2026:DHC:7704

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Judgment reserved on: 07.09.2026**
Judgment pronounced on: 10.09.2026

\# **CNR No. DLHC010555102023**
\+ O.M.P. (COMM) 533/2023
RELIGARE FINVEST LIMITED .....Petitioner

Through: Mr. Sanjeev Singh, Ms. Sandipa Bhattacharjee, Ms. Sneha Mondal & Mr. Kartik Sharma, Advs.

versus

ATELIER AUTOMOBILES PVT. LTD. & ORS. .....Respondents

Through: Mr. Tarun Gupta & Mr. Hirday Virdi, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

<u>J U D G M E N T</u>

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') challenging the arbitral award dated 02.08.2023 and the order dated 20.09.2023.

2. The petitioner is a non-banking financial company engaged in providing financial and credit facilities. The respondent availed a loan facility of Rs.11,50,00,000/- from the petitioner pursuant to the loan agreement dated 14.03.2016. The loan carried floating interest initially at 13% per annum subsequently revised to 14% per annum w.e.f. 20.02.2021. The loan was secured *inter alia* by mortgage of immovable property situated at Megh Chhaper Pargana Tehsil and District Saharanpur, Uttar Pradesh.

2.1 On account of defaults in payment of instalments the petitioner invoked arbitration and recalled the loan *vide* notice dated 14.10.2019 claiming Rs.10,13,79,085/- as outstanding as on 09.10.2019. Upon failure of the respondents to liquidate the dues, on 08.11.2019 the petitioner appointed the sole arbitrator.

2.2 During the pendency of the proceedings the respondent filed a petition under Sections 14 and 15 of the Act seeking termination of the mandate of the unilaterally appointed arbitrator and appointment of a substitute arbitrator. By order dated 07.12.2022 this court appointed the sole arbitrator.

2.3 By the impugned award the arbitrator allowed the claims of the petitioner and awarded Rs.9,98,32,582/- towards principal with *pendente lite* interest @10% per annum, post-award interest @10% per annum and proportionate arbitration costs to the petitioner. The respondents were further permitted to discharge the award amount in thirty-six equated in monthly instalments commencing from 10.09.2023. The entire amount shall become recoverable upon default in payment of any two instalments.

2.4 Both parties thereafter preferred applications under Section 33 of the Act. The respondent sought adjustment of payments made after 09.10.2019 whereas the petitioner sought rectification of the computation of the awarded amount. By order dated 20.09.2023 the arbitrator modified the award by providing for 10% interest from 14.10.2019 till the date of award and permitting adjustments of payment made during the relevant period. Aggrieved by the award and the modification, the present petition has been filed.

3. Learned counsel for the petitioner submits that the arbitrator erred in awarding interest @10% per annum instead of the contractual rate of 13% per annum and failed to assign any reason for awarding the *pendente lite* interest and the post award interest both @10% per annum.

4. *Per contra* learned counsel submits that the petitioner after having accepted the payments pursuant to the repayment schedule furnished *vide* e-mail dated 01.09.2023, is estopped from assailing the rate of interest awarded by the arbitrator. Reliance to support acceptance of amount by the petitioner is on the similar pleadings made in application under Section 33 of the Act filed by the petitioner and the reply of the petitioner to the application under Section 33 of the Act filed by the respondent.

4.1 Reliance is placed upon the decision of the Supreme Court in ***Rajasthan State Industrial Development and Investment Corporation and Anr. v. Diamond & Gem Development Corporation Limited & Anr. (2013) 5 SCC 470*** to contend that a party cannot be permitted approbate and re-probate or blow hot and cold simultaneously and that a party having accepted the benefits of a contract subsequently cannot repudiate the obligations arising therefrom.

4.2 Reliance is on the decision of this court in ***Sporty Solutionz Pvt. Ltd. v. Badminton Association of India 2020:DHC:897*** and ***MS K S Jain Builders v. Indian Railway Welfare Organisation***

2024:DHC:2943 to contend that having accepted the awarded amount and acted upon the repayment arrangement, the petitioner is estopped from the challenging the award.

5. The arbitrator framed the following issues:

> "I. 1 Whether the loan recall notice dated 14.10.2019 was not acted upon and/ or is deemed to have been withdrawn, as alleged in the Statement of Defense? OPR
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> II. 2 Whether the claimant is entitled to the amount of Rs. 10,80,02,230/claimed by it? OPC
>
> III. 3 Whether the Claimant is entitled to interest and if so at what rate and for which period? OPC
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> IV. 4 Whether the Claimant is entitled to the coast of Arbitration and if so, to what amount? OPC
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> V. 5 Whether the Respondents are entitled in law, to set off the amount of Rs.89,45,945/- out of the amount if any found payable by the Respondents to the Claimant? OPR.
>
> VI. 6 Relief"

6. The only grievance pressed by learned counsel for the petitioner in the petition pertains to the rate of interest (hereinafter 'ROI') awarded for the period commencing from the filing of the statement of claim till passing of the award and the post-award period. There is no dispute between the parties that under the the loan agreement, the agreed floating ROI was 13% per annum which was subsequently amended to 14% per annum.

6.1 Before proceeding further it would be relevant to quote Section

31(7)(a) and (b) of the Act:

> "**31. Form and contents of arbitral award**.—
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> ***
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> (7) *(a)* Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
>
> *(b)* A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.
>
> *Explanation.*—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978)."

7. Under Section 31(7)(a) of the Act, the arbitrator can award interest at a reasonable rate on the whole or any part of the amount awarded for the whole or any part of the period arising from the cause of action till date of the award, unless the parties have otherwise agreed. In the case in hand, the parties had agreed for a floating ROI @14%. No evidence was led before the arbitrator to establish the prevailing ROI yet without recording any basis or reasoning, simple interest @10% per annum was awarded from date of filing of the statement of claim till passing of the award.

8. The award of *pendente lite* interest being unsupported by any

reasons or discernible basis for determination of the ROI is contrary to Section 31(7)(a) of the Act and falls foul of Section 31(3) of the Act.

9. Under Section 31(7)(b) of the Act, in case of the post-award interest unless otherwise directed by the award, the sum awarded carries an interest of 2% higher than the current rate prevalent on the date of the award. The explanation to Section 31(7)(b) provides that the expression 'current rate of interest' shall have same meaning assigned to it under Section 2(b) of the Interest Act, 1978. Section 2(b) of the Interest Act, 1978 is reproduced below:

> "**Section 2. Definitions.**
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> ***
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> *(b)* "current rate of interest" means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 (10 of 1949).
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> Explanation.--In this clause, "scheduled bank" means a bank, not being a co-operative bank, transacting any business authorised by the Banking Regulation Act, 1949 (10 of 1949);"

10. The arbitrator without determining the prevailing ROI or disclosing any basis awarded simple interest @10% per annum for post-award period. The granting of post-award interest is bereft of discernible basis, non-speaking, in violation of Section 31(3) of the

Act, and suffers from patent illegality and is liable to be set aside.

11. The reliance of the learned counsel for the respondent on decision of this Court in ***Sporty Solutions Pvt. Ltd. (supra)*** to contend that having accepted the awarded amount the petitioner is precluded from challenging the award *via* filing a petition under Section 34 of the Act, lacks merit. In that case, an amount of Rs.2.50 crores was awarded to the petitioner as compensation for the failure of the respondent to give the contractually stipulated three months' notice prior to termination, to be paid within three months from the date of award. The petitioner filed a petition under Section 34 of the Act but withdrew it and accepted the release of the awarded amount of Rs.2.5 crores. The petitioner accepted the compensation unconditionally. In that background, this Court held that having accepted the benefit under the award, the petitioner was estopped from subsequently challenging the award or claiming interest thereon by filing a second petition under Section 34 of the Act.

12. The reliance on the decision of this Court in ***MS K S Jain Builders (supra)*** is misconceived. The question whether acceptance of principal amount awarded operates as an estoppel against challenging the ROI was neither an issue before the Court nor was any finding rendered on this issue.

13. The Supreme Court in ***Rajasthan State Industrial Development and Investment Corporation (supra)*** considered the maintainability of a writ petition in a contractual matter. There is no quarrel with the proposition enunciated that a party cannot be allowed to approbate and

re-probate simultaneously. This principle is based on equity and fairness and is intended to prevent a party from accepting and rejecting the same transaction to its advantage. This principle cannot be applied mechanically or in a manner contrary to the principles of right and good conscience.

14. In the present case the claiming of the awarded amount specially when not disputed by the respondent shall not debar the petitioner to pray for interest at an enhanced rate. Moreso, when principal amount awarded is not disputed by either of the party.

15. The reliance on the pleadings in the application under Section 33 of the Act filed by the petitioner and the reply of the petitioner to the application under Section 33 of the Act filed by the respondent does not tantamount to acceptance of the award by the petitioner. The pleadings were confined to opposing the correction sought by the respondent and for that purpose reference to the awarded amount and interest granted thereupon was made. Relevant paragraph of the application under Section 33 of the Act filed by the petitioner is reproduced below:

> "13. That the Respondents have mischievously filed the application to create confusion and have blatantly without any basis submitted that an amount of Rs.2,07,09,851 /- stands outstanding to evade their entire outstanding liability. However, this Hon'ble Arbitral Tribunal may be pleased to reject incorrect representation of the Respondents and pass appropriate directions under this Application filed by the Claimant to the Respondents to pay an amount of Rs. 10,80,02,230/- (Rupees Ten Crore Eighty Lakh Two Thousand Two Hundred Thirty only) with effect from

20.02.2021 at simple interest of 10% p.a. till payment of the entire amount."

16. Similarly, the e-mail dated 01.09.2023 whereby the petitioner had sought the recovery of the awarded amount, does not record waiver or relinquishment of the right by the petitioner to avail the remedies against the award. The demand for payment of the awarded amount in absence of any express or unequivocal abandonment of the statutory remedies cannot be construed as acceptance of the award in its entirety.

17. The Supreme Court in ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*,(2025) 7 SCC 1** held that while an arbitral award cannot be modified under Section 34 of the Act, a severable part of the award may be set aside. The relevant paragraphs are quoted below:

> "32. In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. <u>This serves a twofold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of *kompetenz- kompetenz*, that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the Court to sever and preserve the "valid" part(s) of the award while setting aside the "invalid" ones.</u>[27] Indeed, before us, none of the parties have argued that the Court is not empowered to undertake such a segregation.

33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.

34. To this extent, the doctrine of *omne majus continet in se minus*—the greater power includes the lesser—applies squarely. <u>The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic.It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.</u>"

(emphasis supplied)

18. The issue no.3 awarding *pendente lite* interest unsupported by reasons for determination of the ROI and the grant of post-award interest are contrary to Section 31(7)(a) and (b) of the Act and is patently illegal.

19. The issue no. 3 is severable not intricately connected to the other claims adjudicated by the arbitrator. Consequently, the petition is allowed and the award to the extent of grant of interest is set aside.

AVNEESH JHINGAN, J

SEPTEMBER 10, 2026/*'JK'*

Reportable:- Yes