2026:DHC:7793

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on: 07.09.2026
Judgment pronounced on: 15.09.2026

CNR No. DLHC010035702024

\+ O.M.P. (COMM) 69/2024 &I.A. 2596/2024

STATE BANK OF INDIA .....Petitioner

Through: Mr. Dharmesh Mishra, Sr. Adv. with Mr. Rajiv Kapur, Ms. Riya Sood & Mr. Akshit Kapur, Advs.

versus

K R ANAND .....Respondent

Through: Mr. Aabhas Kshetarpal, Mr. Dhiliban Varadarajan & Mr. Harsh N Dudhe, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

JUDGMENT

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the arbitral award dated 31.08.2023 (for brevity 'the award').

Brief Facts

2. The brief facts are that the petitioner/State Bank of India (hereinafter 'SBI') invited tenders for construction of seventy-six flats for officers at Sector-62, Noida including civil, internal and external water supply, complete sanitary and external development works. M/s K.R. Anand (hereinafter 'the respondent') was the successful bidder. The work was awarded

vide Letter of Award dated 22.12.2012. The parties entered into an agreement dated 16.01.2013 for a value of Rs.19,81,39,324/-. The period for completion of the work was twenty-four months i.e. by 15.01.2015.

2.1 The work was not completed within the stipulated period. The respondent sought three extensions. The first extension was for eighty-five days from 15.01.2015 to 08.04.2015 with Price Variation Adjustment (for short 'PVA'). The second extension was for one forty-five days from 09.04.2015 to 31.08.2015 with PVA. The third *post-facto* extension was for one fifty days from 01.09.2015 to 28.01.2016 without PVA. The extensions were granted *vide* letters dated 28.07.2015, 24.11.2015 and 23.08.2016 respectively.

2.2 The respondent completed the work on 23.01.2016 and submitted the final bill on 23.08.2016. The Virtual Completion Certificate was issued on 11.01.2017 and the defect liability period ended on 23.01.2017. The final bill was cleared on 15.05.2017 and the payment was released on 12.06.2017.

2.3 Disputes arose between the parties regarding the reasons for the delay in completion of the work. The respondent attributed the delay to SBI in providing necessary drawings and approvals. SBI contended that the approvals were given after inspection and preparation of the designs by the architect, M/s Taneja Associates (P) Ltd. (hereinafter 'the architect'). The claims raised by the respondent *vide* letter dated 11.09.2018 were rejected by SBI on 28.09.2018, being time-barred.

2.4 On 07.01.2019, arbitration was invoked at the instance of the respondent under clause 38 of the General Conditions of Contract (for short 'GCC') and fourteen claims were raised aggregating to Rs.4,92,35,263/-. By the impugned award, the arbitrator awarded a total sum of Rs.1,42,95,725/- in favour of the respondent. The claims raised and the amounts awarded are tabulated below:

Claim No.	**Brief Description of claim**	**Claim Amount (Rs.)**	**Award (Rs.)**
1	Loss of overhead expenditure	65,80,940/-	30,27,231/-
2	Interest on claim no.1	34,77,982/-	8% *pendente lite* & future interest
3	PVA	1,00,65,359/-	1,00,65,360/-
4	Interest on delayed payment of PVA	36,31,363/-	8% *pendente lite* & future interest
5(a)	Short payment towards extra items	20,40,032/-	NIL
5(b)	Cost of extra works carried out but not paid	34,87,052/-	NIL
6	Interest on Claims 5(a) & 5(b)	29,21,026/-	NIL
7	Loss on account of delay in payment of RA bills and final bill	20,81,957/-	4,21,385/-+ 8% future interest
8	Reimbursement of Service Tax	59,88,125/-	NIL

9	Interest on Claim No.8	31,84,010/-	NIL
10	Loss of interest due to delayed release of retention/security deposit and withholding from 20th and final bill	17,92,113/-	8,08,750/-+ 8% future interest
10(i)–10(iv)	Interest on Claim No.10	4,28,917/-	NIL
11	Loss due to delay in earning profit	9,80,536/-	NIL
11(a)	Interest on Claim No.11	5,18,207/-	NIL
12	*Pendente lite* interest @15% per annum		NIL
13	Future interest @15% per annum		NIL
17	Cost of arbitration		NIL

2.5 The challenge in the present petition is confined to claim nos.1, 3, 7 & 10 and the consequential interest awarded thereon.

Submissions of the Parties

3. Learned senior counsel for SBI submits that the award *qua* claim no.1 has inherent contradictions. The arbitrator recorded that delay of 205 days was attributable to the respondent and 175 days to SBI yet awarded damages towards overhead expenditure for the period of delay not attributable to SBI. Reliance is on ***Union of India v. Pundarikakshudu and Sons & Anr.*** (2003) 8 SCC 168 to contend that an award having inherent contradictions is liable to be set aside. The submission is that the arbitrator erred in awarding claim no.1 in the absence of evidence proving the loss suffered on account of overheads

incurred due to prolongation of the contract. Reliance is placed on ***Unibros v. All India Radio*** 2023 SCC OnLine SC 1366 and ***Batliboi Environmental Engineers Ltd. v. HPCL & Anr.*** (2024) 2 SCC 375. The contention is that on failure of the respondent to prove the actual losses suffered, the Emden formula could not have been relied upon for quantification of damages. It is emphasised that the award is non-speaking and no reasons have been recorded for accepting the calculations based upon Emden formula and the CPWD manual.

3.1 *Vis-a-vis* claim no.3, the contention is that the arbitrator erred in ignoring the vital evidence on record and the award suffers from patent illegality. The argument is fortified by relying upon the third extension whereby the time was extended without PVA, in contrast to the first two extensions which were subject to PVA. It is canvassed that the architect *vide* letter dated 11.11.2015 recommended the third extension without monetary benefit and PVA but despite this evidence adduced the arbitrator erred in awarding the claim for PVA. Reliance is on clause 44.3 of the GCC to contend that the price adjustment clause was applicable only to work executed during the contract period including an authorised extension and not thereafter. The submission is that the third extension was accepted by the respondent without reserving the right to claim PVA and the claim awarded is unsustainable under Sections 55 and 73 of the Indian Contract Act, 1872 (hereinafter 'Contract Act'). To fortify the argument, reliance is placed upon ***Kailash Nath and Associates v. New Delhi Municipal Committee*** 99 (2002) DLT 361 (DB-DHC).

3.2 *Qua* claim no.7 the grant of interest for delay in payment of the running bills and final bill is challenged contending that the running bills were in the nature of advance payments and not debt within the meaning of the Interest Act, 1978 (hereinafter 'Interest Act') and no interest is to be paid. Reliance is on the decision of Supreme Court in ***State of Manipur and Others v. Shangreihan Muivah*** (2002) 10 SCC 516.

3.3 With regard to claim no.10 it is argued that the arbitrator erred in awarding interest for delay in refund of the security deposit. The submission is that clause 6.2 of the GCC stipulates that no interest shall be paid on the amount retained by the bank as security deposit. The grievance is that the arbitrator relying upon Section 31(7) of the Act could not have awarded interest consequent to the parties having agreed otherwise i.e. no interest shall be paid on the security deposit. Reliance is on the decision of ***Jai Prakash Associates Limited (JAL) v. Tehri Hydro Development Corporation (India) Limited (THDC)*** (2019) 17 SCC 786 and ***Garg Builders v. Bharat Heavy Electricals Limited*** (2022) 11 SCC 697 to contend that the jurisdiction of the arbitrator to award interest under Section 31(7) of the Act is ousted by the agreement between the parties.

4. *Per contra,* the scope of interference under Section 34 of the Act is limited and a plausible view taken by the arbitrator is not to be interfered with. Reliance is on the decision of the Supreme Court in ***OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited and Anr.*** (2025) 2 SCC 417.

4.1 The award of claim no.1 is defended stating that for loss sustained evidence in the form of bills for expenses incurred during the prolonged period were produced before the arbitrator. The contention is that the arbitrator rightly awarded the claim relying upon the Emden formula read with the CPWD manual wherein the overhead expenses were quantified at 7.5 per cent. The decision of this court in ***National Highways and Infrastructure Development Corporation Limited v. Intercontinental Consultants and Technocrats Private Limited*** 2026 SCC OnLine Del 1776 is relied upon for the proposition that determination of the quantum of evidence falls within the exclusive domain of the arbitrator.

4.2 It is argued that the view taken by the arbitrator for awarding claim no.3 is plausible. The submission is that the architect in cross-examination admitted that an effort was made to convince SBI to grant PVA for the third extension. Moreover, a factual finding is recorded by the arbitrator that SBI was responsible for the delay necessitating third extension. The submission is that claim no.3 also included the shortfall of

Rs.56,84,292/- towards PVA for the earlier extensions and is not challenged by SBI. The contention of SBI that the acceptance of the third extension without reserving the right to claim price variation debars the claim for PVA is refuted. To lend support to the contention that the delay was not attributable to the respondent reliance is on the letter of the architect dated 23.08.2016 and the entry at serial no.16 in the document granting the third extension. The submission is that the third extension was granted *post-facto* and there was no occasion for SBI to raise an objection regarding PVA.

4.3 With regard to claim no.7, it is contended that clause 37 of the GCC prescribes the time for payment against certificates issued by the architect and applies to the running bills as well as the final bill. The submission is that there was a delay of 243 days in payment of the running bills and a further delay of 133 days in release of payment towards the final bill. The arbitrator after considering and reconciling the charts furnished by the parties awarded interest for the period of delay proved. It is argued that the award based on the contractual stipulation calls for no interference under Section 34 of the Act.

4.4 The argument is that clause 6.2 of the GCC was not pressed before the arbitrator and the grievance that claim no.10 was awarded contrary to clause 6.2 cannot be raised for the first time under Section 34 of the Act. Reliance is placed upon the decision of the Supreme Court in ***Union of India v. Susaka***

Private Limited and Others (2018) 2 SCC 182.

5. Heard learned counsel for the parties at length and perused the record with their able assistance.

RELEVANT CLAUSES

6. Before proceeding further, it would be apposite to quote the relevant clauses of the GCC:

> "**Clause 6 Security Deposit**
>
> **6.1** Total security deposit shall be 5% of contract value. Out of this 2% of contract value is in the form of initial security deposit, which includes the EMD. Balance 3% shall be deducted from the running account bill of the work at the rate of 10% of the respective running account bills i.e., deduction from each running bill account will be 10% till total 3% of contract value is reached. 50% of the total security shall be paid to the contractors on the basis of achieving the virtual completion along with the final 3rd Payment. The balance 50% would be paid to the contractors after the defects liability period as specified in the contract provided he has carried out all the work attended to all the defects in accordance with the condition of the contract and clearance, if any, of the observations of the CTE of CVC, and would be released after closure of CTE's Report.
>
> **6.2** No interest shall be paid to the amount retained by the Bank as Security Deposit.
>
> **Clause 37 Certificate of payment**
>
> The contractor shall be entitle under the certificates to be issued by the Architect / consultant to the contractor within 14 working days from the date of certificate to the payment from SBI from time to time. The SBI shall recover the statutory recoveries towards Income tax, Work contract tax as per the

prevailing bye laws and other dues including the retention amount from the certificate of payment.

Provided always that the issue of any certificate by the Architect/consultant during the progress of works or completion shall not have effect as certificate of satisfaction or relieve the contractor from his liability under clause.

Clause 44 Price Variation Adjustment

44.3 The price adjustment clause shall be applicable only for the work executed during the contract, period including authorised extension, if any. ln case the work is not completed within the period including authorised extension and the provision of liquidated damages has to be enforced, this adjustment clause will not be applicable for work done during that period. It is also clarified that price adjustment clause will not be applicable to any extra variation items, the rates of which are based on prevailing market rate."

7. The dispute in the present petition only pertains to claim nos.1, 3, 7 & 10. The undisputed facts are that the work was not completed within the stipulated period. Three extensions were granted by SBI, the first two with PVA and the third extension without PVA.

ANALYSIS FOR CLAIM NO. 1

8. The respondent claimed an amount of Rs.65,80,940/- for overhead expenditure incurred during the period of prolongation of the contract by twelve and a half months. The respondent attributed the entire delay to SBI and the claim was

computed relying upon the Emden formula and the CPWD manual.

9. The arbitrator after considering the evidence of the architect concluded that 205 days of delay were attributable to the respondent and 175 days to SBI. The arbitrator thereafter proceeded to quantify the claim for the period of delay attributable to SBI. It was taken note of that the Emden formula was an accepted mode for assessing overhead expenditure. The relevant portion of the award granting claim no.1 is reproduced below:

> "99. The Claimant, in cross-examination, has not been able to rebut the testimony of RW-3 relating to the statements made in para 13 of the affidavit by way of evidence and the documents mentioned therein. In that view of the matter, this Tribunal accepts the well-reasoned analysis of RW-3. Accepting the evidence of RW-3, this Tribunal holds that the Claimant responsible for205 days of delay and the Respondent responsible for 175 days of delay.
>
> l00. The Claimant is entitled to Overhead expenditure for 175 days only. Emden formula has been accepted as mode of assessing the Overhead expenditure. Reference be made to ***Mcdermott International Inc vs. Burn Standard Co. Ltd.,*** (2006) 11 SCC 181, ***Associate Builders vs. Delhi Development Authority,*** 2015 (3) SCC 49 and ***Atlanta Limited vs. Union of India*** (2022) 3 SCC 739 relating to the principles for computation of Overhead expenditure.
>
> 101. Applying the aforesaid principles, this Tribunal

awards Rs. 30,27,231/- (Rs.5,26,475 (7.5% of prime cost of tender i.e. Rs.16,84,71,795/- x 5.75 months) towards the Overhead expenditure for the period of 175 days. Claim No. 1 is partially allowed in the above terms."

10. The law is well settled that for awarding damages under Section 73 of the Contract Act, the twin conditions are required to be fulfilled: first, breach of the contractual conditions and second, the actual loss or damage suffered or proof that it is not possible to prove the actual damage suffered. It is fruitful to cite the following decisions of the Supreme Court:

10.1 In ***Kailash Nath Associates v. DDA,*** (2015) 4 SCC 136 it was held:

> "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."

10.2 In ***State of Rajasthan v. Ferro Concrete Construction (P) Ltd.,*** (2009) 12 SCC 1 it was held:

"55.While the quantum of evidence required to accept a claim may be a matter within the exclusive jurisdiction of the arbitrator to decide, if there was no evidence at all and if the arbitrator makes an award of the amount claimed in the claim statement, merely on the basis of the claim statement without anything more, it has to be held that the award on that account would be invalid. Suffice it to say that the entire award under this head is wholly illegal and beyond the jurisdiction of the arbitrator, and wholly unsustainable."

11. In the present case, the arbitrator without the respondent discharging the onus with regard to fulfilment of the second limb for claiming damages under Section 73 of the Contract Act directly proceeded to quantify the claim on the basis of the

Emden formula. The award of claim no.1 is against the provisions of the Contract Act, the decisions of the Supreme Court in ***Kailash Nath Associates v. DDA*** (supra) & ***Ferro Concrete Construction (P) Ltd.*** (supra) and suffers from patent illegality.

12. The Supreme Court in ***Unibros v. All India Radio*** (supra) held that reliance on a formula is not a substitute for establishing the loss actually suffered. The relevant paragraphs of the judgment are reproduced below:

> "18. Hudson's formula, while attained acceptability and is well understood in trade, does not, however, apply in a vacuum. Hudson's formula, as well as other methods used to calculate claims for loss of off-site overheads and profit, do not directly measure the contractor's exact costs. Instead, they provide an estimate of the losses the contractor may have suffered. While these formulae are helpful when needed, they alone cannot prove the contractor's loss of profit. They are useful in assessing losses, but only if the contractor has shown with evidence the loss of profits and opportunities it suffered owing to the prolongation.
>
> 19. The law, as it should stand thus, is that for claims related to loss of profit, profitability or opportunities to succeed, one would be required to establish the following conditions: first, there was a delay in the completion of the contract; second, such delay is not attributable to the claimant; third, the claimant's status as an established contractor, handling substantial projects; and fourth, credible evidence to substantiate the claim of loss of profitability. On perusal of the records,

> we are satisfied that the fourth condition, namely, the evidence to substantiate the claim of loss of profitability remains unfulfilled in the present case."
>
> (*emphasis supplied*)

13. In the case in hand the damages awarded relying upon the Emden Formula in the absence of evidence to prove the actual loss suffered is contrary to the settled position of law.

14. Another aspect to be considered is that Section 31(3) of the Act mandates a reasoned award and recording reasons is not a mere formality. Reference is to the decision of the Supreme Court in ***Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.*** (2019) 20 SCC 1 wherein it was held as under:

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

15. There cannot be a dispute with the proposition that an arbitral award is not to be equated with the judicial judgement and reasons are to be gathered from a reading of the award as a whole and the documents referred to therein. However, even on a fair reading of the award as a whole no reason emanates for the arbitrator accepting the calculation based on the Emden formula without there being evidence to prove the loss suffered

or that it was difficult or impossible to prove the actual loss suffered. The award of claim no.1 falls within the teeth of Section 31(3) of the Act.

FOR CLAIM NO.3

16. The arbitrator held that during the cross-examination the architect admitted that an attempt was made to convince SBI to grant the third extension with PVA. There is a contradiction between the contents of the letter dated 11.11.2015 and the statement of the architect in cross-examination. The recommendation of the architect was for grant of the third extension up to 28.01.2016 without any monetary benefit and PVA to the respondent. The relevant portion of the letter is reproduced below:

> "An overall delay of **150 days** is considered for time extension,
> The Extension be granted for upto January 28, 2016 **but without any monetary benefit and without PVA to the contractor.**"

17. In respect of the third extension, the claim was awarded solely relying upon the alleged admission of the architect in cross-examination. The question no. 44 and the answer thereto are reproduced below:

> "Q.44. Is it correct that the claimant had submitted the final PVA bill for Rs. 1,95,51,176/- at page 192 but the same was never processed by you, only because you say that the third extension given by the bank was without PVA?
> Ans. I even tried to convince the bank but I could

not convince them as I could not explain the bank
the delay done on part of the contractor."

18. The answer to question no.44 cannot be construed as an admission that the third extension was subject to payment of PVA. Be that as it may, the PVA for the third extension could have been granted by the arbitrator had there been a clause in the contract providing for it or if evidence was adduced to establish the entitlement of the respondent to claim PVA for this period. There is no reason recorded in the award for granting PVA for the third extension except reliance upon the admission of the architect, which does not exist.

19. The documentary evidence in the shape of the recommendation letter dated 11.11.2015 is relevant material on record and cannot be ignored on the basis of an alleged admission of the architect in cross-examination.

20. Another aspect to be considered is that while deciding claim no.1 the total delay of 380 days was attributed to both parties i.e. 175 days to SBI and 205 days to the respondent. However, there is no discussion either in claim no. 1 or in claim no.3 as to the time period for which the delay was attributable to SBI and to the respondent respectively. In such circumstances, the conclusion recorded in claim no. 3 that SBI was responsible for the third extension is without any basis and is perverse. Reliance of the learned counsel for the respondent on the entry at serial no.16 in the document granting the third

extension does not enhance the case of the respondent as it reproduces the recommendation of the architect and not the conclusion for extending the time.

21. Under claim no.3, the arbitrator dealt with two parts, firstly the short payment of PVA for the initial two extensions granted with PVA and secondly the PVA for the third extension. Though the amounts were awarded under one claim, the two amounts were dealt with separately and different reasons were recorded for awarding Rs.56,84,292/- and Rs.43,81,068/- respectively. This court has no power to modify the award. However, the Supreme Court in ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd***., (2025) 7 SCC 1 held that segregation of issues which are not intricately connected is permissible. The award of PVA up to the second extension is not under challenge. The two awards of PVA are not interconnected and are severable and only the award of PVA for the third extension is liable to be set aside.

FOR CLAIM NO.7

22. It is not disputed by learned counsel for the parties that clause 37 of the GCC dealing with certificate of payment prescribes the procedure, time for payment against certificates issued by the architect and applies to both running bills and the final bill. It is not under challenge that there was delay in making payment of the running bills and the final bill. The arbitrator on that basis awarded Rs.4,21,385/- towards interest.

23. The contention of SBI that the payment of running bills is in the nature of an advance payment and delay in clearing the running bills shall not entitle the respondent to interest, lacks merit. Clause 37 of the GCC stipulates the timeline of fourteen working days from the date of certificate issued by the architect for making payment to the contractor. The arbitrator after considering clause 37 recorded that the payments were not made within the stipulated period and awarded interest for the delay in payment. The view taken by the arbitrator is a plausible view and calls for no interference in proceedings under Section 34 of the Act. Reference is made to the decision of the Supreme Court in ***Prakash Atlanta v. National Highways Authority of India*** 2026 INSC 76 wherein it was held that a plausible view taken by the arbitrator is not be interfered with unless the conclusion arrived at is perverse.

24. Reliance of learned senior counsel for SBI on the decision of ***State of Manipur and Others v. Shangreihan Muivah*** (supra) is of no avail. The clause considered by the Supreme Court in that case specifically provided that the intermediary payments were to be treated as advances against the final payment and not as payment for the work actually done and completed. There is no such clause in the case in hand and clauses in both cases are materially different.

25. The contention that the jurisdiction of the arbitrator under Section 31(7) of the Act to grant interest stood ousted is noted

to be rejected. No clause is brought to the notice of the court or the arbitrator providing that no interest shall be paid on delayed payment of running bills or the final bill. Reliance on the decision of the Supreme Court in ***Jai Prakash Associates Limited (JAL) v. Tehri Hydro Development Corporation (India) Limited (THDC)*** (supra) does not come to the rescue of SBI as in that case there was a specific contractual bar for awarding interest whereas no such bar is pointed out in the present case. Moreover, it was held that the phraseology of the agreement has to be considered while examining the power of the arbitrator to award *pendente lite* interest.

FOR CLAIM NO.10

26. The security deposit of 5% of the contract value as stipulated under clause 6 of the GCC was made by the respondent. 50% of the total security as per clause 6.1 of the GCC was to be refunded along with the payment of the final bill on the basis of the certification of virtual completion. The balance 50% was to be paid back to the respondent after the defect liability period was over subject to the respondent carrying out and attending to the defects in accordance with the conditions of the contract.

27. It is not disputed that the work was completed on 23.01.2016 and the defect liability period ended on 23.01.2017. The first 50% of the security deposit was released on 18.06.2017 after a delay of 321 days and the balance 50% on

21.03.2018 with a delay of 424 days. In facts and circumstances, especially in view of clause 6 of the GCC the arbitrator rightly awarded interest for the delayed period.

28. The contention of learned counsel for the respondent that in the statement of defence reliance upon clause 6.2 of the GCC against awarding of interest was not pleaded is factually correct and deserves acceptance. The decision of the Supreme Court relied upon by learned counsel for the respondent in ***Union of India v. Susaka Private Limited and Others*** (supra) applies to the facts of the case. The plea not raised before the arbitrator by SBI cannot be permitted to be raised under Section 34 of the Act. The relevant paragraphs of the judgement are reproduced below:

> "23. If the appellant was so keen to place reliance on Clause 13(3) of GCC to defeat the claim of Respondent 1 relating to the award of interest on various claims, then it was necessary for the appellant to have raised such plea specifically, in their reply, before the Arbitral Tribunal. No such plea was raised even before the Arbitral Tribunal.
> 24. Though we find that the appellant raised this ground, for the first time, in Section 34 proceedings [see Ground (cc)] before the Single Judge but again this ground was not pressed at the time of arguments. It is clear from the perusal of the Single Judge's order. Not only that, the appellant again did not raise this plea before the Division Bench.
> 25. In the light of the aforementioned factual scenario emerging from the record of the case, we cannot grant any indulgence to the appellant (Union of India) to raise such plea for the first time.

> In our view, <u>it is a clear case of waiver or/and abandonment of a plea at the initial stage itself.</u>
>
> (*emphasis supplied*)

29. Moreover, clause 6.2 of the GCC cannot be read in isolation. From a reading of clauses 6.1 and 6.2 it emerges that no interest shall be paid on the security deposit retained by the bank. Clause 6.1 stipulates the conditions for release of the security deposit. Admittedly, the security deposit was refunded beyond the period prescribed in clause 6.1 and clause 6.2 shall not apply in such a situation.

30. In view of the above discussion, the award in respect of claim nos. 1 and 3 as discussed above cannot be sustained and is liable to be set aside. However, claim nos. 7 and 10 awarded are upheld.

31. The Supreme Court in ***Gayatri Balasamy*** (supra) held that while the court exercising jurisdiction under Section 34 cannot modify the arbitral award, 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</u>

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.[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. 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."

(*emphasis supplied*)

32. The claim nos. 1 & 3 are not intricately connected with claim nos. 7 & 10 and are severable. Consequently, the impugned award to the extent of awarding claim no.1 and the amount under claim no.3 towards PVA for the third extension is

set aside.

33. The petition is allowed to the aforesaid extent.

34. Pending application stands disposed of.

AVNEESH JHINGAN, J

SEPTEMBER 15, 2026
'JK'

Reportable:- Yes