* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment reserved on:04.05.2026*
Judgment delivered on :16.07.2026

\+ **FAO(OS) (COMM) 130/2020 and CM APPL. 42522/2021**

TURNER MORRISON LTD .....Appellant

versus

KARMA KONCHOK NAMGYAL .....Respondent

Advocates who appeared in this case:

For the Appellant	: Mr. Sandeep Sethi, Sr. Adv. with Mr. Rishi Agrawala, Mr. Lalit Gupta, Ms. Aarushi Tiku, Mr. Vikram Choudhary, Ms. Riya Kumar, Advs.
For the Respondent	: Mr. Amit Rawal, Sr. Adv. with Mr. Saurabh Suman Sinha, Ms. Sujal Gupta, Mr. Harshit Khanduja and Mr. Pulkit Shree, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J.

1. Through the present appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereafter '**the Act**'), the Appellant/ Turner Morrison Ltd. ('**TML**') is essentially assailing the

correctness of judgment dated 14.05.2020 in O.M.P. (COMM) 50/2018 (hereafter '**impugned judgment**'), as well as the Common Arbitral Award dated 31.10.2017 passed in two arbitrations– Arbitration I and Arbitration II, on the following counts:

i. That in Arbitration I pertaining to construction cost dispute, the contractually agreed rate of interest of 36% per annum was to be reckoned from the date when Respondent No.2/ Namgyal Institute for Research on Ladakhi Art and Culture ('**NIRLAC**') installments fell due in terms of the Construction Agreement dated 11.12.1995; and

ii. That in Arbitration II pertaining to maintenance cost dispute, the agreed rate of interest/ penalty at the rate of 2% per month on the outstanding service and electricity charges under the Facilities and Maintenance Contract dated 15.10.1999 and Facilities and Maintenance Agreement dated 29.11.2001 was to be paid by NIRLAC.

2. By the Common Award, the learned Arbitrator had awarded interest at the rate of 7.5% per annum on delayed payments under the Construction Agreement dated 11.12.1995 from 20.01.2007 (that is, the date when the demand notice was sent by the TML to NIRLAC to recover the construction cost along with interest and expenses), and rejected the TML's claim for interest at the agreed rate of 36% per annum. The Arbitrator had also rejected the TML's claim for interest on outstanding electricity service and other maintenance charges. By

the impugned judgment, the learned Single Judge set aside the Common Award to the extent that it has reduced the rate of interest from 36% to 7.5% without interfering with the Arbitrator's findings in regard to the date from when the interest in this regard was to be reckoned. The learned Single Judge further held that the Arbitrator's view that there being no liability on NIRLAC to pay any penalty on service and electricity charges was also plausible.

3. Shorn of unnecessary details, the brief facts of the case are as under:

Arbitration I

3.1. On 22.11.1995, a Perpetual Lease Deed was executed between the President of India and NIRLAC for a plot of Nazul Land measuring 5324.40 sq. mtrs. whereunder NIRLAC was to complete construction of a building on the subject plot within two years.

3.2. As NIRLAC was not in a position to comply with the terms of the Lease due to paucity of funds, it approached TML for carrying out the construction. Pursuant to the same, TML and NIRLAC entered into the Construction Agreement dated 11.12.1995 wherein it was decided that TML would obtain necessary approvals, permissions for construction on the plot and recover the cost of construction with interest from NIRLAC. The relevant sub clauses in this respect are as under:

> *"3.2 (a) It will be the obligation of the First Party to make payments to the Contractor in accordance with the Schedule of*

payment annexed hereto and in the event delay in any payment, the First Party shall pay interest@ 36% per annum on the delayed payment.

(b) That till the entire construction cost is paid by the First Party to the Second Party. The Second Party shall have a lien over the said land a/ongwith constructions thereon and in that event shall have full authority and power to - appropriate all its construction cost, interest and expenses by sale, transfer or lease of such constructed area so as to meet the outstanding liabilities of the First Party and in that event the First Party shall not raise any objection in any manner whatsoever

(c)That further to secure the payments to be made to the Second Party the First Party shall deposit the original title deeds of the said property with the Second Party who shall retain the same as a security till the entire payment and entire construction cost and all the dues and expenses payable by the First Party to the Second Party is paid fully."

3.3. Further, the payment schedule under the Construction Agreement provided for payment in the following manner:

"1. 20% as advance for mobilization.

2. 15% on completion of Foundation.

3. 15% on laying Ground Floor Roof slab.

4. 15% on laying First Floor roof slab.

5. 10% on completion of Superstructure.

6. 10% after Brick work, plastering, flooring.

7. 10% on Sanitary fixtures & wood work, like door Windows.

8. 5% on possession."

3.4. On 11.12.1995 itself, NIRLAC also entered into ten separate unregistered agreements to lease various portions of the proposed building to different entities for an initial term of 9 years, which was renewable for successive terms of 9 years each. As per TML, the aforesaid arrangement was entered to enable NIRLAC to raise finances to meet the proposed construction cost, however, NIRLAC was unable to generate sufficient funds and it defaulted in making payments. This led TML to acquire leasehold rights *qua* these Leases by separate deeds of assignment.

3.5. Thereafter, on 02.06.1997, TML and NIRLAC also executed supplemental agreements agreeing that NIRLAC will refund the Security and cost of construction with interest along with any amount spent by TML on alteration/ modification and loss/ damage suffered by TML if TML has to vacate the property due to action of NIRLAC or any statutory authority or due to any government stipulation. GPA's dated 11.12.1995 and 04.03.1999 were executed by NIRLAC in favour of TML's nominees authorising them to let out the constructed building and generate some rental inflow which could be adjusted towards recovery of construction cost.

3.6. In February, 1999, NIRLAC entered into two agreements to forego a sum of ₹2.1 crores and ₹20 lakhs respectively out of total security deposit payable by TML to NIRLAC in respect of the acquired leases as well as in respect of the additional area of building.

3.7. Construction was completed by TML on 11.06.1999 and Municipal Corporation of Delhi ('**MCD**') issued a completion certificate. As the constructed area was 71,146 sq. ft., in terms of the Agreement, NIRLAC was liable to pay construction cost of ₹14.23 crores (at the rate of ₹2000/- sq. ft.) along with interest on delayed payment. On 01.10.1999, NIRLAC handed over possession of the premises measuring 44,900 sq. ft. area on the 1st to 5th floors along with the adjoining terraces and also an area measuring 11,322 sq. ft. in the basement of the building to TML.

3.8. After completion of construction, separate registered tripartite Agreements to lease were entered into with different lessees with consent of NIRLAC and TML continued to receive rent (which was to be adjusted towards constructed cost) till 14.11.2006, on which date the property was sealed by MCD pursuant to Delhi Development Authority cancelling the Perpetual lease in favour of NIRLAC on the ground of alleged unauthorised subletting to commercial organisations.

3.9. Aggrieved by NIRLAC's failure to pay the due amount and as it could no longer recover the amount by leasing out portions of the constructed building, TML issued a demand notice dated 20.01.2007 to recover the construction cost along with interest and expenses. Thereafter, TML filed two separate petitions under Section 9 of the Act, which were allowed by common order dated 23.09.2009 and NIRLAC was *inter alia* restrained from occupying or using and/or alienating, encumbering or parting with possession of subject plot. The Appeals against the interim order were dismissed.

3.10. In the first arbitration, TML essentially sought the due amount towards construction cost with compound interest at the rate of 36% annum. The learned Arbitrator rejected all the claims of TML and directed it to deliver back the original title deeds of the plot and building constructed thereon to NIRLAC. Rate of interest was reduced to 7.5% per annum as the Arbitrator found the interest at the rate of 36% per annum to be hit by Usurious Loans Act, 1918. By the impugned judgment, the learned Single Judge held that the Arbitrator had erred in reducing the rate of interest despite the subject contract expressly providing for interest at the rate of 36% per annum. However, the learned Single Judge found that the claim of TML in respect of entitlement to interest with effect from 11.12.1995 had been rightly rejected by the Arbitrator on the ground that it appeared that both parties had proceeded on the basis that TML would bear the construction cost and but for the sealing, TML would have proceeded to receive rent till expiry of Lease.

3.11. The learned Single Judge, however, granted liberty to the Appellant to seek a fresh reference through Arbitration with regard to disputes relating to the rate of interest payable under Arbitration-I.

Arbitration II

3.12. After construction of the building was completed, by lease deed dated 15.10.1999, NIRLAC and TML granted a lease of common areas to one M/s. Tuareg Properties and Security Services Ltd. (‘**Tuareg**’), a subsidiary of TML. Tuareg was further approached for providing and maintaining various facilities in the said building, which led to Facilities and Maintenance Contract dated 15.10.1999 being executed. Since NIRLAC was in possession of the ground floor of the building measuring 13,500 sq. ft and the parking area of 2,188 sq. ft. in the basement, Tuareg was providing facilities/ services to NIRLAC.

3.13. On 29.11.2001, Tuareg and NIRLAC entered into another Facilities and Maintenance Agreement dated 29.11.2001 under which Tuareg agreed to provide facilities to space occupied by NIRLAC, subject to payment of service fee of ₹80,580/ month during the 1st year and ₹94,010/ month for the next two years.

3.14. Subsequently, NIRLAC let out a part of the ground floor to M/s. Pfizer Limited and a separate Facilities and Maintenance Agreement dated 01.09.2004 was entered amongst Tuareg, Pfizer and NIRLAC whereafter Pfizer started paying the service fees.

3.15. By way of deed of assignment dated 16.03.2005, Tuareg assigned all its rights under Facilities and Maintenance Contract dated 15.10.1999 in favour of TML. After sealing of the property on 14.11.2006, various occupants in the building vacated their respective areas, due to which, TML has been unable to provide services and earn income despite investing a significant sum in machinery. This led TML to raise a claim of ₹11.33 crores till 31.08.2017 on NIRLAC towards service, electricity and other charges.

3.16. The said claim was rejected by the learned Arbitrator and the learned Single Judge did not interfere with the observations in this respect.

4. Before this Court, the learned Senior Counselfor the Appellantraised a limited grievance and submitted that since the learned Single Judge had already restored the contractual rate of interest, the only controversy that persisted was in relation to the period for which the interest was payable. He submitted that the learned Arbitrator virtually rewrote the entire contract which is impermissible.

5. He submitted that in terms of the Construction Agreement, NIRLAC was obliged to make timely payments to the Appellant as per the payment schedule in lieu of the construction costs incurred by the Appellant and in the event of delay, NIRLAC was liable to pay interest @36% per annum on delayed payments. He submitted that the final instalment fell due and payable upon handing over the possession which took place on 01.10.1999. He submitted that in view of the inability of NIRLAC to pay the construction costs to the Appellant, the possession of a portion of built-up property was handed over to the Appellant to enable the Appellant to recover its legitimate dues.

6. He submitted that once the learned Arbitrator in paragraph 80 of the award had categorically noted that the liability of NIRLAC to pay construction cost as per the construction agreement remained unaffected then the liability to pay interest also has to be reckoned from the date of the first default.

7. He submitted that the learned Arbitrator of its own accord evolved the theory of there being three options to recover the

construction cost whereas the Construction Agreement under Clause 3.2 clearly provided for a complete mechanism and entitlement to recover the construction cost along with interest on delayed payments. He submitted that separate tri-partite agreements to lease were entered into to generate rental inflows which could be adjusted towards recovery of construction cost.

8. He submitted that the so-called option (iii) as culled out by the learned Arbitrator was never acted upon and the same has been confirmed by the learned Arbitrator himself in paragraph 80 of the impugned award. He submitted that the Appellant was appropriating rent and adjusting the same towards construction cost along with interest till the date of sealing of the property on 14.11.2006 under separate registered tri-partite agreements to lease.

9. He submitted that the learned Single Judge as well as learned Arbitrator erred in noting that the date of default would be 20.01.2007. He submitted that when the learned Arbitrator had already concluded in paragraph 80 of the award that NIRLAC at no point in time was absolved of their liability to pay the construction cost, there is no basis to conclude that the Appellant for the first time indicated its intention to claim the construction cost on 20.01.2007.

10. He submitted that the learned Single Judge failed to appreciate that the *option iii* as culled out by the learned Arbitrator was never given effect to at any point of time. He submitted that the learned Arbitrator, in fact, had concluded in paragraph 80 that NIRLAC's

contention that it was not liable to pay construction cost is not supported by the construction agreement and that the document show that the liability of NIRLAC to pay construction cost remained unaffected. He submitted that the learned Arbitrator in paragraph 80(e) of the impugned award categorically noted that there would have been no need for the Construction Agreement to provide for payment of construction cost by NIRLAC in 8 installments or to provide for payment of interest in the event of delay *if* the parties had agreed that the construction cost was recoverable from the holders of the ten unregistered leases. He further submitted that if the fund raising for construction through 10 separate leases had been acted upon and no amount was due then there was no reason for NIRLAC to allow the Appellant to rent out property to recover construction cost for 7 years till the sealing occurred on 14.11.2006.

11. He submitted that the learned Single Judge proceeded on a wrong premise that the Appellant was resorting to three options as detailed in the impugned award. He submitted that since NIRLAC did not pay the construction cost as per the agreement and the separate 10 unregistered leases were never acted upon, the only option for recovery was through appropriating rents by leasing out premises to unrelated parties. He consequently submitted that the Appellant is entitled to interest at 36% per annum from the date it fell due, that is, from 11.12.1995 in terms of the construction agreement.

12. It is also pleaded on behalf of the Appellant that the learned Single Judge erred in not granting the agreed rate of interest(s)/ penalty @2% per month on the outstanding service and electricity charges under the Facilities and Maintenance Contract dated 15.10.1999 and Facilities and Maintenance Agreement dated 29.11.2001 even though the service and electricity charges were not fully paid by the Respondents.

13. *Per contra,* the learned Senior counsel for the Respondent submitted that the scope of this Court under Section 37 of the Act is circumspect. He submitted the learned Arbitrator rightly concluded that NIRLAC was not liable to pay interest on construction cost for any period prior to 20.01.2007.

14. He submitted that as is evident from a perusal of the impugned award also, the learned Arbitrator relied upon the annual reports of the Petitioner from the year ending 1998 upto 2005-2006 and concluded that in none of these annual reports/Balance sheets did the Appellant ever show NIRLAC as a debtor from whom any construction cost or any interest was due.

15. He submitted that on the day when the construction agreement was entered into that is on 11.12.1995, 10 separate agreements to lease were also entered into with the subsidiaries of the Appellant to generate sufficient funds for commencing and completing the construction. He submitted that the Appellant was to recover the construction cost from the lessees. He submitted that the Appellant

had three options to recover the amount and only when the property was sealed did the Appellant for the first time made a claim that NIRLAC was liable to pay the due amount.

16. He submitted that for the entire period between 1995 till the property was sealed, no demand for payment was made to NIRLAC and submitted that there is no acknowledgement of debt in terms of Section 18 of the Limitation Act, 1963. He consequently submitted that the Appellant is barred from making a claim for payment of interest prior to 20.01.2007.

17. He submitted that even otherwise, the learned Single Judge by the impugned judgment had given a liberty to the Appellant to seek a fresh reference through Arbitration with regard to disputes pertaining to the rate of interest payable under Arbitration-I. He submitted that in that regard, the Appellant had preferred a petition under Section 11 of the Act and the same was dismissed as withdrawn with liberty to file afresh if the Appellant’s challenge to the Award was decided in its favour in the present petition before this Court or the Supreme Court.

ANALYSIS

18. At the outset, it is relevant to appreciate the limited scope of an appeal under Section 37 of the Act. It is well-settled that appellate jurisdiction under the aforesaid provision is constrained within the domain under Section 34 of the Act, and rather, the appellate power of this Court is even more restricted than the powers conferred under Section 34 of the Act. It is not open to the Court to reappreciate the

evidence or review the merits of the case and interference is permissible only if the Court exercising power under Section 34 of the Act has not acted within the contours of the provision or failed to exercise the power so conferred. Recently, in the case of ***Jan De Nul Dredging India (P) Ltd. v. Tuticorin Port Trust*****: (2026) 3 SCC 186**, after adverting to a catena of judgments, the Hon'ble Apex Court has expounded on the scope of interference under Section 37 of the Act. Discussing the scope and objective of the Act which allows only limited grounds for challenge against the arbitral award, the Hon'ble Apex Court Cautioned against excessive interference by Courts and noted as under:

> *"**23.** The primary object of the Act is to provide **speedy and inexpensive mode of resolution of disputes** through the process of arbitration with the minimum intervention of the law courts. In this context, it would be beneficial to refer and quote Section 5 of the Act which reads as under:*
>
> > *"**5. Extent of judicial intervention**.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."*
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> ***24.** The above Section 5 of the Act contemplates that in matters of arbitration governed by Part I i.e. in relation to domestic arbitration, minimum intervention of the judicial authority is acceptable unless it is otherwise provided under Part I of the Act. **In other words, in order to speed up the remedial measures under the Act in relation to domestic arbitration, there has to be <u>minimum intervention of the court</u> and, if necessary, it has to be only in strict compliance with the provisions of the Act.***
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> ***25.** The Act provides for the challenge of the arbitral award before the court on limited grounds as contemplated by Section 34 of the Act i.e. where one of the party was under some incapacity; or where the arbitration agreement itself was not valid; or the parties*

were not given proper notice of the appointment of an arbitrator or the arbitral proceedings; or was unable, for some reason, to present his case before the arbitrator or Arbitral Tribunal; or if the arbitral award deals with the dispute not contemplated or falling within the terms of the arbitration or deals with the matters beyond the scope of the arbitration; or where the constitution of the Arbitral Tribunal was not in accordance with arbitration agreement; and, or where the court finds the subject-matter of the arbitral dispute was incapable of settlement by arbitration or the arbitral award is in conflict with the public policy of India.

26. *In short, apart from the above grounds, the arbitral award is not open for challenge under Section 34 of the Act on any other ground. So, the intervention of the court is limited. Therefore, technicalities apart, the main ground for challenge of the arbitral award in the instant case, which survives is that of the award being in conflict with the public policy of India i.e. whether it is in contravention with the fundamental policy of India or is in conflict with the most basic notions of morality or justice.*

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29. *…**It is settled in law that the appellate powers under Section 37 are limited to the scope of Section 34 and cannot exceed beyond it.** Certainly, therefore, if an award is not liable to be disturbed under Section 34 of the Act, the same could not have been interfered with in exercise of powers under Section 37 of the Act.*

30. *In **MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293]** , this Court has very succinctly laid down the powers of appellate court under the Act. It held as under : (SCC p. 167, para 14)*

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

must be extremely cautious and slow to disturb such concurrent findings."

*31. In **Konkan Railway Corpn. Ltd. v. Chenab Bridge Project [Konkan Railway Corpn. Ltd. v. Chenab Bridge Project, (2023) 9 SCC 85 : (2023) 4 SCC (Civ) 458]** , a three-Judge Bench of this Hon'ble Court has extensively dealt with the jurisprudence around Sections 34 and 37 of the Arbitration Act. This Court has held that : (SCC p. 93, paras 18-19)*

"18. … Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.

*19. **Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction.** [UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116, para 15 : (2022) 2 SCC (Civ) 401. See also Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1, paras 24, 25] It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal. [Ibid; SsangyongEngg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213; Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236, para 11.1 : (2019) 3 SCC (Civ) 552] "*

*33. In **UHL Power Co. Ltd. v. State of H.P. [UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116 : (2022) 2 SCC (Civ) 401]** , a three-Judge Bench of this Court observed as under : (SCC p. 124, para 16)*

*"16. … the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, **when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed.**"*

*34. In a recent case of **Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani [Bombay Slum Redevelopment***

Corpn. (P) Ltd. v. Samir Narain Bhojwani, (2024) 7 SCC 218] *, a Bench of this Court, of which one of us (P. Mithal, J.) was a member, had held that the* ***jurisdiction of the appellate court dealing with an appeal under Section 37 of the Act against the judgment in a petition under Section 34 of the Act is <u>more constrained</u> than the jurisdiction of the court dealing with a petition under Section 34 of the Act.***

35. *The gist of the aforesaid decisions is that the jurisdiction of the court under Section 37 of the Act is akin to the jurisdiction of the court under Section 34 of the Act, and, therefore, the scope of interference by the court in appeal under Section 37 cannot go beyond the grounds on which challenge can be made to the award under Section 34 of the Act. Moreover, the courts exercising powers under Sections 34 and 37, do not act as a normal court, and therefore, ought not to interfere with the arbitral award on a mere possibility of an alternative view."*

36.<u>In other words, the scope of interference of the court with the arbitral matters is virtually prohibited, if not absolutely barred.</u> *The powers of the appellate court are even more restricted than the powers conferred by Section 34 of the Act.* ***The appellate power under Section 37 of the Act is exercisable only to find out if the court exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred.*** *The appellate court exercising powers under Section 37 of the Act has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits so as to hold as to whether the award of the Arbitral Tribunal is right or wrong. The appellate court in exercise of such power cannot sit as an ordinary court of appeal and reappraise the evidence to record a contrary finding. The award of the Arbitral Tribunal cannot be touched by the court unless it is contrary to the substantive provision of law or any provision of the Act or the terms of the agreement.*

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50. *Before parting, we consider it proper to note that the Act is a special enactment which aims to resolve contractual/commercial disputes through arbitration with the minimum intervention of the court, if not without the intervention of the court.* ***In the event, the courts are allowed to step in at every stage and the arbitral awards are subjected to challenge before the courts in hierarchy before court of first instance, through regular appeals and finally***

> ***by means of SLP/civil appeal before the Supreme Court, it would obviate/frustrate and defeat the very purpose of the Act.*** *It is, therefore, necessary to accept the arbitral award if it is not patently illegal or does not fall within the scope of intervention under Section 34 of the Act.* ***The appeal thereof has a much narrower scope of intervention particularly when the arbitral award has been upheld under Section 34 of the Act.*** *The appellate jurisdiction acquires little significance only when the arbitral award has been erroneously upheld or set aside by the court in exercise of its power under Section 34 of the Act as discussed earlier, but has no authority of law to consider the matter which was before the Arbitral Tribunal on merits.*"
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> (emphasis supplied)

19. In the present case, the sole question before this Court is whether the learned Single Judge, while exercising jurisdiction under Section 34 of the Act, committed any jurisdictional error or applied an incorrect legal standard in declining to interfere with the impugned common award insofar as it did not grant interest at the rate of 36% per annum to the Appellant from when the respective installments fell due and it also rejected the Appellant's claim for grant of interest/ penalty at the rate of 2% on the outstanding service and electricity charges under the Facilities and Maintenance Contract dated 15.10.1999 and Facilities and Maintenance Agreement dated 29.11.2001.

Arbitration I :Interest on Construction Costs

20. The Appellant has sought to impress upon this Court that the impugned common award is perverse as the learned Arbitrator has exceeded his ambit by *re-writing* the terms of the contract, despite which, the learned Single Judge has upheld the findings of the learned

Arbitrator in regard to this issue.The limited argument agitated by the Appellant is that NIRLAC was obliged to make timely payments to the Appellant and the learned Arbitrator erroneously evolved its own theory of there being three options to effectuate recovery of Construction Costs. Reliance is also placed on Paragraphs 80 and 84 of the impugned common award to impress upon this Court that there are certain inconsistencies in findings of the Arbitrator in regard to NIRLAC's ensuing liability of construction costs.

21. Though there is no doubt that the terms of the Agreement/ Contract between the parties are sacrosanct in nature, it also cannot be denied that construction of contractual terms rests within the domain of the Arbitrator and interference is only permissible if the Arbitrator's interpretation is manifestly unreasonable that no fair-minded person could adopt it [Ref. ***Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India***: **(2015) 15 SCC 131**].

22. Pertinently, the said argument found favour with the learned Single Judge and ultimately persuaded the Court to partly set aside the impugned common award and find that it was not open to the learned Tribunal to reduce the rate of interest of 36% per annum that was stipulated in the contract to 7.5% per annum. Consequently, liberty was granted to the Appellant to seek a fresh reference through Arbitration with regard to the disputes relating to the rate of interest payable under Arbitration I. However, the learned Single Judge

rejected the Appellant's claim for grant of interest from the date when the installments fell due by noting as under:

> *"50. The claim of the Petitioner with regard to grant of interest with effect from 11.12.1995 i.e. the date when the installments fell due has been rightly rejected by the Tribunal and the period has been reckoned from 20.01.2007.* ***The Arbitrator analysed the three options by which the recovery of the cost was to be secured. After extracting the three options, the Arbitrator gave a finding that it was the Petitioner who had created an anomalous and amorphous position by keeping the three options open.*** *The premises were sealed on 14.11.2006, which is when the rental income ceased, and it was only thereafter that the Petitioner issued a notice dated 20.01.2007 choosing a different option to recover the balance from NIRLAC.* ***But for the sealing, Petitioner would have proceeded to receive the rent till the expiry of the Lease.<u>Thus, according to the Arbitrator, both parties proceeded on the basis that the Petitioner was the lessee and would bear the construction cost and enjoy the property without any obligation to account for the rents.</u>*** *Therefore, according to the Arbitrator till this period there was no liability of NIRLAC to pay the cost. This part of the Award suffers from no infirmity and calls for no interference."*

(emphasis supplied)

23. Though the learned Single Judge has succinctly summarised the observations of the learned Arbitrator on this issue, considering the arguments agitated by the Appellant in relation to the purported rewriting of the contract by the learned Arbitrator, this Court considers it apposite to refer to the relevant portion of the impugned common award, which is as under:

> *"80. But, the question is whether NIRLAC was at any time absolved of the liability to pay the construction cost as provided in construction agreement, in view of the execution of the agreements to lease with the ten nominees of claimant? At the outset, it should be noted that the method of recovery contemplated by the construction agreement is as per clauses 3.2(a) and (b), as*

contended by claimant. ***It is true that independent of the construction agreement, on the same day (11.12.1995), at the instance of claimant, NIRLAC entered into ten agreements to lease in favour of the nominees of claimant which were subsequently assigned in favour of TMLL. It is also true that certain amounts were paid as security deposit in terms of the lease.*** *NIRLAC's contention that it is not liable to pay the construction cost at all as claimant had agreed to receive the construction cost from the ten lessees, is not supported by the terms of the construction agreement.* ***The documents/evidence show that the liability of NIRLAC to pay the construction cost at per the construction agreement remained unaffected, as is evident from the following…***

*81…****The execution of the powers of attorney on 11.12.1995 and 4.3.1999 indicated that claimant kept open the option of recovering the construction cost as mentioned in clause 3.2(b) of the construction agreement (that is, by recovering the rent and adjusting it towards construction cost).***

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*82…****The documents show that claimant created an anomalous and amorphous position by keeping all the three options open.*** *Only after the premises was sealed on 14.11.2006 and the rental income from the premises ceased, claimant, by issuing a notice dated 20.1.2007, chose the (second) option by contending that various portion of the premises were let out by it on behalf of the claimant and the rents/revenue received by it were appropriatedtowards the construction cost, interest and expenses, leaving a balance to be recovered from NIRLAC.* ***Till then, both parties had proceeded on the basis of the third option, that is, receiving the construction cost from the ten lessees (or their assignee) thereby relieving NIRLAC from the obligation to pay the construction cost or interest thereon. But for the sealing on 14.11.2006, claimant would have proceeded to receive the rents till 30.9.2008 (that is, expiry of nine years from 01.10.1999) even in the absence of a registered lease, without any obligation to account for or appropriate the rents.*** *Claimant fell back on second option obviously because the chances of getting the premises de-sealed and earning rentals till 30.9.2008 appeared to be remote and it thought that' it can maintain a claim for· a large sum. Be that as it may. The question is whether claimant was entitled to change the option as late as 2007? The Tribunal has found that it can do so.*

83. The claim made by claimant for recovery of the balance of the construction cost with interest and expenses after adjusting rents/revenue received from the premises (the second option referred to above) is authorised by and is in accordance with the provisions of the construction agreement, namely clause 3.2(b). ***The provisions of ·unregistered agreements to lease providing for an alternative method of recovery absolving NIRLAC of the liability to pay the construction cost cannot be enforced, as admittedly, the crucial term of the said agreements providing for payment of the construction cost by the agreement holders was never given effect; and NIRLAC did not seek enforcement/specific performance of the terms of the agreements of lease by insisting that the construction cost should be recovered only from the agreement holders, absolving it from liability.*** *Therefore, contention ofNIRLAC that it is not liable to pay the construction cost and consequently not liable to pay interest, cannot be accepted.*

84. But, the above is subject to one condition/clarification. Even if claimant is entitled to recover the construction cost and expenses, by receiving the rents on behalf of NIRLAC and appropriating the rents towards the dues (by exercising the second option), ***the evidence clearly shows that till 20.1.2007, both parties had proceeded on the basis that claimant was the 'lessee' which would bear the construction cost in terms of the agreements to lease and enjoy the portions of the premises delivered to it on 1.10.2009 as lessee without any obligation to account for the rents and consequently, there was no liability on the part of NIRLAC to pay the construction cost or any interest on the construction cost****. It was only on 20.l.2007, for the first time, claimant indicated its intention to claim the construction cost, expenses and interest from NIRLAC.* ***As claimant shifted to the third option from the second option only on 20.1.2007, claimant will be entitled to interest on the construction cost (due if any) only from the date of notice (20.1.2007) and not in regard to any earlier period."***

(emphasis supplied)

24. Pertinently, the entire dispute in relation to the date from which the interest will be due thus rests on the three options as culled out by

the learned Arbitrator in paragraph 82 of the impugned award, which are premised on Clause 3.2 of the Construction Agreement dated 11.12.1995. The '*three options*'as provided in the said paragraph of the common award are as follows:

> *"(i) To recover the construction cost (secured by mortgage by deposit of title deeds) with interest and expenses from NIRLAC.* ***[NOTE: This is without exercising the lien to receive the rents and adjust the same towards the construction cost.]***
>
> *(ii) To recover the construction cost with interest and expenses by letting out the premises and recovering the rents and adjusting the same towards the construction cost, interest and expenses (by exercising the lien over the land and building with power to lease/sell/transfer the premises created under the construction agreement).* ***For this purpose, claimant had obtained registered general powers of attorney in favour of its nominees authorising them to let out and recover rents.***
>
> *(iii) To recover the construction cost from the prospective lessees of the premises nominated by TML (who were either the subsidiaries or group companies of TML), in whose favour NIRLAC had executed agreements to lease dated 11.12.1995 (simultaneously with the execution of the construction agreement), thereby relieving NIRLAC from the liability to pay the construction cost."*

25. Though the Appellant has sought to agitate that the learned Arbitrator has virtually re-written the contract by evolving the non-existing theory of '*Three options*' to recover the construction cost, a bare reading of Clause 3.2 of the Construction Agreement dated 11.12.1995 reflects that the interpretation of the learned Arbitrator is not implausible or manifestly unreasonable. On first blush there appears to be an inconsistency in findings of the Arbitrator in regard to NIRLAC's ensuing liability of construction costs, however, a holistic reading of the Award indicates that the learned Arbitrator has read

Clause 3.2 of the Construction Agreement dated 11.12.1995 to contain multiple methods of recovery of construction costs.

26. Although it has also been noted by the learned Arbitrator that the liability of NIRLAC remained unaffected, the learned Arbitrator has clearly also stipulated that the same was *subject* to one condition. It has been clearly elaborated by the learned Arbitrator that the evidence indicates that till 20.01.2007, the parties were proceeding on the basis that the Appellant was the lessee and it would bear the construction cost by enjoying the premises delivered to it on 01.10.1999 without any obligation to account for rent. It has been specifically observed by the learned Tribunal that the Appellant in its accounts showed the construction of the building on NIRLAC plot in different ways but it did not treat or show NIRLAC as a debtor from whom the construction cost or any interest was due in any of the annual reports/ balance sheets. This led the Tribunal to opine that till seizing of the premises, the parties had proceeded on the basis that there was no liability on part of NIRLAC to account for the construction cost or interest thereon.

27. Further, the observation that NIRLAC's liability remained unaffected cannot be read in isolation. The said observation was made while addressing NIRLAC's argument that its liability was entirely negated in terms of the unregistered lease agreements (which NIRLAC had entered into with nominees of the Appellant) alongside the Construction Agreement dated 11.12.1995. NIRLAC had

essentially sought to impress upon the learned Arbitrator that its liability was absolved in terms of the unregistered Lease Agreements as the same provided for an alternative arrangement of recovery wherein NIRLAC's liability to pay the construction cost was *substituted* by liability of the nominees of the Appellant and the clause in the Construction Agreement was a formality. In this context it was observed that theunregistered Lease Agreements did not absolveNIRLAC's liability under the Construction Agreement as the Lease Agreements were never executed and neither party had sought specific performance of the same, and it was open to the Appellant to *change option* of recovery under the Construction Agreement subsequently. It was thus observed by the learned Arbitrator that NIRLAC's liability *under the Construction Agreement* remained unaffected.

28. Perusal of the impugned common award reflects that the learned Arbitrator was of the view that NIRLAC had no liability to pay the construction cost or any interest on the same *till* the seizing of the premises (as the parties had proceeded on the basis that the Appellant would bear construction costs as a lessee *even in absence of a registered lease*under the third option). It appears that as per the learned Arbitrator, the Appellant shifted from the *third option* to the *second option* on 20.01.2007 and the observation in paragraph 84 to the contrary is merely a typographical error.

29. It is only through notice dated 20.01.2007 that the Appellant chose a different option to recover the duesby contending that various portion of the premises were let out by it and the rents/revenue received were appropriated towards the construction cost, interest and expenses, leaving a balance to be recovered from NIRLAC.Thereby, though the parties had proceeded on the basis of the third option, ultimately, the Appellant chose to effectuate recovery of the construction costs through the second option when the premises were sealed. But for the sealing, the Appellant would have proceeded to receive the rent till expiry of the Lease and enjoyed the property without any obligation to account for rents.

30. Pertinently, till the notice dated 20.01.2007, no notice for recovery was sent by the Appellant and the same lends credence to the Arbitrator's view that the parties were proceeding on the basis that the Appellant was to bear construction costs as a lessee.

31. It has ultimately been rightly appreciated that the Appellant had created a peculiar situation by keeping all its three options open. The arguments urged by the Appellant do not demonstrate *ex facie* patent illegality which warrants interference. Possibility of an alternative interpretation of the contractual terms is insufficient for tinkering with the well-reasoned and plausible interpretation of the contractual terms.

32. Having perused the impugned common award as well as the material on record, this Court is of the opinion that the learned Single Judge has rightly declined to interfere in this regard. There is no

perversity in the impugned common award and the learned Single Judge has rightly upheld the findings of the learned Arbitrator. This Court finds no material to conclude that the learned Single Judge applied an incorrect legal standard or erred in not exercising the jurisdiction vested in it.

33. Needless to say, insofar as the rate of interest is concerned, since no cross appeal has been preferred by NIRLAC, it is presumed that there is no challenge to the rate of interest awarded by the learned Single Judge.

Arbitration II :Claim for interest/ penalty at the rate of 2% on the outstanding service and electricity charges

34. Even though arguments were primarily addressed in relation to date from which interest was to be paid on construction costs, insofar as thesaid issue is concerned, a perusal of the impugned judgment reflects that the learned Single Judge declined to interfere in this respect on finding that the view of the Arbitrator was based on analysis of the contractual clauses between the parties as well as the law of damages. After undertaking a lengthy appraisal of the findings of the Tribunal, the learned Single Judge ultimately came to the conclusion that the view taken by the Arbitrator was a possible one.

35. Before proceeding further, it is imperative to first take note of the relevant contractual clauses in this respect. Before the learned Arbitrator, the Appellant had placed reliance upon Clause 3.2 of the

Facilities and Maintenance Contract dated 15.10.1999, which reads as under:

> *"In the event this Agreement is terminated and/or Tuareg is forced to cease to enjoy the benefits under this Agreement during the Initial Term or any renewals thereof because of any action of TMLL or NIRLAC or because of any Government stipulations or because of any action of the Delhi Development Authority or any other Government Authority, TMLL and NIRLAC shall refund to Tuareg the entire amount spent on the infrastructure for provision of Facilities, including but not limited to expenditure on air conditioning plant, elevators, electrical distribution system, water supply and sanitation facilities, horticulture, etc. along with interest @36% p.a. along with all losses and damages suffered by Tuareg."*

It was found that the claim was not governed byClause 3.2, and the same was also conceded by the Appellant.

36. An alternative contention was raised by the Appellant before the Arbitrator that it was entitled to interest by way of penalty at the rate of 2% per annum, compounded monthly, under Clause 11 of the Facilities and Maintenance Agreement dated 29.11.2001, which reads as under:

> *"DEFAULT BY NIRLAC*
> *Should NIRLAC default in payment of the Service or other fees payable hereunder or otherwise not conform to Tuareg's notices of payment given to him Tuareg is entitled to terminate this Agreement by a thirty (30) day's written notice or to forthwith cease providing any or all of the Facilities and/or facilities to the Occupied Space, including but not limited to the ceasing of provision of air conditioning, lighting, electricity and/or water supply, and NIRLAC is not entitled to claim any compensation of any damage or loss of business which may result therefrom. NIRLAC also agrees to pay penalty at the rate of 2% per month on the overdue amount to Tuareg calculated on a monthly basis from the date of default until full payment is completed."*

37. As also appreciated by the learned Single Judge, perusal of the impugned common award indicates that the learned Arbitrator returned a finding that the amount claimed towards service and electricity charges were adjusted against the excessive recoveries made by it and nothing was due. Thus, there was no question of interest.It was furtheropined by the learned Arbitrator that Clause 11 did not support the case of the Appellant and the same was only a provision for penalty. On a careful reading of the provision, the learned Arbitrator concluded that the words–'*calculated on a monthly basis*' did not refer to compounding but merely to penalty, if any, being calculated for every month even if the amount was overdue for a part of the month. Rejecting the claim of the Appellant in this regard, the learned Arbitrator noted that there was no claim for penalty, as what was claimed was interest at the rate of 36%.

38. Further, it was observed that Section 74 of the Indian Contract Act, 1872 would be attracted, which disentitles a party from seeking damages simply to recover penal sum provided in the agreement and only reasonable compensation for breach can be awarded. Noting that a provision for penalty merely fixes the upper limit for damages which can be awarded, the learned Arbitrator rightly found that there was no liability to pay any penalty as in this case nothing was due towards service and electricity charges.

39. The Appellant made a claim for *compound interest* at the rate of 36% per annum, and alternatively, raised a claim for *compound*

interest at the rate of 2% per month. It was rightly noted that there was *no* claim for penalty. The learned Arbitrator took a rational view that in such circumstances, there was no question of compound interest being awarded when there was no provision for interest at all. The learned Arbitrator also fairly noted that if any amount was due towards service and electricity charges, the Appellant would be entitled to maximum penalty of 24% per annum as penalty, however, no penalty was awarded as the learned Arbitrator awarded northing towards service charges and electricity charges due to excess recovery already effected by the Appellant.

40. As noted above, only reasonable compensation for breach can be awarded and a pre-estimate penal clause does not *per se* entitle the Appellant to such penalty. The learned Arbitrator has consciously appraised the facts of the case and rejected the Appellant's claim, which has been cogently upheld by the learned Single Judge after appreciating that the Arbitrator's findings are based on cogent appreciation of law of damages when a pre-estimate penalty is stipulated.

41. Upon careful examination of the common award as well as the impugned judgment, this Court is of the opinion that the learned Single Judge has rightly opined that the view taken by the learned Arbitrator is plausible and the same is based on a scrupulous examination of the relevant law as well as the contractual clauses, which cannot be interfered with in the present proceedings.

CONCLUSION

42. In view of the aforesaid discussion, this Court is of the opinion that the present appeal is without any merit and we find no such palpable error or infirmity which warrants interference with the impugned judgment.

43. The present appeal is accordingly dismissed.

AMIT MAHAJAN, J.

ANIL KSHETARPAL, J.

JULY 16, 2026