppages, routes, rake link, originating and/or terminating stations of the train and it further provides that the Licensees shall maintain the same quality and hygiene standards for preparation, supply and services of food/meals to such passengers despite such changes. Clause 8.3 also deals with revision in catering tariff, the Licensee shall be allowed to sell food/meals at the revised rates to the passengers and the Licensee shall be increased on pro rata basis/reassessment of sales or both, as the case may be.

121. An overall reading of this Article 8 makes it clear that there may be unforeseen contingencies, given the nature of contract between the parties, the supply of services required to be made in the trains whose frequency, time table, duration etc. may undergo changes from time to time and in order to cater to such contingencies, rights have been reserved in favor of Indian Railways to change catering tariff and menu. However, these Clauses cannot come to the aid of the Respondent in present case where admittedly, the supplies have been made and payments have either not been made or deficit payments have been made.

122. I also find that there has been no change in the catering tariff as such and therefore, the reliance of the Respondent on this Clause is not proper. Admittedly, the rates contained in Commercial Circular dated 09.10.2013 wherein the rates of both the regular meal as

> *well as the combo meal are specified. The computation done by the Claimant is on the basis of the rates specified therein only. In other words, the Respondent's action to direct the Licensees to supply dinner and yet contend that while making payment, rates of combo meal will be considered, obviously cannot be an instance falling under Clause 8.1, since this is not an instance of change in catering tariff. In fact, the present factual scenario is one where the Respondent directed the Claimant to serve dinners for which a rate or price is specified and thus, the question is whether the Claimant are entitled to be reimbursed at the price of the regular meal or at any price lesser. Merely because the Respondent has chosen to reimburse them at the rate of combo meal would not bring this under Clause 8.1. Similarly, with regard to the services of Welcome Drink to the passengers, the same also cannot be treated to fall within the scope of Clause 8.1."*

74. Clause 1.4 of the MLA, on which the learned Single Judge placed reliance, reads as under:-

> *"1.4 It is agreed by the Licensee that the norms with regards catering changes payable to License for providing catering services to the passengers on the Train are also subject to the predetermined prices as set forth in Annexure II of this Agreement. The Licensee also hereby confirms and acknowledges that Railway shall have the absolute right and discretion to change and modify the prices set forth in Annexure II without any need for prior discussion with the Licensee and the decision of Railway shall be strictly enforced by the Licensee during the Term of this Agreement."*

75. The learned Sole Arbitrator, again dealt with the said Clause in

his Impugned Award, by observing as under:-

> *"125. The Respondent next relied upon Clause 1.4 of the Master License Agreement which is found at Page 681 of Common Convenience Compilation, Volume-III. The Respondent more particularly, relied upon the part, "the licensee also hereby confirms and acknowledges that Railway shall have the absolute right and discretion to change and modify the prices set forth in Annexure-II without any need for prior discussion with the Licensee and the decision of the Railway shall be strictly enforced by the Licensee during the term of this Agreement". The Counsel for the Respondent also produced the Annexure-II mentioned in this Clause. The said Annexure contains a set of revised apportionment charges for the train in question. In the revised apportionment charges, the services namely, whether lunch, evening tea, morning tea, breakfast, combo meal, dinner etc. required to be given to passenger station wise, is specified and in another column, the charges payable to the Licensee for the services to be rendered to passenger station wise, is also specified. Evidently, even in this revised apportionment charges submitted by the Respondent, one of the services mentioned is "CM" which refers to "Combo Meal". Thus, it proves that even as per Clause 1.4 read with the Annexure II, the liability of the Claimant was to supply Combo Meal and not the Regular Meal wherever it is specified in the Annexure-II. Thus, from this very Annexure-II cited by the Respondent, it is clear that the prices payable to the Licensee are calculated on the premise that a Combo Meal is to be supplied which is so specifically set out in the Column-"Services". Hence, this Annexure-II does not support the case of the Respondent and in fact, favors the contention of the Claimant herein in as much as the liability was to supply Combo Meal and therefore, the reimbursement was to be made*

> *at the price of the Combo Meal. However, once the Respondent directed the Claimant to supply Regular Meal then obviously the reimbursement at the rate of Combo Meal will not be justified on the basis of this revised apportionment charges. Therefore, the Respondent's contention that this is a case governed by Clause 1.4 and therefore, falls within the absolute right and discretion of the Respondent to change and modify the prices, is again not correct. Again, at the cost of repetition, it is emphasized that the instant case is not the case of change or modification of the prices since the rates or prices contained in Circular dated 09.10.2013 remained unchanged."*

76. A reading of the above would show that the learned Sole Arbitrator also took note of Annexure-II appended to the MLA. Annexure II first described the menu of the various meals, including the lunch/dinner for the 1AC/2AC/3AC/EC/CC; it then gives the 'revised apportionment charges for 12423-24 (Dibrugarh-Rajdhani)' (as far as that train is concerned). What strikes immediately is that in the revised apportionment charges, the Combo Meal is again mentioned for determining the rates payable to the licensee. This is in spite of the fact that even before the MLA was executed on 21.04.2014, by the Circular dated 23.10.2013, the concept of service of a Combo Meal had been disbanded/discontinued. It seems that in the MLA, the old Circular of 09.10.2013 was relied upon, not realising that the concept of Combo Meal was no longer in-vogue. The claimant could not have served a Combo Meal to the passengers in violation of the Circular dated 23.10.2013. At the same time, the

respondent could also not have paid the claimant on the basis that it was serving a Combo Meal, which would have been in violation to the Circular dated 09.10.2013. The learned Sole Arbitrator, therefore, in our opinion, rightly held that Clause 1.4 of the MLA or Annexure II attached to the MLA, could not come to the aid of the respondent to deny the claim of the claimant for the Second Regular Meal instead of a Combo Meal.

77. The learned Single Judge has also placed reliance on Clause 1.3.1 of the Tender Document, which is reproduced hereinbelow:-

> *"1.3.1 The Licensee shall be responsible for all catering services from pantry car on Train No. 12423/24 as per Policy, guidelines, instructions issued by Railway and other statutory regulations. This will include supply and service of fully cooked meals/food to passengers on demand viz. breakfast, lunch, dinner, snacks, tea, coffee etc. These meals/food will be prepared, packed and transported from the Kitchens set-up and located at or around the originating/terminating/en-route station(s) on Railway premises/non railway area authorised by railway administration to be set up by the licensee."*

78. The learned Sole Arbitrator had also discussed the ambit and scope of the above Clause, by holding as under:-

> *"115. I do not agree with the broad proposition advanced by the Counsel for the Respondent. This Clause cannot be interpreted in such expansive manner thereby giving all rights to the Respondent of any nature which can then constitute a binding obligation on the Claimant. I feel that each policy guideline or instruction will have to be separately seen and*

examined to assess whether the same is consistent with the object and obligations to be performed by the parties, more so, by the Claimant. Thus, this Clause cannot clothe the Respondent with unilateral powers to issue any directions whatsoever which would then automatically deem to bind the Claimant. For instance, any instruction or policy guideline with regard to hygiene, cleanliness or relating to passenger's safety etc., would be viewed differently and possibly one may accept the contention of the Respondent that such policy guideline or instruction if not otherwise inconsistent with the contract, would have to be complied by the Claimant given the nature of their contract with the Respondent.

116. However, this cannot be logically stretched to mean that incase, the Claimant are directed to make supplies of certain services, then the Respondent would also reserve the right to decide as to whether the Claimant should be paid or not at all or should be paid at lesser rate than meant for such service. Let me further stretch this explanation to even assume that the Respondent has the right to even change from time to time, the supplies of services required to be rendered by the Claimant. So, in a particular train, the Respondent may direct that a particular eatable item or beverages may be discontinued for whatever reason, the Respondent feel proper. In such a situation, the Claimant will have to discontinue supply of such item or beverages or services and would therefore not be paid by the Respondent. In such situation, the Claimant cannot urge that the supplies should be continued or that they should be reimbursed or compensated since given the nature of their contract, they are going to be changes from time to time depending on multiple factors. However, it cannot be countenanced that if the Respondent direct the Claimant or other Licensees to

> *render a particular service which leads to additional costs being incurred by the Licensees, then, even without their express consent, the Respondent can assume or assert that the Claimant will not be reimbursed such additional costs incurred by them on account of services rendered on the specific instruction of the Respondent."*

79. A reading of the above Clause would show that the respondent had a right to issue policy guidelines, instructions and regulations, including for supply and service of fully cooked meals/food to the passengers on demand, and the claimant were bound to follow such instructions. In our view, this Clause, however, cannot be extended to mean that while the respondent insisted upon the claimant/licensee to serve a Second Regular Meal instead of a Combo Meal, the respondent would, however, pay the claimant at the rate specified for a Combo Meal. In none of the Commercial Circulars nor the Tender Document nor the MLA, was there any Clause which stipulated that for the Second Regular Meal the claimant/licensee will be paid at the rate specified for the Combo Meal. Clause 1.3.1 of the Tender Document, Clause 1.4, and Clause 8.1 of the MLA would have had any relevance if there was such a Clause which stipulated that though the licensee is obliged to serve a Second Regular Meal, it would be paid only at the rate specified for a Combo Meal, which admittedly consists of lesser food items and of lesser cost.

80. The learned Single Judge, therefore, in our view, has exceeded his jurisdiction by interfering with the Arbitral Award by relying upon

the above Clauses of the Tender Document and the MLA insofar as the claim of the claimant for the Second Regular Meal is concerned.

81. As we have observed hereinabove, the Arbitral Tribunal is the final arbiter on facts as also on the interpretation of the contractual terms. The scope of jurisdiction under Section 34 of the A&C Act to interfere with an Arbitral Award is restricted, and merely because the interpretation of the learned Sole Arbitrator on a particular contractual term does not find favour with the Court exercising jurisdiction under Section 34 of the A&C Act, it cannot be said that the learned Sole Arbitrator has exceeded its jurisdiction or has travelled beyond the terms of the contract.

Claim for supply of Welcome Drink

82. One of the main submissions of the learned Solicitor General in answer to both the claims of the claimant was that by not raising the bills for the Second Regular Meal or for the Welcome Drink, the claimant have waived its rights to later claim the same. The learned Sole Arbitrator rejected the said challenge of the respondent, by observing as under:-

> *"98. I do not agree that the Claimant can be non-suited on the ground that they waived or abandoned their rights to seek reimbursement for the costs suffered to make supplies. It is an admitted fact that tenders were issued prior to the Commercial Circular dated 23.10.2013 and even the bids were submitted prior to the this circular. Even though, from the record, it appears that the letter of award was issued later, but the Respondent did not seek any consent from the Claimant as regards to their*

willingness to supply regular meals at the price of the combo meal. I may observe that the present contracts are in the nature of commercial contracts where the parties have to incur costs for providing services and therefore, unless proved otherwise, it cannot be accepted that a party would agree to provide services and incur costs and not expect to be adequately reimbursed. To put it differently, in case a party is pleading waiver, estoppel and acquiescence, then the onus is on that party to establish the same as otherwise, in normal circumstances, given that the contract is of commercial nature for supply of services, a party is legitimate in expecting itself to be reimbursed for actual services rendered. Thus, I am unable to agree with the Respondent that merely because the Claimant raised the bills and accepted payments under those bills, would itself amount to an act of waiver or abandonment or relinquishment of their rights to seek reimbursement, if they are otherwise entitled to seek under the law.

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102. I further agree with the submissions of the Claimant that a waiver, has to be not only conscious but also clear and express and it cannot be so lightly and casually construed that a party would so easily give up its contractual rights. In fact, the Claimant has invited my attention to Clause 21.6 of the Master License Agreement which itself provides that merely a delay or omission by either party to exercise any of its right under this agreement, will not be construed to be a waiver thereof. Thus, this contractual provision itself sounds a caution against a plea of waiver being casually and lightly invoked by a party against the other.

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105. I have no hesitation to find that the Respondent did enjoy a superior and dominant

> *position in the contract. It is admitted that the Claimant have to pay their license fees as well as security deposits in advance which they paid. Their return on investment is in the form of payments regularly received from the Respondent against the regular monthly bills raised towards the periodic services rendered in the trains. Thus, the Claimant will not be in a position to adopt a cavalier stand against the Respondent given their status in the contractual arrangement. Owing this, it will be unfair to non-suit the Claimant only on the account that they raised the bills and received payments for the Respondent. The contractual arrangement is also such that the Claimant are required to make security deposits and pay license fees in advance which given the nature of contracts are significant and thus, it will not be fair to assume that the Claimant could have easily surrendered the contracts if they were not happy with the circulars given the stakes invested in these contracts. It also goes without saying that merely because a party is unhappy with certain actions of the other contracting party, it is not necessary that it must always surrender or opt out of the contract as the aggrieved can always take legal recourse to enforce its rights under the contract."*

83. The learned Single Judge, however, considered the issue of waiver separately for the claim of the claimant towards the Second Regular Meal and the Welcome Drink. As far as the claim of the claimant with respect to the Second Regular Meal is concerned, the learned Single Judge held that the claim was barred by Doctrine of Waiver, by observing as under:-

> *"73. For the said reasons, reliance upon Clause 21.6 of the MLA cannot be made in this*

regard and the same has also been erroneously relied upon by the Ld. Arbitrator. The said clause reads as under:

"Unless otherwise expressly provided in this Agreement, a delay or omission by either Party to exercise any of its rights under this Agreement will not be construed to be a waiver thereof."

74. The aforesaid clause covers those situations where there is a legitimate right of a party arising from the Agreement which has been hampered. In the present case, given the contractual terms between the parties and the guidelines which were in force, BFP had no legitimate right to make its claim. The Arbitrator's reliance upon the representations of2015-2016 and the writ proceedings instituted in 2017 to state that this was not a case of waiver is perverse since it is in blatant ignorance of the binding contractual terms between the parties. He has failed to consider that this was not a right which the respondent had in the first place.

75. Further, and importantly, for almost one and a half years i.e. from the commencement of services in 21.01.2014 till 22.05.2015 when the first representation was made by the Indian Railway Mobile Catering Association to the General Manager of Northern Railway, no objection as raised by the respondent regarding the change in apportionment charges. During this period, the respondent continued to raise bills in accordance with the commercial circulars and continued to receive payments without any demur/protest or reservation. For the sake of repetition, circulars were issued in 2013, LOA was issued in 2014 and the MLA was entered into in 2014, however, till 22.05.2015 there was no protest by the respondent.

76. The respondent has not been able to explain that why for a period of 1.5 years the respondent was providing two Regular Meals

and was charging for the second Regular Meal at Combo Meal tariff. The Arbitrator's finding that the bills were raised under duress, coercion and because the respondent was in a financially precarious situation is not supported by any evidence. The Arbitrator has erred in holding that because the petitioner had a dominant position in the contract, the respondent could not have easily surrendered the contract and had no other choice but to raise the bills and receive payments as per the commercial circulars. These are bald assumptions without any evidence to support the same.

77. The Arbitrator has merely considered the pleadings of the respondent in the SOC that the payments would have stopped had they not raised the bills in accordance with commercial circulars, and has held that "I have no reasons to disbelieve them". He has, thus, based his reasoning on mere surmises and conjectures, and has observed that since significant amounts are sought, the respondent must have incurred huge losses. There is nothing on record to show the financial investment made by the respondent, or that the petitioner was not ready to accept the bills which did not comply with CC 67/2013 and CC 32/2014.

78. Before the Arbitrator, the respondent sought reimbursement at the rates specified in CC 63/2013 for supplying a second Regular Meal, which it was supplying at Combo Meal tariff as per CC 67/2013 and CC32/2014. I am of the view that the Ld. Arbitrator failed to give due consideration to the fact that the respondent cannot claim benefit under CC 63/2013 and in the same breath seek to resile from CC 67/2013 on the ground of it being inequitable. The Arbitrator failed to notice that BFP could not have cherry-picked which guidelines/circulars of the petitioner they wanted to follow and which favoured them.

*79. The Arbitrator has considered various hypothetical situations, but has failed to consider a situation where a contracting party enters into a contract with another party, executes the contract, receives the payments as per the contractual terms, and thereafter challenges the same on the plea of equity and on the ground that the other party enjoyed a superior and dominant position in the contract. This interpretation adopted by the Arbitrator is tantamount to making the objective of the Indian Contract Act ("**ICA**") redundant, which gives legal enforceability to validly executed contracts, making the terms binding between the parties. The essence of ICA is to ensure that agreements between parties are enforced and are binding between them.*

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81. The Arbitrator's reasoning, while seeks to achieve an equitable outcome, completely ignores contractual terms which permitted the petitioner to change the tariff.

82. Hence, in a nutshell, I am of the view that the doctrine of waiver is irrelevant in the present case as, once BFP entered into the contract with the petitioner, it did not have any right to seek reimbursement of price difference for providing the Second Meal as per the charges stipulated in CC 63/2013. The conduct of the respondent, however, falls squarely within the definition of "estoppel". The respondent signed the contract, which permitted the petitioner to change the tariff, the respondent acted upon the changed tariff introduced vide the commercial circulars namely CC 63/2013, CC 67/2013 and CC 32/2014, raised bills upon the changed tariff, accepted payments pursuant to those bills without demur or protest and only after 1.5 years, issued a letter of protest."

84. On the contrary, the learned Single Judge found no infirmity with the finding of the learned Sole Arbitrator on the issue of waiver as far as the claim for the Welcome Drink is concerned. The learned Single Judge in that regard observed as under:-

> *"87. Under this claim, the question is not of inadequate reimbursement, but rather of no reimbursement which is the point of difference. Such an interpretation falls foul of ethos of the ICA in as much as it lacks a very necessary ingredient which forms a valid and binding contract. As per Section 10 of ICA, a valid contract is one which is a) made by the free consent of parties; b) made by parties which are competent to contract; c) for a lawful consideration; d) with a lawful object. While the lawful object i.e. to provide Welcome Drink, exists; the element of lawful consideration is absent.*
> *88. A contract and a contractual provision cannot, in my view, override the objective of law and purport an illegal outcome. This is a situation where Clause 21.6 of the MLA clearly applies, since BFP had a legitimate right arising out of the contract. The Arbitrator's reasoning that the same could not have been waived off merely because BFP was raising bills and getting paid for it, is a plausible and reasonable finding. His observations in paragraph 105 of the Impugned Award that "merely because a party is unhappy with certain actions of the other contracting party, it is not necessary that it must always surrender or opt out of the contract as the aggrieved can always take legal recourse to enforce its rights under the contract" also stand under this claim. Hence, to this extent I find no infirmity with the reasoning of the Ld. Arbitrator."*

85. In our view, the learned Single Judge has, in fact, given

contradictory findings on the issue of waiver. The fact situation in both the claims was almost identical. The claimant had not raised a claim for the Second Regular Meal or the Welcome Drink in its bills raised with the respondent for over a period of one and a half years. This was pressed as a waiver by the respondent. The learned Sole Arbitrator, as would be evident from the above, held that the respondent was in a dominant position and, therefore, believed the claim of the claimant that the respondent forced the claimant not to raise the bills, which would include the additional amounts for the Second Regular Meals and for the Welcome Drinks. The learned Sole Arbitrator also relied upon Clause 21.6 of the MLA to hold that merely not raising of the bills would not be considered as a waiver of the claim.

86. While the learned Single Judge cannot be faulted in his finding that a plea of economic duress cannot be accepted on mere pleadings and without any evidence, at the same time, the learned Sole Arbitrator had inferred the same from the various facts, including the fact that the licence fee had been paid by the claimant in advance; the claimant had also paid the security deposit in advance; and the return was only in form of payments regularly received from the respondent against the regular monthly bills. The learned Sole Arbitrator is entitled to draw his inferences from the facts proved before it. The scope of jurisdiction under Section 34 of the A&C Act cannot extend to the merits of the inference so drawn. It is only where the inference has been drawn completely without evidence or contrary to the

express terms of the contract or the evidence led by the parties, and where no reasonable person could have drawn such an inference, that an interference with the Arbitral Award may be warranted. The present was not such a case.

87. We also appreciate the submission of the learned Solicitor General that by not raising the bills, the claimant denied an opportunity to the respondent to charge the same from the passengers, however, this itself cannot be a ground to reject a legitimate and legal claim of the claimant arising out of the MLA and the Circulars issued by the respondent. The respondent itself should have rectified its stand at least when the first representation in this regard had been received by it. Even otherwise, the claimant has not been granted the claim for the entire period because of the question of limitation that we shall deal with in the subsequent part of our judgment.

88. The question of estoppel also does not arise given the terms of the MLA and the Circulars, as have been interpreted by the learned Sole Arbitrator and with which we see no reason to disagree. The finding of the learned Single Judge that by signing the MLA, the claimant is estopped from maintaining a claim for the Second Regular Meal, cannot be accepted. As noted by us herein above, the said finding of the learned Single Judge is based on the finding that the MLA provided that though the claimant shall supply the Second Regular Meal, but shall be paid only for a Combo Meal. We have already held that this finding of the learned Single Judge and his interference with the interpretation placed by the learned Sole

Arbitrator on the terms of the MLA, cannot be sustained. Consequently, the finding of the learned Single Judge on application of the principle of estoppel is also not sustainable in law.

Issue of limitation

89. The learned Solicitor General has further challenged the finding of the learned Sole Arbitrator, as upheld by the learned Single Judge, on the issue of limitation. He has submitted that the learned Sole Arbitrator has wrongly extended the benefit of Section 14 of the Limitation Act to the claimant and extended the period of limitation.

90. We are unable to agree with the submission made of the learned Solicitor General. Admittedly, the petitioner had invoked the writ jurisdiction of this Court by filing a petition under Article 226 of the Constitution of India, being W.P.(C) 11548/2017, praying for the following reliefs:

> *"A. Issue an appropriate writ, order or directions quashing the impugned circular bearing Commercial Circular No. 67 of 2013 dated 23-10-2013 and Commercial Circular No. 32 of 2014 dated 6-08-2014 issued by the Respondent; and*
> *B. Issue an appropriate writ, order or direction commanding the Respondent to refund an amount of Rs. 7,82,49,945.00/- incurred by the Petitioner for providing regular meal at the price of combo meal from 17.10.2013 to 30.11.2017 along with 18% interest from the date when the amount became due and payable; and / or*
> *C. Issue a writ, rule, order or direction in the nature of Mandamus directing the Respondent to refund an amount of Rs. 1,80,57,132.42*

> *along with 18% interest from the date when the amount became due and payable incurred by the Petitioner for providing Welcome Drink from 01.08.2014 to 30.11.2017."*

91. This Court, by its Judgment dated 23.09.2019, dismissed the said Writ Petition, however, granted liberty to the claimant to invoke the Arbitration Agreement between the parties. Once such liberty is granted, in our view, the claimant had rightly been extended the benefit of Section 14 of the Limitation Act, which reads as under:-

> *"**14. Exclusion of time of proceeding bona fide in court without jurisdiction.**—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*
>
> *(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*
>
> *(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that*

> *the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature."*

92. As far as computation of the benefit is concerned, the learned Sole Arbitrator has again given reasons for determining the same as January 2015, by observing as under:-

> *"**84.** However, I agree with the submission of Mr. Bishnoi that the Claimant are entitled to seek exclusion of the time period spent by them in prosecuting the writ petitions before the Delhi High Court.*
>
> *****
>
> ***89.** ....It is not denied that the writ petitions were filed in December, 2017. Though, the writ petition is dated 19.12.2017 but the first order of the Court in the writ petition is dated 22.12.2017 which is filed at Page No. 778 of Common Convenience Compilation, Volume-III. Thus, there can be no dispute about initiation of the writ proceedings on 22.12.2017. As examined by me earlier, the proceedings in the High Court came to an end by order dated 23.09.2019, a certified copy of which was received by the Claimant on 16.01.2020. Thus, it is reasonable to assume that the Claimant did spend time between 22.12.2017 till 16.01.2020 to prosecute their writ petitions.*
>
> ***90.** The next question arises as to whether the Claimant are entitled to seek exclusion of time spent in the High Court in terms of Section 14 of the Limitation Act, 1963. I am conscious that Section 14 provides for exclusion of time spent by a party which is sincerely and bonafidely pursuing a remedy in another civil court of defective jurisdiction. However, this issue need not detain me as the Hon'ble Supreme Court has squarely answered the same in affirmative in one of the judgments cited by the Claimant.*

91. *Before noticing the Supreme Court judgment, I may indicate that the Claimant had filed writ petitions wherein prayers, inter-alia, were also made for recovery of monies due to them on accounts of the two services claimed herein. The Delhi High Court, in its judgment dated 23.09.2019 also found in Para 16 that what the petitioner was claiming is purely a money claim arising out of contractual obligation and that there are no issues of public law character raised in the present case. Thereafter, the Delhi High Court granted liberty to the Petitioners (Claimant herein) to take steps for appointment of an Arbitrator to look into the grievance of the Petitioner. The Court further ordered that in case such arbitration proceedings are initiated, the Ld. Arbitrator may adjudicate the disputes raised by the Petitioner uninfluenced by any observations made by this Court.*

92. *So, from reading of the judgment dated 23.09.2019 of the Delhi High Court, it is clear that the Court did not find the writ remedy to be an appropriate remedy and thus, relegated the Claimant to approach appropriate forum in the shape of taking steps for appointment of an Arbitrator.*

93. *Whether in the factual scenario highlighted above, the Claimant is entitled to seek benefit of Section 14 of the Limitation Act, 1963, has been dealt with by the Supreme Court in a similar situation in Rameshwar Lal v. Municipal Council, Tonk & Ors. (1996) 6 SCC 100. In this case, the Supreme Court held that the party was entitled to the relief of exclusion of time period spent in the High Court during which it was pursuing its writ petitions diligently and in a bona fide manner. The Hon'ble Supreme Court, being conscious of the language used in Section 14, yet granted this benefit to the party after finding that the High Court had declined to grant relief to the*

party by relegating the petitioner to a suit in a Civil Court and in such situation, the Petitioner cannot be left remediless. The Supreme Court excluded the time period spent in the High Court in prosecuting the writ petitions and further directed the Trial Court to dispose of the matter in accordance with law on merits.

94. *Thus, applying the ratio of the aforesaid judgment, I agree that the Claimant are entitled to seek exclusion of time period spent in the High Court between 22.12.2017 and till 16.01.2020. There is nothing on record to suggest that the Claimant were not bona fide or diligent in pursuing the writ remedy. Though, the Claimant have cited other decisions as well but I don't feel the need to notice all of them given the fact that the Supreme Court judgment is clear and direct.*

95. *Admittedly, the Claimant invoked the arbitration clause on 24.01.2020 and by virtue of Section 21 of the Arbitration and Conciliation Act, 1996, the arbitration proceeding is deemed to have commenced on the said date. If the time period before the High Court is excluded, the claim can be said to have been instituted in around January, 2018. Given the fact that some time is required to make payment against the bills raised from January, 2018, I hold that the amounts claimed by the Claimant three years prior to January, 2018 i.e. from January, 2015 onwards would be within the period of limitation and all amounts claimed prior to the said period would be barred by limitation. Thus, I partly agree with the preliminary objection raised by the Respondent and hold that the Claimant are not entitled to seek recovery of amounts prior to January, 2015."*

93. We, therefore, do not find any merit in the above challenge of the respondent.

94. The reliance of the learned Solicitor General on the judgment of this Court in ***Niyogi Offset Printing Press Limited*** (Supra), cannot be accepted to deny the relief of Section 14 of the Limitation Act to the claimant inasmuch as, the said case was considering whether the benefit of a winding up petition can be granted for extending the benefit of Section 14 of the Limitation Act. The Court held that though a Company Petition for winding up may result in the petitioner getting the amount due to him or some amount on pro rata basis, it does not necessarily mean that the matter in issue will be the same as in a suit for recovery of amount, had it been filed. In the present case, as noted hereinabove, the claimant had claimed the amounts due to it in the Writ Petition filed by it. This Court while dismissing the writ petition had also granted liberty to the claimant to invoke the Arbitration Agreement. Therefore, the above judgment would not apply to the facts of the present case. To the contrary, the learned Sole Arbitrator has rightly placed reliance on the judgment of the Supreme Court in ***Rameshwarlal*** (Supra), wherein the Supreme Court held as under:-

> *"**3.** Normally for application of Section 14, the court dealing with the matter in the first instance, which is the subject of the issue in the later case, must be found to have lack of jurisdiction or other cause of like nature to entertain the matter. However, since the High Court expressly declined to grant relief relegating the petitioner to a suit in the civil court, the petitioner cannot be left remediless. Accordingly, the time taken in prosecuting the proceedings before the High Court and this Court, obviously pursued diligently and bona*

fide, needs to be excluded. The petitioner is permitted to issue notice to the Municipality within four weeks from today. After expiry thereof, he could file suit within two months thereafter. The trial court would consider and dispose of the matter in accordance with law on merits."

95. The reliance of the learned Solicitor General on the judgments of the Supreme Court in ***Raja Ram Maize Products*** (Supra), and on ***Nortel Networks India Pvt. Ltd***. (Supra), also cannot be accepted as the claimant has not been granted an extension of period of limitation by the learned Sole Arbitrator on basis of the representations made by the claimant. The learned Sole Arbitrator has determined that the cause of action for filling the claim would not arise from the circular dated 23.10.2013 or the execution of the MLA, but would arise month-to-month and every month that the claimant was not paid the charges for the Second Regular Meal or the Welcome Drinks. Once it is held that the circular dated 23.10.2013 or the MLA did not deny the right of the claimant to claim the above amounts, the finding of the learned Sole Arbitrator that the claim would arise on a month-to-month basis cannot be faulted. Even otherwise, limitation is a mix question of facts and law. Only because an Arbitrator makes an error in determination of a fact or of law, would not warrant an interference by the Court under Section 34 of the A&C Act, unless it is shown that the finding of the Arbitrator is perverse or against the public policy of India. We do not find such a case to be made out in the facts of the present appeals.

Computation of quantum of claim

96. The learned Solicitor General has further submitted that the learned Sole Arbitrator has erred in the determination of the quantum of claim of the claimant on both the above claims. He submits that the claimant had not produced any evidence in support of the quantification of its claims, and the learned Sole Arbitrator has erred in law in placing a reverse burden of this claim on the respondent by calling the respondent to disprove it.

97. We are unable to agree with the submission made by the learned Solicitor General. The learned Sole Arbitrator, on the issue of determination of the quantum of the claim of the claimant, has observed as under:-

> *"**140.** The next question which arises is as to whether the Claimant have adequately proved the claim computations. For this purpose, a scrutiny of the pleading as well as evidence is required to be done closely. In the lead case, in Para 47, the Claimant have given the number of regular meals supplied in AC-I/II/III. Similarly, in Para 49 it has specified the amounts due and payable to it towards Welcome Drink. The month wise number of regular meals and Welcome Drinks have further been specified in the charts annexed to the certificate of the Chartered Accountant in Vol.C-3 in all cases. A perusal of charts in all the cases show that number of meal and Welcome Drink supplied each month wise for the various years have been specified and these numbers have then been multiplied with the differential rate, with regard to first claim and with the rate of the Welcome Drink for second set of claims. Thus, it is clear that the*

Claimant have set out the numbers of the services rendered by it before this Tribunal. The Respondent, in its defense, has denied the same though no other contrary figures have been set up.

141. *Though the Ld. Counsel for the Respondent is right in submitting that the Claimant are required to be prove their own case and onus lies on them, but in a case like the present one wherein the Claimant have discharged the initial burden by providing a quantification drawn from the bills, the originals of which are with the Respondent, the burden would then shift on the Respondent to prove that it is wrong. Such a plea may have some weight in favor of a party which is not having possession of the relevant record and documents but not in present case.*

142. *From the Affidavit of CW-1, the Chartered Accountant filed by the Claimant, it is clear that he has set out the claim amounts in Para 16. The same computation is also filed along with the SOC by way of a certificate of the same Chartered Accountant along with which, detail charts have been annexed wherein services, namely, number of Regular Meals as well as Welcome Drinks supplied each month wise for the various years in question, have been specified. These figures have though been denied as part of the general denial in the pleadings but given the fact that the Claimant have made supplies of the services in terms of the Commercial Circulars, then, the only question can be with regard to the numbers. In such a situation, since the Respondent has not given any contrary figure of the numbers of Regular Meal and Welcome Drinks supplied and in absence of contrary evidence, the Tribunal is inclined to accept the amounts computed by the Claimant.*

*****

156. *One more contention of the Respondent which requires to be noticed is that it*

contends, by relying upon CC-32 of 2014 that the Welcome Drinks were to be supplied with a rider that whenever breakfast is followed immediately after the Welcome Drink, then fruity/tetra pack to be provided along with the breakfast were not required to be served. It states in its written submission that, thus, the said circular neutralized the effect of the service of Welcome Drinks. I may note that this plea has been taken vaguely without giving supporting factual details, particulars and evidence. It is not clear as to how, according to Respondent, it neutralizes the effect of service of welcome without explaining the number of Welcome Drinks in each train and also the breakfasts and the comparative cost analysis. From the averments made in para 30 of the written submissions wherein it is averred that "even otherwise, all the Shatabdi trains start in the morning followed by breakfast" shows that this situation does not arise in all the trains. This plea being factual should have been established by producing on record the facts and figures. The Respondent was required not only to plead the necessary facts but also prove the same by adducing evidence with regard to the numbers of breakfasts as well as the comparative cost. The Claimant, on the other hand in their written submission has taken the plea that they had supplied the Welcome Drink to all the passengers to avoid complaints as the commuters are unaware of these internal circulars. It may be pointed out that the written submission by the Respondent has been filed much after that of the Claimant. Be that as it may, I find that the Respondent has chosen not to plead set off or counter-claim and in absence thereof the supporting evidence with full details and particulars, this contention about neutralizing the effect of service of Welcome Drink, cannot be accepted."

98. In the present case, admittedly, the bills of the claimant were being paid on the basis of the Occupancy Certificate. The bills as far as the claim of the Combo Meal is concerned, were, therefore, duly paid by the respondent. The only difference now is that instead of a Combo Meal, the claimant claims to have served a Second Regular Meal to the passengers. The number of passengers who have been served this Second Regular Meal, therefore, stands accepted by the respondent. It is not the case of the respondent that though the claimant is claiming to have served a Second Regular Meal to the passengers, it instead, served a Combo Meal. The rates of the Regular Meal, as has already been held by us hereinabove, are to be determined by the Circular dated 09.10.2013. The claimant, in support of its claim has also produced its Chartered Accountant, Mr.Jeetmal Khandelwal **(CW-1)**, whose testimony has been rightly relied upon by the learned Sole Arbitrator by invoking Section 65(g) of the Indian Evidence Act. These, in any case, are matters of evidence and the appreciation thereof, with which the Courts generally do not interfere in exercise of their powers under Section 34 of the A&C Act. It cannot be said that there was no evidence at all before the learned Sole Arbitrator for allowing the claim of the claimant.

99. The above also applies to the Welcome Drinks, where the rates that have been taken by the claimant, though have not been expressly determined by any of the Commercial Circulars issued by the Indian Railways or by the respondent herein, on basis of the charges

applicable to the service of tea to the passengers. We do not find any infirmity in the same.

100. Admittedly, the concept of Welcome Drink came to be introduced by the respondent post the signing of the MLA, *vide* Circular dated 06.08.2014. There was no stipulation in the Commercial Circulars prohibiting the payment for the Welcome Drink. Clause 1.3 of the Tender Document, or Clause 1.4 or Clause 8.1 of the MLA also cannot be read to prohibit the payment of a new food/drink item being introduced in the menu.

101. Therefore, the learned Sole Arbitrator as also the learned Single Judge rightly allowed the said claim of the claimant. The plea of the respondent that it was entitled to a set-off inasmuch as a drink was reduced from the breakfast menu which was to follow, in the absence of any pleading or proof thereof, was also rightly rejected by the learned Sole Arbitrator. In any case, this would have been a matter of evidence and in absence thereof, could not have been invoked by the learned Sole Arbitrator to reject or reduce the claim of the claimant.

Interest

102. As noted hereinabove, the learned Solicitor General has submitted that from the claim made in the Execution Petition filed by the respondent seeking enforcement of the Arbitral Award, it would be evident that the learned Sole Arbitrator has awarded interest on the total sum awarded with effect from 01.01.2018 though the amount would become due in instalments with each bill, which were raised at

the interval of ten days, that is, three bills a month subsequent to 01.01.2018.

103. The Arbitrator, in the Impugned Award, has awarded a sum of Rs.20,97,85,202/- as principal amount towards the claim of recovery of differential cost for the supply of Second Regular Meal and Rs.5,04,99,122/- towards supply of Welcome Drink. The Arbitrator then proceeds to award interest on the principal amount by observing as under:-

> *"161. Section 31 (7) of the Arbitration and Conciliation Act, 1996 provides that the Arbitral Tribunal can award interest at such reasonable rate 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. In the present case, I have held that the claim amounts from January, 2015 are within time period of prescribed limitation by applying Section 14 to exclude the time period spent in the High Court by the Claimant in prosecuting their writ petitions. The Claimant have not pointed out any contractual provisions providing for rate of interest for the amounts payable under the Master License Agreement. Considering the facts and circumstances of the case and also the fact that the Claimant initiated legal action for recovery of the amounts only in December, 2017 for the first time, I deem it fit to award interest on the principal amounts payable only from January, 2018 onwards @ 6% simple rate of interest per annum. Thus, the Claimant will not be entitled for interest prior to the said period.*
>
> *162. The Respondent is given a period of four months from date of award to pay the awarded amounts towards principal as well as interest*

> *component as specified above. However, in case the amounts are not paid within a period of four months from the date of award, the Claimant shall be entitled to future simple interest @ 9% per annum in terms of Section 31 (7) (b) of the Arbitration and Conciliation Act, 1996 on the total sum comprising of principal as well as interest amounts as awarded abovefrom the date of award till the date of actual payment."*

104. It cannot be disputed by the respondent that the above principal amount comprises of bills that are raised on regular intervals, which, as the learned Solicitor General submitted, was after every ten days. The entire principal amount, therefore, did not become due and payable as on 01.01.2018. The amount of principal would keep on increasing with the period of each subsequent bill and the billing period. Similarly, interest would have to be calculated on the principal that was payable on a given date.

105. Section 31(7) of the A&C Act reads as under:-

> *"**Section 31**. **Form and contents of arbitral award.***
>
> *(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.*
>
> *(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."

106. While there can be no doubt that unless otherwise agreed by the parties, 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 or on the date on which the Award is made, such discretion cannot be exercised arbitrally. The cause of action for each bill/billing period shall arise separately and therefore, the cause of action for the principal amount due towards the bills that were raised post 01.01.2018 or relate to the billing period post 01.01.2018 would arise only post the said date. The amount would become due also post the said date. The Arbitrator, therefore, had no jurisdiction under Section 31(7) of the A&C Act to award interest on the amount which was not even due as on a particular date and for which no cause of action had arisen as on that date. As this Court does not have the power to modify the Arbitral Award, the Award to this extent, being contrary to the A&C Act itself, is, therefore, patently illegal and is set aside.

Conclusion:

107. In view of the above findings, we partially set aside the Impugned Order dated 13.08.2024 of the learned Single Judge, as under:-

(a) The Impugned Order in so far as it sets aside the Arbitral

Award *qua* the claim of the claimant for the Second Regular Meal supplied by the claimant, is sets aside and the Arbitral Award is restored;

(b) The Arbitral Award in so far as it awards interest on the principal amount in favour of the claimant, is set aside;

(c) We affirm the Impugned Order dated 13.08.2024 of the learned Single Judge and the Award dated 27.04.2022 of the learned Sole Arbitrator *qua* the Claim for Welcome Drinks.

108. The appeals are disposed of in the above terms. The parties shall bear their own costs.

NAVIN CHAWLA, J

SHALINDER KAUR, J

FEBRUARY 10, 2025/*rv/VS/SJ*

Click here to check corrigendum, if any