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

Reserved on: 07th April, 2026
Pronounced on: 17th August, 2026

\# **CNR No. DLHC010503732019**

+ O.M.P. (COMM) 534/2019 & I.A. 18412/2019, I.A. 18414/2019

RATNAGIRI GAS AND POWER PVT. LTD. .....Petitioner

Through: Mr. Puneet Taneja, Sr. Adv. with Mr. Manmohan Singh Narula and Mr. Amit Yadav, Advocates
Mob: 9953951910
Email: attorney.manmohan@gmail.com

versus

DINOWIC PTE LTD. .....Respondent

Through: Mr. Giriraj Subramanium, Mr. Jaisal Baath, Ms. Reaa Mehth and Ms. Aadhyaa Khanna, Advocates
Mob: 9899436986
Email: office@grschambers.org

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

I. INTRODUCTION:

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 **("Arbitration Act")**, seeking to set aside the Arbitral Award dated 03rd September, 2019 **("impugned Award")**, passed

by the Sole Arbitrator in arbitration proceedings titled as *M/s Dinowic Pte. Ltd. Versus Ratnagiri Gas and Powers Pvt. Ltd*.

2. By way of the impugned Award, the Arbitrator has allowed the claim of the respondent/claimant and directed the petitioner herein to refund a sum of USD 714,760.74, deducted by the petitioner towards liquidated damages from the security deposit, along with simple interest @6% per annum with effect from 17th June, 2014, while rejecting all the counter claims raised by the petitioner herein.

3. This Court notes that the respondent herein has filed *OMP (ENF.)(COMM.) 12/2021*, seeking enforcement of the impugned Award, wherein, this Court *vide* order dated 14th October, 2024, had directed the release of the amount deposited by the petitioner/judgment-debtor, along with accrued interest, in favour of the respondent/decree-holder, subject to furnishing security to the satisfaction of the Registrar General.

II. FACTUAL BACKGROUND:

4. The facts relevant for adjudication of the present petition, as culled out from the impugned Award and the pleadings on record, are set out hereinbelow:

5. ***Facts***

5.1 The petitioner herein, i.e., M/s Ratnagiri Gas and Power Private Limited **("RGPPL")**, is a joint venture company promoted by NTPC Limited and GAIL (India) Limited, formed under the aegis of the Empowered Group of Ministers **("EGoM")** for the revival and restructuring of the erstwhile *Dabhol* Power Project. The petitioner owns and operates a power plant at *Village Anjanwel, District Ratnagiri,* in the State of

Maharashtra. The respondent herein, i.e., M/s Dinowic Pte Ltd., is a company incorporated in Singapore.

5.2 On 19th March, 2014, the petitioner floated an e-auction tender for sale of approximately 40,000 Metric Tonnes **("MT")** of Naphtha, lying at *Dabhol, Maharashtra*, through M/s. MSTC Limited, on an *"as is where is"*, *"as it is what it is"* and *"no complaint"* basis. The e-auction tender documents comprised of the General Terms & Conditions **("GTC")** of e-auction, the Buyer Specific Terms & Conditions **("BSTC")**, Special Terms & Conditions for E-sale of Naphtha **("STC")** and Special Conditions of Contract **("SCC")**.

5.3 The respondent was the successful bidder in the said e-auction, and deposited a pre-bid Earnest Money Deposit **("EMD")** of USD 833,000/- with its bid on 25th March, 2014, and was required to deposit a post-bid EMD of USD 833,000/- in favour of the petitioner. The total EMD of USD 16,66,000/- (pre-bid and post-bid) was to be converted into an interest-free security deposit and retained by the petitioner.

5.4 The petitioner issued a Sale Order dated 02nd April, 2014 **("Sale Order")** to the respondent for sale of approximately 40,000 MT of Naphtha, to be lifted from the petitioner's *Dabhol* site, for a total consideration of Rs. 160,03,40,000/-, which was required to be paid in the form of demand draft/RTGS or through an irrevocable confirmed Letter of Credit **("LC")**, covering 110% of the sale consideration, including taxes and duties. The payment was to be in equivalent USD at the State Bank of India Telegraphic Transfer **("TT")** buying exchange rate as on 27th March, 2014, i.e., 1 USD = Rs. 59.84.

5.5 A scanned copy of the Sale Order was e-mailed to the respondent on 02nd April, 2014, and the same was accepted by the respondent *vide* its E-mail dated 04th April, 2014. Thereafter, by way of an E-mail dated 07th April, 2014 the respondent further intimated, *inter alia*, that the first LC would be established, and that the post-bid EMD would be arranged within five working days.

5.6 As per the terms of the tender, delivery of Naphtha was to be taken by the respondent through the petitioner's Single Point Mooring **("SPM")** facility at *Dabhol*. The respondent had to mobilise suitable ships, take delivery, obtain the requisite statutory permissions and to insure the Naphtha.

5.7 As per Clause 5, i.e., Completion Time (Payment/Delivery Period) of the Sale Order, the entire quantity was to be lifted in two lots, i.e., first lot of a minimum of 30,000 MT was to be lifted, wherein, the scheduled date of opening of LC/payment was 07th April, 2014 and completion of delivery was on or before 16th April, 2014; and second lot of the balance quantity of approximately 10,000 MT was to be lifted, wherein, the scheduled date of opening of LC/payment was 12th April, 2014 and completion of delivery on or before 21st April, 2014.

5.8 Further, if the delivery was not taken before 30th April, 2014 or the date of onset of the monsoon period as declared by the Maharashtra Maritime Board **("MMB")**, whichever was later, the same could be taken only after completion of the monsoon period and the start of port operations.

5.9 Clause 9, i.e., Liquidated Damages of the Sale Order provided that, in case the respondent failed to lift the Naphtha within the stipulated time, liquidated damages would be payable at 1% of the contract value (excluding taxes and duties) corresponding to the total un-lifted quantity remaining at the end of said period, per week of delay or part thereof, subject to a maximum of 5% of the total sale consideration, payable within seven days of raising of the claim by the petitioner, failing which the amount shall be deducted from any other payment due to the buyer or from the buyer's security deposit.

5.10 By way of E-mail dated 04th April, 2014, the petitioner called upon the respondent to remit the payment towards the post-bid EMD/security deposit, as also towards the first lot of Naphtha.

5.11 Further, by way of a subsequent E-mail dated 07th April, 2014, the petitioner reiterated that the payment for the first instalment was towards a minimum quantity of 30,000 MT, and called upon the respondent to adhere to the payment schedule stipulated under the Sale Order and to confirm the vessel details.

5.12 By E-mail dated 07th April, 2014, the respondent remitted the post-bid EMD/security deposit and intimated that, having quoted different rates for the lots, it cannot open LC of different amounts, therefore, it proposed to open LC for the first two lots aggregating 20,000 MT, in a short period of time.

5.13 The petitioner, by way of its E-mail dated 08th April, 2014, intimated that the LC for the first lot was supposed to be opened within five days of issuance of the Sale Order, i.e., by 07th April, 2014, and called upon the respondent to open the LC immediately. By E-mail dated 09th April, 2014, the respondent stated that it was in the process of establishing the LC in favour of the petitioner, and requested the petitioner to inform the respondent of the outcome of the request pending before the Directorate

General of Shipping **("DG Shipping")**, seeking permission for operating the SPM.

5.14 By E-mail dated 11th April, 2014, the petitioner conveyed that there was no hindrance in obtaining such permission and sought confirmation of the nominated ship details. The respondent, thereafter, nominated the vessel *'GSW Fabulous OOS'*, having a capacity of 13,000 MT. However, by E-mail dated 14th April, 2014, the respondent suggested the vessel *'MT Mercini Lady OOS'* having a Deadweight Tonnage **("DWT")** of 46,647 MT. The same was rejected by the petitioner *vide* E-mail dated 15th April, 2014, as being well above the RGPPL SPM capacity of 30,000 DWT.

5.15 The respondent submitted the LC for the first lot on 15th April, 2014 for a quantity of 20,000 MT, amounting to USD 13,369,600, through its banker, Standard Chartered Bank. Thereafter, certain discrepancies in the LC were communicated by the petitioner on the same day, and a meeting was held at the RGPPL's office at Noida on 17th April, 2014 in this regard. Further, the respondent nominated the vessel *'MT Maersk Maya'*, and furthermore *vide* letter dated 18th April, 2014, the respondent intimated the appointment of *M/s Atlantic Shipping Pvt. Ltd.* as its shipping agent for lifting of the Naphtha.

5.16 On 25th April, 2014, the shipping agent submitted the commercial invoice and Bill of Lading, and the first lot comprising of 20,090.848 MT of Naphtha was lifted on 25th April, 2014. By E-mails dated 26th April, 2014 and 28th April, 2014, the petitioner called upon the respondent to deploy a further vessel to lift the balance quantity, having regard to the approaching South-West Monsoon.

5.17 By swift message dated 01st May, 2014, the petitioner's banker, i.e., State Bank of Hyderabad, intimated to the petitioner the refusal of the Standard Chartered Bank to remit payment in respect of the first lot, on account of discrepancies in the shipping documents, particularly the Bill of Lading, which had not been endorsed, did not show freight payable as per the charter party, and did not evidence the number of originals issued.

5.18 Subsequently, *vide* E-mail dated 02nd May, 2014, the respondent informed the petitioner that its banker was declining to honour the documents on account of the non-endorsement of the Bill of Lading, and requested that the Bill of Lading be returned for rectification and relodged for acceptance.

5.19 By E-mail dated 05th May, 2014, the respondent intimated that the vessel deployed for the balance quantity had been delayed due to opposite current, in response whereto the petitioner, by its E-mail of even date, conveyed that the delay was on account of a delayed start from the earlier port and that any financial liability arising from the delay would be to the account of the respondent.

5.20 The payment for the first lot was credited to the petitioner's account on 07th May, 2014. The LC for the second lot was submitted on 08th May, 2014. Discrepancies therein were pointed out, and the amended LC was provided on 09th May, 2014. On 10th May, 2014, the commercial invoice and Bill of Lading were submitted by the shipping agent, and the second lot of Naphtha was lifted from the *Dabhol* port. The payment in respect of the second lot was received on 22nd May, 2014.

5.21 By letter dated 24th May, 2014, the respondent sought a *post-facto* extension of the delivery period and release of the security deposit/EMD, and by letter dated 04th June, 2014, the respondent reiterated its request for refund of the security deposit.

5.22 In terms of Clause 9 of the Sale Order, the petitioner deducted a sum of USD 714,960.74 from the security deposit towards liquidated damages and released the balance security deposit to the respondent.

5.23 By letter dated 01st July, 2014, the respondent sought refund of the amount deducted towards liquidated damages, attributing the delay to various hindrances in the lifting of Naphtha. However, the same was declined by the petitioner *vide* letter dated 17th July, 2014, justifying the recovery in terms of Clause 9 of the Sale Order.

5.24 Consequently, the respondent issued a Legal Notice dated 08th August, 2014 calling for refund of the deducted amount of USD 714,975.74, along with interest @18% per annum, to which the petitioner responded *vide* reply dated 23rd September, 2014.

5.25 In view of the dispute with regard to the deduction made by the petitioner in the form of liquidated damages, the respondent invoked Arbitration under Clause 14 of the SCC *vide* its letter dated 31st January 2015. As the appointment of the arbitrator was not made, the respondent approached this Court, pursuant to which, Mr. Justice (Retd.) Anil Dev Singh, former Chief Justice of Rajasthan High Court, was appointed as the Sole Arbitrator, with the arbitral proceedings to be governed by the Rules of the Delhi International Arbitration Centre **("DIAC")**.

5.26 Before the Sole Arbitrator, the respondent/claimant filed its Statement of Claim, raising the following claims:

A. Refund of balance security deposit amounting to USD 714,975.74 i.e. approximately INR 4.8 Crores.

B. Interest @ 18 percent per annum on the balance security deposit.

C. Costs.

5.27 The petitioner herein, filed its Statement of Defence along with counter claims, raising the following counter-claims:

A. Loss on account of Interest due to delay in remittance of payment by Claimant vis-a-vis scheduled date(s) of payment: Rs. 2,64,19,002/-.

B. Loss on account of exchange rate variation due to delay in remittance of payment by Claimant vis-a-vis scheduled date(s) of payment: Rs. 1,86,17,386/-.

C. Levy of Ground Rent for delayed lifting of material: Rs. 4,30,53,398/-.

D. Interest @ 12% p.a. on Claim (a) to (c) from the due date till the date of award and @ 18% p.a. from the date of award till the date of payment.

5.28 By way of the impugned Award dated 03rd September, 2019, the Sole Arbitrator allowed claims A and B raised by the respondent/claimant, and directed refund of the sum of USD 714,760.74 deducted by the petitioner towards liquidated damages, along with simple interest at the rate of 6% per annum with effect from 17th June, 2014, in favour of the claimant.

5.29 Further, the Sole Arbitrator rejected all the counter claims of the petitioner herein in their entirety, i.e., counter claims A, B, C and D towards interest on delayed remittance, exchange-rate variation, ground rent for delayed lifting, and interest, respectively. The parties were left to bear their own costs.

5.30 The Sole Arbitrator recorded that there had, in fact, been delay on the part of the respondent/claimant both in the remittance of payment and in the lifting of the Naphtha. However, since the petitioner had accepted such delayed performance without reservation, the petitioner was held to have waived strict compliance with the contractual timelines. The Arbitrator also held that even otherwise, the deduction of liquidated damages had been made in breach of the procedure stipulated in the contract. Further, the liquidated damages stipulated in the contract were held to be not genuine pre-estimates and the petitioner herein was held to have failed to show some loss having been suffered by it, so as to sustain the levy.

5.31 Aggrieved thereby, the petitioner has preferred the present petition under Section 34 of the Arbitration Act, assailing the impugned Award.

III. SUBMISSIONS OF THE PARTIES:

6. The following rival submissions have been made before this Court in favour of and against setting aside of the impugned Award:

7. ***<u>Grounds of challenge/objection by petitioner</u>***

7.1 Despite holding that there was delay on part of the claimant/respondent in opening the LC and remittance of payment, the Arbitrator, declined to grant interest on the delayed payments to the petitioner in an arbitrary and perverse manner, on account of waiver by the petitioner.

7.2 Payment of interest is the natural and direct consequence of delayed payment, and the petitioner was entitled to the same, in the absence of any clause barring the grant of interest for delayed receipt of money.

7.3 The Arbitrator erroneously relied on Clause 4.2 of the SCC and Clause 6 of the Sale Order to hold that the petitioner had waived the delay in remittance, by observing that had the petitioner been aggrieved by the delayed payment, it ought not to have allowed the lifting of Naphtha without receipt of payment. The Arbitrator failed to appreciate that stalling the lifting of Naphtha on account of delayed payment, would have occasioned huge losses to the petitioner, particularly in view of the onset of monsoon and the consequent closure of the *Dabhol* port.

7.4 The petitioner was justified under the principle of mitigation of damages to accept the delayed remittance. The respondent/claimant, which had notice of the delay from the very inception of the contract, and which had itself acknowledged the urgency in the matter, could not have been absolved on the ground of waiver.

7.5 The Arbitrator erred in placing reliance on Section 55 of the Indian Contract Act, 1872 **(“Contract Act”)** to decline interest on the delayed remittance. The said provision is applicable to timely performance of reciprocal promises, whereas, the grant of interest is the natural consequence of the deprivation of a lawful payment.

7.6 Despite finding that there was delay on behalf of the respondent in lifting the lots of Naphtha, the Arbitrator has set aside the petitioner’s deduction towards liquidated damages from the security deposit, on the ground that the petitioner had waived the delay on the part of the respondent and had set time at large, by having allowed the respondent herein to lift the two lots of Naphtha beyond the due dates.

7.7 There was no waiver on part of the petitioner as the petitioner time and again insisted the respondent to adhere to the time schedule mentioned in the Sale Order. Further, the act of respondent seeking *post facto* extension of time *vide* its Letter dated 24th May, 2014 shows that there was no waiver by the petitioner and was an admission to the effect that time was always the essence of the contract.

7.8 The Arbitrator erred in holding that the petitioner had waived the obligation of the respondent to lift 30,000 MT of Naphtha in the first lot by permitting the lifting of only 20,090.848 MT. The petitioner had consistently insisted upon adherence to the Sale Order, and the reduction in the quantity had been occasioned by the respondent's own communication dated 07th April, 2014. The petitioner allowed the lifting of the reduced quantity only at the stage of submission of the LC, in the overall interest of business and to mitigate damages, given the approaching monsoon.

7.9 The plea of the respondent that the capacity of the SPM being 30,000 DWT, and the SPM not having been used for a long time, caused bottlenecks in lifting the scheduled quantity are baseless as Naphtha had been sold on an "as is where is" basis. The said plea had been raised for the first time during the arbitral proceedings, and no such grievance was raised during the execution of the contract.

7.10 The Arbitrator erred in holding that notice of the consequence of delay must be given at the time of acceptance of the delayed performance. Such requirement under Section 55 of the Contract Act is only relatable to damages under Section 73 of the Contract Act, whereas, liquidated damages have their genesis in Section 74 of the said Contract

Act, in respect whereof, the right to seek damages is pre-notified in the contract, and gets triggered upon the delay itself. Likewise, the Arbitrator erred in applying Section 63 of the Contract Act, to infer waiver of the obligation of timely payment and lifting of Naphtha.

7.11 The Arbitrator wrongly concluded that time had ceased to be the essence of the contract, in absence of any positive act on the part of the petitioner signifying that it was not insisting upon timely payment or lifting. Further, the Sale Order contained no provision for extension of time.

7.12 The Arbitrator erred in observing that the petitioner had not followed the procedure prescribed under Clause 6 of the SCC and Clause 9 of the Sale Order before deducting liquidated damages from the security deposit. The Arbitrator misinterpreted Clause 9 of the Sale Order, which permitted the petitioner to deduct liquidated damages, and required petitioner to raise a claim only if the recovery was not sufficient.

7.13 Even otherwise, respondent had due notice of the delay through repeated correspondence, including, the communication dated 05th May, 2014. Even on the assumption that no quantified claim had been made prior to the recovery, the same would not disentitle the petitioner from recovering liquidated damages, which was otherwise contractually and legally sustainable. Thus, the Arbitrator acted contrary to the terms of the contract and the law of the land in declining liquidated damages.

7.14 The Arbitrator, without any basis in the pleadings of the parties, held that Clause 9 of the Sale Order did not provide for a genuine pre-estimate of damages for delay, and required petitioner to prove some loss. The tanks storing the Naphtha were required to be emptied for the storage of water, necessary for the generation of electricity, and therefore, the parties were *ad idem* that any delay in the lifting of Naphtha, was bound to cause loss to the petitioner, which could not be quantified.

7.15 Thus, parties agreed to a pre-estimate of such loss under Clause 9 of the Sale Order, and the liquidated damages stood pre-notified to the respondent, which was not entitled to any further notice.

7.16 The Arbitrator erroneously required the petitioner to prove actual loss, despite Clause 9 of the Sale Order providing a genuine pre-estimate of liquidated damages. Further, in cases of public utility, loss can be assumed even without proof, and onus was upon the party in breach to establish that no loss was likely to occur.

7.17 Further, the Arbitrator declined the petitioner's application dated 15th October, 2018 for placing on record additional documents to demonstrate the financial distress/loss caused to the petitioner, on the ground that the same would cause prejudice to the claimant/respondent, for want of an opportunity of cross-examination.

7.18 The dismissal of the said application led to denial of a fair opportunity to the petitioner to present its case on merits under Section 34(2)(a)(iii) of the Arbitration Act, as the witnesses had already deposed to the loss in their examination-in-chief, and only documentary proof was being filed subsequently by the petitioner. In any event, the Arbitrator could have recalled the witnesses.

7.19 The Arbitrator erroneously relied on Code of Civil Procedure, 1908 **("CPC")** and the Indian Evidence Act, 1872 **("Evidence Act")** to reject the said application, when the said statutes are not applicable to arbitral proceedings in terms of Section 19 of the Arbitration Act.

7.20 The Arbitrator, in violation of Section 31(3) of the Arbitration Act, rejected the petitioner's counter claims, i.e., counter claims B and C towards Exchange Rate Variation and ground rent, without affording any reason. Further, the Arbitrator declined to grant interest in terms of Section 31(7)(a) of the Arbitration Act, despite there being no Clause in the agreement barring the grant of interest.

8. ***Submissions of the respondent***

8.1 The impugned Award proceeds upon a plausible and commercially reasonable interpretation of the contract. It is settled law that where two interpretations are possible, the view taken by the Arbitral Tribunal must prevail and cannot be substituted by this Court in exercise of its jurisdiction under Section 34 of the Arbitration Act. The interpretation of the terms of the contract lies within the domain of the Arbitral Tribunal, and are binding on this Court.

8.2 None of the grounds urged by the petitioner disclose any patent illegality, perversity or violation of public policy. The petition makes only vague averments that the impugned Award is against the public policy of India and is patently illegal, without substantiating the same. The petition in effect only seeks a re-appreciation of the evidence and entry into the merits of the dispute, which is impermissible in law.

8.3 The impugned Award is a well-reasoned award that has duly considered the pleadings of the parties, the evidence produced on record, the relevant provisions of the contract executed between the parties, and the applicable judicial precedents. The interpretation and reasoning of the Arbitrator is premised, in particular, upon Sections 55 and 63 of the Contract Act, and the Award is supported by the decisions of the Supreme Court, this Court and other High Courts.

8.4 The contractual trigger for the levy of liquidated damages, namely, the failure of the respondent to lift the Naphtha before the onset of the monsoon period as declared by the MMB, in terms of Clause 1.10 of the SCC read with Clause 5 of the Sale Order, never arose as it is undisputed that the respondent lifted the entire quantity of Naphtha prior to the onset of the monsoon. The finding of the Arbitrator in this regard is purely a matter of contractual interpretation, that lies squarely within the arbitral domain and is binding upon this Court.

8.5 Clause 9 of the Sale Order prescribed a mandatory contractual sequence, namely, the raising of a claim for liquidated damages by the petitioner, the grant of seven days to the respondent to remit the claimed amount, and deduction only upon failure to pay within such period. The unilateral deduction of liquidated damages by the petitioner, without raising any claim, was thus contractually barred. The conclusion of the Arbitrator that such deduction was impermissible was not only plausible but inevitable, and warrants no interference.

8.6 The petitioner, having permitted and accepted the lifting of Naphtha beyond the stipulated dates and having allowed the vessels to leave the port without insisting upon payment, waived the timelines and accepted the performance of the contract. In terms of Section 55 read with Section 63 of the Contract Act, no notice for deduction was issued by the petitioner at the time of acceptance of performance, and the petitioner is now debarred from raising any claim or deducting liquidated damages.

8.7 The petitioner's reliance on its letter dated 05th May, 2014 is misplaced as the said letter neither quantifies any liquidated damages nor invokes Clause 9 of the Sale Order. At best, the said letter contains a vague and non-binding reservation of rights. By the said letter, the petitioner fixed a fresh timeline directing the respondent to ensure the arrival of the vessel by 09th May, 2014, thereby, condoning any prior delay, whereafter the loading was permitted and the vessel was allowed to sail without any protest or reservation.

8.8 The petitioner failed to plead or prove any loss. The contention that loss was occasioned on account of the tanks storing the Naphtha being required for power generation at the *Dabhol* Power Plant, is conspicuously absent from the petitioner's counter claims and is only an afterthought.

8.9 The plea of mitigation of losses is equally an afterthought, the same having been taken for the first time by the petitioner in its rejoinder to the reply to the counter claim, and is, in any event, unsubstantiated.

8.10 The present petition is a disguised appeal on merits seeking a re-appreciation of the contractual interpretation and the factual findings, which is impermissible and deserves to be dismissed with costs.

IV. FINDINGS AND ANALYSIS:

9. The petitioner, i.e., RGPPL issued the Sale Order dated 02nd April, 2014 in favor of the respondent for lifting of approximately 40,000 MT of surplus Naphtha, on an *"as is where is"* basis for a total consideration of Rs. 160,03,40,000/-.

10. The Sale Order required lifting of the Naphtha and remittance of payment within stipulated timelines. The schedule stipulated under the Sale Order, and the timeline actually followed in the performance of the contract, are set out in the table appended hereto, which forms the substratum of the disputes between the parties.

FIRST BATCH LIFTED IN TWO LOTS

Qty. lifted	Scheduled LC Opening	Actual LC Opening	Scheduled Delivery Completion	Actual Delivery Completion	Date of Payment Remittance
First Lot 20,090.848 MT	07.04.2014	17.04.2014	16.04.2014	25.04.2014	07.05.2014
Second Lot 9,909.152 MT	07.04.2014	09.05.2014	16.04.2014	10.05.2014	23.05.2014

SECOND BATCH

Qty. lifted	Scheduled LC Opening	Actual LC Opening	Scheduled Delivery Completion	Actual Delivery Completion	Date of Payment Remittance
9,038.104 MT	12.04.2014	09.05.2014	21.04.2014	10.05.2014	22.05.2014

11. Disputes arose upon the petitioner deducting USD 714,960.74 from the respondent's security deposit towards liquidated damages for delay in lifting naphtha and delay in remittance. The respondent assailed the said deduction as being unjustified, leading to the invocation of arbitration and, ultimately, to the impugned Award.

12. By the impugned Arbitral Award dated 03rd September, 2019, the Sole Arbitrator allowed the claims of the respondent/claimant and directed the petitioner to refund the sum of USD 714,760.74 deducted

towards liquidated damages, together with simple interest at the rate of 6% per annum with effect from 17th June, 2014, till realisation.

<u>Scope of interference of Court under Section 34 of the Arbitration Act</u>

13. Having noticed the factual matrix in which the present dispute arises, it is essential to note that the impugned Award is an "International Commercial Arbitration" in terms of Section 2(1)(f)(ii) of the Arbitration Act, on account of the respondent/claimant being a company incorporated in Singapore, having Company Registration no. *199707495K*, and registered office at *16, Raffles Quay # 27-01A, Hong Leong Building, Singapore – 048581*.

14. Section 2(1)(f) of the Arbitration Act defines International Commercial Arbitration as an Arbitration relating to disputes arising out of a legal relationship, whether contractual or not, considered as commercial under the law in force in India, where at least one party is a foreign national or habitually resident in any other country other than India, a body corporate incorporated outside India, an association or body of individuals whose central management or control is exercised outside India, or the Government of a foreign country. In cases where these tests are satisfied, the arbitration is an International Commercial Arbitration, though the seat of arbitration is in India.

15. Thus, it is germane to the present dispute, to delineate the scope of interference of the Court under Section 34 of the Arbitration Act in respect of International Commercial Arbitrations.

16. It is settled law that while exercising power under Section 34 of Arbitration Act, the Court does not sit in appeal over the arbitral award,

and interference is permitted only on the limited grounds set out under Section 34 of the Arbitration Act, which read as under:

"xxx xxx xxx

***34. Application for setting aside arbitral award**.—*

(1) … … …

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application [4][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.

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

(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or
(ii) it is in contravention with the fundamental policy of Indian law; or
(iii) it is in conflict with the most basic notions of morality or justice.

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

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

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

xxx xxx xxx"

(Emphasis Supplied)

17. A perusal of the aforesaid provision makes it evident that Section 34 (2-A) of the Arbitration Act, i.e., setting aside of award on account of patent illegality appearing on the face of the award, is not a ground for challenge in respect of International Commercial Arbitrations. Thus, the only grounds for challenging an award arising out of International Commercial Arbitration, are those provided under Section 34(2)(a) and (b) of the Arbitration Act.

18. At this stage, reference must be made to the judgment dated 29th May, 2026 in *O.M.P. (COMM) 223/2026*, titled as ***"Mr Pathan Imrankhan Zafarullakhan & Anr. Versus Microsoft Corporation"***, wherein, this Court held that the scope of interference in an arbitral

award arising out of an International Commercial Arbitration is significantly narrower than that applicable in the case of a purely domestic award, in the following manner:

> *"xxx xxx xxx*
>
> *44. Before proceeding to examine the merits of the rival submissions advanced on behalf of the parties, this Court considers it apposite to reiterate the well-settled limitations governing the exercise of jurisdiction under Section 34 of the A&C Act, particularly in the context of an International Commercial Arbitration.* ***<u>The jurisdiction of this Court in such proceedings is supervisory and not appellate in nature, and therefore does not permit a reappreciation of facts or a reconsideration of the merits of the dispute as though this Court were sitting in appeal over the arbitral award.</u>***
>
> *45.* ***<u>There exists a consistent and authoritative line of decisions rendered by the Hon'ble Supreme Court, which has clearly delineated the contours of judicial interference under Section 34 of the A&C Act. Such precedents repeatedly emphasise that the scope of interference with an arbitral award arising out of an International Commercial Arbitration is significantly narrower than that applicable in the case of a purely domestic award</u>****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

19. It is also apposite to refer to the decision in the case of ***Bridge Marine Limited Versus Indian Oil Corporation Limited, 2021 SCC OnLine Del 3427***, wherein, this Court held as under:

> *"xxx xxx xxx*
>
> ***48.*** *Before proceeding to adjudicate the contentious issues raised by the respective parties, it is imperative to emphasise that* ***<u>the present petition deals with an award passed in international commercial arbitration as defined in Section 2(1)(f) of the Act. The limitations and contours of the power of a court exercising jurisdiction in a</u>***

challenge to an arbitral award are well defined under Section 34 of the Act as amended by the Amendment Act, 2015. The Supreme Court in Ssangyong Engg. & Construction Co. Ltd. case [Ssangyong Engg. & Construction Co. Ltd. v. National Highways Authority of India, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] has clearly delineated the parameters on which the courts can interfere in an arbitral award. One of the amendments carried out in Section 34 of the Act is insertion of sub-section (2-A) which provides an additional ground of "patent illegality" for setting aside an award arising out of purely domestic arbitration and clearly excludes the same as a ground of challenge in international commercial arbitration. It is thus clear that the amendment treats Domestic Arbitration and international commercial arbitration having seat in India differently for the purpose of challenge under Section 34 of the Act. *The amendment was pursuant to recommendations of the 246th Report of the Law Commission of India, aimed at reducing interventions of courts in arbitral awards.* ***In view thereof, scope of interference in an award in an international commercial arbitration is extremely narrow and restricted.***

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54. From the conspectus of the above judgments, it is clear that the scope of interference in the award impugned before this Court is extremely narrow. The expression "public policy of India" referred to in Section 34(2)(b)(ii) of the Act would mean and connote fundamental policy of Indian law as explained in Renusagar Power Co. Ltd. case [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] and Ssangyong Engg. & Construction Co. Ltd. case [Ssangyong Engg. & Construction Co. Ltd. v. National Highways Authority of India, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] . An award in international commercial arbitration is impervious to jural interference on the ground of "patent illegality" in sub-section (2-A) of Section 34 of the Act. Relevant would it be to note that any challenge to an award in respect of interpretation or construction of a contractual provision by an Arbitral Tribunal falls under "patent illegality" and is thus no longer a ground to challenge an award arising out of an international commercial arbitration as

categorically propounded by the Supreme Court in Ssangyong Engg. & Construction Co. Ltd. case [Ssangyong Engg. & Construction Co. Ltd. v. National Highways Authority of India, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] . Likewise, grounds of perversity which includes findings based on no evidence or in ignorance of vital evidence would fall under the ground of "patent illegality" and only domestic awards other than awards in international commercial arbitration can be assailed on this ground.

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72. *Having given my thoughtful consideration to the question posed in the present petition and adumbrating to the factual matrix obtaining in the present case as well as the judgments relied upon, this Court is of the view that the impugned majority award does not call for any interference. As rightly pointed out by learned Senior Counsel for the respondent, the scope of judicial review and interference in the impugned award is extremely narrow and confined, post-amendment to Section 34 of the Act by the Amendment Act, 2015. The Supreme Court in Ssangyong Engg. & Construction Co. Ltd. case [Ssangyong Engg. & Construction Co. Ltd. v. National Highways Authority of India, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] and Vijay Karia case [Vijay Karia v. Prysmian Cavi E Sistemi SRL, (2020) 11 SCC 1] has perspicuously laid down the scope and ambit of judicial interference.* ***Be it ingeminated that the restricted interference becomes narrower in an award passed in an international commercial arbitration and there is a terse deprecation to courts interdicting enforcement of such awards. Therefore, it becomes crucial at this stage to understand the legal challenges posed by the petitioner to the award and how the same fit into the contours and confines of judicial review delineated by the Supreme Court.***

73. Objections put forth by the petitioner can be cast into two neat compartments viz. interpretation of Clauses 6 and 9 of the charter party, including the terms "customary anchorage", "arrived ship" and "reachable on arrival", and failure of the majority tribunal to consider and/or erroneous application of the principles of law, enunciated in the judgments placed before it by the petitioner.

74. The preponderant position evident from the conspectus and

exposition of law aforesaid is that under Section 34(2)(b)(ii) of the Act, an award of the Arbitral Tribunal can be challenged if it is in conflict with the public policy of India. By the Amendment Act, 2015, Explanation 1 was inserted and it was clarified that an award is in conflict with the public policy of India, only if: (a) making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or (b) it is in contravention with the fundamental policy of Indian law; or (c) it is in conflict with the most basic notions of morality and justice. Explanation 2 clarifies that the test as to whether there is contravention with fundamental policy of Indian law shall not entail a review on merits of the disputes. Sub-section (2-A) was inserted by the same amendment which provided an additional ground in case of purely domestic awards in India, where the award is vitiated by "patent illegality" appearing on the face of the award, with a cautious caveat that award shall not be set aside merely on the ground of erroneous application of law or by reappreciation of evidence.

75. ***In the decision in Ssangyong Engg. & Construction Co. Ltd. case [Ssangyong Engg. & Construction Co. Ltd. v. National Highways Authority of India, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , the Supreme Court held that the expression "public policy of India" whether contained in Section 34 or Section 48, would now mean the "fundamental policy of Indian law" as explained in paras 18 and 27 of Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] i.e. relegated to the understanding of the expression in Renusagar Power Co. Ltd. case [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] . To the extent it is relevant to the present case, in para 27 of Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , the Supreme Court held as under:***

> *"27. Coming to each of the heads contained in Saw Pipes judgment ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] , we will first deal with the head 'fundamental policy of Indian law'. It has already been seen from Renusagar Power Co. Ltd. case [Renusagar Power Co.*

*Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] judgment that violation of the Foreign Exchange Act and disregarding orders of superior courts in India would be regarded as being contrary to the fundamental policy of Indian law. **To this it could be added that the binding effect of the judgment of a superior court being disregarded would be equally violative of the fundamental policy of Indian law.”***

*76. **The Supreme Court further held that the change made in Section 28(3) of the Act by the Amendment Act, 2015 would follow the observations of the Supreme Court in Paras 42.3 to 45 in Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , that construction of terms of a contract is primarily the domain of the arbitrator, unless the arbitrator construes the contract in a manner that no fair minded or reasonable person would i.e. the view of the arbitrator is not even a possible view to take. The challenge to the award under this head would, however, fall under “patent illegality” under Section 34(2-A) of the Act and cannot be sustained in the present case as the impugned award is passed in international commercial arbitration.***

*77. **In view of the above, the challenge by the petitioner, calling upon this Court to interfere in the interpretation/construction of Clauses 6 and 9 of the charter party rendered by the majority tribunal cannot be sustained. Albeit this is sufficient for this Court to reject the said objection of the petitioner, however, even otherwise, the harmonious construction made by the majority tribunal to the two clauses is not only a possible but a plausible view and cannot be substituted by this Court.** In fact this Court need not charter in troubled waters as in the maritime legal regime, the said clauses have received interpretation in two judgments by the House of Lords and the petitioner has not been able to furnish any cogent reason to substitute the said interpretation and construction.*

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80.** Clearly, the aforesaid findings of the majority tribunal are based on the interpretation and construction of the clauses of the charter party keeping in the backdrop two judgments of the House of Lords and the obtaining factual matrix. **The binding dicta of the Supreme

<u>Court in Ssangyong Engg. & Construction Co. Ltd. case [Ssangyong Engg. & Construction Co. Ltd. v. National Highways Authority of India, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] does not permit this Court to interfere in the interpretation of the contractual clause made by the majority arbitrators and the contentions of the petitioner are thus rejected.</u>

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(Emphasis Supplied)

20. From a reading of the aforesaid judgment, it is clear that the restricted interference of Courts under Section 34 of the Arbitration Act becomes narrower in an award passed in an International Commercial Arbitration. The ground of "patent illegality" in Sub-Section (2-A) of Section 34 of the Arbitration Act, cannot be sustained in case of International Commercial Arbitration. Further, any challenge to an award in respect of construction of terms of a contract by an Arbitral Tribunal falls under "patent illegality", and is no longer available as a ground of challenge of an award arising out of an International Commercial Arbitration.

21. Section 34(2)(b)(ii) of the Arbitration Act further provides that an award may be set aside if the same is in conflict with the "public policy of India". Explanation 1 clarifies that an award would be 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; (ii) the award 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. As per Explanation 2, the test as to whether there is contravention with fundamental policy of Indian law shall not entail a review on merits of the disputes.

22. The expression "fundamental policy of Indian law" has been the subject of interpretation in a *catena* of decisions, and refers to such fundamental principles that form the basis for administration of justice and the enforcement of law, and a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award.

23. In the case of ***Bridge Marine (Supra)***, the Court noted that the expression "fundamental policy" connotes the basic and substratal rationale, values and principles which form the bedrock of laws in our country. Thus, if there is breach of some legal principle or legislation which is so basic to Indian law that it is not susceptible of being compromised, such an Award would be in contravention of the fundamental policy of Indian law. Accordingly, an award in violation of provisions of a statute enacted to safeguard national economic interest, or disregarding orders passed by the superior Courts in India would be in violation of fundamental policy of Indian law. However, contravention of any provision of an enactment is not synonymous to contravention of fundamental policy of Indian law. The relevant paragraphs of the aforesaid decision are reproduced as under:

> *"xxx xxx xxx*
>
> ***49. <u>Under Section 34(2)(b)(ii) of the Act, an arbitral award may be set aside if it is in conflict with the "public policy of India". One of the earliest cases of the Supreme Court, where the term "public policy of India", which includes the expression "fundamental policy of Indian law", was interpreted by the Supreme Court in the year 1993, is Renusagar Power Co. Ltd. case [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] , where the Supreme Court held that an award in violation of provisions of</u>***

Foreign Exchange Regulation Act, 1973 (FERA) being a statute enacted to safeguard national economic interest shall be contrary to public policy of India. Equally, disregarding orders passed by the superior courts in India could also be violation of fundamental policy of Indian law albeit contravention of statute simpliciter would not attract the bar of public policy.

50. In Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , the Supreme Court reaffirmed the concept of fundamental policy of Indian law as explained in Renusagar Power Co. Ltd. case [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] as well as three juristic principles viz. judicial approach, natural justice and absence of perversity or irrationality, as explained in ONGC Ltd. v. Western Geco International Ltd. [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , thereby expanding the scope of interference by the courts. *The 256th Law Commission, however, made recommendations which were aimed at narrow construction of the term fundamental policy of Indian law, leading to an amendment in the Act in 2015, as aforementioned.* ***After an in-depth and detailed analysis of the earlier judgments and recommendations of the Law Commission, the Supreme Court in Ssangyong Engg. & Construction Co. Ltd. case [Ssangyong Engg. & Construction Co. Ltd. v. National Highways Authority of India, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , held as follows:***

> *"34. What is clear, therefore, is that* ***the expression 'public policy of India', whether contained in Section 34 or in Section 48, would now mean the 'fundamental policy of Indian law' as explained in paras 18 and 27 of Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] i.e. the fundamental policy of Indian law would be relegated to 'Renusagar' understanding of this expression. This would necessarily mean that WesternGeco expansion has been done away with. In short, WesternGeco, as explained in paras 28 and 29 of Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] ,***

<u>would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] .</u>

*　　　*　　　*

36. ***<u>Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that WesternGeco, as understood in Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , and paras 28 and 29 in particular, is now done away with.</u>***

*　　　*　　　*

38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

39. ***<u>To elucidate, para 42.1 of Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award.</u>*** *Para 42.2 of Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , however, would remain, for if an arbitrator gives no* *reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.*

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

* * *

*42. **Given the fact that the amended Act will now apply, and that the 'patent illegality' ground for setting aside arbitral awards in international commercial arbitrations will not apply, it is necessary to advert to the grounds contained in Sections 34(2)(a)(iii) and (iv) as applicable to the facts of the present case.***

* * *

44. In Renusagar Power Co. Ltd. case [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] , this Court dealt with a challenge to a foreign award under Section 7 of the Foreign Awards (Recognition and Enforcement) Act, 1961 (the Foreign Awards Act). The Foreign Awards Act has since been repealed by the 1996 Act. However, considering that Section 7 of the Foreign Awards Act contained grounds which were borrowed from Article 5 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the New York Convention), which is almost in the same terms as Sections 34 and 48 of the 1996 Act, the said judgment is of great importance in understanding the parameters of judicial review when it comes to either foreign awards or international commercial arbitrations being held in India, the grounds for challenge/refusal of enforcement under Sections 34 and 48, respectively, being the same."

(emphasis supplied)

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52. <u>A Coordinate Bench of this Court in Cruz City 1 Mauritius Holdings v. Unitech Ltd. [Cruz City 1 Mauritius Holdings v. Unitech Ltd., 2017 SCC OnLine Del 7810 : (2017) 239 DLT 649] , following the decision in Renusagar Power Co. Ltd. case [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] , elaborated on the connotation of the expression "fundamental policy" as the basic and substratal rationale, values and principles which form the bedrock of laws in our country. Though in the context of a foreign award, the observations of the Bench are extremely relevant even in the realm of international commercial arbitration and are to the following effect:</u>

> *"97. **<u>It plainly follows from the above that a contravention of a provision of law is insufficient to invoke the defence of public policy when it comes to enforcement of a foreign award. Contravention of any provision of an enactment is not synonymous to contravention of fundamental policy of Indian law. The expression fundamental policy of Indian law refers to the principles and the legislative policy on which Indian statutes and laws are founded. The expression 'fundamental policy' connotes the basic and substratal rationale, values and principles which form the bedrock of laws in our country.</u>***
>
> *98. It is necessary to bear in mind that a foreign award may be based on foreign law, which may be at variance with a corresponding Indian statute. And, if the expression 'fundamental policy of Indian law' is considered as a reference to a provision of the Indian statue, as is sought to be contended on behalf of Unitech, the basic purpose of the New York Convention to enforce foreign awards would stand frustrated. One of the principal objective of the New York Convention is to ensure enforcement of awards notwithstanding that the awards are not rendered in conformity to the national laws. **<u>Thus, the objections to enforcement on the ground of public policy must be such that offend the core values of a member State's national policy and which it cannot be expected to compromise. The expression 'fundamental policy of law' must be interpreted in that</u>***

<u>perspective and must mean only the fundamental and substratal legislative policy and not a provision of any enactment.</u>

* * *

108. Having held that a simpliciter violation of any particular provision of FEMA cannot be considered synonymous to offending the fundamental policy of Indian law, it would also be apposite to mention that enforcement of a foreign award will invariably involve considerations relating to exchange control. The remittance of foreign exchange in favour of a foreign party seeking enforcement of a foreign award may require permissions from the Reserve Bank of India. There may also be a question whether the initial agreement pursuant to which a foreign award has been rendered required any express permission from RBI. However, as indicated earlier, the policy under FEMA is to permit all transactions albeit subject to reasonable restrictions in the interest of conserving and managing foreign exchange. India has not accepted full capital account convertibility as yet. Thus, there are transactions for which permission may not be forthcoming. Whereas certain transactions are permitted under FEMA and regulations made thereunder without any further permissions; other transactions may require express permission from the RBI. However, these considerations can be addressed by ensuring that no funds are remitted outside the country in enforcement of a foreign award, without the necessary permissions from the Reserve Bank of India. This would adequately address the issue of public interest and the concerns relating to foreign exchange management, which FEMA seeks to address.

109. As discussed hereinbefore, this Court while considering the question whether to decline enforcement of a foreign award on the ground of public policy, is also required to consider the nature of the policy that is alleged to have been contravened. The approach that this Court would bear is one that favours enforcement of a foreign award and if the public policy considerations can be addressed without declining recognition of the foreign award, the court would lean towards such a course."

53. *Be it noted that the reasoning of the Coordinate Bench of this Court commended itself to the Supreme Court in Vijay Karia v. Prysmian Cavi E Sistemi SRL [Vijay Karia v. Prysmian Cavi E Sistemi SRL, (2020) 11 SCC 1] , where in the context of another statute viz. Foreign Exchange Management Act, 1999 (FEMA), the Supreme Court reiterating the principles laid down in Renusagar Power Co. Ltd. case [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] and affirming the reasoning in Cruz City 1 Mauritius Holdings case [Cruz City 1 Mauritius Holdings v. Unitech Ltd., 2017 SCC OnLine Del 7810 : (2017) 239 DLT 649] held as follows:*

> *"88. This reasoning commends itself to us. First and foremost, FEMA — unlike FERA — refers to the nation's policy of managing foreign exchange instead of policing foreign exchange, the policeman being Reserve Bank of India under FERA. It is important to remember that Section 47 of FERA no longer exists in FEMA, so that transactions that violate FEMA cannot be held to be void. Also, if a particular act violates any provision of FEMA or the rules framed thereunder, permission of Reserve Bank of India may be obtained post facto if such violation can be condoned. Neither the award, nor the agreement being enforced by the award, can, therefore, be held to be of no effect in law. This being the case, a rectifiable breach under FEMA can never be held to be a violation of the fundamental policy of Indian law. Even assuming that Rule 21 of the non-debt instrument rules requires that shares be sold by a resident of India to a non-resident at a sum which shall not be less than the market value of the shares, and a foreign award directs that such shares be sold at a sum less than the market value, Reserve Bank of India may choose to step in and direct that the aforesaid shares be sold only at the market value and not at the discounted value, or may choose to condone such breach. Further, even if Reserve Bank of India were to take action under FEMA, the non-enforcement of a foreign award on the ground of violation of a FEMA Regulation or Rule would not arise as the award does not become void on that count.* ***The fundamental policy of Indian law, as has been***

<u>held in Renusagar Power Co. Ltd. v. General Electric Co. [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] , must amount to a breach of some legal principle or legislation which is so basic to Indian law that it is not susceptible of being compromised. 'Fundamental policy' refers to the core values of India's public policy as a nation, which may find expression not only in statutes but also time-honoured, hallowed principles which are followed by the courts. Judged from this point of view, it is clear that resistance to the enforcement of a foreign award cannot be made on this ground."</u>

xxx xxx xxx"

(Emphasis Supplied)

24. It would also be fruitful to refer to the decision in the case of ***Municipal Corporation of Delhi (Erstwhile North Delhi Municipal Corporation) Versus IJM Corporation Berhad, 2024 SCC OnLine Del 3597***, wherein, the Division Bench of this Court held that conflict with the fundamental policy of Indian law does not refer to violation of any statute or misconstruction of any clause of a contract. The fundamental policy of law is a substratal policy on which the edifice of law is founded, and refers to the basic legal values that instruct laws in India. Thus, an arbitral award would fall foul of the fundamental policy of India if it offends the basic policy underlying Indian law. Relevant paragraphs of the said decision, read as under:

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23. <u>Conflict with the fundamental policy of Indian law does not refer to violation of any statute or misconstruction of any clause of a contract. The fundamental policy of law is a substratal policy on which the edifice of law is founded. It is the basic legal values that instruct laws in India. Thus, an arbitral award would fall foul of the fundamental policy of India if it offends the basic policy underlying</u>

<u>Indian law.</u>

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*27. **<u>It is clear that in the present case, MCD's challenge is based on the interpretation of contractual clauses. This is not a ground that falls within Section 34(2)(b)(ii) of the A&C Act.</u>***

28. <u>It is also relevant to refer to Explanation 2 to Section 34(2)(b) of the A&C Act, which amply clarifies that the test whether there is any contravention to the fundamental policy of Indian law would not entail a review on the merits of the dispute. In the present case, this is precisely what MCD invites the Court to do. It seeks a judicial review of the Arbitral Tribunal's interpretation of terms of the Agreement, on merits.</u>

xxx xxx xxx"

(Emphasis Supplied)

25. Likewise, in the case of ***OPG Power Generation Private Limited Versus Enexio Power Cooling Solutions India Private Limited and Another, (2025) 2 SCC 417***, the Supreme Court, in an illustrative manner, laid down that violation of Principles of Natural Justice, disregarding orders of superior Courts in India or the binding effect of the judgment of a superior Court; and violating law of India linked to public good or public interest, would amount to contravention of the fundamental policy of Indian law, in the following manner:

"xxx xxx xxx

In contravention with the fundamental policy of Indian law

***51.** As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644], in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a* *foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:*

(a) the fundamental policy of Indian law; and/or

(b) the interest of India; and/or

(c) justice or morality.

52. *In the judicial pronouncements that followed Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644], already discussed above, the domain of what could be considered contrary to the "public policy of India"/"fundamental policy of Indian law" expanded, resulting in much greater interference with arbitral awards than what the lawmakers intended. This led to the 2015 Amendment in the 1996 Act.*

53. ***In Ssangyong Engg. [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213 , this Court dealt with the effect of the 2015 Amendment.*** *While doing so, it took note of a supplementary report of February 2015 of the Law Commission of India made in the context of the proposed 2015 Amendments. The said supplementary report has been extracted in para 30 of that judgment.* ***The key features of it are summarised below:***

(a) ***Mere violation of law of India would not be a violation of public policy in cases of international commercial arbitrations held in India.***

(b) ***The proposed 2015 Amendments in the 1996 Act [i.e. in Sections 34(2)(b)(ii) and 48(2)(b) including insertion of sub-section (2-A) in Section 34] were on the assumption that the terms, such as, "fundamental policy of Indian law" or conflict with "most basic notions of morality or justice" would not be widely construed.***

(c) ***The power to review an award on merits is contrary to the object of the Act and international practice.***

(d) ***The judgment in Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] would expand the court's power, contrary to international practice. Hence, a clarification needs to be incorporated to***

ensure that the term "fundamental policy of Indian law" is narrowly construed. The applicability of Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] principles to public policy will open the floodgates. Hence, Explanation 2 to Section 34(2)(b)(ii) has been proposed.

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55. The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of Explanation 1. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:
(a) ***violation of the principles of natural justice;***
(b) ***disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and***
(c) ***violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.***
However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii).
xxx xxx xxx"

(Emphasis Supplied)

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:17.08.2026
22:01:05

26. Admittedly, in the present case, no grounds for setting aside the impugned Award have been raised under Section 34(2)(a)(i), (ii), (iv) or (v) or Section 34(2)(b)(i) of the Arbitration Act. Thus, the petitioner's challenge to the impugned Award is to be tested on the anvil of Section 34(2)(b)(ii) of the Arbitration Act, i.e., whether the Award is in conflict with the public policy of India, and Section 34(2)(a)(iii) of the Arbitration Act, i.e., whether the petitioner was unable to present its case. Further, no contention has been raised by the petitioner with respect to the impugned Award having been effectuated by fraud or corruption, or being against the most basic notions of morality and justice. Thus, the challenge under 34(2)(b)(ii) of the Arbitration Act is limited to the Award being in violation of fundamental policy of Indian law.

Findings of the Arbitrator

27. This Court notes that while dealing with claims A and B of the respondent, the Arbitrator granted refund of balance security deposit amounting to USD 714,760.74, i.e., approximately INR 4.8 crores, along with interest at the rate 6% per annum, by holding as follows:

103. In a nutshell the result of the aforesaid discussion, which has bearing on the claims and counter claims, is as follows:

- There was delay on the part of the Claimant in establishing the LCs resulting in delay in remittance of payment for two lots of Naphtha in the account of Respondent but the Respondent waived the delay. As such the Respondent is not entitled to interest on delayed payments.
- There was delay on the part of the Claimant in lifting Naphtha. However, the Respondent was not justified in deducting USD714,760.74 by way of liquidated damages from the Security Deposit of the Claimant for the following reasons:
  i. The Respondent waived the delay in lifting the said lots of Naphtha;
  ii. The Respondent set the time at large by having allowed the Claimant to lift the two lots of Naphtha beyond the due dates;
  iii. The Respondent deducted liquidated damages from the security deposit of the Claimant in breach of the procedure prescribed by Clauses 6 of the SCC and 9 of the sale order; and
  iv. The Respondent failed to show that it had suffered some loss due to delay of the Claimant in lifting Naphtha.

28. While arriving at the aforesaid finding, the Arbitrator examined Clause 5 of the Sale Order and Clause 1.10 of the SCC, which are similarly worded, and observed that the contract contemplated lifting of Naphtha in two lots, i.e., a first lot of 30,000 MT and a second lot of 10,000 MT.

29. Clause 5 of the Sale Order and Clause 1.10 of the SCC, are reproduced as under:

Clause 5 of the Sale Order

"

5) COMPLETION TIME (PAYMENT/ DELIVERY PERIOD):

The complete payment and lifting of the material should be done as per the following schedule:

For Quantity upto	Payment / LC (from date of issue of Sale Order by RGPPL)	Delivery Order issued	Completion of delivery
40,000 MT and above	• 1st Installment (Lot) of minimum 30,000 MT within 5 days	Within next 2 days of each payment / LC received at RGPPL	• For 1st instalment (LOT) within 7 days (from date of issue of delivery order by RGPPL)
	• 2nd instalment (lot) of balance quantity within next 5 days	Within next 2 days of each payment / LC received at RGPPL	• For 2nd instalment (lot) also within 7 days of issue of DO for second lot.

Subject to other provisions as envisaged in the E-Auction Catalogue, delivery, if not taken upto 30.04.2014 [or the date of onset of Monsoon period as declared by Maharashtra Maritime Board (MMB), whichever is later, can only be taken after completion of the Monsoon period and start of port operations i.e. from 01.10.2014 or as declared by MMB or from start of SPM (Single Point Mooring system) operations, whichever is later.

In case, the Buyer is not able to lift Naphtha before the date of onset of Monsoon period as declared by Maharashtra Maritime Board (MMB) due to late issuance of order by RGPPL whereby clear 7 days period from date of delivery order is not available to buyer before onset of monsoon period or for any other reason attributable to RGPPL, no Liquidated Damages shall be leviable. If however, the Buyer is not able to lift the Naphtha due to onset of Monsoon, although clear 7 days period from date of delivery order is available to buyer before onset of monsoon period, then Liquidated Damages shall be payable by the Buyer for the entire period of delay including the monsoon period as per clause no. 9 of the sale order. "

Clause 1.10 of the SCC

"xxx xxx xxx

For Foreign bidders:

For Quantity upto	Payment / LC (from date of issue of Sale Order by RGPPL)	Delivery Order issued	Completion of delivery
30,000 MT	Within 5 days	Within next 2 days of payment / LC received at RGPPL	Within 7 days (from date of issue of delivery order by RGPPL)
40,000 MT and above	• Ist Installment (Lot) of minimum 30,000 MT within 5 days	Within next 2 days of each payment / LC received at RGPPL	• For Ist instalment (LOT) within 7 days (from date of issue of delivery order by RGPPL)
	• II instalment (lot) within next 5 days		• and for IInd instalment (lot) also within 7 days of issue of DO

Subject to other provisions as envisaged in the catalogue, delivery, if not taken upto 30.04.2014 [or the date of onset of Monsoon period as declared by Maharashtra Maritime Board (MMB), whichever is later, can only be taken after completion of the Monsoon period and start of port operations i.e. from 01.10.2014 or as declared by MMB or from start of SPM (Single Point Mooring system) operations, whichever is later.

In case, the Buyer is not able to lift Naphtha before the date of onset of Monsoon period as declared by Maharashtra Maritime Board (MMB) due to late issuance of order by RGPPL whereby clear 7 days period from date of delivery order is not available to buyer before onset of monsoon period or for any other reason attributable to RGPPL, no Liquidated Damages shall be leviable. If however, the Buyer is not able to lift the Naphtha due to onset of Monsoon, although clear 7 days period from date of delivery order is available to buyer before onset of monsoon period, then Liquidated Damages shall be payable by the Buyer for the entire period of delay including the monsoon period as per clause no. 6 of SCC mentioned herein below. ”

30. However, the learned Arbitrator held that Clauses 5.10 and 5.6 of the SCC imposed operational restrictions on the 'Single Point Mooring' ("SPM") facility. Clause 5.10 restricted the SPM to vessels of a maximum capacity of 30,000 DWT, while Clause 5.6 contemplated transfer of Naphtha in two batches with a minimum interval of one week between them.

31. The said Clauses 5.6 and 5.10 of the SCC are reproduced as under:

Clause 5.6 of the SCC

"

5.6 Naphtha shall be delivered @ pressure of approx. 10 ksc, derived from the gradient between the Naphtha tanks of RGPPL (139 Meters above sea level) and the SPM (Single Point Mooring) delivery hoses. The flow limit for the naphtha from Tank to SPM shall be 800 m³/hr to 1000 m³/hr.

To achieve the above flow limit, Naphtha will be transferred in two batches and the time line between the two batches will be minimum one week. The last batch of Naphtha will be pushed with the water from the tanks, so the last batch of Naphtha will contain some amount of water. ”

Clause 5.10 of the SCC

"

5.10 Vessel requirements for loading of Naphtha:

- The maximum size of vessel (vessel displacement, & keeping in mind age & idleness of SPM for a long time) SPM can acceptMax. 30000 DWT (Dead Weight Tonnage) product tanker

xxx xxx xxx"

32. In view of the aforesaid contractual limitations, the learned Arbitrator concluded that lifting 30,000 MT of Naphtha in a single shipment was not practically feasible and that strict compliance with the quantity requirement under Clause 5 of the Sale Order was incapable of performance.

33. Further, the learned Arbitrator noted that the petitioner herein had permitted lifting of the first lot in two batches, namely 20,090.848 MT and 9,909.152 MT, without raising any contemporaneous objection and had accepted performance of the contract on that basis.

34. Accordingly, it was held that the petitioner herein had waived strict compliance with the requirement of lifting 30,000 MT in one lot.

35. The learned Arbitrator held that the petitioner had knowingly permitted the respondent to lift both lots of Naphtha beyond the timelines stipulated under Clause 5 of the Sale Order without issuing any contemporaneous notice reserving its right to claim liquidated damages.

36. Thus, the learned Arbitrator noted that even though there was delay on part of the respondent in lifting the Naphtha as well as remittance of payment, the petitioner herein had waived off its right to levy any damages in this regard, and had set the time at large by allowing the claimant/respondent herein to lift the two lots of Naphtha beyond the

stipulated contractual timelines. Therefore, the petitioner was not entitled to levy liquidated damages, having failed to raise any contemporaneous objection, demur or reserving its right to claim liquidated damages.

37. The learned Arbitrator noted that the petitioner accepted delayed performance at every stage, including, the appointment of the shipping agent, nomination of vessels, loading of the first lot on 25th April, 2014 and loading of the second lot on 10th May, 2014, without objecting to the delay or making the lifting of Naphtha subject to levy of liquidated damages.

38. Further, the learned Arbitrator noted that though the petitioner *vide* E-mail dated 05th May, 2014, indicated that any financial liability arising from further delay would be to the respondent's account, no such reservation had been communicated to the respondent prior thereto, i.e., at the time when the delayed performance was accepted. Thus, the learned Arbitrator held that the delays occurring prior thereto stood waived and condoned by the petitioner.

39. The learned Arbitrator placed reliance on Section 55 of the Contract Act, and held that where delayed performance is accepted, compensation for such delay cannot be claimed unless notice of intention to claim damages is given at the time of accepting such performance. Since no such notice was issued when the delayed lifting of Naphtha was accepted, the petitioner was precluded from claiming liquidated damages.

40. In this regard, Section 55 of the Contract Act reads as under:

> ***"55. Effect of failure to perform at fixed time, in contract in which time is essential.****—When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract,*

or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.*—If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.*

Effect of acceptance of performance at time other than that agreed upon.—If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so."

(Emphasis Supplied)

41. Further, it was held by the learned Arbitrator that the conduct of the petitioner in permitting delayed lifting of Naphtha and accepting delayed payments without rescinding the contract amounted to waiver of the contractual timelines. By virtue of Section 63 of the Contract Act, the petitioner was deemed to have dispensed with strict compliance of the contractual obligations relating to timelines for lifting of Naphtha and opening of LCs. Section 63 of the Contract Act reads as under:

*"**63. Promisee may dispense with or remit performance of promise**.—Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to*

him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit."

42. It was further held that once such waiver had occurred, the petitioner could not subsequently seek to enforce the original timelines or justify deduction of liquidated damages on the basis of delay. The petitioner was estopped from asserting breach after having accepted performance without demur.

43. The learned Arbitrator further held that the deduction of liquidated damages from the security deposit was contrary to the express contractual procedure contained in Clause 6.0 of the SCC read with Clause 9 of the Sale Order. The same are reproduced hereinunder:

Clause 6.0 of the SCC

"

o. LIQUIDATED DAMAGES

In case the Buyer fails to lift the Naphtha within stipulated date from date of issuance of Order subject to conditions as stated, liquidated damages shall be payable by the Buyer @1% of the contract value (excluding taxes and duties) corresponding to the total un-lifted quantity remaining at the end of said period, per week of delay or part thereof subject to maximum of 5% of the total contract value (excluding taxes and duties) in addition to the sale value and the same shall be paid by the buyer within 7 days of raising of claim by RGPPL. In case it is not remitted within this period, the amount shall be deducted by RGPPL from any other payment due to Buyer or from the Buyer's Security Deposit.

"

Clause 9 of the Sale Order

"

9) Liquidated Damages: 118

In case the Buyer fails to lift the Naphtha within stipulated date from the date of issuance of sale order as per clause 5 above and subject to conditions as stated therein, liquidated damages shall be payable by the Buyer @1% of the contract value (excluding taxes and duties) corresponding to the total un-lifted quantity remaining at the end of said period, per week of delay or part thereof subject to maximum of 5% of the total sale consideration (excluding taxes and duties) in addition to the sale value and the same shall be paid by the buyer within 7 days of raising of claim by RGPPL. In case it is not remitted within this period, the amount shall be deducted by RGPPL from any other payment due to Buyer or from the Buyer's Security Deposit or otherwise.

"

44. The aforesaid clauses provided for a procedure, namely, first, raising of a claim for liquidated damages by the petitioner, and second, grant of a period of seven days to the claimant to remit the amount claimed. Further, it was only upon failure of the claimant/respondent to make payment within the stipulated period that the petitioner became entitled to recover the amount by way of deduction from the security deposit. Since no prior claim for liquidated damages was ever raised upon the claimant, the learned Arbitrator held that the contractual pre-condition for such deduction was not satisfied and, consequently, the petitioner could not unilaterally appropriate the amount from the security deposit.

45. The Arbitrator held that Clause 6.0 of the SCC and Clause 9 of the Sale Order did not characterize the stipulated amount as a genuine pre-estimate of damages and, therefore, the petitioner's claim for liquidated damages had to satisfy the requirements of Sections 73 and 74 of the Contract Act.

46. It was further held that the petitioner had neither pleaded nor proved any loss arising from the alleged delay in lifting Naphtha and that loss could not be presumed merely because the storage tanks remained occupied for a longer period.

47. Furthermore, the learned Arbitrator rejected the application filed by the petitioner seeking to place additional documents on record, on the ground that the said documents were always within the possession of the respondent therein and were sought to be produced only after completion of evidence and at the stage of final arguments. Thus, their delayed production would amount to filling lacunae in evidence.

48. Additionally, the learned Arbitrator held that the petitioner's reliance on the concept of a public utility project was misplaced. Though, in certain cases involving public utility projects, loss to the public at large may be presumed, however, the Arbitrator observed that the present contract was merely for sale and lifting of Naphtha and was not itself a contract for execution of a public utility project.

49. The learned Arbitrator held that the petitioner herein neither alleged in the pleadings nor proved that power generation suffered because the tanks were not available due to delay in lifting Naphtha. Clause 6.0 of the SCC and Clause 9 of Sale Order were held to be in nature of penalty as they provided for damages in the event there was delay in performance of contract. Thus, it was held that petitioner herein was not entitled to claim damages without any proof of loss suffered by it due to delay in lifting Naphtha by claimant/respondent herein.

50. Accordingly, the learned Arbitrator concluded that the petitioner was not entitled, either under the terms of the contract or in law, to retain the sum of USD 714,960.74 deducted towards liquidated damages and, therefore, directed refund thereof to the respondent herein.

Denial of liquidated damages on grounds of waiver not in violation of fundamental policy of Indian law

51. It is to be noted that the finding that the petitioner waived strict compliance with the contractual timelines is a finding of fact, arrived at upon an appreciation of the conduct of the parties and the material on record. The Arbitrator noted that the petitioner permitted the lifting of both lots of Naphtha beyond the stipulated schedule, allowed the laden vessels to sail without insisting upon payment by the contractual due dates, and

refrained from invoking the liquidated damages mechanism at the time the delayed performance was accepted. Further, although entitled under Clause 4.2 of the SCC and Clause 6 of the Sale Order to withhold the lifting and to prevent the vessels from disembarking until receipt of the price, and further entitled, under Clause 9.2 read with Clause 11.1 of the GTC, to avoid the contract by ordering resale and confiscating the payments, the petitioner did neither, and instead accepted performance beyond the stipulated periods. Further, the admissions of *RW-2* in answer to questions 83 and 87 in cross-examination, to the effect that the lots were released and the vessels permitted to sail without receipt of the price by the due dates, is also pertinent in this regard. The relevant portion of the cross-examination of *RW-2*, witness of petitioner herein, reads as under:

> *"xxx xxx xxx*
>
> *Q.No. 83. Are you aware that the second lot of Naphtha was received by the Claimant and taken delivery of before the Respondent received the payment?*
>
> *A. Yes.*
>
> *Q.No. 87. Why did the Respondent release the second lot of Naphtha without payment in departure from the terms of the sale order?*
>
> *A. I am not aware.*
>
> *xxx xxx xxx"*

52. Upon these facts, the learned Arbitrator applied the principle of waiver, enshrined in Section 63 of the Contract Act that a promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, and held that the conduct of the petitioner evidenced an intention not to insist upon strict adherence to the contractual timelines.

53. This Court notes that the petitioner has challenged the aforesaid findings of the Arbitrator on the ground that there was no waiver on part of the petitioner with respect to lifting of lots of Naphtha and the delayed remittance of payments. Rather, the petitioner had time and again insisted the respondent to adhere to the time schedule, who had sufficient notice of delay in lifting the lots of Naphtha and the consequences in respect of the same.

54. The petitioner has further contended that on the basis of principles of mitigation of damages, the petitioner rightly allowed the respondent to lift the lots of Naphtha belatedly, as otherwise, the petitioner would have incurred significant losses. Thus, the petitioner contends that the Arbitrator erred in applying Section 55 of Contract Act to decline payment of interest on delayed remittance of payment, as the said Section is applicable towards timely performance of reciprocal promises, whereas, grant on interest is a natural consequence of delayed payment. Further, the award is also challenged on the grounds of erroneous application of Section 63 of Contract Act to infer waiver of timely payment obligation.

55. However, it is to be noted that the conclusions reached by the Sole Arbitrator on the issue of waiver and its consequences, cannot be characterised as being in violation of the fundamental policy of Indian law. The objections as raised by the petitioner do not fall within the contours of the parameters of being in conflict with the public policy of India.

56. Whether a party has waived a contractual right is essentially a question of fact to be determined from its conduct and the surrounding circumstances. The petitioner's reliance on the respondent's request for extension dated 24th May, 2014 seeks to advance an alternative

interpretation of the evidence and does not, by itself, demonstrate that the finding of waiver by the learned Arbitrator in any manner contravenes the public policy of India.

57. The learned Arbitrator has given a categorical finding that in view of the petitioner's acceptance of delayed performance, time had ceased to be the essence of the contract. The said conclusion constitutes a legal inference drawn from the primary finding of waiver. Even assuming that an alternative view on the applicability of the authorities relied upon by the Sole Arbitrator is possible, the same does not fall within the parameters of contravention of public policy of India, in terms of the law laid down by Supreme Court in this regard.

58. Further, the findings on fact by the Arbitrator in respect of waiver of right by the petitioner herein is based on the interpretation of different clauses of the contract, conduct of the parties, E-mails exchanged between them, the circumstances of the case and the pleadings of the parties. The petitioner cannot be permitted to seek re-appreciation of evidence before this Court, particularly, the E-mail correspondences between the parties, as the Court under Section 34 of the Arbitration Act cannot sit in appeal over the findings of the Arbitrator, nor entail a review on the merits of the dispute. The arbitrator remains the ultimate master of the quantity and quality of the evidence to be relied upon.

59. The learned Arbitrator held, as an independent basis for disallowing the levy, that the petitioner was precluded by the third paragraph of Section 55 of the Contract Act from claiming compensation for the delay. The third paragraph of Section 55 provides that where a contract has become voidable on account of the promisor's failure to perform at the agreed time, but the

promisee nonetheless accepts performance at a time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

60. The learned Arbitrator found that the petitioner, having accepted the delayed lifting of both lots of Naphtha, gave no notice at the time of accepting such performance, of any intention to claim liquidated damages in respect of the delay. It was held that the communication dated 05th May, 2014 was of no consequence as the same was not issued by the petitioner at the time of lifting and loading of Naphtha beyond the period fixed by the contract.

61. It was held that the earlier delay until 05th May, 2014 stood condoned/waived, as the petitioner herein did not seek to impose any financial liability for the delay until the letter dated 05th May, 2014. The learned Arbitrator held in categorical terms that even for the subsequent period from 05th May, 2014 to 09th May, 2014, no damages could be claimed as the respondent herein complied with the direction of the petitioner by providing the vessel on 09th May, 2014 for lifting/loading of Naphtha.

62. On 10th May, 2014, the vessel after being loaded was allowed to sail by the respondent without any reservation or issuance of a notice to the respondent/claimant that the lifting/loading of the material and disembarkation of the vessel was subject to levy of any liquidated damages. Thus, the learned Arbitrator arrived at the finding that the petitioner herein waived the deviations of timelines on both the occasions when Naphtha was lifted/loaded on 25th April, 2014 and 10th May, 2014.

63. It is to be noted that the petitioner has contended that the requirement of notice under the third paragraph of Section 55 of the Contract Act is referable only to a claim for unliquidated damages under Section 73 of the Contract Act, and has no application to liquidated damages under Section 74 which are stipulated in the contract itself, and at the very inception of the bargain, place the promisor on notice of the consequence of delay. Thus, it is the case of the petitioner that no notice was required as right to liquidated damages stood pre-notified by Clause 9 of the Sale Order upon occurrence of the delay.

64. However, the aforesaid contentions raised by the petitioner, are liable to be rejected. Reference may usefully be made in this context, to the decision of the High Court of Bombay in the case of ***Madgavkar Salvage Versus Norsea Global Offshore PTE. Ltd., 2019 SCC OnLine Bom 79***. In the said case, on the interplay between Section 55 and Section 74 of the Contract Act, it was held that the principle of liquidated damages emanating from Section 74, which deals with the particular case of a breach where a sum is named in the contract as the amount to be paid, as well as the general principle contained in Section 73, are both subject to the other provisions of the Contract Act, including, Section 55 therein. Accordingly, if the promisee is not entitled to claim damages for late performance on account of want of notice to the promisor at the time of the promisee's acceptance of such late performance, that disentitlement extends not merely to a claim laid under Section 73, but even to a case where liquidated damages are specified in the contract within the meaning of Section 74 of the Contract Act.

65. The Court further explained that it is, in the first place, for the promisee to make out a case not only of breach of contract but also of the

loss or damage suffered thereby and recoverable as a result of such breach. Where such loss is not recoverable by reason of want of notice under Section 55, the promisee must take the consequences, for the promisee having accepted performance at a time other than that stipulated, without reserving his right to claim damages for the delay, is thereby disentitled from claiming any damages at all. Thus, in the aforesaid case of ***Madgavkar Salvage (Supra)***, it was held as follows:

> *"xxx xxx xxx*
> *9. Learned Counsel for the Petitioner next submits that a sum of Rs. 25 lakhs was stipulated in the contract as idle time charges for a day and that this sum was not meant to be a penalty. Learned Counsel submits that these idle time charges, being a genuine pre-estimate of damages, it was for the Respondent to prove that no damages had, in fact, been suffered by the Petitioner on account of stoppage of work due to the Respondent's breaches. Before we examine the merits of this contention,* ***it is important to note that the principle of liquidated damages emanating from Section 74 of the Contract Act, which deals with the particular case of breach of contract where a sum is named in the contract as amount to be paid in case of breach, as well as the general principle applied in cases of loss or damage caused by the breach contained in Section 73, are both subject to the other provisions of the Contract Act, including Section 55. If the promisee is not entitled to claim any damages for late performance of a promise on account of want of notice to the promisor at the time of the promisee's acceptance of such late performance, such dis-entitlement extends not only to a case of damages claimed under Section 73, but even in a case, where liquidated damages are specified in the contract within the meaning of Section 74.*** *As this Court has held in the case of Punj Lloyd Ltd. v. IOT Infrastructure and Energy Services Ltd. based on the law stated by the Supreme Court in Kailash Nath Associates v. Delhi Development Authority,* ***wherever it is possible to prove actual damage or loss, the party complaining of breach must tender its proof. If such proof is impossible or difficult to produce, the aggrieved party must make out such case and can, only thereafter, call***

upon the court to award the amount named in the contract as reasonable damages, which the court may do in exercise of its discretion. Accordingly, it is, in the first place, for the promisee to make out a case not only of breach of contract, but also of damage or loss suffered thereby and recoverable as a result of such breach. If the damage or loss is not recoverable by reason of want of notice under Section 55 of the Contract Act, the promisee must take the consequences. *In the present case, the arbitrators held that the promisee had accepted the performance of the promise at a time other than the stipulated time without reserving his right to claim damages for non-performance at the stipulated time and that this dis-entitled the promisee from claiming any damages.*
xxx xxx xxx"

(Emphasis Supplied)

66. Thus, the petitioner's contentions, as aforesaid, do not cross the threshold of interference under Section 34 of the Arbitration Act. The view adopted by the Arbitrator accords with the recognised position in ***Madgavkar Salvage (Supra)***, namely, that a promisee who accepts delayed performance without reserving his right to claim damages at the time of such acceptance, is disentitled from recovering compensation whether the claim be laid under Section 73 or as liquidated damages under Section 74 of the Contract Act. Accordingly, the Arbitrator's reading of Section 55 of the Contract Act, as governing the present claim, cannot be said to be in violation of the fundamental policy of Indian law, in any manner, whatsoever.

67. This Court is of the view that the approach of the Arbitrator was entirely consistent with the settled law under Section 74 of the Contract Act. It is a settled principle of law that where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount, only

if it is a genuine pre-estimate of damages, fixed by both parties and found to be such by the Court. Since Section 74 of the Contract Act awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a *sine qua non* for the applicability of the Section.

68. While proof of the exact quantum of loss is unnecessary, the claimant must establish that some loss or legal injury has in fact resulted where such loss is capable of proof. Section 74 does not permit recovery of a stipulated sum by way of penalty or confer a windfall. The principles laid down in ***Kailash Nath Associates Versus Delhi Development Authority and Another, (2015) 4 SCC 136,*** fully support the Tribunal's approach, wherein, it was held as follows:

> *"xxx xxx xxx*
>
> ***43. On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:***
>
> ***43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.***
>
> ***43.2. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.***

43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.

43.4. *The section applies whether a person is a plaintiff or a defendant in a suit.*

43.5. *The sum spoken of may already be paid or be payable in future.*

43.6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.

43.7. *Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application.*

xxx xxx xxx"

(Emphasis Supplied)

69. Whether Clause 9 of the Sale Order constituted a genuine pre-estimate of damages and whether the petitioner was required to establish loss were matters related to construction of the said Clause, squarely within the Arbitrator's domain. Further, the learned Arbitrator has considered the contractual provision as well as judicial pronouncements to conclude that the petitioner was required to establish some proof of loss in terms of Section 74 of the Contract Act. Such a finding cannot be interfered with under Section 34(2)(b)(ii) of the Arbitration Act, as there has been no contravention of the fundamental policy of Indian law.

70. The learned Arbitrator also considered the petitioner's reliance on ***Construction and Design Services Versus Delhi Development Authority,***

(2015) 14 SCC 263, but distinguished the said decision on facts. The learned Arbitrator held that the presumption of loss in the said case arose in the context of public utility contracts. However, the present dispute concerned a contract for the sale and lifting of Naphtha, and there was neither any pleading, nor evidence, that the delay affected power generation.

71. This Court is of the considered view that the reasoning of the Arbitrator to deny presumption of loss was in accordance with the principles of law, and cannot be said to be in violation of the fundamental policy of Indian law.

72. This Court further notes that the learned Arbitrator held that it was not possible for the respondent herein to lift 30,000 MT of Naphtha in one lot. The Arbitrator noted that Clauses 5.10 and 5.6 of the SCC imposed certain operational restrictions on the SPM facility, i.e., Clause 5.10 restricted the SPM to vessels of a maximum capacity of 30,000 DWT, while Clause 5.6 contemplated transfer of Naphtha in two batches with a minimum interval of one week between them. By interpretating the said Clauses, the learned Arbitrator concluded that lifting 30,000 MT of Naphtha in a single shipment, as required under Clause 5 of the Sale Order, was not practically feasible as the weight of the ship and crew would exceed the limit of 30,000 DWT. Further, the two ships could not have been deployed side by side in quick succession.

73. Although the petitioner herein has challenged the said finding of the learned Arbitrator, on the grounds of misconstruction of the clauses of the contract between the parties, this Court is of the considered opinion that such a challenge with respect to interpretation/construction of terms of a contract falls under the heading of "patent illegality", which cannot be a

ground to challenge the impugned Award, arising out International Commercial Arbitration.

74. The learned Arbitrator denied the levy of liquidated damages also on the ground that the said deduction from the security deposit was contrary to the express contractual procedure contained in Clause 6.0 of the SCC read with Clause 9 of the Sale Order, which required firstly, raising of a claim for liquidated damages by the petitioner, and secondly, grant of a period of seven days to the claimant to remit the amount claimed. Only upon the failure of the respondent to pay within the period as stipulated, the entitlement to deduct from the security deposit would arise. The learned Arbitrator held that since no claim had been raised, the petitioner could not have unilaterally appropriated the amount, and that the contractual pre-condition to deduction, thus, stood unsatisfied.

75. This Court notes that the aforesaid finding of the learned Arbitrator has been rendered squarely upon, and in enforcement of, the terms of the contract, i.e., Clause 6.0 of the SCC read with Clause 9 of the Sale Order, as per which a claim was required to be raised before deduction of any liquidated damages.

76. The finding of the learned Arbitrator is reinforced by the principle that the power to deduct liquidated damages is not an inherent right, but flows entirely from the contract, so that where the contract prescribes a procedure as a condition precedent to such deduction, that procedure must be adhered to. A unilateral deduction made in disregard of the prescribed procedure is impermissible and amounts to a wrongful withholding of the amount due.

77. Thus, the finding of the learned Arbitrator is well within the four corners of the contract, since, it pertains to the procedure as prescribed in the contract, and cannot be said to be in violation of the fundamental policy of Indian law.

78. The nature of contention raised by the petitioner also makes it evident that what the petitioner seeks to challenge is the interpretation of Clause 9 of the Sales Order by the learned Arbitrator, which essentially falls under the head of "patently illegality" and cannot be a ground for setting aside of an award in International Commercial Arbitration.

79. All the aforesaid contentions of the petitioner fail to identify how the Award has given findings in contravention of the fundamental policy of Indian law, or public policy. Rather, it is evident that the challenge raised by the petitioner is in the nature of alleging perversity or irrationality in the impugned Award, which is not a ground for challenging International Commercial Arbitration in terms of Section 34(2-A) of the Arbitration Act. Thus, the petitioner's contentions, as aforesaid, do not cross the threshold of interference under Section 34 of the Arbitration Act.

Rejection of application for additional documents does not amount to violation of Section 34(2)(a)(iii) of the Arbitration Act

80. The petitioner has contended that the Arbitrator's rejection of the application of the petitioner for placing on record additional documents, to show loss occasioned due to delay by the respondent/claimant, denied the petitioner a full and fair opportunity of hearing in contravention of Section 34(2)(a)(iii) of the Arbitration Act.

81. As per the Award, the learned Arbitrator rejected the said application of the petitioner on the ground that the same had been moved belatedly, after

completion of evidence and at the stage of final arguments, even though it was not the case of the petitioner herein that the documents were not in its possession/power or could not be traced without due diligence. The learned Arbitrator further found that permitting the documents to be taken on record at that stage would have seriously prejudiced the right of the respondent, for want of opportunity to cross-examine the documents.

82. The challenge to the Arbitrator's refusal to take additional documents on record is completely devoid of merit. Despite having ample opportunity to file the additional documents, during the pleadings and evidentiary stage, the petitioner herein chose to move the application only at the stage of final arguments, without furnishing any cogent or satisfactory explanation for such delay. The finding of the learned Arbitrator that permitting the documents to be taken on record at that stage would have seriously prejudiced the respondent herein, who had already concluded its evidence and would have been deprived of an opportunity to examine or rebut the documents, warrants no interference as the exercise of discretion by the Arbitrator cannot be faulted.

83. The arbitral record demonstrates that both parties were afforded adequate opportunity to lead evidence and place all material on record. Having failed to avail itself of the opportunity at the appropriate stage, the petitioner cannot seek to reopen the evidentiary record during final arguments and thereafter contend that it was unable to present its case in terms of Section 34(2)(a)(iii) of the Arbitration Act.

84. Such a contention is contrary to the record and does not disclose any violation of the Principles of Natural Justice as the refusal to admit the

additional documents was founded upon considerations of fairness, prejudice and orderly conduct of the arbitral proceedings.

85. The petitioner's submission that, in view of Section 19 of the Arbitration Act, the Arbitrator was not bound by the provisions of the CPC or the Evidence Act is correct only to that limited extent. Section 19 of the Arbitration Act relieves the Tribunal from the technical rigours of those enactments, however, it does not dispense with the fundamental requirements of procedural fairness and natural justice. The refusal to entertain evidence introduced at the threshold of conclusion of the proceedings, particularly, where no due diligence is shown, is a procedural decision well within the Arbitrator's discretion and cannot, by itself, amount to a denial of opportunity under Section 34(2)(a)(iii) of the Arbitration Act.

86. In this regard, reliance is placed on the judgment of ***ST. Thomas School Versus Megalogix, 2026 SCC OnLine Del 2177***, wherein, it has been held that the refusal of an Arbitral Tribunal to take on record documents tendered for the first time at the stage of final arguments, which were at all material times within the possession and control of the party tendering them, and for whose belated production no cogent explanation was furnished, is a legitimate exercise of the procedural discretion vested in the Tribunal by Section 19 of the Arbitration Act, and does not amount to a denial of a full and fair opportunity to present one's case within the meaning of Section 34(2)(a)(iii) of the Arbitration Act. The concept of "full opportunity" cannot be stretched to include a right to act in a dilatory or negligent manner, or to introduce material at a stage that would compromise the fairness of the proceedings as a whole. The relevant paragraphs of the said decision are reproduced as under:

"xxx xxx xxx

20. __The learned arbitrator has further noted that no cogent, plausible, or satisfactory Explanation was furnished by the Petitioner to justify such belated filing. In addition, it was rightly observed that permitting the introduction of such documents at that stage would have caused manifest prejudice to the Respondent, who would have been deprived of a fair and reasonable opportunity to examine, rebut, or respond to the same.__

21. __The Impugned Award further reflects that both parties were granted adequate and sufficient opportunity, at the appropriate stages of the proceedings, to lead evidence and place all relevant material on record. Indeed, the record demonstrates that at a particular stage, both parties consciously elected not to lead any further evidence and agreed to proceed on the basis of the documents already on record. In such circumstances, it is not open to the Petitioner, having voluntarily foregone the opportunity to introduce evidence at the proper stage, to subsequently attempt to reopen the evidentiary record at the stage of final hearing, and that too without any justifiable cause or Explanation. Such conduct is clearly contrary to settled principles of procedural discipline and cannot be countenanced.__

22. __It is well-settled that the scheme of the A&C Act mandates adherence to the Principles of Natural Justice, and any violation thereof may render an arbitral award susceptible to challenge under Section 34, including under Section 34(2)(a)(iii), which contemplates situations where a party was unable to present its case. Section 18 of the A&C Act expressly enshrines the requirement that parties shall be treated with equality and that each party shall be afforded a full and fair opportunity to present its case. However, the concept of "full opportunity" cannot be stretched to include a right to act in a dilatory or negligent manner, or to introduce material at a stage that would compromise the fairness of the proceedings as a whole.__

23. In the present case, there is no material whatsoever to indicate that the Petitioner was denied a fair opportunity to present its case. On the contrary, the record clearly establishes that the arbitral proceedings were conducted in a fair, transparent, and equitable manner, with due adherence to procedural propriety. ***It is equally significant to note that Section 19 of the A&C Act confers autonomy upon the Arbitral Tribunal to determine its own procedure, and expressly provides that the Tribunal shall not be bound by the provisions of the Civil Procedure Code, 1908 or the Indian Evidence Act, 1872.***

24. ***This legislative framework is intended to ensure that arbitration remains a flexible, efficient, and expeditious mode of dispute resolution, free from the rigidities and technicalities that characterize conventional civil litigation. At the same time, such procedural flexibility is balanced by the overarching requirement that the proceedings must conform to the principles of fairness and natural justice.***

25. ***Up to the stage of final hearing, the Petitioner did not raise any grievance whatsoever regarding any alleged deviation from the agreed procedure, nor was any complaint made with respect to denial of opportunity or procedural unfairness. The absence of any such contemporaneous objection is a significant factor that militates against the Petitioner's present attempt to assail the proceedings on grounds of alleged violation of natural justice. The learned arbitrator, in exercise of powers vested under the A&C Act, is fully competent to regulate the conduct of proceedings and to decline attempts to introduce material at a belated stage, particularly where such attempts would disrupt the procedural balance and fairness of the adjudicatory process.***

26. ***In the absence of any demonstrable prejudice or denial of opportunity, the contention that rejection of the belated documents constitutes a violation of natural justice is wholly untenable. It is a settled principle that a party cannot, as a matter of right, seek to introduce new evidence at the stage of***

final arguments. Procedural fairness operates bilaterally, and any indulgence shown to one party at a belated stage must not come at the cost of prejudice to the other. The refusal to entertain such belated material, especially in the absence of due diligence, cannot be construed as a procedural infirmity, much less one that vitiates the arbitral proceedings.

27. *This Court is also of the considered view that the reasoning adopted by the learned arbitrator does not suffer from perversity, patent illegality, or any jurisdictional error. The learned arbitrator has exercised discretion judiciously and in accordance with settled principles governing arbitral procedure.* ***It is incumbent upon parties to act with due diligence and to ensure that all documents and material sought to be relied upon are placed on record at the appropriate stage. A failure to do so cannot be remedied by invoking the limited jurisdiction of this Court under Section 34 of the A&C Act, which is not intended to function as an appellate forum.***

xxx xxx xxx

37. *Notwithstanding, even on merits, the contention regarding the insufficiency of reliance on ledger accounts is devoid of substance.* ***In terms of Section 19 of the A&C Act, the Arbitral Tribunal is vested with wide procedural discretion to determine the admissibility, relevance, materiality, and weight of the evidence placed before it. The Tribunal is not bound by the strict rules of the Civil Procedure Code, 1908 or the Indian Evidence Act, 1872, and is entitled to adopt a flexible approach in evaluating the material on record.*** *This includes the power to rely upon documentary evidence such as ledger accounts, especially where such material forms part of the regular course of business and is not effectively rebutted.*

xxx xxx xxx

39. The only limitation on the procedural flexibility afforded to the Arbitral Tribunal is that the proceedings must conform to the fundamental principles of fairness, equality of treatment, and natural justice. Both parties must be afforded a full and reasonable opportunity to present their respective cases. So

<u>long as these foundational safeguards are adhered to, the manner in which the Tribunal evaluates evidence or conducts the proceedings cannot be faulted merely because it departs from the technical rigours of conventional civil trials.</u>
xxx xxx xxx"

(Emphasis Supplied)

87. Accordingly, the rejection of application to file additional documents by the learned Arbitrator in the present case cannot be said to have rendered the petitioner unable to present his case in terms of Section 34(2)(a)(iii) read with Section 18 of the Arbitration Act. Principles of Natural Justice are violated when a party is unable to present its case, but surely when the party fails to avail of the opportunity available, it cannot later complain of the violation of its right to present its case. No party can, as a matter of right, seek to introduce new evidence at the stage of final arguments.

Denial of counter claims were by way of reasoned award.

88. This Court notes that petitioner has contended that counter claim A of the petitioner with respect to grant of interest on delayed remittance has been rejected by the Arbitrator, even though interest is the natural corollary of withheld payments. Further, this Court also notes that the petitioner has contended that the Arbitrator denied the counter claims B and C, i.e., claim of the petitioner with respect to Exchange Rate Variation and ground rent without any reasoning, and therefore the impugned Award is in violation of Section 31(3) of the Arbitration Act. However, the grounds as raised by the petitioner in this regard, are untenable.

89. It is to be noted that the counter claims have been rejected by the learned Arbitrator, by holding as follows:

"xxx xxx xxx

67. It is true that the Claimant failed to pay/open LC for first lot of 30,000 MT and second lot of 10,000 MT of Naphtha on or before stipulated dates viz., April 7, 2014 and April 12, 2014 respectively and payments were received much later in the bank account of the Respondent for whatever reason, question arises what is its effect. This takes us to the next question.

<u>Re. Second point: Whether the Respondent is entitled to interest on delayed payments</u>?

68. The learned counsel for the Respondent contended that since the LCs were established by the Claimant long after the stipulated dates and the amounts against them were remitted to Respondent's bank account much later after they were established, the Respondent is entitled to interest on account of delayed payments.

69. On the other hand, as already pointed out, it was argued by the learned counsel for the Claimant that the Respondent waived the alleged delay. For appreciating the submissions of the learned counsel for the parties and for determination of the aforesaid question, we may refer to relevant clauses of the contract having a bearing thereon and the conduct of the Respondent. Clause 4.2 of the SCC provides that "*Naphtha of the particular lot will be allowed to be lifted only after deposit of full value (including taxes and duties) for that lot.*" Clause 6 of the sale order also armed the Respondent to disallow the vessel to disembark in the event the payment was not made along with the corresponding taxes/duties. Clause 6 of the sale order reads as under:

> *"Each vessel shall be allowed to disembark only on receipt of the payment along with corresponding taxes/duties in the RGPPL amount and necessary clearances from the necessary authorities."*

70. Since the payments were not made as per terms of the contract referred to above, it was open to the Respondent to disallow the Claimant to lift Naphtha and vessels to sail as per clause 4.2 of the SCC and Clause 6 of the sale order. But the Respondent overlooked the delay and gave a go by to the aforesaid Clauses and permitted the Claimant to lift Naphtha and allowed the vessels to leave without receiving the price of Naphtha by due dates. This is an admitted position as admitted by RW2 in answers to question no. 83 and 87 put to him during his cross examination. For ease of reference both the questions and answers are set out below:

> *Q.No. 83. Are you aware that the second lot of Naphtha was received by the Claimant and taken delivery of before the Respondent received the payment?*
>
> *A. Yes.*
>
> *Q.No. 87. Why did the Respondent release the second lot of Naphtha without payment in departure from the terms of the sale order?*
>
> *A. I am not aware.*

71. Thus, the Respondent waived the delay by the Claimant in remittance of the payments to it. There is a catena of authority for the proposition that where a party fails to perform its promise at the agreed time and the other party accepts performance of such promise at any time after that time, the other party is debarred from raising a claim on account of breach of promise. Reference will be made to some of the decisions in the later part of the award as they will be cited while dealing with the next point.

72. The Respondent having waived the right available under clause 4.2 of the SCC and Clause 6 of the sale order and having allowed the Claimant to load Naphtha on the vessels and permitted them to disembark without any pre-condition relating to remittance of the price of each lot by due dates, it cannot succeed in demanding interest on delayed payments of price.

xxx xxx xxx"

90. As noted hereinabove, after a detailed discussion, the learned Arbitrator held that the petitioner herein had waived the timelines within which the claimant/respondent herein was to lift Naphtha. It was further held that the petitioner herein had failed to establish any damage or loss suffered by it. Accordingly, the learned Arbitrator gave a categorical finding that petitioner herein was not entitled to claim damages without any proof of loss suffered by it due to delay in lifting Naphtha by the claimant/respondent herein. It was further held that the discussion by the learned Arbitrator on the aspect that the petitioner herein was not entitled to claim liquidated damages, had bearing on counter claims also. Thus, it was held as follows:

"xxx xxx xxx

103. In a nutshell the result of the aforesaid discussion, which has bearing on the claims and counter claims, is as follows:

- There was delay on the part of the Claimant in establishing the LCs resulting in delay in remittance of payment for two lots of Naphtha in the account of Respondent but the Respondent waived the delay. As such the Respondent is not entitled to interest on delayed payments.
- There was delay on the part of the Claimant in lifting Naphtha. However, the Respondent was not justified in deducting USD714,760.74 by way of liquidated damages from the Security Deposit of the Claimant for the following reasons:

i. The Respondent waived the delay in lifting the said lots of Naphtha;

ii. The Respondent set the time at large by having allowed the Claimant to lift the two lots of Naphtha beyond the due dates;

iii. The Respondent deducted liquidated damages from the security deposit of the Claimant in breach of the procedure prescribed by Clauses 6 of the SCC and 9 of the sale order; and

iv. The Respondent failed to show that it had suffered some loss due to delay of the Claimant in lifting Naphtha.

xxx xxx xxx"

91. Thus, the learned Arbitrator found that the petitioner had waived any objection to delay in lifting Naphtha. The Award records that, notwithstanding the rights available under Clause 4.2 of the SCC and Clause 6 of the Sale Order to withhold delivery of the Naphtha and detain the vessels until payment was received, the petitioner consciously permitted the claimant to lift the Naphtha and the vessels to sail without insisting upon payment by the stipulated dates. This position also stands admitted by the petitioner's own witness, *RW-2*. Once such waiver was established, the very premise on which counter claims rested, stood displaced. The rejection of

counter claims, therefore, flows directly from the finding that the petitioner had waived the delay in remittance and lifting of Naphtha.

92. The counter claim of the petitioner has been expressly adjudicated and rejected for stated reasons. The petitioner's grievance is, in substance, directed against the correctness of the finding of waiver itself, a contention which has already been dealt with while examining the challenge to the rejection of the petitioner's claim for liquidated damages.

93. This Court further notes that the law is well settled that award must be read as a whole and not in isolated compartments. In ***Dyna Technologies Private Limited Versus Crompton Greaves Limited, (2019) 20 SCC 1***, the Supreme Court held that while exercising jurisdiction under Section 34, Court has to adjudicate the validity of an Award based on the degree of particularity of reasoning. It was held that reasoning can also be implied by the Courts from a fair reading of the award and documents referred to thereunder. Thus, in the aforesaid case, Supreme Court held as follows:

> *"xxx xxx xxx*
>
> ***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.

xxx xxx xxx

***30.** A five-Judge Constitution Bench of this Court in Raipur Development Authority v. Chokhamal Contractors [Raipur Development Authority v. Chokhamal Contractors, (1989) 2 SCC 721 : AIR 1990 SC 1426], considered the scope of Section 30 of the Arbitration Act, 1940 and held as under: (SCC p. 736, para 19)*

> *"19. It is now well settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons. The arbitrator or umpire shall have to give reasons also where the court has directed in any order such as the one made under Section 20 or Section 21 or Section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so."*

xxx xxx xxx

33. It may be relevant to note Russell on Arbitration, 23rd Edn. (2007), wherein he notes that:

> *"If the Court can deduce from the award and the materials before it, which may include extracts from evidence and the transcript of hearing, the thrust of the tribunal's reasoning then no irregularity will be found….Equally, the court should bear in mind that when considering awards produced by non-lawyer arbitrators, the court should look at the substance of such findings, rather than their form, and that one should approach a reading of the award in a fair, and not in an unduly literal way."*

(emphasis supplied)

*34. **<u>The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.</u>***

*35**<u>. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.</u>***

xxx xxx xxx"

(Emphasis Supplied)

94. Reference may also be made to the decision of the Supreme Court in the case of ***Vijay Karia and Others Versus Prysmian Cavi E Sistemi SRL and Others, (2020) 11 SCC 1***, wherein the Supreme Court held that so far as "the public policy of India" ground is concerned, both Sections 34 and 48

are now identical, so that in an International Commercial Arbitration conducted in India, the ground of challenge relating to "public policy of India" would be the same as the ground of resisting enforcement of a foreign award in India. The Apex Court further held that poor reasoning, by which a material issue or claim is rejected, does not constitute violation of public policy of India. Also, issues that the Tribunal considered essential and has addressed must be given their due weight as it often happens that the Tribunal considers a particular issue as essential and answers it, which by implication would mean that the other issue or issues raised have been implicitly rejected. The important point to be considered is that the award must be read as a whole, fairly, and without nit-picking. If read as a whole, the said award has addressed the basic issues raised by the parties and has, in substance, decided the claims and counter claims of the parties, enforcement must follow. Meaning thereby, such award would be upheld. Relevant paragraphs of the said judgment are reproduced as under:

> *"xxx xxx xxx*
>
> ***42.** At this stage it is important to advert to amendments that were made by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as "the 2015 Amendment Act"). Section 48 was amended to delete the ground of "contrary to the interest of India". Also, what was important was to reiterate the Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] position, that 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 [vide Explanation 2 to Section 48(2)].*
>
> ***43. It will be noticed that in the context of challenge to domestic awards, Section 34 of the Arbitration Act differentiates between international commercial arbitrations***

<u>held in India and other arbitrations held in India. So far as "the public policy of India" ground is concerned, both Sections 34 and 48 are now identical, so that in an international commercial arbitration conducted in India, the ground of challenge relating to "public policy of India" would be the same as the ground of resisting enforcement of a foreign award in India. Why it is important to advert to this feature of the 2015 Amendment Act is that all grounds relating to patent illegality appearing on the face of the award are outside the scope of interference with international commercial arbitration awards made in India and foreign awards whose enforcement is resisted in India. In this respect, it is important to advert to paras 41 and 69 of Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] as follows: (SCC pp. 171 & 194)</u>

> *"41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.*
>
> * * *
>
> *69. We therefore hold, following the aforesaid authorities, that in the guise of misinterpretation of the contract, and consequent "errors of jurisdiction", it is not possible to state that the arbitral award would be beyond the scope of*

submission to arbitration if otherwise the aforesaid misinterpretation (which would include going beyond the terms of the contract), could be said to have been fairly comprehended as "disputes" within the arbitration agreement, or which were referred to the decision of the arbitrators as understood by the authorities above. If an arbitrator is alleged to have wandered outside the contract and dealt with matters not allotted to him, this would be a jurisdictional error which could be corrected on the ground of "patent illegality", which, as we have seen, would not apply to international commercial arbitrations that are decided under Part II of the 1996 Act. To bring in by the backdoor grounds relatable to Section 28(3) of the 1996 Act to be matters beyond the scope of submission to arbitration under Section 34(2)(a)(iv) would not be permissible as this ground must be construed narrowly and so construed, must refer only to matters which are beyond the arbitration agreement or beyond the reference to the Arbitral Tribunal."

This statement of the law applies equally to Section 48 of the Arbitration Act.

xxx xxx xxx

83. *Having said this, however,* ***if a foreign award fails to determine a material issue which goes to the root of the matter or fails to decide a claim or counterclaim in its entirety, the award may shock the conscience of the Court and may be set aside, as was done by the Delhi High Court in Campos [Campos Bros. Farms v. Matru Bhumi Supply Chain (P) Ltd., 2019 SCC OnLine Del 8350 : (2019) 261 DLT 201] on the ground of violation of the public policy of India, in that it would then offend a most basic notion of justice in this country[85]. It must always be remembered that poor reasoning, by which a material issue or claim is rejected, can never fall in this class of cases. Also, issues that the Tribunal considered essential and has addressed must be given their due weight —***

it often happens that the Tribunal considers a particular issue as essential and answers it, which by implication would mean that the other issue or issues raised have been implicitly rejected. For example, two parties may both allege that the other is in breach. A finding that one party is in breach, without expressly stating that the other party is not in breach, would amount to a decision on both a claim and a counterclaim, as to which party is in breach. Similarly, after hearing the parties, a certain sum may be awarded as damages and an issue as to interest may not be answered at all. This again may, on the facts of a given case, amount to an implied rejection of the claim for interest. The important point to be considered is that the foreign award must be read as a whole, fairly, and without nit-picking. If read as a whole, the said award has addressed the basic issues raised by the parties and has, in substance, decided the claims and counterclaims of the parties, enforcement must follow.

xxx xxx xxx"

(Emphasis Supplied)

95. Viewed in this light, the Award cannot be said to suffer from absence of reasons. The counter claims arise from the same factual foundation. While counter claim A seeks interest on account of the claimant's alleged delay in remitting the sale consideration, counter claim B seeks compensation for the loss allegedly occasioned by fluctuations in the exchange rate during the period of such delay. Counter claim C seeks ground rent for delay in lifting Naphtha. The counter claims, therefore, proceed on the premise that the delay in remittance and lifting of Naphtha, entitled the petitioner to compensation.

96. Thus, counter claims raised by the petitioner do not rest upon an independent factual foundation. The counter claims have been raised solely

because of the claimant's delay in remitting the sale consideration and lifting the Naphtha.

97. Once the learned Arbitrator concluded that the petitioner had waived the delay in remittance as well as in lifting the Naphtha, the said findings would necessarily govern the counter claims. The reasons recorded while holding that petitioner was not entitled to receive liquidated damages and while rejecting counter claim A, therefore, equally constitute the reasons for rejecting all the counter claims. Read as a whole, the Award clearly discloses the basis on which all counter claims came to be rejected.

98. Thus, the non-grant of interest on delayed payment, as well as denial of amount towards loss on account of Exchange Rate Variation and ground rent for delay in lifting Naphtha, are supported by reasons. Rejection of counter claims are the direct and logical consequence of the finding with respect to waiver, i.e., the petitioner waived the delay in remittance by permitting the claimant to lift the Naphtha and allowing the vessels to sail without insisting upon payment by the contractual due dates and the petitioner waived the delay in lifting Naphtha. Once such waiver is established and the finding of learned Arbitrator on the aspect of waiver is sustained, the petitioner cannot subsequently recover any charge founded upon the same delay in payment and lifting of Naphtha. Rejection of counter claims do not suffer from absence of reasons, nor from violation of the most basic notions of morality or justice, i.e., public policy. Accordingly, no interference is warranted on this finding.

99. Thus, the petitioner's contention that the rejection of the counter claim is unsupported by reasons is without merit. An arbitral award must be

read as a whole. The learned Arbitrator has rejected the plea of petitioner for recovery of liquidated damages on the basis of two findings that run throughout the Award, first, that the petitioner waived the delay, and secondly, that no loss was proved. These findings necessarily govern the counter claims, as well. This is not a case where the Tribunal has omitted to decide a distinct and independent claim. The reasons for rejecting the counter claims are clearly discernible from the Award when read as a whole.

Award of Interest to Respondent on the amount of refund towards liquidated damages is valid:

100. Lastly, the petitioner's challenge to the award of interest from 17th June, 2014 in favor of the respondent is equally devoid of merit. Section 31(7)(a) of the Arbitration Act expressly empowers the Arbitral Tribunal, unless otherwise agreed by the parties, to award interest for the whole or any part of the period between the date on which the cause of action arose and the date of the award.

101. In the present case, the learned Arbitrator has recorded that the respondent's claim for refund arose on 17th June, 2014, when the petitioner retained a sum of USD 714,960.74 from the respondent's interest-free security deposit towards alleged liquidated damages. Having found such deduction to be unjustified, the learned Arbitrator awarded interest from the very date on which the respondent was deprived of the amount.

102. The said approach is in consonance with the object underlying Section 31(7)(a), namely, to compensate a party for being kept out of money lawfully due to it. Once the deduction of amount towards liquidated damages by the petitioner itself was held to be unjustified, the amount

ceased to retain the character of an interest-free security deposit and assumed the character of money wrongfully withheld by the petitioner. The contractual stipulation, i.e., Clause 8.1 of the Sale Order and Clause 3.1 of SCC, that the security deposit would not carry interest operated only so long as the amount continued to remain with the petitioner as security, and could not extend to a situation where the petitioner had wrongfully withheld the same.

103. The determination of the period for which interest is payable, including, the date from which it is to commence, squarely falls within the discretion vested in the Arbitral Tribunal under Section 31(7)(a) of the Arbitration Act. The exercise of such discretion, being neither arbitrary nor contrary to the contract or the statute, does not warrant interference in proceedings under Section 34 of the Arbitration Act.

104. Consequently, where the Arbitral Tribunal finds that a party has wrongfully deducted or withheld monies lawfully payable to the opposite party, the award of interest from the date of such deprivation constitutes a proper exercise of the discretion conferred by Section 31(7)(a) of the Arbitration Act. As explained by the Supreme Court in ***McDermott International Inc. Versus Burn Standard Co. Ltd. and Others, (2006) 11 SCC 181,*** the power of the Arbitral Tribunal to award pre-award interest is well recognised under Section 31(7)(a), which authorises it to award 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 of the award, subject to any contractual stipulation to the contrary. The Supreme Court further held that

the question whether interest should be awarded, on what amount, at what rate, and for what part of the pre-award period, depends upon the facts and circumstances of each case and lies within the discretion of the Arbitral Tribunal. Accordingly, where such discretion has been exercised reasonably and in accordance with the contract and the statute, the same does not warrant interference under Section 34 of the Arbitration Act. Thus, it was held as follows:

> *"xxx xxx xxx*
>
> ***154. The power of the arbitrator to award interest for pre-award period, interest pendente lite and interest post-award period is not in dispute. Section 31(7)(a) provides that the Arbitral Tribunal may award 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 award is made i.e. pre-award period. This, however, is subject to the agreement as regards the rate of interest on unpaid sums between the parties. The question as to whether interest would be paid on the whole or part of the amount or whether it should be awarded in the pre-award period would depend upon the facts and circumstances of each case. The Arbitral Tribunal in this behalf will have to exercise its discretion as regards (i) at what rate interest should be awarded; (ii) whether interest should be awarded on the whole or part of the award money; and (iii) whether interest should be awarded for the whole or any part of the pre-award period****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

CONCLUSION:

105. Thus, in light of the principles enunciated by the Supreme Court in a catena of judgments with regard to scope of interference in a petition under Section 34 of the Arbitration Act with respect to International Commercial Arbitrations, and having regard to the detailed analysis undertaken by the Arbitral Tribunal of the contractual stipulations and the evidence on record,

this Court finds no infirmity in the Impugned Award warranting interference under Section 34 of the Arbitration Act.

106. The Impugned Award embodies a reasoned and plausible construction of the contractual terms based on an appreciation of the material placed before the Tribunal, and in no way violates the fundamental policy of Indian law or public policy. It is trite that, while exercising its limited jurisdiction under Section 34 of the Arbitration Act, particularly in respect of International Commercial Arbitrations, this Court cannot re-appreciate the evidence or entail a review on merits.

107. A holistic consideration of the Impugned Award reveals that the disputes have been adjudicated in a structured and reasoned manner within the framework of the contract executed between the parties, the evidence adduced, and the jurisdiction vested in the Arbitral Tribunal. The Award reflects due consideration of the pleadings, documentary material, and the relevant contractual provisions.

108. No merit is found in the present petition. The same is accordingly dismissed.

MINI PUSHKARNA
(JUDGE)

AUGUST 17, 2026
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